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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT, IN AND FOR LEON COUNTY, FLORIDA

UNITED FACULTY OF FLORIDA, UFF-FLORIDA A&M UNIVERSITY, EDUCATION ASSOCIATION OF SAINT LUCIE, DR. JAMES J. MUCHOVEJ, ERIC GRAFF, Plaintiffs, vs. THE PUBLIC EMPLOYEES RELATIONS COMMISSION, a Florida state agency, Defendant.	Case No. _____

COMPLAINT FOR DECLARATORY, EQUITABLE, AND INJUNCTIVE RELIEF

Plaintiffs UNITED FACULTY OF FLORIDA, UFF FLORIDA A&M UNIVERSITY, EDUCATION ASSOCIATION OF SAINT LUCIE, DR. JAMES J. MUCHOVEJ, and ERIC GRAFF ("Plaintiffs") bring this action for declaratory and injunctive relief against Defendant THE PUBLIC EMPLOYEES RELATIONS COMMISSION ("PERC" or "Defendant"), a Florida state agency. Plaintiffs ask the Court to declare unconstitutional and enjoin implementation of certain

amendments made to Chapter 447, Part II, Florida Statutes, by Chapter 2023-35, Laws of Florida ("SB 256"), as further amended by Chapter 2024-23, Laws of Florida ("SB 1746"). Plaintiffs also request an order that any Plaintiff that has been decertified as representative for any bargaining unit as a result of the challenged provisions of SB 256 be immediately recertified and that any Plaintiff that has been financially damaged by operation of SB 256 be made whole.

I. INTRODUCTION

Section 4 of Senate Bill 256 ("Section 4"), which was signed into law on May 9, 2023, and which went into full effect on October 1, 2023, violates Article I, Section 6 of the Florida Constitution's Declaration of Rights, which guarantees Florida's public employees the fundamental right to engage in collective bargaining by and through a labor organization. That infringement survived, and was exacerbated by, certain amendments that were made in SB 1746, which was signed by the Governor and went into immediate effect on March 22, 2024.

The Plaintiffs seek declaratory relief and to enjoin Defendant PERC from enforcing Section 4, as well as certain provisions of SB 1746. Those Plaintiffs that have been or might be decertified pursuant to the challenged provisions also seek an order that their certifications as bargaining representative be restored, and those Plaintiffs that had to pay the State for the cost of undergoing unconstitutional recertification elections seek to be made whole.

Section 4 conditions the ability of a public employee to exercise their fundamental right to collective bargaining on whether the employee organization that represents that public employee is receiving membership dues payments from at least 60% of the employees in the bargaining unit. As PERC has applied Section 4, if an employee organization's dues-payment rate falls below the 60% threshold for even a single day (the so-called "snapshot" date, which occurs 30 days before the end of its current registration), that organization is threatened with decertification (the term for when an organization that is certified to represent a bargaining unit of employees loses its legal authorization to do so). That means that, in some cases, Section 4 threatens an employee organization with decertification even though a clear majority of employees in the bargaining unit have paid dues. In addition, after SB 1746, an employee organization is threatened with decertification unless a 60% super-majority of represented employees have submitted signed, unrevoked membership authorization forms, containing various statements prescribed by Defendant PERC.

When an employee organization is decertified, any collective-bargaining agreement ("CBA") negotiated on behalf of—and ratified by a majority of—the represented employees is immediately nullified. When that occurs, the employees who were represented by that employee organization lose not only their representative at the bargaining table, but also the benefits and protections of their

lawfully negotiated contract, including access to the grievance procedures that are included in nearly every CBA. Further, those employees immediately lose the legal protection that requires their employer to negotiate with their representative before making any unilateral changes to the terms and conditions of their employment.

That statutory scheme is unconstitutional under Article I, Section 6 of the Florida Constitution, which guarantees the fundamental right to collective bargaining for public-sector and private-sector employees alike, for at least three reasons. First, Section 4 and SB 1746 condition the exercise of collective-bargaining rights by employees and employee organizations on attainment by the employee organization of a super-majority—instead of a majority—of dues-paying members and membership authorization forms. Second, the challenged provisions threaten to nullify the protections afforded by existing collective-bargaining agreements before the date of their bargained-for expiration. Finally, Section 4 contradicts the basic premise of Florida's constitutionally guaranteed "Right to Work," which prohibits the State, employers, and employee organizations from conditioning the exercise of employees' collective-bargaining rights on the payment of union dues.

II. JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this action pursuant to Article V, Section 5(b) of the Florida Constitution, and Sections 26.012 and 86.011 of the Florida Statutes.

2. Venue is proper in Leon County, Florida, pursuant to Section 47.011, Florida Statutes, because the Defendant is located in Leon County.

III. ALLEGATIONS

A. Parties

3. Plaintiff UNITED FACULTY OF FLORIDA ("UFF") is an employee organization under the Public Employees Relations Act, Sections 447.201-447.609, Fla. Stat. (2023) ("PERA"), and a labor organization as described by Article I, Section 6 of the Florida Constitution.

4. UFF is the certified bargaining representative for approximately 26 bargaining units of public employees working for public employers at State universities, colleges, community colleges, and K-12 lab schools.

5. UFF is affiliated with local chapters throughout Florida that serve as voluntary private membership associations and non-profit advocacy organizations on behalf of the employees working on a particular campus, community college, or lab school.

6. Plaintiff UFF-FLORIDA A&M UNIVERSITY ("UFF-FAMU") is one of those UFF chapters, representing employees working for Florida A&M University. UFF-FAMU is an employee organization under the Public Employees Relations Act, Sections 447.201-447.609, Fla. Stat. (2023), and a labor organization as described by Article I, Section 6 of the Florida Constitution.

7. UFF and UFF-FAMU bring this action on behalf of themselves and their members.

8. Plaintiff DR. JAMES J. MUCHOVEJ is a tenured professor in the Division of Agricultural Sciences at Florida A&M University. Dr. Muchovej has been employed by FAMU since in or about January 1992. Dr. Muchovej is a dues-paying member of UFF and UFF-FAMU, and has been a member continuously since in or about January 1992.

9. Plaintiff EDUCATION ASSOCIATION OF SAINT LUCIE ("EASL") is an employee organization under the Public Employees Relations Act, Sections 447.201-447.609, Fla. Stat. (2023), and a labor organization as described by Article I, Section 6 of the Florida Constitution.

10. EASL brings this action on behalf of itself and its members.

11. Plaintiff ERIC GRAFF is a media specialist and a certificated teacher employed by the School Board of Saint Lucie County and working at Morningside Elementary School. Mr. Graff is member of the EASL Classroom Teacher

bargaining unit. Since in or about 1988, Mr. Graff has been a member of EASL and pays voluntary dues as a member of that employee organization.

12. The Defendant, the PUBLIC EMPLOYEES RELATIONS COMMISSION, is the state agency located in Tallahassee, Florida that administers and enforces Chapter 447, Part II, Florida Statutes.

