IN THE IOWA DISTRICT COURT FOR POLK COUNTY

IOWA STATE EDUCATION ASSOCIATION, and DAVENPORT EDUCATION ASSOCIATION, *Plaintiffs*, v. STATE OF IOWA, IOWA PUBLIC EMPLOYMENT RELATIONS BOARD, MIKE CORMACK, in his official capacity as Chair of the Iowa Public Employment Relations Board, JAMIE VAN FOSSEN, in his official capacity as a Member of the Iowa Public Employment Relations Board, and MARY GANNON, in her official capacity as a Member of the Iowa Public Employment Relations Board, *Defendants*.	CASE NO. _____ **PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF**

COME NOW the Plaintiffs, Iowa State Education Association and Davenport Education Association, and in support of the instant Petition for Declaratory and Injunctive Relief state to the Court as follows:

I. PRELIMINARY STATEMENT

1. Plaintiffs—employee organizations representing the interests of education employees—challenge sweeping changes to the Public Employment Relations Act ("PERA"),

Iowa Code §§ 20.1-20.31, made by House File 291 ("H.F. 291"), as violating Article I, Sections 6 and 9 of the Iowa Constitution.

2. Both before and after the enactment of H.F. 291, the policy of the State of Iowa with respect to collective bargaining by public employees has been and is as follows:

> The general assembly declares that it is the public policy of the state to promote harmonious and cooperative relationships between government and its employees by permitting public employees to organize and bargain collectively; to protect the citizens of this state by assuring effective and orderly operations of government in providing for their health, safety, and welfare; to prohibit and prevent all strikes by public employees; and to protect the rights of public employees to join or refuse to join, and to participate in or refuse to participate in employee organizations.

Iowa Code § 20.1.

3. Without purporting to change the public policy declared in Iowa Code § 20.1, H.F. 291 amends PERA in ways that are contrary to that policy and which, in several respects, violate the Uniformity Clause and the substantive due process guarantee of the Iowa Constitution. These provisions challenged in this action fall into three principal categories.

4. First, Sections 1, 6, and 12-14 of H.F. 291 amend PERA to create a grossly unequal collective bargaining scheme under which organizations representing most public employees, including education employees, face severe restrictions on the subjects over which they may bargain with employers and as to the interest arbitration remedies that may be ordered in the event of a bargaining impasse, while employee organizations that represent a newly created and underinclusive category of "public safety employees" continue to enjoy the right to bargain over a wide range of workplace issues and have recourse to a full range of interest arbitration remedies in the event of a bargaining impasse, even if only 30% of the represented employees are in the "public safety" category. Plaintiffs contend that these provisions violate the uniformity clause set forth in Article I, Section 6 of the Iowa Constitution.

5. Second, Sections 6 and 22 of H.F. 291 prohibit public employers from allowing their employees to pay membership dues to any employee organization via payroll deduction, and prohibit all employee organizations and public employers from bargaining over such arrangements, while leaving public employers free to allow payroll deduction of dues to any professional or trade association that is not an employee organization, or—with respect to local government employers such as school districts—to any other kind of organization or program at all. Plaintiffs contend that these provisions also violate the uniformity clause of Article I, Section 6 of the Iowa Constitution.

6. Third, Section 9 of H.F. 291 drastically alters PERA's provisions governing how employee organizations are certified to represent public employees and how they lose such certification.

a. To certify an employee organization as a bargaining representative, Section 9 requires a majority vote of all employees in a bargaining unit, rather than the longstanding PERA requirement of a majority of those voting. If an employee organization fails to achieve such a majority of the total employees in the bargaining unit only because another employee organization also is on the ballot and the votes in favor of representation are split, Section 9 prohibits certification of a bargaining representative even though a majority of the employees in the bargaining unit favor representation.

b. H.F. 291 also requires that every employee organization undergo a "retention and recertification" election prior to the expiration of a collective bargaining agreement, even if no one in the bargaining unit requests such an election.

Plaintiffs contend that these provisions violate the substantive due process guarantee of Article I, Section 9 of the Iowa Constitution.

