UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JENNIFER PARRISH, ADDIE CLYDE, CYNTHIA CUNNINGHAM, PATRICIA GENTZ, HOLLY GOAD, SARA NELSON, JEROL OLDENKAMP, TRACY STENGEL, LISA TEMPLIN, RUTH TESSMER, SALLY WILLIS-OELTJEN, TABITHA ZIMMER, Plaintiffs, v. GOVERNOR MARK DAYTON, in His Official Capacity as Governor of the State of Minnesota, and JOSH TILSEN, in His Official Capacity as Commissioner of the Bureau of Mediation Services, and LUCINDA JESSON, in her official capacity as Commissioner of the Minnesota Department of Human Services, Defendants.	)	No.: **COMPLAINT**

INTRODUCTION

1. Plaintiffs are individuals who operate child care businesses in their homes. They bring this suit to enjoin and declare unconstitutional the Family Child Care Providers Representation Act, Minn. Stat. §§ 179A.50-52 ("the Act"), which calls for the certification of an organization to act as their exclusive representative for purposes of petitioning the State over issues of public policy. The Act violates 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 individually choose with whom they associate to petition the Government for redress of grievances.

JURISDICTION AND VENUE

2. This Court has jurisdiction to adjudicate 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 the authority under 28 U.S.C. §§ 2201 and 2202 to grant declaratory relief and other relief based thereon.

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

PARTIES

4. Plaintiffs are individuals who operate family child care businesses in their own homes. They reside and operate their businesses in the following counties in the State of Minnesota ("State"): Jennifer Parrish (Olmsted), Addie Clyde (Carlton), Cynthia Cunningham (Ramsey), Patricia Gentz (Dakota), Holly Goad (Carlton), Sara Nelson (Dakota), Jerol Oldenkamp (Mower), Tracy Stengel (Blue Earth), Lisa Templin (Sibley), Ruth Tessmer (Anoka), Sally Willis-Oeltjen (Olmsted), and Tabitha Zimmer (Pine).

5. Defendant Mark Dayton is the Governor of the State of Minnesota and its chief executive officer, and is sued in his official capacity.

6. Defendant Josh Tilsen is the Commissioner of the Minnesota Bureau of Mediation Services ("BMS"), and is sued in his official capacity.

7. Defendant Lucinda Jesson is the Commissioner of the Minnesota Department of Human Services ("DHS"), and is sued in her official capacity.

FACTUAL ALLEGATIONS

I. Family Child Care Providers

8. Pursuant to Minnesota Statutes § 245A.03, a licensed family child care provider ("licensed provider") is an individual who provides child care services to up to fourteen (14) children in his or her own residence. Licensed providers are the proprietors of home-based businesses, to include for federal tax and other purposes, and often employ one or more employees. For example, Plaintiffs Addie Clyde and Jennifer Parrish currently employ one employee, and Tabitha Zimmer employs two employees.

9. Pursuant to Minnesota Statutes § 245A.03, a nonlicensed family child care provider ("nonlicensed provider") is an individual who provides child care to (a) children to whom he or she is related and/or (b) unrelated children from a single family. As relevant here, nonlicensed providers are generally grandparents, aunts, uncles, adult siblings, nieces, nephews, or neighbors of the children for whom care is provided.

10. Licensed and nonlicensed providers sometimes provide care to low-income families enrolled in the State's Child Care Assistance Program ("CCAP"), Minnesota Statutes § 119B *et seq*., which is operated pursuant to the federal Child Care and Development Block Grant Act of 1990. This public-assistance program subsidizes participating families' costs of obtaining child care for their children.

11. The amount of the CCAP subsidy is set by statute. Pursuant to Minnesota Statutes § 119B, subsidized families are responsible for paying their child care provider a designated co-payment and any difference between their provider's rates and the CCAP reimbursement rate and co-payment.

12. Families enrolled in CCAP may use any qualified child care service willing to accept their business, including licensed and nonlicensed providers. The CCAP subsidy is paid directly to the provider, unless the care is provided in the child's own home, in which case payment is directed through the family.

13. Pursuant to Minnesota Statutes § 119B.125, providers willing to accept CCAP payments for their child care services must register with their county to receive payment. All Plaintiffs are so registered, and anticipate that they may provide child care services to subsidized families in the future.

14. In 2013, the family child care businesses operated by Plaintiffs Addie Clyde, Holly Goad, Sara Nelson, Jerol Oldenkamp, Tracy Stengel, Lisa Templin, Ruth Tessmer, Sally Willis-Oeltjen, and Tabitha Zimmer provided child care services to one or more CCAP subsidized families.

II. Family Child Care Providers Representation Act

15. On May 24, 2013, Governor Dayton signed the Act into law. As relevant here, Minnesota Statutes § 179A.51, subd. 4 governs "family child care provider[s]," which it defines to include any licensed or nonlicensed provider "who receives child care assistance to subsidize childcare services for a child or children in their care, under [CCAP]."

16. In § 179A.52, subd. 1, the Act provides that "[f]or the purposes of the Public Employment Labor Relations Act ["PELRA"], under Chapter 179A, family child care providers shall be considered, by virtue of this section, executive branch state employees employed by the commissioner of management and budget or the

commissioner's representative." However, the "section does not require the treatment of family care providers as public employees for any other purpose."