B. Background of Applicable State Law Related to Collective Bargaining

i. Background Law Concerning the Scope of the Article I, Section 6 Right to Collectively Bargain

13. While the National Labor Relations Act ("NLRA") provides most private-sector employees with workplace bargaining rights, those rights are governed by state law when it comes to the rights of employees of state, federal and local governments and their sub-divisions. 29 U.S.C. § 152(2) (2022).

14. Under Article I, Section 6 of the Florida Constitution, public-sector employees have the "fundamental right" to collectively bargain with their public employers. *Hillsborough Cnty. Governmental Emps. Ass'n, Inc. v. Hillsborough Cnty. Aviation Auth.*, 522 So. 2d 358, 362 (Fla. 1988).

15. Article I, Section 6, created by Florida's voters with the 1968 adoption of the current Florida Constitution, states in its entirety:

> 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.

16. The Article I, Section 6 right of employees to collectively bargain by and through a labor organization includes the right of employees to be represented by "any employee organization *of their own choosing*." Fla. Stat. § 447.301(1)(a). (emphasis added). *See City of Tallahassee v. Pub. Emp. Rels. Comm'n*, 393 So. 2d 1147, 1149 (Fla. 1st DCA), *aff'd,* 410 So. 2d 487 (Fla. 1981) (Section 447.301 is part of PERA, which implements Article I, Section 6).

17. As a "fundamental right," the right of Florida's public employees to collectively bargain "is subject to official abridgement only upon a showing of a compelling state interest." *Hillsborough Cnty*, 522 So. 2d at 362.

18. Moreover, "the intent of the constitution is to grant the right of *effective* collective bargaining," such that "[a]ny restriction on the right to bargain collectively must necessarily violate [A]rticle I, Section 6." *Id.* (emphasis in original). Therefore, any "statute abridging the right of state employees to bargain collectively is consonant with the constitution only if it vindicates a compelling state interest by minimally invasive means." *Coastal Fla. Police Benevolent Ass'n, Inc. v. Williams*, 838 So. 2d 543, 551 (Fla. 2003) (quoting *Chiles v. State Emps. Att'ys Guild*, 734 So. 2d 1030, 1033 (Fla. 1999)).

19. The Article I, Section 6 bargaining right granted to public employees is coextensive with the bargaining rights of private employees under the NLRA. The NLRA therefore remains an important touchstone for public employees in

Florida, as courts look to the body of federal NLRA precedent in construing the collective-bargaining rights of public employees under Article I, Section 6. *Dade Cnty. Classroom Tchrs.' Ass'n v. Ryan*, 225 So. 2d 903, 905 (Fla. 1969) (stating "with the exception of the right to strike, public employees have the same rights of collective bargaining as are granted private employees").

20. Both individual employees and labor organizations possess this Article I, Section 6 right to bargain collectively by and through a labor organization of the employees' choosing. *See, e.g.*, *Fla. State Fire Serv. Ass'n, IAFF, Loc. S-20 v. State*, 128 So. 3d 160, 162 (Fla. 1st DCA 2013) (holding that the state had violated the employee organization's right to collective bargaining).

ii. Background Law Concerning Majority Support in the Certification Process

21. In Florida, if a majority of public employees in an appropriate bargaining unit want to bargain with their employer "by and through a labor organization," they have the fundamental right to do so.

22. Majority representation is the foundational principle of the NLRA, as well as PERA, codified in Chapter 447, Part II. Indeed, under PERA, majority support is the touchstone of every step in the certification process. *See infra* ¶¶23-25.

23. Upon registration and a petition by an employee organization supported by a majority of public employees in an appropriate bargaining unit,

PERC has the duty to certify that employee organization as the exclusive bargaining agent for the unit. Fla. Stat. §§ 447.305 & 447.307.

24. The initial certification and decertification procedures established by both PERA and the NLRA set different thresholds of majority support that are required to trigger different stages of the certification or decertification process:

a. Employees can give rise to a question concerning representation with respect to an initial certification by coming forward with signed statements from at least 30% of employees in an appropriate bargaining unit stating that they seek to be represented for collective bargaining by a particular employee organization. Fla. Stat. § 447.307(2); *Pearl Packing Co.*, 116 NLRB 1489, 1490 (1956).

b. Once a question concerning representation exists with respect to an initial certification, another employee organization can intervene in the representation matter by coming forward with signed statements from at least 10% of the employees in the bargaining unit indicating that they wish to be represented for the purpose of collective bargaining by that intervening employee organization. Fla. Stat. § 447.307(2).

c. In addition, employees that are represented by a certified bargaining representative can give rise to a question concerning representation with respect to decertification of that representative by coming forward with signed statements from at least 30% of employees in an appropriate bargaining unit stating that they no longer wish to be represented for collective bargaining by an incumbent employee organization. Fla. Stat. § 447.308(1).

d. The existence of a question concerning representation obligates PERC (under PERA), or the National Labor Relations Board ("NLRB") (under the NLRA) to conduct a representation election. In both initial certification elections and decertification elections, the employee organization will be certified as the exclusive representative of the employees in the bargaining unit if, and only if, a majority (50%+1) of employees select the employee organization as their exclusive representative. Fla. Stat. §§ 447.307(3)(b); 447.308(2).

25. Thus, under both PERA and the NLRA, the only thresholds of employee support that are relevant for initial certification or decertification proceedings are **30%** (the threshold giving rise to a question concerning representation); **10%** (the threshold at which an outside employee organization can

intervene in an existing question concerning representation); and **50%** (the threshold an employee organization must exceed to be certified as an exclusive representative). There are no legally significant super-majority thresholds of employee support.

iii. Background Law Concerning Majority Support in the Collective-Bargaining Process

26. Although a certified representative—initially certified on a showing of majority support—is empowered to bargain on behalf of all represented employees, no CBA is binding until it is ratified by a majority vote of all employees who are part of the bargaining unit, including those employees who choose not to join as members or pay dues to the certified representative. Fla. Stat. § 447.309(1). That means that both the employer and *a majority of the voting employees* in a given bargaining unit must approve the terms of any CBA, including the date on which the CBA expires.

27. Prior to SB 256, for all employees other than K-12 instructional personnel, once an employee organization was certified by PERC, the employee organization could only have that certification revoked (a process called "decertification") if first, the employees submitted a decertification petition supported by signed statements from 30% of employees in the bargaining unit, and, second, if a majority of employees in the bargaining unit then voted against

continuing representation by the employee organization in a secret-ballot election conducted by PERC. Fla. Stat. § 447.308.

28. Furthermore, to ensure stable labor relations and to honor bargained-for contractual commitments, PERA insulates certified representatives (and represented employees) from decertification petitions during certain protected periods, including during the term of a CBA until shortly before its expiration. Thus, under PERA, once there is a ratified CBA in place, a decertification petition can be filed by employees "only during the period extending from 150 days to 90 days immediately preceding the expiration date of that agreement." Fla. Stat. § 447.307(3)(d). The reason for this "contract bar" is "to provide important safeguards to the stability and predictability of the collective bargaining process" because "[o]nce the parties have a collective bargaining agreement in place…they need to be able to depend on that relationship continuing undisrupted during the period of the agreement." *City of Orlando v. Cent. Fla. Police Benevolent Ass'n*, 595 So. 2d 1087, 1088 (Fla. 5th DCA 1992).

