

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

UNITED AUTO WORKERS REGION 2B,
1691 Woodlands Drive
Maumee, Ohio 43537,

**OHIO STATE UNITED AUTO
WORKERS COMMUNITY ACTION
PROGRAM COUNCIL,**
1691 Woodlands Drive
Maumee, Ohio 43537,

**UNITED AUTO WORKERS OHIO
STATE POLITICAL ACTION
COMMITTEE,**
1691 Woodlands Drive
Maumee, Ohio 43537,

OHIO AFL-CIO
395 East Broad Street, Suite 300
Columbus, Ohio 43215,

**OHIO AFL-CIO VOTER EDUCATION
FUND**
395 East Broad Street, Suite 300
Columbus, Ohio 43215,

OHIO EDUCATION ASSOCIATION
225 East Broad Street
Columbus, Ohio 43215,

PLAINTIFFS,

-v-

**JENNIFER L. BRUNNER
OHIO SECRETARY OF STATE**
180 East Broad Street, 16th Flr.
Columbus, Ohio 43215,

DEFENDANT.

Case No:

JUDGE

COMPLAINT

NATURE OF THE ACTION AND JURISDICTION

1. This is an action for a declaratory judgment declaring provisions of Amended Substitute House Bill No. 694 (“H. B. 694”) of the 126th General Assembly, restricting the political and non-political speech and associational rights and freedoms of labor organizations and their members that engage in collective bargaining on behalf of public employees, to be in violation of rights guaranteed under the Constitution of the State of Ohio. H. B. 694 was never signed into law, but purportedly will take effect on April 4, 2007. This case is also an action for injunctive relief to halt the implementation and enforcement of such restrictions upon labor organizations and the members and public employees they represent.

PARTIES

2. The jurisdiction of this Court is invoked pursuant to Article I, §16 and Article IV, §4(B) of the Ohio Constitution, Ohio Revised Code §2721.12, and Rule 65 of the Ohio Rules of Civil Procedure.
3. Plaintiff United Auto Workers Region 2B (“UAW Region 2B”) is a voluntary, unincorporated labor organization. It is a subordinate body of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America. All United Auto Workers local unions in Ohio are affiliated with Region 2B, representing approximately 150,000 active and retired Ohio members.
4. Plaintiff Ohio State United Auto Workers Community Action Program Council (“UAW State CAP Council”) is a voluntary, unincorporated labor organization representing the political, legislative, civic, and community interests of members of UAW locals in Ohio. Plaintiff UAW State CAP Council receives a portion of

the dues of members of UAW local unions in Ohio for the purpose of funding contributions and expenditures supporting and opposing candidates for state and local offices, political parties, and other election related and political activity. It has been registered with the Ohio Secretary of State as a Political Contributing Entity since 1998 and regularly files reports of its contributions and expenditures.

5. Plaintiff United Auto Workers Ohio State Political Action Committee (“UAW State PAC”) is a political action committee established pursuant to the laws of Ohio. It has been in existence since 1968. It has always been funded solely through an allocated portion of the dues paid by members of United Auto Workers local unions in Ohio. It is registered as a Political Action Committee with the Ohio Secretary of State and regularly files reports of its contributions and expenditures.
6. Plaintiff Ohio AFL-CIO (“AFL-CIO”) is an unincorporated, voluntary labor organization federation. A portion of dues paid by individual members of local and district union affiliates of Plaintiff AFL-CIO funds political contributions and expenditures of Plaintiff Ohio AFL-CIO VEF. Plaintiff AFL-CIO represents the interests of approximately 750,000 active and approximately 1,000,000 retired members of its local and district affiliates.
7. Plaintiff Ohio AFL-CIO Voter Education Fund (“AFL-CIO VEF”) is sponsored by Plaintiff AFL-CIO and is receives a portion of the dues of individual members of its member unions in Ohio for the purpose of funding contributions and expenditures supporting and opposing candidates for state and local offices, political parties, and other political activities. It was previously registered with

the Ohio Secretary of State as a Political Action Committee under Ohio law from 1958 to 1988. It has been registered with the Ohio Secretary of State as a Political Contributing Entity since 1988 and regularly files reports of its contributions and expenditures.

