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Are Home Health Care Workers About to Get Screwed by the Supreme Court?

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Harris v. Quinn could take away their collective bargaining rights. That would be a loss for not only these workers, but our nation's elderly and disabled.

Flora Johnson feeds, clothes, and supervises her adult son Kenneth, whose cerebral palsy prevents self-care. Areena Johnson makes sure that disabled people are well groomed and able to get about. These women are personal assistants, undertaking the same job as those who labor in nursing homes and hospitals. But instead of working for a home care agency, they are employed by both their consumer (the elderly or disabled person for whom they care) and the State of Illinois, which established home care to meet the needs of such citizens.

But now a case before the U.S. Supreme Court, *Harris v. Quinn*, threatens the independent living of some 30,000 persons served by the Illinois State Department of Rehabilitative Services. At stake is not only the fate of home care unions, but whether judicial barriers will interfere with state efforts to serve elderly and disabled persons at home rather than through institutionalization.

The aging of the baby boomers has upped the demand for personal attendants and home health aides, projected to double to over five million workers by 2018. Current medium salary for these jobs is under $20,000 a year and about 40 percent of the workforce relies on food stamps or other public assistance. Over the last decade, however, home care unions became the new face of labor, improving pay and bringing benefits such as more regular hours, medical insurance, and paid sick days to workers who previously lacked all forms of security. In Illinois alone, since 2003 when personal assistants selected SEIU to represent them, wages jumped 65 percent and workers won health coverage.

Anti-labor forces want to reverse these gains and would use people with disabilities and their assistants as pawns in a cynical “right to work” ploy, part of a sixty year effort to weaken trade unions in the name of free choice. These partisans are asking the Supreme Court to overturn the right of public employee unions to collect “fair share” fees from employees who refuse to join a

democratically selected union but nevertheless benefit from the results of collective bargaining. They claim that Illinois is not really the employer of these personal assistants and suggest that what home health aides do is not really "work" and therefore they have no need for unionization.

There is no doubt that home health aides engage in work, and that Illinois is one of their employers. Consumer-directed care, a central tenet of the independent living movement, gives recipients the power to hire, fire, and supervise their attendants in the intimate give-and-take of the day. But its practice requires a reliable labor market that only the state in its capacity as joint employer can provide. The setting of wages and benefits, the development of training systems and standards, the management of employment registries, and the administering of payrolls go beyond the capacity of individual consumers. And indeed, states have long performed these functions. As part of this process, California, Oregon, Washington, Massachusetts, Missouri, and Illinois decided that allowing collective bargaining was the best way to maintain an adequate home care workforce, reduce turnover, improve skill, and deliver services efficiently with cost effectiveness.

Objecting to the mandated fee, a handful of assistants would rather be "free riders." Represented by the National Right to Work Legal Defense Foundation (NRWLDF), they claim not to be public employees of any sort, but aggrieved citizens whose right to speak for themselves the state has trampled upon by requiring support of a union. The NRWLDF is seeking to overturn long-standing labor law that ensures effective representation of all employees in a given bargaining unit and not just union members.

There is a sleight of hand going on here. The NRWLDF and a who's who of right wing think tanks—notably the Cato Institute, the Mackinac Center for Public Policy, and the Pacific Legal Foundation, which all filed amicus briefs—bet that the court will view home aides not as workers, who together have selected a collective voice, but as caregivers bullied by "union bosses" and their "big government" lackeys. They conflate these jobs with the expectation that wives, mothers, and other kin will administer to the sick and aid disabled and elderly people out of love or obligation. The home, or so it goes, is where the heart is, a place apart from the cash nexus. But when care is paid for, the home becomes a workplace and law and sound labor policy rightly enter the front door.

The NRWLDF plays off this confusion by refusing to recognize the state's interest in establishing a system in which care workers participate in shaping their terms of employment. It turns the state's interest into a question of private interests: the family vs. the union. And it obscures what is really happening: an attempt to undercut trade unionism in the service of an ideology that elevates an abstract negative freedom not to associate over pressing human needs. Without collective bargaining, we end up with care on the cheap, again pitting workers against recipients, hardly a stable solution to the mounting demand for long-term care at home. The NRWLDF would sacrifice personal and social security to weaken unions. The Supreme Court should not accept its invitation to radically recast the law.