run for two years, in terms of building the kind of movement we have to build. . . .

What I would like to do, and what I would like to propose, is that as we went and worked in Washington against the death penalty, we have to take some city and make it what I call "Exhibit A." Where is the city, where organizers so impact that city, that it incites them to change, so that everybody says: "What the hell happened?" I propose that we literally do that, in terms of being a catalytic agent to move ministers, students, community organizing, into an economic development protest. We're in a good position. All the boys who are selling drugs, and the people who are marching at night, saying they're victims—they do not understand that part of marching has to go into fighting so that the Federal Reserve is put under Congress. But that lesson needs to be taught, in the context of taking one city and making it an exhibit. . . .

Now, I know when you're young and you're full of energy, you have a tendency to think you're going to live at least 10,000 years. The truth of the matter is, all of us have to replace ourselves—tenfold. We have to replace ourselves tenfold. So we have to pray about, think about, putting together schools, where we seriously recruit, and then develop a whole curriculum around what we're dealing with. There has to be a school.

When you're bringing people out of hell, you've got to show them a whole alternative. A whole school of thought. So we have to have a school—and all of us need to think about that—where we educate people in depth to fight this war. We have to come up with hundreds of organizers in America. In 12 years, we're going to have hundreds of young people organizing and selling papers and selling subscriptions and putting together the *EIR*—we've got to have that, just in terms of impacting situations in the community as we need.

So there are two things we need to think about: the fight that's got to go on in Washington in terms of turning it into Exhibit A, and the whole question of, can we build a school which gives us the power to organize and impact on a continuous basis all over the country?

. . . I've had a good, good time. . . . I want to thank Mr. LaRouche for giving me another context in which to learn about America and about our government, and what I shall do is to take the knowledge and increase it and give it back and give myself to solving the problem in America. It's our nation, I love our nation, and if our nation doesn't get straightened out, then there's not a light for the rest of the nations and the rest of the people. So let us recognize the awesome burden that we're under, and then let us, with patience and love rededicate ourselves, reset our boundaries and our objectives—short-range, medium-range, and long-range—and let's take the Washington situation, that victory, and build on it, and let's create the kind of mass, non-violent, constitutional movement that the country and the world need.

Court allows ERISA health benefits cuts

by Linda Everett

Despite appeals from the American Medical Association, the American Hospital Association, the American Bar Association, the American Public Health Association, and numerous advocacy groups including the Michigan Protection and Advocacy Services and American Association of Retired Persons, the U.S. Supreme Court has let stand a federal court ruling that allows self-insured employers to slash health care benefits to workers and their dependents, even during the course of medical treatment for chronic, life-threatening illnesses. On Nov. 9, in a 7-2 decision, the court refused to hear an appeal in the case of *Greenberg v. H&H Music Company,* in which two federal courts upheld the right of a Houston music store to cut an employee's health care benefits from $1 million to $5,000 while he was being treated for AIDS.

The case turns on an extremely broad—and barbaric—interpretation of the 1974 Employee Retirement Income Security Act (ERISA), which was meant to provide protection to employees who rely on employer-sponsored benefits such as pension or retirement plans. But, as this case demonstrates, instead of assuring employee health care benefits precisely at the point when they are needed the most, ERISA is being wielded in a series of federal court rulings to strip employees of *any* safeguards, leaving them with fewer benefit rights than before the law was enacted.

In December 1987, Jack McGann, an employee of H&H Music Company, was diagnosed with AIDS. McGann requested reimbursement for AIDS-related medical expenses from H&H Music's group health insurance, which, at the time, provided up to $1 million in lifetime benefits to all its employees. In 1988, H&H informed its employees that, effective Aug. 1, H&H would no longer carry group insurance, but would become self-insured. The new policy eliminated treatment of drug or alcohol abuse; increased premiums and deductibles; and reduced lifetime maximum payments for AIDS treatment from $1 million to $5,000. Under the new plan, McGann could not recover the substantial amount spent on his medical treatment. Not only did the new $5,000 cap cover his AZT treatment for only five months, but his chronic, life-threatening illness effectively foreclosed any possibility of purchasing alternate insurance.

Since H&H's new plan placed no similar limitation on treatment for other diseases or conditions, McGann was ef-

fectively singled out for exclusion by the policy change, suggesting not only retaliation by H&H in response to his filing medical claims for treatment of AIDS, but also discrimination. As Rep. Sherwood Boehlert (R-N.Y.) told a Subcommittee on Retirement Income and Employment hearing: "Sounds like discrimination to me. One day you have a promised health benefit, the next day it's removed based on the fact you're using it." When McGann sued H&H and its former insurer, General American Insurance Company (now acting as administrator of H&H's self-insured plan), the court disagreed.

