

SOMEBODY’S KNOCKING, SHOULD I LET THEM IN?: THE FIGHT OVER UNIONS ENTERS THE HOME

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INTRODUCTION

Nationally, according to a 2018 report from the Paraprofessional Healthcare Institute, there are over 2 million home-care workers making a median hourly wage of \$11.03 an hour.¹ Due to these low wages, depressed by low Medicaid reimbursement where government is the payer, “[o]ne in four home-care workers lives below the federal poverty line (FPL) and over half rely on some form of public assistance.”² Roughly 90% of home-care workers are women and only 40% are white—immigrants account for nearly 30% of the overall workforce.³

This workforce is growing as our society ages. As Soo Oh reported in *Vox*, “The Bureau of Labor Statistics projects an increase of more than 1 million new direct care workers—personal care workers, home health aides, and nursing assistants—between 2014 and 2024.”⁴ The report also notes

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1. *U.S. Home Care Workers: Key Facts*, PARAPROFESSIONAL HEALTH INST. 2 (2018), <https://phinational.org/resource/u-s-home-care-workers-key-facts-2018/> (last visited Dec. 4, 2018).

2. *Id.*

3. *See id.* at 3 (listing 2016 demographic statistics for home-care workers where 15% are “U.S. Citizens by Naturalization” and 13% are “Not a Citizen of the U.S.” to account for the nearly 30% of immigrants in the overall workforce). Home-care workers, once known as “domestics,” were excluded from the Fair Labor Standards Act of 1938. Ariela M. Migdall, *Home Health Care Workers Aren’t Guaranteed Minimum Wage or Overtime, and the Legacy of Slavery Is the Reason Why*, HUFFINGTON POST (May 6, 2015), https://www.huffingtonpost.com/ariela-m-migdal/home-health-care-workers_b_7224080.html. They were only included by Obama Administration rulemaking. Michelle Chen, *Home-Care Workers Are Now Protected by Minimum-wage Laws*, NATION (July 1, 2016), <https://www.thenation.com/article/homecare-workers-are-now-protected-by-minimum-wage-laws/>. But that legacy of legal marginalization persists.

4. Soo Oh, *The Future of Work is the Low-wage Health Care Job*, VOX (July 3, 2017), <https://www.vox.com/2017/7/3/15872260/health-direct-care-jobs>.

that “the poor are essentially taking care of the poor.”⁵ These marginalized workers have been receptive to unionization in many states.⁶

In 2014, the U.S. Supreme Court decided *Harris v. Quinn*.⁷ The Court, in a 5–4 decision, ruled that Illinois personal assistants providing long-term care in homes had a right to completely opt out of representation by the Service Employees International Union (SEIU).⁸

In *Harris*, the Court expressed strong reservations about the 1977 precedent of *Abood v. Detroit Board of Education*,⁹ “which held that state employees who choose not to join a public-sector union may nevertheless be compelled to pay an agency fee to support union work that is related to the collective-bargaining process.”¹⁰ Yet the Court fell short of overturning *Abood*, distinguishing it by stating, “[t]he Illinois Legislature has taken pains to specify that personal assistants are public employees for one purpose only: collective bargaining. For all other purposes, Illinois regards the personal assistants as private sector employees.”¹¹

The Court declined to extend *Abood*, writing, “[i]f respondents’ and the dissent’s views were adopted, a host of workers who receive payments from a governmental entity for some sort of service would be candidates for inclusion within *Abood*’s reach.”¹²

Far from questioning the efficacy of union representation, the majority opinion, authored by Justice Alito, appeared concerned that it would be successful:

In this case, for example, the category of union speech that is germane to collective bargaining unquestionably includes speech in favor of increased wages and benefits for personal assistants. Increased wages and benefits for personal assistants would almost certainly mean increased expenditures under the Medicaid program, and it is impossible to argue that the level of Medicaid funding (or, for that matter, state spending for employee benefits in general) is not a matter of great public concern.¹³

5. *Id.*

6. *See, e.g., id.* (noting successful attempts to unionize in Washington).

7. *Harris v. Quinn*, 134 S. Ct. 2620, 2620 (2014).

8. *Id.* at 2623.

9. *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209, 211 (1977).

10. *Harris*, 134 S. Ct. at 2627 (citations omitted).

11. *Id.* at 2634.

12. *Id.* at 2638.

13. *Id.* at 2642–43.

The Court held that “[t]he First Amendment prohibits the collection of an agency fee from personal assistants in the Rehabilitation Program who do not want to join or support the union.”¹⁴

Writing for the four dissenters, Justice Kagan wrote that *Abood* should control.¹⁵ She also noted, “[b]ecause of that bargaining, as the majority acknowledges, home-care assistants have nearly doubled their wages in less than 10 years, obtained state-funded health insurance, and benefited from better training and workplace safety measures.”¹⁶

In 2018, the U.S. Supreme Court, in *Janus vs. American Federation of State, County, & Municipal Employees* (AFSCME),¹⁷ built on *Harris* and overturned the 41-year-old *Abood* precedent.¹⁸ Like *Harris*, Justice Alito authored the 5–4 decision in *Janus*.¹⁹ The plaintiff, Mark Janus, worked for the Illinois Department of Healthcare and Family Services as a child support specialist.²⁰ Janus objected to union representation, in part, because it was too successful in raising pay despite “the current fiscal crises in Illinois”²¹—a self-sacrificing, even noble, position somewhat belied by the fact that after the decision Janus quit his job and joined a conservative policy group as a “senior fellow.”²² The group was among what the *New York Times* described as “a Web of Conservative Donors” that bankrolled the case.²³

In response to the argument that to fail to pay dues to the union would result in “free riders” enjoying the benefits of its advocacy, Justice Alito wrote that Janus “strenuously objects to this free-rider label. He argues that

14. *Id.* at 2644.

15. *Id.* at 2645 (Kagan, J., dissenting).

16. *Id.* at 2648.

17. *Janus v. Am. Fed’n State, Cty., & Mun. Emps.*, 138 S. Ct. 2448, 2459 (2018).

18. *Id.* at 2460.

19. *Id.*; One wonders how the 25 Senators of the Democratic Caucus who refused to support a filibuster of Alito now feel. *Senate Roll Call on Alito Filibuster*, N.Y. TIMES (Jan. 30, 2006), <https://www.nytimes.com/2006/01/30/politics/politicsspecial1/senate-roll-call-on-alito-filibuster.html>.

20. *Janus*, 138 S. Ct. at 2461.

