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POLICY BRIEF

Citizens Guide to Initiative 1501: to change the state's public records act to further the special interests of organized labor

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September 2016

1. *In 2001, Washington voters approved union-sponsored Initiative 775, which reclassified individual home care providers from private workers to state employees; the measure specified that individual providers are not employees of the state, but they are treated as public employees "solely for the purpose of collective bargaining."*

2. *The Service Employees International Union (SEIU) contributed more than $1 million to the campaign to pass the measure in Washington. After passage of Initiative 775, SEIU Local 775 was certified to act as the monopoly union representative for all individual providers in Washington.*

3. *In 2014, the U.S. Supreme Court ruled in Harris v. Quinn that classifying providers, including those that only take care of immediate family members, as public employees only for the purposes of unionization makes them "partial public employees" who cannot be forced to participate in a union or pay union dues or agency fees.*

4. *SEIU executives filed Initiative 1501 to block independent organizations from informing individual providers of their rights under Harris v. Quinn. Under the guise of protecting the elderly and disabled from consumer fraud and identify theft, the measure would prevent any group, except the union, from obtaining providers' contact information currently available under the Public Record Act.*

5. *Under Initiative 1501 the union would be exempt from its own exemption, meaning union executives, but not the public, would have full and exclusive access to the contact information they claim should be closely guarded.*

6. *Washington's public records laws are routinely hailed as a model of government accountability and transparency, and are widely recognized as among the best in the nation. Initiative 1501 would weaken the public's right to access the public information that keep our government open and accountable.*

7. *An objective reading of the text and a review of its background show that Initiative 1501 would not serve the general interest of the people of our state. On the contrary, it would only serve the narrow interest of one union that is seeking to gain financial benefit from exclusive access to public information.*

8. *Our state's Public Records Act should not be weakened for the benefit of a special interest group.*

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Introduction

This fall, voters will decide on whether to pass Initiative 1501, a statewide measure that supporters say would increase penalties for identity theft and fraud targeting seniors and people with disabilities. On the surface the proposal seems to ban fraud activities that are already illegal.

A closer look reveals the measure is about much more than fighting illegal theft and fraud. The measure is an attempt by organized labor to change the state's public records law to strengthen a union's monopoly access to the contact information of Washington's in-home caregivers. The effect of Initiative 1501 would be to prevent any non-union group from informing care-givers of their right not to pay union dues or agency fees if they do not want to.

This Citizens Guide summarizes the ballot proposal and describes how the policy changes it would require, under the guise of protecting society's most vulnerable, would benefit organized labor and make it harder for in-home caregivers to learn about their right to not pay union dues or fees.

Background

In the mid-1980s, as union membership declined, labor unions developed plans to increase their dues-paying membership by unionizing state-subsidized home care providers.[1] State subsidized day care providers were also targeted.

Home care providers are individuals who contract with the state to provide care to another person who is eligible for state-subsidized services, usually the elderly or people with disabilities. Often the person providing the care is a family member or a friend. An example would be a mother caring for her disabled adult daughter. These state-subsidized caregiving services are typically paid through the federal Medicaid entitlement program.

The biggest obstacle to the unions' plan for expanding due-paying membership was that these home caregivers were typically classified as private-sector workers who are not employed by the state and are generally

1 "A New Model of Public-Sector Union Organization," by Derek Wilcox, Mackinac Center for Public Policy, October 23, 2012 at www.mackinac.org/17796.

not paid directly by the state. They are care providers, often family members, as noted, who are hired by the disabled or elderly person to assist in a private home and are paid from a government entitlement received by the client. As private-sector workers who are hired and employed by individuals and contract with the state for payment, there was no way to organize caregivers and no common employer with whom to collectively bargain.

The Service Employees International Union (SEIU) began a state-by-state political effort to change the classification of caregivers from private-sector workers to public-sector, arguing caregiver providers are really public-sector employees because their services are funded though state dollars via the federal Medicaid program. Reclassification as a public-sector employee meant the state would technically be considered their employer, and unions could require that those workers join the union and pay dues.

In 1999, SEIU's first success came in California, when lawmakers passed a bill to change the status of individual home care workers from private employees to state employees.

Two years later voters in Washington approved union-sponsored Initiative 775, which supporters described as a measure to establish an "authority that has the power and duty to regulate and improve the quality of long-term health-care services." Among the thirteen pages of initiative text establishing qualifications, standards and training for publicly funded individual providers of in-home care services, was a provision allowing organized labor to unionize home care workers in the state.[2]

However, Initiative 775 clearly specifies that individual providers are not actually employees of the state, rather they were designated public employees "solely for the purpose of collective bargaining."[3] They are still legally employed by the person who hires them for caregiving services.

