Foundation Action

The bi-monthly newsletter of the National Right to Work Legal Defense Foundation, Inc.

Vol. XXXIV, No. 5 | 8001 Braddock Road • Springfield, Virginia 22160 | www.nrtw.org | September/October 2014

VICTORY! Supremes Strike Down Homecare Unionization Scheme

Foundation attorneys plan to use Harris *win to challenge homecare unionization nationwide*

WASHINGTON, DC – On June 30, 2014, the United States Supreme Court issued a landmark ruling in *Harris v. Quinn*, striking down a coercive unionization scheme implemented by Illinois Governor Pat Quinn and his disgraced predecessor, Rod Blagojevich.

The *Harris* case was argued by National Right to Work Foundation staff attorneys for eight Illinois homecare providers who opposed unionization. The case marks the 17th time Foundation attorneys have argued before the highest court in the land.

The Court's ruling struck down the Illinois unionization scheme, holding that individuals who receive state subsidies based on their clientele cannot be forced to pay union dues. The Court's ruling renders unconstitutional similar forced-dues homecare unionization schemes in at least 14 other states.

"We celebrate knowing that Illinois moms linked arms and refused to be bullied," said lead plaintiff Pam Harris. "Families in Illinois can relax knowing their homes are safe from being a union workplace and there will be no third party intruding into the care we provide our disabled sons and daughters."

"After a long legal struggle, eight courageous Illinois care providers have established a precedent that protects not only their First Amendment rights, but the rights of caregivers across the country," said Mark Mix, President of the National Right to Work Foundation. "Forcing parents and other care providers into union ranks is inimical to the idea of freedom of association, and we applaud the Supreme Court for recognizing that fact."

With the help of Foundation staff attorneys, Chicago-area caregiver Pam Harris won an important precedent against coercive unionization.

Unionization drives undermine caregivers' rights

The *Harris* case stemmed from a federal class-action lawsuit challenging the constitutionality of a law approved by Blagojevich in 2003 and an executive order later signed by Quinn. The governors designated individuals who offer in-home care to disabled persons receiving state subsidies as "public employees" for the purpose of subjecting them to coercive unionization.

Under the governors' scheme, if a majority of caregivers in a "bargaining unit" had voted for unionization, all

See **SUPREME COURT WIN** *page 8*

IN THIS ISSUE

Teamster Bosses to Finally Pay Worker Over $50K in Damages

Union twice went to Supreme Court to defend discriminatory scheme during 8 year legal fight

TULSA, OK – After nearly a decade of stonewalling and legal wrangling, Teamster union bosses have finally agreed to pay former Interstate Bakeries Wonder Bread/Hostess delivery driver Kirk Rammage $51,500 for discriminating against him.

Eight years ago, Foundation staff attorneys helped Rammage file charges with the National Labor Relations Board (NLRB) against Teamster Local 523 union officials for insisting that Rammage lose his seniority during a merger. The Teamsters also forced Rammage to commute to a new work location more than 70 miles away.

Rammage was the single nonunion sales representative with a Dolly Madison facility in Ponca City for over 15 years before his division was combined in 2005 with Wonder Bread/Hostess. Although the company wanted to protect Rammage's seniority during the merger, Teamster officials demanded that he be put at the bottom of the seniority roster.

After Rammage filed charges against the union, the NLRB ruled against the Teamsters' discriminatory policy. But Rammage's legal battle wasn't over.

After an eight-year legal fight, Teamster union bosses have finally agreed to pay Kirk Rammage over $50,000 in damages.

Supreme Court rejected union twice

On an appeal filed by Teamster union lawyers, the U.S. Court of Appeals for the Tenth Circuit upheld the NLRB's decision. Those rulings were later nullified by the U.S. Supreme Court in 2009 on the ground that the Board lacked a three-member quorum at the time of its decision.

The case then went back to the NLRB. The NLRB revisited the facts of the case and again concluded that union officials broke the law. The Tenth Circuit upheld the NLRB ruling again and slapped Teamster Local 523 with monetary sanctions for the frivolous nature of the union's lawyers' second appeal. Teamster union lawyers appealed the case to the Supreme Court again, but the Court declined to take the case.

