2024 ULA Midwest Regional Field Meeting

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Workers' Rights Amendment Two Years Later

I. Overview

Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.

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

a. Adds Section 25 to the Illinois Constitution Bill of Rights (Ill. Const. art. I, § 25)
b. Makes certain employees' rights to organize and collectively bargain fundamental
c. Prohibits infringing on covered employees' rights to organize and bargain over core subjects of collective bargaining
d. Prohibits laws outlawing union security agreements

II. Constitutional Amendment Procedure

a. Constitutional Amendments by General Assembly (Ill. Const. art. XIV, § 2)
    i. Initiated in either house, 3/5 approval
    ii. Must be on general election ballot at least 6 months after approval
    iii. Effective if 3/5 vote of those voting on question **OR** majority voting in election
b. Illinois Constitutional Amendment Act (5 ILCS 20/)
    i. Proposed by joint resolution
    ii. Procedural requirements: notice, explanation to voters, form of ballot, certification
c. House and Senate Rules re: constitutional amendments for procedure
    i. Updated by session

III. Workers' rights prior to the Amendment

a. Private Sector
    i. Private sector employee rights are primarily governed by the National Labor Relations Act ("NLRA") (29 USC 151 – 169.

ii. Under the Taft Hartley Act, states have the right to choose whether to enact a right-to-work law for private sector employment.
iii. Attempts to regulate private employees outside of what is granted in the NLRA is generally preempted by the NLRA, except those rights specifically left out of the NLRA (i.e., agricultural workers, independent contractors, domestic workers (20 USC §152)).[1]

b. Public Sector
   i. Public sector employees are regulated by state law.
   ii. Much like the private sector, states were allowed to elect whether to be a right-to-work state by statute for the purposes of public employment. However, after *Janus*[2], the United States Supreme Court effectively created a national right-to-work law for public sector employment.
   iii. In addition, Illinois public sector workers are regulated by the following:
      1. Illinois Public Labor Relations Act (5 ILCS 315/)
      2. Illinois Educational Labor Relations Act (115 ILCS 5/)
      3. (300 +) laws that regulate and define employee.

IV. Why the Amendment was adopted

a. Private
   i. To prevent Illinois from enacting right-to-work laws in the private sector
   ii. Constitutional amendments are less vulnerable to whims of legislature
b. Public
   i. To protect workers' rights to bargain over wages, hours, and conditions of employment and their right to choose their own union.
   ii. Prevent the passage of laws like Iowa's Chapter 20 law and Wisconsin's Act 10 Law whereby public employee's rights to organize and collectively bargain were decimated by the legislature
   iii. Constitutional amendments are less vulnerable to the whims of legislature

V. How private sector employers and employees are impacted by WRA

a. Private sector employers will still be covered by the NLRA and Illinois continues to be a non- right-to-work state.
b. Private sector employees can rest-assured Illinois will not become a right-to-work state
c. WRA creates a fundamental right for all employees to collectively bargain over wages, hours, working conditions, and to protect their economic welfare and safety at work, even those not covered by the NLRA (see 6. *infra*)

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[1] *See San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236 (1959); *Machinists v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132 (1976)
[2] *Janus v. Am. Fed'n of State, Cnty., & Mun. Employees, Council 31*, 201 L. Ed. 2d 924, 138 S. Ct. 2448 (2018).

d. It is still early to see how this may play out in application.
e. Need an organizing framework by which private sector employees not covered by the NLRA can organize, see below.

VI. How private sector employees not covered by the NLRA may organize

a. Agricultural workers, supervisory workers, managerial workers, principals would all be granted the right to bargain, organize and choose their union as granted under the WRA.
    i. Under NLRA, "employee" defined at 29 U.S.C. § 2(3)). Excludes:
        1. Independent Contractors
            a. Note, Canadian Labor Law contains "dependent contractor" classification of worker;
        2. Agricultural workers: Under NLRA, employers and unions may include agricultural workers (and supervisors) in CBA's but cannot insist upon their inclusion, thus a permissive subject of bargaining
        3. Supervisors
            a. Voluntary recognition
            b. Existing units
            c. IPLRA "grandfather" existing units

b. Need an organizing framework by which private sector employees not covered by the NLRA can organize, defining terms and processes. For example:
    i. California Agricultural Labor Relations Act of 1975, covering agricultural workers
    ii. New York State Employment Relations Act covering workers not covered by the NLRA
    iii. Create Illinois State Labor Relations Act?
        1. Definitions, processes, who governs, remedies, etc.
        2. Amend existing IL Public Labor Relations Act?

VII. How public sector employers and employees are impacted by WRA

a. Ability for public sector workers to organize governed by state statute
    i. Legislative workers formerly had no right but do under WRA
        1. HB 4148 Legislative Employee Labor Relations Act introduced
            a. Preponderance test for supervisors
    ii. Need to create framework by which other public sector workers not formerly authorized to organize can now organize

b. Legislation review
    i. All bills need to be reviewed to ensure nothing diminishes, interferes with, or negates an employee's right to organize

ii. In practical terms, the WRA allowed all statutes governing public sector employees currently in effect to be the floor.

VIII. Whether or not non-employees can organize

a. The WRA explicitly guarantees "all employees" the right to organize under the Illinois Constitution. The answer largely depends on how employee is defined. Possibilities:
   i. Adopt/codify an expansive definition or test of employee (e.g., "The ABC test")
   ii. Organize private sector employees excluded from coverage by the NLRA? (see 4. *supra*)

b. If not defined as an "employee" would not be covered under the WRA is now defined. Numerous Illinois statutes use work employee but not one to definitely definitively define "employee" in all contexts.

