

U.S. Supreme Court Agrees To Look At Forced Unionization

By Jack Spencer

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The United States Supreme Court will hear a case involving the forced unionization of "personal care providers" in Illinois that the Mackinac Center Legal Foundation and two other groups asked the Court to hear.

If the high court rules against the Illinois forced unionization, the decision could outlaw such schemes nationwide. In Michigan, the Service Employees International Union took more than \$34 million from tens of thousands of home-based caregivers who were forced into the union. That scheme officially ended this year.

In the class action lawsuit headed to the Supreme Court, Pamela Harris and seven other Illinois personal care providers are challenging a forced unionism put in place by two Illinois governors, former Gov. Rod Blagojevich and current Gov. Pat Quinn. Harris and other personal care providers claim the forced unionization violates their rights to free expression and association by forcing them to subsidize union lobbying.

Attorneys with the National Right to Work Legal Defense Foundation are representing Harris and the other providers. The Mackinac Center Legal Foundation, along with The Cato Institute and the National Federation of Independent Business filed an amicus brief in the case on Jan. 4, 2012.

"We were in the middle of a similar legal battle here in Michigan at the time and we knew that the same problem was occurring in other states," said Patrick J. Wright, director of the Mackinac Center Legal Foundation, in a press release. "It needs to be settled on a national level and the Supreme Court needs to make it clear that forcing people into a public-sector union against their will simply because a portion of their income is derived from public dollars is unconstitutional."

The Illinois lawsuit was filed after Gov. Quinn issued an executive order in 2009 designating 4,500 people, who had previously not been a legal target for unionization, as "public employees." With the status as public employees, the providers will be vulnerable to repeated attempts to be unionized.

The unions most directly involved in Illinois are the SEIU and the American Federation of State, County, and Municipal Employees (AFSCME). The first attempt to unionize the 4,500 providers failed as the providers rejected unionization by a two-to-one margin in a 2010 by-mail election.

"These 4,500 were in a different program than those unionized some years ago by Gov. Blagojevich," said Bill Messenger, an attorney with the National Right to Work Legal Defense Foundation. "The program they are in is for people taking care of their own children."

Although the actions taken by Gov. Quinn that subject the 4,500 providers to possible forced unionization triggered the lawsuit, Messenger said the case is a challenge to the overall concept of forced unionizations.

"We are hoping the Court hands down a decision that will put an end to these unionizations in all of the states," he said.

Messenger said he thinks the Supreme Court will hear oral arguments in the case in February or March and announce a decision in May or June.

In its essential concept, the Illinois unionization scheme is much like Michigan's home-based caregiver "dues skim," which transferred more than \$34 million from the Medicaid checks of home-based caregivers to union coffers. In Illinois, home-based caregivers are referred to as personal care providers.

An important aspect of the schemes in both Michigan and Illinois is the treatment of the caregivers in both states as "public employees" only for the purposes of unionization.

Similar unionizations have taken place in other states across the U.S., particularly over the past decade as unions lose membership and seek ways to boost their numbers and importantly, increase dues collection. Cases sprung up in California, Connecticut, Minnesota, Illinois, Michigan and elsewhere.

Because the Illinois' employment relations structure is not the same as Michigan's, the forced unionization came about differently there. Shortly after former Illinois Gov. Blagojevich came to office in 2003, he unionized about 20,000 personal care providers by executive order. There was no unionization election involved with that unionization, just a signature gathering drive by a union.

In Michigan, unionizations of home-based caregivers and daycare providers took place in 2005-2006. Under former Gov. Jennifer Granholm, the SEIU and AFSCME used dummy employers and by-mail stealth elections to accomplish the forced unionizations.

The forced unionizations in Michigan did not come to light until 2009, when the Mackinac Center Legal Foundation filed suit over the daycare unionization.

The daycare provider unionization ended in Michigan when Gov. Rick Snyder came into office.

The forced unionization of home-based caregivers in Michigan ended in March and finally took place when Gov. Snyder and the legislature outlawed it. A union attempt to place the unionization in the state constitution with Proposal 4 was soundly defeated by 14 percentage points. Gov. Snyder later forced the dummy employer to disband.

Gov. Quinn's office did not respond to a request for comment.