

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, STATE OF FLORIDA**

**FLORIDA EDUCATION ASSOCIATION,  
BROWARD TEACHERS UNION, BREVARD  
FEDERATION OF TEACHERS, POLK EDUCATION  
ASSOCIATION, TEACHERS ASSOCIATION OF  
LEE COUNTY, CHARLOTTE FEA,  
HILLSBOROUGH CLASSROOM TEACHERS  
ASSOCIATION, WAKULLA CLASSROOM  
TEACHERS ASSOCIATION, LEON CLASSROOM  
TEACHERS ASSOCIATION, MANATEE  
EDUCATION ASSOCIATION, ANNA FUSCO,  
ANTHONY COLUCCI, MARIANNE CAPOZIELLO,  
KEVIN DALY, BRYAN BOUTON, ROB KRIETE,  
MELISSA RUDD, SCOTT MAZUR, PAT BARBER,  
SUSAN BISTRICAN, CHARLOTTE HOOVER,  
SHARI GEWANTER, ZAC JOHNSON, DIANE  
PHILLIPS, HEATHER KALTENBACH, and  
ANDREW KALTENBACH,**

Plaintiffs,

v.

Case No. \_\_\_\_\_

**DONNA MAGGERT POOLE**, as Chair and  
Commissioner of the Florida Public Employees Relations  
Commission, **JAMES BAX**, as Commissioner of the  
Florida Public Employees Relations Commission, and  
**CURT KISER**, as Commissioner of the Florida Public  
Employees Relations Commission,

Defendants.

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, Florida Education Association, Broward Teachers Union, Brevard Federation  
of Teachers, Polk Education Association, Teachers Association of Lee County, Charlotte FEA,

Hillsborough Classroom Teachers Association, Wakulla Classroom Teachers Association, Leon Classroom Teachers Association, Manatee Education Association, Anna Fusco, Anthony Colucci, Marianne Capozziello, Kevin Daly, Bryan Bouton, Rob Kriete, Melissa Rudd, Scott Mazur, Pat Barber, Susan Biscitran, Charlotte Hoover, Shari Gewanter, Zac Johnson, Diane Phillips, Heather Kaltenbach, and Andrew Kaltenbach, bring this action pursuant to Chapters 26 and 86, Florida Statutes, and allege:

1. This is an action for declaratory and injunctive relief asking the Court to declare unconstitutional and permanently enjoin implementation of certain newly enacted provisions of Florida law.

2. Plaintiffs seek a determination that Chapter 2018-6, Laws of Florida, was enacted in violation of the “single subject” rule of Article III, Section 6, Florida Constitution (Count I); alternatively, that portions of Section 33 of Chapter 2018-6, Laws of Florida, treat members of K-12 instructional bargaining units differently than all other classes of public employees in violation of the equal protection requirements of Article I, Section 2, Florida Constitution (Count II); violate the right of public employees to exercise their collective bargaining rights in violation of Article I, Section 6, Florida Constitution (Count III); and abridge a non-union member’s right to work in violation of Article I, Section 6, Florida Constitution (Count IV).

3. An actual controversy currently exists between the Plaintiffs and the Defendants. Absent the requested declaratory relief, Defendants are required to implement and enforce the unconstitutional provisions of Chapter 2018-6, Laws of Florida, to the injury and detriment of Plaintiffs and all Florida citizens and taxpayers.

## **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this action pursuant to Article V, Section 5(b) and 20(c)(3) of the Florida Constitution, and Sections 26.012(2)(c), (3) and 86.011, Florida Statutes.

5. Venue is proper in Leon County, Florida, pursuant to Section 47.011, Florida Statutes, because Defendants maintain their principal place of business in Leon County.

## **PLAINTIFFS**

6. Plaintiff **FLORIDA EDUCATION ASSOCIATION (FEA)** is an organization comprised of more than 140,000 education employees employed in the public school districts throughout the State of Florida. FEA, *inter alia*, advocates on behalf of its members the right to collectively bargain over wages, hours and terms and conditions of employment accorded to them by their employer school boards as assured and protected by Article I, Section 6, Florida Constitution. FEA brings this suit on behalf of its members.