IX. Topics over which employers and unions must bargain

a. Employers and unions must bargain over mandatory subjects of bargaining which include wages, benefits, terms and conditions of employment. The WRA further includes protecting economic welfare and safety at work as topics over which bargaining rights are fundamental. as
   i. Mandatory subjects of bargaining, that is those covering wages, benefits, and terms and conditions of employment, have longstanding and established meanings in Illinois under the IL Public Labor Relations Act and the Illinois Educational Labor Relations Act for public sector employees and under the NLRA for private sector. WRA does not change those.
   ii. However, WRA adds protecting economic welfare and safety at work to those topics. How this will be defined is largely dependent on future legislation or the landscape of caselaw in the years to come.

X. Litigation

a. Prior to passage: *Sachen v. IL State Board of Elections*, 2022 IL App (4th) 220470
   i. Petition for leave to file a taxpayer action seeking to prevent the use of public funds to place the WRA on the ballot because it is preempted by the NLRA and therefore violates the Supremacy Clause
   ii. Holding: Taxpayers are seeking judicial interference with a constitutionally authorized legislative process. Thus taxpayers' claims fail as a matter of law for purposes of determining whether reasonable grounds exist to grant the action, where the taxpayers did not claim a violation of Constitutional requirements. As to the preemption argument, court found

the WRA could have valid applications not subject to preemption and, regardless, claims failed as a matter of law.

b. Post-passage: *Weckbacher, et al, v. Illinois*, Case No. 23 MR 5, Lake County
    i. Election Contest Petition (procedural steps for contesting election)
        1. Claimed violations of Illinois Constitutional Amendment Act
            a. Voters did not have equal access to the Amendment text, notices and ballot titles varied by county election authority
            b. IL SOS sent out a postcard with a link, not a pamphlet with the full text
            c. "Residential Customers" received postcard, allegedly not nursing homes, shelters, jails
        2. Court Order: Court can only consider challenges to the results of the election, not the election itself and even if jurisdiction found, no specific facts alleged showing irregularities changed the results of the election.
            a. Motion to Reconsider decision was denied.

c. Post-passage, ongoing: *Illinois Legislative Staff Association v. Welch*, Case No. 24 CH 05144, Cook County
    i. Complaint:
        1. Claims the WRA guarantees Illinois Legislative Staff Association (ILSA) right to organize and bargain collectively, and Speaker Welch has refused to recognize.
        2. ILSA filed petition with Illinois Labor Relations Board (ILRB) that was dismissed due lack of jurisdiction.
        3. Claims HB 4148 introduced by Welch to regulate bargaining was a a bad faith effort to undermine rights.
        4. Among other things, seeking a declaration affirming their right to bargain.
    ii. Motion to Dismiss:
        1. Claims legislative immunity under the IL Const., protecting legislative activities.
        2. IL lacks a private right of action for violations of constitutional rights.
        3. ILRB has exclusive jurisdiction over public sector labor relations.
        4. Failure to exhaust administrative remedies by not appealing ILRB's dismissal.
        5. General Assembly employees are excluded from "public employee" definition under IPLRA, meaning they lack statutory bargaining rights.

IN CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Illinois Legislative Staff Association and Brady Burden, Plaintiffs, v. Speaker of the Illinois House of Representatives, Emanuel "Chris" Welch, Defendant.	)	2024CH05144

COMPLAINT

Introduction

1. After campaigning for a constitutional amendment to ensure the collective bargaining rights of every Illinois citizen, the Defendant Speaker Emanuel "Chris" Welch has refused to acknowledge and sought to deprive Plaintiff Brady Burden and the Speaker's own staff employees, who are members of the Plaintiff Illinois Legislative Staff Association ("ILSA"), of the very bargaining rights that the now-amended Illinois Constitution guarantees. Plaintiff Burden and the plaintiff labor organization seek a declaratory judgment that the Defendant Speaker's refusal to engage in *any* collective bargaining with his employees or recognize the legitimacy of their individual rights and the rights of Plaintiff ILSA to collective bargaining under the Illinois Constitution violates the constitutional duty of the Speaker to perform or carry out the lawful business of the State. By such total refusal to deal with Plaintiff ILSA and its members in violation of Section 25, the Defendant Speaker has unlawfully created a climate of fear among the Speaker's staff and among the members of the ILSA and sought to chill the open exercise by the Plaintiff ILSA and its members and Plaintiff Burden of their rights to engage in good faith bargaining.

Plaintiffs seek both declaratory and injunctive relief with respect to the Defendant Speaker's refusal to discuss wages, hours, and working conditions with the ILSA, as required by law.

Parties

2. Plaintiff ILSA is a labor organization that represents the legislative coordinators, policy analysts, and communications specialists who are employed on the staff of the Speaker of the Illinois House, a chamber of the Illinois General Assembly. Plaintiff ILSA is asserting both its own rights as a labor organization under the Illinois Constitution and asserting, in an associational capacity, the rights of its individual members.

3. The individual Plaintiff Brady Burden is in the bargaining unit represented by ILSA and assisted in the formation of the ILSA.

4. Defendant Emanuel "Chris" Welch is the Speaker of the Illinois House and is sued here in his personal capacity for failure to do the official business of the State by disregarding the obligations of the Illinois Constitution.

