

IN THE CHANCERY COURT FOR DAVIDSON COUNTY
TWENTIETH JUDICIAL DISTRICT

TENNESSEE EDUCATION ASSOCIATION,
KNOX COUNTY EDUCATION
ASSOCIATION,
METROPOLITAN NASHVILLE
EDUCATION ASSOCIATION,
LAWRENCE COUNTY EDUCATION
ASSOCIATION,
GARY TAFT,
and
JOSHUA VADEN,

Plaintiffs,

v.

BILL LEE, in his official capacity as Governor
of the State of Tennessee,
and
SAM PEARCY, in his official capacity as
Interim Education Commissioner for the
Tennessee Department of Education,

Defendants.

Case No. _____

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I. NATURE OF THE ACTION

1. Plaintiffs Tennessee Education Association (“TEA”), Knox County Education Association (“KCEA”), Metropolitan Nashville Education Association (“MNEA”), Lawrence County Education Association (“LCEA”), Gary Taft, and Joshua Vaden, bring this action for declaratory and injunctive relief to challenge the constitutionality of Section 2 of Public Chapter

No. 437 (“the Act”), which upends decades of law and practice to block professional educators such as Plaintiffs Taft and Vaden from paying, and professional employee organizations such as Plaintiffs KCEA, MNEA, LCEA, and TEA from collecting, voluntary membership dues by payroll deduction.

2. Section 2 of the Act, prohibiting Tennessee school districts from administering payroll deductions for voluntary membership dues, regardless of whether the school districts provide such deductions pursuant to school board policies or to binding memoranda of understanding entered into with professional educator organizations under the Professional Educator Collaborative Conferencing Act (“PECCA”), is unconstitutional on the following grounds.

a. Section 2 of the Act violates Article II, Section 17 of the Tennessee Constitution in three ways: (a) the inclusion of the ban on payroll deduction of professional educators’ dues payments with the Act’s pay-raise provision violates the single-subject requirement of Art. II, § 17; (b) the Act’s caption is constitutionally defective because it fails to express and thereby conceals the subject of Section 2’s payroll deduction ban; and (c) the caption fails to disclose that the Act amends PECCA and indeed necessarily repeals the PECCA provision allowing dues deductions to be negotiated and included in binding MOUs between school districts and a professional teachers’ organizations. All this being so, Tennessee’s broad severability statute, Tenn. Code Ann. § 1-3-110, and a long line of judicial authority mandate that the constitutionally defective Section 2 of the Act be severed from Section 1 of the Act, which embraces a separate subject that is expressed in the Act’s caption.

- b. Section 2 of the Act violates the provisions of the United States Constitution (U.S. Const. art. 1, § 10) and the Tennessee Constitution (art. 1, § 20) prohibiting state laws that impair contractual obligations because it renders nugatory provisions of binding memoranda of understanding that Plaintiffs MNEA and LCEA entered into with local school boards that specifically provide for such deductions, as well as membership agreements that Plaintiffs Taft and Vaden entered into with professional educator associations promising to pay membership dues via payroll deduction in exchange for membership in those organizations and all of the services and benefits that come with such membership. These substantial contractual impairments do not further any legitimate, much less important or vital, state interest; and even if they did, the impairments are not reasonable and necessary to further such interests.

II. PARTIES

3. Plaintiff TEA is a non-profit, voluntary membership organization of education professionals who work as pre-kindergarten through twelfth grade educators in the more than 140 public school districts throughout Tennessee. TEA's voluntary membership includes directors of schools, principals, administrators, teachers, and education support employees from every school district in the state. No educator is required to maintain membership in TEA, and no educator who chooses not to join TEA is required to pay dues.

4. TEA has been in existence for more than 150 years. Its mission is to protect and advocate for its students, the education profession, and its members to create great public schools that prepare everyone for success in a global society. The members of TEA govern their association. They elect, from among their membership, those who serve on TEA's board of

directors. They also choose, from among their membership, delegates to an annual “representative assembly” where their association budget is approved and their association policy objectives are established. Through these self-governance processes, the members set the association’s dues and establish its mission and goals.

5. TEA is affiliated with local associations in public school districts throughout the state, and with the National Education Association (“NEA”) at the national level. Pursuant to their respective constitutions and by-laws, NEA, TEA, and their local affiliates operate under a unified membership structure, according to which an educator who chooses to join a local affiliate also agrees to join TEA and NEA and to pay the dues required for membership in each of the associations. The vast majority of TEA’s members choose to pay their membership dues by means of payroll deductions. TEA has associational standing to bring the claims herein on behalf of its affiliates, all of which derive their operating revenues almost entirely through membership dues collected via payroll deduction, and on behalf of its members who pay their dues via payroll deduction because (a) TEA affiliates that derive their revenues from payroll-deducted dues and TEA members who pay their dues via payroll deduction would otherwise have standing to sue in their own right; (b) the interests TEA seeks to protect are germane to the its purpose and mission; and (c) given that Plaintiffs seek declaratory and injunctive relief, not damages, neither the claims asserted nor the relief requested require the participation of individual members in the lawsuit.

6. Plaintiff KCEA is a non-profit, voluntary membership organization of education professionals who work as pre-kindergarten through twelfth grade educators for the Knox County Schools (“KCS”). KCEA members are permitted to pay their dues to KCEA, TEA, and NEA pursuant to a policy adopted by the Knox County Schools Board of Education. KCEA has

associational standing to bring the claims herein on behalf of its members because (a) KCEA members who pay their dues via payroll deduction would otherwise have standing to sue in their own right; (b) the interests KCEA seeks to protect are germane to its purpose and mission; and (c) given that Plaintiffs seek declaratory and injunctive relief, not damages, neither the claims asserted nor the relief requested require the participation of individual members in the lawsuit.