29. Similar limits on when decertification petitions may be filed exist under the NLRA for the same reasons. Importantly, those NLRA limitations predated the adoption of Article I, Section 6 of the Florida Constitution. *See, e.g.*, *Gen. Cable Corp.*, 139 NLRB 1123 (1962).

30. In interpreting the NLRA, a unanimous Supreme Court has recognized a "conclusive presumption" that an employer may not, during the term of a collective-bargaining agreement up to three years, claim that a union has "lost majority support" as a basis to cease recognizing a union as the certified collective-bargaining agent for the employer's employees. *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 786 (1996). This presumption, too, is based "on the need to achieve 'stability in collective-bargaining relationships.'" *Id.* (quoting *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 38 (1987)); *see also City of Ocala v. Marion Cnty. Police Benevolent Ass'n*, 392 So. 2d 26, 32 (Fla. 1st DCA 1980) (endorsing PERC's view that the presumption of continued majority support is, if anything, stronger under Florida law than in the private sector).

31. Under both PERA and the NLRA, "[u]pon decertification of the incumbent union, the collective bargaining agreement no longer exists." *Teamsters Loc. Union No. 385 v. Orange Cnty*., 25 F.P.E.R. P 30072, 1999 WL 35114734 (Feb. 3, 1999) (citing *NLRB v. Burns Int'l Sec. Servs.*, 406 U.S. 272, 284 n.8 (1972)); *see also Alachua Cnty. Educ. Assoc. v. Carpenter*, Case No 1:23-cv-00111-MW-HTC, ECF No. 154 (N.D. Fla. July 24, 2024) (same). Among other things, the nullification of a CBA means that the employer is no longer bound to follow the grievance procedures defined in the CBA and that employees cannot bring an action against the employer to enforce the terms of that contract.

32. Even after the expiration of a CBA, under both PERA and the NLRA, an employer is obligated, as part of its duty to bargain in good faith with the certified representative, to maintain the status-quo terms and conditions of employment upon the expiration of the CBA, so long as the bargaining unit continues to be represented by an exclusive representative. *Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 198 (1991); *City of Delray Beach v. Pro. Firefighters of Delray Beach*, 636 So. 2d 157, 161 (Fla. 4th DCA 1994). In contrast, under both PERA and the NLRA, there is no obligation to maintain the status-quo terms and conditions of employment when the representative has been decertified and has not been replaced by a newly certified representative. *See NLRB v. Arkema, Inc*., 710 F.3d 308, 320 (5th Cir. 2013). That is because the duty to maintain the status quo is a subset of the duty to bargain in good faith, and, after a union is decertified, there is no certified representative to which the employer owes a duty to bargain in good faith. *Id.*

iv. Background Law Concerning Dues Payment by Represented Employees

33. Florida's Constitution declares Florida to be a "Right to Work" state in which the decision to join or not join a union and pay or not pay union membership dues is constitutionally protected. Article I, Section 6 protects the right of employees to bargain collectively through a labor organization whether or not those employees are union members or pay union dues, and whether or not the

labor organization in question makes the internal decision not to collect dues at all. In short, employees have the right to be represented in collective-bargaining negotiations by a labor organization on an equal basis regardless of whether they tender dues or other payments to the union that represents them.

34. In other words, under Article I, Section 6, public employees may designate an employee organization to serve as their bargaining representative by voting for that union in a certification election but need not (and cannot be compelled to) become members or pay dues to the union that represents them.

35. Public-employee labor organizations, like all unions, are private, democratically run membership organizations. They are governed by constitutions and bylaws that define membership and set amounts of dues, if any.

36. Both PERC and Florida courts have repeatedly emphasized that the internal policies of a union—including those involving dues and membership—exist separate and apart from PERA and its statutory provisions for determining majority representation. *See Orinthia Mullin v. AFSCME Loc. 1363,* 48 F.P.E.R. P 157 (2021); *Taite v. Bradley*, 151 So. 2d 474, 475 (Fla. 1st DCA 1963).

v. The Since-repealed K-12 Certification Statute

37. Prior to SB 256, only a single statute implementing Article I, Section 6 linked a union's continued certification as a collective-bargaining agent to payment of membership dues, and it did so only for units consisting of K-12

instructional personnel. *See* Fla. Stat. § 1012.2315(4) (2022) (repealed by SB256) (the "K-12 certification statute"). Like SB 256, that K-12 certification statute required employee organizations that represented K-12 instructional personnel to file an annual registration with PERC that included the percentage of unit employees who paid dues to the union in the prior registration period. However, unlike SB 256, the K-12 certification statute only subjected employee organizations to a recertification process if fewer than 50%—that is, less than a majority—of unit employees paid dues to the employee organization.

38. Statewide, between the time when the K-12 certification statute became effective and when it was repealed by SB 256, no employee organization representing K-12 instructional personnel was decertified as a result of the K-12 certification statute. Only one employee organization representing K-12 instructional personnel was subjected to the statute's recertification procedures for failure to meet the 50% dues-payment threshold set by that statute.

vi. Background Law Concerning the Freedom of Association

39. "The First Amendment and article I, section 5 of the Florida Constitution protect the rights of individuals to associate with whom they please and to assemble with others for political or for social purposes." *Wyche v. State*, 619 So.2d 231, 234 (Fla.1993). Article I, Section 5, of the Florida Constitution

protects the freedom of association to the same extent as the First Amendment of the federal Constitution. *Dep't of Educ. v. Lewis*, 416 So. 2d 455 (Fla. 1982).

40. "When lawmakers attempt to restrict or burden fundamental and basic rights such as [the right to assemble and associate], the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible." *Wyche*, 619 So.2d at 234.

41. An employee organization is a "voluntary group of individuals" that "has the right to select its own members." *Everglades Protective Syndicate, Inc. v. Makinney*, 391 So. 2d 262, 266 (Fla. 4th DCA 1980).

42. The choice to join, or not to join, an employee organization is an individual employee decision protected by Article I, Section 5 of the Constitution and Article I, Section 6 of the Constitution, because association with the employee organization serves the individual's political and social purposes.

43. The choice to associate, or not associate, with an employee organization for the purpose of collective bargaining, is, likewise, an individual employee decision protected by Article I, Section 5 of the Constitution and Article I, Section 6 of the Constitution. *See United Steelworkers of Am., AFL-CIO v. Univ. of Alabama*, 599 F.2d 56, 61 (5th Cir. 1979) (under First Amendment, "[t]he right to organize collectively and to select representatives for the purposes of engaging in collective bargaining is such a fundamental right.")

C. Senate Bill 256 (2023)

44. Senate Bill 256 was enacted by the Florida Legislature during the 2023 legislative session and signed into law by Governor DeSantis on May 9, 2023 (Chapter 2023-35, Laws of Florida). Its provisions all took full effect by October 1, 2023. SB 256 does not contain a declaration of purpose, nor does it amend Part II of Chapter 447's statement of policy.