8. Plaintiff Ohio Education Association (“OEA”) is a non-profit, voluntary incorporated labor association which exists for the purpose of representing public employees in dealing with public employers concerning grievances, labor disputes, and the establishment of employee working conditions. Plaintiff OEA is an “employee organization” as defined in Ohio Revised Code §4117.01(D). Plaintiff OEA is affiliated with National Education Association (“NEA”). OEA has over seven hundred fifty (750) local affiliate associations and membership in excess of one hundred twenty thousand (120,000) education employees throughout Ohio. Plaintiff OEA and its members and affiliates support a political action committee known as the Ohio Education Association-Fund for Children and Public Education (“OEA-FCPE”). OEA-FCPE is established pursuant to the laws of Ohio which govern political action committees. All contributions to OEA-FCPE are voluntary and separate from dues monies. Plaintiff OEA brings this suit on behalf of itself as an entity and on behalf of the local affiliates and individual members Plaintiff OEA represents.
9. Defendant Jennifer L. Brunner (“Secretary of State”) is the Secretary of State of the State of Ohio. As such, she is the chief elections officer of the state. In general, her duties include the administration of Title XXXV of the Revised Code, including those provisions pertaining to campaign finance regulation. She

is required by R.C. §3501.05(N) to investigate alleged violations of the election laws and report violations thereof to the Attorney General or prosecuting attorney, or both, for possible prosecution. She is further required by R.C. §3517.11 to examine all campaign finance statements filed with his office for compliance with the Revised Code and, in the event that a statement appears to disclose a violation of law, to report such facts to the Ohio Elections Commission. She has the responsibility pursuant to R.C. §3517.23 to adopt rules necessary for the administration and enforcement of Sections 3517.08 to 3517.13, 3599.03, and 3599.031 of the Revised Code and to provide candidates, political action committees, and political parties written instructions and explanations in order to insure compliance with the state's campaign finance laws.

10. Plaintiff UAW Region 2B's primary purpose is to represent employees in interactions with their employers concerning grievances, labor disputes, and the establishment of employee working conditions. Plaintiff UAW Region 2B's local affiliate organizations currently represent 2,121 public sector employees employed by various political subdivisions of the State of Ohio. The employees are grouped in 26 bargaining units and belong to eight different UAW local unions that are subordinate organizations of Plaintiff UAW Region 2B. Plaintiff UAW Region 2B's local affiliates are signatories to approximately twenty six public sector collective bargaining agreements. Said collective bargaining agreements are executed pursuant to Ohio Revised Code Chapter 4117; specifically Ohio Revised Code §4117.09 and 4117.10 The local affiliate signatories to collective bargaining agreements are "employee organizations"

pursuant to Ohio Revised Code §4117.01(D), as well “exclusive representatives” as defined in Ohio Revised Code §4117.01(E). Plaintiff UAW Region 2B is an “employee organization” as defined in Ohio Revised Code §4117.01(D). Plaintiff UAW Region 2B brings this suit on behalf of itself as an entity and on behalf of the local affiliates and individual members Plaintiff UAW Region 2B represents.

11. Plaintiff AFL-CIO represents the interests of its affiliated labor organizations and their members. Included among its affiliated labor organizations are the following labor organizations representing public employees under collective bargaining agreements with the State of Ohio elected executive offices and with political subdivisions throughout the state: AFSCME/OCSEA (34,869 members), AFSCME Council 8 (42,598 members), AFSCME OAPSE (29,288 members), Ohio Association of Professional Firefighters (11,485 members), Ohio Federation of Teachers (16, 371 members), and Ohio Highway Patrol (4,397 members). Other affiliates of Plaintiff AFL-CIO, including the Communication Workers of America, the United Steelworkers, and many of the building and construction trade labor organizations, also represent significant numbers of public employees throughout Ohio under collective bargaining agreements with government offices. The primary purpose of these affiliated organizations is to represent employees in interactions with their employers concerning grievances, labor disputes, and the establishment of employee working conditions. Plaintiff AFL-CIO and each of these affiliated labor organizations is an “employee organization” as defined in Ohio Revised Code §4117.01(D). Plaintiff AFL-CIO’s affiliate labor organizations are signatories to hundreds of public sector collective bargaining

agreements. Said collective bargaining agreements are executed pursuant to Ohio Revised Code Chapter 4117; specifically Ohio Revised Code §4117.09 and 4117.10 Plaintiff AFL-CIO's affiliate organization signatories to collective bargaining agreements are "employee organizations" pursuant to Ohio Revised Code §4117.01(D), as well "exclusive representatives" as defined in Ohio Revised Code §4117.01(E). Plaintiff AFL-CIO brings this suit on behalf of itself as an entity and on behalf its affiliate organizations and the ir individual members.

12. Plaintiff Ohio Education Association ("OEA") is a non-profit, voluntary incorporated labor association which exists for the purpose of representing public employees in their interactions with public employers concerning grievances, labor disputes, and the establishment of employee working conditions. Plaintiff OEA is an "employee organization" as defined in Ohio Revised Code §4117.01(D). Plaintiff OEA is affiliated with the National Education Association ("NEA"). Plaintiff OEA has seven hundred fifty five (755) local affiliate associations, and represents one hundred twenty thousand eighty six (120,086) education employees in bargaining units throughout Ohio. Ohio Education Association – Fund for Children and Public Education ("OEA-FCPE") is the lawfully established political action committee of Plaintiff OEA, its local affiliates and members, and is funded by voluntary contributions. OEA-FCPE's purpose is to exercise free speech and associational rights in the political forum on matters of concern to its members. Plaintiff OEA brings this suit on behalf of itself as an entity and on behalf of the local affiliates and individual members Plaintiff OEA represents.