7. Plaintiff MNEA is a non-profit, voluntary membership organization of education professionals who work as pre-kindergarten through twelfth grade educators for the Metropolitan Nashville Public Schools (“MNPS”). MNEA is party to a Memorandum of Understanding (“MOU”) with the Metropolitan Nashville Public Schools Board of Education which provides that MNPS will honor duly authorized payroll deduction requests for membership dues for professional employees’ organizations. MNEA sues on its own behalf and on behalf of its members who pay their dues through payroll deduction. MNEA has associational standing to bring the claims herein on behalf of those members because (a) MNEA members who pay their dues via payroll deduction would otherwise have standing to sue in their own right; (b) the interests MNEA seeks to protect are germane to its purpose and mission; and (c) given that Plaintiffs seek declaratory and injunctive relief, not damages, neither the claims asserted nor the relief requested require the participation of individual members in the lawsuit.

8. Plaintiff LCEA is a non-profit, voluntary membership organization of education professionals who work as pre-kindergarten through twelfth grade educators for the Lawrence County School System. LCEA is party to a Memorandum of Understanding with the Lawrence County Board of Education, which provides that the Board will honor properly signed membership enrollment and deduction authorization forms. LCEA sues on its own behalf and on behalf of its members who pay their dues through payroll deduction. LCEA has associational

standing to bring the claims herein on behalf of those members because (a) LCEA members who pay their dues via payroll deduction would otherwise have standing to sue in their own right; (b) the interests LCEA seeks to protect are germane to its purpose and mission; and (c) given that Plaintiffs seek declaratory and injunctive relief, not damages, neither the claims asserted nor the relief requested require the participation of individual members in the lawsuit.

9. Plaintiff Gary Taft is an award-winning high school teacher of Advanced Placement U.S. History, State Dual Credit History, State Dual Credit Psychology, and U.S. Government and a member of Lenoir City Association of Educators (“LCAE”). He has been teaching for 26 years. He has also had a parallel career in the military; he retired from the Tennessee Air National Guard in 2019 after a 25-year career. He chose to become a member of LCAE, TEA, and NEA when he began teaching. Since he joined LCAE, he has paid his membership dues via payroll deduction because that is a safe, convenient, and efficient way to make those payments. His membership agreement with LCAE, TEA, and NEA is a contract which is in effect through August 31, 2023, when it will automatically renew if he does not terminate it.

10. Plaintiff Joshua Vaden is an award-winning high school English teacher in Robertson County Schools and a member of the Robertson County Education Association (“RCEA”). He has taught in Robertson County Schools since 2012. He chose to become a member of RCEA the same year he began teaching. Since he joined RCEA, he has paid his membership dues via payroll deduction because that is a safe, convenient, and efficient way to make those payments. His membership agreement with RCEA, TEA, and NEA is a contract which is in effect through August 31, 2023, when it will automatically renew if he does not terminate it.

11. Defendant Bill Lee is the Governor of the State of Tennessee. In his official capacity, he has a legal obligation to enforce the Constitution and laws of this State. Governor Lee is vested under Article III, §§ 1 and 10, of the Tennessee Constitution with “Supreme Executive power” and the duty to ensure that “the laws be faithfully executed.” Governor Lee is being sued in his official capacity and has an office located at State Capitol, First Floor, 600 Charlotte Avenue, Nashville, Tennessee 37243. Service on Governor Lee may be perfected by delivering a copy of the summons and complaint to the Attorney General or at his State office.

12. Defendant Sam Percy is the Interim State Education Commissioner. In his official capacity, he is responsible for the implementation of law and policies established by the General Assembly and the State Board of Education, Tenn. Code. Ann. § 49-1-201(a), which include those provisions of the Tennessee Code relating to local administration of education set forth in Title 49, Chapter 2, Part 1, which the Act amends to prohibit school districts from collecting voluntary membership dues for professional educators’ associations via payroll deduction. Interim Commissioner Percy oversees the State system of public schools and administers the Tennessee Department of Education. Defendant Percy is being sued in his official capacity and has an office at 710 James Robertson Parkway, Nashville, Tennessee 37243. Service on Interim Commissioner Percy may be perfected by delivering a copy of the summons and complaint to the Attorney General or at his State office.

III. JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this action pursuant to Tenn. Code Ann. §§ 16-11-101, *et. seq.* The Court has the power to enter a declaratory judgment and issue injunctive relief pursuant to Tenn. Code Ann. §§ 1-3-121, 29-1-101, and 29-14-101, *et seq.*, and Tenn. R. Civ. P. 65.

14. This Court has personal jurisdiction over Defendants pursuant to Tenn. Code Ann. §§ 20-2-222 and 20-2-223 on the grounds that their principal place of business is in Tennessee and that the wrongful conduct and resulting injuries alleged herein substantially occurred in Tennessee.

15. Venue is proper in this judicial district pursuant to Tenn. Code Ann. § 20-4-101.

IV. FACTS

A. Payroll Deduction of Educators' Membership Dues Has Been Permitted by Law and A Widespread Practice in Tennessee for Decades

16. Payroll deduction of membership dues in professional educators' organizations ("payroll deduction" or "dues deduction") has been both expressly permitted by law and a widespread practice by school districts in Tennessee for nearly 50 years. Such deductions are either provided for in contracts between school districts and professional educators' associations, or in school board policy. Dues deduction is a reliable, secure, and efficient way for educators who chose to become members of their local education association, TEA, and NEA to pay their membership dues to those associations. Carrying out dues deduction for professional educators' organizations is a service that imposes no or only the most negligible burden on school districts.