Facts

5. In the Illinois general election held on November 8, 2022, Illinois voters approved the following amendment to the Illinois Constitution, now set out as Article 1, Section 25.

6. Article 1, Section 25 of the Illinois Constitution reads in relevant part as follows:

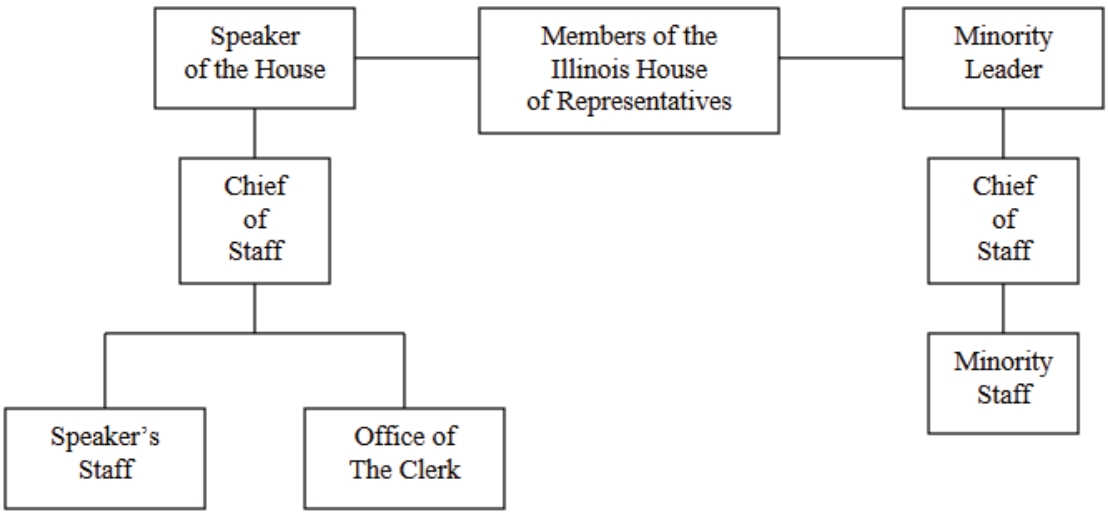
> SECTION 25. WORKERS' RIGHTS
>
> (a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. No law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

7. Upon enactment of Section 25, the individual plaintiffs and other employees of the Defendant Speaker's staff formed an independent, unaffiliated labor organization known as the Illinois Legislative Staff Association, including the signing of authorization cards.

8. The cards signed by the individual Plaintiffs and other employees state as follows: "I hereby authorize the Illinois Legislative Staff Association, or its successor organization(s) to represent me for the purpose of collective bargaining."

9. Having collected signatures from a majority of legislative coordinators and research assistants authorizing representation by the ILSA, the Plaintiff labor organization sent a letter to the defendant Speaker to request the collective bargaining guaranteed by Section 25 on November 29, 2022. A copy of the letter is attached as Exhibit A.

10. The following chart describes the organization of the Illinois House of Representatives:



11. The official description of the position of a legislative coordinator is attached as Exhibit B.

12. The official description of the position of a communications specialist is attached as Exhibit C.

13. The official description of the position of a research analyst is attached as Exhibit D.

14. The Defendant Speaker responded to the letter of November 29, 2022, attached as Exhibit A, by having the Defendant Speaker's legal counsel meet with Plaintiffs.

15. In the first meeting and subsequent meetings, the Defendant Speaker's legal counsel and chief of staff refused to engage in collective bargaining, and instead only discussed their doubt that such bargaining could proceed at all, insisting that the "proper process" be followed, which they implied was the certification of the ILSA by the Illinois State Labor Relations Board.

16. Plaintiffs ILSA and Burden responded that the Illinois State Labor Relations Board under the statute existing prior to the adoption of Section 25 did not have jurisdiction over certain public employees, including those on the Speaker's staff.

17. Nonetheless, though such action was a futility, the Plaintiff ILSA filed a formal petition for certification with the Illinois Labor Relations Board, though neither Section 25 nor the Illinois Public Relations Act required that public employees excluded by law do so.

18. They filed this petition with 17 of the 33 legislative coordinators and research assistants on the Speaker's Staff, a majority.

19. On January 4, 2023, the Plaintiff ILSA filed the formal petition attached as Exhibit E.

20. On March 29, 2023, the Executive Director of the Illinois Labor Relations Board dismissed the petition on the grounds that its organic law, which was enacted before Section 25, did not give jurisdiction to the Board. The letter is attached as Exhibit F.

21. Since the receipt of the Executive Director's letter, the Plaintiff ILSA has tried without success to collectively bargain with the Speaker over wages, hours, and the terms and conditions of employment of its members.

22. Nearly a year after Plaintiffs sought collective bargaining on September 26, 2023, Defendant introduced a bill in the House, HB 4148, that would create a regulatory regime for collective bargaining between legislative staff and their employees.

23. HB 4148 on its face violates the rights of Plaintiffs under Section 25 of the Constitution in two respects. First, the bill authorizes collective bargaining only after June 1, 2026, and seeks to ratify by law the Defendant Speaker's deprivation of the constitutional right prior to that date. Second, the bill contains a poison pill, a bad faith attempt to insulate the Defendant Speaker from his constitutional obligation, by gerrymandering the members of the ILSA together with legislative aides who are not part of the Speaker's staff but are part of the staff of the minority party, and hired by a different employer, so as to make it potentially impossible for the Speaker to claim authority to conduct bargaining.

