

# DEMOCRATIC NORMS AND GOVERNANCE EXPERIMENTALISM IN WORKER CENTERS

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## I

### INTRODUCTION

The United States is on the cusp of major change in workplace governance. Scholarship on contemporary labor law notes the decline of unionism in its twentieth century form and the rise of new forms of worker organization.<sup>1</sup> Conceptualizations of a “new labor law” observe that worker activism is channeled through social movement organizations in addition to, in coalition with, or in lieu of unions.<sup>2</sup> This is true in the Fight for 15 campaign that has had a significant nationwide impact on law and legal institutions regulating low-wage work,<sup>3</sup> in challenges to worker exploitation in both labor and product supply chains,<sup>4</sup> in the One Fair Wage campaign to eliminate the subminimum wage for

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1. See, e.g., Kimberly M. Sanchez Ocasio & Leo Gertner, *Fighting for the Common Good: How Low-Wage Workers' Identities Are Shaping Labor Law*, 126 YALE L.J. F. 503 (2017).

2. Kate Andrias, *The New Labor Law*, 126 YALE L.J. 2, 8 (2016) (describing the “new labor law”).

3. FIGHT FOR \$15, <https://fightfor15.org> [<https://perma.cc/5SZT-S8CS>] (last visited April 3, 2019); DAVID ROLF, *THE FIGHT FOR \$15: THE RIGHT WAGE FOR A WORKING AMERICA* (2016); David Madland, *Wage Boards for American Workers: Industry-Level Collective Bargaining for All Workers*, CENTER FOR AMERICAN PROGRESS (Apr. 9, 2018); NEW YORK DEPARTMENT OF LABOR MINIMUM WAGE FACT SHEET, <https://www.labor.ny.gov/formsdocs/factsheets/pdfs/p716.pdf> (last visited June 6, 2019); see generally Kate Andrias, *An American Approach to Social Democracy: The Forgotten Promise of the Fair Labor Standards Act*, 128 YALE L.J. 616 (2019) (discussing the history of the use of wage boards under the federal wage-hour law).

4. Jennifer Gordon, *Regulating the Human Supply Chain*, 102 IOWA L. REV. 445 (2017); Galit A. Sarfaty, *Shining Light on Global Supply Chains*, 56 HARV. INT'L L.J. 419 (2015); FAIR FOOD PROGRAM, [www.fairfoodprogram.org](http://www.fairfoodprogram.org) [<https://perma.cc/YY2U-LKMS>] (last visited April 3, 2019); Jennifer Gordon, *The Problem with Corporate Social Responsibility*, WORKER-DRIVEN SOCIAL RESPONSIBILITY NETWORK (last visited April 3, 2019), <https://wsr-network.org/resource/the-problem-with-corporate-social-responsibility/> [<https://perma.cc/RAC2-76KR>].

tipped employees,<sup>5</sup> in organizing among domestic and home care workers,<sup>6</sup> in the ongoing efforts to provide some form of worker representation in platform-based and gig economy work,<sup>7</sup> and in regional efforts to transform low-wage labor markets.<sup>8</sup> On the other side, business groups seek to eliminate majority rule unionism entirely<sup>9</sup> and to have a court declare that collective action by workers violates federal antitrust law; in these litigations, business groups insist that labor unions coerce members and nonmembers alike and are oligarchic cartels that do not reflect worker interests.<sup>10</sup> One way or another, the institutions and the law regulating collective action by workers will transform over the next five to ten years into something substantially different from the institutions and law of the past century.

In this period of ferment, the governance of social movement organizations gains new salience. At the most general level, the legitimacy and efficacy of social movement activism aimed at legal change may depend on whether social movement organizations are broadly representative of those on whose behalf they speak. Moreover, to the extent that labor law reforms should be aimed at counteracting autocracy at work, as philosopher Elizabeth Anderson has argued,<sup>11</sup> it matters that the institutional frameworks created to promote democracy in civil society provide for accountable representation of workers. Also, at a general level, the burgeoning literature on law and social movements has yet to fully incorporate an account of the internal governance of social movement organizations. Moreover, understanding the prospects for workplace

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5. SARU JAYARAMAN, *FORKED: A NEW STANDARD FOR AMERICAN DINING* (2016); Vicki Schultz, *Reconceptualizing Sexual Harassment, Again*, 128 YALE L.J. F. 22 (2018); Suzanne Specker, “*Hun, I Want You for Dessert*”: *Why Eliminating the Sub-Minimum Wage for Restaurant Servers Will Empower Women*, 19 U. PA. J.L. & SOC. CHANGE 335 (2015); RESTAURANT OPPORTUNITIES CENTERS UNITED, [rocunited.org](http://rocunited.org) (last visited April 3, 2019); ONE FAIR WAGE, [onefairwage.com](http://onefairwage.com) [<https://perma.cc/DX3K-A3LQ>](last visited April 3, 2019).

6. Peggie R. Smith, *The Publicization of Home-Based Care Work in State Labor Law*, 92 MINN. L. REV. 1390 (2008).

7. See generally, Symposium: *Law and the Disruptive Workplace*, 2017 U. CHI. LEGAL F.; V. B. Dubal, *Winning the Battle, Losing the War?: Assessing the Impact of Misclassification Litigation on Workers in the Gig Economy*, 2017 WIS. L. REV. 739; Sanjukta Paul, *Uber as For Profit Hiring Hall*, 38 BERKELEY J. EMP. & LAB. L. 233 (2017); Brishen Rogers, *Employment Rights in the Platform Economy: Getting Back to Basics*, 10 HARV. L. & POL’Y REV. 479 (2016).

8. See, e.g., SCOTT CUMMINGS, *BLUE AND GREEN: THE DRIVE FOR JUSTICE AT AMERICA’S PORT* (2018) (a regional campaign to transform trucking in Southern California).

9. That is, they seek to have the Court overrule *Minn. State Bd. of Cmty. Colls. v. Knight*, 465 U.S. 271 (1984). Thus far, the Supreme Court has denied review in cases that presented the opportunity to overrule *Knight*. See *Uradnik v. Inter Faculty Organization*, 2018 WL 4654751 (D. Minn. 2018) (rejecting First Amendment challenge to, and denying preliminary injunction against enforcement of Minnesota public sector labor law providing that union is the exclusive representative of faculty) (same), *aff’d*, (8th Cir. 2018), *cert. denied*, (Apr. 29, 2019). See also *Bierman v. Dayton*, 900 F.3d 570 (8th Cir. 2018), *cert. denied*, 2019 WL 2078110 (May 13, 2019).

10. *Chamber of Commerce v. City of Seattle*, 890 F.3d 769 (9th Cir. 2018) (holding that Seattle ordinance allowing collective bargaining by independent contractor for-hire drivers is not immune from antitrust scrutiny under state action immunity).

11. ELIZABETH ANDERSON, *PRIVATE GOVERNMENT: HOW EMPLOYERS RULE OUR LIVES (AND WHY WE DON’T TALK ABOUT IT)* (Princeton University Press, 2017).

democracy requires understanding the organizations that represent workers in and outside the workplace.

The literatures on law and social movements and labor law reform invite empirical study of whether or how worker formations promote worker voice and autonomy; this paper reports findings of interviews we conducted as a preliminary foray into such a study. Worker centers, the organizations that we study in this article, rose to fill gaps created as a result of increasing economic and social inequality and declining union density in the United States.<sup>12</sup> In particular, our research seeks answers to five questions:

1. Is there a relationship between democratic norms in social movement organizations and the types of campaigns that they wage?
2. Why do organizations created to empower poor and marginalized people embrace democracy? Why have some, at times, slid toward oligarchy? Is centralization and concentration of power inevitable in social movement organizations?
3. Are governance innovations in social movement organizations scalable?
4. To what extent is the pursuit of democracy at the workplace and in civil society organizations envisioned as being crucial to the prospects for social and political democracy?<sup>13</sup>
5. How do legal regulation and funding models affect democratic norms in social movement organizations?

Based on in-depth, semi-structured interviews with a mix of lawyers, executive directors, and organizers deeply involved in a variety of worker centers and workers' social movement organizations nationwide,<sup>14</sup> we find these organizations are pluralistic in terms of their commitment to, and modes of incorporating, worker voice and worker leadership. The variations among organizations correlate with the economic and political power of employers in the sector, the origins and development of an affiliate structure of the worker organization, turnover among workers, the organizational resources and capacity of the worker organization, choices made by organization leaders about the 501(c)(3) structure, the advocacy modes of the organization, and characteristics of the workers and the organizational leadership.

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12. On worker centers: JANICE FINE, *WORKER CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM* (2006); JENNIFER GORDON, *SUBURBAN SWEATSHOPS* (2005); Peter Kwong, *Chinese Staff and Workers Association: A Model for Organizing in the Changing Economy?*, 25 *SOCIAL POLICY* 30 (1994); MIRIAM CHING YOON LOUIE, *SWEATSHOP WARRIORS: IMMIGRANT WOMEN WORKERS TAKE ON THE GLOBAL FACTORY* (2001); BIJU MATTHEW, *TAXI! CABS AND CAPITALISM IN NEW YORK CITY* (2005); RINKU SEN, *STIR IT UP: LESSONS IN COMMUNITY ORGANIZING AND ADVOCACY* (2003); RINKU SEN & FEKKAK MAMDOUH, *THE ACCIDENTAL AMERICAN: IMMIGRATION AND CITIZENSHIP IN THE AGE OF GLOBALIZATION* (2008); VANESSA TAIT, *POOR WORKERS' UNIONS: REBUILDING LABOR FROM BELOW* 129–57 (2005).

13. ANDERSON, *supra* note 11; JAKE ROSENFELD, *WHAT UNIONS NO LONGER DO* (Harvard University Press, 2015); Cynthia Estlund, *Rethinking Autocracy at Work*, 131 *HARV. L. REV.* 795 (2018); Aziz Z. Huq & Tom Ginsburg, *How to Lose a Constitutional Democracy*, 65 *UCLA L. REV.* 78 (2018).

14. We discuss our empirical methods in Part III.A., *infra*.

We find a major commonality among all worker centers studied: social movement organizations of workers pursue internal democracy because the leadership deems it both instrumentally and intrinsically beneficial to the cause of improving working conditions and creating a more equitable political economy. Organizational democracy is time-consuming, but if a campaign can leverage and be shaped by workers' organic leadership and community relationships, the result could be more powerful than even a well-designed corporate campaign.

The structure of this article is as follows. Part II frames the research questions by exploring the relevant literatures on social movement organizations and worker organizations. Part III describes our research methods and sets out our analysis of the content of the interviews. Part IV reflects on the continuities and discontinuities between workers centers and unions in light of our findings. Part V considers five additional implications of our findings and concludes.

## II

### DEMOCRATIC GOVERNANCE OF SOCIAL MOVEMENT ORGANIZATIONS, LABOR UNIONS, AND NONPROFITS

The analysis we draw from our interviews with worker center leaders contributes to at least three different strands of research on the governance of civil society groups such as social movement organizations, labor unions, and nonprofits. At the most general level, the literatures—in law, sociology, political science, and history, among other disciplines—describe and theorize about the structure and governance of various nonprofit organizations that organize and advocate for workers and other groups.

The literature on social movement organizations has emphasized the possibility of participatory democracy in social movements, asking whether broad participation is feasible in a large organization or in an organization that seeks to achieve political change in the face of powerful opposition.<sup>15</sup> A related question in the law and social movements literature focuses on the relationship between social movement structures and their capacity to achieve social change.<sup>16</sup> In our interviews, we sought to learn leaders' views on the relationship between democratic structure, worker development, and efficacy in achieving social change.

Another debate, one especially dominant in the labor law and labor studies literature, focuses on union democracy—what used to be called top-down and bottom-up organizing—and the challenges for unions of being both internally democratic and powerful, especially when dealing with large corporate opponents in organizing workers and in bargaining.<sup>17</sup> In our interviews, we sought

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15. See, e.g., FRANCESCA POLLETTA, *FREEDOM IS AN ENDLESS MEETING: DEMOCRACY IN AMERICAN SOCIAL MOVEMENTS* (University of Chicago, 2002).

16. See, e.g., Scott L. Cummings, *The Puzzle of Social Movements in American Legal Theory*, 64 *UCLA L. Rev.* 1554 (2017);

17. See, e.g., FRANCES FOX PIVEN & RICHARD CLOWARD, *POOR PEOPLE'S MOVEMENTS: WHY*

to learn what worker centers are doing to match their governance structure with their organizing, worker development, and social change goals.

A third debate, mainly in the law of nonprofit organizations but also in labor law, focuses on accountability of the leadership to the membership or intended beneficiaries of the organization's activity.<sup>18</sup> By default, nonprofit organizations follow the board of directors and staff director model of the 501(c)(3) organization and have relied predominantly on foundation grants rather than member dues for funding. Our interviews explore the question of whether the 501(c)(3) organization and grant-based funding model lead to the accountability issues that have been explored in the literature on nonprofits and how these organizations envision accountability to workers.

#### A. The Possibility of Participatory Democracy in Social Movement Organizations

The study of social movement organizations, or SMOs, is a relatively recent phenomenon. Sociologists McCarthy and Zald, who have driven research in a series of influential articles in the field, define an SMO as “a complex, or formal, organization which identifies its goals with the preferences of a social movement or countermovement and attempts to implement those goals.”<sup>19</sup> McCarthy and Zald recount a prehistory of “classical” SMOs driven by base mobilization, which gave way in the 1960s and 1970s to “professionalized” SMOs.<sup>20</sup> Unlike the classical SMOs started and sustained by “beneficiary” constituents, under “resource mobilization” theory the professionalized SMOs were started by “entrepreneurs,” led by paid leaders, and funded largely by “conscience” constituents driven by a commitment to movement goals rather than being directly affected themselves by the causes of social grievance.<sup>21</sup> Resource mobilization theory spawned a critical literature, most prominently in sociology

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THEY SUCCEED, HOW THEY FAIL (New York: Vintage, 1977); Jane McAlevey, *The Crisis of New Labor and Alinsky's Legacy: Revisiting the Role of the Organize Grassroots Leaders in Building Powerful Organizations and Movements*, 43 POL. & SOC. 415 (2015); Kim Voss, *Same as it Ever Was? New Labor, the CIO Organizing Model, and the Future of American Unions*, 43 POL. & SOC. 453 (2015); Kim Voss & Rachel Sherman, *Breaking the Iron Law of Oligarchy: Union Revitalization in the American Labor Movement*, 106 AM. J. SOC. 303 (2000).

18. On nonprofits: See, e.g., Melanie DiPietro, *Duty of Obedience: A Medieval Explanation for Modern Nonprofit Governance Accountability*, 46 DUQ. L. REV. 99 (2007); Renee A. Irvin, *State Regulation of Nonprofit Organizations: Accountability Regardless of Outcome*, 34 NONPROFIT & VOLUNTARY SECTOR Q. 161 (2005); Rosario Laratta, *Advocacy, Accountability, and Ethical Climate in Nonprofit Organizations*, 10 INT'L J. CIV. SOC'Y L. 17 (2012); Dana Brakman Reiser, *Dismembering Civil Society: The Social Cost of Internally Undemocratic Nonprofits*, 82 OR. L. REV. 829 (2003). On labor: See, e.g., SEYMOUR MARTIN LIPSET, MARTIN A. TROW & JAMES COLEMAN, *UNION DEMOCRACY: THE INTERNAL POLITICS OF THE INTERNATIONAL TYPOGRAPHICAL UNION* (1956); Guy Mundlak, *Workplace-Democracy: Reclaiming the Effort to Foster Public and Private Isomorphism*, 15 THEORETICAL INQUIRIES IN L. 159 (2014).

19. John D. McCarthy & Mayer N. Zald, *Resource Mobilization and Social Movements: A Partial Theory*, 82 AM. J. SOC. 1212, 1218 (1977).

20. *Id.* at 1216–17.

21. Suzanne Staggenborg, *The Consequences of Professionalization and Formalization in the Pro-Choice Movement*, 53 AM. SOC. REV. 585, 585 (1988).

by scholars who argued that professionalized SMOs betrayed their base by fostering social control by founders, leaders, and funders.<sup>22</sup> Piven and Cloward, drawing on their study of the welfare rights movement, contended that professionalized SMOs deradicalized the movements from which they were created and led them to adopt less confrontational and more conventional tactics in social change campaigns.<sup>23</sup>

The creation of new organizational forms by social movements is theorized “as a political process in which social movements play a double-edged role: They de-institutionalize existing beliefs, norms, and values embodied in extant forms, and establish new forms that instantiate new beliefs, norms and values.”<sup>24</sup> We ask in this article how worker centers—founded in part due to the inadequacy of weakened and besieged labor unions—act to instantiate those new beliefs, norms, and values. According to Rao, Morrill & Zald, new organizational forms originate in the interstices between established fields and at the margins.<sup>25</sup> New entrants who are otherwise blocked from established channels of organizational formation and advocacy find spaces in which to develop forms that sometimes upend the fields from which they were excluded. Worker centers began at the margins of labor organizing (e.g., day labor, domestic work) and in the interstices between workers’ and immigrants’ rights advocacy.

After their founding, SMOs are susceptible to social control and cooption. The Piven and Cloward account of how organizations are corrupted or defanged through professionalization and bureaucratization resonates deeply with stock suspicions about people and money.<sup>26</sup> Jenkins and Eckert confront philanthropic funding forthrightly:

Private foundations are, after all, institutionalized agencies of the capitalist class and, as such, will generally be politically cautious in their support for social reform. At the minimum, their conscience donations will typically be socially circumscribed by their class interests in political stability and the preservation of capitalist institutions.<sup>27</sup>

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22. See, e.g., DOUGLAS MCADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY* (1982).