7. **MAJORITY MEMBERSHIP UNION PLAINTIFFS.** Plaintiffs Broward Teachers Union (BTU), Brevard Federation of Teachers (BFT), Polk Education Association (PEA), Teachers Association of Lee County (TALC), Charlotte FEA (CFEA), and Hillsborough Classroom Teachers Association (HCTA), hereafter, collectively, “Majority Membership Union Plaintiffs,” are the certified bargaining agents for units of employees, including instructional employees, of The School Board of Broward County, Florida, The School Board of Brevard County, Florida, The School Board of Polk County, Florida, The School Board of Lee County, The School Board Charlotte County, and The School Board of Hillsborough County, Florida respectively. Dues-paying membership in the Majority Membership Union Plaintiffs is currently greater than fifty percent of the instructional bargaining unit employees who are represented, and is expected to be so when they next file for annual renewal with the Public Employee Relations

Commission. None of the Majority Membership Union Plaintiffs has ever been subjected to a decertification effort or vote. The Majority Membership Union Plaintiffs bring this suit on their own behalf as well as on behalf of their members.

8. **MINORITY MEMBERSHIP UNION PLAINTIFFS.** Plaintiffs Wakulla Classroom Teachers Association (WCTA), Leon Classroom Teachers Association (LCTA) and Manatee Education Association (MEA), hereafter, collectively, “Minority Membership Union Plaintiffs,” are the certified bargaining agents for units of employees, including instructional employees, of The School Board of Wakulla County, Florida, The School Board of Leon County, Florida, and The School Board of Manatee County, Florida, respectively. Dues-paying membership in the Minority Membership Union Plaintiffs is fewer than fifty percent of the instructional bargaining unit employees who are represented and is expected to be so when they next file for renewal with the Public Employee Relations Commission. The Minority Membership Union Plaintiffs were certified as the exclusive bargaining representatives for their respective bargaining units following an election in which all members of the bargaining unit, without regard for their union membership status, were eligible to vote. A majority of such bargaining unit employees selected the Minority Membership Union Plaintiffs, respectively, to be their exclusive collective bargaining representatives. None of the Minority Membership Union Plaintiffs has ever been subjected to a decertification effort or vote. The Minority Membership Union Plaintiffs bring this suit on their own behalf as well as on behalf of their members.

9. **UNION PRESIDENT PLAINTIFFS.** Plaintiffs Anna Fusco, Anthony Colucci, Marianne Capozziello, Kevin Daly, Bryan Bouton, Rob Kriete, Melissa Rudd, Scott Mazur, and, Pat Barber, hereafter, collectively, “Union President Plaintiffs,” serve as the president of

Plaintiffs BTU, BFT, PEA, TALC, CFEA, HCTA, WCTA, LCTA, and MEA, respectively. Each of the Union President Plaintiffs is a member of Plaintiff FEA as well as a citizen and taxpayer of the State of Florida. The Union President Plaintiffs each wish, on their own behalf and on behalf of all instructional bargaining unit employees for their respective unions, to continue to bargain collectively with their respective boards for which their unions have been certified as the certified bargaining agents.

10. **INDIVIDUAL MEMBER PLAINTIFFS.** Plaintiffs Melissa Rudd, Susan Biscitran, and Charlotte Hoover, members of WCTA and Shari Gewanter and Zac Johnson, members of LCTA, hereafter, collectively, “Individual Member Plaintiffs,” are teachers and dues-paying members of their respective unions. They wish for their unions to continue to represent them for purposes of collective bargaining regardless of the percentage of employees represented by the union who are dues-paying members.