17. The subject of payroll deductions for membership dues in professional educators' organizations was made an expressly lawful and required subject of collective bargaining and collective bargaining agreements between school boards and professional educator organizations under the Educational Professional Negotiations Act ("EPNA"), which was in effect from 1978 to 2011. *See* Tenn. Code Ann. § 49-5-611(a)(8) (2010). The subject of payroll deductions for membership dues in professional educators' organizations remains a lawful and required subject for collaborative conferencing and binding memoranda of understanding between school boards

and professional educator organizations under the EPNA's successor statute, PECCA, see Tenn. Code Ann. § 49-5-608(a)(7) (2023).

18. Some of TEA's local affiliates independently engage in the collaborative conferencing process with their local school boards under PECCA. Under PECCA, educators decide whether they will engage in collaborative conferencing and who their representatives in collaborative conferencing will be. Often the local TEA affiliate is the sole representative chosen by the LEA's educators. Sometimes other professional employees' organizations are also chosen to have representative roles. TEA sometimes advises and assists local affiliates that engage in the collaborative conferencing process by, for instance, providing suggestions on language for proposals to be made in collaborative conferencing.

19. When the collaborative conferencing process results in an agreement that is approved by the school board, that agreement is set out in a Memorandum of Understanding. The scope and content of the MOU varies from one school district to another, depending on the parties' history of negotiations and on the priorities of the particular parties. The MOUs are designed to be mutually beneficial to both the school system administration and the teachers in those school districts, see Tenn. Code Ann. § 49-5-601(b). MOUs are voluntary agreements. They are not compelled by PECCA.

20. MOUs providing for payroll deduction of voluntary membership dues as authorized by professional educator members of the associations are commonplace. There are 15 such MOUs currently in force between local affiliates of TEA and school boards that do not expire until well after the July 1, 2023, effective date of Section 2 of Public Chapter No. 437.

21. Although payroll deductions are among the topics of collaborative conferencing permitted by PECCA, the vast majority of Tennessee's LEAs provide payroll deduction of

association dues via board policy rather than through an MOU, and many have done so for decades.

22. Whether they provide payroll deduction pursuant to MOUs or board policy, school districts generally provide both involuntary payroll deductions (e.g., federal income tax withholding; FICA taxes; TCRS contributions) and voluntary payroll deductions (e.g., teacher premiums for medical, dental, and other health care plans; cafeteria plan payments; YMCA dues; United Way or other charitable organization contributions). Providing an additional payroll deduction of professional association dues is a simple matter of a keystroke for school districts. Payroll deduction for professional association dues is a service for teachers that imposes no or only the most negligible burden or cost on the local school district.

23. Members exercise the option to pay their dues via payroll deduction by entering into written contractual commitments with their local education association, TEA, and NEA, providing their consent to have their employer deduct their dues from their pay in exchange for the services and benefits of membership in the associations. These contractual commitments run from September 1 to August 31 each year and, by their terms, renew automatically unless revoked in accordance with the agreements. For many decades, the overwhelming majority of TEA members, including Plaintiffs Taft and Vaden, have paid their membership dues by means of these voluntary written authorizations. In all, thousands of association members throughout the state pay their dues via payroll deductions administered by school districts pursuant to MOUs or board policies.

24. These individual agreements make it clear to TEA's members that their decision to join their local education association, TEA, and NEA is voluntary and is not a condition of

employment. For example, TEA’s membership agreement for the 2022-23 school year includes the following provision:

ANNUAL PAYMENT AUTHORIZATION: YES! I hereby agree to pay the annual (Sept. 1 to Aug. 31) dues, fees, and assessments established by the three [local, state, and national] associations in consideration for the services the association provides. I understand that these annual amounts are subject to periodic change by the governing bodies of the associations.

...

I UNDERSTAND THAT THIS AGREEMENT IS VOLUNTARY AND IS NOT A CONDITION OF EMPLOYMENT AND THAT I HAVE THE LEGAL RIGHT TO REFUSE TO SIGN THIS AGREEMENT WITHOUT SUFFERING ANY REPRISALS.

Another section of the agreement permits the educator to choose between payroll deduction and cash, check, or money order. It provides in part:

If I selected Payroll Deduction as my method of payment, I authorize the local Board of Education or other employer to deduct from my paycheck, in regular installments, annual dues as reflected above, including any annual increase.

These private, individual contracts would be impaired if Section 2 of the Act goes into effect.

B. Unless Enjoined, Section 2 of the Act Will Cause TEA and its Local Affiliates to Incur Substantial Costs While Diminishing their Dues Revenue, thus Reducing the Amount of Funds Available to Carry Out the Associations’ Core Representation and Advocacy Missions.

25. The impending loss of the ability of association members to pay, and for TEA and its affiliates to collect, membership dues by payroll deduction as a result of Section 2 of the Act has caused, and will continue to cause, TEA and its local affiliates—including Plaintiffs KCEA, MNEA, and LCEA—to incur significant costs, which will only increase unless the payroll deduction ban is enjoined. At the same time, unless enjoined, the payroll deduction ban will

diminish the revenues of TEA and its affiliates, which are entirely derived from membership dues.

