IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

Illinois AFL-CIO; American Federation of State, County, and Municipal Employees, Council 31, AFL-CIO; Troopers' Lodge No. 41, FOP; Illinois Nurses Association; Illinois Federation of Public Employees, Local 4408, AFT/IFT; Illinois Federation of Teachers, AFL-CIO Local #919;Teamsters Illinois Downstate Employee Negotiating Committee; Teamsters Local 700;Teamsters Local 330; Teamsters Local Union 705,affiliated with the International Brotherhood of Teamsters; General Teamsters/Professional &Technical Employees Local Union No. 916; Service Employees International Union, Local 73; Laborers' International Union of North America; Illinois State Employees Association, Local 2002and the Southern and Central Illinois Laborers' District Council; Conservation Police Lodge, Illinois Police Benevolent and Protective Association; Illinois Fraternal Order of Police Labor Council; International Union of Bakery, Confectionery and Tobacco Workers; International Union Bricklayers and Allied Craftworkers, Local 8, Illinois; United Brotherhood of Carpenters and Joiners of America (on behalf of Chicago Regional Council of Carpenters, Mid-Central Illinois Regional Council, and St. Louis Missouri District Council; International Brotherhood of Electrical Workers; Service Employees International Union, Local1, International Union of United Food and Commercial Workers; Laborer's International Union of North America; International Association of Machinist and Aerospace Workers District 8; International Union of Operating Engineers; International Union of Painters and Allied Trades; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of U.S.A. and Canada; Metropolitan Alliance of Police, Chapter 294; Plaintiffs,	Civil Action No. 15-cv-271

v.)
)
Bruce Rauner, Governor of the State of Illinois; Tom Tyrrell, Acting Director of the Illinois Department of Central Management Services; Illinois Department of Central Management Services; Leo Schmitz; Director of the Illinois State Police; and the Illinois State Police,)
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Defendants.

DEFENDANTS' NOTICE OF REMOVAL

Dennis Murashko
Special Assistant Attorney General
Deputy Counsel
Office of Governor Bruce Rauner
100 W. Randolph,
Suite 16-100
Chicago, IL 60601
(312) 814-2121
dennis.murashko@illinois.gov

Philip S. Beck
Matthew R. Ford
Rebecca T. Horwitz
Special Assistant Attorneys General
BARTLIT BECK HERMAN
PALENCHAR & SCOTT LLP
54 West Hubbard Street
Chicago, Illinois 60654
(312) 494-4400
philip.beck@bartlit-beck.com
matthew.ford@bartlit-beck.com
rebecca.horwitz@bartlit-beck.com

Attorneys for Defendants

Pursuant to 28 U.S.C. §§ 1331, 1441(b), and 1446(a), Defendants Bruce Rauner, Governor of the State of Illinois, Tom Tyrrell, Acting Director of the Illinois Department of Central Management Services, the Illinois Department of Central Management Services, Leo Schmitz, Director of the Illinois State Police, and the Illinois State Police (collectively "Defendants") hereby give notice of their removal of this case to the United States District Court for the Southern District of Illinois on the grounds set forth below:

1. On March 5, 2015, the above-captioned Plaintiffs, the Illinois AFL-CIO and twenty-six labor unions, filed a Verified Complaint in the Circuit Court of the 20th Judicial Circuit, St. Clair County, Illinois. That action is entitled *Illinois AFL-CIO, et al. v. Bruce Rauner, Governor of Illinois, et al.* Defendants have yet to be served. A copy of the Complaint as filed is attached as Exhibit A.

2. All Defendants consent to the removal of this action. 28 U.S.C. § 1441(b)(2)(A).

3. This Notice of Removal is timely because it was filed within 30 days of March 5, 2015. 28 U.S.C. § 1446(b).

4. No proceedings have taken place in the state court as of this Notice of Removal. 28 U.S.C. § 1446(a).

5. Removal to the United States District Court for the Southern District of Illinois is proper as the district includes St. Clair County. 28 U.S.C. § 93(c).

6. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and is therefore removable pursuant to 28 U.S.C. § 1441(a).

7. A state claim arises under federal law for purposes of 28 U.S.C. § 1331 when the "claim necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal

and state judicial responsibilities." *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005); *see also Gunn v. Minton*, 133 S. Ct. 1059, 1064-65 (2013) ("But even where a claim finds its origins in state rather than federal law … we have identified a 'special and small category' of cases in which arising under jurisdiction still lies.") (citing *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 699 (2006).).

8. Plaintiffs have pled state-law claims in their Complaint. But Plaintiffs' claims against Defendants raise a disputed, substantial federal issue that controls the analysis of the state-law claims. Accepting jurisdiction of this dispute will not disturb any comity between federal and state judicial responsibilities. Therefore, federal jurisdiction is appropriate under 28 U.S.C. § 1331 and *Grable*. *See Gunn*, 133 S. Ct. at 1065 ("[F]ederal jurisdiction over a state law claim will lie if a federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.").

