Bundling “Alt-Labor”:
How Policy Reform Can Facilitate Political Organization in Emerging Worker Movements

Dayne Lee*

Young voters — particularly low-income, minority, and immigrant workers — have virtually no impact on policymaking. However, young workers could increase their influence through political organization. Labor unions are the most powerful political vehicles available to low- and middle-income citizens because they bundle economic and political activities. While unions are typically inaccessible to most young workers, a number of highly visible “alt-labor” organizations have emerged to organize non-union workers. Yet the alt-labor movement has not replicated the political functions of traditional labor unions as schools of democracy.

This note outlines a set of reforms to tax and labor law that will allow alt-labor organizations to emulate traditional labor unions and foster effective political organization among young, low-income, and minority workers. After proposing a taxonomy of alt-labor, I develop a framework for understanding how structural limitations prevent alt-labor from replicating union power at the ballot box. I propose that: (1) awarding nonprofits greater political rights in exchange for democratic accountability; (2) allowing truly independent contractors to collectively bargain; (3) permitting alt-labor to mimic traditional unions’ bundling of administrative and political resources; and (4) providing alt-labor with tax benefits will allow young workers to form effective political organizations that help close the influence gaps between themselves and elites.

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I. Introduction: Young Voters’ Lack of Political Organization and Power

Policymakers are highly attuned to the interests of wealthy voters. A policy change that is supported by economic elites is two and a half times more likely to be enacted than one opposed by most wealthy voters, irrespective of its popularity with average citizens.1 On the other hand, policymaking is wholly unresponsive to the preferences of poor or working-class voters.2 But non-wealthy voters can increase their political influence through political organization. According to Benjamin Sachs, “[p]olitical power also flows from political organization[,] . . . a source of power available to all income groups.”3 Although they are not as influential as economic elites, organized “mass-based interest groups” have a real, measurable impact on policymaking.4 Consequently, policies that facilitate political organizing by the poor and working class can promote representational equity even in the absence of, say, campaign finance reform or more robust voting rights protections.5

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1 Martin Gilens & Benjamin I. Page, Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens, 12 PERSP. ON POL. 564, 572 (2014) (finding that a policy proposal supported by four out of five wealthy voters (those with income in the top 10%) is 2.5 times more likely to pass (45% to 18%) than a policy opposed by four out of five wealthy voters, regardless of the support of non-economic elites).
2 See id. (finding a near-zero correlation between average citizens’ support and the chance that a given policy proposal is enacted).
4 See Gilens & Page, supra note 1, at 571, 575 (finding a .12 correlation between mass-interest groups’ preferences and policy change or preservation).
5 Sachs, supra note 3, at 151.
This paper is particularly interested in the political organization of young workers, specifically those who are poor, are working class, or are members of immigrant and minority communities. In 2012, eligible voters under thirty years of age were 37.5% less likely to cast a ballot than those over sixty five — 24.4% less likely than people between the ages of thirty and forty-four. Longitudinal surveys show that today far few voters under thirty belong to civic organizations such as unions, churches, and civic clubs than young voters in the 1970s. Studies also suggest that generational disparities in voter turnout may not fully subside as young voters age, and that non-college educated young voters are substantially less likely than their college-educated peers to vote or belong to civic organizations. Millennials are also more diverse than their predecessors. While political associations and member organizations can strongly impact rates of political participation, immigrant and minority communities are under-organized politically. Millennials’ lack of political organization will shape the future of participatory democracy. Unless young, diverse, low-income voters develop effective political organizations, they will be ill-equipped to promote their interests and counter the political influence of economic elites.

Labor unions have traditionally served as a nexus and incubator of political organization and mobilization among working class voters. Unsurprisingly, the declining share of the workforce represented by unions has coincided with the diminishing political influence of workers. However, the recent “alt-labor” phenomenon has emerged as a new form of organization in workplaces with low union density, often under the leadership of young and marginalized workers. In this Note, I identify three types of alt-labor organizations: movement networks, immigrant nonprofits, and member-service organizations.

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7 Constance Flanagan, Peter Levine, & Richard Settersten, Civic Engagement and the Changing Transition to Adulthood at 2-3, Figure 1 & Figure 2 (2008), available at http://www.civicyouth.org/PopUps/ChangingTransition.pdf, archived at https://perma.cc/643L-GLZM.

8 See id. at 7.

9 See id. at 4.


12 Id. at 152.

13 Id. at 154.

Alt-labor organizations and networks such as the “Fight for 15” movement of fast-food restaurant employees provide social services and coordinate worker activism. Despite sharing many characteristics, alt-labor formations are not labor unions. This means that members of alt-labor organizations do not have a right to collectively bargain, strike for prolonged periods, and elect their leadership under the National Labor Relations Act (“NLRA”).15 Instead, a defining characteristic of alt-labor is the reliance on political pressure in the form of grassroots advocacy, media pressure,16 and “get out the vote” activity in order to achieve, for instance, a higher minimum wage or more workplace rights.17

Although there is a wealth of scholarship assessing alt-labor’s prospects for impacting the workplace, there has been little analysis of whether alt-labor can replicate traditional unions’ success in increasing workers’ political power. This Note defines “political organization” in both structural and functional terms. Political organizations are structured; they have a recognized legal status, elected representative leadership, internal organization, and self-sustaining funding mechanisms. They also function as “schools of democracy” by setting democratic norms among members, teaching members how to hold meetings and debate issues, mobilizing voter engagement, and supporting or even training candidates for office.18 This Note assesses whether alt-labor has facilitated political organization among workers and examines reforms that could encourage such activity.

Traditional labor unions serve as powerful political organizations for their members; they mobilize workers at the voting booth and facilitate political organization. Many alt-labor organizations have effectively emulated the political mobilization of traditional labor unions. Their members engage in grassroots lobbying to influence policymaking.19 But, as this Note details, alt-labor has not replicated union success in facilitating political organization. Three factors have prevented alt-labor organizations from doing so: (1) lack of legal infrastructure promoting internal democracy, (2) restrictions on nonprofits’ political activity, and (3) lack of self-sufficient funding mechanisms. These barriers prevent alt-labor from exercising the same degree of political power as labor unions.

