SUPREME COURT OF MISSOURI
en banc

MISSOURI NATIONAL EDUCATION ASSOCIATION, et al., Respondents, v. MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, et al., Appellants, FERGUSON-FLORISSANT SCHOOL DISTRICT, et al., Defendants.	)	*Opinion issued June 1, 2021* No. SC98412

APPEAL FROM THE CIRCUIT COURT OF ST. LOUIS COUNTY
The Honorable Joseph Walsh III, Judge

This appeal concerns the constitutional validity of House Bill No. 1413, enacted in 2018, which significantly altered many aspects of public labor relations in Missouri. The circuit court found the challenged provisions of HB 1413 violated multiple provisions of the Missouri Constitution and permanently enjoined its operation and enforcement.

Specifically, the circuit court found, in part, the exemption of public safety labor organizations in section 105.503.2(1)[1] creates a scheme that effectively disfavors non-public safety labor organizations and violates public employees' right to bargain collectively *through representatives of their own choosing*, in violation of article I, section 29. The circuit court also found the exemption of public safety labor organizations violates article I, section 2 of the Missouri Constitution, which guarantees equal protection, because the exemption makes little sense given the purported justifications for the different treatment. This Court agrees the exemption violates article I, section 2.

The circuit court further found the exemption of public safety labor organizations permeates throughout HB 1413. As a result, it found the valid provisions of HB 1413 were so essentially and inseparably connected with, and so dependent upon, this constitutionally invalid provision that it could not be presumed the legislature would have enacted those provisions without it. This Court agrees. Pursuant to section 1.140, RSMo 2016, this Court is required to declare HB 1413 void in its entirety, rather than severing the offending provision. The circuit court's grant of the plaintiffs' motion for summary judgment, declaring HB 1413 void in its entirety and permanently enjoining the defendants from administering or enforcing any provision of HB 1413, is affirmed.

[1] All statutory references are to RSMo Supp. 2018, unless otherwise specified.

Background

Prior to the General Assembly's enactment of HB 1413, Missouri's public labor law, codified in section 105.500, RSMo 2016, *et seq.*, created a loose collective-bargaining framework for public employees. Including definitions, the entire law spanned five brief sections. Section 105.510, RSMo 2016, provided, with certain exceptions,[2] that "[e]mployees . . . of any public body shall have the right to form and join labor organizations and to present proposals to any public body relative to salaries and other conditions of employment through the representative of their own choosing." An "exclusive bargaining representative" was designated or selected by a majority of employees in an appropriate unit as the representative of those employees. Section 105.500(2), RSMo 2016. If issues arose concerning the appropriateness of bargaining units or majority representative status, the state board of mediation resolved the disputes. Section 105.525, RSMo 2016. Public bodies were required to meet and confer with labor organizations:

> Whenever such proposals are presented by the exclusive bargaining representative to a public body, the public body or its designated representative or representatives shall meet, confer and discuss such proposals relative to salaries and other conditions of employment of the employees of the public body with the labor organization which is the exclusive bargaining representative of its employees in a unit appropriate. Upon the completion of discussions, the results shall be reduced to writing and be presented to the appropriate administrative, legislative or other governing body in the form of an ordinance, resolution, bill or other form required for adoption, modification or rejection.

[2] Section 105.510, RSMo 2016, excluded police, deputy sheriffs, Missouri state highway patrol troopers, Missouri National Guard members, and all teachers of Missouri schools, colleges, and universities.

Section 105.520, RSMo 2016. No right to strike was provided for public labor organizations. Section 105.530, RSMo 2016.

HB 1413 significantly altered many aspects of public labor relations in Missouri by repealing sections 105.500, 105.520, 105.525, 105.530,[3] and 208.862 and enacting 21 new sections. Among its new provisions, HB 1413 requires labor organizations to adopt a constitution and bylaws and provide detailed reporting and annual filings. Section 105.533. HB 1413 also mandates officers and employees of labor organizations file certain disclosures. Section 105.535. Public employees must annually authorize withholding labor organization dues and fees from their earnings. Section 105.505.1. Annual authorizations are also required from public employees for the labor organization to use dues for political contributions or expenditures. Section 105.505.2. The bill further prevents supervisory employees from being included in the same bargaining unit as those they supervise and also disallows the same labor organization to represent both supervisory and non-supervisory employees. Section 105.570. In addition, HB 1413 transforms the manner in which a labor organization is selected and retained. A labor organization can gain recognition only through an election conducted before the state board of mediation, for a fee, by secret ballot with more than 50 percent of all public employees within the bargaining unit voting positively to certify the labor organization.[4] Section 105.575.1, .5, .8, .15. Once certified, labor organizations must be recertified

[3] HB 1413 did not amend section 105.510.

