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Mobilizing Local Government Law for Low-Wage Workers

Scott L. Cummings* and Steven A. Boucher†

INTRODUCTION

Over the past decade, stories of the “working poor” have emerged from the economic margins as a powerful rejoinder to the claim that the rising tide of American prosperity lifts all boats.¹ The current period of economic crisis has made their vulnerability even more severe—while sharpening the contrasting fortunes of the wealthy. What to do about the persistence and perilousness of low-wage work has emerged as a central challenge of contemporary economic reform.

One common diagnosis of the low-wage market is that federal labor and employment laws have failed to protect the rights of low-wage workers. The deficiencies of federal labor law—codified in the National Labor Relations Act (“NLRA”)²—as a framework for promoting meaningful worker organizing have been extensively documented. Scholars have emphasized that federal labor law excludes from coverage categories of workers who play important roles in the contemporary workplace,³ while also erecting a structure to govern union elections that tilts decisively in favor of employers by providing inadequate protection against illegal employer interference in union campaigns.⁴ Employment law, in turn, has not provided an adequate backstop, particularly for

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¹ See Barbara Ehrenreich, *Nickel and Dimed: On (Not) Getting By in America* (Macmillan 2001); David K. Shipler, *The Working Poor: Invisible in America* (Knopf 2004). See also Frank Munger, ed, *Laboring Below the Line: The New Ethnography of Poverty, Low-Wage Work, and Survival in the Global Economy* (Russell Sage 2002).

² 29 USC §§ 151–69 (2006).

³ For a general discussion, see Nelson Lichtenstein, *State of the Union: A Century of American Labor* (Princeton 2002); Katherine V.W. Stone, *From Widgets to Digits: Employment Regulation for the Changing Workplace* (Cambridge 2004); Cynthia L. Estlund, *The Ossification of Labor Law*, 102 Colum L Rev 1527 (2002).

⁴ Benjamin I. Sachs, *Employment Law as Labor Law*, 29 Cardozo L Rev 2685, 2694–95 (2008).

those low-wage workers at the bottom of the economic ladder, many of whom are either excluded from coverage (for example, as independent contractors) or work for subcontracted firms that are judgment proof.⁵ Even for workers technically covered by employment law, the reality of lax enforcement means that many aggrieved workers never receive adequate redress.⁶

In response, low-wage worker advocates have pursued a variety of strategies. Attempts to meet the regulatory failings on their own terms through federal legislative reform have received a chilly political reception.⁷ Using the tools at hand, labor unions—particularly those associated with the Change to Win coalition—have achieved some notable victories organizing low-wage service sector workers, with the Los Angeles Justice for Janitors campaign by the Service Employees International Union (“SEIU”) being one of the most prominent examples.⁸ In addition, the emergence of non-union organizations, such as immigrant worker centers and community-labor groups committed to advancing the rights of low-wage workers, have generated new grassroots organizing and innovative legal mobilization campaigns designed to organize workers, enhance legal enforcement, and improve working standards.⁹

Against this backdrop, scholars have started to examine how new private and public law frameworks are being fashioned to support worker organizing outside of the NLRA. Benjamin Sachs argues that alternative legal frameworks are being forged by the “hydraulic demand for collective action,” which has been thwarted within the federal labor law system and thus found its outlet elsewhere: in private agreements, the innovative use of

⁵ Noah D. Zatz, *Working Beyond the Reach or Grasp of Employment Law*, in Annette Bernhardt, et al, eds, *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market* 31 (Cornell 2008).

⁶ *Id.*

⁷ The Obama administration and Democratic Congress offer a new opportunity for federal labor reform. Organized labor is vigorously pressing a card-check neutrality law, which would require union certification if a majority of employees sign cards indicating their intent to join the union—thus bypassing the formal election process that unions charge is rife with employer abuse.

⁸ Catherine L. Fisk, Daniel J.B. Mitchell, and Christopher L. Erickson, *Union Representation of Immigrant Janitors in Southern California: Economic and Legal Challenges*, in Ruth Milkman, ed, *Organizing Immigrants: The Challenge for Unions in Contemporary California* 199 (Cornell 2000).

⁹ See, for example, Janice Fine, *Worker Centers: Organizing Communities at the Edge of the Dream* 2 (Cornell 2006); Scott L. Cummings, *Law in the Labor Movement's Challenge to Wal-Mart: A Case Study of the Inglewood Site Fight*, 95 Cal L Rev 1927, 1930 (2007).

federal employment law, and new state and local regulations.¹⁰ The state and local responses, in particular, have been shaped by the doctrine of federal labor preemption, which prohibits the non-federal regulation of activities covered by the NLRA or left to the “free play of economic forces.”¹¹ Yet state and local governments have instituted labor organizing policies under exceptions to the preemption rules, namely when state and local governments themselves act as employers or when they act in their proprietary capacity by dispensing public subsidies or issuing contracts.¹²

This Article steps back from the focus on local government laws intended to directly advance union organizing and surveys the broader range of local initiatives designed to improve conditions in the low-wage work sector—by imposing minimum work standards, rewarding “good” employers, creating training programs and pathways to higher-paying jobs, and indirectly facilitating worker collective action. Although local governments may take other steps to improve the quality of life for low-income residents,¹³ the focus of this Article is on how local government law has been specifically used in efforts to restructure work. For evidence, we draw upon low-wage worker organizing campaigns in Los Angeles, which have capitalized on dynamic labor leadership, a tradition of occupation-based unionism, and the energy of immigrant worker organizing to generate innovative models for revitalizing the labor movement.¹⁴ These new strategies have sought to expand unionism, but also to reframe labor activism as a project that extends beyond union members to touch the lives of working people more broadly. The effort to broaden the labor movement has been pursued both as an affirmative union strategy and as a reaction to the emergence of non-union worker activism—such as immigrant worker organizing—that has contested the dominance of organized labor.¹⁵ Community and labor groups

¹⁰ Benjamin I. Sachs, *Labor Law Renewal*, 1 Harv L & Pol Rev 375, 376–77 (2007).

¹¹ Id at 382.

¹² Id at 387.

¹³ Most significantly, local governments pursue a wide range of policies to expand and protect access to affordable housing. See, for example, Peter Marcuse, *To Control Gentrification: Anti-Displacement Zoning and Planning for Stable Residential Districts*, 13 NYU Rev L & Soc Change 931 (1985).

¹⁴ See Ruth Milkman, *L.A. Story: Immigrant Workers and the Future of the U.S. Labor Movement* 3–4 (Russell Sage 2006). See also Lichtenstein, *State of the Union* at 266–67 (cited in note 3).

¹⁵ See, for example, Jennifer Gordon, *Suburban Sweatshops: The Fight for Immigrant Rights* (Harvard 2005).

have formed alliances to challenge the deterioration of working conditions in the low-wage sector and connect the struggle against low-wage work to a broader movement for economic justice.¹⁶ One outgrowth has been the advent of low-wage worker initiatives to leverage changes in local government laws as a means to improve the economic status of the working poor.

This Article examines nine low-wage worker initiatives launched in Los Angeles between 1997 and 2008. The initiatives were selected for study because each resulted in, or significantly relied upon, local government policy as a means to restructure some sector of the local market for low-wage work.¹⁷ Part I of this Article describes the genesis and features of these initiatives, and examines how they relate to—and extend—traditional local government contracting, land use, and regulatory powers. Part II then frames the key issues presented by the turn to local initiatives to promote low-wage worker organizing and improve labor conditions. Specifically, we explore six central questions raised by local market interventions on behalf of low-wage workers: (1) Which groups are promoting the initiatives? (2) Which low-wage industries are targeted and why? (3) What are the goals of the community and labor groups supporting the initiatives? (4) How are the issues framed for political purposes? (5) What are the impacts of the initiatives on the low-wage market? (6) And what are the challenges of replicating these initiatives as a national labor strategy?

I. LOCAL LOW-WAGE WORKER INITIATIVES: EVIDENCE FROM LOS ANGELES

The conventional view of local government law sees it primarily as a mechanism for providing essential local services (for example, police and fire protection), regulating property use, and promoting economic development. Although scholars have long noted that local government decision making has profound distributional impacts,¹⁸ local government law has generally not

¹⁶ For a general discussion, see Robert Gottlieb, et al, *The Next Los Angeles: The Struggle for a Livable City* (California 2005); Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 *Stan L Rev* 399 (2001).

¹⁷ Seven of the initiatives have been formalized as local ordinances, one has resulted in a series of private agreements in connection with publicly subsidized development projects, and one is still in progress (but aims to produce legislation).

¹⁸ See, for example, Richard Thompson Ford, *The Boundaries of Race: Political Geography in Legal Analysis*, 107 *Harv L Rev* 1843, 1844 (1994). See also Gerald E. Frug,

played a strong role in restructuring workplace relationships to the benefit of employees. Low-wage worker initiatives challenge this convention by taking the traditional tools of local government—its contracting, land use, and regulatory powers—and adapting them to advance workplace reform.¹⁹ This Part examines how this adaptation has worked through descriptions of the Los Angeles initiatives.

A. The Contracting Model

Local governments not only regulate pursuant to their police power, they also act as market participants, purchasing goods and services in the process of governance. This market participant function takes a variety of forms. Municipalities may contract out services that would otherwise be undertaken directly by government staff, as in the case of bus transportation or janitorial services. In addition, municipalities may award concessions to private companies, such as airport vendors, to operate businesses on publicly owned property. Finally, municipalities may purchase supplies, such as uniforms for police officers and firemen, from private companies.