45. SB 256 contains four operative sections. Section 1 amends Fla. Stat. § 447.301 to require public employees who desire to be members of an employee organization to sign and date a membership form prescribed by PERC, which must contain information about the employee organization, a prescribed statement describing Florida as a "right-to-work state," and statements informing employees of the right to join and pay dues or to refrain from joining and financially supporting a labor union. Section 2 grants to PERC the power to exempt certain mass-transit employees from SB 256's other provisions. Section 3 prohibits employee organizations from collecting dues via payroll deduction and requires that voluntary dues must be paid directly to the employee organization. Section 4, which is described in more detail *infra*, makes substantial changes to the annual registration requirements and certification procedures that apply to employee organizations representing public employees.

46. Section 4 did not make any changes to the procedures and requirements for an employee organization to become initially certified as the exclusive representative of a unit of public employees.

47. Instead, as relevant, Section 4 amended Fla. Stat. § 447.305 to require that annual registration applications filed by employee organizations include the number of employees in the bargaining unit who are eligible for representation by the employee organization, the number who have submitted signed membership authorization forms without subsequent revocation, and the number of employees in the bargaining unit who paid dues to the employee organization. Then, as PERC has implemented the statute, Section 4 (as amended) requires that any employee organization that cannot demonstrate that at least 60% of eligible unit employees were voluntarily paying dues as of the "snapshot" date (thirty days prior to the date on which the organization's current registration ends) must petition PERC for recertification as the exclusive representative within one month (now 30 days) after the date on which the employee organization filed for renewal of its registration.

48. By mandating that employee organizations meet a 60% dues-payment threshold to avoid Section 4's recertification procedures, Section 4 introduces a first-ever requirement of super-majority support to public-employee labor relations. Indeed, even after SB 256 was passed, employee organizations are required to demonstrate only 30% minority support within the bargaining unit to

petition for a PERC election to become an exclusive representative, Fla. Stat. § 447.307(2), need only to demonstrate bare-majority support to seek voluntary recognition from a public employer through a recognition-acknowledgment petition, *id.* § 447.307(1)(a), and need only be selected by a bare majority of voters in a PERC certification election to be certified as the exclusive representative of a group of employees, *id.* § 447.307(3)(b). Even the now-repealed K-12 certification statute required K-12 employee organizations to demonstrate dues-payment by only a bare majority of eligible employees. *See* Fla. Stat. § 1012.2315(4) (2022).

49. If an incumbent public-employee organization fails to meet this new, super-majority dues-payment threshold, that employee organization is required to satisfy a series of new requirements to maintain its certification and to protect the bargaining rights of the employees it represents (collectively referred to herein as the "recertification requirements"). Specifically:

50. First, the incumbent employee organization must apply to PERC for certification within 30 days of the date on which it submitted its application for renewal of registration. Fla. Stat. § 447.305(6) (citing §§ 447.307(2) and (3)). That petition for certification must be accompanied by dated statements signed by at least 30 percent of the employees in the existing unit indicating that they wish to be represented for collective bargaining by the petitioner (referred to as a "showing of interest"). Fla. Stat. § 447.307(2). In other words, under SB 256, to maintain its

certification, an incumbent employee organization with a less-than 60% dues-payment rate must meet the same filing standard as a new employee organization seeking to represent a group of employees for the first time.

51. Second, if the employee organization meets the 30% showing-of-interest requirement, the employee organization must campaign amongst the bargaining-unit employees to persuade them to vote for the incumbent employee organization in the recertification election to be conducted and held by PERC. Such campaigning is necessary, in part, because any other employee organization can intervene in the incumbent's recertification proceeding and appear on the election ballot as a choice alongside the incumbent if the intervenor comes forward with a showing of interest from just 10% of the employees in the bargaining unit. Fla. Stat. § 447.307(2).

52. Third, if it satisfies the 30% showing-of-interest requirement, the incumbent employee organization must pay for half the cost incurred by PERC of administering the recertification election. Fla. Stat. § 447.307(3)(a)(3). The cost to the employee organization of paying this State-mandated fee can be in the hundreds or even thousands of dollars, depending on the size of the bargaining unit and the method of election ordered by PERC.

53. Fourth, the incumbent employee organization must win the election, which requires it to be selected as the exclusive representative by a majority of the

employees who voted in the bargaining unit. Fla. Stat. § 447.307(3)(b). If the incumbent employee organization is so selected, PERC then issues a certification of representative, enabling the incumbent employee organization to continue representing the employees in the bargaining unit, at least until the employee organization's next annual registration filing with PERC, at which point the entire process repeats itself. *Id.*

54. If the majority of the employees voting in the recertification election choose not to be represented by an employee organization, the employees in that bargaining unit are barred from exercising their right to bargain collectively through a labor organization for a period of 12 months after the date of the PERC order verifying the representation election. Fla. Stat. § 447.307(3)(d). That prohibition on the exercise of employee collective-bargaining rights extends to employee petitions seeking representation by the recently decertified employee organization *and all other employee organizations*. *Id.*

55. In addition to the unprecedented super-majority requirement, Section 4 introduces and expands a concept that was totally foreign to PERA (or, so far as plaintiffs are aware, to any state or federal regime), at least prior to the passage of the K-12 certification statute. Namely, it prescribes that the payment of union membership dues—while still irrelevant to an employee organization *becoming*

certified to represent a bargaining unit of employees—has become the critical feature required for a union to *remain* certified as the exclusive representative.

56. As such, Section 4 of SB 256 effectively *requires* employee organizations—in order to ensure that they maintain their certified status and avoid the cost and uncertainty of a recertification election—to charge and collect dues, regardless of what the union's governing documents require or what the union's membership has decided internally with respect to dues and membership.

57. In so doing, the State has imposed a definition of membership on a private, democratically run membership organization, as a condition of continuing to carry out its members' fundamental right to collective bargaining. The State has also imposed a requirement on public employees that they must pay membership dues to that private organization in order to exercise (and rely on) their fundamental right to collective bargaining. This concept would be prohibited under analogous federal law applicable to both the private and federal sector.

58. Section 4 thus abridges the collective-bargaining rights of public employees, replacing continued certification of a bargaining representative based on a presumption of majority support with *conditional* certification benchmarked to a *supermajority* threshold of membership dues payments.

59. Although SB 256 imposed these new recertification requirements on public-employee organizations generally, SB 256 exempted employee

organizations certified as a bargaining agent to represent law enforcement officers, correctional officers, correctional probation officers, and firefighters from any of the new recertification procedures imposed on other employee organizations, irrespective of whether those employee organizations could satisfy a majority, supermajority, or any other dues-payment threshold.

D. Senate Bill 1746 (SB 1746)

60. Senate Bill 1746 was enacted by the Florida Legislature during the 2024 legislative session and signed into law by Governor DeSantis on March 22, 2024 (Chapter 2024-23, Laws of Florida). Its provisions took effect immediately. SB 1746 does not contain a declaration of purpose, nor does it amend Part II of Chapter 447's statement of policy.