23. PIVEN & CLOWARD, *supra* note 17 at 14–36; see also INCITE!, *THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX* (2nd ed. 2017).

24. Hayagreeva Rao, Calvin Morrill & Mayer N. Zald, *Power Plays: How Social Movements and Collective Action Create New Organizational Forms*, 22 *RESEARCH IN ORG. BEHAV.* 237, 238 (2000).

25. *Id.* at 250 (“[N]ew organizational forms are produced at the intersections of multiple organizational fields through social movement processes. An interstice is a gap between multiple industries or professions and arises when problems or issues persistently spill over from one organizational field to another. . . . Initially, many interstices experience a lack of social visibility as they form vis-à-vis a majority of players in relevant organizational fields. Because most social attention and authority tends to concentrate on conventional practices, many people in a given organizational field will tend to be unaware of initial work in the gaps between fields.”); *id.* at 260–61.

26. PIVEN & CLOWARD, *supra* note 17, at 14–36.

27. J. Craig Jenkins & Craig M. Eckert, *Channeling Black Insurgency: Elite Patronage and Professional Social Movement Organizations in the Development of the Black Movement*, 51 *AM. SOC. REV.* 812, 819 (1986).

But ultimately, both Jenkins and Eckert—examining the civil rights movement of the 1960s and 1970s—and Staggenborg<sup>28</sup>—on the pro-choice movement—conclude that funders channel rather than control or coopt SMOs:

Our evidence . . . indicates no significant change in goals or tactics, but rather a general decline and reorganization around professional SMOs. Patronage may well have accelerated this decline by diverting leaders from indigenous organizing, exacerbating rivalries and creating symbolic gains. Quite clearly, it channeled the movement into professionalization forms.<sup>29</sup>

The reconfiguration of SMOs is subtler than we might assume. Nevertheless, writing about the NAACP in the first half of the twentieth century and analogizing it to the current Movement for Black Lives, Francis argues that “movement capture”—power asymmetries between community organizations and foundations and businesses with a corporate social responsibility approach to governance—remains a threat. Funders have in the past taken organizational focus away from the gravest dangers to the community: fatal state and vigilante violence against African-Americans.<sup>30</sup>

In spite of these vital exchanges in sociology, organizational formation and change and internal decision-making remain, in the words of Minkoff and McCarthy, “black box” processes that researchers and participants in the field generally do not understand well.<sup>31</sup> A focus on field-wide investigations leads researchers to “ignore[] the emergence and impact of social movements and new forms as they are experienced on the front lines of organizations.”<sup>32</sup> The black box of organizational structuration is also experienced by leaders and participants in SMOs. According to Minkoff and McCarthy:

[I]t may not always be obvious to activist decision-makers that an operational decision might also have major long-term consequences, and hence, in retrospect, be a strategic decision . . . [T]he decisions to legally incorporate and/or register for federal and state tax status (or some combination of these) have major strategic consequences, although many SMOs do not recognize them as such when decisions are made, nor are other strategic implications for organizational operations, especially governance, immediately obvious to many activists.<sup>33</sup>

In light of the opacity of these processes for both researchers and participants in SMOs, it is especially important to consider how structural choices shape organizational activity. For leaders and participants, the legal presumptions of the non-profit form produce a strong gravitational pull on nascent organizations

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28. Staggenborg, *supra* note 21.

29. *Id.* at 828.

30. Megan Ming Francis, *The Price of Civil Rights: Black Lives, White Funding, and Movement Capture*, 53 L. & SOC. REV. 275, 278 (2019).

31. Debra Minkoff & John D. McCarthy, *Reinvigorating the Study of Organizational Processes in Social Movements*, 10 MOBILIZATION 289, 289 (2005); RAO ET AL., *supra* note 24 at 275–76 (“Organizational sociology over the past two decades has largely deserted analyses of the internal workings of organizations . . . .”); POLLETTA, *supra* note 15, at 203 (“Sociologists . . . have paid little attention to lower-profile efforts to put mobilizing structures in place and to ensure that concessions won actually translate into local changes, and they have paid still less attention to the organizational structures that best serve such a strategy.”).

32. RAO ET AL., *supra* note 24, at 276.

33. Minkoff & McCarthy, *supra* note 31, at 299.

and, ultimately, on the social movements that birth them.<sup>34</sup> Further, this relationship between law, organizations, and social movements remains largely unexplored and undertheorized.<sup>35</sup>

#### B. The Challenge of Democracy and Power: Lessons from Union Governance and the Contrast with the Law of Tax-Exempt Organizations

Labor unions were, arguably, the first large social movement organization to attain nationwide scale and legal rights and responsibilities as recognized institutional players in American (and European) capitalism. Given unions' power and significance and the potential challenge they posed to corporate dominance in the economy, union governance has unsurprisingly been a subject of heated debate for decades.<sup>36</sup> In each decade, the debates over the governance and finance of worker movements have been oriented toward whatever problem working people's collective power presented for capitalism, for the American government, and for the causes around which working people organize. The 1930s and 1940s saw concern over the influence of communists and radicals; over craft-based as opposed to industrial organizing; over the processes by which union leadership and rank-and-file workers decided on the use of strikes, picketing, and boycotts; and over whether unions harmed American society by being too racially inclusive or too racially exclusionary. In the 1950s and 1960s, when union density reached its peak (at thirty-five percent of the industrial labor force), public and scholarly concern with union governance turned to the economic and political power of Big Labor, corruption in some unions, and the role of labor organizations in promoting or hindering racial equality.<sup>37</sup>

An influential strand of literature on governance of worker organizations from this era built on an early twentieth century work that posited an "iron law of oligarchy" in civil society organizations. According to this theory, organizations will tend toward oligarchy and conservative tactics as leaders seek

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34. *Id.* at 300 ("Another research direction revolves around how decision-making contests are shaped by SMO governance structures. One consequence of state registration requirements is to impose upon conforming SMOs a board of director structure that mimics corporate boards of directors, resulting in stark homogeneity of governance structures among registered SMOs.").

35. See Lauren B. Edelman, Gwendolyn Leachman, & Doug McAdam, *On Law, Organizations, and Social Movements*, 6 ANN. REV. L. & SOC. SCI. 653 (2010).

36. See, e.g., LIPSET, TROW & COLEMAN, *supra* note 18.

37. See REUEL SCHILLER, *FORGING RIVALS: RACE, CLASS, LAW, AND THE COLLAPSE OF POSTWAR LIBERALISM* (2015). For examples of the literature of the era expressing these concerns, see Lloyd H. Bailer, *Organized Labor and Racial Minorities*, 274 ANNALS OF AM. ACADEMY OF POL. SCI. 101 (1951) (discussing racial exclusion by unions); Ray Marshall, *Unions and the Negro Community*, 17 ILR REV. 179 (1964) (same); John F. Kennedy, *Union Racketeering: The Responsibility of the Bar*, 44 AM. B. ASS'N J. 437 (1958) (explaining the work of the Senate committee investigating union governance); Maurice F. Neufeld, *The Historical Relationship of Liberals and Intellectuals to Organized Labor in the United States*, 350 ANNALS OF AM. ACADEMY OF POL. SCI. 115 (1963) (surveying literature on evolving concerns about democracy and accountability of unions); Philip Taft, *Attempts to "Radicalize" the Labor Movement*, 1 ILR REV. 580 (1948) (discussing the relationship of communism and other radical groups to organized labor);

to preserve the organization rather than carry out its mission.<sup>38</sup> As applied to unions of the 1940s and 1950s, the question was whether the unions could retain the democratic activist character many had in the 1930s while becoming powerful institutions in advanced capitalism.<sup>39</sup>

As the power of organized labor withered in the 1970s, debates over union governance began to focus on causes of decline and how unions should reorganize themselves to address new forms of capital organization, globalization, hostile employers, and weak laws.<sup>40</sup> Studies of unions and other worker organizations after this period sought to understand the conditions under which the “iron law of oligarchy” could be broken and a tendency to conservatism could be reversed. Influential labor sociologist Kim Voss and others sought to explain why some union locals embraced new militant tactics and the call to recruit new members, while others succumbed to internal resistance from leaders and members. Shifting from primarily servicing members to recruiting new ones and engaging in disruptive activities requires a significant shift in resource allocation to pay the researchers, “full-time staff[,] and directors . . . necessary for many of the intensive rank-and-file techniques associated with worker mobilization.”<sup>41</sup> They identified three factors that reversed the conservative nature of an oligarchical organization: First, an internal political crisis fostered the entry of new leadership. Second, these new leaders had activist experience in other social movements. That experience prompted them to interpret labor’s decline as a mandate to organize and gave them the skills and vision to implement new organizing programs. Third, international unions with leaders committed to organizing in new ways facilitated the entry of these activists into locals and provided locals with the resources and legitimacy to launch the process of organizational transformation.<sup>42</sup> Importantly, Voss and Sherman found that the leverage for democratic transformation sometimes started from the top. Some locals did not want to recruit new members or change their strategy, so the international placed them into trusteeship and they then became “fully revitalized.”<sup>43</sup>

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38. ROBERT MICHELS, *POLITICAL PARTIES: A SOCIOLOGICAL STUDY OF THE OLIGARCHICAL TENDENCIES OF MODERN DEMOCRACY* (1911, 2001 repr. ed.), available at <https://socialsciences.mcmaster.ca/~econ/ugcm/3ll3/michels/polipart.pdf> [<https://perma.cc/G7Y3-J5LR>].

39. LIPSET, TROW & COLEMAN, *supra* note 18.

40. See, e.g., Jane McAlevey, *The Crisis of New Labor and Alinsky’s Legacy: Revisiting the Role of the Organic Grassroots Leaders in Building Powerful Organizations and Movements*, 43 *POL. & SOC.* 415, 416 (2015); Peter Fairbrother et al., 2007, *Unions Facing the Future: Questions and Possibilities*, 31 *LAB. STUD. J.* 31, 31 (2007); Kim Voss, *Same as It Ever Was? New Labor, the CIO Organizing Model, and the Future of American Unions*, 43 *POL. & SOC.* 453, 455 (2015). On the 1970s as the end of a crucial era in American labor history, see JEFFERSON COWIE, *STAYIN’ ALIVE: THE 1970S AND THE LAST DAYS OF THE WORKING CLASS* (2010), and Jefferson Cowie, *Reframing the New Deal: The Past and Future of American Labor and the Law*, 17 *THEORETICAL INQUIRIES IN L.* 13 (2016).

41. Voss and Sherman, *supra* note 17, at 313 (emphasis added) (members felt that some resisted because they did not want to return to their bartending jobs and attempted to shut out new staff).

42. *Id.* at 325–38.

43. *Id.* at 334. The authors define revitalization as the use of “shift[ing] away from servicing current union members to organizing the unorganized and [using] unconventional disruptive tactics.” *Id.* at 316.

The last twenty years of scholarly debate over union governance emphasized the connection between worker power and union practices in connecting leadership, staff, members, and prospective members. Loosely speaking, this is a debate between top-down and bottom-up approaches to organizing and internal governance. On the one hand there are campaigns that make heavy use of researchers and paid staff to direct and mobilize workers. These are sometimes called top-down campaigns (though the term is controversial). The underlying theory is that, on account of weak labor law and economic change, employers are no longer susceptible to traditional methods of union organizing or bargaining leverage.<sup>44</sup> As a result, the power to persuade employers to recognize a union or sign a collective bargaining agreement is found less in disrupting production and more in disrupting demand using “symbolic leverage” like public shaming,<sup>45</sup> limiting investments, or political pressure.<sup>46</sup> Some scholars believe only this mode of campaigning can check capital’s resurgence.<sup>47</sup>

On the other hand, there are campaigns that focus on systematic whole worker organizing and disrupting production using direct action, including strikes and public protests, as the primary tool. This is sometimes called bottom-up organizing. The theory here is that worker agency is the *sine qua non* of a workers’ rights campaign, and the strike is the utmost expression of that agency.<sup>48</sup> It is a high-risk tactic that proves workers are “all in,” and any resulting victory is truly theirs. This bottom-up approach, it is believed, builds long-term power, and reduces three sides—the employer, workers, and union—to two, with the union and workers becoming a single group.<sup>49</sup> While the strike deepens the campaign by having a worker be fully invested, whole worker organizing can broaden it by charting workers’ connections to the broader community and drawing it into the struggle.<sup>50</sup> Some features of a bottom-up organization include member involvement in hiring and firing staff, approving budgets, deciding on the direction and priorities of the organization.<sup>51</sup> When an idea does not originate with the membership, staff may conduct a survey to see if the issue is important enough to demand the organization’s resources.<sup>52</sup> Commentators like Jane

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44. Voss, *supra* note 17, at 355.

45. CAROLINA MUÑOZ, BUILDING POWER FROM BELOW: CHILEAN WORKERS TAKE ON WALMART 11 (2017) (citing JENNIFER CHUN, ORGANIZING AT THE MARGINS: THE SYMBOLIC POLITICS OF LABOR IN SOUTH KOREA AND THE UNITED STATES (2009)).

46. Andrew Martin, *The Institutional Logic of Union Organizing and the Effectiveness of Social Movement Repertoires*, 113 AM. J. SOC. 1067, 1085 (2008).

47. Tom Juravich, *Beating Global Capital, A Framework and Method for Union Strategic Corporate Research and Campaigns*, in GLOBAL UNIONS: CHALLENGING TRANSNATIONAL CAPITAL THROUGH CROSS-BORDER CAMPAIGNS 16, 16 (Kate Bronfenbrenner ed. 2007).

48. JANE MCALEVEY, NO SHORTCUTS: ORGANIZING FOR POWER IN THE NEW GILDED AGE, 38–39 (2016).

49. *Id.* at 57–58

50. *Id.* at 69–70.

51. MCALEVEY, *supra* note 17, at 183.

52. *Id.* at 188.

McAlevy<sup>53</sup> and Kim Moody<sup>54</sup> believe only bottom-up campaigns and organizations lead to victory.

To date, there has been little empirical study of these questions in the context of worker centers, which are the new and rapidly growing form of worker organization.<sup>55</sup> It is well settled in the labor literature that employer hostility to unions, globalization, financialization, and the general decline of the union movement mean that militant and disruptive tactics are necessary to impose sufficient costs to gain wage increases, workplace safety, and greater worker autonomy.<sup>56</sup> However, both recent literature and our findings based on our interviews with worker center leaders suggest it may not be true that militant and disruptive tactics require expensive staff and top-down strategic organizational control.<sup>57</sup> And when seeking to increase long-term worker buy-in, staff control could even be detrimental. Carolina Muñoz's study of Chilean Wal-Mart workers found that strong democratic processes improved strategic capacity and increased militancy, which increased associational power and the capacity to symbolically disrupt the business.<sup>58</sup> This is not to say that top-down campaigns cannot lead to long-term worker participation when they use militant and confrontational tactics like civil disobedience. No particular type of governance structure is necessarily required by a commitment to one organizing or leverage approach or another. For example, mobilizing is typically associated with a top-down model, but some new worker formations are both highly democratic and primarily mobilizing-focused.<sup>59</sup> Likewise, an oligarchical institution is not limited to conservative tactics.<sup>60</sup>

Beyond the union democracy and top-down versus bottom-up union organizing debates, another major theme in the literature concerns the ways to build organizations for worker power. In particular, Kate Andrias, Ben Sachs, and others have proposed the revival of tripartite bargaining on a sectoral basis

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53. *Id.* at 29.

54. KIM MOODY, *WORKERS IN A LEAN WORLD: UNIONS IN THE INTERNATIONAL ECONOMY* (1997).

55. *See supra*, note 12.

56. *See, e.g.*, Kate Andrias, *The New Labor Law*, 126 *YALE L.J.* 2, 25-31 (2016); Mark Barenberg, *Widening the Scope of Worker Organizing: Legal Reforms to Facilitate Multi-Employer Organizing, Bargaining, and Striking*, ROOSEVELT INST. 1, 3 (Oct 1, 2015), <http://rooseveltinstitute.org> [<https://perma.cc/TAK5-T9TC>]; Paul Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 *HARV. L. REV.* 1769 (1983).

57. *See, e.g.*, Michael Oswalt, *Improvisational Unionism*, 104 *CALIF. L. REV.* 597 (2016).

58. MUÑOZ, *supra* note 45, at 16–18. Muñoz found employees shared a suspicion of the national labor federation and were committed to democracy and militancy; in her account, the employees considered a “real” and “grassroots union” to be one that took risks.

59. MCALEVEY, *supra* note 48, at 197–98

60. Craig Jenkins, *Radical Transformations of Organizational Goals*, 22 *ADMIN. SCI. Q.* 568 (1977); Voss and Sherman, *supra* note 17, at 303. A detailed, empirically rich, and carefully theorized work exploring the variety of organizations involved in the huge nationwide immigrants protests of 2006 reveals that the bottom-up versus top-down dichotomy is inadequate to understanding some mass mobilizations. CHRIS ZEPEDA-MILLAN, *LATINO MASS MOBILIZATION: IMMIGRATION, RACIALIZATION, AND ACTIVISM* (2017).

as crucial to reverse growing economic inequality.<sup>61</sup> As Andrias and others who advocate tripartite and sectoral bargaining recognize, to assure effective representation of workers, it is necessary that worker organizations who are empowered by any legal regime to engage in tripartism are genuinely representative of and accountable to the workers on whose behalf they bargain.<sup>62</sup> This need not be a union, but it does need to be representative and accountable to workers. Realistically, given that nationwide worker center organizations that do not engage in collective bargaining are already engaged in political activism, negotiation with high-road employers, and pressuring low-road employers, they will be part of any new initiatives to use law to improve labor standards. Hence, it matters to everyone whether worker organizations are truly democratic.

