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Mobilizable Labor Law

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In the history of new labor localism, city-level living wage ordinances—emerging in the 1990s with Los Angeles leading the way—have generally been understood as a second-best, limited antipoverty device designed to raise wage floors, with only indirect effects on organized labor. Drawing upon original archival materials, this Article offers an alternative reading of the history of the living wage in Los Angeles, showing how it was designed and operationalized as a proactive tool to rebuild union density and reshape city politics. Doing so makes four key contributions. First, the Article theorizes and empirically examines the living wage as a pioneering form of mobilizable labor law: a local legal reform with pro-labor potential unlocked through collective action by unions, in this case, enabling union organizing by addressing regulatory weaknesses in the National Labor Relations Act. Second, the Article deepens labor history by reframing the LA living wage movement as a key inflection point connecting the seminal Justice for Janitors campaign, considered the launching pad for new labor efforts to organize low-wage immigrant workers, to new labor organizing building toward the Fight for $15. Third, contrary to the standard critique of lawyers demobilizing movements through legalization, the LA campaign reveals the creative role of lawyers behind the scenes in developing new understandings of labor law that established conditions of possibility for successful union organizing. Finally, by illuminating how labor actors mapped local government power to identify opportunities for mobilization—particularly in publicly held assets such as airports—the Article sheds new light on the dynamic relation between social movements and local government. Specifically, in the case of labor, strategic localism has catalyzed an iterative cycle of union organizing by helping build a power base for organized labor in big cities and promoting diffusion of pro-labor policymaking across political boundaries. Recovering this history of the living wage serves as a means to unlock law's transformative potential in labor campaigns that rise to meet contemporary challenges of economic and racial inequality.

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INTRODUCTION

The story of the American labor movement's decline is well told. From its peak in the 1970s, union membership sharply decreased, hastened by weak legal protections and remedies in the National Labor Relations Act (NLRA).[1] "Fissuring"—or the outsourcing of low-wage work by large companies to small,

1. *See* JAKE ROSENFELD, WHAT UNIONS NO LONGER DO 10–27 (2014). Union density is at a historic low in the United States. Press Release, Bureau of Lab. Stat., U.S. Dep't of Lab., Union Members—2022 (Jan. 19, 2023), https://www.bls.gov/news.release/pdf/union2.pdf [https://perma.cc/37KN-3AG8].

non-union employers—became a default business strategy to reduce labor costs.[2] Employers exploited the subordinated status of immigrant workers, who became even more vulnerable with the increasingly polarized politics of immigration law reform.[3] Dwindling union membership fueled a correspondingly sharp rise in income and racial inequality, which has continued and been exacerbated by the COVID-19 pandemic.[4] The labor movement's response to these forces is also familiar. Progressive unions reacted to federal retrenchment and union decline with important forms of experimentation coalescing around a new labor localism—city-based labor innovation, growing out of immigrant worker organizing.[5] The pivotal event was the Justice for Janitors (JfJ) campaign. Launched in the late 1980s to unionize commercial cleaners in immigrant-dense cities such as Los Angeles, JfJ pioneered new strategies used by the labor movement in campaigns to increase local union strength and membership by the end of the millennium.[6]

The movement for a "living wage"—one sufficient to lift workers out of poverty—has not figured prominently in historical accounts of the rise of new labor localism. In the 1990s, community-labor coalitions launched the living wage movement to pass ordinances in major and mid-sized U.S. cities, requiring government contractors and financial subsidy recipients to pay a living wage.[7] Scholarly treatments of these ordinances present them as a limited intervention in the context of political constraints to support a "high road" economic development approach, using the moral language of a "living wage" to protect public sector unions from privatization and modestly raise the wage floor for covered employees.[8] The wage and benefit requirements codified in living wage ordinances have been generally understood as second best to an increase in the federal minimum wage—a limited legal tool to address widening economic inequality, disconnected from JfJ-inspired labor strategies to increase union density during this time.[9]

This Article complicates the conventional historical account by exploring how the living wage movement in Los Angeles—a critical incubator of labor innovation—was deliberately designed to advance unionization and political mobilization

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2. DAVID WEIL, THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT 11 (2014).

3. RUTH MILKMAN, L.A. STORY 110–113 (2006).

4. *See* Henry S. Farber, Daniel Herbst, Ilyana Kuziemko & Suresh Naidu, *Unions and Inequality over the Twentieth Century: New Evidence from Survey Data*, 136 Q.J. ECON. 1325, 1355–57 (2021); Anna Stansbury & Lawrence H. Summers, *Declining Worker Power Hypothesis: An Explanation for the Recent Evolution of the American Economy*, BROOKINGS PAPERS ON ECON. ACTIVITY, Spring 2020, at 9–10 (attributing stagnant wages to a decline in worker power).

5. Andrew Elmore, *Labor's New Localism*, 95 S. CAL. L. REV. 253, 267 (2021).

6. SCOTT L. CUMMINGS, AN EQUAL PLACE: LAWYERS IN THE STRUGGLE FOR LOS ANGELES 16 (2021).

7. ROBERT POLLIN & STEPHANIE LUCE, THE LIVING WAGE: BUILDING A FAIR ECONOMY 8, 22–23 (1998).

8. *See id.*; Jared Bernstein, *The Living Wage Movement: Pointing the Way Toward the High Road*, ECON. POL'Y INST. (Mar. 4, 2002), https://www.epi.org/publication/webfeatures_viewpoints_lw_movement/; RICK FANTASIA & KIM VOSS, HARD WORK: REMAKING THE AMERICAN LABOR MOVEMENT 170–71 (2004).

9. *See* FANTASIA & VOSS, *supra* note 8, at 170–71; Bernstein, *supra* note 8.

strategies that laid the foundation for the rise of labor power in the city and the expansion of local labor law. Its central goal is to rethink the meaning of the living wage movement in relation to the rise of local labor activism in the new millennium. Based on original archival analysis, the Article traces the living wage movement in Los Angeles,[10] which in 1997 became only the third city in the United States to pass a living wage ordinance, through three key phases: (1) the effort to use the living wage ordinance to organize airline subcontractor and concession workers at the Los Angeles International Airport (LAX); (2) the struggle to apply living wage coverage to retail tenants of publicly subsidized developments through contractual provisions embedded in community benefits agreements alongside changes to city redevelopment policy; and (3) the campaign to extend living wage requirements beyond city contractors to hotels in geographic tourist zones in which unions sought to build density.

By recovering the hidden history of the LA living wage, this Article makes four important contributions to the labor, legal mobilization, and local government literatures. First, the Article theorizes and empirically examines the living wage as a form of *mobilizable labor law*. It defines mobilizable law as a legal reform that includes specific regulatory provisions that may be leveraged by social movement organizations to advance organizing aims. The key feature of mobilizable law is that it serves dual purposes: one actual and one potential. The actual purpose is regulatory (such as raising the minimum wage), while the law's potential may be unlocked through goal-driven collective action by social movements. As a general category, mobilizable law is a legal innovation that provides a scaffolding for collective action across substantive areas and regulatory spaces.[11] Mobilizable *labor* law refers to a legal reform at the local level with pro-labor potential: enabling union organizing by addressing regulatory weaknesses in the NLRA. One of the Article's key contributions is to present—and redefine—the LA living wage as an early and innovative form of mobilizable labor law. Toward this end, the Article shows how the LA living wage campaign drafted and advanced a suite of original and complementary pieces of legislation and regulatory actions to protect and encourage union organizing in low-wage workplaces by counterbalancing the pro-employer tilt of the NLRA that had stymied unionization efforts up to that point. The legislative effort began with the passage of a worker retention ordinance in 1995, which required new city contractors to retain existing employees and maintain union recognition for ninety days after contract termination. The effort culminated in the passage of the 1997 living wage ordinance, which included a wage mandate as well as crucial "plus" factors: opt-outs for unionized employers, anti-retaliation and anti-

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10. The documents we rely on are hand-assembled and digitized from the archives of the Los Angeles Alliance for a New Economy (LAANE), an economic justice organization formed in 1993 to address the growth of low-wage work in LA, which spearheaded the city's living wage movement. They cover the transformative period from LAANE's launch through the mid-2000s and include key materials related to a suite of living wage campaigns from 1995 to 2002 that formed the heart of LA's living wage movement. The documents were organized and coded and included internal memoranda, meeting notes, and communications with public officials.

11. *See* Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546, 596–97, 632 (2021).

harassment requirements, city penalties for noncompliance, and public transparency about employers subject to living wage provisions.[12] These plus factors reduced the power of employers to oppose unions and afforded unions and community groups with access to employees to enforce living wage requirements, allowing unions to negotiate with employers for labor neutrality.[13] Collectively, these critical aspects of the living wage ordinance became a framework to advance unionization and lift work standards in low-wage sectors—and, ultimately, to pass local minimum wage ordinances covering all private sector businesses.

Second, and relatedly, the Article deepens labor history by reframing the LA living wage movement as an *inflection point* connecting JfJ to subsequent waves of local labor organizing focusing on low-wage, immigrant workers. Specifically, the Article shows how the living wage campaign channeled key lessons of JfJ into a repertoire of local lawmaking and union organizing that built a foundation for the Fight for $15 movement for a $15 minimum wage and a union. By deploying lessons from JfJ to actively shape subsequent local policy and organizing campaigns, the LA living wage movement had a widespread, and underappreciated, legal and political influence. Crucially, the living wage campaign adapted JfJ's legal and tactical template—targeting private powerholders at the apex of an industry to force their support for union efforts against subcontracted employers—to pressure local government actors with authority over public contracting, leasing, and subsidies to create favorable conditions for unionization. This enabled the campaign to refashion the law and political economy of Los Angeles to support unionization while avoiding preemption by federal labor law. The living wage campaign, like JfJ, also pressured employers to recognize unions through a mix of tactics that included protest and legal mobilization, which rested on legal enforcement of the plus factors in living wage law to promote union organizing.[14] As this suggests, the living wage campaign did not simply repeat the JfJ playbook. Rather, the campaign's innovation was to adapt the JfJ approach to the local government law context.

Third, contrary to the standard critique of lawyers demobilizing movements,[15] the LA campaign reveals the creative role of lawyers behind the scenes in designing and operationalizing new understandings of labor law that established *conditions of possibility* for organizing.[16] While NLRA preemption was a key obstacle to living

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12. *See infra* Part II.

13. *See id.* By "labor neutrality," we mean a voluntary recognition agreement between an employer and union that the employer will remain neutral regarding whether its employees join a union and recognize and bargain with a union if a third-party card check shows that a majority of the employees support representation by the union. The National Labor Relations Board has upheld voluntary recognition agreements so long as the union proves its majority status through a third-party card check prior to negotiating a collective bargaining agreement with the employer. *See* Dana Corp. & Int'l Union, 356 N.L.R.B. 256, 264 (2010).

14. *See infra* Part II.

15. For a summary of legal academic literature critiquing lawyering for social change, particularly lawyers who sought to advance the civil rights movement through litigation, see Scott L. Cummings, *Rethinking the Foundational Critiques of Lawyers in Social Movements*, 85 FORDHAM L. REV. 1987, 1988–89 (2017).

16. *See* Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 YALE L.J. 2740, 2800–01 (2014) (arguing

wage lawmaking,[17] pro-movement legal analysis gave local political leaders authority to push back on a business-friendly mayor and litigation-averse city attorney. Armed with this analysis, movement lawyers persuaded city officials to support an expansive suite of plus factors in LA's living wage ordinance (and a later supplemental ordinance that applied to LAX hotels).[18] In addition, these lawyers actively advanced union organizing goals through administrative advocacy with reluctant agency officials and by extending living wage requirements to airline subcontractors at LAX and retail and hospitality firms in publicly subsidized development projects. In so doing, movement lawyers helped unions gain access to workers and created tools to pressure direct employers to accept labor neutrality. They also devised effective countermeasures to employer responses seeking to halt or supplant living wage ordinances. In contrast to a view of labor lawyers on the defensive, seeking to protect unions from liability under labor law,[19] the lawyers' affirmative, pro-movement role in designing and implementing mobilizable law enabled living wage activists to wield greater power in local union campaigns and to scale up to more ambitious goals.[20]

Fourth, this revised history of the LA living wage, powered by innovative forms of legal mobilization, sheds new light on the dynamic relation between social movements and local government and the value of localism to organized labor. Specifically, the LA living wage campaign provides an early exemplar of how sophisticated, multilevel social movement activism can redefine the legal opportunity structure at the city level, effectively redeploying tools that have historically benefited empowered actors to create wider opportunities for participation and power building by excluded groups. In the labor context, the LA living wage campaign shows how strategic localism may ignite a virtuous cycle of local policymaking to build union membership of low-wage workers in urban economies, strengthen organized labor to seek widescale changes, and refine and export policy innovations across political boundaries. From this perspective, local government is not simply an opportunistic site of mobilization but also provides distinctive advantages for social movements that depend on collective action and proximity to decision makers to advance goals. In short, *cities matter* as places with

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that "law and lawyers ultimately do much of the heavy lifting in shaping a social movement's trajectory in fashioning both its short term objectives and long term consequences"). Showing how unions—and labor lawyers—sought to raise work standards and facilitate unionization and collective bargaining in the living wage movement contributes to Catherine Fisk's and Diana Reddy's project of offering labor lawyers as "cause" lawyers who bridged what is conventionally understood as organized labor's separate participation in "movement" activities and "bread and butter" work of seeking higher wages and benefits for working people. Catherine L. Fisk & Diana S. Reddy, *Protection by Law, Repression by Law: Bringing Labor Back into the Study of Law and Social Movements*, 70 EMORY L.J. 63, 74, 80, 85 (2020).

17. The NLRA preempts local government regulation of labor relations or activities the NLRA intended to be left unregulated. *See* Lodge 76, Int'l Ass'n of Machinists & Aerospace Workers v. Wis. Emp. Rels. Comm'n, 427 U.S. 132, 154 (1976); San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 246 (1959).

18. *See infra* Part II.

19. *See* Fisk & Reddy, *supra* note 16, at 129 (exploring the effect of "the constant threat of legal liability" on "the role of the union lawyer").

20. *See infra* Part III.

specific legal tools that can be used in the struggle for economic justice and as sites of decentralized power where social movements can gain greater access to the system, understand how it works, and leverage the knowledge of people with lived experience to take hold of the levers of government power—at least sometimes.

In making these contributions, this Article adds a new dimension to the growing scholarly effort to rethink settled historical understandings of critical legal events in order to analyze—and potentially unlock—alternative meanings with transformative potential.[21] It is a particularly important time to undertake this reexamination of the living wage. Even as organized labor faces enormous challenges to regain strength undercut by decades of decline, and after the pandemic pushed low-wage workers further into economic insecurity,[22] there are signs of robust organizing and bargaining strategies to demand greater corporate and state accountability to labor.[23] The rise in mass worker protest, the growing popularity of unions, and reenergized labor organizing campaigns against Amazon, Starbucks, and other corporate giants underscore the need to think creatively about law as a tool to extend labor rights in this pivotal moment.[24] Labor scholars have launched important new efforts to outline what labor law should look like going forward.[25] Yet many remain skeptical of law's potential as a force for mobilization,[26] illustrating how labor law enables employers

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21. *See* SUSAN D. CARLE, DEFINING THE STRUGGLE: NATIONAL RACIAL JUSTICE ORGANIZING 1880–1915, at 75–81, 289 (2013); *see also* RISA LAUREN GOLUBOFF, THE LOST PROMISE OF CIVIL RIGHTS 6–10 (2007); Sanjukta Paul, *Recovering the Moral Economy Foundations of the Sherman Act*, 131 YALE L.J. 175, 185 (2021); Kenneth W. Mack, *Rethinking Civil Rights Lawyering and Politics in the Era Before* Brown, 115 YALE L.J. 256, 354 (2005).

22. *See* ROSENFELD, *supra* note 1, at 89; Michael M. Oswalt, *Liminal Labor Law*, 110 CAL. L. REV. 1855, 1903–05 (2022).

23. *See* JANE MCALEVEY, A COLLECTIVE BARGAIN: UNIONS, ORGANIZING, AND THE FIGHT FOR DEMOCRACY 15–41 (2020); SCOTT L. CUMMINGS, BLUE AND GREEN: THE DRIVE FOR JUSTICE AT AMERICA'S PORT 1–16 (2018) (describing labor and environmental coalition to organize truck drivers in ports in Southern California).

24. Catherine L. Fisk, *The Once and Future Countervailing Power of Labor*, 130 YALE L.J.F. 685, 686–87 (2021); Taylor Johnston, *The U.S. Labor Movement Is Popular, Prominent and Also Shrinking*, N.Y. TIMES (Jan. 25, 2022), https://www.nytimes.com/interactive/2022/01/25/business/unions-amazon-starbucks.html [https://perma.cc/YSX5-R3XQ]; Michael Sainato, *'They Are Fed Up': US Labor on the March in 2021 After Years of Decline*, THE GUARDIAN (Dec. 21, 2021, 2:00 PM), https://www.theguardian.com/us-news/2021/dec/21/labor-organizing-pandemic-decline [https://perma.cc/967M-DHZC].

25. *See* Andrias & Sachs, *supra* note 11, at 565; Kate Andrias, *The New Labor Law*, 126 YALE L.J. 2, 10 (2016); Benjamin Sachs, David E. Feller Memorial Labor Law Lecture, *Revitalizing Labor Law*, 31 BERKELEY J. EMP. & LAB. L. 333, 334–35 (2010); *see also* Emily Bazelon, *Why Are Workers Struggling? Because Labor Law Is Broken*, N.Y. TIMES MAG. (Feb. 19, 2020), https://www.nytimes.com/interactive/2020/02/19/magazine/labor-law-unions.html [https://perma.cc/RQ3G-UWHL]; Sharon Block, David E. Feller Memorial Labor Law Lecture, *Go Big or Go Home: The Case for Clean Slate Labor Law Reform*, 41 BERKELEY J. EMP. & LAB. L. 167, 170 (2020).

26. *See, e.g.*, Fisk, *supra* note 24, at 688 ("Law tends not only to thwart and suppress but also to *channel* movement activity in ways that weaken threats to the hegemony of the wealthy under capitalism.") (emphasis in original).

to punish unions for impermissible forms of worker protest "with crushing damages liability and injunctions."[27] Scholarship about innovative low-wage worker organizing often highlights the role of worker centers that exist outside of labor law, rather than unions.[28]

This Article's account of the LA living wage movement, in contrast, shows the importance of legal innovation as a crucial piece of comprehensive labor campaigns. By highlighting the union organizing potential of integrated local law and organizing strategies, the Article suggests how law can, under the right conditions, contribute to transformative change, linking living wage legal mobilization to current efforts by the Fight for $15 movement, as well as new state- and national-level labor campaigns. Spotlighting cities as the primary site of labor contestation illuminates opportunities to incubate new and stronger forms of local labor lawmaking. As the living wage movement demonstrates, a strategic approach to city power can create conditions of possibility for political and workplace mobilization, facilitate union organizing and collective bargaining, and enable local groups to scale up and make more audacious demands. Mobilizable labor law can play a key role in these dynamics and has structural features that transcend the living wage context discussed in this Article: visible in recent efforts to organize workers in publicly owned ports and public transit infrastructure projects and seen in proposed federal legislation to strengthen worker rights in America's airports.[29]

This Article proceeds as follows. Part I presents the standard history of the living wage outside of new labor localism.[30] In this view, the living wage movement occurred on a separate track from the rise of immigrant worker organizing catalyzed by JfJ. Living wage ordinances were understood as limited antipoverty tools, creating local wage floors not directly related to unionization—a second-best solution to wage erosion in the context of national legal constraint. Part II revises that account by presenting a history of the LA living wage as mobilizable labor law:

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27. *Id.* at 694. As Fisk and Reddy observe, "[t]he pre-Wagner Act history of strikes crushed and unions destroyed by sweeping injunctions and staggering damages judgments reminds us that litigation loss can also shatter a movement." Fisk & Reddy, *supra* note 16, at 94–95; *see also* Fisk, *supra* note 24, at 704–05 (explaining the expansive restrictions of the secondary boycott prohibition on unions).

28. *See, e.g.*, Sameer M. Ashar & Catherine L. Fisk, *Democratic Norms and Governance Experimentalism in Worker Centers*, 82 LAW & CONTEMP. PROBS. 141, 168–76 (2019); Jeffrey M. Hirsch & Joseph A. Seiner, *A Modern Union for the Modern Economy*, 86 FORDHAM L. REV. 1727, 1749 (2018); Brishen Rogers, *Libertarian Corporatism Is Not an Oxymoron*, 94 TEX. L. REV. 1623, 1631 (2016).

29. For examples, see Good Jobs for Good Airports Act, S. 753, 118th Cong. (2023); Ian Kullgren, *Labor Board to Review Los Angeles Port Truckers Unionizing Case*, BLOOMBERG L. (July 13, 2022, 7:20 PM), https://news.bloomberglaw.com/daily-labor-report/labor-board-to-review-los-angeles-port-truckers-unionizing-case?context=search&index=0 [https://perma.cc/U358-8F9H]; and Editorial, *Taxpayer Money Can Build Transit Projects—and a Stronger Middle Class. L.A. Metro Shows How*, L.A. TIMES (Dec. 1, 2022, 5:00 AM), https://www.latimes.com/opinion/story/2022-12-01/metro-infrastructure-dollars-deliver-good-jobs [https://perma.cc/D8SJ-MA9Q].

30. *See* Elmore, *supra* note 5; *see also* Katherine Stone & Scott Cummings, *Labor Activism in Local Politics: From CBAs to 'CBAs'*, *in* THE IDEA OF LABOUR LAW 273 (Guy Davidov & Brian Langille eds., 2011).

showing how organizers and lawyers built and leveraged living wage provisions across iterative, dynamic campaigns that used local law reform, administrative advocacy, and contractual bargaining to extend organizing opportunities and build union density in critical service industries. Part III discusses key implications of our study. Deepening labor history, it reframes the living wage as an essential bridge connecting JfJ to the modern use of local lawmaking by Fight for $15, and contemporary union battles against employers linked to public entities, such as the San Francisco and Seattle-Tacoma airports—contributing to the development of an innovative multi-organizational and multi-tactical model of mobilization to spur unionization and build local labor power. Adding to legal mobilization theory, Part III illuminates underappreciated forms of labor lawyering for progressive unions—and describes its value in the face of NLRA preemption. Part III concludes by assessing doctrinal implications for labor law, suggesting how the LA living wage campaign fashioned mobilizable labor law as a set of specific legal tools to proactively respond to NLRA weaknesses, outside the boundaries of NLRA preemption, and exploring theoretical implications for local government law by highlighting how cities can serve as key sites of social movement base-building and policy diffusion.

I. LIVING WAGE OUTSIDE OF LOCAL LABOR ACTIVISM

Part I sets forth the conventional historical understanding of the living wage as an antipoverty tool disconnected from union organizing and the rise of local labor activism. This history is not presented as a critique of the extant scholarship, which has accurately shown that living wage campaigns in many cities were not fully integrated into union strategy. Rather, the goal of this Part is to identify historical gaps that lay the foundation for the Article's affirmative contribution. Toward that end, it presents the standard history of the living wage from four perspectives. First, this Part provides the historical context in which the living wage movement emerged alongside new forms of low-wage *immigrant worker organizing* after 1980s de-unionization, spotlighting JfJ as the seminal precedent for local labor activism. Second, it suggests how the living wage movement has been understood from a labor perspective as a disjuncture, developing on a *separate track* from JfJ and other labor experimentalism credited with reviving the labor movement. Third, it explains how living wage laws have been classified as *antipoverty policy* comprised of limited, city-level wage floors applying to small numbers of low-wage workers, not as a tool for unionization. Fourth, and relatedly, this Part shows how the living wage has been presented as a *second-best solution* to declining labor standards necessitated by the absence of an increase in the federal minimum wage.

A. Immigrant Worker Organizing

The living wage movement crystalized after the political and economic transformations of the 1980s, which hollowed out unions in manufacturing and turned popular sentiment against organized labor.[31] Low-wage service work grew

31. NELSON LICHTENSTEIN, STATE OF THE UNION: A CENTURY OF AMERICAN LABOR 185–91 (2002).

more precarious as employers shed labor costs by contracting out labor-intensive operations.[32] Union avoidance consultants became ubiquitous, emboldening employers to aggressively de-unionize their workplaces.[33] The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), once a powerful voice for proworker positions in federal legislation, could not counter the increasingly powerful business lobby or check its legislative and administrative agenda.[34] The rise of immigration during this time reshaped the labor market, leading many within the labor movement to consider the service sector, and its increasingly immigrant workforce, "unorganizable."[35] These structural changes were enabled by federal law[36]—and thus the labor movement looked to more favorable local ground. Los Angeles—because of its history of sector-wide organizing by craft unions in service industries and large immigrant population—emerged as a key locus of this struggle.[37]

Entering the last decade of the millennium, labor organizing in Los Angeles faced formidable challenges as the city had become ground zero for anti-union and anti-immigrant politics.[38] Through the 1980s, Los Angeles faced dwindling union membership and declining work standards in the service economy, where most low-wage immigrants worked.[39] This was a product of de-industrialization and deliberate de-unionization efforts by employers, which sought to break union power through contracting models. Richard Riordan, a venture capitalist and political novice, became mayor in 1993 as a law-and-order Republican.[40] Riordan promised to crack down on crime and unleash economic development after the massive civil unrest in South Los Angeles led by Black Angelenos outraged by the acquittal of white police officers who beat Rodney King and frustrated over the loss of union jobs in aerospace and auto manufacturing.[41] The mayor advanced policies to grow the service economy and weaken unions further, greenlighting retail development projects that created low-wage jobs and outsourcing work at the airport and other publicly held venues to

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32. WEIL, *supra* note 2, at 8–9.

33. ROSENFELD, *supra* note 1, at 1, 10–30.

34. *See* Elmore, *supra* note 5, at 263–65.

35. Kent Wong, *A New Labor Movement for a New Working Class: Unions, Worker Centers, and Immigrants*, 36 BERKELEY J. EMP. & LAB. L. 205, 206–07 (2015).

36. Elmore, *supra* note 5, at 263–65; *see also* JACOB S. HACKER & PAUL PIERSON, WINNER-TAKE-ALL POLITICS: HOW WASHINGTON MADE THE RICH RICHER—AND TURNED ITS BACK ON THE MIDDLE CLASS 116–60 (2010) (attributing decline of labor movement and rise in income inequality to ascendance of neoliberal national politics beginning in the late 1970s).

37. MILKMAN, *supra* note 3, at 16–25.

38. CUMMINGS, *supra* note 6, at 11–15.

39. Christopher L. Erickson, Catherine L. Fisk, Ruth Milkman, Daniel J. B. Mitchell & Kent Wong, *Justice for Janitors in Los Angeles: Lessons from Three Rounds of Negotiations*, 40 BRIT. J. INDUS. RELS. 543, 544–45 (2002) (noting that janitorial union members in Los Angeles peaked at around five thousand in 1978 and fell to one thousand and eight hundred by 1985).

40. CUMMINGS, *supra* note 6, at 15–16; *see* Seth Mydans, *Los Angeles Elects a Conservative as Mayor and Turns to a New Era*, N.Y. TIMES (June 10, 1993), https://www.nytimes.com/1993/06/10/us/los-angeles-elects-a-conservative-as-mayor-and-turns-to-a-new-era.html?searchResultPosition=1 [https://perma.cc/R48F-HW7H].

41. CUMMINGS, *supra* note 6, at 15.

low-wage private contractors.[42] At the same time, anti-immigrant sentiment surged—exemplified by the 1994 passage of state Proposition 187, a measure barring unauthorized immigrants from public services and schools[43]—pushing more immigrants into precarious work.

In this context, LA labor leaders turned to local experimentation—developing new coalition-based organizing to build solidarity with existing immigrant rights groups to advance unionization. Los Angeles's history with successful sectoral organizing in service industries dominated by the AFL—such as the janitorial, trucking, and construction industries—gave it a comparative advantage in rethinking labor strategy in postindustrial America, in which site-specific organizing was extremely difficult.[44] Unionization drives in California's Central Valley by the United Farm Workers (UFW) in the 1960s and 1970s provided foundational lessons for how to organize an increasingly subcontracted, predominantly immigrant workforce.[45] Immigrant worker organizing in Los Angeles built on strong occupational networks, an infrastructure of unions and community organizations, and solidarity formed from "the shared experience of stigmatization."[46]

The acclaimed JfJ campaign by the Service Employees International Union (SEIU) grew out of this context. First launched in Denver, Colorado in the 1980s, JfJ sought to unionize janitors in an industry decimated by contracting. Prior to that time, janitors had been employed directly by building owners and were heavily unionized.[47] But by the 1980s, building owners shed the direct employment relationship by contracting out to small cleaning firms that hired janitors in low-wage, low-benefits positions—aggressively (and often illegally) fighting union attempts and hiring immigrant workers viewed by firms as easier to control. Because of labor law rules prohibiting secondary boycotts,[48] the SEIU could not legally strike against building owners, which were not direct employers. Instead, the union developed a new strategy: a public campaign to sway building owners to encourage their janitorial contractors to accept union neutrality—agreeing not to campaign against union organization drives.[49] JfJ succeeded by mobilizing immigrant rights

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42. *Id.* at 18.

43. *See* Kevin R. Johnson, *Proposition 187 and Its Political Aftermath: Lessons for U.S. Immigration Politics After Trump*, 53 U.C. DAVIS L. REV. 1859, 1861–63 (2020).

