

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ILLINOIS NETWORK OF CHARTER)	
SCHOOLS, INTRINSIC SCHOOLS, and)	
THE MONTESSORI NETWORK D/B/A)	
THE MONTESSORI SCHOOL OF)	
ENGLEWOOD)	
)	Case No.
Plaintiffs,)	
)	
v.)	
)	
)	
KWAME RAOUL in his official capacity as)	
the Attorney General for the State of)	
Illinois, The BOARD OF EDUCATION OF)	
THE CITY OF CHICAGO, the ILLINOIS)	
STATE BOARD OF EDUCATION)	
)	
Defendants.)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Illinois Network of Charter Schools ("INCS"), Intrinsic Schools ("Intrinsic"), and the Montessori Network d/b/a the Montessori School of Englewood ("TMSOE" and with Intrinsic, the "Charter School Plaintiffs") by and through their attorneys, Goldberg Kohn Ltd., for their Complaint against Defendants, Kwame Raoul in his official capacity as the Attorney General for the State of Illinois, the Board of Education of the City of Chicago ("CPS"), and the Illinois State Board of Education ("ISBE") allege as follows:

INTRODUCTION

1. This lawsuit seeks a declaration that Illinois Public Act 103-0416 (the "Act"), which amended Sections 105 ILCS 5/27A-3, 105 ILCS 5/27A-6, and 105 ILCS 5/27A-7 of Article 27A of the Illinois School Code in (the "Charter Schools Law"), is invalid. The Act is preempted by the National Labor Relations Act (the "NLRA") and because the Act violates the Illinois and the

United States Constitutions (collectively, the "Constitutions"). The Act became effective when signed into law on August 4, 2023, by Governor JB Pritzker. Among other issues addressed below, the Act materially alters and interferes with the uniform body of federal labor law Congress implemented through the NLRA. The Act further restricts, through prior restraint, free speech that is protected by the NLRA and by the Constitutions.

Illinois' Charter Schools

2. Illinois charter schools are free, independent, neighborhood public schools open to all children in the state, including students who are English language learners and students with disabilities. Charter schools do not have special entrance requirements and have the freedom to be innovative, while being held accountable for advancing student achievement.

3. Illinois Charter schools serve public school students whose families choose to enroll them in charter schools, but they are created and governed by private, not-for-profit 501(c)(3) entities.

4. Charter schools in Illinois are employers subject to the NLRA. In Illinois, the National Labor Relations Board (the "NLRB"), on every occasion in which it has considered the issue, has found and asserted its jurisdiction over Illinois charter schools.

5. Illinois currently has 134 charter schools, collectively serving more than 60,000 students state-wide, the vast majority of whom are authorized by the CPS district. Eighty-Five percent of Illinois charter school students receive free or reduced lunch and Illinois charter schools serve a vastly diverse student population. In Chicago, one out of every four high school students in CPS attends a charter high school and one out of every ten elementary school students in CPS attends a charter elementary school.

6. Since the first charter public school opened in Illinois over 25 years ago, charter schools have pushed the needle on academic achievement. They have served students and communities in need, thanks to the unique learning models and a future-oriented approach to success. Because of the nature of charter public schools, educators have the freedom to adjust their curriculum and school environments in order to meet students where they are and help them to grow. In Chicago, on average, students who attend charter schools are more likely to graduate from high school and college, have higher standardized test scores and higher attendance and classroom engagement. The ability for parents to choose the best learning environments for the individualized needs of their children so that they have an opportunity to thrive is essential to achieving true educational equity.

The Act Conflicts with and is Preempted by the NLRA

7. The Act purports to impose so-called "union neutrality" for Illinois charter schools by requiring that new charter proposals and renewal charter agreements include a "union neutrality clause." That clause prohibits charter schools from expressing "any opinion" on the issue of the unionization of their employees.

8. Effective August 4, 2023, the Act amended the Charter Schools Law, and legislatively requires authorizers to include a "union neutrality clause" in any renewal of a certified charter. 105 ILCS 5/27A-6(c-10).

9. The Act defines a "union neutrality clause" as meaning:

"a provision whereby a charter school agrees: (1) to be neutral regarding the unionization of any of its employees, such that the charter school will not at any time express a position on the matter of whether its employees will be unionized and such that the charter school will not threaten, intimidate, discriminate against, retaliate against, or take any adverse action against any employees based on their decision to support or oppose union representation; (2) to provide any bona fide labor organization access at reasonable times to areas in which the charter school's employees work for

the purpose of meeting with employees to discuss their right to representation, employment rights under the law, and terms and conditions of employment; and (3) that union recognition shall be through a majority card check verified by a neutral third-party arbitrator mutually selected by the charter school and the bona fide labor organization through alternate striking from a panel of arbitrators provided by the Federal Mediation and Conciliation Service. As used in this definition, "bona fide labor organization" means a labor organization recognized under the National Labor Relations Act or the Illinois Educational Labor Relations Act. As used in this definition, "employees" means non-represented, non-management, and non-confidential employees of a charter school."