II. PARTIES

7. Plaintiff Iowa State Education Association ("ISEA") is a statewide non-profit membership organization headquartered in Des Moines, Polk County, Iowa representing more than 30,000 members, the majority of whom are employees of public schools throughout the state. The mission of ISEA is to "promote quality public education by placing students at the center of everything we do while advocating for education professionals." ISEA advances that mission through, among other things, representing educators collectively in order to advocate on behalf of students, quality public education, and the fair treatment and compensation of educators and education support professionals. The employees ISEA represents choose to belong to four hundred local associations which negotiate collective bargaining agreements with school districts and other public employers. Employees who choose to join their local association choose to be members of ISEA as well. ISEA depends on its local associations to represent members to their school district and supports such representation by way of, among other things, assigning significant ISEA staff to support such direct local representation. ISEA receives membership dues via its local affiliates to whom most members pay their dues by payroll deduction. No one is forced to join ISEA or to pay any dues or fees to ISEA.

8. Plaintiff Davenport Education Association ("DEA") is a membership organization representing professional staff working for the Davenport Community School District in Davenport, Scott County, Iowa, which has been certified by the Iowa Public Employment Relations Board as the exclusive bargaining agent to represent those professionals.

9. Plaintiffs ISEA and DEA are professional associations that constitute "employee organizations" under PERA. *See* Iowa Code § 20.3(4) (defining "employee organization" as "an

organization of any kind in which public employees participate and which exists for the primary purpose of representing public employees in their employment relations").

10. Plaintiff ISEA has standing to sue on its own behalf, on behalf of its local affiliates, and on behalf of its members who will be adversely affected in many ways if the challenged provisions of H.F. 291 are permitted to take effect, including through the loss of existing bargaining rights, the inability to attain and to retain the certification of a bargaining representative, and the loss of revenues to ISEA and its affiliates derived from membership dues received via payroll deduction, with a resulting diminution in the ability of ISEA and its affiliates to provide services to their members. Plaintiff DEA likewise has standing to sue on its own behalf and on behalf of its members.

11. Defendant State of Iowa enacted and will be responsible for the enforcement of H.F. 291.

12. Defendant Iowa Public Employment Relations Board ("PERB") is an administrative agency of the State of Iowa located in Des Moines, Polk County, Iowa, with the authority to administer and enforce PERA. PERB is responsible for conducting representation elections, adjudicating complaints of prohibited practices under the PERA, and remedying violations of PERA.

13. Defendant Mike Cormack is Chair of PERB. He is sued in his official capacity.

14. Defendant Jamie Van Fossen is a Member of PERB. He is sued in his official capacity.

15. Defendant Mary Gannon is a Member of PERB. She is sued in her official capacity.

III. JURISDICTION AND VENUE

16. This is a suit for declaratory judgment, supplemental relief and a permanent injunction, pursuant to Iowa Rules of Civil Procedure 1.1101, 1.1106 and 1.1501. This Court has jurisdiction over this matter pursuant to Iowa Code § 602.610l (2017).

17. Venue is proper under Iowa Code § 616.3(2) as the causes herein arise in Polk County, Iowa against public officers by virtue of the public offices they hold, and against the State of Iowa and the Public Employment Relations Board as their primary offices are in Polk County, Iowa.

IV. FACTUAL ALLEGATIONS

A. Pre-H.F. 291 PERA

18. Following a series of strikes by public sector employees in the late 1960s and early 1970s, the 1974 Iowa legislature passed PERA with bipartisan support, and Governor Robert D. Ray signed it into law. PERA was enacted to advance the objectives declared in Iowa Code § 20.1, quoted in paragraph 2 above.

19. To those ends, the legislature outlawed public sector strikes for the first time, and provided heavy penalties for employees, unions, and union officials who unlawfully engaged in strike activity, while at the same time creating an orderly system of collective bargaining for public employees.

20. At the heart of this orderly system of collective bargaining was PERA's requirement that public employers and unions representing their employees must bargain in good faith over a wide range of workplace issues, including:

> wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-

> service training and other matters mutually agreed upon. [Iowa Code § 20.9 (2016).]

21. PERA's duty-to-bargain provision specifically extended to "terms authorizing dues checkoff for members of the employee organization" (which could only be collected from employees who provided written authorization) "and grievance procedures for resolving any questions arising under the agreement." *Id.*

22. The only employment-related subject that the 1974 legislature excluded from the scope of the bargaining duty was the public employee retirement system, *id.*, which is governed by separate and detailed statutory schemes, such as are set forth in Chapter 97B and Chapter 411 of the Iowa Code.

