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

SARAH SACHEN, IFEOMA NKEMDI, JOSEPH OCOL, and ALBERTO MOLINA, Petitioners, v. THE ILLINOIS STATE BOARD OF ELECTIONS, *et al.*, Respondents.	Case No.: 22-CH-34

OBJECTION TO PETITION FOR LEAVE TO FILE TAXPAYER ACTION

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INTRODUCTION

Petitioners seek leave to file a taxpayer suit that would restrain the use of public funds to place the proposed Workers' Rights Amendment[1] on the general election ballot, thereby preventing the voters from deciding this November whether to add the Amendment to the Illinois Constitution. As grounds, they assert that the Amendment would conflict with the National Labor Relations Act (NLRA), 29 U.S.C. §§ 151 to 169, *as applied to certain private-sector employment*, and so, they reason, it is invalid and Respondents may not spend taxpayer money to put the Amendment on the ballot. In essence, Petitioners assert as-applied claims but improperly seek relief as if they were asserting a facial challenge to the amendment. The Court must deny the petition because Petitioners' claims are premature and fail as a matter of law.

First, because each house of the General Assembly passed the Workers' Rights Amendment proposal by the constitutionally required three-fifths margin, the Illinois constitution *requires* that it be submitted to the voters at the general election in November. Second, this Court has no power to enjoin the amendment process in the absence of a showing that the *mode or act* of amendment violates the Illinois constitution's own requirements for its amendment. In contrast, a challenge to the *substance and effect* of the Amendment, which is all that Petitioners assert in this case, is not ripe for adjudication unless and until the Amendment is adopted and becomes operational. Courts enjoin enforcement of laws, they do not enjoin *enactment* of laws unless the *act of enactment* itself is prohibited by the Illinois constitution. Third, the doctrine of preemption merely *suspends the operation* of state laws that actually conflict with federal law, and only to the extent of the conflict. Thus, the law becomes *dormant*, not invalid. Preempted laws remain valid

[1] Exhibit 1, https://www.ilga.gov/legislation/102/SJRCA/PDF/10200SC0011lv.pdf. The proposed Workers' Rights Amendment has also been referred to as the Illinois Right to Collective Bargaining Amendment. Although referred to as an "Amendment" throughout this Response, it is only a *proposed* amendment being submitted to Illinois voters for their consideration.

and enforceable as to nonconflicting applications, and a repeal of the conflicting federal law causes the state law to spring back into operation. Thus, even if the NLRA would preempt enforcement of the Workers' Rights Amendment in some applications, it remains a valid method of securing rights under state law in the event the federal government ever decided to abandon the NLRA, as well as securing rights not addressed by the NLRA and reserved to the States.

The petition must be denied.

THE WORKERS' RIGHTS AMENDMENT

The Illinois House and Senate passed, by a three-fifths margin, the Workers' Rights Amendment, also known as the Illinois Right to Collective Bargaining Amendment. It proposes to amend Article I of the Illinois constitution by adding a Section 25:

> SECTION 25. WORKERS' RIGHTS
>
> (a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.
>
> (b) The provisions of this Section are controlling over those of Section 6 of Article VII [Powers of Home Rule Units].

102d Gen. Assem., Senate Joint Resolution Constitutional Amendment No. 11, (May 26, 2021). Under Article XIV, section 2(a) of the Illinois Constitution, the Amendment "shall be submitted to the electors at the [November] general election." Ill. Const. art. XIV, § 2(a) (emphasis added).

If enacted, it would join similar provisions contained in the constitutions of Hawaii,[2] Missouri,[3] and New York,[4] as well as dissimilar provisions contained in the constitutions of numerous states, including, for example, Florida[5] and Oklahoma,[6] which curtail the enforceability of certain "union security agreements"[7] reached between collective bargaining representatives and employers.

STANDARD

"An action to restrain and enjoin the disbursement of public funds by any officer or officers of the State government may be maintained either by the Attorney General or by any citizen and taxpayer of the State." 735 ILCS 5/11-301. When brought by a citizen taxpayer, the taxpayer must petition the Court for leave to file the action. 735 ILCS 5/11-303. This procedure serves as a check upon the indiscriminate filing of such suits, *Strat-O-Seal Mfg. Co. v. Scott*, 27 Ill. 2d 563, 565–66 (1963), and the Court should deny the petition if it is not "satisfied that there is reasonable ground for the filing of such action." 735 ILCS 5/11-303; *Kaider v. Hamos*, 2012 IL App (1st) 111109, ¶ 8. Reasonable grounds are lacking where a suit is brought for ulterior, frivolous, or malicious

