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Financial Threats to Pluralism: Challenges to the Financial Security of Public Sector Labor Unions Threaten Labor Relations Stability and the Public Welfare

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A recent cartoon by Barbara Smaller published in The New Yorker sums up, quite well, the position espoused by those who seek to limit political spending of labor unions through state and federal legislation, thereby tilting the political playing field to the right of the political spectrum:

The cartoon shows a financial mogul sitting behind his desk, saying: "I own one plane, two yachts, four houses, and five politicians." Tom Perkins, "Sticking it to the Rich," The Wall Street Journal, September 19, 2014, quoting from Darrell M. West, Billionaires, (2014).

I. Pluralism Is A Cornerstone of American Workplace Democracy

A. As early as May 15, 1891, Pope Leo XIII in Rerum Novarum, recognized the importance of labor organizations and the need to protect the operations of such organizations from the state. This papal encyclical is a very important statement in support of the mutual determination of wages, hours and conditions of employment for workers. In describing the need to insure better wages and working conditions to enable working people to house, feed and care for their families, Pope Leo XIII wrote that among associations and organizations to aid those in distress, "the most important of all are working men's unions" Encyclical of Pope Leo XIII, on Capital and Labor, Rerum Novarum, ¶ 49 (May 15, 1891),

> "History attests what excellent results were brought about by the artificers' guilds of olden times. They were the means of affording not only many advantages to workmen, but in no small degree of promoting the advancement of art, as numerous monuments remain to bear witness. Such unions should be suited to the requirements of this our age-an age of wider education, of different habits, and the far more requirements in daily life." Id.

B. This very insightful comment about the need to protect workingmen's associations further states:

> The State should watch over these societies of citizens banded together in accordance with their rights, but it should not thrust itself into their peculiar concerns and their organization, for things move and live by the spirit inspiring them, and they may be killed by the rough grasp of a hand from without." Id. at ¶ 55.

C. Interference by the state into the internal operations of a labor union according to the insight of Pope Leo XIII will have an effect of killing the organizations, and in the case of Wisconsin in 2011 and its pernicious anti-union legislation that is exactly what happened. There has been a precipitous drop in union membership in Wisconsin public sector unions. Public Union Memberships Plummets Two Years After WI Act 10, Wisconsin Reporter, July 17, 2013; Act 10 Delivers a Heavy Blow to Once-Powerful Player AFSCME, The Capital Times, January 25, 2014.

II. Until 2011, the U.S. and its state governments have had a long and proud history of supporting pluralism in the determination of wages, hours and working conditions for employees at the state and local government levels.

A. Resolution of work place conflict and strife can be best resolved in an atmosphere by pluralistic determination rather than unilateral determination, which appear to be more like central planning.

B. The principal public policy statement on pluralism is the National Labor Relations Act which was passed based upon a finding that the denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining led to strikes and other forms of industrial strife or unrest, which have the intent with a necessary effect of burdening or obstructing commerce by (a) impairing the

efficiency, safety or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining or controlling the flow of raw materials or manufactured or processed goods; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce. 29 U.S.C. §151.

(i) Congress also found that the inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates in working conditions within and between industries.

(ii) Congress further found that experience proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours or other working conditions and by restoring equality of bargaining power between employers and employees.

C. State public employee collective bargaining statutes were enacted to create legitimate rights for collective bargaining between public employees and public employers on wages, hours and conditions of employment, to protect the public health and safety of citizens, to provide peaceful and establish orderly procedures for the protection of the statutory rights and to prevent labor strife. In some states, strikes are prohibited for employees who do not provide essential public services, such as police, fire and correctional officers,

but such states provided for an alternative, expeditious, equitable and effective procedures for the resolution of labor disputes. These procedures are key contributions of the states to the overall stability of labor relations in the public sector and the success of pluralism in dealing with wages, hours and working conditions.

D. These state laws followed the concept of pluralism set out in the National Labor Relations Act and gave public workers' rights to have mutual determination of wages, hours and conditions of employment. See generally, J. Slater, Public Workers, Government Employee Unions, the Law and the State 1900 – 1962, pp. 158-203 (2004). For example, the Illinois Public Labor Relations Act's stated purpose is to regulate labor relations between public employers and employees, including the designation of employees representatives, negotiation of wages, hours and other conditions of employment, and resolution of disputes arising under collective bargaining agreements… [T]o protect the public health and safety of the citizens of Illinois, and to provide peaceful and orderly procedures for protection of rights of all, to prevent labor strife and to protect the public health and safety of the citizens of Illinois…" 5 ILCS 315/2.

E. The freedom of association and pluralism for workers also have been recognized under International Labor Organization conventions and have been recently affirmed by the Canadian Supreme Court.

1. ILO Convention 87-Freedom of Association and Protection of the Right to Organize Convention (July 9, 1948) provides, inter alia:

a. Workers and employers, without distinction whatsoever, shall have the right to establish and subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

b. Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organizations, federation or confederation shall have to right to affiliate with international organization of workers and employers.

c. Each Member of the International Labor Organization for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organize.

2. ILO Convention 98-Right to Organize and Collective Bargaining

Convention was adopted in 1949 and in relevant part provides:

a. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect to their employment.

b. Such protection shall apply more particularly in respect to acts calculated to—

(i.) make the employment of a worker subject to the condition that he shall not join or shall relinquish trade union membership;

(ii.) cause the dismissal or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

c. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

d. Machinery appropriate to national conditions shall be established, where necessary, for purpose of ensuring respect for the right to organize as defined in the preceding Articles.

e. Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and

> utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

d. Although this convention does not deal with the position of public servants engaged in the administration of the State..., the language is not to be construed as "prejudicing their rights or status in any way." *Id.*

F. These conventions to protect the rights of workers have been used in the public sector and were relied upon by the Canadian Supreme Court in striking down anti-union legislation that is similar to the Wisconsin legislation adopted in 2011.

1. In Heath Services and Support Facilities Subsector Bargaining Association v. British Columbia, 2 S.C.R. 391, 2007 SCC 27 (2007) ("Health Services"), the Supreme Court of Canada held that the Canadian Charter of Rights and Freedoms granted freedom of association and right to bargain collectively. The court specifically held collective bargaining was recognized as a fundamental aspect of Canadian society, emerging as the most significant collective activity through which freedom of association is expressed in the labor context. Association for purposes of collective bargaining has long been recognized as a fundamental Canadian right which predated the 1982 Canadian Charter of Rights and Freedoms. 2007 SCC 27.

2. The constitutional right to collective bargaining concerns protection of the ability of workers to engage in associational activities and their capacity to

act in common to reach shared goals related to work place issues in terms of employment. The Canadian Charter does not guarantee the particular objective sought through this associational activity but rather the process through which those goals are pursued, and it means that employees have the right to unite, to present demands to government employers collectively and to engage in such discussions in an attempt to achieve worker place related goals. This charter provision protects "substantial interference" with associational activity. One of the fundamental achievements of collective bargaining is to "palliate the historical inequality between employers and employees." 2007 SCC 27.

3. The Canadian interpretation of its Charter is consistent with international law commitments and the current state of international thought on human rights, including the International Labor Organization's Convention, No. 87 Concerning Freedom of Association and the Protection of the Right to Organize; International Covenant on Economic, Social and Cultural Rights, 993 U.N.T.S. 3; International Covenant on Civil and Political Rights, 999 U.N.T.S. 171,

4. In Health Services, the Supreme Court of Canada declared unconstitutional legislation adopted to respond to challenges facing the British of Columbia healthcare system. The legislation introduced changes to transfers and multi-work site assignment rights, contracting out, job security programs, layoffs and bumping rights and gave healthcare employers greater flexibility to organize the relations with their employees "as they see fit,

and in some cases, to do so in collective bargaining agreements and without a hearing and requirements of consultation and notice that would have otherwise obtained. It invalidated important provisions of collective bargaining agreements then in force and effectively precluded meaningful collective bargaining on a number of specific issues." 2007 SCC 27.

5. In a subsequent case, the Supreme Court of British Columbia in British Columbia Teachers' Federation v. British Columbia, 2011 BCSC 469 (2011), relying on the Health Services decision, declared unconstitutional provisions of legislation dealing with public sector education and health services workers. In the teachers' case, the provincial government unilaterally voided existing terms of collective bargaining agreements and prohibited future collective bargaining on the subjects of restrictions on class size, class composition, ratio and non-enrolling teachers to students and work load. The government's position was that these subjects are more important matters for educational policy decisions and ought not to be the subject of collective bargaining. The government believed it was exercising its power and authority to enact educational legislation for the public good, as is its constitutional responsibility. Pertinent sections of the legislation provided:

> There must not be included in a teachers' collective agreement any provision:
>
> (a) Regulating the selection of employment of teachers under this Act, the course of study, program of studies or the professional methods and techniques employed by a teacher restricting or regulating the assignment by a board of teaching duties to administrative officers,

(b) Limiting a board's power to employ persons other than teachers to assist teachers and the carrying on of responsibilities under this act and the regulations,

(c) Restricting or regulating a board's power to establish class size and class composition,

(d) Establishing or imposing class size limits, requirements respecting average class size, or methods for determining class size limits or average class sizes,

(e) Restricting or regulating a board's power to assign a student to a class, course or program,

(f) Restricting or regulating a board's power to determine staffing levels or ratios or the number of teachers or other staff employed by the board,

(g) Establishing minimum numbers of teachers or other staff,

(h) Restricting or regulating a board's power to determine the number of students assigned to a teacher, or

(i) Establishing maximum or minimum case loads, staffing loads or teacher loads.

