



Request for Amicus Brief to the United States Supreme Court

March 23, 2023

The Northwestern Illinois Area Agency on Aging (NIAAA) is asking your organization to consider filing an amicus brief in our appeals to the United States Supreme Court in *Nyhammer v Basta* and/or *NIAAA v. Illinois Department on Aging*. NIAAA's two petitions are currently pending being docketed by the Clerk of the U.S. Supreme Court. The petitions are asking the U.S. Supreme Court to accept review of two 2023 Illinois appellate court decisions because they will likely have devastating nationwide consequences for vulnerable older adults, the aging network, and all welfare recipients. NIAAA is one of the 618 nationwide area agencies on aging (AAAs) designated by the Older Americans Act (OAA) as "public advocates" who are responsible for protecting older adults from governmental actions.

NIAAA's first appeal alleges that *Nyhammer v Basta* improperly denies older adults their fundamental constitutional right (guaranteed by *Goldberg v Kelly*) to receive an administrative hearing before a state agency can terminate welfare benefits. Despite *Goldberg* being settled law for over half a century, *Basta* wrongly gives the state agency "unbridled discretion" to continue permanently closing the administrative hearing process to all Illinois older/disabled adults which is a blatant violation of their constitutional rights. This means, for example, that if a state agency wrongly terminates an older adult from the home delivered meal program, the older adult cannot appeal the termination. Since all welfare programs in the United States are premised on complying with *Goldberg*, its potential demise in *Nyhammer v. Basta* could have huge consequences nationwide for millions of welfare recipients.

NIAAA's second appeal alleges that *NIAAA v. Illinois Department on Aging* contradicts the OAA by preventing the Illinois Long-Term Care Ombudsman from functioning as an independent advocate protecting nursing home/facility residents from actions of state agencies. Since there are no federal cases on the topic, it is expected that state agencies nationwide will seize on *NIAAA v. Illinois Department on Aging* in their continuing efforts to eliminate any pretense that the State Ombudsman is an independent advocate for facility residents.

Both appeals also allege that the decisions contradict the OAA by preventing AAAs nationwide from functioning as public advocates protecting older adults.

Since both of these Illinois appellate court decisions are harmful to older adults/welfare recipients and will be final if the U.S. Supreme Court does not accept our appeal, we encourage your organization to file an amicus brief on any "relevant matter" you believe the U.S. Supreme Court should know before deciding if it will take NIAAA's appeals. Under U.S. Supreme Court Rule 37, an amicus should present new information and be filed by an attorney who is admitted to practice before the U.S. Supreme Court within 30 days of the petition being docketed. Since NIAAA's appeals to the U.S. Supreme Court are separate, you have the option of filing an amicus in either or both cases.

If you would like copies of NIAAA's petitions and other court filings, please visit our website at: www.nwilaaa.org. If you have questions, please contact me at gnyhammer@nwilaa.org or by calling NIAAA at (815) 226-4901.

NIAAA appreciates your consideration,

Grant Nyhammer

Grant Nyhammer, NIAAA Executive Director & General Counsel