16-2327

United States Court of Appeals for the Seventh Circuit

REBECCA HILL, RANETTE KESTELOOT, CARRIE LONG, JANE MCNAMES, GAILEEN ROBERTS, SHERRY SCHUMACHER, DEBORAH TEIXEIRA, and JILL ANN WISE,

Plaintiffs-Appellants,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION, HEALTHCARE ILLINOIS, INDIANA, MISSOURI, KANSAS, MICHAEL HOFFMAN, in his official capacity as Director of Illinois Department of Central Management Services, and JAMES DIMAS, in his official capacity as Secretary of Illinois Department of Human Services,

Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Illinois
Case No. 15-CV-10175
Honorable Manish S. Shah

APPELLANTS' BRIEF AND SHORT APPENDIX

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DISCLOSURE STATEMENT

1. The full name of every party that the undersigned attorney represents in the case: Appellants Rebecca Hill, Ranette Kesteloot, Carrie Long, Jane McNames, Gaileen Roberts, Sherry Schumacher, Deborah Teixeira, and Jill Ann Wise.

2. The name of all law firms whose partners or associates have appeared on behalf of the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this Court: the National Right to Work Legal Defense Foundation and the Liberty Justice Center.[1]

3. If the party or amicus is a corporation: not applicable.

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[1] The National Right to Work Legal Defense Foundation and Liberty Justice Center are technically not law firms, but legal aid foundations.

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JURISDICTIONAL STATEMENT

The district court had jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it arises under the United States Constitution, to 28 U.S.C. § 1343 because relief is sought under 42 U.S.C. § 1983, and to 28 U.S.C. § 2201 because declaratory relief is sought. On June 1, 2016, Plaintiffs-Appellants Rebecca Hill, Ranette Kesteloot, Carrie Long, Jane McNames, Gaileen Roberts, Sherry Schumacher, Deborah Teixeira, and Jill Ann Wise ("Appellant Providers") filed a timely notice of appeal of the District Court's May 12, 2016, Memorandum Opinion and Order ("Dist. Op.") (Short Appendix ("S.A." 1)) dismissing their Complaint. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

The State of Illinois compels individuals who are not government employees to accept an exclusive representative for petitioning and contracting with the State over public policies that affect their profession. The questions presented are:

1. Can the government compel individuals to accept an exclusive representative for any rational basis, or is this mandatory association permissible only if it satisfies exacting First Amendment scrutiny, which requires that the mandatory association serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms?

2. If exclusive representation is subject to First Amendment scrutiny, is it constitutional for Illinois to extend exclusive representation beyond government employees to private citizens who provide services to public aid recipients?

STATEMENT OF THE CASE

A. Personal Assistants and Childcare Providers.

This case concerns two groups of citizens who are being forced by the State to accept Defendant SEIU Healthcare Illinois, Indiana, Missouri, Kansas ("SEIU") as their exclusive representative: (1) personal assistants who provide home-based care to persons with disabilities enrolled in the Illinois Home Services Program ("HSP"), 20 ILL. COMP. STAT. 2405/0.01–/17.1 (2015); and (2) childcare providers who serve families enrolled in the Illinois Child Care Assistance Program ("CCAP"), 305 ILL. COMP. STAT. 5/9A-11 (2015) (collectively "providers").

HSP is a Medicaid-waiver program "'[d]esigned to prevent the unnecessary institutionalization of individuals who may instead be satisfactorily maintained at home at a lesser cost to the State.'" *Harris v. Quinn*, 134 S. Ct. 2618, 2623–24 (2014) (quoting ILL. ADMIN. CODE tit. 89, § 676.10(a)). Among other things, persons with disabilities enrolled in the HSP can hire personal assistants to help them with activities of daily living, such as eating and dressing. Am. Compl. ¶ 16 (S.A. 11). Personal assistants are employed not by the State, but by persons enrolled in the HSP, who are responsible for locating, hiring, training, supervising, evaluating, and terminating their personal assistants. *Id*. at ¶ 17 (S.A. 11). The State merely subsidizes a program participant's costs of employing a personal assistant. *Id*.

Approximately 25,000 personal assistants are employed by HSP enrollees each year. *Id*. at ¶ 24 (S.A. 12). Many of those personal assistants are relatives of the person receiving care, and many provide care in their own homes. *Id*. at ¶ 18 (S.A.

12). Here, Plaintiffs-Appellants Rebecca Hill, Jane McNames, Gaileen Roberts, Deborah Teixeira, and Jill Ann Wise are personal assistants who each provide care to a son or daughter enrolled in the HSP. *Id.* at ¶¶ 19–23 (S.A. 12).

CCAP is a public assistance program that subsidizes the childcare expenses of qualified families with low incomes. 305 ILL. COMP. STAT. 5/9A-11; ILL. ADMIN. CODE tit. 89, § 50.101 et seq. The program pays for childcare services provided to enrolled families up to maximum rates set by Illinois' Department of Human Services ("DHS") in accordance with legislative appropriations and federal requirements. *See* 305 ILL. COMP. STAT. 5/9A-11(f); 45 C.F.R. § 98.43. Most enrolled families also pay a co-payment to their childcare providers. *See* ILL. ADMIN. CODE tit. 89, § 50.310.

Families enrolled in CCAP can purchase daycare services from any qualified childcare provider. As relevant here, this includes licensed daycare homes and license-exempt providers (collectively "childcare providers"). *Id.* § 50.410; 45 C.F.R. § 98.30. A licensed daycare home is a private, home-based business that provides childcare services to the public. *See* 225 ILL. COMP. STAT. 10/2.18, 10/2.20. These daycare homes are businesses for tax and other purposes, and they sometimes contract with employees. Am. Compl. ¶ 28 (S.A. 13). Plaintiffs-Appellants Carrie Long and Sherry Schumacher operate daycare homes. *Id.* at ¶¶ 36–37 (S.A. 14).

License-exempt providers include: (1) daycare homes that either serve no more than three children or children from the same household, ILL. ADMIN. CODE tit. 89, § 50.410(e); (2) relative care providers who provide daycare services, either in their own home or in the child's home, to children to whom the providers are related, *id.*

§ 50.410(f); and (3) individuals who provide daycare services in the child's home to no more than three children or children from the same household, *id.* § 50.410(g). *See* Am. Compl. ¶ 30 (S.A. 13). Approximately 69.7% of license-exempt providers in fiscal year 2013 were relative care providers—i.e., were grandparents, aunts, or cousins caring for children to whom they are related. *Id.* at ¶ 31 (S.A. 14). Plaintiff Ranette Kesteloot is a relative care provider who provides care to her great-grandchildren who receive CCAP assistance. *Id.* at ¶ 35 (S.A. 14).

Like personal assistants, childcare providers are not employed by the State of Illinois. *Id.* at ¶ 38 (S.A. 14–15). Rather, they are operators of private businesses who serve customers who partially pay for rendered services with public-aid monies, or grandparents, aunts, or cousins who receive public monies for caring for children to whom they are related. *Id.*

B. Illinois Compels Providers to Accept a Mandatory Representative for Lobbying the State.

Notwithstanding the lack of an employment relationship between providers and the State, former Illinois Governor Rod Blagojevich issued executive orders in 2003 and 2005 that called for the State to recognize "exclusive representative[s]" of providers for bargaining with the State over aspects of the HSP and CCAP, respectively, and for the State to grant those representatives all the powers that exclusive representatives enjoy under Illinois Public Labor Relations Act ("IPLRA"), 5 ILL. COMP. STAT. 315/1–315/28. *See* Am. Compl. ¶¶ 39–45 (S.A. 15–17). Blagojevich designated SEIU to be the representative of both provider types based on an ostensible showing of majority support for that advocacy group. *Id.* at ¶¶ 42, 44 (S.A. 16, 17).

Blagojevich's stated justification was that personal assistants "cannot effectively voice their concerns" about the HSP without representation, and it "is essential for the State to receive feedback from the personal assistants in order to effectively and efficiently deliver home services." Ill. Exec. Order 2003-08 (Mar. 4, 2003); *see* Ill. Exec. Order 2005-1 (Feb. 18, 2005) (similar justification for childcare providers).

Governor Blagojevich's executive orders were later effectively codified into law. Am. Compl. at ¶¶ 41, 45 (S.A. 15–16, 17). Under current Illinois law, providers are deemed "public employees" of the State solely for IPLRA purposes, and for no other purposes, "including but not limited to, purposes of vicarious liability in tort and purposes of statutory retirement or health insurance benefits." 5 ILL. COMP. STAT. 315/3(n). SEIU is empowered to act as the providers' "exclusive representative." *Id.* at 315/3(f); *see* Am. Compl. ¶¶ 41, 45 (S.A. 15–16, 17). That designation grants SEIU legal authority to act as the agent of all providers for both petitioning and contracting with the State over certain HSP and CCAP policies. Am. Compl. ¶¶ 50, 59 (S.A. 18, 20); *see* 5 ILL. COMP. STAT. 315/6(c)-(d).

SEIU exercised its agency authority to speak for providers by meeting and speaking with State policymakers concerning certain HSP and CCAP policies. Am. Compl. ¶ 61 (S.A. 20–21). SEIU also used other expressive means to influence policymakers on providers' behalf, *id.* at ¶ 62 (S.A. 21), to include conducting public demonstrations and protests; conducting television, radio, and print advertising campaigns; and engaging in other forms of political advocacy. *Id.* For example, on June 29, 2015, SEIU aired television commercials designed to pressure current Illi-

nois Governor Bruce Rauner and state policymakers to accede to SEIU's bargaining demands concerning the HSP and CCAP programs. *Id.* at ¶ 63 (S.A. 21).

SEIU also exercised its authority to contract for providers by entering into several agreements with Illinois as the providers' proxy. *Id.* at ¶ 51 (S.A. 18). The most recent contracts, which expired on June 30, 2015, will be referred to as the "HSP Contract" (App. 25) and the "CCAP Contract" (App. 53). Among other things, the contracts contained terms calling for certain HSP and CCAP payment rates. Am. Compl. ¶¶ 55–56, 66 (S.A. 19–20, 22). Actual rates, however, are subject to legislative appropriation, and to federal regulation requiring that rates be based on prevailing market rates and the needs of program enrollees. *Id.*[2]

SEIU's contracts required that Illinois assist SEIU with increasing its membership in a variety of ways, such as by requiring that the State: provide SEIU with detailed lists of personal information about all providers; mail SEIU membership materials to providers; refer all questions concerning union representation and membership to SEIU; and make thirty minute SEIU presentations about union membership part of provider orientations and/or trainings. *Id.* at ¶ 52 (S.A. 18–19). The contracts also required the State to seize compulsory fees from payments made to providers who decided not to join SEIU, *id.* at ¶ 53 (S.A. 19), until the Supreme Court

[2] Specifically, federal law requires that HSP rates be "consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." 42 U.S.C. § 1396a(a)(30)(A). CCAP rates must be based on a biennial market rate survey and CCAP must set childcare rates at amounts sufficient to ensure that subsidized children have access to childcare services equal to unsubsidized children. 45 C.F.R. § 98.43.

ruled these seizures unconstitutional in *Harris*, 134 S. Ct. 2618. Between fiscal years 2009 and 2013, SEIU unlawfully seized more than $30 million in compulsory fees from HPS payments made to personal assistants, and more than $44 million in membership dues and compulsory fees from CCAP payments made to childcare providers. Am. Compl. ¶ 53 (S.A. 19).

Illinois' willingness to designate exclusive representatives to speak for its citizens did not end with personal assistants and childcare providers. In January 2013, at SEIU's behest, Illinois Governor Pat Quinn authorized the collectivization of registered nurses and therapists who provide home-based care when he signed into law Public Act 97-1158; 5 ILL. COMP. STAT. 315/3, 315/7; 2012 Ill. Legis. Serv. P.A. 97-1158 (West). This Act deems to be public employees, for IPLRA purposes, "individual maintenance home health workers," 5 Ill. Comp. Stat. 315/3(n), who are "registered nurse[s]" and "licensed-practical nurse[s]" who provide in-home services, and therapists who provide "in-home therapy, including in the areas of physical, occupational and speech therapy." ILL. ADMIN. CODE tit. 89, § 676.40(d). The law also extends the IPLRA to encompass all personal assistants and individual maintenance home health workers who work under the HSP "no matter whether the State provides those services through direct fee-for-service arrangements, with the assistance of a managed care organization or other intermediary, or otherwise." 5 ILL. COMP. STAT. 315/3(n). In the HSP Contract, the State agreed to "voluntarily recognize the [SEIU] as the exclusive collective bargaining representative of such persons." (App. 42).