An NLRB Administrative Law Judge determined that Rammage was entitled to $47,337 in back pay and reimbursements, plus interest. After union lawyers filed objections, a three-member panel of the NLRB upheld the ruling, forcing Teamster bosses to finally agree to pay damages and interest totaling $51,500.

"Justice delayed is justice denied, and Mr. Rammage has been denied justice for far too long," said Ray LaJeunesse, Vice President of the National Right to Work Foundation. "After two appeals to the Supreme Court, we are happy to report that Mr. Rammage will finally receive what has long been owed."

Foundation *Action*

Rev. Fred Fowler	Chairman, Board of Trustees
Patrick Semmens	Vice President and Editor-in-Chief
Ray LaJeunesse, Jr.	Vice President and Legal Director
Mark Mix	President

Distributed by the
National Right to Work Legal Defense Foundation, Inc.
8001 Braddock Road, Springfield, Virginia 22160
www.nrtw.org • 1-800-336-3600

The Foundation is a nonprofit, charitable organization providing free legal aid to employees whose human or civil rights have been violated by abuses of compulsory unionism. All contributions to the Foundation are tax deductible under Section 501(c)(3) of the Internal Revenue Code.

High Court Clears Path for Michigan Care Providers to Win Back Money

Government union bosses took in over $4 million in dues from 50,000 childcare providers

WASHINGTON, DC – In the wake of the National Right to Work Foundation's latest U.S. Supreme Court victory (See cover story), the Supreme Court announced on the last day of the current term that it has vacated the decision of a lower court and remanded a federal lawsuit which asks that Michigan's 50,000 home-based childcare providers receive a refund of union dues illegally taken during a now-defunct unionization scheme. The move tosses out a Sixth Circuit Appeals Court ruling against Michigan childcare providers, who are seeking the return of money illegally diverted to union coffers.

In the suit, Foundation staff attorneys argue that all of Michigan's home childcare providers should be entitled to refunds of the union dues collected after former Michigan Governor Jennifer Granholm and a United Auto Worker (UAW) and American Federation of State, County and Municipal Employees (AFSCME) coalition - known as the Child Care Providers Together Michigan (CCPTM) union - colluded to force the state's providers into union ranks against their will.

When this unionization scheme was first announced, media reports suggested that, in exchange for their special government-granted privileges to force Michigan's homecare providers under union monopoly control, the union bosses benefiting from the scheme had contributed to various pro-compulsory unionism politicians in Michigan, including Governor Granholm.

Providers challenged scheme in federal court

With free legal assistance from National Right to Work Foundation staff attorneys, Michigan home childcare providers Carrie Schlaud, Diana Orr, Peggy Mashke, and Edward and Nora Gross filed a federal class-action lawsuit in 2010 against Granholm and the CCPTM union for designating home childcare providers who receive state funds as public employees solely for the purpose of forcing them to accept the CCPTM's "representation" and pay union dues.

Homecare provider Carrie Schlaud led the effort to strike down Michigan union bosses' illegal forced-dues scheme.

Although less than 15 percent of 40,000 eligible childcare providers receiving state funding voted in a union certification election, CCPTM union bosses were subsequently granted monopoly lobbying privileges and the power to collect union dues from home childcare providers. The union took upwards of $4 million dollars from the childcare providers before the scheme ended.

"It's not about the money or about being 'anti-union;' it's about the principle," stated Schlaud, a home-based provider who employs one other person to help care for about a dozen children. "And that I had no choice in whether to pay union dues."

After filing their lawsuit, the five plaintiffs won a settlement with Governor Rick Snyder ensuring that Michigan no longer forces home childcare providers into union ranks. However, because the providers' lawsuit was denied class-action status, CCPTM union officials were not required to refund $4 million in forced union dues previously collected from what turned out to be over 50,000 care providers.