23. To encourage the orderly resolution of any deadlocks in bargaining, PERA provided for binding interest arbitration over any issue on which collective bargaining parties reached an impasse. Under this procedure, each party submits its final offer on the impasse subjects to an arbitrator, who holds a hearing and, based on consideration of specified factors, is to "select … the most reasonable offer, in the arbitrator's judgment, of the final offers on each impasse item submitted by the parties." Iowa Code § 20.22(2), (3), and (9) (2016).

24. PERA's rules governing the certification and decertification of employee organizations as bargaining representatives provided that if a majority of the votes cast in a PERB-conducted election favored representation by an employee organization listed on the ballot, that employee organization would be certified to represent the employees. Conversely, if a majority of the employee votes cast were against representation by an employee organization, no employee organization would be certified. And if more than one employee organization was on the ballot but no single employee organization received a majority of the votes cast, PERB would

hold a runoff election among the two ballot choices that received the greatest number of votes. Iowa Code § 20.15(1)-(3).

25. The orderly system of collective bargaining and impasse resolution established by PERA has successfully carried out the statute's objectives for over forty years. In that time, no public sector strikes have occurred, and the overwhelming majority of collective bargaining contracts have been settled voluntarily.

26. On the 40th anniversary of PERA, former Governor Ray described the successful operation of PERA thus:

> Iowa has a system that is envied by many states that struggle to achieve the proper balance of protecting workers while maintaining effective management of government. In Iowa, it is an equal balance of power at the table between labor and management that has provided positive results that work for all Iowans.

B. H.F. 291 Drastically Alters PERA

27. On February 17, 2017, Governor Terry Branstad signed H.F. 291 into law. This legislation makes drastic changes to the PERA framework that has governed public sector labor relations in Iowa for more than forty years, including in three crucial areas: (1) the scope of collective bargaining and interest arbitration, (2) payroll deduction of dues, and (3) rules governing the certification and retention of bargaining representatives.

(1) Unequal Collective Bargaining and Interest Arbitration Rights

28. H.F. 291 takes the even-handed provisions of PERA relating to the subjects of bargaining and the scope of impasse procedures and warps them into a grossly unequal regime of favored and disfavored employee organizations.

29. Under this regime, favored employee organizations—those representing bargaining units in which at least 30% of the members fall within a newly created category of

"public safety employees"—continue to enjoy almost all of the bargaining rights and arbitral remedies provided for under the pre-H.F. 291 PERA.

30. The newly created category of "public safety employees" is defined in Section 1 of H.F. 291 to include:

> a. A sheriff's regular deputy.
> b. A marshal or police officer of a city, township, or special purpose district or authority who is a member of a paid police department.
> c. A member, except a non-peace officer member, of the division of state patrol, narcotics enforcement, state fire marshal, or criminal investigation, including but not limited to a gaming enforcement officer, who has been duly appointed by the department of public safety in accordance with section 80.15.
> d. A conservation officer or park ranger as authorized by section 456A.13.
> e. A permanent or full-time firefighter of a city, township, or special-purpose district or authority who is a member of a paid fire department.
> f. A peace officer designated by the department of transportation under section 321.477 who is subject to mandated law enforcement training.

31. The definition of "public safety employees" in H.F. 291 arbitrarily excludes many employees who perform public safety duties, including, *inter alia*, school security guards or officers represented by affiliates of ISEA, prison guards and university police officers.

32. An employee organization representing a bargaining unit in which at least 30% of the members are "public safety employees" as defined by H.F. 291 is given special rights by that legislation for the benefit of all bargaining-unit members, including those who are not public safety employees, whereas an employee organization representing a bargaining unit in which fewer than 30% of the members are "public safety employees" as defined by H.F. 291 is denied those rights as to all members of the unit, including those who are public safety employees as defined by H.F. 291 and those who would be classified as public safety employees but for the arbitrary underinclusiveness of that definition.

33. For the favored employee organizations (those representing bargaining units in which at least 30% of the members are "public safety employees" as defined by H.F. 291), Section 6 of H.F. 291 provides that the right to bargain continues to extend to the following subjects with respect to all members of the unit:

> wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training, grievance procedures for resolving any questions arising under the agreement, and other matters mutually agreed upon.