44. MILKMAN, *supra* note 3, at 22–25.

45. *See* Jennifer Gordon, *Law, Lawyers, and Labor: The United Farm Workers' Legal Strategy in the 1960s and 1970s and the Role of Law in Union Organizing Today*, 8 U. PA. J. LAB. & EMP. L. 1, 8–9 (2005).

46. MILKMAN, *supra* note 3, at 133.

47. Roger Waldinger, Chris Erickson, Ruth Milkman, Daniel J. B. Mitchell, Abel Valenzuela, Kent Wong & Maurice Zeitlin, *Helots No More: A Case Study of the Justice for Janitors Campaign in Los Angeles*, *in* ORGANIZING TO WIN 102, 109–10 (Kate Bronfenbrenner et al. eds., 1998); Erickson et al., *supra* note 39, at 545.

48. *Id.* at 545, 556. The NLRA prohibits unions from boycotting companies other than the direct employer, *see* 29 U.S.C. § 158(b)(4)(B), which can result in janitors' unions being punished for picketing outside offices that their members clean to seek support from building tenants for their labor protest. *See* Fisk, *supra* note 24, at 704–05 (discussing Preferred Bldg. Servs., Inc., 366 N.L.R.B. No. 159 (2018)).

49. *See* Waldinger et al., *supra* note 47, at 111–12, 115.

groups to protest in the street, drawing public attention to the issue and pressuring building owners to enter into a city-wide master contract.

In the late 1980s, SEIU Local 399 in Los Angeles launched a JfJ campaign against contracted cleaning firms in downtown Los Angeles and Century City. As discussed more fully in Part II, this campaign used street protest, insider political strategies, litigation, and media messaging to pressure building owners to require contractors to permit unionization efforts to proceed. By focusing public pressure on entities with ultimate economic power—the building owners—JfJ was able to win labor neutrality and card-check recognition agreements, and the adoption of city-wide master contracts.[50] Through JfJ, the SEIU restored unionism as a source of power for thousands of LA janitors in 1990,[51] transforming the national approach to immigrant worker organizing and rejuvenating the labor movement's sense of possibility.[52]

B. The Living Wage Movement as a Separate Track

Although the living wage movement emerged shortly after JfJ and on the cusp of worker center development, it has been viewed as a separate track of activism not explicitly connected to the rise of immigrant worker organizing and local labor resurgence catalyzed by JfJ. The living wage movement was led by a new generation of community-labor groups created to pioneer local policymaking to promote workers' rights.[53] These groups built coalitions of progressive unions, faith organizations, and economic justice groups, which launched local campaigns to attach wage mandates to employers with a direct link to local government, typically in the form of a public contract or subsidy. The first successful living wage campaigns—in Washington, D.C. in 1993 and Baltimore, Maryland in 1994—conceived of the living wage as a tool to counter privatization through the award of public contracts, leases, and subsidies to low-wage, non-union private businesses with little oversight.[54]

While unions were critical to the living wage movement, historical studies tend to focus on the movement's policy success—raising wages for non-unionized employees—rather than its linkage to efforts to unionize low-wage, immigrant workers.[55] This is partly an accurate reflection of historical reality given that living wage campaigns in some cities did, in fact, lack an organizing focus.[56] Yet this reality

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50. *Id.* at 114.

51. CUMMINGS, *supra* note 6, at 16.

52. By the 2000s, JfJ became a national strategy to unionize commercial cleaners and bargain for a "de facto national contract." Erickson et al., *supra* note 39, at 560.

53. FANTASIA & VOSS, *supra* note 8, at 171.

54. WASH., D.C. ORDINANCE 9-343 (Jan. 14, 1993); BALT., M.D. ORDINANCE 94-442 (Dec. 1994). By 2004, over seventy cities had enacted a living wage ordinance. FANTASIA & VOSS, *supra* note 8, at 171.

55. *See, e.g.*, MILKMAN, *supra* note 3, at 131 (describing the living wage movement's "success in passing ordinances in several jurisdictions raising wage levels for workers employed under government contracts").

56. David Reynolds, *Living Wage Campaigns as Social Movements: Experiences from Nine Cities*, 26 LAB. STUD. J. 31, 50–53 (2001); Bruce Nissen, *Living Wage Campaigns from a "Social Movement" Perspective: The Miami Case*, 25 LAB. STUD. J. 29, 46–49 (2000).

has shaped a broader division between JfJ-inspired unionism and living wage activism outside of unionism. Rick Fantasia and Kim Voss, taking stock of the state of unions during the 1990s, identified union campaigns such as JfJ as "social movement unionism," or "a new, more expansive, and more combative model of unionism" responding to the challenges posed by de-unionization,[57] treating them separately from living wage campaigns focused on achieving greater accountability for cities that subsidized jobs with poverty-level wages.[58] In this frame, living wage campaigns demonstrated social solidarity by progressive unions that sought to advance the economic interests of low-wage workers in non-union workplaces.[59]

Recent scholarship provides positive portraits of the living wage movement, though it does not frame that movement in relation to new labor efforts to build power and advance unionization. In this vein, Brishen Rogers has credited the living wage movement for giving voice to moral claims about work standards as necessary for social equality,[60] while Benjamin Sachs has pointed to community benefits agreements as a form of "tripartite political exchange" that avoids federal law preemption.[61] Others have offered more negative assessments. Reviewing the living wage movement as an example of labor coordination, Charles Heckscher and Françoise Carré found that most campaigns did not generate "sustained networks capable of mounting repeated actions."[62] In their analysis of the rise of economic and racial justice organizing, Marc Doussard and Greg Schrock concluded that while the living wage movement was important for building alliances between unions and racial justice groups (thereby addressing the labor movement's legacy of racial discrimination) and elevating the leadership of multi-local organizations, the "ordinances themselves delivered disappointing returns."[63]

C. The Living Wage Law as Antipoverty Policy

As evaluations of the living wage's impact underscore, the standard conception of the living wage stresses its character as antipoverty policy, not labor law. In this view, the living wage was a limited measure to address wage inequality by protecting

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57. FANTASIA & VOSS, *supra* note 8, at 120.

58. *Id.* at 169–71.

59. CAROL ZABIN & ISAAC MARTIN, LIVING WAGE CAMPAIGNS IN THE ECONOMIC POLICY ARENA: FOUR CASE STUDIES FROM CALIFORNIA 8–12 (1999). As Marion Crain and Kenneth Matheny have observed, community-labor coalition building has occurred throughout the labor movement's history. Marion Crain & Ken Matheny, *Beyond Unions, Notwithstanding Labor Law*, 4 U.C. IRVINE L. REV. 561, 583 (2014).

60. Brishen Rogers, *Justice at Work: Minimum Wage Laws and Social Equality*, 92 TEX. L. REV. 1543, 1572 (2014).

61. Benjamin I. Sachs, *Despite Preemption: Making Labor Law in Cities and States*, 124 HARV. L. REV. 1153, 1221 (2011) (identifying community benefits agreements (CBAs) as a form of "tripartite lawmaking").

62. Charles Heckscher & Françoise Carré, *Strength in Networks: Employment Rights Organizations and the Problem of Co-Ordination*, 44 BRIT. J. INDUS. RELS. 605, 623 (2006).

63. MARC DOUSSARD & GREG SCHROCK, JUSTICE AT WORK: THE RISE OF ECONOMIC AND RACIAL JUSTICE COALITIONS IN CITIES 47–48 (2022) (discussing leadership of Association of Community Organizations for Reform Now (ACORN) in living wage campaigns in many cities).

against downside economic risk—not a legal instrument to advance union organizing and broader labor mobilization. Empirical evaluations of the living wage's impact stressed its effect on lifting workers and their families out of poverty and analyzed whether those economic benefits outweighed the costs of lost jobs and increased public contracting prices.[64] Specifically in Los Angeles, a major study of the living wage ordinance, conducted in the early 2000s, found that the ordinance covered approximately 22,000 jobs and increased pay for nearly 10,000 of those jobs in 150 firms, mostly through directly mandated pay raises resulting in average increases of $1.48 per hour (or $2600 per year), which went primarily to workers in low-income families.[65] The study also concluded that a majority of covered employers "did not make changes" in response to the living wage mandate, although some made "minimal" reductions resulting in the loss of "112 jobs, or 0.8 percent of covered jobs in affected firms."[66]

This understanding of the living wage as antipoverty policy is also evident in the legal mobilization literature, in which living wage ordinances have been viewed as tools to address economic insecurity in a context of rising neoliberalism.[67] For example, in the mid-1990s, poverty lawyers engaged in community economic development practice identified living wage ordinances as an important way to advance economic justice in poor communities.[68] In scholarly accounts of such practice, these lawyers negotiated, drafted, and enforced living wage ordinances to advance an antipoverty mission.[69] Legal mobilization for the living wage in these accounts was not designed to advance union organizing and, because of this, the role of labor lawyers was not addressed—reinforcing the perception that the living wage existed outside of labor law.

D. Second-Best Localism

As the living wage movement sought to create viable antipoverty policy at the local level, that policy was seen as second best: a forced version of localism necessitated by the lack of political opportunity at the federal level for a broader minimum wage floor or genuine labor law reform. While appreciating that limited policy advances were better than none, advocates and scholars acknowledged that the living wage ordinances of the 1990s covered too few workers to broadly address the growth of inequality.[70] In this vein, sociologist Stephanie Luce and economist

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64. *See* POLLIN & LUCIE, *supra* note 7.

65. DAVID FAIRRIS, DAVID RUNSTEN, CAROLINA BRIONES & JESSICA GOODHEART, EXAMINING THE EVIDENCE: THE IMPACT OF THE LOS ANGELES LIVING WAGE ORDINANCE ON WORKERS AND BUSINESSES 3, 17, 50 (2015).

66. *Id.* at 115.

67. Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 21–25 (2004).

68. Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 410–21 (2001).

69. *See, e.g.*, Charles Elsesser, *Community Lawyering—The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375, 391 (2013) (describing role of lawyers in challenging local implementation of living wage ordinance); Jesse Newmark, *Legal Aid Affairs: Collaborating with Local Governments on the Side*, 21 B.U. PUB. INT. L.J. 195, 296–300 (2012) (proposing legal aid lawyer involvement in living wage campaigns).

70. *See, e.g.*, Paul K. Sonn & Stephanie Luce, *New Directions for the Living Wage*

Robert Pollin made the case for living wage ordinances by arguing for their necessity in counteracting neoliberal municipal policies that subsidized large businesses at the expense of union members and poor people.[71] They acknowledged, however, that local living wage ordinances made too small an impact to address the broader problem of "eradicating low-wage poverty," for which a federal standard was superior.[72] Striking a similar tone, other scholars defended living wage ordinances as modest antipoverty interventions,[73] emphasizing their important challenge to "the prevailing orthodoxy against local redistribution" under theories of fiscal federalism.[74]

For some commentators, the limited effects of living wage ordinances were a desirable feature, as wage and benefit requirements applied to city contractors did not cause "far-reaching disruptions of employment or contract costs," as opponents warned.[75] The modest direct redistributive effects of living wage ordinances led scholars to emphasize their indirect beneficial effects on local government and organized labor. Richard Schragger, for example, asserted that living wage campaigns were a form of economic localism, a component of "a more comprehensive campaign to redefine the relationship between labor and capital at the municipal level,"[76] while Stephanie Luce traced "some concrete short-term gains for the labor movement, including new organizing, winning raises for already unionized workers and holding onto union jobs."[77] But some scholars cautioned that facilitating private political exchanges through local economic development programs raised accountability concerns.[78] Others criticized the living wage movement as not only second best but positively harmful,[79] asserting that it

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Movement, *in* THE GLOVES-OFF ECONOMY: WORKPLACE STANDARDS AT THE BOTTOM OF AMERICA'S LABOR MARKET 269, 271 (Annette Bernhardt et al. eds., 2008).

71. POLLIN & LUCIE, *supra* note 7, at 8.

72. *Id.* at 22–23. A key part of their case was defending living wage ordinances against opponents' claims of job loss by showing the lack of adverse effects in scores of municipalities. *Id.* at 10–19.

73. *See* WILLIAM P. QUIGLEY, ENDING POVERTY AS WE KNOW IT: GUARANTEEING A RIGHT TO A JOB AT A LIVING WAGE 159–61 (2003).

74. Clayton P. Gillette, *Local Redistribution, Living Wage Ordinances, and Judicial Intervention*, 101 NW. U. L. REV. 1057, 1070 (2007).

75. Jared Bernstein, *The Living Wage Movement: What Is It, Why Is It, and What's Known About Its Impact?*, *in* EMERGING LABOR MARKET INSTITUTIONS FOR THE TWENTY-FIRST CENTURY 99, at 129 (Richard B. Freeman, et. al., eds. 2004).

76. Richard C. Schragger, *Mobile Capital, Local Economic Regulation, and the Democratic City*, 123 HARV. L. REV. 482, 513 (2009).

77. Stephanie Luce, *Lessons from Living-Wage Campaigns*, 32 WORK & OCCUPATIONS 423, 425 (2005).

78. *See, e.g.*, Sachs, *supra* note 61, at 1210–11 (raising the concerns of "accountability problems . . . its law-eluding qualities, the politics of indirection it requires, and its collateral effects on other areas of law"); *see also* Vicki Been, *Community Benefits Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?*, 77 U. CHI. L. REV. 5, 32–33 (2010).

79. As Fantasia and Voss explain (without sharing this view), some labor scholars cautioned that a wage mandate disconnected from union organizing "might undercut workers' need and support for collective bargaining." FANTASIA & VOSS, *supra* note 8, at 170–71.

channeled labor movement energy outside of union campaigns, thereby distracting organized labor from the more fundamental goal of building institutional power.[80]

II. RECOVERING THE HISTORY OF LA'S LIVING WAGE

Part II recovers the history of the LA living wage campaign as a vehicle to support union organizing and strengthen labor's position in local politics. Drawing on a unique dataset of archival materials and interviews, it presents an original history of the foundational LA living wage campaign that shows how it served as an inflection point: leveraging the lessons from JfJ to provide a bridge between emergent immigrant worker organizing and the rise of new labor localism symbolized by the Fight for $15. Through this history, Part II illuminates how movement lawyers worked with activists to understand federal labor preemption risks and design local living wage law to minimize them, resulting in innovative legal provisions crafted to advance unionization efforts. This Part then examines how LA's living wage ordinance was used as mobilizable labor law: serving an actual regulatory purpose (higher wage standards) with latent organizing potential. It traces the mobilization of living wage law through key campaign phases, showing how it contributed to efforts to organize workforces linked to local government—those of airport contractors at LAX and hotels and retail stores subsidized through city-subsidized development. These campaigns sought to leverage living wage law to pressure apex powerholders to require contractors to agree to labor neutrality, thereby reshaping the landscape of union organizing in low-wage service industries tied to the city.

A. Living Wage as an Inflection Point: Learning Lessons from JfJ

As LA living wage activism emerged in the mid-1990s, JfJ was already well-known as the foundational precedent for organizing immigrant workers whose rights were degraded by contracting—a practice through which building owners divided the workforce into small units that would go out of business and reorganize rather than bargain with unions.[81] By mobilizing political pressure and public opinion through protests, JfJ's genius was to penetrate the barrier imposed by contracting to force building owners to require their contractors to bargain with unions. As such, JfJ catalyzed a new wave of labor organizing that sought to leverage broad-based mobilization against apex powerholders (such as building owners) in contracting relationships to enable triangular bargaining (between union, direct employer/contractor, and apex powerholder) to advance the unionization of low-wage workers. On the cusp of this new wave, the LA living wage campaign served as an inflection point, in which labor activists applied lessons from JfJ to scale up union organizing in workplaces with a fiscal connection to local government.

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80. *See* Richard Freeman, *Fighting for Other Folks' Wages: The Logic and Illogic of Living Wage Campaigns*, 44 INDUS. RELS. 14, 23–27 (2005) (critiquing narrow scope of living wage campaigns and cautioning that they "could lead to a cul-de-sac that produces no noticeable impact on the US labor market").

81. MILKMAN, *supra* note 3, at 82–113.

1. Divining the Deep Meaning of JfJ

Los Angeles was the epicenter of JfJ. As Part I described, SEIU Local 399 launched JfJ in Los Angeles in the late 1980s with a sophisticated political and legal strategy based on six key tenets:

1. *Build Intermovement Coalition*: First, JfJ built a new community-labor coalition between the SEIU and faith-based partners, particularly the Catholic Church, led by social justice-oriented Cardinal Roger Mahoney, alongside support from community members and local politicians, including state assemblyman (and former labor leader) Antonio Villaraigosa (who would become Los Angeles's first Latino mayor in 2005).[82]
2. *Identify New Leverage*: Second, because the union election process was ineffective for janitorial workers, JfJ developed a "comprehensive campaign" approach that identified new leverage points outside of labor law.[83] This approach included determining how many other buildings targeted owners held and how they were financed, which allowed the coalition to coordinate actions and pressure investors.[84] In addition, JfJ organizers mobilized government leverage through labor movement appointments to the powerful Community Redevelopment Agency (CRA), responsible for authorizing and subsidizing development in economically distressed areas of Los Angeles. Influence over the CRA meant that developers wanted to play ball with the unions since, without CRA approval, they would lose potential future development opportunities.[85]
3. *Focus on Apex Powerholder*: Third, as described above, a crucial innovation of JfJ was its response to the fissuring of cleaning services: focusing pressure on apex powerholders—the building owners—to require downstream employers—commercial cleaning contractors—to drop their hostility to the union. Specifically, the idea was that if the campaign could draw enough negative attention to the owners and raise costs of noncooperation, the owners would use their economic power over contractors to require them to negotiate with the union, passing on the higher labor costs to the owners via their cleaning contracts.[86]
4. *Address NLRA Weaknesses*: Fourth, in order to effectively pressure the apex powerholders, JfJ needed to surmount impediments to union organizing contained in federal labor law, specifically, the secondary boycott prohibition, which only allowed unions to strike primary employers (here,

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82. Waldinger et al., *supra* note 47, at 115–16.

83. *Id.* at 114.

84. Carole Luce, *Organizing the Unorganizable: The Justice for Janitors History Project*, UCLA LAB. CTR. 10 (Feb. 6, 2012), https://www.labor.ucla.edu/wp-content/uploads/2015/03/Organizing-the-Unorganizable-by-Luce.pdf [https://perma.cc/KM3R-EPL7]; Waldinger et al., *supra* note 47, at 114.

85. Waldinger et al., *supra* note 47, at 115.

86. *Id.* at 114.

the cleaning companies).[87] In order to place maximum pressure on the building owners without running afoul of the secondary boycott rule, the campaign needed new forms of pressure other than the standard economic weapon of strikes.

5. *Use All of the Tools at Hand*: Fifth, to exert these new forms of pressure, JfJ organizers and lawyers committed to mobilizing every available tool to advance the campaign. This involved organizing low-wage immigrant workers in highly visible community protests and marches in downtown Los Angeles to draw public attention. On the legal front, organizers worked with lawyers to file numerous agency complaints about legal violations in the janitors' workplace as a guerilla-style tactic.[88] Filing complaints over wage-and-hour and safety-and-health violations and unfair labor practice charges alleging anti-union employee harassment raised costs for employers, and transformed "the union into the effective, if not the legal, representative of the workers."[89]
6. *Win the Framing Game*: Sixth, the coalition coordinated tactics with an eye on building broad public support, not simply winning narrow legal arguments. It did this by framing JfJ as a campaign for justice and dignity rather than a commercial dispute, drawing on the moral authority of coalition members and spotlighting the courage of the workers themselves to galvanize public support.[90] Sometimes this involved adapting the campaign's public messaging to unforeseen events. A key turning point in the campaign came after a police attack on marching janitors and protesters afforded an opportunity for the campaign to highlight the stark injustice of denying workers' basic rights. This led Mayor Tom Bradley and other local leaders to call on building owners and large commercial cleaners to deal with the union.[91]

By following these tenets, JfJ was able to win building owner support for labor neutrality and card-check recognition agreements, leading to the adoption of city-wide master labor contracts between the SEIU and cleaning firms,[92] and expanding the collective power of thousands of janitors in the 1990s.[93] JfJ transformed immigrant worker organizing and rejuvenated the labor movement's sense of possibility.[94] The campaign's success turned on taking a familiar strategy—gaining "control over all the key players in a local labor market, with the goal of taking labor costs out of competition"[95]—and adapting it to the new context of contracted service sector employment in Los Angeles. But it was not immediately clear how to build

87. Erickson et al., *supra* note 39, at 556–57.
88. *Id.* at 557–58; Waldinger et al., *supra* note 47, at 114–15.
89. Waldinger et al., *supra* note 47, at 115.
90. Erickson et al., *supra* note 39.
91. *Id.* at 548.
92. *See generally* Waldinger et al., *supra* note 47, at 115–16.
93. CUMMINGS, *supra* note 6, at 16.
94. By the 2000s, JfJ became a national strategy to unionize commercial cleaners and bargain for a "de facto national contract." Erickson et al., *supra* note 39, at 560.
95. Waldinger et al., *supra* note 47, at 114; *see also* MILKMAN, *supra* note 3, at 156.

on this success and extend the JfJ model to other low-wage sectors given particular advantages in the cleaning industry, which was centered in downtown areas with large concentrations of union members who previously had a master collective bargaining agreement with uniform, competitive terms.[96] In the immediate wake of JfJ, the open question was how to apply its lessons to unionize workers in other service sectors, especially in retail and hospitality, in which unions were virtually absent and direct employers had a long history of labor hostility.

2. Applying JfJ to the Local Service Economy

To answer that question, LA labor leaders believed that they had to build an innovative organizational structure. By 1994, Miguel Contreras, a former UFW and Hotel Employees and Restaurant Employees (HERE) Local 11 organizer, became political director of the powerful LA County Federation of Labor ("County Fed") and made organizing immigrant workers a centerpiece of its local and state political strategy (he would be elected executive secretary two years later).[97] The County Fed was a key opponent of Proposition 187 and backer of former union members seeking office in city and state government.[98] Contreras and other leaders of progressive LA unions supported novel strategies to promote immigrant worker organizing and were founding partners of the Los Angeles Alliance for a New Economy (LAANE),[99] which conceived of living wage campaigns as a strategy to challenge low-wage work and build union power in the ascendant service sector.[100]

Rather than depart from the immigrant organizing focus of JfJ, LAANE was launched to deepen it. Originally formed by HERE Local 11 in 1994 as the Tourism Industry Development Council, LAANE's mission was to figure out how to use levers of local power to strengthen the rights of low-wage, immigrant workers. As founding LAANE director Madeline Janis-Aparicio—a lawyer who had led a local immigrant rights group and been an associate for a powerful LA law firm—described the moment: "It was post-civil unrest. So there was this sense of crisis, and overwhelming poverty and suffering. And at the same [time], it was a mission that was focused on . . . Justice for Janitors . . . [and the] beginning of the new immigrant-worker-led labor movement."[101] In that moment, LAANE was launched to "represent immigrant workers . . . and be more of a glue that could bring together different organizations . . . . And the tourism industry just happened to be the industry that had

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96. MILKMAN, *supra* note 3, at 64–70, 86 (describing city-wide commercial cleaning union organizing in Los Angeles from the 1950s through the 1970s); *see* Waldinger et al., *supra* note 47, at 104.

97. CUMMINGS, *supra* note 6, at 16–17.

98. *See* MILKMAN, *supra* note 3, at 131–32.

99. Interview with Madeline Janis, Founder, LAANE, in L.A., Cal. (Feb. 17, 2012). Madeline Janis changed her last name from Janis-Aparicio to Janis in 2002. Textual references refer to her consistently as Janis-Aparicio to avoid confusion, although this interview accurately cites to Janis.

100. CUMMINGS, *supra* note 6, at 20–22 (noting that retail and hospitality work accounted for nearly ten percent of the Los Angeles County workforce in the 1990s).

101. Interview with Madeline Janis, *supra* note 99.

been really transformed in a matter of fifteen to twenty years to eighty to ninety percent immigrant Latinos."[102]

To facilitate union organizing in the tourism industry, LAANE and union leaders sought to apply the JfJ lessons to broader sectors of the LA low-wage service economy—with the critical innovation, inspired by the HERE, of using local policy to build labor power. Living wage law would be the linchpin in this effort. As the history developed in this Part shows, the passage of the LA living wage ordinance (and the worker retention ordinance before it) laid the foundation for the labor movement to repurpose and extend the six key JfJ tenets to new organizing campaigns.

First, the living wage ordinance provided the anchor for creating the Living Wage Coalition, staffed by LAANE, which convened representatives from unions, faith-based organizations, community groups, and legal services providers to coordinate and plan a series of campaigns, each run by its own coalition, toward the goal of expanding application of the living wage and creating opportunities for unionization. This Living Wage Coalition, and the campaign-specific coalitions it incubated, were designed to win organizing victories, while building intermovement solidarity and local political power.[103]

Second, with the living wage ordinance in place, campaigns were designed to identify and deploy new governmental leverage. Whereas JfJ did this by exploiting fiscal ties between building owners and the city, the living wage movement expanded this effort. By attaching legal requirements to employers with financial relationships to the city, the living wage ordinance created possibilities for community-labor groups to encourage employers to remain neutral in union campaigns. These possibilities focused movement attention on employers in publicly owned assets, specifically LAX, and employers receiving public subsidies, specifically city-financed developers in economic development zones.[104] Targeting local government connections afforded the living wage movement a wider and more variable set of tools, applicable to a broader range of low-wage occupations.

Third, this leverage was used to put pressure on apex powerholders to support labor neutrality by employers in privity of contract with them. In some contexts, the apex powerholder was the city itself, for example, where the city held commercial leases with retail companies at LAX. In others, the powerholders were private companies at the apex of contracting chains similar to those in the janitorial industry. Whereas JfJ won by targeting building owners, the LA living wage movement would target LAX airlines, which contracted with security firms and baggage handlers to provide airport services, and private developers, which leased property to restaurants, hotels, and groceries with permanent employees who could be unionized.

Fourth, to support unionization, the living wage movement had to bypass weak NLRA rights and remedies at the direct employer level. This goal was advanced through "plus" factor provisions drafted into the living wage ordinance that

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102. *Id.* (stating that LAANE's priorities were "organizing with the hotel workers, and to a lesser degree, organizing with janitors. Hotel worker organizing was number one. And then, really, immigrant organizing.").

103. Waldinger et al., *supra* note 47, at 111–12, 115.

104. Interview with Madeline Janis, *supra* note 99.

addressed federal labor law weaknesses by penalizing retaliation against activist workers seeking a living wage, granting access to workers and information about employers subject to living wage requirements, and allowing employers to opt out of the living wage in exchange for adopting union contracts. In this way, the idea of mobilizable labor law was born.

Fifth, building on these plus factors, labor movement actors were empowered—as in JfJ—to win hard-fought organizing drives by using all the legal tools at hand, mobilizing employment law rights and administrative remedies to weaken the resolve of employers hostile to union recognition.[105]

Sixth, the Living Wage Coalition and the campaign-specific offshoots sought to win the framing game by using justice and dignity arguments to generate popular support.[106] These campaigns emphasized the fact that this was a "living" wage—designed to lift hard-working people out of poverty—and that they deserved respect and dignity.

Overall, LA labor leaders believed that the lessons from JfJ could prove crucial in using the living wage ordinance to help establish new baselines for low-wage immigrant workers seeking to join and collectively bargain in a union.[107] As the following history illuminates, the intersecting living wage campaigns built a dynamic, iterative movement around successive policy changes, which enabled the coalition to expand political mobilization to widen the scope of living wage law and use its features to launch new unionization efforts.[108]

B. Living Wage as Legal Innovation: Designing Regulation to Avoid Preemption

For this ambitious plan to work, the essential first step was to design local law that could achieve movement goals while avoiding preemption. To do so, lawyers worked for and alongside LAANE and allied unions, conceiving and drafting worker retention and living wage ordinances that could facilitate union campaigns, while ensuring that they were protected from NLRA preemption. In this way, LA labor lawyers were following the well-worn path of union lawyers who had long learned how to expand their practice beyond the NLRA to overcome its weaknesses, especially while representing unions seeking to organize workers in non-union workplaces.[109] While these forerunner labor lawyers hewed closely to a technical and narrow set of rules governing union elections and bargaining, they also engaged in

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105. *See* Erickson et al., *supra* note 39.

106. Brishen Rogers, *Employment Rights in the Platform Economy: Getting Back to Basics*, 10 HARV. L. & POL'Y REV. 479, 502 (2016); *see* Waldinger et al., *supra* note 47, at 111–16.

107. Interview with Madeline Janis, *supra* note 99.

108. This analysis is aligned with Michael McCann's synthesis of legal mobilization scholarship—that social movement action has discrete "stages." MICHAEL W. MCCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION 11 (1994).

109. RICHARD B. FREEMAN & JAMES L. MEDOFF, WHAT DO UNIONS DO? 19 (1984); Gordon, *supra* note 45, at 7–8 (critiquing narrow view of labor lawyers and offering legal work of United Farm Workers as an example of labor lawyer experimentation outside of labor law).

policymaking "campaigns to establish new workplace rights."[110] Following this lead, labor lawyers in Los Angeles designed living wage policymaking to create conditions of possibility for union organizing.

