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OPINIONS + EDITORIAL

Supreme Court ends dues skim nationwide

By Derk Wilcox

In Michigan, it took several lawsuits, new statutes, and the defeat of a constitutional amendment to end an underhanded union scheme that skimmed "dues" from those who were providing home-based care to certain Medicaid recipients. On Monday, the United States Supreme Court, in the case of Harris v Quinn, ruled that an almost identical dues skim in Illinois was illegal and violated the First Amendment. The Mackinac Center Legal Foundation filed two amicus briefs in the case.

In both Michigan and Illinois, the unions used a dubious approach to classify home-based caregivers, most of whom were assisting family or friends, as public-sector employees. And as the Supreme Court noted, these people were considered public employees only for the purposes of collective bargaining — they did not receive state-funded retirement plans or protections that state workers have. Using this theory of public-sector unionization, a grocer who accepts food stamps could be considered a government employee. In Michigan, during Gov. Jennifer Granholm's administration, it was the Service Employees International Union (SEIU) that unionized these home-based caregivers and began skimming dues and fees from the Medicaid payments. In Illinois, the scheme was written into place by disgraced former Gov. Rod Blagojevich and his successor, Gov. Patrick Quinn, and again involved the SEIU.

Eight other states — California, Oregon, Washington, Massachusetts, Missouri, Connecticut, Vermont and Maryland — have similar schemes that will be impacted.

In Michigan, before it was ended, the dues skim filled the SEIU's coffers with approximately $34 million taken from funds that were meant to go to the caregivers. In Illinois, the SEIU's skim took about $3.6 million a year. The Michigan dues skim ended with the defeat of Proposition 4 in 2012, after which the SEIU was assessed a $199,000 fine — the second biggest penalty ever for campaign finance violations in Michigan — for hiding its bankrolling of Proposition 4.

In neither state did the union even negotiate for wages or conditions of employment. The SEIU went so far as to admit in federal court two years ago that it used the dues skim money for political purposes. As the court noted, [I]n the public sector, both collective bargaining and political advocacy are directed at the government."

(Dale G. Young / The Detroit News)

Granholm

This forced lobbying on behalf of the home-based care givers was the key point at the Supreme Court, which found that forcing these people to fund lobbying for government action which they do not necessarily support violates their First Amendment rights of free speech and freedom of association. As the court stated, "This case presents the question whether the First Amendment permits a State to compel personal care providers to subsidize speech on matters of public concern by a union that they do not wish to join or support. We hold that it does not."

The court had been asked to rule on the larger First Amendment question of mandatory unionism for all public-sector employees, but it declined to address that broader question. If it had ruled more broadly, the court could have had the larger impact of ruling that all public-sector employees nationwide would have the right-to-work freedoms enjoyed in Michigan and 23 other states. For now, it is safe to say that these schemes to designate home-based caregivers as public employees solely for the purpose of forcing them to pay union dues and fees are over.

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