61. SB 1746 went beyond those amendments enacted by SB 256 and made several further changes to PERA.

62. As relevant, SB 1746 amended SB 256's employee organization registration requirements to require that an incumbent employee organization demonstrate annually that a 60% supermajority of eligible employees in the unit have submitted PERC's prescribed membership authorization forms without subsequent revocation, in addition to demonstrating that a 60% supermajority of employees paid dues to the employee organization. A copy of the membership authorization form prescribed by PERC ("PERC Form 2023-1.101") is publicly

available at https://perc.myflorida.com/forms/PERC%20FORM%202023-1.101%20WITH%20INSTRUCTIONS.pdf, and is incorporated into this Complaint.

63. If the employee organization fails to make this additional supermajority showing of PERC-prescribed membership authorization forms, the employee organization must satisfy the same series of new recertification requirements to maintain its certification and to protect the bargaining rights of the employees it represents that SB 256 imposes on employee organizations that do not satisfy the supermajority dues-payment threshold. *See supra* ¶¶49-54. The incumbent employee organization must undergo that process even if it demonstrates that 60% of unit employees paid dues and even if it demonstrates that a majority (that is, 50%+1) of unit employees submitted PERC's prescribed membership authorization forms without subsequent revocation.

64. In addition to adding the requirement that employee organizations produce a supermajority of membership authorization forms, SB 1746 broadens and clarifies the list of employee organizations that are exempt from any of SB 256's recertification requirements to include any bargaining unit in which the majority of employees are employed as law enforcement officers, correctional officers, correctional probation officers, firefighters, public-safety communicators, emergency medical technicians, or paramedics.

E. The Impact of SB 256 and SB 1746 on Plaintiff Unions and Their Members

i. United Faculty of Florida ("UFF")

65. Plaintiff UFF is the certified representative of higher-education employees at State universities, State colleges, community colleges, and K-12 lab schools. In all, UFF represents approximately 26 bargaining units of public employees across Florida.

66. Among the approximately 26 bargaining units represented by UFF is a bargaining unit of faculty members employed by Florida Agricultural and Mechanical University ("FAMU"), which is referred to herein as the "UFF-FAMU unit." UFF was certified as the exclusive representative of the UFF-FAMU unit on or about July 25, 2003, pursuant to PERC Order Number 03E-179. UFF's certification for the UFF-FAMU unit bears Certification Number 1412.

67. UFF and FAMU are parties to a collective-bargaining agreement setting terms and conditions of employment for covered faculty members. That CBA expired June 30, 2022. However, because UFF is currently and has at all times since the CBA's expiration remained the certified exclusive representative of the UFF-FAMU unit, the expired CBA continues to set the terms and conditions of employment for employees in the UFF-FAMU unit. *See supra* ¶32.

68. The CBA that remains applicable to UFF-FAMU-represented employees contains a provision that allows represented employees to file

grievances against the employer for violations of the contract, and to be represented by their union in pursuing and resolving those grievances, up to and including binding arbitration.

69. UFF and FAMU are in ongoing negotiations for a successor CBA.

70. On or about March 7, 2024, before the effective date of SB 1746, UFF submitted its PERC Form 1, Employee Organization Registration/Renewal Application to PERC.

71. On or about April 5, 2024, PERC issued a letter to UFF informing it of certain deficiencies in its March 7, 2024 filing related to bargaining units other than the UFF-FAMU unit and providing UFF with ten days to file an amended Appendix A correcting or otherwise addressing the perceived deficiencies in UFF's initial filing.

72. On or about April 12, 2024, in response to PERC's April 5, 2024 letter, UFF submitted a revised Appendix A to its previously filed Form 1. With respect to the UFF-FAMU unit, that revised Appendix A reported that there were 505 employees eligible for representation in the unit, that 286 employees had paid dues to the employee organization, and that 219 employees did not pay dues to the employee organization.

73. Therefore, with respect to the UFF-FAMU unit, UFF reported a 56.6% dues-payment rate. That 56.6% dues-payment rate was a clear majority of

eligible employees in the bargaining unit but below the 60% supermajority threshold imposed by SB 256.

74. As of the date of this Complaint, PERC has not granted UFF's renewal of registration or otherwise acted on UFF's March 7, 2024 application for renewal of registration, as amended by UFF's April 12, 2024 filing.

75. On or about April 4, 2024, UFF submitted a petition for recertification as the exclusive representative of the employees in the UFF-FAMU unit, as required by Section 4. UFF's petition with respect to the UFF-FAMU unit was supported by dated statements signed by 193 employees in the UFF-FAMU unit, indicating that the employees desire to be represented for purposes of collective bargaining by UFF. The 193 statements of interest submitted by UFF constituted 38.2% of the bargaining unit.

76. As of the date of this Complaint, PERC has not issued an order scheduling a certification election in the UFF-FAMU unit, or otherwise acted on the UFF-FAMU petition filed on or about April 4, 2024. Issuance of an order scheduling an election among the UFF-FAMU unit is a ministerial task that is required by Section 4, and therefore both foreseeable and imminent.

77. When PERC issues an order scheduling an election among the employees in the UFF-FAMU unit, UFF will be required to campaign for

recertification among its UFF-FAMU members to persuade them to select UFF as their exclusive representative in the recertification election.

78. When PERC issues an order scheduling an election among the employees in the UFF-FAMU unit, UFF will be required to pay for half the cost of conducting that election among the UFF-FAMU employees. *See* Fla. Stat. § 447.307(3)(a)(3). UFF's State-mandated share of the cost of conducting the recertification election among employees in the UFF-FAMU will be over $100.00.

79. The uncertainty caused by the impending recertification election and risk that UFF-FAMU will be decertified as a result of that process has undermined UFF's effectiveness as a collective-bargaining representative on behalf of the members and other employees it represents in the UFF-FAMU unit. Therefore, the employees in the UFF-FAMU unit, even though a majority of those workers pay voluntary union dues, have been deprived of an effective bargaining representative in the ongoing negotiations over their new collective-bargaining agreement.

ii. Education Association of Saint Lucie ("EASL")

80. Plaintiff EASL is the certified representative of classroom teachers, education support personnel ("ESP"), and professional-technical ("ProTech") employees employed by the School Board of Saint Lucie County. In all, EASL represents three separate bargaining units of School Board of Saint Lucie County employees, which are referred to herein collectively as the "EASL units."

81. EASL was initially certified as the exclusive representative of its classroom teachers unit on or about December 30, 1974, pursuant to a PERC Order in Case Number 8h-RA-744-1011. The certification issued to EASL to represent Saint Lucie classroom teachers has been amended several times since 1974, including most recently in 2020, when PERC granted EASL's petition to amend its certification to reflect the association's name change to "Education Association of St. Lucie." EASL's certification for the classroom teachers unit bears Certification Number 10.

82. EASL was initially certified as the exclusive representative of the ESP unit on or about January 19, 1981, pursuant to PERC Order No. 80E-319. EASL's certification for the ESP unit bears Certification No. 518.

83. EASL was initially certified as the exclusive representative of the Pro-Tech unit on or about April 5, 2019, pursuant to PERC Order No. 19E-117. EASL's certification for the ProTech unit bears certification No. 1957.

84. EASL and the School Board of St. Lucie County are parties to three collective-bargaining agreements. Those three agreements cover the classroom teachers, ESP, and ProTech units, respectively.

