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# Washington State Senate

**Senator John Braun**
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The Honorable Bob Ferguson
Washington State Office of the Attorney General
P.O. Box 40100
Olympia, Washington 98504-0100

RE: Request for Informal Opinion

Dear Attorney General Ferguson:

On June 30, 2014, the United States Supreme Court issued its opinion in the case Harris v. Quinn, 573 U.S. _____, 2014. The Court held that an Illinois state law requiring non-union members to pay union fees violated their first amendment right to freedom of speech.

Harris. v. Quinn, Id., is a case involving three personal assistants from Illinois. Personal assistants are equivalent to individual providers in Washington State and like individual providers, they have the ability to collectively bargain. Just as with our individual providers in Washington, the personal assistants bargain with the state which is the employer solely for this limited purpose. Personal assistants (and individual providers) who choose not to join a union are required to pay fees instead of union dues and these fees are deducted from their paychecks. The three personal assistants bringing the case in Illinois are non-union members who asserted that the payment of fees to the union is a violation of their 1st amendment rights.

The Supreme Court agreed. The Court reasoned that while under Abood v. Detroit Board of Education, 431 U.S. 209 (1977), state employees can be compelled to pay fees even if they are not union members, Abood does not extend to personal assistants who are not full-fledged state employees. In determining that the personal assistants are not state employees, the Supreme Court points to the language authorizing the collective bargaining arrangement which states that personal assistants are state employees, but only for the purpose of collective bargaining. The Court also noted that the personal assistants are "almost entirely answerable to the customers and not to the State." Harris, at p. 22.

Individual providers working in Washington State appear to be similarly situated.

Washington State is the employer of individual providers, but only for the limited purpose of collective bargaining and requires that individual providers who are not union members pay fees in lieu of dues. The consumer controls and directs these employees placing them into a category that the Harris court calls a "partial public employee."

Washington state law considers certain non-traditional bargaining sectors, including home care individual providers, as public employees only for "the purposes of collective bargaining." They are not considered full time state employees. Washington State's Office of Financial Management (OFM) Labor Relations division explicitly states that these individuals are "not state employees."

OFM's website states, "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. Individuals covered under the non-state employee agreements are business owners, independent contractors, or employees of the consumer of services."[1]

Individual providers are considered public employees solely for the purposes of collective bargaining, as defined by RCW 74.39A.270, subsection 3:

> "Individual providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state, its political subdivisions, or an area agency on aging for any purpose."

An employer-employee relationship exists between consumers and individual providers, as defined by RCW 74.39A.240, subsection 4:

> "Consumers and prospective consumers retain the right to select, hire, supervise the work of, and terminate any individual provider providing services to them."

The state is not liable for the actions taken by individual providers in the course of their employment, as stated in RCW 74.39A.270, subsection 7:

> "The state, the department, the area agencies on aging, or their contractors under this chapter may not be held vicariously or jointly liable for the action or inaction of any individual provider or prospective individual provider..."

All three of those points are referenced by the Supreme Court as important factual considerations in the determination that Abood does not extend to these "partial public employees."

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[1] http://www.ofm.wa.gov/labor/agreements/about.asp (Last visited on August 4, 2014)

Therefore, I request an informal opinion from you and pose the following questions:

1. Does the U.S. Supreme Court's ruling in Harris v. Quinn prevent the state from maintaining a union security provision in its collective bargaining agreement with any union representing individual providers?

2. In light of the U.S. Supreme Court's decision in Harris v. Quinn, what must an individual provider do in order to be viewed by the state as a nonmember of Service Employees International Union Healthcare 775NW for the purposes of RCW 41.56.113?

3. What liability attaches to the state if state agencies deduct union dues or other fees from non-member individual providers without their express, written permission?

I greatly appreciate your time and attention to this matter.

Sincerely,

Senator John Braun
20th Legislative District