[4] In other words, HB 1413 no longer permits voluntary recognition, and an election's outcome is no longer determined by a majority of votes cast in the election.

every three years. Section 105.575.12. Finally, HB 1413 imposes additional limitations on the formation and coverage of labor agreements between public bodies and labor organizations. Sections 105.580, 105.585.

The revised provisions of sections 105.500 to 105.598 "apply to all employees of a public body, all labor organizations, and all labor agreements between such a labor organization and a public body." Section 105.503.1. A "labor organization" is defined as

> any organization, agency, or public employee representation committee or plan, in which public employees participate and that exists for the purpose, in whole or in part, of dealing with a public body or public bodies concerning collective bargaining, grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Section 105.500(5). A public body is defined as "the state of Missouri, or any officer, agency, department, bureau, division, board or commission of the state, or any other political subdivision or special district of or within the state" but excludes the department of corrections. Section 105.500(6).

HB 1413's provisions, however, *do not apply* to "[p]ublic safety labor organizations and all employees of a public body who are members of a public safety labor organization" or to the department of corrections and its employees. Section 105.503.2. The definition of a "public safety labor organization," found in section 105.500(8), is a labor organization that "wholly or primarily represent[s] persons trained or authorized by law or rule to render emergency medical assistance or treatment . . . and persons who are vested with the power of arrest for criminal code violations."

The day before HB 1413 was to go into effect, seven labor unions—Missouri National Education Association; Ferguson-Florissant National Education Association;

Hazelwood Association of Support Personnel; Laborers' International Union of North America, Local Union No. 42; Miscellaneous Drivers, Helpers, Healthcare and Public Employees Union Local No. 610, International Brotherhood of Teamsters; International Union of Operating Engineers, Local 148; and Service Employees International Union Local 1—(collectively, the "Labor Unions") sued the state agencies authorized to implement and enforce HB 1413, the employers of the bargaining units represented by the Labor Unions, and the prosecutor[5] who would enforce HB 1413's criminal provisions (collectively, the "State"). The Labor Unions are not public safety labor organizations and would be subject to all provisions of HB 1413. The Labor Unions argued HB 1413 violated provisions of the state constitution, namely the right to collective bargaining in article I, section 29; the equal protection provision of article I, section 2; and the right to freedom of speech and association in article I, sections 8 and 9. The Labor Unions alleged the unconstitutional provisions of HB 1413 were not severable and that HB 1413 should be declared unconstitutional in its entirety. The circuit court preliminarily enjoined the State from administering or enforcing any provision of HB 1413.

The Labor Unions moved for summary judgment, seeking to permanently enjoin the operation and enforcement of HB 1413. The circuit court granted summary judgment in favor of the Labor Unions, finding, in large part, exempting public safety labor organizations from the provisions in HB 1413 violates constitutional protections. It found the exemption could not be severed. As a result, HB 1413 was declared void in its

[5] St. Louis County Prosecuting Attorney Wesley Bell was named.

entirety, and the State was permanently enjoined from administering or enforcing any provision of it. The State appeals.[6]

Standard of Review

This Court reviews the grant of summary judgment *de novo*. *Sofia v. Dodson*, 601 S.W.3d 205, 208 (Mo. banc 2020). Summary judgment is appropriate when the movant establishes a lack of genuine issue regarding the material facts and entitlement to judgment as a matter of law. *Id.* at 208-09. This Court also reviews *de novo* a challenge to the constitutional validity of a statute. *Mo. State Conference of NAACP v. State*, 607 S.W.3d 728, 734 (Mo. banc 2020). Although a statute is presumed valid, if it conflicts with provisions in the state constitution, this Court must find the statute invalid. *Priorities USA v. State*, 591 S.W.3d 448, 452 (Mo. banc 2020). The challenger bears the burden of proving the statute's constitutional invalidity. *Id.*

Analysis

The State raises six points on appeal, contending the circuit court erred by finding: (1) HB 1413 violated article I, section 29; (2) HB 1413 violated article I, section 2; (3) HB 1413 violated article I, sections 8 and 9; (4) summary judgment to be appropriate; (5) HB 1413 to be facially invalid; and (6) severance was not appropriate. As explained below, this Court finds the violation of article I, section 2 to be dispositive.

[6] This Court has jurisdiction pursuant to article V, section 3 of the Missouri Constitution.

I. The exemption of public safety labor organizations in HB 1413 violates article I, section 2

Article I, section 29 of the Missouri Constitution provides "[t]hat employees shall have the right to organize and to bargain collectively through representatives of their own choosing." This right applies to both private-sector and public-sector employees. *Indep.-Nat'l Educ. Ass'n v. Indep. Sch. Dist.*, 223 S.W.3d 131, 133 (Mo. banc 2007). The purpose of article I, section 29 is "to protect employees against legislation or acts which would prevent or interfere with their organization and choice of representatives for the purpose of bargaining collectively." *Quinn v. Buchanan*, 298 S.W.2d 413, 419 (Mo. banc 1957), *overruled on other grounds by E. Mo. Coal. of Police, Fraternal Ord. of Police, Lodge 15 v. City of Chesterfield*, 386 S.W.3d 755 (Mo. banc 2012).