21. *Id.* To be sure, Illinois is a fiscal basket case. See, e.g., Editorial, *Tell it Straight, Bruce and J.B., About the Pain Ahead for Illinois*, CHICAGO SUN-TIMES (June 5, 2018), <https://chicago.suntimes.com/opinion/illinois-budget-rauner-pritzker-gubernatorial-election/> (“The state’s backlog of bills stands at \$6.6 billion and the new budget does little to address that problem. And the state’s massive pension debt—more than \$130 billion in unfunded liabilities—just keeps growing.”).

22. Rick Pearson, *State Employee in Major Union-undermining Supreme Court Case Will Join Conservative Think Tank, Tour the Country*, CHICAGO TRIB. (July 22, 2018), <http://www.chicagotribune.com/news/local/politics/ct-met-janus-afscme-illinois-policy-institute-20180722-story.html>.

23. Noam Scheiber & Kenneth P. Vogel, *Behind a Key Anti-labor Case, a Web of Conservative Donors*, N.Y. TIMES (Feb. 25, 2018), <https://www.nytimes.com/2018/02/25/business/economy/labor-court-conservatives.html>.

he is not a free rider on a bus headed for a destination that he wishes to reach but is more like a person shanghaied for an unwanted voyage.”²⁴

Again, Alito appeared to argue that public sector unions had been too successful, complaining that “ascendance of public-sector unions has been marked by a parallel increase in public spending.”²⁵ He further complained of “the considerable windfall that unions have received under *Abood* for the past 41 years. It is hard to estimate how many billions of dollars have been taken from nonmembers and transferred to public-sector unions in violation of the First Amendment. Those unconstitutional exactions cannot be allowed to continue indefinitely.”²⁶

Furthermore, the majority decision requires government workers to *opt into* union membership: “Neither an agency fee nor any other payment to the union may be deducted from a nonmember’s wages, nor may any other attempt be made to collect such a payment, unless the employee affirmatively consents to pay.”²⁷

In dissent, Justice Kagan accused the majority of “weaponizing the First Amendment, in a way that unleashes judges, now and in the future, to intervene in economic and regulatory policy.”²⁸ Of *Abood*, she wrote: “More than 20 States have statutory schemes built on the decision. Those laws underpin thousands of ongoing contracts involving millions of employees. Reliance interests do not come any stronger than those surrounding *Abood*. And likewise, judicial disruption does not get any greater than what the Court does today.”²⁹

Indeed, the disruption cannot be overstated. As Alana Semuels wrote in *The Atlantic*, “[u]ntil now, 22 states had in place a so-called ‘fair share’ provision, which required people represented by unions who did not choose to be members of these unions to pay fees to cover the cost of the unions’ collective bargaining activities.”³⁰

There may also be interesting collateral effects, as *Washington Post* columnist Dana Milbank wrote in anticipation of the decision: “Among the

24. *Janus*, 138 S. Ct. at 2466.

25. *Id.* at 2486. Justice Alito complains of “[u]nsustainable collective-bargaining agreements.” *Id.* Could it not be argued that the remedy is either to not enter into such agreements in the first place, or to *sustain* them through additional revenue, as opposed to weakening the ability of unions to bargain?

26. *Id.* The use of the term “windfall” conjures the image of union leaders sitting, like Scrooge McDuck, upon piles of gold, when, in fact, have not the dues resulted—as Alito complains elsewhere—in improved compensation for those paying them?

27. *Id.*

28. *Id.* at 2501 (Kagan, J., dissenting).

29. *Id.* at 2487–88.

30. Alana Semuels, *Is This the End of Public-sector Unions in America?*, ATLANTIC (June 27, 2018), <https://www.theatlantic.com/politics/archive/2018/06/janus-afscme-public-sector-unions/563879/>.

other things that might be challenged if government-imposed payments become unconstitutional ‘compelled speech’: bar dues, student-association fees, utility bills, auto-insurance premiums, continuing-education requirements for doctors and other professionals, homeowners association dues, training for school-bus drivers and others, vaccinations, attorney-supervised real estate closings.’³¹

In California, for example, the effects of *Janus* were immediate, as the *Sacramento Bee* reported:

The State Controller’s Office said on Wednesday that it would cease deducting fair share fees from the paychecks of state workers who are not full union members. Employees will notice the change in their paychecks for their work in July, with many of them saving about \$1,000 a year that they had paid in labor fees.³²

In a celebratory Tweet—of course—President Trump exulted: “Big loss for the coffers of the Democrats!”³³ He may be right.

The fight will now be to persuade public sector workers to join, or not join, unions. As the *New York Times* noted, even before the *Janus* decision, the conservative Bradley Foundation “substantially increased its contributions, totaling well over \$1 million, to groups like the Independence Institute of Colorado and the Freedom Foundation of Washington State. Those groups have used such tools as direct mail, phone calls and door knocking to persuade public-sector workers to give up union membership.”³⁴

This Article examines the implications of *Janus* by first focusing on the state of Washington, where the fight between SEIU and those wishing to reduce its membership has been fierce ever since the *Harris* decision. The Article then extrapolates based on that example.

31. Dana Milbank, *The Kochs Are Trying to Kill Unions. Be Careful What You Wish For.*, WASH. POST (Feb. 26, 2018), https://www.washingtonpost.com/opinions/the-kochs-are-trying-to-kill-unions-be-careful-what-you-wish-for/2018/02/26/ce810844-1b45-11e8-9de1-147dd2df3829_story.html?utm_term=.fe732fee7fb0.

32. Adam Ashton, *Court Case Will Cost California Unions Big Money Immediately. Then the Real Fight Begins.*, SACRAMENTO BEE (June 28, 2018), <https://www.sacbee.com/news/politics-government/the-state-worker/article213953319.html>.

33. Kaitlyn Schallhorn, *Supreme Court Ruling in Janus Union Case Sparks Reactions From Trump, Other Lawmakers*, FOX NEWS (June 27, 2018), <http://www.foxnews.com/politics/2018/06/27/supreme-court-ruling-in-janus-union-case-sparks-reactions-from-trump-other-lawmakers.html>.