13. Plaintiff OEA's affiliates are mostly unincorporated associations, and each local affiliate is also affiliated with the National Education Association. Plaintiff OEA's local affiliates are signatory to approximately seven hundred fifty five collective bargaining agreements. Said collective bargaining agreements are executed pursuant to Ohio Revised Code Chapter 4117; specifically Ohio Revised Code §4117.09 and 4117.10 The local affiliates signatory to collective bargaining agreements are "employee organizations" pursuant to Ohio Revised Code §4117.01(D), as well "exclusive representatives" as defined in Ohio Revised Code §4117.01(E).
14. The majority of Plaintiff OEA's local affiliates' collective bargaining agreements are with signatory employers that are Ohio public school district Boards of Education. Said public school district Boards of Education are political subdivisions of the State of Ohio. Plaintiff OEA's local affiliates are also signatory to a significant number of contracts with employers that are local Boards of Mental Retardation and Developmental Disabilities ("MRDD Boards"). The local MRDD Boards are part of the State Department of Mental Retardation and Developmental Disabilities. *See* Ohio Revised Code §12.60. Plaintiff OEA also has local affiliates signatory to contracts with institutions of higher education that hold various degrees of affiliation with the State of Ohio, and with other departments of the State of Ohio as set forth in Ohio Revised Code §12.60.
15. On December 20, 2006, the General Assembly passed Amended Substitute House Bill No. 694 (hereinafter "H. B. 694"). On or about that date, the Speaker of the Ohio House of Representatives and the President of the Ohio Senate, and on

January 2, 2007, then Governor Taft all signed an earlier version of Am. Sub. H. B. No. 694, namely Substitute House Bill No. 694, which was not the bill finally passed by the General Assembly. Governor Taft filed the signed earlier version of the legislation, Substitute House Bill No. 694, with the Secretary of State on January 3, 2007.

16. On January 17, 2007, the earlier version of the legislation, Substitute House Bill No. 694, was returned to the 127th General Assembly's House of Representatives' Clerk's office by the Secretary of State's office, except for the last two pages bearing the signatures of the Speaker of the House of Representatives of the 126th General Assembly, the President of the Senate of the 126th General Assembly, the former Governor and the former Secretary of State. On that same date, a different document purporting to be H.B. 694 of the 126th General Assembly was filed with the Secretary of State and added to the signature pages. It purports to take effect April 4, 2007, although certain provisions purport to apply based on actions occurring prior to that date.
17. H. B. 694 as passed by the General Assembly was never presented to the Governor by the 126th General Assembly and was never signed by the Speaker of the House of Representatives, the President of the Senate or the Governor and has never been filed with the Secretary of State.
18. H. B. 694 amended and/or enacted new provisions of the Ohio Revised Code relevant to State and local government contracts and political contributions. For purposes of this Complaint, H. B. 694 imposes restrictions upon political contributions by labor organizations that are signatories with the State or political

subdivisions to collective bargaining agreements and to labor organizations that may in the future seek on behalf of their members a collective bargaining agreement with the State or any political subdivision of the State. For purposes of applying limitations on political contributions by labor organizations, H. B. 694 characterizes labor organizations as “unincorporated businesses” and their collective bargaining agreements as “contracts for services.”

CLAIMS

COUNT I: IMPAIRMENT OF CONTRACTS

19. Plaintiffs incorporate as if fully rewritten all of the foregoing allegations of their Complaint.
20. Ohio Constitution Article II, §28 prohibits laws impairing contracts.
21. Plaintiffs have a constitutionally enforceable right to the benefit of their collectively bargained agreements.
22. Ohio Revised Code Chapter 4117 provides recognition and enforcement of the public sector collective bargaining process and the collective bargaining agreements negotiated pursuant to that process. Ohio Revised Code §4117.09(B)(1) vests jurisdiction in the Courts of Common Pleas for suits related to the enforcement of collective bargaining agreements.
23. Ohio Revised Code Section 4117.10(A) provides that Chapter 4117 “prevails over any and all other conflicting laws, resolutions, provisions, present or future, except as otherwise specified in this Chapter 4117 or as otherwise specified by the General Assembly.” Chapter 4117 contains no specified exception for the

matters addressed in H. B. 694 and in enacting H. B. 694 the General Assembly did not specify an exception to Chapter 4117 for the matters addressed in H. B. 694.