[2] Haw. Const. art. XIII, § 1 "Persons in private employment shall have the right to organize for the purpose of collective bargaining."); *id.* at § 2 ("Persons in public employment shall have the right to organize for the purpose of collective bargaining as provided by law.").
[3] Mo. Const. art. I, § 29 ("[E]mployees shall have the right to organize and to bargain collectively through representatives of their own choosing.").
[4] N.Y. Const. art I, § 17 ("Employees shall have the right to organize and to bargain collectively through representatives of their own choosing.").
[5] Fla. Const. art. I, § 6 ("The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.").
[6] Okl. Const. art. 23, § 1A(B)(2) ("No person shall be required, as a condition of employment or continuation of employment, to: . . . Become or remain a member of a labor organization.").
[7] Union security agreements include "union shop," and "agency shop" agreements. "A 'union shop" agreement provides that no one will be employed who does not join the union within a short time after being hired. An 'agency shop' agreement generally provides that while employees do not have to join the union, they are required - usually after 30 days - to pay the union a sum equal to the union initiation fee and are obligated as well to make periodic payments to the union equal to the union dues. The 'union shop' and 'agency shop' varieties of 'union security' agreements are to be distinguished from the 'closed shop' agreement, barred by § 8(a)(3), which provides that the employer will hire no one who is not a member of the union at the time of hiring." *Oil, Chemical & Atomic Workers v. Mobil Oil Corp., Marine Transp. Dep't*, 426 U.S. 407, 409 n.1 (1976) (citation omitted).

purposes, where it is an "unjustified interference[]" in the application of public funds, *Strat-O-Seal Mfg. Co.*, 27 Ill. 2d at 565–66, or where the claims sought to be asserted fail as a matter of law, *Tillman v. Pritzker*, 2021 IL 126387, ¶ 22; *Wirtz v. Quinn*, 2011 IL 111903, ¶¶ 6, 9; *Kaider v. Hamos*, 2012 IL App (1st) 111109, ¶¶ 6, 20, 24, 28, 33, 35. In evaluating whether reasonable grounds exist, well-pleaded nonconclusory allegations of fact must be taken as true, *Hamer v. Dixon*, 61 Ill. App. 3d 30, 31–32 (2d Dist. 1978), but conclusions or unjustified allegations should be disregarded, *Barco Mfg. Co. v. Wright*, 10 Ill. 2d 157, 162 (1956); *cf. Beacham v. Walker*, 231 Ill. 2d 51, 57–58 (2008) (§ 2–615 motion accepts as true a complaint's well-pleaded allegations of fact, but not legal or factual conclusions).

ISSUES AND ARGUMENT

There are no reasonable grounds for filing the complaint because Petitioners' claims fail as a matter of law. Specifically, the Illinois Constitution *requires* the Workers' Rights Amendment to be submitted to the voters. Additionally, Petitioners' preemption theory is premature, and, even if true, is not grounds for preventing the adoption of the Amendment, both because it plainly applies to matters that are not preempted by the NLRA and because it is a permissible method of preserving rights in the event the NLRA were ever repealed. Accordingly, the Court should deny the petition for leave to file the complaint.

I. The Illinois Constitution requires the Workers' Rights Amendment to be submitted to the voters.

Under Article XIV, section 2 of the Illinois Constitution, "[a]mendments approved by the vote of three-fifths of the members elected to each house *shall be submitted to the electors at the general election* next occurring at least six months after such legislative approval, unless withdrawn by a vote of a majority of the members elected to each house." Ill. Const. art. XIV, § 2(a) (emphasis added). The Workers' Rights Amendment passed the House by a vote of 80 to 30,

with 3 members voting present.[8] The Amendment passed the Senate by a vote of 49 to 7.[9] Petitioners do not claim that the Amendment fails to comport with Article XIV, section 2. Because each legislative house approved the Amendment by a vote of three-fifths of its members and they have not voted to withdraw the amendment, the Illinois Constitution *requires* the Amendment to be submitted to the voters for adoption or rejection. Ill. Const. art. XIV, § 2(a). "The constitution is the supreme law . . . and every court is bound to enforce its provisions." *Hooker*, 2016 IL 121077, ¶ 38; *see also Maddux v. Blagojevich*, 233 Ill. 2d 508, 529 (2009). Accordingly, this Court has no power to prevent the Amendment's submission to the voters.

II. Petitioners' challenge is premature and seeks an advisory opinion.

The Illinois Supreme Court has consistently held in a long line of cases that courts have no power to enjoin a referendum under the theory that, if the measure passed and became operational, it would be invalid. *See*, *e.g.*, *Slack v. Salem*, 31 Ill. 2d 174, 176 (1964); *Fletcher v. Paris*, 377 Ill. 89, 92–94 (1941). In *Fletcher*, the Court rejected an attempt to enjoin a referendum to approve an ordinance to build a light and power plant. *Fletcher*, 377 Ill. at 90–91. The Court observed:

> That the courts have no jurisdiction to enjoin the holding of an election has been long settled in this State. As far back as 1868, in the case of *People* v. *City of Galesburg,* 48 Ill. 485, the rule was definitely announced. In that case the court was asked to enjoin the holding of an election under an act of the legislature alleged to be unconstitutional and inoperative. The circuit court sustained a demurrer to the complaint and dismissed the suit for want of equity. On appeal to this court the decree was affirmed. In disposing of the case this court said in the opinion: "We are aware of no well considered case which has enjoined the holding of an election, or prevented an officer of the law from giving the required notices for, or the certificate of election. *To sanction the practice of granting temporary injunctions in such cases, would be highly calculated to obstruct the various branches of government in the administration of public affairs. Courts of equity can have no such power, otherwise any and all elections might be prevented, and government greatly embarrassed.*"

[8] Exhibit 2, https://www.ilga.gov/legislation/votehistory/102/house/10200SC0011_05262021_003000A.pdf.
[9] Exhibit 3, https://www.ilga.gov/legislation/votehistory/102/senate/10200SC0011_05212021_001000T.pdf

> . . . [A]n injunction will not be issued to forbid any of the steps in the proceedings looking to or pertaining to an election. . . .
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> * * *
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> In this case it is obvious that the primary purpose of the suit was to have the court declare ordinance No. 6 invalid before it became effective or in force. . . . [T]he election here sought to be enjoined . . . constitutes one of the steps necessary in the passage of the ordinance. . . . Until ordinance No. 6 should be so approved it could never become operative or effective. . . .
>
> . . . . Until these requirements have been complied with, no action can be taken under such an ordinance. That the courts cannot interfere with the exercise of these legislative functions is too well settled to now be questioned. The courts have no more right to interfere with or prevent the holding of an election which is one step in the legislative process for the enactment or bringing into existence a city ordinance, than they would have to enjoin the city council from adopting the ordinance in the first instance.
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> * * *
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> The holding of an election is the exercise of a political right. Equity will not interfere in a case affecting only the enjoyment of political rights. The reasons for the application of this rule are even more persuasive in a case like this where the election sought to be enjoined is a necessary step in the legislative process of adopting and bringing into existence a municipal ordinance.
>
> As already observed, the obvious and predominate purpose of this suit was to have ordinance No. 6, at the suit of the taxpayers, declared invalid prior to the time it had passed through all the legislative processes necessary to give it life. The validity of an ordinance cannot be thus prematurely and circuitously attacked in the courts. The courts have no such control over legislation by municipalities in this State.

Id. at 92–96, 98–99 (emphasis added) (quoting *People ex rel. Fitnam v. Galesburg*, 48 Ill. 485, 490 (1868)).

And in *Slack*, the plaintiff sought to restrain a referendum election to approve or disapprove the issuance of revenue bonds which the plaintiff claimed violated the Illinois constitution as a use of public credit in aid of a private corporation. *Slack*, 31 Ill. 2d at 175–76. The Illinois Supreme Court held that the trial court lacked subject matter jurisdiction to consider the plaintiff's claim because the referendum was merely "one of the steps necessary in the passage" of the provision,

and that, unless and until the referendum passed, the provision had no validity or operation. *Id.* at 176–78. The Court reaffirmed its holding in *Fletcher*:

> The referendum election that is sought to be enjoined in this case is . . . a part of the legislative process. Unless the proposal to issue bonds is favorably acted upon by the voters at the referendum election that is sought to be enjoined, the City of Salem can not issue any bonds under the Act.
>
> The situation is not altered by the fact that the complaint in the present case sought a declaratory judgment as to the validity of the Act and the ordinance, as well as injunctive relief. . . . [U]ntil the statute or ordinance is passed, the claim of privilege or immunity would be premature. This court has no power to render advisory opinions, and until the legislative process has been concluded, there is no controversy that is ripe for a declaratory judgment. Indeed, the constitutional issues upon which the opinion of this court is sought may never progress beyond the realm of the hypothetical.

Slack, 31 Ill. 2d at 177–78 (internal quotation marks and citations omitted).

Applying these well-settled principles here, this Court has no authority to enjoin the General Assembly from passing the proposed Workers' Rights Amendment, nor to interfere with the referendum that constitutes the final step of that process. *Id.*; *see also Ziller v. Rossi*, 395 Ill. App. 3d 130, 138 (2nd Dist. 2009) ("[C]ourts may not enjoin the holding of an election," and "courts should *restrain the enforcement, rather than the passage of*, unauthorized orders, resolutions, or ordinances. Indeed, there is a distinction between enjoining legislative action and enjoining action taken in accordance with unauthorized legislative action." (emphasis added) (citations omitted)). Similar to *Slack* and *Fletcher*, Petitioners merely assert that the terms of the Amendment *would* conflict with the NLRA, if the Amendment passes, thus asking the Court to pass on "constitutional issues . . . [which] may never progress beyond the realm of the hypothetical." *Slack*, 31 Ill. 2d at 178; *see also People v. Luis R. (In re Luis R.)*, 239 Ill. 2d 295, 306 (2010) ("[i]t is well settled that Illinois courts cannot pass judgment on mere abstract propositions of law, render an advisory opinion, or give legal advice as to future events."). Of course, it is not clear that the Amendment *must* be interpreted to conflict with the NLRA, and there

are no facts before the Court to guide its decision, nor any parties actually affected by the Amendment who could be granted effective relief. *Cf. Fletcher*, 377 Ill. at 95 ("In order to enable an individual to invoke the power of the courts to enjoin the enforcement of an unconstitutional statute he must be able to show that the statute is invalid and that he has sustained, or is in immediate danger of sustaining, some direct injury as the result of its enforcement and not merely that he suffers in some indefinite way in common with people generally."). Petitioners' bare conjecture as to the future operation of the Amendment is insufficient to sustain a lawsuit. The petition must therefore be denied for lack of reasonable grounds to file.