The foregoing brief summary of the literatures on social movement organizations and on union governance reveals that democracy in worker organizations is valued both instrumentally and inherently, although the emphasis on one or the other differs. For example, some scholars emphasize its ability to increase strategic capacity and associational power,<sup>63</sup> and others find that democracy increases internal solidarity.<sup>64</sup> On this analysis, robust democracy can protect against high-level decision-makers taking an accommodating stance instead of resisting employer power.<sup>65</sup> Others clearly articulate the intrinsic value of internal democracy and view any effectiveness undemocratic unions may have as illegitimate, similar to gains made through blackmail or violence.<sup>66</sup>

Of course, any instrumental theory—i.e., that a democratic organization or one with high levels of worker participation is more likely to win—invites the

61. Kate Andrias, *An American Approach to Social Democracy: The Forgotten Promise of the Fair Labor Standards Act*, 128 YALE L.J. 616 (2019) (advocating the revival of tripartite bargaining and exploring its implementation under the Fair Labor Standards Act between 1938 and 1949); Kate Andrias, *The New Labor Law*, 126 YALE L.J. 2 (2016) (advocating sectoral bargaining); Kate Andrias & Brishen Rogers, *Rebuilding Worker Voice in Today's Economy*, The Roosevelt Institute (Aug. 2018); Benjamin Sachs, *Despite Preemption: Making Labor Law in Cities and States*, 124 HARV. L. REV. 1153 (2011) (describing tripartism in state and local economic development programs and labor regulation).

62. Cf. Andrias & Rogers, *Rebuilding Worker Voice*, *supra* note 61, at 24-25 (proposing ways to increase worker voice in the workplace).

63. MUÑOZ, *supra* note 45, at 17 (using Marshall Ganz's theory of strategic capacity, *Resources and Resourcefulness: Strategic Capacity in the Unionization of California Agriculture*, 105 AM. J. SOC. 1003 (2000) and Erik Olin Wright's theory on associational power, *Working Class Power, Capitalist-Class Interests, and Class Compromise*, 105 AM. J. SOC. 957 (2000).

64. Peter Fairbrother, *Rethinking Trade Unionism: Union Renewal as Transition*, 26 LAB. RELS. REV. 561, 570 (2015).

65. MCALEVEY, *supra* note 48, at 957 (quoting David Rolf as saying, "Wouldn't it be something if people thought unions weren't about creating problems but they were actually about working with management to solve problems? Where is it written that the thing we need to do most is have fights"); *id.* at 81 (explaining SEIU 775's "top-secret" agreement that unionized nursing home workers in Washington, resulting in little increase in wages or improvement in working conditions); Ian Thomas MacDonald, *Towards Neoliberal Trade Unionism: Decline, Renewal and Transformation in North American Labour Movements*, 52 BRIT. J. INDUS. RELS. 725 (2014) (focusing on union leadership accommodation of public employers).

66. Gregor Gall and Jack Fioreto, *Union Effectiveness: In Search of the Holy Grail*, 37 ECON. & INDUS. DEMOCRACY 189, 191 (2016) ("[U]nions are of, by and for workers . . . [which] defines their character, means, purpose, and interests").

question, “win what?” One wide-ranging survey of union campaigns defined success as getting a contract.<sup>67</sup> Other scholars, however, recognize that losing can be winning when the campaign leads to a shift in power,<sup>68</sup> and that winning can be losing when the campaign achieves its goal of securing a collective bargaining agreement but the workers themselves did not gain power and instead rely on a third party to monitor and enforce the agreement.<sup>69</sup> Because the campaign and its goals teach workers to “be union,” whether the campaign is conducted democratically as a function of worker agency or bureaucratically through staff direction has consequences beyond immediate success.<sup>70</sup> For example, demanding wage increases and pensions can improve workers’ quality of life, but demanding autonomy and control over production can improve immediate material conditions, set the foundation for vigorous enforcement, and “enable a majority of workers to engage in mass collective struggle.”<sup>71</sup> According to Linda Markowitz’s 1998 study, so-called blitz campaigns which involve significant worker participation result in longer term participation within the union after a win than after comprehensive campaigns.<sup>72</sup>

On the whole, the literature on worker organization governance considers democracy as a factor to which different analyses give different degrees of emphasis in describing the relationship between a worker organization’s purpose, strategic capacity, and organizational structure.<sup>73</sup> Moreover, although all labor scholars agree that organizations are more democratic to the extent they develop members into leaders, there is some scholarly disagreement over what methods of leadership development have been most effective in the labor movement.<sup>74</sup>

Another salient debate in the labor law literature has to do with the financial model of worker organizations. For a long time, the regulation of union dues was of interest to many labor lawyers but few scholars. The right-wing litigation attack on union dues has, however, put the question of union funding in headlines and in prominent law reviews.<sup>75</sup> Only unions, among contemporary worker

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67. Hickey et. al, *No Panacea for Success: Member Activism, Organizing and Union Renewal*, 48 BRIT. J. INDUS. RELS. 53, 54 (2010).

68. EVE S. WEINBAUM, *TO MOVE A MOUNTAIN: FIGHTING THE GLOBAL ECONOMY IN APPALACHIA* (2004).

69. MCALEVEY, *supra* note 48, at 58; LINDA MARKOWITZ, *WORKER ACTIVISM AFTER SUCCESSFUL UNION ORGANIZING* (2000).

70. Linda Markowitz, *After the Organizing Ends: Workers, Self-Efficacy, Activism and Union Frameworks*, 45 SOC. PROBS. 356 (1998).

71. MCALEVEY, *supra* note 48, at 56; *see also* Melanie Simms, *Imagined Solidarities: Where is Class in Union Organizing?* 35 CAP. & CLASS 97, 111 (using Richard Hyman’s typology of union identities (class, market, and social), UNDERSTANDING EUROPEAN TRADE UNIONISM: BETWEEN MARKET, CLASS AND SOCIETY (2001), and arguing that unions should shift to building a class identity).

72. MARKOWITZ, *supra* note 70, at 379.

73. Fairbrother, *supra* note 64, at 563.

74. *See, e.g.*, Stuart Eimer, *The Crisis of New Labor and Alinsky’s Legacy: Some Questions, Comments, and Problems*, 43 POL. & SOC. 443, 444–45 (2015); Paul Osterman, *Building Progressive Organizations: An Alternative View*, 43 POL. & SOC. 447, 449 (2015).

75. *See, e.g.*, *Janus v. Am. Fed’n of State, Cty. & Mun. Emps. Council 31*, 138 S. Ct. 2448 (2018). The law review literature on *Janus* is already too voluminous to cite.

formations, have adopted a dues model. Others rely on foundation and other philanthropic funding. Unions insist that dues keep the leadership accountable to the membership. One goal of this study was to consider whether the philanthropic funding model exerts indirect pressure to shape the tactics, strategy and priorities of the organization.<sup>76</sup>

Worker centers and unions are governed by significantly different law regulating their internal governance. In contrast to labor unions, worker centers are governed primarily by the law of tax-exempt organizations, which is much less intrusive, provides less transparency to the public and to members, and does not require the organization to operate as a democracy. Another goal of this study was to consider whether the issues that led to the unique and uniquely intrusive regulatory structure for internal union affairs are appearing in worker centers. As will become apparent below, we find they are not.

Worker centers are generally established as nonprofits under § 501(c)(3) of the Internal Revenue Code. Under § 501(c)(3) and state nonprofit corporation law, a nonprofit organization needs to have a board of directors and must adhere to certain limits on use of funds to maintain its tax-exempt status, but there is no legal requirement that the organization involve its members in internal governance.<sup>77</sup>

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76. See MCALEVEY, *supra* note 48, at 196–98 (saying that power struggles between related (c)(4) and (c)(3) boards of a worker center resulted in a less democratic arrangement as the better-funded board began to influence the other).

77. 1 HUGH WEBSTER, *THE LAW OF ASSOCIATIONS* § 2.06 (Matthew Bender 2018) (State nonprofit corporation statutes generally require that associations have a board, and the lack of a board of directors can result in loss of corporate status) *citing* Cmty. & Human Servs. v. N.W. Defenders, 75 P.3d 583 (Wash. App. 2004) (association directors resigned and were never replaced). Chapter 2 (“Governance”) of the RESTATEMENT OF THE LAW OF CHARITABLE NONPROFIT ORGANIZATIONS Tent. Draft No. 2 (dated March 20, 2017) and Tent. Draft No. 1 (dated April 13, 2016) summarizes the law of the 50 states in Comments & Illustrations by saying: “Most states require a governing board of a charity that is a corporation to be composed of at least three directors, although some states require only one. A few states require at least a majority of the directors to be independent. Although the requirements differ by state, independent board members are those who are not, for example, current or recent employees of the charity or close relatives of such persons.” § 2.05, cmt. c. See, e.g., REVISED MODEL NONPROFIT CORP. ACT § 8.01(a) (1988) (“Each corporation must have a board of directors.”); CAL. CORP. CODE § 5210 (2014); N.Y. NOT-FOR-PROFIT CORP. LAW § 701 (McKinney 2015); *Ciamaichelo v. Independence Blue Cross*, 928 A.2d 407, 410 (Pa. Commw. Ct. 2007) (“the business and affairs of every nonprofit corporation must be managed under the direction of the board of directors or other body”). See generally Evelyn Brody, *The Board of Nonprofit Organizations: Puzzling Through the Gaps Between Law and Practice*, 76 *FORDHAM L. REV.* 521 (2007).

Some states allow the membership to function in lieu of a board and/or allow exceptions to the requirement that a charity must be governed by a board. For example, Delaware law states, “The business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation.” DEL. CODE ANN. tit. 8, § 141(a) (2011 & Supp. 2014). Similarly, New York statute provides that a nonprofit corporation will be managed by a board “[e]xcept as otherwise provided in the certificate of incorporation.” N.Y. NOT-FOR-PROFIT CORPORATION LAW § 701(a) (McKinney 2015).

The Internal Revenue Service defines the governing body of a nonprofit organization as follows: “The governing body is the group of one or more persons authorized under state law to make governance decisions on behalf of the organization and its shareholders or members, if applicable. The governing body is, generally speaking, the board of directors (sometimes referred to as board of trustees) of a

Labor organizations are § 501(c)(5) organizations, subject to slightly different rules for tax-exempt activities, and subject to much greater federally-mandated reporting and disclosure obligations under the Labor Management Reporting and Disclosure Act of 1959 (LMRDA or Landrum-Griffin).<sup>78</sup> The LMRDA was, in part, intended to ensure that unions remained responsive to members, and the law also regulated union's obligations to nonmembers.<sup>79</sup> Legal regulation was, from the start, deeply tied to hostility to union power as well as to desire for union democracy. As unions rapidly gained the power and responsibility to bargain after 1937, to collect dues from members and fees from nonmembers, and to administer the collective bargaining agreements and their social welfare funds, the arguments for extensive regulation of their governance and finances gained strength. Once chosen as an exclusive representative in a bargaining unit, they owe duties of fair representation to all workers in the unit, regardless of whether the worker chooses to join. In the public sector and in over half the states, they owe such duties even to those who pay no fees for the services that the unions are required by law to provide. Little scholarly attention has been paid lately to the administrative costs of such regulation, its efficacy in ensuring financial probity and member accountability, and the risks of such regulation to other goals.

A final goal of this project is to understand whether worker formations that are not subject to all this regulation have developed mechanisms of transparency and accountability to members. In other words, what difference does it make that worker centers and other worker formations that are not labor organizations are subject to distinctively different legal regulation?

### III.

#### GOVERNANCE APPROACHES

This part of the article reports our methods and findings. Subpart A explains our methods. Subpart B discusses, in general terms, the resources worker centers rely on to conduct the campaigns that are the core of their work. Subpart C explores variations in the structure and operations of worker centers that modify organizational approaches to worker voice and leadership. Subpart D discusses

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corporation or association . . . ." Instructions for Form 990, at 18 (2014). For the purposes of Form 990, the annual information return filed by charities, members of the governing body are defined as "members of the governing body of the organization with power to vote on all matters that come before the governing body (other than when a conflict of interest disqualifies the member from voting)." *Id.*

78. The Internal Revenue Code's provision on tax exempt organizations contains several subsections. 26 U.S.C. 501(c). Subsection (c)(5) provides that among the organizations exempt from taxation under 26 U.S.C. 501(a) are "labor, agricultural, or horticultural organizations."

Title II of the LMRDA requires extensive reporting to the federal government and disclosure to union members. 29 U.S.C. section 431 requires reporting by labor unions. Section 432 requires reporting by officers and employees of labor unions. Title IV regulates the selection of union leadership, requiring regular elections by secret ballot among members in good standing. 29 U.S.C. 481.

79. *See, e.g.,* MARTIN H. MALIN, *INDIVIDUAL RIGHTS WITHIN THE UNION* 34-48 (1988) (describing the origins and purposes of the LMRDA); 29 U.S.C. 401 (Congressional findings, purposes, and policy of LMRDA).

the ways in which worker center leaders involve workers in decision-making, both in the governance of the organization and in campaigns.

#### A. Methods

This article is based on eight interviews with nine worker center leaders conducted in 2016 and 2017. Three of our interview subjects are lawyers who have been involved with multiple worker centers in major cities across the United States. Their experience included working with local worker centers and national alliances of worker centers from the 1990s to the present. Throughout the article, the lawyers will be consistently referred to individually by the pseudonyms Steven, Ruben, and Marianne. Six are organizers who worked in both local worker centers and with statewide or nationwide alliances. Similarly, the organizers will consistently be referred to individually by the pseudonyms Robert, Jennifer, Paula, Hanna, John, and Henry. Jennifer and Paula completed a joint telephone interview, so they will often be referred to in tandem. The interview subjects were selected for their expertise and the breadth of experience with different types of worker centers. The sample is neither random nor representative of all worker centers nationwide. Rather, we envisioned the sample as being a pilot study for a larger and more systematic study of worker centers.

The interviews were conducted primarily over the telephone. They were recorded and transcribed. Each interview lasted approximately an hour. The interviews were semi-structured, as we asked each the same questions focusing on governance and finance, but also asked follow up questions based on the answers.

#### B. Underpinnings of Worker Voice

The projection of worker voice in worker center campaigns is undergirded by at least four types of resources: philanthropic funding, paid organizing staff, collaborations with unions, and, increasingly, collaborations with local government agencies. We briefly summarize what our interviews revealed about how worker centers use these four types of resources.

First, foundations supported early waves of worker center formation and activism and continue to be an important source of support. Our interviews confirmed the general perception that foundation funding has been, and remains, essential to the operations of worker centers.<sup>80</sup> Low-wage immigrant workers fall through the gaps in the frayed support network of civil society organizations and

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80. For example, Jennifer and Paula explained, “in the initial phases of the organization, it was really important to have that level of investment and for philanthropy, you have to take a risk on a movement like black women and women of color. It’s such a given that a union labor has traditionally ignored this workforce. Electoral and civic organizations have ignored this workforce being community members. It was important to have that support.” Telephone interview with Jennifer and Paula, organizers (June 29, 2016) (transcript on file with authors). For ease of citation, after the first reference to an interview, we do not footnote each individual interview transcript. Rather, we refer to the interviewees by their pseudonym.

governmental agencies in the United States. Worker centers organized workers who had been overlooked by unions and who were, in many cases, excluded from most labor and employment law protections, poorly paid, and under-resourced. Foundation support was crucial to enable the work. Foundations, most prominently Ford, recognized that philanthropic funding was necessary to support and expand this organizing work. Program officers' views about how to address the challenges of poverty and low wage work aligned with the approach of leaders in some of the expanding worker center networks in low-wage sectors of the economy, such as domestic and restaurant work.<sup>81</sup>

The reliance on foundation funding presents the possibility that an organization's agenda may be shaped by the terms of a foundation's grant rather than by the needs or goals of workers. We found that the threat was more theoretical than real. While acknowledging some programmatic constraints placed on grant recipients, worker center leaders reported that foundations have not dictated their agenda.<sup>82</sup> The more realistic possibility, our interviews revealed, is that if foundations were to decide that general operating support channeled toward base building is no longer a priority, worker centers would have to scramble to replace the funding.

Second, as noted above, most of the established worker centers that were the focus of this study have some paid staff and a larger number of volunteers.<sup>83</sup> The paid organizers and administrators on worker center staffs typically had some prior, albeit limited, experience as organizers in progressive, immigrant-friendly union entities. In a few cases, they had work experience in the sector being organized. The volunteers are drawn from the community in which the worker center works. Marianne, a lawyer who works with multiple worker centers, explained the transition from being a worker volunteer to a staffer:

[A] worker leader who becomes an organizer, I think the work - . . . [c]ould be similar to what they were doing as a volunteer member leader, but there's a deeper investment because the person is on staff and so obviously, just the sheer time issue of more . . . . As a paid organizer, you don't have to negotiate how does the worker deal with work, domestic work, and then doing campaign and political work, social justice work on a voluntarily basis.<sup>84</sup>

Third, worker centers have been engaged in long-term collaborations with unions. In sectors such as domestic and home care and warehouse work, worker centers are engaged in established collaborations that extend from financial support to referrals of workers for union organizing campaigns. There are several

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81. Steven explained the commitment of the Ford Foundation to the worker center movement by noting that the foundation program officers' "politics are very aligned with groups like ROC and NDWA." Telephone interview with Steven, lawyer (June 13, 2016) (transcript on file with authors).