15 See National Labor Relations Act, 29 U.S.C. § 151 (2012) (“It is hereby declared to be the policy of the United States to . . . encourag[e] the practice and procedure of collective bargaining and . . . protect[] the exercise by workers of full freedom of association, self-organization, and designation of representatives . . . .”).
17 See Eidelson, supra note 14.
Reforms to nonprofit and labor law could allow voters — particularly immigrants, minorities, and the working class — in the alt-labor movement to bundle workplace power with political organization. In other words, if these reforms were enacted, workers in alt-labor could create formal, structured institutions that promote voter registration, civic education, voter turnout, and grassroots lobbying. This is important for two reasons. First, alt-labor relies on political success to achieve workplace goals; greater political organization will increase alt-labor’s effectiveness as a labor movement. Furthermore, as policymakers are largely unresponsive to young workers’ interests, alt-labor could serve as a site of greater political organization, enabling young voters to exert sustained political influence.

II. THE EMERGENCE OF ALT-LABOR

A. Background: Exclusion of Young Workers from Traditional Unions

Unions are extraordinarily effective incubators of political participation and organization among the poor and working class. Labor unions are democratically governed membership organizations. Union members flex and thereby strengthen their democratic muscles by electing their own shop stewards, local representatives, and national leadership. Additionally, unions regularly encourage their members to engage in politics by forming political action committees, social justice committees, and political education committees that pool contributions to spend on partisan politics. Unions also groom rank-and-file members to run for political office by training...
members, providing a policy platform, fundraising, and serving as a “stepping stone” to office. 24

Workplaces are effective sites of civic education and political organization because colleagues not only share economic and political interests, but also develop the interpersonal networks necessary for participatory political organization, reducing the informational costs of organization. 25 In addition, the workplace offers unions a comparative advantage over other forms of political organization. This is because union leaders can use the workplace as a convenient physical meeting place and utilize the employers’ resources to track union membership, reducing administrative costs. 26 Furthermore, unions can offer their members powerful legal protections for political activity. 27

As a result, union membership is an independent variable that increases the voter registration and turnout rates of even less-politically engaged, rank-and-file members — sometimes at rates 14.5 percent higher than comparable non-union members. 28 Unions raise their members’ turnout by registering voters, 29 providing educational materials on candidates and issues, sponsoring endorsement processes in which members meet candidates, pooling and spending political donations, and calling, mailing, or door-knocking voters to encourage turnout. 30 Ultimately, union political activity provides its members with political power that translates to responsiveness from policymakers. 31

Labor unions seem to be an excellent vehicle for addressing young voters’ low levels of political organization, political impact, and civic engagement. Furthermore, 66% of young workers under thirty-five are interested in joining and have positive feelings about unions, outpacing the approval of the public writ large. 32 Why have young voters been unable to utilize the traditional labor movement to expand their political voice? The simple answer is that virtually no young voters are members. Employers have become

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25 Sachs, supra note 3, at 172.

26 See id. at 155–56.

27 See id.

28 Id. at 169 (citing John Thomas Delaney et al., Unionism and Voter Turnout, 9 J. LAB. RES. 221, 232 (1988) (finding that union members were 14.5% more likely than their similarly-educated peers to vote in the 1978 national general elections)).


30 See Cope Endorsement, supra note 24.

31 See Sachs, supra note 3, at 171 (citing Richard B. Freeman & James L. Medoff, WHAT DO UNIONS DO? 195–98 (1984)).

stringently opposed to the formation of traditional labor unions and to legal changes that would enable greater numbers of workers to be covered by labor law protections.\textsuperscript{33} America’s unionization rate has steadily plummeted, reaching a low of 11.1% in 2014.\textsuperscript{34} For workers between twenty-five and thirty-four, the unionization rate is 9.5%, and for workers under the age of twenty-five, the respective rate is 4.5%.\textsuperscript{35}

Union membership could make economic sense for young workers under thirty-five, who make $2000 less than their parents did in 1980 despite higher levels of educational attainment.\textsuperscript{36} But young workers are structurally excluded from traditional labor unions. The manufacturing, retail, and hospitality industries — which are low-wage and have low rates of unionization — collectively employ more than a third of workers under thirty-five.\textsuperscript{37} At 15%, the share of so-called “freelancer workers” and other independent contractors in the workforce has more than doubled over the past twenty years.\textsuperscript{38} Independent contractors generally cannot join labor unions that bargain collectively for higher pay from their clients. Independent contractors are considered businesses, and any attempt by contractors to fix a market rate is likely to be considered price-fixing under antitrust law.\textsuperscript{39}

B. The Development of Alt-Labor

Setting aside the quixotic scenario in which there is a large-scale revival of traditional labor unions governed by the National Labor Relations Board (“NLRB”), the question this Note seeks to address is whether policy and regulatory interventions can help young voters form workplace political organizations. This Note sets out a framework of analysis for new forms of

\textsuperscript{33} Sachs, supra note 3, at 185.
\textsuperscript{34} See Union Members Summary, BUREAU LAB. STAT. (Jan. 23, 2015), http://www.bls.gov/news.release/union2.nr0.htm, archived at https://perma.cc/677K-C89R.
\textsuperscript{35} Id.
labor organization and proposes regulatory and policy interventions that will facilitate political organization in a changing labor market.

Because joining or forming labor unions is impractical in most industries, young workers are forming worker-based organizations outside of the traditional 501(c)(5) labor union structure.40 Many, but not all, of these movements and organizations are financially supported by traditional labor movements, but nonetheless operate outside the organizational and financial structures that shape traditional unions.41 While their numbers are small, these campaigns and movements — some of which have been informally dubbed alternative labor, or “alt-labor,” movements42 — gather outsized attention because they are novel, non-union efforts reshaping labor-management relations.43 Table 1 provides a taxonomy of these diverse movements, their organizational structures, and the tactics they employ in pursuing workplace objectives.

### Table 1: Taxonomy of Alt-Labor Organizations that Organize or Serve Young Workers Outside of Traditional Unions

<table>
<thead>
<tr>
<th>Alt-Labor Organizational Model</th>
<th>Examples</th>
<th>Methods Used for Workplace-related Goals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Movement Networks</td>
<td>Fight for 15 Campaign, Clean Carwash Campaign, Good Jobs Los Angeles</td>
<td>Organize workers; engage in coalition campaigns, lobbying, and advocacy; litigate wage theft and employee misclassification</td>
</tr>
</tbody>
</table>

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40 Eidelson, supra note 14, at 4–5.
41 Id.
42 Id. at 3.
44 See infra II.B.i.–II.B.iii.
This paper assesses alt-labor formations among retail, service, immigrant, and independent contractor workers, and identifies three alt-labor models: (1) Movement Networks, (2) Immigrant Nonprofit Organizations, and (3) Member-Service Organizations.