26. After a number of amendments were proposed and defeated—including an amendment to exclude payroll deductions conducted pursuant to contracts in force before the Act’s effective date—S.B. 281 passed the House on April 19 and the Senate on April 20. As a consequence, TEA and its local affiliates were aware that the Governor would likely sign the bill and end dues deduction for educators in Tennessee. Thus, after the bill passed both houses of the Legislature, TEA was placed in the position of having to immediately launch an extensive effort to inform members of the need to change payment methods, and to assist members in switching to an alternative dues payment system called EZ Pay, only about a month before the end of the school year.

27. This effort to convert members to paying via EZ Pay and the maintenance of EZ Pay as the primary method for members to pay their dues has caused and will continue to cause TEA and its local affiliates to incur substantial, non-recoverable costs. Although TEA is working quickly to help members convert their payment methods, it is inevitable that not all members will have converted as of July 1, the effective date of the Act, which will mean a loss of dues to TEA and the diminishment of TEA’s revenues, which are entirely derived from membership dues.

28. EZ Pay allows members to choose to pay dues either by recurring credit-card or debit-card (“RCC”) charges or electronic funds transfer from their bank accounts (“EFT”). TEA has had EZ Pay available for several years, and a small number of members have chosen to use it. But starting in late April, TEA launched a costly, intensive program to contact all members who pay dues via dues deduction to alert them to the need to switch to EZ Pay and to assist them

in signing up for EZ Pay. This effort has included mailings to all TEA members; producing videos and outreach materials to inform members about the need to change their payment method and how to do so; and hiring retired educators to assist other TEA staff with traveling across the state to meet with local associations and members to explain the need to change payment methods and assist members in switching to EZ Pay. TEA officers and staff have also been required to establish new accounting processes for tracking members' payments on an individual basis.

29. One cost of switching to EZ Pay is increased transaction costs. Credit card and debit card companies charge a processing fee of approximately 4% of each RCC transaction. Banks charge processing fees of approximately \$0.50 per transaction. This means that TEA, NEA, and local education associations will receive less of each dues payment than they did under a payroll deduction system. TEA estimates that credit card and EFT transaction fees for TEA members will be more than \$180,000 in the next membership year.

30. It is likely that some members who do switch to EZ Pay and who wish to remain members will nonetheless become delinquent in the payment of dues in the future—whether because they have changed financial institutions, have had payments declined by their financial institutions, have had an authorized credit card expire, have forgotten to renew their payment authorizations at the required time, or other reasons. TEA estimates there will be four times as many “bounced” or delinquent payments under EZ Pay as there are under payroll deduction, or approximately 400-500 delinquent members at the end of each month. TEA will likely need to add at least one additional staff member in the membership department to follow up with these delinquent members.

31. EZ Pay will also result in higher costs for some members, especially those who are low-income or whose finances are already precarious. Members who pay via RCC will incur interest charges on top of their dues payments if they are not able to pay off their credit card balance every month. Members who pay via EFT will risk overdraft fees if their bank balances are low. TEA members who are unbanked or underbanked will be at increased risk of losing their association with TEA and their local education association, and losing access to the benefits that come with membership. These risks to members are one reason why TEA has not encouraged members to switch to an RCC or EFT-based dues payment systems in the past.

32. Some members who wish to remain members of TEA will almost certainly not sign up to pay their dues via EZ Pay by July 1, either because of concerns about the security of their financial information, concerns about inadvertently incurring financial institution overdraft or overlimit charges or credit card or debit card interest charges; because they do not hear about or understand the need to make the change, despite Plaintiffs' efforts to alert them; or because they simply do not get around to making the change. This is especially true since Governor Lee signed the Act into law approximately a month before the end of the school year, a hectic time for educators and a time when many of them transition to different employment or child-care responsibilities for the summer and thus are harder to reach. As of June 5, 2023, approximately 4,100 TEA members had signed up to pay 2023-2024 dues via RCC, and 6,600 had signed up to pay via EFT; this means a substantial number of TEA members have yet to switch to EZ Pay. As a result, the loss of payroll deduction will not only significantly increase TEA's administrative costs, but also result in a reduction of dues revenue.

33. The direct costs incurred by TEA and its local affiliates, and the officer and staff time spent as a result of the need to administer new payment systems, take away from the funds

and officer and staff time that TEA and its affiliates have to devote to their core representation and advocacy missions.

C. Public Chapter No. 437 Consists of a Payroll Deduction Ban Grafted Onto an Unrelated, Vitally Important Provision to Raise Teacher Pay, Under a Caption Concealing the Subject of the Payroll Deduction Ban and the Fact That It Effectively Amends PECCA

34. Public Chapter No. 437 consists of a ban on long-standing payroll deduction arrangements for professional education association dues, grafted onto an unrelated provision providing for increases in teacher salaries, under a caption that does not disclose that the Act addresses educators' voluntary payments of professional education dues by payroll deduction and does not disclose that the ban necessarily repeals a provision of PECCA.

35. The bill that became Public Chapter No. 437 was introduced in January 2023 as Senate Bill 281. As originally introduced, it would simply have amended Tenn. Code Ann. § 49-3-306(a)(1) to require the Education Commissioner to publish an annual state salary schedule on providing for teacher pay increases. The caption of S.B. 281 when it was introduced was the same as the enacted legislation: "AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 2, Part 1 and Title 49, Chapter 3, Part 3, relative to wages."

36. During legislative hearings and floor debates on S.B. 281, legislators of both parties pointed out that the two substantive provisions of the bill were on two different topics, and also that the payroll deduction ban was not reflected in the bill's caption. In a Senate Education Committee hearing on March 8, Bill Powers, one of S.B. 281's Senate co-sponsors, introduced the amendment that would replace the introduced version of S.B. 281 with the version now enacted as Public Chapter No. 437. In response, Senator Joey Hensley (R-District 28) asked:

Why are we combining these two issues? Seems like we're up in Washington DC with bills that cover multiple things. So it seems like these are two different issues ... Why are we combining these two things?

