

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

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*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.<sup>1</sup> On the other hand, policymaking is wholly unresponsive to the preferences of poor or working-class voters.<sup>2</sup> 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.”<sup>3</sup> Although they are not as influential as economic elites, organized “mass-based interest groups” have a real, measurable impact on policymaking.<sup>4</sup> 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.<sup>5</sup>

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<sup>1</sup> 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).

<sup>2</sup> *See id.* (finding a near-zero correlation between average citizens’ support and the chance that a given policy proposal is enacted).

<sup>3</sup> Benjamin I. Sachs, *The Unbundled Union: Politics Without Collective Bargaining*, 123 YALE L.J. 148, 151 (2013).

<sup>4</sup> *See* Gilens & Page, *supra* note 1, at 571, 575 (finding a .12 correlation between mass-interest groups’ preferences and policy change or preservation).

<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> Studies also suggest that generational disparities in voter turnout may not fully subside as young voters age,<sup>8</sup> and that non-college educated young voters are substantially less likely than their college-educated peers to vote or belong to civic organizations.<sup>9</sup> Millennials are also more diverse than their predecessors.<sup>10</sup> While political associations and member organizations can strongly impact rates of political participation, immigrant and minority communities are under-organized politically.<sup>11</sup> 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.<sup>12</sup> Unsurprisingly, the declining share of the workforce represented by unions has coincided with the diminishing political influence of workers.<sup>13</sup> 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.<sup>14</sup> In this Note, I identify three types of alt-labor organizations: movement networks, immigrant nonprofits, and member-service organizations.

<sup>6</sup> THOM FILE, U.S. DEP’T OF COMMERCE, *YOUNG-ADULT VOTING: AN ANALYSIS OF PRESIDENTIAL ELECTIONS 1964-2014* 4 (2014), available at <https://www.census.gov/prod/2014pubs/p20-573.pdf>, archived at <https://perma.cc/ZV67-G3VN>.

<sup>7</sup> 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>.

<sup>8</sup> See *id.* at 7.

<sup>9</sup> See *id.* at 4.

<sup>10</sup> See, e.g., Pew Research Trends, *Comparing Millennials to Other Generations*, PEW RES. CTR. (Mar. 29, 2015), <http://www.pewsocialtrends.org/2015/03/19/comparing-millennials-to-other-generations>, archived at <https://perma.cc/FPL9-4P6F> (statistics and visuals on millennial diversity).

<sup>11</sup> See, e.g., William A. Diaz, *Latino Participation in America: Associational and Political Roles*, 18 *HISP. J. BEHAV. SCI.* 154, 156–57, 163–69 (1996) (discussing the role of political associations in minority and immigrant voter turnout, specifically, in relation to Hispanic voters).

<sup>12</sup> *Id.* at 152.

<sup>13</sup> *Id.* at 154.

<sup>14</sup> See Josh Eidelson, *Alt-Labor*, *AM. PROSPECT* (Jan. 29, 2013), <http://prospect.org/article/alt-labor>, archived at <https://perma.cc/9SJ7-MQ8J>.

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”).<sup>15</sup> Instead, a defining characteristic of alt-labor is the reliance on political pressure in the form of grassroots advocacy, media pressure,<sup>16</sup> and “get out the vote” activity in order to achieve, for instance, a higher minimum wage or more workplace rights.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup> 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.

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<sup>15</sup> 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 . . .”).

<sup>16</sup> See, e.g., Kati L. Griffith, *Worker Centers and Labor Law Protections: Why Aren’t They Having Their Cake?*, 36 BERKELEY J. EMP. & LAB. L. 331, 334–35 (2015).

<sup>17</sup> See Eidelson, *supra* note 14.

<sup>18</sup> ROBERT PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* 338–39 (2000); see also Richard D. Kahlenberg, *Strong Unions, Strong Democracy*, N.Y. TIMES, Jan. 12, 2016, at A27, available at <http://www.nytimes.com/2016/01/12/opinion/strong-unions-strong-democracy.html> (noting that “union members [phonebanking and canvassing] increases civic participation among members and nonmembers alike”).

<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.<sup>23</sup> Unions also groom rank-and-file members to run for political office by training

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<sup>20</sup> It is fashionable to theorize that digital organizing, social media networks, and leaderless movements such as Occupy Wall Street and Black Lives Matter, can replace formal organization among young voters. See, e.g., E. Tammy Kim, *A Leadership Bible to Soothe Scared Elites*, NEW REPUBLIC (Aug. 19, 2015), <http://www.newrepublic.com/article/122569/elizabeth-samets-leadership-bible-soothes-scared-elites>, archived at <https://perma.cc/8WTH-QXJ4>. The antithesis of traditional organization, these unstructured networks allow like-minded activists to form short-term campaigns while avoiding the high costs and compromises inherent in traditional organizations. Though the effectiveness of such networks is not the topic of this paper, it is fair to observe that these networks have yet to produce higher voting rates or political effectiveness among young voters writ large. See FLANAGAN, *supra* note 7, at 12; see also MICAH L. SIFRY, *THE BIG DISCONNECT: WHY THE INTERNET HASN’T TRANSFORMED POLITICS (YET)* 158–60 (2014); Malcolm Gladwell, *Small Change: Why the Revolution Will Not be Tweeted*, NEW YORKER (Oct. 10, 2010), <http://www.newyorker.com/magazine/2010/10/04/small-change-malcolm-gladwell>, archived at <https://perma.cc/MY75-JRU8>.

