

Supreme Court Hears Oral Argument On The Constitutionality Of Public Sector Unions

January 22, 2014 | [Unions And Union Membership](#), [Labor And Employment](#)



With all the focus on [Noel Canning](#) last week, it's easy to overlook another labor case in front of the high court this term - *Harris v. Quinn*, No. 11-681, had oral argument in front of the Supreme Court yesterday and involves a constitutional challenge to agency shop rules for public employee unions.

Under previous Supreme Court precedent, public employees who are represented by a union can be required to accept the exclusive representation of the union and pay in dues the costs of representation (although they may object and are not required to pay for the costs of political or other non-representation activities). While this standard also applies to union employees in the private sector, agency shop requirements in the public sector raise unique constitutional issues that do not apply to private sector employees. Since public sector employees are employed by the government, forcing them to accept representation by a union raises issues under the First Amendment rights to freedom of association and to petition the government. The Supreme Court has previously held that agency shop requirements in the public sector do not violate the Constitution, but has opened the door to reconsidering this position by agreeing to hear the *Harris* case this term.

RELATED PRACTICE AREAS

Collective Bargaining
Labor and Employment
Labor Relations
Union Avoidance

The *Harris* case involves home care workers in Illinois who are represented by SEIU. (As we have [previously covered](#), SEIU's representation of similar home care workers in Michigan was outlawed by the state in 2012.) Issues before the Supreme Court include not only the constitutional questions but also whether the workers should be considered employees of the state (they are paid by Medicare funds managed by the state) or of the patients they care for.

SCOTUSblog has an in-depth analysis of the issues [available here](#) and a summary of yesterday's oral argument [here](#). The Court's comments at oral argument suggest that the Court may be seriously considering overruling its prior precedent and that Justice Scalia may be the deciding vote.

The position of the National Right to Work Legal Defense Foundation, which is representing the objecting workers, is [available here](#).

Like *Noel Canning*, the Court's opinion in *Harris v. Quinn* is expected by the end of the Court's term in June.

UPDATE: A link to the Supreme Court's oral argument transcript can be [accessed online here](#).