Tennessee Senate Education Committee Hearing, March 8, 2023, available on video recording at https://tnga.granicus.com/player/clip/27877?view_id=703&redirect=true&h=2198c45ee93059ae26eed505bc994f8d (at timestamp 3:23:00).

37. Senator Raumes Akbari (D-District 29) also questioned the rationale for including Section 2 (the payroll deduction ban) in the legislation. She commented:

See, my concern is I think that this is a great policy to make sure that our teachers are able to receive the long-overdue salary increases they need. But [the payroll deduction ban] is a totally unrelated issue, and you guys are combining it, and you're putting people in a very tough position when they don't support Section 2 but support Section 1.

Id. (at timestamp 3:30:19).

38. In a hearing in the Senate Finance, Ways, and Means Committee on March 21, Senator Hensley (R-District 28) repeated his point that the bill combined two separate issues:

Certainly, teacher salaries are very important, but I just felt like this was two separate issues we were combining ... combining the salaries with the dues are just two separate issues.

Tennessee Senate Finance, Ways, and Means Committee Hearing, March 21, 2023, available on video recording at https://tnga.granicus.com/player/clip/28043?view_id=703&redirect=true&h=f06abd93c9e890ce7eccfe7622bb2b77 (at timestamp 1:06:16).

39. In a House Education Administration Committee hearing on March 22, Rep. Charlie Baum (R-District 37) commented:

I think our intent here is to do something to help teachers. But with the second part of this bill being there to prohibit dues deductions, it makes it look like we're up to something else. We're getting ready to spend a lot of money to help teachers—I think the fiscal note here says \$125 million. I would like it to be a clean bill so that we get credit for helping

teachers. I don't want to spend all that money and then be accused of spending it to stick it to unions.

Tennessee House Education Administration Committee hearing, March 22, 2023, available on video recording at

https://tnga.granicus.com/player/clip/28090?view_id=703&redirect=true&h=669c9bec1a8ca079f0b405b6fe36f169 (at timestamp 46:42).

40. The explanations that the bill's supporters gave in legislative hearings and debates to justify the payroll deduction ban focused on the baseless claims that teachers were being forced to pay dues to their local affiliates, TEA, and NEA, and that carrying out payroll deduction came at a cost to school districts or taxpayers. They also included negative statements about the associations' political activities. In the March 8 Senate Education Committee meeting, Senator Powers claimed that the bill, as amended, would:

end the practice of local school district deductions for national, state, and local labor organizations. Currently, school districts are permitted to provide these unions with a free benefit of collecting dues on their behalf. Taxpayer resources and K-12 education [sic] should not be used to support these activities, both political or otherwise, of any organization, including labor unions.

Tennessee Senate Education Committee Hearing, March 8, 2023, available on video recording at https://tnga.granicus.com/player/clip/27877?view_id=703&redirect=true&h=2198c45ee93059ae26eed505bc994f8d (starting at timestamp 3:19:58). Later in the same hearing, Senator Powers commented that "we've collected money for 36 years for the educators. Thirty-six years ... Can you imagine the nightmare some of these smaller LEAs have trying to do the job so they can be the benefactors?" and made assertions about the extent of TEA's assets and how much it donated to political candidates. *Id.* (at timestamp 3:43:14).

41. In the House Education Administration Committee hearing on March 22, Rep. Scott Cepicky (R-District 64) wrongly suggested that payroll deduction comes at taxpayer

expense and that teachers are forced to participate in payroll deduction for association dues. He claimed:

It just says we're not going to use taxpayer-funded assets, taxpayer-funded personnel, to collect dues for a union ... But what it does is it puts the teachers in charge of the way that they want their dues collected, instead of being forced to have them collected out of their payroll.

Tennessee House Education Administration Committee hearing, March 22, 2023, available on video recording at

https://tnga.granicus.com/player/clip/28090?view_id=703&redirect=true&h=669c9bec1a8ca079f0b405b6fe36f169 (at timestamp 48:48).

42. In the Senate Floor Session on S.B. 281 on March 30, Senator Powers noted that TEA's website included information about the EZ Pay payment system, and implied that carrying out payroll deduction costs the state money: "Raise all the dues that you can, the state just does not need to pay it anymore." Tennessee Senate Session – 21st Legislative Day, March 30, 2023, available on video recording at

https://tnga.granicus.com/player/clip/28184?view_id=703&redirect=true&h=7bd2a8b1624d6bbe7187c289a982a748 (at timestamp 47:55). He then read a letter from a constituent commenting negatively on political positions taken by NEA, and again implying that payroll deduction comes at taxpayers' expenses: "National union leaders fund left-leaning super PACs and progressive causes that just don't sync with Tennessee values. Worse, these dues are deducted directly from teachers' paychecks at taxpayers' expense." *Id.* (at timestamp 48:56).