82. Of course, there are strong incentives for both leaders and foundations to resist the notion of control or cooption. However, we found that the structural commitments of organizations matched leader assurances on this point.

83. Voluntary worker associations continue to develop across sectors and particularly in regions of the country with less civic infrastructure. The more established workers centers that are the focus of this article are actively considering how to integrate this type of bottom-up activism.

84. Telephone interview with Marianne, lawyer (June 13, 2016) (transcript on file with authors).

noteworthy examples, many of which were identified in our interviews: Caring Across Generations is an alliance of the National Domestic Workers Alliance (NDWA) with Service Employees International Union (SEIU). The Fight for 15 campaign has been a project of SEIU. The National Day Laborer Organizing Network (NDLON) has had some support from the Laborers' International Union of North America (LIUNA). OUR Walmart was originally supported by the United Food and Commercial Workers International Union (UFCW).<sup>85</sup> Local worker centers also collaborate frequently with unions, as illustrated by the Clean Carwash campaign in Los Angeles or Arise-Chicago.

Fourth, worker centers are increasingly collaborating with government agencies, particularly on enforcement campaigns in progressive jurisdictions with expansive, but under-enforced legal protections for workers.<sup>86</sup> Worker centers have initiated collaborative relationships with local labor standards enforcement agencies in New York, San Francisco, and Los Angeles, with state agencies in California, and with federal and state health and safety agencies in Illinois and California. We found that these co-enforcement initiatives strengthened working relationships between worker centers and government enforcement agencies and worker center leaders perceive that these partnerships improve enforcement.<sup>87</sup> These collaborations have generated a limited amount of financial support for worker centers. The financial support is in the form of government grants to

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85. Steven and Ruben both noted this. Ruben explained that the city-wide worker center for which they had worked connects workers who “have a certain level of organizing or development that they wanna form a union” with “labor unions that will then be unionizing part and then it sort of helps with the workplace campaign.” Telephone interview with Ruben, lawyer (June 8, 2016) (transcript on file with authors).

86. Janice Fine, *Enforcing Labor Standards in Partnership with Civil Society: Can Co-enforcement Succeed Where the State Alone Has Failed?* 45 POL. & SOC'Y 359 (2017); Janice Fine & Jennifer Gordon, *Strengthening Labor Standards Enforcement Through Partnerships with Workers' Organizations*, 38 L. & POL'Y REV. 552 (2010); Seema Patel & Catherine Fisk, *California Co-Enforcement Initiatives that Facilitate Worker Organizing*, HARV. L. & POL'Y REV. (2018).

87. As Hanna, a worker center organizer, explained: “[W]e definitely have a strong working relationship with the labor commissioner and the DIR, one of our anchor organizations, Pilipino Workers Center in LA, is part of the new collaboration between Julie Su’s office and BOFE. . . . But, in practice, a lot of the Filipino caregivers that work in these homes actually also work in private care. It’s a pretty affluent industry, so they’re partnering with the labor commissioner on that and. . . . But it’s definitely giving us the opportunity, and there’s a real commitment to build strong relationships, particularly with BOFE investigators, who have also expressed an interest in doing enforcement in the home care industry. And Pilipino Workers Center also has this big flagship case with BOFE and the City Attorney of Los Angeles against a home care agency for about \$9 Million of unpaid minimum wage and overtime violations for 200 workers with Health Alliance. . . . [T]here’s definite growing partnership with labor agencies, and I think on the home care side it gives us the potential to leverage the city attorney, which has been really interesting. . . . [I]t’s a question for us, just thinking about how to deepen that partnership in other places where there aren’t city based or municipal labor agencies. And I think we’re thinking about also partnering with the labor commissioner around training of deputies. Just building relationships with deputies in different cities and providing, from the worker center perspective, just some kind of working knowledge of the domestic worker industry.” Telephone interview with Hanna, organizer (February 6, 2018) (transcript on file with authors).

Ruben also echoed the same point: “They get some very minimal funding from, say like, OSHA, has a grant to train folks in health and safety. So they get a little bit of money from OSHA if they incorporate health and safety in their basic workshops.”

facilitate investigation and enforcement of minimum labor standards violations and training in know-your-rights programs.<sup>88</sup> In addition to providing modest financial support for work that the center does regardless of such support—training workers in their rights and assisting them in pressing wage theft claims<sup>89</sup>—the co-enforcement collaborations with city and state agencies create connections with government officials, improve enforcement prospectively, and settle claims for unpaid wages for worker members.<sup>90</sup>

### C. Variations

Social movement organizations engaged in sectoral organizing and bargaining are pluralistic in their relative commitment to worker voice and worker leadership within their organizations. We found that certain factors, examined below, were important in shaping the governance choices of worker centers.

#### 1. Modes of Advocacy

Our interviewees worked in or with worker centers engaged in a wide range of political and legal activity, including litigation, policy advocacy, and cultural transformation. Their advocacy choices were both shaped by and, in turn, shaped the organizations themselves.

A number of worker centers relied on litigation in the early stages of their development, generally in cases in which an individual or group of workers were represented by a legal team assembled by the worker center.<sup>91</sup> The worker center would run an issue campaign using the case to advance allegations of lawbreaking by employers and then leverage litigation settlement negotiations for agreements that provided remedies for individual workers, as well as some forms of generalized relief like new hiring and promotion policies.<sup>92</sup> Over time, some worker centers moved toward larger class actions on behalf of employees at larger workplaces or across a large chain of businesses. Legal scholar Lucie White

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88. Fine, *Enforcing Labor Standards in Partnership with Civil Society*, *supra* note 86; Patel & Fisk, *supra* note 86.

89. As Ruben remarked: “They get some very minimal funding from, say like, OSHA, has a grant to train folks in health and safety. So they get a little bit of money from OSHA if they incorporate health and safety in their basic workshops.”

90. Hanna noted “we’re thinking about also partnering with the labor commissioner around training of deputies. Just building relationships with deputies in different cities and providing, from the worker center perspective, just some kind of working knowledge of the domestic worker industry.”

91. Steven explained: “It is true that if you looked back, I’m not sure of the timeframe, six years or so, [ROC] would be mainly doing workplace justice campaigns of the kind you’re describing, which would include a lot of demonstrations in pressure but also litigation. And they were gearing up for a big one against Darden, which moves them from high-end to mid-level, and to a huge international chain. And they seem to have. . . At a certain point, that became less emphasized.”

92. See Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CALIF. L. REV. 1879 (2007); Benjamin Sachs, *Employment Law as Labor Law*, 29 CARDOZO L. REV. 2685 (2008); Sameer M. Ashar, *Advancing Low-Wage Worker Organizing Through Legal Representation*, 47 CLEARINGHOUSE REV. 313 (2013).

calls these types of campaigns “mobilization on the margins of the lawsuit.”<sup>93</sup> In litigation-centered or litigation-adjacent organizing, worker centers develop the leadership skills of plaintiffs as they navigate decision-making in cases and complicated, triangulated relationships with lawyers. Organizations also mount ongoing political education programs as a means by which to keep groups of plaintiffs united and focused on settlements that included elements apart from remedies for individual violations.

A second significant mode of advocacy pursued by worker centers is policy advocacy. Organizers have pivoted from campaigns focused on particular workplaces toward local, state, and national policy initiatives.<sup>94</sup> They have secured enactment of laws creating “bills of rights” for domestic workers, higher wages and sick days for restaurant workers, and health and safety protections for warehouse workers. Through these legislative and policy campaigns, worker centers have gradually developed the capacity to advocate for changes in law that offer protections for low-wage workers beyond their sectoral focus. Ruben observed that organizations have originated their own policy campaigns and joined ones started by others, such as Fight for 15. The localized workplace justice campaigns, often relying on litigation, keep key members engaged and energized. Ruben described effective organizers as those who draw those engaged members into wider-ranging policy campaigns.

A primary role that worker-members play in these policy campaigns is to testify about their conditions of work and the need for new laws and regulations. This role—and the accompanying necessary leadership development and political education offered by organizers—was described extensively in Jennifer Gordon’s case study of the passage of the Unpaid Wages Prohibition Act in New York in 1997.<sup>95</sup> Robert marveled at the effectiveness of worker testimony in the face of employer lobbying at the state level:

These guys sit in air conditioned offices all day, and having a real worker standing across . . . from you . . . I remember last week, the meeting, they were talking about cost . . . and they’re like, “Oh, it’s gonna be \$40 per employee to deal with this issue,” and “How do we abate this cost?” And . . . one [of] the workers, went up and was like, “My life is worth more than \$40.” And that just shut the entire [group up]. All these \$500 an hour lobbyists, for whatever reason couldn’t, didn’t have the guts to stand up, and say anything after that.

The power of worker testimony imposes a type of discipline or accountability as organizations identify issues around which to build campaigns. A wage floor is a much more compelling and salient demand for workers and the broader public than joint liability for companies in a production chain, for example. Robert put it bluntly: “Talking about working conditions in the context of \$15.00 an hour,

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93. Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987–88).

94. Both Steven and Ruben made this observation..

95. Jennifer Gordon, *Campaign for the Unpaid Wages Prohibition Act: Latino Immigrants Change New York Wage Law*, <https://carnegieendowment.org/1999/08/01/campaign-for-unpaid-wages-prohibition-act-latino-immigrants-change-new-york-wage-law-pub-513> [<https://perma.cc/7CAT-76V5>] (1999).

it's very clear and very simple and compelling story. Joint employment, liability, up-the-chain for logistics companies is complicated and obscure, and nobody really cares." These more foundational campaigns also have broader effect, as Robert explained:

You have the same fight, 'cause the Chamber of Commerce is gonna fight you as hard on something specific as on something broad. But you don't get the bang for your buck. That's our hope, is to try to get more that comes from the workers, or from the worker organizations, in terms of policies that are much more down the middle.<sup>96</sup>

Worker-members have a fairly direct role in selecting and testing the value and political viability of policy initiatives.

Another role that worker-members play in legislative campaigns is in deciding when and how to compromise as advocates attempt to push a bill over obstacles to enactment. Much of the leadership development and political education in one of the organizations that we examined focused on this moment of compromise in the legislative process. As Jennifer and Paula observed, this is a moment in which accountability mechanisms may break down, if organizational leaders decide to take a win at the expense of the deeper and longer-term goals of the organizing. The organization prioritizes the development of collective principles to guide members and leaders in the legislative process. Ultimately, Jennifer and Paula concluded, the wins in the legislative process have to unify rather than divide workers; a win is not a win if portions of the worker base are disempowered or made marginal in the legislative process.

Enforcement is another context in which it may be challenging to maintain worker voice. Hanna reflected, "as we win more rights, then it becomes enforcement, and then we'll have to figure out what centralized state decision-making looks like around enforcement, and how we maintain worker voice, and being worker-driven with organizational autonomy." Co-enforcement—agency-worker center collaborations described above in Part III.B.—<sup>97</sup> is one response to this challenge. Part of the benefit of a worker-driven policy agenda is the inherent capacity of members to go back to their workplaces after a legislative win and point out to their managers that there's a new law on the books that provides some protection.<sup>98</sup> Accountability to workers in the process of issue identification paves the way toward their involvement in struggles to enforce new laws in a time of governmental austerity and withdrawal from the employer-employee relationship.

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96. Robert elaborated on the challenges of engaging workers and the public around campaigns that challenge the structure of an industry rather than just the workers' current conditions: "Why are we allowing workplaces to be 100% temporary? Why are we allowing people to be temps for five years, 10 years, without being a direct? Those kinds of conversations are things that we think will be more compelling for the workers. Probably you have much bigger impact, but also we need to bring the public into it, the general public. And so that's kind of what we've learned, is incremental little things here and there . . . ."

97. See *supra* notes 85–86 and accompanying text.

98. As Robert put it: "It doubles back to those workers, again taking these heat breaks at work saying, 'Hey, there's a policy.' It's perfect, right?"

Finally, some worker centers, particularly the larger national networks, aim for deeper cultural shifts. Like the pivot from workplace justice campaigns to policy advocacy, the shift from litigation and legislation to cultural production is an important one that differentiates organizations and poses new challenges to worker voice and autonomy.<sup>99</sup> This is, in part, a reflection of the limits placed on the state to enforce new laws and judgments in litigation. These efforts are both incredibly ambitious and also quite pragmatic. As Steven put it, these efforts pragmatically attempt to improve compliance with new laws while they ambitiously identify areas of interest convergence that might mobilize new sources of power in fights on behalf of low-wage workers. Because of the way in which political and popular culture is formed in the United States, efforts to shift ideology and the value of low-wage work through cultural production tend to emphasize the role of more familiar, highly educated, and articulate non-worker leaders.<sup>100</sup> This type of work is a test of the commitment of organizers to worker voice and the governance and accountability infrastructure developed within their organizations.

## 2. Relative Economic and Political Power of Employers

The forces opposing low-wage worker initiatives differ across sectors, in part because the structures of economic sectors differ. There is an accelerating trend toward disaggregation in some sectors and toward scale in others. For example, domestic workers are distributed across homes in which they are usually the only employee. Their employers generally have not organized to oppose policy initiatives that they may be advocating.<sup>101</sup> There is a fair amount of consolidation in the restaurant industry, on the other hand, and many large employers are part of the National Restaurant Association (NRA), which opposes initiatives intended to improve the work conditions of low-wage workers in their industry. Further, the NRA has repeatedly attempted to run campaigns against worker centers in the sector and have them reclassified as union organizations, with accompanying burdensome regulatory requirements and limits on organizing and activism.<sup>102</sup> For warehouse workers, Robert explained, employers have created attenuated relationships with workers through the use of temporary work

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99. Jennifer and Paula described their goal of producing a cultural shift as follows: "One is that like the terrain that it's not only around structural changes and legislative wins but ultimately that the tone, ideology and culture in a norm on a societal level need to be are up to be defined. And that's a huge part of the arena that we tried to contest as well because ultimately, a private employer in their home is gonna make a decision about what to pay a worker even if the law states, the laws are helpful, but also some of it has to do with a change in culture and ideology in terms of how this work is valued."

100. See, e.g., Ai-Jen Poo, *I was Meryl Streep's "Plus One" at the Golden Globes*, COSMOPOLITAN (Jan. 10, 2018), available at <https://www.cosmopolitan.com/politics/a15003277/meryl-streep-ai-jen-poo-golden-globes-essay/> [<https://perma.cc/784G-59BG>].

101. Steven drew the contrast between strategies generated by the structure of the domestic work sector as compared to other sectors: "So the contrast with NDWA is really very interesting. One difference, of course, is that NDWA has no adversary. Nobody's opposed. And there's no economic interest is challenged."

102. *Id.*

agencies, while growing in scale as e-commerce claims a larger market share of the retail sector. But unlike the restaurant industry, there isn't as much unity amongst employers.<sup>103</sup> Sectors in which technological platforms have come to the fore, such as ride hailing, have seen both increasing disaggregation of the workforce and expanded scale.<sup>104</sup>

The variation across sectors causes differentiated worker governance goals and practices in worker centers. In sectors without organized opposition, call it Sector A, there is much greater emphasis on the development of individual worker capacity and personal transformation. There is more networked decentralization.<sup>105</sup> The campaigns are less adversarial.<sup>106</sup> In sectors with powerful and organized opposition, call it Sector B, organizations tend to be more hierarchical and have greater message discipline up and down affiliate networks.<sup>107</sup> There is less affiliate autonomy and less decentralized decision-making, which comes at the expense of localized experiments in developing worker voice in governance activities. In a third type of sector, call it Sector C, in which there is disaggregation through contingent work arrangements but scaled up work sites, worker centers have to develop cross-employer regional advocacy efforts; these conditions also explain the pivot from workplace justice campaigns—very challenging at a work site with 500 workers hired through temporary agencies—toward policy initiatives.<sup>108</sup> As in Sector A, disaggregation demands more investment in the development of individual worker voice and leadership, or in Robert's words, a “need to figure out how to make people feel bigger.”

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103. Robert elaborated: “I have the Home Depot guys, logistics guys based in Atlanta, and the Walmart guys based in Arkansas. They all hate each other. I think that's being part of a global system. They don't collude on our level. And they don't really . . . It's not really worth it. Maybe we're not big enough or bad enough to have an impact. That's what we see. In terms of the staffing agencies, similarly it's just like shark pit, and those guys are just constantly trying to slash each other's throats. The blacklisting, it takes some level of trust, and those guys are all just stinks. [chuckle] They can't really get it together to blacklist either. And there's always another staffing agency. That's not to say public activists have no trouble getting more work, but they get something. And again, the region's so big. You can get by.”

104. This is a point Hanna raised. As none of our interviews focused on organizing workers engaged in platform-based work, we caution that our findings may not be generalizable to organizing such workers.