24. HB 4148 was passed by the House on October 25, 2023.

25. The next day, it was sent to the Illinois Senate, where it was referred to the Assignments Committee the same day.

26. No action has been taken on the bill since, and neither Defendant Speaker nor his counterpart in the Senate, President Don Harmon, have taken any steps to further the passage of the bill.

27. Defendant continues to take the position that they will not collectively bargain with Plaintiffs absent legislation in force that dictates what structure that bargaining will take.

28. Since the beginning of this process, Plaintiff ILSA's organizing has expanded to include communications specialists in the Speaker's Office who have authorized Plaintiff ILSA to serve as their collective bargaining representative.

29. Defendant Speaker's refusal to bargain has the intent and effect of undermining Plaintiff ILSA's ability to represent its members.

30. The refusal of the Defendant Speaker to engage in any way with the Plaintiff ILSA is intended to dissipate the support of Plaintiff ILSA over time just as employers in the private sector do to rid themselves of unions.

31. Defendant further refused to make any kind of public comment on the staff union for nearly a year following Plaintiff ILSA's letter in November 2022 despite repeated requests from Plaintiff ILSA that Defendant reassure staff that they would not face retaliation for organizing.

32. As a result, the Defendant Speaker has created a climate of fear or anxiety within the staff and a sense of vulnerability to discharge or removal because of the belief fostered by the Defendant Speaker that the Plaintiff ILSA is powerless to protect them and the Defendant Speaker can deal with staff as he pleases, with no concern for their rights under the law.

33. The Defendant Speaker has no good faith doubt that the Plaintiff ILSA represents as active members at least a substantial portion or majority of legislative coordinators, communications specialists, and research analysts on the Speaker's staff, and there is no mandatory procedure that the ILSA is required by Illinois law to follow for exercise of its constitutional right.

34. Nor is it necessary for such a right to be operative that the ILSA be certified as the exclusive bargaining representative for *all* employees in the Speaker's staff, but only for those who are members of ILSA.

Count I – Officer Exception: Violation of Constitutional Right

35. Under the Illinois Constitution, Plaintiff Burden and his coworkers and fellow members of the Plaintiff ILSA and the Plaintiff ILSA itself as a labor organization have the "fundamental right" to "bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions."

36. Under the Illinois Constitution, Plaintiff Burden and his coworkers and fellow members of the Plaintiff ILSA and the Plaintiff ILSA itself as a labor organization also have a right to assemble and to "make known their opinions to their representatives and to apply for redress of grievances," which rights also guarantee the freedom of association. IL Bill of Rights, Sec. 5.

37. Plaintiff Burden and his coworkers have chosen Plaintiff ILSA as their representative.

38. By the acts set out above, Plaintiff Burden asserts the violations of his own constitutional rights under Section 25 of the Illinois Constitution.

39. By the acts set out above, Plaintiff ILSA has and asserts here the violation of its own constitutional right as an organization under Section 25 of the Illinois Constitution.

40. By the acts set out above, Plaintiff ILSA in its associational capacity asserts the violations of the constitutional rights of its own individual members under Section 25 of the Illinois Constitution.

41. Defendant Speaker has refused to bargain collectively with Plaintiff Burden and his coworkers, through Plaintiff ILSA or otherwise, and refused to bargain with ILSA itself, in

contravention of Plaintiffs' constitutional rights and Defendant's duty to uphold the Constitution of the State of Illinois and act within his authority as Speaker.

42. By the acts set forth above, and by failing or refusing to respond to repeated requests to engage in good faith bargaining, the defendant Speaker has deprived the Plaintiff ILSA of its associational right, and the individual members of the ILSA of their individual associational rights, to the good faith bargaining required by Section 25 of the Illinois Constitution.

43. By such acts, the defendant Speaker has failed or refused to do the business which the sovereign entrusted him to do, and Plaintiffs are entitled to appropriate declaratory and injunctive relief.

WHEREFORE, Plaintiffs pray this Court to:

A. Declare that, by the acts set forth above, the Defendant Speaker has deprived Plaintiff Burden, Plaintiff ILSA, and the individual members of the Plaintiff ILSA represented by Plaintiff ILSA here in an associational capacity of their constitutional rights to engage in collective bargaining, as guaranteed by Article 1, Section 25 of the Illinois Constitution, and in doing so the Defendant Speaker has failed to perform the lawful business of the State and acted beyond his lawful authority.

B. Grant such other relief including injunctive relief as may be appropriate against the Defendant Speaker in his individual capacity including but not limited to appointment of a mediator to confer with the parties and assist them in the process of collective bargaining and grant other injunctive relief to bar Defendant Speaker from any act to forestall bargaining with the purpose or intent of depriving them of the constitutional rights guaranteed by Section 25.

C. Grant such other relief as may be appropriate, including an order to Defendant Speaker to post or mail to members of the Defendant Speaker's staff recognizing and assuring protection of their right under Section 25 of the Illinois Constitution to engage in collective bargaining without reprisal.

