WASHINGTON POLICY CENTER

LEGISLATIVE MEMO

SB 6199, HB 2751, and SB 6229: Three bills seek to protect union financial interests at the expense of worker rights

By Erin Shannon, Director, Center for Worker Rights February 2018

Introduction

The U.S. Supreme Court is considering the highly anticipated Janus v AFSCME case, which could end the forced unionization of every public employee in the nation. Labor unions in Washington state are not taking any chances.

Sponsors of the Washington state bills, SB 6199, HB 2751, and SB 6229, seek to work around the U.S. Supreme Court to continue to force public employees to pay for union representation many workers do not want.

Taking advantage of their control of the state's government, Democrats in the state House of Representatives and Senate are passing the bills that reward labor unions for their generous campaign contributions. Each of these bills has passed one house of the legislature. If the bills pass both chambers, they are almost certain to receive the signature of Democratic Governor Jay Inslee, who has indicated his support for the special interest groups that have contributed millions to his election campaigns.

Background

On February 26, the nation's highest court heard arguments from both sides of the case of *Janus v. the American Federation of State, County and Municipal Employees*. The case resurrects the *Friedrichs v. California Teachers Association* challenge to the forced unionization of public school teachers. The Court was expected to rule in favor of public school teacher Rebecca Friedrichs in 2016, but the sudden death of Justice Scalia left the issue unresolved.[1]

Now the Court is set to consider the same legal arguments against the forced unionization of public workers. If the Court rules in favor of Mark Janus, a child support specialist at the Illinois Department of Healthcare and Family Service (which appears likely), public employees in the 22 states without a right-to-work law, like Washington, will no longer be forced to choose between paying the union or keeping their jobs. Every public employee in the nation will be free to choose.

If past history is any indication, unions are determined to continue forcing workers to unionize, seemingly viewing such U.S. Supreme Court decisions as inconveniences to be worked around.

Working around past Supreme Court decisions

In 2014, the U.S. Supreme Court ruled in the landmark case *Harris v Quinn* that the forced unionization of individual home care providers who are designated state employees "solely for the purposes of collective bargaining" is unconstitutional.

The Court ruled that designating individual 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" (often a family member) 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."[2]

This means the caregivers who provide in-home health care services to the disabled, sick, and elderly, cannot be forced to participate in a union or to pay a union for representation they

1 "Compelled Union Dues are Back at the Supreme Court: What Happens Next?" by Brian Miller, Forbes, September 28, 2017, at www.forbes.com/sites/briankmiller/2017/09/28/compelled-union-dues-are-back-at-the-supreme-court-what-happens-next/#18540d2255dc

2 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

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do not want. They have the right to choose whether to hand over their money to the union every month.

SEIU moves to deprive home care workers of their rights

Executives of the union that has benefitted the most from the forced unionization of individual providers, the Service Employees International Union (SEIU), considered the Harris v. Quinn ruling a threat to their endless stream of guaranteed revenue. The president of SEIU International declared "no court case is going to stop us!"[3]

SEIU executives have worked aggressively to prevent home care providers, and other "partial public employees," from exercising their right to reject paying the union for representation they do not want.[4]

Now union executives are adopting the same strategy in response to a potential Supreme Court ruling this summer in favor of Mark Janus.

State bills would let union executives defy U.S. Supreme Court ruling

A trio of union-backed bills are moving through the legislature that appear to reward unions for their political support by creating new laws to work around U.S. Supreme Court rulings against forced unionization.

SB 6199 would direct the agency that manages the state's individual home care providers, the Department of Social and Health Services (DSHS), to contract out its work to a private company. SB 6199 specifies that the private company would become the legal employers of those providers.

As the employees of a newly-designated private entity, individual providers would no longer be protected by the right guaranteed them in the U.S. Supreme Court *Harris v Quinn* decision to reject paying the union, since that ruling applies only to so-called "partial public employees."