43. Notwithstanding some legislators' suggestions that ending dues deduction would save school boards or taxpayers money, a series of fiscal memoranda about the bill prepared by the Tennessee General Assembly Fiscal Review Committee, and provided to the General Assembly, demonstrate that Section 2's payroll deduction ban would have absolutely no effect

on local expenditures. The memoranda estimated that Section 1's increase in teacher pay would increase local expenditures, but did not find any expected savings associated with Section 2's prohibition against payroll deduction. Because there were several amendments proposed to the bill that became Public Chapter No. 437, including one to remove Section 2 and another to add it back in, there are several different fiscal memoranda associated with various proposed amendments. All of them—regardless of whether the amendments under review would add, remove, or amend Section 2—anticipate an increase in local expenditures of \$106,100 in FY 25-26 and \$1,614,100 in FY 26-27. All of that increase is attributed solely to the increases for teacher pay under Section 1, with no increase or decrease attributed to the payroll deduction ban in Section 2. *See* Fiscal Memorandum, SB 281-HB 329, Amendment 004382, March 7, 2023, <http://www.capitol.tn.gov/Bills/113/Fiscal/FM0431.pdf> (increase in local expenditures of \$106,100 in FY 25-26 and \$1,614,100 in FY 26-27 under bill as passed, with no increase or decrease attributed to the payroll deduction ban); Fiscal Memorandum, SB 281- HB 329, Amendments 00438, 005185, March 11, 2023, <http://www.capitol.tn.gov/Bills/113/Fiscal/FM0659.pdf> (same increase in local expenditures under bill with Section 2 removed); Fiscal Memorandum, SB 281-HB 329, Amendment 005368, March 17, 2023, <http://www.capitol.tn.gov/Bills/113/Fiscal/FM0887.pdf> (same increase in local expenditures for bill with Section 2 added back in); Fiscal Memorandum, SB 281-HB 329, Amendments 005368, 006025, March 20, 2023, <http://www.capitol.tn.gov/Bills/113/Fiscal/FM0932.pdf> (same increase in local expenditures for version of bill that would have established an LEA was not required to deduct membership dues in professional employees' organizations unless payroll deduction was required under an MOU); Fiscal Memorandum, SB 281-HB 329, Amendments 005368, 005185, March 21, 2023

<http://www.capitol.tn.gov/Bills/113/Fiscal/FM1049.pdf> (same increase in local expenditures for version of bill with Section 2 removed).

44. SB 281, as amended, was adopted by the House and Senate in April.

45. On April 19, the same day SB 281 passed the House, the Tennessee House Republican Twitter account described the bill as though all it did was raise teacher pay, in order to draw negative attention to several Democratic Representatives for voting against it:

We'd like to point out to our great teachers of Memphis, Nashville, and Knoxville that those representing them – [Rep. Justin Jones, Rep. Justin J. Pearson, and Rep. Gloria Johnson] - just voted NO to RAISING their pay. House Republicans just passed HB329, allocating \$125 MILLION to raise teacher pay.”

TN House Republicans (@tnhousegop), Twitter (April 19, 2023), available at

<https://twitter.com/tnhousegop/status/1648723230763483136>.

46. The Governor signed SB 281 into law on May 15 and it was enrolled as Public Chapter No. 437.

47. The caption of Public Chapter No. 437 reads in full as follows: “AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 2, Part 1 and Title 49, Chapter 3, Part 3, relative to wages.”

48. The two portions of the Tennessee code mentioned in the caption are those governing general local administration of education (Title 49, Chapter 2, Part 1 of the Tennessee Code), and the Tennessee Education Finance Act of 1977 (Title 49, Chapter 3, Part 3 of the Tennessee Code); they have nothing to do with voluntary payment of education association dues by payroll deduction. The caption does not state that the Act is “relative to” voluntary payment of education association dues by payroll deduction—only to “wages.” Nor does the caption disclose that the Act repeals Tenn. Code Ann. § 49-5-608(a)(7), the PECCA provision making

payroll deductions a lawful and required subject of collaborative conferencing (codified at Chapter 49, Chapter 5, Part 6 of the Tennessee Code).

49. The body of Public Chapter No. 437 has three sections.
 - a. Section 1 amends Tenn. Code Ann. § 49-3-306(a) to raise minimum teacher salaries by adding a new subdivision to Title 49, Chapter 3, Part 3 of the Tennessee Code requiring the Commissioner of Education to establish a base salary of no less than \$42,000 for the 2023-24 school year, increasing each year up to \$50,000 for the 2026-27 school year. Section 1 is consistent with the caption.
 - b. Section 2 eliminates payroll deduction for professional employees' organizations. This section amends Title 49, Chapter 2, Part 1, by adding a new section which states, in part:

Notwithstanding chapter 5, part 6 of this title, an LEA shall not deduct dues from the payroll of the LEA's employees for a professional employee's organization, including, but not limited to, a professional employees' organization that is affiliated with a labor organization exempt under 26 U.S.C. § 501(c)(5).

Section 2 also states that "This section does not prohibit an employee of an LEA from personally and voluntarily remitting dues to a professional employees' organization."

Section 2 is unrelated to the caption. The "notwithstanding chapter 5, part 6 of this title" phrase in Section 2 is a vague reference to PECCA, which is not one of the portions of the Tennessee Code cited in the caption. As explained above, PECCA includes a requirement—not cited in the caption or even the body of the Act—that local boards of education engage in "collaborative conferencing" with

educators' professional employees' organizations about "payroll deductions," among other topics. Public Chapter No. 437 would necessarily eliminate this requirement.

- c. Section 3 states that the Act will take effect on July 1, 2023.

**COUNT ONE:
VIOLATION OF ARTICLE II, SECTION 17 OF THE TENNESSEE
CONSTITUTION
(All Plaintiffs v. All Defendants)**

50. Plaintiffs incorporate ¶¶ 1 - 49 by reference as if fully set forth herein.

51. Article II, Section 17 of the Tennessee Constitution provides: "No bill shall become law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended."