105. See *infra* Part III.C.3.

106. Jennifer and Paula put it this way: “So in some ways it's like, sure, there's definitely been conversations about, what is organizing with love? Whatever, and I think it's worked. And I think ultimately just to build off of that, in some ways given the industry or given domestic work and given that it's a one-to-one employer/worker relationship and also, as [Jennifer] was pointing out, the actual work of caring, there's a certain level of interest in that emotional labor that goes into this work and some of it's actually more complicated than who's the boss and then there's workers in a factory context.”

107. See POLLETTA, *supra* note 15, at 6 (“responding quickly to the aggressive action of movement opponents may require leaders' unilateral action”).

108. Robert made this point.

### 3. Organizational Development and Affiliate Structure

As discussed in the preceding subpart, some sectors enable greater network decentralization, which, in turn, allows for variation and experimentation with organizational governance across networks. Hanna, Jennifer, and Paula noted that organizations transmit information and organizing strategies up and down the network and organizers import lessons from their work at other types of organizations, such as unions. Key nodes in a network set a floor for democratic governance but, as Hanna observed, allow affiliates to develop the specific mechanisms that will be used to ensure worker voice and accountability to the membership. That floor ensures that organizational decisions and perspectives “are vetted by and emerge from your membership,” as Hanna put it. Those nodes may exercise a modest amount of power over affiliates by re-granting funds. Jennifer and Paula explicitly indicated that they sought to use resource transmission to affiliates (both in the form of funding and capacity-building) to counter the nonprofit form, to cause “a shift in their culture, in their structures and in their notion of what leadership means.” The affiliates that are most committed to experimentation with worker governance and voice tend to be the ones that are most central in the substantive advocacy initiatives being advanced by the network. Organizations will use national convenings of organizers and workers from across the network to share knowledge and advance governance principles that can be taken back to affiliates that may be less developed.

The origins of a network also contribute to shaping its development. Jennifer and Paula explained that, in their experience, networks built up from local organizing in different parts of the United States reserve more local authority over organizational development at the grassroots (countered to some degree by downward resource distribution). In other cases, national networks create local affiliates, with greater requisite input on the structure and governance of those affiliates.<sup>109</sup>

Stand-alone worker centers develop creative governance practices, as well. In some cases, worker centers are autonomous projects within larger nonprofit organizations and have an independent governance structure that is less conventional than the host nonprofit’s and more worker-centered.<sup>110</sup>

### 4. Organizational Resources and Capacity

The larger worker center networks—such as Restaurant Opportunities Center (ROC), NDWA, NDLON, and National Guestworkers Alliance—have benefited from strong support from large foundations, particularly the Ford Foundation.<sup>111</sup> In a portion of the work force earlier ignored by unions and

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109. See McCarthy & Zald, *supra* note 19, at 1227–28 (“Federation development out of preexisting groups can occur quite rapidly, while organizing unattached individuals probably requires more time and resources.”).

110. Hanna said: “I don’t see very clearly how worker centers housed within 501(c)(3) structures carve out space for worker decision-making and autonomy and how it interacts, and what may be the tensions are with the 501(c)(3) model.”

111. Marianne, Jennifer and Paula made this point.

electoral and civic organizations, foundation funding was key in the startup, expansion, and consolidation phases of many worker center networks. Particular program officers have been especially supportive of and patient with worker center networks.<sup>112</sup>

All worker centers, but particularly smaller worker center networks and stand-alone organizations, grapple with uncertainty and piece together funding from multiple sources, including foundations, membership fees, individual donors, unions, church congregations, and local governmental contracts.<sup>113</sup> Smaller foundations without a record of support for workers remain confused about what worker centers do, which requires that leaders spend time communicating with foundation officers.<sup>114</sup> The idea that nonprofit organizations have to fill the gaps left by de-unionization remains relatively novel, though *Janus* may be a wake-up call for funders.<sup>115</sup> Jennifer and Paula spoke at length about this, explaining that many foundations have theories of change focused on particular policy changes and electoral work rather than organizing and base building. Uncertainty and lack of funding for operations and organizing constrain smaller worker center networks and stand-alone organizations. The lack of staff support, they worried, may cause those organizations to skip a step in internal governance. In spite of the best intentions with regard to worker voice and autonomy in organizational governance, limited funding hinders the development and implementation of creative and labor-intensive bottom-up leadership efforts.

##### 5. Membership Models

Worker centers have considered different membership models, though the organizations appear to do so with an awareness of the dangers of a transactional model in which workers pay dues in exchange for services. Ruben explained that both the national networks and stand-alone organizations base their development on an identity in opposition to service organizations, such as legal services offices and unions that emphasized member services over organizing. However, the lack of collective bargaining representation undercuts the value proposition for workers, as Steven worried: Exactly what services do they get from worker centers that are not time limited, such as ROC's job training programs?<sup>116</sup>

Still, our interviewees thought of the membership model as one that can aid in the quest for financial sustainability, though it would likely not eliminate dependence on other sources of funding. Jennifer and Paula report their organization aspires to have over two hundred thousand members nationwide by

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112. Marianne and Steven both noted this.

113. Ruben's organization is an example of this kind of patchwork of funding.

114. Jennifer and Paula made this observation.

115. *Id.*

116. *But see* POLLETTA, *supra* note 15, at 12 ("Participatory democracy's solidarity benefits counteract movement groups' inability to offer much in the way of selective incentives to participate.").

2020. If they succeed, it would dramatically change the financial situation of the organization because even a small sum in dues would generate sufficient revenue to pay the staff. With a baseline in which foundations provide an overwhelming share of worker center budgets in most cases, increasing membership would alter the governance trajectory of organizations. In particular, both a national network and a stand-alone organization projected that membership dues might pay for organizing staff, who are an essential element of their programs and are not always fully supported by foundations focused on more immediate outputs.<sup>117</sup> Robert, an organizer, talked both about the logistical challenges of collecting small dues amounts from workers every month in a shelved membership scheme and the spontaneous contributions made by workers to pay for food at worker meetings in the midst of an active campaign:

They're gonna invest in something that they see value and it's not gonna be a huge amount of money, but it's not gonna be tiny. I think we could do more like \$20 a month even with low wage workers. I've talked to folks and they're like, "Oh I could do that. It's worth it.

There was mixed feedback on what membership might mean in governance. For Ruben's organization, membership implied active participation in organizing rather than passive receipt of services. But that did not necessarily translate into decision-making authority within the organization. Members might help with planning campaign events but do not have ultimate decision-making authority over allocation of organizational budget, campaign targets, or selection of policy initiatives. In that organization, paid staff make most of those types of decisions, with tacit approval given by the nonprofit board.

A national network is working on developing a membership model in the context of an extended affiliate structure. On the one hand, Jennifer and Paula said, the organization hopes to follow a model developed by one of its older and more established affiliates in creating opportunities for workers to organize with others close at hand in their neighborhoods, periodically pulling these "circle[s]" into larger local, state, and national campaigns. The organization also hopes to deploy representational models, placing worker-members on the board of the national organization and other state organizational nodes in the network, with accompanying attention paid to financial literacy and other capacities. At the same time, the network is working to transition from an affiliate structure toward a more membership driven organization. One idea is to create a two-tiered affiliate structure in which local organizations that set a higher floor for member leadership and engagement have more power within the network, while other affiliates that focus more on service provision or social enterprise with less leadership development resources are placed on a lower tier.

Membership in a worker center is an especially interesting possibility, perhaps less for financial sustainability—though it may free up important but underfunded components of an organization's program—and more as a means by which to cope with contingent work in non-unionized workplaces. Robert

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117. Marianne, Robert, Jennifer and Paula all identified this.

articulated this vision: “[H]aving a lot of workers, having cadre of workers . . . who are in action. Who are not majorities, who are not necessarily represented by a union or by us or anyone, but are members . . . paying in and participating in our activities.” While there is potential for accentuating worker voice and autonomy through membership, it appears that the models remain more hypothetical than actual at this time. But the inquiry and varied responses across sectoral contexts is quite rich.

## 6. Identity and Experience

Worker centers aimed to organize those who labored in conditions of contingency and inequality—racial, gendered, lingual, and by citizenship status. The organizations sought to develop worker voice and autonomy in their unequal workplaces. In some cases, the worker centers themselves became microcosms in which workers developed the capacities needed to navigate difficult conditions of work. This was particularly the case for the domestic worker organizations that we examined through leadership interviews. Paid staff and leadership of those organizations are nearly exclusively women of color. The coincident conditions of exploitation and care in the industry inform organizational goals and practices, as Jennifer and Paula explained:

Most of the people in the domestic workers industry are women of color, and so we’re representing, and we also see domestic work itself . . . both occurs where people experience a lot of inequality and also have to have a lot of care . . . . And so that’s really built into the organization, and when people come in, we get that immediately, that we’re trying to fight inequality and the way that we’re doing that is leaning in on the compassion that’s necessary in the industry that’s needed more in the movement, and to do that, we have to show that to ourselves and to each other.

The focus on personal and cultural transformation in the domestic worker organizations reflect this recognition. The experiments in worker governance in this sector also reflect the deep commitment to the development of voice and autonomy.

In some cases, as both Hanna and Robert noted, women build autonomous projects within larger organizations, which may be an indication of the need to create an organizing space of their own, free of the presumptions of the nonprofit form or the patriarchal hierarchies that may be inherent in mixed gender contexts. Men who are day laborers accompany women who are domestic workers on lobbying visits but, said Hanna, do not hold positions of leadership within their organizations or have sway over policy priorities and decision-making. Organizations create space for autonomous decision-making by workers marginalized in other contexts.

The maturity and prior experience of workers help form organizing initiatives and shape worker centers. As Robert said, “you need the young people to light a fire and have a fight, but you need the older people to build the structure.” Some of the older workers, Hanna explained, have experience engaging in sophisticated organizing drives in their countries of origin. The intergenerational nature of some worker centers offers sustenance and stability.

Finally, because of the recognition of the political and economic inequality in society, worker centers have elevated issues and solidarities that might have been ignored in other spaces. The commitment to raising standards in a sector is matched with social movements focused on other issues, such as immigration enforcement and police violence against men and women of color. According to Jennifer and Paula, a pair of organizers, “we try to intersect a lot of identities” and their “focus was on interdependence.”

#### D. Governance Experimentalism

Worker center leaders uniformly see worker involvement in governance as both intrinsically valuable and instrumentally useful to build worker power. As Marianne said, the organization tries to incorporate workers in decision-making “when there are important strategic decisions, that really determine[] the future of the organization” and the organization always tries “to engage their worker leaders or members.”<sup>118</sup> Although all agree worker involvement is crucial, there are varying degrees of integration of worker voice in organizational and campaign decision-making and sometimes a gap between intention and practice.<sup>119</sup> We identified four general ways in which worker centers strive to implement their deep and unifying commitment to embed worker governance structures in organizations and campaigns.

##### 1. Worker Membership on Organization Boards

State and federal law governing nonprofit organizations require governance by a board of directors. A number of the worker center leaders we interviewed reported that their organization has worker representatives on the board so that the board’s deliberations are informed by the involvement of people who are experiencing directly the working conditions in the sector. Hanna described one affiliate organization as having “a mixed board, that has both external board members and member leaders.” Ruben explained that a local worker center decides to invite workers to join the board based on whether “they’ve shown to have played very active and influential roles in the various workplace campaigns and other campaigns that [the worker center] has [led].” In some cases, the organization has specific rules for representation of workers on the board to ensure that worker representatives are not tokens. A national organization that has several constituent affiliates gives each affiliate two seats on the board. One of those two is a worker representative and the other is an affiliate staff

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118. Jennifer and Paula echoed this point, saying: “[s]o, I think it’s multiple levels, so I’ll start with, I think it’s the highest levels of the organization in terms of [time], setting, organizational direction. Like establishing and approving the sort of budget which I would say is the way that we allocate funding to realize the work.”

119. Marianne observed: “I also think there’s a set of questions around strategy. Do we have the vision to make that kind of change and are we taking on the kind of campaigns we should be to build the base, build the leadership, build the capacity, the organization and win, and winning towards a larger goal. I think there’s a whole set of strategy questions and that’s not unique to the workers center. The unions are grappling with that. . . . There’s several different factors that contribute to the set of questions you are asking around, where there’s a disconnect between their intentions and how it gets practiced.”

member.<sup>120</sup> Other organizations manifest the commitment more organically, by recruiting the most active workers to formal leadership roles but without quotas for worker representation. Worker representatives play a formal governance role, represent the organization in the public sphere, and provide leadership internally, particularly for worker leadership development functions.<sup>121</sup> As Jennifer and Paula described it:

[T]he board's role is both governance as well as support. So governance being that they ensure that we comply with legal...responsibilities as well as ensure that all of our programs, campaigns, initiatives are aligned with our mission and values. And then, it might sort of approve our budget, accordingly. Support is that they are spokespeople for the organization. They work with the staff, around the programs and initiatives. They all donate to the organization and support fundraising activities, as well. So that and support the Executive Director, like giving feedback, doing an annual review, help in thinking about professional development.

Organizations are experimenting with how representation on a 501(c)(3) board might work: Jennifer and Paula, leaders of an organization aspiring to have mass membership in its sector, said the organization is considering elections for worker representatives by region or by occupational category. However, they added, leaders are concerned about moving the structure “ahead of where the work and organizing [is].”

The concern with aligning structure with the current state of organizing is shared by worker center leaders across sectors. In its most successful form, worker membership on the board of directors is supported by the professional development of those worker-members on the larger strategy questions being confronted in the sector; the professional development training also is intended, as Jennifer and Paula explained, to “develop skills around reading spreadsheets and understanding budgets.” The non-worker board members are expected to assist in this professional development function.

So far, this effort to induct worker-members into organizational governance functions has not pulled them away the front lines in the sector, as appears to have occurred in some unions. As Jennifer and Paula said: “So that’s actually less of an issue for us. I think there’s just not as many opportunities. And that’s one of our goals is to kind of continually lift up the workforce, professionalize and have people have more opportunities.” For better or for worse, in Jennifer and Paula’s industry, workers continue to labor in low-wage jobs, even as the organization offers professional development and leadership opportunities. Some leaders consider it a success when a member leader is able to move out of working in the sector and into a position as an organizer because then, as Jennifer and Paula put it, “their main role” can be “building contact and connection with more” workers in the sector and “bringing them into the organization.” Organizational leaders take pains to instill in worker-members, Jennifer and

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120. Hanna, Jennifer, and Paula described a similar structure for different organizations.

121. Ruben explained that “a lot of the board of director[s] . . . members, the worker members, lead those workshops, those leadership workshops that they hold.”

Paula said, “a sense of responsibility and accountability . . . to the rest of the base and to other workers.”

In other cases, worker centers have ended experiments with representation on 501(c)(3) boards or avoided such representation. Robert said such experiments may be “well-intentioned, not necessarily planned out well, then it just goes to hell.”<sup>122</sup> Robert explained that a single worker representative of a workers’ committee on the board became a conduit for grievances; the board stopped attending to its other business in this period, until the organization was reconfigured. There were conduits for worker voice but conflicts were impeding organizational development and sustainability. For another worker center that Robert was involved with, holding on to worker-members of the board was a challenge. The workers were interested in conversations about their workplaces and organizing, less so about the organizational governance issues that 501(c)(3) board have an obligation to consider. Further, linguistic differences and the need for interpretation during board meetings has impeded the functioning of the board, as has the difficulty for workers of managing to get to board meetings after a long day of work. Worker voice on the board, Robert explained, needs to be “not just individual workers, but . . . a structure . . . where the workers have a direct” voice in organizational governance. That worker center is actively searching for structures that will sustainably facilitate worker voice and be responsive to workers’ concerns, while leaving conventional 501(c)(3) matters to a board composed of staff leadership, community members, and union allies. As Robert said, “[I]f we’re gonna do this, let’s not just be symbolic about it, let’s actually like make it work.”

## 2. Workers on Campaign Committees

There is a nearly universal commitment amongst worker centers to worker leadership of campaign formations, either focused on conditions at a particular workplace or on policy reforms.<sup>123</sup> This type of embedded worker governance performs at least four functions. First, a clear commitment to campaign participation and leadership signals to new arrivals that the worker center is not primarily a service provider. At one worker center, after a worker has gone through a traditional intake process about their workplace issue, the discussion

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122. Robert continued: “Again, the men are doing stuff as a collective related to their work, so they maintain a minimum wage from the center. They engage with the guys who are not engaged with the center, who are trying to pick off work. They engage with the employers, they back each other up. That’s all similar to a WWRC where we have structure where on the workplace side, they are organized, but in terms of how they engage with the Center, it’s not where it should be, we think. But also same story, but even more like, ‘[i]t went really bad for a while there, and so before we go back to it we wanna make sure we’re doing it right.’ ‘Cause it was actively just causing heat and trauma, so it’s . . . I don’t know if you’ve already talked to a lot of people, but you might have heard that story many times and you probably will. But well-intentioned, not necessarily planned out well, then it just goes to hell.”

123. Jennifer and Paula phrased it this way: “[E]very campaign is a little different, but all of our campaigns have either sort of a[n] affiliate committee where there’s both domestic workers, there’s also organizers that get on regular calls that give input and feedback and some even set strategy and make decisions around tactics.”

turns to how they might help constitute a campaign strategy with other workers to solve the problem. The goal, explained Ruben, is not merely to educate the workers “on your basic rights” under the law, but also to initiate “a conversation with the worker to see how the organization and the worker can start campaigning on its behalf. And the idea is that it would include other workers from the workplace or from the worker center, media contacts, clergy, that sort of thing to start—so a process.” This turn toward non-litigation and collectivization of a workplace problem is a well-worn strategy of worker centers dating back to the earliest exemplar organizations.<sup>124</sup>

Second, organizations draw on critical knowledge that only workers possess. They engage workers in discussion about how to build their power. As Ruben said:

I used to be a union lawyer and I did all the talking for everyone. And so here, so when we met the employer, the idea was that we would prepare the worker enough that the worker started the conversation with the employer about the wages owed and what not so that worker felt empowered, and the worker felt that it was their campaign.