Supreme Court ruling opens door to dues refunds

In early July, the Supreme Court overturned the Seventh Circuit U.S. Court of Appeals' decision in the case and ordered that court to reconsider its denial of class-action status to the thousands of childcare providers. The High Court cited the Foundation's recently-won *Harris* precedent, in which the Court held that homecare providers cannot be forced into union dues payments because of their clientele.

"The Court's order opens the door for over 50,000 childcare providers to recover millions of dollars in illegally-seized union dues that were meant for the children of families receiving state assistance," said Mark Mix, President of the National Right to Work Foundation. "Right to Work staff attorneys plan to use the *Harris* victory to help Michigan caregivers get their money back."

Supreme Court Strikes Down Obama's Illegal NLRB 'Recess' Appointments

Right to Work Foundation attorneys argued Obama's purported 'recess' appointments were invalid

WASHINGTON, DC – In a victory for workers, the U.S. Supreme Court in late June unanimously struck down President Barack Obama's controversial purported "recess appointments" to the National Labor Relations Board (NLRB).

The decision may invalidate up to 1,058 NLRB rulings, many of which favored union bosses' forced dues powers and other privileges over the interests of independent-minded workers or job providers.

The United States Supreme Court unanimously struck down President Obama's unconstitutional recess appointments to the NLRB. The ruling invalidates hundreds of pro-Big Labor decisions handed down by the Board.

Foundation staff attorneys filed first legal challenge

On January 4, 2012, Obama announced that he was making three appointments to the NLRB, including former union lawyer Richard Griffin, without consent from the U.S. Senate and despite the fact that the Senate was not officially in recess

"Obama's recess appointments to the NLRB, despite there being no formal recess of Congress, clearly demonstrated that this Administration is in the pocket of Big Labor," explained Mark Mix, President of the National Right to Work Foundation. "Union bosses know their coercive agenda is overwhelmingly unpopular with the American people, which is why they've turned to unelected administrative agencies like the NLRB to push through much of what they cannot get by Congress."

The appointments immediately set in motion legal challenges to the validity of the Board's pro-forced-unionism rulings. On January 13, 2012, National Right to Work Foundation staff attorneys filed motions challenging the legality of the recess appointments, making them among the first to challenge the illegal appointments. Foundation attorneys continued to challenge the recess appointments in several federal courts in the following months, and were the first in the country to argue in a U.S. Court of Appeals that the appointments were illegal.

Appeals court hands Right to Work advocates total victory

However, it was another case, *Noel Canning v. NLRB*, that prompted a three member panel of the U.S. Court of Appeals for the District of Columbia to strike down the recess appointments in January 2013.

In a stunning ruling, the appeals court adopted arguments made in an *amicus curiae* ("friend of the court") brief filed jointly by Foundation staff attorneys and the Landmark Legal Foundation. The court held that the recess appointments were in violation of the U.S. Constitution, ruling that the Recess Appointments Clause (Article II, Section 2, Clause 2) limited the power of the president to making such appointments only during a congressional intersession recess and only when the vacancy actually occurs during that recess.

Foundation attorneys file *mandamus* case to stop rogue Board

While *Noel Canning* was pending on appeal at the U.S. Supreme Court, Foundation staff attorneys filed a *mandamus* ("cease and desist") case for Jeanette Geary, a former Warwick, Rhode Island nurse, to completely shut down the illegal Obama Labor Board.

The U.S. Supreme Court has long held that nonmember workers cannot be compelled to pay for union boss politics. In Geary's case, however, Obama's hand-picked Labor Board ruled that Geary and several of her nonmember coworkers could be forced to pay for union boss political lobbying, including lobbying for legislation in neighboring Vermont – a ruling that flatly contra-

dicted long-standing Supreme Court precedent.

Divided Supreme Court issues unanimous ruling

Finally, on June 26, 2014, the U.S. Supreme Court upheld the *Noel Canning* judgment of the appeals court.

A five member majority of the Court issued a narrow ruling holding that the president could make recess appointments only during a recess of "sufficient length" and that "the Senate is in session when it says it is, provided that, under its own rules, it retains the capacity to transact Senate business."