III. *Hooker* and *Chicago Bar Association* merely demonstrate that the Illinois constitution's requirements for its amendment must be followed.

Petitioners broadly claim that a proposed amendment may be removed from the ballot if it is "unconstitutional," citing *Hooker v. Illinois State Board of Elections*, 2016 IL 121077 and *Chicago Bar Association v. Illinois State Board of Elections*, 161 Ill. 2d 502 (1994), and will no doubt argue that their claims are ripe under these cases, notwithstanding *Slack*, *Fletcher*, and *Galesburg*. Petitioners are wrong on all accounts. Petitioners fail to account for the critical distinction between the *substance* of an Amendment and the *act* of amendment. They assert the Amendment *would* conflict with federal law if *applied*, but then purport to enjoin the mere process of approving the amendment. Those are two discrete concepts. The substance, *i.e. operation*, of a constitutional amendment may not be challenged until the amendment is, in fact, operational. *See Fletcher*, 377 Ill. at 92–94; *Slack*, 31 Ill. 2d at 177–78; *Galesburg*, 48 Ill. at 490. On the other hand, *Hooker* and *Chicago Bar Association* merely stand for the proposition that the *act* of amendment, *i.e. the proposal*, and whether it complies with the Illinois constitution's requirements for amendments, may be challenged. But the courts do not thereby rule on the wisdom or validity

of the *substance* or operation of the anticipated enactment, and a mere proposal cannot possibly conflict with federal law.

To illustrate, *Hooker* and *Chicago Bar Association* each involved a citizen ballot initiative under Article XIV, section 3,[10] which "may only be used for amendments directed at 'structural and procedural subjects contained in Article IV' of the constitution, pertaining to Illinois's legislative branch." *Hooker*, 2016 IL 121077, ¶ 3 (citations omitted); *Chi. Bar Ass'n*, 161 Ill. 2d at 507. In both cases, the proposed amendment was not limited to "structural and procedural subjects contained in Article IV," and therefore was not a valid attempt to amend the constitution *by ballot initiative under Article XIV, section 3*. *Hooker*, 2016 IL 121077, ¶ 44; *Chi. Bar Ass'n*, 161 Ill. 2d at 510. In *Hooker*, the proposal would have "greatly expand[ed] the duties" of the Auditor General, which are subjects of Article VIII, not the Legislative Article (Article IV). *Hooker*, 2016 IL 121077, ¶ 27. And in *Chicago Bar Association*, the proposed amendment would have instituted term limits, which the Illinois Supreme Court held was neither a "structural" nor "procedural" subject of the Legislative Article because eligibility or qualifications of individual legislators "does not involve the structure of the legislature *as an institution*." *Chi. Bar Ass'n*, 161 Ill. 2d at 504, 509–10.

Notably, the substantive validity of the measures was not at issue—there was no suggestion that the duties of the Auditor General could not be amended, or that term limits could not be implemented, either by constitutional convention under Article XIV, section 1 or by legislative initiative under section 2. *See Hooker*, 2016 IL 121077, ¶ 34 (the Court's "role does not

[10] "The Illinois Constitution of 1970 may be amended by three methods: (1) constitutional convention (Ill. Const. 1970, art. XIV, § 1); (2) '[a]mendments by General Assembly' (Ill. Const. 1970, art. XIV, § 2); and (3) ballot initiatives (Ill. Const. 1970, art. XIV, § 3). Ballot initiatives . . . may only be used for amendments directed at 'structural and procedural subjects contained in Article IV' of the constitution (Ill. Const. 1970, art. XIV, § 3; Ill. Const. 1970, art. IV), pertaining to Illinois's legislative branch." *Hooker*, 2016 IL 121077, ¶ 3.

require us to read between the lines of every proposal in an attempt to discern the propriety of the proponent's underlying intentions; *our role is solely* to determine whether the proposal comports with the strict limitations set out in article XIV, section 3" (emphasis added)). And the reason those cases were ripe for adjudication is precisely because the Court was *not* concerned with whether the amendments, if enacted, violated the federal constitution, but rather solely concerned with whether the *chosen mode* of amendment satisfied the requirements for placement on the ballot. *Hooker*, 2016 IL 121077, ¶ 8 n.2 ("No additional matters appear to stand in the way of the proposal *being placed in the ballot*. The only steps remaining for the Board of Elections are solely administrative." (emphasis added)); *see also Coalition for Political Honesty v. State Bd. of Elections*, 65 Ill. 2d 453, 460–61 (1976) (distinguishing *Slack* and noting that if the election *itself* is "called in violation of the constitution," the election may be restrained).