24. H.B. 694 impairs, in violation of Ohio Constitution Article II §28, the public sector collective bargaining agreements to which Plaintiffs or their affiliates are signatories or may seek to negotiate on behalf of their members in the future. Such impairments include, but are not limited to:

A. H.B. 694's enactment of R.C. §3517.992(R)(1) mandates the rescission of a contract if its terms have not yet been performed where there has been a violation of H. B. 694's amended R.C. §3517.13(I)(1)(a) or (I)(4)(a) (restricting the award of state contracts on the basis of prior individual or PAC contributions), or (Y)(1)(a) or (Y)(4)(a) (restricting the award of state contracts or other business dealings with the Bureau of Workers Compensation on the basis of prior individual or PAC contributions).

B. H.B. 694's enactment of R.C. §3517.992(R)(2) provides that a contract may be rescinded at the discretion of the Elections Commission where a person is found guilty of violating H.B. 694's enacted changes to R.C. §3517.13(I)(2) or (I)(4)(b) (restricting individual or PAC contributions during the term of a state contract or one year after its expiration) or (Y)(2) or (Y)(4)(b) (restricting individual or PAC contributions during the term of a state contract with the Bureau of Workers Compensation or for one year after its expiration).

C. H.B. 694's enactment of R.C. §3517.992(R)(3) mandates that a contract that includes a certification made in violation of the requirements of R.C. §3517.13(I)(3) or (Y)(3) shall be rescinded.

H.B. 694's above-referenced amendments/enactments void and/or change the terms of presently effective collective bargaining agreements.

25. H.B. 694's amendment of R.C. 3517.13(R)(2) improperly authorizes the exercise of judicial and/or quasi-judicial authority to enforce H.B. 694 in a manner impairing contracts, which exercise is prohibited by Ohio Constitution Article II, §28.
26. H.B. 694 leaves collective bargaining agreements vulnerable to rescission upon vague or non-existent standards.
27. The impairment of collective bargaining agreements authorized by H.B. 694 stands in direct conflict with the Ohio Public Employee Bargaining Act (hereinafter the "SERB Act") and voids the State Employment Relation's Board's executive authority as an administrative agency without any corresponding change in the SERB Board's governing statute, Ohio Revised Code Chapter 4117.

COUNT II: RETROACTIVE EFFECT

28. Plaintiffs incorporate as if fully rewritten all of the foregoing allegations of their Complaint.
29. Ohio Constitution Article II, Section 28 prohibits retroactive laws.

30. Ohio Revised Code Section 1.48 presumes that statutes will be prospective “unless expressly made retroactive.”
31. In Sections 3 and 4 of H.B. 694 the General Assembly expressly provided for certain provisions of H.B. 694 to have retroactive effect to January 1, 2007.
32. Other provisions of H.B. 694 are also subject to retroactive application by virtue of language referring to contributions made during the prior two calendar years.
33. Collective bargaining agreements establish vested rights and accrued substantive rights. These rights include, but are not limited to: (1) wages and other working conditions, (2) accruing rights such as wage progressions, promotion opportunities, pension, health and welfare benefits, and sick day/severance accrual; and (3) rights related to displacement from employment due to layoff or discipline for just cause only. The rescission of a collective bargaining agreement pursuant to implementation of H.B. 694 would impair or take away vested rights and, at minimum, would impose additional burdens or liabilities upon past transactions. For example, the interruption of health care benefits as the result of a rescinded collective bargaining agreement would remove an accrued benefit, and the out-of-pocket cost to bargaining unit members to pay medical bills after coverage is terminated would impose a new burden or liability upon the contractual commitment to provide insurance for such costs. This constitutional injury is not analogous to any injury that would be suffered by a state contractor other than a labor organization.

34. Plaintiffs have fundamental substantive rights under the Ohio Constitution to engage in political speech and association through the making of political contributions, which they exercised by making political contributions.
35. Plaintiffs have fundamental substantive rights under the Ohio Constitution to associate for a common purpose and their common welfare, which they have exercised by supporting the candidates for public office of their choice.
36. H.B. 694 retroactively takes away or burdens these substantive rights in violation of the Constitution of Ohio by attaching new liabilities to past actions.

COUNT III: CONFLICT WITH OHIO REVISED CODE CHAPTER 4117

37. Plaintiffs incorporate as if fully rewritten all of the foregoing allegations of their Complaint.
38. The provisions of H.B. 694 violate and conflict with those provisions of Ohio Revised Code Chapter 4117 (including, but not limited to, R.C. §4117.02, §4117.03, §4117.09, and §4117.10) which support the enforceability of collective bargaining agreements. The labor stability, increased efficiency in the administration of public services, and prudent use of public funds which is fostered by O.R.C. Chapter 4117 is undermined by H.B. 694's impairment of the statutorily protected contracts which create such stability.
39. Ohio Revised Code Section 4117.10(A) mandates that Chapter 4117 prevails over any present or future enactment of the General Assembly other than those enactments specified by R.C. 4117.10(A) or by the General Assembly. H.B. 694 contains no specified exception to Chapter 4117.