The State argues the circuit court erred in finding HB 1413 violates article I, section 29 by infringing on public employees' right to bargain "through representatives of their own choosing." This right equates to "employees hav[ing] complete freedom of choice to organize and choose their collective bargaining representatives." *Quinn*, 298 S.W.2d at 417. Inherent in this freedom of choice is that "[c]oercion from any source is a denial of this right and a direct infringement on it[.]" *Id.* Early cases interpreted employees' right to "representatives of their own choosing" in the context of picketing in an attempt to cause an employer to pressure its employees to join a union. *E.g., Bellerive Country Club v. McVey*, 284 S.W.2d 492, 500 (Mo. banc 1955) (noting "the right guaranteed to employees by Art. I, Sec. 29, Mo.Const.1945, 'to organize and to bargain

collectively through representatives of their own choosing' is a free choice, uncoerced by management, union, or any other group or organization").

The State contends provisions of HB 1413 promote employees' free choice in union elections by mandating secret-ballot elections, periodic recertification, and absolute-majority votes. Regardless of these purported benefits, those voting provisions apply to only non-public safety labor organizations because of section 105.503.2(1)'s exemption of public safety labor organizations. Moreover, all other provisions in HB 1413, relating to topics ranging from annual authorizations to reporting and disclosure requirements, also apply only to non-public safety labor organizations. The end result of exempting public safety labor organizations in HB 1413 is a myriad of requirements on all other labor organizations.

To avoid the significant additional restrictions and requirements imposed by HB 1413, a bargaining unit of employees not associated with public safety-related job functions would reasonably be pressured to be represented by a public safety labor organization that "primarily represent[s] persons trained or authorized by law or rule to render emergency medical assistance or treatment . . . and persons who are vested with the power of arrest for criminal code violations." *See* section 105.500(8). Likewise, a bargaining unit of employees with public-safety related job functions would be incentivized to seek representation from a public safety labor organization.[7] Logically,

[7] A labor organization could represent bargaining units comprised of employees from both public safety and non-public safety positions. As an example, the Labor Unions point to Laborers' International Union of North America, Local Union No. 42 and Miscellaneous Drivers, Helpers, Healthcare and Public Employees Union Local No. 610, International Brotherhood of Teamsters,

the framework of HB 1413 creates pressure to join a labor organization exempt from these requirements.

The Labor Unions argue coercion of this nature in the decision of selecting a representative conflicts with the constitutional right of employees to bargain collectively "through representatives of their own choosing." Because it forces them to choose between representation by a labor organization saddled with additional restrictions and one without, they contend employees have lost their complete freedom of choice to organize and choose their collective bargaining representatives. This Court need not resolve whether article I, section 29 would be violated by a collective-bargaining framework that provides a strong incentive to affiliate with one type of labor organization over another, for even if that were not the case, the bill violates the equal protection provision contained in article I, section 2.

The Missouri Constitution guarantees its citizens the equal protection of the laws. Mo. Const. art. I, sec. 2. This Court applies a two-step analysis for equal protection violation claims. *Amick v. Dir. of Revenue*, 428 S.W.3d 638, 640 (Mo. banc 2014). A court must first determine whether a fundamental right is at issue. If there is no fundamental right at issue, "a court will apply a rational-basis review to determine whether the challenged law is rationally related to some legitimate end." *Id.* There is no need to evaluate whether or to what extent the exemption for public safety labor

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as labor organizations that represent a combination of employees both in public safety and not in public safety positions, but neither primarily represents those in public safety positions.

organizations infringes upon fundamental rights because this exemption fails even the rational basis test.

Under rational basis review, the party challenging the constitutional validity of the statute must overcome the presumption the statute has a rational basis "by a clear showing of arbitrariness and irrationality." *Cosby v. Treasurer of State*, 579 S.W.3d 202, 209 (Mo banc. 2019) (citation omitted). The Labor Unions have met that burden. Each of the State's proffered rational bases concerns public safety *employees* and the important work they perform. Whether these might have sufficed had the exemption at issue protected public safety employees is not at issue, for it exempts only public safety *labor organizations*.