SEIU, the union that pioneered the strategy to gain union dues from individual providers by classifying them as state employees, contributed more than $1 million to the campaign to pass the measure in Washington.[4] After passage of Initiative 775, SEIU Local 775 was certified to act as the monopoly union representative for all individual providers in Washington.

Suddenly, in-home caregivers were required to pay union dues or agency fees to SEIU Local 775 for representing them, even if they did not want that representation. Even parents receiving state assistance to care for their disabled child are forced to pay union dues. The union does not even have to

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2 Initiative 775, Washington In-Home Care Services Initiative, approved November 6, 2001, at www.sos.wa.gov/elections/initiatives/text/i775.pdf.

3 Ibid.

4 "I-775: A Solution or a problem?" by Carol M. Ostrom, *The Seattle Times*, October 29, 2001, at http://community.seattletimes.nwsource.com/archive/?date=20011029&slug=healthinitiative29m.

do the collecting; the state automatically takes the union dues and fees from caregivers' monthly earnings and passes the funds to SEIU. Today, there are around 35,000 individual home care providers in the state, and SEIU 775 takes more than $20 million in dues from them each year.[5]

SEIU pushed for similar laws in other states, and before long a dozen other states had followed the examples of California and Washington.[6] By 2011, a total of 13 states reclassified different groups of state-subsidized in-home care providers as state employees. Three of those states subsequently repealed those laws.[7] Those newly-created "state employees" must pay union dues or fees as a condition of providing care to their elderly or disabled family members.

Of course, most of these "state employees" are not really employees of the state. Like Washington, most of the states specify that providers are considered state employees only for the purpose of collective bargaining. They receive none of the generous benefits that come with being a state employee, but they must pay union dues or fees if they want to work as a caregiver. Meanwhile, unions benefit from the millions of dollars of guaranteed revenue generated by the forced unionization scheme.

Some home caregivers objected to the forced unionization plan and sued to recover their independence. In 2014 a ruling by the U.S. Supreme Court ended labor union's dues-collecting "scheme." The Court ruled in *Harris v. Quinn* that designating providers as public employees only for the purposes of unionization makes them "partial public employees" who cannot be forced to participate in a union or pay union dues or agency fees. The Court noted that the customers who hire the caregivers control most aspects of their employment, including hiring, assigning duties, supervising, disciplining and firing, and "other than compensating" caregivers, the state's "involvement in employment matters is minimal."[8]

In Washington, individual providers are among four employee groups considered public employees "solely for the purposes of collective bargaining." As stated by the state Office of Financial Management:

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5 "The Fate of the Union," by Daniel Walters, *Inlander*, July 9, 2014 at www.inlander.com/spokane/the-fate-of-the-union/Content?oid=2323759.

6 "Big labor trickery on display in effort to unionize home care," by Sean Higgins, *Washington Examiner*, October 31, 2015, at www.washingtonexaminer.com/big-labor-trickery-on-display-in-effort-to-unionize-home-care/article/2575302.

7 "The Practical Impact of *Harris v. Quinn*: A Major Blow to Organized Labor," by Andrew M. Grossman, Cato Institute, June 30, 2014, at www.cato.org/blog/practical-impact-harris-v-quinn-major-blow-organized-labor.

8 Harris et al. v. Quinn, Governor of Illinois, et al., Supreme Court of the United States, No. 11-681, Argued January 21, 2014—Decided June 30, 2014, at www.supremecourt.gov/opinions/13pdf/11-681_j426.pdf.

> "Adult family home providers, child care providers, home care individual providers and language access providers are not state employees. They are only considered state employees for the purposes of collective bargaining."[9]

Based on the Court's *Harris v. Quinn* ruling, these four groups are "partial public employees." This means those workers now have a choice of whether they want to pay a union to represent them, and many have decided to leave their union, taking their monthly dues dollars with them.[10] But many individual providers do not know about their right to quit paying union dues and fees, and union executives have been reluctant to inform them. They believe they still have no choice but to pay union dues.