These market interventions may have direct impacts on the quality of jobs. For example, to the extent that municipal workers are unionized, outsourcing government services to private contractors that are not under union contract may lower wages and benefits for workers performing those services. Similarly, municipalities seeking the lowest cost suppliers may enter contracts with those companies that reduce labor costs in order to decrease the price of their bids.

Yet contracting relationships can also be a tool for raising employment standards in companies that do business with local governments.²⁰ This Section focuses on three policies that leverage the city's market power to enhance work standards for private employers: the Los Angeles Living Wage Ordinance, which imposes wage and benefit rates above the federal and state minimums on companies that receive municipal service and concession contracts (among other financial benefits); the Los Angeles Sweat-Free Procurement Ordinance, which sets standards for

City Making: Building Communities Without Building Walls 132–38 (1999).

¹⁹ See Clayton P. Gillette, *Local Redistribution, Living Wage Ordinances, and Judicial Intervention*, 101 *Nw U L Rev* 1057, 1057–1062 (2007).

²⁰ See Jody Freeman, *Extending Public Law Norms Through Privatization*, 116 *Harv L Rev* 1285 (2003).

city garment contractors; and the Los Angeles Port Clean Trucks Program, which requires trucking companies to treat their drivers as employees as a condition of their concession agreements.

1. Contracting out services: The Los Angeles Living Wage Ordinance.

The movement for a “living wage” emerged in the 1990s against the backdrop of declining rates of private sector unionization, stagnant federal and state minimum wage floors (declining in real terms), and growing low-wage workforces in many cities.²¹ Commentators have viewed the living wage movement as a way to engage local labor groups in responding to economic inequality, rather than as a national solution to low-wage work.²² Inspired by Baltimore, which first passed a living wage law in 1994, labor and community activists in Los Angeles initiated a Living Wage Campaign in 1995.²³ The campaign was spearheaded by the Tourism Industry Development Council, which later changed its name to the Los Angeles Alliance for a New Economy (“LAANE”). LAANE was formed by the Hotel Employees and Restaurant Union (“HERE”) Local 11 to move beyond conventional union organizing in order to more effectively address the growth of low-wage work, particularly in nonunionized hotels.²⁴ To advance its agenda, LAANE formed a coalition with a number of local community groups, including the Association of Community Organizing for Reform Now (“ACORN”), a national membership organization focused on progressive grassroots organizing; Esperanza Community Housing Corporation, an affordable housing developer in the Figueroa Corridor neighborhood south of downtown; and Action for Grassroots Empowerment and Neighborhood Development Alternatives (“AGENDA”), an Alinsky-style organizing group working primarily on job development for low-income residents of South Los Angeles. This coalition, in partnership with the HERE and SEIU locals, won its first victory in 1996, when it secured an ordinance that required city service contractors to retain long-term workers

²¹ Robert Pollin and Stephanie Luce, *The Living Wage: Building a Fair Economy* 3–6 (New Press 1998).

²² Richard Freeman, *Fighting for Other Folks’ Wages: The Logic and Illogic of Living Wage Campaigns*, 44 *Indus Rel L J* 14, 17–18 (2005).

²³ Hany Khalil and Sandra Hinson, *The Los Angeles Living Wage Campaign*, in *Public Subsidies, Public Accountability: Holding Corporations to Labor and Community Standards* 18 (Grassroots Policy Project 2d ed 1998).

²⁴ *Id* at 19.

and provide continuing employment to those who met performance standards—a victory that prevented new airport restaurant concessionaires like McDonald’s from firing long-term workers and paying new workers lower wages.²⁵

Strengthened by this victory, the coalition—which expanded to include the newly formed Clergy and Laity United for Economic Justice (“CLUE”)—set its sights on pursuing a more ambitious living wage ordinance. With support from key allies on the Los Angeles City Council, the coalition ran a media and lobbying campaign that relied on moral suasion and the results of an empirical study conducted by then-University of California, Riverside economist Robert Pollin to defuse business concerns that a living wage ordinance would “kill jobs.”²⁶ The Los Angeles Living Wage Ordinance was passed by the city council in 1997 and became law over the veto of Mayor Richard Riordan.²⁷

The current version of the ordinance requires employers to pay minimum compensation (a combination of wages plus health benefits) adjusted annually for inflation.²⁸ “Employer” is defined such that the ordinance applies to three broad categories of businesses with fiscal ties to the city: (1) companies with city service contracts (and their subcontractors) that are worth more than \$25 thousand and have a term of at least three months; (2) companies with leases or licenses to perform services on city property (such as airports or parks) and their subcontractors or sublicensees; and (3) companies that receive city “financial assistance” (such as bond financing, planning assistance, tax increment financing, and tax credits) for economic development or job growth projects, with companies receiving large amounts (\$1 million or more) required to meet living wage obligations for five years, while those receiving smaller amounts (between \$100 thousand and \$1 million) obligated only for one year.²⁹

The Los Angeles Living Wage Ordinance exemplifies the most common approach to the living wage, which is to tie living wage compliance to a direct financial relationship between the

²⁵ *Id.* at 20.

²⁶ *Id.* at 24.

²⁷ *Id.* at 25–26. The original Los Angeles Living Wage Ordinance was amended twice. The 1998 amendment extended coverage to companies with a lease or license of city property and added provisions imposing sanctions for retaliation and willful violations. LA Ordinance No 172336 (Dec 11, 1998). The 2001 amendment made technical changes to the statutory language. LA Ordinance No 173747 (Jan 18, 2001).

²⁸ LA Admin Code § 10.37.2(a). As of 2008, the living wage was set at \$10 per hour with health benefits or \$11.25 per hour without.

²⁹ LA Admin Code § 10.37.1.

city and private employer. Most living wage laws cover city service contractors.³⁰ The Los Angeles Living Wage Ordinance includes a less common provision that applies the living wage requirements to subsidy recipients, while also explicitly covering companies that have subcontracts with city contractors, thus closing a potential loophole by ensuring that companies cannot circumvent living wage mandates by adding additional layers of contracted services.³¹ However, the ordinance does exclude lessees of subsidy recipients, which means that lessees of publicly financed development projects, such as retail stores or restaurants in shopping malls, are under no obligation to meet city living wage requirements.³² However, as described below, these workers may be covered by living wage requirements instituted through city development agreements or private contract.

Since the Los Angeles Living Wage Ordinance was passed, approximately 125 living wage ordinances have been enacted in cities and counties across the country.³³ These ordinances have been subject to a variety of legal challenges, with mixed results.³⁴ Business groups have also sought to overturn living wage ordinances via local referenda, arguing that the ordinances will reduce the number of jobs and injure low-wage workers by causing employers to hire better-credentialed employees.³⁵ A sizeable litera-

³⁰ David Neumark, *How Living Wage Laws Affect Low-Wage Workers and Low-Income Families* 8 (Public Policy Institute of California 2002).

³¹ LA Admin Code §§ 10.37, 10.37.1(k).

³² LA Admin Code § 10.37.1(c).

³³ See *Living Wage Wins*, Living Wage Resource Center, available at <<http://livingwagecampaign.org/index.php?id=1959>> (last visited July 18, 2009).

³⁴ Compare *New Orleans Campaign for a Living Wage v City of New Orleans*, 825 S2d 1098, 1108 (La 2002) (striking down New Orleans's living wage ordinance on state constitutional grounds) with *Visiting Homemaker Service of Hudson County v Bd of Chosen Freeholders*, 883 A2d 1074, 1076–77 (NJ Super Ct App Div 2005) (upholding Hudson County, New Jersey living wage ordinance against state law challenge). In California, the United States Court of Appeals for the Ninth Circuit upheld a federal constitutional challenge to Berkeley's living wage ordinance, which like the Los Angeles ordinance applied to city contractors, lessees, and financial assistance recipients. *RUI One Corp v City of Berkeley*, 371 F3d 1137, 1141 (9th Cir 2004). The Berkeley ordinance also added a provision applying living wage requirements to businesses of a certain size operating in the Berkeley Marina, which the city held in public trust. *Id.* at 1144–46. The Ninth Circuit upheld the Berkeley ordinance in its entirety, rejecting arguments that it violated (1) the federal contract clause by impairing existing contracts with businesses in the Marina, (2) federal and state equal protection clauses by treating Marina businesses differently based on geographic location, and (3) federal and state due process clauses by impermissibly delegating legislative power to unions. *Id.* at 1147–48, 1155–57.