34. In contrast, disfavored employee organizations—those representing all other units of public employees—are severely restricted in the subjects as to which they can bargain with respect to any of the members of the unit. For these disfavored employee organizations, Section 6 of H.F. 291 provides that the right to bargain encompasses only "base wages and other matters mutually agreed upon," and the legislation specifies that these subjects "shall be interpreted narrowly and restrictively." *Id.* Moreover, for disfavored employee organizations, Section 6 expressly prohibits bargaining with respect to "insurance, leaves of absence for political activities, supplemental pay, transfer procedures, evaluation procedures, procedures for staff reduction, and subcontracting public services."

35. This gross inequality extends as well to the interest arbitration process that is available in the event of impasse. As an initial matter, because arbitrators can only consider parties' proposals on issues for which bargaining is allowed, the disparity in bargaining rights described above means that interest arbitration awards for disfavored employee organizations are limited to proposals regarding base wages and the handful of "other matters" that are not specifically prohibited. For favored employee organizations, on the other hand, the pre-H.F. 291

rule applies and the arbitrator may select proposals on the broad range of issues as to which negotiating is mandatory or permissive.

36. In addition, under Sections 12 and 13 of H.F. 291 the factors the arbitrator is to consider in determining which party's proposal should be selected differ depending on whether an employee organization is in the favored or disfavored category. If the arbitration involves a favored organization, the arbitrator must consider past collective bargaining agreements between the parties and the parties' bargaining history, but those matters are barred from consideration in an arbitration involving a disfavored organization. And for a favored organization, an arbitrator must compare the employees' wages, hours and conditions of employment to those of other public employees, whereas for a disfavored organization, private sector base wages, hours and working conditions must form part of the comparison.

37. For disfavored employee organizations, not only is an arbitrator prohibited from making any award with respect to insurance and supplemental pay, but an award with respect to base wages is subject to two severe restrictions that do not apply to the favored "public safety employee" organizations.

38. First, Section 13 of H.F. 291 provides that in an arbitration involving a disfavored organization, the arbitrator "shall not consider … [t]he public employer's ability to fund an award through the increase or imposition of new taxes, fees, or charges, or to develop other sources of revenues." But no such prohibition applies in an arbitration involving a favored "public safety employee" organization.

39. Second, for disfavored organizations, notwithstanding PERA's basic requirement, retained by H.F. 291, that an arbitrator must "select … the most reasonable offer, in the arbitrator's judgment, of the final offers on each impasse item submitted by the parties," Iowa

Code § 20.22.9(a), under Section 12 of H.F. 291 an arbitrator is prohibited from selecting what he or she judges to be the most reasonable offer with respect to base wages for members of a bargaining unit represented by a disfavored employee organization if the offer provides for an increase that would exceed in any year the increase in a specified consumer price index; and even an increase that is equal to or less than the increase in that index is prohibited for such employees if it would exceed 3%. Those prohibitions do not apply to favored employee organizations including the many members of such organizations who are not public safety employees.

(2) Dues Checkoffs Prohibited for Employee Organizations but not for Other Professional or Trade Associations

40. Under Section 6 of H.F. 291, no employee organization—defined as "an organization of any kind in which public employees participate and which exists for the primary purpose of representing public employees in their employment relations," Iowa Code § 20.3(4)—will be permitted to bargain regarding "dues checkoffs, and other payroll deductions for political action committees or other political contributions or political activities." In addition, under Section 22, all public employers will be prohibited from providing payroll deduction for membership dues to "an employee organization as defined in section 20.3."

41. While banning payroll deductions for the payment of membership dues to employee organizations by any public employer, H.F. 291 leaves local governments, including school districts, free to allow payroll deductions for virtually any other purpose, including the payment of dues to any other kind of organization and particularly to other professional or trade associations. For state employees, H.F. 291 also leaves in place a provision of Iowa law that provides for payroll deduction of dues to any professional or trade association that is not an employee organization. *See* Iowa Code § 70A.17A.