1. Alt-Labor “Movements and Networks”

Alt-labor “Movements and Networks” are most visible in the retail and service sectors. Emblematic of these networks is the Fight for 15. Though it consists of many different types of workers, the most visible participants are young and diverse workers in fast food restaurants such as McDonald’s. Fight for 15 is a decentralized, national network of campaigns supported by workers, activists, unions (particularly the Service Employees International Union), and nonprofit organizations. Other hybrid labor-social movements in this mold include the Clean Carwash Campaign in Los Angeles to prevent wage theft in the car wash industry and the national Good Jobs Coalition pushing for higher public-sector contractor pay.

Alt-Labor movements like Fight for 15 do not directly organize into traditional unions. For example, Fight for 15 does not represent workers in grievance arbitration, organize NLRB elections in individual workplaces, collectively bargain for contracts, or collect dues from members that fund a
central organization. Instead, Fight for 15 and other similar social movements aim to raise the wages of and unionize low-wage workers by pressuring the national headquarters of franchisees, or by lobbying local and state legislatures to increase the minimum wage.

2. Alt-Labor Immigrant Nonprofits

Immigrant nonprofits are organizations in the house of alt-labor that serve and organize largely immigrant workforces in industries excluded from labor protections. For example, many worker centers, such as Make the Road New York and the Florida-based Coalition of Immokalee Workers, serve migrant and agricultural workers, who are explicitly excluded from labor law protections. Similarly, the National Domestic Workers Alliance (“NDWA”) organizes domestic workers — mostly immigrants and minorities — who are explicitly ineligible for most employment protections. And other organizations, like Adhikaar, serve immigrant nail salon workers who often work as independent contractors. These organizations provide critical basic social services, such as English language education and assistance with naturalization paperwork, for their largely immigrant constituencies. They are generally non-profit corporations funded by union or foundation grants rather than member dues.

Alt-labor immigrant nonprofits use social services, policy advocacy, and grassroots community organizing to improve wages and working condi-

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56 See Eidelson, supra note 47.
2016] Bundling “Alt-Labor” 519
tions for members.57 But, like alt-labor movements and networks, they do not often facilitate the formation of formal labor unions, engage in collective bargaining, or represent workers in grievance arbitration.58 And although many such organizations attempt to incorporate the leadership of grassroots members,59 they are not formally held to democratic governance rules.60

3. Alt-Labor Member-Service Organizations

Whereas alt-labor movements and immigrant nonprofits aim to develop activists and achieve workplace victories outside of traditional labor unions organization, another alt-labor model that aims to provide services to non-unionized workers emulates the guilds and mutual-protection associations that predated modern labor unions.61 “Member-Service Organizations,” as this Note labels them, replicate the social services that labor unions or generous employers provide for workers who are ineligible to join labor unions without replicating union activism and workplace advocacy.

The Freelancers Union is a fascinating example. Over 300,000 strong, the Freelancers Union’s membership spans the socioeconomic spectrum but is geared towards creative class, precarious independent workers such as web designers and freelance journalists.62 Funded by foundations, including the Rockefeller, MacArthur, and Robert. M. Wood Foundations,63 the organization does not collect dues from its card-carrying members, but offers services and resources such as affordable health and life-insurance, discounts from local vendors, networking opportunities, and form-documents such as contracts and tax preparation guides.64 However, some deride “Freelancers Union”65 as a misnomer: the Freelancers Union does not engage in or facilitate collective bargaining or set industry rates and standards, all basic func-

57 See Griffith, supra note 16, at 335–36; see generally Eidelson, supra note 14.
58 See Eidelson, supra note 14.
59 See id.
tions of traditional unions. Accordingly, the Freelancers Union is the target of vociferous criticism from labor advocates; one critique is that because the organization doesn’t collect member dues and joining requires no sacrifice, union members will not be able to achieve significant gains.  

Nonetheless, the Freelancers Union is fast-growing and its methods are catching on. Even traditional labor unions have set up similar membership nonprofit organizations that offer health insurance, life insurance, discounts, and other benefits to nonmembers, without formally organizing workers into local unions. For example, the American Federation of Labor-Congress of Industrial Organizations (“AFL-CIO”) has established the nonprofit “Working America,” which provides services and benefits to non-member workers. Similarly, a pair of former SEIU staff founded “Coworker.org,” a website that facilitates digital organization among coworkers in the form of online petitions. The organization assists with coordinating and attracting media attention to petition campaigns for workplace rights, such as the right not to be fired from Starbucks for having visible tattoos.

III. ALT-LABOR AND CHALLENGES TO POLITICAL ORGANIZATION

Popular and scholarly observers have taken note of the comparative effectiveness of alt-labor organizing projects and traditional labor unions. But whether alt-labor formations could serve as nexuses of political organization for their members has garnered little attention. Politically active traditional labor unions bundle members’ dues to contribute substantial sums to candidates, fund political advertising, and lobby policymakers. Members also elect their leaders and form and join political action committees. In short, labor unions bundle their workplace representation (i.e. collective bargaining, representation in grievance hearings) with extensive political activity aimed at advancing the interests of union members, and working class voters more broadly.

66 Greenhouse, supra note 61.
70 Eidelson, supra note 14.
71 Sachs, supra note 3, at 169.
Like labor unions, alt-labor organizations aim to improve the working conditions of their members, including low-income, minority, young, disenfranchised, and immigrant workers. If alt-labor organizations serve as nexuses of political organization, they can narrow the political engagement and influence gaps between affluent and other voters. After all, many of the factors that have bound members of nontraditional labor organizations together in robust workplace organizing — interpersonal networks, shared identity, shared political interests — could also facilitate effective political organization. Political organization, in turn, could make policymakers more responsive to young workers’ policy preferences.