105 ILCS 5/27A-3.

10. There is nothing neutral about the Act's requirements. Instead, the Act deprives charter schools, and their employees, of free speech guaranteed under the NLRA and the Constitutions and of other federal labor law rights. The Act is a gag order that censors charter schools from honestly communicating with their stakeholders, including employees, parents, students, funders, legislators, voters and community members, on significant political and ideological issues.

11. In particular, the Act prohibits charter schools from addressing the merits of unionization and whether or not unionization could impact the freedoms and flexibilities charter schools have to provide a high quality education to students from underserved communities. Indeed, it goes further by prohibiting discussion of factual information about unions and union organizing even if disseminated in a non-coercive matter. In so doing, the Act censors dialogue on an important issue in education reform.

12. The Act is expressly intended to change Illinois labor policy for private, charter school employers. The sponsor of the Act, Representative Will Guzzardi, described its purpose as providing charter school teachers with the same measures and protections available to teachers in traditional public schools under the Illinois Educational Labor Relations Act ("IELRA").

Representative Guzzardi stated that the Act was "simply seeking to extend similar [IELRA] provisions to teachers at charter schools."

13. The Act, however, is a state regulatory measure that seeks to advance Illinois' chosen labor policies in direct contravention of the rights guaranteed to charter schools and their employees under the NLRA. In particular, the Act interferes with rights granted under Section 8(c) of the NLRA which provides that "the expressive of any views, argument, or opinion, or the dissemination thereof . . . shall not constitute or be evidence of an unfair labor practice under any provisions of [the NLRA], if such expression contains no threat of reprisal or force or promise of benefit." (29 U.S.C. § 158(c) (1976) (emphasis added)).

14. Moreover, the Act regulates employer and employee speech that Congress intended to leave unregulated.

15. The Act also conflicts with Section 9(c) of the NLRA which guarantees charter school employees the right to a secret ballot election to vote whether or not to select any union as their exclusive bargaining representative. 29 U.S.C. § 159(c). The Act eliminates this important right by imposing "card-check" procedures that are directly inconsistent with the secret-ballot protections afforded to employers and their employees under the NLRA.

16. The Act also conflicts with Section 8(d) of the NLRA, which provides that the NLRA does not require employers and unions to enter into contractual agreements with one another. 29 U.S.C. § 159(d) (stating that the NLRA "does not compel either party to agree to a proposal or require the making of a concession"). The Act, by compelling charter schools to agree to certain contractual terms with unions, is inconsistent with Section 8(d) of the NLRA and interferes with conduct that Congress intended to be unregulated.

17. The Act also disrupts the careful, established balance that the NLRA strikes between employer's property rights and the right of third parties, such as labor unions, to access the employer's property. The Act ignores and alters this purposeful balance by imposing access rights to labor unions that are directly inconsistent with employers' property rights that have been upheld under the NLRA.

18. Finally, the Act interferes with the exclusive jurisdiction of the NLRB to construe and enforce the NLRA, including the NLRB's exclusive jurisdiction to determine whether an employer's conduct or speech violates the NLRA.

19. For all of these reasons, and as further described below, the Act is preempted by the NLRA.

The Act Violates the Illinois and United States Constitutions

20. By regulating, chilling, prohibiting, and punishing speech that is protected by the NLRA and the Constitutions, the Act is an unlawful prior restraint on speech.

21. By forcing charter school employers to grant union organizers and agents access to and use of their property, the Act also unconstitutionally infringes upon charter schools' constitutionally protected property rights.

22. For these reasons, as elaborated below, the Act violates the Supremacy Clause of the United States Constitution, the First, Fifth, and Fourteenth Amendments of the United States Constitution, as well as Article One Sections Four and Fifteen of the Illinois Constitution. The Act is unlawful and should be declared void, and any enforcement of the Act must be preliminarily and permanently enjoined.

THE PARTIES

Plaintiff Illinois Network of Charter Schools

23. Plaintiff INCS is a not-for-profit corporation incorporated, headquartered, and established with its principal place of business in Chicago, Illinois. INCS is an umbrella organization with approximately 134 Illinois charter school members. Collectively, INCS' members constitute 100% of Illinois' charter schools and serve approximately 60,853 students in Illinois.