1. Navigating Around Preemption

Labor lawyers in Los Angeles sought to craft local laws to encourage organizing by workers whose rights to join a union and collectively bargain were insufficiently protected by the NLRA alone. As Janis-Aparicio put it, "Everything [was] about the failure of the NLRA."[111] Shifting focus to the city through local lawmaking required confronting the limitations of NLRA preemption. The NLRA provides for two forms of preemption of state or local laws that regulate labor relations between unions and employers.[112] In *San Diego Building Trades Council v. Garmon*,[113] the Supreme Court held that the NLRA preempts state and local laws that seek to regulate conduct arguably regulated by the NLRA.[114] The *Garmon* rule prohibits states from providing any regulatory or judicial remedies for NLRA violations.[115] Under *Lodge 76, International Association of Machinists v. Wisconsin Employment Relations Commission*,[116] states may not regulate "economic weapons" of self-help such as strikes, which the NLRA intends to leave unions free to engage in as part of the bargaining process.[117] *Garmon* and *Machinists* stand for the "unquestionably and remarkably broad" preemption of state regulation of labor disputes.[118] By the 1990s, Los Angeles had already lost an important NLRA preemption decision on *Machinists* grounds. In *Golden State Transit Corp. v. City of Los Angeles*,[119] the city sought to resolve a labor dispute between a union and one of the city's taxi franchisees by conditioning the employer's franchise on resolution of the dispute.[120] Rejecting the city's claim that this was a "traditional municipal function," the Court held that the city could not rebalance bargaining power between employers and unions by conditioning a license on settling the dispute.[121]

However, NLRA preemption did not threaten the core idea of a living wage ordinance that applied to employers with fiscal ties to the city. Courts had established a presumption against preemption of state regulation of the employer-employee relationship,[122] and the NLRA did not preempt laws of general applicability, such as minimum wage laws that applied equally to union and non-union workplaces.[123] As

110. Fisk & Reddy, *supra* note 16, at 129.
111. Interview with Madeline Janis, *supra* note 99.
112. Metro. Life Ins. Co. v. Massachusetts, 471 U.S. 724, 748–49 (1985).
113. 359 U.S. 236 (1959).
114. *Id.* at 245.
115. Wis. Dep't of Indus., Lab. & Hum. Rels. v. Gould, Inc., 475 U.S. 282, 286 (1986).
116. 427 U.S. 132 (1976).
117. *Id.* at 152–53.
118. Sachs, *supra* note 61, at 1164–66.
119. 475 U.S. 608 (1986).
120. *Id.* at 609–11.
121. *Id.* at 618–19.
122. Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 21 (1987).
123. *See* Metro. Life Ins. Co. v. Massachusetts, 471 U.S. 724, 754–55 (1985); *see also* Am.

laws of general applicability, standard living wage ordinances applying minimum wage and benefit requirements to city contractors and subsidy recipients did not implicate *Garmon* or *Machinists* preemption. But, particularly after *Golden State*, it was an open question how far LA labor leaders could go in crafting living wage and other local laws that included features to facilitate unionization and collective bargaining.

Designing local laws that could be used to mobilize workers therefore required a plausible theory that the NLRA did not preempt it. Two important theories emerged by the mid-1990s. First, the NLRA did not preempt worker retention ordinances—which protected unionized workforces from a transfer of city contract responsibilities to a non-unionized employer—because, like the minimum wage, they were laws of general applicability. Beginning in the 1990s, cities successfully defended worker retention ordinances in NLRA preemption litigation on this ground. In *Washington Service Contractors Coalition v. District of Columbia*,[124] the D.C. Circuit rejected an NLRA preemption challenge to a worker retention ordinance because it did not require bargaining with a successor's employees or regulate labor disputes.[125] Following that case, courts uniformly found that worker retention ordinances, like minimum wage laws, did not implicate *Garmon* or *Machinists* preemption.[126]

Second, cities could expressly regulate labor relations under the market participant exception to NLRA preemption, which permitted cities to avoid service disruptions by ensuring labor peace.[127] Under the market participant exception, when a city acts in its proprietary interests (for example, as a property owner), it is not preempted by the NLRA from encouraging collective bargaining.[128] In 1993, the Supreme Court clarified the scope of the market participant exception in *Building & Construction Trades Council v. Associated Builders & Contractors (Boston Harbor)*.[129] In *Boston Harbor*, a court ordered a government agency to clean up a harbor after failing to prevent pollution in violation of federal law. In order to "maintain worksite harmony, labor-management peace, and overall stability

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Hotel & Lodging Ass'n v. City of Los Angeles, 834 F.3d 958, 963 (9th Cir. 2016) ("Minimum labor standards . . . are not preempted, because they do not 'regulate the mechanics of labor dispute resolution.'").

124. 54 F.3d 811 (D.C. Cir. 1995).

125. *See id.* at 816–18.

126. *See, e.g.*, Metro. Life, 471 U.S. at 755; Am. Hotel, 834 F.3d at 965–66 ("We have consistently held that minimum labor standards do not implicate *Machinists* preemption."); R.I. Hosp. Ass'n v. City of Providence *ex rel.* Lombardi, 667 F.3d 17, 28–40 (1st Cir. 2011); Cal. Grocers Ass'n v. City of Los Angeles, 254 P.3d 1019, 1030–38 (Cal. 2011); Alcantara v. Allied Props., LLC, 334 F. Supp. 2d 336, 344–45 (E.D.N.Y. 2004). In contrast, one federal trial court invalidated a successorship statute under section 301 of the Labor Management Relations Act on the ground that the statute necessarily required an interpretation of the previous contractor's collective bargaining agreement. *See* Commonwealth Edison Co. v. Int'l Bhd. of Elec. Workers, Loc. Union No. 15, 961 F. Supp. 1169, 1179–84 (N.D. Ill. 1997).

127. *See, e.g.*, Bldg. & Constr. Trades Council of Metro. Dist. v. Associated Builders & Contractors of Mass./R.I., Inc., 507 U.S. 218, 229–32 (1993); Airline Serv. Providers Ass'n v. L.A. World Airports, 873 F.3d 1074, 1080–84 (9th Cir. 2017).

128. Wis. Dep't of Indus., Lab. & Hum. Rels. v. Gould, Inc., 475 U.S. 282, 291 (1986).

129. 507 U.S. at 229.

throughout the duration of the project,"[130] the contractor hired by the agency negotiated a project labor agreement with construction unions requiring all subcontractors to recognize the unions.[131] The state's use of a project labor agreement covering the cleanup project was, according to the Court, not preempted by the NLRA because the state agency acted as a purchaser of services completing a project without disruption rather than as a regulator seeking to set policy.[132] For lawyers advising the emergent living wage movement, *Boston Harbor* stood for the proposition that while cities could not penalize companies for violating the NLRA or condition a permit on NLRA compliance, they could require labor peace as proprietors to avoid labor disruptions.

2. Worker Retention as a Test Case

Los Angeles's living wage campaign began to coalesce in response to efforts by the new mayor, Richard Riordan, to diminish labor power in the city by terminating the leases of unionized concessionaires in publicly owned property and rebidding them to non-union employers.[133] In 1995, the rebidding of concessions at LAX caused the termination of an incumbent food and beverage vendor, Marriott, resulting in layoffs of 220 employees who were HERE Local 11 members.[134] While some workers found jobs with new vendors in low-wage, non-union positions, most remained laid off even after the Airport Department—the city agency with authority over LAX—and HERE held a hiring fair.[135] Since the City of Los Angeles was not the direct employer of the unionized workers, it could terminate the Marriott contract without any labor law obligation to bargain with Local 11.[136]

The LAX layoffs provided a test case for how to redesign local law to protect union members from the city's de-unionization efforts. The layoffs galvanized LAANE and HERE leaders and allied lawyers to figure out a way to stabilize the unionized work force—and then expand its scope. Working with one staff person and an intern, LAANE's Madeline Janis-Aparicio and Margo Feinberg, a prominent labor lawyer at Schwartz, Steinsapir, Dohrmann & Sommers—a Berkeley-based law firm known for representing the United Food and Commercial Workers (UFCW) and other progressive unions in organizing campaigns—began drafting a suite of proposed local laws. These laws included: (1) a worker retention ordinance, requiring new city vendors, leaseholders, or concessionaires to hire the incumbent employer's workers for a probationary period and continue their union representation; and (2) a living wage ordinance requiring that contractors and other

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130. *Id.* at 221.

131. *Id.* at 221–22.

132. *Id.* at 232.

133. CUMMINGS, *supra* note 6, at 169–70.

134. Letter from John J. Driscoll, Exec. Dir., Bd. of Airport Comm'rs & Theodore Stein, President, Bd. of Airport Comm'rs, to L.A. City Council (June 20, 1995) (on file with authors).

135. *See id.* A McDonald's franchisee, in particular, declined to hire any of the laid-off Marriott employees, instead bringing in its own minimum-wage staff from other stores. *Id.*

136. An employer has a duty to bargain over the replacement of an existing bargaining unit with those of another contractor to do the same work. *See* Fibreboard Paper Prods. Corp. v. NLRB, 379 U.S. 203, 213–15 (1964). But this obligation applies only to employers.

businesses with fiscal ties to the city pay a wage above the federal or state minimum wage.[137] Although Washington, D.C. had recently passed a worker retention ordinance and Baltimore a living wage ordinance, Janis-Aparicio and Feinberg effectively "made everything up" since those laws did not go far enough to address the LA coalition's goals.[138]

Labor leaders hoped, in particular, that putting a worker retention ordinance in place might keep union contracts from "pricing" workers out of jobs that were competitively bid by city agencies. According to a memo circulated by the LA Living Wage Coalition, worker retention would put a speedbump on this practice by requiring that new vendors offer a probationary period of employment to the previous vendor's employees, with the right to fire those employees only for good cause.[139] Worker retention was thus viewed as a critical first step to regain ground by giving time for unions to negotiate collective bargaining agreements with new vendors on behalf of incumbent workers. As Janis-Aparicio stated, "The interplay between worker retention and the National Labor Relations Act [was] really important because . . . the contracting out phenomenon ha[d] been so often used to bust unions. And so when you require [a new vendor] to retain the majority of the existing workforce, then . . . you keep [union] recognition . . . . [The vendor has] to bargain for a new contract."[140]

To stop Mayor Riordan's union busting contract terminations, labor leaders met with supportive members of the City Council to urge a moratorium on bidding out contracts that would displace union employees pending passage of a worker retention ordinance to preserve worker rights and seniority when the city renegotiated contracts.[141] The labor movement's political strategy was to persuade the City Council to support the ordinance in order to ameliorate the harmful effects of the city's contracting process on workers with collective bargaining agreements. Overwhelming political support was necessary to overcome corporate opposition and the expected veto of a mayor hostile to legislation that might jeopardize his standing in the local business community.

The most pressing threat at the outset was not political but legal. As Los Angeles City Council member Jackie Goldberg explained in a public hearing on the matter in July 1995, she and other progressive council members wanted worker retention and living wage requirements for all city contracts to secure a "stable workforce free of strikes."[142] But in 1995, living wage ordinances were still new and untested as an

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137. CUMMINGS, *supra* note 6, at 169–70.

138. Interview with Madeline Janis, *supra* note 99; *see also* BALT., MD. Code § 26-8 (1994) (prohibiting retaliation but without private enforcement or opt-outs to facilitate mobilization); WASH., D.C. CODE § 32-103 (1993) (prohibiting retaliation with private enforcement but no retention, opt-out, or other mobilizable terms).

139. Memorandum from the L.A. Living Wage Coal. on the Good Faith Worker Retention Ordinance (on file with authors) [hereinafter Fact Sheet].

140. Interview with Madeline Janis, *supra* note 99.

141. Fact Sheet, *supra* note 139; Jackie Goldberg, Comm. Chairwoman, Remarks at the Personnel Committee Hearing (June 21, 1995) (transcript on file with authors) [hereinafter Remarks at the Personnel Committee Hearing].

142. Jackie Goldberg, Remarks at the Los Angeles City Council Hearing (July 5, 1995) (transcript on file with authors) [hereinafter Los Angeles City Council Hearing].

exercise of local government power. The small number of cities that had enacted living wage ordinances were confronting their own litigation challenges.[143] While progressive City Council members were willing to undergo litigation risk, at the July public hearing, the Los Angeles City Attorney urged caution. Responding to the argument of SEIU lawyer Andy Strom that Los Angeles could require city contractors to adopt labor neutrality and card-check recognition under *Boston Harbor*, the city attorney responded that *Boston Harbor* applied only to construction contractors of the type in that case.[144] The city attorney also opined that a worker retention ordinance might interfere with the independent power of some departments set forth in the city charter.[145] Serving as the living wage proponents' legal expert, Strom criticized the city attorney's "constrained" reading of *Boston Harbor*, which he argued whittled that decision to its "narrowest possible holding."[146] To counteract the city attorney's objections, Janis-Aparicio and Rich McCracken, a partner at Davis, Cowell & Bowe, who was a national expert in municipal labor law and federal preemption, circulated a chart to City Council members, offering a "summary and justifications" for labor standards and plus factors for airport workers employed by city contractors.[147] It argued that retention and rehiring of airport workers were part of the city's proprietary powers under *Boston Harbor* and that city-level worker retention ordinances were also not preempted by the NLRA because they are laws of general applicability applying to union and non-union workplaces alike.[148] By presenting this broader view of *Boston Harbor* and the city's legal authority to impose work mandates on private contractors, the coalition was able to persuade an overwhelming majority of the City Council to pass the worker retention ordinance.[149] Tracking the reasoning of *Boston Harbor*, the ordinance adopted legislative findings that the competitive contracting process should not harm employees and that a worker retention requirement improved services, reduced labor disputes, and stabilized employment.[150]

The Los Angeles Worker Retention Ordinance became law in April 1996,[151] closely following the proposal advanced by the Living Wage Coalition. It specifically required that, in the event of a service contract termination (either because the city or contractor decided to terminate), the new "successor contractor" had to "retain, for a ninety (90)-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for

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143. *Id.* (Los Angeles City Attorney recommended not adopting ordinance until after all appeals were exhausted in D.C. living wage ordinance litigation).

144. *Id.*

145. Letter from Richard G. McCracken to Madeline Janis-Aparicio (Nov. 28, 1995) (on file with authors).

146. Los Angeles City Council Hearing, *supra* note 142.

147. RICHARD G. MCCRACKEN & MADELINE JANIS-APARICIO, MINIMUM LABOR STANDARDS FOR L.A. AIRPORT WORKERS (1995) (on file with authors).

148. *Id.*

149. *Id.*; *see also* Agenda from L.A. City Council (Oct. 3, 1995) (on file with authors).

150. *See* Memorandum from Rich McCracken on Worker Retention Ordinance (Oct. 3, 1995) (legislative findings) (on file with authors).

151. Service Contractor Worker Retention Ordinance (summary of the ordinance) (on file with authors).

the preceding twelve (12) months or longer."[152] During the ninety-day period, the successor contractor could only fire employees for cause; after the period ended, the contractor was required to offer continued employment to those employees upon completion of a satisfactory performance review.[153] Employees improperly discharged were given a private right of action to sue the contractor for back pay and could collect attorney's fees if successful.[154] The coalition's political strategy of gaining overwhelming support of the City Council deterred the mayor from vetoing the bill out of fear of a council override.[155] The Council also rejected a subsequent effort, backed by business groups, to limit the scope and duration of the ordinance.[156] Legal analysis by LAANE persuaded the City Council not to follow the city attorney's suggestion to exempt from coverage public contractors that also received federal or state funds.[157]

3. Wage and Benefit Requirements and Plus Factors

The quick passage of the worker retention ordinance emboldened LAANE and HERE Local 11 to reach higher by seeking a living wage ordinance the next year. Initially, the groups aimed to create preferential leasing policies for commercial tenants in economic development projects that would pay a living wage.[158] A living wage ordinance was of particular importance for employees of commercial tenants

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152. L.A., CAL., ORDINANCE NO. 171004, L.A. ADMIN. CODE div. 10, art. 10, § 10.36.2(a)–(b).

153. *Id.* § 10.36.2(e)–(f).

154. *Id.* § 10.36.3.

155. Jean Merl, *Riordan Grudgingly Decides Not to Veto Job Protection Law*, L.A. TIMES (Dec. 9, 1995), https://www.latimes.com/archives/la-xpm-1995-12-09-me-11994-story.html [https://perma.cc/8L2K-ZVNG]; Letter from Richard J. Riordan, Mayor, City of L.A., to Honorable Members, L.A. City Council (Dec. 8, 1995, 12:00 AM) (on file with authors).

156. Letter from Richard J. Riordan, Mayor, City of L.A., to Jackie Goldberg, Honorable Member, L.A. City Council, Mark Ridley-Thomas, Honorable Member, L.A. City Council, Laura Chick, Honorable Member, L.A. City Council (Feb. 12, 1996) (on file with authors); Press Release, Valley Indus. & Com. Ass'n, Position Paper on Worker Retention Ordinance (Dec. 12, 1995) (on file with authors); Motion to Amend Service Contract Worker Retention Ordinance (Mar. 26, 1996) (on file with authors); Walter N. Prince, *Perspectives on City Contractors: . . . But Forced Hiring Is the Road to Ruin: Vendors Base Bids on the Cost of the Work Force They Need. They Shouldn't Be Forced to Inherit One They Don't Know*, L.A. TIMES (Jan. 3, 1996, 12:00 AM), https://www.latimes.com/archives/la-xpm-1996-01-03-me-20271-story.html [https://perma.cc/4CTJ-XTQC].

157. Letter from Maria Elena Durazo, President, HERE Loc. 11, & Madeline Janis-Aparicio, Exec. Dir., Tourism Indus. Dev. Council, to Jackie Goldberg, Honorable Member, L.A. City Council, Mark Ridley-Thomas, Honorable Member, L.A. City Council, Laura Chick, Honorable Member, L.A. City Council (Mar. 15, 1996) (on file with authors). The city attorney argued that the U.S. Department of Housing and Urban Development (HUD) preempts or limits extension of local mandates to recipients of federal aid. The Los Angeles Living Wage Coalition persuaded the City Council that, on the contrary, the Worker Retention Ordinance furthers HUD's non-displacement goals. *Id.*

158. Cmty. Redevelopment Agency., CRA Key Points (Apr. 6, 1999) (notes) (on file with authors).

of developments that received financial assistance from the CRA, which was empowered under state law to subsidize private development to help revitalize so-called "blighted" neighborhoods.[159] This powerful agency had played a role in JfJ by encouraging building owners to support the union campaign in light of the possibility that those same owners might seek to develop new properties with CRA assistance. More broadly, the agency had a mixed record in relation to LA redevelopment. It was responsible for the removal of working-class neighborhoods to make way for high-rise business development on Bunker Hill and had undertaken multiple unsuccessful efforts to redevelop South Los Angeles.[160] Yet the CRA also remained an important engine of job creation and affordable housing production with potential to benefit low-income communities—even if that potential had not been fully realized. In short, the CRA provided leverage that could be used in new union campaigns against commercial tenants in CRA-sponsored developments. These commercial tenants tended to be low-wage employers in the retail and hospitality sectors, where union density was low.[161] Unions and LAANE criticized the CRA for mostly financing retail projects, while ignoring industrial possibilities, and for spending taxpayer money without evidence of high-wage job creation.[162] For employees of CRA tenants, job quality was the chief problem. A living wage requirement that applied to commercial tenants could improve job standards and address CRA subsidy accountability concerns.

This requirement would also impose new costs on covered employers made to pay the higher wage and, as a result, living wage proponents encountered fierce political opposition. The coalition that developed to advance the living wage ordinance depended upon and deepened ties established during JfJ. Building on the support of the LA Catholic Church, the group Clergy and Laity United for Economic Justice (CLUE), composed of leaders of progressive churches across denominations, was created in 1996 to support the living wage movement. Like JfJ, the living wage movement also developed a national reach by linking labor coalitions in different cities through the AFL-CIO. In 1995, the AFL-CIO's "New Voices" slate, led by President John Sweeney, embraced the living wage movement along with other local innovations to rejuvenate local central labor councils.[163] Sweeney, who helmed the SEIU when JfJ began before leading the AFL-CIO, saw in the living wage movement a way to encourage union locals to organize new workers.[164] As Janis-Aparicio explained, the AFL-CIO sought "to link these local and state living wage efforts to the national 'America Needs a Raise' campaign . . . . [and] requested proposals from

159. CUMMINGS, *supra* note 6, at 166.

160. *Id.* at 166–67.

161. In 1998, LAANE collaborated with UCLA to create the Subsidy Accountability Project, which released a report detailing these findings, in MAKING ECONOMIC DEVELOPMENT ACCOUNTABLE: AN EVALUATION OF SUBSIDIES TO BUSINESS IN LOS ANGELES (1999).

162. *Id.*

163. *See* John J. Sweeney, *America Needs a Raise, in* AUDACIOUS DEMOCRACY: LABOR, INTELLECTUALS, AND THE SOCIAL RECONSTRUCTION OF AMERICA 13, 13–21 (Steven Fraser & Joshua B. Freeman eds., 1997).

164. *See* Harold Meyerson, *The Man Who Realigned Labor: John Sweeney, 1934-2021*, THE AM. PROSPECT (Feb. 2, 2021), https://prospect.org/labor/man-who-realigned-labor-john-sweeney-obit/ [https://perma.cc/9AAT-MHCX].

multi-union campaigns that link[ed] living wage campaigns to organizing."[165] In 1996, the AFL-CIO convened the first national living wage meeting, bringing together living wage activists from over a dozen cities and states to discuss campaigns and organizing strategies.[166] As evidence of the importance of the living wage, Sweeney personally lobbied LA City Council members to vote in favor of the 1997 living wage ordinance.[167]

A key point of contention was the scope of the proposed law, specifically, whether it would apply not just to city contractors but to recipients of city subsidies—which included developers financed by the CRA. The mayor, who had staked his claim to leadership on rebuilding LA after the 1992 unrest, strenuously objected to living wage requirements being attached to economic development projects. The living wage ordinance, passed by the City Council on March 18, 1997, exempted the CRA, although it still covered employers that received "city financial assistance" from other agencies.[168] Mayor Riordan vetoed the ordinance on March 26, refusing to support it on the ground that it failed to exempt recipients of city subsidies.[169] Nonetheless, underscoring the living wage movement's success in building overwhelming political support, the City Council took the unusual step of overriding the mayor's veto, enacting the identical Los Angeles Living Wage Ordinance on April 1, 1997.[170] In doing so, labor leaders achieved a critical goal: creating a law requiring contractors and financial subsidy recipients to pay a living wage and offer paid sick leave and vacation, as well as health benefits to employees.[171] Specifically, the ordinance required "employers"—defined as any "City financial assistance recipient, contractor, or subcontractor"—to pay workers $7.25 per hour with health benefits or $8.50 per hour without them and provide twelve days of paid leave per year.[172]

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165. Letter from Madeline Janis-Aparicio, Tourism Indus. Dev. Council, to John Wilhelm (Apr. 25, 1996) (on file with authors).

166. *See* Notes from National Living Wage Meeting (Apr. 12, 1996) (on file with authors).

167. Letter from John J. Sweeney, President, AFL-CIO, to Mike Hernandez, Council Member, L.A. City Council (Jan. 22, 1997) (on file with authors).

168. L.A., CAL., L.A. ADMIN. CODE div. 10, ch. 1, art. 11, § 10.37.1(b) (1997) (stating that the ordinance covered all city departments "which exercise independent control over the expenditure of funds" except the CRA). "City financial assistance recipient" was defined as "any person who receives from the City discrete financial assistance for economic development or job growth expressly articulated and identified by the City"; assistance over $1 million required five-year compliance while assistance between $100,000 and $1 million required one-year compliance. *Id.* § 10.37.1(c). After the ordinance's passage, the Living Wage Coalition pressed the CRA to directly adopt its own living wage rules. *See* Press Release, Living Wage Coal., Living Wage Coalition Campaign to Get the Community Redevelopment Agency to Adopt a Living Wage Policy (Nov. 9, 1998) (on file with authors).

169. Letter from Richard J. Riordan, Mayor, City of L.A., to Honorable Members, L.A. City Council (Mar. 26, 1997) (on file with authors).

170. ADMIN. § 10.37. The ordinance became effective on May 5, 1997. Letter from J. Michael Carey, L.A. City Clerk, to All City Departments (Apr. 7, 1997).

171. ADMIN. §§ 10.37.2–10.37.3.

172. *Id.* §§ 10.37.1(f), 10.37.2–10.37.3. Contractors were defined as "any person that enters into a service contract with the City," with "service contract" defined to include contracts to provide services to the City valued at over $25,000 (with at least a three-month

Crucially for the unions, this law was designed to be *mobilizable*. It not only mandated higher wages and benefits, but it also created new potential to facilitate unionization through incorporation of critical "plus" factors that could, if exploited by unions, help organizing by providing a foundation to negotiate labor neutrality.[173] These plus factors responded to restrictions in labor law that inhibited union organizing. In addition to worker retention, which had already been passed to prevent the city from wholesale elimination of unionized workforces through contract termination, three critical plus factors were built directly into the living wage ordinance.

First, the LA ordinance included an opt-out provision (the only one in the country at the time), permitting an employer to supersede the living wage mandate with a collective bargaining agreement.[174] Unlike labor peace provisions, in which the state would directly require employers not to oppose unions during organizing campaigns (typically in return for a limit on the ability by unions to strike), an opt-out clause indirectly encouraged employers to recognize unions by exempting those with bona fide collective bargaining agreements from statutory living wage requirements. Employers could be incentivized to prefer a union given the value of labor peace and the marginal cost difference between living wage compliance (which included paid leave and health benefits) and benefits afforded through a collective bargaining agreement. While opt-outs were politically vulnerable to the employer charge that they benefitted unions rather than employees, they were less doctrinally vulnerable to NLRA preemption than labor peace provisions. Opt-outs had been repeatedly upheld against preemption challenges as permissible tools to avoid undermining collective bargaining.[175] Laying the legal groundwork for the LA ordinance, in 1994, the Supreme Court held that "familiar and narrowly drawn opt-out provisions" for collective bargaining agreements were not preempted by the NLRA,[176] unlike more expansive labor peace provisions, which required a state proprietary interest to fall within the market participant exception. While an opt-out, as the Second Circuit recently held, may not "create[] significant pressure on employers to encourage unionization of their employees," this "must be considered in tandem with the

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term) or "a lease or license" to render such services but only when "the services to be rendered probably would otherwise be rendered by City employees." *Id.* § 10.37.1(d), (h).

173. Madeline Janis-Aparicio, *How Local Living Wage Campaigns Can Help Build the Labor Movement: An L.A. Perspective* (Working Paper No. 002474) (on file with authors).

174. L.A., CAL., L.A. ADMIN. CODE div. 10, ch. 1, art. 11 § 10.37.11 ("Parties subject to this article may by collective bargaining agreement provide that such agreement shall supersede the requirements of this article.").

175. *See* Livadas v. Bradshaw, 512 U.S. 107, 132 n.26 (1994) (holding that opt-outs are not preempted by the NLRA because they do not impact rights to collective bargaining); Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 22 (1987) (stating that an opt-out provision enabling parties to agree to wage standards in a collective bargaining agreement "works no intrusion on collective bargaining" and so "cannot be pre-empted" under the NLRA); Am. Hotel & Lodging Ass'n v. City of Los Angeles, 834 F.3d 958, 965 (9th Cir. 2016) (rejecting NLRA preemption challenge to opt-out in city minimum wage law); 29 U.S.C. § 203(o) (2018) (permitting opt-out for FLSA definition for hours worked "under a bona fide collective-bargaining agreement applicable to the particular employee").

176. *Livadas*, 512 U.S. at 132, n.26.

financial costs of unionization" and the employer's financial condition.[177] Opt-outs do not implicate NLRA preemption, even if they reduce the employer's incentive to oppose unions on cost grounds, so long as the costs of the regulation are not so much greater than the costs of a collective bargaining agreement that they significantly pressure the regulated employers to encourage their employees to join unions.[178] James Elmendorf, a LAANE researcher, explained that an opt-out mattered for union organizing because it allowed unions to negotiate for "different sets of workers," such as tipped employees who might accept "some lower wages . . . in order to get pensions or better health care benefits," while helping employers that would prefer to "pay more for health care than wages because they get tax exemptions" or to pay for pensions because some of the costs "can be deferred."[179]

Second, the LA ordinance was among the first to permit employees to privately enforce living wage requirements, permitting them to bring an action against employers in state court for unpaid wages and benefits, with "reasonable attorney's fees and costs to an employee who prevails in any such enforcement action."[180] It was also among the first to require that city service contracts prohibit employer retaliation against employees "for alleging non-compliance with" the ordinance and that all contracts provide that any violation would "entitle the City to terminate the contract and otherwise pursue legal remedies that may be available."[181] A private right of action for employees, coupled with anti-retaliation protections and city contract termination rights, provided expansive new enforcement tools that could be used to ensure living wage compliance—which included compliance through the union opt-out provision. These rights to enforce living wage law contrasted with the lack of effective NLRA remedies for employer interference with employees' NLRA rights to participate in lawful, collective worksite protests or to join a union.[182] And

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177. Ass'n of Car Wash Owners Inc. v. City of New York, 911 F.3d 74, 82–83 (2d Cir. 2018) (vacating and remanding trial-level determination that NLRA preemption applies to an opt-out because the factual record did not show that the cost difference between the regulation and collective bargaining agreement demonstrated "significant pressure" on regulated employers to encourage their employees to join a union, and criticizing the lower court's assumption that collective bargaining agreements do not themselves impose significant costs on employers for ignoring "economic reality").

178. The only other plausible legal argument against an opt-out is on non-delegation grounds, but as the Ninth Circuit held in rejecting this attack on Berkeley's living wage ordinance, "[l]abor unions negotiating collective bargaining agreements with employers are not legislating, but rather negotiating on behalf of their members," which does not implicate the non-delegation doctrine. RUI One Corp. v. City of Berkeley, 371 F.3d 1137, 1157 (9th Cir. 2004).