This section will examine how these emerging worker-based movements facilitate political engagement and organization in comparison with SEIU Local 99 (a traditional Los Angeles-based labor union affiliated with the Service Employees International Union), focusing on one example of each of the three alt-labor models: the Fight for 15 (Movements & Networks), the Filipino Migrant Center, which is the Long Beach, California affiliate of the NDWA (Immigrant Nonprofits), and the Freelancers Union (Member-Service Organization).

A. Analysis of Alt-Labor Political Activity

| Table 2: Comparing the Political Activity and Organization of Unions with Alt-Labor Organizations |
|-----------------------------------------------|---------------------------------|---------------------------------|---------------------------------|
| SEIU Local 99 (Traditional Labor Union)       | Fight for 15 (Alt-Labor Movement & Network) | Filipino Migrant Center (Alt-Labor Immigrant Nonprofit) | Freelancers Union (Alt-Labor Member Service Organization) |
| Internal democracy with elected leadership | Yes | No<sup>76</sup> | Unclear<sup>77</sup> | No<sup>78</sup> |

<sup>74</sup> Sachs, supra note 3, at 172.

<sup>75</sup> Some of this information has been addressed with specific footnotes in Table 2. For support for the remainder of Table 2, see infra Part III.A–III.B.

<sup>76</sup> Arun Gupta, *Fight for 15 Confidential*, IN THESE TIMES (Nov. 11, 2013), http://inthesetimes.com/article/15826/fight_for_15_confidential (criticizing lack of internal democracy in the SEIU-backed Fight for 15 action).

<sup>77</sup> *Our Board, FILIPINO MIGRANT CENTER*, http://filipinomigrantcenter.org/who-are-we/our-board, archived at https://perma.cc/FYV8-V7XJ (last visited Mar. 5, 2016) (board consists of community leaders with wide range of experience in community and labor organizing, but it is unclear how the board is selected or elected).

<sup>78</sup> Paul, supra note 65.
Member-activists form local organizations that engage in issue-based campaigns

<table>
<thead>
<tr>
<th>SEIU Local 99 (Traditional Labor Union)</th>
<th>Fight for 15 (Alt-Labor Movement &amp; Network)</th>
<th>Filipino Migrant Center (Alt-Labor Immigrant Nonprofit)</th>
<th>Freelancers Union (Alt-Labor Member Service Organization)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes³⁹</td>
</tr>
</tbody>
</table>
| Members get out the vote (register, educate, turnout) internally with other members
| Yes                                    | Yes³⁰                                   | Yes³¹                                                | Unclear³²                                               |
| Get out the vote activities to the broader community
| Yes                                    | Yes                                     | Yes                                                 | No                                                      |
| Advocacy & lobbying to elected officials
| Yes³³                                   | Yes                                     | Yes                                                 | Yes                                                     |
| Issue based public political campaigns (e.g. ballot measures, legislation)
| Yes                                    | Yes³⁴                                   | Yes³⁵                                                | No                                                      |


³² See Advocacy, FREELANCERS UNION, https://www.freelancersunion.org/advocacy, archived at https://perma.cc/5URP-3XF2 (last visited Mar. 5, 2016) (listing several events and ways in which the organization engages in advocacy work). Voter registration and GOTV activities are not included. Id.

³³ Committees, supra note 73.


SEIU Local 99 represents forty-five thousand Southern California-based workers, mostly employees of education organizations such as K-12 schools and community colleges; its members include teachers’ assistants, child-care workers, custodians, bus drivers, and head start workers. The union engages in extensive political mobilization through its voluntary political program, Committee on Political Education (“COPE”). COPE spearheads Local 99’s lobbying, mobilizes members and voters in support of candidates and ballot measures, and donates to local school board members as well as state and federal policymakers. In addition to mobilizing its members, SEIU Local 99 facilitates political organization among its members; its members form internal activist-groups such as the “Social, Economic, and Global Justice Committee” and the “Political Action Committee” that engage in both social activism and partisan political campaigning.

The alt-labor examples detailed below have each facilitated political activity among their membership, but none of them have served as sites of political organization as characterized by internal democracy, membership structures, political committees, and partisan activity. The Fight for 15, for instance, is highly political; it organizes members to participate in social

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91 Id.

92 Committees, supra note 73.
movement building, advocacy, and grassroots lobbying to promote policy change. Activists engage in walk-outs and protests, meet with elected officials, and advocate for higher wages.93 Organizers mobilize members to support a pro-worker platform at the polls,94 and activists try to pressure national political candidates to debate a higher minimum wage.95 But, although its affiliates at the SEIU and other unions engage in robust political campaigning,96 Fight for 15 cannot endorse candidates or create political action committees.97

Similarly, the NDWA has a robust political mobilization program in support of its policy platform. By mobilizing domestic workers, the NDWA has pursued and achieved reforms including convincing the Department of Labor and seven state agencies and legislatures to pass a “Domestic Worker Bill of Rights.”98 The NDWA routinely engages its membership in grassroots lobbying through community organizing and makes efforts to include grassroots members in its decision-making bodies and processes.99 Furthermore, NDWA’s member-nonprofit organizations participate in local “Get Out the Vote” activity.100 For example, the Filipino Migrant Center, an NDWA affiliate in Long Beach, California, coordinates a civic engagement program aimed towards increasing Filipino community turnout.101 However, unlike SEIU Local 99, it does not facilitate the creation of independent, member-led political committees, and cannot endorse candidates or engage in partisan campaigning.102

The Freelancers Union is also constrained in its political organization. Unlike traditional unions, Freelancers Union is not required to submit its endorsements or policy advocacy to a democratic process, although members are invited to join the Executive Committee of an affiliated Political

93 Finnegan, supra note 49.
97 Strikes Happening, supra note 80. 501(c)(3) nonprofit organizations cannot engage in partisan activity. Nonprofit Corporations, supra note 87, at 1660.
101 Civic Engagement, supra note 81.
102 See Voice Waves, supra note 100 (describing FMC civic activities as non-partisan).
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Action Committee that decides on endorsements. Critically, because of its 501(c)(3) structure, and because membership is free, member dues are not used to sponsor political activity.