24. INCS' mission statement is as follows: "The Illinois Network of Charter Schools advocates for the improvement of public education by leveraging the charter school model as a catalyst to transform lives and communities. As the voice of Illinois charter schools, INCS engages a diverse coalition of policymakers, school leaders, parents, and community members to create systemic change and secure high-quality schools for underserved communities." (<https://www.incschools.org/about/>). INCS' website further describes its work to ensure: "adequate and equitable resources for charter public schools, autonomy to find innovative approaches to meet student needs, and fair, transparent policy landscape that allows high-quality options to thrive."

25. INCS was founded in 2003. Charter schools in Illinois can choose to join INCS as a member. Members join INCS with the expectation that INCS will represent the Illinois charter school sector in connection with important issues that affect Illinois charter schools, including with respect to ISBE, CPS and various public school districts, known as Local Educational Agencies ("LEAs").

26. One of INCS' central purposes is to support its members. Consistent with its mission and stated priorities, INCS' support focuses on preserving its members' autonomy in operating charter schools. Encouraging innovation and flexibility in public education is central to

the purposes of the Charter School Law and to the mission and vision of many of INCS' charter school members.

27. INCS works to protect the flexibility and autonomy of its members so that charter schools can innovate on behalf of their students. To that end, INCS advocates against legislation and other restrictions that reduce its members' autonomy – including measures that purport to unlawfully restrict charter schools' legal rights.

28. Twelve of INCS' members making up 49 charter campuses were approved for a renewed charter in January 2024. Each of those charter schools has received a draft charter renewal agreement from its respective charter authorizer. Each of those draft charter renewal agreements incorporates a "union neutrality" provision, as required by the Act.

29. Each of INCS' remaining members is up for charter renewal before 2028 and as a condition of their charter renewal, the Act requires that each charter renewal agreement also include a "union neutrality" provision. All of INCS' members are therefore directly impacted by the Act.

30. INCS' mission and purpose is frustrated by the Act, which unlawfully restricts charter schools' statutory rights and its members' autonomy in operating charter schools.

31. Numerous of INCS' members have sought INCS' guidance and expressed concerns about the Act's restrictions, and about CPS' and ISBE's enforcement of the Act. INCS' members are particularly concerned about the Act's direct contravention of rights guaranteed by the Constitutions and the NLRA. These rights include content-based restrictions on their freedom of speech, which forbid them from communicating freely and honestly on the topic of unionization, and the Act's compelled property access and use for union agents.

32. Each of these concrete injuries is directly traceable to the Defendants' conduct in enacting, enforcing and implementing the Act, and they are injuries that the Court can redress through a favorable judicial decision declaring the Act unlawful and enjoining its enforcement. As such, INCS members have standing to bring this action on their own and INCS has associational standing to bring these claims on behalf of its members who are not named plaintiffs.

Plaintiff Intrinsic Schools

33. Intrinsic operates two charter school campuses in Chicago, serving students from 7th through 12th grade. Intrinsic's Belmont campus, which is authorized by CPS, opened in 2013 and Intrinsic's Downtown campus, which is authorized by ISBE, opened in 2019.

34. Intrinsic was founded by a team of educators from CPS to create a new, excellent public charter school option for middle and high school students in Chicago. Intrinsic's mission is to provide every student what they need to achieve their postsecondary plans. Intrinsic invests deeply in three areas: (i) strong instruction, (ii) exposure and opportunities and (iii) connection to school.

35. Intrinsic serves an at-risk student population. Eighty-seven percent of Intrinsic's students qualify for free or reduced lunch, 17% of its students are identified as diverse learners, and 21% are English language learners.

36. Notwithstanding these obstacles, more than 90% of Intrinsic's Class of 2023 enrolled in college and beginning in 2023.

37. Intrinsic is a not-for-profit corporation registered in the state of Illinois that is governed by an independent board of directors. Intrinsic's board of directors is made up of volunteers interested in Intrinsic's mission. Members of the board of directors are selected according to Intrinsic's bylaws. No Intrinsic board member is an elected official, nor

accountable to any elected official. Neither CPS, ISBE, nor any other state actor, has ever attempted to appoint or remove any member of the Intrinsic board of directors.

38. Intrinsic is not a political subdivision as defined by the NLRA.

39. Intrinsic's Downtown Campus was approved for a renewed charter in January 2024, by its authorizer, ISBE. Intrinsic received a draft charter renewal agreement from ISBE on or about January 17, 2024. ISBE has informed Intrinsic that it requires execution of its renewal charter agreement by June 2024.