The Freedom Foundation, a 501(c)(3) non-profit organization based in Washington state, has engaged in an educational campaign to inform individual providers of their new rights under *Harris v. Quinn*. The Freedom Foundation says data shows that when these workers are given a choice, many of them reject union representation.[11]

SEIU strongly opposed the Court's ruling, and has attempted to prevent workers from exercising their right not to pay union dues or fees.[12] The union has provided confusing information to members, filed lawsuits and tried to pass legislation to keep home care providers from being informed.

In this continuing effort, SEIU executives have filed Initiative 1501 to block independent organizations (like the Freedom Foundation) from informing individual providers of their rights under *Harris v. Quinn*. The initiative would prevent any group, except the union, from obtaining providers' contact information currently available under the Public Record Act.

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9 "Learn about the collective bargaining process," Washington State Office of Financial Management, at www.ofm.wa.gov/labor/agreements/about.asp, accessed September 8, 2016.

10 "Thousands of workers leave SEIU," Freedom Foundation, *The Snohomish Times*, October 8, 2015, at www.snohomishtimes.com/snohomishNEWS.cfm?inc=story&newsID=4033.

11 Ibid.

12 "Freedom Foundation lands one-two punch in effort to inform workers of their rights," by Jeff Rhodes, Freedom Foundation, August 1, 2016 at www.freedomfoundation.com/blogs/liberty-live/freedom-foundation-lands-one-two-punch-in-effort-to-inform-workers-of-their.

Policy Analysis

Parts 1 and 2 of Initiative 1501 would increase penalties for identity theft and consumer fraud, respectively, directed at seniors and people with disabilities.

Current law already protects against identify theft and consumer fraud. New laws are unnecessary.

The lesser-known Part 3 of the measure would "prohibit the release of certain public records." The measure would amend the state Public Records Act to exempt the contact information of in-home caregivers who help the elderly and the disabled, as well as family child care providers, from public disclosure. The names, addresses, telephone numbers and e-mail addresses of these workers would not be available to the public as they are currently.

Of course, under Initiative 1501 the union would be exempt from its own exemption, meaning union executives, but not the public, would have full and exclusive access to the "sensitive personal information" they claim should be closely guarded. Ironically, after passage of Initiative 775 in 2001 SEIU took advantage of our state's strong open records laws to gain unfettered access to the same "sensitive personal information" of individual providers so union executives could contact them about unionizing.

Now, with Initiative 1501, SEIU wants to restrict any other organization from accessing the same information.

Conclusion

Initiative 1501 has little to do with improving public policy or serving the public interest of Washington state. It is a transparent attempt by an organized interest, the SEIU union, to protect its own special advantages by misleading voters into weakening our state's strong Public Records Act. The motivation behind the measure is clearly not about protecting seniors and the disabled from identity theft or consumer fraud, activities that are already illegal, and everything to do with preventing individual care providers from learning of their court-ordered rights under *Harris v. Quinn*.

SEIU 775 lawyers have repeatedly lost in court in their efforts to prevent independent citizen organizations like the Freedom Foundation from contacting individual providers to educate them about their rights when it comes to paying mandatory union dues. Now SEIU executives hope to mislead voters, under cover of anti-fraud protections, into passing a ballot measure that would impose a limit on public information that the courts have rejected.

Washington's public records laws are routinely hailed as a model of government accountability and transparency, and are widely recognized as among the best in the nation. Citizens here have open access to information

about how state and local government is functioning and operating. Initiative 1501 would weaken the public's right to access the public information that keep our government open and accountable.

An objective reading of the text and a review of its background show that Initiative 1501 would not serve the general interest of the people of our state. On the contrary, it would only serve the narrow interest of one union that is seeking to gain financial benefit from exclusive access to public information. Our state's Public Records Act should not be weakened for the benefit of a special interest group.

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Erin Shannon is director of WPC's Center for Small Business and Labor Reform. Before joining Washington Policy Center in 2012, she was the Public Relations director of Washington state's largest pro-small business trade association, and was formerly a Legislative Correspondent for U.S. Congressman Randy Tate in Washington, D.C. Over the past 15 years Erin has appeared regularly in print, broadcast and radio media. She was a recurring guest on ABC's "Bill Maher's Politically Incorrect" until the show's cancellation in 2002, and participated in a live, on-stage version of Politically Incorrect in Seattle with Bill Maher. Erin has served as the spokesperson for several pro-small business initiative campaigns including Referendum 53, repealing increases in unemployment insurance taxes; Initiative 841, repealing the state's ergonomics rule; and Initiative 1082, to end the state's monopoly on workers' compensation. Erin holds a bachelor's degree in political science from the University of Washington.