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**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE**
**TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY**

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| **TENNESSEE EDUCATION ASSOCIATION, KNOX COUNTY EDUCATION ASSOCIATION, LAWRENCE COUNTY EDUCATION ASSOCIATION, METROPOLITAN NASHVILLE EDUCATION ASSOCIATION, GARY TAFT, and JOSHUA VADEN,** | ) | |
| **Plaintiffs,** | ) | **No. 23-0784-II** |
| **v.** | ) | **Chancellor Anne C. Martin, Chief Judge**<br>**Judge A. Blake Neill**<br>**Chancellor Pamela A. Fleenor** |
| **BILL LEE, GOVERNOR OF THE STATE OF TENNESSEE, in his official capacity, and LIZZETTE GONZALEZ REYNOLDS, COMMISSIONER OF THE TENNESSEE DEPARTMENT OF EDUCATION, in her official capacity,** | ) | |
| **Defendants.** | ) | |

## ORDER

Before the Court is the Plaintiffs' Motion requesting a temporary injunction of Section 2 of 2023 Tennessee Public Chapter 437 (the "Act"). Plaintiffs allege Section 2 violates Tennessee Constitution Article II, § 17's single subject and caption provisions. They also allege the Act impairs the obligation of contracts in violation of U.S. Constitution Article I, § 10 and Tennessee Constitution Article 1, § 20.[1] The parties came before the Court for hearing, via Zoom, on July 13, 2023. After review, and for the reasons that follow, the Court **DENIES** Plaintiffs' motion.

[1] As discussed in further detail below, Plaintiff Knox County Education Association does not join these claims. *See* note 7, *infra*.

## I. Factual and Procedural History

When public school educators in Tennessee join the workforce, they have the option of joining one or more professional education associations.[2] (*See generally* Compl. ¶¶ 3-10). Education associations work in ways similar to unions: educators pay dues to the associations they join, and in return, the associations advocate for their members on a host of issues, as well as provide benefits such as insurance coverage and access to professional development programs. (*See, e.g.*, Decl. of Tanya Coats ¶ 5; Decl. of Renay Fernandez ¶ 6).

One primary way education associations work for their members is through collaborative conferencing[3] with local boards of education. *See* Tenn. Code Ann. § 49-5-608; (Compl. ¶ 18). Under Tennessee law, education associations (as the "designated representatives" of their members) and local boards of education negotiate numerous terms of employment through the collaborative conferencing process, from formal grievance processes to working conditions.[4] *Id.* The policies and procedures that govern the terms agreed to in the collaborative conferencing process are then generally translated into memoranda of understanding ("MOUs")—freestanding contracts that vary from one school district to another. (Compl. ¶ 19).

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[2] In this case, each Local Education Association Plaintiff operates under a "unified membership structure" with the Tennessee Education Association and the National Education Association. (Compl. ¶ 5). Therefore, any educator who joins a local affiliate "also agrees to join the TEA and NEA and to pay the dues required for membership in each of the associations." (*Id.*).

[3] State law defines "collaborative conferencing" as

> the process by which the chair of a board of education and the board's professional employees, or such representatives as either party or parties may designate, meet at reasonable times to confer, consult and discuss and to exchange information, opinions and proposals on matters relating to the terms and conditions of professional employee service, using the principles and techniques of interest-based collaborative problem-solving.

Tenn. Code Ann. § 49-5-602(2).

[4] The scope and manner of involvement of each education association in the collaborative conferencing process varies based on the decisions of the local educators. (*See* Compl. ¶ 18).

How educators pay their membership dues is up to them. Sometimes, the MOUs governing their school districts will contain terms governing payroll deduction of membership dues.[5] (*See id.* ¶ 20). Other times, the terms are set by board policy. (*Id.* ¶ 21). Either way, authorizations for payroll deductions of education association dues are commonplace in Tennessee. (*Id.* ¶ 22). For most education association members, the dues are deducted automatically from their paychecks pursuant to authorizations that the members voluntarily provide when they sign their membership agreement with the education association. (*See, e.g.,* Compl. ¶ 24; Coats Decl. ¶ 12; Decl. of Joshua Vaden ¶ 5). For example, the Tennessee Education Association's membership agreement contains a provision where educators may "authorize the local Board of Education or other employer to deduct from [their] paycheck, in regular installments, dues as reflected above, including any annual increase." (Compl. ¶ 24). Members may also choose other options such as cash, check, or money order. (*Id.*). Members may opt out of automatic deduction payments between August 1 and August 31 of each year with no penalty. (*See, e.g.*, Coats Decl. Ex. A).