40. The charter renewal agreement includes a "union-neutrality" provision, requiring the following:

The Charter School agrees (1) to be neutral regarding the unionization of any of its employees; the Charter School will not at any time express a position on the matter of whether its employees will be unionized nor will the Charter School threaten, intimidate, discriminate against, retaliate against, or take any adverse action against any employee based on their decision to support or oppose union representation, and (2) the Charter School will provide any Bona Fide Labor Organization access at reasonable times to areas in which the Charter School's employees work for the purpose of meeting with employees to discuss their right to representation, employment rights under the law, and terms and conditions of employment, and (3) union recognition shall be through a majority card check verified by a neutral third-party arbitrator mutually selected by the Charter School and the Bona Fide Labor Organization through alternate striking from a panel of arbitrators provided by the Federal Mediation and Conciliation Service.

Plaintiff The Montessori School of Englewood

41. TMSOE is a charter school authorized by CPS that has operated in the Englewood neighborhood of Chicago since 2012.

42. The mission of TMSOE includes providing a high-quality, nurturing, and inclusive educational environment that follows the Montessori method. The Montessori method is central to TMSOE's success.

43. TMSOE strives to create an inclusive environment that celebrates diversity, promotes equity, and prepares students to be active, compassionate, and lifelong learners.

44. TMSOE's Montessori educational approach emphasizes self-directed activity, hands-on learning, and collaborative play. Students at TMSOE are encouraged to make creative choices in their learning while the classroom and the teacher offer age-appropriate activities to guide the process. This method helps develop critical thinking, independence, and a lifelong love for learning. TMSOE serves nearly 350 K-8 students.

45. TMSOE serves an at-risk student population. One hundred percent of TMSOE's students qualify for free or reduced lunch; 18% of its students are in temporary living situations; 18% of students are identified diverse learners; and 10% are English language learners.

46. TMSOE is a not-for-profit corporation registered in the state of Illinois that is governed by an independent board of directors. TMSOE's board of directors is made up of volunteers interested in TMSOE's mission. Members of the board of directors are selected according to TMSOE's bylaws. No TMSOE board member is an elected official, nor accountable to any elected official. Neither CPS, nor any other state actor, has ever attempted to appoint or remove any member of the TMSOE board of directors.

47. TMSOE is not a political subdivision as defined by the NLRA.

48. TMSOE was approved for a renewed charter in January 2024, by its authorizer, CPS. TMSOE received a draft charter renewal agreement from CPS on or about March 11, 2024.

49. The draft charter renewal agreement includes a "union-neutrality" provision, requiring TMSOE to covenant and warrant that it shall comply with the following:

"Public Act 103-0416 regarding union neutrality, whereby the Charter School agrees (1) to be neutral regarding the unionization of any of its employees such that the Charter School will not at any time express a position on the matter of whether its employees will be unionized and such that the charter school will not threaten, intimidate, discriminate against, retaliate against, or take any adverse action against any employees based on their decision to support or oppose union representation; (2) to provide any bona fide labor organization access at reasonable times to areas in which the Charter School's employees work for the purpose of meeting with employees to discuss their right to representation, employment rights under the law, and terms and conditions of employment; and (3) that union recognition shall be through a majority card check verified by a neutral third-party arbitrator mutually selected by the charter school and the bona fide labor organization through alternate striking from a panel of arbitrators provided by the Federal Mediation and Conciliation Service."

THE DEFENDANTS

50. Defendant Kwame Raoul sued here in his official capacity as the Attorney General of the State of Illinois is the chief legal officer of the State of Illinois and responsible for the enforcement of state laws, including the Act. As Attorney General, Defendant Raoul has the statutory duty to "institute and prosecute all actions and proceedings in favor of or for the use of the State, which may be necessary in the execution of the duties of any State officer" and to "investigate alleged violations of the statutes which the Attorney General has a duty to enforce." To serve as the Attorney General of the State of Illinois, Defendant Raoul affirmed that he would support the Constitution of the United States.

51. Defendant the Board of Education of the City of Chicago ("CPS") is the governing entity for Chicago Public School District 299, which is a school district located in the Northern District of Illinois, organized pursuant to the Illinois School Code. CPS serves as the authorizer for 111 charter schools operating in the City of Chicago, including Plaintiff TMSOE.

52. Defendant the Illinois State Board of Education ("ISBE") is the legal educational agency responsible for setting state policies and guidelines for public and private schools,

preschool through grade 12. ISBE serves as the authorizers for 11 charter schools operating in the State of Illinois, including Plaintiff Intrinsic.