HB 1413 defines public safety labor organizations as those labor organizations which "primarily"—but not necessarily exclusively—represent public safety employees. Section 105.503.2(1). Accordingly, by definition, public safety labor organizations are not limited to public safety employees, nor do public safety labor organizations encompass representation of all public safety employees. As a result, HB 1413's public safety labor organization exemption does not apply to only or all public safety employees involved in collective bargaining. Public safety employees represented by labor organizations that "primarily" represent other types of employees will not be protected by HB 1413's exemption. Rather, public safety employees will benefit from the exemption only so long as the labor organization that represents them "primarily" represents public safety employees. As a result, despite the State's arguments to the contrary, the type of labor organization, not the type of employee, creates the basis for the exemption.

Leaving aside that the exemption for public safety labor organizations supplies preferential status for certain labor organizations over others and not certain employees over others, there is no rational basis for protecting public safety employees from most—if not all—of the new provisions in HB 1413. In fact, the opposite is true. For example, section 105.585(2) requires that every labor agreement expressly prohibit covered employees from going on strike. While a rational basis would exist in some circumstances for including public safety *employees* given the importance of the work they do and the need to protect against interruptions in their service, HB 1413 and its exemption for public safety *labor organizations* protects those labor organizations—and only those labor organizations—from this requirement.

Although the dissenting opinion correctly notes that public-sector labor laws may treat dissimilar types of public-sector employees differently if there is a rational basis for such a differentiation, the cases it cites reflect differential treatment based on job function. *Slip op.* at 7-8. There may well be situations in which this type of separate treatment can be rational,[8] but that question does not apply here because HB 1413 differentiates groups of employees based on their affiliation with other employees, regardless of job functions of those employees. Although the dissenting opinion states that "public safety labor organizations represent different groups of employees than other

[8] Although police, deputy sheriffs, state highway patrol troopers, members of the Missouri National Guard, and teachers have been excluded from the public-sector labor law, section 105.510, this different treatment turns on job function. The dissenting opinion criticizes the Labor Unions for not commenting about whether the exemption for employees of the department of corrections violates the equal protection clause, *slip op.* at 4 n.1, but this question is not before the Court.

public-sector labor organizations," *slip op.* at 5, this is not true, as is evident from how HB 1413 defines a "public safety labor organization." Again, pursuant to section 105.500(8), a labor organization is classified as a "public safety labor organization" if the labor organization "primarily" represents those with public safety positions. The composition of public safety labor organizations and non-public safety labor organizations may be, by definition, quite similar. The distinction merely turns on whether those with public safety positions constitute a simple majority of the organization's membership. A labor organization composed of 51 percent public safety employees is similarly situated to a labor organization composed of 49 percent public safety employees. HB 1413, however, would treat the two drastically different. The dissenting opinion's conclusion that the two classifications are not similarly situated is incorrect. Distinctions noted by the dissenting opinion, such as public safety employees having lower turnover or higher unionization rates, *slip op.* at 5-6, are wholly irrelevant when those public safety employees may be in either a public safety labor organization or a non-public safety labor organization.

These defects make it unnecessary to address the Labor Unions' other arguments for, in themselves, they demonstrate each of the State's asserted rational bases is neither rational nor an apparent basis for the provision. Instead, the only effect (and, therefore, the only evident purpose) of the exemption for public safety labor organizations is to give preferential treatment to some labor organizations over others for some reason other than

those employees they represent. Accordingly, this exemption violates equal protection and is invalid on that ground.[9]

II. Severance of the exemption is inappropriate

While maintaining that the exemption of public safety labor organizations is valid, the State urges this Court to sever this provision if it is found unconstitutional. The Labor Unions argue that, because the exemption of public safety labor organizations reaches every other provision in the public labor law, HB 1413 should be declared void in its entirety.

Severance is addressed in section 1.140, RSMo 2016, which provides that unconstitutional provisions of a statute should be severed from otherwise valid provisions unless:

> *the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one*; or unless the court finds that the valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

(Emphasis added).

The State reasons severance is appropriate pursuant to section 1.140, RSMo 2016, because the otherwise valid provisions of HB 1413 are not "so essentially and

[9] The State also contends summary judgment in favor of the Labor Unions is not appropriate because there are disputes over material facts. The material facts at issue, according to the State, involve the extent of the burden imposed by each restriction in HB 1413 and the justifications for those restrictions. Because this Court holds the exemption fails to pass the rational basis test, summary judgment was appropriate under article 1, section 2. No factual dispute would alter this analysis.

inseparably connected with, and so dependent upon," the exemption of public safety labor organizations "that it cannot be presumed the legislature would have enacted the valid provisions without" it.[10] The Labor Unions note both the interrelated character of the exemption with other provisions of HB 1413 and evidence that the exemption for public safety labor organizations was adopted to secure passage of the entire law.[11]

In fact, HB 1413 left the Missouri House of Representatives as a brief, two-page act focused on transparency in labor organizations. It took its existing form in a Missouri Senate committee, but it left that committee without the exemption. It was not until HB 1413 was under consideration by the full senate that the exemption was added in a senate substitute. The next day, the house passed the senate substitute, and the legislation went to the governor's desk.