On May 16, 2023, Governor Bill Lee signed into law Public Chapter 437, which was set to go into effect on July 1. *See* 2023 Tenn. Pub. Acts, ch. 437.[6] The caption of Public Chapter 437, which is the subject of some of Plaintiffs' constitutional claims, describes the law as "AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 2, Part 1 and Title 49, Chapter 3, Part 3, relative to wages." *Id.* The Act contains two primary sections. Section 1, which all parties agree is constitutional, creates a new salary schedule for teachers across the State. At issue in this case is Section 2 of the Act, which bars Local Education Associations ("LEAs") from "deduct[ing] dues

[5] Payroll deductions are generally required to be discussed as part of the collaborative conferencing process. *See* Tenn. Code Ann. § 49-5-608(a)(7).

[6] The Complaint incorrectly states the Act was signed on May 15.

from the wages of the LEA's employees for a professional employees' organization." The Act does not prohibit employees from "personally and voluntarily remitting" such dues. *Id.* § 2(c).

The Plaintiffs in this case include the Tennessee Education Association ("TEA"), Knox County Education Association ("KCEA"), Metropolitan Nashville Education Association ("MNEA"), and Lawrence County Education Association ("LCEA"), each of which presently allows its members to pay their dues via automatic payroll deduction. (Coats Decl. ¶ 6 & Ex. A; Fernandez Decl. ¶ 7 & Ex. A; Decl. of Paula Hancock ¶ 7 & Ex. A; Decl. of Paula Pendergrass ¶ 7 & Ex. A). Plaintiffs also include Gary Taft and Joshua Vaden, two teachers from other school districts who also pay their membership dues via automatic payroll deduction. (Decl. of Gary Taft ¶ 9 & Ex. A; Vaden Decl. ¶ 5 & Ex. A). Together, they contend that the Act voids provisions like those in the association Plaintiffs' MOUs with their local boards of education governing payroll deductions of association membership dues as well as the individual Plaintiffs' membership agreements that lets them authorize or seek to authorize payroll deductions for their membership dues.

This case involves two sets of contracts. The first are those between the LEA Plaintiffs and their respective local boards of education. Plaintiff LCEA's MOU with the Lawrence County Board of Education runs until June 30, 2024. (Fernandez Decl. Ex. B at 24). It provides that upon completion of the requisite forms, the Board shall make the appropriate deductions and remit them to the professional associations within ten business days. (*Id.*, Ex. B at 5-6). An employee's authorization for dues deduction continues year to year unless revoked in writing before September 1 of that new school year. (*Id.*). Plaintiff MNEA's MOU with the Metropolitan Nashville Public Schools Board of Education is in effect until August 10, 2024 and contains similar provisions. (*See* Pendergrass Decl. ¶ 11, Ex. B at 52-53). In both cases, the respective boards of education

have reserved the right to change their payroll practices absent further negotiation. (*See* Fernandez Decl. Ex. B at 23; Pendergrass Decl. Ex. B at 52).

The second set of contracts involved in this case are the membership applications of individual educators such as Plaintiffs Taft and Vaden to their professional associations. These applications "authorize the local Board of Education or other employer to deduct from [their] paycheck" their membership dues but also allow the individual educators to choose other methods of dues payments, including cash, check, money order, and bank drafts. (Taft Decl. Ex. A; Vaden Decl. Ex. A). Members may opt out of automatic deduction payments between August 1 and August 31 of each year; otherwise, the deductions take place on a continuing basis. (*See* Coats Decl. Ex. A).

Plaintiffs brought this action in the Chancery Court for Davidson County on June 12, 2023 and contemporaneously filed a Motion for a Restraining Order and Temporary Injunction. (*See* Compl.; Pl.'s Mot. for Temp. Inj.). The case was then referred to the Supreme Court for appointment of a three-judge panel pursuant to Tenn. Code Ann. § 20-18-101 and Tenn. Sup. Ct. R. 54. A panel was appointed on June 27, 2023, and on June 29, 2023, the Court granted a temporary restraining order. The Court extended its order on July 14, 2023 an additional fifteen days to July 29, 2023 pursuant to Tenn. R. Civ. P. 65.03(5).

In their Complaint, Plaintiffs allege that Section 2 of the Act is unconstitutional under three state and federal constitutional provisions. First, they allege Section 2 violates Article II, § 17 of the Tennessee Constitution because: 1) it combines teacher salary increases with "the wholly distinct subject of prohibiting school districts from facilitating educators' voluntary payments of membership dues" and therefore "impermissibly embraces more than one subject"; 2) its caption fails to accurately describe the bill because it only refers to "wages" and not "Section 2's prohibition against the voluntary payment of educators' membership dues"; and 3) its caption fails

to disclose that it at least implicitly repeals Tenn. Code Ann. § 49-5-608(a)(7), which "allow[s] such deductions to be negotiated and included in binding memoranda of understanding between school districts and a professional educators' organizations." (Pl.'s Mot. for Temp. Inj. 1-2). Second, Plaintiffs allege Section 2 of the Act violates both state and federal constitutional provisions that forbid laws "impairing the obligation of contracts." (*Id.* at 2); *see also* U.S. Const. art. I, § 10; Tenn. Const. art. I, § 20.[7] Defendants also bring up an issue of standing, arguing Governor Lee is not a proper party in this action.