179. Interview with James Elmendorf, Senior Pol'y Analyst, LAANE (Feb. 23, 2012) (on file with authors).

180. L.A., CAL., L.A. ADMIN. CODE div. 10, ch. 1, art. 11, § 10.37.5 (1997). Washington D.C.'s ordinance permitted employees to privately enforce its living wage requirement, but Baltimore's did not.

181. *Id.* Baltimore's and Washington D.C.'s ordinance contained anti-retaliation provisions, but only Baltimore's called for debarment of service contractors with multiple offenses.

182. As Cynthia Estlund explains, the NLRA "contains no private right of action. Rather, an aggrieved person may file a charge with the NLRB's prosecutorial arm, which makes an

unlike the National Labor Relations Board, which could not impose penalties for violations of labor law, the living wage ordinance provided public agencies with contract termination as a strong remedy for violating living wage requirements.[183] These provisions were not preempted by the NLRA because they addressed violations of living wage requirements and retaliation against employees for complaining about them, which would be considered a "peripheral concern" of federal labor law.[184]

Following the JfJ playbook of leveraging governmental authority over apex powerholders, the anti-retaliation and contract termination provisions empowered the coalition to demand that city agencies police their contractors to ensure living wage compliance and to discourage contractors from taking adverse actions against employees seeking proper wage payments. As Janis-Aparicio explained, in a union campaign, "administrative and legal remedies for noncompliance with the ordinance and for violating the non-retaliation protections in the ordinance [could] build support for the workers and . . . convince the employer that it's easier to unionize."[185] In addition, the anti-retaliation provision allowed workers to be educated and

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unreviewable decision whether to file an unfair labor practice complaint with the Board." Cynthia L. Estlund, *The Ossification of American Labor Law*, 102 COLUM. L. REV. 1527, 1552 (2002) (discussing 29 U.S.C. § 153(d)).

183. While the Board can order reinstatement and lost wages for employees as remedies for unlawful employer interference with those employees' NLRA rights, the NLRA does not permit the Board to levy penalties against employers for NLRA violations. *See* Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 197–200 (1941).

184. *Garmon* preemption does not apply to claims of retaliation for asserting state and local law rights that are a "'peripheral concern' to the NLRA." Wis. Dep't of Indus., Lab. & Hum. Rels. v. Gould Inc., 475 U.S. 282, 291 (1986)*; see* Peabody Galion v. Dollar, 666 F.2d 1309, 1319 (10th Cir. 1981) (finding that a state worker's compensation anti-retaliation claim is not preempted by NLRA because it has only a "peripheral and tenuous" connection to federal labor law); Roussel v. St. Joseph Hosp., 257 F. Supp. 2d 280, 285 (D. Me. 2003) (holding that NLRA does not preempt state whistleblower claim); Balog v. LRJV, Inc., 250 Cal. Rptr. 766, 771 (Ct. App. 1988), *reh'g denied and opinion modified* (Sept. 20, 1988) (holding that claim of unlawful discharge for complaining about violations of state safety and health regulations was not preempted because the alleged discharge was "of only peripheral concern" to NLRA). A retaliation complaint can become so entangled with collective bargaining that *Garmon* applies. *See, e.g.*, Londono v. ABM Janitorial Servs., No. CIV.A. 13-3539 ES, 2014 WL 7146993, at *5–6 (D.N.J. Dec. 12, 2014) (holding that *Garmon* requires preemption of retaliation claim by union representative because it "necessarily encompasses the collective bargaining process, and thus cannot be considered 'peripheral'"); Mayes v. Kaiser Found. Hosps., 917 F. Supp. 2d 1074, 1084 (E.D. Cal. 2013) (holding NLRA preempts state retaliation claim by union representative that employer fired him for demanding audit of employer's payroll for overtime payments during labor-management meeting). Anti-retaliation provisions protecting the right of individuals to complain about noncompliance with wage and benefit standards are not generally preempted by the NRLA because they reflect "legitimate local concern rooted in a strong and clearly articulated public policy." Hume v. Am. Disposal Co., 880 P.2d 988, 993 (Wash. 1994); *see also* Puglia v. Elk Pipeline, Inc., 141 A.3d 1187, 1209 (N.J. 2016) (stating that preempting claims "of retaliatory discharge in response to complaints under those statutes . . . would undermine the purpose of those statutes and leave employees with a half-baked remedy").

185. Janis-Aparicio, *supra* note 173, at 2.

organized to enforce their living wage rights without fear of reprisal—building an activated base of workers who might later pursue unionization. As such, anti-retaliation protection was not just a secondary feature, but a key ingredient of the living wage ordinance that buttressed the coalition's strategy to rejuvenate unionism in Los Angeles.

Third, public transparency requirements of the California Public Records Act,[186] alongside regulations implementing the living wage ordinance,[187] allowed unions to review city information on contractors—and worker complaints against them—to identify and penalize noncompliant contractors and access employees seeking to enforce living wage rights. In particular, living wage regulations required awarding authorities to provide to the Bureau of Contract Administration (BCA) all contracts subject to the ordinance, including the number of covered employees, and charged the BCA with monitoring compliance and investigating and resolving employee complaints.[188] The regulations further provided that "[d]ocuments obtained in the administration of [the ordinance] will become City records and disclosure is subject to the Public Records Act."[189] In this way, the living wage regulations created a legal right for public access to specific information about contractor compliance that could be used by the coalition to reach out to employees of noncompliant contractors, help them to enforce their living wage rights, and advocate that the city terminate contractors that failed to follow the law. These public information rights were key to the Living Wage Coalition's monitoring of the ordinance's implementation by the BCA,[190] and would be used by the coalition to provide unions with "a list detailing contracts and subsidies that [were] scheduled for review by a city agency," in their first large-scale living wage campaign at LAX, detailed below.[191] Access to city contractor information thus enabled the coalition to educate workers about their rights under the living wage ordinance and facilitated union access to non-union workers potentially interested in unionization as a method of living wage compliance. These informational rights—working in synch with the worker retention ordinance and other living wage plus factors—created a new opportunity to empower workers to enforce higher wage and benefit standards, push back against the use of contracting to cut labor costs, and reduce employer hostility to unions in sectors with low union density.[192]

186. CAL. GOV'T CODE §§ 6250–6253.6, *repealed by Stats*. 2021, c. 614 (A.B. 473), § 1, *operative* Jan. 1, 2023.

187. L.A., CAL., L.A. ADMIN. CODE div. 10, ch. 1, arts. 10, 11 (1997).

188. *Id.*

189. *Id.*

190. Letter from Margo A. Feinberg, Schwartz, Steinsapir, Dohrmann & Sommers LLP, to Frederic C. Merkin, Senior Assistant City Att'y (Apr. 16, 1998) (on file with authors).

191. Letter from Madeline Janis-Aparicio, Dir., L.A. Living Wage Coal., to Labor Supporter of the Living Wage Coalition (May 12, 1997) (on file with authors).

192. Press Release, AFL-CIO, Living Wage Policies With "Plus" Provisions (Nov. 10, 2003) (on file with authors).

C. Living Wage as Mobilizable Law: Unlocking Organizing Potential

Armed with the new living wage ordinance, labor leaders sought to extend its reach by using it to support a series of campaigns to extend the living wage and unlock its union organizing potential. It did so through a "comprehensive campaign" strategy that involved fundraising, research, coalition building and outreach, organizing, and legal advocacy.[193] From the outset, the aims of the living wage campaigns were "very interconnected" with union organizing, which was viewed as "one of the only ways to really ensure improved conditions, and improved power," as opposed to just raising wages.[194] The effort to mobilize the living wage proceeded in three arenas. First, LAANE and allied unions used the worker retention and living wage ordinances to advance the unionization of airport workers in a campaign called "Respect at LAX." Second, LAANE established a series of distinct coalitions to negotiate community benefits agreements in relation to publicly subsidized development projects—an effort that eventually circled back to LAX, resulting in a half-billion-dollar airport community benefits agreement. These struggles occurred alongside a third movement to create living wage laws covering businesses in distinct geographical zones: first in Santa Monica, a beachfront city in Los Angeles County, then in the hotel zone around LAX.

1. Overcoming Bureaucratic Resistance: New Agency Enforcement

After passage of the worker retention and living wage ordinances, LAANE convened the LA Living Wage Coalition, an umbrella group staffed by LAANE's general counsel Erika Zucker, that supported and connected more specific campaigns that were developing. Working to promote basic living wage compliance by relevant city agencies, the coalition immediately encountered resistance. The BCA, an agency under the Department of Public Works, was charged with implementing the living wage ordinance. Instead of embracing this charge, the BCA created a sclerotic and poorly-resourced program to assess coverage, tasked to staff who were indifferent—or even hostile—to the ordinance's goals.[195] The living wage ordinance required city departments to award service contracts only to contractors that provided their employees with the required living wage and benefits; however, some departments refused to ensure that contractors followed living wage requirements.[196] In response, the coalition proved itself as an effective regulatory watchdog by engaging directly

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193. Interview with Madeline Janis, *supra* note 99 (stating that "the comprehensive campaign language came out of the kind of the new labor movement. It was HERE and [SEIU] that were creating these new research departments, and looking at now, you know, in the face of global capitalism, we need comprehensive campaigning").

194. *Id.*

195. Letter from Madeline Janis-Aparicio, Exec. Dir., LAANE, to Jackie Goldberg, Honorable Member, L.A. City Council (July 31, 1998) (on file with authors); Memorandum from The Living Wage Team to Madeline Janis-Aparicio (July 28, 1998) (on file with authors); Press Release, L.A. Living Wage Coal., Detailed Report of the City's First Year of Implementation of the Living Wage Ordinance (May 20, 1998) (on file with authors) [hereinafter Detailed Report].

196. Detailed Report, *supra* note 195.

with the BCA and the other individual departments and, in the process, gained the trust and support of the City Council. This department-level advocacy also provided the coalition with access to workers and rich contract information from which to base union organizing—most notably in its Respect at LAX campaign.

Within months of the living wage ordinance's passage, LAANE learned that the BCA had contacted only a few contractors about the law's requirements.[197] LAANE's active participation in the BCA's regulatory process revealed that the BCA sought to limit the ordinance's coverage and enforcement.[198] Initial attempts by the coalition to collaborate with the BCA in educating covered workers about their rights revealed that the BCA staff, in joint trainings, gave workers inaccurate information and, contrary to their previous agreement, invited the workers' managers to fully participate in the trainings. The BCA blocked the coalition's independent worker education on public property and minimized LAANE's role in the joint trainings—even deleting LAANE's name from its own educational materials.[199]

By attending public meetings, engaging in discussions with BCA staff, and filing public record requests to the BCA in 1997 and 1998, the coalition uncovered that few city agencies knew about the living wage ordinance or its requirements.[200] Those that did responded by increasing the contract amounts to reflect wage increases instead of competitively bidding those contracts to solicit contractors willing to absorb or share the wage costs.[201] The coalition also identified janitorial bids for contracts with the Los Angeles Department of Water and Power (DWP) that were covered by the living wage ordinance but provided for wages below the minimum standard.[202] By attending DWP board meetings, the coalition learned that the DWP board refused to put the living wage ordinance on its agenda, signaling its intent not to comply.[203] Between November 1997 and April 1998, the coalition reported its findings to the City Council and independently wrote to the DWP board, demanding that it follow the ordinance.[204]

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197. *Id.*

198. Press Release, L.A. Living Wage Coal., Analysis of Draft Regulations on Service Contract Worker Retention Ordinance (SCWRO) and Living Wage Ordinance (LWO) (June 22, 1997) (on file with authors).

199. Letter from Madeline Janis-Aparicio, Exec. Dir., Tourism Indus. Dev. Council, to C. Bernard Gilpin, Dir., Bureau of Cont. Admin. (Nov. 4, 1997) (on file with authors); Letter from Jalal Sudan, LWO/SCWRO Section Supervisor, to Madeline Janis-Aparicio, Exec. Dir., Tourism Indus. Dev. Council (Apr. 6, 1998) (on file with authors); Letter from Fabiola Vilchez, Coordinator, Tourism Indus. Dev. Council, & Veronica Carrizales, Trainer, Tourism Indus. Dev. Council, to Jalal Sudan, L.A. Bureau of Cont. Admin. (Apr. 21, 1998) (on file with authors).

200. Detailed Report, *supra* note 195; Letter from Margo A. Feinberg, *supra* note 190.

201. Letter from Nari Rhee, Rsch. Analyst, L.A. Living Wage Coal., to Council Members, L.A. City Council (June 25, 1997) (on file with authors).

202. Letter from Nari Rhee, Rsch. Analyst, L.A. Living Wage Coal., to Jalal Sudan, Bureau of Cont. Admin. (Sept. 17, 1997) (on file with authors).

203. Detailed Report, *supra* note 195.

204. Letter from Nari Rhee, Rsch. Analyst, L.A. Living Wage Coal., to Rick Caruso, President, Bd. of Water & Power Comm'rs (Nov. 21, 1997) (on file with authors); Letter from Julie Park, Rsch. Analyst, L.A. Living Wage Coal., to Rick Caruso, President, Bd. of Water & Power Comm'rs (Apr. 3, 1998) (on file with authors).

The deep and proactive involvement of the coalition in implementation allowed it to respond effectively to agency resistance. The coalition's two-pronged strategy included direct worker education and internal agency advocacy, in both cases relying on its relationship with the City Council to prod agencies to comply. Key to this strategy was the coalition's effort to hold BCA accountable for mishandling living wage implementation.[205] In March 1998, Janis-Aparicio wrote to Council member Goldberg, her staff, and Richard Sander, a professor at the University of California Los Angeles School of Law hired by the city to assess BCA implementation. In her four-page assessment, Janis-Aparicio drew on LAANE's ongoing monitoring to detail BCA's "grossly inadequate" implementation.[206] The coalition's complaints prompted the City Council to endorse LAANE's role in educating workers about the worker retention and living wage ordinances, and to "urge all City Departments, employers, and business owners covered by the Ordinances to provide LAANE with all the necessary support information and access to employees to ensure successful worker training sessions."[207]

In May 1998, the Living Wage Coalition presented a report assessing implementation of the living wage ordinance to the City Council.[208] The report analyzed public contracting documents from the BCA and forty other agencies, along with notes from public meetings and interviews with staff and workers. It reiterated Janis-Aparicio's findings about the BCA's dismal implementation efforts in greater detail. While crediting the Airport Department for applying the living wage ordinance to service contractors and concessionaires, the report noted the refusal by United Airlines, a major LAX carrier, to accept status as a city contractor to which living wage requirements would apply. Lastly, it faulted the DWP board for voting against adoption of the worker retention ordinance and DWP's failure to implement the living wage ordinance despite the explicit inclusion of departments like DWP within its scope.[209]

In August 1998, Sander issued his own report, showing that the BCA had failed to enforce the living wage ordinance, resulting in wage increases for only 750 of the roughly 5,000 workers who should have received them.[210] Faced with this mounting evidence of noncompliance, the City Council amended the ordinance in January 1999, taking implementation authority away from the BCA and giving the council authority to designate a new enforcement agency, which it exercised to select the City Administrative Officer (CAO).[211] The CAO, compared with the BCA, embraced

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205. *See* Memorandum from Madeline Janis-Aparicio on the Evaluation of the Activities of Bureau of Contract Administration over the Past Year (Mar. 26, 1998) (on file with authors).

206. *Id.*

207. Letter from John Ferraro, President, L.A. City Council, to All City of Los Angeles Departments and Contractors (Nov. 10, 1998) (on file with authors).

208. Detailed Report, *supra* note 195.

209. *Id.*

210. Press Release, Richard Sander & Sean Lokey, The Los Angeles Living Wage in Operation: A Preliminary Evaluation (Aug. 20, 1998) (on file with authors); *see also* Ted Rohrlich, *How Bureaucratic Loops Can Leave a Law in Knots*, L.A. TIMES (Sept. 13, 1998, 12:00 AM), https://www.latimes.com/archives/la-xpm-1998-sep-13-me-22411-story.html [https://perma.cc/HA3A-LADB].

211. L.A., CAL., L.A. ADMIN. CODE div. 10, ch. 1, art. 11, § 10.37.7 (1998) ("The City

its implementation role, allocating sufficient resources and opening its process to stakeholders. Specifically, the CAO created a "Living Wage Section" with dedicated staff and convened a Living Wage Task Force, including agency heads, the city attorney, and Living Wage Coalition members, to "brain storm about problems and vexing questions."[212] By ultimately sidelining the BCA and empowering a new agency committed to active oversight, the coalition strengthened living wage enforcement, which proved to be critical to advancing its living wage campaigns. Instead of fighting about living wage coverage, unions could start from the baseline of coverage to organize workers.

2. Applying Living Wage to Public Assets: Respect at LAX

In addition to terminating BCA's oversight authority, the 1999 amendment to the living wage ordinance made other important changes, including clarifying its application to public assets, such as LAX, and to LAX airlines and employees of their subcontractors, such as security screeners and baggage handlers.[213] As this amendment underscored, the battle over the living wage ordinance's implementation had become focused on LAX as a key site of struggle. Indeed, when labor leaders initially won the worker retention and living wage ordinances, it was with an eye toward organizing workers at LAX, run by the influential mayor-appointed Board of Airport Commissioners, which governed the Airport Department. In 1998, leaders from the SEIU, HERE, and AFL-CIO drafted the LAX Organizing Worker Proposal: a blueprint for enforcing the newly enacted living wage ordinance at the airport, while using it as leverage to organize the LAX workforce.[214] This proposal, which formed the basis for what would become the Respect at LAX campaign, focused initial energies on LAX because it presented an ideal testing ground for applying lessons from JfJ to living wage mobilization.[215] As a public entity, LAX exercised significant contractual authority over airport companies, which could be leveraged to organize airport workers. Toward that end, the unions launched a comprehensive campaign following the JfJ model: mobilizing the living wage ordinance to address NLRA weaknesses, deploying administrative advocacy, and framing the effort around worker "respect." According to the campaign, although there were 18,000 union members at LAX, between 10,000 and 15,000 workers were not in unions.[216]

Council shall by resolution designate a department or office, which shall promulgate rules for implementation of this article and otherwise coordinate administration of the requirements of this article . . . ."). The amendment became effective in 1999. Six months earlier, the City Council passed another ordinance that leveled up wages of city employees who were being paid below the living rage rate. L.A., Cal., Ordinance 172090 (June 30, 1998).

212. Letter from Madeline Janis-Aparicio, Dir., L.A. Living Wage Coal., to Council Members, L.A. City Council (Apr. 21, 1999) (on file with authors).

213. ADMIN. § 10.37.1(i).

214. CUMMINGS, *supra* note 6, at 201.

215. *Id.* at 199.

216. Press Release, Respect at LAX, 50,000 Workers at LAX, 18,000 = Union Members (on file with authors) [hereinafter Respect at LAX].

This provided both the possibility of large numbers of low-wage workers joining unions and of union member (and union employer) solidarity with these workers.[217]

To organize airport workers, Respect at LAX sought to mobilize pressure from existing union members and the Airport Department to win voluntary recognition agreements from LAX employers, which fell into two categories: (1) concessionaires, primarily retailers (such as magazine stands) and restaurants; and (2) airline subcontractors employing custodial workers, baggage handlers, wheelchair runners, and security workers. The Board of Airport Commissioners directly controlled the contracts of city concessionaires and leases with airlines, which set terms for their own subcontractors.[218] To gain leverage over both sets of LAX employers, the presidents of HERE Local 11, SEIU Local 1877, and HERE Local 814 designed a living wage mobilization strategy to advance two goals.[219] As HERE Local 11 President Maria Elena Durazo explained, the first goal was "to have the Airport Commission adopt a Labor Peace Agreement (LPA) to cover all service workers hired" at LAX after commencement of an impending airport expansion.[220] The campaign's second goal was to ensure living wage compliance by the airlines, all of which leased LAX space. Through the airlines, the campaign sought to apply the living wage requirements, including the plus factors, to "all workers subcontracted out by the airlines," which would give the unions leverage to pressure those subcontractors to adopt card-check neutrality agreements.[221]

Labor lawyers were deeply involved in the legal design of this strategy, arguing that—by protecting its investment in LAX as a public asset—any airport labor peace agreement would fall within the market participant exception to NLRA preemption. The SEIU's Andy Strom and Larry Engelstein, along with Margo Feinberg, served as attorneys for the HERE and SEIU locals coordinating the Respect at LAX campaign and advised the unions on how to design a labor peace agreement to advance the proprietary interests of LAX.[222] Specifically, the lawyers recommended that the unions seek an agreement in which airport contractors would consent to card check recognition during union organizing and interest arbitration during negotiation, in return for unions agreeing to refrain from striking while organizing and bargaining. Securing employer neutrality would advance the Airport Department's interest in ensuring a stable workforce at LAX.[223]

In this effort, the ordinance plus factors were intended to play a crucial role. In addition to mobilizing the opt out provision, the information rights created by living wage regulations were key. Specifically, information about airport contracts and

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217. *See id.*

218. Memorandum from Maria Elena Durazo, President, HERE Loc. 11, Mike Garcia, President, SEIU Loc. 1877, & Tom Walsh, President, HERE Loc. 814, to Richard Slawson, Exec. Sec'y, L.A./Orange Cntys. Bldg. & Constr. Trades Council (May 4, 1998) (on file with authors).

219. *Id.*

220. *Id.*

221. *Id.*

222. Letter from Larry Engelstein, Andy Strom & Margo Feinberg to Andy Levin, Lettie Salcedo, Mary Anne Hohenstein, Tom Walsh & Madeline Janis-Aparicio (June 30, 1998) (on file with authors).

223. *Id.*

access to workers of noncompliant employers were important to allow the campaign to target employers and build a base of workers seeking to enforce living wage requirements and potentially join unions. Toward this end, in May 1997, the SEIU local sought regulations from the Airport Department to clarify categories of workers covered by the living wage ordinance and to inform the public when contracts came up for renewal and were thus subject to the ordinance.[224] Later that summer, the coalition proposed to the Airport Department that it run a worker education program at LAX.[225] This would permit the coalition to engage directly with LAX employers about worker complaints that surfaced during the education program, while carefully avoiding coordination with unions on specific employer campaigns.[226] In this way, living wage mobilization was used by the Respect at LAX campaign to open up access to airport employers and employees. Specifically, the ordinance provided the Respect at LAX campaign with real-time data about employers whose employees were about to be due wage increases already secured by the coalition—which could then be used as bargaining leverage by unions in a future unionization drive. Information on living wage compliance also interacted with the worker retention ordinance in potentially useful ways. In particular, because noncompliance with the living wage ordinance constituted grounds for contract termination, information surfaced by the coalition on employers that were not following the living wage requirements could be used to justify the Airport Department in contracting with new companies more supportive of worker rights. Under the worker retention ordinance, such new contractors would be required to maintain the existing workforce for the ninety-day succession period, providing opportunities to translate preexisting relationships with workers forged through living wage enforcement into union organizing.

By May 1998, as efforts to win an airport-wide labor peace agreement stalled, the Respect at LAX campaign launched the second prong of its attack: extending the living wage to employees working for airline subcontractors as baggage handlers, security screeners, janitors, and wheelchair attendants.[227] This, too, depended on the effective mobilization of plus factors. The opt-out provision, in particular, was

224. Memorandum from Eddie Iny, SEIU Loc. 1877, to the Honorable Members of the Personnel Committee, L.A. City Council (May 28, 1997) (on file with authors).

225. Letter from Madeline Janis-Aparicio, Dir., L.A. Living Wage Coal., to Jack Driscoll, Gen. Manager, Dep't of Airports (Aug. 6, 1997) (on file with authors).

226. *See* Letter from Madeline Janis-Aparicio, Dir., L.A. Living Wage Coal., to Jim Kawashima, World Wide Serv. (Aug. 12, 1997) (on file with authors). Worker education programs, and assisting workers with complaints, do not risk converting non-profits such as LAANE into unions under labor law so long as the non-profits do not exist for the purpose of "dealing with [specific] employers" on an ongoing basis about issues such as wages and working conditions. 29 U.S.C. § 152(5); *see* Cynthia Estlund, *Are Unions a Constitutional Anomaly?*, 114 MICH. L. REV. 169, 229 (2015) (describing "dealing with" as including "a pattern of bilateral exchange between employee groups and employers"); Kati L. Griffith & Leslie C. Gates, *Worker Centers: Labor Policy as a Carrot, Not a Stick*, 14 HARV. L. & POL'Y REV. 231, 235 (2019) (explaining that, unlike worker centers, unions dealing with employers "actively seek to become the exclusive collective bargaining representatives of employees.").

227. *See* Press Release, L.A. Living Wage Coal., A Small Price for Justice—A Price the Airlines Can Afford (on file with authors); Press Release, L.A. Living Wage Coal., Notes on Instructions for Delegation Leaders (Sept. 25, 1998) (on file with authors).

critical because, as Durazo explained, it would "enable the airline subcontractors to work out appropriate wages and working conditions through collective bargaining agreements . . . . with the workers themselves having bargained for better wages, benefits and working conditions."[228] To do this required first exerting city pressure on the airlines, which denied that they qualified as a "contractor" under the living wage ordinance—and therefore that their subcontractors had to follow the living wage rules. The specific dispute was whether the airlines and their subcontractors were performing a "service contract" for the city for services that "probably would otherwise be rendered by City employees" under the ordinance's terms.[229] Mayor Riordan had argued that airlines and their subcontractors were not covered since they performed services that would not otherwise be done by city workers.[230] After the city attorney initially questioned the living wage's application to the airlines, the BCA issued a May 1998 directive concluding that the living wage ordinance applied to the airlines' custodial and security workers.[231] Nonetheless, the airlines continued to resist living wage compliance, arguing in part that since the federal government required them to perform security screening, such work could not be done by city employees.[232] In its campaign communications, Respect at LAX sought to ratchet up pressure on the airlines to comply, criticizing United Airlines and other carriers for "fighting to stop the Los Angeles living wage ordinance from covering all service employees," evoking a justice frame calling for airline workers to join unions to redirect profits "back into Los Angeles' poorest communities."[233]

As a result of LAX airline intransigence, living wage leaders returned to the City Council with a proposal to amend the ordinance to make clear its application to airlines and their subcontractors.[234] With the recommendation of the city attorney, the Los Angeles City Council passed an amended living wage ordinance in November 1998 to take effect the following year.[235] This amended ordinance

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228. Memorandum from Maria Elena Durazo, *supra* note 218.

229. L.A., CAL., L.A. ADMIN. CODE div. 10, ch. 1, art. 11, § 10.37.1(h) (1997).

230. Jim Newton, *Mayor Trying to Keep LAX Exempt from New Pay Law*, L.A. TIMES (Oct. 2, 1997, 12:00 AM), https://www.latimes.com/archives/la-xpm-1997-oct-02-mn-38322-story.html [https://perma.cc/5QUP-2V5T].

231. CUMMINGS, *supra* note 6, at 205; Jim Newton, *Agency Says 'Living Wage' Law Covers Airport Guards, Janitors*, L.A. TIMES (June 11, 1998, 12:00 AM), https://www.latimes.com/archives/la-xpm-1998-jun-11-me-58940-story.html [https://perma.cc/8HVZ-NEJW].

232. Newton, *supra* note 230.

233. Respect at LAX, *supra* note 216.

234. Beth Shuster, *Tighter Rules Proposed for Living Wage Law*, L.A. TIMES (Aug. 21, 1998, 12:00 AM), https://www.latimes.com/archives/la-xpm-1998-aug-21-me-15137-story.html [https://www.latimes.com/archives/la-xpm-1998-aug-21-me-15137-story.html]; *see* Memorandum from Fred Merkin, City Att'y Off., on Circulation for Comment of Discussion Draft of Proposed Revision to the Living Wage Ordinance (Nov. 19, 1998) (on file with authors).

235. *City Council Committee Approves Amendment to Living Wage Ordinance*, LAX WORKER, Oct. 1, 1998, (on file with authors); *see* Shanté Morgan, *L.A. May Upgrade Workers*, DAILY BREEZE, Aug. 21, 1998, (on file with authors); *L.A. Contract Board Says Living Wage Law Applies to Some Airline Terminal Workers*, DAILY BREEZE, (June 19, 1998) (on file with authors).

asserted in its legislative findings that the ordinance was meant to apply to "employees employed by lessees and licensees of City property and by their service contractors and subcontractors," given the importance of the city's proprietary interest in the smooth operations of "facilities visited by the public on a frequent basis, including but not limited to, terminals at Los Angeles International Airport . . . ."[236] The ordinance explicitly provided that covered city contractors included companies like the airlines with a "proprietary lease" of "City property on which services are rendered . . . on premises at least a portion of which is visited by substantial numbers of the public on a frequent basis (including, but not limited to, airport passenger terminals . . .), [when] any of the services could feasibly be performed by City employees if [it] had the requisite financial and staffing resources."[237]

In response to this legal mandate—and ongoing pressure by the Respect at LAX campaign, which was urging the Airport Department to reject the impending United Airlines lease renewal on the ground of living wage noncompliance[238]—United finally agreed to abide by living wage requirements, thereby opening the way for other airlines to follow suit.[239] The amended ordinance, coupled with the precedent-setting United agreement to follow it, eliminated a key organizing hurdle for the Respect at LAX campaign by making clear that the ordinance—and its plus factors—applied to airline service subcontractors, which employed the largest number of workers entitled to a wage increase.[240] With this foundation in place, AFL-CIO president John Sweeney met with LAX workers in March 1999 to ignite the campaign's push to lift standards for 8,000 LAX workers, calling on the Airport Department to move aggressively since the ordinance's terms would only apply to airlines once their leases were renewed or renegotiated.[241] Heeding the campaign's call, the Airport Department recommended terminating airline leases in order to reissue them with living wage requirements.[242] As Airport Department executive director John Malloy explained—echoing the market participant legal rationale for city action—extending the living wage to airlines and their subcontractors would serve the city's "proprietary interest in safety and security of the airports."[243] Viewing the trend of "ground handling companies [bringing] in new workers at very

236. L.A., CAL., ORDINANCE No. 172336, L.A. ADMIN. CODE div. 10, ch. 1, art. 11, § 10.37 (1998).

237. *Id.* § 10.37.1(i). The amended ordinance created a small business exception for lessees with annual gross revenues of less than $200,000 and fewer than seven employees. *Id.*

238. CUMMINGS, *supra* note 6, at 206–07.

239. Beth Shuster, *Airline Ends Wage Impasse*, L.A. TIMES (Jan. 12, 1999, 12:00 AM), https://www.latimes.com/archives/la-xpm-1999-jan-12-nb-62892-story.html [https://perma.cc/32C4-MYXQ].