42. School districts that employ members of the Plaintiff employee organizations frequently allow employees to make payments by payroll deduction for a wide range of purposes, including payment of membership dues for employee organizations and for other professional associations and payment of insurance premiums, charitable pledges, and many other kinds of employee obligations. Including dues payments for employee organizations among the many kinds of payments that can be made by payroll deduction generally imposes no additional cost on a school district, but H.F. 291 prohibits such deductions even if they involve no cost at all or if the employee organization would absorb any costs that would otherwise be incurred. What is more, reconfiguring existing payroll systems so as to exclude deductions for this one purpose will itself impose costs on school districts, and those costs generally may exceed any costs of continuing to allow such deductions.

43. H.F. 291 nevertheless forces every school district to prohibit payroll deduction of employee organization dues, without regard to the wishes of the district, without regard to a school district's allowance of payroll deduction for many other purposes, and without regard to whether the prohibition will save the district money or will instead require the district to incur additional cost.

(3) Rules Obstructing the Certification and Retention of Bargaining Representatives

44. H.F. 291 enacts onerous and irrational changes to the statutes governing elections to certify a bargaining representative.

45. While the pre-H.F. 291 PERA provided that an employee organization would be certified to represent an appropriate unit of public employees if a majority of those voting in a PERB-conducted election chose to be represented by the organization, Section 9 of H.F. 291 provides that an employee organization will be certified as bargaining representative only when a

majority of employees in the unit vote to be represented by the organization, meaning that every unit member who does not vote is automatically counted as a vote against representation.

46. Section 9 also requires that when multiple organizations are on the ballot seeking to be certified as the bargaining representative and no single organization secures a majority vote of the unit, no bargaining representative will be certified, even if a majority of employees in the unit desires to be represented by one of the employee organizations rather than to have no representation. In contrast, pre-H.F. 291 PERA provided that in an election involving more than one labor organization, a run-off election would be conducted if no organization received a majority of the vote from those voting in the initial election.

47. Section 9 also adds a requirement that every bargaining representative undergo a "retention and recertification" election in the year prior to the expiration of a collective bargaining agreement, even if members of the bargaining unit have not requested such an election.

48. If an employee organization does not receive the votes of a majority of unit members in an initial certification election, a retention and recertification election or a decertification election, Section 9 provides that no petition for certification of that organization or of any other employee organization will be considered for a period of two years.

COUNT ONE: COLLECTIVE BARGAINING PROVISIONS VIOLATION OF THE UNIFORMITY CLAUSE OF ARTICLE I, SECTION 6 OF THE IOWA CONSTITUTION

49. The allegations stated in paragraphs 1-49 above are restated and incorporated herein by reference.

50. Article I, Section 6 of the Iowa Constitution requires that "[a]ll laws of a general nature shall have a uniform operation; the general assembly shall not grant to any citizen, or

class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens."

51. The grossly unequal regime of bargaining rights described in paragraphs 29-40 above creates two classifications of employee organizations: favored employee organizations representing units where at least 30% of the members meet the newly created definition of "public safety employees" and disfavored employee organizations that represent all other units of public employees. H.F. 291 bestows on every organization in the former class broad bargaining rights and interest arbitration rights that can be exercised on behalf of all of the organization's members, including those who are not public safety employees as defined by the statute, while those rights are denied to every organization in the disfavored class, including as to members of the bargaining unit who are public safety employees as defined by the statute or who would be classified as public safety employees but for the arbitrary underinclusiveness of that definition.

52. These favored and disfavored organizations and the members of the units they represent all are similarly situated with respect to all legitimate purposes relevant to collective bargaining and interest arbitration rights. There is no rational basis for the differential treatment to which H.F. 291 subjects the disfavored organizations and the members of the units they represent, including the Plaintiff organizations and their members, with respect to such rights, and this classification bears no reasonable relation to any legitimate state interest that is realistically conceivable and has a basis in fact. In the case of the Plaintiff organizations, this is particularly true of the differential treatment that is described in the following paragraphs 54-58.

53. By excluding numerous subjects from collective bargaining as described in paragraph 35 above, H.F. 291 violates the public policy declared in Iowa Code § 20.1, and prevents bargaining parties from reaching agreements that benefit the public employer as well as

the employees. For example, collective bargaining has enabled school districts to negotiate provisions concerning transfer procedures and evaluation procedures—subjects that are excluded from bargaining by H.F. 291—that are more beneficial to employees and to the districts than procedures a school district could adopt unilaterally.