52. Section 2 of the Act violates this provision in three distinct but related respects.

- a. First, the incorporation of the ban on payroll deduction into the Act's pay-raise provision violates the single subject requirement of Art. II, § 17. The subject of Section 1, an increase in wages for public school teachers, is wholly different from the subject of Section 2, public school teachers' ability to pay voluntary membership dues via payroll deduction.
- b. Second, the caption of the Act fails to express, and thereby conceals, the subject of Section 2's payroll deduction ban. The only subject expressed in the caption—"wages"—does not encompass voluntary employee payments by means of payroll deduction.
- c. Third, Section 2 effectively repeals a statutory section, Tenn. Code Ann. § 49-5-609(a)(7) (part of PECCA), a statute other than the statutes named in the Act's

title. Under Art. II, § 17, if an act's caption lists the statutory sections that the act would amend, the body of the act cannot amend other statutory sections. Section 2 violates this limitation because the payroll deduction ban effectively amends and repeals that part of PECCA permitting dues deductions to be negotiated in collaborative conferencing, and included in binding memoranda of understanding, even though PECCA is not among the statutes that the caption says the Act is amending.

53. While Section 2 of the Act violates Art. II, § 17 of the Tennessee Constitution, Section 1 is independent of Section 2 and suffers no constitutional infirmity.

54. Tennessee's severability statute, Tenn. Code Ann. § 1-3-110, is a strong directive in favor of preserving any portion of a statute that is free of constitutional defects when the other provisions are invalidated. Under Tenn. Code Ann. § 1-3-110 and caselaw, Section 2 of the Act—the payroll deduction ban—must be invalidated and severed from the rest of the Act.

55. For these reasons, Plaintiffs are entitled to a declaration that Section 2 of Public Chapter No. 437 is unconstitutional, void, and of no effect, but that Section 1 of the Act must remain in force.

**COUNT TWO:
SECTION 2 OF THE ACT VIOLATES ARTICLE I, SECTION 20 OF THE
TENNESSEE CONSTITUTION
(Plaintiffs TEA, MNEA, LCEA, Taft, and Vaden v. All Defendants)**

56. Plaintiffs incorporate ¶¶ 1 - 55 above by reference as if fully set forth herein.

57. Section I, § 20 of the Tennessee Constitution provides that “[N]o ... law impairing the obligations of contracts, shall be made.” This provision has the same meaning as Art. I, § 10 of the United States Constitution, which also prohibits laws impairing the obligation of contracts.

58. Section 2 of the Act substantially impairs MOUs that local education associations—including Plaintiffs MNEA and LCEA—have entered into with local school boards, which provide that the school boards will, upon receiving authorizations signed by a member, deduct membership dues for the local, state, and national associations and transmit them to those associations unless and until the member revokes the authorizations. Plaintiff TEA is a third-party beneficiary with respect to these MOU provisions. Fifteen of these MOUs do not expire until well after the July 1, 2023 effective date of the Act, and thus will be impaired if Section 2 of the Act is not enjoined as applied to them.

59. Section 2 of the Act also substantially impairs the thousands of private, individual contractual arrangements that exist between TEA’s members, on the one hand, and their local education associations, TEA, and NEA, on the other, under which members have agreed to pay their membership dues through payroll deduction. These individual membership agreements all renew automatically unless cancelled by the member. If Section 2 of the Act is not enjoined as to these agreements, these agreements will be substantially impaired.

60. The state lacks a significant and legitimate purpose in enacting Section 2 of the Act and upending these contractual expectations. The Act contains no statement of purpose that would justify ending payroll deduction, and any post hoc justifications should be considered skeptically. And even if the state did have a significant and legitimate interest in enacting Section 2, the impairments of contracts are not reasonable and necessary to further such interests.

61. For these reasons, Plaintiffs are entitled to a declaration that Section 2 of the Act is unconstitutional, void, and of no effect as applied to MOUs between local school boards and local education associations, including Plaintiffs MNEA and LCEA, that contain dues deduction provisions and that will not expire before the July 1, 2023 effective date; and as to the thousands

of individual membership agreements between TEA members and local education associations, TEA, and NEA, that include dues deduction agreements; and an injunction against the implementation of Section 2 against these contracts until they expire.

**COUNT THREE: VIOLATION OF ARTICLE I, SECTION 10 OF THE UNITED STATES CONSTITUTION
(Plaintiffs TEA, MNEA, LCEA, Taft, and Vaden v. All Defendants)**

62. Plaintiffs incorporate ¶¶ 1 - 61 above by reference as if fully set forth herein.

63. U.S. Const. art. I, § 10 provides that “No State shall pass any ... Law impairing the Obligation of Contracts.”

64. Because the meanings of the state and federal constitutional contract impairment provisions are identical, the allegations at ¶¶ 56 - 61, incorporated here by reference, conclusively show that Section 2 of the Act violates Article I ¶ 10 of the United States Constitution.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for the following relief:

- (a) A declaratory judgment that:
 - i. Section 2 of Public Chapter No. 437 violates Art. II, § 17 of the Tennessee Constitution and is therefore void and of no effect, and that Section 2 is severable from the rest of the Act, and the rest of the Act should remain in force.
 - ii. Section 2 of Public Chapter No. 437 violates Art. I, § 20 of the Tennessee Constitution and art. I, § 10 of the United States Constitution as applied to MOUs between local school boards and local education associations, including Plaintiffs MNEA and LCEA, that contain dues deduction provisions and that will not expire before the July 1, 2023 effective date;

and as to the thousands of individual membership agreements between TEA members and local education associations, TEA, and NEA, that include dues deduction agreements.