³⁵ For an example of a successful referendum to overturn a living wage ordinance, see Kathleen M. Erskine and Judy Marblestone, *The Movement Takes the Lead: The Role of Lawyers in the Struggle for a Living Wage in Santa Monica, California*, in Austin Sarat and Stuart A. Scheingold, eds, *Cause Lawyers and Social Movements*, 249, 253–54 (Stan-

ture has developed to analyze these claims, which are vigorously contested. The most recent study of the Los Angeles Living Wage Ordinance, written in collaboration with LAANE, found that it had increased pay in nearly ten thousand jobs, over half of which were in the airline service, security, and parking industries.³⁶ The study also found that employment reductions were minimal, approximately 1 percent of all affected jobs, and that most workers affected by the law were low-income.³⁷

2. Contracting out goods: The Los Angeles Sweat-Free Procurement Ordinance.

The Los Angeles Living Wage Ordinance excludes employers bound to the city by a contract for the purchase of goods, as in the case where the city purchases food, uniforms, or other supplies for city employees.³⁸ However, city contracts for the purchase of goods may also create opportunities to leverage the government's purchasing power to exact concessions from suppliers. Most obviously, the city can bargain to lower the price of goods purchased in bulk. Yet price is only one aspect of the purchasing relationship. Municipalities can also use their market power to extract other concessions with public policy implications, with any price increase financed by taxpayers. A number of cities across the country have adopted various procurement laws that require municipalities to only purchase from firms with particular characteristics.³⁹ These laws include general "responsible bidder" laws requiring awardees of public contracts to comply with anticorruption regulations, as well as (in some cases) labor, environmental, and antidiscrimination standards.⁴⁰ Other cities have more explicit procurement conditions, for example, "that localities purchase goods with a certain percentage of recycled content, that they purchase nonpolluting vehicles, or that they enter into contracts only with companies that provide equal benefits to employees with spouses and employees with domestic

ford 2006).

³⁶ David Fairris, et al, *Examining the Evidence: The Impact of the Los Angeles Living Wage Ordinance on Workers and Businesses* 18–21 (2005), available at <<http://www.irle.ucla.edu/publications/index.html>> (last visited July 18, 2009).

³⁷ Id at 2–4.

³⁸ See LA Admin Code §§ 10.37.1(d), (j).

³⁹ Adrian Barnes, *Do They Have to Buy from Burma?: A Preemption Analysis of Local Antisweatshop Procurement Laws*, 107 Colum L Rev 426, 426–27 (2007).

⁴⁰ Id at 428–29.

partners.”⁴¹ Antisweatshop or “sweat-free” ordinances have developed as a specific version of procurement conditions targeted at eliminating labor violations in domestic (and sometimes foreign) firms that sell apparel and textile goods to city agencies.⁴² Following the lead of New York City, which first passed an anti-sweatshop ordinance in 2002, a small number of cities have passed similar procurement laws; some dioceses, school districts, and individual high schools have also developed similar policies.⁴³

Los Angeles enacted its Sweat-Free Procurement Ordinance in 2004, after a decade-long struggle to improve conditions in the nation’s largest garment industry.⁴⁴ Labor abuse was endemic in the garment sector. In 1994, the federal government reported that there were 4,500 sweatshops in Los Angeles,⁴⁵ while a state study found that half of California’s garment shops were in violation of minimum wage laws and two-thirds broke overtime laws.⁴⁶ A 1998 Department of Labor survey repeated similar conclusions, finding that nearly two-thirds of garment firms in Los Angeles were violating wage and hour regulations, underpaying workers by over \$70 million per year.⁴⁷

The antisweatshop movement was built upon a foundation of labor activism in the garment industry that began to gain strength in the early 1990s. It was galvanized by the 1995 discovery of enslaved Thai workers in a garment contract shop outside of Los Angeles that produced goods for well-known manufacturers and retailers, including Mervyn’s.⁴⁸ That case, which was

⁴¹ Id at 429.

⁴² Id at 432. To the extent that such ordinances apply to foreign contractors, there is some uncertainty about whether they are preempted by federal trade law. Barnes, 107 Colum L Rev at 437–39 (cited in note 39).

⁴³ SweatFree Communities, *Adopted Policies*, available at <<http://www.sweatfree.org/policieslist>> (last visited July 18, 2009). To date, only the New York ordinance has been challenged. In that case, the court invalidated the ordinance on the ground that it violated state referendum law and was preempted by a preexisting state finance law related to apparel contracting. *Mayor of City of New York v Council of City of New York*, 789 NYS2d 860, 865 (NY County Supreme Ct 2004).

⁴⁴ Scott L. Cummings, *Hemmed In: Legal Mobilization in the Los Angeles Anti-Sweatshop Movement*, 30 Berkeley J Empl & Lab L (forthcoming 2009) (on file with the U Chi Legal F).

⁴⁵ US General Accounting Office, Report No GAO/HEHS-95-29, *Garment Industry: Efforts to Address the Prevalence and Conditions of Sweatshops* 5 (1994).

⁴⁶ Stuart Silverstein, *Survey of Garment Industry Finds Rampant Labor Abuse*, LA Times D1 (Apr 15, 1994).

⁴⁷ Edna Bonacich and Richard P. Appelbaum, *Behind the Label: Inequality in the Los Angeles Apparel Industry* 3 (California 2000).

⁴⁸ Cummings, *Hemmed In* at *19 (cited in note 44).

litigated by lawyers at the Asian Pacific American Legal Center (“APALC”), produced a highly publicized settlement of over \$3.5 million and helped to spur the development of an infrastructure of antisweatshop organizations that included Sweatshop Watch, formed to coordinate policy research and advocacy, and the Garment Worker Center (“GWC”), created to assist workers in recovering unpaid wages and promoting collective action to reform the garment industry.⁴⁹ A coalition of antisweatshop groups, led by APALC, Sweatshop Watch, the Union of Needletrades, Industrial and Textile Employees (“UNITE”), and other immigrant rights and labor groups, won passage of a statewide law in 2000 that assigned liability for labor abuse to garment manufacturers that contracted with sweatshop firms.⁵⁰ On the heels of this victory, the coalition expanded to include the newly formed GWC, the international antisweatshop group Global Exchange, and the Progressive Jewish Alliance (among others) in an effort to leverage the power of city contracting to improve conditions among the garment firms that sold items directly to the city.⁵¹

The Sweat-Free Procurement Ordinance campaign was organized on the heels of a hard-fought legal case filed by APALC against the young women’s retailer, Forever 21, which APALC sued on behalf of several Latina workers claiming unpaid wages.⁵² The case was coordinated with an organizing effort conducted by the GWC that received a great deal of media attention and precipitated a counter-attack by Forever 21 that included suits against labor activists and workers protesting in front of Forever 21 retail stores.⁵³ The case ultimately settled in 2004 for an undisclosed amount. The antisweatshop coalition moved to capitalize on the political momentum generated by the case by

⁴⁹ Id at *63–*67.

⁵⁰ Cal Labor Code § 2673.1(a) (West 2003) (stating that garment manufacturers “shall guarantee payment of the applicable minimum wage and overtime compensation” due to employees of their contractors).

⁵¹ For a list of groups that lobbied for the Sweat-Free Procurement Ordinance, see Global Exchange, *Los Angeles Council Passes Anti-Sweatshop Ordinance*, (Nov 9, 2004), available at <<http://www.globalexchange.org/campaigns/sweatshops/2675.html>> (last visited July 18, 2009).

⁵² Victor Narro, *Finding the Synergy Between Law and Organizing: Experiences from the Streets of Los Angeles*, 35 *Fordham Urban L J* 339, 349–50 (2008).

⁵³ These suits were ultimately struck down under the state Strategic Litigation Against Public Participation (“SLAPP”) statute, which allows a court to dismiss a cause of action “arising from any act of that person in furtherance of the person’s right of petition or free speech.” Cal Civ Proc Code § 425.16(b)(1) (West 2009). For a discussion of the SLAPP suit litigation, see Cummings, *Hemmed In* at *53–54 (cited in note 44).

reaching out to allies on the Los Angeles City Council to support an antisweatshop ordinance.⁵⁴

In 2004, the city council unanimously enacted the Sweat-Free Procurement Ordinance. In describing the need for procurement standards, the ordinance stated:

In its role as a market participant that procures equipment, goods, materials, and supplies, the City seeks to protect its interests by assuring that the integrity of the City's procurement process is not undermined by contractors who engage in sweatshop practices and other employment practices abhorrent to the City.⁵⁵

Toward that end, the ordinance requires all city contractors to sign a "Contractor Code of Conduct" in which they agree to comply with all applicable employment, labor, and environmental laws, and all "human and labor rights and labor obligations that are imposed by treaty or law on the country in which the equipment, supplies, goods or materials are made or assembled."⁵⁶ The Code of Conduct also requires contractors to "take good faith measures" to ensure that subcontractors comply with its terms.⁵⁷ The ordinance covers all city contracts for "equipment, goods, materials or supplies."⁵⁸ For "contracts involving the procurement of garments, uniforms, foot apparel, and related accessories," contractors are bound to ensure that workers are paid a "procurement living wage" equal to the federal poverty threshold for a family of three plus an additional 20 percent, paid as hourly wages or health benefits.⁵⁹

A key issue with any Code of Conduct is monitoring and enforcement. The ordinance places the ultimate authority with the city's Department of General Services to evaluate allegations of violations and to impose sanctions, which may range from a demand that contractors provide access to monitors to the termination of contracts for breach. Under the terms of the ordinance, in evaluating contractor compliance, the city shall "take into consideration relevant and reliable information including, but not limited to, information provided by the contractor and its subcon-

⁵⁴ Narro, 35 *Fordham Urban L J* at 357 (cited in note 52).

⁵⁵ LA Admin Code § 10.43.

⁵⁶ *Id* at § 10.43.3.A and B.

⁵⁷ *Id* at § 10.43.3.C.

⁵⁸ *Id* at § 10.43.1.B.