As explained below, because Plaintiffs are unlikely to succeed on the merits of either claim, the Court will **DENY** Plaintiffs' motion.

## II. Temporary Injunction Standard

A court has discretion to grant a temporary injunction

> if it is clearly shown by verified complaint, affidavit or other evidence that the movant's rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual.

Tenn. R. Civ. P. 65.04(2). When deciding whether to grant a temporary injunction, Tennessee courts consider four factors: "(1) the threat of irreparable harm to the plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest." *Moore v. Lee*, 644 S.W.3d 59, 63 (Tenn. 2022) (quoting *Fisher v. Hargett*, 604 S.W.3d 381, 394 (Tenn. 2020)). When, as is the case here, "the temporary injunction is sought on the basis of an alleged constitutional violation, the third factor—likelihood of success on the merits—often

[7] Plaintiffs argue that the state and federal Contracts Clauses have been violated because the Act "renders nugatory" the provisions of their respective membership agreements allowing for voluntary payroll deductions of membership dues. (Pl.'s Mot. for Temp. Inj. 2). Because Plaintiff KCEA's payroll deductions are governed by board policy, they do not join this section of the Complaint. (*See* Compl. at 23).

is the determinative factor." *Fisher*, 604 S.W.3d at 394 (citing *Obama for America v. Husted*, 697 F.3d 423, 428 (6th Cir. 2012)); *see also id.* at 407 (Lee, J., concurring in part and dissenting in part) (noting that "issues of the public interest and harm to the respective parties largely depend on the constitutionality" of the challenged action (quoting *Daunt v. Benson*, 956 F.3d 396, 406 (6th Cir. 2020))).

**III. Findings of Fact**

After reviewing the record and considering the arguments of the parties, the Court makes the following findings of fact based on the record as required by Tenn. R. Civ. P. 65.04(6).

Plaintiff TEA is a non-profit organization that provides support and services to its membership of education professionals, both at a local and statewide level.

Plaintiffs KCEA, MNEA, and LCEA are all Local Education Associations who provide support and services to their members at the local level. Each LEA works in conjunction with TEA on a host of issues on behalf of their members.

Each LEA involved in this case operates under a unified membership structure with the TEA and NEA. Being a member of an LEA requires membership in the TEA and NEA.

Membership in these associations is entirely voluntary, and an individual may opt out of their membership between August 1 and August 31 of each year with no penalty.

The Professional Educators Collaborative Conferencing Act of 2011 ("PECCA") governs the terms and conditions of employment for public school educators in Tennessee.

The TEA and LEA Plaintiffs often engage in collaborative conferencing through PECCA on behalf of their members.

PECCA requires LEAs and local boards of education to discuss certain issues when they engage in collaborative conferencing, including payroll deductions.

If the parties reach an agreement through the collaborative conferencing process, then the terms of that agreement are set out in a written Memorandum of Understanding. There are currently fifteen MOUs in place across Tennessee between various LEAs and local boards of education.

Plaintiffs MNEA and LCEA's members are able to pay their membership dues to these associations though automatic payroll deductions pursuant to written Memoranda of Understanding negotiated between the LEAs and their respective local boards of education.

Plaintiff LCEA's MOU with the Lawrence County Board of Education runs until June 30, 2024. Plaintiff MNEA's MOU with the Metropolitan Nashville Public Schools Board of Education runs until August 10, 2024.

Both MOUs provide that the local board of education is required to deduct association dues from the paychecks of members who request automatic deduction and remit those deductions to the appropriate professional association.

Both MOUs contain provisions allowing the local board of education to change their payroll practices absent further negotiation in appropriate circumstances.

Plaintiff KCEA's members are able to pay their membership dues to these associations through automatic payroll deductions pursuant to a policy adopted by the Knox County Schools Board of Education.

Plaintiff Gary Taft is a high school teacher and member of the Lenoir City Association of Educators, the TEA, and the NEA. He pays his dues to these associations through automatic payroll deductions.

Plaintiff Joshua Vaden is a high school teacher and member of the Robertson County Education Association, the TEA, and the NEA. He pays his dues to these associations through automatic payroll deductions.

The standard TEA membership application both individual Plaintiffs utilize provides boxes for members to check indicating how they wish to pay their dues for the year. An employee's authorization for dues payment continues year to year unless revoked in writing before September 1 of that new school year.

In addition to professional association dues, local school districts typically provide a variety of other payroll deductions, including federal income tax withholding, health care premiums, and even YMCA dues and charitable organization contributions.

Those who choose not to have their membership dues automatically deducted from their paychecks can instead pay with cash, check, money order, or through TEA's EZ Pay system, which collects dues through recurring credit card charges or electronic funds transfer from members' bank accounts.

On May 16, 2023, Governor Bill Lee signed Public Chapter 437 into law.

Under Section 2 of Public Chapter 437, association members will no longer have the option of choosing to have their membership dues automatically deducted from their paychecks.