40. H.B. 694 conflicts with Ohio Revised Code Chapter 4117, and impairs the statutory rights of labor organizations established in Chapter 4117, and is, therefore unenforceable.

**COUNT IV: VIOLATION OF “ONE SUBJECT” AND “TITLE”
REQUIREMENTS OF THE CONSTITUTION OF OHIO**

41. Plaintiffs incorporate as if fully rewritten all of the foregoing allegations of their Complaint.
42. Ohio Constitution Article II, §15(D) mandates that “[n]o bill shall contain more than one subject, which shall be clearly expressed in its title.”
43. H.B. 694, as applied to labor organizations, contains restrictions upon the collective bargaining rights and activities of labor organizations. H.B. 694 does not specify this subject in its title in violation of Article II, §15(D).
44. H.B. 694 is unconstitutional by virtue of its enactment of multiple subjects of legislation within a single bill in violation of Article II, §15(D).

**COUNT V: RESTRAINT OF THE RIGHTS OF SPEECH, ASSEMBLY,
CONTRACT AND TO EARN A LIVELIHOOD**

45. Plaintiffs incorporate as if fully rewritten all of the foregoing allegations of their Complaint.
46. Article I, §1 of the Ohio Constitution secures the natural rights of persons. Among these rights are free speech and assembly for political and non-political purposes, including the rights to contract and pursue a livelihood. Article I, §1 provides that:

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

47. Article I, § 3 of the Ohio Constitution secures the right of assembly and association by persons. Assembly or association for political purposes is deemed core activity within the protection of Article I, § 3.

48. Article I, § 11 of the Ohio Constitution secures the right of free speech. Political speech is deemed core activity within the protection of Article I, § 1, which provides in pertinent part that:

Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press.

49. The rights to speech, assembly, association, contract and pursuit of a livelihood are fundamental rights protected by the Ohio Constitution.

50. H.B. 694's enactment of R.C. 3517.13(L)(1)(a) and Section 4(B) of the Act restrict the political and non-political rights of association and speech of labor organizations, including Plaintiffs, and of their affiliate organizations and members in violation of Article I, §§ 1, 3 and 11 of the Ohio Constitution.

51. H.B. 694's enactment of R.C. 3517.13(L)(1)(a) and Section 4(B) of the Act arbitrarily target labor organizations, including Plaintiffs, and their members for

additional infringement of their free speech and assembly rights in violation of Article I, §§ 1, 3 and 11 of the Ohio Constitution.

52. H.B. 694's restrictions upon labor organizations' free speech and associational rights are not content neutral or speaker neutral in violation of Article I, §§ 1, 3 and 11 of the Ohio Constitution.
53. H.B. 694's restrictions upon labor organizations are overbroad and chill the exercise of protected speech and association in violation of Article I, §§ 1, 3 and 11 of the Ohio Constitution.
54. H.B. 694's restrictions on Plaintiffs and Plaintiffs members' do not serve a compelling state interest.
55. H.B. 694's restrictions on Plaintiffs and Plaintiffs members' rights are not narrowly drawn to address a compelling state interest.

COUNT VI: VIOLATION OF DUE PROCESS

56. Plaintiffs incorporate as if fully rewritten all of the foregoing allegations of their Complaint.
57. Ohio Constitution Article I, §16 secures due process of law.
58. H.B. 694 is unconstitutionally vague in its failure to specify the public entities to which the Act's restrictions and obligations apply.
59. H.B. 694 imposes an arbitrary and inaccurate characterization of labor organizations as "unincorporated businesses" and arbitrarily and inaccurately characterizes a collective bargaining agreement as a "state contract for services."

60. A labor organization is not the “employer” of the members it represents in a collective bargaining agreement. A labor organization does not provide any services to a public employer.
61. A labor organization is not a partnership or an unincorporated business, and therefore has no “partners” or “owners.”
62. H. B. 694 does not define the term “partner” or “owner” in relation to either the term “unincorporated business” or “labor organization.”
63. H. B. 694’s enactment of R.C. 3517.13(I)(3) and (Y)(3), as applied to labor organizations, require the labor organization to include a certification by the “unincorporated business” (i.e. “labor organization”) that “each partner or owner of the partnership or other unincorporated business,” their spouses or children, or any combination of such persons, are in compliance with the campaign finance restrictions imposed by H.B. 694. In the context of a labor organization, it is impossible for a labor organization to comply with this provision, or to determine how to comply with this provision, as a labor organization has no “partners” or “owners.”
64. The provisions of H. B. 694 relative to labor organizations do not define or establish criteria for what constitutes a labor organization PAC or PCE, yet the law imposes criminal penalties and bars and rescinds collective bargaining agreements based on contributions made by a labor organization PAC or PCE.