B. The Limits of Alt-Labor Political Mobilization

Thus far, there have been no empirical studies on whether members of alt-labor organizations vote at higher rates than similarly situated workers who do not belong to an alt-labor organization or a traditional labor union. Comparing SEIC Local 99 with Fight for 15, local NDWA groups, and the Freelancers Union shows that alt-labor movements and immigrant nonprofits emulate many of the political mobilization activities of labor unions, such as engaging in public advocacy campaigns, lobbying, and encouraging voter turnout. However, the main political difference between unions and politically active alt-labor organizations is that alt-labor organizations, unlike unions, do not pursue political organization. Specifically, as discussed in Part IV, alt-labor groups do not (1) foster democratic internal governance, (2) endorse and support partisan political candidates, or (3) fund their political operations through member dues. These differences suggest that alt-labor organizations do not facilitate structured political organization or serve as “schools of democracy” to the extent that traditional labor unions do.

If alt-labor organizations were able to fully replicate the political organization of labor unions, their members’ workplace interests would be better served. This is because alt-labor organizations rely on the political process to promote workers’ interests. Unlike bona fide unions, alt-labor groups will “never be bargaining units,” or negotiate contracts through which they represent all workers in grievance arbitration or reinstatement hearings. Union membership is endowed with a set of affirmative legal rights; alt-labor membership is not. Instead, alt-labor organizations mobilize media and popular pressure against abusive employers, lobby policymakers to raise the minimum wage and persuade agencies and legislatures to enact “Domestic Worker Bill of Rights.” Alt-labor’s effectiveness is tied to the strength and sophistication of their political campaigns. Thus, alt-labor members’ workplace interests would be even more effectively served by

105 Id.
107 Id.
maximizing their political rights, organization, and civic engagement through political organization.

Furthermore, alt-labor organizations have the potential to serve as powerful nexuses of political organization that will increase young voter turnout rates and, more importantly, increase young workers’ political power. And, just as unions advocate for the economic interests of the entire working class and not just union members,109 so too could politically unleashed alt-labor organizations advocate for poor, contingent (non-employee), and immigrant workers beyond their membership. If, in fact, power flows in part from structured political organization,110 merely emulating the political mobilization of labor unions is insufficient. Thus, it is necessary to understand what prevents alt-labor from fostering political organization and to explore reforms that reduce these barriers.

IV. Reforming Non-Profit and Labor Law to Facilitate Political Organization in Alt-Labor

Some alt-labor organizations have emulated the political mobilization activities of traditional labor unions (i.e. “get out the vote” campaigns and grassroots lobbying), but they have not generally fostered political organization. Workers in alt-labor organizations have not formed political endorsement committees, for example, and do not elect their own staff and leadership. Part IV of this Note identifies and analyzes the barriers to political organization within alt-labor organizations and proposes a set of policy and regulatory reforms that would allow alt-labor to replicate the political organization of labor unions. These reforms would further strengthen alt-labor campaigns while empowering young workers.

A. Three Barriers to Political Organization Within Alt-Labor: Legal Infrastructure, Restrictions on Partisan Activity, Sustainable Funding

There are three structural barriers that prevent young workers in emerging worker organizations from forming political organizations at the same rate as their traditional union counterparts: (1) lack of legal infrastructure promoting internal democracy, (2) restrictions on nonprofits’ partisan political activity, and (3) lack of self-sufficient funding mechanisms. The first issue preventing alt-labor political organization is that the 501(c)(3) public-charity nonprofit structure is an awkward fit for many alt-labor groups such as the NDWA or the Freelancers Union. After all, the 501(c)(3) structure encompasses everything from religious organizations to charities feeding the homeless to private universities. Public charities are governed by the Inter-

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109 Sachs, supra note 3, at 168–69.
110 Id. at 151.
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nal Revenue Code (“IRC”) but are otherwise lightly regulated because of First Amendment association and privacy protections.111 Reflecting this light touch, the IRC contains no equivalent to the Labor Management Reporting and Disclosure Act ("LMRDA") laws regulating union internal governance.112 Thus, the IRC does not require democratic governance for 501(c)(3) organizations, unlike LMRDA regulations on union elections.113 Although nonprofit law does not prevent internal democracy within alt-labor organizations, it does not incentivize, reward, or specifically recognize democratic governance by members of nonprofit organizations.114

Second, while 501(c)(3) nonprofit organizations are permitted to engage in generic or issue-based “get out the vote” activities, they are prohibited from partisan campaigning.115 And although 501(c)(3)’s can encourage their members to participate in “grassroots lobbying,” such lobbying cannot constitute a substantial portion of an organization’s activities.116 Young workers who wish to utilize an alt-labor group’s resources to organize partisan political activity would jeopardize the organization’s tax-exempt status.117 Such a regime is ill-suited to govern alt-labor organizations who wish to foster partisan, member-led political organizations that can help young workers and voters gain political influence.

The third, and arguably most challenging, barrier for young workers is the difficulty alt-labor and emerging worker movements have in funding workers’ rights or political work from membership dues.118 Most alt-labor organizations rely on foundation or union support rather than member dues to pay for their workplace services and campaigns, let alone political activity.119 The following hypothetical illuminates why alt-labor organizations depend on union or foundation funding rather than member dues.

Imagine a bare-bones alt-labor organization of coffee shop workers, “Baristas United,” that wants to pay for an office, a staff of five employees (one director, three organizers, one program coordinator), and an extensive

111 Nonprofit Corporations, supra note 87, at 1658.
112 See generally Governance and Related Topics – 501(c)(3) Organizations, supra note 60 (lacking laws regulating internal governance).
114 See generally Governance and Related Topics – 501(c)(3) Organizations, supra note 60.
115 Nonprofit Corporations, supra note 87, at 1660.
117 See Nonprofit Corporations, supra note 87, at 1660.
118 Eidelson, supra note 47.
organizing drive and $30,000 get out the vote operation (paying for coffee, donuts, printing pamphlets, phone lines, clipboards) with the dues it collects from low-wage restaurant workers. Its office is in the basement of a church, rented below-market at $2000 per month. The five employees will have a take-home income of just $30,000 per year, with an additional $20,000 in benefits and taxes. Supplies will be donated, and volunteers will perform administrative work and provide social services. Lawyers will provide hundreds of hours of pro bono service each month.