85. One of the EASL-School Board CBAs is the collective-bargaining agreement applicable to classroom teachers. That CBA is referred to herein as the "EASL Teachers' CBA." The EASL Teachers' CBA was ratified by a majority of

the bargaining unit on or about February 28, 2022, and is in effect from July 1, 2022, through June 30, 2025.

86. Another of the EASL-School Board CBAs is the collective-bargaining agreement applicable to ESP. That CBA is referred to herein as the "EASL ESP CBA." The EASL ESP CBA was ratified by a majority of the bargaining unit on or about February 28, 2022, and is in effect from July 1, 2022, through June 30, 2025.

87. The last of the three EASL-School Board CBAs is the collective-bargaining agreement applicable to the ProTech unit. That CBA is referred to herein as the "EASL ProTech CBA." The EASL ProTech CBA was ratified by a majority of the bargaining unit on or about February 28, 2022, then extended by a letter of understanding that was signed on or about June 30, 2023. The EASL ProTech CBA is in effect through June 30, 2026.

88. Each of the EASL CBAs includes provisions that allow represented employees, whether or not they are members or pay dues to the union, to file grievances against the employer for violations of the contract, and to be represented by their union in pursuing and resolving those grievances, up to and including binding arbitration.

89. On or about May 10, 2024, EASL submitted its PERC Form 1, Employee Organization Registration/Renewal Application to PERC, on behalf of all three of the abovementioned units.

90. As reflected on EASL's PERC Form 1, EASL reported the following dues-payment figures for each of its three units:

a. Classroom Teachers: 2858 employees eligible for representation; 1628 employees who paid dues; 1330 employees who did not pay dues, for a dues-payment rate of 57.0%. That 57.0% dues-payment rate was a clear majority of eligible employees in the bargaining unit but below the 60% supermajority threshold demanded by SB 256.

b. ESP: 996 employees eligible for representation; 405 employees who paid dues; 594 employees who did not pay dues, for a dues payment rate of 40.6%.

c. ProTech Unit: 186 employees eligible for representation; 45 employees who paid dues; 141 employees who did not pay dues, for a dues payment rate of 24.1%.

91. As reflected on EASL's PERC Form 1, EASL reported that 0 employees in the classroom teachers unit, 0 employees in the ESP unit, and 0 employees in the ProTech unit had signed and submitted the prescribed PERC membership authorization form.

92. On or about May 21, 2024, in response to EASL's May 10, 2024 application, PERC issued a Final Order Granting Registration to EASL. That Final

Order states that it "pertains to the employee organization's registration only and does not address whether the employee organization has complied with Chapter 447, Part II, Florida Statutes, with respect to its certification(s)."

93. On or about June 9, 2024, EASL submitted a petition for recertification as the exclusive representative of the employees in the classroom teachers, ESP, and ProTech units, as required by Section 4 and SB 1746. EASL's petition with respect to all three units was supported by dated statements signed by at least 30 percent of the employees in each unit, indicating that those employees desire to continue to be represented for purposes of collective bargaining by EASL. More specifically, the classroom teachers petition was supported by showing of interest statements from 1,682 out of 2,858 eligible employees (58.85%), the ESP unit petition was supported by showing of interest statements from 564 out of 996 eligible employees (56.63%), and the ProTech unit petition was supported by showing of interest statements from 89 out of 186 eligible employees (47.85%).

94. Pursuant to SB 256 and SB 1746, EASL has to satisfy the same registration requirements with respect to each of its three bargaining units, even though EASL reported a majority dues-payment rate in its classroom teachers unit, a dues-payment rate in excess of 30% but below 50% in its ESP unit, and below 30% in its ProTech unit.

95. As of the date of this Complaint, PERC has not issued an order scheduling a certification election in any of the EASL bargaining units, or otherwise acted on the three EASL recertification petitions filed on or about June 9, 2024. Issuance of an order scheduling an election among the employees in each of the three EASL units is a ministerial task that is required by Section 4, and therefore both foreseeable and imminent.

96. When PERC issues an order scheduling an election among the employees in the three EASL units, EASL will be required to campaign for recertification among the employees in each of the three units to persuade them to select EASL as their exclusive representative in the recertification election.

97. When PERC issues an order scheduling an election among the employees in the EASL units, EASL will be required to pay for half the cost of conducting those elections among the EASL-represented employees. *See* Fla. Stat. § 447.307(3)(a)(3). The cost to EASL of conducting recertification elections in all of its three bargaining units will exceed $200.

98. The uncertainty caused by the impending recertification elections and risk that EASL will be decertified in one or more units as a result of that process has undermined EASL's effectiveness as a collective-bargaining representative on behalf of the members and other employees it represents in the EASL units. Therefore, the employees in the EASL units have been deprived of an effective

bargaining representative, as well as the ability to rely on the bargained-for terms of their collective-bargaining agreements, including the effective dates of the agreements themselves. That is true despite the fact those collective-bargaining agreements were all approved and ratified by a majority vote of all represented employees in each of the EASL units.

F. The Impact of SB 1746 on Plaintiffs Muchovej and Graff

99. Approximately thirty-two years ago, Plaintiff Muchovej exercised his Article I, Sections 5 and 6 right to become a voluntary member of Plaintiffs UFF and UFF-FAMU by executing the membership authorization forms promulgated by UFF and UFF-FAMU and then-required by those organizations as a condition of membership in those organizations.

100. Plaintiff Muchovej has paid voluntary dues to those organizations, on a substantially continuous basis from when he first joined in or about 1992 until the present.

101. Plaintiff Muchovej joined Plaintiffs UFF and UFF-FAMU, in substantial part, because he sought to exercise his right to collectively bargain by and through those employee organizations. Plaintiff Muchovej desires to continue being a member in Plaintiffs UFF and UFF-FAMU and to continue exercising his right to collectively bargain by and through them.

102. For their part, because he has satisfied the unions' requirements for membership and pays voluntary membership dues, Plaintiffs UFF and UFF-FAMU consider Plaintiff Muchovej to be a member in good standing, with all the rights and privileges attendant to that status.

103. Approximately, 36 years ago, Plaintiff Graff exercised his Article I, Sections 5 and 6 right to become a voluntary member of EASL by executing the membership authorization forms promulgated by EASL and then-required by EASL as a condition of membership in that organization.

104. Plaintiff Graff has paid voluntary dues to EASL, on a substantially continuous basis from when he first joined in or about 1988 until the present.

105. Plaintiff Graff joined EASL, in substantial part, because he sought to exercise his right to collectively bargain by and through EASL. Plaintiff Graff desires to continue being a member in EASL and to continue exercising his right to collectively bargain by and through it.

106. For its part, because he has satisfied the Union's requirements for membership and pays voluntary membership dues, EASL considers Plaintiff Graff to be a member in good standing, with all the rights and privileges attendant to that status.

107. Plaintiff Muchovej and Plaintiff Graff have not signed PERC Form 2023-1.101, and they do not plan to sign PERC Form 2023-1.101.