Respectfully submitted,

Dated: May 31, 2024

By: /s/ *Thomas H. Geoghegan*
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Illinois Legislative Staff Ass'n, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 24 CH 05144
	)	
Speaker of the Illinois House of Representatives, Emanuel "Chris" Welch,	)	
	)	Hon. Pamela Mclean,
Defendants.	)	Meyerson, presiding.
	)	

DEFENDANT SPEAKER OF THE ILLINOIS HOUSE OF REPRESENTATIVES EMANUEL "CHRIS" WELCH'S COMBINED MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO SECTIONS 2-619.1 OF THE CODE OF CIVIL PROCEDURE

NOW COMES Defendant Speaker of the Illinois House of Representatives Emanuel "Chris" Welch ("Defendant"), represented by Del Galdo Law Group, LLC, and Michael J. Kasper, and moves this Honorable Court to dismiss Plaintiff's Complaint pursuant to 735 ILCS 5/2-619.1, and in support thereof states as follows:

INTRODUCTION

Plaintiff Illinois Legislative Staff Association ("ILSA") asserts that it is a "labor organization" purporting to represent employees of the Illinois House of Representatives, which is a chamber of the Illinois General Assembly (Comp, ¶2). Plaintiff Brady Burden is an employee of the Illinois House of Representatives Office of the Speaker who assisted in the formation of ILSA (Comp., ¶3).

In the Complaint, Burden asserts that he and other employees employed by the Illinois House of Representatives are employees in a "bargaining unit" represented by

ILSA. *Id*. The Complaint further asserts that these employees signed "authorization cards" to authorize ILSA to represent them in collective bargaining with their employer (Comp., ¶¶7-9). ILSA filed a representation petition with the Illinois Labor Relations Board ("ILRB") (Case No. S-RC-23-019), on January 4, 2023, seeking certification as the exclusive representative of a bargaining unit composed of 33 employees of the Illinois General Assembly (Office of the Speaker of the Illinois House of Representatives), and to negotiate a collective bargaining agreement on their behalf (Comp., ¶19; Exhibit E).

On March 29, 2023, the ILRB's Executive Director dismissed the Petition finding that employees of the Illinois General Assembly are specifically excluded from the protections of Illinois Public Labor Relations Act, 5 ILCS 315/1 *et seq.* ("IPLRA"), and therefore, do not have the right under the IPLRA to be represented by a "labor organization" for purposes of collective bargaining over their wages, hours and work conditions (Comp., ¶20; Exhibit F). The ILRB's Executive Director decision specifically informed ILSA that it may appeal her decision to the ILRB within ten (10) calendar days of the service of her decision (*Id.*). ILSA failed to appeal the dismissal of its Petition to the ILRB, resulting in the Executive Director's decision becoming final (*Id.*).

ILSA filed this single count Complaint against the Speaker of the Illinois House of Representatives in his personal capacity only, seeking a declaration that he violated Plaintiff's constitutional rights under Article I, Section 25 of the Illinois Constitution. *Id*. ¶¶ 39-40. Plaintiffs also seek "other relief" including appointment of a mediator to "assist" in the process of collective bargaining and an injunction barring the Defendant

from "any act to forestall bargaining." *Id*. p. 8. Speaker Welch moves to dismiss the Complaint.

LEGAL STANDARD

Section 2-619.1 authorizes the filing of one pleading incorporating both a section 2-615 motion to dismiss and 2-619 motion to dismiss. 735 ILCS 2-619.1. A motion to dismiss pursuant to 735 ILCS 5/2-619(a)(1) seeks involuntary dismissal of a complaint where "the court does not have jurisdiction of the subject matter of the action." A motion to dismiss brought pursuant to 2-619 admits the legal sufficiency of the complaint and raises defects, defenses, or other matters that serve to defeat the claim. *Schlicher v. Bd. of Fire & Police Comm'rs*, 363 Ill. App. 3d 869, 877 (2nd Dist. 2006) (citations omitted). When a circuit court rules on a section 2-619 motion, it may consider the pleadings, depositions and affidavits that have been filed. *Hagemann v. Illinois Workers' Compensation Commission,* 399 Ill.App.3d 197, 207 (1st Dist. 2010). The purpose of a motion based upon defects or defenses is to dispose of issues of law and easily proved issues of fact at the outset of the case. *Melanowski v. Jabamoni*, 293 Ill. App. 3d 720, 723 (1st Dist. 1997).

A Section 2-615 motion to dismiss challenges the legal sufficiency of the complaint. *Napleton v. Vill. of Hinsdale,* 229 Ill. 2d 296, 305 (2008). The question presented is "whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Borowiec v. Gateway 2000, Inc.,* 209 Ill. 2d 376, 382 (2004). "Illinois is a fact pleading jurisdiction." *Edelman v. Hinshaw & Culbertson,* 338 Ill. App. 3d 156, 167 (2003). Even

though courts are to construe pleadings liberally, this "does not correct or replace defective allegations." *Feis Equites, LLC. V. Sompo Int'l Holdings, Ltd.,* 2020 IL App (1st) 191072, ¶49. "A section 2-615 motion to dismiss should be granted when no set of facts could be proven that would entitle the plaintiff to relief." *Thompson v. N.J.*, 2016 IL App (1st) 142918, ¶ 28 (quoting *Tedrick v. Cmty. Res. Ctr., Inc.*, Ill. 2d 155, 161 (1st Dist. 2009).

ARGUMENT

I. Speaker Welch is Immune from Suit Regarding his Interactions With Legislative Staff Under Article IV, Section 12 of the Illinois Constitution Requiring Dismissal Under Section 2-619(a)(1) of the Code of Civil Procedure.

Article IV, Section 12 of the Illinois Constitution, which attaches broad immunity to legislators regarding legislative activities, provides:

> SECTION 12. LEGISLATIVE IMMUNITY
> Except in cases of treason, felony or breach of peace, a member shall be privileged from arrest going to, during, and returning from sessions of the General Assembly. A member shall not be held to answer before any other tribunal for any speech or debate, written or oral, in either house. These immunities shall apply to committee and legislative commission proceedings.