34. Scheiber & Vogel, *supra* note 23.

I. WASHINGTON STATE: BATTLEGROUND OVER UNION
REPRESENTATION

In Washington, home-care workers, also known as individual providers (IPs), gained the right to collectively bargain with the state through the 2001 passage of Initiative 775.³⁵ Or as the conservative Freedom Foundation—which fought the SEIU—more cynically recounts it: “In 2001, the Service Employees International Union (SEIU) successfully backed Initiative 775, which opened the door for SEIU to unionize IPs. In a little-publicized, low-turnout election, SEIU Local 775 was certified to act as the monopoly provider of workplace representation for all individual providers with only 6,575 votes.”³⁶

In 2001, the plight of Washington’s IPs was objectively difficult.³⁷ Their wages were not bargained for or based upon empirical criteria, but simply arbitrarily set in the state budget. The budget that passed in 2001 raised their wages to \$7.68 per hour, from \$7.18.³⁸ In 2002, the Democratic Governor, Gary Locke, actually vetoed a wage increase.³⁹

Today SEIU Local 775, under the longtime leadership of its president David Rolf, has grown to be a powerful force in state politics; representing 45,000 long-term care workers in Washington and Montana.⁴⁰ SEIU is pushing for a \$15 minimum wage and other progressive policies.⁴¹ Under

35. 2002 Wash. Sess. Laws 10.

36. David Dewhirst & Maxford Nelsen, *SEIU’s Dues Collection from Home-care Workers is Illegal*, EVERETT HERALD (Jan. 15, 2016), <https://www.heraldnet.com/opinion/seius-dues-collection-from-home-care-workers-is-illegal/>.

37. See S. 6153, § 206, 57th Leg., 2d Spec. Sess. (Wash. 2001) (appropriating funds for individual home-care providers’ wages in the state of Washington for 2001).

38. *Id.*

39. See S. 6387, § 206, 57th Leg., Reg. Sess. (Wash. 2001) (striking a wage increase for individual providers).

40. Podcast: *Seattle Labor Leader David Rolf on the Demise of Unions, and How They Can Evolve*, SEATTLE TIMES (Feb. 16, 2018), <https://www.seattletimes.com/seattle-news/politics/podcast-seattle-labor-leader-david-rolf-on-the-demise-of-unions-and-how-they-can-evolve/>.

41. See, e.g., *id.* (discussing unions post-*Janus* case). The *New York Times* had written that “Mr. Rolf is at the forefront of the shift in the labor movement—from a focus on organizing workers in manufacturing and crafts to those in the service sector, particularly low-income and women of color.” Alina Tugend, *Leading the Way in the Fight for Human Rights*, N.Y. TIMES (May 24, 2018), <https://www.nytimes.com/2018/05/24/us/leading-the-way-in-the-fight-for-human-rights.html>. In September 2018, it was announced that Rolf would be stepping away due to a term limit. See Jim Brunner & Benjamin Romano, *David Rolf, Powerful Labor Leader, Handing Off Reins at Seattle-based SEIU 775*, SEATTLE TIMES (Sept. 6, 2018). See Jim Brunner & Benjamin Romano, *David Rolf, powerful labor leader, handing off reins at Seattle-based SEIU 775*, SEATTLE TIMES (Sept. 6, 2018), <https://www.seattletimes.com/business/david-rolf-powerful-washington-labor-leader-handing-off-reins-at-seiu-775/> (“Rolf, a power player in Seattle and state politics, reached the 15-year term limit in the union’s constitution and could not stand for re-election.”). The Freedom Foundation exulted:

the current union contract, each home care worker will make no less than \$15 an hour by January 1, 2019, and workers today receive health care, workers' compensation, retirement, and other benefits.⁴² They also have the nation's highest training standards.⁴³

The Freedom Foundation is described as “a group tied to Republican billionaires long opposed to organized labor and its support of the Democratic Party.”⁴⁴ Its objectives are clear. As one article described, “Freedom Foundation CEO Tom McCabe authored a fundraising letter touting its ‘proven plan for bankrupting and defeating government unions’ and addressing ‘a broken political culture’ fueled by union dues.”⁴⁵

Like Rolf, McCabe is a formidable political force, credited with killing *homeowners' rights* legislation due to his friendship with the state's long-time Democratic House Speaker—all while head of Washington's homebuilding lobby.⁴⁶

The union's national leadership, which considered Rolf one of its rising stars just a few months ago, couldn't have been pleased that the Freedom Foundation emerged as perhaps the most prominent policy organization in the nation in the fight to see *Janus* decided — despite the best efforts of Rolf and his henchmen to destroy us first.

Jeff Rhodes, *6,000 Workers Freed, Rolf Ousted: SEIU 775's Legacy of Failure Continues.*, FREEDOM FOUND. (Sept. 13, 2018), <https://www.freedomfoundation.com/labor/6000-workers-freed-rolf-ousted-seiu-775s-legacy-of-failure-continues/>.

42. See, e.g., COLLECTIVE BARGAINING AGREEMENT BETWEEN THE STATE OF WASHINGTON & SEIU 775, at 15, 16, 29, 33, A-4 (2017), http://seiu775.org/files/2017/09/Homecare17_19WebReady-signature-page-w-mou.pdf (stating union employees rights and benefits). The SEIU Benefits Group has also taken innovative approaches to addressing the anxiety and depression that comes with caregiving. See Sara Schilling, *They Care for Your Relatives When You Can't. This Program's Trying to Save Them*, TRI-CITY HERALD (May 26, 2018), <https://www.tri-cityherald.com/news/local/article211089364.html> (discussing the mindfulness program set by the SEIU Benefits Group).

43. Oh, *supra* note 4.

44. Josh Eidelson, *Backed by Court Ruling, Freedom Foundation to Launch Assault on West Coast Public-Sector Unions*, NEWS TRIB. (June 29, 2018), <https://www.thenewtribune.com/news/local/article214027639.html>. The Freedom Foundation is so conservative that it does not even celebrate Labor Day. See Press Release, Freedom Foundation, Freedom Foundation Again Marks Right to Work Day Instead of Labor Day (Aug. 30, 2018) (“For the fifth year in a row, employees of the Freedom Foundation have volunteered to work on the traditional Monday Labor Day holiday and instead take a day off the previous Friday to observe what they've dubbed Right to Work Day.”), <https://www.freedomfoundation.com/labor/freedom-foundation-again-marks-right-to-work-day-instead-of-labor-day/>.

