HARRIS V. QUINN DECISION MAY SET STAGE FOR FURTHER RULINGS LIMITING PUBLIC UNIONS

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On Monday, the U.S. Supreme Court decided *Harris v. Quinn*. As readers of my June 10 posting will recall, the plaintiffs in that case objected on First Amendment grounds to being required to contribute public union dues as a condition of their employment. Because unions rarely thrive unless they are able to compel non-member employees to contribute towards their expenses, the case raises issues affecting the very future of public sector unionism.

Some commentators have emphasized the narrowness of Monday's ruling. The court sided with the plaintiffs but in a way that — at least for the time being — does not impact on the vast majority of unionized public employees. Essentially, the court treated the plaintiffs — home care workers who are paid under a Medicaid program primarily to take care of disabled family members — as "partial-public" or "quasi-public" employees distinct from the "full-fledged" state employees considered by the court in prior decisions. In this way, the court avoided a head-on collision with its 1977 decision in *Abood v. Detroit Board of Education*, which held that public employees could be compelled to contribute to a union's "agency costs" in negotiating and administering a collective bargaining agreement, even if the First Amendment forbade requiring non-members from contributing to political activities or speech. So, Monday's ruling has no immediate effect on "full-fledged" public employees, whom unions more typically represent.

Still, *Harris v. Quinn* hardly bodes well for the future of public unions. To begin with, Justice Alito, the author of the majority opinion, cast serious aspersions on *Abood*, whose foundations he termed "questionable." He thus disputed the core distinction drawn by *Abood* between political speech and expenditures supporting collective bargaining activities, emphasizing that "in the public sector, core issues such as wages, pension, and benefits are important political issues." He likewise attacked *Abood*'s provenance, suggesting that the decision was premised on an overly expansive reading of prior court precedents that had little or nothing to do with the First Amendment issues at stake.

Perhaps most troubling from the perspective of public unions — and most heartening to those who believe that they have become far too powerful — Alito's opinion was joined by all four of the court's more conservative justices, thus defying

the expectations of many commentators, including this one, that the decision would not break down along familiar ideological lines. So, even while escaping the noose this time, public unions have reason to fear that they will not fare as well next time. In a vigorous dissent, Justice Kagan, devotes many pages defending *Abood*, emphasizing the absence of any "special justification" under the *stare decisis* doctrine to permit overturning this established precedent. The court's liberal minority apparently senses that a more definitive showdown with their conservative colleagues over the future of public sector unions might still lay ahead. Stay tuned…