<sup>21</sup> See Sachs, *supra* note 3, at 152.

<sup>22</sup> Miriam Galston, *Civic Renewal and the Regulation of Nonprofits*, 13 CORNELL L.J. & PUB. POL’Y 289, 301–03 (2004).

<sup>23</sup> See, e.g., *Local Committees*, SEIU LOCAL 99, <http://seiu99.org/member-resources/resources-information/committees-2>, archived at <https://perma.cc/3Z4K-P9P6> (last visited Mar. 7, 2016); see also *Contribute to SEIU COPE. Contribute to the Change You Want to See!*, SEIU LOCAL 99, <http://seiu99.org/2016/01/22/contribute-to-seiu-cope-contribute-to-the-change-you-want-to-see>, archived at <https://perma.cc/U6V6-4WZQ> (last visited Apr. 16, 2016).

members, providing a policy platform, fundraising, and serving as a “stepping stone” to office.<sup>24</sup>

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.<sup>25</sup> 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.<sup>26</sup> Furthermore, unions can offer their members powerful legal protections for political activity.<sup>27</sup>

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.<sup>28</sup> Unions raise their members’ turnout by registering voters,<sup>29</sup> 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.<sup>30</sup> Ultimately, union political activity provides its members with political power that translates to responsiveness from policymakers.<sup>31</sup>

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.<sup>32</sup> 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

<sup>24</sup> See *Cope Endorsement*, OC LABOR.ORG, [https://web.archive.org/web/20150630023240/http://www.oclabor.org/index.php?option=com\\_content&view=article&id=142&Itemid=109](https://web.archive.org/web/20150630023240/http://www.oclabor.org/index.php?option=com_content&view=article&id=142&Itemid=109), archived at <https://perma.cc/A76J-TBGH> (last visited Jul. 22, 2015).

<sup>25</sup> Sachs, *supra* note 3, at 172.

<sup>26</sup> See *id.* at 155–56.

<sup>27</sup> See *id.*

<sup>28</sup> *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)).

<sup>29</sup> See, e.g., Norberto Santana, Jr., *Union Drive Enlists Foot Soldiers*, ORANGE COUNTY REGISTER (Aug. 21, 2013, 1:17 PM), <http://www.ocregister.com/articles/county-190110-labor-orange.html>, archived at <https://perma.cc/685J-3WFN> (describing union-led voter registration drive of 3200 new voters).

<sup>30</sup> See *Cope Endorsement*, *supra* note 24.

<sup>31</sup> See Sachs, *supra* note 3, at 171 (citing RICHARD B. FREEMAN & JAMES L. MEDOFF, *WHAT DO UNIONS DO?* 195–98 (1984)).

<sup>32</sup> Lydia Saad, *American’s Support for Labor Unions Continues to Recover*, GALLUP (Aug. 17, 2015), <http://www.gallup.com/poll/184622/americans-support-labor-unions-continues-recover.aspx>, archived at <https://perma.cc/S53D-ZHZZ>.

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.<sup>33</sup> America’s unionization rate has steadily plummeted, reaching a low of 11.1% in 2014.<sup>34</sup> 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%.<sup>35</sup>

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.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup>

### 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

<sup>33</sup> Sachs, *supra* note 3, at 185.

<sup>34</sup> 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>.

<sup>35</sup> *Id.*

<sup>36</sup> See U.S. CENSUS BUREAU, *YOUNG ADULTS, THEN AND NOW* 3, 6 (2015), available at [http://www.census.gov/content/dam/Census/newsroom/c-span/2015/20150130\\_cspan\\_youngadults.pdf](http://www.census.gov/content/dam/Census/newsroom/c-span/2015/20150130_cspan_youngadults.pdf), archived at <https://perma.cc/B8PB-VELX> (comparing inflation-adjusted wages by age-cohort of workers by decade).

<sup>37</sup> See TOM ALLISON & KONRAD MUGGLESTONE, *YOUNG INVINCIBLES, WHERE DO YOUNG ADULTS WORK* at 3-4 (2015), available at <http://younginvincibles.org/wp-content/uploads/2014/12/Where-Do-Young-Adults-Work-12.4.pdf>, archived at <https://perma.cc/V3DD-RH59> (employment figures); see also *Table 3: Union Affiliation of Employed Wage and Salary Workers by Occupation and Industry (2013–2014)*, BUREAU LAB. STAT. (Jan. 28, 2016), <http://www.bls.gov/news.release/union2.t03.htm>, archived at <https://perma.cc/VB6P-KC93> (showing union density by industry and finding that only 10.5% of manufacturing workers, 5% of retail workers, and 3.8% of hospitality workers are unionized).

<sup>38</sup> See Jeff Wald, *What the Rise of the Freelance Economy Really Means for Business*, FORBES (Jul. 1, 2014), <http://www.forbes.com/sites/waldleventhal/2014/07/01/a-modern-hu-man-capital-talent-strategy-using-freelancers>, archived at <https://perma.cc/45QM-YTQB>.

