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Reyna Ramolete Hayashi

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Empowering Domestic Workers Through Law and Organizing Initiatives

Reyna Ramolete Hayashi[1]

I. INTRODUCTION

> *We are subjected to emotional and physical exploitation from which we cannot easily free ourselves because of the need to work and support our families in our home countries. For some of us, being immigrants—this makes our situation worse, because the employers take advantage of this situation, increasing our work hours, many times reaching 24 hours. We are verbally assaulted, and we have to stay quiet. Often we end up leaving these jobs when we can't take it anymore. What is sad and difficult is that sometimes we are not paid a single penny for the work we've done. In my case, I have had good, considerate employers, but in these years, I have also experienced difficulties which I never thought I would have to endure—discrimination because of the color of my skin and for being an immigrant.*
>
> Housecleaner from the Dominican Republic[2]

Domestic workers in the United States are predominantly poor immigrant women of color,[3] subject to multiple forms of oppression based on class, nationality, gender, and race. Current U.S. immigration and labor law does little for domestic workers to guarantee basic workers' rights or provide protection from, or remedies for, employer abuse. While legal reform in U.S. immigration and labor law is necessary to codify rights and remedies for domestic workers, it is not sufficient.[4] A community-based, organizing-centered approach to progressive lawyering that privileges the goals of social movements over law reform efforts will empower communities to more holistically address the conditions of power and privilege that cause domestic worker abuse and oppression. This law and organizing model will require facilitating creative initiatives with domestic workers to produce

social change alongside legal reform efforts, which include unionization, worker centers, and worker cooperatives.

This note seeks to critically examine the domestic work industry in the United States, critique the immigration and labor protections available for domestic workers, and propose alternative law and organizing initiatives to empower domestic workers to generate meaningful social change. To begin, section two will illustrate the domestic worker experience by examining the history of domestic servitude in the United States, the domestic workforce today, domestic workers as a unique workforce prone to abuse, and the exploitation of domestic workers by focusing on intersections between gender, race, immigration, and poverty. Section three will provide an inventory and critique of the current state of labor and immigration laws and remedies for domestic workers. Section four will argue that law is an imperfect and problematic apparatus for social change by employing critical legal theory to critique the law, litigation, and lawyers. Section four will ultimately conclude that the best way to address the intersections and conditions that cause domestic servitude is to de-center the role of law and lawyers and adopt a "law and organizing approach" to social change work. Section five will argue that adopting a law and organizing methodology will require facilitating creative, community-based, and organizing-centered initiatives. These include unionization, worker centers, and worker cooperatives—all of which empower domestic workers to generate tangible, bottom-up social change. Section five will then present case studies of three innovative law and organizing models: the unionization of a particular sector of the domestic service workforce, a worker center, and a worker-owned cooperative.

II. THE DOMESTIC WORKER EXPERIENCE

A. The History of Domestic Servitude

> *I am a negro woman, and I was born and reared in the South. . . . For more than thirty years . . . I have been a servant in one capacity or another in white families. . . . I frequently work from fourteen to sixteen hours a day. I am compelled by my contract, which is oral only, to sleep in the house. I am allowed to go home to my own children . . . only once in two weeks. . . . I don't know what it is to go to church; I don't know what it is to go to a lecture or entertainment. . . . I live a treadmill life. . . . You might as well say that I'm on duty all the time—from sunrise to sunrise, every day in the week. I am the slave, body and soul, of this family.*
>
> African American domestic worker, 1912[5]

Today's domestic work industry depends upon the exploitation of the household labor of women of color. The industry today both inherits and reproduces the systemic, institutionalized relationships of power and privilege rooted in our history of slavery—where the growth and power of the U.S. economy depended upon the appropriation of the land and labor of people of color. As the colonial plantation economy grew and white settlers accumulated wealth, they hired maids, used indentured servants, or bought slaves to perform household work.[6] While white men could labor in the market economy, women's only option was household work.[7] Meanwhile, African American women did the same work as slaves—laboring both in the fields, growing and harvesting cotton, as well as in the home, spinning thread, weaving fabric, cooking, cleaning, washing, and raising their white master's children—all of which sustained the life of the plantation economy.[8]

After the abolition of slavery, African American women continued to perform household work as paid domestic workers.[9] As white women, both American-born and foreign-born, moved from the private sphere of the home to industrial, retail, and service sector jobs, they sought to distance

themselves from what was increasingly thought of as "black women's work."[10] White women experienced sexism as a paternalistic denial of their right to work outside the sanctity of the home—a denial which sought to preserve the feminine ideal of women's roles as mothers and wives.[11] Thus, the core demand of the white feminist movement was the right to do paid work outside of the home.[12] Consequently, white feminism's vision of access to work outside their homes universalized white women's experiences, discounting the very distinct ways in which women of color experienced both sexism and racism. Because the labor of women of color has always been exploited, women of color feminists questioned demands for access to paid work outside of the home. For women of color who had always been working, who had never had a day off, who had never been paid for what their labor was worth, and who had always been relegated to taking care of white women's children, their experience of the labor market was one of oppression, exploitation, and trauma. Women of color wanted the right to take care of their own children, not just white women's children.[13]

Thus, as white women gained entry into the male-dominated public sphere of work, they shifted their child-rearing and domestic responsibilities to African American women, instead of demanding a fundamental change in the gendered division of labor.[14] Because of white women's exodus into other sectors of the workforce, and the fact that African American women were denied work in other occupations, African American women occupied the majority of the domestic work industry by the 1940s.[15] Eventually, African American domestic workers moved to institute day-work as the prevailing form of domestic labor, replacing the historical arrangement of live-in domestic work. Day-work gave domestic workers more autonomy over their conditions of employment by shortening work days, making it easier to leave an abusive employer, and allowing workers more time to take care of their own families and children.[16] As the civil rights movement

made jobs available to African Americans, their presence in domestic work declined.[17]

B. The Domestic Workforce Today

> *We have been forced here because U.S. foreign policy has created poverty in our home countries. Once we are here in the U.S., searching for a way to survive, we are pushed into exploited jobs where our work is not recognized, respected or protected.*
>
> Joycelyn Campbell, nanny from Barbados.[18]

From the 1970s until today, immigrant women of color have dominated the domestic work industry.[19] These domestic workers are either immigrants, undocumented migrants, trafficked workers, or those working under special work visas. The push-and-pull factors that cause forced migration to the United States are a direct result of U.S. neoliberal foreign policies.[20] The United States and other developed countries instituted policies to encourage globalization and free trade, which created poverty and displacement in developing countries, resulting in unemployed or underemployed economic migrants coming to the United States in search of work and higher wages.[21] Treaties like the 1994 North American Free Trade Agreement and the 2005 Central American Free Trade Agreement, in addition to the structural adjustment programs of the World Bank and the International Monetary Fund, all jointly reduced tariffs, opened markets, and distributed loans in developing countries.[22] These policies collectively shifted jobs to low-wage countries, encouraged lower wages and living standards, weakened workers' rights, caused environmental damage, privatized public industries, and reduced government spending on social services to pay back foreign debt, thus devastating economies in developing countries.[23] Neoliberal policies allowed for the free-flow of capital into the United States, while at the same time criminalizing the corollary free flow of labor.[24] Nevertheless, economic devastation in developing countries

displaced a mobile, vulnerable, and cheap migrant labor force for the United States, many of whom filled the ranks of the domestic workforce.

Due to this phenomenon of displacement and migration, domestic workers in the United States today are disproportionately poor, immigrant women of color[25] subject to intersectional oppressions of class, nationality, gender, and race. In stark contrast, employers of domestic workers are predominately white and from the United States.[26] The demographics of the domestic workforce reflect the institutionalized reproduction of racism and sexism through the occupational segregation of women of color in the low-wage, contingent, and transient workforce.

Domestic workers are employed to work in private homes by the heads of the household. They perform various household responsibilities including cleaning, cooking, laundry, gardening, shopping, and running errands, as well as home care such as childcare, elderly care, and disabled care.[27] There are approximately one million domestic workers in the United States,[28] and 95 percent of those domestic workers are women.[29] Still, those statistics fail to capture the large population of undocumented immigrant domestic workers, many of whom are from Mexico, Central America, the Caribbean, South Asia, and the Philippines.[30] In New York City, for example, there are approximately 250,000–450,000 undocumented domestic workers.[31] Domestic workers earn a mean annual wage of $15,160 and experience higher levels of poverty than workers in any other occupation, often living paycheck to paycheck.[32] Employment benefits—like health insurance, paid holidays, vacation, and sick leave—are almost nonexistent in the domestic work industry.[33]

C. Domestic Workers as a Unique Workforce Vulnerable to Abuse

> *The first time I heard "Christie," our son's caregiver, refer to me as her boss, I was taken aback. The word seemed too formal. I had hopes for the kind of intimacy I'd known other parents and nannies to experience and wanted "Christie" to relate to me as someone other than her employer. . . . [M]y resistance to seeing myself as*

> *an employer meant that it took too long for "Christie" to be treated like an employee; rather than signing a contract and agreeing to the terms of work on day one, we talked about benefits casually, after she'd already started work. I would not have tolerated such lack of professionalism in my own job.*
>
> Household employer[34]

Domestic workers are more prone to suffer labor exploitation and abuse because of the unique structure and characteristics of the domestic work relationship.[35] Domestic workers are vulnerable to exploitation and mistreatment because of the isolated, solitary, one-on-one, employee-employer relationship; the informality and precariousness of domestic work; the location of domestic work in the private sphere of the home; and its resemblance to unpaid women's household labor.