Engaging workers in discussion is necessary to develop facts and identify legal violations, to develop approaches to fellow workers subject to the same conditions, and to develop tactics to begin to ameliorate the effects of overwhelming employer power and worker vulnerability.<sup>125</sup> Organizations turn to workers to set campaign goals, from immediate action to a far time horizon across the industry in which they work.

Third, worker centers build mechanisms by which to remain accountable to workers in contexts in which there is a greater threat of organizational drift or corruption. For example, Jennifer and Paula said their national worker center network is building a worker council to exercise judgment with regard to proposed partnerships with private sector and nonprofit service provision entities. Worker centers engaged in policy campaigns draw on worker leadership to ensure that the organization remains, as Ruben put it, true to its mission in contexts in which compromises with state actors are unavoidable. Worker leadership ensures that staff do not become detached from the actual or imagined base of the organization. Worker-based accountability is not inevitable but requires careful leadership development and a pervasive commitment to underlying values. Worker leadership of campaigns, together with a concerted focus on the development of worker capacity and an anchoring in social justice values points organizations toward greater base accountability.

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124. See *supra* note 12.

125. Robert concurred, explaining: “Most of our work is done in the context of campaigns. . . . A campaign of a group of workers in a specific workplace, organizing to change their conditions. And so, that’s where I think most of the worker accountability occurs, is that those workers as committees make decisions about the plans around their campaigns, around the strategies. That’s where we’ve been able to engage workers and not just when are we gonna do the delegation kinda conversations, but what is the next step conversations around what we’re trying to build toward, what kinds of goals we’re trying to get accomplished, and how we’re gonna get there?”

Fourth, campaign leadership strengthens relationships between staff and workers and offers an opportunity for workers to test their interest in broader leadership within the organization. It is a first screen for both workers and staff to identify new organizational leadership. This screening function can be formalized; one worker center is contemplating bringing together two or three workers from each of its campaigns to constitute a worker leadership group that is less focused on internal governance functions and more on cross-fertilization of power-building strategies and goal setting within the sector. This is particularly significant for Robert's organization because it is trying to organize workers at multiple different jobsites and, Robert reported, it is using the committee to build connections among them. Workers can share lessons from their organizing while also being drawn into broader discussions about how to develop power across the sector. It can, as Robert said, move the organizing discussions from the particular level of "Hey, what're you guys up to? What worked for you?" to "building up to, 'Okay, how do we actually get to a coherent industry-wide message and strategy, because that's really where we'd like to get.'"

Worker participation and leadership in campaign activities appears to be a bedrock commitment of worker centers driven both by organizational values and aspirations, as well as by necessity due to lean staffing.<sup>126</sup>

### 3. Leadership Development and Personal Transformation

Board membership and campaign participation can be forms of leadership development. Some worker centers have developed more formal approaches; others rely on organic efforts that develop worker capacity over time. As Robert said:

[W]e haven't just told them what to do but we've engaged them. We've invited them to trainings. We've done a lot of direct involvement. We've brought workers on house visits to push each other and pull other people in. But it's just the basics of organizing. And it's really [a co-director] organizing that group to be able to hold their co-workers accountable.

Ruben explained that worker involvement is an effective communications strategy and a form of leadership development: "If they are having just a press conference about whatever campaign, they make sure that they bring members from the organization to be there, present and they can speak to the press, because it's always preferable to have them speak than somebody like me." One particularly intentional national network of worker centers emphasizes personal transformation in its fellowship program for prospective worker-leaders. Marianne described a set of questions that connect personal transformation with organizing and leadership development goals: How might workers' life experiences have inhibited their leadership potential? How do they share their experiences with other workers, both within and outside of their sector? How does personal transformation lead to social transformation? The perspective of

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126. See McCarthy & Zald, *supra* note 19, at 1227 (discussing members on "transitory teams" led by staff).

organizers in asking these questions is rooted in an understanding that legal change may be necessary but not sufficient in creating changed conditions of work in their sector.<sup>127</sup> As Jennifer and Paula explained, “if we just changed how the labor standards were applied in our industry but then people still devalued [the workers], then that’s not a victory for us.” Jennifer, Paula, and Marianne noted that workers may have to overcome forms of trauma—from experiences in their country of origin, from their migration to the United States, or from their experiences in this country—before exercising agency and leadership.<sup>128</sup> By focusing on individual transformation, organizers hope, as Jennifer and Paula put it, that they can ultimately enable “people [to] take seriously that they’re representing many workers, and many organizations, and many people” beyond themselves.<sup>129</sup> Before they can take on the responsibility of collective solidarity, they must overcome their own internal constraints.

The aspiration for deeper democratic engagement relies on an organization’s investment in the capacity of workers to weigh in on strategic decisions and organizational development. As Jennifer and Paula explained:

[T]his question of democracy and sort of worker-led organizations, it’s a process, so we’ve created these statures and structures within the organization to really provide sort of a[n] opportunity for development and then for decision-making and input. And the reality is it’s a process, and then they’re really building the capacity in the ability of workers themselves to make these decisions. And so, part of having that process sort of be successful and continually moving towards, I think, a more democratic structure is really investing in their leadership and in their capacity to make decisions on strategy and in an organizational direction.<sup>130</sup>

It is, Jennifer and Paula continued, a slow process:

It’s something that we’ll have to invest in for many years, but . . . And then the quality of leadership at the board level, at the director’s cohort, and then within each of these program . . . or in the fellowship, you can see just how people are able to both bring their personal experience as workers, and then also to get them at the larger social, political, and economic levels.

However, as we discuss more fully in Part III.C., the sector context may determine the scope of possibility for leadership development in worker centers. According to Steven, a lawyer who has worked with numerous worker centers:

127. See Thomas B. Stoddard, *Bleeding Heart: Reflections on Using the Law to Make Social Change*, 72 N.Y.U. L. REV. 967 (1997)(on “culture-shifting” through law).

128. Jennifer and Paula said: “Even in our leadership development program, we’re talking to people about the things that have happened in their lives and how that can limit them as leaders, and then what pairings they need to engage in on an individual level and a collective level so we can all just lead better.” Marianne phrased it slightly differently: “I would say that . . . they actually have made a structural choice, so they have a program . . . really to engage members from their affiliates, and I think some staff are involved too, but really engage them in political education, leadership development, skills training for them to be good organizers, and really tryin’ to connect what they do as an organizer, as a worker . . . Like connected to their personal trauma and the healing, and so they engage in somatics practice. So I think there’s a real effort [the organization] is making to broaden the base of leadership that it goes beyond paid staff.”

129. Marianne also made this point.

130. See POLLETTA, *supra* note 15, at 7 (“In the organizations that I studied, I was struck by participants’ emphasis on *deliberative talk*. . . [T]he goal was not unanimity so much as discourse. But it was a particular kind of discourse, governed by norms of openness and mutual respect.”).

“If you put more resources into leadership development, you maybe move more slowly; if you’re trying to move fast for policy changes against well-resourced opposition, leadership development is different. And you look for a different set of people and skills.”

#### 4. Political Education

Worker centers engage in at least three forms of political education of their members and staff. First, organizations teach workers how to engage in politics: the push and pull of interest groups in making laws through legislative and administrative processes.<sup>131</sup> A state-based sectoral network of worker centers prepares what Hanna called “facilitation guides” for discussion amongst workers at the affiliate organizational level. The guides discuss the concerns of elected officials and other factors that determine outcomes in the policy-making process. As Hanna explained, the process is so that “[t]hey don’t just present an idea, they train workers to understand the context to a decision that has to be made, questions around political strategy and political context.” The goal is to build consensus within organizations and then across the network for the how it will approach choices and decisions in the policy-making process, and then the consensus decision can be reported back up to the state level organization. The state-based network also uses this kind of process to do strategic planning and organizational development work across the affiliates. In Hanna’s words, “[i]t’s not an agile infrastructure, those bigger lift decisions where we really touch back with the membership, it takes maybe two months, to . . . [m]aybe a month, we could do it.”

Second, organizations teach workers about the political: thinking about the forces in conflict in their sector and across the economy.<sup>132</sup> The aspiration is to offer staff and workers the capacity to develop their own political analysis.<sup>133</sup> Nearly all national networks of worker centers have annual assemblies of worker-leaders, at which both politics and the political are discussed and debated across organizational and geographic bounds.<sup>134</sup>

Third, organizations engaged in funded worker education programs extend those discussions to focus on how to change debilitating conditions of work. For example, Robert explained, his worker center receives small amounts of funding to provide health and safety training for workers. Organizers pivot midway through the workshop to focus on how to challenge conditions while remaining

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131. CHANTAL MOUFFE, *ON THE POLITICAL* 8–34 (2005).

132. MOUFFE, *supra* note 131.

133. As Jennifer and Paula put it, “And we got on an organizational level, we incorporate a lot of both the political analysis that we have of what’s happening in the broader society and then when it’s focused on what’s happening in the care industry, and we do that pretty regularly. So as we do it in our staff retreats, we also have staff that meet together every month. So there’s a way in which we’re helping to create that ability for the whole staff to participate in analysis and strategy, but not just purely focus on our sector or just domestic workers. So I think that’s one way that we’re trying to view that culture.”

134. Marianne reported that her own organization does this and that various other organizations do too.

employed. There is a broad understanding of how employers may be abusing their power. As Robert explained: “[T]hat’s always the thing, [the] workers know generally when they’re getting screwed. The problem is, how do you move that to action without getting fired?” Robert continued, explaining that laws that are supposed to protect workers against retaliation for challenging illegal employer practices aren’t often enforced:

[E]veryone knows that if you speak up about a problem, even if you’re on the right side of the law, you’re still fucked. That’s...where you have the conversation about, “Okay, what are we gonna do to do this and not get fired? How do we do this collectively? How do we do it to whatever?” Get press involved. That’s a conversation you have to tack on there, but it takes more time and it takes more resources. And that’s the constant struggle that we have as a worker center.”

Organizers struggle to make this pivot in the context of otherwise formal and formulaic educational programs.

### 5. Worker Autonomy

A final form of embedded worker governance in this organizational context is an aspiration and preparation for worker autonomy. One worker center operating with a very lean staff in an immense and growing non-unionized sector of the economy is particularly focused on how to prepare groups of workers to exercise power at their workplaces, ultimately independently of organizational staff. Its organizer, Robert, explained:

The workers that are taking action on their own without checking with us, they’re just doing it and then telling us later. Not necessarily strikes, but delegations, running petitions, we haven’t been staffing as much as we used to, and so, they actually are running their own meetings, convening in regular basis with us or without us, but that’s because they’ve been doing it for a while.

This works, the organizer explained, because they have experience through the center’s organizing activities: “if they tried this three years ago, it wouldn’t have happened.” The worker center does not have the capacity or the access to educate, support, and protect workers at numerous work settings in the region in which it operates, so autonomy and taking the initiative has “been forced on them.” Robert explained that the shortage of staff at the center has, in some sense, been good for the workers:

But it’s always a lot easier for them to just say, “Oh, you guys do it.” Right? [chuckle] Now we’re like, “No, we can’t do it man. It’s on you.” It’s actually forced us to do that. . . .I’m not quite sure what would happen if we pull back entirely, but I think a lot of the activities that they’re taking is, when it’s hot they’ll call heat break. We have nothing do with that. And they don’t have their phones inside [the workplace]. They can’t communicate with us. They’re just like, “No, we’re doing it.” Or if there’s a forklift that’s brakes are a problem and it’s dangerous, they’ll call it out and say, “Hey, that machine needs to be taken out of service.” That stuff happens more than you think, but now that they’re more organized it happens even more.

The lack of worker center resources means that workers must take it upon themselves to run meetings, make demands, formulate petitions, and call work stoppages. The focus of domestic worker organizations on personal transformation discussed above is analogous to this aspiration for the transformation of groups of workers in larger workplaces with hundreds or

thousands of workers on site. The goal of the organizing is to help workers understand what constraints hold groups of workers from acting in concert. Does the group have a strategic vision that it hopes to achieve in a workplace? Is the group linked to other groups of workers in similar workplaces? How can positive lessons in organizing be transmitted across groups? A leader at this worker center posited that this kind of autonomy was already in operation at many workplaces. The goal of organizers was to invest in groups of workers and make connections to struggles in other workplaces.

A second context in which the exercise of worker autonomy is essential is in litigation when the worker center is not a party. As Robert said:

[W]e don't have attorneys on staff, we're not the party. We can recommend and often when you get to the point of the settlement, these guys have been involved with a lawsuit for several years, guys and gals, they've been involved and been the face of the organization for the lawsuit for several years. It's not just [the worker center that] says, "Settle," and they do it . . . . If our relationship is good, they listen and we have a conversation.

Workers need to make decisions about the conduct of litigation and in judging whether to settle cases or to continue to fight. The lawyer-client relationship pulls workers away from organizers.<sup>135</sup> Workers in these contexts may be called on to defy the pressures of their own immediate need or that of other workers to sustain deeper and longer-term shifts in their conditions of work. Worker centers invest in groups of workers entering into litigation with the understanding that they will not ultimately have a decision-making role in most forms of litigation or administrative adjudication. This is an essential and time-intensive function of worker centers with uncertain outcomes.

#### IV.

##### UNIONS AND WORKER CENTERS: CONTINUITIES AND DISCONTINUITIES

For reasons of size and budget, worker centers—whether local or national—are, at the moment, not at risk of creating a genuine bureaucracy. The democracy and accountability problems that bureaucracy entails and that have shaped half a century of criticism of labor unions are, therefore, not yet a substantial concern. The field, however, is dynamic and we seek to understand the trajectories of organizations as much as their current constitution. Accordingly, this part compares worker centers to unions with respect to four crucial characteristics of social movement organizations: (1) the mobilization and training of workers to engage in effective campaigns; (2) the relations between the professional staff and the worker members; (3) the balance of power between local groups and the national organization of which they are affiliates; and (4) the prospects for developing a self-sustaining funding model.

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135. Ashar, *supra* note 92, at 1894–95.

### A. Mobilization and Training of Worker Leaders

One of the most significant features of all the organizations we studied is that all count on intense member engagement to conduct their campaigns. That is not surprising about, and indeed is a well-known feature of, worker centers that focus on organizing workers in a particular community and pressuring individual employers to change certain policies. Thus, Robert, a leader of a local worker center in the warehouse industry, noted that the organization is a

[P]retty traditional non-profit organization. We have a board of directors . . . . We have . . . co-directors. We report to the Board of Directors, which is a group of folks who are community members, union leaders. We do not have any current or former . . . workers [in the industry they are trying to organize] on our board, at different points we've had . . . workers, but it's been really hard to hang on to and keep them engaged on the board level[.]

In describing the way workers are involved, Robert explained:

So this is something we've struggled with over the years and had long conversations and attempts. We don't have a membership structure currently. We're looking into what that would look like. Most of our work is done in the context of campaigns. . . . A campaign of a group of workers in a specific workplace, organizing to change their conditions. And so, that's where I think most of the worker accountability occurs, is that those workers as committees make decisions about the plans around their campaigns, around the strategies. That's where we've been able to engage workers. [A]nd not just "when are we gonna do the delegation?" kinda conversations, but, "what is the next step?" conversations around what we're trying to build toward, what kinds of goals we're trying to get accomplished, and how we're gonna get there.

But the structures to elicit and maintain intense member engagement exist even among organizations that are focused on state-wide or national legal policy campaigns and legislative change. Hanna, a statewide leader of an alliance of seven organizations each rooted in a distinct community within the same sector, explained:

We have a document, like a living document that is adjusted year by year, that stipulates the infrastructure for our coalition, the staffing structure, as well as the decision-making structure, how work is carried by different organizations. And in terms of leadership and decision-making, that is vested in the seven organizations of the steering committee and decisions are aimed to be made by consensus. And when they're not, they're made by a majority vote since it's an odd number. And the other requirement we have had is that the representatives . . . that sit on our steering committee that makes decisions about our work have to include . . . members from the base in order for those decisions to be made. We built into the structure—and this became really important during our legislative campaign . . . — when there was decisions made about amendments, even, amendments to the bill, shifts in the bill content, all of that had to be approved by the steering committee.

Hanna added that when the organization is engaging in strategic planning, or deciding on what legislation the organization should seek to have enacted, "we have this kind of feedback loop infrastructure . . . [by which] the different worker centers . . . go . . . to their general membership."

To make member engagement work as a form of decision-making and strategic planning, it is necessary to educate workers about the issues and the political context. That is a resource-intensive and time-consuming process. Thus, in describing the way that affiliates of the alliance of seven affiliated

organizations described immediately above engage the membership in strategic planning, Hanna explained:

They don't just present an idea, they train workers to understand the context to a decision that has to be made, questions around political strategy and political context. And then they build consensus among their membership and then take that consensus and that's what [is] brought into decision making in the coalition.

Unions have long struggled with the same kinds of challenges and some have employed similar processes that balance member engagement at the local level with efficient decision-making at quadrennial national conventions. It is not feasible in this article to exhaustively compare and contrast the decision-making structures of worker centers and unions. It suffices to note for present purposes that both types of organizations have to work to balance member engagement in decision-making against the need to be responsive to fast-moving events. Both rely on professional staff to make a great many decisions.