Other options remain available for association members to pay their dues, including cash, check, money order, and the EZ Pay system. Plaintiff TEA has already launched a campaign to encourage its members to switch to the EZ Pay system.

Not every association member will follow through with the switch to EZ Pay. Some may choose to pay in cash or check, and some may fail to pay dues going forward.

Plaintiffs assert that switching to the EZ Pay system will result in decreased revenues to the association Plaintiffs due to credit card and bank processing fees.

## IV. Conclusions of Law

### A. Caption Clause

Article II, Section 17 of the Tennessee Constitution provides that "[n]o bill shall become a law which embraces more than one subject, that subject to be expressed in the title. All acts which repeal, revive or amend former laws, shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended." Plaintiffs allege the Act violates each of Article II, Section 17's commands. First, they allege the Act "embraces more than one subject." Second, they allege the Act's caption does not adequately express the inclusion of both subjects. Finally, Plaintiffs allege the Act amends PECCA, Tenn. Code Ann. §§ 49-5-601 to -609, without properly stating as much in its caption.

Article II, Section 17's purpose is to "prevent 'surprise and fraud' and to inform legislators and the public about the nature and scope of proposed legislation." *Tenn. Mun. League v. Thompson*, 958 S.W.2d 333, 338 (Tenn. 1997). The issue is one of information; the Caption Clause seeks "to prohibit so-called 'omnibus bills' and bills containing hidden provisions of which legislators and other interested persons might not have appropriate or fair notice." *State ex rel. Blanton v. Durham*, 526 S.W.2d 109, 111 (Tenn. 1975). As such, courts should review statutes challenged under the Caption Clause carefully to ensure the legislature does not "combin[e] in the same act . . . laws upon wholly different subjects." *Trotter v. City of Maryville*, 235 S.W.2d 13, 16 (Tenn. 1950).

At the same time, courts must also make sure not to encroach on the legislature's authority to "enact any law which our Constitution does not prohibit." *Fisher*, 604 S.W.3d at 397 (quoting *Willeford v. Klepper*, 597 S.W.3d 454, 465 (Tenn. 2020)). We must "begin with the presumption that an act of the General Assembly is constitutional" and "indulge every presumption and resolve every doubt in favor of the constitutionality of the statute." *Id.* To that same end, the Caption

Clause must be "liberally construed so that the General Assembly w[ill] not be 'unnecessarily embarrassed in the exercise of its legislative powers and functions.'" *Tenn. Mun. League*, 958 S.W.2d at 336 (quoting *Memphis St. Ry. Co. v. Byrne*, 104 S.W. 460, 461 (Tenn. 1907)). The result is that courts "will presume that the caption adequately expresses the subject of the body of an act and avoid a technical or narrow construction of the caption." *Chattanooga-Hamilton Cnty. Hosp. Auth. v. City of Chattanooga*, 580 S.W.2d 322, 326 (Tenn. 1979).

**1. Multiple Subjects; Caption Description**

Plaintiffs' first two Caption Clause challenges allege that the Act unconstitutionally combines two subjects into one bill.[8] As noted above, the Act's caption expresses that it amends Tennessee law "relative to wages." Plaintiffs argue that while Section 1 of the Act—the portion that establishes a new pay scale for teacher salaries—is "relative to wages," Section 2's prohibition of automatic deductions for professional association dues is not. But Plaintiffs' argument would have us read the Act's caption too narrowly.

Part of the Court's analysis under the Caption Clause requires a recognition that "titles to acts may be general and broad or restrictive and narrow, and that the legislature has the right to determine for itself how comprehensive the object of the statute will be." *Tenn. Mun. League*, 958 S.W.2d at 336. When a caption "relates to" a subject, "the body of the act must be germane to" that subject. *Id.* at 337; *see also Cannon v. Mathes*, 55 Tenn. (8 Heisk.) 504, 523 (1872) (stating "that any provision of the act, directly or indirectly relating to the subject expressed in the title, and having a natural connection thereto, and not foreign thereto, should be held to be embraced in it"). Here, the term "relative to wages" is general enough to cover both sections of the Act. The

[8] Plaintiffs' second argument is more or less an extension of their first. Plaintiffs say the Act combines two subjects because only one portion of the Act is related to wages. They then argue that the caption inadequately describes the Act because the caption only mentions wages. Resolution of the first question necessarily answers the second as well. If the Act combines two subjects, then the caption is inadequate. However, if the bill does encompass only one subject—wages (and all parties agree the bill at least in part concerns wages)—then the caption is sufficient.

case *State ex rel. Tipton v. City of Knoxville*, 205 S.W.3d 456 (Tenn. Ct. App. 2006) is instructive. In *Tipton*, the plaintiffs challenged a law that shifted the burden of proof and eliminated the right to a jury trial in certain annexation cases. *See id.* at 460. They alleged that the bill enacting these changes violated the Caption Clause because the bill's title provided that its purpose was simply "relative to growth." *Id.* at 466. The Court of Appeals held that the Caption Clause was not violated because altering how annexation trials were conducted "affect[s] the growth of municipalities, and . . . [is] germane to the 'growth' of municipalities." *Id.* at 467. And because the Caption Clause "does not require that a caption express the means or instrumentalities used to accomplish the purpose of an act," *id.*, the caption was constitutional under Article II, Section 17.