108. In relevant part, Plaintiff Muchovej and Plaintiff Graff will not sign PERC Form 2023-1.101 because there are aspects of PERC FORM 2023-1.101 to which they object. Specifically, they object to the description of Florida as "a right-to-work state." "Right to Work" is a slogan created by opponents of labor unions to describe the system by which some employees are permitted to free ride on the financial support of union members like Muchovej and Graff who have chosen to financially support their unions. Plaintiff Muchovej and Plaintiff Graff also object to the Form's statements overall because they are designed to disincentivize people from joining the Union.

109. More fundamentally, Plaintiffs Muchovej and Graff object to the State Government dictating the terms on which they can become full-fledged members of an employee organization, including their Unions, the UFF and UFF-FAMU and EASL.

110. Although Plaintiffs Muchovej and Graff have not and do not intend to sign Form 2023-1.101, they consider themselves, and they seek to be considered by both their Unions and the State of Florida, as a member of the Unions for all purposes. In particular, Plaintiff Muchovej and Plaintiff Graff seek to be counted as a dues-paying member for the purposes of their Unions' annual renewals of registration, including the Section 4 requirement, added by SB 1746, that employee organizations certify that at least 60% of unit employees have submitted

membership authorization forms without subsequent revocation. *See* Fla. Stat. § 447.305(6).

COUNT 1
Violation of the Right to Bargain Collectively Through a Labor Organization As Applied to Labor Organizations with Majority Dues-Payment Rates

(Art. I, § 6, Fla. Const.)
(Plaintiffs UFF, EASL, Muchovej, and Graff)

111. For purposes of Count 1, the allegations made in paragraphs 13 to 32, 44 to 59, and 65 to 98 are relied upon, along with what follows.

112. The Florida Constitution's prohibition of laws abridging the right of public employees "by and through a labor organization, to bargain collectively" grants to employees and their labor organizations the fundamental right to effective collective bargaining. *See supra* ¶¶14-15. More specifically, Article I, Section 6 of the Florida Constitution guarantees the right of employees to pursue their collective-bargaining rights through an employee organization of their own choosing. *See supra* ¶16. Section 4 violates this fundamental right as applied to any bargaining unit in which a majority of the members pay dues to the employee organization.

113. Collective bargaining, as it was understood by the voters who approved Article I, Section 6 of the Florida Constitution, is a majoritarian process through which a majority of employees may select a collective-bargaining representative, set uniform terms and conditions for employment for the full

bargaining unit through the bargaining process, ratify the resulting CBA if it is supported by a majority of employees in the affected unit, and/or vote to decertify their exclusive representative and replace their exclusive representative with a new employee organization or no exclusive representative whatsoever. *See supra* ¶¶21-32. Plaintiffs are unaware of any collective-bargaining regime, at either the federal or state level, that incorporates a super-majority threshold for continued representation.

114. Section 4, by conditioning stable collective-bargaining relationships on the attainment by employee organizations of a 60% super-majority dues-payment rate, is inconsistent with and invalid under Article I, Section 6, because Section 4 contravenes the majoritarian principle inherent to collective bargaining as it is protected by the Florida Constitution.

115. Plaintiff UFF, with respect to its UFF-FAMU unit, and Plaintiff EASL, with respect to its classroom teachers unit, demonstrated majority dues-payment on their most recent annual registration renewals.

116. Nevertheless, because they did not meet the 60% dues-payment threshold, by operation of Section 4, Plaintiff UFF, with respect to its UFF-FAMU unit, and Plaintiff EASL, with respect to its classroom teachers unit, were required to satisfy the full battery of recertification requirements applicable to employee organizations that do not demonstrate majority dues-payment at all.

117. As a result, both Individual Plaintiff Muchovej and Individual Plaintiff Graff have been deprived of important benefits of the collective-bargaining process, including the right to rely on a ratified CBA according to its own terms, and the right to be represented in all aspects of the bargaining relationship by a union that is fully empowered to negotiate on behalf of represented employees. Because Article I, Section 6 guarantees the fundamental right to effective collective bargaining, those abridgements of Individual Plaintiffs' collective-bargaining rights violate the Florida Constitution unless Section 4 can pass muster under strict scrutiny.

118. Therefore, as applied to Plaintiff UFF, with respect to its UFF-FAMU unit, and Plaintiff EASL, with respect to its classroom teachers unit, and Plaintiffs Muchovej and Graff, Section 4 violates the right to collectively bargain set forth in Article I, Section 6 of the Florida Constitution.

119. Florida has no compelling interest in abridging the collective-bargaining rights of employees and labor organizations based on whether a super-majority of employees in the bargaining unit pay dues.

120. There are less restrictive means available to accomplish whatever interest, if any, the State might purport to advance for Section 4 of SB 256.

COUNT 2
Facial Violation of the Right to Bargain Collectively Through a Labor Organization

(Art. I, § 6, Fla. Const.)
(All Plaintiffs)

121. For purposes of Count 2, the allegations made in paragraphs 13 to 59 and 65 to 98 are relied upon, along with what follows.

122. The Florida Constitution's prohibition of laws abridging the right of public employees "by and through a labor organization, to bargain collectively" grants to employees and their labor organizations the fundamental right to effective collective bargaining. *See supra* ¶¶14-15. Effective collective bargaining, in Florida and throughout the United States, requires that labor organizations have the ability, on behalf of their represented employees, to enter into binding contracts for a definite term. *See supra* ¶28. It also requires that represented employees, once they have ratified a collective-bargaining agreement, are able to rely on that agreement for its lawfully bargained term. *Id.*

123. Whether employees in a bargaining unit are dues-paying members or have chosen not to join or pay dues to the union that represents them, if the union is decertified, the employees immediately lose their CBA with their public employer, allowing their public employer to make any unilateral changes to their terms of employment without consultation or negotiation; the many terms and

conditions contained in the CBA, which apply to and benefit all employees in the unit, are no longer binding under that labor agreement.

124. Whether employees in a bargaining unit are dues-paying members or have chosen not to join or pay dues to the union that represents them, if the union is forced to undergo mid-contract elections that could decertify the representative and nullify the CBA, they all lose their right to rely on the benefits, protection, and stability that a collectively bargained contract is meant to provide. The loss of that stability goes to the very heart of what collective bargaining is for.

125. Both Section 4 and the relevant provisions of SB 1746 abridge employees' and labor organizations' fundamental right to effective collective bargaining because they threaten to nullify the protections afforded by existing CBAs before the date of their bargained-for expiration date. Among those protections is a process for resolving grievances, including the availability of the union as an advocate during that process, and protection against unilateral changes to the terms and conditions of employment by the employer.

126. Effective collective bargaining, in Florida and throughout the United States, also requires labor organizations to be able to achieve, through the initial recognition and certification process, and through employee ratification of a collective-bargaining agreement with a reasonable duration, insulated periods

during which the labor organization's status as certified, majority representative cannot be threatened by state, employer, or employee action.

127. Both Section 4 and the relevant provisions of SB 1746, by requiring the decertification of some employee organizations based on dues-payment and membership authorization data submitted as part of an annual reregistration and recertification process, destroy the periods of insulation during which an employee organization's majority status cannot be challenged, including both the initial certification year and during the term of a collective-bargaining agreement. That, in turn, destabilizes the bargaining relationship on which effective collective bargaining relies, abridging public employees' ability to negotiate and rely on effective collective-bargaining agreements in the first place.