In sum, both *Hooker* and *Chicago Bar Association* merely stand for the narrow and unremarkable proposition that a proposed amendment to the Illinois constitution must conform to requirements for amending the constitution before it may be put to the voters, irrespective of whether the substance of the amendment is infirm on any other grounds. *Hooker*, 2016 IL 121077, ¶ 1 ("This case addresses the question of whether . . . the redistricting initiative petition . . . failed to comply with the requirements of article XIV, section 3, of our constitution," which governs the requirements for citizen ballot initiatives.); *Chi. Bar Ass'n*, 161 Ill. 2d at 508 ("[W]e are presented with the question of whether a proposed amendment to our constitution satisfies the constitution's own requirements for its amendment."); *see also Coalition for Political Honesty*, 65 Ill. 2d at 460 ("Any offered amendment under the initiative obviously must comply with the procedure and the limitations on amendment set out in section 3 before it can be submitted to the electorate."). Put another way, a ballot measure is only proper if it conforms with the requirements for ballot

measures. *See Hooker*, 2016 IL 121077, ¶ 22 ("[T]he will of the people to [amend the constitution] can only be expressed in the legitimate modes by which such a body politic can act, and which must either be prescribed by the constitution whose revision or amendment is sought, or by an act of the legislative department of the State." (quoting *Coalition for Political Honesty*, 65 Ill. 2d at 460–61). Neither case involved preemption, neither held that federal preemption or general notions of constitutionality are sufficient to keep a proposed amendment off the ballot where there is no question that the proposed amendment complies with the constitutional revision Article, and neither overruled *Slack*, *Fletcher*, or *Galesburg*.

Here, as noted above, there is no suggestion that the Workers' Rights Amendment fails to comply with Article XIV or any other requirement for amendment. Petitioners' legal claims are not directed to the legality of the *mode or act* of amendment as in *Hooker*, but rather plainly look *beyond the ballot to anticipated enforcement* as the alleged offense. Accordingly, *Hooker* and *Chicago Bar Association* have no application to this case. Instead, *Slack*, *Fletcher*, and *Galesburg* control. And under those cases, Petitioners may not bring their challenge unless and until the Amendment is adopted and becomes operational. Voter choice is plainly not a mere administrative step in bringing the Amendment into operation. Hence, there remains a final discretionary act in the "legislative process," and "until it has been concluded, there is no controversy that is ripe for a declaratory judgment." *Slack*, 31 Ill. 2d at 178. A proposed amendment that fails to win the approval of the electorate is just a failed idea that cannot possibly conflict with federal law.

IV. Federal preemption merely suspends enforcement of state laws while an actual conflict exists, and therefore is not a basis for preventing adoption of the Workers' Rights Amendment.

Under the Supremacy Clause, "[i]f federal law imposes restrictions or confers rights on private actors and a state law confers rights or imposes restrictions that conflict with the federal law, the federal law *takes precedence* and the state law is preempted." *Kansas v. Garcia*, 140 S.

Ct. 791, 801 (2020) (emphasis added) (internal quotation marks omitted). The Supremacy Clause is not a "source of any federal rights," however, and "does not create a cause of action." *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 324-25 (2015). Rather, it is *merely a rule of decision*, "instruct[ing] courts what to do *when* state and federal law clash." *Id.* (emphasis added). "In all cases, the federal restrictions or rights that are said to conflict with state law must stem from either the Constitution itself or a valid statute enacted by Congress. There is no federal preemption *in vacuo*, without a constitutional text, federal statute, or treaty . . . ." *Garcia*, 140 S. Ct. at 801 (2020).

Preemption does not mean a state law is struck down as invalid. Rather, "[i]n a pre-emption case . . . , state law is *displaced*," and "only to the extent that it actually conflicts with federal law." *Dalton v. Little Rock Family Planning Servs.*, 516 U.S. 474, 476 (1996) (per curiam) (emphasis added) (internal quotation marks and citations omitted). The fact that a state law may conflict with federal law in some applications is not sufficient to preempt the state law as to all applications. *Id.*

It is true that courts often refer to preempted laws as being "invalid," or "unconstitutional," *see id.* (using "displace[ment]" and "invalidation" interchangeably), but in truth, the state laws are merely suspended, or "displaced," *while the federal law exists*. As explained in *Lily Lake Road Defenders v. County of McHenry*, 156 Ill. 2d 1, 8 (1993):

> The doctrine of preemption . . . is applied where enactments of two unequal legislative bodies (*e.g.,* Federal and State) are inconsistent. Where a statute is preempted, there is no repeal of that statute. Rather, the subordinate legislative body's enactment is *suspended and rendered unenforceable by the existence* of the superior legislative body's enactment. This being so, the repeal of the preempting statute revives or reinstates the preempted statute without express reenactment by the legislature.