53. Defendants are all governmental actors acting under color of state law for purposes of 42 U.S.C. § 1983.

JURISDICTION AND VENUE

54. This action for declaratory and injunctive relief arises under the Declaratory Judgment Act, 28 U.S.C. Sections 2201 *et seq.*, the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, the First and Fourteenth Amendments to the United States Constitution; Article VI, Paragraph 2 of the United States Constitution (the "Supremacy Clause"); Article I Section 4 of the Illinois Constitution; and 42 U.S.C § 1983.

55. This Court has original jurisdiction over this action under, *inter alia*, 28 U.S.C §§ 1331 and 1343 because Plaintiffs raise federal questions and allege violations of the Constitutions.

56. This Court also has supplemental jurisdiction over the claims brought under state law pursuant to 28 U.S.C. § 1367, which are so related to the claims in this action where the Court is vested with original jurisdiction that they form part of the same case or controversy.

57. Pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2), venue is proper in this Court because all of the Defendants are residents of the State of Illinois and because all or a substantial part of the events giving rise to the claim have occurred in this federal judicial district.

58. A live and justiciable controversy exists between the Plaintiffs and the Defendants regarding the implementation and enforcement of the Act. Declaratory relief is authorized under 28 USC §§ 2201-02 and Fed. R. Civ. P. 57. Injunctive relief is authorized under Fed. R. Civ. P. 65.

ALLEGATIONS COMMON TO ALL COUNTS

The Illinois Charter School Laws

59. The Charter Schools Law governs the authorization of charter schools in Illinois.

60. The Charter Schools Law was intended to "create a legitimate avenue for parents, teachers, and community members to take responsible risks and create new, innovative, and more flexible ways of educating children within the public school system." 105 ILCS 5/27A-2(c).

61. The stated purpose of the Charter Schools Law is, in part, (i) to improve pupil learning; (ii) to increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for at-risk pupils; (iii) to encourage the use of teaching methods that may be different in some respects than others regularly used in the public school system; (iv) to allow the development of new, different, or alternative forms of measuring pupil learning and achievement; (v) to create new professional opportunities for teachers; (vi) to provide parents and pupils with expanded choices within the public school system; (vii) to encourage parental and community involvement with public schools; and (viii) to hold charter schools accountable for meeting rigorous school content standards and to provide those schools with the opportunity to improve accountability.

62. Under the Charter Schools Law, Illinois public charter schools must be authorized by an authorizer. If authorized, the charter schools are granted a charter agreement. A charter school cannot operate in Illinois without a charter agreement. A charter agreement is a binding contract that contains terms and conditions for the charter school's continued operation. Charter agreements can be renewed by their authorizers pursuant to the Charter Schools Law.

63. "Authorizers" are entities authorized under the Charter Schools Law to, *inter alia*, approve or reject charter applications and to enter into charter contracts with applicants. Pursuant

to the Charter Schools Law, LEAs, like CPS, can be authorizers. Under certain circumstances, ISBE can also authorize charter schools in Illinois.

64. Under the Charter Schools Law, charter schools must be non-profit schools and organized and operated as a non-profit corporation or other discrete, legal, non-profit entity authorized under the laws of the State of Illinois. Charter schools must also be administered and governed by a board of directors or other governing body.

65. According to the Chicago Teachers Union (the "CTU"), the CTU currently represents educators and staff at thirteen charter schools, across 35 charter school campuses.

66. The Lake County Federation of Teachers also represents charter school educators at one or more charter schools.

67. The CTU filed representation petitions at the NLRB invoking the jurisdiction of the NLRA to organize employees of Illinois charter schools into its union. In each instance, the NLRB found that it had jurisdiction over these representation proceedings.

68. The CTU has repeatedly invoked the jurisdiction of the NLRB by filing unfair labor practice charges against several of the Illinois charter school employers who are members of INCS and subject to the Act. In each instance, the NLRB has consistently exercised its jurisdiction over Illinois public charter schools.

Allegations In Support of Preliminary Injunction

69. The Charter School Plaintiffs' current charter school agreements expire on June 30, 2024.

70. Consistent with the Act's requirements, the renewal charter school agreements from CPS and ISBE include "union neutrality" clauses. Given the Act, CPS and ISBE are understandably without a choice not to include the "union neutrality" language, short of bringing

their own challenges to the legality of the Act. ISBE informed Intrinsic that it would not, and legally could not, consider changes to the union neutrality provision.

71. CPS and ISBE have put pressure on the Charter School Plaintiffs to execute their renewal charter agreements before June 30, 2024. CPS has been repeatedly pressing, with increasing urgency and frequency, to require charter schools to execute their respective renewal agreements by June 30, 2024. In fact, CPS has suggested that if charter schools do not execute their renewal charter agreements, their future funding would be at risk.