Now let’s suppose that that each local coffee shop has twenty baristas and ten of them are dues-paying members who voluntarily pay $30 per month to Baristas United, which, unlike a traditional union, cannot compel every worker to pay dues or utilize employers’ administrative resources such as payroll records in order to assess fees. Baristas United cannot help workers collectively bargain for higher wages, but its dues-paying members want to invest in the politics of the movement. In order to raise $104,000 for the campaign, then, the organization needs to organize 289 workers, or twenty-nine workplaces. Each organizer would have to oversee nine or ten workplaces, organizing workers, battling employers, coordinating labor actions and protests, training leaders, and administering weekly organizing meetings at each site. Such a herculean task would be out of the reach of all but the most talented of organizers.

B. Bundling Alt-Labor with the Workplace

One of the most effective twentieth century innovations of the labor movement was the bundling together of a union’s administrative, organizational, financial, and political resources. This bundling enables a local union’s vice president to use her boss’s list of employees to access the phone numbers and titles of her colleagues and call each of them, using her boss’s phone lines, to invite them to a partisan political meeting in a union break room that her supervisor pays for. Furthermore, she can require her employer’s payroll staff to automatically deposit union dues, and even political donations, to the union. And with a union, the same organization that guar-

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120 Which would represent, for a minimum wage worker earning $9.00 an hour (which adds up to approximately $1600 a month), nearly 2% of gross pay, a high rate considering that full union dues are between 1% and 3% of take-home pay. See, e.g., Why Join a Union, SEIU LOCAL 99, http://www.seiu503.org/about-seiu/why-join-a-union (last visited Mar. 5, 2016) (setting dues at 1.7% of salary per month plus $2.75); Teamster Basics – Frequently Asked Questions (FAQ), TEAMSTERS, https://teamster.org/about/frequently-asked-questions-faq (last visited Mar. 5, 2016) (dues for low wage workers are 2x hourly wage, or approximately 1.4%, per month).

121 See Sachs, supra note 3, at 154.
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...also creates and affirms employees’ right to free political speech in the workplace.

...yet would-be political organizers within alt-labor organizations do not enjoy the same privileges. As it is not a bona fide labor union, Fight for 15 cannot force McDonalds to disclose a list of all employees, nor can it protect member-workers who are disciplined for talking about politics while on the job. Because the NDWA is a 501(c)(3) charity, a domestic worker cannot use the NDWA’s email list to send out a fundraiser request for her favorite candidate. Bundling the community organizing and institution building efforts of the alt-labor movement with substantive political privileges would foster greater political organization within alt-labor. What policy interventions would encourage members of these alt-labor movements to form political organizations? This Section explores policy, organizational, and regulatory reforms that would address these barriers and facilitate political organization among young workers in the alt-labor movement. These would allow members of alt-labor organizations to mimic the political organizing of traditional labor unions by electing internal leaders, participating in partisan politics, and sustaining such activities with member dues.

1. Reform Tax-Code Treatment of Nonprofit Alt-Labor Organizations

Alt-labor organizations are a hybrid of traditional unionism, social services, and social movement activism. As such, the regulations that govern 501(c)(3) social service nonprofits are not conducive to political organization of the workers in the alt-labor movement. Specifically, restrictions on partisan and political activity by nonprofits prevent alt-labor organizations from impacting politics in the way that unions do. Traditional labor unions are allowed to fund partisan politics with voluntary dues. In exchange for this privilege, unions must meet a strict set of regulations that mandate internal democratic governance and accountability.

The tax-code should recognize that alt-labor organizations play a critical role in promoting social welfare and deserve tax-exempt status but are poorly served by the 501(c)(3) designation. Instead, policymakers should enact a new tax code category that provides alt-labor nonprofits such as worker centers and the Fight for 15 with the same tax-exemption and political rights as labor unions. In addition, because these alt-labor organizations are not financially self-sufficient — unsurprising since their members are often among the lowest-paid and most-exploited workers — policy makers

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123 See Sachs, supra note 3, at 172.
124 Eidelson, supra note 14.
126 Id. at 818–19.
should continue to allow these organizations to be funded by foundations or sponsoring unions. These reforms would add “more voice” to the political process by “leveling up” and allowing marginalized young workers to effectively organize and influence policymaking.127

In exchange, lawmakers can require these “quasi-unions” to submit to LMRDA-like internal governance and financial accountability requirements. The LMRDA states in its declaration of policy that it was enacted in order to prevent corruption, uphold employee rights, and hold union officials to high ethical standards.128 Like the War Labor Disputes Act of 1943 restricting political spending by labor unions, the LMRDA was passed during a time of public concern over union political power.129 But legislators also preserved a great deal of unions’ political rights while holding them to high standards of democratic accountability. Similarly, lawmakers can even give the NLRB or IRS oversight and regulatory authority into quasi-unions’ internal elections. These safeguards would prevent corrupt leaders from pooling workers’ dues and supporting politics that members oppose. By rewarding internal democracy with greater political rights, policymakers can help all-labor organizations to better promote the empowerment of young voters without jeopardizing their financial viability.

2. Allow Quasi-Independent Contractors to Unionize or Engage in Political Organization

Independent contractors cannot form NLRA-governed labor unions and can only join or coordinate with labor unions if they: (1) perform the same work as and (2) compete with bona fide employees in the industry.130 Because the statutory and non-statutory labor exemptions to the antitrust laws — articulated in the Clayton Antitrust Act and in its state-law analogues — only apply to employees, independent contractors generally commit price fixing should they try to collectively bargain with clients for better rates or working conditions.131 The roots of this exemption lie in antitrust law and

129 Sachs, supra note 125, at 810–11.
130 U.S. v. Los Angeles Meat Provision Union, 196 F.Supp. 12, 15 (S.D. Cal 1961) (finding that the law “sanctions [a union] coercing the joinder of independent contractors, jobbers or vendors (1) if these groups compete with union members by doing the same or similar work; and (2) if the object of having these groups join the union is to eliminate their unfair competition with union members”).
131 There are some state-law exceptions for certain classes of independent contractors, such as dental hygienists in California, who are permitted to collectively bargain. See Cal. Dental Ass’n v. Cal. Dental Hygienists Ass’n, 222 Cal. App. 3d. 49, 71 (Cal. Ct. App. 1990). This reasoning — that certain independent contractors are essentially laborers as opposed to entrepreneurs — is not controlling in the federal case law. Instead, the determining factors are the two-part Los Angeles Meat Provision Test outlined in supra note 130; see also Los Angeles Meat Provision, 196 F.Supp. 12, 21 (“perpetually enjoining” the defendant union from accepting non-employee “peddlers” as union members).
important public interests; it would be improper for, say, fishermen or gas station owners to declare themselves “a labor union” and conspire to fix the prices of salmon or fuel. However, in the present labor market, this means that the ability of quasi-independent contractors, such as Uber drivers or house cleaners, to form labor unions is too often contingent upon workers successfully convincing courts and regulators that they are employees. This prevents vulnerable non-employee workers from collectively bargaining and exercising workplace rights or pooling their political power. Instead, the law should distinguish bona fide independent businesses from vulnerable, contingent laborers.