45. Eidelson, *supra* note 44.

46. See, e.g., Editorial, *Home Warranty: A Simple Matter*, SEATTLE POST-INTELLIGENCER (Mar. 11, 2008), <https://www.seattlepi.com/local/opinion/article/Home-Warranty-A-simple-matter-1266908.php> (discussing Democratic House Speaker Chopp killing a homeowner's protection). McCabe received the 2011 Ronald Reagan Award from the Conservative Political Action Conference. See Brad Shannon, *Tom McCabe Wins National Ronald Reagan Award*, OLYMPIAN (Feb. 14, 2011),

The Freedom Foundation and the SEIU have been locked in conflict since *Harris*, and there is no reason to suppose the conflict will diminish after *Janus*. Indeed, after the *Janus* ruling, the Freedom Foundation filed suit in federal court seeking class-action status on behalf of IPs who did not want to pay dues to the SEIU.⁴⁷

In a *Washington Examiner* column encouraging the result in *Janus*, Maxford Nelsen, of the Freedom Foundation, contended that the SEIU in Washington had “tarnished dissenters within their ranks, and run personal attack campaigns targeting the homes of Freedom Foundation leaders for simply trying to ensure workers understand their rights.”⁴⁸ He previously maintained in an *Examiner* column that unions “siphon off Medicaid funds meant for society’s most vulnerable” and that, “[b]eyond periodically negotiating caregivers’ reimbursement rate with the state, the unions provide little in return.”⁴⁹

Expressing the conservative viewpoint, Akash Chougule, with Americans for Prosperity, wrote in *Forbes* that “union members often flee when given the chance” and lauded the efforts of the Freedom Foundation relative to “public-sector child-care providers. Between 2014 and 2015, over 3,000 union members—more than half the bargaining unit—withdraw from the union.”⁵⁰

SEIU Local 775 went to great lengths to thwart the Freedom Foundation’s efforts. As one conservative critic, Red Jahnke, claimed in the *National Review*:

SEIU 775 tightened resignation rules to lock in those who might become aware of their *Harris* rights. A member could resign, and a non-member could opt out, only by giving written notice to both the union and the state within 15 days

<https://www.theolympian.com/news/politics-government/article25284622.html> (discussing McCabe’s leadership and lobbying positions).

47. *Lawsuit Seeks Reimbursement for Home Care Worker Union Dues*, SEATTLE TIMES: ASSOCIATED PRESS (July 3, 2018), <https://www.seattletimes.com/seattle-news/apxlawsuit-seeks-reimbursement-for-home-care-worker-union-dues/>.

48. Maxford Nelsen, *Neil Gorsuch Can Give Workers Win Over Unions at the Supreme Court If We Fight for It*, WASH. EXAMINER (Sept. 28, 2017), <https://www.washingtonexaminer.com/neil-gorsuch-can-give-workers-a-win-over-unions-at-the-supreme-court-if-we-fight-for-it>.

49. Maxford Nelsen, *Unions are Siphoning Medicaid Funds by Bullying Caregivers*, WASH. EXAMINER (May 10, 2017), <https://www.washingtonexaminer.com/unions-are-siphoning-medicaid-funds-by-bullying-caregivers>.

50. Akash Chougule, *Unions Stifle Worker Freedom*, FORBES (Aug. 18, 2016), <https://www.washingtonexaminer.com/unions-are-siphoning-medicaid-funds-by-bullying-caregivers>.

after his anniversary date of joining the union. Behold SEIU's Hotel California rules.⁵¹

He stated, "SEIU 775's machinations proved remarkably successful. Two years after Harris, it retained 94 percent of its membership, according to data the Freedom Foundation obtained from the state."⁵²

In 2016, Washington voters had before them the union-backed Initiative 1501, magnificently-titled "Seniors and Vulnerable Individuals' Safety and Financial Crimes Prevention Act"⁵³ that—among other things—would keep caregivers' information from organizations like the Freedom Foundation.⁵⁴

A Tacoma *News Tribune* article noted, "[e]ven the opponents of Initiative 1501 agree the measure, on its face, sounds innocuous."⁵⁵ According to the article, "[t]he Washington State Senior Citizens' Lobby supports the initiative. Walt Bowen, the group's president, said deterring identity thieves with stiff penalties is important, as is protecting the information of seniors and their caregivers from people who might abuse it."⁵⁶

In contrast, the president of the Washington Coalition for Open Government opposed the measure, saying he is "concerned I-1501 sets a dangerous precedent by allowing a special-interest group to 'stealthily create a new exemption in the Public Records Act' via a citizen initiative."⁵⁷

The *Seattle Times*, which editorially leans right on union issues,⁵⁸ and is ardent on public disclosure,⁵⁹ editorialized in opposition: "I-1501 is a

51. Red Jahnke, *SCOTUS Halts Unions' 'Hotel California' Rules*, NAT'L REV. (July 8, 2018), <https://www.nationalreview.com/2018/07/supreme-court-ruling-janus-case-no-more-opt-out-rules-for-unions/>.

52. *Id.*

53. Seniors & Vulnerable Individuals' Safety & Financial Crimes Prevention Act, 2017 Wash. Sess. Laws 23.

54. *Id.*

55. Melissa Santos, *Would Initiative 1501 Protect the Elderly, a Powerful Union—or Both?*, NEWS TRIB. (Oct. 19, 2016), <https://www.thenewstribune.com/news/politics-government/election/article109187922.html>.

56. *Id.*

57. *Id.*

58. See, e.g., Editorial, *Initiative 1163: Leadership Means Having the Courage to Say We Can't Afford It*, SEATTLE TIMES (Oct. 25, 2011), <https://www.seattletimes.com/opinion/initiative-1163-leadership-means-having-the-courage-to-say-we-cant-afford-it/> (opposing higher training standards for home-care workers). I-1163 passed with 65% of the vote statewide. See *November 8, 2011 General Election Results: Initiative Measure No. 1163, Concerning Long-term Care Workers and Services for Elderly and Disabled People*, WASH. SEC'Y OF STATE (Dec. 6, 2011), <http://results.vote.wa.gov/results/20111108/Initiative-Measure-1163-Concerning-long-term-care->

Trojan horse. It's being run by a deep-pocketed special-interest group that wants to weaken the state Public Records Act, reducing the people's access to government records."⁶⁰ The editorial stated that "[b]ecause these care providers are public employees, basic contact information is available upon request. This is an inescapable facet of public service: In an open government, the public gets to know who is receiving its tax dollars."⁶¹

But, as an article in the Spokane *Spokesman-Review* noted, the union alleged "members are being harassed by Freedom Foundation representatives who show up at homes, send mail and emails, and call."⁶² In a *Times* article, Rolf was quoted saying, "I don't think that because you choose to be a caregiver, that you should become subject to endless harassment by anti-union ideologues."⁶³

Conservatives took a different view. After *Harris*, a *National Review* writer complained:

The Freedom Foundation effortlessly obtained SEIU 925's membership list through the Public Record Act and notified members of their rights. The union shrunk nearly 60 percent. In the courts, Washington's other SEIU chapter, SEIU 775, challenged the Freedom Foundation's use of public records, and the Freedom Foundation prevailed. The state supreme court refused to hear the union's appeal. In the aftermath of its legal loss, SEIU has donated \$1.6 million to fund I-1501 public advocacy in a final attempt to prevent the think tank from obtaining its membership list.⁶⁴

workers-and-services-for-elderly-and-disabled-people.html (modifying the law governing background checks, training, and home-care-aide certification for long-term care workers). I-1163 was codified in 2012. See 2012 Wash. Sess. Laws ch. 1.