C. Proceedings Below

The Appellant Providers oppose being forced to accept SEIU as their exclusive representative for petitioning and contracting with the State. *Id*. at ¶ 70 (S.A. 22–23). They want neither to be forced into an agency relationship with this advocacy group, *id*., nor to be affiliated with SEIU's petitioning, contracts, and other expressive activities, *id*. They bring this suit to vindicate their First Amendment right to choose individually which organization, if any, speaks and contracts for them in their relationship with the State.

On May 12, 2016, the district court dismissed their Complaint. Dist. Op. 7 (S.A. 7). The court held that *Minnesota State Board v. Knight*, 465 U.S. 271 (1984), required it to answer "no" to the question of whether exclusive "representation itself infringe[s] or impinge[s] associational rights." Dist. Op. at 5 (S.A. 5). While the district court acknowledged that "*Knight* did not expressly discuss the right not to associate," it concluded that *Knight's* rejection of an associational argument "necessarily included the full breadth of associational rights." *Id*. The lower court further found that "absent any infringement, there is no need to balance the justifications for the regime in this case against the plaintiffs' interests in distancing themselves from the union." *Id*. On these grounds, the district court held the First Amendment is no barrier whatsoever to the government granting an organization the power to exclusively represent individuals in their relations with government. This timely appeal follows.

SUMMARY OF ARGUMENT

1. Mandatory associations are supposed to be "exceedingly rare," and "permissible only when they serve a 'compelling state interes[t] . . . that cannot be achieved through means significantly less restrictive of associational freedoms.'" *Knox v. SEIU, Local 1000*, 132 S. Ct. 2277, 2289 (2012) (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984)). The lower court's holding violates both principles, as it gives government untrammeled authority to appoint exclusive representatives to speak and contract for citizens for virtually any reason under the rational-basis test.

The district court's conclusion that providers are not compelled to associate with their exclusive representative is untenable. Illinois has forced providers into a mandatory agency relationship with SEIU, in which SEIU has authority to speak and contract for providers. Providers cannot be represented by SEIU and, at the same time, not be associated with it. SEIU cannot speak and contract for providers and, at the same time, deny that those providers are associated with SEIU. The lower court's conclusion is akin to finding that a principal is not associated with his or her agent. SEIU's authority to represent providers in their relations with the State necessarily associates those individuals with that representative and its expressive activities.

Knight, which the district court relied on, is not to the contrary, as it concerned only whether a public employer could constitutionally *exclude* employees from its "meet and confer" sessions with a union. 465 U.S. at 273. *Knight* did not address whether state recognition of an exclusive representative constitutes a mandatory

association that must be justified by heightened state interests. The likely reason is that, a year earlier, the Supreme Court, in *Abood v. Detroit Board of Education*, held exclusive representation of employees to be justified by the government's interest in so-called "labor peace," 431 U.S. 209, 220–21, 224 (1977). *Knight* did not revisit that issue.

2. *Abood* and the labor peace interest cannot justify Illinois' extension of exclusive representation to providers because of *Harris,* 134 S. Ct. at 2638–41. *Harris* held it unconstitutional for Illinois to compel personal assistants to support an exclusive representative financially because the labor peace rationale does not extend that far, *id.* at 2640-41, and "it would be hard to see just where to draw the line" if *Abood* were not limited to "full-fledged public employees," *id.* at 2638. The same reasons require confining exclusive representation to employment relationships. No compelling interest justifies this mandatory association outside of the workplace. And, if exclusive representation is not confined to employees, there will be no discernible limit to government's authority to designate exclusive representatives to speak and contract for individuals in their relations with the government.

Illinois' extension of exclusive representation to non-employee providers cannot survive exacting constitutional scrutiny under *Harris*. For this reason, the Court should limit government's authority to impose regimes of exclusive representation to situations where the government acts as an employer, and should not extend it to situations where, as here, the government acts as a regulator and lawmaker.

ARGUMENT

The district court's dismissal of the Complaint is subject to *de novo* review, in which the Complaint's factual allegations must be accepted as true and construed in the Appellant Providers' favor. *E.g., Citadel Grp. Ltd. v. Wash. Reg'l Med. Ctr.,* 692 F.3d 580, 591 (7th Cir. 2012).

I. Exclusive Representation Is a Mandatory Association Subject to Exacting Constitutional Scrutiny.

A. Providers Are Associated with Their Exclusive Representative And the Expressive Activities It Engages in as Their Proxy.

The First Amendment guarantees "a right to associate for the purpose of engaging in those activities protected by" it, such as "speech" and "petition[ing] for the redress of grievances." *Roberts*, 468 U.S. at 618. Given that "[f]reedom of association . . . plainly presupposes a freedom not to associate," *id.* at 623, compelling association for expressive purposes infringes on First Amendment rights. *See id.* at 622–23; *Knox*, 132 S. Ct. at 2288–89.

Consequently, mandatory associations are "exceedingly rare because . . . [they] are permissible only when they serve a 'compelling state interes[t] . . . that cannot be achieved through means significantly less restrictive of associational freedoms.'" *Knox,* 132 S. Ct. at 2289 (quoting *Roberts*, 468 U.S. at 623); *see Christian Legal Soc'y v. Walker*, 453 F.3d 853, 861–62 (7th Cir. 2006) (holding that infringements on expressive association are subject to this scrutiny). The Supreme Court has required the government to satisfy this level of scrutiny to justify mandatory associations in a variety of contexts. This includes where the government required employ-

ees and contractors to affiliate with political parties, *see Elrod v. Burns*, 427 U.S. 347, 362–63 (1976); *O'Hare Truck Service, Inc. v. City of Northlake*, 518 U.S. 712, 714–15 (1996); where it required groups to associate with unwanted individuals, *see Roberts*, 468 U.S. at 623; *Hurley v. Irish-American Gay, Lesbian & Bisexual Gr*oup, 515 U.S. 557, 577–78 (1995); *Boy Scouts of America v. Dale*, 530 U.S. 640, 658–59 (2000); and where it required individuals to support exclusive representatives financially, *see Harris*, 134 S. Ct. at 2639; *Knox*, 132 S. Ct. at 2288–89.

The district court acted in a manner inconsistent with these precedents when it concluded that Illinois can force providers, and apparently anyone else, into an exclusive representation relationship with an advocacy group without satisfying exacting scrutiny. If there is any mandatory association that should have to pass constitutional muster, it is the one at issue here, for Illinois is forcing providers to accept a mandatory agent for petitioning the State over matters of public policy. *See infra,* pp. 19-20.

The lower court failed to apply the proper level of scrutiny because it found that providers are not associated with their representative or its expressive activities. That conclusion is difficult to accept even as a conceptual matter. How can individuals be represented by an organization, yet not be associated with it? A "representative" is defined as "[s]omeone who stands for or acts on behalf of another." *Black's Law Dictionary* (10th ed. 2014). Logically, it is impossible for SEIU to stand for and act on behalf of providers without those providers being associated with SEIU and its acts. The former necessarily entails the latter.

More specifically, Illinois' imposition of exclusive SEIU representation onto providers infringes on their associational rights because, as discussed below, it (1) forces providers into a mandatory agency relationship with SEIU, and (2) affiliates providers with SEIU's expressive activities, for (3) the purpose of petitioning, or lobbying, the State over matters of political and public concern.

1. *Illinois Is Compelling Association Because It Is Forcing Providers Into a Mandatory Agency Relationship with SEIU.*

a. Exclusive representatives are often called "exclusive bargaining agents." *Harris*, 134 S. Ct. at 2640. That is for good reason: "By its selection as bargaining representative, [a union] . . . become[s] the agent of all the employees, charged with the responsibility of representing their interests fairly and impartially." *Wallace Corp. v. NLRB*, 323 U.S. 248, 255 (1944). This mandatory agency relationship is akin to "the relationship . . . between attorney and client," and to that between trustee and beneficiary. *ALPA v. O'Neill*, 499 U.S. 65, 74–75 (1991).

Unlike other agency relationships, however, "an individual employee lacks direct control over a union's actions." *Teamsters Local 391 v. Terry*, 494 U.S. 558, 567 (1990). That is because exclusive representation "extinguishes the individual employee's power to order his own relations with his employer and creates a power vested in the chosen representative to act in the interests of all employees." *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U.S. 175, 180 (1967). In this way, "[t]he powers of the bargaining representative are 'comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents.'" *Sweeney v.*

Pence, 767 F.3d 654, 666 (7th Cir. 2014) (quoting *Steele v. Louisville & Nashville Ry.*, 323 U.S. 192, 202 (1944)).

As a result, exclusive representatives can, and often do, pursue agendas that do not benefit individuals subject to their mandatory representation. *See Knox*, 132 S. Ct. at 2289; *Abood*, 431 U.S. at 222. Exclusive representatives also can enter into agreements that bind everyone subject to their representation. *See Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). Thus, for example, union representatives can waive employees' right to bring discrimination claims against their employer in court by agreeing that employees must submit such claims to arbitration. *See 14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009). A represented individual "may disagree with many of the union decisions but is bound by them." *Allis-Chalmers,* 388 U.S. at 180.

Unsurprisingly, given a union's power to speak and contract for individuals against their will, the Supreme Court has long recognized that exclusive representation impacts and restricts individual liberties. *See Pyett*, 556 U.S. at 271 (holding "[i]t was Congress' verdict that the benefits of organized labor outweigh the sacrifice of individual liberty that this system necessarily demands"); *Vaca v. Sipes*, 386 U.S. 171, 182 (1967) (noting "[t]he collective bargaining system . . . of necessity subordinates the interests of an individual employee to the collective interests of all employees in a bargaining unit"); *Am. Commc'ns Ass'n v. Douds*, 339 U.S. 382, 401 (1950) (holding "individual employees are required by law to sacrifice rights which, in some cases, are valuable to them" under exclusive representation, and that "[t]he

loss of individual rights for the greater benefit of the group results in a tremendous increase in the power of the representative of the group—the union"). In fact, the Court requires that exclusive representatives fairly represent all individuals subject to their mandatory representation for these reasons. Otherwise, "the congressional grant of power to a union to act as exclusive collective bargaining representative, with its corresponding reduction in the individual rights of the employees so represented, would raise grave constitutional problems." *Vaca*, 386 U.S. at 182.

The district court's conclusion that exclusive representation does not "infringe or impinge associational rights," Dist. Op. 5 (S.A. 5), cannot be squared with these precedents or reconciled with the extraordinary authorities these agents possess. An exclusive representative's agency authority to speak and contract for unconsenting individuals necessarily impinges on those individuals' associational rights.

b. Exclusive representation of *employees*, however, has been deemed constitutional because the Supreme Court has found this mandatory association justified by the government's interest in workplace "labor peace." *See Harris*, 134 S. Ct. at 2631; *Abood*, 431 U.S. at 220–21. But that does not change the fact relevant here: that exclusive representation infringes on associational rights, and must be justified by heightened government interests, just like any other mandatory association. And unlike with employees, the labor peace rationale does not justify exclusive representation of non-employee providers. *See Harris,* 134 S. Ct. at 2640–41.

On point is *Mulhall v. UNITE HERE Local 355*, which addressed whether exclusive representation by a union (Unite) threatened an employee (Mulhall) with asso-

ciational injury, even though he could not be required to join the union under Florida's Right to Work law. 618 F.3d 1279, 1286–87 (11th Cir. 2010). The Eleventh Circuit recognized that "[i]f Unite is certified as the majority representative of . . . employees, Mulhall will have been thrust unwillingly into an agency relationship[.]" *Id*. at 1287. Thus, "regardless of whether Mulhall can avoid contributing financial support to or becoming a member of the union . . . its status as his exclusive representative plainly affects his associational rights." *Id*. However, the court recognized that, while exclusive representation "amounts to 'compulsory association,' . . . that compulsion 'has been sanctioned as a permissible burden on employees' free association rights,' based on a legislative judgment that collective bargaining is crucial to labor peace." *Id*. (quoting *Acevedo–Delgado v. Rivera*, 292 F.3d 37, 42 (1st Cir. 2002)). The same analysis governs here, except that the labor peace interest does not justify unionizing non-employee providers. *Harris,* 134 S. Ct. at 2640–41.