⁵⁹ LA Admin Code § 10.43.3.D.

tractors at the point of manufacture, assembly or service, reports from reputable national and international organizations, documented media reports, and credible information from local groups and organizations.”⁶⁰ Since labor violations may occur at the subcontractor level, gaining access to subcontractor practices and providing credible evidence of violations is crucial to the ordinance’s enforcement. In order to enhance enforcement, anti-sweatshop groups in Los Angeles fought for a strong outside monitoring agency and ultimately succeeded in persuading the Department of General Services to retain the Worker Rights Consortium, a labor rights organization that grew out of United Students Against Sweatshops and focuses on monitoring conditions in factories that produce university logo apparel.⁶¹ In 2007, in its first official investigation under the agreement, the Worker Rights Consortium evaluated a Cambodian producer of Dickies brand clothing sold to Los Angeles. As a result of the investigation, the company agreed to reinstate a worker harassed and fired for union organizing, adopt an antidiscrimination policy related to pregnant workers, and reverse its practice of denying bathroom breaks and sick leave.⁶²

3. Concession agreements: The Clean Trucks Program.

In addition to contracting out for goods and services, local governments may also enter into concession agreements with private companies granting them the right to undertake economic activity within the locality for a period of time.⁶³ A concession agreement is akin to a lease, but distinct in that concessionaires do not take a proprietary interest in real property, but rather are given the privilege of operating in connection with governmental property under contractual terms that specify the scope of governmental permission. A concession agreement allows a private company to provide goods or services on public property that might otherwise be provided directly by government personnel. Airport vendors, for example, operate under concession agreements that allow them to sell food to travelers on publicly owned

⁶⁰ Id at § 10.43.5.

⁶¹ *Sweat-Free Update: Independent Monitor Hired to Enforce Los Angeles’ SweatFree Law*, 13 *Sweatshop Watch* 1, 6 (Spring 2007).

⁶² *SweatFree Communities, Independent Factory Investigation Improves Conditions in Los Angeles Supplier Factory*, available at <http://www.sweatfree.org/statements_newwide308> (last visited July 19, 2009).

⁶³ Nicholas Miranda, Note, *Concession Agreements: From Private Contract to Public Policy*, 117 *Yale L J* 510, 512 (2007).

property. As seen in the fight over worker retention at the Los Angeles International Airport (“LAX”) discussed above, concession agreements may be used to privatize otherwise public services in ways that undercut unionization.

A recent campaign to institute a “Clean Trucks Program” at the port of Los Angeles, however, shows that concession agreements may be used as a tool to promote unionization—while also linking labor and environmental goals. The port of Los Angeles sits side-by-side with the port of Long Beach on San Pedro Bay, which straddles the Los Angeles-Long Beach border. The port of Los Angeles, which ranks first in the country in terms of container volume (and, along with the port of Long Beach, handles over 40 percent of the country’s total imported goods),⁶⁴ is a public agency that owns and manages the port property as a trustee and is governed by the Los Angeles Harbor Commission, which is a five-member board appointed by the Los Angeles mayor and confirmed by city council.

A port authority will typically contract with a company called a terminal operator to run the port and coordinate the interface between the ships that carry cargo by sea and the trucks, to and from which the cargo is transferred. The terminal operator will, in turn, enter into contracts with shipping and trucking companies, under which they pay tariffs for the privilege of accessing the port facilities. At the Port of Los Angeles, the structure of these arrangements had been loosely regulated, with one result being that trucking companies with port contracts began in the 1980s to hire drivers as independent contractors, rather than employees, which allowed them to reduce costs by lowering payments and eliminating employment-related expenses (such as health care), while also avoiding unionization.⁶⁵ This structure led to reduced driver income and placed pressure on the drivers, as independent contractors, to cut costs associated with truck operation.⁶⁶ Drivers therefore lacked strong financial incentives to invest in maintenance or upgrade from old trucks that produced high levels of harmful diesel emissions. Old trucks have contributed significantly to high levels of air pollution at the Los

⁶⁴ Louis Sahagun and Ronald D. White, *Truckers and Ports Head to Court*, LA Times B3 (Sept 8, 2008).

⁶⁵ Los Angeles Alliance for a New Economy, *The Road to Shared Prosperity: The Regional Economic Benefits of the San Pedro Bay Ports’ Clean Trucks Program* 11 (Aug 2007), available at <<http://www.laane.org/>> (last visited July 19, 2009).

⁶⁶ *Id.* at 12.

Angeles-Long Beach ports complex, which accounts for one-fourth of the air pollution in Los Angeles.⁶⁷

In 2007, to address both the labor and environmental issues related to the Port of Los Angeles, LAANE—working as part of the Coalition for Clean and Safe Ports⁶⁸—undertook its Clean Trucks Program campaign, which culminated in the passage of a city ordinance formally authorizing the program on June 26, 2008.⁶⁹ The stated goals of the program were to:

- (a) further the improvement of air quality at the Port, (b) create an efficient, reliable supply of drayage [shipping] services to the Port for the sustainable future, (c) establish performance criteria for providers of drayage services that promote the Port's business objectives, (d) ensure sufficient supply of drayage drivers, by improvement of wages, benefits, and working conditions, (e) enhance Port security and safety, and (f) reduce negative impacts on the local community.⁷⁰

In order to advance these goals, the ordinance approved an order of the Los Angeles Harbor Commission amending the port's operating rules (called "Tariff No. 4") to require that trucking companies providing drayage services enter into a "Drayage Truck Concession Agreement" with the port in order to gain port access.⁷¹ These agreements were designed to significantly alter the structure of the trucking industry's relationship with the port by requiring that a trucking company: (1) transition its drivers from independent contractors to 100 percent employees by December 31, 2013; (2) take steps to meet local hiring goals; and (3) retrofit or replace all trucks to meet specific environmental standards.⁷² In addition, the Clean Trucks Program aimed to

⁶⁷ Id at 23. Evelyn Larrubia, *Labor, Environmentalists Unusual Allies; Ports' Clean Trucks Program Has Union Leaders Talking "Green," but Some Truckers Want to Put on the Breaks*, LA Times B3 (Nov 27, 2008).

⁶⁸ This coalition includes the American Lung Association of California, Change to Win, CLUE, CHIRLA, Communities for a Better Environment, the Los Angeles County Federation of Labor, LAANE, Natural Resources Defense Council, Sierra Club, and Teamsters, among others. See *Coalition for Clean & Safe Ports*, available at <<http://www.cleanandsafeports.org/index.php?id=8>> (last visited July 19, 2009).

⁶⁹ LA Ordinance No 179981 (June 26, 2008).

⁷⁰ Id at ¶ 23.

⁷¹ Id at ¶ 24.

⁷² *Drayage Services Concession Agreement for Access to the Port of Los Angeles 2-4*, available at <<http://www.cleanairactionplan.org/civica/filebank/blobload.asp?BlobID=2350>> (last visited Sept 8, 2009).

ban pre-1989 trucks and progressively require all trucks to meet 2007 emission standards, while also imposing a container fee to help finance the nearly \$2 billion in fleet modernization costs necessary to replace or upgrade approximately 17,000 old diesel trucks.⁷³ By eliminating dirty trucks, the program sought to significantly reduce the emission of diesel particulates, and by mandating that concessionaires hire drivers as employees, the program sought to make it possible for the drivers to be unionized. The program thus attempted to achieve a crucial objective of organized labor—facilitating unionization—while also forging an alliance with environmental groups around an issue of common concern.⁷⁴

However, the Clean Trucks Program, designed to go into effect on October 1, 2008, has been held up by legal challenges, which as they currently stand leave the program's central features in doubt. In July 2008, the American Trucking Association brought suit challenging the concession agreements as preempted by federal law. Although the district court initially denied the Association's motion for a preliminary injunction, that ruling was reversed by the Ninth Circuit Court of Appeals, which held that crucial aspects of the program—including the independent contractor phase-out provision—were likely to be preempted by the Federal Aviation Administrative Authorization Act governing the "price, route, or service" of motor carriers engaged in interstate commerce,⁷⁵ and were unlikely to fall within the Act's

⁷³ Rick Wartzman, *Airing a Pollution Solution for the Ports*, LA Times C1 (Feb 23, 2007); Sahagun and White, *Truckers and Ports Head to Court*, LA Times B3 (cited in note 64).

⁷⁴ In another example of an effort to link labor and environmental goals that leverages city contracting authority, the Los Angeles City Council in 2009 passed the Green Jobs Ordinance, which requires that the city develop a plan for the use of state and federal funds to retrofit city buildings to green standards that gives priority to retrofitting projects "in areas with high levels of poverty and unemployment," while requiring "[t]o the extent feasible and permissible by applicable law" that "the work performed under Construction Contracts associated with the Program be performed by Local Residents." LA Admin Code § 7.302(D)-(E). "Local Resident" is defined as "an individual whose primary place of residence at the commencement of a project under the Program on which that individual is seeking employment is within the City and is within the zip code containing at least part of one census tract with a rate of unemployment in excess of 150% of the Los Angeles County unemployment rate." *Id.* at § 7.301(H). The Green Jobs Ordinance was developed by the Los Angeles Apollo Alliance, a coalition of labor and environmental groups spearheaded by AGENDA and its research/policy arm, Strategic Concepts in Organizing & Policy Education. See Los Angeles Apollo Alliance, *Los Angeles Adopts Landmark Green Jobs Ordinance* (Apr 7, 2009), available at <http://apolloalliance.org/wp-content/uploads/2009/04/04-07-09-la-ordinance-press-release_final.pdf> (last visited July 19, 2009).