- (b) A restraining order, and temporary and permanent injunctions, prohibiting Defendants, their officers and agents and all those acting in concert with them or at their direction, from implementing or enforcing Section 2 of the Act; and
- (c) such other and further relief as the court may find appropriate.

Dated: June 12, 2023

Respectfully submitted,

BY: /s/ Richard L. Colbert
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Kay Griffin Evans, PLLC
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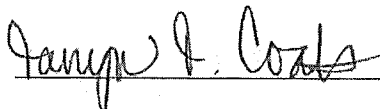
STEVEN McCLOUD, No. 16487
Tennessee Education Association
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Nashville, TN 37201
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ALICE O'BRIEN (D.C. Bar No. 454999)
PHILLIP HOSTAK (D.C. Bar No. 472945)
JENNIFER HUNTER (D.C. Bar No. 495827)
National Education Association
1201 16th St. NW
Washington, DC 20036
Phone: 202-822-703
(*Pro hac vice* motions to be filed)

VERIFICATION

I, Tanya Coats, subject to the penalty of perjury, state the following facts:

1. I am the President of the Tennessee Education Association ("TEA") and am authorized to speak and act on its behalf.
2. I have personal knowledge, or knowledge based on a review of public records or business records maintained by TEA, of the factual claims in this Complaint that relate to TEA. I verify on behalf of TEA that the factual claims set forth in the Complaint that relate to TEA are true and correct to the best of my knowledge.
3. I declare under penalty of perjury that the foregoing is true and correct.



Tanya Coats, President, TEA

Dated: 12 June 2023

VERIFICATION

1. Paula Hancock, subject to the penalty of perjury, state the following facts:

1. I am the President of the Knox County Education Association ("KCEA") and am authorized to speak and act on its behalf.

2. I have personal knowledge, or knowledge based on a review of public records or business records maintained by KCEA, of the factual claims in this Complaint that relate to KCEA. I verify on behalf of KCEA that the factual claims set forth in the Complaint that relate to KCEA are true and correct to the best of my knowledge.

3. I declare under penalty of perjury that the foregoing is true and correct.

Paula Hancock, President, KCEA

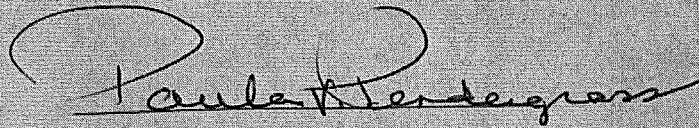
Paula Hancock, President, KCEA

Dated: *June 11, 2023*

VERIFICATION

1, Paula Pendergrass, subject to the penalty of perjury, state the following facts:

1. I am the Vice President of the Metropolitan Nashville Education Association ("MNEA") and am authorized to speak and act on its behalf.
2. I have personal knowledge, or knowledge based on a review of public records or business records maintained by MNEA, of the factual claims in this Complaint that relate to MNEA. I verify on behalf of MNEA that the factual claims set forth in the Complaint that relate to KCEA are true and correct to the best of my knowledge.
3. I declare under penalty of perjury that the foregoing is true and correct.



Paula Pendergrass, Vice President, MNEA

Dated: 6/11/2023

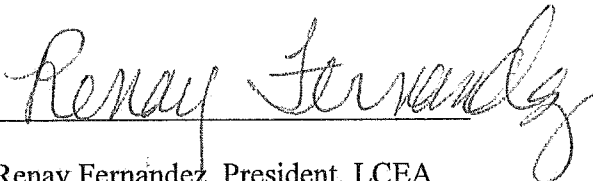
VERIFICATION

I, Renay Fernandez, subject to the penalty of perjury, state the following facts:

1. I am the President of the Lawrence County Education Association ("LCEA") and am authorized to speak and act on its behalf.

2. I have personal knowledge, or knowledge based on a review of public records or business records maintained by LCEA, of the factual claims in this Complaint that relate to LCEA. I verify on behalf of LCEA that the factual claims set forth in the Complaint that relate to LCEA are true and correct to the best of my knowledge.

3. I declare under penalty of perjury that the foregoing is true and correct.

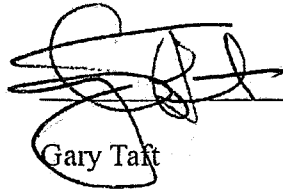

Renay Fernandez, President, LCEA

Dated: 06-12-2023

VERIFICATION

I, Gary Taft, subject to the penalty of perjury, state that I have personal knowledge of the factual claims set forth in the Complaint that relate to me, and I verify that the factual claims set forth in the Complaint that relate to me are true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct.



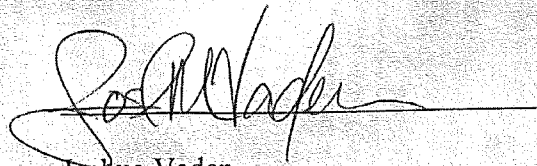
Gary Taft

Dated: June 9, 2023

VERIFICATION

I, Joshua Vaden, subject to the penalty of perjury, state that I have personal knowledge of the factual claims set forth in the Complaint that relate to me, and I verify that the factual claims set forth in the Complaint that relate to me are true and correct to the best of my knowledge.

I declare under penalty of perjury that the foregoing is true and correct.


Joshua Vaden

Dated: 06/09/2023

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Verified Complaint was served on the following via electronic and U.S. mail on June 12, 2023.

Jonathan Skrmetti, Tennessee Attorney General
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Andree Blumstein, Solicitor General
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/s/ Richard L. Colbert
Richard L. Colbert