So too here. The term "relative to wages" is broad. This caption is not like the detailed, specific captions discussed in the cases Plaintiffs offer in support of their argument. *See Tenn. Mun. League*, 958 S.W.2d at 334 ("An ACT . . . relative to the distribution of situs-based tax collections after new municipal incorporations and the timing of elections to incorporate new municipalities"); *Armistead v. Karsch*, 237 S.W.2d 960, 961 (Tenn. 1951) ("An Act . . . so as to consolidate certain pension funds of the City of Nashville, fix the contributions of employees thereto, and to provide certain benefits for widows of pensioned employees"). The legislature could have chosen to have a caption more specific than "relative to wages," but it did not. That is its prerogative, and it by itself is not a choice that will cause the Court to hold that the Act violates the Caption Clause. *See Tenn. Mun. League*, 958 S.W.2d at 336.

Plaintiffs make much of previous case law explaining that the phrase "relative to" has "a restrictive or narrowing effect." (*See* Pl.'s Br. in Support of Temp. Inj. at 21 (citing *Tenn. Mun. League*, 958 S.W.2d at 337)). The Tennessee Supreme Court has previously held that the phrase "relative to" in the context of a Caption Clause challenge "means 'relevant to; concerning; about; corresponding to; in proportion to.'" *Tenn. Mun. League*, 958 S.W.2d at 337 (quoting Webster's

New World Dictionary (2d ed.1980)). Plaintiffs' point that this narrows an act's caption is true as far as it goes. But a caption stating that an act is "relative to" a certain subject narrows it only insofar as it must affect matters "relevant to; concerning; about; corresponding to; [or] in proportion to" that subject. *Id.* Said another way, even an act narrowed by the phrase "relative to" is not violative of the Caption Clause so long as all matters within the act are "germane to" the subject in question. *See id.*

And Section 2 of the Act is clearly "relevant to; concerning; about; corresponding to; [or] in proportion to," *i.e.*, "relative to" wages. It reads, in its entirety:

> SECTION 2. Tennessee Code Annotated, Title 49, Chapter 2, Part 1, is amended by adding the following as a new section:
>
> (a) As used in this section:
>
> (1) "Dues" means the fees imposed on individuals as a condition of their participation or membership in a professional employees' organization; and
>
> (2) "Professional employees' organization" has the same meaning as defined in § 49-5-602.
>
> (b) Notwithstanding chapter 5, part 6 of this title, an LEA shall not deduct dues from the wages of the LEA's employees for a professional employees' organization, including, but not limited to, a professional employees' organization that is affiliated with a labor organization exempt under 26 U.S.C. § 501 (c)(5).
>
> (c) This section does not prohibit an employee of an LEA from personally and voluntarily remitting dues to a professional employees' organization.

2023 Tenn. Pub. Acts, ch. 437. Subsection (b) of Section 2 specifically prohibits an LEA from deducting dues "*from the wages*" of its employees in certain situations. So this section of the Act "affect[s]" wages in that employees may no longer have professional association dues automatically deducted from their paycheck (which reflects their wages). Without wages, there is no payroll, and without payroll, there can be no payroll deductions. Section 2 is therefore

"germane to" or "indirectly related to" wages, so the Act's caption sufficiently covers it. *Cf. Tipton*, 205 S.W.3d at 467. For these reasons, Plaintiffs are unlikely to succeed on their claims that the Act covers more than one subject or that its caption does not adequately express the subject matter.

**2. Amendment of PECCA**

Plaintiffs' remaining Caption Clause challenge is that the Act improperly amends PECCA without stating as much in the title. Article II, Section 17 requires that when an act "repeal[s], revive[s] or amend[s] former laws," that act "shall recite in their caption, or otherwise, the title or substance of the law repealed, revived or amended." However, our Supreme Court has previously held that "it is not necessary to recite the title or substance of all prior laws which are affected by the positive provisions of a subsequent enactment." *Chattanooga-Hamilton Cnty. Hosp. Auth.*, 580 S.W.2d at 327 (quoting *Dorrier v. Dark*, 540 S.W.2d 658, 659 (Tenn. 1976)). Acts which affect other laws "only so far as they may be irreconcilable or inconsistent with the Act under review" do not outright "repeal" or "amend" a law for purposes of the Caption Clause. *Martin v. State*, 519 S.W.2d 793, 795 (Tenn. 1975) (quoting *Brown v. Knox Cnty.*, 212 S.W.2d 673, 676 (Tenn. 1948)).