⁷⁵ 49 USC § 14501(c)(1) (2006).

statutory “safety exception.”⁷⁶ Upon remand, the district court, in an opinion issued in April 2009, enjoined the central provisions of the program, including the independent contractor phase-out, the local hiring preference, and the truck modernization requirement.⁷⁷ Although the decision has been appealed, it appears at this stage that the city’s ambitious plan to leverage its concession authority to promote the unionization of the port’s trucking industry is in legal jeopardy. Nonetheless, by focusing attention on concession agreements, it suggests yet another possible way that local governments might use their contracting power to shape labor conditions.

B. The Land Use Model

Land use authority remains at the heart of local power. This power can be vast since virtually every business requires some sort of land use permit to operate. Land use authority derives from the local police power,⁷⁸ and has been viewed as a way to prevent one property owner’s activities from spilling over onto an adjacent owner’s land.⁷⁹ But since the 1920s, local governments have expanded their land use powers, using it as a tool of local fiscal policy to promote uses that contribute to municipal budgets and zone out those that detract from them.⁸⁰ Indeed, the ubiquity of land use has led groups from across the political spectrum to use it to foster their policy goals, even if those goals have little in common with traditional spillover problems. For instance, the “New Urbanist” movement seeks to change land use policies to reduce automobile dependence, develop accessible and inclusive public spaces, promote economic diversity, and augment open space.⁸¹ Following this trend towards more expansive land use

⁷⁶ *American Trucking Associations, Inc v City of Los Angeles*, 559 F3d 1046, 1057, 1060–61 (9th Cir 2009).

⁷⁷ *American Trucking Associations, Inc v City of Los Angeles*, 2009 WL 1160212, *20–*21 (C D Cal). In another legal challenge, a federal court denied a preliminary injunction sought by the Federal Maritime Commission alleging that the program would drive small firms and independent drivers out of the market. Carol J. Williams, *Court Refuses to Halt Clean-Truck Program*, LA Times A10 (Apr 16, 2009). The Commission subsequently dropped the lawsuit.

⁷⁸ Daniel J. Curtin, Jr. and Cecily T. Talbert, *California Land Use and Planning Law* 1 (Solano 27th ed 2007).

⁷⁹ *Village of Euclid v Ambler Realty*, 272 US 365, 388 (1927).

⁸⁰ William A. Fischel, *Property Taxation and the Tiebout Model: Evidence for the Benefit View from Zoning and Voting*, 30 J Econ Lit 171, 171 (1992).

⁸¹ *Congress for the New Urbanism, Charter of the New Urbanism*, available at <http://www.cnu.org/sites/files/charter_english.pdf> (last visited July 19, 2009) (showing how broadly the movement views the purposes of land use authority).

planning, cities have also begun to use land use authority to affect local labor markets and inject low-wage workers' concerns into economic development policy.

1. Redevelopment.

A key function of local land use planning is promoting the development of vacant property and the redevelopment of property deemed underutilized. The formal process of "redevelopment" involves designating "blighted" areas as redevelopment zones where the city has power to take property by eminent domain for private development and capture increased property tax revenues from redeveloped sites ("tax increment").⁸² In California, state law allows municipalities to exercise redevelopment powers through a community redevelopment agency ("CRA").⁸³ Los Angeles, for example, delegates these powers to a board of commissioners appointed by the mayor and confirmed by the city council. In addition to this set of powers associated with "redevelopment" officially defined, cities also have the power to foster development outside of the formal redevelopment law, particularly through the provision of public subsidies to entice developers. The concept of redevelopment has a checkered past and remains much maligned. Its inception in the 1950s as a federally sponsored program called Urban Renewal—in which the federal government gave cities grants and loans to effectuate redevelopment plans—quickly became associated with "slum clearance" in order to promote business-oriented "downtown development," leading to the demolition of low-income neighborhoods that critics labeled "Negro Removal."⁸⁴ Urban Renewal was eventually terminated as a federal policy but revived as a local government authority chartered under state law.⁸⁵

Affordable housing has been a central focus of redevelopment, which often displaces local low-income residents by razing their dwellings to make way for new residential and commercial properties. California redevelopment law, for instance, requires that 20 percent of the tax increment generated by a project area

⁸² William B. Fulton, *Guide to California Planning* 243–79 (Solano 1999).

⁸³ Cal Health & Safety Code § 33100.

⁸⁴ Martin Anderson, *The Federal Bulldozer: A Critical Analysis of Urban Renewal, 1949–1962* 1–14 (MIT 1964); Robert Halpern, *Rebuilding the Inner City: A History of Neighborhood Initiatives to Address Poverty in the United States* 64–71 (Columbia 1995).

⁸⁵ Benjamin B. Quinones, *Redevelopment Redefined: Revitalizing the Central City with Resident Control*, 27 Mich J L Reform 689, 700–07 (1994).

be used to increase affordable housing. In addition, the law mandates that new and substantially rehabilitated residential developments include designated percentages of affordable units.⁸⁶

a) *Community benefits agreements.* The use of redevelopment to influence hiring and work standards, however, is not inscribed in redevelopment law and has traditionally not been viewed as an explicit redevelopment goal. Yet a number of mechanisms have evolved to tie redevelopment to workplace issues. For example, the approval of redevelopment projects has been linked to project labor agreements that institute pre-hire collective bargaining agreements between developers and the unions representing workers involved on the project, particularly in the construction trades.⁸⁷ Recently, the development process has been viewed as a way not simply to leverage unionized jobs during the construction phase, but also to promote living wage jobs responsive to local resident hiring needs once projects are built and leased out to commercial tenants.⁸⁸ These efforts have generally involved project-specific policies, some included in development agreements between developers and the city, and others negotiated between developers and community coalitions.

As a historical matter, community benefits promised by private developers have generally been negotiated between the developers and public agencies.⁸⁹ These benefits have been incorporated in the development agreement, which a city typically requires either when it sells land to private developers below cost or provides other types of public subsidies.⁹⁰ Although community groups do not have a formal role in negotiating the contents of a development agreement, they have worked with city officials in certain instances to win contractually defined community benefits. In Los Angeles, LAANE worked closely with Councilwoman

⁸⁶ Cal Health & Safety Code §§ 33334.2(a), 33413(b)(1)-(2).

⁸⁷ See, for example, Patricia E. Salkin and Amy Lavine, *Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations*, 26 UCLA J Environ L & Pol 291, 308 (2008).

⁸⁸ Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, in Sarat and Scheingold, eds, *Cause Lawyers and Social Movements* 302, 313-24 (cited in note 35).

⁸⁹ William Ho, *Community Benefits Agreements: An Evolution in Public Benefits Negotiation Processes*, 17 J Affordable Housing & Community Dev L 7, 9 (Fall 2007/Winter 2008).

⁹⁰ Julian Gross, Greg LeRoy, and Madeline Janis-Aparicio, *Community Benefits Agreements: Making Development Projects Accountable*, 9 (Good Jobs First and the California Partnership for Working Families 2005).

Jackie Goldberg to incorporate a community benefits package—which included provisions for living wage jobs, card check neutrality, local hiring, and job training—into the 1998 development agreement for a large entertainment and retail project in Hollywood.⁹¹ The inclusion of community benefits provisions in the development agreement allows a city to enforce such provisions against the developer. However, it does not provide a mechanism for direct enforcement by community organizations, which may be important since government enforcement incentives dissipate after subsidies are awarded and projects are built.

The community benefits agreement (“CBA”) responds to this enforcement gap by creating a contractual relationship between community organizations and the developer, in which the developer agrees to provide designated benefits in exchange for community support for the project. CBAs emerged in Los Angeles in 2000 as a way to give greater scope for community input in redevelopment decision making.⁹² The first CBA was negotiated by the Figueroa Corridor Coalition for Economic Justice, led by Strategic Actions for a Just Economy (“SAJE”), along with groups active in the living wage and antisweatshop movements: LAANE, ACORN, AGENDA, Esperanza Community Housing Corporation, the Coalition for Humane Immigrant Rights of Los Angeles (“CHIRLA”), HERE Local 11, and SEIU Local 1877. The coalition used the threat of holding up the project by contesting environmental and land use approval to negotiate a CBA with the owners of the Staples Center, in connection with L.A. Live, a proposed \$1 billion sports and entertainment complex adjacent to the Staples Center with high-end hotels, apartments, offices, restaurants, nightclubs, and a live theater. Under the CBA, the coalition agreed both to release its right to oppose the development project (which included bringing lawsuits, taking administrative actions, and expressing public opposition) and to provide affirmative support for the project (which included issuing a press release and testifying in support of administrative approvals). In exchange for the coalition’s cooperation, the developer agreed to a substantial community benefits program, which included \$1 million for a park, \$25 thousand per year for five years to create a residential parking permit program, a first source hiring pro-

⁹¹ Erskine and Marblestone, *The Movement Takes the Lead* at 250–51 (cited in note 35); Los Angeles Alliance for a New Economy, *A Track Record of Success*, available at <<http://www.laane.org/>> (last visited July 19, 2009) (found by going to Victories under the About Us tab).