The court held that the point of the Canadian Charter of Rights and Freedom is to allow employees a freedom to associate so as to collectively influence their working conditions through strength of numbers which equalizes an employee's bargaining power with the employer. The court recognized that collective bargaining is "not a perfect tool," but has long been seen as the best vehicle there is for resolving differences between management and labor. Accordingly, the court declared key portions of the legislation, including sections discussed above, to be an infringement of the teacher's freedom of association that was not a reasonable limit

"demonstrably justified in a free and democratic society"…under the Canadian Charter.

III. U.S. Labor Law and the Right to Associate for Public Employees

A. Section 7- National Labor Relations Act provides for a right of association as the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection.

B. Public sector statutes have similar provisions and administrative agencies created to enforce these provisions and protect the associational rights of workers to engage in collective bargaining on matters of wages, hours and working conditions.

C. In sharp contrast to the Canadian courts' decisions and the ILO conventions, U.S. courts have not been as respectful of associational rights for workers in the public sector.

1. In 2011, the Wisconsin Legislature enacted Wisconsin Act 10, a budget repair bill proposed by Governor Walker. The Act gutted critical collective bargaining rights that had been established as early as 1959. The 1959 Act was the first state law granting organizational and bargaining rights, and it was strengthened in 1962. So it was a cruel irony that Wisconsin passed in 2011 a law that:

(a) Prohibited general employees from collective bargaining on issues other than "base wages" and requiring any base wage increase exceeding a cost of living adjustment to be approved by a Municipal referendum;

(b) Prohibited municipal employers from deducting labor organization dues from the paychecks of general employees

(c) Prohibited fair share agreements, and

(d) Required mandatory recertification elections.

2. Union challenges to this legislation were denied in both federal and state courts. In Madison Teachers, Inc. v. Scott Walker, 2014 WI 99 - ____N.W.2d.____, 200 LRRM 3141 (2014), the Supreme Court of Wisconsin held that the collective bargaining limitations, the ban on fair share agreements and annual recertification requirements did not violate plaintiff's freedom of association rights. The court also rejected several constitutional arguments: 1) equal protection arguments which asserted differential treatment between general employees and non-represented general employees, and 2) home rule and contract clause claims in ordering a prohibition on the City of Milwaukee from paying the employees' share of pension contributions to a state pension system.

3. In denying these claims, the court held that there is no constitutional right to associate with a certified representative in order to bargain collectively on any subject and noted there is no constitutional right to negotiate with a municipal employer on matters of wages, hours and conditions of employment. The court relied on Smith v. Arkansas State Highway Employees, Local 1315, 441 U.S. 463, 465 (1979).

4. On the matter of fair share and dues deductions, the court held that labor unions do not have a constitutional entitlement to the fees of non-member employees, and the First Amendment does not compel the government to subsidize speech. Davenport v. Wash. Educ. Ass'n, 555 U.S. 353(2009). The court also noted the U.S. Supreme Court's decision interpreting the First Amendment in Quinn v. Harris, 134 S.Ct. 2618 (2014) but did not comment on the ongoing validity of Abood v. Detroit Board of Education, 431 U.S. 209 (1977), other than to note that the court in Harris believed that fair share agreements are constitutionally suspect.

5. However, by stripping the unions of a financial lifeline established by state law, the state has taken a major step to discourage union membership or association in a manner that it becomes a less effective advocate for employees and crosses the line established in Smith, i.e., "[f]ar from taking steps to prohibit or discourage union memberships or association, all that the [Arkansas Highway] Commission has done in its challenged conduct is simply to ignore the union." 441 U.S. at 466. Barring voluntary agreements for the collection of union dues and fair share fees and requiring annual certification elections is a bold faced attempt to destroy the public sector union movement in Wisconsin. It is not simply a matter of ignoring the union.

6. Two federal cases also considered aspects of Act 10. The Seventh Circuit, in Wisconsin Education Association Council v. Walker, 705 F.3d 648 (7th Cir. 2013), held that the payroll deductions prohibition did not violate free

speech or equal protection rights and that the limits on collective bargaining and annual recertification requirements did not violate the equal protection clause. The public safety unions were exempted from the major Act 10 provisions, but the equal protection arguments were rejected. The court denied the union's argument that the prohibition on payroll deductions creates an obstacle or barrier to speech; the court concluded only that it diminished the union's ability to fund its speech. The court also rejected argument that denying fair share deductions for general employees but not for firefighters and police officers was a view point neutral matter that did not violate the First Amendment

(i) This is not a mere matter of perspective but one of important collective bargaining rights in a state whose governor's idea was to cripple the public sector unions. .

(ii) The court accepted as a rational basis for this differential treatment the state's fear that labor peace among the public safety employees was a risk, so payroll deductions were allowed for those unions. Such reasoning from the court on the public interest factor of labor peace should be an important consideration for all public workers, not just police and fire. The court's justification is somewhat suspect because public safety employees in Wisconsin and some general employees are subject to interest arbitration and are prohibited by statute from striking.

7. The second case involves essentially the same issues as the earlier one with essentially the same reasoning to reject both the First Amendment and equal protections challenges, but some of the reasoning is questionable. "None of Act 10's provisions disadvantage employees who choose to join a union. Act 10 does not tell unions how to conduct their internal affairs." Laborers Local 236, 749 F.3d at 638. Devastating moves by the Wisconsin Legislature against public sector unions are more than disadvantageous elements. Citing Smith, the court focused on what it believed to be slight impairments that are not prohibited, but in Wisconsin, nothing was of a minor nature because the union movement was crushed. The court also held that Act 10 does not "mandate any form of unfavorable treatment for minor members," but this observation overlooks the devastating impact the law has had on the universal operation of Wisconsin's public sector unions.

D. Among the more aggressive anti-collective bargaining judicial views are those of Justice Alito that were expressed at oral argument in Harris v. Quinn, Case No. 11-681, U.S. Supreme Court, (June 30, 2014). Justice Alito questioned the role of the union as exclusive representative of workers. He asked counsel for respondents why the union's participation in the wage determination is essential. He stated:

> The State can say, that is how much these people are being paid, it's not enough, we want to increase it, we want to increase it by 10 percent, 20 percent, 30 percent whatever it is. They need some – they should have extra benefits, well, we'll give them these benefits and these benefits. Why do they need to have the union intervene here? Oral Argument pp. 31-32.

Justice Alito also expressed his dismay over intra-bargaining unit tensions that exist between young employees and senior employees and their goal in collective bargaining negotiations:

> Justice Alito: [Alright]. Now what do you say to the young employee who is not very much concerned at this point about pensions, but realizes that there's a certain pot of money, and it's either going to go for pensions or it's going to go for salary at the present time. So that employee [who is] not a member of the union has to pay for the union to bargain with - - - the State to achieve something that's contrary to that person's interest but you say that person is a free rider." Id. at 44.

Justice Alito obviously questioned the fairness of having an employee pay a fair share fee where that employee's work related interest is not in sync with that of older bargaining unit members. This may be the heart of the skepticism over the concept of exclusivity, which is such a fundamental right or element of the collective bargaining process and pluralism.

IV. Financial support is necessary to ensure the free and fair exercise of the right to associate.

A. In Railway Employees' Department v. Hansen, 351 U.S. 245 (1956), the U.S. Supreme Court upheld the validity of an agency shop provision compelling financial support for an exclusive bargaining representative.

B. In Abood v. Detroit Board of Education, 431 U.S. 209 (1977), the Court held that freedom of association rights did not permit a union and employer to compel membership in the union but could require employee financial support for the exclusive bargaining representative.

C. The questions raised by several state laws is whether removing or stripping fair share protections violates the right of association for the union members. Such laws clearly have dire financial consequences for the unions.

These are the converse of Hansen and Abood. See also Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986); Lehnert v. Ferris Faculty Association, 500 U.S. 507 (1991).