Our caselaw wisely counsels against severance when severance would effectuate an outcome the legislature avoided. For example, in *Preisler v. Calcaterra*, 243 S.W.2d 62 (Mo. banc 1951), this Court found a statute limiting the right of watchers during

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[10] The State also notes in *Karney v. Department of Labor & Industrial Relations*, 599 S.W.3d 157 (Mo. banc 2020), this Court previously severed a single provision of HB 1413. *Karney* is distinguishable from the challenge here. In *Karney*, five words—"and picketing of any kind"—were severed from section 105.585(2) because the prohibition against "picketing of any kind" was too broad. *Id.* at 166-67. The severed language impermissibly violated public employees' freedom of speech to picket about matters of public concern when that picketing did not impede the efficiency of public services. *Id.* at 164. The State urges this Court to use a scalpel, as was done to excise five words from HB 1413 in *Karney*, rather than a blunderbuss. But unlike the isolated issue addressed in a single provision in *Karney*, the obstacle of the public safety labor organization exemption flows to all provisions of HB 1413.

[11] Amicus Curiae Missouri Fraternal Order of Police also argues HB 1413 would have failed without the exemption. The Fraternal Order of Police, in its amicus brief arguing against severance, notes it actively lobbied against HB 1413 before the exemption was added and, had the exemption not been included, it and other first responders would have opposed HB 1413 during the legislative process.

general elections in the city of St. Louis to the two largest parties, when no other area in the state was subject to such restriction, to violate constitutional provisions for equal rights and equal protection. *Id.* at 64-65. Faced with the prospect of severing a clause in the statute, the effect of which would be to allow *all* political parties to have watchers, this Court instead struck the entire statute because the original legislation clearly sought to limit that number of poll watchers to no more than two. *Id.* at 66 (noting, "if the elimination of such clauses leaves the remaining portions of the statute so that they do not express the true legislative intent but are instead in conflict with it, the statute should not be upheld").

State ex rel. Transport Manufacturing & Equipment Co. v. Bates, 224 S.W.2d 996 (Mo. banc 1949), provides another example. In that case, this Court found a use tax excluding motor vehicles with a seating capacity of 10 passengers or more to be arbitrary. *Id.* at 1000-01. Faced with the question of whether the invalid exemption infected the entire legislative act, this Court noted:

> The fact that the residue of an act remaining after a portion has been declared invalid may be complete in and of itself is not always sufficient to sustain it. If the invalid portion is so connected with the residue of the statute as to furnish the consideration for the enactment of the residue and as to warrant the belief that they were intended as a whole and that the Legislature would not have passed the part remaining had it known the other part would be held invalid, then the entire act must fall.

Id. at 1001. This Court ultimately determined it had "no power by construction to extend the scope of a taxing statute and make it applicable to those to whom the General Assembly never intended it should apply, thus taxing those whom the Legislature said shall not be taxed." *Id.*

The State's argument in favor of severance of the exemption is illogical in that the result would make public labor law reform applicable to public safety labor organizations, which the legislature specifically excluded. The exemption is not concerned with a singular provision or aspect of the bill; rather, it provides an exemption from the overall statutory scheme itself, which consists of approximately 20 sections. Even without giving weight to the late addition of the exemption in the legislative process, this Court refuses to sever the exemption and make this public labor reform law applicable to public safety labor organizations when the legislature contemplated this application and intentionally crafted section 105.503.2(1) to avoid such an outcome.

This Court cannot say the legislature would have enacted the valid provisions of HB 1413 without this void one. If the legislature desired to pass a scheme imposing reform provisions to all public labor organizations, it had the opportunity to do so. But it did not; it specifically provided the reform provisions would not apply to public safety labor organizations. This Court will not, by severance, leave in place legislation contrary to the legislature's intent. By its plain language, section 105.503.2(1) is essentially and inseparably connected with all other provisions of HB 1413; therefore, HB 1413 must be declared void in its entirety.