⁹² Cummings, *Mobilization Lawyering* at 302 (cited in note 88).

gram in which employers would make efforts to hire local residents, and an agreement to produce affordable housing units equivalent to 20 percent of the total units constructed.⁹³ In an attempt to fill a gap of the Los Angeles Living Wage Ordinance, which does not apply to the tenants of publicly subsidized developers, the CBA required that the developer “shall make all reasonable efforts to maximize the number of living wage jobs” in the project and agree to a 70 percent living wage goal for the anticipated 5,500 jobs.⁹⁴

The Figueroa Corridor Coalition’s success in negotiating the CBA led to an explosion of CBAs around the country.⁹⁵ In Los Angeles, there were two major CBAs that followed. The first was between Los Angeles World Airports, the city department that owns and operates LAX, and a coalition of school districts, churches, environmental organizations, and labor groups that earmarked nearly \$500 million for soundproofing schools, homes, and businesses, setting up job training programs, and conducting environmental studies in connection with the \$11 billion modernization of LAX.⁹⁶ The second was negotiated around the proposed \$2 billion Grand Avenue mega-development project to build four-hundred thousand square feet of retail space, a high-end hotel, housing, and a park near the Disney Hall Music Center in the northern part of downtown Los Angeles. That CBA included provisions that echo the Staples Center CBA terms, including a 20 percent inclusionary affordable housing provision, \$50 million for the development of a public park, local hiring and job training requirements, and an agreement to require all permanent jobs to pay the living wage rate.⁹⁷

There was an effort to convert the success of the CBA strategy into local policy reforms. In Los Angeles, community groups such as LAANE pushed the CRA to adopt a community impact report policy, which would have required developers within rede-

⁹³ Id at 322.

⁹⁴ Id.

⁹⁵ See Patricia E. Salkin and Amy Lavine, *Negotiating for Social Justice and the Promise of Community Benefits Agreements: Case Studies of Current and Developing Agreements*, 17 J Affordable Housing & Community Dev L 113 (Fall 2007/Winter 2008) (providing case studies of CBA campaigns).

⁹⁶ For a general discussion, see Los Angeles World Airports, *LAX Master Plan, Community Benefits Agreement (CBA) 2007 Annual Progress Report*, available at <<http://www.laxmasterplan.org/commBenefits/pdf/CBAStatusReport2007.pdf>> (last visited July 19, 2009).

⁹⁷ Grand Avenue Committee, *Community Benefits* (Jan 22, 2007), available at <<http://www.grandavenuecommittee.org/community.html>> (last visited July 19, 2009).

velopment project areas to take into account the impact of projects on affordable housing and jobs along the lines of the current environmental review system. But that proposal was tabled after strong developer opposition.⁹⁸ The CRA did, however, institute a series of policies attempting to link the disbursement of redevelopment funds more closely to labor issues. First, it passed living wage and worker retention policies in 2003 that bring the CRA in line with the Los Angeles city ordinances on these issues. Specifically, the CRA Living Wage Policy extends the living wage requirements of the Los Angeles Living Wage Ordinance to CRA contractors, lessees/licensees, and financial assistance recipients.⁹⁹

b) Construction Careers and Project Stabilization Policy.

In 2008, the CRA instituted a new policy aimed at promoting the hiring of local low-income residents on CRA-financed projects, called the Construction Careers and Project Stabilization Policy.¹⁰⁰ The policy—advanced by LAANE and the Los Angeles County Federation of Labor—applies, with limited exceptions, to projects receiving over \$500 thousand in public improvement funds (to build, for example, sidewalks, parks, or parking lots), projects constructed on CRA-owned property, or more than \$1 million in CRA subsidies.¹⁰¹ The policy requires that these covered projects comply with local hiring requirements mandating that “Community Area and Local Residents” perform a minimum of 30 percent of all work on the projects and that “Disadvantaged Workers” with minimal union experience perform 10 percent of all project work.¹⁰² The policy also requires new CRA projects to

⁹⁸ Cummings, *Mobilization Lawyering* at 324 (cited in note 88). The City of Petaluma in Sonoma County recently approved “the first Community Impact Report (CIR) requirement for new commercial development of more than 25,000 square feet, including retail establishments, grocery stores and hotels.” Martin J. Bennett, *Petaluma Leads Again with New Impact Reports*, Press Democrat (Jan 12, 2009).

⁹⁹ *Living Wage Policy*, Community Redevelopment Agency of the City of Los Angeles (adopted May 29, 2003), available at <<http://www.crala.org/internet-site/Policies/index.cfm>> (last visited Apr 16, 2009).

¹⁰⁰ Ronald D. White, *Seeking to Help At-Risk Workers*, LA Times C1 (Sept 1, 2008).

¹⁰¹ *Construction Careers and Project Stabilization Policy* § II(1) (The Community Redevelopment Agency of the City of Los Angeles, Cal, 2008), available at <http://www.crala.org/internet-site/Policies/Local_Hire_Policy_Programs.cfm> (last visited Apr 16, 2009).

¹⁰² *Id.* at § III(1). A “Community Area Resident” is defined as “an individual whose primary place of residence is in the City of Los Angeles and is within the CRA/LA determined project impact area, typically bounded by a 3-mile radius of the Project Area in which the Covered Project is located.” *Id.* at § I(8). A “Local Resident” is defined as someone “whose primary place of residence is within the City and is within the zip code con-

be covered by project labor agreements and requires developers to engage a Jobs Coordinator to reach out to targeted local and low-income residents, coordinate job training programs, and facilitate hiring.¹⁰³ Before the current recession, the policy was forecast to create five thousand jobs for local residents over the next five years.¹⁰⁴

2. Conditional use.

Conditional use permitting is a process under which a property owner may obtain permission for a land use not otherwise allowed as a matter of right by zoning law. It thus allows a property owner the opportunity to argue for “relief from the strict terms of a comprehensive zoning ordinance.”¹⁰⁵ For example, some cities may not automatically allow the development of a school in an area zoned for residential use, but may allow a school to be built if the developer obtains a conditional use permit (“CUP”) that demonstrates how the proposed school would be compatible with the existing residential nature of the community. In California, the criteria for issuing a CUP is determined by local ordinance.¹⁰⁶ Traditionally, the CUP process has been used to regulate noxious or incompatible land uses in order to preserve the character of a community. It has not been a tool for addressing redistributive issues related to workplace policy. Recently, however, the CUP process has been adapted in a number of cases to address low-wage work. While these adaptations promote the goal of improving labor conditions, they resonate with more traditional land use objectives: redressing blight, abating nuisances, and counteracting redlining.

a) Blight: The Los Angeles Superstores Ordinance. The CUP process has been invoked in connection with development

taining at least part of one census tract with a rate of unemployment rate in excess of 150% of the Los Angeles County unemployment rate.” Id at § I(29). A “Disadvantaged Worker” is someone “whose primary place of residence is within the City and who, prior to commencing work on a Covered Project, either (a) has a household income of less than 50% of the AMI or (b) faces at least one of the following barriers to employment: being homeless; being a custodial single parent; receiving public assistance; lacking a GED or high school diploma; having a criminal record or other involvement with the criminal justice system; or suffering from chronic unemployment.” *Construction Careers and Project Stabilization Policy* at § I(18) (cited in note 101).

¹⁰³ Id at §§ IV, V(5).

¹⁰⁴ White, *Seeking to Help At-Risk Workers*, LA Times at C1 (cited in note 100).

¹⁰⁵ Curtin and Talbert, *Curtin’s California Land Use and Planning Law* at 61 (cited in note 78).

¹⁰⁶ Id at 63.

decisions having multiple “community impacts,” some of which are akin to traditional land use concerns (such as the effect on local businesses and housing), while some are related to labor standards (such as the impact on wages and other job related benefits). Because the concerns motivating the use of CUPs in these contexts extend beyond “physical blight,” the traditional controls associated with environmental review are considered insufficient.¹⁰⁷ Extending the CUP to regulate issues more directly concerned with conditions of employment may also impact labor organizing, albeit indirectly.

Although other cities had passed bans on big-box development, Los Angeles was the first city to pass a “Superstores Ordinance” requiring an economic impact analysis.¹⁰⁸ The ordinance was the culmination of a two-year-long organizing drive led by LAANE and United Food and Commercial Workers Union (“UFCW”) Local 770 to stop the development of what would have been the first Wal-Mart Supercenter in metropolitan Los Angeles, to be located in the City of Inglewood.¹⁰⁹ This “site fight”—which again included groups that had been involved in prior campaigns around the living wage and CBAs (like CLUE and ACORN)—combined litigation and grassroots organizing to mobilize voters in Inglewood to defeat a Wal-Mart-sponsored ballot initiative that would have authorized the development without the normal environmental and land use review process. The successful defeat of the proposed Inglewood Supercenter revived stalled efforts to pass an ordinance regulating big-box development in Los Angeles. From a legal standpoint, there was concern about the validity of any type of outright ban, which could be viewed by a court as an impermissible use of zoning law to interfere with private business for economic reasons (like protecting labor standards in the grocery industry) unrelated to typical land use concerns (such as preventing blight or reducing traffic).¹¹⁰

¹⁰⁷ In one California case, however, environmental review has been extended to cover “economic blight” related to big-box retail development. *Bakersfield Citizens for Local Control v City of Bakersfield*, 124 Cal App 4th 1184, 1193 (2004).