59. See, e.g., Opinion, *Gov. Inslee, Veto Anti-transparency Bill in Full*, SEATTLE TIMES (Mar. 1, 2018), <https://www.seattletimes.com/opinion/editorials/gov-inslee-veto-anti-transparency-bill-in-full/> (urging governor to prevent legislators from hiding records).

60. Editorial, *Reject I-1501 and Urge Lawmakers to Address Identity Theft*, SEATTLE TIMES (Oct. 4, 2016), <https://www.seattletimes.com/opinion/editorials/reject-i-1501-and-urge-lawmakers-to-address-identity-theft/>.

61. *Id.*

62. Erica Curless, *True Aim of Initiative 1501 Tangled in Political Brawl*, SPOKESMAN-REVIEW (Oct. 16, 2016), <http://www.spokesman.com/stories/2016/oct/16/true-aim-of-initiative-1501-tangled-in-political-b/>.

63. Jim Brunner, *Behind Washington I-1501 Lies Union's Feud with Conservative Think Tank*, SEATTLE TIMES (Oct. 26, 2016), <https://www.seattletimes.com/seattle-news/politics/behind-washington-1-501-lies-unions-feud-with-conservative-think-tank/>.

64. Austin Yack, *In Washington State, Unions Advance a Ballot Measure to Keep Members in the Dark*, NAT'L REV. (Oct. 24, 2016), <https://www.nationalreview.com/2016/10/service-employees-international-union-ballot-initiative-1501-freedom-foundation-public-records-act/>.

The initiative passed with 70.6% of the vote.⁶⁵ Among other things, the initiative provides:

(1) Sensitive personal information of vulnerable individuals and sensitive personal information of in-home caregivers for vulnerable populations is exempt from inspection and copying under this chapter.

(2) The following definitions apply to this section:

(a) “In-home caregivers for vulnerable populations” means: (i) Individual providers as defined in RCW 74.39A.240, (ii) home care aides as defined in RCW 18.88B.010, and (iii) family child care providers as defined in RCW 41.56.030.

(b) “Sensitive personal information” means names, addresses, GPS [global positioning system] coordinates, telephone numbers, email addresses, social security numbers, driver’s license numbers, or other personally identifying information.

(c) “Vulnerable individual” has the meaning set forth in RCW 9.35.005.⁶⁶

65. *November 8, 2016 General Election Results: Initiative Measure No. 1501 Concerns Seniors and Vulnerable Individuals*, WASH. SEC’Y OF STATE, <http://results.vote.wa.gov/results/20161108/State-Measures-Initiative-Measure-No-1501-concerns-seniors-and-vulnerable-individuals.html> (last visited Dec. 4, 2018). I-1501 was codified in 2017. 2017 Wash. Sess. Laws 23–24. Days before the election, Washington’s Democratic Attorney General sued the Freedom Foundation for not disclosing its work against the initiative. *See* Press Release, Washington State Office of the Attorney General, AG Files Campaign Finance Complaint Against Freedom Foundation (Oct. 28, 2016), <https://www.atg.wa.gov/news/news-releases/ag-files-campaign-finance-complaint-against-freedom-foundation-0> (discussing that the Attorney General of Washington is suing the Freedom Foundation for failing to file reports in conjunction with an election). However, the Attorney General has also sued SEIU Local 775 in response to a 2015 campaign finances complaint from the Freedom Foundation; *See* Press Release, Washington State Office of the Attorney General, AG Files Campaign Finance Complaint Against SEIU 775 (Oct. 28, 2016), <https://www.atg.wa.gov/news/news-releases/ag-files-campaign-finance-complaint-against-seiu-775> (announcing that the Attorney General filed a complaint against SEIU 775). In 2017, the Freedom Foundation has filed federal suit to try to block I-1501. *See* Complaint, Boardman v. Inslee, No. 3:1-cv-05255 (W.D. Wash. Apr. 5, 2017) (seeking to enjoin and declare I-1501 unconstitutional).

66. WASH. REV. CODE § 42.56.640 (2018). A similar law passed in Oregon in response to the Freedom Foundation: “After a 2014 Supreme Court opinion allowed those workers to opt out of paying union dues, the foundation sought that information so that it could send mailers to those workers. The state delayed the request until the Legislature passed a law exempting the information from public

Nor was I-1501 the end of the fight. In February 2018, the *Seattle Times* editorialized, “Washingtonians are paying a heavy price for an ideological war between the conservative Freedom Foundation and a powerful union representing in-home care providers.”⁶⁷ The editorial board opposed Senate Bill 6199, which they characterized as “outsourcing employment of roughly 34,000 individual care providers to a private vendor” as a means of shielding from public disclosure the identities of those workers.⁶⁸

In protest of SB 6199, all House Republicans walked off the floor during the vote—being marked as absent—resulting in an uncommon 50-0 passage in the 98-member House.⁶⁹ The bill passed into law.⁷⁰ Under the new law, the state “shall endeavor to select and contract with one consumer directed employer to be a medicaid provider that will coemploy individual providers. The department shall make every effort to select a single qualified vendor.”⁷¹

As a *Times* article noted, “private status would allow SEIU 775 to create a shop where home-care workers must pay either union dues or agency fees if they don’t claim religious exemptions.”⁷² Private status would also seem to circumvent *Janus*, which relates to government employment.

release.” Mike McNally, Editorial, *Brown’s Move on Records is Troubling*, ALBANY HERALD-DEMOCRAT (July 2, 2018), https://democratherald.com/opinion/editorial/editorial-brown-s-move-on-records-is-troubling/article_eae1ee60-5b33-5acf-80b3-ea233cc4ea13.html.

Under that 2015 Oregon law:

A public body that is the custodian of or is otherwise in possession of information that was submitted to the public body in confidence and is not otherwise required by law to be submitted, must redact all of the following information before making a disclosure described in ORS 192.355 (4):

- (1) Residential address and telephone numbers;
- (2) Personal electronic mail addresses and personal cellular telephone numbers;
- (3) Social Security numbers and employer-issued identification card numbers; and
- (4) Emergency contact information.