First, the traditional structure of domestic work required that workers both labored and lived in their employer's home. This live-in structure meant that domestic workers were isolated from each other and did not have the opportunity to forge a sense of solidarity or develop a collective consciousness about their labor conditions.[36] Even those workers that do not have live-in arrangements are still working one-to-one with their employers in the private setting of the employer's home. Because they are solitary employees, domestic workers do not have coworkers at their workplace to obtain support and leverage from employer abuse.[37]

Next, the informality and precariousness of domestic work means that workers have to secure multiple sources of employment, and therefore, workers are continually in the process of a job search. Also, once workers do secure a job, many of those arrangements are done through verbal agreements, which leave workers vulnerable to abuse at the impulses of their employers.[38]

Lastly, domestic labor is rendered invisible both physically and economically. In the physical sense, the domestic work relationship is invisible because it is located within the private sphere of the home.[39] Even

other low-wage service industries, like food service and janitorial work, have the advantage of occupying more public spaces. In contrast, domestic work occurs behind closed doors and out of the public eye. In the economic sense, the domestic work relationship is rendered invisible, because it is characterized as unpaid women's household labor.[40] Because women are already expected to perform household duties—cooking, cleaning, and child rearing—as part of their maternal roles and out of love and devotion, domestic work defies market quantification and exchange. Consequently, because domestic work is gendered in nature and is located in the private sphere, both physically and economically, it has been marginalized and devalued by both the market and the legal system.

D. Employer Abuse and Exploitation of Domestic Workers

> *Sometimes they didn't pay me. If I asked them about the money they started teasing me. They told me to go buy food from fifty dollars for the whole family, and I had to buy my clothes, lotion, soap. They never gave me a vacation or holidays off. Sometimes I was not feeling well, but still had to work. The doctor told them that I had to stop working for four days, but when I went home they told me I had to cook, clean the house, take the children to the park, take the children to the YMCA from 33rd Street to 47th Street by walking with two children. At the same time, I was collecting the cans of soda and took them to the store to get some money to buy food.*
>
> Housekeeper from the Philippines[41]

Domestic workers suffer varying degrees of abuse at the hands of their employers, including labor violations; verbal, psychological, and physical abuse; and even trafficking, servitude, and forced labor. One survey in New York revealed that one-third of all domestic workers and one-half of live-in workers experienced abuse at the hands of their employer.[42] Twenty-one percent of workers reported that their employer verbally abused them by yelling, threatening, or calling them insulting names, and a small percentage

of workers reported that their employer physically abused them by pushing, beating, raping, or sexually assaulting them.[43]

A Human Rights Watch report documents various abuses suffered by domestic workers with special visas in the United States.[44] First, for example, employers have psychologically abused domestic workers by requiring that they wash their clothes separately from the employers' clothes or with dirty rags. [45] Employers have also denied workers proper clothing, insulted them, and controlled their food consumption.[46] In addition to psychological abuse, domestic workers suffered physical abuse by their employers when employers yanked on workers' clothing; beat, hit, slapped, or spit on them; threatened them with weapons; and sexually assaulted them.[47] Third, employers restricted domestic workers' freedom of movement through confiscating passports; prohibiting them from leaving the worksite after work hours; denying them the right to leave unaccompanied; refusing to give them house keys; misrepresenting U.S. law, culture, and city life; controlling with whom workers could speak; and denying them the right to attend religious services.[48] Fourth, employers jeopardized domestic workers' health and safety by providing workers with unhealthy sleeping environments (sometimes in unheated basements that were under construction or in utility rooms next to furnaces); providing them with unsafe working conditions; denying them food; and refusing to give them medical care.[49] Fifth, employers forced domestic workers to work long hours with little rest or break time while at the same time compensating workers less than required by minimum wage laws. Workers had an average workday of fourteen hours, worked six days a week, and were compensated a median hourly wage of $2.14, which was only 42 percent of the minimum hourly wage[50] Last, employers invaded the privacy of domestic workers by reading their mail and diaries, listening in on telephone conversations, and searching workers' purses and rooms.[51] Such inhumane conduct harasses workers, violates their dignity, and reinforces their subordination.

III. DOMESTIC WORKERS' LEGAL RIGHTS, PROTECTIONS, AND EXCLUSIONS

A. Critiques of Federal Labor Rights for Domestic Workers

> *What do we do about the cleaning lady that comes in? She enjoys herself. She gets together with the family and has a [C]oke or a glass of milk.*
>
> Senator Peter Dominick, arguing against extending labor protections to domestic workers in 1974 Congressional debates[52]

Society's refusal to recognize domestic work as a legitimate occupation resulted in the historic exclusion of domestic workers from the labor standards forged during the Progressive Era and the New Deal.[53] The racial and regional politics of the time influenced the decision to exclude domestic workers from those labor protections, which furthered the South's agenda to maintain a cheap labor force and preserve white supremacy.[54] While women, people of color, and immigrants fought in organized labor's struggle to win fundamental workplace rights, unions continued to exclude domestic workers from membership.[55] Likewise, when workers' rights legislation was passed to quell labor unrest, women, people of color, and immigrants were de facto excluded from the very same protections they helped win.[56] These labor law exclusions do not exclude women or people of color explicitly. Instead, they operate covertly to exclude theoretically neutral categories of workers, like domestic and agricultural workers, who, in reality, are women, people of color, and immigrants.[57]

First, the National Labor Relations Act of 1935 (NLRA)—which protects workers' rights to organize, strike, and bargain collectively for better working conditions—explicitly excludes domestic workers from its definition of "employee."[58] Because domestic workers are excluded from the NLRA, any organizing efforts could be legally thwarted by firing workers or taking retaliatory action against them. Further, even if domestic

workers unions were formed, employers would have no legal obligation to bargain collectively with union representatives.[59]

Second, the Fair Labor Standards Act of 1938 (FLSA), which sets a national minimum wage, maximum work hours, and guarantees overtime for workers, completely excluded domestic workers when first enacted.[60] Since the 1974 amendments, the FLSA continues to exclude "casual" employees like caregivers for children, the sick, and the elderly.[61] Moreover, the FLSA excludes live-in domestic workers from overtime provisions, which require compensation of at least one-and-a-half times the regular rate for every hour worked over forty hours a week.[62] Thus, the 1974 amendments failed to comprehensively protect domestic workers and bring them under the same labor standards as all other occupations.

Next, the Occupational Safety and Health Act of 1970 (OSHA) guarantees safe and healthy working conditions for employees. While the Act itself does not explicitly exclude live-in domestic workers, the regulations promulgated by the OSHA Department of Labor exclude live-in domestic workers "[a]s a matter of policy."[63]

Finally, the Social Security Act of 1935, which provides retirement, disability, and survivors benefits, excluded domestic workers until the 1950 amendments.[64] While the Social Security Act now covers regularly employed domestic workers, it still effectively denies benefits to most low-wage domestic workers who are not considered regularly employed, because a growing contingent and temporary workforce makes regular employment difficult to secure. If employers pay their employees less than the established dollar amount in a year, employers do not have to report social security taxes for their employees.[65] Because employers do not have to pay taxes on their low-wage workers, denying the employees records of social security tax payments, the law effectively renders domestic workers ineligible for social security benefits.[66]

B. Critiques of Immigration Rights for Domestic Workers

The United States is in desperate need of comprehensive immigration reform for many reasons, including protecting domestic workers who work in low-wage industries and substandard working conditions. Nevertheless, city and state governments continue to pass hundreds of new laws targeting undocumented workers by excluding them from core labor laws, denying them compensation for workplace injuries, making it a criminal violation for workers to seek or hold employment, requiring employers to use faulty employment verification systems, sanctioning employers who hire workers, and requiring state and local law enforcement to demand proof of immigration status and enforce immigration law.[67] This anti-immigrant legislation and the criminalization of undocumented workers, in compound with language barriers and fear of exposure to immigration authorities, all drive immigrant domestic workers further underground into more exploitative conditions.[68]

> Immigration law has increasingly become an obstacle to the enforcement of employment and labor law to protect immigrant workers. Moreover, employment and labor law, with their individual rights frameworks, have proven blunt instruments in eradicating the type of subordinating, sometimes slave-like conditions of immigrant workers, especially those in low-wage industries.[69]

A truly accountable and holistic labor rights movement needs to fundamentally shift U.S. immigration policy from anti-immigrant to pro-worker.

IV. WHY THE LAW AND ORGANIZING MODEL?

A. Critical Legal Theories: The Law as an Imperfect Tool for Achieving Social Change

> *Most lawyers do not understand about organizing. Lawyers do not understand that the legal piece is only one tactic of organizing. It*

> *is not the goal. In my 25 years of experience, I find that lawyers create dependency. The lawyers want to advocate for others and do not understand the goal of giving a people a sense of their own power. Traditional lawyer advocacy creates dependency and not interdependency. With most lawyers there is no leadership development of the group.*
>
> Ron Chisom, African American community organizer[70]

Many poverty law practitioners and critical legal, critical feminist, and critical race scholars critique the law as an imperfect, if not destructive, tool for achieving systemic social change. Although traditional channels of legal advocacy like litigation, rights enforcement, and law reform have made some gains for domestic workers, their effects are (at times) marginal in terms of the actual impact on the lived experiences of domestic workers, particularly undocumented and live-in domestic workers.[71] Legal reform epitomizes top-down social change; that is, in order for legal reform to have an impact on domestic workers' social and economic realities, it requires a trickle-down effect.

Yet, legal reform has not resulted in change trickling down because progress made on the legal front has been tempered by a culture of noncompliance and underenforcement. Government enforcement data and private studies continue to show that labor laws have been appallingly ineffective at guaranteeing workers' rights.[72] Nationwide, employers strategically evade or outright violate core labor laws by not paying the workers minimum wage or overtime, misclassifying workers as independent contractors, subcontracting work to avoid liability, and providing unsafe working conditions.[73] Moreover, many household employers do not regard themselves as employers or recognize their homes as workplaces.[74]

Further, while there has been a significant increase in the number of workers and workplaces covered under federal labor law protections, there has also been a steady decrease in the number of federal workplace investigators and compliance actions.[75] Thus, even if domestic workers

fight to be formally included in the class of workers deemed worthy of protection, as noncompliance and underenforcement increasingly turn legal protections into false promises, movement resources should increasingly be allocated to organizing projects that actually deliver positive results for workers. Accordingly, the domestic worker labor movement and the lawyers supporting it should adopt a bottom-up, progressive law and organizing model to empower domestic workers to best address the intersections and conditions that cause domestic servitude.

