



## EXECUTIVE ORDER

15-13

### EXECUTIVE ORDER RESPECTING STATE EMPLOYEES' FREEDOM OF SPEECH

**WHEREAS**, the First Amendment to the United States Constitution protects the freedom of speech and association; and

**WHEREAS**, on numerous occasions, most recently in *Harris v. Quinn*, 134 S. Ct. 2618 (2014), in enforcing the First Amendment's rights, the United States Supreme Court recognized a "bedrock principle" that "no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support," because "compelled funding of the speech of other private speakers or groups presents the same dangers as compelled speech"; and

**WHEREAS**, together with the people of this State and throughout the nation, every state employee enjoys the freedoms of speech and association enshrined in the Constitutions of the United States and the State of Illinois; and

**WHEREAS**, the Governor of the State of Illinois has a duty under Article V, Section 8 and Article XIII, Section 3 of the Illinois Constitution, and upon taking office swears an oath, to "support the Constitution of the United States, and the Constitution of the State of Illinois," including those provisions that protect speech and association; and

**WHEREAS**, under Article VI, Clause 2 of the United States Constitution (the "Supremacy Clause"), the Constitution "shall be the supreme law of the land," preempting "anything in the Constitution or laws of any State to the contrary"; and

**WHEREAS**, consistent with the Supremacy Clause, the Governor of the State of Illinois must exercise his executive powers under Article V, Section 8 of the Illinois Constitution by resolving all conflicts between the United States Constitution and state law in favor of the Constitution; and

**WHEREAS**, employees of the State of Illinois must not be forced, against their will, to participate in or fund public sector labor union activities to which they object; and

**WHEREAS**, collective bargaining agreements, to which the State of Illinois is a party, currently compel some state employees to subsidize the political speech of public sector labor unions of which they have chosen to not be members; and

**WHEREAS**, under the Illinois Public Labor Relations Act (“Illinois Labor Act”), 5 ILCS 315/6, a public sector labor union unilaterally determines the so-called “fair share” fees to be paid by those who choose not to be members of the union; and

**WHEREAS**, by requiring non-union members to pay “fair share” fees to unions by imposing automatic paycheck deductions without any regard to whether an employee objects to the views and actions of public labor unions’ representatives, the collective bargaining agreements force some employees to subsidize and enable union activities that they do not support; and

**WHEREAS**, the State engages in this practice through actions of Executive Branch agencies, under the direction of the Governor, pursuant to collective bargaining agreements negotiated under the Illinois Labor Act; and

**WHEREAS**, one of those executive agencies, the Illinois Department of Central Management Services (“CMS”), has entered into collective bargaining agreements that contain provisions requiring CMS, pursuant to the Illinois Labor Act, to deduct “fair share” fees from state employees’ paychecks and deliver those deductions to the contracting unions (“Fair Share Contract Provisions”); and

**WHEREAS**, the United States Supreme Court first addressed such “fair share” arrangements for state government employees in the case of *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977); and

**WHEREAS**, since its decision in *Abood*, the Supreme Court has repeatedly acknowledged that compelling state employees to financially support public sector unions seriously impinges upon free speech and association interests protected by the United States Constitution; and

**WHEREAS**, in *Harris v. Quinn*, the Supreme Court held that “fair share” provisions, which required nonmember Medicaid-funded home-care personal assistants to pay “fair share” fees to the union, violated the First Amendment; and

**WHEREAS**, the Supreme Court in *Harris* ruled that such “fair share” provisions served no compelling state interest; and

**WHEREAS**, in *Harris*, a majority of the Supreme Court also questioned the legal and factual bases of *Abood*’s ruling that public sector employees may be compelled to pay “fair share” fees, calling the analysis in *Abood* “questionable on several grounds” and labeling the decision “an anomaly”; and

**WHEREAS**, the aforementioned criticisms of *Abood* and the present facts and circumstances of Illinois public sector collective bargaining leave no doubt that the Fair Share Contract Provisions, as permitted by the Illinois Labor Act, violate Illinois state employees’ freedoms of speech and association; and

**WHEREAS**, for instance, Illinois state employee unions are using compelled “fair share” fees to fund inherently political activities to influence the outcome of core public sector issues, such as wages, pensions, and benefits, that are all currently mandatory subjects of collective bargaining under the Illinois Labor Act; and