65. The penalties imposed by H.B. 694 include criminal penalties, which may be imposed against labor organizations and unspecified officers or members of labor organizations.
66. The penalty provisions of H.B. 694 call for the rescission of contracts by the Ohio Elections Commission pursuant to unspecified standards or requirements.
67. Violation of R.C. §3517.13(I)(3) and (Y)(3) is a felony of the fifth degree. Violation of R.C. §3517.13(I)(3) and (Y)(3) will result in the mandatory rescission of the contract. *See* R.C. §3517.992(R)(3). As applied to Plaintiffs and their affiliates, it cannot be determined who, among each labor organization's members or officers, is responsible for the required certification, or who among its members or officers could face fifth degree felony charges in the event of an alleged violation. If a violation were sustained, the contract subject to mandatory rescission would be the collective bargaining agreement. Rescinding the collective bargaining agreement would unjustly impose widespread injury upon all members of a bargaining unit.
68. Violation of the provisions limiting contributions prior to the issuance of a state contract are punishable by a fine up to one thousand dollars (\$1,000.00), and the contract awarded in violation of such provisions will be rescinded if its terms have not been performed. *See* R.C. §3517.992(R)(1). Violation of provisions limiting contributions from the date a state contract is awarded through one (1) year after its conclusion carry a fine of three (3) times the amount contributed in excess of the permitted amount, and the contract may be rescinded at the discretion of the Elections Commission. See R.C. §3517.992(R)(2). As the terms

“partner” and “owner” have no application to labor organizations, it is impossible to determine from the statute who is restricted by the contribution limits, the certification requirements, and the other restrictive provisions set forth in R.C. §3517.13(I) and (Y).

69. The penalty provisions of H. B. 694 are so imprecise, vague, and inapplicable to labor organizations, that it is impossible for labor organizations to conform their behavior to comply with the law and leave the law open to arbitrary and discriminatory enforcement.
70. The provisions of H. B. 694 relative to labor organizations were enacted for illegitimate partisan political purposes, not for a legitimate state interest.
71. H.B. 694’s application of 3517.13(I) and (Y) to collective bargaining agreements, its redefinition of labor organizations as “unincorporated businesses” and its redefinition of collective bargaining agreements as “state contracts” deprive labor organizations, including Plaintiffs and their affiliates, and their members of statutory rights which uphold the enforceability of collective bargaining agreements, and further deprive labor organizations and their members of their liberty rights to speech, assembly, contract and pursuit of a livelihood in violation of Article I, § 16 of the Ohio Constitution
72. H.B. 694’s application of 3517.13(I) and (Y) to collective bargaining agreements, its redefinition of labor organizations as “unincorporated businesses” and its redefinition of collective bargaining agreements as “state contracts” are

unconstitutionally vague and arbitrary and capricious in violation of Article I, § 16 of the Ohio Constitution.

73. H. B. 694 allows for the deprivation of liberty and property rights of labor organizations and their members without notice and hearing in violation of Article I, § 16 of the Ohio Constitution.

**COUNT VII: VIOLATION OF EQUAL PROTECTION OF THE LAWS –
UNEQUAL ENFORCEMENT OF R.C. CHAPTER 4117**

74. Plaintiffs incorporate as if fully rewritten all of the foregoing allegations of their Complaint.
75. Article I, §2 of the Ohio Constitution secures the right to equal protection under the laws. Article II, §1 of the Ohio Constitution defines the limits of legislative power.
76. Labor organizations that exercise their free speech and associational rights are subject to H.B. 694's restrictions and penalties. H.B. 694's penalties include the rescission of collective bargaining agreements.
77. R.C. Chapter 4117 governs public sector collective bargaining. R.C. Chapter 4117 applies to all Ohio public sector labor organizations, and R.C. §§4117.09 and 4117.10 expressly uphold the legal enforceability of collective bargaining agreements. R.C. Chapter 4117 contains no provision which permits the rescission of collective bargaining agreements.
78. The only method by which an Ohio public sector labor organization can avoid the contract rescission penalties of H.B. 694, and thereby retain the full statutory

protections of R.C. Chapter 4117, is by forfeiting its exercise of the free speech and associational rights restricted by H.B. 694.

79. H.B. 694 violates equal protection of the laws by treating labor organizations that exercise their full range of free speech and associational rights differently than labor organizations that abstain from exercising those rights. The labor organizations that exercise their rights are penalized by loss of the statutory protection of their collective bargaining agreements afforded by R.C. Chapter 4117.