1. Fair share notices posted pursuant to Hudson demonstrate the importance to unions of the financial security needed to represent all bargaining unit members, which requires a reimbursement from all employees and full payment from dues paying members.
2. A typical Hudson notice like the one used by the union in Harris v. Quinn, 134 S. Ct. 2618 (2014), demonstrates the importance of Abood as a fundamental source of protection of financing for the workers' rights. See Appendix A.
3. Only matters that are germane to the core operation of unions in the representation of all bargaining unit members are subject to reimbursement, and these expenditures are designed to assure that workers are able to have the benefits of pluralism. The expenses that are chargeable to workers choosing not to join the union and which are permitted under Abood's germane expenses are:

    1. Payroll
    2. Benefits
    3. Per capita payments-international state councils
    4. Office administration, repairs, parking permits, supplies, and printing, real estate taxes, telephones, utilizes, insurance, and data and IT services.
    5. Education and communication expresses.
    6. Contributions
    7. Legal services
    8. Audit, accounting and contractual services
    9. Meetings and conferences
    10. Travel

a. In Harris, 78.76 percent of the union's total expenses were determined to be chargeable. The non-chargeable expenses included political action, contributions and professional services and allocations made to chargeable expenses for the portion of salaries, office administration, education, meetings, and per capital payments to the international union and state council. Thirty-two percent of the international per capita payments were considered to non-chargeable, and most likely for political contribution expenses. At the state level 86 percent of the per capita payments were considered to be non-chargeable, meaning these were direct contributions or in kind political expenditures.

b. Note, there were no political expenditures which the union in Harris sought to charge nonmembers.

4. The union in Harris began its representation of home health workers in Illinois on the basis of a meet-and-confer agreement in which the terms were substantially different and more limited than those normally contained in a comprehensive bargaining agreement. The very first meet and confer agreement was negotiated between a SEIU local union and a Republican governor and was followed by successful agreements with Republican governors Under a Democratic governor the agreement was enhanced and protected by an executive order and legislation.

5. These executive and legislative actions were exercises of a state police power to protect the public from potential labor disputes and to provide

reasonable wages and economic benefits to workers whose earnings are at the poverty level.

6. These workers are near the poverty level or below and are emblematic of the income gap. The court's opinion in Harris places them and other similarly situated workers in a worse financial position to the extent they will not be able to benefit from collective bargaining. Where there is only unilateral action by employers on wages and economic benefits, it is very likely that income inequality will not be reduced.

7. The plaintiffs in Harris mocked these state actions as being part of a political payoff for the union's support but never noticed or acknowledged that the relationship had actually begun and was fostered by Republican governors. See Brief of Plaintiffs in Harris v. Quinn.

V. The most obvious impact of Harris v. Quinn, is the likelihood that collective bargaining rights will continue to be under attack and challenged in an effort to eradicate work place rights of public workers and consequently increase the income gap between workers and the very rich.

A. The most important aspect about the collective bargaining agreements reached for the employees in Harris is that they were given an opportunity to increase their incomes and provide for their families in a more meaningful way then they had done under the meet and confer agreements. The 2003 agreement and subsequent agreements provided for wage increases from $7.00 per hour in 2003 to $13.00 per hour in 2014, created a joint union-state committee to develop training programs and study health and safety issues, required the state to provide safety

gloves for workers' protection, established a grievance procedure to resolve disputes over the meaning and interpretation of the agreement and included a up status clause. The 2008 and 2012 state agreements provided state-funded health insurance coverage. Harris v. Quinn, Brief of Respondent State of Illinois, pp. 7-8. The rights and benefits they had under the Illinois Public Labor Relations Act were clearly more substantial than those under the meet and confer agreements.

B. At a wage level of $13.00 per hour, these Illinois workers were able to earn an annual salary of $27,040, which is higher than the $23,550 poverty guideline for 2013. 78 Fed Reg. 5182, Jan. 24, 2013. The $13.00 per hour wage level is significantly above the Illinois $8.25 per hour minimum wage by $4.75 per hour.

C. Stripping collective bargaining rights for such low wage workers will have the adverse impact of increasing an already high income inequality gaps. Between 1967 and 2012, the income share of the top ten percent of the U.S. population grew from about 34 percent to over 50 percent. See Appendix B. The ratio of the average household income of the top one percent to that of the bottom 90 percent has tripled from 14.1 to 42.1 between 1979 and 2010. Joseph D. Stiglitz, The Price of Inequality, p. 294 -95 (2012). Since 1980, income inequality in the U.S. has exploded. Thomas Piketty, Capital p. 294. (2014). Median household income was actually lower in 2010 ($49,445) than it was in 1997, adjusted for inflation ($50,123 in 2010 dollars). Over the longer period, 1980-2010, median family income essentially stagnated, growing at an annual rate of only 0.36 percent. Stiglitz at pp. 295-96. Between 1979 and 2007, the after-tax income for the top 1 percent income earners increased 275 percent. For the 21st through 80th

percentiles, the increase was just below 40 percent. For the bottom 20 percent, the increase was only 18 percent. Id. at 297. Probably the most stunning illustration of inequality in the U.S. is that the six Walton family hires to the Wal-Mart empire command wealth of $69.7 billion, which is equivalent to the entire bottom 30 percent of U.S. society. Id. at 8 and 300.

D. Professor Catherine Fisk has correctly noted that Harris is inconsistent with the court's own understanding of federalism and the deference it owes to the state. Catherine Fisk, Harris v. Quinn Symposium: Court Departs From Federalism, First Amendment Jurisprudence. SCOTUS Blog (July 3, 2014. 10:28 A.M.), http://www.scotusblog.com/2014/07/harris-v-quinnsymposum-court-departs-from-federalism-first-amendment-jurisprudence. By reducing the authority of states to establish collective bargaining rights, the Court has adversely affected state's ability to have productive collective bargaining arrangements – pluralism – to create efficient and cost productive operations, to create training programs in partnership with unions, to reduce employer turnover and to assure stable and peaceful labor relations.

E. The court's attack in Harris on a state's right to provide collective bargaining rights for its own employees is clearly a major problem of that opinion and is contrary to the Court's prior opinions supporting states in the federal system. Illinois has a right to provide collective bargaining rights and to protect the public from labor disputes that could disrupt the provision of home healthcare.

F. Challenges to the freedom of association and the rights to bargain collectively places the United States out of sync with established international-human rights

principles discussed above. Collective bargaining has historically served to increase consumer purchasing power, insure a voice in the workplace and provide checks and balances in society. Models for collective bargaining in the public sector have incorporated alternative dispute-resolution mechanisms to protect the public interest. Levin, D., et al., Getting it Right: Empirical Evidence and Policy Implications From Research on Public Sector Unionism and Collective Bargaining, Employment Policy Research Network, and Labor and Employment Relations Association, (May 16, 2011).

VI. A number of scholars have responded to the attacks on public sector labor relations in an effort to show that the various states have succeed in providing for pluralistic procedures for public sector wage determination that protects the public interest.

A. Substantial research completed within the past two years demonstrates that public employees are underpaid relative to their private-sector counterparts. Public sector benefits are higher than those of private sector counterparts, but total compensation (including healthcare and retirement benefits) is lower than that of comparable private-sector employees. Erosion of public-sector pay and benefits will make it harder for public employers to attract, retain and motivate the work force needed to provide public services.

1. State and local governments employ a much higher percentage of college graduates than private-sector employers do because of the many specialized state services that involve expert workers in a wide range of fields. Educational differences must be taken into account, and average wages of public sector employees cannot properly be compared to the average wages of private-sector employees. Jeffrey Keefe, a professor of economics at Rutger's University found that on a national basis, public employees are on a 11.5 percent lower base pay (i.e., wages and salaries) than their private sector counterparts, once education and other relevant human-capital variables are taken into account.

2. Keefe, J. Debunking the Myth of the Over-Compensated Public Employee, Economic Policy Institute Briefing Paper (September 15, 2010).

   a. Professor Keefe determined that comparing workers of similar "human capital" where personal protective characteristics and labor market skills is considered the best alternative and well accepted by labor economists in comparing salaries of public sector employees and two private sector employees. The educational level is the single most important earnings predictor. Education is followed by experience in terms of determining relative earnings. Other factors that affect compensation include gender, race, ethnicity and disability. Professor Keefe's study focused on full-time public and private sector employees who represent over 81 percent of the nation's work force.

   b. Educational level is the most important factor in determining earnings. Approximately 54 percent of 6 state and local full-time public employees hold a B.A. degree compared to 35 percent in the private sector. The data indicates that someone completing college with a B.A. degree has an 84 percent premium in wages over persons who do not have a high school diploma. The public sector employs more highly educated workers, but as the private sector organizations become larger, they rely substantially more on educated labor. In the public sector, 19 percent of the state and local government workers have only a high school diploma, but in the private sector, 33 percent of all employees have only a high school diploma.

   c. In comparing private and public sector workers based upon educational levels, the study determined that state and local workers with B.A. degrees earned 32 percent lower wages in total compensation of 25 percent less than private sector workers.

   d. That total benefit costs for public sector workers represent 34.1 percent of total compensation costs for large employers of more than 500 workers, and that total benefits represent 33.1 percent of total compensation costs. Factors to consider are the differences between public sector and private sector employees: supplemental pay, insurance, retirement earnings and the number of public sector workers who do not have social security. The study concludes that on average, public sector workers are earning 11.47 percent less than comparable private sector workers after controlling for hours worked. The average public employees receive 3.74 percent less compensation than comparable private sector workers.