240. FAIRRIS ET AL., *supra* note 65, at 21 (finding that one-third of affected jobs were airline service workers, prior to the federalization of airport security after September 11, 2001).

241. Nancy Cleeland, *Unions Fight to Lift Pay for LAX Workers*, L.A. TIMES (Mar. 4, 1999, 12:00 AM), https://www.latimes.com/archives/la-xpm-1999-mar-04-fi-13781-story.html [https://perma.cc/2Y92-PK7Z].

242. Memorandum from F.J. Portnoy, L.A. World Airports, on Ground Handlers and the Living Wage Ordinance, to J.K. Lee (Mar. 2, 1999) (on file with authors).

243. Memorandum from John F. Malloy, L.A. World Airports, on Living Wage Ordinance, to Raymond D. Anderson (Apr. 29, 1999) (on file with authors).

low wages with very little training and an extremely high turnover rate" as causing "damage to equipment and operational errors [as] the direct result of poorly trained, inexperienced personnel," the Airport Department saw "the living wage as a way of increasing stability and retention of the workforce."[244]

The new leverage created by extending living wage requirements to airline subcontractors was put to immediate effect against Argenbright Security, a major security provider at LAX, which had stridently opposed union recognition and the higher living wage amount. In response, the SEIU sought the assistance of United Airlines in pressuring Argenbright (a major United subcontractor) to negotiate with the union—after United had accepted living wage coverage in exchange for the airport agreeing to renew its lease with terms promising subcontractor compliance with the living wage and worker retention ordinances.[245] United's initial reluctance was overcome by the SEIU's savvy advocacy, which used all the legal tools at hand to gain United's grudging support. In particular, the SEIU worked with community partners, along with labor and environmental lawyers, to challenge United's cargo facilities expansion, which required environmental review (and for which United was seeking over $40 million in tax-exempt public bond financing).[246] To resolve this challenge, and labor strife disrupting security operations,[247] United agreed to address community concerns about the environmental impact of its expansion and use its weight to encourage Argenbright to adopt a card check agreement.[248] It worked. In 2000, Argenbright agreed to labor neutrality, and after employees affirmed union support, they reached a collective bargaining agreement with SEIU Local 1877 on March 1, 2001.[249]

As the Respect at LAX campaign ramped up its efforts to ensure airline subcontractor compliance with the living wage, it also continued its outreach to employees of airport concessionaires. Here, again, the campaign was furthered by the living wage plus factors, especially the information and anti-retaliation rights, which allowed unions to uncover noncompliance and directly engage with workers to enforce living wage requirements without those workers fearing reprisal. As a result, workers across a range of LAX concessionaires stepped forward to demand the higher wages and benefits that they were owed. In 1998, after the coalition gained evidence of noncompliance, workers for Host Marriott, an airport food and beverage concessionaire, met with the Board of Airport Commissioners to demand that the company pay a living wage, which it agreed to do the following year under intense organizing and political pressure.[250] In 2002, LAANE—while speaking with LAX

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244. *Id.*

245. CUMMINGS, *supra* note 6, at 202–07.

246. *Id.* at 207.

247. Nancy Cleeland, *Some Security, Baggage Workers Walk Out at LAX, Demanding Union*, L.A. TIMES (Apr. 30, 1999, 12:00 AM), https://www.latimes.com/archives/la-xpm-1999-apr-30-fi-32588-story.html [https://perma.cc/DU5K-PYEQ].

248. CUMMINGS, *supra* note 6, at 206–08; Letter from Mary Anne Hohenstein, Loc. 1877, to Jackie Goldberg (Feb. 3, 1999) (on file with authors); *see also* Flyer, Respect at LAX, 1999 Argenbright Negotiations Bargaining Team Nominees (on file with authors).

249. *See* CUMMINGS, *supra* note 6, at 207–09.

250. Nancy Cleeland, *Host Marriott Lifts Pay at LAX*, L.A. TIMES (Jan. 21, 1999) (on file with authors).

McDonald's workers—uncovered wage-and-hour, harassment, and safety violations, which formed the basis for subsequent worker complaints to state agencies and another meeting with the Airport Commission.[251] After allegations by McDonald's employees that they were retaliated against for meeting with the commission,[252] the City Council's commerce committee held a hearing to determine whether the City Council should approve the McDonald's franchisee's contract extension at LAX. In response, McDonald's affirmed to the City Council that it would pay the living wage amount.[253]

Through these efforts, the Respect at LAX campaign helped workers resolve complaints of living wage underpayment to promote employer compliance—and, in some cases, to spur union recognition. For example, through organizing employees around their living wage rights, HERE was able to negotiate a voluntary recognition agreement with LAX concessionaire DFS North America.[254] In addition, after the CAO and City Council member Jackie Goldberg's staff informed another major concessionaire, WH Smith, that its noncompliance with living wage requirements could result in contract termination, debarment, and civil action unless it cured the violations or opted out through a collective bargaining agreement,[255] WH Smith entered into a card-check agreement with HERE Local 814.[256] Later, after completing a collective bargaining agreement and receiving a renewed contract from LAX with that union's support, WH Smith further pledged that its subcontractors would also agree to collective bargaining agreements with the same terms and conditions of employment as WH Smith employees.[257] As these victories underscore, the Respect at LAX campaign successfully used the living wage ordinance as leverage to significantly increase wages and union density among service workers at the airport by the early 2000s.[258]

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251. Memorandum from Erika Zucker, Pol'y Dir. of LAANE, on McDonald's Legal Strategy to LAX Team (July 14, 2002) (on file with authors).

252. NLRB Charge Against Employer, No. 31-CA-25807 (July 10, 2002) (on file with authors); *see General V-2 Filing Information*, SOC. SEC. ADMIN. (June 14, 2002) (on file with authors).

253. Jennifer Oldham, *McDonald's Oks Higher Pay at LAX,* L.A. TIMES (July 24, 2002) https://www.latimes.com/archives/la-xpm-2002-jul-24-me-lax24-story.html [https://perma.cc/GS6B-Y8NS].

254. Memorandum from James W. Hurley, President, DFS N. Am., on Agreement between DFS North America & HERE Union Local 814 (Mar. 30, 2001) (on file with authors).

255. *See* Letter from June W. Gibson, Principal Admin. Analyst, City of Los Angeles, to Doreen S. Davis, Montgomery, McCracken, Walker & Rhoads, LLP (Aug. 11, 1999) (on file with authors).

256. CUMMINGS, *supra* note 6, at 208.

257. Letter from Doreen S. Davis, Morgan, Lewis & Bockius, LLP, to Tom Walsh, President, HERE Loc. 814 (July 15, 2002) (on file with authors).

258. CUMMINGS, *supra* note 6, at 471 n.29 (Two-thirds of 9,600 workers who received pay increases from living wage ordinances worked at LAX or Ontario airports, most of whom were service workers.); *Airport-Unions Grow Organizing Push at LAX*, L.A. BUS. J. (July 30, 2000), https://labusinessjournal.com/news/airport-unions-grow-organizing-push-at-lax/ [https://perma.cc/BDE3-R2Z7] (finding 2400 LAX contract workers joined unions from 1998 to 2000); *see also* FAIRRIS ET AL., *supra* note 65 (finding that 92 percent of airport jobs that received raises required by the ordinance "were covered by a collective bargaining agreement" at the time of the study's survey in 2001 to 2003).

D. Living Wage as Local Government Tool: Widening the Scope of Unionization

While LAANE advanced the Respect at LAX campaign at the airport, it also launched two parallel efforts to widen the living wage's scope. The first was an effort to pass a living wage law in the beach city of Santa Monica. As this section shows, although the Santa Monica effort failed, it sparked a related, successful campaign to pass a zone-based living wage law covering hotels adjacent to LAX. The second effort sought to apply the living wage to publicly subsidized developers and their commercial tenants, especially hotels, restaurants, and groceries in new CRA-financed megaprojects in downtown, Hollywood, and the San Fernando Valley. This effort was coordinated with the nascent community benefits movement, which ultimately won a seminal agreement between LAX and a LAANE-led coalition that strengthened workers' rights at the airport. In both cases, the relevant coalitions mobilized according to the comprehensive campaign playbook: assembling intermovement coalitions to leverage city power and apply living wage plus factors to private employers with city financial ties as a predicate for unionization.

1. Creating Living Wage Mini-Zones, Part 1: The Santa Monica Campaign

Even before the Los Angeles Living Wage Ordinance was enacted, LAANE launched a parallel coalition to pass a similar law in Santa Monica, a wealthy, separately incorporated tourist hotspot viewed as an important political opportunity because of its progressive political reputation and concentration of beachfront hotels. In 1996, LAANE, HERE Local 814, community leaders, and clergy formed Santa Monicans Allied for Responsible Tourism (SMART), a coalition devoted to lifting work standards and facilitating unionization for hotel workers.[259] Once convened, SMART initiated a campaign to pass a living wage ordinance covering all private businesses in the prime beachfront tourist zone where the hotels were clustered.[260] This campaign pushed the envelope of living wage law at the time by seeking to extend it to private employers within a commercial "zone" designated by local government. SMART's "zone" ordinance was a bold innovation: among the first in the country that sought to apply the living wage mandate to employers that were not city contractors, concessionaries, or recipients of city financial assistance.[261] The

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259. Kathleen M. Erskine & Judy Marblestone, *The Movement Takes the Lead: The Role of Lawyers in the Struggle for a Living Wage in Santa Monica, California*, *in* CAUSE LAWYERS AND SOCIAL MOVEMENTS 249, 250 (Sarat & Scheingold eds., 2006); Interview with Beth Leder-Pack, Founding Member, SMART (on file with authors).

260. *See* Erskine & Marblestone, *supra* note 259, at 250–51; Interview with Erika Zucker, Pol'y Dir. of LAANE (on file with authors); Interview with Beth Leder-Pack, *supra* note 259.

261. Barbara Whitaker, *'Living Wage' Ordinance Both Delights and Divides*, N.Y. TIMES (May 29, 2001), https://www.nytimes.com/2001/05/29/us/living-wage-ordinance-both-delights-and-divides.html [https://perma.cc/9FT2-EELS]. The Santa Monica living wage ordinance, first passed in 2001, was technically the second zone-based ordinance, following Berkeley's ordinance, which was amended in 2000 to cover its Marina business area. *See* RUI One Corp. v. City of Berkeley, 371 F.3d 1137, 1141 (9th Cir. 2004) (discussing Berkeley Ordinance No. 6548-N.S. (2000) and creating Berkeley Municipal Code ch. 13.27, *amended by* Berkeley Ordinance No. 6583-N.S. (2000)).

argument in favor of this proposal was that the beachfront was a public asset. Because the city had heavily subsidized the build-out of the limited beach area, the hotels were able to operate a virtual monopoly on tourist lodging in the city—and reap the windfall profits of so doing. With this innovative ordinance, the SMART campaign—like its LA counterpart—sought to facilitate union recognition by applying its provisions to employers with public ties: in this case, premier hotels adjacent the publicly owned Santa Monica pier. In seeking political support for the measure, SMART argued that since the hotels benefitted from city zoning and financial investment in maintaining the beaches and pier as an economic development strategy, they should be subject to a living wage ordinance that would provide a public benefit for their workers by lifting them out of poverty.[262] While this argument succeeded in winning support, it also unleashed a ferocious countermobilization by the Santa Monica hotels and business community.

In 1999, SMART drafted proposed living wage legislation, incorporating the mobilizable provisions that living wage activists developed in connection with the LA ordinance and careful to do so in ways that avoided NLRA preemption.[263] Yet that is where the similarities between the Los Angeles and Santa Monica campaigns ended. In stark contrast to LAANE and HERE's experience in Los Angeles, SMART encountered stiff, immediate opposition at the outset from the beach hotels near the Santa Monica Pier. In response to SMART's proposed ordinance, which it sought to pass through the Santa Monica City Council, the hotels and local Chamber of Commerce spent nearly $1 million to qualify an anti-living wage ordinance, called Proposition KK, as a local initiative for voter approval. To advance the initiative, the business community deceptively labeled Proposition KK a "living wage" proposition—even though it would have gutted SMART's proposed ordinance by covering only city contractors (not hotels in the beach zone), while including a poison pill that preempted any other local living wage ordinance.[264]

Placing Proposition KK on the local ballot catalyzed the SMART living wage campaign in ways that quickly shifted the momentum in its favor. SMART and HERE members organized phone banks and walked precincts to protest the proposition.[265] SMART's "No on KK" campaign educated voters about the money

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262. E-mail from Vivian Rothstein on Living Wage "Most Frequently Asked Questions" (Mar. 2, 2002) (on file with authors).

263. Memorandum from Ruben J. Garcia, on Enforcement Options for Living Wage Ordinance, to SMART (Nov. 13, 1998) (on file with authors); Memorandum from Ruben J. Garcia, Att'y, Rothner, Segall & Greenstone, on State Preemption of the Proposed Santa Monica Living Wage Ordinance, to Honorable Members, City Council (Feb. 6, 2000) (on file with authors); *see also* Memorandum from Peter J. Marx, on Anti-Harassment Provisions, to SMART Legal Team (May 17, 1999) (on file with authors); Memorandum from SMART Legal Team, on Legal Analysis of Proposed Santa Monica Living Wage Ordinance, to Honorable Members, Santa Monica City Council (Aug. 16, 1999) (on file with authors).

264. Erskine & Marblestone, *supra* note 259, at 251–52; Nancy Cleeland, *Opponent Ends Campaign Against 'Living Wage' Rule*, L.A. TIMES (Oct. 28, 2000, 12:00 AM), https://www.latimes.com/archives/la-xpm-2000-oct-28-me-43597-story.html [https://perma.cc/JY68-RLZ5]; *see* Santa Monicans for a Living Wage, Let the People Decide (on file with authors); SANTA MONICA, CAL., PROPOSITION KK (2000) (on file with authors).

265. Interview with Beth Leder-Pack, *supra* note 259; Clara Sturak, *Anti-KK Workers Get Word Out*, SANTA MONICA MIRROR (Oct. 18, 2000) (on file with authors).

that hotels poured into the campaign and about disreputable causes the public relations firm hired to run the hotel campaign had represented in the past.[266] Local media turned against the hotels, calling Proposition KK "phony" and "cynical."[267]

In November 2000, Santa Monica voters overwhelmingly rejected Proposition KK.[268] SMART credited the success of its No on KK campaign to favorable media coverage and its efforts to mobilize 15,000 voters who supported the living wage in Santa Monica.[269] After the proposition's defeat, SMART returned to the Santa Monica City Council, seeking to strengthen the previously proposed ordinance and defuse political opposition. In addition to higher wage and benefit requirements and key plus factors borrowed from the Los Angeles living wage ordinance—including opt-out, worker retention, anti-retaliation, and penalty provisions—SMART also crafted new information provisions, modeled on the recent Oakland living wage ordinance, requiring that employers post notices about living wage requirements and preserve payroll records showing compliance with them.[270] Rich McCracken and other attorneys, on behalf of HERE, also proposed a provision shifting the burden of proof in anti-retaliation claims to the employer.[271] Legal counsel for SMART engaged with lawyers for small businesses in the proposed living wage zone to negotiate financial hardship exemptions in return for non-opposition.[272] In May 2001, the Santa Monica City Council passed the living wage ordinance.[273] Lawyers assisting SMART and LAANE prepared for legal challenges.[274] The successful

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266. Press Release, Santa Monica Coalition Against Measure KK, Measure KK Is Funded by Santa Monica's Luxury Hotels (on file with authors).

267. Teresa Rochester, *Opponents of Prop KK Denounce Million Dollar Campaign*, SURF SANTA MONICA: THE LOOKOUT (Oct. 19, 2000), https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2000/Oct-2000/10_19_2000_Opponents_of_Prop_KK.htm; Robert Scheer, *Willie Horton's Ghost Comes to Santa Monica*, WESTSIDE WEEKLY (Oct. 1, 2000) (on file with authors); Harold Meyerson, *Masters of Deceit*, L.A. WEEKLY (Oct. 11, 2000); *see also* Jorge Casuso, *Hotels Double War Chest for Ballot Initiative*, THE LOOKOUT NEWS (Oct. 11, 2000), https://www.surfsantamonica.com/ssm_site/the_lookout/news/News-2000/Oct-2000/10_11_2000--Hotels_Double_Ballot_Initiative.htm.

268. Nancy Cleeland, *Council Orders New Living Wage Law*, L.A. TIMES (Mar. 29, 2001), https://www.latimes.com/archives/la-xpm-2001-mar-29-me-44281-story.html [https://perma.cc/WBP4-WUNK].

269. Notes, SMART Post-Election Retreat (Nov. 18, 2000) (on file with authors).

270. Memorandum from Ruben J. Garcia, on Enforcement Options for Living Wage Ordinance, *supra* note 263; Letter from Erika Zucker, Gen. Couns., LAANE, to Marsha Jones Moutrie, Santa Monica City Att'y (Apr. 20, 2001) (on file with authors); E-mail from Vivian Rothstein (Oct. 27, 2001, 2:28 PM) (on file with authors).

271. Memorandum from Richard G. McCracken, Michael T. Anderson & Andrew J. Kahn, on Proposed Anti-Retaliation Provision for Living Wage Ordinance, to Marsha Jones Moutrie, Santa Monica City Att'y (Apr. 26, 2001) (on file with authors).

272. *See* E-mail from Steve Ury to Erika Zucker &Vivian Rothstein (May 23, 2001, 12:31 PM) (on file with authors).

273. Whitaker, *supra* note 261; E-mail from Vivian Rothstein (May 23, 2001, 11:53 AM) (on file with authors).

274. *See* Memorandum from SMART Legal Team on Equal Protection Analysis of the Proposed Living Wage Ordinance's Application to Employers in the Coastal Zone to

defense of ordinances in other cities, particularly after Berkeley's zone-based living wage ordinance withstood attack in 2002,[275] suggested that similar challenges against the Santa Monica ordinance would fail as well.[276]

But the living wage ordinance was never challenged in court because businesses instead responded with a voter referendum to repeal it: Proposition JJ, sponsored by the local business community operating under the auspices of the Fighting Against Irresponsible Regulation (FAIR) coalition. Confusingly, a "yes" vote on Proposition JJ was a vote to uphold the living wage ordinance passed by the Santa Monica City Council, while a "no" vote was a vote to repeal it. FAIR deepened this confusion in the lead up to the November 2002 vote with a massive disinformation campaign that included a fake "Democratic Voters Ballot Guide" suggesting that key Democrats opposed living wage; as a result, FAIR succeeded in winning the referendum and repealing the law.[277] SMART immediately raised claims of election law violations, urging Santa Monica to study deceptive election practices by living wage opponents, which spent $2.3 million over their three-year campaign to stop the legislation.[278] A subsequent report by local election law attorneys detailing deceptive voter tactics was not successful in overturning the results.[279] However, the evidence reframed the loss as one resulting from the manipulation of the democratic process, rather than a campaign failure to persuade voters of the merits of the living wage.

Although unsuccessful in overcoming organized resistance by the business community, the Santa Monica living wage campaign nonetheless taught valuable lessons about the repertoire of employer opposition,[280] while raising labor's profile among local officials and voters. Emboldened by public support despite Proposition JJ, HERE launched union drives at the beachfront hotels resulting in voluntary recognition agreements with several of them.[281] When the Doubletree Hotel fired an

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Honorable Members, Santa Monica City Council (Sept. 1, 2000) (analyzing equal protection claim against zone living wage) (on file with authors).

275. *See* RUI One Corp. v. City of Berkeley, 371 F.3d 1137, 1146 (9th Cir. 2004) (referencing 2002 district court decision granting summary judgment to Berkeley on the ground that its zone-based living wage ordinance was not unconstitutional).

276. *See* E-mail from Vivian Rothstein (Mar. 19, 2002, 4:58 PM) (on file with authors) (describing *RUI One Corp*. district court opinion, concluding that it "severely weakens any potential lawsuit that the hotels might file against the Santa Monica ordinance"); E-mail from Vivian Rothstein (Apr. 1, 2002, 4:21 PM) (on file with authors) (circulating news of favorable state court decision upholding New Orleans minimum wage ordinance).

277. *See* Erskine & Marblestone, *supra* note 259, at 253–55; Clara Sturak, *What's FAIR? Pro-Business Group to Campaign for Referendum on Living Wage*, SANTA MONICA MIRROR (June 13, 2001) (on file with authors); Press Release, Santa Monica Living Wage Comm'n of Inquiry, Council Orders Report on Election Reforms (July 9, 2003) (on file with authors) [hereinafter Report on Election Reforms].

278. Report on Election Reforms, *supra* note 277.

279. Erskine & & Marblestone, *supra* note 259, at 251–52; Report on Summary Findings (on file with authors) (Feb. 22, 2003); Cindy Frazier, *Living Wage Supporters Want to Overturn Measure JJ November Election Results*, THE ARGONAUT (July 3, 2003) (on file with authors).

280. *See* Interview with Erika Zucker, *supra* note 260 (discussing counter-living-wage strategies of challenging ballot initiatives, introducing a competing bill, and state preemption).

281. *See* E-mail from Vivian Rothstein (Nov. 22, 2000, 2:10 PM) (on file with authors);

employee in 2002 for promoting HERE to co-workers, SMART organized demonstrations leading to her reinstatement.[282] By 2003, the coalition amassed enough power to persuade the Santa Monica City Council and mayor to endorse HERE's campaign calling for local businesses to accept union representation by card check recognition.[283] Although SMART lost the particular contest over the living wage zone, it vowed to carry on the larger labor struggle.

2. Extending Living Wage to Subsidized Development: The Community Benefits Campaign

While the Santa Monica campaign stalled out, LAANE turned its attention to another point of intersection between local government and private companies—city subsidies of private developers—with an eye toward mobilizing living wage requirements to facilitate the unionization of hotel and retail workers in the booming development market. This effort was initially designed to fill a gap left by the original LA living wage ordinance, which had exempted the CRA, by extending the living wage to private developers and their commercial tenants, including the restaurants, bars, hotels, and groceries responsible for hiring permanent employees. Extending the ordinance in this way would allow unions to pursue voluntary recognition agreements with those direct employers—much like Respect at LAX sought to do with airline subcontractors at the airport. To do so, the LA Living Wage Coalition first sought the CRA's voluntary adoption of the living wage ordinance's terms, which were to be made applicable to developers that accepted CRA funds.[284] The CRA agreed to adopt the living wage ordinance, but with exemptions for residential projects and thresholds for service contracts and financial assistance amounts.[285] The coalition directly lobbied the CRA for narrow exceptions and waivers,[286] and drafted a policy for the CRA that would cover commercial tenants,[287] which remained the

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Memorandum from John W. Wilhelm, Gen. President, Hotel Emps. and Rest. Emps. Int'l Union, to Kurt Petersen, Eric Altman, Vivian Rothstein, Maria Elena Durazo & Tom Walsh (Sept. 6, 2000) (on file with authors).

282. DoubleTree Hotel Corp., Employee Problem/Solution Notice (Elba Hernandez) (Apr. 5, 2002) (on file with authors); E-mail from Durwood77@aol.com (Apr. 26, 2002, 11:56 AM) (on file with authors); E-mail from Kurt Petersen to Vivian Rothstein (Apr. 24, 2001, 12:48 PM) (on file with authors).

283. Memorandum from Kevin McKeown (on file with authors); E-mail from Kurt Peterson to Kevin McKeown (Apr. 1, 2003, 9:11 PM) (on file with authors); E-mail from Kurt Peterson to Vivian Rothstein (Mar. 6, 2003, 5:02 PM) (on file with authors).

284. Report on Summary of a Proposed Living Wage Policy for the Community Redevelopment Agency of the City of Los Angeles (on file with authors) [hereinafter Summary of a Proposed Living Wage Policy].

285. Memorandum from Jerry A. Scharlin, Adm'r, Cmty. Redevelopment Agency of the City of Los Angeles, CA, on Agency Policy on the Payment of a Living Wage, to Agency Commissioners (Mar. 16, 2000) (on file with authors).

286. *See* Memorandum from Erika Zucker, Dir. of Living Wage Pol'y & Advoc., L.A. Living Wage Coal., on CRA Board Hearing on Adoption of Living Wage Policy, to Armando Vergara (Mar. 13, 2000) (on file with authors).

287. *See* Notes on The Community Redevelopment Agency of the City of Los Angeles, California—Policy on Payment of a Living Wage for Work Related to a Redevelopment Site

most important target from an organizing perspective.[288] Yet the CRA rejected this expansive version, limiting application to developers who were direct recipients of CRA funds.

The CRA's limited adoption of the living wage ordinance for developers thus motivated a new approach: extending living wage provisions to commercial tenants through community benefits agreements with developers that required tenants to meet living wage requirements. These developer agreements—contracts between developers and community coalitions—promised specific benefits to residents threatened with displacement and job loss by city-financed development. The community benefits movement is well known for its success in bringing housing to communities affected by city-sponsored gentrification.[289] Less well known is the way that it strengthened the labor movement by providing another vehicle for applying the living wage. As in Respect at LAX, this approach followed the JfJ template: leveraging city authority against the apex powerholder, in this case developers, to embed living wage requirements in contracts with commercial tenants, which were the permanent employers of substantial numbers of low-wage, non-unionized workers. In this context, city power flowed through two key agencies, the CRA, which had the power to use public dollars to finance private development, and the city planning commission, responsible for conducting environmental review and approving land use entitlements. Just as Respect at LAX pressured airlines by threatening to disrupt lease renewal, the community benefits campaign pressured developers by threatening to disrupt subsidies and entitlements, through political pressure and threatened litigation. The endgame was also similar to what Respect at LAX pursued with airlines: a contract in which developers agreed to include living wage requirements in subcontracts (in this case, leases) with commercial tenants, containing terms that unions could mobilize to enter into voluntary recognition agreements.

This approach was pioneered by the LAANE-led Figueroa Corridor Coalition for Economic Justice—which included community-based organizations fighting gentrification and promoting affordable housing, as well as faith-based and environmental justice groups—in negotiations with the developer of an entertainment complex adjacent to the downtown Staples Center sports arena in 2001.[290] The 4-million-square-foot, $1 billion project—called L.A. Live—was to include a forty-five-story convention center hotel along with a high-end hotel, apartment towers, a live theater, restaurants, nightclubs, and an office tower.[291] As a coalition member, LAANE conceptualized community benefits agreements as a way to look forward to strengthen unions, which (with the exception of building trades) were unified in support of community benefits under Contreras's leadership at the County Fed.[292] In the Staples campaign, the community-labor coalition succeeded in

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(Mar. 2, 1999) (on file with authors) [hereinafter Notes on CRA Living Wage Policy]; E-mail from Roxana Tynan to Erika Zucker (Apr. 21, 2000, 12:54 PM) (on file with authors).

288. Notes on CRA Living Wage Policy, *supra* note 287; Summary of a Proposed Living Wage Policy, *supra* note 284.

289. *See* CUMMINGS, *supra* note 6, at 164–65; Been, *supra* note 78.

290. CUMMINGS, *supra* note 6, at 171–74; Interview with Madeline Janis, *supra* note 99.

291. CUMMINGS, *supra* note 6, at 171.

292. *Id.*

negotiating the nation's first community benefits agreement, or what it called a "CBA," in which the developer agreed to build affordable housing, hire local workers, and—crucially for the living wage movement—meet a "Living Wage Goal of maintaining 70% of the jobs in the Project as living wage jobs."[293]

The Staples CBA sought to extend mobilizable living wage provisions via contract to the development's commercial tenants while avoiding legal landmines. It did this, first, by making clear that the Living Wage Goal applied to project tenants and that the developer was responsible for selecting tenants to promote the goal and monitoring their compliance. Specifically, the CBA included permanent jobs created by commercial tenants as counting toward the developer's overall "Living Wage Goal" while offering tenants incentives of "substantial economic value" to provide "living wage jobs."[294] It also included an opt out: jobs were considered living wage jobs if they met the terms of the city's living wage ordinance or were "covered by a collective bargaining agreement."[295] Second, the CBA incorporated reporting requirements and information rights, which included annual reports by tenants and the developer on "the percentage of jobs in the Project that are living wage jobs," along with notification to the coalition and the right to meet with proposed tenants before they signed a lease agreement.[296] Finally, the CBA required that successive tenants in the "hotel and theater components" of the project—key union organizing targets—adhere to the city's worker retention ordinance to prevent new ownership from undercutting unionization.[297]

All of these mobilizable provisions were drafted so as to avoid preemption and other potential legal concerns. While the coalition used the threat of mobilizing against necessary city land use permits and public subsidies to win developer concessions, because the city itself did not condition any benefits on permit approval, it avoided legal concerns about government takings.[298] The contractual nature of CBAs also removed the NLRA preemption threat.[299] For example, the CBA required that the developer refrain from selecting tenants that had previously violated labor law,[300] a term that would have been preempted if required by the city.[301]

Over the following few years, the Living Wage Coalition supported campaigns for CBAs in connection with the North Hollywood (2001) and Hollywood & Vine (2004) mixed-use projects—both funded by the CRA and built around a new subway line—which included key living wage provisions pioneered in Staples.[302] In North

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293. STAPLES Center Community Benefits Program Attachment A § V.A.2. (on file with authors); CUMMINGS, *supra* note 6, at 185–87.