**COUNT VIII: VIOLATION OF EQUAL PROTECTION OF THE LAWS –
UNEQUAL RESTRICTIONS UPON LABOR ORGANIZATIONS**

80. Plaintiffs incorporate as if fully rewritten all of the foregoing allegations of their Complaint.

81. H. B. 694 violates the rights of Plaintiffs and their members to equal protect and benefit of the laws in violation of the Ohio Constitution, including, but not limited to, the following:

A. H. B. 694 treats corporations and business trusts differently than labor organizations by imposing contribution restrictions for purposes of the award of a contract only upon persons who own more than 20% of the corporation or business trust.

B. H. B. 694 treats unincorporated businesses differently than labor organizations by imposing contribution restrictions for purposes of the award of a contract only upon owners of the business.

C. H. B. 694 treats labor organizations differently from business entities in placing restrictions on contributions by a political action committee (“PAC”) for purposes of the award of a contract by establishing different standards for deeming affiliation. A PAC deemed affiliated with a corporation or trust for purposes of H. B. 694 based on contributions only from owners of more than 20% of the corporation or trust or their spouses or children. A PAC of an unincorporated business is deemed affiliated with the business for purposes of H. B. 694 based on contributions only from owners of the business or their spouses or children. With respect to labor organizations, H. B. 694 applies its restrictions to any PAC or political contributing entity (PCE) of the labor organization.

D. H. B. 694 treats labor organizations differently than other non-profit organizations, such as chambers of commerce and business, industry and professional associations, by imposing contribution restrictions on labor organizations and their PACs and PCEs for purposes of the award of a contract, but placing no restriction on contributions by other non-profit organizations or their PACs or PCEs.

E. H. B. 694 treats labor organizations differently than all other legal entities that have or could establish a PCE by restricting contributions by the labor organization’s PCE for purposes of the award of a contract, but placing no restrictions on contributions by PCEs of other entities.

F. H. B. 694 treats labor organizations differently than individuals by restricting contributions by a PAC or PCE established by a labor organization for

purposes of the award of a contract, but placing no restriction on contributions by a PAC or PCE established by an individual.

G. H. B. 694 treats labor organizations differently than other entities and individuals that represent the interests of persons in interacting with the state and local governments, such as attorneys and lobbyists. H. B. 694 places no restrictions on contributions from such persons for purposes of the award of a contract.

H. Labor organizations are not state or local government contractors, yet H.B. 694 artificially characterizes labor organizations as contractors for the sole purpose of restricting their free speech and associational rights. H.B. 694 violates equal protection by categorizing labor organizations as “unincorporated businesses” and thereby subjecting labor organizations to a greater degree of restriction than other entities which are not state contractors.

I. H. B. 694 treats labor organizations that have a PAC or PCE that makes contributions differently from labor organizations that do not.

J. H. B. 694 treats labor organizations differently than certain other contract holders by deeming collective bargaining agreements as contracts for services and applying its contribution and contract restrictions to labor organizations, but not doing so for other contracts that are not goods or services, such as real estate purchases.

K. H. B. 694 treats labor organizations differently than other entities and individuals that work with the State and local governments to obtain benefits for

themselves or others, other than through contracts, such as grants, tax abatements, zonings, variances, and development agreements. H. B. 694 places no restrictions on such benefits based on contributions made.

L. H. B. 694 treats labor organizations differently than individuals who are employed by or are seeking employment, higher wages or advancement with an officeholder. H. B. 694 places no restrictions upon the granting and procurement of employment or employment related benefits to an individual regardless of contributions to the officeholder. Indeed, R. C. 3517.13(L)(1)(b) exempts such contracts.

M. H. B. 694's "rescission of contract" and fifth degree felony penalties disproportionately injure labor organizations and their members with a severity that has no analogy to state contractors that are not labor organizations. H.B. 694's disparate impact upon labor organizations violates equal protection.

N. H. B. 694 treats labor organizations that have or may seek a collective bargaining agreement differently from labor organizations and others that do not have and do not seek contracts with a statewide officeholder by applying different contribution limits.

82. H. B. 694 violates the rights of labor organizations, including Plaintiffs and their affiliates, and their members to equal protection and benefit of the laws in violation of Article I, § 2 and Article II, § 1 of the Ohio Constitution.

COUNT IX: SEPARATION OF POWERS

83. Plaintiffs incorporate as if fully rewritten all of the foregoing allegations of their Complaint.
84. H. B. 694 violates the doctrine of separation of powers inherent in the Constitution of Ohio. Legislative power is addressed in Ohio Constitution Article II, Section 1, and executive power is defined in Ohio Constitution Article III, Section 5.
85. In its enactment of H.B. 694, the General Assembly has divested the SERB Board of its executive power to uphold the enforceability of collective bargaining agreements pursuant to R.C. Chapter 4117, and has thereby has interfered with the constitutional authority of the executive branch.