#### B. The Development of Professional Staff Divorced from Worker Members

One of the old concerns about union democracy, going back to the 1950s at least, was that unions tended to become oligarchical because it was too hard for someone who once worked in the industry to learn and adapt to the very different—and often more respected and less physically demanding—job of being a union leader for just the term of years in office and then leave office and go back to working in a factory.<sup>136</sup> Just as unions in the 1930s and 1940s envisioned eliminating this difficulty by training factory workers to be permanent union organizers or union stewards (at least part time), worker centers think of training members to become organizers by profession. The goal, as Marianne, a leader of a national organization of domestic workers, explained, is to:

[R]eally engage [the workers] in political education, leadership development, skills training for them to be good organizers, and really tryin' to connect what they do as an organizer, as a worker, is . . . [l]ike connected to their personal trauma and the healing, and so they engage in somatics practice. So I think there's a real effort [our organization] is making to broaden the base of leadership that it goes beyond [paid] staff.

The first step is often to work as a volunteer part-time worker-leader, and then perhaps as part-time worker center staff, either while still working in the occupation or while working on staff of the worker center or another one like it, and perhaps finally as a professional full-time staffer. Marianne explained the difference:

I met some of [a national worker organization's] members who are in leadership role[s], but they haven't transitioned into staff, so they're still working in the industry. . . I've also seen where they're splitting time. They're still working [in the industry], but

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136. LIPSET, TROW & COLEMAN, *supra* note 18. This was also, to some extent, an accomplishment of the United Farm Workers – to train farm workers to become organizers so that they would never again have to work in the fields. FRANK BARDACKE, *TRAMPLING OUT THE VINTAGE: CESAR CHAVEZ AND THE TWO SOULS OF THE UNITED FARM WORKERS* 314 (2011) (“Having experienced the joy of politics, most of the farm workers [who were involved in organizing the nationwide grape boycott in 1968] swore they would never work in the fields again – although Fred Ross, who was in charge of training the boycotters, admonished them not to say that publicly.”).

also working at [the organization] as a staff person. But the attempt is . . . [f]or them to become full-time paid organizers. . . .

I think this is where the organizing strategy is different, and again, not in any way [a] critique of the unions, but my understanding of the worker center as a broader movement strategy is really lead with base building, so part of the work as an organizer is . . . . And they're running campaigns, and part of the campaign work has to be base building. So I think that the transition of you're working on a factory floor one day, and now you're in an office somewhere in the city, and maybe engaged in contract negotiation, that comparison isn't—[i]t's not easily transferable or applicable in the worker center.

All interviewed worker group leaders are quite intentional in their efforts to prevent a division from arising between the professional staff and the membership. As Jennifer and Paula explained, the evolution in the board structure of her organization was intended to ensure that worker members retain power in the national board. In the beginning, the national organization was simply an affiliation of local groups and “didn't have its own 501(c)(3), and so there was a steering committee of all affiliates. Each affiliate organization being represented by staff as well as a worker.” As described above, each of the six affiliates represented on the national board are represented by two people: a staffer and a worker member. When asked specifically whether it is difficult for workers who have been part of the national board to continue to work in the field in their occupation, Jennifer and Paula said:

So that's actually less of an issue for us. [...]” I will say that one thing we've seen is some of our domestic worker leaders do get on staff of some of the organizations, either part-time or full-time, to become organizers with their main role being building contact and connection with more domestic workers and bringing them into the organization.

And what's been important in continuing them holding sort of the values is that as we develop organizers, . . . we really kinda integrate a sense of responsibility and accountability to what that means, in particular to the rest of the base and to other workers. . . . Most of them continue to be part of the workforce and do most of their work as volunteers either in their organization or with [our organization]. . . . I do think that one thing that I would add—and I don't know that this is something that would safeguard us from that [oligarchy] or not—but I do feel like one of the kind of core values of [our organization] and what people consistently say why they are part of the alliance is because we built in a lot of care, a lot of connections, a lot of resilience.

Yet most leaders to whom we spoke recognize that creating structures that will keep the organization accountable to its members is an ongoing project. As Robert, a leader of a local organization, said: “all in all we basically have like a traditional nonprofit structure, and don't have a lot of real clear accountability from the workers.” That is not to say the organization is not accountable at all, just that the accountability is not “real clear” and is not inherent in the structure. Jennifer and Paula, leaders of a national organization, explained:

Yeah, there's a lot of learning, a lot of experimentation on how to use these different structures in order to achieve transparency and democracy, and leadership, accountability. And I think we're all trying to figure it out and it's really just a process, but I wouldn't say that we have it figured out completely.

### C. Power of Local Affiliates Versus Power of National Organization

The history of labor union democracy has a featured lively debate over whether unions should be more centralized or less so. Though some of that debate lost its edge as unions lost power, it surfaced with the usual vigor (and the all-too-common recriminations) when the SEIU restructured its historically quite autonomous local unions in the early 2000s. SEIU created larger locals that could engage in sectoral bargaining on a regional or statewide basis to counter the growing consolidation of power among ever-larger health care corporations, but critics worried that it consolidated power in the professional leadership at the expense of grassroots activists.<sup>137</sup>

The challenge of preserving the power of local affiliates while engaging in a nationwide campaign against a nationwide business organization exists for some worker centers as well. A leader of one nationwide worker center, and another person involved in the same organization from the early years, both said the structure of the worker center evolved because of the need for national coordination. As with unions, the organization reduced the autonomy of chapters in particular cities that formerly had been linked mainly by affiliation agreements in order to concentrate organizational power in the national organization to counter the power of the major national business association. As Steven said, the fact that the workers confronted “a very resourced, unified opposition” was “a significant factor in pushing [the worker center] to have a single organization to respond or to attack or whatever.” Henry, a seasoned scholar-activist who has studied and been involved with many worker centers, explained in contrasting worker organizations in the restaurant, domestic work, and day labor sectors, “the industry make-up . . . influences the way they do decision-making and the way they approach strategic decisions.” In economic sectors—such as domestic work—that are not dominated by large nationwide corporations and their powerful lobbying organization, the tendency is to have a national federation of worker centers to engage in policy advocacy but the alliance is looser and more of the funding and policymaking power is held in the local organizations.

The federal structure of worker centers is also, in some cases, influenced by the determination of the opposition to engage in an affirmative campaign to destroy the workers’ organization. As the scholar-activist Henry explained, whether the organization and its leadership are “under attack” and the target of “attempts to destroy the organization” influences how the organization’s leaders and members can debate “what we can do to move forward and how to strategically—what makes sense, what doesn’t make sense—to address important issues.” In contrast, explained Steven, reflecting on his involvement in several worker centers, a national federation of predominantly local organizations is possible when a worker center “has no adversary. Nobody’s opposed. And there’s no economic interest [being] challenged.”

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137. An insightful analysis of the issues, including a discussion of the particular case of the SEIU-UHW dispute, is Matthew Dimick, *Revitalizing Union Democracy: Labor Law, Bureaucracy, and Workplace Association*, 88 DENV. U. L. REV. 1, 1 (2010).

Another reason that some worker center national organizations are affiliations of local groups, in which the local group is the primary locus of activity, rather than national groups in which the national organization is the dominant actor, has to do with the historical development of the organizations. As Steven explained about one national federation of worker centers:

[T]he locals existed first. They were . . . worker organizations [that] grew up in New York and San Francisco, and at least half a dozen, maybe more, other cities. And then they gathered together within one of the U.S. social forums ten years ago or whatever and formed the national organization out of that. The structure of the board, the national board . . . , partly [is] a result of the history.

However, Steven immediately qualified the statement about history by continuing:

I think also a different priority and building local leadership and local strengths and democracy internally, but also not having any external pressure. They have a board where most of the members represent chapters . . . or the locals . . . [or their] component organizations. . . . So, really, the chapters are on the board for so many years. And actual people sitting on the board are there—sent by the chapters—and the chapter could switch who their representative is. It's a very interesting structure.

Jennifer and Paula, leaders of the same organization described by Steven, explained that the national organization was not originally a separate legal entity but was instead a steering committee composed of representatives of the affiliates. That national steering committee “always held that level of decision-making authority in the organization.” When the national organization became a § 501(c)(3) organization, the steering committee became the board of directors, and the composition of the board changed slightly but continued to give affiliates and workers a majority vote on the board.

Many interviewees noted the constant challenge of maintaining autonomy and power at the local level while enabling national or regional coordination and accountability to an oversight organization like a board of directors. Henry, a former leader of a local nonprofit that was the institutional home of a worker center and organizing project, explained the tension between accountability to the workers and accountability to the board of directors

One of the challenges I had . . . because [my organizer] would always push me to become more independent of the decision-making above me. Because [of] the worker centers, he wanted to have his own model of his whole strategy with the [workers], his own independence, which makes sense because it's what the workers wanted. . . . I was caught right smack in the middle of this, because then I also had to be accountable to [the nonprofit's] leadership, [to] my executive director, and also the Board of Directors. So I always found myself trying to find this checks and balances approach, make sure I keep [my organizer independent] to develop his strategy for . . . organizing for the worker centers. And then I had to figure out how to translate that strategy into something that was acceptable for the people above me.

When asked how the interests of the two groups diverged, Henry identified institutional control or credit and also resources:

I think we were all on the same page of promoting the leadership and improving. [T]he . . . people were on the same page with the leadership development and improving the lives of the [workers]. And also putting up effective worker centers as far as providing services and education for the workers and employment.

But when an organizer “thought of a strategy to create a movement like worker centers would become independent, be part of a bigger movement,” there was “tension” because the nonprofit’s leadership “saw these worker centers as a project of [the nonprofit] while [my organizer] and these other organizers saw these worker centers as the creation of a movement of [workers in that sector].” Henry continued:

You know, [the nonprofit] was a membership organization. We were trying to build our membership, so there was always that struggle that the day laborers at the worker centers felt that the worker center was the organization; they were members of their worker center, and not so much of the [nonprofit].

Moreover, Henry explained, the money to operate the worker center came from a foundation that funded the nonprofits, of which the worker center was just one part. Two different nonprofits that housed worker centers at various points felt like if the workers “became independent from their own movement, that there’d be a competition with resources. . . . If it branches off on its own, then it creates a dynamic about the resources, because then the resources should go to the new organization since it’s no longer connected with [the nonprofit].”

#### D. Dependence on Foundations Rather Than Member Dues

A major difference between worker centers and labor unions, of course, is that worker centers depend on foundation funding, not on member dues.<sup>138</sup> The availability of foundation funding has been crucial, according to Henry, who has long experience in worker center organizing:

[O]ne of the biggest [developments has been] the Ford Foundation providing resources to worker centers. . . . I think we’re going into our tenth year now of the Ford Foundation. . . . And so the way they look at it—they see worker center networks as labor market intermediaries. They have been leveraging important gains for workers and working with key stakeholders, that’s how they see unions. . . . They don’t call it organizing because the Board of Directors, they don’t do anything that’s considered organizing. But they call it supporting worker centers to be effective labor market intermediaries, which they are.

All of our interviewees noted that they rely heavily on foundations and philanthropy, not on member dues. Most explained the absence of a dues model by the very low wages workers are paid would make charging dues terribly onerous on the workers. The small amount workers could pay, combined with the fact that many low-wage workers have no access to banking or formal financial services, would make the collection of dues not worth the effort. Robert said the organization tested out a dues model a few years before but “[i]t was just really burdensome to—even dealing with [five dollars] a month. We literally were chasing people down for [five dollar] bills.” Robert noted that their center does not “have a membership structure currently. We’re looking into what that would look like. Most of our work is done in the context of campaigns.”<sup>139</sup>

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138. See generally, Catherine L. Fisk, *Workplace Democracy and Democratic Worker Organizations: Notes on Worker Centers*, 17 THEORETICAL INQUIRIES IN L. 101 (2016).

139. Hanna also talked about considering a dues model.

Leaders did not perceive that the reliance on philanthropy and some government grants to fundamentally shape the governance of the organization. As Hanna said, “fundors do not have governing say and I don’t believe that they play a role in governance.”<sup>140</sup> But funding can impact priorities. As Robert explained:

There’s very little funding for organizing, and what we end up doing is getting money for other stuff and then doing that work, and figuring out how to loop organizing into it. There’s . . . money for policy—not a lot. There’s money for policy. There’s money for civic engagement and voter engagement. There’s money for education. And you’d have to figure out how to engage workers in a deeper way. And most of the time you can, if you’re doing a training. . . .

Yet, Robert continued:

[A]s an organization that’s growing up and learning, we’re having to figure out how not to just chase money and do whatever the foundation says, but actually engage them and say, “Hey, this is what we do. We’re not gonna twist ourselves into knots to do what you want us to do, ‘cause otherwise we’ll never get anything done.”

Henry, who has been involved with many different worker formations, noted the significance of funding for the formation of the national worker center networks. The Ford Foundation, Henry explained, funds “worker center networks. The Ford Foundation is not going to fund individual worker center because they also see the stuff as impact funding.... They feel like it’s more beneficial . . . for them, [and] they get more for their dollar if they give to the worker center networks and then the worker center networks can develop innovative strategy. . . .”

## V.

### IMPLICATIONS AND CONCLUSIONS

There are at least five additional implications of our findings for how we think about worker organizations in the contemporary U.S. The first is related to the interaction between governance experimentalism and the types of activities undertaken by SMOs. Does governance formalism lead to the use of more conservative advocacy tactics? Second, is the “iron law of oligarchy” inevitable? Third, is governance experimentalism scalable? Fourth, do organizational democratic norms contribute to social and political democracy outside of the organizations? Finally, fifth, how do legal regulation and funding models interact with governance experimentalism? We offer contingent and preliminary answers to these queries on the basis of our pilot study with leaders and affiliates of workers centers.

#### A. Organizational Democracy and Advocacy Tactics

It is difficult to establish a relationship between governance experimentalism and how confrontational or bottom-up organizational advocacy might be. First,

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140. Similarly, Robert said the funders are not represented in governance.

worker centers hew to a baseline investment in worker voice and autonomy. All of the organizations examined in this article have worker leadership on campaign committees and engage in political education of varying kinds. Above that baseline, some of the organizations have workers on non-profit boards, invest more consciously in leadership development and personal transformation, and try to equip workers not involved in core campaigns with the capacity to stand up to employers in far-flung workplaces. This variation appears to be caused largely by the conditions in the sector in which a worker center operates. The relative economic and political power of employers is a significant determinant of how experimentalist with worker voice and autonomy a worker center can be or how decentralized it can be. In sectors with powerful opponents, such as the National Restaurant Association, a worker center network has to be more centralized and project greater message discipline. It also has to self-police so as to preclude employer attacks on its quasi-union status. Further, the profusion of less restricted foundation resources allows for greater organizing capacity, which translates into governance experimentalism and focus on worker voice and autonomy. This allows the networked worker centers with support from the Ford Foundation to have a greater capacity for governance experimentalism than stand-alone worker centers, which need to scramble more to produce a program that is fundable.

All of the worker centers about which we gathered information have engaged in a range of advocacy methods, including litigation, legislative advocacy, and direct action. They have used both top-down and bottom-up tactics. “[A]ctivists’ success usually depends on their tactical innovation.”<sup>141</sup> Those worker centers with powerful and unified opponents in their sectors have deployed adversarial tactics to a greater degree than organizations in other sectors. But there doesn’t appear to be a simple relationship between the use of confrontational tactics and the degree of governance experimentalism in the organization.

#### B. Defying the “Iron Law of Oligarchy”

SMOs can resist oligarchy.<sup>142</sup> We have collected interview data about organizations that are all less than 20 years old. Perhaps there is further professionalization or inevitable bureaucratization or leadership corruption in the future of these organizations. But we saw no evidence of a widening disinvestment in worker voice and autonomy. Some organizations exhibit a substantial governance experimentalism. Others operate as a typical nonprofit organization managed by staff with a modest amount of member engagement. Those that have been more experimental in governance have been able to do so because of the structure of the sector in which their members work. The initial

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141. POLLETTA, *supra* note 15, at 10.

142. Staggborg, *supra* note 21, at 604 (“Based on my data, I dispute the conclusion that formalized SMOs necessarily become oligarchical. In fact, many seem more democratic than informal SMOs because they follow routinized procedures that make it more difficult for individual leaders to attain disproportionate power.”).

social justice mission of the organizations and the commitment to a degree of accountability to constituents remains, even in the absence of established membership models or external legal regulation. Although size necessitates formalization, those organizations practicing a high degree of experimentalism have developed alternative approaches to governance challenges.<sup>143</sup> For example, one organization strategically allocates resources to enhance democratic norms and assure accountability in areas of potential breach, such as legislative compromise and social enterprise development, when individualized or third-party interests may undercut a commitment to collective interests. In sectors with powerful employer interests, professionalized SMOs are no match for entrenched antagonists;<sup>144</sup> SMOs must engage in mass mobilizations to mount challenges to those interests, which depend on organizational credibility and established accountability structures, thus countering the push for centralization in such sectors. Pragmatic concerns may reinforce a founding mission to keep democratic norms present and vital as organizations and the fields in which they operate evolve.