Lily Lake Road Defenders, 156 Ill. 2d 1, 8 (1993) (emphasis added); *see also Kinsey Distilling Sales Co. v. Foremost Liquor Stores, Inc.*, 15 Ill. 2d 182, 193 (1958); *Local 514 Transp. Workers*

Union of Am. v. Keating, 2003 OK 110, ¶ 17 (preemption of clause restricting union security agreements not equivalent to invalidation). The Supreme Court agrees:

> It is apparent that [the Supremacy] Clause *creates a rule of decision*: Courts "shall" regard the "Constitution," and all laws "made in Pursuance thereof," as "the supreme Law of the Land." They must *not give effect* to state laws that conflict with federal laws.

Armstrong, 575 U.S. at 324 (emphasis added).

In sum, federal preemption under the Supremacy Clause is limited in scope to actual conflicts, is temporal in nature, that is, it applies only while the preempting federal law continues to exist, and unlike other constitutional limitations, it is merely a rule of decision requiring courts to give effect to the federal law instead of the state law.

V. The Workers' Rights Amendment has substantial applications that do not conflict with federal law and is a valid method of preserving worker rights in the event the NLRA is repealed.

Petitioners claim that the Workers' Rights Amendment conflicts with the NLRA *as applied to private-sector employer-employee relationships*. Pet. ¶¶ 2–4. Even if this claim is true,[11] the Amendment has substantial nonconflicting and constitutional applications, which Petitioners concede. Pet. ¶ 12 (the Workers' Rights Amendment "makes no distinction between private-sector and public sector employees and therefore *would establish a right to collective bargaining for both*." (emphasis added)); *see also* Proposed Compl. ¶ 56. Moreover, as noted above, the proposed Amendment would remain viable, albeit currently unenforceable, even for conflicting applications.

Dalton is particularly instructive. There, the trial court enjoined enforcement of an amendment to the Arkansas constitution that prohibited public funding of abortions except to save

[11] To be clear, Respondents do not concede that the NLRA preempts the Workers' Rights Amendment. But the Court need not decide that issue because, as Petitioners acknowledge, the NLRA does not supersede *all* applications of the Amendment. *Cf. Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306 (2008) ("[A]n enactment is facially invalid only if no set of circumstances exist under which it would be valid.").

the mother's life. *Dalton*, 516 U.S. at 474–75. The amendment conflicted with the so-called "Hyde Amendment," a federal law that restricted federal funding of abortions, but "*authorized* the use of federal funds to pay for an abortion after notice that 'such procedure is necessary to save the life of the mother *or that the pregnancy is the result of an act of rape or incest*.'" *Dalton*, 516 U.S. at 475–77 (emphasis added). The Supreme Court reversed in part, holding the trial court's injunction was overbroad both because it enjoined applications of the amendment that did *not* conflict with the Hyde Amendment, and because it would have continued to enjoin the amendment even if the preempting legislation was repealed. The Court explained:

> Respondents do not claim that any other possible application of § 1 [of Arkansas Amendment 68] is pre-empted by current federal law. It is entirely possible, for example, that § 1 would have application to state programs that receive no federal funding. As the District Court noted, the Arkansas Crime Victims Reparations Act established a program which provides compensation and assistance to victims of criminal acts within the State, including compensation for medical expenses. Without the limitation imposed by Amendment 68, the program might have the authority to reimburse crime victims for abortions not necessary to save the life of the pregnant woman. Assuming the compensation program is entirely state funded, nothing in respondents' challenge to Amendment 68 suggests that the application of § 1 to the program would conflict with any federal statute. Because Amendment 68 was challenged only insofar as it conflicted with Title XIX, it was improper to enjoin its application to funding that does not involve the Medicaid program.
>
> The District Court's injunction is overbroad in its temporal scope as well. The Hyde Amendment is not permanent legislation; it was enacted as part of the statute appropriating funds for certain Executive Departments for one fiscal year. While the versions of the Hyde Amendment applicable to the 1994 and 1995 fiscal years authorized the use of federal funds to pay for an abortion after notice that "such procedure is necessary to save the life of the mother or that the pregnancy is the result of an act of rape or incest," the version of the amendment applicable to prior years limited federal funding to those abortions necessary to save the life of the mother. Because this history identifies the possibility that a different version of the Hyde Amendment may be enacted in the future, it was improper for the District Court to enjoin enforcement of Amendment 68 "for so long as the State of Arkansas accepts federal funds pursuant to the Medicaid Act."
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> * * *

> We therefore reverse . . . and remand for entry of an order enjoining the enforcement of Amendment 68 only to the extent that the amendment imposes obligations inconsistent with federal law.

Dalton, 516 U.S. at 476–78 (citations omitted).

As *Dalton* makes clear, where a state law has a "substantial application" permissible under the Supremacy Clause, it remains viable. In this case, the Amendment would plainly have applications that do not conflict with the NLRA.

