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Supreme Court Ends 'Dues Skim' Nationwide

By Michael J. Reitz

Summary

The U.S. Supreme Court recently put an end to the stealth unionization of home-based caregivers in Illinois and several other states, a scheme similar to the one that the Mackinac Center helped end here in Michigan but not before the SEIU skimmed $34 million in "dues" from our state's most vulnerable residents.

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Mackinac Center staff at the Supreme Court in January after oral arguments in Harris v. Quinn: (L to R) Dan Armstrong, Mike Reitz, Patrick Wright, Joe Lehman.

(Editor's note: A version of the following commentary originally appeared in The American Spectator on July 1, 2014.)

On June 30, the Supreme Court ruled that thousands of home-based caregivers in Illinois — and perhaps hundreds of thousands in eight other states — are not required to pay union dues as a condition of employment.

How did we get here? Hundreds of thousands of disabled individuals in this country require the assistance of a caregiver. In order to avoid institutionalizing these patients, a federal Medicaid program provides assistance for in-home care. Many patients are cared for by a friend or family member.

Most people wouldn't equate such a selfless act to labor unions, but the Service Employees International Union saw the flow of Medicaid dollars as an opportunity to reverse organized labor's decades-long membership slump. SEIU began organizing caregivers in Los Angeles in the 1990s, and then moved to Washington, Oregon, Illinois, and several other states.

The arrangement was quite simple: SEIU would convince a state agency to declare that caregivers were public employees of the agency, when in reality the caregivers are privately employed by the care recipients and paid through the Medicaid program. The union would then run a union election to designate itself the representative of the "public employees," ostensibly to bargain for higher wages and better working conditions. The state then diverted a portion of the Medicaid payments to SEIU in the form of union dues, regardless of whether the caregivers wanted to belong to a union.

The practice of unionizing private caregivers greatly enriched SEIU. We exposed a similar scheme in Michigan in 2009. Michigan Gov. Rick Snyder and the Michigan Legislature dismantled the program, but not before SEIU skimmed $34 million away from disabled adults.

The Harris case eventually reached the Supreme Court. In the 5-4 majority decision, Justice Samuel Alito wrote that home-based caregivers in the Medicaid program are not public employees, despite Illinois's insistence otherwise. The recipients of the care, noted the court, have prime authority in hiring, firing, and supervising their caregiver, while the state merely administers the program and provides minimal regulatory oversight.

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The court also noted that a ruling for SEIU would lead to absurd results, potentially unionizing as public employees a host of private workers who receive payments from a government agency. Doctors, hospitals workers, childcare providers, and foster parents could all be facing the same tactic. As the Mackinac Center noted, there could be no end to this type of public-sector unionization if it were allowed to be played out to its full extent. Could grocers be unionized because some customers use food stamps? Or perhaps landlords if some tenants receive housing subsidies? We noted such a landscape in one of two amicus briefs we filed in this case, and it appears the majority took note. Justice Alito wrote: "Extending those boundaries to encompass partial-public employees, quasi-public employees, or simply private employees would invite problems."

Organized labor (and its primary political beneficiary) will criticize the ruling, but secretly labor leaders must have breathed a sigh of relief on Monday. Why? During the Harris v. Quinn litigation a much larger issue emerged: whether any public employee should be required to financially support a union he does not wish to join as a condition of employment. In 1977 the court had ruled in Abood v. Detroit Board of Education that public school employees could be required to pay union dues, even if they objected to the union's ideological expenditures.

In the Harris majority, the Court again indicated that Abood stood on a "questionable" constitutional foundation, but declined to reverse the precedent, as the Illinois caregivers are not truly public employees.

So what's next? The Supreme Court's ruling ends the union practice of charging in-home caregivers mandatory dues. This ruling will apply nationwide, but especially in the nine states that have unionized hundreds of thousands of such workers.

But just as significant, the Harris ruling is another step in the direction of giving all public employees a choice in whether to support a labor union.

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