The evolution of the law and organizing model is relatively recent. In the 1950s and 1960s, poverty lawyers employed a litigation-centered approach to social change by bringing major class action lawsuits to challenge segregation.[76] In the 1970s, poverty lawyers used complex public law litigation to reform public institutions such as prisons and mental hospitals.[77] These early poverty law strategies preferred law and litigation as the fundamental mechanisms for achieving social change.[78] In the 1980s and 1990s, poverty lawyers and scholars became increasingly skeptical of the transformative capacity of law, lawyers, and litigation as vehicles to redistribute power, privilege, and resources to empower marginalized and indigent communities.[79]

1. Critique of the Law

In liberal democracies, like the United States, where law is the ultimate governing authority, translating social and economic demands into legal rights is necessary,[80] but not sufficient. "Law by its nature is conservative, and when calls for change that threaten to destabilize existing distributions of material and symbolic power are made, change through law will occur in ways that preserve existing distributions to the greatest extent possible."[81]

While formalistic rights regimes for domestic workers will give legitimacy to an occupation and a group of workers that have been historically marginalized, these codified rights often do not translate into tangible positive effects for workers' social and economic realities. Seeking

social change through the law results in "preservation through transformation." That is, the "law tends to absorb emancipatory struggles and translate them into one-dimensional rights—'civil rights,' like 'equality,' which lack traction in the economic and social realms."[82] Rights-centered regimes tend to separate rights of recognition from rights of distribution.[83] While many social movements have demands that are redistributive in nature, the law often co-opts those comprehensive demands resulting in hollow legal rights. For example, when new legislation or case law forces employers to amend policies, employers tend to do so in a way that is tailored just enough to avoid liability—misclassifying workers as independent contractors or subcontracting to absolve liability—all while "leaving the core exploitative conditions intact."[84] Thus, while legal reform may be successful in securing recognition rights that formally identify domestic workers as employees worthy of labor protections, it does so in a way that favors preserving and reinforcing existing power relations.

The law also tends to adopt a perpetrator perspective. That is, our legal system focuses on neutralizing individual bad actors as the intentional perpetrators of legal wrongs.[85] Thus, a person only has legal redress when they have been intentionally wronged in a legally cognizable manner. Accordingly, achieving justice only requires stopping the faulty actor or action. The law fails to see injustice through the victim perspective as systemic, historic, and institutionalized forms of oppression, which demand comprehensive solutions to eliminate all of the conditions contributing to the victim's state of being.

For example, the law's perpetrator perspective addresses discrimination through antidiscrimination law, which merely protects people from being intentionally and overtly discriminated against but fails to address institutional and structural forms of racism.[86] Likewise, using the law's perpetrator perspective to address domestic violence requires criminalizing and punishing abusers, as opposed to addressing the root causes of violence against women in society. Relying solely on the law's perpetrator

perspective to address domestic servitude would mean stopping individual employers or traffickers from exploiting domestic workers. Alternatively, adopting a victim perspective to domestic work would require eliminating the conditions associated with the oppression of domestic workers: the racism and sexism inherent in the history of domestic work, the occupational segregation of immigrant women of color in the domestic workforce, the structural power imbalance between household employer and employee, unjust foreign policies that create forced migration coercing immigrants to work under exploitative conditions, and flawed immigration policies that permit scofflaw employers to thrive off of an underground economy of hyper-vulnerable workers.

Legislative reform, while bringing domestic workers within the scope of legal protections provided to other workers, will only positively affect their lives and working conditions if those protections are appropriately observed, regulated, and enforced. Though the legal protections afforded to domestic workers could, in theory, protect them from abuse and exploitation, the government has largely failed in standardization, oversight, and enforcement of those protections, because the pertinent enforcement mechanisms are intended and structured to protect workers in the public but not in the private workplace.[87] This is particularly true for the domestic workforce, which exists in the sphere of the underground economy. Legal reform will have minimal practical effect for domestic workers laboring in an underground economy where existing labor laws are already violated with impunity.[88] Therefore, the principle means through which domestic workers can assert their rights is through retrospective worker-initiated lawsuits.[89] While those who are privileged enough to defend and exercise their rights may secure some redress through the law, there are significant barriers—lack of economic resources, immigration status, limited English proficiency, social and physical isolation—which prohibit domestic workers from pursuing lawsuits to enforce their rights.

2. Critique of Litigation

While poverty lawyers favor litigation as the preferred means of achieving social change, litigation-based strategies have the tendency to co-opt social movements. First, litigation-based strategies generally strive to fit broad-based, progressive community goals of social struggle into constricted, individual, and legally identifiable claims.[90] Thus, litigation divides rather than unifies social movements, by privileging individual controversies over collective struggles. For example, when employers settle a lawsuit with a worker, they often require the worker to sign a binding confidentiality agreement that allows the employer to avoid remedying the underlying problem by ensuring that other workers do not know about it.[91] Second, litigation silences poor peoples' voices and lived experiences by articulating their stories in a formula the court can comprehend. Next, litigation restricts the world of possibilities, goals, and results to a limited set of available remedies the court can bestow: injunctions, financial awards, criminal punishment, etc.

Last, litigation takes people and community leaders away from movement-organizing to participate in litigation's time-consuming demands, and entices them with compensation through a settlement or judgment award.[92] For example, domestic workers who bring their legal problem to a lawyer are often among the bravest and most active workers who are willing to risk retaliation and deportation to remedy an injustice.[93] Once these workers win financial compensation through a lawsuit, they tend to be satisfied and leave the workplace.[94] Thus, litigation that is disconnected from organizing and movement building has the effect of paying off those workers who are the most audacious leaders.[95]

Furthermore, prioritizing impact litigation is dangerous, because in the case selection process, attorneys look for cases that fit a particular legally recognizable claim and prefer those clients who precisely fit each of a claim's statutory elements in order to best posture the case for success. The danger inherent in the painstaking selection process of choosing the

"perfect" case and the "perfect" client is that poverty lawyers tend to privilege and reinforce the narrowly defined categories of people and claims that the law is willing to provide remedy for. Though impact litigation often succeeds in establishing new precedent, the most vulnerable people—with their complexity of lived experiences that suggest imperfect legal claims—are considered outliers who do not fit into such stringently predetermined legal precedent. By privileging those clients and cases that represent the archetypal exception at the expense of those clients and cases that represent the flawed norm, impact litigation leaves the legal paradigms and conventions—of whom is deserving of legal redress—unchallenged.

3. Critique of Lawyers

In traditional law practice, lawyers tend to dominate, regulate, and manage their clients within the structure of the attorney-client relationship. Lawyers may function as oppressors, who, in effect, subjugate their already disenfranchised clients through controlling litigation strategies, discounting client's narratives and aspirations, and fostering a relationship of dependence upon the lawyer's professional expertise.[96] For example, when a domestic worker benefits from legal action, she does not learn the skills necessary to autonomously fight back the next time she is exploited. Rather, she learns that she needs to seek out a lawyer to solve her problems.[97] Lawyers often instinctively and uncritically invest in traditional legal mechanisms to solve problems that have extralegal causes, characteristics, and solutions. However, once problems are relegated to the legal sphere, which lawyers do by default, workers hesitate to take the problem back into their own hands.[98] Consequently, inserting disadvantaged people into the hierarchal structure of the attorney-client relationship—which does not challenge existing institutional distributions of power and privilege, but instead, reproduces those same oppressive systems and power relations—only leaves clients powerless and dependent.

B. The Law and Organizing Model

> *Lawyers do not realize they need another tool to challenge the system, one that lawyers do not know about, and that is the power of the community. Because no matter how good you might be in court, the power of the people in the street weighs mighty heavily on the decision of the power brokers, sometimes more heavily than the law itself.*
>
> Barbara Major, African American organizer[99]

The law and organizing movement emerged to address the numerous critiques of the law as an imperfect vehicle to generate social change by fusing legal advocacy with community organizing.[100] This model adopts a community-based and organizing-centered approach to progressive lawyering that privileges bottom-up movement politics over top-down law reform efforts in order to more fully address the conditions of power and privilege that cause domestic worker abuse and oppression.[101] Ultimately, the transformative agenda for social change should be directed by grassroots and community-based organizations to which lawyers are both accountable and subordinate.[102] Thus, this model requires de-centering the law, litigation, and lawyers, in addition to prioritizing community organizing, political mobilization, and community empowerment. Specifically, lawyers should provide community education programs, link the provision of legal services with participation in organizing, and take direction from community-organizing campaigns.[103] It is only through law and organizing projects that lawyers can assist communities in challenging the underlying structural causes of poverty and oppression and advance a progressive vision of social justice.

V. COMMUNITY-BASED AND ORGANIZING-CENTERED INITIATIVES

The law and organizing model, as applied to domestic work, will require lawyers to help facilitate creative, community-based, organizing-centered initiatives for domestic workers to produce social change that includes

unionizing certain fields of domestic work, establishing and supporting worker centers, and developing worker cooperatives. This section will provide an overview of each of these three initiatives and examine case studies from Washington State and around the country where they have been successfully implemented in the domestic worker context.

A. Unionization: Leveraging Labor Power to Negotiate the Terms of Employment

1. About Unionizing

Unionization can empower domestic workers to produce social change, because establishing a union allows domestic workers to collectively leverage their labor power and demand better working conditions. Through union representation, domestic workers can participate democratically in determining their working conditions through collective bargaining with their employers. Through the establishment of union bargaining agreements, essentially binding employment contracts, domestic workers can have a stake in negotiating the terms of their labor, including wages, overtime, benefits, vacation, complaint procedures, workplace health and safety, hiring, and firing.