If anything, the associational injury SEIU's mandatory representation inflicts on providers is far worse than the infringement at issue in *Mulhall*. That case addressed subjecting employees to exclusive representation for dealing with a private employer over workplace issues. This case concerns a state forcing parents who care for disabled sons and daughters, and small business operators who serve children from families with low incomes, to accept a representative for *petitioning the government over public policies*. Illinois' conduct implicates core First Amendment concerns, for "expression on public issues 'has always rested on the highest rung of the

hierarchy of First Amendment values.'" *NAACP v. Claiborne Hardware Co.,* 458 U.S. 886, 913 (1982) (quoting *Carey v. Brown,* 447 U.S. 455, 467 (1980)).

2. *SEIU's Authority to Petition and Contract for Providers Associates Providers with SEIU's Petitioning and Contracts.*

SEIU's exclusive representative status associates personal assistants and child-care providers not only with SEIU as an entity, but also with the expressive activities SEIU engages in as their proxy. That includes petitioning and contracting with Illinois' policymakers over the operation and funding of the HSP and CCAP. Am. Compl. ¶¶ 61–63 (S.A. 20–21). Indeed, "[t]he purpose of exclusive representation is to enable the workers to speak with a single voice, that of the union." *Szabo v. U.S. Marine Corp*., 819 F.2d 714, 720 (7th Cir. 1987).

Specifically, SEIU's exclusive representative status creates both the legal reality and the public perception that SEIU's speech and contracts reflect the will of the providers it represents. It creates the legal reality because, as a matter of State law, SEIU speaks and contracts for all providers. *See* 5 ILL. COMP. STAT. 315/6(c)-(d). It creates the public perception because people impute a union's speech to the individuals for whom the union is speaking (i.e., those it represents). That is especially true here, given the public nature of SEIU's expressive activities. SEIU "has conducted public demonstrations and protests; conducted television, radio, and print advertising campaigns; and engaged in other forms of political advocacy to influence state policymakers and the public to support [SEIU's] positions concerning HSP and CCAP policies and funding." Am. Compl. ¶ 62 (S.A. 21). By making SEIU the exclu-

sive representative of all providers, Illinois has affiliated those providers with this advocacy group's expressive activities in the eyes of both the law and the public.

A contrary conclusion is logically untenable. SEIU cannot speak and contract for providers without those individuals being affiliated with SEIU's speech and contracts. To assert otherwise is as incongruous as asserting that an agent speaks for his principal, but the principal is not spoken for by his agent. Just as an agent's actions are imputed to its principal, so too are SEIU's actions imputed to providers.

In fact, creating this associational linkage was a principal purpose of Governor Blagojevich's executive orders, which assert that representation is necessary because personal assistants "cannot effectively voice their concerns" without it, and that it "is essential for the State to receive feedback from the personal assistants." Ill. Exec. Order 2003-08; *see* Ill. Exec. Order 2005-1 (similar). Illinois cannot now claim that providers are not associated with their designated "voice" and the "feedback" it provides to the State.

Not only are providers affiliated with SEIU's petitioning of the State, they are effectively forced to support it. Under regimes of exclusive representation, "[t]he loss of individual rights for the greater benefit of the group results in a tremendous increase in the power of the representative of the group—the union." *Douds*, 339 U.S. at 401. SEIU's power to speak and contract for all providers in Illinois, including the Appellant Providers and others who are not members of this advocacy group, amplifies SEIU's speech and strengthens SEIU's ability to pursue its policy agenda. Providers are being conscripted to support SEIU's agenda against their will.

That infringes on the First Amendment rights of providers who do not want to be associated with SEIU's speech, petitioning, and contracts. The government cannot compel citizens to affiliate with messages with which they disagree, such as by requiring citizens to use license plates with objectionable mottos, *Wooley v. Maynard*, 430 U.S. 705 (1977); to include an advocacy group in their parade, *Hurley,* 515 U.S. 557; or to "affiliate[ ] with" a political party to receive a government job or benefit, *Branti v. Finkel*, 445 U.S. 507, 516–17 (1980); *see Galli v. New Jersey Meadowlands Commission*, 490 F.3d 265, 272–73 (3d Cir. 2007). Illinois, by making SEIU representation a condition of being a personal assistant or childcare provider, is forcing providers to associate with this interest group's expressive activities. And "associating with an interest group, which by design is usually more narrowly focused on particular issues, conveys a much stronger message of alignment with particular political views and outcomes" than does alignment with a political party. *Republican Party v. White*, 416 F.3d 738, 760 (8th Cir. 2005) (en banc).

3. *Providers Are Being Forced to Associate with SEIU for Lobbying the State Over Matters of Public Policy.*

a. The Appellant Providers are being forced to associate with SEIU for a purely expressive purpose: namely, "petition[ing] the Government for a redress of grievances" under the First Amendment. SEIU's function as an exclusive representative is to speak and contract with state policymakers over their operation and funding of the HSP and CCAP. *See* 5 ILL. COMP. STAT. 315/7; Am. Compl. ¶¶ 61–65 (S.A. 20–21). That is First Amendment "petition[ing]"—i.e., engaging in "expression directed to the government." *Borough of Duryea v. Guarnieri*, 131 S. Ct. 2488, 2495 (2011).

SEIU's petitioning concerns matters of political and public concern, as the HSP and CCAP programs affect vulnerable populations and significantly impact Illinois' strained budget. Am. Comp. ¶¶ 64–65 (S.A. 21); *see Harris*, 134 S. Ct. at 2642–43 (holding SEIU's bargaining over the HSP to be speech regarding "a matter of great public concern"). The political nature of SEIU's representational activities is constitutionally significant because "[p]etitions to the government assume an added [constitutional] dimension when they seek to advance political, social, or other ideas of interest to the community as a whole." *Guarnieri*, 131 S. Ct. at 2498.

There is also another word, besides "petitioning," to describe SEIU's function as an exclusive representative. That word is "lobbying." *See Merriam-Webster's Collegiate Dictionary* 730 (11th ed. 2011) (to "lobby" means "to conduct activities aimed at influencing public officials"; and a "lobby" is "a group of persons engaged in lobbying esp[ecially] as representatives of a particular interest group"). SEIU's function is quintessential "lobbying": meeting and speaking with public officials, as an agent of interested parties, to influence the administration of a public program. Seen for what it is, Illinois' recognition of SEIU as providers' exclusive representative is forcing providers to accept a mandatory lobbyist.

An example proves the point. If a professional association representing doctors met and spoke with state officials seeking higher Medicaid payment rates, or if a trade association of daycare centers petitioned state policymakers to increase CCAP payment rates, those actions would certainly constitute "petitioning" and "lobbying." SEIU's function as an exclusive representative is indistinguishable from these ac-

tivities, except that SEIU is not a voluntary lobbying association, but a compulsory one appointed by the government.

If the First Amendment prohibits anything, it prohibits the government from dictating who speaks for citizens in their relations with the government. The freedom to choose which organization, if any, an individual associates to "petition" or "lobby" the government over matters of public policy is a fundamental First Amendment right. *See, e.g., Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 294–95 (1981). Consequently, Illinois cannot compel individuals to associate with advocacy organizations against their will, any more than Illinois can compel individuals to associate with political parties, *see Elrod*, 427 U.S. 347; *O'Hare Truck Services*, 518 U.S. 712. Illinois, by forcing providers to accept SEIU as their mandatory agent for lobbying the State over its Medicaid and childcare policies, egregiously infringes on providers' First Amendment right to choose who speaks for them in their relations with the State.

b. The fact that Illinois made SEIU the providers' representative pursuant to an ostensible majority vote for SEIU only makes the infringement worse, as the First Amendment exists to protect individual rights *from* majority rule.

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them *beyond the reach of majorities* and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights *may not be submitted to vote*; they depend on the outcome of no elections.

W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624, 638 (1943) (emphasis added).

This Court would never tolerate Illinois putting to a majority vote whether a particular group of citizens or entities must associate with the Chamber of Commerce, National Rifle Association, Sierra Club, or other advocacy group. SEIU is no different from any other advocacy group, particularly when it seeks to influence public policies, as it does here. It is antithetical to basic constitutional guarantees for Illinois to subject to the tyranny of the majority each Appellant Provider's individual right to choose who speaks for her vis-à-vis the State.

B. *Knight* Does Not Exempt Exclusive Representation from First Amendment Scrutiny.

1. Knight *Addressed Only Whether the First Amendment Restricts the Government's Ability to Choose to Whom It Listens, and Not Whether Exclusive Representation Is a Mandatory Association*.

The lower court recognized that *Knight* "did not expressly discuss the right not to associate," but nevertheless it construed *Knight* to hold that exclusive representation does not compel association within the meaning of the First Amendment. Dist. Op. 5 (S.A. 5). *Knight* did no such thing. That "case involves no claim that anyone is being compelled to support [union] activities." 465 U.S. at 291 n.13.

Knight addressed only whether *excluding* employees from union bargaining sessions restricts their First Amendment rights. That is how the Supreme Court framed the issue before it: "[t]he question presented . . . is whether this restriction on participation in the nonmandatory-subject exchange process violates the constitutional rights of professional employees." *Id.* at 273. The "appellees' principal claim [was] that they have a right to force officers of the state acting in an official policy-making capacity to listen to them in a particular formal setting." *Id.* at 282. The

Court disagreed: "The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy." *Id*. at 283.[3]

The associational argument *Knight* addressed likewise concerned only whether *excluding* employees from union bargaining sessions impinged on their associational rights by indirectly pressuring them to join the union. *Id*. at 289–90. The Supreme Court found that:

> Appellees' speech and associational rights, however, have not been infringed by Minnesota's *restriction of participation in "meet and confer" sessions* to the faculty's exclusive representative. The state has in no way restrained appellees' freedom to speak on any education-related issue or their freedom to associate or not to associate with whom they please, including the exclusive representative.

Id. at 288 (emphasis added).[4]

Knight did not address whether exclusive representation constitutes a mandatory expressive association because the Supreme Court had ruled on that issue years earlier in *Abood*, 431 U.S. at 220–21. *Abood* "rejected the claim that it was unconstitutional for a public employer to designate a union as the exclusive collective-

[3] The portion of the lower court's decision in *Knight* that the Supreme Court summarily affirmed likewise "rejected the constitutional attack on PELRA's *restriction* to the exclusive representative of *participation* in the 'meet and negotiate' process." 465 U.S. at 279 (emphasis added).

[4] To the extent there can be any question that *Knight* did not address the claim presented here, the lower court's opinion in *Knight v. Minnesota Community College Faculty Ass'n*, 571 F. Supp. 1 (D. Min. 1982), answers it. The opinion makes clear that four distinct claims were before that court: (1) that exclusive representation is "an impermissible delegation of state sovereignty," *id*. at 3, (2) that the union defendant was "a quasi-political party" that employees could not be forced to support financially, *id*. at 5; and that it was unconstitutional to exclude employees from (3) union "meet and negotiate" and (4) union "meet and confer" sessions with their employer, *id*. at 7–12. The fourth claim is what the Supreme Court addressed in *Knight*, 465 U.S. 271. None of these claims is the claim presented here, which is that exclusive representation constitutes a mandatory association.

bargaining representative of its employees." *Chicago Teachers Union v. Hudson*, 475 U.S. 292, 301 (1986); *see Knight v. Minn. Cmty. Coll. Faculty Ass'n*, 571 F. Supp. 1, 15 (D. Minn. 1982) (recognizing that "*Abood* squarely upheld the constitutionality of exclusive representation bargaining in the public sector"). *Abood* did so because it found "[t]he principle of exclusive union representation . . ." to be justified by the labor peace interest. 431 U.S. at 220–21.[5] *Knight* did not revisit the compelled association issue previously decided in *Abood*.

Knight has no bearing here because the Appellant Providers neither allege that Illinois wrongfully excludes them from its meetings with SEIU, nor assert a "constitutional right to force the government to listen to their views." 465 U.S. at 283. Rather, the Appellant Providers assert their constitutional right not to be forced to associate with SEIU. Their claim that exclusive representation *compels* association is different from the alleged *restriction* on speech at issue in *Knight*.

More generally, it is inconceivable that the Supreme Court, when deciding in 1984 the narrow issue of whether it was constitutional for a college to exclude faculty members from union bargaining sessions, intended to rule that the First Amendment is no barrier whatsoever to the government forcing childcare businesses, Medicaid providers, and other citizens to accept a mandatory representative for lobbying the government over its administration of public aid programs. Yet, that is

[5] As discussed below, *Abood*'s holding that the government's interest in labor peace justifies exclusive representation of employees does not save Illinois here, because *Harris* held *Abood* and the labor peace interest inapplicable to individuals who are not government employees. 134 S. Ct. at 2638–42.

how broadly the district court here reads *Knight*. *Knight* cannot bear the incredible weight the lower court places upon it.