<sup>39</sup> See Clayton Antitrust Act §§ 6, 20, 15 U.S.C. §§ 12–27 (2012); *L.A. Meat Cutters v. Jewel Tea*, 381 U.S. 676, 689–90 (1965) (expressing doubt as to whether the labor exemption would apply to any union efforts to bargain over the price of meat sold at a butcher shop).

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.<sup>40</sup> 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.<sup>41</sup> While their numbers are small, these campaigns and movements — some of which have been informally dubbed alternative labor, or “alt-labor,” movements<sup>42</sup> — gather outsized attention because they are novel, non-union efforts reshaping labor-management relations.<sup>43</sup> 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<sup>44</sup>

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

<sup>40</sup> Eidelson, *supra* note 14, at 4–5.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 3.

<sup>43</sup> Not analyzed in this paper but sometimes categorized as alt-labor are higher education-related labor movements such as the efforts by student-athlete football players to unionize at Northwestern University, Tom Farrey, *Northwestern Players Denied Request to Form First Union for Athletes*, ESPN (Aug. 17, 2015), [http://espn.go.com/college-football/story/\\_/id/13455477/nlr-says-northwestern-players-cannot-unionize](http://espn.go.com/college-football/story/_/id/13455477/nlr-says-northwestern-players-cannot-unionize), archived at <https://perma.cc/QF62-VG2M>, by graduate student unions and non-union labor organizations, David Ludwig, *Why Graduate Students of America Are Uniting*, THE ATLANTIC (Apr. 15, 2015), <http://www.theatlantic.com/education/archive/2015/04/graduate-students-of-the-world-unite/390261>, archived at <https://perma.cc/FGG9-4B2R>, by adjunct professors, Justin Miller, *When Adjuncts Go Union*, AM. PROSPECT (June 30, 2015), <http://prospect.org/article/when-adjuncts-go-union>, archived at <https://perma.cc/W6PA-8A29>, and by paid and unpaid college interns, Lydia DePillis, *Now Interns are Unionizing, Too*, WASH. POST (June 5, 2015), <https://www.washingtonpost.com/news/wonk/wp/2015/06/05/now-interns-are-unionizing-too>, archived at <https://perma.cc/M7K4-EUYU>.

<sup>44</sup> See *infra* II.B.i.–II.B.iii.



<b>Alt-Labor Organizational Model</b>	<b>Examples</b>	<b>Methods Used for Workplace-related Goals</b>
Immigrant Nonprofits	National Domestic Workers Alliance Restaurant Opportunities Center Worker Centers National Day Laborer Organizing Network Nail Salon Organizers	Organize workers; engage in lobbying and campaigns; litigate wage theft, misclassification, and other grievances; provide social services, particularly for immigrants
Member-Service Organizations	Freelancers Union Programmers Guild Working America App-Based Driver Association Coworker.org	Provide benefits (insurance, tax assistance, etc.); coordinate advocacy; facilitate or coordinate “digital organizing” and petitioning; foster referrals and networking

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.<sup>45</sup> 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.<sup>46</sup>

Alt-Labor movements like Fight for 15 do not directly organize into traditional unions.<sup>47</sup> 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

<sup>45</sup> See FIGHT FOR 15, <http://fightfor15.org>, archived at <https://perma.cc/E6F8-8PY7> (last visited Mar. 7, 2016).

<sup>46</sup> See CLEAN CARWASH CAMPAIGN, <http://www.cleancarwashcampaign.org>, archived at <https://perma.cc/U7LH-CAKM> (last visited Mar. 7, 2016); GOOD JOBS LA, <https://vimeo.com/goodjobsla>, archived at <https://perma.cc/VX56-MK5V> (last visited Mar. 7, 2016).

<sup>47</sup> See Josh Eidelson, *Who Should Fund Alt-Labor?*, NATION (Jul. 17, 2013), <http://www.thenation.com/article/who-should-fund-alt-labor>, archived at <https://perma.cc/YT7Y-QNR3>.

central organization.<sup>48</sup> 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.<sup>49</sup>

## 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<sup>50</sup> and the Florida-based Coalition of Immokalee Workers,<sup>51</sup> serve migrant and agricultural workers, who are explicitly excluded from labor law protections.<sup>52</sup> Similarly, the National Domestic Workers Alliance (“NDWA”) organizes domestic workers — mostly immigrants and minorities — who are explicitly ineligible for most employment protections.<sup>53</sup> And other organizations, like Adhikaar, serve immigrant nail salon workers who often work as independent contractors.<sup>54</sup> These organizations provide critical basic social services, such as English language education and assistance with naturalization paperwork,<sup>55</sup> for their largely immigrant constituencies. They are generally non-profit corporations funded by union or foundation grants rather than member dues.<sup>56</sup>

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

<sup>48</sup> See Steven Greenhouse, *How to Get Low-Wage Workers into the Middle Class*, ATLANTIC (Aug. 19, 2015), <http://www.theatlantic.com/business/archive/2015/08/fifteen-dollars-minimum-wage/401540>, archived at <https://perma.cc/ZQ6U-3M8N>.