The attempt to unionize domestic workers presents a few challenges, such as the difficulty of mobilizing domestic workers to form a union and the lack of an identifiable employer with whom to bargain with.[104]

First, it is difficult to mobilize domestic workers who, instead of working in a central location like most employees, work alone in private homes dispersed throughout neighborhoods, towns, and cities and often for multiple families.[105] The unionized labor movement has overcome these challenges by building relationships with organizations and coalitions in their communities, using media to communicate with workers, holding rallies to voice workers' issues, and going door-to-door to workers'

homes.[106] These strategies have proven effective in reaching out to and organizing domestic workers who were once thought of as unorganizable.[107]

Second, domestic workers lack a traditional employment relationship with a common employer for the purposes of collective bargaining.[108] Unions have overcome this challenge in a specific area of domestic work—publicly subsidized, home-based care workers.[109] Because the workers are publicly funded by the state, unions have endeavored to take advantage of this commonality, treating the state as a common employer for collective bargaining purposes.[110] Unions have sought to persuade states to treat publicly subsidized home-based care workers as quasi-public-sector employees and negotiate with their union representative over the terms under which they provide publicly funded care to individual consumers, including compensation and workplace benefits.[111]

States are increasingly employing individual domestic workers, rather than employment agencies that hire workers, to provide publicly subsidized child and home care.[112] Home-based care workers encompass both home care and family childcare. Home care refers to in-home services that a worker provides to the elderly or disabled who require assistance with personal care, like grooming, dressing, and bathing, and household activities like shopping, cleaning, and cooking.[113] "Family childcare refers to childcare services that a worker provides in her own home for two or more unrelated children."[114] Like the demographics of the general domestic-worker population, women make up 90 percent of home-care workers and family-childcare providers.[115] Women of color are overrepresented in home care and family childcare, especially African Americans and Latinas.[116] Many home-care and family-childcare providers are also immigrants.[117]

Most states traditionally treat home-based care workers as independent contractors who are not protected under labor and employment laws. However, both family-childcare and home-care states pay workers substandard wages.[118] This problem has presented an opportunity for the labor movement, which has made strides in unionizing and representing

home-based case workers in spite of the fact that they are treated as independent contractors under the NLRA.[119] In 1999, Service Employees International Union (SEIU) saw the largest increase since 1941 in new union membership resulting from a single election when they won the right to represent seventy-four thousand home-care workers in Los Angeles, California.[120] The second largest increase in new union membership came in 2005, when over forty-nine thousand family-childcare providers in Illinois voted to join SEIU.[121] Because of strong union advocacy, states are beginning to use various means—legislation, gubernatorial executive orders, ballot initiatives, and intergovernmental operation agreements—to extend labor law rights to home-based care workers providing publically subsidized care. Most of these measures structurally designate a state agency to function as an employer of record for the workers and recognize a union representative on their behalf.[122]

There are some weaknesses in the methods employed for unionizing publicly subsidized, home-based care workers. First, the creation of legal authority to unionize home-based care workers exclusively through executive order makes it vulnerable to attack.[123] While executive orders can be revoked by succeeding governors, legislation is more difficult to repeal.[124] In some states, governors have issued an executive order that is later followed by codifying state legislation.[125] In other states, executive orders have not been codified through legislation.[126] While it is clear that executive orders are not a required precursor to legislation, they can be helpful as a political precursor to legislative support.[127] For example, in some states, bills have passed the legislature without a preceding executive order, only to be later vetoed by the governor.[128]

Second, the strength of the bargaining mandate may be weaker than in the traditional union context. While home-based care workers in some states have been granted collective bargaining rights, others have been granted only the opportunity to meet-and-confer.[129] In collective bargaining, the parties are required to meet and bargain in good faith with the intent of

reaching an agreement, and there is a process for resolving impasses.[130] In contrast, meet-and-confer authority carries a weaker bargaining mandate, which only requires the parties to meet and discuss bargainable issues, and it does not have a process for resolving a stalemate.[131] Thus, negotiations are more prone to terminate without reaching an agreement. However, requiring a state to meet-and-confer with union representatives of home-based care workers is preferable to no negotiation mandate at all, especially given the struggle that these workers have experienced in seeking to be heard by the state.[132]

Lastly, once a collective bargaining agreement is reached, challenges in obtaining funding can inhibit implementing the terms of the agreement. Similar to public sector labor law procedures, when a collective bargaining agreement is reached, the governor stipulates the financing needed to fulfill the terms of the contract in the proposed budget, but ultimately, the state legislature must appropriate those funds.[133] If those legislative appropriations are not forthcoming, then the terms of the contract may be subject to modification.[134] However, home-based care workers are better off with a labor agreement that provides their union an advantage in lobbying the legislature for additional funding to implement the contract, than with the traditional lobbying done by home-based care advocates for increased public investment or improved working conditions.[135] A governor's budget proposal has the power of the executive branch behind it and the labor agreement has the political power of a union behind it, putting home-based care workers in a better position to lobby for the funds needed to implement their contract.[136]

Despite these difficulties, national unions have demonstrated a desire and commitment to unionize home-based care workers (both home-care and family-childcare providers). Thus far, the labor movement has extended labor-law protections to publicly subsidized home-care workers in at least nine states: California, Illinois, Iowa, Massachusetts, Michigan, Ohio, Oregon, Washington, and Wisconsin.[137] Additionally, the labor movement

has secured labor rights for publicly subsidized family-childcare providers in ten states: Illinois, Iowa, Kansas, Michigan, New Jersey, New York, Oregon, Pennsylvania, Washington, and Wisconsin.[138] Unions in these states have successfully gained collective bargaining rights on behalf of publicly subsidized home-based care workers, providing them with more organized power to negotiate the terms of their labor agreements with government agencies.[139] In states where unions have reached collective bargaining agreements, unions have won significant improvements for the home-based care workforce, including increases in reimbursement rates, more efficient payment procedures, grievance processes, job training, a stronger stake in rulemaking, health insurance, and other benefits.[140] In addition, rate increases for unionized care workers are having the residual effect of increasing prevailing wages for the nonunion care workforce as well.[141]

Labor and union lawyers have important roles to play in facilitating the unionization of certain types of domestic work. The first and most complex of the legal challenges facing lawyers seeking to unionize domestic workers is identifying a common employer for the purpose of collective bargaining. Determining whether sectors of the domestic workforce, other than subsidized home-based care workers, are ripe for unionization will depend on creative lawyering to develop alternative models for unionization, such as legislation, gubernatorial executive orders, ballot initiatives, and intergovernmental operation agreements. Lawyers can also problem-solve and counsel domestic workers in weighing the advantages and disadvantages of preferring one unionization model over another. Further, lawyers can advise union organizers and workers of the risks and benefits of employing certain tactics in union-organizing drives. This is particularly important in a climate of employer hostility to unionization, because live-in domestic workers are excluded from the NLRA, and workers can suffer retaliatory action by the employer without legal recourse.[142] Lastly, lawyers

play a critical role in representing domestic workers' interests in negotiating the terms of the collective bargaining agreement.

2. A Case Study: Home-Based Care Providers in Washington State

Washington State has successfully passed legislation to extend labor rights to both home-care and family-childcare providers. The unionization of publicly funded home-care workers began in 2001, when the state legislature debated a bill that would have provided labor rights to home-based care workers through a public authority model, where a government agency would serve as the legal employer for workers for the purposes of collective bargaining.[143] As the bill delayed in committee, its proponents proposed a ballot initiative—the Homecare Quality Initiative—which would establish a Home Care Quality Authority as a designated employer of record and grant collective bargaining rights to publicly subsidized home-care workers. About 62 percent of Washington voters approved the initiative. During the 2002 legislative session, the text of the initiative was enacted into law.[144]

The unionization of publicly funded family-childcare providers came later, in September 2005, when Governor Christine Gregoire issued a two-fold executive directive that (1) allowed all family childcare providers to organize, and (2) directed the Department of Social and Health Services to "meet and confer" with union representatives and "strive to arrive at a mutually agreeable resolution."[145] The workers then selected SEIU Local 925 as their representative.[146] In March 2006, the legislature codified the gubernatorial directive[147] and passed legislation granting stronger collective bargaining rights to state-subsidized family-childcare providers. The legislation made state-funded family-childcare providers state employees for the sole purposes of collective bargaining.[148] The bargainable issues covered by the legislation included "the rate and manner of subsidy payments, health and welfare benefits, training, grievance procedures," and "other economic matters," but expressly excludes retirement benefits."[149]

On November 13, 2006, family-childcare providers, represented by SEIU, reached a collective bargaining agreement with Washington.[150] The contract benefited over ten thousand family-childcare providers, including six thousand workers who were exempt from licensing.[151] The contract represented substantial gains for the family-childcare workforce. Licensed providers received a 10 percent increase in subsidy payments over two years.[152] License-exempt providers were paid the same rate ($2.06 per hour) for children from the same family.[153] Previously, they were paid $1.03 for the second child.[154] Those rates increased 7 percent over two years, representing the first increase in pay for these workers in eight years.[155] The contract provided for over $750,000 in job-training subsidies for both licensed and unlicensed providers.[156] Licensed providers who cared for children from four families were eligible for health insurance coverage.[157] Licensed providers received payment bonuses to incentivize caring for infants and providing care during nonstandard hours.[158] The contract also established a new grievance procedure to resolve subsidy payment disputes.[159]

The family-childcare provider's newest contract for July 2009 through June 2011 also includes substantial gains for subsidized family-childcare providers. The rate for caring for infants is now paid for infants up to eighteen months old rather than only for infants up to twelve months old. The eligibility criterion for health care was made less stringent from caring for four subsidized children a month to providing at least sixty units of childcare a month. The nonstandard hours bonus of $50 per month is now paid when a child is in care for forty nonstandard hours a month rather than forty-five nonstandard hours a month, and the bonus is paid automatically to the provider. The funding for license-exempt provider training bonuses increased so that more providers can collect a $600 bonus per year upon completion of ten hours of child development training.[160]

In Washington State, home-based care workers won significant gains in pay, benefits, and working conditions through this alternative model of

unionization and collective bargaining with a state agency. Whether the labor movement will be able to identify a common employer or a common entity to bargain with in other domestic work relationships, particularly for domestic workers working for individual private homeowners, remains to be seen, but the model used for publicly subsidized home-based care workers presents opportunities for creative replication in other areas of the domestic worker workforce.