2. Knight's *Rationales Are Immaterial to the Appellant Providers' Claims*.

Knight's inapplicability to this case is further demonstrated by the inapplicability of *Knight*'s rationales to the Appellant Providers' cause of action. As the district court stated, *Knight* found "no infringement because the state was entitled to ignore dissenters (and listen only to the exclusive representative), the dissenters were free not to join or support the association, and the dissenters were free to express their views." Dist. Op. 5 (S.A. 5). None of these rationales has any bearing on whether exclusive representation is a mandatory association subject to exacting scrutiny.

First, the fact that the government is "entitled to ignore dissenters (and listen only to the exclusive representative)," *id.*, does not mean the government is free to dictate *who speaks and contracts* for individuals in their relations with government. The latter infringes on First Amendment rights, even if the former does not. For example, if Governor Blagojevich would have decided to listen only to SEIU when formulating his HSP or CCAP policies, turning a deaf ear to all others, that alone would not have violated anyone's First Amendment rights. Governor Blagojevich was constitutionally free to choose to whom he listened. But his executive orders and subsequent legislation go far beyond that. They empower SEIU to speak and contract for providers in their relations with the State. That action compels association.

Second, that "dissenters [a]re free not to join or support the association," *id.*, does not change the reality that forcing providers into an unwanted agency relationship with SEIU infringes on their associational rights. As the Eleventh Circuit held in *Mulhall*, "regardless of whether Mulhall can avoid contributing financial support to or becoming a member of the union . . . [the union's] status as his exclusive representative plainly affects his associational rights." 618 F.3d at 1287.

Third, even if "dissenters were free to express their views" under regimes of exclusive representation, Dist. Op. 5 (S.A. 5), that would not save the scheme at issue here.[6] The government is not free to compel citizens to associate with advocacy groups so long as those citizens are otherwise free to speak. As Justice Scalia put it when addressing a similar contention in *Harris*, "I suppose the fact that you're entitled to speak against abortion would not justify the government in requiring you to give money to Planned Parenthood . . . ." Transcript of Oral Argument at 17, *Harris*, 134 S. Ct. 2618.

The Supreme Court's compelled association cases prove the point. In *Dale*, the Boy Scouts were free to speak against the positions of the activists with which it was compelled to associate. 530 U.S. 640 (2000). In *Wooley*, motorists were free to express messages different from the motto inscribed on the license plates they were

[6] To the extent relevant, SEIU's exclusive representation interferes with a provider's ability to speak because providers would have to argue against the speech of their own agent if they wished to voice a different message. It also interferes with a provider's ability to petition the State both individually and through associations other than SEIU because SEIU's contracts require that "[t]he State . . . not meet, discuss, confer, subsidize or negotiate with any other employee organization or its representatives" and not "negotiate with [providers] over terms and conditions of employment within the State's control." HSP Contract, Art. IV, § 1 (App. 27); CCAP Contract, Art. IV, § 1 (App. 56).

required to bear. 430 U.S. 705 (1977). In *United States v. United Foods*, mushroom producers were free to express messages different from the advertising they were compelled to subsidize. 533 U.S. 405 (2001). And, in *Miami Herald Publishing Co. v. Tornillo*, newspapers were free to publish any article they wished in addition to the government-mandated article they were required to publish. 418 U.S. 241, 256–57 (1974). Yet each instance of compelled association or speech was held unconstitutional.

This Court's precedents are to the same effect. *Krislov v. Rednour* found it unconstitutional to require that campaign solicitors be registered voters, notwithstanding "the fact that the regulation leaves open other possibilities of expression (circulators who are registered residents)." 226 F.3d 851, 862 (7th Cir. 2000). *Christian Legal Society* found it unconstitutional for a university to deny a student group access to its channels of communication and facilities based on the group's associational choices, notwithstanding the group's ability to "turn to alternative modes of communication and alternative meeting places." 453 F.3d at 864. Similarly here, it is unconstitutional for Illinois to compel providers to associate with SEIU and its expressive activities, notwithstanding the providers' ostensible freedom to alternatively express their views.

C. The Eleventh Circuit's Reasoning in *Mulhall* Is More Persuasive Than the First Circuit's Reasoning in *D'Agostino*.

The federal appellate courts are divided over whether exclusive representation compels association. The Eleventh Circuit held that it does in *Mulhall*, 618 F.3d 1279, while the First Circuit held that it does not in *D'Agostino v. Baker*, 812 F.3d

240 (1st Cir. 2016). The Appellant Providers submit that *Mulhall* got it right and *D'Agostino* got it wrong, for all of the reasons discussed in this brief. Two additional aspects of *D'Agostino* also render it especially unpersuasive.

First, *D'Agostino* relied on *Abood* in upholding the extension of exclusive representation to childcare providers. 812 F.3d at 242–43. This conflicts with *Harris*, which "confine[d] *Abood*'s reach to full-fledged state employees." 134 S. Ct. at 2638.

Second, *D'Agostino* reasoned that dissenting providers are not associated with their exclusive representative's speech because:

> the relationship is one that is clearly imposed by law, not by any choice on a dissenter's part, and when an exclusive bargaining agent is selected by majority choice, it is readily understood that employees in the minority, union or not, will probably disagree with some positions taken by the agent answerable to the majority.

812 F.3d at 244. These facts only prove that exclusive representation compels association and infringes on associational rights. Forced associations are, by definition, "imposed by law," *id.*, and not by a dissenter's choice. That individuals "disagree with some positions taken by [their] agent," *id.*, shows it is an unwanted forced association. *D'Agostino* inverts reality by relying on the very factors that prove that the State is compelling association in violation of the First Amendment to reach the opposite conclusion.

The Court should not embrace *D'Agostino's* unpersuasive reasoning. Instead it should adopt the persuasive reasoning in *Mulhall*, which correctly found that exclusive representation compels association because it forces individuals into an unwanted agency relationship with a union. 618 F.3d at 1287.

D. The District Court's Holding That Exclusive Representation Is Not Subject to Constitutional Scrutiny Gives Government Untrammeled Authority to Designate Mandatory Agents to Speak and Contract for Citizens in Their Relations with Government.

1. *The Government Could Impose Exclusive Representation on Anyone If This Mandatory Association Requires Only a Rational Basis.*

The district court's conclusion that regimes of exclusive representation need not satisfy constitutional scrutiny, but require only a rational basis, must be reversed not only because it is erroneous, but because of its vast implications. Quite simply, it gives the government free rein to designate mandatory representatives to speak and contract for any profession in its relations with government.

This case illustrates the danger, as it represents not the top of a slippery slope, but its bottom. Illinois is forcing parents who provide home-based care to disabled sons and daughters, Am. Compl. ¶¶ 19–23 (S.A. 12), individuals who operate home-based businesses, *id.* at ¶¶ 36–37 (S.A. 14), and grandparents who provide daycare to their grandchildren, *id.* at ¶ 35 (S.A. 14), to accept an exclusive representative simply because they receive public aid monies for their services. Illinois recently extended its net of mandatory representation to ensnare nurses and therapists who provide home-based care to Medicaid recipients, even those who work through managed care organizations. *Id.* at ¶¶ 47–48 (S.A. 17–18). If these state actions are exempt from constitutional scrutiny, then the State and other governments could impose mandatory representatives on almost anyone.

This includes individuals in other medical professions, such as doctors, as well as medical industries (hospitals, insurers), all of which could be forced to accept exclu-

sive representatives to bargain with the government over Medicaid and Medicare rates. These professions and entities are little different from personal assistants, nurses, and therapists who provide care to persons enrolled in the HSP. Exclusive representation could also be imposed on persons and businesses that accept government monies for their services, such as government contractors, vendors that sell food to persons enrolled in the Supplemental Nutrition Assistance Program, and landlords that accept Section 8 housing vouchers. These entities are indistinguishable from the home childcare businesses that are being forced to accept SEIU representation because they receive CCAP monies for their services.

Nothing in the lower court's opinion limits the reach of exclusive representation only to those who accept government monies. If only a rational basis is required, any definable group of individuals or businesses could constitutionally be forced to accept a government-appointed representative. A state could grant a trade association legal authority to petition and contract with the government for all businesses in a given industry over regulations that affect that industry. A state could conceivably make the National Rifle Association the exclusive agent for all gun owners in a state for bargaining with that state over its firearm policies. The district court's opinion gives the government practically limitless discretion to empower mandatory representatives to speak and contract for unconsenting citizens.

2. *Allowing the Government Free Rein to Create Mandatory Advocacy Groups Will Subvert the Political and Policymaking Process That the First Amendment Protects from Government Interference.*

The ramifications of the district court's opinion are intolerable. "'The First

Amendment protects [individuals'] right not only to advocate their cause but also to select what they believe to be the most effective means for so doing.'" *Krislov*, 226 F.3d at 862 (quoting *Meyer v. Grant*, 486 U.S. 414, 424 (1988)). The Court cannot allow the government to claim that individual right for itself and select representatives to speak for its citizens. "[T]he government, even with the purest of motives, may not substitute its judgment as to how best to speak for that of speakers . . . ; free and robust debate cannot thrive if directed by the government." *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 791 (1988). Indeed, "[t]o permit one side of a debatable public question to have a monopoly in expressing its views to the government is the antithesis of constitutional guarantees." *City of Madison, Joint Sch. Dist. v. Wis. Emp't Relations Comm'n*, 429 U.S. 167, 175–76 (1976).

The nation's political and policymaking process will be upended if government officials become free to make their favored advocacy groups representatives of non-consenting citizens, as Governor Blagojevich did here. Mandatory advocacy groups that citizens are conscripted to accept, and that have special privileges in dealing with the government that no others enjoy, will have political influence far exceeding citizens' actual support for the groups and their agendas. Allowing the government to create such artificially powerful lobbying forces will skew the "marketplace for the clash of different views and conflicting ideas" that the "[Supreme] Court has long viewed the First Amendment as protecting." *Citizens Against Rent Control*, 454 U.S. at 295. Just as "First Amendment values are at serious risk if the government can compel a particular citizen, or a discrete group of citizens, to pay special subsi-

dies for speech on the side that it favors," *United Foods*, 533 U.S. at 411, so too are First Amendment values at serious risk if government can dictate who speaks for discrete groups of citizens on matters of public policy.

In *Harris*, the Court reiterated its reluctance to "'sanction a device where men and women in almost any profession or calling can be at least partially regimented behind causes which they oppose,'" or to "'practically give carte blanche to any legislature to put at least professional people into goose-stepping brigades.'" 134 S. Ct. at 2629 (quoting *Lathrop v. Donohue*, 367 U.S. 820, 884–85 (1961) (Douglas, J. dissenting)). "'Those brigades are not compatible with the First Amendment.'" *Id*.

The district court's opinion gives government "carte blanche" to designate mandatory agents to represent professions in their relations with government. As a consequence, the opinion below cannot stand. Consistent with *Knox*, mandatory associations must remain "exceedingly rare," and be permitted "only when they serve a 'compelling state interes[t] . . . that cannot be achieved through means significantly less restrictive of associational freedoms.'" 132 S. Ct. at 2289 (quoting *Roberts*, 468 U.S. at 623). The Court should require that regimes of exclusive representation, like other mandatory expressive associations, satisfy exacting scrutiny.

II. It Is Unconstitutional for Illinois to Extend Exclusive Representation Beyond Employment Relationships Because No Compelling State Interest Justifies the Mandatory Association Outside of That Context.

A. *Harris* Rejected the State Interests That Could Justify Collectivizing Non-Employee Providers.

Illinois' imposition of exclusive representation on providers cannot survive exacting constitutional scrutiny because of *Harris*, which held that Illinois could not jus-

tify compelling personal assistants to support an exclusive representative financially. 134 S. Ct. at 2638–41. As shown below, all three of *Harris'* reasons for confining compulsory fee requirements to employment relationships are equally applicable to exclusive representation.