294. STAPLES Center Community Benefits Program Attachment A § V.A.2, A.3, B.1 (on file with authors).

295. *Id.* § V.A.3.

296. *Id.* § V.A.5, A.6, B.3.

297. *Id.* § VII.B.

298. *See* Been, *supra* note 78, at 27–28.

299. *See* Sachs, *supra* note 61, at 1221–22.

300. STAPLES Center Community Benefits Program Attachment A § VIII.B (on file with authors).

301. Wisconsin Dep't of Indus., Lab. & Hum. Rels. v. Gould Inc., 475 U.S. 282, 287 (1986).

302. CUMMINGS, *supra* note 6, at 192, 553 n.174.

Hollywood, the agreement included a seventy-five percent living wage goal, with an opt-out provision that counted jobs covered by union contract as meeting the goal.[303] In exchange for coalition support, the developer entered a voluntary recognition agreement with UFCW Local 770, eventually leading to a union contract between that local and the grocery store at the heart of the project.[304] The Hollywood & Vine CBA also included similar living wage provisions that facilitated the unionization of the W Hotel on site.[305]

A final LAANE-led CBA campaign circled back to LAX, resulting in the first-ever CBA between a community-labor coalition and a public entity.[306] This CBA grew in part out of Respect at LAX's effort to seek an airport-wide labor peace agreement, which it did not achieve after the 1999 amendment to the living wage ordinance despite persistent advocacy at the Airport Department.[307] Trying a different route, LAANE decided to pursue a labor peace policy in connection with the incipient campaign to demand benefits, particularly environmental remediation and local hiring, for communities affected by a massive LAX expansion plan.[308] That campaign, launched in 2003 by a coalition anchored by LAANE and Environmental Defense, used legal leverage provided by the environmental review process required of the airport as a condition of expansion, along with public pressure, to negotiate a nearly half-a-billion dollar CBA, primarily geared toward sound proofing and air filtration for surrounding communities.[309] Although it did not ultimately include the long-sought labor peace agreement, the CBA did provide important worker benefits, including job training and promises to hire LAX-area low-income residents,[310] while also giving the coalition a formal role in CBA implementation and committing LAX to annual reporting.[311] The LAX CBA also included a provision explicitly applying the living wage and worker retention ordinances to all airport contractors, lessees, and licensees—making crystal clear that those laws applied to airline subcontractors and guaranteeing that all new employers brought into the airport after its expansion would have to abide by those laws.[312]

Following the North Hollywood CBA, the Living Wage Coalition sought to institutionalize a community benefits policy for all development citywide—a move that would have increased union leverage by requiring developers to promise to create living wage jobs.[313] But developer opposition killed the policy. In response, as LAANE researcher James Elmendorf recalled, the coalition made an "explicit

303. *Id.* at 191–92.

304. *Id.* at 192.

305. *Id.* at 553, n.174; Hollywood and Vine Mixed-Use Development Project Community Benefits Agreement, Gatehouse Hollywood Development § III (2004) (on file with authors).

306. CUMMINGS, supra note 6, at 221.

307. *Id.* at 209.

308. *Id.* at 210, 219–21.

309. *Id.* at 210–21.

310. *Id.* at 221–24.

311. Los Angeles International Airport Master Plan Program, Cooperation Agreement, Attachment A, Community Benefits Agreement, § XVI (2004) (on file with authors).

312. *Id.* § II.A; *see also* CUMMINGS, *supra* note 6, at 221–23.

313. Interview with Jessica Goodheart, Dir. of Rsch., LAANE (Feb. 17, 2012) (on file with authors).

shift" toward using local policy to "change the industry in a way that raises standards for workers and helps the union organize."[314] To advance that goal, the coalition returned to the CRA, where Janis-Aparicio had been appointed commissioner in 2002. Under her leadership, the CRA adopted living wage and contractor responsibility policies applicable to CRA contractors and financial assistance recipients and passed a labor peace policy requiring hotels on city-owned land to agree to card-check neutrality with unions.[315] Although these policies did not specifically apply the living wage to commercial tenants of CRA projects, they demonstrated organized labor's influence over LA redevelopment in ways that allowed labor leaders to use levers of institutional power to attach community benefits to future projects until the California redevelopment law was abolished a decade later. Overall, the CBA movement achieved a significant extension of the living wage. By channeling underutilized forms of local government pressure against subsidized developers as apex powerholders, CBA coalitions forced them to contract into novel mobilizable living wage provisions, which—although not ultimately requiring tenants to follow living wage law—gave the CBA movement new legal and political tools to extend its reach. Moreover, the movement's success linking CBAs to site-specific labor neutrality agreements and CRA labor peace policy returned the Living Wage Coalition's attention to hotel workers—this time in the City of Los Angeles along Century Boulevard adjacent to LAX.

3. Creating Living Wage Mini-Zones, Part 2: The LAX Hotel Ordinance

Following the failed living wage campaign in Santa Monica, the zone-based living wage law endured as an important legal concept to support union campaigns in Los Angeles. In 2006, after the demise of the proposed citywide community benefits policy, the LA Living Wage Coalition embraced the zone strategy as a more targeted approach to support organizing workers at non-union hotels in the Century Corridor around LAX.[316] HERE, which aimed to unionize the LAX hotels,[317] sought tip protection in the proposed Century Corridor ordinance (so that employers could not reduce wages in relation to tips) and worker retention.[318] Labor lawyer Rich McCracken drafted the ordinance with HERE researcher Roxanne Auer and input from LAANE staff, primarily James Elmendorf.[319]

As in Santa Monica, the Century Corridor campaign encountered stiff legal and political resistance. To allay the city attorney's concern about NLRA preemption under *Golden State Transit Corporation v. City of Los Angeles*[320]—the Supreme Court case rejecting Los Angeles's attempt to condition taxi permits on resolution of

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314. Interview with James Elmendorf, *supra* note 179.

315. CUMMINGS, *supra* note 6, at 193.

316. *See* Scott L. Cummings & Steven A. Boutcher, *Mobilizing Local Government Law for Low-Wage Workers*, 2009 U. CHI. LEGAL F. 187, 219–21; *see also* My Bach Trinh, Passing the Hotel Worker Living Wage Ordinance in Los Angeles (May 8, 2007) (Independent Study, University of California Los Angeles) (on file with authors).

317. Interview with James Elmendorf, *supra* note 179.

318. *Id.*

319. *Id.*

320. 475 U.S. 608 (1986).

a dispute with the drivers' union—coalition lawyers Rich McCracken and Paul More drafted legal opinions and met to discuss cases from Berkeley and Emeryville that upheld zone-based living wage ordinances.[321] According to James Elmendorf, the fact that those ordinances had been "upheld . . . gave . . . city attorneys a great deal of confidence that, oh, okay, this has been done before . . . we're not entirely breaking new ground here."[322] Once the City Attorney was on board, the coalition was able to solidify the necessary political support to secure the November 2006 passage of the Century Boulevard living wage ordinance.[323] The ordinance set minimum compensation for hotel workers at a rate of $10.64 per hour (without health benefits).[324] It also included plus factors: a provision prohibiting retaliation for any worker "seeking to enforce his or her rights" under the law; a private right of action for failure to pay the living wage or retaliatory actions, along with attorney's fees for prevailing workers; and an opt out for a "bona fide collective bargaining agreement . . . explicitly set forth in . . . clear and unambiguous terms."[325]

The coalition did not expect that the hotels would file suit to challenge the ordinance or referendize it as in Santa Monica, given the more difficult standard for doing so in Los Angeles. So it came as a surprise when the hotels and business allies gathered over 100,000 signatures—more than twice the number required—to put the ordinance on the 2007 city ballot.[326] To avoid the embarrassment of reversal by referendum, the City Council repealed the ordinance on January 31, 2007.[327] With Mayor Antonio Villaraigosa working to broker a new deal with business groups, the City Council passed a new Airport Hospitality Enhancement Zone Ordinance three weeks later, containing the same wage requirements and plus factors in the repealed law as well as additional public subsidies sought by hotels, including infrastructure upgrades, a workforce development program, and city-funded publicity.[328] However, in another surprising twist, a group of LAX hotels (including Courtyard by Marriott, Embassy Suites, the Westin, Holiday Inn, and the Radisson) broke their promise of support and sued on the grounds that the second ordinance was "essentially the same in language and purpose" as the first,[329] causing an LA superior court judge to

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321. Interview with James Elmendorf, *supra* note 179. The Berkeley and Emeryville cases are: RUI One Corp. v. City of Berkeley, 371 F.3d 1137, 1157 (9th Cir. 2004); and Woodfin Suite Hotels, LLC v. City of Emeryville, No. C 06-1254 SBA, 2006 WL 2739309, at *21 (N.D. Cal. Aug. 23, 2006).

322. Interview with James Elmendorf, *supra* note 179.

323. *See* L.A., CAL., L.A. MUN. CODE ch. XVIII, art. 2, § 182.01 (2006).

324. *Id.* § 182.03(a).

325. *Id.* §§ 182.06–08.

326. Memorandum of Points and Authorities in Support of Petitioners' Verified Petition for Alternative and/or Peremptory Writ of Mandate; Preliminary and Permanent Injunction and Declaratory Relief at 3, Rubalcava v. Martinez, No. BS107624 (Cal. Super. Ct. Feb. 28, 2007) [hereinafter Memorandum of Points and Authorities]; Joe Mathews & Steve Hymon, *'Living Wage' for LAX Hotel Staffs Blocked*, L.A. TIMES (May 5, 2007, 12:00 AM), https://www.latimes.com/archives/la-xpm-2007-may-05-me-wage5-story.html [https://perma.cc/2YB7-NKA8].

327. Memorandum of Points and Authorities, *supra* note 326, at 3.

328. L.A., CAL., L.A. MUN. CODE ch. X, art. 4, § 104.103 (2008).

329. Memorandum of Points and Authorities, *supra* note 326, at 4.

temporarily block its implementation.[330] After the decision was reversed on appeal,[331] and the state supreme court declined to hear the case, the final ordinance went into effect in July 2008.[332]

Within a year of the Century Corridor living wage ordinance passing, HERE won union contracts at four of the twelve LAX hotels—Four Points LAX, Westin LAX, Radisson LAX, and the Sheraton Gateway—resulting (when combined with wage increases from the ordinance) in a total of nearly $24 million in worker benefits.[333] As Elmendorf reflected on the impact of the new ordinance: "We had zero hotels that were unionized prior to that campaign . . . . [Following the campaign,] density went from zero to about forty percent."[334] This success punctuated a transformational twenty-year period for organized labor in Los Angeles, in which the living wage movement played a central role. Emerging after the nadir period of LA de-industrialization, the movement used JfJ as a springboard to devise an intertwined lawmaking and organizing approach that enabled successful unionization drives in workplaces tied to publicly held assets and publicly financed development in the city. In so doing, the LA living wage movement helped build union density and local labor political power while creating an innovative template of mobilizable labor law that could be extended by savvy organizing and advocacy into new industries and geographic spaces.

III. THE UNHERALDED LEGACY OF THE LIVING WAGE

Building from Part II's historical account of the living wage as a launching pad for creative unionization efforts in Los Angeles, this Part assesses its unheralded legacy. It begins by tracing the historical impact of the LA living wage movement—and its contribution to rebuilding local labor power—to recent union drives in other labor battleground cities organized in connection with the Fight for $15. Next, it situates the living wage as "mobilizable labor law" in relation to law and social movement scholarship, suggesting how it shines new light on the importance of legal design in labor organizing, which reveals the critical—and underappreciated—role of labor lawyers as architects of legal empowerment. This Part then turns to analyze the legal tools developed by the living wage movement and explores implications for contemporary labor law, suggesting how the invention of living wage plus factors and their application to public assets strengthened legal protections for low-wage, immigrant worker organizing, against the backdrop of NLRA preemption, and surging corporate power. Finally, this Part considers the legacy of the living wage movement in relation to strategic localism, suggesting how local government matters

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330. Minute Order, Rubalcava v. Martinez, No. BS107624 (Cal. Super. Ct. May 2, 2007).

331. *See Court Upholds LAX-Area Hotel Wage Ordinance*, COURTHOUSE NEWS SERV. (Jan. 3, 2008), https://www.courthousenews.com/court-upholds-lax-area-hotel-wage-ordinance/ [https://perma.cc/N5FC-RQQ8].

332. L.A., CAL., L.A. MUN. CODE ch. X, art. 4, § 104.103 (2008). While most hotels began implementing the wage mandate, Hilton filed a federal suit against the ordinance on equal protection grounds, which was dismissed. Cummings & Boutcher, *supra* note 316, at 221.

333. JASLEEN KOHLI, LAANE, TRANSFORMING THE GATEWAY TO L.A.: THE ECONOMIC BENEFITS OF SUSTAINABLE TOURISM MODEL 1–2 (Dec. 2, 2009) (on file with authors).

334. Interview with James Elmendorf, *supra* note 179.

as a site to incubate innovative labor strategies and export them to other cities through network-based policy diffusion.

A. Bridging a Connective History of Labor Mobilization

Historical analysis is significant on its own terms, looking backward to add nuance and depth to prior understandings.[335] It can also force reconsideration of current trends by tracing lines of influence that illuminate previously unseen connections and chart forward-looking directions.[336] Recovering the history of Los Angeles's living wage movement serves both purposes. By offering a new perspective on a transformative period of labor history, it reveals a through line that situates the living wage movement as an essential bridge between the rise of immigrant worker organizing in JfJ and recent demands by low-wage workers for a $15 minimum wage and a union. As this Article has shown, the living wage movement's crucial intervention was to adapt the central lessons of JfJ to build union power in industries tied to local government through innovative lawmaking. Shifting from commercial cleaning to other low-wage service sector workplaces required a fresh industry analysis that targeted new apex powerholders and mapped their relation to local government. This mapping revealed underappreciated contracting chains and other fiscal relationships that could be used as leverage to create a favorable environment for union efforts. These chains ran through commercial operations in public assets, like LAX, where the Airport Department contracted with restaurants and retail businesses, as well as airlines, which in turn held power over thousands of non-unionized subcontracted workers in critical jobs like security and baggage handling. Contracting chains also snaked through local redevelopment, in which the city committed funds to private developers building projects like L.A. Live that promised public benefits, while city infrastructure investment formed the basis for zone-based living wage ordinances in Santa Monica and the Century Corridor. The living wage movement's genius was to design local lawmaking to facilitate unionism through these fiscal relationships by creating new labor rights that responded to NLRA weaknesses. This gave rise to what we have called "mobilizable labor law" as a key legal innovation: legal provisions in living wage law designed to be mobilized to advance union organizing goals while avoiding NLRA preemption.[337]

Living wage mobilization in Los Angeles followed the movement's JfJ-inspired playbook: building intermovement coalitions to strategically deploy mobilizable living wage provisions as leverage against apex powerholders in campaigns to win labor neutrality.[338] These playbook features were also visible in living and minimum

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335. *See* JOSEPH FISHKIN & WILLIAM E. FORBATH, THE ANTI-OLIGARCHY CONSTITUTION 16, 441–53, 479 (2022).

336. *See* GOLUBOFF, *supra* note 21, at 5–6.

337. *Cf.* Sachs, *supra* note 61, at 1174–80 (describing how local economic development programs have been used to advance union campaigns while navigating around preemption).

338. Others have noted the influence of JfJ on Fight for $15. *See, e.g.*, DAVID ROLF, THE FIGHT FOR $15: THE RIGHT WAGE FOR A WORKING AMERICA 91 (2016) (stating that Fight for $15 built "upon strategies pioneered in the Justice for Janitors campaign and furthered by the

wage organizing in other West Coast cities during and following the period of LA mobilization, highlighting connections between the LA movement and wider community-labor efforts to ignite new approaches to organizing immigrant and low-wage workers. By spotlighting these connections, this Section bridges the living wage movement's past and the labor movement's present by revealing synergies between the LA living wage movement and community-labor campaigns in other West Coast cities—suggesting how the deep lessons of JfJ have shaped the historical arc of new labor organizing through the seminal Fight for $15 campaign at the Seattle-Tacoma International Airport (SeaTac) in Washington.

In the period immediately following the 1997 passage of the LA living wage ordinance, labor groups in other West Coast cities assembled their own intermovement coalitions to win similar laws framed around the "living wage" as a matter of economic justice and worker dignity. Within five years of the LA ordinance, twenty-two other California municipalities enacted living wage laws.[339] Many of these laws adopted—and adapted—the LA model to address NLRA weaknesses.[340] For example, as noted in Part II, Oakland enacted a 1998 living wage ordinance covering city contractors and tenants of publicly funded developments,[341] while Berkeley passed a similar ordinance in 2000, which was amended that same year to apply to all businesses in the Marina Zone (a format similar to the geographic zone-based living wage law advanced around the same time in Santa Monica).[342] In addition to establishing higher wage and benefit rates and applying them to city service contractors and subsidy recipients (as well as Marina Zone businesses in Berkeley), these laws included versions of mobilizable labor provisions used in Los Angeles to expand worker access to new labor rights—at times modifying those rights in response to local conditions and political resistance. Oakland's 1998 ordinance, for instance, limited opt-outs to "bona fide" collective bargaining agreements that waived the living wage mandate "in clear and unambiguous terms."[343] Clarifying in the ordinance that opt-outs were designed to respect workers' collective determination about desirable work terms, and not to allow sweetheart deals between employers and unions, blunted potential employer criticism that living wage ordinances benefitted unions and not workers. Berkeley used an identical opt-out provision as Oakland for its living wage ordinance,[344] which was copied by the LA movement in the Century Corridor ordinance covering LAX hotels in 2007,

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OUR Walmart campaign"). Our contribution is to show the connective history of living wage movement in adapting JfJ strategies for new apex powerholders.

339. Michael Reich, *Living Wage Ordinances in California*, *in* 3 STATE CAL. LAB., 199, 200–02 (2003).

340. *Id.* (listing more than 10 jurisdictions with various types of "[l]abor [r]elations [p]rovisions," including anti-retaliation, labor peace, and collective bargaining supersession provisions).

341. OAKLAND, CAL., MUN. CODE §§ 2.28.20, .30 (1998).

342. Berkeley, Cal., Ordinance 6548-NS (2000) (creating BERKELEY, CAL., MUN. CODE ch. 13.27.20 (2000), *amended by* Berkeley, Cal., Ordinance 6583-NS (2000), which amends definitions to include businesses in "Marina Zone" as among those employers subject to living wage ordinance).

343. OAKLAND, CAL., MUN. CODE § 2.28.160 (1998).

344. Berkeley, Cal., Ordinance 6548-NS (2000) (creating BERKELEY, CAL. MUN. CODE ch. 13.27 (2000), *amended by* Berkeley, Cal., Ordinance 6583-NS (2000)).

underscoring how historical evolution of living wage developed through dynamic city-to-city influence and recursive learning.

In addition, while the LA movement rolled out Respect at LAX, an SEIU-led community-labor coalition pursued a parallel strategy at the San Francisco International Airport (SFO): using mobilizable living wage provisions in an airport-specific law in combination with local government leverage to pressure airport service firms to support labor neutrality.[345] The campaign began by securing an living wage law at SFO (called the Quality Standards Program), passed in 2000, which specifically applied to airline employees and airline subcontract workers whose performance affected security and safety—avoiding the controversy in Los Angeles around the living wage law's scope by directly covering baggage screeners and handlers, airplane cleaners, and boarding agents, among other subcontract workers.[346] In addition, unlike LAX, the SFO law included a labor peace policy that was promulgated by the Airport Commission in a separate regulation,[347] thereby providing the SFO campaign with leverage to move straight into union organizing at the firm level—which Respect at LAX had to pursue in more piecemeal fashion. With the labor peace policy in place, the SEIU launched organizing drives with employees of twenty-one different employers in SFO; by 2002, according to a leading study, "in every case the union gained recognition, and all had reached collective bargaining agreements, or had reported progress towards reaching agreements."[348] This led to new union representation of 2,400 SFO workers or about "one quarter of the workers in the surveyed firms."[349] Building from this success, in 2003, the voters of San Francisco passed a local minimum wage law—among the

345. Ken Jacobs, Rebecca Smith & Justin McBride, *State and Local Policies and Sectoral Labor Standards: From Individual Rights to Collective Power*, 74 ILR REV. 1132, 1142 (2021).

346. Reich, *supra* note 339, at 218.

347. *See* United Screeners Ass'n Loc. One v. City & Cnty. of San Francisco, No. C 05-00001 JSW, 2005 WL 2671384, at *1 (N.D. Cal. Oct. 19, 2005) (discussing the San Francisco Airport Commission's February 2000 Resolution No. 00-0049, "Resolution Approving Use of Labor Peace/Card Check Rule and Model Card Check Agreement"); Michael Reich, Peter Hall & Ken Jacobs, *Living Wage Policies at the San Francisco Airport: Impacts on Workers and Businesses*, 44 INDUS. RELS. 106, 111–12 (2005) (analyzing impact of Quality Standards Program and card check policy on SFO employees). A trial court enjoined enforcement of the then-existing SFO labor peace policy against an employer in 2001 on the ground that the city acted as a regulator and not a proprietor in extending its coverage to all employers that did business in the airport. Aeroground, Inc. v. City & Cnty. of San Francisco, 170 F. Supp. 2d 950, 959 (N.D. Cal. 2001). SFO currently has in place a labor peace policy that more narrowly applies to employers with a "lease, sublease, or permit of Airport property at the Airport or any property owned by the Airport." THE AIRPORT COMM'N CITY & CNTY. OF S.F., RULES AND REGULATIONS 87 (2023), https://www.flysfo.com/sites/default/files/2023-03/2023%20Rules%20and%20Regs-Updated%20Rule%2012.1.pdf [https://perma.cc/TD7T-3HQH].

348. MICHAEL REICH, PETER HALL & KEN JACOBS, LIVING WAGES AND ECONOMIC PERFORMANCE: THE SAN FRANCISCO AIRPORT MODEL (2003), https://laborcenter.berkeley.edu/wp-content/uploads/2021/06/Living-Wages-and-Economic-Performance-The-San-Francisco-Airport-Model.pdf [https://perma.cc/DFW3-GBEX].

349. *Id.* at 43.

first in the nation to mandate wage increases above state and federal requirements on a citywide basis.[350] Further extending the scope of mobilizable law, San Francisco's minimum wage ordinance included an opt-out for "bona fide" collective bargaining agreements,[351] as well as other familiar "plus" factors: penalties for noncompliance (including liquidated damages and revocation and suspension of permits and licenses), anti-retaliation protections, notice and posting mandates, and record-keeping requirements.[352]

Elements of the LA living wage playbook were also part of labor's effort to build upon the first-wave success of citywide minimum wage ordinances (like San Francisco's) to launch the more ambitious Fight for $15 movement, as shown in SeaTac and Seattle.[353] Coming on the heels of fast-food worker strikes in New York City in 2012, the SeaTac $15-an-hour minimum wage ordinance in 2013 is widely viewed as the first Fight for $15 victory—the result of a union-led campaign to use local law to facilitate organizing of the largely immigrant workforce in the airport.[354] Our analysis of interviews of key actors in 2015, curated by the Harry Bridges Center for Labor Studies at the University of Washington, shows deep connections between the LA living wage movement and the SEIU and Teamsters' effort to organize workers who labored in and around the SeaTac airport. As with Respect at LAX, the SeaTac campaign coalesced in response to efforts by apex powerholders to diminish labor power in the airport. In one well-known example, in 2005, Alaska Airlines, the largest SeaTac carrier, laid off nearly 500 union-represented baggage handlers,[355] and contracted out its baggage handling positions to a non-union contractor, Menzies Aviation, which slashed wages "[o]vernight."[356] Baggage handlers at SeaTac paid an average of $13.41 an hour in 2005 saw their wages fall to an average of $9.66 per hour in 2011.[357]

The SeaTac campaign started with a coalition of unions, community organizations, and faith-based groups that began reaching out in the early 2010s to airport workers, a majority of whom were immigrants and a significant proportion Muslim.[358] The early phase of the campaign included demonstrations at the airport and targeted disruptions of shareholders' meetings at Alaska Airlines, the largest SeaTac carrier, to pressure the airline to use its apex power to support organizing.[359]

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350. S.F., CAL., ADMIN. CODE § 12R.4 (2003).

351. S.F., CAL., ADMIN. CODE § 12R.8 (2003).

352. S.F., CAL., ADMIN. CODE §§ 12R.5–.7 (2003).

353. As we will explain more in Section D, networks developed across West Coast cities enabled campaigns to learn strategies from the LA living wage coalition. As one SeaTac campaign organizer explained, in strategizing the SeaTac campaign, she contacted LAANE and "LA affiliates just to get lessons learned on how they won their living wage increase." Interview by Riddhi Mehta-Neugebauer & Megan Brown with Claudia Alexandra Paras, Lead Coordinator, Puget Sound SAGE, in Seattle, Wash. (Sept. 17, 2015) (on file with authors).

354. *See* ROLF, *supra* note 338, at 97–121, 160–64.

355. Melissa Allison, *Alaska Air Workers Fuming*, SEATTLE TIMES (May 18, 2005, 12:00 AM), https://www.seattletimes.com/business/alaska-air-workers-fuming/.

356. MIRANDA DIETZ, PETER HALL & KEN JACOBS, COURSE CORRECTION: REVERSING WAGE EROSION TO RESTORE GOOD JOBS AT AMERICAN AIRPORTS 12 (2013).

357. *Id.*

358. JONATHAN ROSENBLUM, BEYOND $15, at 56–91 (2017).

359. *See id.*; Interview with Claudia Alexandra Paras, *supra* note 353.

Labor organizers sought to strengthen their position with the airline by advocating that the Port of Seattle (with authority over the airport) pass "some sort of labor peace language," but the Port Commissioners rebuffed the request.[360]

Union efforts to organize airport workers were initially stymied by employers' invocation of the Railway Labor Act (RLA), a federal law covering airline carriers that requires the exhaustion of negotiation and mediation procedures before unions can strike.[361] Unlike National Labor Relation Board election procedures, which presume that single-location bargaining units are appropriate,[362] the National Mediation Board (NMB), which oversees RLA union elections, will only certify "unions that represent the majority of a system-wide class of employees."[363] This effectively requires a union seeking to represent airport workers to gain majority support in all the airports in which their employer operates.[364] The NMB, furthermore, has interpreted the RLA to not only cover direct airline employees, like pilots, but also employees of airline subcontractors if the airline exerts "substantial control" over them.[365] When the unions began organizing SeaTac baggage handlers and screeners, as well as other airline-subcontracted service workers, employers argued that they were subject to the RLA and sought to enjoin strikes on the ground that the unions did not exhaust required procedures under that law.[366] As a result, unions faced significant limits on collective action and the prospect that, even with the support of a majority of employees at worksites targeted by unions at SeaTac, nationwide employers could reject their demands for card-check recognition.[367]

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360. Interview by Megan Brown & Garrett Strain with Leonard Smith, Teamsters 117 (June 11, 2015) (on file with authors).

361. 45 U.S.C. § 151 (2012); *see* Chicago & N.W. Ry. Co. v. United Transp. Union, 402 U.S. 570, 583 (1971).

362. *See* Hilander Foods, 348 N.L.R.B. 1200, 1200 (2006) (affirming National Labor Relations Board presumption that a single store or facility is an appropriate bargaining unit); Haag Drug Co., 169 N.L.R.B. 877, 877–879 (1968) (same).

363. Summit Airlines, Inc. v. Teamsters Loc. Union No. 295, 628 F.2d 787, 795 (2d Cir. 1980).

364. As Dmitri Iglitzin, a labor lawyer assisting the SeaTac campaign, explained, this means that "if you want to organize Menzies workers you basically have to organize all the Menzies workers in the country, which is simply a much, much harder challenge." Interview by Riddhi Mehta-Neugebauer with Dmitri Iglitzin, Schwerin, Campbell, Barnard, Iglitzin, & Lavitt LLP (Sept. 25, 2015) (on file with authors).

365. *See* John Menzies, PLC, 31 N.M.B. 490, 505–07 (2004).

366. *See* ROLF, *supra* note 338, at 108–09; ROSENBLUM, *supra* note 358, at 53; *see, e.g.*, Aircraft Serv. Int'l Inc. v. Int'l Bhd. Teamsters AFL CIO Loc. 117, 742 F.3d 1110, 1123 (9th Cir. 2014), *rev'd on reh'g en banc*, 779 F.3d 1069, 1070 (9th Cir. 2015) (upholding a district court's injunction against Teamsters under RLA for striking in protest of airline service worker termination at SeaTac, which the Ninth Circuit reversed on rehearing en banc for lack of evidence that plaintiff used "every reasonable effort" to resolve the dispute, as is required by the Norris-LaGuardia Act before a federal court can enjoin a strike).

