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Battle continues over Blagojevich's clemency backlog

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[Rod R. Blagojevich](#) may be down for the count, but lawyers are still slugging it out over the former governor's handling of requests for executive clemency.

On one side of the fight are 12 Illinois residents who claim Blagojevich denied them due process by allegedly dragging his feet in deciding whether to wipe long-ago felony convictions from their records.

On the other side is Blagojevich's successor, [Patrick J. Quinn](#), who argues that there are virtually no limits on the governor's exercise of the power to grant or deny clemency.

Lawyers for Quinn and the clemency seekers are to square off before the 7th U.S. Circuit Court of Appeals at 9:30 a.m. Tuesday on the 27th floor of the Dirksen Federal Courthouse.

The 12 clemency seekers emphasize that they are not arguing that they have a right to a favorable decision on their petitions.

But they contend they do have a liberty interest in a decision itself.

And they argue that with that interest comes a requirement that the decision be made within a reasonable period of time.

"Without a reasonableness time component to the governor's clemency decision, he could continue to delay clemency decisions in perpetuity and thereby violate Illinois law with impunity, making his statutory obligation to make a decision in the first place illusory," attorneys for the 12 clemency seekers wrote in a brief filed before Blagojevich was removed from office.

Quinn stepped into the ring after Blagojevich was impeached by the Illinois House of Representatives and then convicted of abuse of power by the Illinois Senate.

Quinn, like his predecessor, sees things differently than the clemency seekers.

Quinn contends that the governor pretty much has free rein in handling requests for

executive clemency.

Quinn does concede that the General Assembly has mandated that the governor either grant or deny applications for clemency that the state Prisoner Review Board forwards to him.

But Quinn also points out that Article 5, section 12 of the Illinois Constitution states that the governor may grant clemency applications "on such terms as he thinks proper."

And Quinn argues that this means that Illinois lawmakers would have been out of bounds if they had intended to dictate the process a governor must follow in deciding whether to grant or deny clemency.

"Further, if the legislature limited the amount of time the governor may consider a clemency petition, even by implication, the legislature has violated the Constitution's separation-of-powers clause by infringing upon the governor's unfettered discretion to decide clemency petitions in the manner he deems proper," lawyers who now represent Quinn wrote in a brief.

Chicago attorney [J. Timothy Eaton](#) of Shefsky & Froelich Ltd. is to argue the case before the 7th Circuit on behalf of Quinn.

Chicago attorney [Charles C. Jackson](#) of Morgan, Lewis & Bockius LLP is to argue the case for the plaintiffs.

In a lawsuit filed in federal court, the plaintiffs claimed Blagojevich had violated their right to due process by failing to act — in some cases, for several years — on their petitions for executive clemency.

The plaintiffs asked for an injunction directing then-governor Blagojevich to make a decision one way or the other on the clemency petitions that had been forwarded to him by the Prisoner Review Board.

In March 2008, U.S. District Judge [Joan B. Gottschall](#) denied the governor's motion to dismiss the suit.

Gottschall found that the plaintiffs — assuming their allegations were true — had shown that they had a "protectable liberty interest" in getting a decision on their clemency requests "within a reasonable period of time subsequent to the PRB's recommendation."

Blagojevich filed an interlocutory appeal with the 7th Circuit.

The case before the appeals court is *Stephanie Bowens, et al. v. Gov. Pat Quinn*, No. 08-4153.

In addition to Jackson, the plaintiffs are represented before the 7th Circuit by [Gregory P.](#)

[Abrams](#), also of Morgan, Lewis.

The law firm is representing the plaintiffs pro bono.

In addition to Eaton, Quinn is represented by [Roger J. Kiley](#), also of the Shefsky firm.

The petitions for clemency were filed for the plaintiffs by the Cabrini Green Legal Aid Clinic.

On Wednesday, Executive Director [Robert B. Acton](#) said CGLA does not represent clients who have been arrested within the last 10 years or who pose a threat to others.

Instead, CGLA represents clients who have paid their debt to society and who want to clean up their record so they can get a job and become a productive citizen, Acton said.

"These are individuals who made mistakes in the past and owned up to them and want to move on with their lives," Acton said.

Acton also said he expects that Quinn will move more quickly than Blagojevich in addressing a backlog of about 2,600 clemency petitions.

"We anticipate a positive working relationship with Gov. Quinn and have every reason to believe that this extensive bottleneck of pending clemency decisions will soon be cleared," Acton said.

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