Plaintiffs' argument is straightforward. The Act's caption expresses that it is to amend "Tennessee Code Annotated, Title 49, Chapter 2, Part 1 and Title 49, Chapter 3, Part 3, relative to wages." Section 2 of the Act provides that certain dues may not automatically be deducted "[n]otwithstanding chapter 5, part 6 of this title." Therefore, because the caption did not also note that it was amending Tennessee Code Annotated Title 49, Chapter 5, Part 6, the Act is unconstitutional.

A closer reading of both the Act and of PECCA belies this assertion. Plaintiffs specifically allege that the Act "conflicts with," and thus "effectively" and "necessarily" amends and repeals

Tenn. Code Ann. § 49-5-608(a)(7). (Pl.'s Br. in Support of Temp. Inj. at 22, 24). Section -608 covers the scope of what local boards of education and employees must cover when they engage in collaborative conferencing. Under subsection (a), the board "shall be required" to discuss:

> (1) Salaries or wages;
>
> (2) Grievance procedures;
>
> (3) Insurance;
>
> (4) Fringe benefits, but not to include pensions or retirement programs of the Tennessee consolidated retirement system or locally authorized early retirement incentives;
>
> (5) Working conditions; except those working conditions which are prescribed by federal law, state law, private act, municipal charter or rules and regulations of the state board of education, the department of education or any other department or agency of state or local government;
>
> (6) Leave; and
>
> (7) Payroll deductions; except as provided in subsection (b).[9]

Under PECCA's plain language, all payroll deductions are subject to collaborative conferencing, not just those related to professional association dues. Plaintiffs themselves acknowledge that "school districts generally provide" a whole host of payroll deductions, both voluntary and involuntary. (*See* Compl. ¶ 22 (listing, among others, "federal income tax withholding," "FICA taxes," "teacher premiums for medical, dental, and other health care plans," "YMCA dues," and "United Way or other charitable organization contributions")). And nothing in the Act removes that panoply from PECCA's coverage. Instead, it carves out one specific type of payroll deduction being made through one specific mechanism that has already been restricted under Tenn. Code Ann. § 49-5-608(b)(6). This is not the same as a repeal or amendment of the law.

[9] Subsection (b)(6) specifies that "no collaborative conferencing shall be conducted on" payroll deductions "for political activities."

Plaintiffs' reliance on *Hays v. Federal Chemical Co.*, 268 S.W. 883 (Tenn. 1925) and *State v. Chastain*, 871 S.W.2d 661 (Tenn. 1994) is misplaced. In both cases, the fact that the act in question served to "repeal, revive or amend" the law in question was not in dispute. The act in *Hays* outright increased the percentage of wages owed to the widow of a deceased employee. *See* 268 S.W. at 883. The act in *Chastain* amended the statute of limitations and jurisdictional provisions of the Post-Conviction Procedure Act even though the caption indicated it only concerned provisions "relative to the confiscation of motor vehicles of certain offenders." *See* 871 S.W.2d at 666-67. Additionally, the Court held the Caption Clause was violated in *Chastain* in large part because "members of the General Assembly were given no indication by the *language of the bill* that additional statutes not mentioned in the caption . . . were being amended without being repealed in their entirety." *Id.* (emphasis added). The Act's caption references Tennessee Code Annotated Title 49, Chapter 2 Part 1. Section 2 amends this specific part of the code and alerts its readers that the amendment applies "notwithstanding Chapter 5 part 6 of this title," *i.e.*, PECCA. Unlike in *Chastain*, the language of Section 2 fairly indicates that PECCA is affected by the Act.[10]

Here, the Act prevents automatic deduction of professional association membership dues, which we have already held is "relative to wages." It does nothing to amend or repeal PECCA. Before the Act, payroll deductions were required to be discussed as a part of the collaborative conferencing process; after the Act, payroll deductions are required to be discussed as a part of the collaborative conferencing process. The only difference is that now, association members may

[10] Moreover, even if a court could find that the Act amends or repeals part of PECCA, it would be at most by implication. And it has long been held that the Caption Clause only applies "to such acts as undertake directly to repeal previous laws, and not to acts by the positive provisions of which previous laws may be repealed by implication." *Maney v. State*, 74 Tenn. (6 Lea) 218, 221-22 (1880); *see Martin*, 519 S.W.2d at 795-96.

not enter into a contract that provides for automatic deductions of those membership dues—a matter not squarely addressed by PECCA's plain text in the first place.