3. A study focusing only on Wisconsin reaches a similar conclusion. Keefe, J. Are Wisconsin Public Employees Over-Compensated? Economic Policy Institute (February 2011).

4. Professor Craig Olson of the University of Illinois has recently written that for more than a decade Wisconsin teachers' salaries have fallen behind both changes in the cost of living and wage growth in the private sector. Between 1995 and 2009, the average private sector college graduate saw his weekly earnings increase by 10 percent after accounting for inflation. In contrast, from 1995 to 2010, the average teacher in Wisconsin saw his or her salary (without fringe benefits) decline by 10 percent after accounting for inflation. Wisconsin teachers did not keep up with inflation and fell behind their private sector counterparts. In 1995, the average college educated private sector worker in the U.S. earned 17 percent more than a Wisconsin teacher, and in 2009 this gap increased to 36 percent. C. Olson, The Battle Over Public Sector Collective Bargaining in Wisconsin and Elsewhere, Employment Policy Research Network, March 1, 2011 - Public Sector Employment Issues.

5. Similar results were reached in a study presented by Keith A. Bender and John S. Heywood, Trends in Relative Compensation of State and Local Government Employees (January 2012), LERA Conference Paper. Appendix D. They have found that in the private sector only 23 percent of workers have completed college while in the state sector 48.8 percent are college graduates and in the local sector 48.2 percent have finished college.

    a. The estimate for 2010 shows that state workers were paid 6.6 percent less than their otherwise equal private sector counterparts and that local workers were paid 3.7 percent less than their private sector counterparts. Figure 1 shows that the wage gap is between 13 or 14 percent based on raw unadjusted average data. Figure 1 shows the annual percentage difference between the average wage earned among U.S. state and U.S. local government workers when compared to the average wage earned by private sector workers. The study accounted for the differences in wages when adjusting for basic earnings to determinants, such as education and 8personal characteristics. Men earn 20 percent more than women, that high school graduates earn 23 percent more than dropouts and that college graduates earn 98 percent more than dropouts holding all other variables constant.

    b. The estimates adjusted for education and other personal characteristics for 2010 show that state workers were paid 6.6 percent less than their private sector counterparts, and that local government workers were paid 3.7 percent less than private sector counterparts. This adjusted wage gap provides a estimate of comparability, and the estimate suggests state and local workers are, on the average, underpaid controlling for other determinants of wages.

c. The major driver here is that government workers have jobs that demand more education, which is a fact not accounted for by the raw averages. State and local workers after 2004 had a lower share of their total compensation covering wages and salaries. Table 4 shows the earnings as a share of total compensation for state and local government workers is 68 percent and for large firm private sector workers is 69 percent, while the total private sector percentage is 71.5. This table makes clear that fringe benefits are a larger share of compensation in state and local government but not dramatically different.

d. State and local total compensation differentials and shows that public workers remain modestly undercompensated relative to private sector workers. Most of the difference in the average costs of benefits between sectors reflect the differences in the provision or type of benefits. Table 6, from this paper, shows that approximately 75 percent of public sector employees receive an employer or union provided pension and health insurance. In the private sector, only 44 percent of the employees receive a pension and only 55 percent receive health insurance.

e. The study also shows a sharp contrast in the state-private 9 percentage differential for employees with college educations and those who do not have college educations. A phenomenon of the past fifteen years is that employees with college degrees are far worse off than those without college degrees relative to the private sector. Thus, janitors relative to private employees are better off than professional employees.

B. Dispute resolution processes including mediation fact finding and interest arbitration adopted as substitutes for the right to strike have performed well in avoiding work stoppages and producing contract settlements that reflect the criteria included in the statutes.

1. Interest arbitration provides the most effective deterrent to strikes.

2. In terms of ability to reach agreements, some states, New York for example, have seen a decline in the percentage of bargaining units relying upon interest arbitration.

3. Mediation has proved to be very effective in assisting parties in reaching negotiated agreements. Wages of police officers and firefighters covered by arbitration statutes are not significantly different from wages for police officers and firefighters in states without collective bargaining. This may be because interest arbitrators tend to be very conservative, and there is a strong normative judgment that arbitrators should not break new ground or award new benefits. This is based on the belief that the parties know their unique needs better than the arbitrators, and it is the negotiation process by which such major changes should occur. Lewin, et al., Getting it Right: Levin, D. et al., Empirical Evidence and Policy Implications from Research and Public-Sector unionism and Collective Bargaining, Employment Policy Research Network, (March 16, 2011).

VII. How Unions Can Respond to Harris and the Attacks on Financial Security Provisions.

A. Members only benefits. Since the beginning of the collective bargaining relationship between the Chicago police officer's union, Fraternal Order of Police Chicago Lodge No. 7, and the City of Chicago, the Lodge has maintained a legal defense fund which engages veteran criminal defense lawyers to protect the interests of police offers in duty related matters, such as officer involved shootings and arrests or on street activities involving allegations of police brutality. When initially started, the Lodge's membership dues amount was $10.00 per month, and the fair share fee was calculated at a 20 percent discount, which means that for $2.00 a month a police officer received high quality legal representation shortly after an on duty incident occurred. At the rate of $2.00 per month, the overwhelming majority of police officers became members. Of the initial group of over 10,500 bargaining unit members, only 40 chose to pay fair share fees rather than become members. The Lodge 7 FOP Chicago legal defense fund has been so attractive for police officers that only a small number of them, less than 0.003 percent choose fair share status. Similar kinds of member only

benefits could have substantial attraction for employees' benefits, e.g. job training program, health fairs and evaluation programs, to join unions and supplemental health.

VIII. Tilting the playing field by thwarting the ability of unions to collect workers' voluntary payments and dues unfairly impedes their ability to spend money on political campaigns or independent expenditures as allowed by Citizens United and to protect the interests of workers.

A. Legislative and judicial efforts to weaken the ability of unions to fund such activities only enhance the ability of union foes to weaken the labor movement. The Supreme Court's opinions in Knox v. Service Employees International Union, Local 1000, 132 S. Ct. 2277 (2000), Ysura v. Pocattello Education Association, 129 S. Ct. 1093 (2009), and Davenport v. Washington Educ. Assn, 127 S. Ct. 2372 (2007), set the stage for a number of state regulative proposals as well as the Court's decision in Hudson. These cases changed the entire scheme of how public unions are able to collect fair share fees from non-members who they represent.

B. At issue in Knox were First Amendment implications for a special dues assessment not disclosed in the yearly Hudson notice. California law allows for a majority of public employees to vote to approve an agency fee agreement and such an agreement was involved in Knox. The Supreme Court in Knox held that a new Hudson notice is required for each special union assessment intended solely for political or ideological expenses. Five members of the Court, in an opinion written by Justice Alito, held "that any special assessment from that notice can

only be levied on those employees who opt-in to pay it." Therefore, when a public sector union proposes a special assessment or due increase, the union must provide a fresh Hudson notice and not extract any funds from non-members without their affirmative consent.

C. The most disturbing aspect of Knox questions the constitutionality of the collective bargaining based exclusive representation and majority rule. Justice Alito wrote: "Our cases to date have tolerated this 'impingement,' and we do not revisit today whether the Court's former cases have given adequate recognition of the critical First Amendments Rights at stake." Knox, 132 S. Ct. at 2290. Justice Alito referred to the acceptance of the free rider argument as an anomaly that so far has been justified in furtherance of labor peace. This clearly opened the door to additional challenges on a variety of fronts, including the direct attack on fair share fees in Harris.

D. In Davenport, the Court held that the State of Washington statute's affirmative authorization provisions for a union to spend agency fees for ideological or political purposes unrelated to the union's collective bargaining responsibilities did not violate the First Amendment: Davenport, 127 St. Ct. at 2382.

In Pocatello, the Court dealt with the Idaho Right-to-Work Act that permitted public employees to authorize payroll deductions for general union dues but barred deductions for union political activities. This limitation, according to the Court does not infringe the union's First Amendment rights.

E. State legislatures have considered such measures as prohibitions on payroll deduction for union dues from salaries of public employees; requirements that

public employees provide written authorizations to unions on an annual basis to allow union dues as fees to be used for political contributions or expenditures; termination of the exclusive representation requirement meaning that employees who are not union members and who do not pay fair share fees will not be represented by the union. Moves to limit the authority of unions to maintain financial security through dues collection systems agreed upon by the parties in negotiations, annual decertification elections, and denying collective bargaining rights all together are destructive to the overall goal of enabling unions to provide adequate representation of employees, negotiate collective bargaining agreements and assure labor peace because labor relations stability is a mainstay of pluralism.