ILL.CONSTIT.1970, art. IV, § 12. This constitutional immunity mirrors that provided to legislators in the federal Constitution. U.S. Const. art. I, § 6, cl. 1. This immunity "extend[s] beyond mere discussion or speechmaking on the legislative floor", and applies to "legislators acting in their legislative capacity." *McCann v. Brady*, 909 F.3d 193, (7th Cir., 2018), citing *Reeder v. Madigan*, 780 F.3d 799, 802 (7th Cir. 2015); *Rateree v. Rockett*, 852 F.2d 946, 950 (7th Cir. 1988). Indeed, the U.S. Supreme Court has recognized that "[i]t is well established that federal, state, and regional legislators are

entitled to absolute immunity from civil liability for their legislative activities…" *Bogan v. Scott-Harris*, 523 U.S. 44, 46 (1998).

The U.S. Supreme Court has also determined what is, and is not, legislative activity for purposes of immunity:

> The heart of the Clause is speech or debate in either House. Insofar as the Clause is construed to reach other matters, they must be an integral part of the deliberative and communicative processes by which Members participate in committee and House proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either House.

Gravel v. United States, 408 U.S. 606, 625 (1972).

In *McCann*, Plaintiff was a disgruntled Republican legislator who sued the Illinois Senate Republican leader after he was denied access to legislative staff, and its work on legislative analyses. *McCann*, 909 F.3d at 197. The Court held that Leader Brady was immune from the suit under the Speech & Debate Clause, recognizing that "aides are protected by the privilege" because "[e]xtra help in the form of staff resources is part of the leader's toolkit for managing his troops." *Id*. The Court went on to add that the staff's work is a "valuable input into the legislative process." *Id*.

Similar to Leader Brady in *McCann*, in this case Speaker Welch derives his authority over the staff as a result of his election as presiding officer. ILL.CONSTIT.1970, art. IV, § 6. The General Assembly Operations Act, in turn, provides:

> The Speaker of the House of Representatives shall have the authority to hire all professional staff and employees necessary for the proper operation of the House. Professional staff and employees may be employed as full-time employees, part-time employees, or contractual employees.

25 ILCS 10/5(a). The Act goes on to empower the Speaker to "adopt and implement personnel policies for professional staff and employees under his or her jurisdiction and control as required by the State Officials and Employees Ethics Act." 25 ILCS 10/5(b). Further, the Illinois Constitution empowers the House of Representatives to adopt rules governing its operations. ILL.CONSTIT.1970, art. IV, § 6. The Procedural Rules of the House of Representatives provide that the Speaker has:

> general supervision of the Clerk and his or her assistants, the Doorkeeper and his or her assistants, the majority caucus staff, the parliamentarians, and all employees of the House except the minority caucus staff.

Ill. House of Rep., Rule 4(c)(12).[1] The legislative staff and its work, as the 7th Circuit Court of Appeals recognized in *McCann*, are integral and valuable parts of the legislative process. The work the legislative staff performs goes to the heart of the legislative process: preparing "[m]embers [to] participate in committee and House proceedings" and preparing analyses "with respect to the consideration and passage or rejection of proposed legislation…" *See Gravel*, 408 U.S. 625.

The Speaker, as presiding officer, is responsible for "general supervision" of the staff. As the *McCann* Court recognized, "the legislature is not required to operate as a free-for-all. Illinois law allows each caucus to select its leadership, and the leaders organize the legislative work." *McCann*, 909 F.3d at 198. One of the Speaker's legislative duties is, thus, to "organize the work." Given the import of the staff's role in the legislative process, the legislative immunity provided by the Illinois Constitution

[1] https://www.ilga.gov/house/103rd_House_Rules.pdf

applies to the interactions between the Speaker and the legislative staff, including Plaintiffs, and the case should be dismissed.

II. Plaintiff's Complaint should be Dismissed Under Section 2-619(a)(1) Because Illinois Does Not Provide a Private Cause of Action for Alleged Violations of Constitutional Rights.

Plaintiff's Complaint allege only that the Defendant violated their rights under Article I, Section 25 of the Illinois Constitution, which provides:

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

ILL.CONST. 1970, art. I, § 25.

But Plaintiffs cites no authority affording them a private right of action to bring suit for these alleged violations. And for good reason: Illinois does not have an equivalent mechanism to Section 1983 to bring an action under the Illinois Constitution. The closest example can be found in Section 29–17 of the Election Code, modeled after Section 1983, which creates a state law private right of action limited to claims involving registration and voting. 10 ILCS 5/29-17; see also *Dempsey v. Johnson*, 2016 IL App (1st) 153377, ¶ 48, 69 N.E.3d 236, 252–53 (1st Dist. 2016). There is no such an enabling mechanism for the constitutional claims Plaintiffs assert here.

The text of the Illinois Constitution makes no mention of a private right to bring this kind of action. There is simply no right, express or implied, to bring a private cause of action for violations of the Illinois Constitution alleged here. See, e.g., *Teverbaugh ex rel. Duncan v. Moore*, 311 Ill.App.3d 1, 5–6 (1st Dist. 2000) (holding the omission of self-execution language that is found in Article I, Section 17 of the Illinois Constitution, indicated under the rules of statutory construction, that the drafters of Article I, Section 18, did not intend for there to be a private right of action for damages).