Worse, the bill that would deprive caregivers of their constitutional right would cost taxpayers up to an additional $26 million every two-years. According to the nonpartisan Office of Financial Management (OFM), SB 6199 would cost taxpayers an extra $11 million to $13 million every year.[5]

Union influence in election campaigns

SEIU and other public sector unions have contributed heavily to Democratic candidates in Washington elections. In the past two years, such unions donated just under $800,00 directly to Democrats running for state office, with another $830,000 donated to state Democrat party committees.[6] In comparison, Republican candidates received little or nothing in union campaign donations.

If SB 6199 becomes law, the 4,000 home caregivers in Washington state who exercised their right under *Harris v Quinn* to not pay SEIU 775 would again be forced to pay the union, adding more than $2.8 million to SEIU 775's bank accounts every year.[7]

The appearance of a quid pro quo is hard to deny. SEIU 775 executives have refused to respond to media questions about SB 6199's connections to union campaign giving, instead referring reporters to DSHS.[8]

Newspapers around the state have recommended against the bill, publishing strongly worded editorials condemning

3 Mary Kay Henry, SEIU International President, accessed on February 22, 2018, at www.local3seiu.com/SEIU/no-court-case-is-going-to-stop-us-seiu.html

4 "Six ways SEIU 775 is getting around Harris v. Quinn," by Maxford Nelson, Freedom Foundation, May 18, 2016, at www.freedomfoundation.com/labor/six-ways-seiu-775-is-getting-around-harris-v-quinn/

5 Fiscal Note Package to SB 6199, prepared by Bryce Anderson, Office of Financial Management, accessed on February 22, 2018, at https://fortress.wa.gov/FNSPublicSearch/GetPDF?packageID=51979

6 "Washington state Democrats push quietly to roll back open-records laws," by Jim Brunner, *The Seattle Times*, February 20, 2018, at www.seattletimes.com/seattle-news/politics/washington-state-democrats-quietly-push-curbs-to-open-records-laws/

7 "Democrats and Governor Inslee push bill that would force newly freed caregivers back into union," by Jeff Rhodes, Freedom Foundation, February 8, 2018, at www.freedomfoundation.com/labor/democrats-governor-inslee-push-bill-force-newly-freed-caregivers-back-union/

8 "Tensions flare at Capitol after Democrats try to pass pro-union bills after midnight," by Walker Orenstein, *The News Tribune,* February 8, 2018, at www.thenewstribune.com/news/politics-government/article199213994.html

Democrats for "acting at the will of their largest political donors" and pushing legislation that puts special interests before taxpayers.[9] *The Seattle Times* said SB 6199 carries "the strong odor of political favoritism."[10]

Confidential memo reveals political payback

A recently-released confidential memo written for Governor Inslee clearly shows the political purposes behind SB 6199.

Dated, June 3, 2014, nearly a month before the U.S. Supreme Court ruling in the Harris v. Quinn case, the memo outlines ways SEIU 775 executives wanted the state to circumvent a potential ruling against forced unionization.[11]

The memo lists the "requests that SEIU 775 (David Rolf, President) have made in response to the *Harris v. Quinn* case." The nine "requests" are a list of ways SEIU 775 wanted the state to work around the U.S. Supreme Court's ruling and deprive caregivers of their right to reject paying the union for representation they do not want.

One of the SEIU 775 "requests" was for the state to contract out the management of individual home care providers to a private entity so caregivers would still have to pay union dues: "State could contract with an outside entity to run the home care system, making IPs [individual providers] private-sector employees. [12]

Governor Inslee included SEIU 775's "request" in his proposed 2018 supplemental budget, and it is accomplished legislatively via SB 6199.[13]

Further union political influence on legislation

Two more bills that appear to reward unions for political support are HB 2751 and SB 6229. Both bills passed their chamber of origin along mostly party line votes, with two Republicans in the Senate voting with Democrats in support of union executives. Both bills are preemptive actions to deprive workers of rights that might be recognized by a U.S. Supreme Court ruling in the *Janus* case.