B. Worker Centers: Empowering Workers to Build an Immigrant Labor Movement

> *Casa Latina is where you learn to speak up for yourself. It is the opportunity to build a future for our families with our own hands, through education and work.*
>
> Worker center participant[161]

1. About Worker Centers

Worker centers evolved out of social movements and community organizing traditions to address the growing social, cultural, economic, and legal needs of the low-wage immigrant workforce. For new immigrants, life revolves around the ability to work, and is therefore at the center of many problems they experience.[162] Worker centers are community-based and community-led organizations that promote greater workplace equity and a stronger culture of labor insurgency. Many of these centers are established by community organizers or union leaders.[163] Worker centers have three central functions—service delivery, advocacy, and organizing—with the overarching goal of empowering low-wage immigrant workers.[164] Service delivery includes job skills training, English-as-a-second-language courses, workers' rights trainings, legal representation to recoup unpaid wages, and access to other social services, like health clinics, bank accounts, and loans. Advocacy involves researching and releasing reports about conditions in low-wage industries, lobbying the legislature for legal reform, working with

government administrative agencies to improve monitoring and grievance procedures, and filing lawsuits against employers. Organizing entails movement-building, political mobilization, protests, demonstrations, and leadership development to empower workers to take action on their own behalf for social and economic change.[165]

Worker centers are uniquely situated and structured to comprehensively address the conditions of power and privilege (as well as the intersections of class, gender, race, and nationality) that cause domestic worker oppression. First, worker centers have constituted themselves as mediating organizations that help immigrants navigate employment in the United States and are now integral to the immigrant-community infrastructure.[166] Because domestic workers are predominately immigrants, worker centers are an ideal location for organizing among that workforce.

Second, the number of worker centers in the United States has increased dramatically while labor unions have declined and a growing population of immigrant workers has come to the United States.[167] This suggests that worker centers are filling an unmet need in the low-wage immigrant worker community.[168]

Third, worker centers have been able to organize the most vulnerable groups of workers—those who work in the lowest wage jobs, under the most oppressive conditions, and those who traditionally fall outside of mainstream union or other organizing efforts.[169] Thus, the worker center model is particularly well-suited to organize domestic workers who are often undocumented and rendered hyperexploitable.[170]

Fourth, because worker centers are place-based rather than worksite-based, workers come into a center because they live or work in that geographic area, not because they share the same worksite.[171] Hence, worker centers function as a meeting place and centralized location for decentralized workforces that do not share common worksites—i.e., like domestic workers or day laborers, who work for multiple, individual employers. Consequently, worker centers are able to attract, congregate, and

organize discrete workers who work in isolation from one another in one-on-one, employer-employee relationships.

Fifth, members and leaders of worker centers bring organizing knowledge and strategies from their home country, which creates space for alternatives to traditional American organizing models.

Finally, worker centers are functioning as laboratories of experimentation for worker organizing. Their flexibility and ingenuity have proven successful in testing and creating innovative strategies.[172]

Lawyers can help facilitate the distinctive types of organizing work that worker centers are engaged in. First, lawyers can connect the provision of legal services, advice, and referral with organizing by conditioning services on participation in organizing activities like attending a workers' rights training, joining a committee, or participating in direct action campaigns.[173] Providing critical services for domestic workers' unmet legal needs initially attracts workers to the worker center. Further, tying service provision with participatory membership shifts the focus from attracting workers to keeping workers invested in the long-term worker movement. Participatory membership in an organization educates and empowers workers instead of rendering them dependent on a lawyer's expertise, and it mobilizes workers to engage in the larger movement instead of pacifying workers whose fight is limited to their individual legal battle.

Second, attorneys can provide community legal education to domestic workers by means of rights trainings on employment, wage and hour law, health and safety, unemployment, immigration, labor organizing, and dealing with the police.[174] Community legal education is critical to worker empowerment, because it turns worker clients into their own advocates who know what their rights are, when they are being violated, and how to assert them.

Third, lawyers can provide domestic workers with valuable advice on the legality of different organizing tactics.[175] For example, lawyers can provide

legal advice in the planning of direct action campaigns like picketing, protests, and demonstrations.

Fourth, lawyers can teach domestic workers lay-lawyering skills. For example, lawyers can teach workers what is required to establish a valid oral or written employment contract that is most advantageous for the worker. Also, lawyers can teach workers negotiation skills that could be useful, for example, when trying to get an employer to pay wages owed.

Fifth, lawyers can help to expose, publicize, and condemn the conditions of domestic workers by conducting research and publishing reports on conditions of the domestic-work industry.[176]

Last, when a worker center does strategically choose to use litigation or legislation as organizing strategies—in order to generate media attention, public support, and community activism—lawyers can use their more traditional legal skills of representation and drafting proposed legislation, while still remaining accountable to the long-term goals of movement building. Further, taking workers through the resource-intensive process of seeking change through the courts or the legislative process is often an effective means of teaching them the ways in which court victories, political promises, or passed legislation do not produce the systemic changes they demanded from the system. This process of disillusionment with using traditional legal avenues for change can be important in shifting investment, resources, and activism toward alternative law and organizing initiatives like worker centers, unionization, and cooperative development.

2. A Case Study: Casa Latina and the Household Helpers Project

Casa Latina was founded in 1994 to empower Seattle's Latino immigrants by providing educational and economic opportunities and equipping immigrants with the tools they need to work, live, support their families, and contribute to the Seattle community. Their work is based on the core values of social justice, community, respect, democracy, integrity, and learning.[177]

Previously, Casa Latina's programs were dedicated solely to immigrant day laborers who solicited temporary work on street corners. This led to the development of the Day Laborer Center, which connects immigrant workers with employers and temporary jobs that often lead to full-time employment. Jobs typically include construction, installation, carpentry, masonry, painting, gardening, and moving. The majority of day laborers are composed of men; those few women who participated in the program were often faced with discrimination and rejection by employers who preferred male workers for labor-intensive jobs.[178]

In recent years, Casa Latina has seen a surge of immigrant Latina women who are the sole heads of their households, having left their children in their home countries to come to the United States and find work to support their families. At Casa Latina, this led to the development of a support network for those new immigrant women. However, the women were continually in search of employment, and Casa Latina did not have a program to help women find jobs and become economically independent. The primary opportunities Casa Latina received for female workers were for cleaning and childcare jobs. Because most of these women were homemakers in their home countries, their whole lives were devoted and accustomed to household work and taking care of children. The demand for household services and the women's need for work presented a natural opportunity to form the Household Helpers project in 2007.[179] Through Household Helpers, women gain and retain jobs to achieve economic stability while empowering them to increase job skills, build relationships with customers, and as a result, seek out future and permanent employment opportunities.[180]

Casa Latina researched exemplary programs around the country and modeled their program on La Colectiva de Mujer in San Francisco. Casa Latina's goal was for women to become self-sufficient and not dependent on the program. Accordingly, the women are in control of the collective decision making processes. They decide their wages depending on the terms of employment and establish rules and community agreements for all of the

women.[181] The women wanted to diverge from the system used at the Day Laborer Center, where being dispatched for a job is dependent upon the fortune of a daily raffle. At the Day Laborer Center, the men would show up, take a number, and if their number was called, they would be part of the pool of workers to be dispatched for a job that day. In contrast, the women decided to use a participatory model where one's priority on the job dispatching list depends upon participation: i.e., attending weekly meetings, going to job trainings, attending "know your rights" workshops, distributing flyers, advertising for Household Helpers, and volunteering for fundraising events. At their weekly meetings, the women discuss the challenges they face on the job, work on alternative strategies for gaining more control over their work environment, and develop initiatives to become more self-sufficient.

Household Helpers, in addition to dispatching domestic-work jobs and holding worker-solidarity meetings, also offers vocational workshops including an English class tailored towards household work, green cleaning, customer service, childcare and nanny services, CPR training, positive child discipline, financial literacy, and resume and interview workshops. Moreover, because many of the women come from disadvantaged backgrounds—being separated from their families, subjected to raids and deportation, and victimized by domestic violence in their home countries or the United States—there was also a need for consciousness-raising trainings. These trainings now include the history of women's oppression, self-esteem, negotiation (to empower women to communicate and negotiate with their employers), and labor rights for household workers (to empower women to know their rights and assert them on the job).[182]

Household Helpers has also focused efforts on alliance building with the National Alliance for Domestic Workers, which holds regular annual congresses for domestic workers to work on movement building and political organizing nationwide. One campaign that the Alliance for Domestic Workers is pushing nationally, particularly in New York and

California, is the Domestic Workers Bill of Rights, which seeks to provide domestic workers with greater workplace rights and protections under state law.[183]

Additionally, Casa Latina has established a partnership with Washington Cash, and now offers a ten-week course on how to start your own small business.[184] Washington Cash also provides microlending to help program participants start their own small businesses. For those domestic workers who are more stable, this program has the potential to develop a domestic worker-owned cooperative through microlending.

Another unique feature of Casa Latina is the Worker Defense Committee where domestic workers and day laborers who are victims of wage theft—i.e., wage and hour violations—can bring their wage claims. Formerly, this wage recovery program operated principally as legal referral service where cases were referred to attorneys to file claims for back wages. However, workers became frustrated with the complex and lengthy legal processes.[185]

Today, the wage claim program has transformed into the Worker Defense Committee, replacing the legal referral model with an organizing and participatory model that meets weekly to organize workers who have not been paid. The committee evaluates the circumstances of each case and collectively decides on a direct action plan. The plan includes putting escalating pressure on the employer by starting with a demand letter. Then, negotiations are attempted and fliers are distributed at the worksite. Finally, they demonstrate at the employer's residence or workplace. All of these techniques, when successful, lead to a contract and payment plan to reimburse the worker for wages owed. This new strategy has proven extremely effective in obtaining back wages and empowering workers to exercise their rights collectively. As a result of this transformation from a legal referral service model to an organizing and participatory model, the Worker Defense Committee recovered $94,867 in unpaid wages in 2009, almost double the $53,827 recovered in 2008.[186] The evolution of the Worker Defense Committee is another example of how the law and

organizing project should prioritize lay-lawyering over the professional expertise of practicing lawyers.