72. As a result of CPS and ISBE's actions and statements in enforcing the Act, the Charter School Plaintiffs must presently choose whether to (a) sign a charter that permits their continued funding past June 30, 2024, but which violates federal law and the Constitutions, or (b) refuse to sign a renewal charter agreement containing the offending neutrality language, which would put their existence, including the education of their students and service to Illinois families, at risk.

73. The Hobson's choice being forced upon the Charter School Plaintiffs is a current threat to their continued operation, funding and existence.

74. The Supreme Court has deemed claims of substantial state interference with federal labor policy, as those plead in this Complaint, to be sufficiently important to justify enjoining any state statute that causes such interference.

75. Plaintiffs have no adequate or speedy remedy at law to correct or redress the violation of their rights under the United States Constitution by Defendants in their enactment and enforcement of the Act.

76. The Act deprives Plaintiffs of their constitutional and statutory rights and in doing so, results in irreparable injury to the Plaintiffs. On that basis, and the facts alleged in this

Complaint, unless the conduct of Defendants in enacting and enforcing the Act is enjoined, Plaintiffs and, without limitation, the families and students they serve, will continue to suffer irreparable injury.

77. Based on the facts alleged in this Complaint, Plaintiffs are likely to succeed on the merits of their claims that the Act is facially, and as applied to the Charter School Plaintiffs, unconstitutional under the First, Fifth and Fourteenth Amendments to the United States Constitution, the Supremacy Clause of the United States Constitution, and Article I of the Illinois Constitution.

78. The balance of equities weigh heavily in favor of Plaintiffs because implementation of the Act greatly harms charter schools, and, without limitation, the families and students they serve, by denying charter school employers and employees of their constitutional rights, while the absence of the Act would not harm employees or any other parties. This is so because the Act takes away federally and constitutionally protected rights of charter schools and their employees, while injunctive relief prohibiting the enforcement of the Act does nothing to change the *status quo* under which charter schools, their employees, and unions would retain their rights under the NLRA.

79. An injunction is also squarely aligned with the public interest of preserving constitutional rights and adhering to the NLRA.

80. Granting injunctive relief would permit Illinois charter schools, and charter school employees, to exercise their rights under the NLRA, as they historically. Injunctive relief would also mean that charter schools – through their volunteer board members and leadership – could continue to exercise their constitutionally and statutorily protected right to freedom of speech, giving charter school teachers and staff the opportunity to hear all sides of the debate when it

comes to unionization. This would increase the flow of information and allow charter school employees to gain a comprehensive understanding of the nuances of unionization by getting access to both labor and employer-side perspectives.

81. Injunctive relief would further the strong public interest of encouraging – rather than artificially stifling – robust political and ideological discourse about an issue of paramount importance in the education reform sector.

82. Implementation of the Act also jeopardizes the public interest by denying Illinois charter school employees' federally protected right to vote in a secret-ballot election facilitated by the NLRB.

CLAIMS FOR RELIEF

COUNT I

(Violation of the Supremacy Clause of the United States Constitution)

83. Plaintiffs incorporate and re-allege the allegations of all preceding paragraphs as if fully set forth in this paragraph.

84. The United States Congress has regulated the field of labor relations by passing the NLRA, which resulted in an integrated scheme of regulations governing labor relations in the private sector.

85. The NLRA provides an existing statutory and regulatory framework governing (i) employer speech related to unionization and (ii) the determination of majority status and union representation. The NLRB and the Supreme Court have established a regulatory framework governing employers' rights to deny property access to non-employee, union organizers and agents under the NLRA and other applicable law.

86. In regulating the field of labor relations, Congress intended to preempt states from enacting legislation that regulates labor relations for private employers, including with respect to

employer speech on labor-related issues, the determination of majority status and union representation, and employer's property rights with respect to non-employee labor union representatives.

87. Illinois public charter schools, including the Charter School plaintiffs, are "employers" within the meaning of the NLRA and are subject to the NLRA's statutory provisions and regulations.

88. The Act purports to regulate conduct that falls within the scope of the NLRA.

89. Specifically, because Section 8(c) of the NLRA expressly precludes regulation of speech about unionization except as permitted by the NLRA, Congress explicitly directed states to leave labor-related speech unregulated.

90. In addition to enacting the NLRA, including its permitted regulation through the NLRB, Congress also intended for certain conduct, including conduct pertaining to private employers' assistance, promotion or deterrence of union organizing, to be left unregulated and controlled instead by the free play of economic forces.

91. The Act intends to prohibit all Illinois charter schools, through their agents (including volunteer board members and individual school leaders), from speaking on issues related to their employees' unionization, to establish union representation under "card-check" procedures rather than secret-ballot election, and to grant non-employee union organizers access to charter school property, even over the charter school's objection.