17. In §§ 179A.52, subds. 2, 5-6, the Act calls for State certification of an "exclusive representative" to speak and act for all family child care providers who had an active CCAP registration within the prior twelve months based on the results of a mail-ballot election.

18. Pursuant to § 179A.52, subd. 5, the mail-ballot election can be requested by an employee organization as early as July 31, 2013.

19. Pursuant to § 179A.52, subd. 4, to facilitate an election request, the Act provides that organizations that seek to exclusively represent family childcare providers, and that have the support of 500 providers, can receive a list of all providers as early as July 1, 2013.

20. Pursuant to § 179A.51, subd. 3, an "exclusive representative" certified by the State under the Act is granted "the right to represent family child care providers in their relations with the state." Pursuant to §§ 179A.52, subds. 6-7, this includes the right to "meet and negotiate" with the State, through the Governor or his designee, over "grievance issues, child care assistance reimbursement rates under Chapter 119B, and terms and conditions of service," and the right to "meet and confer" with the State over "policies and other matters relating to their service that are not terms and conditions of service." The results of these negotiations are to be memorialized in an agreement that governs all family child care providers.

21. The Act thereby contemplates forcing Plaintiffs and other family child care providers to accept a mandatory, exclusive representative for petitioning the State over issues of public policy that may affect them.

22. In addition, the Act also contemplates forcing family child care providers to financially support their state-designated representative. The Act makes applicable to providers Minnesota Statutes § 179A.06, subd. 3, which provides that "[a]n exclusive representative may require employees who are not members of the exclusive representative to contribute a fair share fee for services rendered by the exclusive representative."

23. Plaintiffs strongly oppose being forced to accept or support a mandatory exclusive representative for purposes of petitioning the State. They also do not want their individual right to choose with whom they associate for petitioning government to be subjected to a majority vote. Plaintiffs want to retain their individual right to choose with whom they associate to lobby the State over its child care policies.

24. The Act creates an actual and imminent risk that Plaintiffs and other family child care providers will have their associational rights put to a vote, will be forced into an exclusive agency relationship with an organization for purposes of petitioning the State, and will be forced to financially support that compulsory representative.

CLAIMS FOR RELIEF

COUNT I

(Violation of 42 U.S.C. § 1983 and the United States Constitution)

25. Plaintiffs reallege and incorporate by reference herein the paragraphs set forth above.

26. The First Amendment to the United States Constitution guarantees all citizens the individual right to choose with whom they associate to "petition the Government for a redress of grievances."

27. A state grievously infringes on First Amendment rights when it compels citizens to associate with an organization for these expressive purposes. This infringement is subject to strict scrutiny, as mandatory associations are permissible only when they serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.

28. By and through the Act, Defendants threaten to wrongfully deprive Plaintiffs of their constitutional rights to not associate with an organization for purposes of speech and "petition[ing] the Government for a redress of grievances" in violation of the First Amendment, as secured against State infringement by the Fourteenth Amendment and 42 U.S.C. § 1983.

29. No compelling state interest justifies this infringement on Plaintiffs' First Amendment rights.

30. Minnesota Statutes §§ 179A.52, subds. 1-7 are thus unconstitutional both on their face and as applied to Plaintiffs.

COUNT II

(Violation of 42 U.S.C. § 1983 and the United States Constitution)

31. Plaintiffs reallege and incorporate by reference herein the paragraphs set forth above.

32. The First Amendment exists to protect individual rights from the will of the majority, to include an individual's right to choose with whom he or she associates to "petition the Government for a redress of grievances."

33. By and through the Act, Defendants threaten to wrongfully deprive Plaintiffs of their right to individually choose with whom they associate to speak and petition government under the First Amendment, as secured against State infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, by subjecting them to an election in which the majority of those voting will dictate the organization with which they must associate to petition the State.

34. Minnesota Statutes § 179A.52, subd. 5, which calls for an election, is thus unconstitutional both on its face and as applied to Plaintiffs.

COUNT III

(Injunctive Relief)

35. Plaintiffs reallege and incorporate by reference herein the paragraphs set forth above.

36. The Act threatens to cause Plaintiffs irreparable harm and injury inherent in the violation of constitutional rights for which there is no adequate remedy at law. To wit, Plaintiffs are in imminent danger of having their First Amendment rights violated

because the Act calls for subjecting their associational rights to a majority vote and for forcing Plaintiffs to accept and support a mandatory exclusive representative for purposes of speaking to and petitioning the State.

37. Plaintiffs are entitled to a preliminary and permanent injunction that enjoins the previously mentioned sections of the Act.

PRAYER FOR RELIEF

Wherefore, Plaintiffs request that this Court:

A. Issue a declaratory judgment that Minn. Stat. §§ 179A.51, subd. 4 and 179A.52, subds. 1-10 are unconstitutional under the First Amendment, as secured against State infringement by the Fourteenth Amendment and 42 U.S.C. § 1983, and null and void;

B. Issue a preliminary and permanent injunction that enjoins enforcement of the previously mentioned sections of the Act;

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

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

Date: June 5, 2013

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