OR. REV. STAT. § 192.377 (2017).

67. Editorial, *Legislators Don’t Cave to In-home Care Union—Reject Bill That Would Increase DSHS Costs*, SEATTLE TIMES (Feb. 7, 2018), <https://www.seattletimes.com/opinion/editorials/legislators-dont-cave-to-in-home-care-union-reject-bill-that-would-increase-dshs-costs/>.

68. *Id.*

69. Concerning the Individual Provider Employment Administrator Program, S. 6199, 2018 Sess. (Wash. 2018), [http://apps2.leg.wa.gov/bills/summary?BillNumber=6199&Year=2017&BillNumber=6199&Year=2017](http://apps2.leg.wa.gov/bills/summary/BillNumber=6199&Year=2017&BillNumber=6199&Year=2017).

70. 2018 Wash. Sess. Laws 1784–85 (2018).

71. *Id.* at 1755.

72. *Inslee Sides with Unions in Showdown over Washington’s Home Health Workers*, SEATTLE TIMES (Mar. 28, 2018), <https://www.seattletimes.com/seattle-news/inslee-signs-controversial-union-bill/>.

II. *JANUS* IMPLICATIONS FOR HOME CARE NATIONALLY

As the clash between the Freedom Foundation and SEIU Local 775 in Washington suggests, the stakes will be high in other states with active unions for home-care workers.⁷³ And the Freedom Foundation will be a key player.⁷⁴ Maxford Nelsen, for example, has authored a 114-page report aimed at those states that seek to quantify and criticize “dues-skimming.”⁷⁵ According to his analysis, “[a]ll told, states have deducted more than \$1.4 billion in union dues and fees from caregivers’ wages from 2000-17.”⁷⁶

This will become more challenging under a rule proposed in July 2018 by the Trump Administration that would “remove the regulatory text that allows a state to make payments to third parties on behalf of an individual provider for benefits such as health insurance, skills training, and other benefits customary for employees.”⁷⁷ This rulemaking would rescind a 2014 Obama Administration regulation that allowed state governments to facilitate dues collection from Medicaid providers, a regulation that the Trump Administration now argues: “grants permissions that Congress has foreclosed.”⁷⁸ In its regulatory analysis, the U.S. Department of Health & Human Services concedes it “lacks information to reliably estimate the

73. See Tom McCabe, *Another View—Tom McCabe: Time is Now for Organized Labor Reforms in New Hampshire*, UNION LEADER (Jan. 4, 2017), <http://www.unionleader.com/Another-View-Tom-McCabe-Time-is-now-for-organized-labor-reforms-in-New-Hampshire-01052017> [<https://web.archive.org/web/20170108141429/http://www.unionleader.com/Another-View-Tom-McCabe-Time-is-now-for-organized-labor-reforms-in-New-Hampshire-01052017>] (discussing Wisconsin’s budget and collective bargaining issues in connection with the decline in union memberships in Washington).

74. Although its activities are largely confined to the West Coast, Freedom Foundation leader Tom McCabe encouraged New Hampshire in 2017 to adopt a “right-to-work” law. *Id.* In a surprising development, New Hampshire’s Republican House rejected this priority of the state’s Republican governor and Senate. See Dave Solomon, *NH House Votes Down Right-to-work Bill*, UNION LEADER (Feb. 16, 2017), <http://www.unionleader.com/state-government/nh-house-votes-down-right-to-work-bill--20170216> [<https://web.archive.org/web/20170713234849/http://www.unionleader.com/state-government/nh-house-votes-down-right-to-work-bill--20170216>] (“The state House of Representatives defeated Senate-sponsored Right-to-Work legislation Thursday, 200–177, as 32 Republicans sided with a united Democratic caucus to vote against the measure.”).

75. MAXFORD NELSEN, *GETTING ORGANIZED AT HOME: WHY ALLOWING STATES TO SIPHON MEDICAID FUNDS TO UNIONS HARMS CAREGIVERS AND COMPROMISES PROGRAM INTEGRITY*, FREEDOM FOUND. 4 (2018), <https://www.freedomfoundation.com/wp-content/uploads/2018/07/Getting-Organized-at-Home.pdf> [hereinafter *GETTING ORGANIZED*].

76. See *Freedom Foundation Report Exposes Scope of Unions’ Medicaid Dues Skim*, FREEDOM FOUND. (July 18, 2018), <https://www.freedomfoundation.com/pressrelease/freedom-foundation-report-exposes-scope-of-unions-medicaid-dues-skim/> (reporting on Medicaid dollars paid to the state as a result of unions).

77. Medicaid Program: Reassignment of Medicaid Provider Claims, 83 Fed. Reg. 32,252, 32,252 (proposed July 12, 2018) (to be codified at 42 C.F.R. pt. 447).

78. *Id.* at 32,253.

proportion of homecare providers likely to stop making payments versus those likely to continue making payments through alternative means.”⁷⁹

With 80 canvassers along the West Coast, the Freedom Foundation’s reported aim “is to shrink union ranks in the three states by 127,000 members—and to offer an example for similar efforts targeting unions around the country.”⁸⁰

Harris was imperiling enough. After that ruling, as Semuels noted, the United Domestic Workers of America (UDW), representing California home-care workers, had to go door-to-door to retain membership: “Around 75,000 of 108,000 potential home-care workers in California have chosen to pay dues to the UDW.”⁸¹ That leaves quite a few outliers.

Organizing home-care workers is not like organizing a traditional workplace, where all of the targets of organization work together.⁸² Rather, it is a door-to-door effort. In many states, like Washington, it has been accomplished to date through statute or executive order.⁸³

One wishes that policymakers would simply do the right thing, for the right reasons, without pressure. Yet absent cohesive representation, home-care workers are unlikely to be able to effectively lobby legislatures or maintain political action committees to improve their compensation.⁸⁴ An *Atlantic* article noted: “Women of color are the largest demographic group within the home-care workforce. Their vulnerability reflects a long history of exploitation of women of color working in-home jobs, and highlights a

79. *Id.* at 32,254. In a footnote, the Department relies heavily upon conservative sources, including a webpage maintained by the State Policy Network. *Id.* at 32,254 n.1 (citing *Dues Skimming FAQs*, STATE POL’Y NETWORK, <https://spn.org/dues-skimming-faqs/> (last visited Dec. 4, 2018)). That webpage is entitled “Dues Skimming FAQs” and asserts, among other things, “[u]nions may argue they lobby for greater benefits in the state legislature. However, they are playing politics, *not negotiating for caregivers*.” *Dues Skimming FAQs*, *supra* (emphasis added).