Meanwhile, the four conservative Supreme Court Justices concurred in overturning the recess appointments, but like the appeals court, held that the president can only make recess appointments during "the intermission between two formal legislative sessions…[and] to fill only those vacancies that 'happen during the Recess'…"

As a result of the Court's unanimous judgment, the Board lacked a quorum from January 2012 to August 2013, and the Board's biased and decidedly pro-Big Labor rulings during that period are therefore invalidated.

"In a victory for independent-minded workers who have received unjust treatment at the hands of Obama's pro-forced-unionism NLRB, as many as 1,058 NLRB decisions may be invalidated," said Mix. "This case underscores the constitutional chaos this President created by gaming the rules for the benefit of union bosses."

For breaking news and other updates, visit the Foundation's website: www.nrtw.org

Help Defend Workplace Freedom Through Estate Planning

In several recent issues of **Foundation *Action*** we have examined how you can benefit from careful estate planning and assist the Right to Work cause at the same time. We are extremely grateful to supporters like you who remember the Foundation in your will or estate.

Of course, outright gifts of cash and securities to the Foundation offer immediate help to the millions of Americans denied their workplace freedoms. It is a long and lonely battle, and your gift today will make a difference!

Have you updated your will?

Preparing a well-thought-out will or trust instrument that is beneficial for you, your loved ones, and your charitable causes can be the single most important estate plan you can make – and updating your will is equally important. It is also the most important way to leave a legacy gift to the National Right to Work Legal Defense Foundation and its strategic litigation program.

We read every day about multi-million dollar charitable bequests, but there are countless smaller gifts that have been arranged by supporters who strongly believe in charitable causes like the Foundation and wish to leave a gift in their will or estate plan. All of them help and are appreciated.

In addition to an up-to-date will, many supporters will consider a Revocable Living Trust which can help facilitate the management and distribution of one's property. A living trust may provide significant probate expense savings and speed up the process of your estate settlement.

Below is suggested language for including the National Right to Work Foundation in your will or trust instrument, or when amending your current will or estate plan.

I give, devise and bequeath to National Right to Work Legal Defense and Education Foundation, Inc., 8001 Braddock Road, Springfield, Virginia 22160, for its general purposes:

a. The sum of $_____; or
b. Name a particular investment or piece of Property with legal description, custodian, etc., as applicable; or
c. ____ percent of the rest, residue and remainder of my estate, including property over which I have power or appointment; or
d. All the rest, residue and remainder of my estate, including property over which I have a power of appointment.

You must plan ahead to further your philanthropic goals with a gift to the Foundation or any charitable institution. All of us here at the Foundation are humbled by your generosity and support through a planned gift or bequest.

We encourage you and your family to consult your tax advisor or estate planning attorney before making a final decision on your estate. Please contact Ginny Smith, Foundation Director of Strategic Programs, if you would like additional information at 1-800-336-3600, ext. 3303.

Minnesota Caregivers File Lawsuit Against Coercive Unionization Drive

Foundation staff attorneys hope to leverage Harris *Supreme Court victory in Minnesota*

MINNEAPOLIS, MN - In late August, a group of National Right to Work Foundation-assisted Minnesota homecare providers filed a federal lawsuit challenging another compulsory unionization scheme aimed at caregivers.

With the help of Foundation staff attorneys, Teri Bierman and eight other personal care providers from across the state filed the suit in U.S. District Court against Governor Mark Dayton and the Service Employees International Union (SEIU).

The SEIU's unionization drive was enabled by Governor Dayton, who pushed through legislation that designates Minnesota homecare providers as "state employees" for the purpose of unionization.

On August 27, the SEIU won a majority of votes in a write-in unionization election for Minnesota caregivers. Although nearly 27,000 care providers were eligible to vote under the new law, only 5,782 voted. Of those, 3,543 supported the SEIU, just 13 percent of the total number of eligible voters.