54. School districts have found it beneficial to negotiate compensation on a total package basis, through which an employee organization may reduce its demands with respect to base wage increases in order to achieve an agreement that provides for improving or maintaining insurance, supplemental pay, or other items in a manner that serves the mutual interests of the employer and the employees. But H.F. 291 does not permit a school district to negotiate over insurance and supplemental pay, and thus makes it impossible to bargain on a total package basis. As a result, even where it would be in the interests of both the school district and the employees represented by the employee organization to negotiate a package that would provide for improving or maintaining insurance or supplemental pay coupled with a relatively modest increase in base wages, ISEA affiliates often will have no choice but to propose substantial increases in base wages, as H.F. 291 prevents them from securing the improvement or maintenance of insurance or supplemental pay by negotiation or arbitration.

55. A further consequence of H.F. 291's separation of base wages from other compensation issues is that arbitration, which is made unavailable as to those other issues, is made unworkable as to base wages as well. Section 12 of H.F. 291 provides that "the parties shall not introduce, and the arbitrator shall not accept or consider, any direct or indirect evidence regarding any subject excluded from negotiations pursuant to [H.F. 291]." As a result, arbitrators will be required to evaluate base wage offers in a vacuum, with no way of knowing which offer is most reasonable in the context of the total compensation package. What is more, when an

arbitrator selects the employee organization's offer on base wages, the employer is allowed to proceed to make non-negotiable reductions in other compensation items that are not subject to arbitration, in effect nullifying what was obtained through the arbitrator's decision. Thus, under H.F. 291, bargaining and arbitration over base wages will be ineffective and illusory, and will fail to promote the public policy declared in Iowa Code § 20.1.

56. Even if the restrictions on collective bargaining by disfavored employee organizations that are imposed by the provisions of H.F. 291 described in paragraph 54-56 above served some legitimate state purpose—and they do not—there is no rational basis for imposing those restrictions on every employee organization representing a bargaining unit in which less than 30% of the employees satisfy H.F. 291's arbitrarily underinclusive definition of "public safety employee" while *not* imposing those restrictions on any labor organization representing a bargaining unit in which as few as 30% of the employees satisfy that definition. With respect to these provisions, the statutory classification bears no reasonable relation to any legitimate state interest that is realistically conceivable and has a basis in fact.

57. There also is no rational basis for the provisions of H.R. 291 which require (i) that past collective bargaining agreements between the parties *must* be considered in an arbitration involving a favored "public safety employee" organization, but *cannot* be considered in an arbitration involving any other employee organization, *see* paragraph 37 above; (ii) that comparisons to private sector wages are required in the case of disfavored organizations but not in the case of favored "public safety employee" organizations, *id.*; (iii) that the public employer's ability to fund an award through new taxes or other sources of revenue may be taken into account in considering a base wage proposal by a favored "public safety employee" organization but must be ignored in considering a proposal by a disfavored employee organization, *see*

paragraph 39 above; and (iv) that an arbitrator is free to award to employees represented by a "public safety employee" organization—including those who are not themselves "public safety employees" and may constitute as much as 70% of the bargaining unit—a base wage increase as large as the arbitrator may select, but arbitrators are prohibited from awarding employees represented by a disfavored employee organization an increase that exceeds the increase in the consumer price index or 3%, whichever is less, *see* paragraph 40 above. As to all of those provisions, the statutory classification bears no reasonable relation to any legitimate state interest that is realistically conceivable and has a basis in fact.

COUNT TWO: DUES CHECKOFF PROVISION
VIOLATION OF THE UNIFORMITY CLAUSE OF ARTICLE I,
SECTION 6 OF THE IOWA CONSTITUTION

58. The allegations stated in paragraphs 1-58 above are restated and incorporated herein by reference.

59. Dues checkoff arrangements are the most convenient way for employee organization members to pay, and for employee organizations to collect, the dues required of voluntary members.

60. Under the provisions of H.F. 291 described in paragraphs 41-42 above, members of ISEA and its affiliates cannot use payroll deduction to make dues payments even if the public employer has no objection to that use of its payroll system, even if the arrangement would not subject the employer to any cost, even if ending an existing dues-deduction arrangement *would* subject the employer to costs, and regardless of the extent to which other payments, including dues payments to professional associations that are not employee organizations, are allowed to be made by payroll deduction.