F. Such actions by state legislatures are extreme restraints on the right to enter into collective bargaining agreements and are more akin to the central planning ideas soundly rejected by Friedrich A. Hayek in The Road to Serfdom (1944). Even Professor Hayek understood the significant problems related to income distribution and a reduction in the general standard of living for workers: "The only thing modern democracy will not bear without cracking is the necessity of a substantial lowering of the standard of living in peacetime or even prolonged stationariness of its economic conditions" Id., p. 210. This means we do not want a repeat of the Boston police strike.

G. Attacks on public section sector unions in 2011 and thereafter are far more vehement and led to more damage to unions than the private sector challenge by the anti-union Congress in 1947 with the passage of the Taft-Hartley amendments to the National Labor Relations Act. Among other provisions, the Taft-Hartley

amendments added the exclusion of supervisors, union unfair labor practices, employers' right to file election petitions, employees' right to file decertification petitions, Section 14(b)(right to work provisions), anti-Communist affidavit, Section 302, the national emergency dispute provisions, Section 8(b) secondary boycott provisions banning such activity and jurisdictional dispute or work assignment strikes to the NLRA. This Act was approved by an override of President Truman's veto.

1. A metaphor used by an NLRB attorney in 1949 explained the real impact of these amendments. The situation involved a NLRB ruling against a union, Local 16 ILWU, that awarded the company's disputed work to the International Woodworkers of America. The Board's attorney informed the ILWU members that continued picketing would render them liable to immediate unfair labor practice proceedings under Section 8(b)(4)(d) of Taft-Hartley and that a federal court could enjoin such activity pursuant to Section 10(k).

2. To demonstrate the difficult position union members were in, the attorney reported that he stated to the workers the following:

> "[The union members] were in a game of three-handed poker. They had started the game. They held one hand, the IWA the other, and the company a third. It was five card draw. The house-the Government-was dealing. Four cards had been dealt to each player face up. The company held four aces. Nothing else was showing and the chips were down. It would take more chips to see the fifth card. They had a right to call for it, if they wanted to do so and risk further loss. They could pull out of the game now if they chose to do so. We had come to Juneau to find out whether they wanted the Government to deal the card."

> The ILWU lawyers advised the workers to the futility of taking further action that would prove highly dangerous in terms of financial damages to the union. The international union advised the members to accept the NLRB determination as "advice from the Government and take it and 'lie down like dogs.'" C. Tomlins, the State and the Unions Labor Relations, Law, and the Organized Labor Movement in America 1880-1960, pp. 314-15 (1985).

IX. Since 2011, unions, workers and their supporters have not been lying down like good dogs and that is why political action is so important. For example, in Ohio, unions were successful in a referendum to repeal a law limiting public sector union rights. This was a very substantial victory that involved all elements of the labor movement, including police officer and fire fighter unions. Sabrina Tavernise, *Ohio Turns Back a Law Limiting Union's Rights*, THE NEW YORK TIMES, (Nov. 8, 2011).

A. The prime direction of political activity for labor organizations in 2014 is to make multiple contacts with union member households through telephone calls and home visits. Union resources include stipend payments to members to engage in these activities, mailings, and in-kind expenditures in which union staff employees are assigned to political campaigns. These are considered to be in-kind contributions and along with direct contributions to political campaigns are generally subject to federal and state political financial laws and disclosures.

B. Independent political expenditures, allowed under Citizens United v. FEC, 130 S. Ct. 876 (2010), are becoming an increasingly more important source of union political activity. In Citizens United, the Court held that independent expenditures made by unions or corporations do not give rise to corruption or the appearance of corruption and therefore may not be subject to limitations like those that apply to political contributions. Such expenditures, unlike direct political contributions or in-kind

contributions, are not subject to limits but may not be coordinated with the political organizations of candidates or their campaigns. In fact, unions typically assign staff employees for independent expenditure activity and instruct them to have no campaign related communications at all with union staff members who are working directly with the candidate's political campaigns. These independent expenditures are used to communicate to the public, and they are not subject to campaign financial limitations, but must be disclosed under applicable law. They are, therefore, different than union to member communications in which unions advise their members of the issues in political campaigns and the positions taken by candidates.

C. Union dues money and voluntary contributions are frequently used to support political activities at the state and local level. Unions are barred from making contributions directly to federal candidates, but political action funds established by unions may be funded by dues money and are permitted to make direct contributions to candidates for federal office.

D. Huge amounts of money are being spent on federal, state and local political campaigns by a whole spectrum of organizations. Billionaire Meg Whitman, in 2010, spent nearly $100 million in in her bid to succeed Arnold Schwarzenegger as governor of California. Campaigns for state legislative races in 2011 and 2012 were the most expensive ever. More than 14,000 candidates ran for 6,589 legislative seats, and these candidates raised more than $1.1 billion in campaign contributions. For governor and lieutenant governor races, the amount spent was $256,707,560. Overview of Campaign Finances, 2011 – 2012 Elections. Institute of Money in State Politics.

E. In the state elections for 2011 – 2012, labor unions spent a total of $127,664,552 and were out-spent by industry groups by a wide margin. The total spent by financial institutions, real estate, insurance, general business, energy and natural resources, contribution, agriculture, health and transportation was $494,595.799. Zack Holden, Overview of Campaign Finances, 2011-2012 Elections, National Institute of Money in State Politics. It is clear labor money was eclipsed by a factor of approximately 4. Appendix C.

F. These unions' political expenses are quite important and even more important than they are to most companies. Unions participate in one of the most heavily regulated and politicized markets in the community. Matthew T. Bodie, *Labor Speech, Corporate Speech, and Political Speech: A Response to Professor Sachs*, 112 COLUM. L. REV. SIDEBAR 206 (2012), http://www.columbialawreview.org/wp-content/uploads/2012/10/206_Bodie.pdf.

G. State legislative efforts to limit the ability of unions to collect money from members or to regulate how unions spend dues money for political purposes would clearly change the rules in political campaigns to give unions opponents an unfair advantage.

H. This unfairness has been recognized in the context of the political opt-out procedure which is inherent in Abood, Hudson and Lehrent, where the public employees exercise a First Amendment right to pay a fair share fee and not support union political expenses. Corporations on the other hand do not have a similar obligation to give their shareholders such rights when corporate assets are used for lobbying elected officials and directions or heads of administrative agencies at the federal, state and local levels. Benjamin I. Sachs, Unions, Corporations, and Political Opt Out

rights After Citizens United, 112 Colum. L. Rev. 800, 805, 809, 825, 869. Management is essentially free to use corporate assets to urge political views of any kind through independent expenditures as long as a plausible connection can be drawn between the expenditure and commercial benefit to the corporation. Id. at 825. This distinction is important because of the disadvantage it places on unions and the public policy arguments in state legislatures and courts that are used to restrict unions in their collection of dues money and expenditures of political purposes.

I. Matthew T. Bodie, in a responsive article to the one written by Professor Sachs, agrees with the unfairness in this asymmetry in treatment between unions and corporations but advocates a different solution. Matthew T. Bodie, *Labor Speech, Corporate Speech, and Political Speech: A Response to Professor Sachs*, 112 Colum. L. Rev. Sidebar 206 (2012), http://www.columbialawreview.org/wp-content/uploads/2012/10/206_Bodie.pdf. He argues that union political expenses are part of costs of representation of employees for which all employees should pay.

X. CONCLUSION

Unions have been and continue to face a brutal assault from both the legislatures and the courts. But unions are not down, and they are not out.

> Public employees bore the brunt of a political attack on the American minimalist version of the welfare state. The conservative right took advantage of an opportunity to try to remove an obstacle standing in the way of further reductions in the size of government—collective bargaining. They have succeeded in weakening laws covering negotiations, arbitration, and union security in several states. Largely because of its fragmented legal structure, however, we argue that collective bargaining has survived.
>
> More important perhaps, the political attack on public employees and their unions awakened a sleeping giant. Unions and their allies were surprised and emboldened by the mass support for their cause in the sheer size of demonstrations and the

> wide popular backing for the institution of collective bargaining. Finally, the Wisconsin battles paved the way for the Occupy Wall Street movement of 2011 that placed income inequality on the national scene and on the policy agenda of the United States.

Robert Hebdon, Joseph E. Slater, Marick F. Masters, in Howard R. Stanger , et al. (ed.) Public Sector Collective Bargaining: Tumultuous Times, in Collective Bargaining Under Duress, p. 255 (2013).

APPENDIX A

NOTICE TO ALL PERSONAL ASSISTANTS WHO ARE NOT MEMBERS OF SEIU Healthcare Illinois and Indiana (SEIU HCII)

Under the Illinois Public Labor Relations Act, SEIU HCII serves as the exclusive representative of all Personal Assistants (PAs) providing services under the State of Illinois' Home Services Program administered by the Department of Human Services' Division of Rehabilitation Services. Under our current collective bargaining agreement, PA wages will increase by 13% to $13 per hour by 2014. This agreement also secures additional funding for our healthcare and our training. The agreement also provides that all PAs must pay their fair share of the cost of being represented by SEIU HCII. Your share of the cost is called your fair share fee. Fair share fees are deducted from the paychecks of PAs who are not members of SEIU HCII. The purpose of this Notice is to explain how the fair share fee was calculated and to explain your right to challenge the calculation.