80. Eidleon, *supra* note 44.

81. Semuels, *supra* note 30.

82. See generally Jeanne Meister, *The Death of the Office: What Happens When the Workspace is Mobile, On-Demand and All About Networking*, FORBES (Nov. 6, 2013), <https://www.forbes.com/sites/jeannemeister/2013/11/06/the-death-of-the-office-what-happens-when-the-workspace-is-mobile-on-demand-and-all-about-networking/#236cd5487952> (describing the changing nature of modern workplaces and emphasizing the collaborative nature while differentiating between office and remote workers).

83. In Vermont, for example, an “[i]ndependent direct support provider” is represented by a labor union per statute. VT. STAT. ANN. tit. 21, § 1631 (2018). The Freedom Foundation catalogues these examples. See generally GETTING ORGANIZED, *supra* note 75 (cataloguing state-specific examples).

84. See generally Samantha Liss, *After Missouri Cuts Funding for the Disabled, Some Fear They May Be Forced into Nursing Homes*, ST. LOUIS POST-DISPATCH (Aug. 16, 2018), https://www.stltoday.com/news/local/govt-and-politics/after-missouri-cuts-funding-for-the-disabled-some-fear-they/article_76b2dac9-76ed-5545-9689-e87650d4a3ab.html (highlighting that in Missouri \$50 million was cut in 2017 in-home care).

growing inequality in the health-care workforce, even as health coverage expands to more and more Americans.”⁸⁵ Sarita Gupta and Ai-Jen Poo put it bluntly, “[h]istorically, care has been seen as women’s work; it was long voluntary or unpaid and thus systematically devalued.”⁸⁶ They argue that “the profession’s historical associations with black women have led to harsher conditions and a deeper contempt.”⁸⁷

Setting aside the question of whether being in a union is desirable, or consistent with one’s personal beliefs, there is little question whether union representation brings compensation success for home-care workers in Washington and other states.⁸⁸ Even Justice Alito, in *Harris*, acknowledged the arguments that “the union has been an effective advocate for personal assistants in the State of Illinois, and we will assume that this is correct.”⁸⁹

In Oregon, for example, the 2015–2019 contract between the state and the union representing home-care workers currently provides hourly wages of \$14.65 an hour.⁹⁰ In Massachusetts, the 2016–2019 union contract for personal-care attendants provided they receive \$15 an hour effective July 1, 2018.⁹¹

In 2018, the Connecticut General Assembly voted to increase wages for personal-care assistants—“from \$13.53 to \$14.75, then continue to increase in increments until reaching \$16.25 on July 1, 2020. They would

85. Vann R. Newkirk, II, *The Forgotten Providers*, ATLANTIC (Sept. 29, 2016), <https://www.theatlantic.com/politics/archive/2016/09/home-health-care-workers-wages/502016/>.

86. Sarita Gupta & Ai-Jen Poo, *Who Will Care for the Carers?*, FOREIGN POL’Y (July 16, 2018), <https://foreignpolicy.com/2018/07/16/who-will-care-for-the-carers-automation-health-care-aging-jobs/>.

87. *Id.*; See also Brendan Williams, *Stop Cheering the Budget Deal. It’s a Blow to Long-term Care and the Safety Net.*, USA TODAY (Feb. 15, 2018), <https://www.usatoday.com/story/opinion/2018/02/15/stop-cheering-budget-deal-its-ruinous-long-term-care-well-need-brendan-williams-column/337760002/> (criticizing bipartisan long-term care Medicare cuts, including \$3.5 billion cut to home care, and writing “caregivers, and those they care for, do not enjoy the political clout of defense contractors. No grand parade will be staged in recognition of their sacrifice. Perhaps they are simply easier to marginalize because of their demographics”).

88. *Harris v. Quinn*, 134 S. Ct. 2656, 2640 (2014).

89. *Id.* at 2641.

90. See COLLECTIVE BARGAINING AGREEMENT BETWEEN DEPARTMENT OF ADMINISTRATIVE SERVICES OF THE STATE OF OREGON, OREGON HOME CARE COMMISSION & SEIU LOCAL 503, at 42 (2015), <https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCC/PSW-HCW/Documents/ohcc-seiu-2015-19-bargaining-agreement.pdf> (discussing the terms of the Homecare Workers union contract).

91. COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PERSONAL CARE ATTENDANT (PCA) QUALITY WORKFORCE COUNCIL & 1199 SEIU UNITED HEALTH CARE WORKERS EAST 9 (2016), <https://www.mass.gov/files/documents/2017/08/zj/pca-fully-executed-cba-2016.docx>.

become eligible for worker's compensation coverage, while they still lack health care and retirement benefits under the deal."⁹²

In contrast, in 2016, the average wage of a home-health aide in Texas, a *right-to-work* state, was \$8.93 an hour.⁹³ Texas-based Addus HomeCare Corporation, the nation's largest agency home-care provider, does business in 25 states.⁹⁴ Until recently Addus HomeCare "consistently paid its workers 50 cents to \$1 an hour above minimum wage" according to an interview with its chief executive officer.⁹⁵ In Washington, though, the SEIU Local 775 contract with Addus will require it to pay workers no less than \$15.05 an hour by January 1, 2019.⁹⁶

As has been true in Washington, there will be efforts to trip up those looking to reduce union membership by contacting workers.⁹⁷ After *Janus*, the *Oregonian* editorialized against such an effort, stating, "Gov. Kate Brown wasted no time Wednesday morning in pledging her unwavering fealty to the public - public employee unions, that is."⁹⁸ They wrote: "Brown is considering seeking new limits on what employee information can be released to the public with possible legislation aimed at the 2019 session."⁹⁹ According to the editorial:

The move, according to a letter by her chief of staff, comes in response to two developments: A May records request by the anti-union Freedom Foundation, which wants to contact employees to tell them how to opt

92. Mark Pazniokas, *General Assembly Approves Raises for Home-care Workers*, CONN. MIRROR (Apr. 21, 2018), <https://ctmirror.org/2018/03/21/general-assembly-approves-raises-home-care-workers/>.

93. See *Workforce Data Center*, PARAPROFESSIONAL HEALTH INST., <https://phnational.org/policy-research/workforce-data-center/#states=48> (last visited Dec. 4, 2018) (examining wage trends). Texas regulation requires that "an employee providing primary home care, family care, or community attendant services" under Medicaid be paid "at least \$8.00 per hour." 40 TEX. ADMIN. CODE § 41.505 (2018).