1. *The Labor Peace Interest That Justifies Exclusive Representation of Employees Does Not Apply Outside of the Workplace.*

The government can constitutionally require exclusive representation of public employees because *Abood* held this infringement on employee associational rights to be justified by the labor peace interest.[7] *Harris*, however, held that this precedent and the state interest it cited do not apply outside of employment relationships. 134 S. Ct. at 2638–40. *Abood* has no application to individuals who are not "full-fledged state employees," such as personal assistants and "certain workers under the federal Child Care and Development Fund programs" (i.e., childcare providers). *Id*. at 2638. A state's interest in workplace labor peace[8] does not apply to personal assistants because, among other reasons, they "do not work together in a common state

[7] *See Abood*, 431 U.S. at 220–21 (finding "[t]he principle of exclusive union representation . . ." to be justified by the labor peace interest); *id*. at 224 (similar); *Harris*, 134 S. Ct. at 2631 (interpreting *Abood* to hold that exclusive representation serves the labor peace interest); *Mulhall*, 618 F.3d at 1287 (holding that, while exclusive representation "amounts to 'compulsory association,' . . . that compulsion 'has been sanctioned as a permissible burden on employees' free association rights,' based on a legislative judgment that collective bargaining is crucial to labor peace") (quoting *Acevedo–Delgado*, 292 F.3d at 42).

[8] The "labor peace" interest, as described in *Abood*, is a managerial interest in avoiding workplace "confusion and conflict" caused by employees making conflicting demands on their employer through multiple union representatives. 431 U.S. at 224. According to *Abood*, "exclusive representation 'frees the employer from the possibility of facing conflicting demands from different unions, and permits the employer and a single union to reach agreements and settlements that are not subject to attack from rival labor organizations.'" *Harris*, 134 S. Ct. at 2631 (quoting *Abood*, 431 U.S. at 221).

facility but instead spend all their time in private homes, either the customers' or their own." *Id.* at 2640.

These holdings are dispositive here. The inapplicability of *Abood* and the labor peace interest explains why Illinois cannot extend exclusive representation beyond its employees to providers: the state interest that justifies employee collectivization does not extend that far. Conversely, *Harris'* holdings also explain why finding it unconstitutional to unionize providers will not endanger labor laws that authorize exclusive representation for employees: those laws are justified by *Abood* and the labor peace interest, while provider unionization is not.

It makes sense that the government's interest in appointing exclusive representatives for its employees does not extend beyond that context. "[T]here is a crucial difference, with respect to constitutional analysis, between the government exercising 'the power to regulate or license, as lawmaker,' and the government acting 'as proprietor, to manage [its] internal operation.'" *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 598 (2008) (quoting *Cafeteria & Rest. Workers v. McElroy*, 367 U.S. 886, 896 (1961)). When acting as an employer, the government possesses unique interests in managing its workforce that it does not possess when acting as sovereign. *See Enquist*, 553 U.S. at 598; *Guarnieri*, 131 S. Ct. at 2495–96, 2500–01. Among those unique interests is the labor peace interest. A government employer may well have a managerial interest in using exclusive representation to avoid "the possibility of facing conflicting demands from different unions" representing its employees. *Abood*, 431 U.S. at 221. But government policymakers certainly have no legitimate

interest in suppressing conflicting demands from diverse groups of citizens on matters of public policy. "'[C]onflict' in ideas about the way in which government should operate was among the most fundamental values protected by the First Amendment." *Id.* at 261 (Powell, J., concurring in judgment). "And, of course, State officials must deal on a daily basis with conflicting pleas for funding in many contexts." *Harris*, 134 S. Ct. at 2640. The state labor peace interest that justifies exclusive representation has no application where, as here, the State is acting as a regulator and lawmaker, not as an employer.

Mandatory associations often have been found unconstitutional because the asserted state interest, although sufficient in other contexts, do not justify the specific mandatory association at issue here.[9] That is the situation here. While the labor peace interest may justify imposing exclusive representatives on public employees, it does not justify imposing exclusive representation on non-employee providers.

2. *Illinois' Interest in Improving the HSP and CCAP Cannot Justify Provider Collectivization Because It Is Not the Least Restrictive Means to That End.*

In *Harris*, Illinois and SEIU attempted to justify compelling personal assistants to support SEIU on the grounds that SEIU's advocacy caused the State to provide greater benefits to personal assistants, which in turn contributed to the success of

[9] *See Harris*, 134 S. Ct. at 2640–41 (state interest in labor peace, which justifies exclusive representation of employees, does not justify compelling personal assistants to associate with a union); *Dale*, 530 U.S. at 656–59 (state interest in preventing discrimination, which justifies public accommodation laws, did not justify compelling expressive organization to associate with individuals); *Hurley*, 515 U.S. at 572-73 (same); *Elrod*, 427 U.S. at 372-73 (state interest in operating efficiently, which justifies requiring that policymaking employees associate with a political party, does not justify compelling most other state employees to associate with a political party).

the HSP. 134 S. Ct. at 2640–41. The Supreme Court rejected that argument because it is not the least restrictive means for achieving that end. *Id.* at 2641.

Harris' holding is equally applicable here. Illinois does not need to compel providers to associate with SEIU to provide more monies to providers, or to improve the services the HSP and CCAP provide to program enrollees. Am. Compl. ¶ 58 (S.A. 20). Illinois can make changes to these programs without bargaining with SEIU. For example, if Illinois wants to increase its HSP or CCAP payment rates, it can simply do so. The State does not need SEIU's prompting or permission. It controls these public aid programs, after all.

Similarly, if Illinois wants SEIU's advice on its Medicaid or childcare policies, it can solicit SEIU's views, or meet or confer with its officials, without making SEIU the representative of all providers. Illinois can also solicit the views of providers themselves, through a variety of voluntary means that do not infringe on their constitutional rights, such as by requesting providers' comments in rulemaking, holding public meetings, and conducting surveys. Illinois does not need to force providers to accept SEIU representation, against their will, to obtain policy recommendations from SEIU or from individual providers.[10]

SEIU's limited role in the HSP and CCAP programs further belies any notion that its mandatory representation is relevant to, much less necessary for, the success of those programs. Illinois' bargaining with SEIU is "limited to the terms and

[10] In fact, mandatory SEIU representation is not even a rational means to obtain feedback from providers, except for those who are active SEIU members. Although the State vested SEIU with legal authority to petition the State for all providers, SEIU is not privy to the providers' actual views and experiences and thus cannot accurately convey providers' true views to the State.

conditions of [the providers'] employment under the State's control," 5 ILL. COMP. STAT. 315/7,[11] which are few. As SEIU's own contracts acknowledge, persons with disabilities in the HSP "have the sole and undisputed right to hire, and supervise the work of any Personal Assistant and to terminate without cause and notice any Personal Assistant," the "right to direct services rendered by the Personal Assistant," and the right to "train the Personal Assistant." HSP Contract, Art VI. § 1 (App. 30); *see id.* at Art. XII, § 6 (App. 38). Parents enrolled in CCAP similarly have the "sole and undisputed right to select and terminate without cause and without notice the services of any Provider," and "the right to direct services rendered by the Provider." CCAP Contract, Art. VI, § 1 (App. 59); *see* ILL. ADMIN. CODE tit. 89, § 50.110(c). SEIU's contracts also recognize the State's broad discretion to develop and administer these public aid programs *without* bargaining with SEIU. *See* HSP Contract, Art. V § 1 (App. 29); CCAP Contract, Art. V, § 1 (App. 58).[12]

SEIU's contracts not only demonstrate that its mandatory representation is not necessary to improve the HSP and CCAP, but that SEIU's representation is detrimental to the vulnerable populations those programs serve. SEIU has used its status as an exclusive representative to enrich itself by having Illinois divert scarce

[11] The phrase "conditions of employment" is a misnomer because providers are not employed by the State. In fact, childcare providers who operate licensed daycare homes are not employed by anyone, as they are individuals who operate home-based businesses. *See* Am. Compl. ¶ 28 (S.A. 13).

[12] For example, "rights reserved solely to the State" include the right to "to plan, direct and control the use of resources, including all aspects of the budget, in order to achieve the State's missions, programs, objectives, activities, and priorities," and the right to "develop, modify and administer policies, procedures, rules, and regulations and determine the methods and means by which operations are to be carried out." HSP Contract, Art. V, § 1 (App. 29); CCAP Contract, Art. V, § 1 (App. 58).

program resources to assisting SEIU with recruiting new members and collecting money from them. *See* HSP Contract, Art. IV ("Union Rights") (App. 27–29); *id*. at Art. X, § 5 ("Payroll Deductions") (App. 35); CCAP Contract, Art. IV, (App. 56–58) ("Union Rights"); *id*. at Art.VIII, § 3 ("Deductions") (App. 62–63). For example, SEIU had the State compel all personal assistants to attend orientations and "*annual* mandatory in-person training" at which SEIU is granted thirty minutes "for the purpose of meeting and talking with Personal Assistants and distributing and collecting membership cards." HSP Contract, Side Letter, §§ 1–2 (App. 48-49) (emphasis added). SEIU even convinced the State *to pay* SEIU up to $2 million each year to conduct or facilitate the mandatory orientations and trainings that SEIU desired. *Id*. at Art. IX, § 1 (App. 33). Most egregiously, SEIU used its exclusive representative authority to unconstitutionally seize, over a five year period, more than $30 million in compulsory fees from HPS payments made to personal assistants, and more than $44 million in membership dues and compulsory fees from CCAP payments made to childcare providers. Am. Compl. ¶ 53 (S.A. 19). This was money that was meant to support the care of persons with disabilities and indigent children, and not the SEIU.

For all of these reasons, Illinois cannot plausibly claim that improving its Medicaid and childcare programs "cannot be achieved through means significantly less restrictive of associational freedoms," *Roberts*, 468 U.S. at 623, than forcing providers to accept SEIU as their agent for petitioning the State. Illinois's extension of exclusive representation to providers cannot survive constitutional scrutiny.

3. *Exclusive Representation Must Be Limited to Employment Relationships Because the Mandatory Association Will Otherwise Lack a Limiting Principle.*

One of the primary reasons the *Harris* Court confined *Abood* to full-fledged public employees was because, otherwise "it would be hard to see just where to draw the line." 134 S. Ct. at 2638. Without this limiting principle, the Court feared that "a host of workers who receive payments from a governmental entity for some sort of service would be candidates for inclusion within *Abood*'s reach." *Id*.

The same concern requires confining exclusive representation to situations where the government acts as an employer, and not allowing it to spread to situations where, as here, the government is acting as a regulator and lawmaker. Absent that limitation, countless professions could be forced to accept mandatory representatives for dealing with the government over public policies that affect their profession. This ramification is unacceptable for the reasons stated in Section I(D), pp. 29-32, *supra*. Consistent with *Harris*, the reach of exclusive representation must be limited to full-fledged employees, for otherwise there will be no discernible limit on government's authority to designate mandatory agents to speak for citizens.

B. Illinois Cannot Compel Association for the Expressive Purpose of Generating Feedback about Public Policies.

Even if *Harris* were not on point, Illinois' justification for collectivizing providers fails exacting scrutiny. Governor Blagojevich asserted that he extended exclusive representation to providers because "it is essential for the State to receive *feedback* from the personal assistants in order to effectively and efficiently deliver home services," and providers "cannot effectively *voice their concerns* . . . without representa-

tion." Ill. Exec. Order 2003-08 (emphasis added); *see* Ill. Exec. Order 2005-1 (similar). These rationales are incognizable.[13]

The "feedback" rationale is incognizable because the government cannot compel association for the purpose of generating speech. In *United Foods*, a federal program requiring mushroom producers to subsidize an advertising campaign was held unconstitutional because the program's principal purpose was to require speech. 533 U.S. at 415–16. The Supreme Court stated that it had never "upheld compelled subsidies for speech in the context of a program where the principal object is speech itself." *Id.* at 415. Here, SEIU's function as providers' mandatory representative is speech itself—i.e., speaking to the State over the HSP and CCAP policies. If association cannot be compelled for something as mundane as advocating for greater mushroom consumption, it certainly cannot be compelled for something as central to the First Amendment as advocating for changes to government policy.

Equally incognizable is the State's rationale that personal assistants "cannot effectively voice their concerns . . . without representation." Ill. Exec. Order 2003-08. The Supreme Court has steadfastly rejected the "paternalistic premise" that expressive activities can be regulated because persons "are incapable of deciding for themselves the most effective way to exercise their First Amendment rights." *Riley*, 487 U.S. at 790. "The First Amendment mandates that we presume that speakers, not the government, know best both what they want to say and how to say it." *Id.* at 790-91. This Court has similarly recognized that:

[13] The rationales are also not the least restrictive means exacting scrutiny requires for the reasons stated on page 36, *supra*.

> Our foundational First Amendment cases are based on the recognition that citizens, subject to rare exceptions, must be able to discuss issues, great or small, through the means of expression they deem best suited to their purpose. It is for the speaker, not the government, to choose the best means of expressing a message.