The State also contends *Sessions v. Morales-Santana*, 137 S. Ct. 1678 (2017), supports severability of the public safety labor organization exemption. In that case, the Supreme Court analyzed an exception in the law that provided that unwed United States-citizen mothers, as compared with unwed United States-citizen fathers, could transmit citizenship through a reduced physical-presence requirement in the country for a child

born abroad. *Id.* at 1686-87. The Supreme Court found the exception violated equal protection principles. *Id.* at 1698. The Supreme Court subsequently addressed whether the shorter timeframe applicable to unwed United States-citizen mothers should be extended to unwed United States-citizen fathers and their children. *Id.* at 1698-1700. Believing Congress would have preferred preservation of the longer physical-presence requirements in the law, the Supreme Court applied the longer timeframe to both unwed United States-citizen fathers and mothers alike instead of making the shorter timeframe in the exception more broadly applicable. *Id.*

Relying on *Morales-Santana*, the State urges this Court to sever the exemption of public-safety labor organizations and extend all of HB 1413's reform provisions to both public safety and non-public safety labor organizations. *Morales-Santana* referenced two considerations that should occupy a court in considering whether, if apprised of a constitutional infirmity, the legislature would have struck the exception or broadened the exception to cure the constitutional violation: (1) "the intensity of commitment to the residual policy" and (2) "the degree of potential disruption of the statutory scheme that would occur by extension as opposed to abrogation." *Id.* at 1700 (quoting *Heckler v. Mathews*, 465 U.S. 728, 739 n.5 (1984)).

Assuming *Morales-Santana* applies to this case, its analysis is distinguishable from the result reached here. There, the Supreme Court found Congress would have preferred the exception be abrogated. *Id.* In reaching that conclusion, the Supreme Court noted "[t]he primacy of [the general framework for the acquisition of citizenship at birth] in the statutory scheme [was] evident." *Id.* at 1686.

The State contends the many reform provisions in HB 1413 indicate the intensity of commitment to the residual policy of public labor reform. The mere numerosity of reform provisions is insufficient to make it evident that across-the-board reform, applicable to every public labor organization in the state, was the driving force of HB 1413. The legislature may have found reform important, but, of course, section 105.503.2(1) indicates the legislature did not believe the reform should apply to all public labor organizations.

The State also argues complete abrogation of HB 1413 would cause the greatest possible disruption. If this Court severed the exemption, public safety labor organizations would become subject to all requirements of HB 1413. The problem with this result is that far more labor organizations would be burdened with restrictions than the legislature intended, which would cause great disruption to the statutory scheme.

Conclusion

The exemption of public safety labor organizations violates principles of equal protection. The exemption of public safety labor organizations permeates throughout HB 1413 and reaches all provisions. The operation of this exemption forces this Court to declare HB 1413 void in its entirety rather than sever the offending provision. The circuit court's judgment is affirmed.

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Mary R. Russell, Judge

Draper, C.J., Wilson, Breckenridge, JJ., and
Stith, Sr.J., concur; Powell, J., dissents in separate
opinion filed and Fischer, J., concurs in opinion of Powell, J.

SUPREME COURT OF MISSOURI
en banc

MISSOURI NATIONAL EDUCATION ASSOCIATION, et al.,	)	
Respondents,	)	
v.	)	No. SC98412
MISSOURI DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, et al.,	)	
Appellants,	)	
FERGUSON-FLORISSANT SCHOOL DISTRICT, et al.,	)	
Defendants.	)	

DISSENTING OPINION

The exemption for public safety labor unions in House Bill No. 1413 does not violate Missouri Constitution's equal protection provision found in article I, section 2. Because the public safety exemption is not unconstitutional, the exemption does not support invalidating HB 1413 and enjoining the bill from becoming law as the principal opinion concludes. For these reasons, I respectfully dissent.

Background

In 2007, this Court recognized the right to organize and engage in collective bargaining as guaranteed by the Missouri Constitution is endowed not only to private-sector employees but also public employees, who had previously been exempted. *Indep. Nat. Educ. Ass'n v. Indep. Sch. Dist.*, 223 S.W.3d 131, 140 (Mo. banc 2007). While extending these rights to public-sector employees, this Court acknowledged that, "[u]nquestionably, public employees are differently situated from private employees and are treated differently under the law." *Id*. at 133. This Court articulated at least two reasons for this fundamental difference. "The first is that many public employees—especially **police and firefighters**—are deemed essential to the preservation of public safety, health, and order." *Id.* (emphasis added). "The second is that the economic forces of the marketplace—that limit, at least in theory, the extent to which employers can meet employee groups' demands—do not constrain the public sector." *Id.* "In the public sector, meeting the demands of employee groups is thought to infringe on the constitutional prerogative of the public entity's legislative powers by forcing the entity to raise taxes or distribute public services in a manner inconsistent with the best judgment of the entity's governing board." *Id.*

In 2018, the United States Supreme Court delivered another landmark ruling in the area of public sector labor relations when it decided *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018), and provided protections for public sector employees represented by unions. The Court in *Janus* held

that withholding union dues from public employees who have not clearly and affirmatively consented to paying union dues violates the First Amendment. *Id*. at 2486.