### C. Scalability, Funding Models, and Union Collaborations

Preserving member engagement and developing a sustainable financial model to allow the organizations to grow to a national scale were two of the most common unsolved questions leaders identified. As Marianne said, “I would just say that I think funding is a huge challenge . . . . [Worker centers] are still grappling with what is the revenue generation strategy to sustain their organizations.” Hanna candidly confessed, “[t]he infrastructure that we currently have probably wouldn’t work to grow to scale.”

Everyone recognized the need to develop a self-sustaining funding mechanism but member dues in the union style was not embraced by anyone as the solution because of the very low wages paid to the workers whom worker centers are organizing. Steven mentioned a union leader who had raised seed money “to underwrite various worker centers’ efforts to build mission-consistent revenue generating enterprises. I don’t know if anything’s gotten much off the ground. I work with a couple that [one nationwide worker center organization] is trying, but they’re moving very slowly.” Marianne suggested that the challenge was not simply that workers can ill afford to pay dues, but that it’s not clear what membership should mean: “What’s the definition of when somebody’s engaged or when somebody’s a member? I think it also implicates a question of revenue generation for worker centers.”

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143. *Id.* (“My research shows that SMOs vary in the ways in which they deal with internal organizational problems and changes in the environment. Formalization is one important means of solving organizational problems, particularly as SMOs grow larger; however, SMOs can also develop alternative structures.”).

144. Jenkins & Eckert, *supra* note 27, at 827 (“But if the goal is bringing an excluded group into the polity, a mass movement is necessary. . . . Well-funded professional SMOs are simply no match for an entrenched antagonist.”).

One way in which worker centers meet the challenge of scalability is by collaborating with labor unions. For most of the twentieth century, the term labor organization was synonymous with labor or trade union, and virtually no worker organization existed that was not a labor union. In the early twenty-first century, many wonder whether worker centers will entirely eclipse labor unions, or what role each institution will play. We suggest that envisioning labor unions and worker centers as fundamentally different may be a mistake.

The many collaborations and partnerships between worker centers and unions suggests that the divide between the union model of organizing and representation and the worker center model may be narrowing. Unions fund worker centers and collaborate or even formally affiliate with them. The carwash campaign began on the worker center model but resulted in several car washes being unionized. Fight for 15 was financially supported and staffed by SEIU. The Caring Across Generations campaign is a joint project of SEIU and NDWA. Unions support the One Fair Wage campaign of ROC to eliminate the subminimum wage for tipped employees. And there are many affiliations.<sup>145</sup>

Equally as significant, perhaps, is that organizations are developing with union support and are emulating the worker center model of organizing. Arise-Chicago is one example.<sup>146</sup> Others include partnerships between NDLO and construction unions in which day laborers are members of both NDLO and LIUNA. The collaborations of worker centers and unions can result in an organization that bargains collectively and gains enforceable contracts but that retains the social movement and bottom-up accountability of a worker center. As Henry explained:

In the carwash campaign—the great thing about the carwash campaign is its being led by organizers that are more rooted in worker centers. . . . [A]nd so it's a union model, we do have collective bargaining, so if we can find an opportunity for collective bargaining, we pressure them upholding to the union contract. But the majority of workers belong to the worker center because we don't have enough resources to unionize every car wash. And then that worker center, they have their own decision-making processes separate and apart from the AFL-CIO and United Steelworkers. And they form their own decisions. But that's because the folks that run the campaign have the mindset, they come from the worker center movement background.

Of course, it is still true that unions seek to represent workers for collective bargaining and worker centers do not. And it is now and always has been true that unions represent more than their members especially in pushing legislation and administrative regulation to protect working conditions. For all the overlap, the main differences remain (a) dependence on member dues versus foundations; (b) collective bargaining and contract administration; and (c) legal regulation.

Other than actual or potential collaborations with labor unions, worker centers' baseline commitment to worker voice and autonomy—with workers on

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145. Victor Narro, Saba Waheed & Jassmin Poyaoan, *Building a Movement Together: Worker Centers and Labor Union Affiliations* (2015), available at [https://www.labor.ucla.edu/wp-content/uploads/2018/06/AFL-CIO\\_UCLAreportnobuf\\_final.pdf](https://www.labor.ucla.edu/wp-content/uploads/2018/06/AFL-CIO_UCLAreportnobuf_final.pdf) [<https://perma.cc/9FDJ-3LSL>]

146. Both Henry and Ruben cited the case of Arise-Chicago.

every campaign committee and sophisticated political education—ensures that democratic norms may be scaled upward as organizations get larger and as they influence one another in their fields of work. Further, the commitment to intersectional struggle—allying with others on issues other than the terms and conditions of member employment—is strong and fairly uniform. For example, worker centers have been prominent in activism against immigration enforcement and police violence.

These commitments are not ones that all worker advocacy or even social justice organizations have abided by in the recent past.

#### D. Social and Political Democracy

A major theme in contemporary scholarship and political discussion, as noted briefly above, is the prospect for democracy in the context of neoliberalism. The dearth of democracy in the workplace, noted most recently by philosopher Elizabeth Anderson<sup>147</sup> and law professors including Cynthia Estlund,<sup>148</sup> has always been recognized as having dire consequences for the prospect of democracy writ large. The Industrial Revolution, Anderson says, shattered eighteenth century egalitarian theorists' hope that "a free society of equals might be built through a market society."<sup>149</sup> Employment in large enterprises for the vast majority of workers after the Industrial Revolution, whether in a Ford factory in 1930 or in McDonald's today, was to subject oneself to a dictatorship for most of one's waking hours. The only real freedom the worker enjoys is to quit. The freedom to quit is not much freedom. After all, Anderson points out, Mussolini was no less a dictator because Italians could emigrate.<sup>150</sup>

Social democracy and labor unions, the two institutions that achieved success and scale in combatting autocracy in politics and at work, are enjoying a new vogue. The explicit purpose of the National Labor Relations Act of 1935, which granted workers the right to unionize, was to create a more equitable political economy and a more robust political democracy by protecting workplace democracy.<sup>151</sup> Shared determination of the conditions of work—what used to be called industrial democracy—was essential to political democracy. As the statute's principal sponsor, Robert Wagner believed, those who "know the

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147. ANDERSON, *supra* note 11.

148. Cynthia Estlund, *Rethinking Autocracy at Work*, 131 HARV. L. REV. 795 (2018).

149. ANDERSON, *supra* note 11, at 6.

150. *Id.* at 55.

151. Among the findings and policies of the NLRA are that "[t]he 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 . . . tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry" and that the policy of promoting commerce will be served "by protecting the exercise by workers of full freedom of association, self organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." 29 U.S.C. § 151 (2018).

dignity of freedom and self-expression in their daily lives . . . will never bow to tyranny in any quarter of their national life.”<sup>152</sup>

Labor unions institutionalized what Anderson identifies as the four essential ways to protect “the liberties and interests of the governed under any type of government.”<sup>153</sup> These are: (1) an effective use of the threat of exit, as by striking or enabling workers to leave a job without being blacklisted or unemployed, (2) the rule of law, effective enforcement of contractual and statutory rights to minimum standards and fair treatment, (3) substantive constitutional rights, rights at work, and (4) voice, a say in working conditions.<sup>154</sup> The decline of unions has contributed to a democracy deficit at work and in politics.<sup>155</sup>

Our research on governance within worker centers suggests these organizations strive to fill that deficit in the workplace, in communities, and through local, state, and national political mobilization by building individual and collective worker voice in a bottom-up way that is responsive to the lived experience of workers. Unlike unions—which are required by law to operate internally as electoral democracies—worker centers embrace internal democracy as a matter of fundamental commitment, and as a strategy to build worker power. As Jennifer and Paula said, internal democracy is “not inherent in the 501(c)(3) structure” of nonprofits unlike “the structure of a union [that] kind of inherently encourages sort of democracy because workers vote for the leadership.” They continued: “I bet if you look at non-profit both across the board, most of the boards have connections to funders or fundraising capabilities. . . . I would say probably a minority have representation from the base, for example.” Robert said, “all in all we basically have like a traditional nonprofit structure, and don’t have a lot of real clear accountability from the workers.”

Many leaders recognized that keeping workers involved in governance or internal decision-making presents continual challenges as worker centers grow in size. As Jennifer and Paula said:

[T]here’s a lot of learning, a lot of experimentation on how to use these different structures in order to achieve transparency and democracy, and leadership, accountability. And I think we’re all trying to figure it out and it’s really just a process, but I wouldn’t say that we have it figured out completely.

They continued, in answering a question about processes for democracy in organizational governance:

In some ways all the questions that you’re asking us today, we might have different answers in a few years. [laughter] I think there are certain things we are gonna wanna keep still central around transparency, around interdependence, around care. And they will change in nature and implementation as we get bigger.

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152. JAMES A. GROSS, *BROKEN PROMISE: THE SUBVERSION OF U.S. LABOR RELATIONS POLICY, 1947-1994* 1 (1995). Another source Professor Gross quotes for this proposition is U.S. DEPT. OF LABOR AND U.S. DEPT. OF COMMERCE, *COMMISSION ON THE FUTURE OF WORKER-MANAGEMENT RELATIONS, REPORT AND RECOMMENDATIONS* (Dec. 1994).

153. ANDERSON, *supra* note 11, at 65.

154. *Id.* at 66–70.

155. ROSENFELD, *supra* note 13.

Hanna echoed the same concern: “[A]s the domestic worker movement grows, there’s also new domestic worker organizations popping up...all across the State of California, so an emergent question for us is, how do we provide inroads for these non-steering committee-level domestic worker groups, and at what level?”

Member involvement in a large organization is an equally significant challenge. Hanna explained:

So I think a task that we’re trying to figure out is, how do we provide different layers of engagement, and the ability to weigh in on the strategic direction of our work, and to be involved in the work of the coalition at a deeper level. . . . We’ve experimented with . . . these mass base membership drives, where we’ve reached thousands of workers through outreach. I think a challenge compared to unions is definitely how you integrate them when you don’t have a collective bargaining agreement. When you’re not plugging them into a specific membership that directly. . . . Yeah, I don’t know, I just think it’s a challenge to capture them as members when you’re not actually signing people up on a card. . . . I think our current infrastructure would have to shift, to be honest, in order to grow to scale.”

The challenge of involving workers in the activities of the organization is compounded by the fact that many of the workers whom worker centers are organizing do not have a common workplace. Day laborers, domestic workers, and even many restaurant workers, work alone or with a relatively small number of people. High turnover can make it difficult to form an organization even where workers have a common worksite, as in fast food. Several solutions are being explored.

One is preserving the smallness of any particular organization but connecting them regionally through affiliations. Hanna mused:

I think all organizations are thinking about how they grow to scale in their region, and then people look to the coalition to be how we grow to scale in a different way. We grow to scale throughout the state, through different ethnic communities, Filipino, and Chinese, and Latina . . . workers in different regions, and then really prioritize having an authentic decision-making structure at the center of the statewide work. And that’s how we kind of grow to scale. I don’t know if that makes sense. Versus a union model which may open new chapters, and a new shop, or in a new region. I think people wanna grow to scale within where they work, in the city of Los Angeles . . . .

Hanna continued:

Each of us has an obligation to think about how we grow to scale in our region, and in our ethnic community, ‘cause most . . . organizing [in this sector] happens ethnically specific, but they look towards the coalition and [national association of worker centers] as the way to grow to scale.

Other leaders suggested that technology may be the way that organizations can grow to scale. Marianne said:

[W]hat does democracy look like? What does governance look like when you aggregate workers who are essentially disaggregated? Is a physical meeting space the only way in which to engage, connect, and organize workers? Is the door knocking what we traditionally know the basis on which to build a membership?

Perhaps, she suggested, the question is “how do we then harness technology to advance . . . in a positive way of bringing democracy?” Marianne said that “[h]aving a brick and mortar worker center that workers go to” may not be necessary, suggesting an analogy to another worker organization:

OUR Walmart is an interesting formation where they're trying to organize [chuckle] the employees of the largest private employer in the world. And they have other challenges [chuckle] other than just democracy, well, democracy in the sort of unequal power dynamics between the employer and the workers. But what I've heard them talk about is that Facebook actually has been an amazing way to connect and reach workers, because many of the Walmart associates are online and are finding each other through Facebook. And so through that, they're able to create connections, community, at a local and regional level. And it is the job of the full-time staff of these organizations to, how do you harness that energy and making sure you don't do a top-down kind of approach, and how do you actually create a space for workers who are finding each other through online to really voice and raise their concerns and the direction of the organization?

But without workers together in a physical space, she said, "how do you make the connection?"

Another aspect of the worker center movement and its impact on social and political democracy is the racial and gender character of most of the organizations in the field. Women of color lead and staff many of the worker centers examined in this study. As described above in Part III.C.6., the identity of leadership, staff, and workers significantly shape organizations, how much they focus on individual member transformation, and what kinds of demands they make. Ocasio & Gertner highlight the "intersectional demands" of the new worker organizations at the juncture of labor, civil rights, and immigration.<sup>156</sup> Worker centers are channeling "material and social resources in ways that are at odds with dominant schemas, potentially altering racial structures."<sup>157</sup> This is a challenge to the whiteness of incumbent civil society institutions<sup>158</sup> and to the whiteness of American citizenship and democracy itself.<sup>159</sup> Notwithstanding the mixed identities of leadership, staff, and members, many of our civil society institutions successfully resist diversity and inclusion initiatives. Worker centers have leaders, staff, and members of color but also advance anti-racist and anti-sexist intersectional demands that are core to their existence.

Finally, worker centers challenge authority—both who holds it and why they hold it—analogous to the "prefigurative" organizations examined by Polletta:

Activists in many of the organizations that I studied sought to create new kinds of legitimate power. Their experimentalism was partly borne of necessity: with few models of collectivist decision-making, they were forced to invent new ones. But it also reflected a view that the decisions that affected people's lives had been made only by the "qualified"—the credentialed, the moneyed, the powerful.<sup>160</sup>

In their attempts to engage in the development of "the political" in members, worker centers effectively mount a critique of expertise as it is currently defined. "[A]ctivists . . . use their organizations to experiment with mechanisms of citizen

156. Ocasio & Gertner, *supra* note 1.

157. Victor Ray, *A Theory of Racialized Organizations*, 84 AM. SOC. REV. 26, 43 (2019).

158. Cheryl Harris, citing W.E.B. Du Bois' *Black Reconstruction*, notes the convergence of "white" and "worker," a convergence that persists in American social and political discourse to this day. Cheryl Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1741–42 (1993).

159. *Id.* at 1742 ("Whiteness was also central to national identity and to the republican project.").

160. POLLETTA, *supra* note 15, at 8.

input.”<sup>161</sup> They seek to democratize sources of authority and overturn the racial and gender hierarchies that are resilient and resurgent in the American polity.

#### E. Legal Regulation and Funding Models

As noted briefly above, the law regulates labor unions quite differently than it regulates other membership-based not-for-profit organizations. In particular, the LMRDA requires a level of internal democracy and transparency to members about governance and finance that the law of nonprofit corporations and tax exemption does not require of § 501(c)(3) organizations.<sup>162</sup> A sympathetic account of the purposes of the LMRDA would attribute the legal requirement of internal democracy to the importance of ensuring worker organizations are accountable to their members.

Our findings suggest that worker centers embrace a deep commitment to internal democracy but have adopted a variety of mechanisms to ensure it. To the extent that there is a concern about whether workers would benefit if worker centers were subject to the LMRDA, our findings suggest there is not yet a problem with accountability and worker engagement in governance and, therefore, legal regulation is unnecessary to protect workers from oligarchy.

Governance structures—by which we mean mainly the organization’s practices and bylaws, but which also could include regulation imposed either by law (LMRDA) or by foundation funding agreements—should have an organic relation to the organization’s goals. In the case of unions and worker centers, therefore, the governance should reflect the organization’s and its members’ theory of social change. Our findings, therefore, may be the normative basis for an argument that courts and agencies should reject legal efforts to regulate worker organizations in the name of member or nonmember protection (as in the case of union dues objectors) or to subject worker centers to the LMRDA reporting and disclosure requirements and Taft-Hartley restrictions on funding sources.<sup>163</sup>

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161. *Id.* at 11.

162. The LMRDA requires local unions to conduct secret ballot elections of officers, at which all members in good standing are eligible to vote, not less often than once every three years. 29 U.S.C. 481(b). National or international labor organizations must conduct such elections no less often than once every five years, and intermediate bodies once every four years. 29 U.S.C. 481(a). The union must not discriminate in distributing candidate materials for such elections, must allow all members in good standing, subject to reasonable qualifications, to run for election and allow candidates to have an observer at the polls and to inspect the lists of eligible voters. 29 U.S.C. 481(c). State nonprofit corporation law does not impose similar requirements of internal democracy. *See* sources cited *supra* note 76.

163. If the Department of Labor were to change longstanding law and to deem worker centers to be “labor organizations” under the LMRDA and LMRA, this new legal rule would presumably prohibit worker centers from receiving money or “any thing of value” from an employer. This would, if implemented, prohibit all sorts of innovative funding mechanisms, such as those used by ROC, the Coalition of Immokalee Workers, and so forth. This is perhaps why the Federalist Society has taken an interest in asserting that worker centers are subject to the LMRDA. *See* Stefan J. Marculewicz & Jennifer Thomas, *Labor Organizations By Another Name: The Worker Center Movement and Its Evolution Into Coverage Under the NLRA and LMRDA*, 13 ENGAGE: J. FEDERALIST SOC’Y PRAC. GROUPS 79 (2012) (arguing that worker centers are subject to the LMRDA and NLRA).

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