Krislov, 226 F.3d at 862 (quoting *Hill v. Col.*, 530 U.S. 703, 781 (2000) (Kennedy, J., dissenting)). So too here, it is for individual providers, not the State of Illinois, to choose the means through which they "voice their concerns" to the State about the HSP and CCAP. Illinois is violating that fundamental First Amendment principle by dictating that providers must accept SEIU as their means for petitioning and contracting with the State over the administration of these public aid programs.

CONCLUSION

Whatever its merits in employment relationships, exclusive representation has no place outside of them. The First Amendment reserves to each individual the right to choose the associations through which he or she petitions government. Consequently, Illinois cannot force providers to accept SEIU as their exclusive agent for petitioning the State over its Medicaid and childcare policies. The district court's order dismissing the Complaint should be reversed.

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Counsel for Appellants

Dated: July 11, 2016

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type limitations provided in Federal Rule of Appellate Procedure 32(a)(7). The foregoing brief was prepared using Microsoft Word 2010 and contains 11,310 words in 12-point proportionately-spaced Century Schoolbook font.

/s/ William L. Messenger
William L. Messenger
Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2016, I electronically filed the foregoing Appellants' Brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system, which will send electronic notification to the following:

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REQUIRED SHORT APPENDIX

Contents

Certificate

Pursuant to Circuit Rule 30(d), I hereby certify that this short appendix includes all the materials required by Circuit Rules 30(a) and (b).

/s/ William L. Messenger
William L. Messenger

Counsel for Appellants

[14] The Exhibits to the Amended Complaint are in the Appendix at App. 25 and 53.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

REBECCA HILL, et al.,

Plaintiffs,

v.

SERVICE EMPLOYEES INTERNATIONAL UNION, HEALTHCARE ILLINOIS, INDIANA, MISSOURI, KANSAS, et al.,

Defendants.

No. 15 CV 10175

Judge Manish S. Shah

MEMORANDUM OPINION AND ORDER

Collective bargaining in the public sector necessarily involves interaction with the government, and the constitutional limits on state action have a say in the relationships among unions, the individuals and interests they represent, and the government. In this case, plaintiffs claim that a state-law requirement that a union (as an exclusive representative) negotiate terms and conditions of employment with the government on plaintiffs' behalf amounts to a compelled association with the union in violation of the First Amendment. The plaintiffs are not employees of the state, and as such, plaintiffs argue that there is no compelling justification to require them to be linked to—to speak through—the union. They filed suit and seek a declaration that the exclusive representation regime is unconstitutional. Defendants (the union and the state officials responsible for the particular statutory regime at issue) move to dismiss plaintiffs' complaint, and argue that the First

Amendment's freedom to associate has not been abridged in any way.[1] The Supreme Court may revisit its precedents in this area, but until it does, plaintiffs' theory runs counter to the established principle that a state does not infringe on associational rights by requiring the type of exclusive representation at issue here. Defendants' motions to dismiss are granted.

I. Legal Standard

A complaint may be dismissed if it fails to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6); *see Foxxxy Ladyz Adult World, Inc. v. Vill. of Dix, Ill.*, 779 F.3d 706, 711 (7th Cir. 2015). At this stage, the facts alleged in the complaint are assumed to be true, and inferences from those facts are drawn in plaintiffs' favor. *Id*. Matters of public record—for example, statutes, regulations, and executive orders—are subject to judicial notice and may be considered even if not mentioned in the complaint. *See, e.g.*, *White v. Keely*, 814 F.3d 883, 886 n.2 (7th Cir. 2016).

II. Background

The Illinois Department of Human Services Home Services Program provides funding for certain qualifying individuals to hire personal assistants to perform household and incidental health care tasks. 20 ILCS § 2405/3(f); 89 Ill. Admin. Code § 676.10; [10] ¶¶ 15–18.[2] The personal assistant is paid by the state, but supervised

[1] The current director of the Illinois Department of Central Management Services is Michael Hoffman, and the current secretary of the Illinois Department of Human Services is James Dimas. The Clerk shall substitute Hoffman and Dimas for their predecessors, Tom Tyrrell and Gregory Bassi as defendants in this case. Fed. R. Civ. P. 25.

[2] Bracketed numbers refer to entries on the district court docket.

by the person receiving care. *Harris v. Quinn*, 134 S.Ct. 2618, 2624 (2014). Illinois's Child Care Assistance Program is similar—it pays for certain child care services provided to low-income families (by licensed and license-exempt day care providers). 305 ILCS § 5/9A-11; 89 Ill. Admin. Code §§ 50.310, 50.320; [10] ¶¶ 25–32. Under both programs, the state sets the key elements of compensation for covered services. 20 ILCS § 2405/3(f); 305 ILCS § 5/9A-11(f).

The Illinois Public Labor Relations Act authorizes "public employees" to negotiate hours, wages, and other conditions of employment, with the state through a labor organization as their exclusive representative. 5 ILCS § 315/6(a), (c). The designated labor organization represents "the interests of all public employees in the unit." 5 ILCS § 315/6(d). Although they are not actually employed by the state, the personal assistants and child care providers paid through Illinois's Home Services and Child Care Assistance programs are designated "public employees" under the Public Labor Relations act. 5 ILCS § 315/3(n); *see Harris*, 134 S.Ct. at 2626, 2634. State law requires key terms of the caregivers' employment to be negotiated with an exclusive representative. 20 ILCS § 2405/3(f); 305 ILCS § 5/9A-11(c-5). Defendant SEIU Healthcare Illinois, Indiana, Missouri, Kansas is the designated exclusive representative for the personal assistants and child care providers. [10] ¶¶ 42, 44; 5 ILCS § 315/3(f)(iv)–(v).

The union negotiated and entered into collective bargaining agreements with the state on behalf of all personal assistants and child care providers. [10] ¶ 51. But the plaintiffs do not want to be required to accept the union as their representative

for contract negotiations with the state, and do not want to be affiliated in any way with the union. [10] ¶ 70. Their claim is that the statutory system that inserts the union between the plaintiffs and the state on matters related to the plaintiffs' employment amounts to a compelled association in violation of the First Amendment. The plaintiffs in *Harris v. Quinn* did not challenge the authority of the union to serve as the exclusive representative of all personal assistants in bargaining with the state. 134 S.Ct. at 2640. This case raises that challenge.

III. Analysis

The First Amendment implicitly protects the freedom of association. *Laborers Local 236, AFL-CIO v. Walker*, 749 F.3d 628, 638 (7th Cir. 2014). If the state punishes, interferes with, or distorts the message of associations, the state may improperly burden that constitutionally protected right. *Id*. But there is more to the right because the freedom to associate includes a freedom not to associate. *See Roberts v. United States Jaycees*, 468 U.S. 609, 623 (1984). The state is not constitutionally required to encourage people to associate, *Laborers Local 236*, 749 F.3d at 639, and thus the state is not required to assist non-association. The specific question here is whether authorizing exclusive representation (and mandating it if an exclusive representative is selected) in negotiations with the state over the terms and conditions of employment that are within the state's control infringes plaintiffs' freedom not to associate with the union.

The Constitution tolerates "impingements" of First Amendment rights in the area of public-sector collective bargaining. Compulsory collective bargaining fees for

full-fledged public employees are constitutional. *See Knox v. SEIU, Local 1000*, 132 S.Ct. 2277, 2289 (2012); *Abood v. Detroit Bd. of Ed.*, 431 U.S. 209 (1977). But taking fair-share fees from non-state employees who do not want to join or support the union violates the First Amendment. *Harris*, 134 S.Ct. at 2644. This kind of compelled subsidization (from dissenters or simply the uninterested) of speech crosses the line. Post-*Harris*, plaintiffs no longer have to pay for representation, but does the representation itself infringe or impinge associational rights?

The answer is found in *Minnesota State Bd. for Community Colleges v. Knight*, 465 U.S. 271 (1984), and the answer is no. The Court held that associational rights "have not been infringed" by a system where the state negotiates with an entire constituency through a single, exclusive representative association. *Id.* at 288. There was no infringement because the state was entitled to ignore dissenters (and listen only to the exclusive representative), the dissenters were free not to join or support the association, and the dissenters were free to express their views. *Id.* at 287–90. The Court in *Knight* did not expressly discuss the right not to associate, but in holding that no associational rights were infringed, the Court necessarily included the full breadth of associational rights. And absent any infringement, there is no need to balance the justifications for the regime in this case against the plaintiffs' interests in distancing themselves from the union.

If exclusive representation unconstitutionally inhibits the right not to associate, *Knight* was wrongly decided. But lower courts are bound by *Knight*, and nothing in *Harris* supports a distinction between non-state employees and the full-

fledged employees in *Knight*. *Harris* limited the compulsory fees approved by *Abood*, but the Court expressly avoided the issue of exclusive representation generally (an issue that was unchallenged in that case). *See Harris*, 134 S.Ct. at 2640. *Harris* and *Knight* stand together for the proposition that the First Amendment prohibits some compulsory fees but does not prohibit exclusive representation. The state may not endorse taking fees from non-employees without consent, but its choice to listen only to an exclusive representative does not infringe on anyone's associational rights.

The First Circuit's decision in *D'Agostino v. Baker*, 812 F.3d 240 (1st Cir. 2016), addressed the distinction between *Harris* and *Knight* and is persuasive. In reviewing a Massachusetts child care provider system similar to the one at issue here, and challenged on similar grounds as those asserted by plaintiffs, the court held that no cognizable associational rights were infringed. *Id.* at 243–244. The First Circuit observed that *Knight* presumed and extended a premise: that "exclusive bargaining representation by a democratically selected union does not, without more, violate the right of free association on the part of dissenting non-union members of the bargaining unit." *Id.* at 244. *D'Agostino* correctly articulates the *Knight* premise, and *Knight*, in turn, provides the answer to plaintiffs' claim.

Ordinarily, plaintiffs should be given an opportunity to replead. *See Runnion ex rel. Runnion v. Girl Scouts of Greater Chicago & Nw. Ind.*, 786 F.3d 510, 519 (7th Cir. 2015). But here, plaintiffs' legal theory would remain the same in any amendment, and would not state a claim under the First Amendment. The

complaint is therefore dismissed with prejudice and judgment will be entered in favor of defendants.

IV. Conclusion

Defendants' motions to dismiss, [28] and [29], are granted. Plaintiffs' amended complaint, [10], is dismissed in its entirety. Enter judgment in favor of defendants and terminate civil case.

ENTER:

Manish S. Shah
United States District Judge

Date: 5/12/16

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF ILLINOIS

Hill, et al.,

Plaintiff(s),

v.

Service Employees International Union, et al.,

Defendant(s).

Case No. 15-cv-10175
Judge Manish Shah

JUDGMENT IN A CIVIL CASE

Judgment is hereby entered (check appropriate box):

☐ in favor of plaintiff(s)
and against defendant(s)
in the amount of $,

which ☐ includes $ pre–judgment interest.
☐ does not include pre–judgment interest.

Post-judgment interest accrues on that amount at the rate provided by law from the date of this judgment.

Plaintiff(s) shall recover costs from defendant(s).

☒ in favor of defendant(s) Service Employees International Union, Healthcare Illinois, Indiana, Missouri, Kansas, Michael Hoffman, and James Dimas,
and against plaintiff(s) Rebecca Hill, Ranette Kesteloot, Carrie Long, Jane McNames, Sherry Schumacher, Jill Ann Wise, Gaileen Roberts, Deborah Teixeira.
.

Defendant(s) shall recover costs from plaintiff(s).

☐ other:

This action was *(check one)*:

☐ tried by a jury with Judge Manish Shah presiding, and the jury has rendered a verdict.
☐ tried by Judge Manish Shah without a jury and the above decision was reached.
☒ decided by Judge Manish Shah on a motion.

Date: 5/12/2016

Thomas G. Bruton, Clerk of Court

/Susan McClintic , Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

REBECCA HILL, RANETTE KESTELOOT, CARRIE LONG, JANE MCNAMES, GAILEEN ROBERTS, SHERRY SCHUMACHER, DEBORAH TEIXEIRA, and JILL ANN WISE,	
Plaintiffs,	Judge Thomas M. Durkin Magistrate Judge Daniel G. Martin
v.	
	No. 15-cv-10175
SERVICE EMPLOYEES INTERNATIONAL UNION, HEALTHCARE ILLINOIS, INDIANA, MISSOURI, KANSAS; TOM TYRRELL, in his official capacity as Director of Illinois Department of Central Management Services; GREGORY BASSI, in his official capacity as Acting Secretary of Illinois Department of Human Services,	AMENDED **COMPLAINT**
Defendants.	