Consequently, SEIU officials are now empowered to bargain for all 27,000 Minnesota homecare providers. Caregivers who didn't vote or voted against the union will now be forced to accept the SEIU's "representation."

Lawsuit takes aim at Minnesota homecare unionization scheme

Bierman's suit requests an injunction to halt implementation of the law that designates SEIU union officials as monopoly bargaining representatives for Minnesota homecare providers.

The suit challenges the forced-unionism scheme on the grounds that it violates the U.S. Constitution's guarantees of free political expression and association.

Jennifer Parrish, a Foundation-assisted childcare provider from Minnesota, was interviewed on Fox Business about her opposition to the AFSCME union's childcare organizing drive.

As covered on the front page of this month's issue of **Foundation *Action***, the U.S. Supreme Court recently issued a landmark ruling on homecare unionization in *Harris v. Quinn*. The *Harris* case successfully challenged a unionization scheme that forced Illinois homecare providers into union ranks against their will.

Now Foundation attorneys hope to use this new precedent to help caregivers in other states fight off coercive unionization schemes. After examining the *Harris* decision, Right to Work litigators believe that the Court's ruling renders unconstitutional homecare unionization schemes in at least 13 other states.

"Over 27,000 Minnesota homecare providers could be forced into union ranks because of an election in which only 13 percent of eligible caregivers actually voted for unionization," said Patrick Semmens, Vice President of the National Right to Work Foundation. "Caregivers in states across the country, including Minnesota, are using the Foundation's *Harris* victory to combat coercive unionization drives, and we hope the *Harris* precedent can be used to protect the First Amendment rights of Minnesota caregivers."

Childcare unionization scheme also challenged

Meanwhile, a Foundation-assisted federal lawsuit brought by Minnesota childcare providers seeking to overturn a state childcare unionization law was recently dismissed by the U.S. Court of Appeals for the Eighth Circuit because the threat of unionization is not yet "imminent."

Unlike the homecare providers, who are facing an SEIU-led effort to push them into union ranks, no unionization election has been scheduled for Minnesota childcare providers.

However, a Big Labor unionization drive is almost certainly on the horizon. The American Federation of State and County Municipal Employees (AFSCME) union is already collecting signatures from childcare providers to trigger a unionization election. Based on

"It is outrageous that the state of Minnesota is attempting to unionize Jennifer Parrish, who runs a small business out of her own home."

the Court of Appeals' reasoning, Foundation staff attorneys plan to re-file the lawsuit for Minnesota childcare providers once a date for a unionization election has been set.

"It is outrageous that the state of Minnesota is attempting to unionize Jennifer Parrish, who runs a small business out of her own home," said Semmens. "If AFSCME organizers proceed with their childcare unionization campaign, we plan to re-file this lawsuit to defend Minnesota childcare providers' First Amendment rights from coercive unionization."

Newsclips Requested

We're always looking for stories that expose union corruption and abuse. Send articles that appear in your local paper to:

NRTWLDF
ATTN: Newsclip Appeal
8001 Braddock Road
Springfield, VA 22160

Supporters can also email online stories to wfc@nrtw.org

Foundation Fights Push to Unionize College Sports

Right to Work attorneys file brief opposing NLRB football decision

SPRINGFIELD, VA – The National Right to Work Foundation recently filed an *amicus curiae* ("friend of the court") brief with the National Labor Relations Board (NLRB) opposing the compulsory unionization of college athletes. The brief was filed in response to a ruling issued earlier this year by an NLRB regional director that designated Northwestern University football players as employees eligible for unionization after Steelworkers union officials filed a petition for a unionization vote.

The Foundation's brief points out that subjecting student athletes to compulsory unionization violates their First Amendment right to freedom of association. Under the NLRB regional director's ruling, if a majority of student athletes in an NLRB-designated "bargaining unit" vote for unionization, all student athletes in that unit – even those who oppose the union's presence – must accept the union's bargaining over their terms of participation in college sports. In states like Illinois, where Northwestern is located, this would even mean that students could be forced to pay union dues or fees as a condition of participating in college athletics.