**WHEREAS**, the negotiation of these core public sector issues has a direct impact on the level of public services, priorities within the state budget, creation of bond indebtedness, and tax rates, among other things, thereby influencing the debate over these political issues of paramount importance; and

**WHEREAS**, at least in part because of the cost of wage, benefits, and pension packages obtained by state employee unions in previous administrations with the use of compelled “fair share” fees, the State of Illinois currently has a staggering structural budget deficit and unfunded pension liability of \$111 billion, the largest such deficit as a percentage of state revenue in the country; and

**WHEREAS**, these dire financial conditions are likely to usher in a bleak future of emergency measures that could include reduced or eliminated state services, increased taxes, insolvent public entities, and empty pension accounts; and

**WHEREAS**, the significant impact that Illinois public sector labor costs have imposed and will continue to impose on the State’s financial condition demonstrates the degree to which Illinois state employee collective bargaining is an inherently political activity; and

**WHEREAS**, in light of the foregoing facts and circumstances and insofar as constitutionally-protected freedoms of speech and association are concerned, there is no reasonable basis for distinguishing Illinois public sector collective bargaining activities from Illinois public sector union political activities; and

**WHEREAS**, in order to preserve employees’ fundamental rights of speech and association, and to avoid violations of the First Amendment of the United States Constitution and Article I, Sections 4 and 5 of the Illinois Constitution; and

**WHEREAS**, the Supremacy Clause prohibits the Governor of the State of Illinois from enforcing state law and contractual agreements that violate the First Amendment of the United States Constitution;

**THEREFORE**, I, Bruce Rauner, Governor of Illinois, pursuant to the executive authority vested in me by Section 8 of Article V of the Constitution of the State of Illinois, and faithfully supporting the freedoms protected by the United States and Illinois Constitutions, hereby order as follows:

## **I. DEFINITIONS**

As used in this Executive Order:

“**CMS**” means the Illinois Department of Central Management Services.

“**Fair Share Contract Provisions**” means provisions in collective bargaining agreements that require a State Agency, pursuant to the Illinois Labor Act, to deduct “fair share” fees from state employees’ paychecks and deliver those deductions to the contracting unions.

“**Illinois Labor Act**” means the Illinois Public Labor Relations Act, 5 ILCS 315/6.

“**State Agency**” means any officer, department, agency, board, commission, or authority of the Executive Branch of the State of Illinois under the jurisdiction of the Governor.

“**State Employee**” means any State Agency employee covered by a collective bargaining agreement.

## **II. PROHIBITION AGAINST STATE AGENCIES EXACTING FAIR SHARE FEES FROM STATE EMPLOYEES**

1. CMS is hereby directed to immediately cease enforcement of the Fair Share Contract Provisions.
2. All other State Agencies are hereby prohibited from enforcing such Fair Share Contract Provisions.

3. CMS and all other State Agencies are directed to place all “fair share” deductions in an escrow account for as long as any contracting union’s collective bargaining agreement requires such deductions and to maintain an accounting of the amount deducted from each State Employee’s wages for each contracting union, so that each such State Employee will receive the amount deducted from his or her wages upon the determination by any court of competent jurisdiction that the Fair Share Contract Provisions are unconstitutional.

**III. PRIOR EXECUTIVE ORDERS**

This Executive Order supersedes any contrary provision of any prior Executive Order.

**IV. SAVINGS CLAUSE**

Nothing in this Executive Order shall be construed to contravene any state or federal law. Nothing in this Executive Order shall affect or alter the existing statutory powers of any State Agency or be construed as a reassignment or reorganization of any State Agency. This Savings Clause shall not apply to parts of the Illinois Labor Act that enable the Fair Share Contract Provisions, or to collective bargaining agreements containing such provisions, as the Illinois Labor Act and the collective bargaining agreements are invalid under the United States and Illinois Constitutions.

**V. SEVERABILITY**

If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

**VI. EFFECTIVE DATE**

This Executive Order shall take effect immediately upon filing with the Secretary of State.



Bruce Rauner, Governor

Issued by Governor: February 9, 2015  
Filed with Secretary of State: February 9, 2015