128. Finally, by cutting short the duration and/or effective period of some CBAs and otherwise undermining employees' ability to rely on the terms and conditions set forth in their CBAs, Section 4 and the relevant provisions of SB 1746 infringe on employees' fundamental right to collectively bargain by making their bargaining rights worth considerably less than the bargaining rights of private-sector employees, in violation of the principle that Article I, Section 6 protects public- and private-sector bargaining rights to the same extent.

129. In addition to the above, Section 4 also infringes on the rights of employees under the "Right to Work" provision in Article I, Section 6 of the

Florida Constitution. That is because Section 4 bases the threat of decertification and CBA nullification on the impermissible factor of the payment or non-payment of dues by the employees represented by an employee organization.

130. It is common in "Right to Work" jurisdictions for only a minority of bargaining unit employees to tender dues to the union—because, for example, they may object on religious or political grounds to dues payment, may simply not want to spend the money, or for other personal reasons—but for a majority of bargaining unit members to nevertheless desire union representation for purposes of collective bargaining. The ability to make that decision without fear of losing the ability to be represented by a union, is at the heart of why the Florida Constitution protects the "Right to Work."

131. Section 4 therefore destroys the foundation upon which the "Right to Work" exists in tandem with the right to collectively bargain by explicitly linking continued collective-bargaining representation to dues payment rather than to employees' unencumbered free choice.

132. In summary, Section 4 and SB 1746 unconstitutionally abridge the right of public employees represented by Plaintiffs to collectively bargain "by and through a labor organization," a fundamental right protected by Article I, Section 6 of the Florida Constitution. In addition, Section 4 abridges the right of public

employees to choose whether (or not) to pay dues without fear of forfeiting representation by an employee organization of their choosing.

133. Florida has no compelling interest in abridging the collective-bargaining rights of public employees such as those represented by Plaintiffs based on public employees' dues-paying status or the annual submission of PERC-determined membership authorization forms.

134. The pre-SB 256 requirement of initial certification, subject to existing decertification procedures, together with the requirement that collective-bargaining agreements be ratified by a majority of unit employees, served and continue to serve as effective means of ensuring majority support of an employee organization in the bargaining unit.

135. There are less restrictive means available to accomplish whatever interest, if any, the State might purport to advance for Section 4 of SB 256 and for the relevant provisions of SB 1746.

COUNT 3
Facial Violation of the Freedom of Association

(Art. I, § 5, Fla. Const.)
(Plaintiffs Muchovej and Graff)

136. For purposes of Count 3, the allegations made in paragraphs 39 to 43, 60 to 64, and 99 to 110 are relied upon, along with what follows.

137. Article I, Section 5 of the Florida Constitution provides to individuals the right to form and join expressive associations.

138. Section 1 and Section 4 of SB 256, as amended by SB 1746, infringe the Freedom of Association rights of Plaintiffs Muchovej and Graff by conditioning their right to be a member of the union of their choice on their execution of a government-drafted membership authorization form. *See* Fla. Stat. § 447.301(1).

139. Section 1 and Section 4 of SB 256, as amended by SB 1746, further burdens Plaintiffs Muchovej and Graff's right to collectively bargain by and through a labor organization of their own choosing, by conditioning the ability of their chosen employee organization to remain certified without facing Section 4's recertification requirements on Plaintiffs Muchovej and Graff's completion of PERC Form 2023-1.101.

140. Therefore, Section 1 and Section 4 of SB 256, as amended by SB 1746, unconstitutionally condition Plaintiff Muchovej's and Plaintiff Graff's exercise of their right to freely associate for the purpose of collectively bargaining on their execution of a government-drafted form that have chosen not to execute, in violation of Article I, Section 5 of the Florida Constitution.

141. Florida has no compelling interest in requiring Plaintiffs Muchovej and Graff to execute PERC Form 2023-1.101.

142. There are less restrictive means available to accomplish whatever interest, if any, the State might purport to advance for Section 1 and Section 4 of SB 256 and for the relevant provisions of SB 1746.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that this Court enter judgment as follows:

1. Declaring that subsection 1(b) of Section 447.301 of the Florida Statutes violates Article I, Section 5 of the Florida Constitution and that the provisions of Section 447.301(1) of the Florida Statutes in effect prior to the enactment of SB 256 remain valid;
2. Declaring that subsections 3 through 8 of Section 447.305 of the Florida Statutes violate Article I, Section 6 of the Florida Constitution and that the provisions of Section 447.305 of the Florida Statutes in effect prior to the enactment of SB 256 remain valid;
3. Declaring that subsection 6 of Section 4 of SB 1746, insofar as it amends Section 447.305 of the Florida Statutes to require an employee organization to possess membership authorization forms from 60% of bargaining-unit members to avoid the recertification procedures required by Section 4 of SB 256, violates Article I, Section 5 and Article I,

Section 6 of the Florida Constitution, and that the amended text be stricken from Section 447.305 of the Florida Statutes;

4. Permanently enjoining PERC from rulemaking, guidance, enforcement, or any action revoking the certification of an employee organization based on an insufficient percentage or number of employees in a bargaining unit paying dues to that employee organization, or otherwise under subsections 3 through 8 of Section 447.305 of the Florida Statutes;
5. Permanently enjoining PERC from rulemaking, guidance, enforcement, or any action revoking the certification of an employee organization based on the employee organization possessing an insufficient number or percentage of membership authorization forms, or otherwise under subsections 3 through 8 of Section 447.305 of the Florida Statutes;
6. Ordering PERC to immediately rescind the decertification of any Plaintiff employee organization, to the extent they were decertified to represent any bargaining unit under the authority of Section 4 and/or SB 1746, and restoring their status as certified bargaining representative;
7. Granting declaratory relief that any collective-bargaining agreement that was nullified as the result of such a decertification is restored and remains effective for its existing term;

8. Placing into escrow any election fees paid to PERC pursuant to the requirements of Section 4 and/or SB 1746 during the pendency of this lawsuit, then ordering the disgorgement of those monies to Plaintiffs upon a finding that those provisions violate Article I, Section 6 of the Florida Constitution;
9. Awarding Plaintiffs their costs under Section 57.041, Florida Statutes; and
10. Ordering such other and further relief as this Court may deem appropriate.

IV. JURY DEMAND

The Plaintiffs demand a trial by jury on all issues so triable.

Dated this 23d day of August, 2024.

Respectfully submitted,

By: /s/ Osnat K. Rind
Osnat K. Rind
(orind@phillipsrichard.com)
Florida Bar No. 0958638
Phillips, Richard & Rind, P.A.
9360 SW 72 Street, Suite 283
Miami, Florida 33173
Tel: 305-412-8322
Fax: 305-412-8299

Attorney for the Plaintiffs

Adam Bellotti
(abellotti@bredhoff.com)*
Lane Shadgett
(lshadgett@bredhoff.com)*
BREDHOFF & KAISER, PLLC
805 15th St. NW, Suite 1000
Washington, DC 20009
Tel: 202-842-2600

Attorneys for the Plaintiffs

*Admission *pro hac vice* to be filed