



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

Mr. Scott Harris
Clerk of the Court
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

RECEIVED

SEP 28 2015

Governor's Legal
Office

Dear Mr. Harris:

I write to inform you of an unauthorized filing, purportedly on behalf of Bruce Rauner, Governor of Illinois, in *Friedrichs v. California Teachers Association*, No. 14-915.

According to the Court's docket, Governor Rauner (along with employees of an Illinois school district) filed an amicus brief in support of the *Friedrichs* petitioners on September 11, 2015. The Governor's lawyers identified on the cover of the brief are Jason Barclay and Dennis Murashko from the Office of the General Counsel to the Governor. Mr. Barclay and Mr. Murashko have no authority to file or to order the filing of any brief in this Court on behalf of the Governor, in his official capacity, because neither the Governor nor his attorneys have the authority, as a matter of state law, to represent the State or its officials in any court or to determine the State's litigation positions.

The Illinois Constitution provides: "The Attorney General shall be the legal officer of the State . . ." Ill. Const., art. V, § 15. The Illinois Attorney General Act states, *inter alia*, that the Attorney General has the power "[t]o appear for and represent the people of the State before the supreme court in all cases in which the State or the people of the State are interested." 15 ILCS 205/4. For at least a century, the Illinois Supreme Court has held that the Attorney General, who is an elected constitutional officer, is the exclusive legal representative of the State and state officials in all litigation in which the State is the real party in interest, with minor exceptions not relevant here. *See, e.g., Fergus v. Russel*, 110 N.E. 130, 145 (Ill. 1915) (holding that the Attorney General "is the sole official adviser of the *executive officers* . . . and it is his duty to conduct the law business of the State, both in and out of the courts") (emphasis added); *Scachitti v. UBS Fin. Servs.*, 831 N.E.2d 544, 553 (Ill. 2005) (reaffirming precedent establishing that "the Attorney General is the chief

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legal officer of the State and its *only* legal representative in the courts”) (emphasis in *Scachitti*, internal quotation marks and citations omitted).

Mr. Barclay and Mr. Murashko are well aware that they do not have authority to file or authorize the filing of court documents on behalf of the Governor in his official capacity, absent appointment by the Attorney General as Special Assistant Attorneys General. Although the Office of the Governor did not request such an appointment before filing the unauthorized amicus brief at issue here, and the Attorney General did not make such an appointment, Mr. Barclay’s and Mr. Murashko’s appearance as “Counsel for Amicus Bruce Rauner, Governor of Illinois” on this amicus brief is an implicit assertion that they have such authority.

The amicus brief also omits an important fact. The brief asserts that Governor Rauner filed a complaint in federal court seeking to declare unconstitutional Illinois law providing that public sector employees can be required to pay fair share fees. The brief fails to mention, however, that on May 16, 2015, the district court dismissed the Governor’s claims for lack of subject matter jurisdiction and because the Governor lacks Article III standing to assert them. No appeal has been filed from that dismissal. (For purposes of that case, which involved the validity of an Executive Order issued by the Governor, the Attorney General granted the Governor’s request to appoint Mr. Murashko as a Special Assistant Attorney General to represent him. That appointment, which expired on June 30, 2015, did not extend to filing an amicus brief in a case involving another State’s statute.)

I would be happy to address any questions the Clerk’s Office may have pertaining to the authority of Illinois government officials to file briefs in this Court.

Sincerely,



Carolyn Shapiro
Solicitor General of Illinois

cc: Mr. Jason Barclay, Esq.
Mr. Dennis Murashko, Esq.