¹⁰⁸ Jessica Garrison, *L.A. Council Votes to Restrict Superstores*, LA Times A1 (Aug 11, 2004); Jessica Garrison, *Los Angeles City Panels Back Plan to Hinder Wal-Mart Stores*, LA Times B3 (Aug 5, 2004). See also Rene Sanchez, *L.A. City Council Considers Putting Lid on Big-Box Retailers*, Wash Post (Aug 15, 2004); Jessica Garrison, *Battles Over Mega-Stores May Shift to New Studies; Law Requiring Economic Impact Reports Could Set the Stage for Skirmishes Across Los Angeles*, LA Times B1 (Aug 12, 2004); Daniel B. Wood, *A New Twist in the Wal-Mart Wars*, Christian Sci Monitor USA 2 (Aug 12, 2004).

¹⁰⁹ Cummings, 95 Cal L Rev at 1929-31 (cited in note 9).

¹¹⁰ See George Lefcoe, *The Regulation of Superstores: The Legality of Zoning Ordinances Emerging from the Skirmishes Between Wal-Mart and the United Food and Com-*

Moreover, even if the ban were based on legitimate land use grounds, there remained the very real possibility that Wal-Mart would nonetheless sue, tying up any proposed ordinance in costly litigation, or challenge the ordinance through a referendum. LAANE decided to oppose a ban, which it argued invited risky litigation and ballot fights.¹¹¹ As an alternative, LAANE began to advocate for an ordinance requiring Wal-Mart to submit an economic impact analysis demonstrating the absence of adverse economic impacts prior to a Supercenter's approval.¹¹² This idea was roughly modeled on the process for environmental review that had proved to be a potent vehicle for pressing community demands and echoed the community impact report that LAANE had unsuccessfully lobbied for in front of the CRA.¹¹³ The impact report idea was thus resurrected in connection with discussions about big-box regulation,¹¹⁴ and after the Inglewood fight came to represent a way out of the political and legal impasse created by a big-box ban. Accordingly, the UFCW signed onto the idea of pursuing an economic impact analysis, and the city passed the Superstores Ordinance in August 2004.¹¹⁵

The ordinance defines "Superstore" as "a Major Development Project that sells from the premises goods and merchandise, primarily for personal or household use, and whose total Sales Floor Area exceeds 100,000 square feet and which devote more than 10% of sales floor area to the sale of Non-Taxable Merchandise."¹¹⁶ The ordinance applies to Superstores slated to be located in "Economic Assistance Areas,"¹¹⁷ which include federal and state enterprise zones and city redevelopment project areas covering much of Los Angeles's low-income communities.¹¹⁸ The law

mercial Workers Union, 58 Ark L Rev 833, 859–66 (2006). There were also questions about whether a big-box ban was subject to environmental review under the California Environmental Quality Act, Cal Pub Resources Code §§ 21000-21177.

¹¹¹ Tracy Gray-Barkan, *Southern California's Wal-Mart Wars*, 35 Soc Pol 31, 37 (Fall 2004).

¹¹² *Id* at 38.

¹¹³ Cummings, *Mobilization Lawyering* at 324 (cited in note 88).

¹¹⁴ Gray-Barkan, 35 Soc Pol at 38 (cited in note 111) ("[I]n March [2004], . . . state Senator Richard Alarcon introduced a law (later vetoed by Governor Schwarzenegger) that required local officials to prepare a 'business impact report' (BIR) prior to the approval of big box stores over '100,000 square feet of gross buildable area' and 'more than 10,000 square feet of floor space to be used for selling non-taxable merchandise.'").

¹¹⁵ Cummings, 95 Cal L Rev at 1972–73 (cited in note 9).

¹¹⁶ LA Municipal Code § 12.24(U)(14)(a) (2004). The "Superstore" designation is meant to indicate that the ordinance applies to all big-box stores that meet the statutory definition, not just Wal-Mart Supercenters.

¹¹⁷ *Id* at § 12.24(U)(14)(d).

¹¹⁸ *Id* at § 12.24(U)(14)(a).

makes the development of a Superstore in such an area contingent on the receipt of a CUP.¹¹⁹ In order to receive a CUP, a Superstore developer must submit an economic impact analysis to the city's Community Development Department (or CRA if the project is within a redevelopment zone) specifying whether the store would "have an adverse impact or economic benefit on grocery or retail shopping centers," "result in the physical displacement of any businesses," "require the demolition of housing," destroy park space, displace jobs, impact city revenue, and create other "materially adverse or positive economic impacts or blight."¹²⁰ The analysis must also specify whether there are measures available to "mitigate any materially adverse economic impacts."¹²¹ On the basis of this report and any information submitted in response, the Community Development Department must make a recommendation to the City Planning Commission as to whether the proposed store would result in a "materially adverse economic impact" and, if so, whether there are any mitigation measures available.¹²² In order to give final approval to the project, the City Planning Commission then must conclude that no irremediable adverse impacts exist—a determination that is appealable to the full Los Angeles City Council.¹²³

The ordinance aims to set a high bar for Superstore admission into Los Angeles by requiring the city to create a public record, based on empirical evidence, that the economic benefits of a store will in fact outweigh the costs. In practice, it has generated a cottage industry of consultants who produce reports on both sides of the Wal-Mart divide, touting the benefits or condemning the costs depending on the perspective of the commissioning group.¹²⁴ The ordinance therefore does not eliminate politics from the siting decision, but rather channels it into an impact analysis process that places labor activists on a stronger footing than if they were left solely with the pre-existing land use entitlement and environmental review standards. In particular, the economic impact analysis requirement provides a politically legitimate way for city council members to oppose Wal-Mart because of concerns about its labor practices and negative community effects.

¹¹⁹ See Lefcoe, 58 Ark L Rev at 845 (cited in note 110).

¹²⁰ LA Municipal Code § 12.24(U)(14)(d)(2)(i)-(ix) (2004).

¹²¹ Id at § 12.24(U)(14)(d)(2)(x).

¹²² Id at § 12.24(U)(14)(d)(3).

¹²³ Id at § 12.24(U)(14)(d)(1).

¹²⁴ Cummings, 95 Cal L Rev at 1964 (cited in note 9).

Moreover, the structure of the ordinance, which only compels the production of information about the economic impact of Superstores, is designed to be less vulnerable to legal attack than a flat ban on big-box stores. An analogous ordinance was passed in Inglewood in 2006.¹²⁵ Since the ordinances were passed, Wal-Mart has not attempted to develop a Supercenter in Los Angeles or Inglewood.

b) Nuisance: The Home Improvement Stores Ordinance.

Another adaptation of the CUP process to address low-wage worker issues grew out of the immigrant rights movement in Los Angeles. Over the past two decades, increasing immigration and a lack of employment opportunities have led many immigrants, mostly men, to seek employment on street corners throughout Southern California. These workers, known as day laborers, are subject to high levels of labor abuse, which ranges from an employer's failure to pay minimum wage to the outright denial of pay.¹²⁶ Because day laborers are economically vulnerable and many are undocumented immigrants, exploitation is common and often goes unreported. Some city officials have also viewed the groupings of immigrant laborers, often on street corners or in front of home improvement stores like Home Depot, as creating safety and public nuisance issues. In response, local governments have passed antisolicitation ordinances under their local police power in an effort to get day laborers off the streets.¹²⁷ One of the earliest examples was in Costa Mesa, California in 1988. Other cities soon followed suit and drew legal challenges on free speech grounds from the American Civil Liberties Union and the Mexican Legal Defense and Education Fund, which were largely successful in forcing repeal of the laws.¹²⁸

Beginning in 1997, CHIRLA and the Institute of Popular Education of Southern California (known by its Spanish acronym as "IDEPSCA") began trying to organize day laborers, educating them about workplace rights and coordinating formal day labor

¹²⁵ See Josh Grossberg, *Inglewood Law Scrutinizes Superstores: A New Ordinance Makes It Even More Difficult for Potential Big Boxes to Build by Requiring Them to Pay for an Economic Impact Analysis*, Daily Breeze A3 (July 13, 2006).

¹²⁶ Abel Valenzuela, Jr., et al, *On the Corner: Day Labor in the United States* ii, 1-2 (National Day Labor Study, Jan 2006).

¹²⁷ Michael Torres and Scott Smith, *Between the Street and a Hard Place*, 30 Pub L J 1, 1 (2007).

¹²⁸ See *Comite de Jornaleros de Glendale v City of Glendale*, No CV 04-3521 SJO, slip op at 26 (C D Cal Jan 15, 2005); *Comite de Jornaleros de Redondo Beach v City of Redondo Beach*, 2006 WL 4081215 (C D Cal Dec 12, 2006).

hiring sites around the city.¹²⁹ This collaborative grew to become an independent organization, the National Day Labor Organizing Network (“NDLON”), which was established in 2001.¹³⁰ NDLON sought to expand day labor organizing in part through the creation of organized day labor sites, which instituted formal procedures to govern the hiring process in order to reduce opportunities for employer abuse. Common arrangements at day labor sites include a lottery system to equally distribute work and an agreement among all workers to establish a base wage rate.¹³¹ Beginning in the late 1990s, the City of Los Angeles began directly paying to operate day labor sites, which were coordinated by various organizations, including CHIRLA. These centers were estimated to cost the city between \$1.2 and \$1.5 million dollars per year.¹³²

The idea of enacting a day labor ordinance was conceived as a way to both counteract city efforts to disperse day laborers and to create viable, self-financing sites for day labor organizing. It was linked to the expansion of Home Depot in the Los Angeles market, which day labor advocates viewed as an opportunity to shift the financial burden to Home Depot as a condition for developing a new store. The ordinance campaign was launched by NDLON in the wake of LAANE’s successful effort to pass the Superstores Ordinance—and sought to build upon the CUP dimension of the big-box law. The Home Improvement Stores Ordinance was enacted in 2008 after four years of negotiations between city council members and immigrant rights advocates.¹³³

The ordinance amends the CUP provision that covers Superstores to incorporate an additional process for the approval of a “Home Improvement Store,” defined as a project:

that contains 100,000 square feet or more in a building or structure . . . that sells a large variety of goods, that may include, but are not limited to, the sale of hardware, lumber, plumbing supplies, electrical fixtures and supplies, windows, doors, garden supplies, plants and similar

¹²⁹ Victor Narro, *¡Sí Se Puede! Immigrant Workers and the Transformation of the Los Angeles Labor and Worker Center Movements*, 1 Los Angeles Pub Interest L J 1, 30 (2009).