11. **INDIVIDUAL NON-MEMBER PLAINTIFFS.** Plaintiffs Diane Phillips, Heather Kaltenbach, and Andrew Kaltenbach, hereafter, collectively, “Individual Non-Member Plaintiffs,” are teachers employed by the School Board of Brevard County, Florida. They are teachers within the instructional bargaining unit for which the Brevard Federation of Teachers (BFT) is the certified bargaining agent, but they are not currently and do not wish to become dues-paying members of BFT. However, the Individual Non-Member Plaintiffs do wish to continue to be represented by BFT for purposes of collective bargaining and to continue to receive the benefits of the collective bargaining agreement negotiated by BFT with the school board, without having to become dues-paying members of BFT.

## DEFENDANTS

12. Defendant **DONNA MAGGERT POOLE** is a Commissioner and the Chair of the Florida Public Employees Relations Commission (PERC), an administrative agency of Florida government that is charged, *inter alia*, with implementing and enforcing the provisions of Section 33 of Chapter 2018-6, challenged herein. Chair Poole is sued in her official capacity.

13. Defendant **JAMES BAX** is a Commissioner of the Florida Public Employees Relations Commission (PERC), an administrative agency of Florida government that is charged, *inter alia*, with implementing and enforcing the provisions of Section 33 of Chapter 2018-6 challenged herein. Commissioner Bax is sued in his official capacity.

14. Defendant **CURT KISER** is a Commissioner of the Florida Public Employees Relations Commission (PERC), an administrative agency of Florida government that is charged, *inter alia*, with implementing and enforcing the provisions of Section 33 of Chapter 2018-6 challenged herein. Commissioner Kiser is sued in his official capacity.

## CHAPTER 2018-6, LAWS OF FLORIDA

15. The Florida Legislature passed House Bill 7055 on March 5, 2018. It was signed by Governor Scott on March 11, 2018, and became Chapter 2018-6, Laws of Florida. The law became effective on July 1, 2018.

16. Chapter 2018-6, Laws of Florida, was enacted as a legislative “train” bill comprised of the content of numerous other bills, some of which were separately considered by the Legislature and some of which had not been considered prior to them being rolled together into the “train.” The bill was ostensibly one relating to education.

17. Section 33 of Chapter 2018-6, Laws of Florida, although tucked into the Florida K-20 Education Code, actually amends the substantive provisions of Chapter 447, Part II, Florida

Statutes, which regulates collective bargaining between all public employers in the State and public employees who are employed by public agencies.

18. Section 33 of Chapter 2018-6, Laws of Florida, purports to amend the provisions of the education laws relating to “assignment of teachers” and creates a new subsection which has nothing to do with the assignment of teachers but rather alters the long-standing test of when a single type of employee organization—representing K-12 instructional personnel—must conduct an election in order to retain its certification for collective bargaining purposes.

19. Section 33 of Chapter 2018-6, Laws of Florida adds, in pertinent part,<sup>1</sup> the following new language:

(c)1. In addition to the provisions under s. 447.305(2), an employee organization that has been certified as the bargaining agent for a unit of instructional personnel as defined in s. 1012.01(2) must include for each such certified bargaining unit the following information in its application for renewal of registration:

a. The number of employees in the bargaining unit who are eligible for representation by the employee organization.

b. The number of employees who are represented by the employee organization, specifying the number of members who pay dues and the number of members who do not pay dues.

2. Notwithstanding the provisions of chapter 447 relating to collective bargaining, an employee organization whose dues paying membership is less than 50 percent of the employees eligible for representation in the unit, as identified in subparagraph 1., must petition the Public Employees Relations Commission pursuant to s. 447.307(2) and (3) for recertification as the exclusive representative of all employees in the unit within 1 month after the date on which the organization applies for renewal of registration pursuant to s. 447.305(2). The certification of an employee organization that does not comply with this paragraph is revoked.

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<sup>1</sup> Plaintiffs do not challenge the portion of Section 33 of Chapter 2018-6, Laws of Florida, that creates paragraph 1012.2315(4)(b), Florida Statutes (2018).

This language is codified at Section 1012.2315(4)(c), Florida Statutes (2018) (hereafter “Recertification Requirement”).