C. Worker-Owned Cooperatives: Reconstructing the Employer-Employee Relationship

1. About Worker Cooperatives

A worker-owned cooperative is a business that is owned and democratically controlled by the workers themselves. Worker cooperatives abide by the fundamental principles of "voluntary and nondiscriminatory membership, democratic member control, equitable economic participation by members, and a commitment to ongoing member education."[187] Each cooperative worker is a legal owner of the business, participates in collective management decisionmaking processes, and receives income disbursements. Cooperative workers agree to take on both the risks and benefits of business ownership. Commonly, cooperative workers make a contribution to the cooperative to become members and later receive a share of the profits proportionate to their initial contribution. Democratic worker control requires that each worker have an equal vote in critical business decisions.[188]

Worker-owned cooperatives may be a useful organizing model and job-creation strategy for domestic workers. There are many advantages for domestic workers to start cooperatives. First, by joining together as a group of workers and leveraging their collective bargaining power, domestic workers are better able to demand improved working conditions and higher wages. Second, worker cooperatives can offer domestic workers opportunities for vocational advancement, unlike other occupations that often require formal education to do so. For example, cooperative members can work towards taking on greater managerial responsibilities. Third, cooperatives can increase job security for collectives of domestic workers who individually would be subject to the volatile, exploitative market

because of their isolated, vulnerable economic position in low-wage service work. For example, all cooperative workers can mutually support one another in obtaining and sustaining secure jobs. Fourth, domestic worker cooperatives provide opportunity for worker ownership and democratic self-governance.[189] Workers participate in collective decisionmaking about how the business should be organized, managed, and function. Fifth, cooperatives provide domestic workers with opportunities to acquire and advance their job skills. In taking on the responsibility of owning and running a business, the workers necessarily commit themselves to continuing self-education. In turn, the workers develop business skills such as accounting, marketing, sales, computer literacy, legal skills, negotiation, and management. Sixth, cooperatives can help the most marginalized domestic workers, such as undocumented immigrants, gain employment despite their immigration status.[190] Finally, worker-owned cooperatives are a useful labor and organizing model because they provide domestic workers with means to improve their economic conditions without having to be dependent on the government or employers.[191]

The benefits of the cooperative model substantially outweigh its weaknesses. First, for immigrant domestic workers, some of whom are illiterate or have only an elementary education, it may be a challenge to run a cooperative business. However, many of these women have been self-employed for years and an investment in job skills and business-literacy trainings, both initially and as an ongoing educational process, will help to overcome the barriers that a lack of formal education might present in running a cooperative.

Second, development of an established business with regular clientele takes time and resources, which may be scarce for those women living in high levels of poverty who are struggling daily to survive and earn a living. However, cooperative workers will be able to survive their slow start-up period by supplementing their incomes with other work initially or by not adding new cooperative members until they are somewhat financially

stable. In addition, continued marketing, networking, use of the media, and word-of-mouth advertising will likely result in developing a consistent pool of clients and attracting new ones.

Furthermore, support in the initial development of a cooperative can be obtained through outside organizations that have more time and resources to dedicate to the start-up and incubation of cooperatives than the workers themselves. For example, microlending institutions can provide initial financial backing; nonprofit organizations dedicated to developing cooperatives and small businesses can provide business training and consultation; and legal aid organizations doing community and economic development work can provide transactional legal services to domestic workers endeavoring to form a cooperative.

The cooperative model as a job-creation and organizing strategy for immigrant domestic workers is gaining traction throughout the country. For example, in California, Women's Action to Gain Economic Security (WAGES) has developed a very sophisticated cooperative incubation model. WAGES works with low-income immigrant Latinas to launch green business cooperatives by offering training and technical assistance; which, in turn, incubates cooperatives and develops a framework for continued professional learning and business growth through a cooperative network.[192] WAGES has helped launch four eco-friendly cleaning cooperatives, with over seventy worker owners.[193] All cooperative members earn fair pay (household incomes have increased by more than 50 percent), share business profits, and have health insurance and benefits (like paid vacation).[194] WAGES has also developed a partnership with Seventh Generation[195] so that cooperatives use nontoxic and environmentally friendly cleaning products.[196]

Lawyers can help facilitate the development of worker-owned cooperatives by providing transactional legal services and business consultation to domestic workers endeavoring to establish a cooperative business. Domestic workers may benefit from the technical expertise of a

lawyer in developing business-operating principles and creating dispute resolution procedures. Moreover, establishing cooperatives involves complex legal issues such as choosing the appropriate business entity, drafting bylaws, and structuring a board of directors.[197]

In choosing the appropriate legal entity, lawyers should consider what legal structures will be best suited to create an economically viable and functional cooperative for the particular group of immigrant domestic workers they are working with. For undocumented domestic workers in particular, immigration law issues make the selection of a business entity more complicated.[198] The most common legal structures used in the formation of a cooperative business are the unincorporated association, the cooperative corporation, and the limited liability company.[199] The chosen legal structure is critically important, because it will affect the complexity and cost of the start-up, the nature of business ownership, the manner of governance, the extent of cooperative member liability, and the treatment of the business for tax purposes.[200] Lawyers can provide critical resources and expertise in the formation of domestic worker cooperatives, helping secure business planning assistance for workers and advising workers on complex business law issues.

2. A Case Study: Sí Se Puede! Women's Cooperative

The Center for Family Life, through their cooperative program, helped to launch three cooperative businesses: Sí Se Puede! (a housecleaning services cooperative), BeyondCare (a childcare and babysitting cooperative), and Emigre Gourmet (a catering and cooking lesson cooperative).[201] Because Sí Se Puede! is a domestic-worker cooperative, it will be the focus of this case study. Sí Se Puede! is an immigrant women-run and owned, eco-friendly housecleaning cooperative that was founded in Brooklyn, New York, in August 2006.[202] The cooperative is designed to create living wage jobs, foster a safe and healthy workplace environment through green cleaning, and provide social supports and educational opportunities for cooperative

members.[203] Most of the cooperative workers are immigrants from Mexico and the Dominican Republic,[204] and many of them are undocumented.[205]

Pro bono lawyers helped the cooperative members draft bylaws to develop democratic internal structures.[206] In July 2008, an attorney from the Urban Justice Center oversaw the incorporation of the business into a cooperative corporation, which provides legal protections and legitimacy for the workers to feel more secure about their working status.[207] All cooperative members complete three months of training in green cleaning and in running a cooperative business. Members have an equal vote in decisions regarding policy and operations,[208] earn 100 percent of the cleaning fees they charge (with about forty dollars a month going back into the cooperative to help finance business expenses),[209] and meet biweekly to discuss business strategies and receive ongoing training and support.[210] Cooperative workers also use employment contracts with their clients to outline the terms of employment and payment.[211] The cooperative has over two hundred clients and is continuing to grow.[212] In fact, when its fifteen original founding members decided to add nine more members, eighty women applied.[213]

Cooperative members of Sí Se Puede! have reaped the benefits of this business model. For twenty-nine-year-old Luz María Hernández, who came to the United States from Mexico ten years ago, joining the cooperative changed her life. "I used to work 10-hour days in a factory making $4.25 an hour, always in fear of losing my job and never spending enough time with my family," she says.[214] Now Hernández works only a few hours for $100.[215]

Likewise, Margarita Pavón came to the United States from Veracruz, Mexico, in 2000. She says that being a member of Sí Se Puede! has been "one of the best experiences in [her] life," and that she "love[s] being an owner of a business and not just an employee."[216]

Thirty-four year-old Ailicia Chávez spent eighteen years working more than forty hours and earning about $350 a week in low-wage jobs at

factories and bakeries in Brooklyn, New York. Chávez joined Sí Se Puede! in 2008 and now has ten regular customers and can earn the same amount of money in half that time, allowing her more time to take care of her three children. "I'm very happy with this job," she said, "It lets me sustain my family and still have time for myself."[217]

VI. CONCLUSION

By and large, these law and organizing initiatives are addressing the very critiques of the law, litigation, and lawyers highlighted in section four. First, unlike retrospective lawsuits, which seek remedy after rights have been violated, these models are proactive rather than reactionary. Unions seek to take an offensive stance with workers by joining their voices to bargain collectively with employers in determining the terms and conditions under which they will work. Litigation, on the other hand, is a defensive tactic, reacting to unjust working conditions and employers' violations of the law. Further, the remedies available through litigation are limited to the minimal protections prescribed by the law, which, as illustrated in section three, is designed to exclude domestic workers from even the most basic of labor protections. Collective bargaining is not constrained by a rights regime that establishes a floor of nominal protections, but alternatively opens the doors for domestic workers to constitute creative demands for working conditions under which they can prosper. Likewise, worker centers seek to be proactive and preventative by teaching workers English so that they can gain more autonomy in communicating with their employers, educating workers about their workplace rights and how to best assert them, and teaching them to negotiate the terms of their employment through legally enforceable oral and written contracts. All of these tactics seek to prevent violations of the law, teaching workers in advance to assert and exercise their rights so they will not be trampled upon.

Secondly, these organizing models are empowering, unlike litigation, which fosters dependence on the lawyer's professional expertise. In

litigation, the goal is to find a lawyer to take on your case, leaving the legal battle in their hands to secure a win for the individual worker. Litigation, when disconnected from a law and organizing framework, results in countless missed opportunities to empower and politicize workers. In contrast, organizing can teach workers both legal and nonlegal solutions, what wrongs can and cannot be addressed through the law, and what their rights are and how to exercise them. In alignment with the law and organizing project, worker centers, unions, and cooperatives bring in lawyers for their technical expertise. Retaining a lawyer is not the end goal, but instead, lawyers are just one component of the struggle toward social change. Worker centers and cooperatives are committed to a participatory, empowerment model (as opposed to legal aid provision) through ongoing training in professional skills, workplace rights, and civic and political education.

Third, these models prioritize the collective movement, as opposed to law and litigation, which largely center on individual rights, individual clients, and individual controversies. Unions mobilize the power of groups of workers to exercise their collective rights, gain workplace benefits, and achieve protections for the whole group. Similarly, worker centers concentrate on politicizing communities and developing vibrant social movements, as opposed to identifying individual, legally sound claims.

Finally, while legal reform and litigation tend to maintain existing distributions of power, these organizing models seek to agitate the status quo by reallocating power, resources, and opportunities. Cooperatives are a prime example of the way in which the status quo can be inverted so radically that workers—who, under traditional employment structures, would attempt to change their working conditions by appealing to their employers who retain the power—are now themselves collective employers with democratic control over the conditions under which they work. The cooperative model completely eliminates the asymmetrical power dynamic inherent in a one-on-one, employer-employee relationship. Rather than

working from within inequitable systems, implementing a cooperative model radically reshapes the structures of the employment relationship and redefines the boundaries within which social change can occur.

