

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Hollee Saville, Rebecca Swanson, Jean Lang, Erin Rheault, Nikki Geffe, Terrie Boyd, Misty Fisk, Kristi Johnson, Jennifer Lutgen, Joan Finley, and Susan Johnson,

Court File No.: _____

Plaintiffs,

v.

COMPLAINT

Minnesota Governor Mark Dayton, in his official capacity as the Governor of the State of Minnesota; Minnesota Bureau of Mediation Services; Josh Tilsen, in his official capacity as Commissioner of the Bureau of Mediation Services; Minnesota Department of Human Services; and Lucinda Jesson, in her official capacity as Commissioner of the Minnesota Department of Human Services,

Defendants.

Plaintiffs, family child care providers in the State of Minnesota, bring this suit to challenge Minnesota's Family Child Care Providers Representation Act, §179A.50 et seq., which directs the Department of Human Services and the Bureau of Mediation Services to take certain actions in an effort to facilitate the unionization of family child care providers. Plaintiffs seek declaratory relief that Defendants' actions violate federal law as well as the Minnesota and United States Constitutions. Plaintiffs also seek injunctive relief to prevent the Governor, the Minnesota Bureau of Mediation Services and the Minnesota Department of Human Services from implementing the Family Child

Care Providers Representation Act in any manner.

Wherefore, for its Complaint against Defendants, Plaintiffs state and allege as follows:

PARTIES

1. Hollee Saville, Rebecca Swanson, Jean Lang, Erin Rheault, Nikki Geffe, Terrie Boyd, Misty Fisk, Kristi Johnson, Jennifer Lutgen, Joan Finley, and Susan Johnson are all taxpayers, residents and citizens of the State of Minnesota who are also family child care providers.

2. Plaintiffs Hollee Saville, Nikki Geffe, Jennifer Lutgen, Rebecca Swanson, Kristi Johnson, Joan Finley and Susan Johnson do not receive subsidies for providing family child care services through the Minnesota Child Care Assistance Programs (“CCAP”) under Chapter 119B of the Minnesota Statutes for a child currently in their care.

3. Plaintiffs Jean Lang, Erin Rheault, Terrie Boyd, and Misty Fisk currently receive subsidies for providing family child care services through CCAP for a child currently in their care.

4. Family child care providers regularly employ employees and retain independent contractors to work at their family child care businesses. Plaintiffs Hollee Saville, Rebecca Swanson, Erin Rheault, Terrie Boyd, Misty Fisk, and Jennifer Lutgen are such family child care providers.

5. Defendant Mark Dayton is sued in his official capacity as the Minnesota Governor.

6. Defendant Minnesota Bureau of Mediation Services (“BMS”) is a department in the State of Minnesota government’s executive branch. The BMS administers programs in Minnesota relating to labor relations including mediation, representation, arbitrator referral, labor-management cooperation, and labor relations training.

7. Defendant Josh Tilsen is sued in his official capacity as the Commissioner of the BMS.

8. Defendant Minnesota Department of Human Services (“DHS”) is a department in the State of Minnesota government’s executive branch. The DHS provides essential services to Minnesota seniors, people with disabilities and children, and, through its licensing services, ensures that certain minimum standards of care are met in private and public settings for children and vulnerable adults.

9. Defendant Lucinda Jesson is sued in her official capacity as the Commissioner of the Minnesota Department of Human Services.

JURISDICTION AND VENUE

10. This action is brought in challenge to Article I of Minn. Stat. §179A.50, et seq.

11. Plaintiffs seek declaratory and injunctive relief: (a) for deprivation of Plaintiffs’ rights arising under and secured by the Constitution and laws of the United States, including the Taft Hartley Act, 29 U.S.C.A. §186, and the National Labor Relations Act as amended, 29 U.S.C. § 151, et. seq.; and (b) under Minnesota state law for violation of the Minnesota State Constitution.

12. Plaintiffs also bring this action for declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

13. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

14. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this district.

FACTS IN SUPPORT OF CLAIMS FOR RELIEF

15. On May 24, 2013, Governor Dayton signed the Family Child Care Providers Representation Act (hereinafter “the FCCPRA”), Minn. Stat. §179A.50, et seq. (attached hereto as Exhibit A), into law.

16. The FCCPRA defines “family child care provider” as a licensed or unlicensed child care provider “who receives child care assistance to subsidize child care services for a child or children currently in their care.” Minn. Stat. §179A.51, subd. 4.

17. The FCCPRA requires the DHS, by July 1, 2013, to compile a list of family child care providers who receive subsidies for children in their care and who have had an active CCAP registration within the past 12 months, and to thereafter provide that list to any union seeking to represent family child care providers upon confirmation to the BMS that at least 500 family child care providers support such representation. Minn. Stat. §179A.52, subds. 3 and 4.

18. After July 31, 2013, any union wishing to represent the “appropriate unit” of family child care providers may seek exclusive representative status. Minn. Stat. §179A.52, subd. 5.

19. The FCCPRA requires the BMS to conduct a certification election “upon an appropriate petition stating that at least 30 percent of the appropriate unit wishes to be represented by the petitioner.” Minn. Stat. §179A.52, subd. 5.

20. The FCCPRA mandates that the only appropriate unit is that of family child care providers who receive child care assistance to subsidize child care services for a child or children currently in their care and who have had an active CCAP registration within the previous 12 months. Minn. Stat. §179A.52, subd. 2.

21. There are approximately 11,000 licensed family child care providers in Minnesota. The FCCPRA limits voting rights to only those providers who receive CCAP subsidies for a child currently in their care and who have had an active CCAP registration in the past 12 months, which is approximately between 5,000 and 6,000 licensed family child care providers.