**COUNT I – SINGLE SUBJECT**  
**By All Plaintiffs**

Plaintiffs re-allege and incorporate by reference the allegations in Paragraphs 1 through 19.

20. There is no natural or logical connection between education and union density or requiring a public employee union to recertify its status as the exclusive bargaining unit for members of the instructional staff of a school district. The requirements pertaining to certification of employee unions have been contained in Chapter 447, Part II, Florida Statutes, since 1974 as part of the comprehensive regulation of collective bargaining between public employers and their employees in furtherance of the constitutional right of public employees to engage in collective bargaining guaranteed by Article I, Section 6, Florida Constitution.

21. Article III, Section 6 of the Florida Constitution restricts the Legislature’s authority to enact legislation. Specifically, Section 6 provides in pertinent part that “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.”

22. In violation of Article III, Section 6, the omnibus bill that became Chapter 2018-6, Laws of Florida, contains multiple subjects that have little relationship to one another and absolutely no relationship to the Recertification Requirement contained in Section 33.

23. The Recertification Requirement contained in Section 33 was the subject of other legislation, including House Bill 25 (an act relating to labor organizations), which was not separately enacted by the Legislature. Indeed, House Bill 25 failed even to receive a hearing before the Florida Senate.



24. There exists no logical or natural connection among the various provisions of Chapter 2018-6, Laws of Florida. Rather, Chapter 2018-6, Laws of Florida, contains provisions that were lumped together because the Legislature had been unable to enact them in separate bills.

WHEREFORE, Plaintiffs respectfully request this to Court declare that Chapter 2018-6, Laws of Florida, violates Article III, Section 6 of the Florida Constitution by containing more than one subject and matter properly connected therewith, permanently enjoin its enforcement, and order such further relief as the Court deems appropriate.

**COUNT II – EQUAL PROTECTION**  
**By All Plaintiffs**

Plaintiffs re-allege and incorporate by reference the allegations in Paragraphs 1 through 19.

25. Article I, Section 2 of the Florida Constitution provides in pertinent part:

**Basic rights.**—All natural persons, female and male alike, are equal before the law and have inalienable rights . . . .

26. The right of public employees to bargain collectively is a fundamental constitutional right conferred by Article I, Section 6 of the Florida Constitution.

27. The Recertification Requirement applies only to “an employee organization that has been certified as the bargaining agent for a unit of instructional personnel as defined in s. 1012.01(2).” Subsection 1012.01(2), Florida Statutes, applies only to K-12 staff members who provide direct instructional services to students.

28. Following implementation of the Recertification Requirement, unions that have been certified to represent all classes of public employees *other than* K-12 instructional personnel are not required to report annually their number of dues paying members, are not

required to petition for recertification if the percentage of dues paying membership falls below 50 percent of eligible bargaining unit members, and are not required to conduct an election in order to be re-certified as the exclusive bargaining representative.

29. The Recertification Requirement abridges Plaintiffs' fundamental right to effective collective bargaining under Article I, Section 6 of the Florida Constitution.

30. Singling out members of the instructional staff of public school boards to be treated in a manner different than all other classes of public employees in the State violates their right to equal protection under Article I, Section 2, Florida Constitution.

31. There is no compelling state interest to treat instructional staff members of public school boards in a manner different from all other classes of public employees.

WHEREFORE, Plaintiffs respectfully request this Court to declare that the Recertification Requirement violates Article I, Section 2 of the Florida Constitution by burdening their fundamental right to collective bargaining under Article I, Section 6 in a way that is different than other classes of public employees without a compelling state interest to do so, and order such further relief as the Court deems appropriate.

**COUNT III – RIGHT TO BARGAIN COLLECTIVELY**  
**By All Plaintiffs**

Plaintiffs re-allege and incorporate by reference the allegations in Paragraphs 1 through 19.

32. Article I, Section 6, Florida Constitution provides as follows:

**SECTION 6. Right to work.**—The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization. The right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged. Public employees shall not have the right to strike.