<sup>49</sup> See William Finnegan, *Dignity: Fast Food Workers and a New Form of Labor Activism*, NEW YORKER (Sep. 15, 2014), <http://www.newyorker.com/magazine/2014/09/15/dignity-4>, archived at <https://perma.cc/UVXS-Z9ZS> (comparing the Fight for 15 with traditional forms of labor activism). For examples of state legislative changes to the minimum wage, see Hansi Lo Wang, *California, New York to Raise Minimum Wages to \$15 an Hour*, NPR (Apr. 1, 2016), <http://www.npr.org/2016/04/01/472716122/california-new-york-to-raise-minimum-wages-to-15-an-hour>.

<sup>50</sup> MAKE THE ROAD N.Y., <http://www.maketheroad.org/index-home.php>, archived at <https://perma.cc/5H2S-9QCM> (last visited Mar. 8, 2016).

<sup>51</sup> *Latest News*, COALITION IMMOKALEE WORKERS, <http://www.ciw-online.org>, archived at <https://perma.cc/SJQ9-TS2B> (last visited Feb. 9, 2016).

<sup>52</sup> National Labor Relations Act, 29 U.S.C. § 152 (2012) (“The term ‘employee’ shall . . . not include any individual employed as an agricultural laborer, or in the domestic service of any family . . . .”); see, e.g., NAT’L DAY LABORER ORGANIZING NETWORK, [www.ndlon.org](http://www.ndlon.org), archived at <https://perma.cc/GVB9-RSHV> (last visited Mar. 8, 2016).

<sup>53</sup> See 29 U.S.C. § 152 (2012); NAT’L DOMESTIC WORKERS ALLIANCE, [www.domesticworkers.org](http://www.domesticworkers.org), archived at <https://perma.cc/B8KL-MC4H> (last visited Mar. 8, 2016).

<sup>54</sup> *Who We Are*, ADHIKAAR, [www.adhikaar.org](http://www.adhikaar.org), archived at <https://perma.cc/S4GN-TXBW> (last visited Aug. 21, 2015); see also National Labor Relations Act, 29 U.S.C. § 152(3) (2012) (specifying that the term employee for the purposes of NLRA labor protections does not include “any individual having the status of an independent contractor”).

<sup>55</sup> See, e.g., *How We Work: Adult Education*, MAKE THE ROAD N.Y., [http://www.maketheroad.org/howwework\\_adulted.php](http://www.maketheroad.org/howwework_adulted.php), archived at <https://perma.cc/68SU-G3ZL> (last visited Mar. 8, 2016).

<sup>56</sup> See Eidelson, *supra* note 47.

tions for members.<sup>57</sup> 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.<sup>58</sup> And although many such organizations attempt to incorporate the leadership of grassroots members,<sup>59</sup> they are not formally held to democratic governance rules.<sup>60</sup>

### 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.<sup>61</sup> “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.<sup>62</sup> Funded by foundations, including the Rockefeller, MacArthur, and Robert. M. Wood Foundations,<sup>63</sup> 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.<sup>64</sup> However, some deride “Freelancers Union”<sup>65</sup> as a misnomer: the Freelancers Union does not engage in or facilitate collective bargaining or set industry rates and standards, all basic func-

<sup>57</sup> See Griffith, *supra* note 16, at 335–36; see generally Eidelson, *supra* note 14.

<sup>58</sup> See Eidelson, *supra* note 14.

<sup>59</sup> See *id.*

<sup>60</sup> See GOVERNANCE AND RELATED TOPICS – 501(C)(3) ORGANIZATIONS 3–6 (2008), available at [http://www.irs.gov/pub/irs-tege/governance\\_practices.pdf](http://www.irs.gov/pub/irs-tege/governance_practices.pdf), archived at <https://perma.cc/7QGS-FXWV> (IRS public documents suggesting best-practices for nonprofit charity governance do not include democratic internal governance as a best practice); cf. Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411 (2012) (setting detailed guidelines for labor union internal elections procedures).

<sup>61</sup> See Steven Greenhouse, *Tackling Concerns of Independent Workers*, N.Y. TIMES (Mar. 23, 2013), <http://www.nytimes.com/2013/03/24/business/freelancers-union-tackles-concerns-of-independent-workers.html>.

<sup>62</sup> Nancy Cook, *The Insecure World of Freelancing*, THE ATLANTIC (Jul. 25, 2015), <http://www.theatlantic.com/business/archive/2015/07/building-social-safety-net-freelancers/399551>, archived at <https://perma.cc/DRW3-ZQNK>.

<sup>63</sup> *List of Foundation Funders*, FREELANCERS UNION, <https://www.freelancersunion.org/about/history.html>, archived at <https://perma.cc/LV72-XFGN> (last visited Mar. 12, 2016).

<sup>64</sup> *Frequently Asked Questions*, FREELANCERS UNION, <https://www.freelancersunion.org/about/faqs>, archived at <https://perma.cc/FGW3-DB7W> (last visited Apr. 15, 2016).