Numerous courts have relied on *Teverbaugh* and its reasoning to dismiss claims brought under the Illinois Constitution for this reason. See, *Bourbeau v. Pierce*, 02-CV-1207-MJR, 2008 WL 370677, at *6–7 (S.D. Ill. Feb. 11, 2008); *Coleman v. Illinois*, 19-CV-03789, 2020 WL 6717341, at *6 (N.D. Ill. Nov. 16, 2020); *Bonnstetter v. City of Chicago*, 13 C 4834, 2014 WL 3687539, at *6 (N.D. Ill. July 24, 2014). Because Illinois law does not provide for a private right of action for alleged violations of Article I, Sections 25 of the Illinois Constitution, Plaintiffs' Complaint should be dismissed.

III. Because the Illinois Labor Relations Board has Exclusive Jurisdiction to Determine the Creation and Scope of the Bargaining Unit Sought By Plaintiffs, the Complaint Should be Dismissed Pursuant Section 2-619(a)(1) of the Code of Civil Procedure.

In 1984, the Illinois legislature enacted the IPLRA and its sister legislation, the Illinois Educational Labor Relations Act ("IELRA"), 115 ILCS 5/1 *et seq.*, to create a "comprehensive regulatory scheme for public sector collective bargaining in Illinois." *Foley v. AFSCME, Council 31, Local No. 2258*, 199 Ill.App.3d 6, 10-11 (1st Dist. 1989), *quoting Chicago Board of Education v. Chicago Teachers Union,* 142 Ill.App.3d 527, 530 (1st Dist. 1986).

The IPLRA and the IELRA created Labor Boards that had exclusive jurisdiction over the creation and shaping of "bargaining units" represented by "labor organizations," the interpretation of collective bargaining agreements and determinations as to what issues created unfair labor practices involving public employers. *Foley, Id.* Notably, Illinois courts have consistently held that allowing concurrent jurisdiction in the circuit courts over these types of matters would result in inconsistent decisions and forum shopping which would undermine the goal of uniformity sought to be achieved by the IPLRA and the IELRA. *Zander v. Carlson,* 2020 IL 125691, ¶36-37 (2020), *citing, Cessna v. City of Danville,* 296 Ill.App.3d 156, 163 (4th Dist. 1998).

Here, there is no dispute that ILSA claims to be a "labor organization" seeking to represent employees employed by the Illinois General Assembly, a public entity, to engage in collective bargaining over their wages, hours and working conditions. The IPLRA has specific statutory provisions and rules that govern the representation petition process to decide fundamental labor law questions such as: (1) have appropriate "authorization cards" been signed and filed by the ILSA; (2) do the "authorization cards" filed with the ILRB constitute a majority of employees in the petitioned-for bargaining unit[2]; (3) is the shape and scope of the "bargaining unit" sought by ILSA appropriate, including whether the unit has a "community of interest" with other employees in the

[2] Plaintiff claimed that it barely filed enough "authorization cards" to obtain majority status when it filed 17 cards for a proposed bargaining unit of 33 employees (*See* Complaint, ¶ 18). Kelly Kupris, a member of the ILSA Board of Directors and "bargaining unit" would have presumably signed one of those 17 authorization cards. However, Ms. Kupris is no longer employed by the Illinois General Assembly. This raises the question as to whether ILSA has submitted a majority of authorization cards for the petitioned-for bargaining unit.

bargaining unit; (4) should all or certain public employees be excluded from the "bargaining unit" as "supervisors," "managers," "confidential" employees and a host of other exemptions contained in the IPLRA. *See* 5 ILCS 315/3; 6.

Through this suit, Plaintiffs are attempting to bypass the carefully crafted labor representation process set forth in the IPLRA and 40 years of case law. Their forum shopping to avoid their failure to appeal the dismissal of their representation petition is exactly what the legislature and courts had cautioned against in granting exclusive jurisdiction to the ILRB in such cases. *Zander v. Carlson, Id.; Cessna v. City of Danville, Id.* This Court should maintain this labor law tenet by the dismissal of Plaintiff's Complaint pursuant to Section 2-619(a)(1).

IV. Plaintiffs' Failure to Exhaust Their Administrative Remedies Pursuant to the IPLRA Requires Dismissal Under Section 2-619(a)(1) .

The Plaintiffs have also failed to exhaust their administrative remedies by appealing the ILRB Executive Director's dismissal. Here, this is no dispute that the Plaintiffs failed to appeal the dismissal of their representation petition to the full Labor Board (Comp., ¶20; Exhibit F). Moreover, the Plaintiffs failed to seek judicial review of the ILRB's decision as authorized under Section 9(i) of the IPLRA. 5 ILCS 315/9(i).