YOUR RIGHT TO BE A MEMBER OF SEIU HCII

We strongly urge you to join SEIU HCII as a member. By doing so, you will have the benefits of membership, including the right to participate fully in the internal affairs of the Union, to vote for Union officers, run for Local office, and participate in collective bargaining. You will also be entitled to receive the privileges of the Member Only Benefits including: free accidental death insurance; health, vision and pharmacy prescription discount programs, along with a voluntary dental discount program; access to credit union programs; free and discounted legal services; discounted consumer products and services, such as discounts on monthly cellular usage, purchases on tires, travel and rental car discount programs; GED and computer classes through our Member Education and Training Center; opportunities for various scholarship programs for you and family members; and access to other community benefits.

Moreover, your membership in the Union will result in greater bargaining strength in negotiations, leading to higher wages, better benefits and improved working conditions. Finally, whether you join the Union or not, you are obligated to pay a fair share fee to the Local. As explained below, the fee is equal to 75.84% of HCII dues. Therefore, for only a small amount more per month you can have the full benefits of full Union membership.

HOW THE FAIR SHARE FEE WAS CALCULATED

If you decide not to join the Local, you will be charged a fair share fee equal to your proportionate share of the costs of collective bargaining, enforcement of the contract, and related activities. Illinois law provides for the collection of such fees and their collection has been upheld by the United States Supreme Court.

In calculating the fee, HCII has included your proportionate share of the cost of the following activities engaged in by HCII and its affiliated organizations, the SEIU Illinois State Council and the Service Employees International Union as determined by their fair share calculations (see below). These are the chargeable activities:

1. Governing the union, including union elections.
2. Membership meetings and conventions.
3. Gathering information in preparation for the negotiation of collective bargaining agreements.
4. Gathering information from employees concerning proposals in collective bargaining.
5. Negotiating collective bargaining agreements.
6. Handling grievances of employees under collective bargaining agreements, enforcing collective bargaining agreements and representing employees under civil service and related laws.
7. Ratification of negotiated agreements.
8. Public advertisement of the union's position on the negotiation, ratification or implementation of collective bargaining agreements.
9. Purchasing books, reports and advance sheets used in negotiating and administering collective bargaining agreements.
10. Lobbying for the ratification or implementation of collective bargaining agreements.
11. Paying for the services of technicians in labor law, economics, and other subjects used in negotiating and administering collective bargaining agreements.
12. Conducting and sending staff and members to conferences and meetings concerning collective bargaining, contract administration and other matters relating to wages, hours and working conditions.
13. Defending the union's right to represent employees in relation to collective bargaining.
14. Publishing those portions of newsletters and other literature distributed to employees relating to gaining and maintaining representation rights, collective bargaining, contract administration and related matters.
15. Preparation for and participation in impasse procedures including fact finding, mediation and arbitration, and in strikes and other economic actions designed to secure favorable terms in collective bargaining so long as the actions are legal.
16. The prosecution and defense of arbitration and litigation to obtain ratification, interpretation, implementation or enforcement of collective bargaining agreements and other litigation concerning bargaining unit employees normally conducted by an exclusive representative.
17. Social and recreational activities open to all represented employees.
18. Organizing within units for which the union is the exclusive representative of units of employees.
19. Organizing aimed at obtaining the right to serve as the exclusive representative ofunits of employees.
20. Operating and administrative costs, e.g.,rent, utilities,transportation, etc. allocable to which fair share fee payers are charged.

In calculating the fee, HCII has not included your proportionate share of the cost of the following activities engaged in by HCII or its affiliated organizations. These are called nonchargeable activities:

1. Training in voter registration, get-out-the-vote efforts, and political campaigning.
2. Supporting and contributing to not-for-profit or charitable organizations.
3. Supporting and contributing to political organizations and candidates for public office.
4. Supporting and contributing to ideological causes and committees, including ballot measures.
5. The public advertisement of the union's position on issues other than negotiation, ratification, or implementation of collective bargaining agreements.
6. Providing benefits available only to members.

An independent certified public accounting firm determined what percentage of the Local's expenditures in each of its major categories of expenditure were for chargeable and nonchargeable activities. The following table sets forth the Local's major categories of expenditure and allocates the expenditures between chargeable and nonchargeable categories according to the criteria described above. Both the statement of expenditures and their allocation between chargeable and nonchargeabe activities were audited by Graff, Ballauer & Blanski, P.C., an independent certified public accounting firm. Also included with this notice are the most recent certified audits of the SEIU Illinois State Council and of the SEIU International Union, both of which were taken into account in determining the Local fair share fee percentage. Payments made by HCII to these affiliated organizations are deemed to be chargeable to nonmembers at the same percentage that these organizations' total expenditures are deemed by them to be chargeable to nonmembers as set forth in their audit documents. According to the following calculation, HCII is entitled to collect a fair share fee equal to75.84% of HCII dues which is equal to 2.5% of gross wages each month, with a minimum of $20.47 each month and a maximum of $56.88 per month. This fee shall remain in effect at this percentage and with this monthly minimum through January 2015 at which time it will be recalculated and is subject to change due to an updated independent audit. If you do not join the Local, the fair share fee will be deducted from your paycheck.

CHALLENGING THE CALCULATION OF THE FAIR SHARE FEE

You have the right to challenge the calculation of the fair share fee. You must comply with the following procedures in order to do so.

A. Challenges

In order to challenge the amount of the fair share fee, you must send a letter by mail to: Executive Board, SEIU Healthcare Illinois and Indiana, 2229 S. Halsted, Chicago, Il., 60608. The letter must include your name and address and state that you are challenging the calculation of the fair share fee. The letter must be postmarked no later than 30 days after you receive this notice.

B. Escrow of Amount Reasonably in Dispute

Upon receipt of a written challenge complying with the above-described criteria, HCII will place an amount equal to 100% of your fair share fee in an interest bearing escrow account. Although HCII believes the amount of the fee was correctly calculated, it will escrow that amount to insure that none of your funds is used for an impermissible purpose. The funds shall remain in the account until an arbitration award is issued and shall then be distributed to HCII and the challenger in accordance with the award.

C. Arbitration Procedure

Challenges to the calculation of the fair share fee shall be resolved by an independent arbitrator. All challenges shall be consolidated before a single arbitrator. The arbitrator shall be selected by the American Arbitration Association (the AAA) and the arbitration shall be scheduled and conducted in accordance with the AAA's Rules for Impartial Determination of Union Fees. Upon receipt of a challenge, HCII will send the challenger a copy of these rules as well as additional information concerning the challenge procedure. Challengers will be given written notice of the hearing date and time and have an opportunity to appear and state their objections to the procedure for calculating the fair share fee. HCII will have the burden of proving that the calculation of the fair share fee was proper. HCII will bear the entire cost of the arbitration. Challengers choosing to be represented before the arbitrator shall bear the cost of such representation. The arbitrator shall issue a decision 30 days after submission of final arguments.

If you have any questions about this notice, about the fair share fee, or about becoming a member of the Local, please call Jacqueline Rodriguez at (312) 980.9045.

SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE ILLINOIS INDIANA
NOTES TO THE CONSOLIDATED SCHEDULE OF EXPENSES AND ALLOCATION BETWEEN CHARGEABLE EXPENSES AND NON-CHARGEABLE EXPENSES
FOR THE YEAR ENDED DECEMBER 31, 2011

Note 1-Background
In 1986, the United States Supreme Court issued a decision regarding certain procedures that must be followed by a local union that is collecting fair share fees from nonmembers under a collective bargaining agreement with a public employer. In Chicago Teachers Union vs. Hudson, the United States Supreme Court reaffirmed the constitutionality of such fair share agreements. The United States Supreme Court also held that certain Union expenditures could be charged to fair share fee payers, but that certain others could not be charged.

In 1988, the United States Supreme Court issued a decision holding that unions covered under the National Labor Relations Act (NLRA) may not charge nonmembers fees for nonrepresentational activities when the nonmembers are covered by collective bargaining agreements and object to such fees for nonrepresentational activities. This decision, known as Communications Workers of America vs. Beck, applies not only to the relatively uncommon private sector agency shop, but also to the more standard union shop, where the board and courts have long held that any bargaining unit employee may opt to be classified as a "financial core status employee" if he/she does not wish to join the Union.

Note 2-Summary of Significant Accounting Policies
Service Employees International Union Healthcare Illinois Indiana (HCII) follows the "cash basis" method of accounting and reporting, which is used by most labor organizations on the local level. While this is not considered a generally accepted accounting principle, its widespread use within this particular field permits such treatment in order to fulfill the needs of its Members, Officers, Trustees and Auditors and to render its financial statements comparable to those of other local unions.