92. The Act contravenes the intent of Congress to preempt the states' ability to regulate labor relations in the private sector. The Act further intends to regulate conduct that Congress intended to be unregulated and subject to the free play of economic forces.

93. The Act also disrupts the careful, established balance that the NLRA strikes between employer's property rights and the right of third parties, such as labor unions, to access the employer's property. The Act ignores and alters this purposeful balance by imposing access rights to labor unions that are directly inconsistent with employers' property rights that have been upheld under the NLRA and federal law.

94. The Act also denies charter schools employers' and their employees' rights specifically protected by the NLRA, including with respect to employer speech and election procedures. By doing so, the Act differently regulates conduct and speech that is expressly regulated, and protected, by the NLRA.

95. The Act also conflicts with Section 8(d) of the NLRA, which provides that the NLRA does not require employers and unions to enter into contractual agreements with one another. 29 U.S.C. § 159(d) (stating that the NLRA "does not compel either party to agree to a proposal or require the making of a concession"). The Act, by compelling charter schools to agree to certain contractual terms with unions, is inconsistent with Section 8(d) of the NLRA and interferes with conduct that Congress intended to be unregulated.

96. Finally, the Act interferes with the exclusive jurisdiction of the NLRB to construe and enforce the NLRA, including the NLRB's exclusive jurisdiction to determine whether an employer's conduct or speech violates the NLRA.

97. The Act is thus preempted by the NLRA and unlawful under the Supremacy Clause of the United States Constitution, U.S. Const. Art. VI cl. 2, and for that reason the Act is unconstitutional and void.

98. Acting under the color of state law, Defendants CPS and ISBE have sought to implement the Act, which is a violation of the Plaintiffs' rights as guaranteed by the United States Constitution.

99. WHEREFORE, Plaintiffs pray that this Court (i) enter an Order declaring the Act preempted by the NLRA, declaring that the Act, facially and as applied to the Charter School Plaintiffs, violates the Supremacy Clause of the United States Constitution and for that reason is unconstitutional and void, (ii) enter an Order declaring that the Act, facially and as applied to the Charter School Plaintiffs, violates 42 U.S.C. § 1983, and (iii) entering a preliminary injunction prohibiting Defendants from enforcing the Act.

COUNT II

(Violation of the First and Fourteenth Amendments to the United States Constitution Article I of the Illinois Constitution)

100. Plaintiffs incorporate and re-allege the allegations of all preceding paragraphs as if fully set forth in this paragraph.

101. The Act prohibits "charter schools" – through their agents – from speaking on issues related to unionization by requiring that charter schools agree not to "at any time express a position on the matter of whether its employees will be unionized[.]" 105 ILCS 5/27A-3.

102. Much of the speech at issue, about employee unionization, is political and ideological in nature. Additionally, the Act's prohibition on charter schools expressing a position – either in favor or against – on the matter of whether its employees will be unionized is a content-based, prior restriction on the speech of charter schools and charter school employees, including the Charter School Plaintiffs.

103. Illinois' Charter School Law requires charter schools to be non-profit entities or corporations, and that they be governed by a board of directors or other governing body. Each of

the Charter School Plaintiffs is a non-profit corporation and each is governed by an independent board of directors.

104. The Charter School Plaintiffs, and all Illinois public charter schools, are run by private entities afforded the free-speech protections afforded under the First Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, and Article I Section 4 of the Illinois Constitution. U.S. Const. amend. I ("Congress shall make no law . . . prohibiting the free exercise thereof; or abridging the freedom of speech"); Ill. Const. art. I, § 4. ("[a]ll persons may speak, write and publish freely, being responsible for the abuse of that liberty.").

105. Many charter schools in Illinois, including several of the Charter School Plaintiffs, have previously used their constitutionally-protected free speech rights to share their position on the unionization of their employees. If not for the Act, and CPS and ISBE's attempts to implement the Act's union-neutrality requirement, they would continue to do so.

106. The Act's restriction on charter schools' speech deprives charter schools, including the Charter School Plaintiffs, of their constitutionally protected right to free speech under the First and Fourteenth Amendments to the United States Constitution and Article I of the Illinois Constitution by prohibiting them from discussing the unionization of their employees in any forum.

107. Because the Act imposes a content-based restriction on charter schools' free speech it must further a compelling interest in a narrowly tailored way.

108. The State of Illinois has not identified any legitimate, rational or compelling interest justifying the Act's restriction of charter schools' free speech nor is the Act narrowly tailored to any such interest. The Act's content-based restriction on speech is overbroad because it prohibits

"any" expression of a position on the matter of employees unionizing, including political and ideological speech, and it restricts speech no matter to whom the speech is directed.