367. Interview with Leonard Smith, *supra* note 360. According to Teamsters organizer Leonard Smith, when the union presented authorization cards from a majority of employees to an employer at SeaTac airport demanding recognition, "[t]hey said, '[n]o, they're not going to give you recognition. If you want to organize, go to the National Mediation Board and organize.'" *Id.*

As a result, union leaders decided to pursue a local minimum wage law that could raise airport worker wages and counter their legal disadvantage. In 2013, with echoes of Respect at LAX, the campaign settled on the strategy of "(1) a living-wage policy . . . and (2) 'neutrality' agreements that would make it possible for workers to join a union without retaliation and negotiate a contract."[368] To win a living wage ordinance, the unions redirected organizers to register new voters in the City of SeaTac (where the airport is located) to support a $15-an-hour minimum wage ballot initiative covering all hospitality and transportation employers in the city. In 2013, the initiative narrowly passed.[369] As in Los Angeles and other cities that passed similar laws, the SeaTac ordinance included mobilizable provisions, including worker retention, an opt-out for collective bargaining agreements, a private right of action with substantial penalties, and access to employer records.[370] With these provisions in place, unions could follow the LA playbook of pressuring the airport and airlines to support union efforts to negotiate labor neutrality agreements with airport subcontractors that would commit them to recognizing union representation of SeaTac workers—effectively contracting around the RLA problem.

However, this plan did not take effect in the short term due to employer countermobilization. The SeaTac ordinance was immediately challenged in state court by airport contractors and Alaska Airlines, which argued that the City of SeaTac did not have power to regulate the airport and that the mobilizable provisions were preempted by federal labor law.[371] In December 2013, a lower court struck down the ordinance to the extent it sought to regulate employers inside the airport, which it found to be within the exclusive jurisdiction of the Port of Seattle, and held the anti-retaliation provision was preempted by federal labor law.[372] Demanding that employers *inside* the airport pay $15 an hour—just as the ordinance now required SeaTac employers *outside* the airport to pay—gave the SeaTac labor-community coalition a potent justice and dignity frame.[373] The coalition used all the tools at hand to sustain its campaign, which included civil disobedience,[374] and legal advocacy persuading the NMB that the Menzies Aviation baggage handling firm was not subject to the RLA.[375] The campaign also included a successful effort to organize wheelchair attendants and skycaps—which the labor board determined fell outside

368. ROLF, *supra* note 338, at 109.

369. Interview by Riddhi Mehta-Neugebauer & Megan Brown with Sterling Harders, Vice President, SEIU 775, in Seattle, Wash. (July 8, 2015) (on file with authors); SEATAC, WASH., MUN. CODE § 7.45.010A (2014).

370. *See* SEATAC, WASH., MUN. CODE § 7.45.060A (2014) (retention); SEATAC, WASH., MUN. CODE § 7.45.080 (2014) (opt-out); SEATAC, WASH., MUN. CODE § 7.45.090–100 (2014) (private right of action and retaliation prohibition); SEATAC, WASH., MUN. CODE § 7.45.070 (2014) (records).

371. BF Foods LLC v. City of SeaTac, No. 13-2-25352-6 KNT, 2013 WL 6851515, at *17–18 (Wash. Super. Dec. 27, 2013).

372. *Id.* at *4–7, *15–16. Plaintiffs argued both NLRA and RLA preemption. *Id.* In the case, the lower court did not separately analyze RLA preemption, treating it as coextensive with NLRA preemption. *Id.*

373. Interview with Claudia Alexandra Paras, *supra* note 353.

374. *Id.*

375. Menzies Aviation, Inc., 42 N.M.B. 1, 1–2 (2014).

the RLA—thus maintaining momentum during the two-year litigation.[376] By 2015, when the Washington Supreme Court reversed the lower court decision and upheld the SeaTac living wage ordinance in its entirety,[377] over one thousand SeaTac airport workers—wheelchair attendants, janitors, and transportation workers—had joined unions.[378]

After the 2015 decision, the living wage ordinance's mobilizable provisions helped to facilitate union campaigns at the SeaTac airport.[379] With the ordinance clearly covering airport employers, those that refused to comply with its wage mandate and mobilizable terms faced litigation risk and potential contract suspension. SeaTac airport workers sued over a dozen employers for wages owed since January 2014 when the ordinance originally went into effect;[380] in January 2017, Menzies Aviation employees obtained an $8.2 million settlement for unpaid wages.[381] Later that year, Alaska Airlines terminated its baggage handling contract with Menzies Aviation and gave it to a union-represented company.[382] Under the ordinance's retention provision, the new company was required to retain the 900 former Menzies employees, who obtained "better benefits and incremental pay increases" as union members with a collective bargaining agreement.[383] In 2018, the SEIU entered into SeaTac airport's first master collective bargaining agreement with four service contractors employing 800 "skycaps, ramp agents, cabin cleaners, and baggage handlers."[384] After Washington State enacted a 2020 law permitting airports to extend local labor standards to airport workers excluded from them,[385] the Port of Seattle developed—with the support of UNITE-HERE organizing—a new policy extending the $15-an-hour wage and worker retention requirements from the SeaTac ordinance to airline catering workers.[386]

For many of the SeaTac archive interviewees, the most important effect of the SeaTac campaign was to build a base of support for Fight for $15 in Seattle.[387] The

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376. *See* ROSENBLUM, *supra* note 358, at 156–57. The union prevailed in its argument that this employment was appropriately regulated under the NLRA, which permitted the National Labor Relations Board to direct an election. *Id.*

377. Filo Foods, LLC v. City of SeaTac, 357 P.3d 1040, 1059 (Wash. 2015).

378. ROSENBLUM, *supra* note 358, at 157.

379. Because the SeaTac archive interviews were conducted in 2015, before the litigation challenge was dismissed, this evidence is based on publicly available materials.

380. Blanca Torres, *SeaTac Workers Sue Employers Over Wages*, SEATTLE TIMES, Feb. 18, 2016; *see, e.g.*, Toering v. Ean Holdings LLC, No. C15-2016 JCC, 2016 WL 4765850, at *5 (W.D. Wash. Sept. 13, 2016) (certifying class of SeaTac airport car rental company employees).

381. Ali v. Menzies Aviation, Inc., No. 2:16-cv-262 RSL, 2017 WL 2805477, at *1 (W.D. Wash. Jan. 11, 2017).

382. Dominic Gates, *Alaska Air to Rehire Handlers*, SEATTLE TIMES, Mar. 2, 2017.

383. *Id.*

384. Benjamin Romano, *New Contract Improves Conditions for More than 800 Sea-Tac Airport Workers*, SEATTLE TIMES, July 27, 2018.

385. WASH. REV. CODE ANN. § 14.08.120(2) (West 2023).

386. Press Release, Port of Seattle, Port Adopts New Authority to Expand Workers Covered by City of SeaTac Minimum Wage (July 27, 2021).

387. *See* Interview with Leonard Smith, *supra* note 360; Interview with Sterling Harders, *supra* note 369; Interview with Claudia Alexandra Paras, *supra* note 353; *see also* ROLF, *supra*

campaign for the SeaTac minimum wage initiative, launched in 2013, made a $15 minimum wage a central issue in the mayoral election in the city of Seattle that same year and—once the Seattle mayor was elected—influenced him to endorse a $15-an-hour minimum wage ordinance, which was enacted in 2014.[388] As in SeaTac, the Seattle ordinance contained mobilizable provisions, specifically a private right of action, an anti-retaliation provision, and employer recordkeeping requirements.[389] In combination with the hard-earned victory at SeaTac, the ordinance in Seattle—an economically important bellwether city—helped launch Fight for $15 into a national movement.[390] Looking back from this vantage point, the rise and success of the Fight for $15 movement can be viewed as a direct descendent—and a central achievement—of the living wage movement.

B. Designing the Legal Architecture for Organizing

In addition to reclaiming the LA living wage movement as historically important to the rise of new labor organizing, this Article argues that the creation of mobilizable labor law constituted a critical innovation with significance to the study of law and social movements: revealing how legal rules were intentionally designed to advance unionization and contained features to be actively used toward that end.[391] This innovation responded to the "deradicalizing" impact of federal labor law,[392] highlighting the positive and creative response of movement lawyers and activists crafting mobilizable legal provisions to enable collective action. As the history of the LA living wage movement shows, well-designed local law can augment social movement power to produce direct effects in local campaigns. Identifying the importance of mobilizable labor laws draws attention to the architects who drafted them—labor lawyers—and sheds light on how such lawyers operate in relation to broader union strategies. In particular, the LA movement reveals the importance of

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note 338, at 152–64.

388. Interview with Sterling Harders, *supra* note 369; Andrias, *supra* note 25, at 51–52.

389. SEATTLE, WASH., MUN. CODE § 14.19.110 (2015) (private right of action); SEATTLE, WASH., MUN. CODE § 14.19.055A–E (2015) (retaliation prohibition); SEATTLE, WASH., MUN. CODE § 14.19.050 (2015) (records).

390. As Mary Kay Henry, president of the SEIU later explained, the Seattle ordinance was "catalytic" in launching Fight for $15 nationally. Kate Rogers & Nick Wells, *Seattle Passed a $15 Minimum Wage Law in 2014. Here's How it Turned Out So Far*, CNBC (Jan. 2, 2000), https://www.cnbc.com/2020/01/02/seattle-passed-a-15-minimum-wage-law-in-2014-heres-how-its-turned-out-so-far.html [https://perma.cc/CF9M-9EC6]. Since SeaTac, the Fight for $15 movement—in addition to imposing wage floors—has obtained a wide range of city-based workplace protections for low-wage workers, including wage and benefit floors, safety and health requirements, and prohibitions on sexual harassment. Elmore, *supra* note 5.

391. *See* Austin Sarat & Stuart Scheingold, *Cause Lawyering and the Reproduction of Professional Authority: An Introduction*, *in* CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 3 (Austin Sarat & Stuart Scheingold eds., 1998).

392. *See* Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937–1941*, 62 MINN. L. REV. 265, 265–339 (1978). Fisk and Reddy reframe this critical lens by focusing on the role of labor lawyers who, while drawn to labor law in order to advance the labor movement, are constrained by "the constant threat of legal liability" in the advice they give unions. Fisk & Reddy, *supra* note 16, at 129.

legal design to campaign success: showing how the content and meaning of law can reframe labor goals and influence outcomes. This insight builds upon and extends the existing law and social movements literature in important directions.

Social scientists and legal scholars have generally approached the relationship between law and social movements from two perspectives that have undervalued the critical role of legal design. From the first perspective, scholars have focused on the idea of legal mobilization: the use of law by social movement organizations as leverage to advance political goals.[393] Legal mobilization scholars tend to view law as "tactical,"[394] one tool among many used to pressure political decision makers, raise consciousness among constituents, and motivate collective action. While scholars have stressed the importance of law in shaping the legal opportunity structure within which mobilization occurs,[395] the creation of law itself has not figured prominently in accounts of movement-centered legal advocacy since law is understood as a weak constraint on power, valuable primarily for its indirect effects.[396] Moreover, the cause lawyering literature has not focused significant attention on the role of lawyers in fashioning law outside of court. While this literature highlights helpful distinctions in lawyerly approaches,[397] its predominant focus has been on the role of lawyers in litigation and the tradeoffs of litigation for movement mobilization.[398] From the second perspective on law and social movements, scholars have initiated critical efforts to reimagine legal regimes "explicitly designed to facilitate organizing" to rebalance political power in the United States,[399] while promoting legal development that responds to social movement priorities.[400] However, like the legal mobilization literature, this perspective does not center the *method* by which legal concepts become codified as law, nor does it analyze how lawyers add value to collective action through creative

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393. *See* MCCANN, *supra* note 108; *see also* Douglas NeJaime, *The Legal Mobilization Dilemma*, 61 EMORY L.J. 663, 677–87 (2012).

394. Lynette J. Chua, *Pragmatic Resistance, Law, and Social Movements in Authoritarian States: The Case of Gay Collective Action in Singapore*, 46 L. & SOC'Y. REV. 713, 722–36 (2012).

395. Lisa Vanhala, *Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK*, 46 L. & SOC'Y REV. 523, 543–48 (2012).

396. *See* Emilio Lehoucq & Whitney K. Taylor, *Conceptualizing Legal Mobilization: How Should We Understand the Deployment of Legal Strategies?*, 45 L. & SOC. INQUIRY 166 (2020); *see also* GERALD N. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? 5 (1991).

397. For an excellent overview of the literature, see Thomas M. Hilbink, *You Know the Type...: Categories of Cause Lawyering*, 29 LAW & SOC. INQUIRY 657, 664 (2004) (comparing "[v]anguard" lawyers in the lead of movements, often overtaking movement goals in ways that are detrimental, and client-centered "[g]rassroots" lawyers, following instructions dictated by movement leaders).

398. Catherine Albiston, *The Dark Side of Litigation as a Social Movement Strategy*, 96 IOWA L. REV. BULL. 61 (2011).

399. *See* Andrias & Sachs, *supra* note 11, at 584, 592–93 (proposing, in addition to establishing legal rights, legal regimes that protect against retaliation and provide organizers with necessary information, access to property, and administrative advocacy openings to organize).

400. *See* Guinier & Torres, *supra* note 16, at 2800–01.

approaches to the interpretation, drafting, and mobilization of law in the *policymaking process*.

This Article bridges these perspectives—on the content of law and its utility in mobilization—by highlighting how legal design can create *conditions of possibility* for collective action. Specifically, our account of the LA living wage movement contributes new evidence revealing the ways that lawyers with expertise in labor and local government law shape the design of local rules to create opportunities for unionization and broader power building. Doing so adds dimension to Catherine Fisk's analysis of labor movement lawyers by illuminating the role they play behind the scenes:[401] creating new pro-labor legal rights that avoid federal preemption, exploiting the fragmentation of local power to advance those rights, disciplining recalcitrant governmental agencies, and neutralizing employer countermeasures. Crucially, our historical analysis helps to reframe the role of lawyers in the policy process by showing how they work with movement activists in active partnership—neither dominating nor simply following orders—to craft novel meanings of labor law essential to advancing legal strategies toward more ambitious goals. In this way, labor lawyers promote a pro-movement vision of law by designing new legal rules, which not only provide defensive cover, but also create a platform for offensive action contributing to direct, tangible changes in the structure of power. In the LA living wage movement, lawyers promoted this vision through four key interventions.

First, as the case study underscored, lawyers working on behalf of the movement legitimized local labor law by designing around federal preemption. Labor lawyers developed mobilizable law, sometimes from whole cloth: using exemplars from Baltimore and Washington, D.C. to produce templates for worker retention and living wage ordinances and then refashioning or creating from scratch defensible plus factors to advance union organizing goals. This effort required labor lawyers to analyze the organizing context in which the laws would be deployed and the legal context in which they would be attacked: specifically, how the plus factors could facilitate unionization while avoiding NLRA preemption and employer countermeasures. Through this process of designing and defending mobilizable labor law, lawyers played critical leadership roles, shaped by deep commitment to and participation in the labor movement, using law, in the words of Janis-Aparicio, to "create a pathway forward when the pathway is fraught with lots of obstacles."[402]

Second, to help build support for living wage laws, lawyers had to affirmatively mobilize pro-movement legal interpretations during the policymaking process to overcome political and legal resistance. Understanding how lawyers shape legal meaning in the policy process makes a contribution to legal mobilization studies by spotlighting lawyers' use of legal discourse, symbols, and norms as persuasive materials to strengthen the legal consciousness of movement actors and influence legal meaning-making outside of court.[403] Specifically, our account of the living wage movement sheds empirical light on how legal mobilization in the policy process can establish and defend pro-movement legal understandings by neutralizing

401. Catherine L. Fisk, *Movement Lawyers: The Tension Between Solidarity and Independence*, 97 IND. L.J. 755, 762–63 (2022).

402. Interview with Madeline Janis, *supra* note 99.

403. *See* Susan S. Silbey, *After Legal Consciousness*, 1 ANN. REV. L. & SOC. SCI. 323 (2005).

legal objections and thereby building support among official decision-makers. In the LA campaign, drafting legal opinions that upheld the validity of new living wage rules against the backdrop of preemption was essential to overcome opposition by the mayor to living wage requirements for recipients of city subsidies and the city attorney's narrow interpretation of the market participation exception to NLRA preemption. This analysis enabled movement lawyers to provide legal authority for supportive local policymakers to advance their policy preferences. In this way, legal interpretation was crucial in creating a pro-labor legal frame,[404] which had direct consequences in expanding the legal opportunity structure for living wage enactment.

Third, LA's living wage history reveals how lawyers proactively responded to bureaucratic resistance to living wage law,[405] bringing ready-made legal analysis to city officials, challenging agency backsliding, and redesigning agency oversight and implementation to shift the balance of enforcement power. An important sociolegal critique of legal mobilization emphasizes how legal victory can be undone by hostile agency officials with front-line discretion to undermine legal mandates.[406] The LA case demonstrates how lawyers pushed back against agency intransigence by pursuing proactive fact discovery—obtained through public records requests and agency relationships—to learn about implementing agency (the BCA) missteps, engaging in internal agency advocacy, and applying external watchdog pressure to address noncompliance and outright living wage nullification (in the case of the DWP). The coalition's research and administrative advocacy ultimately built a case for hiring an outside expert to assess implementation and sidelined the BCA. This paved the way for the Los Angeles City Council's decision to reassign enforcement to an agency (the CAO) more supportive of living wage goals. While providing the campaign with access to workers seeking to enforce living wage requirements and ultimately to join unions, fact discovery and administrative advocacy also contributed to the resilience of the LA labor movement by forging political alliances with local officials who supported the movement's goals over the longer term.[407]

Finally, contrary to critical portraits of lawyers winning legal victories that invite backlash resulting in movement retrogression,[408] lawyers in the LA living wage campaign pursued anticipatory responses to industry countermobilization to mitigate resistance by structurally powerful actors, while learning critical lessons from failure. Predicting and proactively addressing countermobilization was built into the living wage movement's comprehensive campaign plan, which sought to game out

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404. *See* Robert D. Benford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 ANN. REV. SOCIO. 611 (2000).

405. *See* JOEL F. HANDLER, SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE 209 (1978).

406. Albiston, *supra* note 398, at 61–77.

407. Stephanie Luce makes a similar point in emphasizing the importance of administrative advocacy by community organizations in the implementation of living wage laws to ensure compliance with the living wage requirements. Stephanie Luce, *The Role of Community Involvement in Implementing Living Wage Ordinances*, 44 INDUS. RELS. 32, 56 (2005).

408. *See* Michael J. Klarman, *How* Brown *Changed Race Relations: The Backlash Thesis*, 81 J. AM. HIST. 81, 84 (1994).

employer strategies and anticipate the need for fallback tactics. From the outset, the design of the living wage plus factors helped the Respect at LAX campaign to level the playing field at the airport, where campaign leaders anticipated that the airlines would resist contractor status and living wage compliance. After the campaign's initial failure to obtain an airport-wide labor peace policy, leaders mobilized the plus factors, particularly rights to information about legal compliance, to threaten airline lease renewals and push the airlines to encourage their subcontractors to adopt labor neutrality. This project succeeded with United after the campaign went back to City Council to amend the ordinance to make it crystal clear that airlines were covered.

Campaign leaders, and the labor lawyers advising them, did not always make accurate predictions or the correct preemptive moves. Yet through the iterative process of building labor power with successive campaigns, leaders could respond to short-term setbacks and learn valuable lessons for future cycles.[409] For example, the mayor's political success in exempting the CRA from the original living wage ordinance led lawyers to design CBAs as a different way to apply living wage requirements to CRA-funded developers and—crucially—their commercial tenants. In a similar vein, the 2002 failure to win a zone-based living wage ordinance in Santa Monica (due to hotel disinformation in the referendum process) reinforced the need to develop multifaceted insider and public-facing strategies to support a new legal framework that could overcome countermobilization in the future. This lesson helped campaign leaders to secure the city's first zone-based living wage ordinance covering LAX hotels in 2009 by enlisting the support of pro-labor Mayor Villaraigosa to negotiate a compromise ordinance to avoid a hotel-sponsored referendum. This compromise ordinance was drafted with input by labor lawyers to lock in key mobilizable provisions while giving employers financial incentives to secure their support. As this suggests, tracing campaign evolution over time reveals a fuller picture of how labor lawyers helped develop proactive living wage policymaking and organizing strategies that accounted for previous lessons and coalesced around a well-defined repertoire that enabled the movement to build power necessary to achieve broad, durable goals.

C. Responding to NLRA Weaknesses and Preemption Through Legal Innovations in Local Labor Law

Examining the legal tools fashioned by the LA living wage movement and their development over time deepens understanding of how local labor law can proactively respond to NLRA weaknesses despite preemption. The NLRA only weakly protects the rights to join unions, collectively bargain, and strike. The NLRA permits employers, with limited exceptions, to ignore a clear showing of majority

409. Douglas NeJaime uses the term "winning through losing" to describe "ways in which the failure of courts and litigation may, within a dynamic system of law and social change, actually produce positive effects for a social movement." Douglas NeJaime, *Winning Through Losing*, 96 IOWA L. REV. 941, 956 (2010). Our account of living wage campaigns in Los Angeles contributes to this concept by offering a policymaking version of winning through losing, in which iterative, dynamic campaigns use policy innovations to achieve new movement goals. As Fisk and Reddy explain, "[l]osing [t]hrough [l]osing" in litigation is also a familiar concept for organized labor. Fisk & Reddy, *supra* note 16, at 132–34.

union support by employees through authorization cards and engage in aggressive anti-union campaigns during a lengthy election process.[410] Even after union recognition, employers may refuse to include reasonable work standards in collective bargaining agreements and permanently replace employees who strike to demand them.[411] While egregious conduct—such as closing stores and terminating employees to chill union support—does violate the NLRA, the law's "make-whole" remedy (often limited to backpay and benefits) does not provide penalties and does little to deter hostile employers.[412] And even this remedy is unavailable to workers who lack authorization to work.[413]

The LA living wage coalition sought to overcome these weaknesses with local policymaking targeting companies with financial relationships to the city in order to encourage these employers (or their tenants or contractors) to remain neutral in union campaigns to win collective bargaining agreements. As discussed in Part II.B, NLRA preemption constrains this strategy. Local lawmaking may not regulate conduct "arguably" protected or prohibited by the NLRA (*Garmon* preemption), or intended by the NLRA to be left to private ordering by employers and unions (*Machinists* preemption).[414] While NLRA preemption does not intrude on a city's authority to enact laws of general applicability, *Garmon* and *Machinists* preemption bars cities from compelling private employers to maintain labor neutrality or resolve a labor dispute unless the city, as in *Boston Harbor*, acts as a market participant.[415] The LA living wage coalition developed two important legal innovations to strengthen labor rights while avoiding preemption: labor peace policies in public assets, falling within the market participation exemption, and mobilizable provisions of general applicability, which do not depend on market participation. Both innovations have proven influential well beyond the LA living wage context.

The first legal innovation, pioneered in the Respect at LAX campaign, was a labor peace policy requiring private employers operating in publicly held assets (like airports) not to oppose a union in their workplaces. LAX could enact a labor peace policy, Respect at LAX lawyers argued, under the market participant exception to NLRA preemption. But labor peace policies in publicly held assets, as shown in our case study and in later campaigns, are heavily contested by employers. The LA living wage coalition was unsuccessful in obtaining labor peace during Respect at LAX, although the Airport Department later adopted a "Labor Harmony" policy in 2014

410. *See, e.g.*, Linden Lumber Div., Summer & Co. v. N.L.R.B., 419 U.S. 301, 309–10 (1974); Babcock & Wilcox Co., 77 N.L.R.B. 577 (1948).

411. 29 U.S.C. § 158(d); H. K. Porter Co. v. N.L.R.B., 397 U.S. 99, 109 (1970); Hot Shoppes, Inc., 146 N.L.R.B. 802, 805 (1964); N.L.R.B. v. Mackay Radio & Tel. Co., 304 U.S. 333, 345 (1938).

412. Ex-Cell-O Corp., 185 N.L.R.B. 107, 108–09 (1970); *see* Phelps Dodge Corp. v. N.L.R.B., 313 U.S. 177, 197–98 (1941).

413. Hoffman Plastic Compounds, Inc. v. N.L.R.B., 535 U.S. 137, 151–52 (2002).

414. San Diego Bldg. Trade Council v. Garmon, 359 U.S. 236, 246 (1959); Lodge 76, Int'l Ass'n of Machinists v. Wis. Emp. Rels. Comm'n, 427 U.S. 132, 154 (1976).

415. Bldg. & Constr. Trades Council v. Associated Builders & Contractors, 507 U.S. 218, 232–33 (1993); Golden State Transit Corp. v. City of Los Angeles, 475 U.S. 608, 619 (1986).

(discussed below).[416] Outside of LA, while unions won labor peace policy at SFO, the Port of Seattle rebuffed the unions' request for a similar policy at SeaTac. But, despite this, labor peace requirements have become a common strategy for unions seeking to organize service workers in airports. Unions have since the late 1990s won labor peace policies in many major airports in the United States, including Chicago, Miami, Philadelphia, and San Jose.[417]

While labor peace policies in airports are vulnerable to NLRA preemption, they have largely survived challenges, even after the Supreme Court in 2008 narrowed the market participant theory in *Chamber of Commerce v. Brown*.[418] In *Brown*, the Supreme Court found that the market participant exception did not apply to a state law that prohibited contractors from using state funds to oppose unions.[419] But the state law in *Brown* can be distinguished from labor peace policies closely tied to a city's proprietary interest. For the *Brown* court, it was the overbreadth of the state law and its onerous and unequal compliance regime that evinced a state policy of favoring employers that supported unions, which *Machinists* forbids.[420] *Brown* does not cast doubt on *Boston Harbor* as precedent for cities seeking to establish labor peace policies in publicly held assets.[421] Courts before and after *Brown* have consistently upheld city labor peace requirements that are tailored to the city's proprietary interests in safety, security, and efficiency in public services.[422]

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416. Brian Sumers, *Setting up Possible Legal Battle, Los Angeles Sets Rules That Should Help LAX Unions*, DAILY BREEZE (May 5, 2014, 8:21 PM), https://www.dailybreeze.com/2014/05/05/setting-up-possible-legal-battle-los-angeles-sets-rules-that-should-help-lax-unions/ [https://perma.cc/2TGC-TZW8].

417. U.S. CHAMBER OF COM., LABOR PEACE AGREEMENTS: LOCAL GOVERNMENT AS UNION ADVOCATE 13–15 (2016) (listing labor peace policies covering airports); Alexia Elejalde-Ruiz, *City Council Approves Law Boosting Pay, Easing Unionization for Airport Workers*, CHI. TRIB. (Sept. 6, 2017, 2:40 PM) https://www.chicagotribune.com/business/ct-airport-worker-ordinance-passed-0907-biz-20170906-story.html [https://perma.cc/847L-76E5]; Damon C. Williams, *City Council Moves to Secure Labor Peace at Airport*, PHILA. TRIB. (Dec. 12, 2014) https://www.phillytrib.com/news/city-council-moves-to-secure-labor-peace-at-airport/article_7d0c5d4e-53b6-5a13-8d18-892bbaeee69a.html [https://perma.cc/SHU4-CVTV]. According to the U.S. Chamber of Commerce, by 2016, unions had sought or obtained labor peace agreements in over a dozen airports in the United States. U.S. CHAMBER OF COM., *supra*, at 1.

418. 554 U.S. 60 (2008).

419. *Id.* at 63 (quoting 2000 Cal. Stat. ch. 872, § 1).

420. *Id.* at 73–74.

421. California, in forbidding state contractors from using state funding to oppose unions, the *Brown* Court held, sought to further a labor policy rather than protect a proprietary interest, and exceeded its sovereign interests by imposing on employers exorbitant "compliance costs and litigation risks" and in exempting costs related to union use of employer property and card-check recognition. *Id.* at 70–71.

422. *See, e.g.*, Hotel Emps. & Rest. Emps. Union, Loc. 57 v. Sage Hosp. Res., L.L.C., 390 F.3d 206, 214 (3d Cir. 2004) (city that issued bonds to fund development project has a proprietary interest in labor peace agreement to ensure that the development will yield tax revenue to service and retire the bonds); Airlines for Am. v. City & Cnty. of S.F., 598 F. Supp. 3d 748, 773 (N.D. Cal. 2022) (finding that market participant exception applies to San Francisco's requirement of medical insurance coverage for employees of SFO contractors, because of city's proprietary interest in "restor[ing] public confidence in air travel," and "to

LAX's 2014 "Labor Harmony" policy shows how cities can distinguish *Brown* in adopting labor peace in airports that fall within the market participant exception. While the Airport Department enacted this policy a decade after the Respect at LAX campaign, the Labor Harmony policy accomplished a key campaign goal and drew support from LA living wage coalition former members and allies. The policy covers LAX "baggage handling, aircraft cleaning, wheelchair pushing and aircraft marshaling" employees, whom the SEIU had been seeking to organize since Respect at LAX, and obligates employers to sign agreements with unions requiring arbitration of the agreement's terms if the employer and union reach impasse.[423] It received support from the SEIU local union organizing these workers in LAX, Mayor Eric Garcetti, who the SEIU endorsed, and Airport Commissioner Jackie Goldberg. Echoing her earlier support for living wage laws in the LA City Council, Goldberg argued that the policy was necessary to protect the city's "proprietary interest" in protecting its investments in LAX as a "world-class" airport.[424] Airline trade associations quickly filed suit on NLRA preemption grounds. But the Ninth Circuit in *Airline Service Providers Association v. Los Angeles World Airports* found that the NLRA did not preempt this stripped-down version of labor peace on market participant grounds.[425] Unlike the California law the Supreme Court criticized as overbroad in *Brown*, here Los Angeles "merely imposed a contract term on those who conduct business at LAX, which the City operates, and that . . . serves a cabined purpose."[426] The Supreme Court denied certiorari in 2019,[427] offering important precedent for other union campaigns in airports and other publicly held assets.