INTRODUCTION

This case concerns whether the government can constitutionally force citizens to accept a mandatory representative to lobby the government over public policies that may affect them. Plaintiffs are Illinois citizens who provide services to persons enrolled in public-aid programs. Specifically, Plaintiffs Rebecca Hill, Jane McNames, Gaileen Roberts, Deborah Teixeira, and Jill Ann Wise provide home-based care to persons with disabilities who are enrolled in the Illinois Home Services Program ("HSP"), 20 ILL. COMP. STAT. 2405/0.01–/17.1 (2015), which is a Medicaid program. Plaintiff Ranette Kesteloot provides child care for relatives who participate in the Illinois Child Care Assistance Program ("CCAP"), 305 ILL. COMP. STAT. 5/9A-11 (2015). Plaintiffs Carrie Long and Sherry Schumacher operate home-based child care businesses that serve customers who are enrolled in the CCAP.

The State of Illinois is forcing Plaintiffs and similarly situated individuals to accept Service Employees International Union, Healthcare Illinois, Indiana, Missouri, Kansas ("SEIU-HCII") as their "exclusive representative" for lobbying the State over its operation of these public programs. By so doing, the State and SEIU-HCII are violating Plaintiffs' rights under the First Amendment to the United States Constitution, as secured against state infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, to choose individually with whom they associate to petition the government for redress of grievances.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331, because it arises under the United States Constitution, and 28 U.S.C. § 1343, because Plaintiffs seek relief under 42 U.S.C. § 1983. This Court has authority under 28 U.S.C. §§ 2201 and 2202 to grant declaratory relief and other relief based thereon.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the claims arise in this judicial district; Plaintiffs McNames, Johnson, and Schumacher reside and do business in this judicial district; and Defendants do business and operate in this judicial district.

PARTIES

4. Defendant Tom Tyrrell is sued in his official capacity as the Director of Illinois' Department of Central Management Services ("CMS").

5. Defendant Gregory Bassi is sued in his official capacity as the Acting Secretary of Illinois' Department of Human Services ("DHS").

6. Defendant SEIU-HCII is a labor organization that transacts business and maintains its main offices in this judicial district.

7. Plaintiff Rebecca Hill is an HSP provider and lives in Cisne, Illinois

8. Plaintiff Ranette Kesteloot provides care for her great-grandchildren, who receive assistance through CCAP, and lives in Kankakee, Illinois.

9. Plaintiff Carrie Long lives and operates a day care home called Home Away from Home Daycare in Springfield, Illinois, where her customers include families enrolled in CCAP.

10. Plaintiff Jane McNames is an HSP provider and lives in Caledonia, Illinois.

11. Plaintiff Gaileen Roberts is an HSP provider and lives in Cameron, Illinois.

12. Plaintiff Sherry Schumacher lives and operates a day care home called Sherry's Littlest Angels in South Beloit, Illinois, where her customers include families enrolled in CCAP.

13. Plaintiff Deborah Teixeira is an HSP provider and lives in Chillicothe, Illinois.

14. Plaintiff Jill Ann Wise is an HSP provider and lives in Mount Carmel, Illinois.

FACTS

A. Medicaid Providers

15. HSP is a Medicaid-waiver program partially funded by the federal government. *See* 20 ILL. COMP. STAT. 2405/0.01–/17.1; Ill. Admin. Code tit. 89, §§ 676.10–686.1410. HSP pays for services to be provided for income-eligible persons with disabilities, which enables those persons to live at home and avoid institutionalization.

16. Among other things, persons with disabilities enrolled in the HSP can use their subsidies to hire "personal assistants" to assist them with activities of daily living in their homes, such as eating and dressing.

17. Personal assistants are employed by persons enrolled in the HSP and not by the State. In addition to other responsibilities, program participants are responsible for locating, hiring, training, supervising, evaluating, and terminating their personal assistants. The HSP subsidizes a program participant's costs of employing a personal assistant.

18. Many personal assistants are related to the person receiving the care. A significant number of personal assistants also live in the same residence as the person with disabilities for whom they provide care.

19. Plaintiff Rebecca Hill provides personal care services to her daughter who requires constant care and supervision.

20. Plaintiff Jane McNames provides personal care services to her son, who requires constant care and supervision due to quadriplegia.

21. Plaintiff Gaileen Roberts provides personal care services to her daughter, who requires constant care and supervision due to quadriplegia.

22. Plaintiff Deborah Teixeira provides personal care services to her daughter, who requires constant care and supervision due to a brain injury.

23. Plaintiff Jill Ann Wise provides personal care services to her daughter, who requires constant care and supervision due to Rett syndrome.

24. Approximately 25,000 personal assistants are employed by persons with disabilities who are enrolled in the HSP each year.

B. Child Care Providers

25. Illinois operates a public-assistance program that subsidizes the child care expenses of qualified low-income families called the CCAP. 305 ILCS 5/9A-11; ILL. ADMIN. CODE tit. 89, § 50.101 et seq. CCAP is partially funded by, and must be administered in accordance with, the federal Child Care and Development Fund program. 45 C.F.R. § 98.10.

26. CCAP pays for child care services provided to enrolled families up to a maximum rate set by DHS in accordance with legislative appropriations and federal requirements. *See* 305 ILL. COMP. STAT. 5/9A-11(f); 45 C.F.R. § 98.43. However, the vast majority of families enrolled in CCAP also pay a designated co-payment to their day care providers, the amount of which is set by

DHS through regulation. *See* ILL. ADMIN. CODE tit. 89, §§ 50.310, 50.320. Day care providers can charge enrolled families additional fees for their services.

27. Families enrolled in CCAP can choose their own qualified child care provider, including any licensed day care home, license-exempt provider, or day care center. ILL. ADMIN. CODE tit. 89, § 50.410; 45 C.F.R. § 98.30.

28. "Day care homes" are private, home-based businesses that provide child care services to the public. *See* 225 ILL. COMP. STAT. 10/2.18, 10/2.20. Day care homes are businesses for tax and other purposes, and sometimes employ employees. Day care homes are usually sole proprietorships but can also be partnerships or incorporated.

29. Operating a day care home that serves more than three children requires a license or permit from the Illinois Department of Children and Family Services. *See* 225 ILL. COMP. STAT. 10/3; ILL. ADMIN. CODE tit. 89, §§ 406.1–.27, 408.1–.135. A day care home with a standard license can serve up to twelve children, 225 ILL. COMP. STAT. 10/2.18; while a day care home with a "group" license can serve up to sixteen children, *id.* 10/2.20.

30. "License-exempt child care providers" are individuals who do not need a license to provide child care services to children. There are several types of license-exempt providers:

a. Day care homes that either serve no more than three children or children from the same household, ILL. ADMIN. CODE tit. 89, § 50.410(e);

b. Relative care providers who provide day care services, either in their own home or in the child's home, to children to whom the providers are related, *id.* § 50.410(f), (h); and

c. Non-relative care providers who provide day care services, in the child's home, to no more than three children or children from the same household, *id.* § 50.140(g).

31. Approximately 69.7% of license-exempt providers in fiscal year 2013 were relative care providers. State of Ill. Dep't of Human Serv., Illinois Child Care Report FY 2013, 9 (2013), https://www.dhs.state.il.us/OneNetLibrary/27897/documents/HCDdocuments/ChildCare/2013Reportfinalsingles.pdf.

32. The State contracts with sixteen private Child Care Resource and Referral Agencies ("CCR&Rs") to administer many aspects of CCAP and to support child care providers and enrolled families. *Id.* 13. Among other things, CCR&Rs provide referral services that refer enrolled families to available child care providers and offer extensive training and support services to child care providers.

33. In Fiscal Year 2013, 7,345 day care homes and 52,364 license-exempt family child care providers received payments from CCAP for services provided to families enrolled in this public-assistance program. *Id.* 9.

34. Hereinafter, "child care provider" shall refer to individuals who operate licensed day care homes or are license-exempt family child care providers, and who serve one or more children enrolled in CCAP.

35. Plaintiff Ranette Kesteloot is a license-exempt family child care provider who provides care for her great-grandchildren who receive assistance through CCAP.

36. Plaintiff Carrie Long is a child care provider who operates a day care home called Home Away from Home Daycare, which serves, or served, one or more customers enrolled in CCAP.

37. Plaintiff Sherry Schumacher is a child care provider who operates a day care home called Sherry's Littlest Angels, which serves, or served, one or more customers enrolled in CCAP.

38. Child care providers are not employed by the State of Illinois. Rather, day care homes are private businesses that have one or more customers who partially pay for the day care home's services with public-aid monies, and license-exempt family child care providers are generally grand-

parents, aunts, or cousins who receive public monies for caring for children to whom they are related.

C. Illinois Deems Personal Assistants, Child Care Providers, and Other Citizens to be Public Employees Solely for Unionization Purposes.

39. In 2003, former Illinois Governor Rod Blagojevich initiated a scheme to force personal assistants to accept and financially support SEIU-HCII as their representative vis-à-vis the State in exchange for SEIU-HCII's political support and campaign contributions. *See Harris v. Quinn*, 134 S. Ct. 2618, 2626 (June 30, 2014).

40. On March 7, 2003, Governor Blagojevich issued Executive Order 2003-08 ("EO 2003-08"). Exec. Order No. 2003-8, https://www.illinois.gov/Government/ExecOrders/Documents/2003/execorder2003-8.pdf. EO 2003-08 recognized that personal assistants are not public employees but nevertheless provided:

> The State shall recognize a representative designated by a majority of the personal assistants as the exclusive representative of all personal assistants, accord said representative all the rights and duties granted such representatives by the Illinois Public Labor Relations Act, 5 ILCS 315/1 et seq., and engage in collective bargaining with said representative concerning all terms and conditions of employment of personal assistants working under the Homes Services Program that are within the State's control.

Id.

41. On July 16, 2003, Governor Blagojevich codified EO 2003-08 by signing Public Act 93-0204, which amended Section 3 of the Disabled Persons Rehabilitation Act to provide as follows:

> Solely for the purposes of coverage under the Illinois Public Labor Relations Act (5 ILCS 315), personal care attendants and personal assistants providing services under the Department's Home Services Program shall be considered to be public employees and the State of Illinois shall be considered to be their employer as of the effective date of this amendatory Act of the 93rd General Assembly, but not before. The State shall engage in collective bargaining with an exclusive representative of personal care attendants and personal assistants working under the Home Services Program concerning their

> terms and conditions of employment that are within the State's control. Nothing in this paragraph shall be understood to limit the right of the persons receiving services defined in this Section to hire and fire personal care attendants and personal assistants or supervise them within the limitations set by the Home Services Program. The State shall not be considered to be the employer of personal care attendants and personal assistants for any purposes not specifically provided in this amendatory Act of the 93rd General Assembly, including but not limited to, purposes of vicarious liability in tort and purposes of statutory retirement or health insurance benefits. Personal care attendants and personal assistants shall not be covered by the State Employees Group Insurance Act of 1971.

20 ILCS 2405/3(f); 2003 Ill. Legis. Serv. 92-204 (West). Public Act 93-0204 also made conforming amendments to the Illinois Public Labor Relations Act ("IPLRA"), 5 ILL. COMP. STAT. 315/1–128.

42. On or around July 26, 2003, the State designated SEIU-HCII to be the "exclusive representative" of personal assistants under the IPLRA for purposes of collectively bargaining with the State over aspects of its HSP.

43. On February 18, 2005, Governor Blagojevich issued Executive Order 2005-01 ("EO 2005-01"), which is similar to EO 2003-08 but targets child care providers. Exec. Order No. 2005-1, https://www.illinois.gov/Government/ExecOrders/Documents/2005/execorder2005-1.pdf. EO 2005-01 required:

> The State shall recognize a representative designated by a majority of day care home licensed and license exempt providers, voting in a mail ballot election, as the exclusive representative of day care home providers that participate in the State's child care assistance program, accord said representative the same rights and duties granted to employee representatives by the Illinois Labor Relations Act, 5 ILCS 315/1 et seq., and engage in collective negotiations with said representative concerning all terms and conditions of the provision of services for day care home providers under the State's child care assistance program that are within the State's control.

Id. 2–3.

44. On July 15, 2005, Governor Blagojevich recognized SEIU-HCII to be the exclusive representative of all child care providers pursuant to EO 2005-01.