<sup>65</sup> For an insightful critique of the Freelancers Union, see Ari Paul, *A Union of One*, JACOBIN (Oct. 28, 2014), <https://www.jacobinmag.com/2014/10/freelancers-union>, archived at <https://perma.cc/8PWF-P8W3>.

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.<sup>66</sup>

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.<sup>67</sup> Similarly, a pair of former SEIU staff founded "Coworker.org," a website that facilitates digital organization among coworkers in the form of online petitions.<sup>68</sup> 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.<sup>69</sup>

### 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.<sup>70</sup> 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.<sup>71</sup> Members also elect their leaders<sup>72</sup> and form and join political action committees.<sup>73</sup> 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.

<sup>66</sup> Greenhouse, *supra* note 61.

<sup>67</sup> *See About Us*, WORKING AMERICA, <http://www.workingamerica.org/about>, archived at <https://perma.cc/9GKF-C4ZQ> (last visited Apr. 15, 2016).

<sup>68</sup> *Let Us Have Visible Tattoos!!!*, COWORKER.ORG, <https://www.coworker.org/petitions/let-us-have-visible-tattoos>, archived at <https://perma.cc/M8S5-7FJ4> (last visited Apr. 2, 2016); *see also Benefits*, WORKING AMERICA, <http://www.workingamerica.org/membership/benefits>, archived at <https://perma.cc/X27L-H3ER> (last visited Mar. 12, 2016).

<sup>69</sup> *Frequently Asked Questions*, COWORKER.ORG, <http://about.coworker.org/frequently-asked-questions/>, archived at <https://perma.cc/6Z7J-XYX9> (last visited Mar. 12, 2016).

<sup>70</sup> Eidelson, *supra* note 14.

<sup>71</sup> Sachs, *supra* note 3, at 169.

<sup>72</sup> Labor Management Reporting and Disclosure Act of 1959, tit. I, § 101(a)(1), 73 Stat. 519, 522–23 (codified as amended at 29 U.S.C. § 411(a)(1) (2012)).

<sup>73</sup> *See, e.g., Committees*, SEIU LOCAL 99, <http://seiu99.org/member-resources/resources-information/committees-2>, archived at <https://perma.cc/T4M7-J27R> (last visited Mar. 5, 2016) (describing how this union includes, among others, a "social, economic, and global justice committee" and a "political action committee").

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.<sup>74</sup> 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<sup>75</sup>

	<b>SEIU Local 99 (Traditional Labor Union)</b>	<b>Fight for 15 (Alt-Labor Movement &amp; Network)</b>	<b>Filipino Migrant Center (Alt-Labor Immigrant Nonprofit)</b>	<b>Freelancers Union (Alt-Labor Member Service Organization)</b>
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](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.

	<b>SEIU Local 99 (Traditional Labor Union)</b>	<b>Fight for 15 (Alt-Labor Movement &amp; Network)</b>	<b>Filipino Migrant Center (Alt-Labor Immigrant Nonprofit)</b>	<b>Freelancers Union (Alt-Labor Member Service Organization)</b>
Member-activists form local organizations that engage in issue-based campaigns	Yes	Yes	Yes	Yes <sup>79</sup>
Members get out the vote (register, educate, turnout) internally with other members	Yes	Yes <sup>80</sup>	Yes <sup>81</sup>	Unclear <sup>82</sup>
Get out the vote activities to the broader community	Yes	Yes	Yes	No
Advocacy & lobbying to elected officials	Yes <sup>83</sup>	Yes	Yes	Yes
Issue based public political campaigns (e.g. ballot measures, legislation)	Yes	Yes <sup>84</sup>	Yes <sup>85</sup>	No

<sup>79</sup> Lindsey McCormack, *Do they Pack a Punch? Freelancers Get Political*, CITYLIMITS.ORG (Sep. 21, 2009), <http://citylimits.org/2009/09/21/do-they-pac-a-punch-free-lancers-get-political>, archived at <https://perma.cc/555Q-ELCX>.

<sup>80</sup> *Strikes Happening*, FIGHT FOR 15, <http://fightfor15.org/november10>, archived at <https://perma.cc/5HX8-JP8J> (last visited Mar. 5, 2016).

<sup>81</sup> *Civic Engagement*, FILIPINO MIGRANT CENTER, <http://filipinomigrantcenter.org/resources/civic-engagement>, archived at <https://perma.cc/29NK-QR7R> (last visited Mar. 5, 2016).

<sup>82</sup> *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.*

<sup>83</sup> *Committees*, *supra* note 73.

<sup>84</sup> Robert McLean, *\$15 Minimum Wage Measure Qualifies For California Ballot*, CNN.com (Mar. 23, 2016), <http://money.cnn.com/2016/03/23/news/california-15-minimum-wage-2016-ballot>, archived at <https://perma.cc/YQB8-9D5F>.

<sup>85</sup> *End Wage Theft*, FILIPINO MIGRANT CENTER, <http://filipinomigrantcenter.org/campaigns-programs/end-wage-theft>, archived at <https://perma.cc/2P2Z-7L23> (last visited Mar. 5, 2016).