First, Petitioners correctly acknowledge that the Amendment would apply to public and private employees alike, whereas the NLRA regulates only private-sector collective bargaining. Pet. ¶¶ 2, 12; *see also* 29 U.S.C. § 152(3) (under the NLRA, "[t]he term 'employer' . . . shall not include . . . any State or political subdivision thereof." 29 U.S.C. § 152(3). "The National Labor Relations Act leaves States free to regulate their labor relationships with their public employees." *Davenport v. Wash. Educ. Ass'n.*, 551 U.S. 177, 181 (2007). Illinois has done just that by enacting the Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.*, and the Illinois Educational Labor Relations Act, 115 ILCS 5/1 *et seq.* Even if Petitioners are correct that the NLRA would preempt the Amendment as it applies to private employees, nothing in the NLRA precludes Illinois' right to grant *public* employees "the fundamental right to organize and to bargain collectively through representatives of their own choosing."

Second, the Amendment would prohibit the passage of laws restricting union security agreements, as to which Congress "chose to abandon any search for uniformity" and "decided to suffer a medley of attitudes and philosophies on the subject." *Retail Clerks Int'l Ass'n, Local 1625 v. Schermerhorn*, 375 U.S. 96, 104–05 (1963). "Congress . . . . left the states free to legislate in [the] field [of union security agreements, and] . . . it intended to leave unaffected the power to enforce those laws." *Id.* at 102. As noted above, the constitutions of Florida and Oklahoma, among other states, prohibit enforcement of certain union security agreements via state constitutional

provisions.[12] The Workers' Rights Amendment would take a different approach for Illinois, and bar the General Assembly from restricting agreements reached between bargaining representatives and employers. § 25(a) ("No law shall be passed . . . that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.").[13] Illinois is free to make this choice if that is the will of its People. *See Schermerhorn*, 375 U.S. at 102.

Since the above applications are plainly not preempted by federal law, Petitioners offer nothing more than an "as-applied" claim that is insufficient to strike the Amendment in its entirety. *Dalton*, 516 U.S. at 476-78 (ban on purely state funding of abortions still valid even though ban on federal funding preempted); *cf. Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306 (2008) ([A]n enactment is facially invalid only if no set of circumstances exist under which it would be valid.").

Finally, if the NLRA were ever repealed, the Amendment would spring into effect as to any applications previously preempted. *See Lily Lake Road Defenders*, 156 Ill. 2d 1, 8; *Dalton*, 516 U.S. at 476-78. Petitioners offer no contrary authority.

Thus, the Amendment serves *at least* three permissible purposes. First, it would create rights for public employees, which is expressly *not* preempted by the NLRA. Second, it would

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[12] Fla. Const. art. I, § 6 ("The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike."); Okl. Const. art. 23, § 1A(B)(2) ("No person shall be required, as a condition of employment or continuation of employment, to: . . . Become or remain a member of a labor organization.").

[13] *See* 29 U.S.C § 158(a)(3) (subject to restrictions, "nothing in this Act, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment"); https://www.illinoispolicy.org/amendment-to-illinois-constitution-is-much-more-than-right-to-work-ban/ (acknowledging the Workers' Rights Amendment would prohibit laws restricting enforcement of union security agreements).

permissibly restrain the power of the General Assembly to pass laws restricting union security agreements. Third, it would act as a state-law failsafe to preserve rights for private-sector employees in the event the federal government ever decided to abandon the NLRA.[14] Accordingly, there are no grounds for denying the voters the opportunity to decide whether to add the Workers' Rights Amendment to the Illinois constitution.

CONCLUSION

Petitioners request an advisory opinion that the Workers' Rights Amendment, if adopted, would conflict with the NLRA in certain applications related to private-sector employment. The Court has no power to grant Petitioners' request. Rather, the plain language of the Illinois constitution *requires* the Amendment to be put before the voters because it complies with the requirements for amendment. If adopted, the Amendment will grant rights to public and private employees alike, and Petitioners concede there is no conflict presented by regulation of public employment. Further, the Amendment will act as a failsafe to protect the rights of private workers in the event the NLRA is ever abandoned by the federal government. And "[a]lthough it is possible that specific future applications . . . may engender concrete problems of constitutional dimension, it will be time enough to consider any such problems when they arise." *Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 504 (1982).

[14] Additional purposes include, for example, regulation of the rights of agricultural laborers and independent contractors, *see* 29 U.S.C. § 152(3).

The petition discloses no reasonable basis for filing the taxpayer suit and must be denied.

WHEREFORE, Respondents request the Court deny the petition.

Respectfully submitted,

JESSE WHITE, Illinois Secretary of State, and SUSANA A. MENDOZA, Illinois State Comptroller,

Respondents,

Kwame Raoul, Attorney General of the State of Illinois,

Attorney for Respondents,

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CERTIFICATE OF SERVICE

Joshua D. Ratz certifies under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109) that he has served a copy of the foregoing Objection to Petition for Leave to File Taxpayer Action upon:

Liberty Justice Center
Cook County No. 49098
Jacob Huebert
Jeffrey Schwab
440 N. Wells Street, Suite 200
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Mailee Smith
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by electronic mail on May 15, 2022.