COUNT X: H.B. 694 IS VOID FOR FAILURE TO COMPLY WITH ARTICLE II, SECTIONS 1c, 15(E) AND 16 OF THE OHIO CONSTITUTION

86. Plaintiffs incorporate as if fully rewritten all of the foregoing allegations of their Complaint.
87. Article II, § 1 of the Ohio Constitution vests the legislative power of the state in the General Assembly. Article II, § 15(A) requires the concurrence of a majority of the members of both houses of the General Assembly to pass a bill.
88. Article II, § 15(E) provides that every bill which has passed both houses of the General Assembly shall be signed by the presiding officer of each house to certify that the procedural requirements for passage have been met and shall forthwith be presented to the Governor for his approval.

89. Article II, § 16 of the Ohio Constitution provides that an Act passed by the General Assembly to become law, it must: a) be signed by the Governor; b) be returned by the Governor with written objections to the House where it originated and be repassed by both Houses of the General Assembly by three-fifths of the members in each House; c) the Governor does not return the bill to the House of origin within ten days, not including Sundays, after it is presented to him, unless the General Assembly prevents the bill's return by adjournment; or d) if the General Assembly has adjourned, the Governor does not file the bill with his objections in the office of the Secretary of State.
90. Article II, § 16 of the Ohio Constitution requires that the Governor shall file with the Secretary of State every bill not returned by him to the House of origin that becomes law without his signature.
91. Article II, § 1c of the Ohio Constitution provides that no law passed by the General Assembly shall go into effect until ninety days after it shall have been filed by the Governor with the Secretary of State.
92. H. B. 694 never became law because H. B. 694, as passed by the General Assembly, was not certified by the Speaker of the House of Representatives and the President of the Senate in accordance with Art. II, § 15(E). Rather, legislation not in fact passed by the General Assembly was signed and certified.
93. H. B. 694 never became law because H. B. 694, as passed by the General Assembly, was not forthwith presented to the Governor for his approval in accordance with Art. II, § 15(E).

94. H. B. 694 never became law because H. B. 694, as passed by the General Assembly, was not signed by the Governor or filed with the Secretary of State without his signature in accordance with Art. II, § 16. Rather, legislation not in fact passed by the General Assembly was signed and filed.
95. The portions of H. B. 694 relative to labor organizations never became law because those provisions were not certified by the Speaker of the House of Representatives and the President of the Senate in accordance with Art. II, § 15(E), were not signed by the Governor in accordance with Art. II, § 16, and were not filed by the Governor with the Secretary of State in accordance with Art. II, § 16.

COUNT XI: H. B. 694 WAS NOT TIMELY PRESENTED TO THE GOVERNOR TO BECOME A LAW

96. Plaintiffs incorporate as if fully rewritten all of the foregoing allegations of their Complaint.
97. The 126th General Assembly House of Representatives adjourned *sine die* on December 22, 2006 and the Senate adjourned *sine die* on December 26, 2006.
98. H. B. 694 never became law because it was not presented to the Governor by the 126th General Assembly before the 126th General Assembly adjourned *sine die*.

COUNT XII: H. B. 694 CAN NOT BECOME EFFECTIVE BECAUSE IT WAS NOT FILED BY THE GOVERNOR WITH THE SECRETARY OF STATE

99. Plaintiffs incorporate as if fully rewritten all of the foregoing allegations of their Complaint.

100. H. B. 694 was never filed by the former Governor with the Secretary of State as required by Art. II, § 16 of the Ohio Constitution. Therefore, in accordance with Article II, § 1c of the Ohio Constitution, it can not become effective.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray the Court to grant the following relief:

- A. Declare that the provisions of H.B. 694 applicable to labor organizations violate Article I, §§1, 2, 3, 11 and 16, and Article II, §§1, 15(D) and 28 of the Ohio Constitution;
- D. Declare that the provisions of H.B. 694 applicable to labor organizations conflict with the provisions of Ohio Revised Code Chapter 4117, and as such are not enforceable;
- E. Declare that H. B. 694 did not become law because of noncompliance with Article II, §§ 15(E) and 16 of the Ohio Constitution.
- F. Declare that H. B. 694 can not become effective because it was not filed with the Secretary State in accordance with Article II, §§ 1c and 16 of the Ohio Constitution.
- G. Issue preliminary and permanent injunctions enjoining Defendant from enforcement of the provisions of H.B. 694 against labor organizations;
- H. Award Plaintiffs their reasonable attorney fees and expenses;
- I. Assess costs against Defendant; and
- J. Award such other relief as is appropriate.

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