GROUNDS FOR REMOVAL

9. Plaintiffs' lawsuit challenges the legality of Governor Rauner's February 9, 2015 Executive Order 15-13. The Order prohibits State agencies from enforcing fair-share contract provisions. The Illinois Public Labor Relations Act ("IPLRA") defines a fair-share fee as an amount paid to a union by non-union public employees that is the "proportionate share of the costs of the collective bargaining process, contract administration and pursuing matters affecting wages, hours and other conditions of employment." 5 ILCS 315/6.

10. The Governor's Order recognizes that the fair-share fees are authorized under Illinois statutory law and contained in the State's collective-bargaining agreements with Plaintiffs. Exec. Order No. 15-13, 39 Ill. Reg. 3193, 3194-95 (Feb. 27, 2015). The Governor

issued the Order, however, because these fees violate the First Amendment of the United States Constitution and "the Supremacy Clause prohibits the Governor of the State of Illinois from enforcing state law and contractual agreements that violate the First Amendment." *Id.*

11. Plaintiffs' complaint alleges two counts. Count I seeks declaratory and injunctive relief on the basis that Governor Rauner's Executive Order violates the IPLRA and the Illinois Constitution's separation of powers. (Compl. ¶¶ 24, 26, 34-91, 94, Count I preamble, Count I relief (c), ¶¶ 102-242.) Count II alleges that the Executive Order violates the State's collective-bargaining agreements with the unions and seeks an injunction in aid of the arbitration of the unions' breach-of-contract claims. (Compl. ¶¶ 102-251, Count II preamble, Count II relief.)

12. These claims raise a substantial and contested issue of federal law. The Executive Order does not deny that the Governor must enforce laws that are constitutional. Exec. Order 15-13, 39 Ill. Reg. at 3196 ("[T]he Supremacy Clause prohibits the Governor of the State of Illinois from enforcing state law and contractual agreements that violate the First Amendment of the United States Constitution…."). The Executive Order does not contest that Illinois statutory law authorizes fair-share fees. *Id.* at 3194 ("[U]nder the Illinois Public Labor Relations Act (' Illinois Labor Act'), 5 ILCS 315/6, a public sector labor union unilaterally determines the so-called 'fair share' fees to be paid by those who choose not to be members of the union…."). And the Executive Order recognizes that the State's collective-bargaining agreements contain provisions for the collection of fair-share fees by non-union public employees. *Id*. at 3193 ("[C]ollective bargaining agreements, to which the State of Illinois is a party, currently compel some state employees to subsidize the political speech of public sector labor unions of which they have chosen to not be members….").

13. Plaintiffs style their claims under Illinois law. But the only dispute in this action concerns the right to freedom of speech and freedom of association protected by the First Amendment of the United States Constitution. Governor Rauner's Executive Order is entitled "Respecting State Employees' Freedom of Speech." Exec. Order No. 15-13, 39 Ill. Reg. at 3193. The Order identifies the basic right that the "First Amendment to the United States Constitution protects the freedom of speech and association" and recognizes that "under Article VI, Clause 2 of the United States Constitution (the 'Supremacy Clause'), the Constitution 'shall be the supreme law of the land,' preempting 'anything in the constitution or laws of any State to the contrary.'" *Id.* And as the United States Supreme Court in *Harris v. Quinn* recognized, "no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support." 134 S. Ct. 2618, 2644 (2014).

14. Resolution of Plaintiffs' claims only requires resolving whether fair-share fees violate the First Amendment's guarantees of free speech and free association. The only legal inquiry involves federal constitutional law. If Plaintiffs' collection and use of fair-share fees are consistent with the First Amendment, the Executive Order was in error. If Plaintiffs' collection and use of fair-share fees violate the First Amendment, the Executive Order stands. Any factual inquiry would likewise only concern federal constitutional issues. For example, even if fair-share fees under *Abood* are consistent with the First Amendment, *Abood* only authorized unions to use those fees for certain union activities. *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 235-236 (1977). The unions' actions could still be unconstitutional under *Abood* if their use of the fair-share fees falls outside the excepted activities the Supreme Court identified in *Abood*.