	<b>SEIU Local 99 (Traditional Labor Union)</b>	<b>Fight for 15 (Alt-Labor Movement &amp; Network)</b>	<b>Filipino Migrant Center (Alt-Labor Immigrant Nonprofit)</b>	<b>Freelancers Union (Alt-Labor Member Service Organization)</b>
Partisan endorsements, donations, campaigning	Yes <sup>86</sup>	No <sup>87</sup>	No	Yes <sup>88</sup>
Self-funded by membership dues	Yes	No	No	No

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.<sup>89</sup> The union engages in extensive political mobilization through its voluntary political program, Committee on Political Education (“COPE”).<sup>90</sup> 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.<sup>91</sup> 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.<sup>92</sup>

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

<sup>86</sup> See, e.g., *SEIU Local 99 Education Workers Endorse L.A. Unified and L.A. Community College Board Candidates*, SEIU LOCAL 99 (Dec. 19, 2014), <http://seiu99.org/2014/12/19/seiu-local-99-education-workers-endorse-l-a-unified-and-l-a-community-college-board-candidates>, archived at <https://perma.cc/JS5R-N7PD>.

<sup>87</sup> 501(c)(3) nonprofit organizations cannot engage in partisan activity. Developments in the Law, *Nonprofit Corporations*, 105 HARV. L. REV. 1656, 1660 (1992) [hereinafter *Nonprofit Corporations*].

<sup>88</sup> Gabrielle Wuolu, *In Good Company: Freelancers Union’s Endorsements Same as NY Times*, FREELANCERS UNION (Sep. 1, 2009), <https://blog.freelancersunion.org/2009/09/01/in-good-company-freelancers-unions-endorsements-same-as-ny-times>, available at <https://perma.cc/7J3S-ZXVL>.

<sup>89</sup> *About Us*, SEIU LOCAL 99, <http://seiu99.org/about-us>, archived at <https://perma.cc/N2PF-EUAT> (last visited Mar. 5, 2016).

<sup>90</sup> *Contribute to SEIU COPE. Contribute to the Change You Want to See!*, SEIU LOCAL 99, <http://seiu99.org/2016/01/22/contribute-to-seiu-cope-contribute-to-the-change-you-want-to-see>, archived at <https://perma.cc/56N4-A43Z> (last visited Mar. 5, 2016).

<sup>91</sup> *Id.*

<sup>92</sup> *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.<sup>93</sup> Organizers mobilize members to support a pro-worker platform at the polls,<sup>94</sup> and activists try to pressure national political candidates to debate a higher minimum wage.<sup>95</sup> But, although its affiliates at the SEIU and other unions engage in robust political campaigning,<sup>96</sup> Fight for 15 cannot endorse candidates or create political action committees.<sup>97</sup>

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.”<sup>98</sup> 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.<sup>99</sup> Furthermore, NDWA’s member-nonprofit organizations participate in local “Get Out the Vote” activity.<sup>100</sup> For example, the Filipino Migrant Center, an NDWA affiliate in Long Beach, California, coordinates a civic engagement program aimed towards increasing Filipino community turnout.<sup>101</sup> 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.<sup>102</sup>

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

<sup>93</sup> Finnegan, *supra* note 49.

<sup>94</sup> *Come Get My Vote*, FIGHT FOR 15, <http://fightfor15.org/november10/come-get-my-vote>, archived at <https://perma.cc/DEM9-3D53> (last visited Mar. 5, 2016).

<sup>95</sup> Teresa Tritch, *The Fight for \$15 Comes to the Republican Debates*, N.Y. TIMES (Nov. 10, 2015), <http://takingnote.blogs.nytimes.com/2015/11/10/the-fight-for-15-comes-to-the-republican-debate>, archived at <https://perma.cc/CW6N-BM3A>.

<sup>96</sup> *Service Employees International Union*, OPENSECRETS.ORG, <https://www.opensecrets.org/orgs/summary.php?id=D000000077&cycle=2012>, archived at <https://perma.cc/K8WK-9V4Q> (last visited Mar. 5, 2016) (SEIU spent over \$25 million on the 2012 elections).

<sup>97</sup> *Strikes Happening*, *supra* note 80. 501(c)(3) nonprofit organizations cannot engage in partisan activity. *Nonprofit Corporations*, *supra* note 87, at 1660.

<sup>98</sup> *Labor Protections*, NATIONAL DOMESTIC WORKERS ALLIANCE, <http://www.domesticworkers.org/initiatives/labor-protections>, archived at <https://perma.cc/4VN6-7ZKR> (last visited Mar. 5, 2016).

<sup>99</sup> *Who We Are*, NATIONAL DOMESTIC WORKERS ALLIANCE, <http://www.domesticworkers.org/who-we-are>, archived at <https://perma.cc/4BZK-5KR2> (last visited Mar. 5, 2016).

<sup>100</sup> Voice Waves, *Community Groups Get Out the Vote*, VOICE WAVES, LONG BEACH (May 28, 2014), <http://voicewaves.org/2014/05/community-groups-get-out-the-vote>.

<sup>101</sup> *Civic Engagement*, *supra* note 81.

<sup>102</sup> See Voice Waves, *supra* note 100 (describing FMC civic activities as non-partisan).