In the context of these two significant court rulings, the General Assembly passed HB 1413 in 2018. This extensive piece of legislation regulates non-public safety public-sector labor organizations, specifically the manner and practice in which unions engage in collective bargaining with public entities and organize public employees. HB 1413 establishes new rules and protocols for public-sector union elections that provide protections for public employees' rights, including those recognized by *Janus*. Other provisions of the bill the terms of public-sector labor agreements to address the unique challenges and circumstances surrounding public-sector collective bargaining as this Court expressly identified in *Independence*. *Indep. Sch. Dist.*, 223 S.W.3d at 133.

A group of non-public safety public-sector labor organizations ("Labor Groups") filed suit seeking to invalidate and enjoin enforcement of HB 1413 before the bill took effect. The Labor Groups challenged the constitutional validity of this comprehensive bill alleging HB 1413 violated the right to organize and collectively bargain, equal protection, and the right to freedom of speech and association as guaranteed by the Missouri Constitution. After the circuit court entered a preliminary injunction enjoining enforcement of HB 1413, the Labor Groups moved for summary judgment. Over the State's opposition, the circuit court granted summary judgment in favor of the Labor Groups, finding HB 1413 unconstitutional, invalidating the bill, and permanently enjoining its enforcement. The State appeals. The principal opinion affirms the circuit court ruling speciously contending HB 1413 violates equal protection and justifies invalidating and

permanently enjoining this comprehensive public section labor organization bill from becoming law.

Equal Protection Analysis

HB 1413 is not unconstitutional as the principal opinion concludes. The principal opinion contends the public safety union exemption in HB 1413 violates the Missouri Constitution's equal protection provision found in article I, section 2. Article I, section 2 provides that a law may treat groups of people or entities differently, but it cannot treat similarly situated persons or entities differently without adequate justification. *Doe v. Phillips,* 194 S.W.3d 833, 845 (Mo. banc 2006). The principal opinion incorrectly finds public safety unions and non-public safety unions are similarly situated entities and there is no rational basis for treating these two types of public-sector unions differently.[1] There

[1] Public safety unions are not the only entities exempted from HB 1413. The department of corrections, which currently employs more than 10,000 Missourians, and the labor organizations that represent these employees are also exempted from the regulatory framework of HB 1413. "[P]ublic safety labor organization" is defined by HB 1413 as "a **labor organization** wholly or primarily representing" certain categories of trained employees. § 105.500 (8), RSMo Supp. 2018 (emphasis added). "Labor organization" is defined as an organization in which "public employees participate and that exists for the purpose, in whole or in part, of dealing with a **public body** or public bodies concerning collective bargaining, grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." § 105.500 (5), RSMo Supp. 2018 (emphasis added). HB 1413 defines "public body" to exclude the department of corrections. § 105.500 (6), RSMo Supp. 2018. Accordingly, to be a labor organization governed by HB 1413, the group must deal with a public body, other than the department of corrections. By definition, therefore, a labor organization that represents department of corrections employees is not a public safety labor organization but is also exempt from the regulations and protocols in HB 1413. Curiously, the Labor Groups do not argue the department of corrections exemption violates the equal protection clause.

are, however, adequate justifications for treating these dissimilar labor organizations differently under the law.

"[T]o successfully raise an equal protection challenge, one first must show that he or she is similarly situated to those who he alleges receive different treatment." *Coyne v. Edwards*, 395 S.W.3d 509, 519 (Mo. banc 2013). "The similarly situated standard is a 'rigorous one' requiring proof that the two classes 'were *similarly situated in all relevant aspects*.'" *Id.* (emphasis added) (quoting *Murray v. Sw. Mo. Drug Task Force*, 335 S.W.3d 566, 569 (Mo. App. 2011)). The Labor Groups have not demonstrated that public safety unions and non-public safety unions are similarly situated in all relevant aspects. As the principal opinion notes, HB 1413 establishes different rules of selection, participation, and governance for public-sector labor organizations versus public safety labor organizations through the public safety exemption. Therefore, for purposes of determining whether these separate labor organizations are similarly situated, the analysis should turn to traits that affect union selection, participation, and governance.

As defined by HB 1413, public safety labor organizations "wholly or primarily" represent men and women who serve as public safety officers. § 105.500 (8), RSMo Supp. 2018. Other public-sector labor organizations may represent public safety employees, but if a labor organization "wholly or primarily" represents public safety officers, then it would be considered a public safety labor organization. Therefore, by definition, public safety labor organizations represent different groups of employees than other public-sector labor organizations. For example, public safety employees demonstrate lower rates of turnover than non-public safety employees. This affects a public employer's management practices

in hiring and promotion—one of the topics for which negotiation is restricted for non-public safety organizations by HB 1413. Additionally, unionization rates are higher among public safety employees than other public employees.[2] The combination of lower turnover and higher union participation makes public safety labor organizations differently situated than non-public safety organizations with respect to the employees' certification of their collective bargaining agreements. These examples illustrate how selection, participation and governance may differ between public safety and non-public safety public-sector labor organizations. Public safety unions, therefore, differ from non-public safety unions, and these differences highlight that these organizations are not similarly situated in all relevant aspects for an equal protection analysis of this legislation. Differently situated entities may be treated differently without running afoul of article I, section 2.