15. Federal jurisdiction exists because the only dispute between the parties turns on questions of federal constitutional law. *See, e.g., Grable*, 545 U.S. at 312 (substantial question

doctrine supports "commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law …."); *Gunn*, 133 S. Ct. at 1064 ("[E]ven where a claim finds its origins in state rather than federal law. . . we have identified a special and small category of cases in which arising under jurisdiction still lies.") (internal citations removed); *see also Evergreen Square of Cudahy v. Julian Castro*, 776 F.3d 463, 467-468 (7th Cir. 2015) (allowing removal under *Grable* and *Gunn* where state law claims dominated because the federal interest was substantial, the government had a strong interest in the issues being decided, and the cases were capable of resolution without disrupting the federal-state balance); *Samuel C. Johnson 1988 Trust v. Bayfield Cnty., Wis.*, 649 F.3d 799, 801-802 (7th Cir. 2011) (allowing removal under *Grable* where state law claim required extensive analysis of federal law).

16. The constitutionality of fair-share provisions is in dispute following *Harris v. Quinn* and the pending petition for writ of certiorari in *Friedrichs v. Cal. Teachers Ass'n, et al.*, No 14-915, challenging the constitutionality of fair-share fees under the First Amendment. *Friedrichs v. Cal. Teachers Ass'n, et al.*, No. 13-57095 (9th Cir. 2014), *petition for cert. filed*, (U.S. Jan. 26, 2015) (No. 14-915). The federal government has a substantial interest in in uniform Federal labor law. *Amalgamated Ass'n of St., Elec. Ry. and Motor Coach Emp. Of America v. Lockridge*, 403 U.S. 274, 286 (1971) ("The course of events that eventuated in the enactment of a comprehensive national labor law, entrusted for its administration and development to centralized, expert agency, as well as the very fact of that enactment itself, reveals that a primary factor in this development was the perceived incapacity of common-law courts and state legislatures, acting alone, to provide an informed and coherent basis for stabilizing labor relations conflict and for equitably and delicately structuring the balance of

power among competing forces so as to further the common good."). Moreover, this case implicates the First Amendment rights of a group of citizens and "it is always in the public interest to prevent the violation of a party's constitutional rights." *G&V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994). The resolution of this issue will not change the federal-state balance adopted by Congress because it is a narrow issue of constitutional rights that would benefit from a uniform resolution. *Evergreen Square of Cudahy*, 776 F.3d at 467-68 (allowing removal under *Grable* where the issues were capable of resolution without changing the federal-state balance adopted by Congress and the federal government had a strong interest in uniform interpretation of the law). The Governor filed a case on February 9, 2015 that is pending in the Northern District of Illinois seeking a declaratory judgment as to the constitutionality of fair-share fees. *Rauner v. AFSCME Council 31, et al.*, No. 15-cv-1235 (N.D.I.L. filed Feb. 9, 2015).

17. As required under 28 U.S.C. § 1446(d), Defendants will immediately file a copy of this Notice with the Clerk of the Circuit Court of St. Clair County, Illinois and will serve a copy of the same upon Plaintiffs' counsel.

18. This notice of removal is signed pursuant to Federal Rule of Civil Procedure 11 as required by 28 U.S.C. § 1446(a).

WHEREFORE, Defendants give notice that the action pending against it in the Circuit Court of St. Clair County, Illinois has been removed from that court to the United States District Court for the Southern District of Illinois.

Dated: March 10, 2015

Respectfully submitted,

By: /s/ Philip S. Beck

Dennis Murashko
Special Assistant Attorney General
Deputy Counsel
Office of Governor Bruce Rauner
100 W. Randolph,
Suite 16-100
Chicago, IL 60601
(312) 814-2121
dennis.murashko@illinois.gov

Philip S. Beck
Matthew R. Ford
Rebecca T. Horwitz
Special Assistant Attorneys General
BARTLIT BECK HERMAN
PALENCHAR & SCOTT LLP
54 West Hubbard Street
Chicago, Illinois 60654
(312) 494-4400
philip.beck@bartlit-beck.com
matthew.ford@bartlit-beck.com
rebecca.horwitz@bartlit-beck.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I, Philip S. Beck, an attorney, hereby certify that on the 10th day of March, 2015 a true and correct copy of the foregoing was served in accordance with Fed. R. Civ. P. 5, by overnight delivery, postage pre-paid upon the following:

Joel Abbott D'Alba, Esq.
ARDC No. 0571121
Asher, Gittler, Greenfield, Cohen & D'Alba, Ltd.
200 West Jackson Boulevard, Suite 1900
Chicago, IL 60606
(312) 263-1500

Attorneys for Illinois State Federation of Labor and Congress of Industrial Organizations; Troopers' Lodge No. 41, FOP; International Union of Bricklayers and Allied Craftworkers, Local 8, Illinois; International Brotherhood of Electrical Workers; International Association of Machinist and Aerospace Workers District 8; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of U.S.A. and Canada

Stephen A. Yokich, Esq.
ARDC No. 6181707
Melissa J. Auerbach, Esq.
ARDC No. 3126792
Cornfield and Feldman LLP
25 East Washington Street, Suite 1400
Chicago, Illinois 60602-1803
312-236-7800