In conclusion, in order to address the conditions of abuse and oppression that plague the field of domestic work, poverty lawyers need to begin de-constructing their traditional roles by de-centering law and litigation. Moreover, lawyers should reconceptualize their role within the framework of the law and organizing model by prioritizing community-based and organizing initiatives that empower domestic workers and produce social change. While legal reform for domestic workers in the realm of immigration and labor law is essential in codifying rights and recognizing domestic work as a legitimate occupation, legal reform will be disappointingly conservative by failing to produce the transformative shifts in power and privilege so necessary to change domestic workers' social and economic realities.

By promoting and facilitating innovative law and organizing initiatives, such as worker centers, worker-owned cooperatives, and unionization, lawyers can empower domestic workers to advocate on behalf of themselves and exercise self-determination by collectively taking control over the very working conditions they seek to change. The time has come for society to recognize domestic work for what it is: "the work that makes all other work possible."[218]

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[2] Home Is Where The Work Is: Inside New York's Domestic Work Industry, DOMESTIC WORKERS UNITED & DATACENTER, 12 (July 14, 2006), http://www.domesticworkersun

ited.org/media/files/215/homeiswheretheworkis.pdf [hereinafter Home Is Where The Work Is].

[3] *See id.* at 2; *see also* MARY ROMERO, MAID IN THE U.S.A. 71 (1992) (observing that "[m]inority and immigrant women are overrepresented in [domestic service].").

[4] Hidden In The Home: Abuse of Domestic Workers with Special Visas in the United States, HUM. RTS. WATCH, 27 (June 1, 2001), http://www.hrw.org/reports/2001/usadom/usadom0501.pdf [hereinafter Hidden In The Home].

[5] Home is Where the Work Is, *supra* note 2, at 12.

[6] *Id.* at 11.

[7] *Id.*

[8] *Id.*

[9] *Id.* at 12–13.

[10] *Id.* at 13 (citing HASIA R. DINER, ERIN'S DAUGHTER IN AMERICA: IRISH IMMIGRANT WOMEN IN THE NINETEENTH CENTURY (1983) (quoting Aging and Caring, *infra* note 53)).

[11] Dorothy E. Roberts, Racism and Patriarchy in the Meaning of Motherhood, 1 AM. U. J. GENDER & L.1, 16–24 (1993).

[12] *Id.*

[13] *Id.*

[14] *Id.* at 22.

[15] Home is Where the Work Is, *supra* note 2, at 13.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 9.

[19] *Id.* at 12.

[20] *See* DAVID BACON, ILLEGAL PEOPLE: HOW GLOBALIZATION CREATES MIGRATION AND CRIMINALIZES IMMIGRANTS 51–81 (Beacon Press 2008).

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] Home is Where the Work Is, *supra* note 2, at 2; MARY ROMERO, *supra* note 3, at 71.

[26] Home is Where the Work Is, *supra* note 2, at 10.

[27] *Id.* at 20.

[28] Peggie Smith, *Organizing the Unorganizable: Paid Household Workers and Approaches to Employee Representation*, 79 N.C. L. REV. 45, 52 (2000) [hereinafter *Organizing the Unorganizable*].

[29] *Id.*

[30] *Id.*

[31] *Id.* at 53.

[32] *Id.*

[33] *Id.*

[34] Home is Where the Work Is, *supra* note 2, at 31.

[35] *Organizing the Unorganizable*, *supra* note 28, at 54–56.

[36] *Id.* at 54.
[37] Home is Where the Work Is, *supra* note 2, at 19.
[38] *Organizing the Unorganizable*, *supra* note 28, at 55–56.
[39] *Id.*
[40] *Id.*
[41] Home is Where the Work Is, *supra* note 2, at 17.
[42] *Id.* at 21.
[43] *Id.*
[44] Hidden In The Home, *supra* 4, 18–19.
[45] *Id.*
[46] *Id.*
[47] *Id.* at 12.
[48] *Id.* at 13.
[49] *Id.* at 15–16.
[50] *Id.* at 16–17.
[51] *Id.* at 17–18.
[52] Home is Where the Work Is, *supra* note 2, at 7.
[53] *Organizing the Unorganizable*, *supra* note 28, at 56–57.
[54] Peggie Smith, *Aging and Caring in the Home: Regulating Paid Domesticity in the Twenty-First Century*, 92 IOWA L. REV. 1837, 1857 (2007) [hereinafter *Aging and Caring*].
[55] Home is Where the Work Is, *supra* note 2, at 7.
[56] *Id.*
[57] *Id.*
[58] 29 U.S.C. § 152(3) (2010); *see also* Home is Where the Work Is, *supra* note 2, at 8; Hidden In The Home, *supra* note 4, at 55 ("The NLRA exclusion of live-in domestic workers is explained in one sentence in the [A]ct's legislative history as reflecting a policy of covering only those "disputes which are of a certain magnitude and which affect commerce." If Congress wished to prevent coverage of disputes not of "a certain magnitude," however, Congress would have excluded all small employers, rather than explicitly excluding only a few labor sectors, such as live-in domestic workers. Similarly, the suggestion that domestic work should be excluded from the NLRA because it does not affect interstate commerce also does not hold water—approximately forty years after passage of the NLRA, in defining the scope of the Fair Labor Standards Act, Congress explicitly stated that domestic work does affect interstate commerce.").
[59] *See* 29 U.S.C. §§ 151–169 (1994); Hidden In The Home, *supra* note 4, at 29.
[60] *Organizing the Unorganizable*, *supra* note 28, at 57.
[61] 29 U.S.C. § 213(a)(15); Home is Where the Work Is, *supra* note 2, at 3.
[62] *See* 29 U.S.C. §§ 206(f), 207(l) (2007); 29 U.S.C. § 213(b)(21) (2004); Hidden In The Home, *supra* note 4, at 55 ("In the FLSA legislative history, Congress indicates that live-in domestic workers are excluded from overtime protections to avoid the 'monitoring and enforcement costs inclusion would foist upon the federal Department of Labor.' The record notes, 'Ordinarily such an employee engages in normal private pursuits such as eating, sleeping, and entertaining, and has other periods of complete freedom. In such a case, it would be difficult to determine exact hours worked.' This justification is

specious, however. Live-in domestic workers are covered by FLSA minimum wage protections, and the federal Department of Labor must therefore already calculate hours worked by live-in domestic workers to monitor and enforce the FLSA on their behalf, regardless of whether they are covered by overtime protections.").

[63] *See* 29 U.S.C. § 651(b) (2010); 29 C.F.R. § 1975.6 (1975); Hidden In The Home, *supra* note 4, at 17–18, 55 ("The exclusion of live-in domestic workers from the OSHA was established '[a]s a matter of policy' by a 1972 Department of Labor (DOL) regulation. The DOL provided no further explicit justification nor goal to be accomplished by this general 'policy.'").

[64] *Aging and Caring*, *supra* note 54, at 1859.

[65] *See* 42 U.S.C. § 409(a)(6)(B) (2000); *see also* Marc Linder, *What Hath Zoe Baird Wrought? The New FICA Amendments on Domestic Service Employees*, 66 TAX NOTES 113 (1995).

[66] *Id.* Some states have undertaken their own legislative reform to provide more protection for domestic workers under state law than is currently covered by federal law. For example, domestic workers in New York State forwarded model legislation called the Domestic Workers Bill of Rights. The New York state legislature passed the bill in June of 2010, and it was signed into law in August of 2010. Domestic Workers Bill of Rights Act, A 1470-B, S 2311-E A1470 (2010), *available at* http://assembly.state.ny.us/leg/?bn =A01470; *see also* Domestic Workers United, Domestic Worker Bill of Rights: Background, *available at* http://www.domesticworkersunited.org/media/files/98/BOR-Background.pdf.

[67] *See, e.g.,* State and Local Anti-Immigrant Legislation, NAT'L EMP. LAW PROJECT, http://www.nelp.org/site/issues/category/state_and_local_anti_immigrant_legislation (last visited Nov. 7, 2010) [hereinafter State and Local Anti-Immigrant]; Thomas M. Forrest, Criminalizing Work, JACKSON FREE PRESS (July 9, 2008), http://www.jacksonfreepress.com/index.php/site/comments/criminalizing_work_070908/; More Harm Than Good: Responding to States' Misguided Efforts to Regulate Immigration, NAT'L EMP. LAW PROJECT, 4–6 (Feb. 2007), http://nelp.3cdn.net/b5b735 db8dc21687d0_llm6bx88t.pdf.

[68] *See* State and Local Anti-Immigrant, *supra* note 67. While "U" and "T" Visas offer two types of immigration relief for domestic workers who are victims of qualifying crimes or trafficking, scholars and immigrant advocates nationwide have critiqued these forms of immigration relief as insufficient. *See* Leticia M. Saucedo, *A New "U": Organizing Victims and Protecting Immigrant Workers*, 42 U. RICH. L. REV. 891, 896–97 (2008); Indira K. Balram, *The Evolving, Yet Still Inadequate, Legal Protections Afforded Battered Immigrant Women*, 5 U. MD. L. J. RACE, RELIGION, GENDER & CLASS 387, 406 (2005); Karyl A. Davis, Commentary, *Unlocking the Door by Giving Her the Key: A Comment on the Adequacy of the U-Visa as a Remedy*, 56 ALA. L. REV. 557, 568–72 (2004); Kevin Hsu, Note, *Masters and Servants in America: The Ineffectiveness of Current United States Anti-Trafficking Policy in Protecting Victims of Trafficking for the Purposes of Domestic Servitude*, 14 GEO. J. ON POVERTY L. & POL'Y 489, 490 (2007); Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 174–75 (2007); Suzy Lee & Charles Song, *Between a Sharp Rock and a Very Hard Place: The Trafficking Victims Protection Act*

and the Unintended Consequences of the Law Enforcement Cooperation Requirement, 1 INTERCULTURAL HUM. RTS. L. REV. 133 (2006). In addition, while many live-in domestic workers commonly enter the United States on nonimmigrant temporary visas (A-3, G-5, and B-1 visas), these work visas have also been extensively critiqued as enabling the unchecked abuse and exploitation of domestic workers. *See* Hidden In The Home, *supra* note 4, at 32–41.