109. Facially and as applied to the Charter School Plaintiffs, the Act's prohibition of speech related to the unionization of a charter school's employees is unconstitutional under the First Amendment to the United States Constitution, as applied to the states through the Fourteenth Amendment, and under Article I of the Illinois Constitution.

110. WHEREFORE, Plaintiffs respectfully ask that the Court (i) enter an Order declaring that the Act, facially and as applied to the Charter School Plaintiffs, violates the First Amendment to the United States Constitution and Article I of the Illinois Constitution, and for that reason is unconstitutional and void, (ii) enter an Order declaring that the Act, facially and as applied to the Charter School Plaintiffs, violates 42 U.S.C. § 1983, and (iii) enter a preliminary injunction prohibiting Defendants from enforcing the Act.

COUNT III

(Violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I of the Illinois Constitution)

111. Plaintiffs incorporate and re-allege the allegations of all preceding paragraphs as if fully set forth in this paragraph.

112. Many charter schools in Illinois own their school properties, and other charter schools lease their school properties. The Plaintiffs generally have the right to regulate who enters their premises and under what conditions. For the safety of their students and staff, charter schools must have authority to monitor visitors and restrict access to their property to keep their premises, students, and staff safe.

113. The right to exclude people from property is a fundamental element of charter schools' property rights, including without limitation to protect staff and students and to promote a safe, productive educational environment.

114. The Act, at 105 ILCS 5/27A-3, requires charter schools to agree to grant property access to non-employee union organizers by requiring them "to provide any bona fide labor organization access at reasonable times to areas in which the charter school's employees work for the purpose of meeting with employees to discuss their right to representation, employment rights under the law, and terms and conditions of employment."

115. The Act grants "bona fide labor organizations" the right to access a charter school's property, regardless of the charter schools' wishes and without compensation to the charter schools. The Act's imposition is without any regard to charter schools' safety concerns.

116. The Act accordingly imposes an obligation that restricts charter schools' right to determine who enters their premises and under what conditions.

117. The Fifth Amendment to the United States Constitution prohibits the taking of private property for public use, without just compensation. U.S. Const. amend. V. The Illinois Constitution likewise provides that "private property shall not be taken or damaged for public use without just compensation as provided by law." Ill. Const. art. I, § 15.

118. The Act's requirement that charter schools grant property access to unions restricts the charter school's rights to use their own property and appropriates charter schools' rights to exclude. The Act does so for the enjoyment of third parties characterized as "bona fide labor organizations."

119. The Act accordingly deprives charter schools, including the Charter School Plaintiffs, of their constitutionally protected property rights and constitutes an unlawful *per se* physical taking under the Fifth and Fourteenth Amendments to the United States Constitution and Article I of the Illinois Constitution.

120. WHEREFORE, Plaintiffs respectfully ask that the Court (i) enter an Order declaring that the Act facially, and as applied to the Charter School Plaintiffs, violates the Fifth and Fourteenth Amendments to the United States Constitution and Article I of the Illinois Constitution, and for that reason is unconstitutional and void, (ii) enter an Order declaring that the Act, facially and as applied to the Charter School Plaintiffs, violates 42 U.S.C. § 1983, and (iii) enter a preliminary injunction prohibiting Defendants from enforcing the Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully ask this Court to enter judgment against Defendants and to provide the following relief:

1. A preliminary injunction and permanent injunction to stop Defendants and any person acting in concert with them from enforcing the Act facially, and as applied to the Charter School Plaintiffs;
2. A declaration that facially, and as applied to the Charter School Plaintiffs, the Act is preempted by the NLRA, in violation of the Supremacy Clause of the United States Constitution, and is thus unconstitutional and void;
3. A declaration that facially, and as applied to the Charter School Plaintiffs, the Act violates the First, Fifth, and Fourteenth Amendments of the United States Constitution, as well as Article I of the Illinois Constitution, and is thus unconstitutional and void;
4. A declaration that facially, and as applied to the Charter School Plaintiffs, the Act violates 42 U.S.C. § 1983;
5. Attorneys' fees, costs and nominal damages pursuant to 42 U.S.C. §§ 1988; and
6. Grant any other relief that this Court deems equitable and just in the circumstances.

Dated: June 18, 2024

PLAINTIFFS ILLINOIS NETWORK OF CHARTER
SCHOOLS, INTRINSIC SCHOOLS, and THE
MONTESSORI NETWORK D/B/A THE
MONTESSORI SCHOOL OF ENGLEWOOD

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