Plaintiffs, therefore, are also unlikely to succeed on the merits of this argument. Since Plaintiffs' chances of success on the merits of all three Caption Clause challenges are unlikely, the Court will **DENY** Plaintiffs' request for a temporary injunction on this basis.[11]

**B. Contracts Clause**

Plaintiffs TEA, LCEA, MNEA, Taft and Vaden next assert that the Act violates both the state and federal Contracts Clauses, which prohibit laws "impairing the obligation of contracts." U.S. Const. art. I, § 10; Tenn. Const. art. I, § 20. "Although the language of the Contract Clause is facially absolute, its prohibition must be accommodated to the inherent police power of the State 'to safeguard the vital interests of its people.'" *Energy Reserves Grp., Inc. v. Kan. Power & Light Co.*, 459 U.S. 400, 410 (1983) (quoting *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 434 (1934)). Under current Contract Clause jurisprudence, states may not "impos[e] 'a substantial impairment' on a 'contractual relationship,' unless that impairment amounts to a 'reasonable' and 'appropriate' means of achieving 'a significant and legitimate public purpose.'" *Mich. State AFL-CIO v. Schuette*, 847 F.3d 800, 804 (6th Cir. 2017) (first quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978); then quoting *Energy Reserves Grp.*, 459 U.S. at 411-12).[12] When an affected contract is made between private parties, such as the individual Plaintiffs' membership applications, "[a]s is customary in reviewing economic and social regulation, . . .

[11] Even though likelihood of success on the merits "often is the determinative factor" in constitutional challenges, *Fisher*, 604 S.W.3d at 394, the other temporary injunction factors also weigh against Plaintiffs. The threat of irreparable harm to Plaintiffs is low. Association members have other tools at their disposal to pay their membership dues, and the TEA has already begun a statewide effort to move its members over to the EZ Pay system. (*See* Compl. ¶¶ 26, 28, 32). And the public interest "lies in the correct application of the law." *Kentucky v. Biden*, 23 F.4th 585, 612 (6th Cir. 2022); *see also Nken v. Holder*, 556 U.S. 418, 435 (2009) (noting the harm to the opposing party and public interest factors merge when the government is the defendant).

[12] The Tennessee Supreme Court has held that the meaning of the Tennessee Constitution's Contracts Clause is identical to its federal counterpart. *See First Util. Dist. of Carter Cnty. v. Clark*, 834 S.W.2d 283, 287 (Tenn. 1992).

courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." *Energy Reserves Grp.*, 459 U.S. at 412-13 (quoting *United States Tr. Co. v. New Jersey*, 431 U.S. 1, 22-23 (1977)).

The first inquiry is a threshold one: "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Energy Reserves Grp.*, 459 U.S. at 411 (quoting *Allied Structural Steel Co.*, 438 U.S. at 244). If the law in question does not produce a substantial impairment, the analysis stops there. *See Sveen v. Melin*, 138 S. Ct. 1815, 1822 (2018). When evaluating a contractual change for substantial impairment, courts will consider "the extent to which the law undermines the contractual bargain, interferes with a party's reasonable expectations, and prevents the party from safeguarding or reinstating his rights." *Id.* Additionally, if the industry at issue "has previously been regulated with respect to the particular aspect that is the subject of the challenged legislation, then it may be assumed that further legislation of that specific area does not work as substantial an impairment as a law affecting a hitherto unregulated aspect of the industry" and is therefore assessed more deferentially. *Toledo Area AFL-CIO Council v. Pizza*, 154 F.3d 307, 323 (6th Cir. 1998); *see also Energy Reserves Grp.*, 459 U.S. at 411 ("The severity of the impairment is said to increase the level of scrutiny to which the legislation will be subjected.").

The Court concludes that the Act's barring of automatic payroll deductions for association dues does not substantially impair either set of contracts. Plaintiffs rely largely on *Pizza*, a Sixth Circuit case where a divided court held that an Ohio law barring "wage checkoffs" to union political funds violated the Contracts Clause. *See* 154 F.3d at 322. A review of the facts of *Pizza* shows why it is distinguishable. In *Pizza*, the statute at issue sought to bar "public employers from administering automatic payroll deductions ('checkoffs') for political purposes." *Id.* at 311. That provision was upheld against First Amendment and Equal Protection challenges. *See id.* at 321-

22. However, the court held that an ancillary provision which "supersede[d] any provision in a pre-existing agreement between public employers and labor organizations granting public employees the right to wage checkoffs for political causes" violated the Contracts Clause because the provision "totally obliterate[d] the affected workers' contractual expectation that the state w[ould] allow them to use this highly effective method of political fundraising." *Id.* at 322-23.

The late Judge Gilbert S. Merritt dissented, arguing that the plaintiffs failed to show the provision in question imposed a "substantial impairment" to their contractual rights. *Id.* at 328 (Merritt, J., dissenting). In his view, an immediate imposition of the law's checkoff provision was not a "key term in the collective bargaining agreement," was "incidental to the . . . agreement as a whole," and did not "go to the essence of the contract." *Id.* Moreover, because collective bargaining was already "heavily regulated," the challenged provision amounted to a "minor adjustment" that was largely "insubstantial" in the context of the entire agreement. *Id.*