Attorneys for American Federation of State, County, and Municipal Employees, Council 31, AFL-CIO; Illinois Federation of Public Employees, Local 4408, AFT/IFT; Illinois Federation of Teachers, AFL-CIO Local #919; and International Union of Bakery, Confectionery and Tobacco Workers

Stanley Eisenstein, Esq.
Katz, Friedman, Eagle,
Eisenstein & Johnson, PC
77 West Washington Street - 20th Floor
Chicago, Illinois 60602-2801
(312) 263-6330

Attorneys for Illinois Nurses Association

James S. Beall, Esq.
ARDC No. 6226493
Alaine S. Williams, Esq.*
Amy R. Rosenberger, Esq.*
Willig, Williams & Davidson, Of Counsel
*motions for pro hac vice admission to be filed
77 West Washington Street, Suite 2120
Chicago, IL 60602
(312) 818-6700

Attorneys for Teamsters Illinois Downstate Employee Negotiating Committee; Teamsters Local 700; and Teamsters Local 330

Emil Patrick Totonchi
1645 West Jackson Boulevard, 7th Floor
Chicago, IL 60612
(312) 738-5264

Attorneys for Teamsters Local Union705

Joel A. D'Alba, Esq.
ARDC No. 0571121
Sean Smoot, Chief Legal Counsel
Policemen's Benevolent and Protective Association
435 West Washington Street
Springfield, IL 62702
(217) 523-5141 x203

Attorneys for Conservation Police Lodge, Illinois Police Benevolent and Protective Association

Carl R. Draper, Esq.
Feldman Wasser
1307 South 7th Street
Springfield, Illinois 62703
P.O. Box 2418
Springfield, Illinois 62705
(217) 544-3403

Attorneys for General Teamsters/Professional & Technical Employees Local Union No. 916

Tamara Cummings, General Counsel
John R. Roche, Jr., Esq.
5600 South Wolf Road, Suite 120
Western Springs, Illinois 60558-2268
(708) 784-1010

Attorneys for Illinois Fraternal Order of Police - Labor Council

Joel A. D'Alba, Esq.
ARDC No. 0571121
Tyson B. Roan, General Counsel
SEIU Local 73
300 South Ashland Avenue, Suite 400
Chicago, Illinois 60607
(312) 588-7498

Attorneys for Service Employees International Union, Local 73

Terrance Bryan McGann, Esq.
Whitfield McGann & Ketterman
111 East Wacker Drive, Suite 2600
Chicago, Illinois 60601
(312) 251-9700

Attorneys for United Brotherhood of Carpenters and Joiners of America (on behalf of Chicago Regional Council of Carpenters, Mid-Central Illinois Regional Council, and St. Louis Missouri District Council)

Ellen J. Schanzle-Haskins, Esq.
Brown Hay & Stephens LLP
205 S 5th Street, Suite 700
Springfield, Illinois 62701
(217) 544-8491

Attorneys for Illinois State Employees Association, Local 2002 and the Southern and Central Illinois Laborers' District Council

Robert E. Bloch, Esq.
Ronald M. Willis, Esq.
Dowd, Bloch & Bennett
8 South Michigan Avenue, 19th Floor
Chicago, IL 60603
(312) 372-1361

Attorneys for Service Employees International Union, Local 1

Jonathan D. Karmel, Esq.
Karmel Law Firm
221 North LaSalle Street, Suite 1307
Chicago, Illinois 60601
(312) 641-2910

Attorneys for International Union of United Food and Commercial Workers

William A. Widmer III, Esq.
Martin Phillip Barr, Esq.
Carmell Charone Widmer Moss & Barr
One East Wacker Drive, Suite 3300
Chicago, Illinois 60601
(312) 236-8033

Brian A. Powers
General Counsel
International Union of Operating Engineers
1125 17th Street, NW
Washington, DC 20036
Of Counsel
(202) 775-2675

Attorneys for International Union of Operating Engineers

Joseph V. Healy, Esq.
Law Offices of Joseph V. Healy
1341 North Halsted, Suite 2S
Chicago, Illinois 60642
(312) 841-1092

Attorneys for Laborer's International Union of North America

John J. Toomey, Esq.
Arnold and Kadjan
203 North LaSalle Street, Suite 1650
Chicago, Illinois 60601
(312) 236-0415

Attorneys for International Union of Painters and Allied Trades

Joseph R. Mazzone, Chief Counsel
Metropolitan Alliance of Police
3033 West Jefferson Street, Suite 208
Joliet, Illinois 60435
(815) 725-7000

Attorneys for Metropolitan Alliance of Police, Chapter 294

By: /s Philip S. Beck