The accompanying consolidated schedule of expenses and allocation between chargeable and non-chargeable expenses was prepared for the purpose of determining the fair share cost of services rendered by Service Employees International Union, Healthcare Illinois Indiana for employees represented by, but not members of, HCII. This statement is not intended to be a complete presentation of the HCII's financial position, or changes in its net assets and its cash flows in accordance with generally accepted accounting principles.

HCII is exempt from federal income taxes under Section 501 (c) (5) of the Internal Revenue Code, except for unrelated business income. The Union does not presently have unrelated business income.

Note 3-Definitions
The following definitions of chargeable and non-chargeable expenses are based on existing law and HCII's interpretation of court cases.
a. **Chargeable Expenses**-Chargeable expenses are those incurred by HCII that reflect the share of the costs of operations of the Local Union which are considered necessarily and reasonably incurred for the performance of their duties as a representative of the employees in dealing with the employer on labor management issues, including the cost of: negotiating and administering the collective bargaining contract; settling grievances and disputes by mutual agreement, or in arbitration, court or otherwise; activities and undertakings normally and reasonably employed to implement the duties of the local union as representative of the employees in the bargaining unit; and the maintenance of the International Union's and Local Union's existence.
b. **Non-Chargeable Expenses**-Non Chargeable expenses are those expenses incurred by the Local Union for the benefit and advancement of represented employees which are not considered representational activities for non-members. Non-Chargeable activities include those services that are ideological or political in nature; those that are exclusively for the benefit of full union members; and those that otherwise are not considered germane to the collective bargaining process.

Note 4-Significant Factors and Assumptions Used in the Allocation of Expenses Between Chargeable and Non-Chargeable

Expense categories are summarized from the general ledger which was the basis of the audited financial statements of HCII for the year ended December 31, 2011

The following are explanations of major categories of expenses and their allocations.

a. Amounts paid to the International including Per Capita Tax and payments to the Unity Fund are allocated based on the 67.16% Chargeable percentage provided in the International's Consolidated Statement of Expenses and Allocation Between Chargeable Expenses and Non-Chargeable Expenses Series 1 for the year ended December 31, 2011. State Per Capita Payments paid to the SEIU Illinois State Council are allocated based on the 13.05% Chargeable percentage provided in the State Council's Statement of Expenses and Allocation Between Chargeable Expenses and Non-Chargeable Expenses for the year ended December 31, 2010. Other Per Capita Taxes are considered Non-Chargeable Expenses.
b. Payroll Costs, Benefits Paid, Office and Administration, Education, Communication, Member Services, Legal Services, Other Professional, meetings, Conferences and Events are all allocated to Chargeable and Non-Chargeable Expenses based on the nature of the work performed throughout the year. For example, expenses related to Political and Charitable Activities are Non-Chargeable and expenses related to Negotiating, Membership Education and Training and Contract Enforcement Activities are Chargeable.
c. Other expenses are 100% Chargeable or Non-Chargeable as shown on the schedule.

Service Employees International Union, Healthcare Illinois Indiana Chicago, Illinois

We have audited the accompanying consolidated statement of expenses and allocation between chargeable expenses and non-chargeable expenses of the Service Employees International Union, Healthcare Illinois Indiana (HCII) for the year ended December 31, 2011. This statement is the responsibility of the Union's management. Our responsibility is to express an opinion on this statement based on our audit. We have also audited the financial statements with our audit report thereon dated August 20, 2012.

We conducted our audit in accordance with the auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated schedule of expenses is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated schedule of chargeable expenses and non-chargeable expenses. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall schedule presentation. We believe that our audit provides a reasonable basis for our opinion.

The expenses reflected in this consolidated schedule of expenses and allocation between chargeable expenses and non-chargeable expenses are based on our audit report for the year ended December 31, 2011. The allocation of expenses between chargeable and non-chargeable is based on the significant factors and assumptions described in Notes 3 and 4. This statement is not intended to be a complete presentation of the consolidated financial statements of HCII.

As more fully described in Note 2, this statement is prepared on the cash basis of accounting, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, the consolidated schedule of expenses and allocation between chargeable expenses and non-chargeable expenses referred to above presents fairly, in all material respects, the chargeable expenses and non-chargeable expenses of the Service Employees International Union, Healthcare Illinois Indiana during the year ended December 31, 2011 on the basis of accounting described in Note 2.

This report is intended solely for the information and use of the Service Employees International Union, Healthcare Illinois Indiana and its agency fee payers and is not intended to be and should not be used by anyone other than those specified parties.

Graff, Ballauer & Blanski, P.C.
December 4, 2012

SERVICE EMPLOYEES INTERNATIONAL UNION HEALTHCARE ILLINOIS INDIANA CONSOLIDATED SCHEDULE OF EXPENSES AND ALLOCATION OF EXPENSES BETWEEN CHARGEABLE EXPENSES AND NON-CHARGEABLE EXPENSES FOR THE YEAR ENDED DECEMBER 31, 2011

ACCOUNT NAME	TOTAL	CHARGEABLE	NON CHARGEABLE
Payroll Expense			
Salaries	$ 6,876,079	$ 6,607,049	$ 269,030
Payroll Taxes	818,792	781,783	37,009
Total Payroll Expense	**7,694,871**	**7,388,832**	**306,039**
Benefits Paid			
Benefits Paid - Health and Welfare	1,749,244	1,670,178	79,066
Benefits Paid - Pension	908,530	867,465	41,065
Benefits Paid - Other	337,834	323,584	14,250
Total Benefits Paid	**2,995,608**	**2,861,227**	**134,381**
Per Capita Payments			
Per Capita Tax - International	7,165,585	4,812,407	2,353,178
Per Capita Tax - State	1,929,241	251,766	1,677,475
Per Capita Tax - Unity Fund	460,156	309,041	151,115
Per Capita Tax - Other	310,792	-	310,792
Total Per Capita Payments	**9,865,774**	**5,373,214**	**4,492,560**
Office and Administration			
Rent	1,059,374	1,034,301	25,073
Early Termination Fees	588,969	562,348	26,621
Dues & Subscriptions	29,317	27,992	1,325
Equipment Leasing & Purchasing	158,852	151,671	7,181
Recruitment Expense	97,206	92,812	4,394
Repairs and Maintenance	78,351	77,591	760
Supplies and Printing	219,322	206,753	12,569
Parking Permits	214,635	213,705	930
Penalties and Fines	13,289	12,689	600
Postage	48,085	46,955	1,130
Real Estate Taxes	41,145	39,286	1,859
Temporary Services	193,689	191,148	2,541
Telephone	460,739	450,353	10,386
Utilities	88,570	86,960	1,610
Insurance	164,490	157,267	7,223
Office Meals	52,098	47,611	4,487
Bank Service Fees	21,872	20,883	989
Data and IT Services	167,051	159,500	7,551
Total Office and Administration	**3,697,054**	**3,579,825**	**117,229**
Education, Communication and Member Services			
Education Expense	1,132	1,117	15
Communication Expense	1,456,599	1,413,747	42,852
Member Services	978,446	975,627	2,819
Total Education, Communication and Member Services	**2,436,177**	**2,390,491**	**45,686**
Contributions			
Contributions	366,076	-	366,076
International Initiatives	82,512	82,512	-
Total Contributions	**448,588**	**82,512**	**366,076**
Legal Services	**534,353**	**529,915**	**4,438**
Other Professional			
Audit Services	58,741	52,421	6,320
Accounting and Management	58,532	56,176	2,356
Contractual Services	648,549	635,265	13,284
Total Other Professional	**765,822**	**743,862**	**21,960**
Meetings, Conferences and Events			
Meetings	84,960	81,781	3,179
Events	330,956	322,565	8,391
Meals	122,786	114,299	8,487
Total Meetings, Conferences and Events	**538,702**	**518,645**	**20,057**
Travel	**1,730,633**	**1,664,563**	**66,070**
Depreciation	**210,872**	**201,340**	**9,532**
Political Action			
Political Action Contributions	1,159,118	-	1,159,118
Professional Services	88,892	-	88,892
Total Political Action	**1,248,010**	**-**	**1,248,010**
TOTALS	**$ 32,166,464**	**$ 25,334,426**	**$ 6,832,038**

Chargeable (Above)	**$ 25,334,426**	**78.76%**
Total Expense (Above)	**$ 32,166,464**	
Non-Chargeable		**21.24%**