33. The second and third sentences of Article I, Section 6 guarantee to public employees the same rights to collectively bargain as enjoyed by private employees except for the right to strike. These rights may not be denied or abridged absent a compelling state interest implemented by the least restrictive means.

34. Florida private employees have the right to continued union representation regardless of the percentage of union membership as long as such representation is supported by a majority of the employees in the bargaining unit. A union's status as a recognized exclusive bargaining agent can be challenged only by (1) employees' timely filing of a petition for a new election, which raises a genuine question of whether bargaining unit employees desire continued union representation; or (2) proof by the employer that the union *in fact* no longer enjoys majority support.

35. Because under Article I, Section 6 employees are not required to be members of the union to enjoy union representation, the number of dues-paying members is an invalid means for determining whether the union has majority support at any particular time. Therefore, Florida private employees have the right to continued union representation without regard to the number of bargaining unit employees who are dues-paying members of the union. Florida public employees therefore have the same right. The Recertification Requirement abridges that right by presuming that majority support is measured by or put in doubt by the number of employees who have become dues-paying members of the union. There is no compelling state interest justifying this abridgement.

36. The Recertification Requirement does not implement any legitimate interest in assuring continued majority support for a certified bargaining agent by the least restrictive means. In fact, Chapter 447, Part II, Florida Statutes, which implements Article I, Section 6,

already provides a least restrictive method for insuring continued majority status. In the event at least 30 percent of the employees in a certified unit no longer desire representation by the certified union, they may authorize a different union to file a petition for an election to replace the incumbent or they may file a petition for an election to decertify the incumbent and have no union representation at all. *See* §§ 447.307, 447.308, Fla. Stat. (2018).

37. The Recertification Requirement interferes with and diminishes the right of public employees to engage in collective bargaining through their chosen representative as protected by the constitution. It therefore constitutes an unconstitutional impairment of the right to collectively bargain guaranteed by Article I, Section 6.

WHEREFORE, Plaintiffs respectfully request this Court to declare that the Recertification Requirement violates Article I, Section 6 of the Florida Constitution by abridging the rights of public employees to bargain collectively through a labor organization, permanently enjoin its enforcement, and order such further relief as the Court deems appropriate.

**COUNT IV – RIGHT TO WORK**  
**By Individual Non-Member Plaintiffs**

The Individual Non-Member Plaintiffs re-allege and incorporate by reference the allegations in Paragraphs 1 through 19.

38. Article I, Section 6 of the Florida Constitution guarantees that an employee who is included in a collective bargaining unit represented by a union cannot be compelled directly or indirectly to join or provide financial support for the union even while enjoying the benefits resulting from union representation.

39. This right may not be denied or abridged absent a compelling state interest implemented by the least restrictive means.

40. Before passage of the Recertification Requirement, the Individual Non-Member Plaintiffs were not required to take any action to ensure continued union representation in the absence of a decertification petition filed by fellow employees.

41. Under the Recertification Requirement, the Individual Non-Member Plaintiffs are compelled and coerced to join the union, and to encourage fellow employees to do so, to ensure that continued union representation is not put at risk where their fellow employees have not sought to challenge continued union representation.

42. The Recertification Requirement thereby diminishes, burdens and imposes a charge upon the free exercise, use and enjoyment of the right of the Individual Non-Member Plaintiffs to be represented for collective bargaining, in violation of Article I, Section 6, Florida Constitution.

43. There is no compelling state interest justifying this abridgement.

44. The Recertification Requirement does not implement any legitimate interest in assuring continued majority support for a certified bargaining agent by the least restrictive means.

WHEREFORE, the Individual Non-Member Plaintiffs respectfully request this Court to declare that the Recertification Requirement violates Article I, Section 6 of the Florida Constitution by abridging their right to work on account of membership or non-membership in a labor union, permanently enjoin its enforcement, and order such further relief as the Court deems appropriate.

Respectfully submitted,

s/ Ronald G. Meyer  
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