In our view, the Act in question here operates in a manner closer to Judge Merritt's description than that of the *Pizza* majority. First, it does not substantially undermine either contractual bargain because barring automatic payroll deductions cannot be said to "go to the essence of the contract." *Pizza*, 154 F.3d at 328 (Merritt, J., dissenting). The MOUs between the association Plaintiffs and their local school boards are several pages long and cover a whole host of topics, from leaves of absence to insurance coverage to grievance procedures. (*See* Fernandez Decl. Ex. B; Pendergrass Decl. Ex. B). Payroll deductions are one topic included in both MOUs. But as both parties also point out, payroll deductions are used for a multitude of reasons besides association dues. (*See, e.g.*, Compl. ¶ 22). With respect to the individual Plaintiffs' membership applications, the method of payment (of which payroll deduction is just one of several available) is clearly "incidental" to the main thrust of the agreement—association membership. *Pizza*, 154 F.3d at 328 (Merritt, J., dissenting); (*see* Taft Decl. Ex. A; Vaden Decl. Ex. A). The Act bars one

type of payroll deduction and removes one method of dues payment from contracts that cover much more than just that. This change is a "minor adjustment" to the contracts as a whole. *Pizza*, 154 F.3d at 328 (Merritt, J., dissenting).

The Act also does not "interfere[] with a party's reasonable expectations" or "prevent[] the party from safeguarding or reinstating his rights." *Sveen*, 138 S. Ct. at 1822. As both parties acknowledge, teacher payroll deductions have been subject to state regulation since at least 1978. (*See* Compl. ¶ 17; Def.'s Mem. in Opp. to Pl.'s Mot for Temp. Inj. 23). When the industry practice in question has been historically regulated, parties' expectations are necessarily lessened because when they "purchased into an enterprise already regulated in the particular to which [they] now object[], [they] purchased subject to further legislation upon the same topic." *Energy Reserves Grp.*, 459 U.S. at 411 (quoting *Veix v. Sixth Ward Bldg. & Loan Ass'n*, 310 U.S. 32, 38 (1940)). The Act is a prime example of the kind of "further legislation" the parties could reasonably expect that would inform their bargaining. It is again different from the act in *Pizza*, where the court held Ohio's law "totally obliterate[d] the affected workers' contractual expectation." 154 F.3d at 323.[13] Here, though the method of receiving funds has been altered, the ability to do so has been far from obliterated. And in both cases, the respective boards of education have reserved the right to change their payroll practices absent further negotiation, further undermining Plaintiffs' argument that the Act impermissibly interferes with their reasonable expectations. (*See* Fernandez Decl. Ex. B at 23; Pendergrass Decl. Ex. B at 52).

The parties' reasonable expectations under the individual membership applications are not undermined either. Though the individual Plaintiffs may have to select a different method to pay

[13] Moreover, the parties in this case do not have expectations like the parties in *Pizza* because, unlike the *Pizza* plaintiffs' expectation to use a "highly effective method of political fundraising," payroll deductions for political activities are specifically excluded from the collaborative conferencing process under PECCA. *See* Tenn. Code Ann. § 49-5-608(b)(6).

their membership dues, nothing in the Act prevents them from being members of any professional association they choose. Additionally, the association Plaintiffs' receipt of membership dues has always been subject to the individual members' ability to unilaterally change the method of payment. That the State has changed that method for some does not rise to the level of substantial impairment needed to find a Contracts Clause violation.

No doubt the Act's implementation will cause some headaches for the individual and association Plaintiffs alike. In anticipation of the Act's taking effect, TEA has launched a large-scale effort to inform its members of the need to change their payment methods. (*See* Compl. ¶ 26). It is likely that not all members will make the change in time. Some may forego paying dues altogether. And those that choose alternative methods may take on increased costs in the form of credit card and bank processing fees. (*See id.* ¶¶ 29-30). In barring payroll deductions for membership dues, the Act prevents association members from utilizing a "reliable, convenient, and secure way to ensure uninterrupted access to the benefits of membership." (Fernandez Decl. ¶ 12). These are valid concerns. However, we cannot say that these concerns rise to the level of a "substantial impairment" under established precedent that constitutes a Contract Clause violation. Because Plaintiffs are unlikely to succeed on the merits of this claim, the Court will likewise **DENY** the motion for a temporary injunction on this basis.

## V. Conclusion

We hold that the Plaintiffs are unlikely to succeed on the merits of either claim. The Act does not impermissibly embrace more than one subject, and its caption fairly describes its contents. The Act also does not repeal PECCA's requirement that payroll deductions be discussed as part of the collaborative conferencing process. Finally, Plaintiffs have failed to show that the Act substantially impairs either set of contracts implicated by the change in the payroll deduction process. Therefore, Plaintiffs' motion for temporary injunction is **DENIED**.

**IT IS SO ORDERED.**

s/Anne C. Martin

**CHANCELLOR ANNE C. MARTIN,**
**CHIEF JUDGE**

s/A. Blake Neill

**JUDGE A. BLAKE NEILL**

s/Pamela A. Fleenor

**CHANCELLOR PAMELA A. FLEENOR**

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