NLRB ruling could lead to student unionization

"The NLRB regional director's ruling could allow union officials to force students to accept union bargaining and pay union dues just to participate in college sports," said Patrick Semmens, Vice President for the National Right to Work Foundation. "That's a perverse way to treat student athletes, who don't need the added hassle of fending off aggressive union organizers."

The Foundation's brief goes on to argue that the NLRB has no interest in forcing students to accept union "representation" or forcing them to pay union dues because student athletes are not employees.

Big Labor operatives have decided that college athletes are the next frontier in union organizing.

Unlike employees, student athletes are not compensated for workplace performance. To take one example, many students "walk on" to teams without the benefit of a scholarship.

Foundation attorneys note that the NLRB regional director's labeling of student athletes as employees could also apply to college students who receive scholarships for academics, music, or the arts. This overly-broad definition could leave even more students vulnerable to coercive unionization.

"If the Obama NLRB goes along with this outrageous overreach, it will be the latest in a long line of actions designed to extend union bosses' privileges at the expense of the individuals being forced into union ranks," continued Semmens. "Although traditionally we've only represented employees, we'd gladly provide legal assistance to student athletes who may now be targeted by union bosses for compulsory unionization."

Supreme Court Win

continued from page 1

caregivers would have been forced to pay union dues and accept the union's "representation," even those who opposed the union's presence.

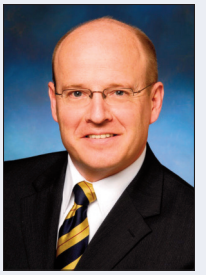
"If we accepted Illinois' argument" that homecare workers can be forced to pay union dues, wrote Justice Samuel A. Alito Jr. in his majority opinion, "we would approve an unprecedented violation of the bedrock principle that, except perhaps in the rarest of circumstances, no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support."

Precedent can be used to challenge similar schemes

As more and more employees become disenchanted with Big Labor, union operatives have turned to coercive organizing schemes to push workers into their forced-dues-paying ranks. Homecare unionization drives are just the latest – and most visible – example of this tactic.

Over the past several years, aggressive union organizers have pushed for homecare unionization in at least 21 states. Foundation litigators are already helping care providers challenge these campaigns in Minnesota, Michigan, and Massachusetts, as well as Illinois. After examining the decision, Right to Work staff attorneys believe that *Harris* can be used to challenge the constitutionality of homecare unionization schemes across the country.

"The scope of the *Harris* decision goes well beyond the rights of homecare providers in Illinois," continued Mix. "We look forward to leveraging this landmark Supreme Court decision to ensure that no caregiver is forced to join or pay dues to a union against his or her will."



Message from Mark Mix

President
National Right to Work
Legal Defense Foundation

Dear Foundation Supporter:

The Supreme Court of the United States receives about 10,000 petitions for a writ of *certiorari* every year. In a given year, the High Court will only hear oral argument in 70 or 80 cases.

Thanks to the dedicated support of concerned citizens like you, your National Right to Work Foundation has reached the very top of the legal summit seventeen times. That's truly unparalleled success.

And it's a privilege to find ourselves at the very tip of the spear fighting for one of the most vital rights in our constitutional republic.

The recent *Harris v. Quinn* decision is just the latest in a string of precedent-setting Foundation victories.

As I look back at all that we've accomplished since our founding in 1968, I believe the best may be yet to come.

In *Harris*, Foundation staff attorneys asked the nine Supreme Court Justices to consider whether government-sector forced unionism is compatible with the First Amendment.

While the Court freed in-home healthcare providers from being forced to subsidize union bosses, it declined to issue a broader ruling protecting the Right to Work for all civil servants.

But Justice Samuel Alito's opinion strongly suggests a majority of the Court may do so in the future.

In great detail, Justice Alito articulated how the Court's reasoning in past forced-dues cases "is questionable on several grounds."

Such a pronouncement from a majority of the Court was unthinkable decades ago.

That just goes to show you how far we've come thanks to the generosity of our supporters.

Sincerely,

Mark Mix