'Just cost-containment'

Under typical contract laws, an insurer cannot decide not to cover a patient just because his or her treatment is too costly, nor can it unilaterally change the terms of its contract to provide fewer than the orginally promised benefits. But, under ERISA, self-insurers are *not* governed by state insurance laws, so patients have no legal recourse. The U.S. District Court judge rejected McGann's suit, saying ERISA does not require employers to provide any particular benefits, nor does it prohibit them from discriminating in their coverage of different diseases. H&H, the court said, had the right to change or terminate its medical plan at any time. Further, the court found there was no claim of discrimination against the then-dying McGann—because the company simply acted for cost-containment purposes! The U.S. Court of Appeals for the Fifth Circuit affirmed the ruling, saying ERISA does not require different groups of participants to be treated equally: "ERISA does not broadly prevent an employer from 'discriminating' in the creation, alteration, or termination of employee benefit plans."

Although McGann died on June 4, 1991, the executor of his estate, Dr. Frank Greenberg, asked the Supreme Court in the fall of 1991 to review the Court of Appeals' ruling. The Supreme Court asked the advice of the Bush administration on whether it should accept the case. Solicitor General Kenneth W. Starr agreed with the Appeals Court, saying there was no justification for a Supreme Court review.

The American Medical Association, among a coalition of health and consumer groups, urged the administration to press the Supreme Court to take up the case. In June 28 testimony before the Retirement Income and Employment Subcommittee of the House Select Committee on Aging, Dr. Richard Corlin, vice speaker of the AMA's House of Delegates and a gastroenterologist from Santa Monica, California, forcefully enunciated what was at stake if the loopholes for abuse and discrimination under ERISA were allowed to continue. In 1979, five years after ERISA was enacted, only 30% of employer health plans were self-insured. By 1983, that number jumped to nearly 51%. Now, with the increase in health care costs, 65% of all health plans are self-insured. Thus, state insurance consumer protection laws are inapplicable, leaving workers unprotected. Employers, Corlin says, have "increasingly pushed the envelope to see how far they can go in cutting or refusing to pay certain benefits."

Broader implications

Corlin testified that if self-insured ERISA plans are allowed to continue to cut benefits for AIDS, they will begin to limit benefits for other costly or long-term illnesses now protected from discrimination, including cancer, heart disease, Alzheimer's disease, premature and seriously ill infants, and long-term rehabilitation and services for the handicapped. This concern was reiterated by Dr. Greenberg, associate professor of clinical molecular genetics, pediatrics, obstetrics, and gynecology at Baylor College of Medicine in Houston. Dr. Greenberg told the subcommittee, "A diagnosis of Huntington disease, Marfan syndrome . . . and many other disorders may have disastrous effect on a patient's health insurance coverage." The overall lifetime costs of many of these chronic disorders are likely to be greater than those of AIDS. But, many families of "children with birth defects, genetic disorders and/or mental retardation . . . are solely dependent on their employer-supplied health coverage for their children."

Dr. Corlin advised that self-insured employers should no longer enjoy corporate tax deductions in exchange for providing employee benefits while legally avoiding their insurance responsibilities. Reps. William Hughes (D-N.J.) and Sherwood Boehlert (R-N.Y.), both members of the House Select Committee on Aging subcommittee that oversees ERISA, have proposed legislation that addresses "the most egregious aspect of H&H Music—the retroactive reduction of benefits to employees who have relied on benefit coverage promised by their employer." Under H.R. 6147, to be reintroduced in January, any changes made to eliminate or reduce benefits to employees, who at the time of the change were in a course of treatment which was medically necessary, would be deemed a form of discrimination.

In their October letter to Secretary of Labor Lynn Martin, Hughes and Boehlert took issue with the Labor Department's recommendation to the solicitor general to deny a hearing of the *Greenberg* case. The congressmen pointed out that as a matter of public policy, the Appeals Court decision "exacerbates one of this country's most pressing problems." They pointed to the 37 million people who are currently uninsured, the 20 million more who are underinsured, and 63.6 million who are sporadically uninsured due to waiting periods and preexisting limitations. If employees' health benefits are cut via ERISA, then Medicaid, other federal and state programs, and local governments will have to provide charity care. While the congressmen correctly call for a halt to "federal courts chiseling away at the employee safeguards the drafters incorporated into ERISA 18 years ago," this can only be achieved with a national economic policy that sees each human life as an investment in the future—not a liability.