To protect quasi-independent contractors, the FTC could issue regulations reinterpreting the phrase “labor organizations” in the Clayton Act labor exemption. The regulations could interpret “labor organizations” to encompass non-NLRA unions such as independent contractor associations that consist of sole proprietor laborers — workers who do not hire any employees and are in business alone. Such an interpretation is reasonable, and would thus be afforded deference by the courts, because it would align with the stated policy of the Clayton Act that “human labor is not a commodity.” Workplace protections would be extended to vulnerable workers who are not currently entitled to benefits, healthcare, or workers’ compensation. If the FTC is unwilling to implement such an interpretation, Congress and state legislatures should revise the federal and state antitrust acts to explicitly exempt laborer-contractors from antitrust liability. In other words, independent contractors who depend on an intermediary to reach paying customers, and who are low-income laborers rather than entrepreneurs selling goods or providing specialized services, should be permitted to collectively bargain for higher rates.

Although distinguishing mere labor from more entrepreneurial goods and services can be a tautological exercise at the margins, concrete examples illustrate the principle. The antitrust laws were meant to prevent fisherman from colluding to corner the fish market, not to prevent housecleaners or truck drivers (non-owners) from bundling together to ask for higher rates,

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134 Id. at 152–53.
137 Kennedy, supra note 133, at 160–62.
which are effectively wages. When a client buys mackerel or salmon from an independent fisherman, the price of each pound of fish is not directly tied to the labor involved in catching it. The fisherman’s labor costs set a price-floor, but the price paid is the market value of the mackerel or salmon itself.\(^\text{139}\) Should a group of fishermen collectively ask for higher payment from purchasers, they are fixing the price of fish, a commodity. House cleaners or truck drivers are more directly selling their labor, which the Clayton Act declares is “not a commodity or article of commerce.”\(^\text{140}\) Although they are also selling an end product of their labor (a clean house, or a shipment of goods that reaches its destination), their service consists of the labor acts of scrubbing a floor or driving cross-country.

Another option for legislators would be to designate a “dependent contractor” status upon contractors who are essentially laborers rather than entrepreneurs. Dependent contractors are workers who rely upon a quasi-employer to make a living: dependency can be determined by, among other factors, the percentage — 80% is a threshold used in Canada — of the worker’s income that comes from a single source, by whether a worker owns his or her tools, and whether a contractor’s working conditions resemble that of an employee.\(^\text{141}\) On-demand drivers would likely fit such a test; they can find customers through Uber, but it is unlikely that they would be able to make the same living by, say, posting individual offers to provide ride-services on community bulletin boards or on private websites. Any such designation should be accompanied by collective bargaining rights and workplace protections. But more to the point, such a designation should be bundled with political rights, including the right of dependent contractor unions to partake in the full range of voluntary partisan political activity that employee unions are allowed to sponsor.

Finally, legislators should allow employees and dependent contractors to collectively bargain together by narrowing the antitrust law’s “nonstatutory labor exemption,” a prohibition on labor-business combination meant to prohibit union-friendly businesses and unions from colluding to exclude business competitors.\(^\text{142}\) However, when applied, this exemption can prevent

\(^{138}\) Columbia River Packers Ass’n v. Hinton, 315 U.S. 143, 146–47 (1942) (holding that fishermen are businessmen who cannot collude to fix prices, but noting in dicta that the exemption should apply to laborers, not just employees); cf., e.g., Pan Alaska Trucking v. Int’l Brotherhood of Teamsters, 621 F. Supp. 800, 803 (D. Alaska 1980) (declining to exempt truck driver-owners affiliated with the Teamsters from antitrust laws).

\(^{139}\) For an explanation of the costs and markups that determine the market price of fish, see, generally, e.g., Douglas W. Lipton, Understanding Fish Pricing: From Production to the Table, FINFISH AQUACULTURE WORKBOOK SERIES, available at http://www.mdsg.umd.edu/sites/default/files/files/Understandingfishpricing.pdf, archived at https://perma.cc/4WBU-RXY8.

\(^{140}\) 15 U.S.C. § 17 (“[L]abor . . . is not a commodity or article of commerce.”).

\(^{141}\) See Kennedy, supra note 133, at 154.

\(^{142}\) Connell Construction Co. v. Plumbers & Steamfitters Local Union No. 100, 421 U.S. 616, 622–23 (1975) (“[T]he nonstatutory exemption offers no similar protection when a union and a nonlabor party agree to restrain competition in a business market.”).
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independent-contractors and employees from organizing together. For example, a janitor might contract with a building services agency one year, work full-time for a hotel the next, and then strike out on her own cleaning small office buildings the year afterwards. A regional union consisting of independent contractors and employee janitors would be in violation of the exemption if they jointly worked to prohibit buildings from hiring non-union janitors. If the ban on business-labor combinations were relaxed, a local janitors’ union could consist of hotel employees, independent janitorial workers, and contract workers. The janitors’ union would be permitted to set local wages, working conditions, and safety standards for all janitorial work, and would be permitted to negotiate and enforce contracts with buildings that prohibited buildings from contracting with or hiring non-union janitors. And the workers would also benefit from the political mobilization and organization that the union could provide.

To summarize, the law should allow quasi-independent contractors to collectively bargain, form or join labor unions, and exercise political rights, either alone or alongside bona fide employees. Young workers who are currently wrongly categorized as independent contractors would no longer be prevented from joining the labor movement, and would be able to use its resources to form effective political organizations.