45. On July 26, 2005, Governor Blagojevich codified EO 2005-01 by signing into law Public Act 94-0320. 5 ILL. COMP. STAT. 315/3–/28; 2005 Ill. Legis. Serv. P.A. 94-320 (West). This Act made child care providers public employees solely for purposes of IPLRA, *see* 5 ILL. COMP. STAT. 315/3(n) and 305 ILL. COMP. STAT. 5/9A-11(c-5); and provides that SEIU-HCII "shall be considered to be the exclusive representative of the child and day care home providers defined in this Section," 5 ILL. COMP. STAT. 315(f).

46. On June 29, 2009, Illinois Governor Pat Quinn attempted to impose exclusive representation on additional personal assistants by issuing Executive Order 2009-15. Exec. Order No. 2009-15, https://www.illinois.gov/Government/ExecOrders/Documents/2009/execorder2009-15.pdf. The executive order called for Illinois to recognize an exclusive representative of all personal assistants who serve persons enrolled in Illinois' Home-Based Support Services Program, 405 ILL. COMP. STAT. 80/20-1, which is a Medicaid program that serves adults with severe mental disabilities. *Id.*

47. In January 2013, Governor Quinn moved to impose exclusive representation on yet another group of individuals, namely registered nurses and therapists, by signing into law Public Act 97-1158. 5 Ill. Comp. Stat. 315/3, /7; 2012 Ill. Legis. Serv. P.A. 97-1158 (West). The Act deems "individual maintenance home health workers" to be public employees solely for purposes of IPLRA. 5 Ill. Comp. Stat. 315/3(n). Individual maintenance home health workers are "registered nurse[s]" and "licensed-practical nurse[s]" who provide in-home services, and therapists who provide "in-home therapy, including the areas of physical, occupational and speech therapy." ILL. ADMIN. CODE tit. 89, § 676.40(d).

48. Public Act 97-1158 also extended the IPLRA to encompass all personal assistants and individual maintenance home health workers who work under the HSP "no matter whether the State provides those services through direct fee-for-service arrangements, with the assistance of a managed care organization or other intermediary, or otherwise." 5 ILL. COMP. STAT. 315/3(n); 2012 Ill. Legis. Serv. P.A. 97-1158.

49. Through the actions set forth above, Illinois has falsely deemed individuals who are not actually State employees to be State employees solely for purposes of the IPLRA and unionization.

D. SEIU-HCII Enters into Contracts with Illinois that Force Personal Assistants and Child Care Providers to Support SEIU-HCII.

50. By making SEIU-HCII the "exclusive representative" of personal assistants and child care providers under IPLRA, Illinois granted SEIU-HCII legal authority to act as the agent of all personal assistants and child care providers for purposes of petitioning and contracting with the State over certain HSP and CCAP policies.

51. SEIU-HCII exercised its legal authority by negotiating and entering into successive collective bargaining agreements ("contracts") with the State as the exclusive representative of all personal assistants and child care providers. The most recent contracts, which were effective until June 30, 2015, shall be referred to as the "HSP Contract" and "CCAP Contract" and are attached as Exhibits A and B, respectively, and incorporated into the Complaint.

52. The contracts primarily require that Illinois assist SEIU-HCII with increasing its membership ranks by requiring that Illinois: provide SEIU-HCII with detailed lists of personal information about all personal assistants and child care providers; mail union membership materials to personal assistants and child care providers; refer all questions concerning union representation and membership to SEIU-HCII; and cause personal assistants and child care providers to attend,

as part of orientations and/or trainings, thirty-minute SEIU-HCII presentations, the purpose of which is to cause the individuals to become members of SEIU-HCII.

53. The HPS and CCAP Contracts also require Illinois to deduct membership dues for SEIU-HCII from payments made to personal assistants and child care providers and to seize compulsory "fair share" fees from all payments made to personal assistants and child care providers who are not members of SEIU-HCII. As a result of the foregoing and prior contracts that required similar dues and fee deductions, SEIU-HCII seized over $30 million in compulsory fees from personal assistants between fiscal years 2009 and 2013, and more than $44 million in membership dues and compulsory fees from child care providers between fiscal years 2009 and 2013.

54. In or around July 2014, the State and SEIU-HCII apparently stopped seizing compulsory fees from nonmember personal assistants and child care providers in the wake of the United States Supreme Court's decision in *Harris v. Quinn*, 134 S. Ct. 2618 (2014), that such fee seizures from non-State employees are unconstitutional.

55. The HSP Contract called for the State to pay certain hourly reimbursement rates to personal assistants. However, actual payment rates are subject to legislative appropriations and to federal law that requires payment rates be "consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area." 42 U.S.C. § 1396a(a)(30)(A). On information and belief, State policymakers could competently establish personal-assistant payment rates without bargaining with SEIU-HCII over those rates.

56. The CCAP Contract called for the State to establish certain CCAP reimbursement rates. Ex. B, at Art. VII. However, actual payment rates are subject to legislative appropriations; administrative rulemaking, *see* 305 ILL. COMP. STAT. 5/9A-11(f); and federal regulations that require states

to base their child care rates on a biennial market-rate survey and set child care rates at amounts sufficient to ensure that subsidized children have access to childcare services equal to unsubsidized children, *see* 45 C.F.R. § 98.43. DHS conducts the requisite biennial market-rate surveys. On information and belief, State policymakers could competently establish CCAP payment rates without bargaining with SEIU-HCII over those rates.

57. The HSP and CCAP Contracts require that the State make contributions to an SEIU-HCII health fund for the ostensible purpose of offering health insurance to personal assistants or child care providers. However, a low percentage of personal assistants and child care providers, estimated to be less than 20%, receive health benefits from SEIU-HCII.

58. On information and belief, SEIU-HCII's petitioning and contracting with the State is not necessary, and has not been necessary, to improve the services that the HSP or CCAP provide to persons with disabilities or low-income families in need of child care services.

E. Personal Assistants and Child Care Providers Are Being Forced to Associate with Both SEIU-HCII and Its Expressive Activities.

59. Under the IPLRA, an organization certified to be the exclusive representative of a bargaining unit of individuals represents and speaks for all individuals in that unit, *see* 5 ILL. COMP. STAT. 315/6(c-d), regardless of membership status.

60. The State's certification and ongoing recognition of SEIU-HCII as the exclusive representative of all personal assistants and child care providers associates and affiliates these individuals with SEIU-HCII because it forces them into a mandatory agency relationship with SEIU-HCII, in which SEIU-HCII has legal authority to act as their agent for petitioning and contracting with the State over certain HSP and CCAP policies.

61. SEIU-HCII has met, spoken to, and otherwise petitioned State policymakers concerning HSP and CCAP policies and funding in its capacity as the exclusive representative of all personal

assistants and child care providers, and will continue to do so as long as SEIU-HCII is their exclusive representative.

62. SEIU-HCII, in its capacity as an exclusive representative of all personal assistants and child care providers, uses other expressive means to influence State policymakers, including members of the General Assembly and the public, to support SEIU-HCII's positions concerning HSP and CCAP policies and funding. Among other things, SEIU-HCII has conducted public demonstrations and protests; conducted television, radio, and print advertising campaigns; and engaged in other forms of political advocacy to influence State policymakers and the public to support SEIU-HCII's positions concerning HSP and CCAP policies and funding.

63. For example, on June 29, 2015, SEIU-HCII began airing two television commercials designed to pressure Governor Rauner and state policymakers to accede to SEIU-HCII's demands in collective bargaining for new contracts governing the operation of the HSP and CCAP programs. SEIU-HCII also unveiled a new website with the same purpose, www.dangerouscuts.org.

64. The HSP and CCAP policies over which SEIU-HCII petitions and contracts with the State are matters of public and political concern. Among other things, the manner in which these programs are administered affects persons with disabilities and low-income families who need child care services.

65. SEIU-HCII's petitioning and contracts concerning HSP and CCAP also impact the programs' budgets, which then affects the legislative appropriations necessary to support the programs. Appropriations from Illinois' General Fund for HSP and CCAP were $334,075.4 and $143,490.7 million, respectively, in Fiscal Year 2014 alone. The funding levels for both programs are a matter of political and public concern, were subjects of public controversy in prior years, and are currently a subject of public controversy.

66. SEIU-HCII's expressive activities concerning HSP and CCAP policies often address other public policies that SEIU-HCII supports, such as increasing taxes, raising the minimum wage, and making changes to immigration policy. To offer one example, a "lobby day" conducted by SEIU-HCII at Illinois' State Capitol in 2012 to influence the proposed budget for the HSP also called for changes to corporate tax policies.

67. SEIU-HCII characterizes itself as progressive organization; and is viewed, and can be characterized as, a progressive advocacy group. SEIU-HCII often advocates for public policies that are viewed, and can be characterized as, liberal or progressive; and often endorses and supports public officials and candidates for public office who are viewed, and can be characterized as, liberal or progressive.

68. By making SEIU-HCII the exclusive representative of all personal assistants and child care providers for petitioning and contacting the State, Illinois associates and affiliates all personal assistants and child care providers with SEIU-HCII and its petitioning, contracts, and related expressive activities.

69. SEIU-HCII itself asserts on its website that "[m]ore than 35,000 home child care providers and child care center teachers and staff are united in SEIU Child Care & Early Learning, a division of [SEIU-HCII]," and that "Illinois home child care providers were the first in the country to unite our voices in SEIU . . . ." *Child Care & Early Learning*, SEIU HEALTHCARE ILLINOIS, INDIANA, MISSOURI, KANSAS, http://www.seiuhcilin.org/category/child-care-early-learning/ (last visited Nov. 2, 2015).

70. Plaintiffs oppose being forced to accept SEIU-HCII as their exclusive representative for petitioning and contracting with the State. They do not want to be forced into an agency relationship with this advocacy group or otherwise affiliated with this advocacy group. Nor do Plaintiffs

want to be associated and affiliated with SEIU-HCII's petitioning, contracts, and other expressive activities.

COUNT I

Forcing Plaintiffs to Associate with SEIU-HCII violates the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

71. Plaintiffs re-allege and incorporate by reference the paragraphs set forth above.

72. The First Amendment to the United States Constitution guarantees each individual a right to choose whether, how, and with whom he or she associates to "petition the Government for a redress of grievances" and engage in "speech." A state infringes on these First Amendment rights when it compels citizens to associate with an expressive organization or its expressive activities. That infringement is subject to at least exacting constitutional scrutiny, and is permissible only if it serves a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.

73. The Defendants, by compelling Plaintiffs and other personal assistants and child care providers to associate with SEIU-HCII as their exclusive representative, and by associating Plaintiffs and other personal assistants and child care providers with SEIU-HCII's expressive activities without their consent, are violating Plaintiffs' First Amendment rights, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983. No compelling, or otherwise sufficient, state interest justifies this infringement on the personal assistant and child care providers First Amendment rights.

74. By being forced to associate with SEIU-HCII, a group with which Plaintiffs would not otherwise associate, Plaintiffs are suffering the irreparable harm and injury inherent in a violation

of First Amendment rights for which there is no adequate remedy at law. Unless the Court enjoins these violations, Plaintiffs will continue to suffer irreparable harm and injury.

75. The following statutory provisions are unconstitutional, both on their face and as applied to Plaintiffs, to the extent that they deem personal assistants or child care providers subject to IPLRA: 5 ILL. COMP. STAT. 315/3(f)(iv-v); 5 ILL. COMP. STAT. 315/3(n); 5 ILL. COMP. STAT. 315/3(o); 5 ILL. COMP. STAT. 315/7; 20 ILL. COMP. STAT. 2405/3(f); and 305 ILL. COMP. STAT. 5/9A-11.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that this Court:

A. Issue a declaratory judgment that it is unconstitutional under the First Amendment, as secured against state infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, for Defendants to compel Plaintiffs and other personal assistants and child care providers to associate with an exclusive representative and its expressive activities.

B. Issue a declaratory judgment that the statutory provisions described in paragraph 71 are unconstitutional under the First Amendment, as secured against State infringement by the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983, and are null and void;

C. Issue preliminary and permanent injunctions that enjoin enforcement of the statutory provisions described in paragraph 71 and enjoin Defendants from requiring Plaintiffs to associate with an exclusive representative and its expressive activities;

D. Award Plaintiffs nominal and compensatory damages from SEIU-HCII;

E. Award Plaintiffs their costs and reasonable attorney fees pursuant to the Civil Rights Attorneys' Fees Award Act of 1976, 42 U.S.C. § 1988; and

F. Grant such other and additional relief as the Court may deem just and proper.

Dated: December 11, 2015

Respectfully submitted,

/s/ Jacob H. Huebert

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