[69] Saucedo, *supra* note 68, at 891.

[70] William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 457–58 (1994).

[71] *See* Hidden In The Home, *supra* note 4, at 27.

[72] Broken Laws and Unprotected Workers: Violations of Employment and Labor Laws in America's Cities, NAT'L EMP. LAW PROJECT, 8 (2009), http://nelp.3cdn.net/59719b5a36109ab7d8_5xm6bc9ap.pdf; *see also* Scott Martelle, *Confronting the Gloves-Off Economy: America's Broken Labor Standards and How to Fix Them*, NAT'L EMP. LAW PROJECT, 8 (July, 2009), http://nelp.3cdn.net/0f16d12cb9c05e6aa4_bvm6i2w2o.pdf.

[73] Martelle, *supra* note 72, at 3–5.

[74] Organizing the Unorganizable, *supra* note 28, at 57.

[75] Martelle, *supra* note 72, at 4–5.

[76] Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 U.C.L.A. L. REV. 443, 444–45 (2001).

[77] *Id.*

[78] *Id.*

[79] *Id.* at 445–47.

[80] Angela Harris, *From Stonewall to the Suburbs? Toward a Political Economy of Sexuality*, 14 WM. & MARY BILL RTS. J. 1539, 1580 (2006).

[81] *Id.* at 1542.

[82] *Id.* at 1580.

[83] *Id.* at 1568.

[84] *See* Jennifer Gordon, *We Make the Road By Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 440 (1995). *See also* Martelle, *supra* note 72, at 8.

[85] Alan Freeman, *Legitimizing Racial Discrimination Through Anti-Discrimination Law: A Critical Review of Supreme Court Doctrine*, *in* CRITICAL RACE STUDIES: THE KEY WRITINGS THAT FORMED THE MOVEMENT, 29–30 (Kimberle Crenshaw et al. eds., 1996).

[86] *Id.*

[87] Hidden In The Home, *supra* note 4, at 27.

[88] Gordon, *supra* note 84, at 441.

[89] Hidden In The Home, *supra* note 4, at 27.

[90] Cummings & Eagly, *supra* note 76, at 455–56.

[91] Gordon, *supra* note 84, at 440.

[92] Cummings & Eagly, *supra* note 76, at 455–56.

[93] Gordon, *supra* note 84, at 439.

[94] *Id.*

[95] *Id.*

[96] Cummings & Eagly, *supra* note 76, at 443.
[97] Gordon, *supra* note 84, at 438–39.
[98] *Id.*
[99] Quigley, *supra* note 70, at 461–62.
[100] Cummings & Eagly, *supra* note 76, at 446–50.
[101] *See generally id. supra* note 76.
[102] *Id.*
[103] *Id.*
[104] Peggie Smith, *The Publicization of Home-Based Care Work in State Labor Law*, 92 MINN. L. REV. 1390, 1398–401 (2008) [hereinafter *The Publicization*].
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Id.* at 1400–03.
[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id.* at 1391.
[113] *Id.* at 1392.
[114] *Id.* at 1393.
[115] *Id.* at 1396.
[116] *Id.*
[117] *Id.*
[118] *Id.* at 1392.
[119] *Id.* at 1391.
[120] *Id.* at 1390–91.
[121] *Id.*
[122] *Id.*
[123] Deborah Chalfie et al., *Unionizing Home-based child care providers*, NAT'L WOMEN'S LAW CTR., 8 (2007), http://www.nwlc.org/sites/default/files/pdfs/Getting Organized2007.pdf.
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *Id.*
[129] *Id.* at 10–11.
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *Id.* at 11.
[134] *Id.*
[135] *Id.*
[136] *Id.*
[137] *The Publicization*, *supra* note 104, at 1403–04.

[138] *Id.*
[139] *Id.* at 1392.
[140] Chalfie et al., *supra* note 123, at 23.
[141] *Id.*
[142] *The Publicization*, *supra* note 104, at 1401–03; 29 U.S.C. § 152(3)(1935).
[143] *The Publicization*, *supra* note 104, at 1407 n.85; S. 5652, 57th Leg., Reg. Sess. (Wash. 2001); H.B. 1576, 57th Leg., Reg. Sess. (Wash. 2001).
[144] *The Publicization*, *supra* note 104, at 1407.
[145] Chalfie et al., *supra* note 123, at 14.
[146] *The Publicization*, *supra* note 104, at 1416.
[147] *Id.*
[148] Chalfie et al., *supra* note 123, at 14.
[149] *Id.* at 14–15.
[150] Washington State Reaches Agreement with Child Care Union, SEIU LOCAL 284 (Feb. 2007), http://www.seiu284.org/admin/Assets/AssetContent/32fccdd3-179e-496ea8fd54e8 f1cff2ae/546bfa9e-94e2-495f-9d30-54cc81f55e47/a3ccfec5-2ce2-470c-8e23a0e8b8561a 7c/1/Washington_State_Reaches_Agreement_with_Child_Care_Union.pdf.
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] *Id.*
[158] *Id.*
[159] *Id.*
[160] Family Child Care Provider Summary, SEIU LOCAL 925, http://www.seiu925.org/Early_Learning/default.aspx (last visited Nov. 7, 2010).
[161] Our Community—Our Stories, CASA LATINA, http://www.casa-latina.org/our-community/our-stories (last visited Oct. 4, 2010).
[162] Janice Fine, *Worker Centers: Organizing at the Edge of the Dream*, 50 N.Y.L. SCH. L. REV. 417, 419–20 (2006).
[163] Cummings & Eagly, *supra* note 76, at 470–72.
[164] Fine, *supra* note 162, at 419–20.
[165] *Id.* at 420.
[166] *Id.* at 452.
[167] *Id.*
[168] *Id.* at 451–53.
[169] Organizing the Unorganizable, *supra* note 28, at 52.
[170] *Id.*
[171] Fine, *supra* note 162, at 427.
[172] *See id.* at 451–53.
[173] Gordon, *supra* note 84, 443–44.
[174] *Id.* at 434–36.

[175] Betty Hung, *Essay-Law and Organizing from the Perspective of Organizers: Finding a Shared Theory of Social Change*, Symposium Immigrants' Rights: From Global to Local, 10 (2008).
[176] Fine, *supra* note 162, at 420.
[177] About Us—Our Mission, CASA LATINA, http://www.casa-latina.org/about-us/our-mission (last visited Oct. 4, 2010).
[178] Interview with Veronique Fachinelli, Women's Leadership Coordinator, Casa Latina, in Seattle, Wash. (Nov. 23, 2009).
[179] *Id.*
[180] What we do-Household Helpers, CASA LATINA, http://www.casa-latina.org/what-we-do/household-helpers (last visited Oct. 4, 2010).
[181] Fachinelli, *supra* note 178.
[182] *Id.*
[183] Campaigns—CA and NY Domestic Workers' Bill of Rights, NAT'L DOMESTIC WORKER'S ALLIANCE, http://www.nationaldomesticworkeralliance.org/campaigns.
[184] Fachinelli, supra note 178.
[185] *Id.*
[186] *About Us-Newsletters*, Casa Latina News – Noticias de Casa, CASA LATINA (Jan. 2010), http://www.casa-latina.org/sites/casalatina.org/files/Casa%20Latina%20News%20January%202010.pdf.
[187] Scott L. Cummings, *Developing Cooperatives as a Job Creation Strategy for Low-Income Workers*, 25 N.Y.U. REV. L. & SOC. CHANGE 181, 185–86 (1999).
[188] *Id.*
[189] *Id.* at 186–88.
[190] *Id.*
[191] Organizing the Unorganizable, *supra* note 28, at 51.
[192] *About Us*, WAGES, http://wagescooperatives.org/about-us (last visited Nov. 7, 2010).
[193] Our Partners, HOME GREEN HOME NAT. CLEANING, http://www.homegreenhomesf.com/partners.html (last visited Nov. 7, 2010).
[194] *See About Us*, *supra* note 192.
[195] About Seventh Generation, SEVENTH GENERATION, http://www.seventhgeneration.com/about (last visited Nov. 7, 2010)
[196] *See* Our Partners, *supra* note 193.
[197] Cummings, *supra* note 187, at 194.
[198] *Id.* at 195.
[199] *Id.* at 196
[200] *Id.* at 195
[201] *Adult Employment Services: Supporting Cooperatives*, CENTER FOR FAM. LIFE IN SUNSET PARK, http://www.cflsp.org/L3pages/AdultEmployment.html (last visited April 2, 2010).
[202] *About Us*, SI SE PUEDE WOMEN'S COOP. WE CAN DO IT!, http://www.wecandoit.coop/about.html (last visited April 2, 2010).
[203] *Id.*
[204] *Id.*

[205] Daniela Gerson, *The Weekend Shift: Cleaning Houses*, AM. PUB. MEDIA, Dec. 20, 2008, http://weekendamerica.publicradio.org/display/web/2008/09/13/weekend_shift/.
[206] Cara Tabachnick, *Si Se Puede! Helps to clean up businesses*, ODE MAG. (Jan.– Feb. 2009), http://www.odemagazine.com/doc/60/Si-Se-puede-helps-to-clean-up-businesses/.
[207] Carlos Davalos, *Cleaning Up: We Can Do It! Women's Cooperative Offers Alternative to Low-wage Jobs*, THE INDYPENDENT, Sept. 18, 2009, http://www.indypendent.org/2009/09/17/cleaning-up/.
[208] About Us, *supra* note 202.
[209] Aaron Smith, *When workers take charge*, CNNMONEY, http://money.cnn.com/galleries/2009/smallbusiness/0909/gallery.worker_owner_coop.smb/index.html.
[210] About Us, *supra* note 202.
[211] Gerson, *supra* note 205.
[212] Davalos, *supra* note 207.
[213] Tabachnick, *supra* note 206.
[214] *Id.*
[215] *Id.*
[216] Si Se Puede Women's Cooperative We Can Do It!, Meet Our Members, http://www.wecandoit.coop/members.html (last visited April 2, 2010).
[217] Davalos, *supra* note 207.
[218] Campaigns, NY Domestic Worker Bill of Rights, DOMESTIC WORKERS UNITED, http://www.domesticworkersunited.org/campaigns.php.