While establishing legal grounds for labor peace, publicly held assets offer other organizing advantages. These advantages flow from the ability of unions to target firms that would otherwise be difficult to organize, especially chain retail establishments owned by large, sophisticated corporations,[428] and contractors in

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improve the safety, security, and efficiency of SFO by retaining high-quality employees, such as mechanics and baggage handlers"). Courts that have found labor peace agreements preempted by the NLRA identified significant spillover effects from them, and that the city rejected easily available alternatives without these effects, from which the court inferred that the city's motive was regulatory rather than proprietary. *See, e.g.*, Metro. Milwaukee Ass'n of Com. v. Milwaukee Cnty., 431 F.3d 277, 282 (7th Cir. 2005).

423. Sumers, *supra* note 416; Airline Serv. Providers Ass'n v. L.A. World Airports, No. CV 14–8977–JFW (PJWx), 2015 WL 13546227, at *2 (C.D. Cal. Mar. 18, 2015), *aff'd in part, vacated in part*, 869 F.3d 751 (9th Cir. 2017), *withdrawn from bound volume, opinion withdrawn and superseded on reh'g in part*, 873 F.3d 1074 (9th Cir. 2017), *and aff'd*, 873 F.3d 1074 (9th Cir. 2017) (discussing Section 25 of the Certified Service Provider License Agreement, titled Labor Harmony, approved by the Board of Airport Commissioners of Los Angeles World Airport in 2014).

424. Sumers, *supra* note 416.

425. 873 F.3d 1074 (9th Cir. 2017).

426. *Id.* at 1084.

427. Airline Serv. Providers Ass'n v. L.A. World Airports, 139 S. Ct. 2740 (2019).

428. The often-insurmountable challenges facing employees in small chain stores seeking to join a union and collectively bargain is most recently illustrated by the alleged "corporate dirty war" by Starbucks of closing stores, firing pro-union workers, indefinitely delaying bargaining, and endlessly litigating NLRB determinations as a union avoidance strategy. *See* Megan K. Stack, Opinion, *Inside Starbucks' Dirty War Against Organized Labor*, N.Y. TIMES

fissured industries in which companies that effectively direct the work of their subordinate firms' employees disclaim any employment relationship.[429] The conventional wisdom, informing union reluctance to organize employees of small contractors, chain stores, and fast-food franchisees, is that organizing these employers is difficult and unlikely to result in a collective bargaining agreement.[430] Targeting such firms in public assets, however, changes the strategic calculus. In contrast to similar firms outside of public assets, airport-based service, food, and retail companies are often linked by contracts to larger companies that depend on the public asset for their business. Another strategic advantage of public assets is that local governments reliant on the safe and efficient services of private employers can be pressured to support union demands. As our case study reveals, community-labor coalitions can build on these strategic advantages by using mobilizable labor law to effectively organize private employers in publicly held assets.

Such coalitions have moved beyond airports to apply labor peace policies to other publicly owned assets. For example, in 2021, Los Angeles County announced a labor peace policy for hotels, restaurants, and other food concessionaires operating on county-owned property.[431] However, local labor lawmaking dependent on the market participant exception may face other preemption risks depending on the legal context. In a prominent example, on the heels of Respect at LAX, the Teamsters and LAANE launched a campaign targeting another city-owned asset, the Port of Los Angeles. The goal was to win a policy ending port truck driver misclassification by requiring trucking firms to buy clean-fuel trucks and hire employee drivers as a condition of entering port property.[432] To win this policy, LAANE assembled an intermovement coalition, this time including environmental and community partners, alongside the Teamsters union,[433] and deployed all the legal tools at hand. The Natural Resources Defense Council filed an important lawsuit blocking port

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(July 23, 2023), https://www.nytimes.com/2023/07/21/opinion/starbucks-union-strikes-labor-movement.html [https://perma.cc/5P53-FVG4]; Justin Stabley, *Why Scrutiny of Starbucks' Alleged Union Violations is Boiling Over Right Now*, PBS (March 29, 2023, 6:00 AM), https://www.pbs.org/newshour/economy/the-union-busting-practices-that-landed-starbucks-in-hot-water [https://perma.cc/8USR-QSF6].

429. *See* WEIL, *supra* note 2, at 93–182.

430. In franchised relationships, such as in the fast-food sector, the conventional wisdom is that productive collective bargaining requires the participation of the franchisor, who often determines all the key aspects of the work relationship. But under the NLRA, a franchisor has no duty to bargain unless it is a joint employer, which is currently an open question. *See* Andrew Elmore, *Franchise Regulation for the Fissured Economy*, 86 GEO. WASH. L. REV. 907, 938–39 (2018); Andrew Elmore & Kati L. Griffith, *Franchisor Power as Employment Control*, 109 CAL. L. REV. 1317, 1346–55 (2021).

431. Stokes Wagner & W. Baker Gerwig, IV, *LA Requires Labor Peace Agreements for Hospitality Operations on LA County Property*, JDSUPRA (Oct. 6, 2021), https://www.jdsupra.com/legalnews/la-requires-labor-peace-agreements-for-2885656/ [https://perma.cc/AXQ2-BTZM] (discussing L.A., CAL. CTY. POLICY 5.290 (2021)). Like the LAX labor peace policy, this policy does not impose any specific requirements on employers except that the covered employers reach labor peace agreements with unions, which must prohibit economically disruptive activity. *Id.*

432. CUMMINGS, *supra* note 23, at 8–11.

433. *Id.* at 10.

expansion until it agreed to remediate air pollution caused by port operations, including its diesel trucks.[434] This—combined with misclassification lawsuits against trucking firms—created policy space for the coalition to pressure the mayor-appointed commission that ran the port to change port rules to address the linked problems of air pollution and labor precarity caused by driver misclassification.[435] In the face of this pressure, the port commission agreed to pass a new rule, codified by the LA City Council in 2008, requiring the port to enforce contracts with trucking firms that blocked those firms from accessing port property unless they agreed to convert trucks to clean fuel and drivers to employees.[436] The legal justification put forth to convince the Los Angeles City Attorney and City Council that it would not be preempted was the market participation exception: because the city operated the port like a business and needed smooth operations not disrupted by lawsuits over pollution and employee status, the Clean Truck Program was necessary to advance the port's proprietary interests.[437] While persuading the city, the program was ultimately struck down on preemption grounds—under a distinct federal trucking law, not the NLRA[438]—suggesting that the preemption risks of targeting public assets under a market participant theory may vary by industry context.

The second important legal innovation of the LA living wage coalition was to define a range of mobilizable labor provisions that operated as laws of general applicability and therefore did not depend on market participation to avoid preemption. Our case study has focused on the importance of specific plus factors—including union opt-outs, retention requirements, city penalties and private rights of action, information rights, and antiretaliation provisions—designed to help advance organizing campaigns. They did this by encouraging employers not to oppose their employees joining unions (instead of *requiring* neutrality, as in labor peace policies) through union opt-outs,[439] counteracting barriers to vindicating workplace rights, and deterring aggressive employer tactics that chill worker participation. As noted earlier, uniform private or public enforcement regimes to enforce laws of general applicability, such as minimum wage requirements, do not implicate NLRA preemption because they "neither encourage[] nor discourage[] the collective-bargaining process[]."[440] Since mobilizable labor law terms do not require a city to demonstrate that it acts as a proprietor rather than a regulator, they are less vulnerable to NLRA preemption challenges than labor peace. As was the case in LAX and in SeaTac, mobilizable provisions can be used, even lacking a labor peace policy, to address challenges of organizing in low-wage workplaces where NLRA weaknesses

434. *Id.*
435. *Id.* at 8–9.
436. *Id.* at 10.
437. *Id.* at 58.
438. *Id.* at 11.
439. Opt-outs remain controversial as being vulnerable to union "sweetheart" deals. *See* Dominic Gates, *What Minimum Wage?*, SEATTLE TIMES, Apr. 1, 2018, at D4 (quoting David Rolf, president of SEIU local involved in campaign, who was critical of opt-outs for "invit[ing] game-playing," despite acknowledging that they can create "flexibility in labor negotiations").
440. Metro. Life Ins. Co. v. Massachusetts, 471 U.S. 724, 755 (1985).

are pronounced.[441] Perhaps for this reason, mobilizable labor law provisions have become a standard element of airport service worker union organizing campaigns. Unions have since the late 1990s won living wage and benefit requirements at airports in twenty cities in the United States, which by the SEIU's estimate has led to pay increases for 120,000 airport workers, and to 30,000 airport workers winning union representation with the SEIU.[442]

Because mobilizable labor law terms do not require a market participant justification to avoid NLRA preemption, they are not limited to airports and other workplaces with local fiscal ties. Accordingly, some unions and worker centers have adapted such terms to support organizing campaigns in other low-wage contexts. For instance, the LA CLEAN Carwash Campaign used opt-outs as a legal tool to facilitate unionization in the car wash industry, where unions are entirely absent. In an organizing campaign focused on wage theft, the campaign helped establish a 2014 state restitution fund (paid for with car wash fees) to recover unpaid wages, which included an increased labor bond amount and an opt-out provision for employers that agree to bona fide collective bargaining agreements.[443] The opt-out provision led dozens of car washes to enter into collective bargaining agreements in Southern California.[444]

Recent campaigns have extended the mobilizable labor law concept in new directions. In 2021, the Fight for $15 campaign in New York City won a Wrongful Discharge Law that includes antiretaliation protection to support fast-food worker organizing.[445] This law establishes a freestanding just cause termination standard (not tied to an underlying wage law) for fast-food workers.[446] Like minimum wage and worker retention, a just cause standard is a law of general applicability, which makes it unlikely to be preempted by the NLRA.[447] A just cause standard can protect

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441. Fight for $15, for example, has targeted stores in publicly funded highway rest stops. *See, e.g.*, Josh Eidelson, *Connecticut's Rest-Stop McDonald's Are New 'Fight for $15' Target*, BLOOMBERG (Aug. 26, 2019, 4:00 AM), https://www.bloomberg.com/news/articles/2019-08-26/connecticut-rest-stop-mcdonald-s-are-new-fight-for-15-target [https://perma.cc/7SQ9-93BR].

442. Ken Jacobs et al., *supra* note 345, at 1142–43.

443. Andrew Elmore, *Collaborative Enforcement*, 10 NE. UNIV. L. REV. 72, 105–06 (2018). *See generally* CAL. LAB. CODE § 2055 (West 2022).

444. Victor H. Narro, *The Role of Labor Research and Education in the Labor Movement of the Twenty-First Century: The UCLA Labor Center and the CLEAN Carwash Campaign*, *in* THE CAMBRIDGE HANDBOOK OF U.S. LABOR LAW FOR THE TWENTY-FIRST CENTURY 402 (Richard Bales & Charlotte Garden eds., 2020).

445. N.Y.C., N.Y. ADMIN. CODE § 20-1272(a) (2021).

446. *Id.* The Wrongful Discharge Law prohibits fast-food employers from firing covered employees without notice or reason, except in cases of "just cause or for a bona fide economic reason." *Id.*

447. A trial court recently upheld this provision against an employer suit on NLRA preemption and other grounds, which, at writing, is on appeal. Rest. L. Ctr. v. City of New York, 585 F. Supp. 3d 366, 376–82 (S.D.N.Y. 2022), *appeal docketed*, No. 22-491 (2nd Cir. Mar. 9, 2022) (quoting N.Y.C., N.Y. ADMIN. CODE § 20-1272(a) (2021)) (finding that the NLRA does not preempt the Wrongful Discharge Law because it is a law of "general applicability aimed at promoting job stability for hourly employees in a particular sector—the fast food restaurant industry").

workers seeking to join a union by prohibiting employers from hiding unlawful retaliation behind arbitrary and false grounds for discharge that would be facially lawful in an at-will workplace.[448] It can also reduce worker fears about arbitrary treatment, whether or not related to union organizing.[449] In this regard, just cause has been used to advance Fight for $15's recent campaigns against sexual harassment and unsafe workplace conditions in the fast-food sector by encouraging workers to speak out.[450] By establishing job security as a general baseline, just cause contributes to Fight for $15's effort to use mobilizable labor law to build labor power for fast-food workers at the city level. As observers note, whether Fight for $15 will ultimately facilitate union membership in the fast-food sector is unclear.[451] But wrongful discharge ordinances demonstrate the ongoing evolution of mobilizable labor law to advance union campaigns by counteracting barriers to vindicating workplace rights and overcoming aggressive employer tactics designed to thwart unions.

D. Rethinking the Value of Localism for Social Movements

That cities have become critical battlegrounds of policy reform on a range of hot-button issues—from climate change to immigration to LGBTQ+ rights to abortion—is a well-documented fact of American democracy in the contemporary period of low federal leadership and high polarization.[452] In this environment, it is commonplace—and correct—to situate labor localism in relation to these structural changes and map familiar red-blue state and local policy schisms.[453] As we put it earlier, one can view the turn by organized labor—and other progressive social movements—to cities for political influence and policy experimentation as a "second-best" strategy: a forced retreat from national policymaking given existing constraints. From this perspective, until the labor movement can regain influence over levers of national power,

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448. KATE ANDRIAS & ALEXANDER HERTEL-FERNANDEZ, ROOSEVELT INSTITUTE, ENDING AT-WILL EMPLOYMENT: A GUIDE FOR JUST CAUSE REFORM 15–17 (2021).

449. Patrick McGeehan, *After Winning a $15 Minimum Wage, Fast Food Workers Now Battle Unfair Firings*, N.Y. TIMES (Feb. 12, 2019), https://www.nytimes.com/2019/02/12/nyregion/fast-food-worker-firings.html?searchResultPosition=1 [https://perma.cc/X7K6-WE3H].

450. *See* Elmore, *supra* note 5, at 298 (discussing Fight for $15 strikes and litigation to counter sexual harassment and the lack of protective equipment during the COVID-19 pandemic).

451. *See, e.g.*, Diana S. Reddy, *After the Law of Apolitical Economy: Reclaiming the Normative Stakes of Labor Unions*, 132 YALE L.J. 1391, 1458 (2023) (noting that Fight for $15 "has thus far won $68 billion in raises for 22 million low-wage workers, but it has not directly grown union membership, at least not yet"). For an argument that Fight for $15's coordinated strikes and litigation strategies may "facilitate long-run unionization efforts, as litigation brings franchisors' current exclusion from the employment relationship into closer, sustained judicial scrutiny," see Elmore, *supra* note 5, at 298.

452. Byron Tau, *Urban America: The Latest Battleground in Policy Making*, WALL ST. J. (Jan. 26, 2015, 6:00 AM), https://www.wsj.com/articles/BL-WB-52468 [https://perma.cc/FJ9Q-G4B9].

453. *See*, *e.g.*, *Minimum Wage Tracker*, ECON. POL'Y INST. (July 1, 2023), https://www.epi.org/minimum-wage-tracker/.

developing pro-labor policy and building union density in cities where the majority of Americans live and work is the best available option. And in pursuing this option, localism succeeds by finding the space within city authority—threading the needle of federal *and* state preemption[454]—to make incremental change.

While not disputing this "push" theory of city-level mobilization, our account of the LA living wage movement offers a more complicated view of the role of localism in social movement struggles for policy influence and power. By tracing the twenty-year history of living wage lawmaking, our account reframes localism as part of a long-term policy dialogue in a multilevel framework, in which movement activists battle opponents to shift attitudes and build political support for new ideas across political scales. In this framework, there is no hard boundary between federal, state, and local lawmaking spheres, but rather a set of ongoing contests over legal norms structured through dynamic engagement between movement activists, opponents, and political officials.[455] These contests are shaped by the existing rules of federal and state preemption and local home rule authority, while challenging and seeking to transform those rules in the process of political struggle. The goal of local legal mobilization in this multilevel framework is not just to find space for new ideas but to contest and change the boundaries of local authority over time. In this process, scale-shifting—moving policy disputes from local to state to federal in an iterative cycle—is the rule, not the exception. According to this rule, we would expect to see new policy ideas like the living wage touted on the national stage, enacted in state and local legislatures, challenged in courts, and revised and refined based on the outcomes of legal fights. Rather than viewing cities as "laboratories" of democratic experimentation,[456] this dynamic vision of localism sees cities as *engines* that activists jump start to push out policy ideas both vertically (to state and federal governments) and horizontally (to other cities). The engine metaphor captures the intentionality with which activists leverage city power to produce new law oriented toward *local power-building* as well as *vertical scalability and horizontal diffusion*.

From a strategic localist perspective, big U.S. cities like Los Angeles serve as anchors of labor mobilization because of the political and legal advantages they afford. Politically, big cities are places with diverse populations and younger, left-leaning voters who are more open to supporting redistributive and inclusive policy reform. In addition, these cities—while shaped by ongoing structural forces of racial and economic segregation—are places where it is nonetheless possible for low-income communities and communities of color to demand responsive

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454. *See Workers' Rights Preemption in the U.S.: A Map of the Campaign to Suppress Workers' Rights in the States*, ECON. POL'Y INST. (Aug. 2019), https://www.epi.org/preemption-map/ [https://perma.cc/2B7E-R7Z6].

455. *See* Scott Cummings, *Catalytic Localism: What Is New About the Green New Deal?*, 97 CHI.-KENT L. REV. 291 (2022).

456. Alan Ehrenhalt, *How Cities Became the New Laboratories of Democracy*, GOVERNING (Sept. 18, 2018), https://www.governing.com/archive/gov-urban-power.html [https://perma.cc/262E-RBRR]. While conventional wisdom holds that states are "laboratories of democracy," recent scholarship suggests that they can also be incubators of authoritarianism. Fabio de Sa e Silva, *Good Bye, Liberal-Legal Democracy!*, 48 LAW & SOC. INQUIRY 292, 308 (2023).

representation,[457] providing opportunities for marginalized interests to exercise political voice at the city level and to gain greater access to decision-makers. From a legal perspective, cities have a degree of control over local economic activity that can be shaped to workers' advantage. In particular, cities empowered under state home rule grants have latitude to regulate areas of traditional local concern, which include city contracting and land use.[458] And as we have already suggested, cities are further empowered to act as private business owners with respect to their control over assets and operations in which they have proprietary interests, thereby avoiding state and federal regulations that constrain cities in their capacity as public actors.[459]

The LA living wage movement used all of these legal tools in its multidimensional effort to strengthen workers' rights: tying living wage mandates to government contracts, leveraging land use processes to negotiate CBAs, and invoking the city's status as a business owner to support labor peace at LAX. The important point is that city advantages provide an *affirmative rationale* for local mobilization: cities have authority to perform functions that higher-level government entities either cannot perform—or do not perform well—and the political incentives to act in ways that are more responsive to people's needs. This gives social movements opportunities for strategic action not as available at other levels of government power. It is for this reason that cities have received attention from progressive groups seeking to address the most pressing social issues of our time and why progressive-leaning organizations, like the Local Solutions Support Center, have advocated strengthening home rule authority in order to expand big city power to legislate without being countermanded by state preemption[460]—particularly relevant in conservative states pursuing "new" preemption tactics to completely disable progressive city action.[461]

The LA living wage movement sought to leverage strategic city advantages to *build local power* through deliberate steps.[462] Movement leaders first sought to identify and reassert control over those local government tools that had historically been used to disempower workers: specifically, city contracting (used to privatize the city workforce) and redevelopment (used to subsidize low-wage employers). By reimagining how those tools could be effectively redeployed to benefit workers, movement leaders seized the "master's tools" in an attempt to reassemble a more

457. *See* Katherine Levine Einstein & Vladimir Kogan, *Pushing the City Limits: Policy Responsiveness in Municipal Government*, 52 URB. AFFS. 3 (2016).

458. Scott L. Cummings & Steven A. Boutcher, *Mobilizing Local Government Law for Low-Wage Workers*, 2009 U. CHI. LEGAL F. 187 (2009).

459. White v. Mass. Council of Constr. Emps., Inc., 460 U.S. 204 (1983).

460. NAT'L LEAGUE OF CITIES CTR. FOR CITY SOLS., PRINCIPLES OF HOME RULE FOR THE 21ST CENTURY 53 (2020).

461. Richard Briffault, *The Challenge of the New Preemption*, 70 STAN. L. REV. 1995, 1997–98 (2018).

462. Scott L. Cummings & Doug Smith, *Policy by the People, for the People: Designing Responsive Regulation and Building Democratic Power*, 90 FORDHAM L. REV. 2025, 2030–34 (2022); K. Sabeel Rahman, *Policymaking as Power-Building*, 27 S. CAL. INTERDISC. L.J. 315, 366–75 (2018).

sustainable local economy.[463] They did this in the form of mobilizable living wage laws that helped to strengthen labor power by: (1) showing that organized labor was a credible political force that could deliver significant policy wins; and (2) increasing union density, resulting in more members, resources, and hence greater political power. This power was used to mobilize voters in favor of pro-labor local government candidates, extending labor influence over Los Angeles city politics during the two decades after the living wage ordinance's passage,[464] while enabling living wage coalition members to become key players in the agency procurement, leasing, and development programs described in our case study. Labor influence, in turn, sparked an iterative cycle of more ambitious policymaking, resulting in the eventual passage of laws penalizing wage theft,[465] establishing local agency enforcement,[466] and adopting a $15 per hour minimum wage.[467] Further, by fostering intermovement alliances with housing justice, immigrant rights, and environmental groups, the community-labor model pioneered by living wage leaders created new openings for progressive policymaking in other domains: building partnerships and policymaking skills that shaped efforts to reduce pollution, protect undocumented immigrants, and expand affordable housing.[468] While these policy successes resulted from independent initiatives—they were not simply the direct result of the living wage movement—that movement did illuminate connections between local lawmaking and political power that drew new attention to how strategic mobilization of city law could ignite and sustain favorable policy cycles over time.

In these cycles, local power-building was directed toward *vertical scalability* and *horizontal diffusion*. Vertical scalability recognizes that local victories, even those by empowered home rule cities like Los Angeles, are inherently vulnerable to countervailing action by state and federal authorities seeking to shut down the engine of local lawmaking and therefore must build legal support at those higher levels as an intrinsic feature of local strategy. In this way, movements that pursue local lawmaking do not simply "slot in" to preexisting local authority but fight to create and defend that authority in contests over the meaning of preemption and battles over codifying local victories at higher levels. In the living wage and Fight for $15 movements, these struggles played out in court, where carefully crafted local laws—in Berkeley and SeaTac—were challenged on state and federal preemption grounds. Vertical scalability is also seen in the 2016 passage of a $15 *state* minimum wage law in California, creating a floor that local governments can exceed, as well as recent efforts to codify a new employment law test at the state level (known as

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463. Paul Butler, *Progressive Prosecutors Are Not Trying to Dismantle the Master's House, and the Master Wouldn't Let Them Anyway*, 90 FORDHAM L. REV. 1983, 1984–85 (2022).

464. CUMMINGS, *supra* note 6 at 472–77.

465. L.A., CAL., MUN. CODE, art. 8, ch. XVIII (2015).

466. David Zahniser, *First & Spring: Will L.A. Put Money Behind Wage Theft Crackdown?*, L.A. TIMES (June 8, 2015, 5:53 AM), https://www.latimes.com/local/cityhall/la-me-wage-theft-funding-20150608-story.html [https://perma.cc/CLR9-EKGR].

467. Jennifer Medina & Noam Scheiber, *Los Angeles Lifts Its Minimum Wage to $15 per Hour*, N.Y. TIMES (May 19, 2015), https://www.nytimes.com/2015/05/20/us/los-angeles-expected-to-raise-minimum-wage-to-15-an-hour.html [https://perma.cc/6T3X-DSJC].

468. CUMMINGS, *supra* note 6, at 461–68.

Assembly Bill 5), which makes it more difficult for companies to misclassify workers as independent contractors.[469] In both cases, state laws followed efforts to create local legal solutions and to expand upon their success.

In addition to influencing higher-order lawmaking, organized labor has also sought to export mobilizable law through what social scientists call network-based horizontal policy diffusion.[470] Local social movement policy wins may be spread through regional and national networks, which operate through peer-to-peer engagement among activists as well as through coordinating organizations that act as resource and communication hubs. Political scientists view sustained organizations, like unions, as uniquely valuable to policymakers precisely because they draft legislation and disseminate it across political boundaries.[471] Our account provides a window into how network-based policy diffusion expanded the impact of the LA living wage movement by sharing templates of effective mobilization strategies with groups in other cities with high proportions of low-wage workers.[472] While the network literature focuses on state-level policy diffusion by centrally organized and well-financed organizations,[473] our account shows how decentralized networks of community-labor coalitions may also help to diffuse policies across local governments.

As we have discussed, the initial success of the LA living wage ordinance informed parallel policy efforts in Oakland and Berkeley, while San Francisco union leaders pursued a strategy that echoed the Respect at LAX airport organizing model.[474] The point is that these parallel efforts were not accidental, but rather were brokered through community-labor networks anchored by groups like the Partnership for Working Families and the SEIU's Fight for a Fair Economy (home of the Fight for $15 movement), which supported mobilizable labor law campaigns across the West Coast. Through workshops, resource-sharing, and informal

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469. Celine McNicholas & Margaret Poydock, *How California's AB5 Protects Workers from Misclassification*, ECON. POL'Y INST. (Nov. 14, 2019), https://www.epi.org/publication/how-californias-ab5-protects-workers-from-misclassification/. Assembly Bill (A.B.) 5's scope remains contested. Transportation network companies spent over $200 million in a state voter initiative, Proposition 22, to nullify their inclusion, which passed in 2020. Unions and worker centers challenged Proposition 22 on state constitutional grounds, which was partially successful at the intermediate court stage and at writing is on appeal. *See* Castellanos v. State of California, 305 Cal. Rptr. 3d 717 (Ct. App. 2023), *as modified* (Apr. 12, 2023), *review filed* (Apr. 21, 2023).

470. *See* Joachim Blatter, Lea Portmann & Frowin Rausis, *Theorizing Policy Diffusion: From a Patchy Set of Mechanisms to a Paradigmatic Typology*, 29 J. EUR. PUB. POL'Y 805, 805–07 (2022), https://www.tandfonline.com/doi/full/10.1080/13501763.2021.1892801 [https://perma.cc/R923-JWU8].

471. Kristin N. Garrett & Joshua M. Jansa, *Interest Group Influence in Policy Diffusion Networks*, 15 STATE POLS. & POL'Y Q. 387, 392 (2015).

472. *See* Nestor M. Davidson, *The Dilemma of Localism in an Era of Polarization*, 128 YALE L.J. 954, 982–83 (2019); Elmore, *supra* note 5, at 305–09; Michael M. Oswalt & César F. Rosado Marzán, *Organizing the State: The "New Labor Law" Seen from the Bottom-Up*, 39 BERKELEY J. EMP. & LAB. L. 415, 468–70 (2018).

473. *See, e.g.*, Loren Collingwood, Stephen Omar El-Khatib & Benjamin Gonzalez O'Brien, *Sustained Organizational Influence: American Legislative Exchange Council and the Diffusion of Anti-Sanctuary Policy*, 47 POL'Y STUD. J. 735, 736 (2019).

474. *See* Tau, *supra* note 452.

communication, these networks enabled the living wage and Fight for $15 movements to develop policy and organizing approaches targeting publicly held assets and subsidized developments nationwide, while supporting labor groups working in regions in which state governments are hostile to the interests of organized labor.[475] These horizontal networks, while certainly not redrawing the red-blue state map, have contributed to some organizing successes in unexpected places. Last year, a community-labor coalition—led by an organization that grew out of LAANE—announced a landmark community benefits agreement establishing local hiring and apprenticeship programs for disadvantaged workers at a major bus manufacturing company outside of Birmingham, Alabama.[476] Though a small step forward in ongoing labor movement efforts to build density in Southern right-to-work states, the agreement underscores that well-designed legal models can travel to less hospitable environments and—through the type of foresight and risk-taking displayed in the LA living wage movement—may potentially grow from small victories into wider change.

CONCLUSION

This Article elevates a new conception of mobilizable labor law—a legal tool for goal-driven collective action embedded in regulatory workplace requirements—and shows how it reframes historical understanding of the living wage movement while making important contributions to legal mobilization, labor law, and local government law scholarship. Specifically, it has explored how the living wage movement used mobilizable labor law to organize low-wage workers in Los Angeles and traced how the pioneering LA model spread across the West Coast over the following decades to improve employment standards and build workplace and political power for unions. Recovering this history fills in a picture of how legal innovations by the living wage movement in the 1990s drew lessons from experimental immigrant worker organizing strategies before it and deeply influenced the rise of alt-labor that followed, as well as the national Fight for $15 movement. This Article's reassessment of the living wage movement spotlights how legal design can enable collective action and suggests how movement lawyers can shape the content and meaning of law in ways that help reframe movement goals and influence outcomes. In so doing, it recovers a piece of vital labor history that speaks to our current moment: one with historic levels of economic inequality sparking savvy new political and legal mobilization. In this moment, the LA living wage movement teaches that big change starts small and proceeds in fits and starts, depending on sustained partnerships between movement activists and legal allies to invent new rights and use them as tools to build power.

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475. Elmore, *supra* note 5, at 270–73.

476. Steven Greenhouse, *Landmark Community Benefits Agreement with New Flyer Will Lift Workers in Two States*, THE CENTURY FOUND. (May 31, 2022), https://tcf.org/content/commentary/landmark-community-benefits-agreement-with-new-flyer-will-lift-workers-and-communities-in-two-states/ [https://perma.cc/6NBT-A4YX].