Action Committee that decides on endorsements.<sup>103</sup> Critically, because of its 501(c)(3) structure, and because membership is free,<sup>104</sup> 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,”<sup>105</sup> or negotiate contracts through which they represent all workers in grievance arbitration or reinstatement hearings.<sup>106</sup> 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<sup>107</sup> and persuade agencies and legislatures to enact “Domestic Worker Bill of Rights.”<sup>108</sup> 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

<sup>103</sup> Freelancers Union, *An Inside Look at the Endorsement Committee*, FREELANCERS UNION (Oct. 13, 2010), <https://blog.freelancersunion.org/2010/10/13/an-inside-look-at-the-endorsement-committee>, archived at <https://perma.cc/MBE8-672C>.

<sup>104</sup> *Frequently Asked Questions*, FREELANCERS UNION, <https://www.freelancersunion.org/about/faqs>, available at <https://perma.cc/7Q5L-5M8C> (last visited Apr. 15, 2016).

<sup>105</sup> *Id.*

<sup>106</sup> *See, e.g., Why Join a Union?*, FREELANCERS UNION, <http://www.seiu503.org/about-seiu/join-seiu/why-join-a-union>, archived at <https://perma.cc/ZB23-8D96> (last visited Apr. 16, 2016).

<sup>107</sup> *Id.*

<sup>108</sup> *See, e.g., Massachusetts Bill of Rights*, NATIONAL DOMESTIC WORKERS ALLIANCE, <http://www.domesticworkers.org/mass-bill-of-rights>, archived at <https://perma.cc/DP9M-9D23> (last visited Mar. 5, 2016).

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,<sup>109</sup> 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,<sup>110</sup> 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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<sup>109</sup> Sachs, *supra* note 3, at 168–69.

<sup>110</sup> *Id.* at 151.

nal Revenue Code (“IRC”) but are otherwise lightly regulated because of First Amendment association and privacy protections.<sup>111</sup> Reflecting this light touch, the IRC contains no equivalent to the Labor Management Reporting and Disclosure Act (“LMRDA”) laws regulating union internal governance.<sup>112</sup> Thus, the IRC does not require democratic governance for 501(c)(3) organizations, unlike LMRDA regulations on union elections.<sup>113</sup> 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.<sup>114</sup>

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.<sup>115</sup> 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.<sup>116</sup> 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.<sup>117</sup> 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.<sup>118</sup> 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.<sup>119</sup> 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

<sup>111</sup> *Nonprofit Corporations*, *supra* note 87, at 1658.

<sup>112</sup> *See generally* GOVERNANCE AND RELATED TOPICS – 501(C)(3) ORGANIZATIONS, *supra* note 60 (lacking laws regulating internal governance).

<sup>113</sup> *Compare id. with* Labor Management Reporting and Disclosure Act of 1959, tit. I, § 101(a)(1), 73 Stat. 519, 522–23 (codified as amended at 29 U.S.C. § 411(a)(1) (2012)). For a discussion of how nonprofits might self-govern to better promote democracy, *see generally* CHAO GUO, THE ROAD LESS TRAVELED 1–3 (2012), *available at* [https://web.archive.org/web/20150630054231/http://www.neh.gov/files/divisions/fedstate/the\\_road\\_less\\_traveled.pdf](https://web.archive.org/web/20150630054231/http://www.neh.gov/files/divisions/fedstate/the_road_less_traveled.pdf), *archived at* <https://perma.cc/5PF6-USVF>.

<sup>114</sup> *See generally* GOVERNANCE AND RELATED TOPICS – 501(C)(3) ORGANIZATIONS, *supra* note 60.

<sup>115</sup> *Nonprofit Corporations*, *supra* note 87, at 1660.

<sup>116</sup> *Cf., e.g.,* BOLDER ADVOCACY, STATE LOBBYING REGISTRATION THRESHOLDS 2–7 (2015), *available at* <http://bolderadvocacy.org/wp-content/uploads/2015/09/NEW-State-Lobbying-Registration-Thresholds.pdf>, *archived at* <https://perma.cc/RU5N-3S2G> (detailing state-based restrictions on nonprofit lobbying).

<sup>117</sup> *See Nonprofit Corporations*, *supra* note 87, at 1660.

<sup>118</sup> Eidelson, *supra* note 47.

<sup>119</sup> Griffith, *supra* note 16, at 346–47.

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<sup>120</sup> 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.<sup>121</sup> 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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<sup>120</sup> 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/join-seiu/why-join-a-union>, archived at <https://perma.cc/RE5U-EYPA> (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#faq05>, archived at <https://perma.cc/8BN5-UYYJ> (last visited Mar. 5, 2016) (dues for low wage workers are 2x hourly wage, or approximately 1.4%, per month).

<sup>121</sup> See Sachs, *supra* note 3, at 154.

antees the right to collectively bargain or redress grievances<sup>122</sup> also creates and affirms employees’ right to free political speech in the workplace.<sup>123</sup>

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.<sup>124</sup> 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.<sup>125</sup> In exchange for this privilege, unions must meet a strict set of regulations that mandate internal democratic governance and accountability.<sup>126</sup>

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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<sup>122</sup> National Labor Relations Act, 29 U.S.C. § 151 (2012).