Requiring the exhaustion of remedies allows the administrative agency to fully develop and consider the facts of the case before it; allows the agency to utilize its expertise in issuing a final decision; and provides an option for the aggrieved party to ultimately succeed before that agency, making judicial review unnecessary. *Illinois Bell Telephone co. v. Allphin*, 60 Ill.2d 350, 358 (1975). The exhaustion doctrine also helps protect

agency processes from impairment by avoidable interruptions, allows the agency to correct its own errors, and conserves valuable judicial time by avoiding piecemeal appeals. *Id.*

Generally, the courts require strict compliance to the exhaustion doctrine and will dismiss complaints for administrative review that fail to exhaust administrative remedies. *Castaneda v. Illinois Human Rights Commission,* 132 Ill.2d 304, 309 (1989) (complaint for administrative review dismissed pursuant to section 2-619 since plaintiff failed to seek *en banc* rehearing before entire Human Rights Commission). The following exceptions exist to this doctrine: (1) where multiple administrative remedies exist and at least one is exhausted; (2) where the agency cannot provide an adequate remedy or where it is patently futile to seek relief before the agency; (3) where no issues of fact are presented or agency expertise is not involved; (4) where irreparable harm will result from further pursuit of administrative remedies; or (5) where the agency's jurisdiction is attacked because it is not authorized by statute. *Id.*

None of these exceptions apply to the case at hand. The ILRB is the one administrative agency that possesses the authority to determine the creation and scope of bargaining units petitioned-for by labor organizations seeking to represent employees employed by public entities. The ILRB possesses the remedial power and expertise to interpret the IPLRA and certify a representation petition, if appropriate. Moreover, there is no claim by the Plaintiffs that they would suffer irreparable harm if they exhausted their administrative remedy through the IPLRA.

The Plaintiffs may belatedly attempt to claim that certain portions of the IPLRA are unconstitutional. However, no such allegation appears in their Complaint and the Plaintiffs have not filed proper notification forms with the Illinois Attorney General pursuant to Illinois Supreme Court Rule 19 whenever a constitutional challenge is made to a statute. Thus, this case is distinguishable from the *Board of Education of Peoria School District No. 150 v. Peoria Federation of Supports Staff Ass.,* 2013 IL 114583 . In *Peoria,* a school district brought a claim that a new amendment to the IPLRA was unconstitutional special legislation where it removed jurisdiction over labor disputes from the IELRB and conferred them onto the jurisdiction of the ILRB involving security officers employed by school districts. *Id.* There, the *Peoria* court ruled that exhaustion of administrative remedies is not required since an administrative agency does not have the authority to rule on constitutional issues. *Id* at ¶ 38. That is not the case here.

The Plaintiffs may also allege that they are challenging the jurisdiction of the ILRB similar to *County of Kane v. Carlson,* 116 Ill.2d 186, 199-200 (1987). In *County of Kane,* the chief judge of a judicial circuit challenged the ILRB's jurisdiction over charges of unfair labor practices filed against him by a union of probation officers. The chief judge alleged that he was not a "public employer" within the scope of the IPLRA's jurisdiction. *County of Kane, Id.* There, the *County of Kane* court held that since a party was contesting the authority or jurisdiction of the administrative agency in the first instance no exhaustion was necessary. *County of Kane,* 116 Ill.2d at 199-200.

Here, the Plaintiffs initially filed their representation petition with the ILRB seeking the certification of a bargaining unit of public employees. Thus, Plaintiff's

concede that the ILRB has jurisdiction over the ILSA's petitioned-for bargaining unit. Rather, the Plaintiffs merely did not like the ILRB Executive Director's decision finding them exempt from the IPLRA due to its reading of the statute. Instead of challenging this ruling through the administrative process set forth in the IPLRA, Plaintiffs are forum shopping - bypassing the ILRB. This Court should deny Plaintiff's attempt at improper forum shopping and dismiss this Complaint pursuant to Section 2-619.

V. The Complaint Should be Dismissed Pursuant to Section 2-615 Because Plaintiffs are Not Public Employees and Defendant is Not a Public Employer Under the Illinois Public Labor Relations Act.

Plaintiffs have sued Defendant in his personal capacity for "failure to do the business of the State …" Complaint, ¶ 4. Specifically, Plaintiffs assert that they are General Assembly staff members (Comp. ¶ 2), and complain that Defendant's "refusal to bargain" (Comp. ¶ 29) over terms and conditions of employment violates their right to collectively bargain. As stated above, collective bargaining by State employees is governed by the Illinois Public Labor Relations Act (5 ILCS 315/6), and as a result, Plaintiff's failure adhere to the IPLRA's process should result in dismissal of this Complaint for lack of subject matter jurisdiction. In the alternative, however, if this court determines that it does have jurisdiction, the Complaint should still be dismissed pursuant to Section 2-615 of the Code of Civil Procedure.

Plaintiffs are not, as the ILRB concluded, "public employees" for purposes of the IPLRA. Section 6 of the IPLRA, which empowers employees to organize and collectively bargain, specifically provides:

> Employees of the State and any political subdivision of the State, *excluding employees of the General Assembly of the State of Illinois* … have, and are protected in the exercise of, the right of self-organization, and may form, join or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours and other conditions of employment…

5 ILCS 315/6. (emphasis added).

For the same reason, the ILRB correctly determined that Speaker Welch is also not a public employer for purposes of the IPLRA. Section 3 of the IPLRA defines "public employer" and, as with "public employees", specifically excludes the General Assembly:

> "Public employer" or "employer" as used in this Act, however, does not mean and shall not include the General Assembly of the State of Illinois.

5 ILCS 315/3(o). Because the General Assembly is not a "public employer" for purposes of the IPLRA, the Speaker likewise is not a public employer. For an individual to be a "public employer" under the IPLRA, the person must be "acting within the scope of his or her authority, express or implied, on *behalf of those entities* in dealing with its employees." *Id*. (emphasis added). Since the General Assembly is not a public employer under the IPLRA, the Speaker could not have been acting within the scope of his authority on it behalf.

CONCLUSION

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully pray that this Court dismiss Plaintiffs' Complaint, and grant any other relief as is just and proper.

Respectfully Submitted,
Plaintiffs

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