3. Allow Members to Utilize Nonprofit Administrative Capacity for Partisan Activity

Suppose legislators are unwilling to create a new “quasi-union” nonprofit designation or give alt-labor organizations full political rights. In that case, policymakers could reduce the administrative burdens preventing political organization among members of nonprofit organizations. Currently, members of an alt-labor nonprofit organization cannot access their organization’s member lists, computers, printers, or even its physical meeting space for the purpose of planning partisan political activities unless the resources are sold at fair market rates and are made available to the general public. Alt-labor organizations might be reluctant to offer their member lists for sale, potentially to employers.

Nonprofit political activity, particularly by 501(c)(3) charities, is restricted because of the potential for interest groups to improperly influence the political process while enjoying the tax benefits of nonprofit charities. At the same time, “[t]he political advocacy of nonprofit corporations enhances the political influence of underrepresented groups and secures a place

143 Cf. id.
One ethos for reforming nonprofit political law is “more voice, not less.” Labor unions are able to effectively represent and organize working class voters in part because as 501(c)(5) nonprofit organizations they are afforded expansive political rights unavailable to 501(c)(3) public charities. They are able to provide a countervailing force to economic elites by adding a voice to the process. Similarly, alt-labor organizations and civic organizations of all political stripes should be afforded a greater range of political rights. This would add “more voice” to politics for underrepresented groups such as young workers.

Policymakers can reform the IRC to allow members of nonprofit organizations to utilize the administrative, physical, and organizational resources of alt-labor nonprofits for partisan activity, and allow nonprofit organizations to allocate funds to such member efforts. In exchange, policymakers could continue to require that these political privileges be accompanied by democratic legitimacy and accountability. Thus, only member-led nonprofits that are subject to the LMRDA-like internal democratic governance requirements proposed in Section IV.A would receive these privileges. Policymakers could also require that nonprofit staff do not coordinate or advise such efforts.

With such reforms, critical masses of under-organized voters in alt-labor and other (religious, civic, environmental, feminist, etc.) nonprofit organizations would gain political power, while individuals and interests without democratic, popular support would be hindered from accessing these rights. This would decrease the administrative costs of political organization and capitalize on the natural networks formed by worker movements. Additionally, workers could form internal political organizations within alt-labor organizations that could endorse candidates, fund campaign ads, and mobilize voters without jeopardizing the parent organization’s nonprofit status. Such organizations should also be allowed to collect voluntary dues from the parent alt-labor organization’s members for political purposes. This would echo the political funding mechanisms that unions in the public sector and in right-to-work states employ, in which only voluntary dues can fund the

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146 Id. at 1656.
147 Bruce E. Cain, More or Less: Searching for Regulatory Balance, in Race, Reform, & Regulation of the Electoral Process: Recurring Puzzles in American Democracy 263, 277 (Guy-Uriel E. Charles et al. eds. 2011).
149 Abood v. Detroit Bd. of Ed., 431 U.S. 209, 234 (1977) (holding in part that plaintiff public sector union members cannot be compelled to support contributions to political candidates with their dues).
150 Commc’ns Workers of Am. v. Beck, 487 U.S. 735, 745 (1988) (holding that dues-paying non-members of a union cannot be compelled to contribute dues to political spending
union’s political activity. This will allow young workers who are members of alt-labor organizations to engage in meaningful political activity that reaches not only their fellow workers, but also the public at large.

4. Facilitate the Sustainable Self-Funding of Political Organizations

The emerging worker movements rely on foundation and union funding because of the inherent difficulty of building a sustainable financing mechanism from their membership, “one of the more dogged problems in organizational development.”151 The financing barrier is even more daunting for movements that organize low-wage workers: it is difficult to fund a professional staff and maintain an organization from dues paid by low-wage workers. It is particularly difficult to imagine young, low-wage workers voluntarily paying monthly dues to a purely political organization that cannot directly provide the economic benefits — insurance, collective bargaining, legal representation — of a labor union.

Worker-based organizations would better facilitate political organization if they were permitted to mimic the political financing models of traditional labor unions and collect dues as a percentage of monthly wages. For example, employers and clients could be required to offer workers the option of automatically deducting membership dues to alt-labor or independent contractor “quasi-unions.” Ideally, there would be a mechanism allowing workers to deduct tax-refundable donations from their payable income taxes without reducing workers’ take-home income. Such a regulatory regime could also separate the funding of political and non-political activities if employers were required to give political organizers and dues-collectors access to its members’ contact information. This privilege could be tied to the stringent internal governance measures proposed in Section IV.A.

V. Conclusion

The alt-labor movement has emerged in response to the decline of traditional labor unions as a source of workplace protection and political empowerment for young workers, particularly those who are independent contractors or work in hospitality and retail. Alt-labor organizations are intriguing incubators of workplace activism and political mobilization, particularly among young immigrant, minority, and low-income workers. Members of these movements use public advocacy campaigns and grassroots lobbying to improve their working conditions through policy and regulatory change. However, alt-labor has yet to replicate the political organization and democratic education that traditional labor unions have fostered among their members. Effective political organization would only

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151 Sachs, supra note 3, at 173.
strengthen the alt-labor movement’s workplace activism. The ability of young workers to form political organizations is also critical to strengthening participatory democracy. The preferences and interests of young workers have little influence in policymaking outcomes, in part because of a lack of political organization. It is through effective political organization that low-income and middle-class workers — particularly immigrants and minorities — will be able to add their voices to the political process.

The main political difference, however, between unions and politically active alt-labor organizations is that alt-labor organizations, unlike unions, do not pursue political organization through (1) fostering democratic internal governance, (2) endorsing and supporting partisan political candidates, and (3) funding their political operations through member dues. If these differences were bridged, the workplace could serve as a powerful nexus of political organization among young workers in the alt-labor movement.

By treating alt-labor organizations more like traditional unions, legislators can establish a regulatory regime that promotes political organization in alt-labor and among young workers more broadly. Young workers would be able to bundle their workplace organizing with political organization if lawmakers enacted reforms that promote democratic accountability. Democratic governance and accountability within nonprofit organizations should be rewarded with the right to engage in partisan politics. Members could utilize their employers’ administrative resources to organize and fund political activity. Employees and other workers could be permitted to collectively bargain and form political organizations, expanding the ranks of the organized young workforce. These strengthened labor organizations could be permitted to mimic the paycheck-deduction financing models of traditional labor unions. Such reforms would give organizers and rank-and-file activists alike a powerful tool to use in developing political organizations and closing the civic influence gap among young workers and economic elites.