61. Employee organizations use membership dues for purposes that promote the public policy declared in Iowa Code § 20.1. There is no rational basis for subjecting such organizations to restrictions on the collection of membership dues that are greater than any restrictions placed on other professional associations which do not use their dues to promote any public policy. This classification bears no reasonable relation to any legitimate state interest that is realistically conceivable and has a basis in fact.

COUNT THREE: PROVISIONS GOVERNING CERTIFICATION, RETENTION, AND DECERTIFICATION ELECTIONS
VIOLATION OF THE SUBSTANTIVE DUE PROCESS GUARANTEE OF ARTICLE I, SECTION 9 OF THE IOWA CONSTITUTION

62. The allegations stated in paragraphs 1-62 above are restated and incorporated herein by reference.

63. Article I, Section 9 of the Iowa Constitution provides that "no person shall be deprived of life, liberty, or property, without due process of law." The Iowa Supreme Court has recognized that this guarantee has a substantive component. *See, e.g., City of Sioux City v. Jacobsma*, 862 N.W.2d 335, 340 (Iowa 2015). Restrictions such as are imposed by H.F. 291 on the right of public employees to choose and retain a certified bargaining representative and of employee organizations to serve as such representatives are subject to the requirement of substantive due process.

64. The requirement in Section of H.F. 291, described in paragraphs 46-47 above, that a majority of a bargaining unit, rather than a majority of those voting, must vote in favor of representation by a specified labor organization in order for the labor organization to be certified to represent the employees in the unit, denies the substantive due process that is required by Article I, Section 9. That rule has no reasonable fit with any legitimate legislative purpose. Furthermore, it establishes an irrebuttable presumption that employees who do not vote in a

certification election are not in favor of representation, but that presumption is arbitrary and irrational in light of the multiple factors that may cause an employee not to cast a vote.

65. Because Section 9's majority-of-the-unit requirement treats a non-vote as a no-vote, it does not serve the purpose of determining whether a majority of the unit is in favor of representation by an employee organization. Indeed, Section 9 is designed to frustrate, rather than to ascertain, the wishes of a unit with respect to union representation. This is made clear by Section 9's no-runoff rule for elections in which more than one employee organization is on the ballot, under which if votes in favor of union representation are split between two or more organizations, no union may be certified even if a substantial majority of the unit would choose to be represented by one of the employee organizations rather than to have no representation.

66. There likewise is no rational basis for the requirement in Section 9 of H.F. 291, described in paragraph 48 above, that a recertification election must be conducted whenever a collective bargaining agreement between an employee organization and a public employer is scheduled to expire. Particularly in the absence of a request for such an election by members of the bargaining unit, requiring such an election has no reasonable fit with any legitimate purpose and only serves to cause instability and unnecessary expense, for the organization, the employees and the public. In this respect as well, Section 9 of H.F. 291 denies the substantive due process that is required by Article I, Section 9 of the Iowa Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Iowa State Education Association and Davenport Education Association, pray that this Court determine that this matter is appropriate for declaratory relief pursuant to Iowa Rule of Civil Procedure 1.1101 and that granting such relief would terminate the legal dispute that gave rise to this Petition; and that this matter is also appropriate for

injunctive relief pursuant to Iowa Rules of Civil Procedure 1.1106 and 1.1501. Absent injunctive relief, plaintiffs will suffer irreparable injury for which there is no adequate remedy at law.

Plaintiffs further pray that this Court:

A. Enter a declaratory judgment that the provisions of H.F. 291 referenced in paragraphs 52-62 above violate the uniformity clause of the Iowa constitution and that the provisions of H.F. 291 referenced in paragraphs 64-67 above violate the substantive due process guarantee of the Iowa Constitution;

B. Enter a permanent order enjoining defendants, their successors, and all those acting in concert with them or at their direction from implementing or enforcing provisions of H.F. 291 referenced in paragraphs 52-67 above;

C. Award plaintiffs' costs incurred herein; and

D. Grant such other and further relief as may be necessary to preserve or restore the *status quo ante*.

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