94. Robert Holly, *Addus CEO on Why Chick-fil-A Matters to In-Home Care Providers*, HOME HEALTH CARE NEWS (June 5, 2018), <https://homehealthcarenews.com/2018/06/addus-ceo-on-why-chick-fil-a-matters-to-in-home-care-providers/>.

95. *Id.*

96. See 2017–2019 COLLECTIVE BARGAINING AGREEMENT BETWEEN ADDUS WASHINGTON & SEIU 775, at 36 (2017), <http://seiu775.org/files/2016/12/ADDUS-WA-2017-2019-CBA.pdf> (charting wage increases from 2017–2019).

97. See Opinion, *Transparency in the Post-Janus Age*, OREGONIAN (June 29, 2018), https://www.oregonlive.com/opinion/index.ssf/2018/06/transparency_in_the_post-janus.html (discussing Governor Brown's action in favor of supporting unions post-*Janus* decision).

98. *Id.*

99. *Id.*

out of union membership and fees; and the release to The Oregonian/OregonLive of a data set with names, job titles, salaries, demographic information and month and year of birth. Neither provides a compelling reason to sacrifice transparency.¹⁰⁰

Caught in the middle of this conflict will be those who are cared for at home, who likely never imagined they would be infirm enough to need care, let alone that they would be the focus of such political machinations. Our society is aging.¹⁰¹ By 2030, there will be an estimated three million more 85-and-older residents than there were in 2012.¹⁰² Professor Paul Osterman of the Massachusetts Institute of Technology's Sloan School of Management conservatively estimated that by 2030 "there will be a national shortage of 151,000 paid direct care workers and 3.8 million unpaid family caregivers."¹⁰³ As the prevalence of immigrants in the workforce suggests, the low wages are not appealing to native-born Americans, making the Trump Administration immigration restrictions all the more worrisome.¹⁰⁴

100. *Id.* In California, one writer noted unions "have done as much as they can to mitigate the ruling before it arrived." Ben Bradford, *California Unions Have Prepared For Janus*, CAP. PUB. RADIO (June 27, 2018), <http://www.capradio.org/articles/2018/06/27/california-unions-have-prepared-for-janus/>. For example, "Gov. Jerry Brown signed a law that puts new employees through an orientation with their prospective unions. Provisions in a state budget bill this year require unions sign-off any emails, flyers or letters that agencies may hand out about unionization, while further preventing employers from discouraging new employees from joining." *Id.* The Freedom Foundation has acknowledged these efforts have curbed its success—only 160 out of 76,000 teachers emailed by the Foundation in May 2018 opted out of their unions through a Foundation website set up for that purpose. Margot Roosevelt, *Will the Supreme Court's Janus Decision Sink California Unions?*, ORANGE COUNTY REG. (June 27, 2018), <https://www.ocregister.com/2018/06/27/can-californias-public-employee-unions-thwart-u-s-supreme-courts-janus-decision/>.

101. *See, e.g.*, JENNIFER M. ORTMAN, VICTORIA A. VELKOFF & HOWARD HOGAN, U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, AN AGING NATION: THE OLDER POPULATION IN THE UNITED STATES 4 (2014), <https://www.census.gov/prod/2014pubs/p25-1140.pdf> (describing the overall trends of age distribution changes in the United States).

102. *See, e.g., id.* at 6 (showing that in 2012 there were an estimated 5,887,000 citizens over 85 years old and in 2030 there are a projected 8,946,000).

103. Mark Miller, *The Future of U.S. Caregiving: High Demand, Scarce Workers*, REUTERS (Aug. 3, 2017), https://www.reuters.com/article/us-column-miller-caregivers-idUSKBN1AJ1JQ?xid=PS_smithsonian.

104. *See, e.g.*, Melissa Bailey, *As Trump Targets Immigrants, Elderly and Others Brace to Lose Caregivers*, WASH. POST (Mar. 24, 2018), https://www.washingtonpost.com/national/health-science/atrump-targets-immigrants-elderly-and-others-brace-to-lose-caregivers/2018/03/24/72d5a0d0-2d3e-11e8-8ad6-fbc50284fce8_story.html?utm_term=.01fc35983933 (describing the low volume of American citizen healthcare workers and the entire system's reliance on immigrants); Abigail Abrams, *How Trump's Immigration Policies Could Hurt Senior Care*, TIME (May 10, 2018), <http://time.com/5272775/donald-trump-immigration-tps-temporary-protected-status/1> (elaborating how the health care sector will change for the worse due to Trump's immigration policies). Advocates of

Since families today are smaller and more scattered, unpaid family caregiving, the bedrock of long-term care, is not as feasible as it once was.¹⁰⁵

In conclusion, whether unionization can combat the serious challenges facing home care is now a question that will be debated home-by-home, in those states where home-care workers are unionized.

immigration restrictions ignore this reality, focusing instead on how most home-care workers are native-born:

Steven Camerota isn't worried about a shortage in home care workers. He's the director of research at the Center for Immigration Studies, which advocates for restrictions on immigration. He points out that, despite the growing immigrant workforce, three-quarters of the people currently providing home care were born in the U.S. There's no mystery to what it would take to increase that percentage, says Camerota. "Raise wages. Treat workers better."

Ina Jaffe, *U.S. Immigration Policy Threatens Shake-Up In Home Health Business*, NPR (Mar. 5, 2018), <https://www.npr.org/sections/health-shots/2018/03/05/587691189/immigrants-who-staff-home-healthcare-in-the-u-s-worry-about-deportation>. Camerota's naïve prescription does not reveal what magic, hitherto unseen, would compel altruism by policymakers who have long neglected Medicaid funding across all of long-term care. Even President Trump's self-styled "Southern White House" was looking for 61 immigrant workers in 2018, despite being owned by a billionaire. See William Cummings, *Trump's Mar-a-Lago Asks Labor for Permission to Hire 61 Foreign Workers*, USA TODAY (July 6, 2018), <https://www.usatoday.com/story/news/politics/onpolitics/2018/07/06/mar-lago-foreign-workervisas/764053002/> (describing how President Trump's golf club is looking to hire 61 immigrants).

105. Clare Ansberry, *America Is Running Out of Family Caregivers, Just When It Needs Them Most*, WALL STREET J. (July 20, 2018), <https://www.wsj.com/articles/america-is-running-out-of-family-caregivers-just-when-it-needs-them-most-1532094538>.