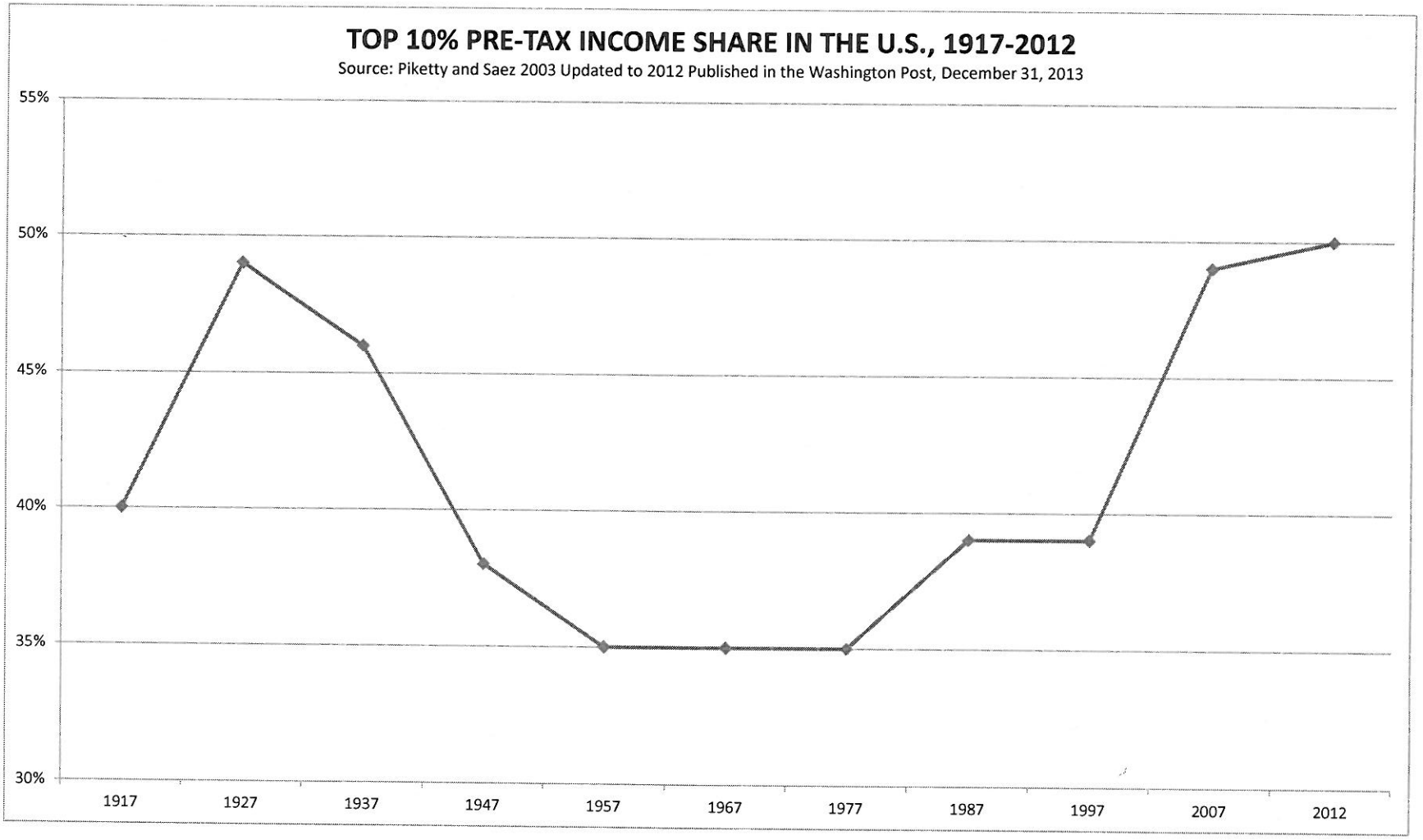
SERVICE EMPLOYEES INTERNATIONAL UNION ILLINOIS STATE COUNCIL CONSOLIDATED STATEMENT OF EXPENSES AND ALLOCATION OF EXPENSES BETWEEN CHARGEABLE AND NON-CHARGEABLE EXPENSES (Modified Cash Basis) YEAR ENDED DECEMBER 31, 2010

	Column A Total	Column B Chargeable	Column C Non-Chargeable
Directly Allocable Expenses			
Salaries and wages	$ 761,165	$ 205,515	$ 555,650
Employee benefits	242,915	65,587	177,328
Payroll tax expense	61,816	16,690	45,126
Telephone	16,651	4,496	12,155
Rent	40,172	10,846	29,326
Insurance	8,576	2,316	6,260
Depreciation	5,817	1,571	4,246
Auto and transportation	76,682	20,704	55,978
Dues and subscriptions	1,715	463	1,252
Travel	6,704	1,810	4,894
Professional fees	121,687	121,687	-
Legislative activities	23,315	23,315	-
Communication expense	12,514	6,446	6,068
Meetings and conferences	44,798	14,653	30,145
Meals and entertainment	111	-	111
Contributions	492,548	-	492,548
Dialer activities	639	-	639
Payments to SEIU PAC Fund	1,878,959	-	1,878,959
Advertisement and promotional	5,267	-	5,267
Total	3,802,051	496,099	3,305,952
Other Expenses			
Office supplies	24,922	3,252	21,670
Printing and postage	6,057	790	5,267
Administrative expenses	3,907	510	3,397
Total expenses	$ 3,836,937	$ 500,651	$ 3,336,286
Fair Share Percentage	100.00%	13.05%	86.95%

SERVICE EMPLOYEES INTERNATIONAL UNION, CTW, CLC UNITED STATES DIVISION CONSOLIDATED STATEMENT OF EXPENSE AND ALLOCATION BETWEEN CHARGEABLE AND NON-CHARGEABLE EXPENSES SERIES 1 YEAR ENDED DECEMBER 31, 2011

	Column A Total	Column B Chargeable	Column C Non-Chargeable
EXPENSES			
Program expenses			
Representation and Organizing:			
Organizing Department	$50,045,898	$21,876,183	$28,169,715
Health Care Division	25,619,064	23,884,302	1,734,762
Public Division	15,115,951	13,361,115	1,754,836
Property Services Division	16,417,025	16,159,490	257,535
South/Southwest Division	10,803,104	9,874,686	928,418
Global activities	1,611,312	1,604,557	6,755
Research	2,641,833	2,027,526	614,307
Capital Stewardship	2,666,401	2,624,507	41,894
Total representation and organizing expenses	124,920,588	91,412,366	33,508,222
Membership services:			
Politics	6,747,831	-	6,747,831
Political Education	9,235,786	-	9,235,786
Committee on Political Education	8,418,886	-	8,418,886
Government Relations	11,885,313	3,693,333	8,191,980
Field Information Services	3,759,556	3,416,343	343,213
Contributions & Affiliate Support	10,315,845	4,726,215	5,589,630
Member Leadership Program	2,988,102	-	2,988,102
Union Communication	6,620,692	5,043,278	1,577,414
Convention & Conferences	4,449,252	4,449,252	-
Strike & Defense Fund	7,362,076	7,362,076	-
SEIU Canada	5,524,296	5,524,296	-
Total membership services	77,307,635	34,214,793	43,092,842
Total program services	202,228,223	125,627,159	76,601,064
Administrative expenses			
IEB and Leadership support	10,402,514	9,999,463	403,051
Field operations support	3,869,638	3,611,947	257,691
Legal	5,658,066	4,354,655	1,303,411
Finance	3,979,800	2,695,905	1,283,895
Information Technology	6,441,395	4,363,382	2,078,013
Administrative Support	4,426,512	2,998,506	1,428,006
Union Administration	11,029,548	7,471,383	3,558,165
Building expenses	12,082,804	8,184,855	3,897,949
Total administrative expenses	57,890,277	43,680,096	14,210,181
Total operating expenses	260,118,500	169,307,255	90,811,245
Less:			
Canadian expenses paid directly from Canadian per-capita taxes	(5,524,296)	(5,524,296)	-
Political expenses paid from voluntary contributions	(10,719,415)	-	(10,719,415)
Total expenses, as modified	$243,874,789	$163,782,959	$80,091,830
	100.00%	67.16%	32.84%

APPENDIX B


TOP 10% PRE-TAX INCOME SHARE IN THE U.S., 1917-2012
Source: Piketty and Saez 2003 Updated to 2012 Published in the Washington Post, December 31, 2013
55%
50%
45%
40%
35%
30%
1917
1927
1937
1947
1957
1967
1977
1987
1997
2007
2012

APPENDIX C

TOP TEN CONTRIBUTIONS BY ECONOMIC SECTOR

STATE ELECTION 2011-2012

	AMOUNT	% OF DEM.	% OF REP.
LABOR	$127,664,552	68.35%	31.6%
FINANCE, INSURANCE & REAL ESTATE	$116,822,926	34.13%	66.12%
GENERAL BUSINESS	$94,693,396	33.29%	66.7%
LAWYERS AND LOBBYISTS	$84,269,028	71.8%	28.2%
HEALTH	$57,031,186	60.1%	39.89%
ENERGY AND NATURAL RESOURCES	$53,814,954	31.02%	68.59%
CONSTRUCTION	$43,296,376	27.2%	72.75%
AGRICULTURE	$24,896,047	27.88%	73.92%
TRANSPORTATION	$19,771,886	34.7%	65.3%

Source: Zach Holden, in *State Politics*, National Institute on Money