/s Joshua D. Ratz
Joshua D. Ratz
Assistant Attorney General

EXHIBIT 1

SENATE JOINT RESOLUTION

CONSTITUTIONAL AMENDMENT NO. 11

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

ARTICLE I

BILL OF RIGHTS

(ILCON Art. I, Sec. 25 new)

SECTION 25. WORKERS' RIGHTS

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

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

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

SCHEDULE

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

EXHIBIT 2

STATE OF ILLINOIS
ONE HUNDRED SECOND
GENERAL ASSEMBLY
HOUSE ROLL CALL
SENATE JOINT RESOLUTION CONSTITUTIONAL AMENDMENT 11
CON AMEND-WORKERS' RIGHTS
THIRD READING
THREE-FIFTHS VOTE REQUIRED
PASSED

May 26, 2021

80 YEAS		30 NAYS		3 PRESENT	
Y	Ammons	Y	Guerrero-Cuellar	Y	Nichols
Y	Andrade	Y	Guzzardi	N	Niemerg
Y	Avelar	Y	Haas	Y	Ortiz
N	Batinick	N	Halbrook	P	Ozinga
N	Bennett	Y	Halpin	Y	Ramirez
N	Bos	Y	Hammond	N	Reick
N	Bourne	Y	Harper	A	Rita
N	Brady	Y	Harris	Y	Robinson
Y	Buckner	Y	Hernandez,Barbara	Y	Scherer
A	Burke	Y	Hernandez,Elizabeth	Y	Severin
N	Butler	Y	Hirschauer	Y	Slaughter
Y	Carroll	Y	Hoffman	Y	Smith
Y	Cassidy	Y	Hurley	N	Sommer
E	Caulkins	N	Jacobs	N	Sosnowski
N	Chesney	Y	Jones	N	Spain
Y	Collins	Y	Keicher	Y	Stava-Murray
Y	Conroy	Y	Kifowit	E	Stephens
Y	Costa Howard	Y	LaPointe	Y	Stoneback
Y	Crespo	Y	Lewis	Y	Stuart
Y	Croke	Y	Lilly	N	Swanson
Y	D'Amico	Y	Luft	Y	Tarver
P	Davidsmeyer	Y	Mah	N	Ugaste
Y	Davis	Y	Manley	Y	Vella
Y	Delgado	Y	Marron	Y	Walker
Y	DeLuca	Y	Mason	Y	Walsh
N	Demmer	Y	Mayfield	N	Weber
Y	Didech	N	Mazzochi	Y	Welter
N	Durkin	Y	McCombie	Y	West
N	Elik	E	McLaughlin	P	Wheeler
Y	Evans	N	Meier	N	Wilhour
Y	Flowers	Y	Meyers-Martin	Y	Williams,Ann
Y	Ford	N	Miller	Y	Williams,Jawaharial
N	Frese	Y	Moeller	Y	Willis
N	Friess	Y	Morgan	N	Windhorst
Y	Gabel	N	Morrison	Y	Yang Rohr
Y	Gong-Gershowitz	Y	Moylan	Y	Yednock
Y	Gonzalez	N	Murphy	Y	Yingling
Y	Gordon-Booth	Y	Mussman	Y	Zalewski
N	Grant	Y	Ness	Y	Mr. Speaker
Y	Greenwood				

E - Denotes Excused Absence

EXHIBIT 3

NO. 1

State of Illinois
102nd General Assembly
Senate Vote

Senate Joint Resolution Constitutional Amendment No. 11
THIRD READING

May 21, 2021

49 YEAS	7 NAYS	0 PRESENT
Y Anderson	Y Gillespie	Y Peters
Y Aquino	Y Glowiak Hilton	N Plummer
N Bailey	Y Harris	Y Rezin
N Barickman	Y Hastings	Y Rose
Y Belt	Y Holmes	Y Simmons
Y Bennett	Y Hunter	Y Sims
Y Bryant	Y Johnson	Y Stadelman
Y Bush	NV Jones, E.	N Stewart
Y Castro	Y Joyce	Y Stoller
Y Collins	Y Koehler	Y Syverson
Y Connor	Y Landek	N Tracy
Y Crowe	Y Lightford	NV Turner, D.
Y Cullerton, T.	Y Loughran Cappel	N Turner, S.
Y Cunningham	Y Martwick	NV Van Pelt
Y Curran	Y McClure	Y Villa
Y DeWitte	N McConchie	Y Villanueva
Y Ellman	Y Morrison	Y Villivalam
Y Feigenholtz	Y Muñoz	Y Wilcox
Y Fine	Y Murphy	Y Mr. President
Y Fowler	Y Pacione-Zayas	