Even if both types of labor organizations were similarly situated, there is a rational basis for distinguishing between them. Under rational basis review, a statute must be upheld if there is any "reasonably conceivable state of facts that . . . provide[s] a rational basis for the classification." *Kan. City Premier Apartments, Inc. v. Mo. Real Estate Comm'n,* 344 S.W.3d 160,170 (Mo. banc 2011) (alterations in original) (quoting *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 313 (1993)). "Rational basis review is highly deferential, and courts do not question the wisdom, social desirability or economic policy underlying a statute." *Estate of Overbey v. Chad Franklin Nat'l Auto Sales N., LLC*, 361

[2] Federal data show unionization is highest among "protective services" at 36.6 percent, compared to the national average of 10.8 percent for the year 2020. U.S. BUREAU OF LABOR STATISTICS: UNION MEMBERS SUMMARY (2021), https://www.bls.gov/news.release/union2.nr0.htm.

S.W.3d 364, 378 (Mo. banc 2012) (internal quotations omitted) (citing *Comm. for Educ. Equal. v. State*, 294 S.W.3d 477, 491 (Mo. banc 2009)). "Instead, all that is required is that this Court find a plausible reason for the classifications in question." *Id.* (alteration omitted).

Public-sector labor laws often treat different types of public-sector employees differently, both in Missouri and in other states around the country. In Missouri, public school teachers historically were exempted from public-sector labor laws. *Indep. Sch. Dist.*, 223 S.W.3d at 134. Other groups such as police and highway patrol officers have also been governed differently. *Id.* at 134 n.2. When the General Assembly enacted Missouri's first public sector labor law in 1965, it established public-sector labor organization rules that exempted police, deputy sheriffs, highway patrolmen, members of the national guard, and teachers. *See* §§ 105.500-.530, RSMo Supp. 1965. This law, with some revisions, governed public-sector labor organizations until the passage of HB 1413, and these distinctions have persisted. Our own Court has noted the distinction between police and firefighters and other public employees. *Indep. Sch. Dist.*, 223 S.W.3d at 133 ("[M]any public employees—especially police and firefighters—are deemed essential to the preservation of public safety, health, and order."). HB 1413's exemption of public safety labor organizations, therefore, is not an irrational anomaly.

Labor laws elsewhere have also differentiated between groups of public-sector employees. Wisconsin exempted public safety workers in its recent public-sector union reform bill. *Wisc. Educ. Ass'n Council v. Walker*, 705 F.3d 640, 654-55 (7th Cir. 2013). Other jurisdictions have distinguished between university faculty and other public

employees bargaining over workload, *Cent. State Univ. v. Am. Ass'n of Univ. Professors, Cent. State Univ. Chapter*, 526 U.S. 124, 125-27 (1999), TSA security screeners and other TSA employees, *Am. Fed'n of Gov't Emps., AFL-CIO v. Loy*, 281 F. Supp. 2d 59, 65-66 (D.D.C. 2003), *aff'd*, 367 F.3d 932 (D.C. Cir. 2004), and court security officers and other police officers, *Margiotta v. Kaye*, 283 F. Supp. 2d 857, 864-65 (E.D.N.Y. 2003). These laws have all survived rational basis review, as should the exemption for public safety labor organizations in HB 1413.

This Court's role is not to determine whether the solution raised by the legislature is perfectly suited to the problem it purports to solve; rather, as long as the reason for distinguishing between public safety and non-public safety unions is plausible, there exists a rational basis for treating these labor organizations differently under the law. *Kan. City Premier*, 344 S.W.3d at 170. Here, the distinctions between the public employees the separate labor groups wholly or primarily serve provides plausible explanations and justifications for the dissimilar regulatory framework for public safety and nonpublic safety labor groups and is not unconstitutional.[3] Therefore, the exemption for public safety organizations does not violate equal protection as guaranteed by article I, section 2 and

[3] The principal opinion tacitly acknowledges the inherent distinctions between public safety employees and non-public safety employees by suggesting the exemption may satisfy equal protection review if it applied to public safety employees rather than public safety unions. But under rational basis review, this Court's role is not to judge the wisdom of the General Assembly's decision to differentiate labor groups verses the employees they represent. *Overbey*, 361 S.W.3d at 378. Because public safety unions wholly or primarily represent public safety employees, there exists "a plausible reason for the classifications in question." *Id.* (alteration omitted).

does not support invalidating HB 1413 and enjoining the bill from becoming law as the principal opinion concludes.

For those reasons, I respectfully dissent.

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W. Brent Powell, Judge