22. Family child care providers who do not currently receive CCAP subsidies for a child currently in their care are not eligible to vote in the union election provided for in the FCCPRA, and are not eligible to be part of the represented unit. Plaintiffs Hollee Saville, Nikki Geffe, Jennifer Lutgen, Rebecca Swanson, Kristi Johnson, Joan Finley and Susan Johnson are such family child care providers.

23. Employees of family child care providers are not eligible to vote in the election provided for by the FCCPRA.

24. The FCCPRA further declares that if Commissioner of the BMS certifies an exclusive representative for the family child care providers who receive CCAP subsidies for a child currently in their care and who have had an active CCAP registration within

the past 12 months, the state, through the governor or the governor's designee, shall meet and negotiate in good faith with the exclusive representative regarding grievance issues, child care assistance reimbursement rates, and terms and conditions of service. Minn. Stat. §179A.52, subd. 6.

25. Pursuant to the FCCPRA, "terms and conditions of service" includes hours of employment, compensation, fringe benefits and personnel policies affecting working conditions. Minn. Stat. §§179A.52, subd. 8 and 179A.03, subd. 19.

26. The subjects bargained for by any exclusive representative for family child care providers who receive CCAP subsidies for a child currently in their care and who have had an active CCAP registration within the past 12 months and the agreements reached with the State of Minnesota will impact all family child care providers within the State of Minnesota.

COUNT I: VIOLATION OF THE EQUAL PROTECTION CLAUSES OF THE UNITED STATES AND MINNESOTA CONSTITUTIONS

27. Plaintiffs reallege and incorporate herein as if fully restated, the allegations contained in paragraphs 1 through 26.

28. The Equal Protection Clauses found in Article 1, Section 2 of the Constitution of the State of Minnesota, and in the Fourteenth Amendment of the United States Constitution, require the state to treat similarly situated individuals alike.

29. The FCCPRA affords family child care providers who receive CCAP subsidies for a child currently in their care and who have had an active CCAP registration within the past 12 months the right to engage in collective action.

30. The FCCPRA does not afford any other family child care providers with the right to engage in collective action or to vote in any union election facilitated by the FCCPRA for family child care providers.

31. The FCCPRA further provides that, if a majority exclusive representative is certified, such a representative shall meet and negotiate with the state “regarding grievance issues, child care assistance reimbursement rates...and terms and conditions of service.”

32. By excluding non-subsidized child care provider Plaintiffs from participation in the vote, from being equally represented with the subsidized child care providers, and from having an equal say in the issues of mutual concern set forth in the FCCPRA, and nonetheless subjecting them to whatever determinations are negotiated by the representatives of the subsidized child care providers, the FCCPRA violates the Equal Protection Clauses of the Constitutions of the State of Minnesota and the United States.

COUNT II: VIOLATION OF THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION – PREEMPTION BY FEDERAL LABOR LAW

33. Plaintiffs reallege and incorporate herein as if fully restated, the allegations contained in paragraphs 1 through 32.

34. The provision of family child care services impacts interstate commerce and family child care providers are subject to the National Labor Relations Act (NLRA), as amended, 29 U.S.C. § 151, et. seq.

35. As set forth in Section 9(a) of the NLRA, employers and independent contractors are prohibited from voting in representation elections.

36. Under Section 8(a)(2) of the NLRA, employers are prohibited from dominating or interfering with “the formation or administration of any labor organization or contributing financial or other support to it.”

37. Under Section 302 of the Taft-Hartley Act, 29 U.S.C.A. § 186, employers, associations of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer are prohibited from paying, lending, or delivering, or agreeing to pay, lend, or deliver, any money or other thing of value “to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce.”

38. By providing for an election of family child care providers, who are properly defined as employers, the FCCPRA is in direct conflict with the National Labor Relations Act and the Taft-Harley Act. As such, it is preempted by operation of these Acts as well as by the Supremacy Clause of the United States Constitution (Article VI, Clause 2).

IRREPARABLE HARM

39. Plaintiffs are suffering or are in danger of suffering irreparable harm if the elections facilitated by the FCCPRA occur. Plaintiffs’ ability to vote in an election on equal terms with other family child care providers, the result of which will directly impact the regulation of their livelihood, and their being subjected to such an election in the first instance when it is unlawful and unconstitutional, is at stake. Plaintiffs have no adequate remedy at law to prevent the infringement of their Constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court to:

1. Grant a preliminary and subsequently a permanent injunction that:
 - a. Enjoins any enforcement or implementation of the Family Child Care Providers Representation Act, Minn. Stat. §179A.50, et seq.
 - b. Enjoins the Commissioner of the Bureau of Mediation Services from conducting the elections provided for by the Family Child Care Providers Representation Act, Minn. Stat. §179A.50, et seq.
2. Issue a declaratory judgment which provides that the Family Child Care Providers Representation Act, Minn. Stat. §179A.50, et seq., is unconstitutional because:
 - a. The Family Child Care Providers Representation Act, Minn. Stat. §179A.50, et seq., violates the Equal Protection Clauses of the Constitutions of the United States and Minnesota.
 - b. The Family Child Care Providers Representation Act, Minn. Stat. §179A.50, et seq., is preempted by federal law.
3. In due course, to award attorneys' fees and costs pursuant to the Minnesota Equal Access to Justice Act, Minn. Stat. § 15.472.
4. In due course, to award further reasonable costs and attorneys' fees as the Court deems proper.
5. In due course, to grant all further relief in law or in equity as the Court may deem proper.