HB 2751 would change state law to allow unions to collect dues and fees from public employees without written permission of those employees. Currently, a union needs the written authorization of public employees before taking a portion of their paycheck. This bill would remove that requirement, instead making the deduction of union dues automatic, and requiring public employees to affirmatively opt-out of the forced dues collection in writing.

This is the same scheme the state enacted at the request of SEIU 775 after the *Harris v Quinn* decision. SEIU 775 has made the opt-out process confusing and difficult for workers, and limiting the option to just a few days or weeks each year.

Should the U.S. Supreme Court rule that it is unconstitutional to force public employees to pay a union for representation they do not want, workers will have the right to leave the union without being fired. If HB 2751 passes, the union executives that represent public employees will, like SEIU 775, work to keep workers from knowing about their right, and will make exercising that right as difficult as possible.

Under another union-influenced bill, SB 6229, union executives would be given a minimum 30 minutes of taxpayer-funded time to convince public employees to pay the union.

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9 "Our Views: Inslee and Company Choose Unions Over the Rest of Us," editorial board, *The Chronicle*, February 16, 2018, at www.chronline.com/opinion/our-views-inslee-and-company-choose-unions-over-the-rest/article_593eecbc-13a3-11e8-ae0e-e376f488094a.html

10 "Legislators, don't cave to in-home care union—reject bill that would increase DSHS costs," editorial board, *The Seattle Times*, February 7, 2018, at www.seattletimes.com/opinion/editorials/legislators-dont-cave-to-in-home-care-union-reject-bill-that-would-increase-dshs-costs/

11 "Update on Harris v. Quinn Union Requests," Governor Briefing, Confidential, June 3, 2014, at www.freedomfoundation.com/sites/default/files/documents/OFM%20Gov%20Briefing%206-3-14.pdf

12 Ibid.

13 2018 Governor's proposed supplemental budgets: DSHS-Long Term Care and DSHS-Developmental Disabilities: Individual Provider Management, at https://ofm.wa.gov/sites/default/files/public/budget/statebudget/18supp/recsum/300050.pdf

This is similar to another scheme the state enacted for SEIU after the *Harris v. Quinn* ruling. According to the confidential memo to Governor Inslee, SEIU executives requested "paid IP time" to "talk to IPs re union issues" and "provide union information." The memo references that request under a list of "actions" the "state has already taken…at the request of the unions." [14]

Public records show these SEIU meetings are often high-pressure, coercive and blatantly misleading toward workers.[15] SB 6229 would require all state workers, not just home health care workers, to attend such high-pressure sessions.

Further, a private organization should never be allowed to conduct that organization's business on taxpayer time. If the union wants to meet with workers to persuade them of the benefits of union membership, they should have to do so on private time, just as every other private organization does.

Conclusion

Union executives show a great deal of determination and creativity in developing schemes to work around rulings by the U.S. Supreme Court that recognize core constitutional rights for workers and threaten the union's guaranteed forced-dues revenue stream. It is not surprising union executives are willing to take extreme steps to change public policy to keep easy money flowing from worker paychecks into union bank accounts.

It is more surprising that so many state lawmakers appear willing to treat rulings by the nation's highest court as inconveniences to be worked around, all for the sake of political payback to union allies.

SB 6199, HB 2751, and SB 6229 represent bad public policies that would benefit a narrow and powerful special interest, would infringe on the rights and freedoms of workers, would cost taxpayers more, and would make the public more distrustful of politics and elected politicians.

The legislature should restore the public's faith in the lawmaking process by freeing themselves of special interest corruption and influence. Rejecting these three union-backed bills that seek to skirt U.S. Supreme Court decisions would serve the public interest by recognizing and respecting the constitutional rights of workers.

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Nothing here should be construed as an attempt to aid or hinder the passage of any legislation before any legislative body.

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14 Ibid.

15 "DSHS allowing SEIU to continue exploiting caregivers," by Maxford Nelson, Freedom Foundation, January 29, 2018, at www.freedomfoundation.com/labor/dshs-allowing-seiu-continue-exploiting-caregivers/