<sup>123</sup> See Sachs, *supra* note 3, at 172.

<sup>124</sup> Eidelson, *supra* note 14.

<sup>125</sup> Benjamin I. Sachs, *Unions, Corporations, and Political Opt-Out Rights After Citizens United*, 112 COLUM. L. REV. 800, 810–19 (2012).

<sup>126</sup> *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.<sup>127</sup>

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.<sup>128</sup> 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.<sup>129</sup> 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 alt-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.<sup>130</sup> 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.<sup>131</sup> The roots of this exemption lie in antitrust law and

<sup>127</sup> Cf. Sachs, *supra* note 3, at 165–66.

<sup>128</sup> Labor Management Reporting and Disclosure Act of 1959, tit. I, § 101(a)–(b), 73 Stat. 519, 522–23 (codified as amended at 29 U.S.C. § 411(a)(1) (2012)).

<sup>129</sup> Sachs, *supra* note 125, at 810–11.

<sup>130</sup> *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”).

<sup>131</sup> There are some state-law exemptions 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<sup>132</sup> or house cleaners, to form labor unions is too often contingent upon workers successfully convincing courts and regulators that they are employees.<sup>133</sup> This prevents vulnerable non-employee workers from collectively bargaining<sup>134</sup> 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.<sup>135</sup> 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.”<sup>136</sup> 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.<sup>137</sup>

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 banding together to ask for higher rates,

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<sup>132</sup> Uber is a mobile, app-based “ride-sharing” platform that connects independent drivers with passengers, sets and receives fees from riders, and collects a portion of each fee. UBER, [www.uber.com](http://www.uber.com), archived at <https://perma.cc/84FT-G7AJ> (last visited Mar. 5, 2016).

<sup>133</sup> See Elizabeth Kennedy, *Freedom from Independence: Collective Bargaining Rights for “Dependent Contractors”*, 26 BERKELEY J. EMP. & LAB. L. 143, 152 (2005).

<sup>134</sup> *Id.* at 152–53.

<sup>135</sup> Clayton Antitrust Act, 15 U.S.C. §§ 12–27 (2012) (exempting “labor organizations” from antitrust liability). Such an interpretation of the Clayton Antitrust Act could be permissible under the *Chevron* test because when the statutory language is unclear, the judiciary defers to the agency’s interpretation of Congressional intent. *Chevron, U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837, 864–65 (1984).

<sup>136</sup> Clayton Antitrust Act, 15 U.S.C. § 17 (2012) (“[L]abor . . . is not a commodity or article of commerce.”).

<sup>137</sup> Kennedy, *supra* note 133, at 160–62.

which are effectively wages.<sup>138</sup> 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.<sup>139</sup> 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."<sup>140</sup> 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.<sup>141</sup> 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.<sup>142</sup> However, when applied, this exemption can prevent

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<sup>138</sup> *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).

<sup>139</sup> 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>.

<sup>140</sup> 15 U.S.C. § 17 ("[L]abor . . . is not a commodity or article of commerce.").

<sup>141</sup> *See Kennedy, supra* note 133, at 154.

<sup>142</sup> *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.").



independent-contractors and employees from organizing together.<sup>143</sup> 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.<sup>144</sup> 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.<sup>145</sup> At the same time, “[t]he political advocacy of nonprofit corporations enhances the political influence of underrepresented groups and secures a place

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<sup>143</sup> Cf. *id.*

<sup>144</sup> B. HOLLY SCHADLER, ALLIANCE FOR JUSTICE, THE CONNECTION: STRATEGIES FOR CREATING AND OPERATING 501(C)(3)S, 501(C)(4)S, AND POLITICAL ORGANIZATIONS, 37–40 (3d ed. 2012), available at [http://bolderadvocacy.org/wp-content/uploads/2012/10/The\\_Connection\\_paywall.pdf](http://bolderadvocacy.org/wp-content/uploads/2012/10/The_Connection_paywall.pdf), archived at <https://perma.cc/RMD6-M65L>.

<sup>145</sup> Cf. *Nonprofit Corporations*, *supra* note 87, at 1657, 1660.

on the social agenda for otherwise neglected concerns.”<sup>146</sup> One ethos for reforming nonprofit political law is “more voice, not less.”<sup>147</sup> 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.<sup>148</sup> 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<sup>149</sup> and in right-to-work states<sup>150</sup> employ, in which only voluntary dues can fund the

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<sup>146</sup> *Id.* at 1656.

<sup>147</sup> 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).

<sup>148</sup> *Cf. The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations*, IRS (Dec. 15, 2015), [http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501\(c\)\(3\)-Tax-Exempt-Organizations](http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/The-Restriction-of-Political-Campaign-Intervention-by-Section-501(c)(3)-Tax-Exempt-Organizations), archived at <https://perma.cc/WXK9-WMJR> (stating that nonprofit charities are not permitted to share resources with partisan organizations).

<sup>149</sup> *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).

<sup>150</sup> *Comm’n 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 its their membership, “one of the more dogged problems in organizational development.”<sup>151</sup> 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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because it is not “germane to collective bargaining, contract administration, and grievance adjustment”).

<sup>151</sup> 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.