¹³⁰ Id at 31–32.

¹³¹ See, for example, Gordon, *Suburban Sweatshops* at 93–97 (cited in note 15).

¹³² Report of the Chief Legislative Analyst, *Funding for New Day Labor Sites*, at 1–2 (Feb 13, 2007).

¹³³ LA Ordinance No 180174 (Aug 22, 2008).

items, used in the maintenance, improvement or expansion of dwellings, buildings or sites.¹³⁴

However, unlike the Superstores Ordinance, which mandates an economic impact report prior to the issuance of a CUP, the Home Improvement Stores Ordinance leaves the inclusion of day labor standards in the CUP process for home improvement stores to the city's discretion.¹³⁵ If the city chooses to require day labor standards in connection with a home improvement store's development, such standards may include:

[A] suitable area located on site for Day Laborers seeking employment with customers [that is] . . . easily accessible and viewable to Day Laborers seeking employment, as well as potential employers of these individuals, . . . is located so as not to impede or restrict vehicular or pedestrian access [to or from the store], . . . is designed to complement the overall design of structures located on the site, . . . is equipped with a minimum level of easily accessible and convenient amenities, such as sources of drinking water, toilet and trash facilities, tables and seating, . . . is covered to provide adequate shelter, [and] . . . is open during the hours of operation [of the store] . . .¹³⁶

The ordinance allows for exemptions if the store can show no day laborer population exists around the planned site or if it expects that there is no need for a mitigation plan. In practice, however, these exemptions will be difficult to prove, although each CUP will be examined on a case-by-case basis.

c) *Redlining: The Grocery Reinvestment Act.* The most current campaign to revise the CUP process is now occurring in connection with LAANE's Grocery and Retail Campaign. In 2006, LAANE helped to organize the Alliance for Healthy and Responsible Grocery Stores. Its goal is to promote the development of grocery stores in low-income neighborhoods, on the grounds that it fosters healthy eating and provides quality jobs

¹³⁴ LA Municipal Code § 12.24(U)(14)(a).

¹³⁵ Id at § 12.24(U)(14)(e)(1) (stating that the City Planning Commission or City Council on appeal "may require written Day Laborer operating standards . . . as a condition of approval of any Home Improvement Store").

¹³⁶ Id at § 12.24(U)(14)(e)(2)(i).

for local residents.¹³⁷ The Alliance thus has sought to link public health and job development.

The backdrop to the formation of the Alliance was the 1992 civil unrest, which produced calls for investment in community-based grocery stores after the riots revealed deep resentment over the lack of access to affordable, quality food.¹³⁸ Ten years later, LAANE reported that only one new grocery store had been built.¹³⁹ In 2003, the Southern California grocery strike challenged the UFCW's position in the Los Angeles grocery sector, leading to a set of union contracts with the major groceries that were uniformly viewed as a defeat for organized labor, establishing a two-tiered employment track that provided new workers with wages and benefits below what were provided to existing workers.¹⁴⁰ After the strike, the UFCW joined forces with LAANE to defeat the Inglewood Wal-Mart Supercenter—the threat of which was viewed as the primary cause of the strike, since the groceries argued that they needed wage and benefit concessions to compete with the impending arrival of nonunionized Wal-Mart stores.¹⁴¹ Another outgrowth was that the UFCW set out to build a stronger base in low-income communities, where support for unionized groceries was strong. As a first step, the union and LAANE convened a blue ribbon commission to study the grocery sector and issued a report criticizing the lack of groceries in poor neighborhoods.¹⁴²

LAANE—as part of the Alliance for Healthy and Responsible Grocery Stores¹⁴³—then began its campaign to develop a “policy to mitigate the problems of redlining, which leaves low-income communities without major grocery stores or access to quality,

¹³⁷ Los Angeles Alliance for a New Economy, *Grocery and Retail Campaign: Securing Quality Jobs for Supermarket Workers and Access to Healthy Food for All Communities*, available at <<http://74.10.59.52/laane/projects/grocery/index.html>> (last visited Apr 14, 2009).

¹³⁸ See Gottlieb, et al, *The Next Los Angeles* at 112–13 (cited in note 16).

¹³⁹ Los Angeles Alliance for a New Economy, *The Supermarket Chains' Broken Promises to Poor and Minority Communities*, available at <http://74.10.59.52/laane/docs/projects/grocery/FS_BrokenPromises.pdf> (last visited Aug 5, 2009).

¹⁴⁰ Cummings, 95 Cal L Rev at 1955 (cited in note 9).

¹⁴¹ *Id.*

¹⁴² *A Call for Standards for Food Access and Job Quality in Los Angeles' Grocery Industry: A Report of the Blue Ribbon Commission on L.A.'s Grocery Industry and Community Health* (July 2008), available at <<http://74.10.59.52/goodgrocery/blueribboncommissionreport2008.pdf>> (last visited Aug 5, 2009).

¹⁴³ See Alliance for Healthy and Responsible Grocery Stores, *Members*, available at <<http://74.10.59.52/goodgrocery/whoware.html>> (last visited Aug 5, 2009).

healthy foods.”¹⁴⁴ The use of the term “redlining” deliberately evokes the shameful practice by commercial banks of refusing to write mortgages to residents of low-income communities of color—literally drawing a red line on a map identifying the excluded neighborhoods.¹⁴⁵ By associating grocery store development decisions with bank lending practices, LAANE has sought to both portray grocery disinvestment in geographic terms and suggest the outlines of a possible solution. In the banking context, the Community Reinvestment Act encourages banks to meet the credit needs of the “entire community, including low- and moderate-income neighborhoods.”¹⁴⁶ To similarly encourage groceries to meet the needs of low-income communities, LAANE is again focusing on modifying the CUP process: “Since virtually every new supermarket must apply for a Conditional Use Permit (CUP), LAANE proposes that the L.A. Planning Commission and City Council add a condition to the CUP application requiring compliance with anti-redlining and food and job quality criteria.”¹⁴⁷ The content of such a CUP application is not yet determined, but presumably would require grocery stores to commit to distribute the development of stores across affluent and low-income neighborhoods as a prerequisite for a CUP to be issued.

C. The Regulatory Model: The LAX Enhancement Zone Ordinance

In addition to using its procurement and land use planning powers to affect the low-wage market, Los Angeles, like other cities, has drawn upon its fundamental police power to directly impose regulations designed to promote the public welfare. Cities are given broad grants of statutory or constitutional power under home rule authority to set local standards. Los Angeles has used its police power authority to enact legislation that directly impacts employment standards in targeted low-wage industries. Most prominently, in 2008 the Los Angeles City Council passed a new living wage law that—unlike the ordinance passed in 1997 that imposes living wage requirements on businesses with direct

¹⁴⁴ Los Angeles Alliance for a New Economy, *Grocery and Retail Campaign* (cited in note 137).

¹⁴⁵ See Melvin L. Oliver & Thomas M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality* 16–23 (Routledge 1997).

¹⁴⁶ 12 USC § 2903.

¹⁴⁷ Los Angeles Alliance for a New Economy, *Grocery and Retail Campaign* (cited in note 137).

fiscal links to the cities—mandates that hotels operating in the vicinity of LAX pay workers at the living wage rate.¹⁴⁸ This law, in contrast to its predecessor, is place-based rather than contingent on city contracts. In this sense, the airport living wage ordinance—called the LAX Enhancement Zone Ordinance—resembles a direct minimum wage increase, but only for designated employers in a specific geographic area.

As of 2006, there were four cities that had enacted city-wide minimum wage increases (Albuquerque, New Mexico; Washington, D.C.; Santa Fe, New Mexico; and San Francisco, California).¹⁴⁹ Legal challenges to these laws (as with the contract-based living wage laws discussed earlier) have revolved in part around the question of state preemption—whether state minimum wage laws preclude localities from enacting their own that exceed state thresholds. Place-based living wage laws, like the one in Santa Fe, New Mexico that imposes a city-wide living wage rate for most businesses,¹⁵⁰ have withstood challenges on preemption grounds.¹⁵¹ The LAX Enhancement Zone Ordinance, however, is the first to apply to private employers in a certain industry within a smaller geographical area.¹⁵² While it is unique in its geographic scope and lack of contracting requirements, its supporters argue that it still relies on indirect public financial relationships as the trigger for the hotel living wage mandates. Specifi-

¹⁴⁸ LA Municipal Code §§ 104.101–104.115.

¹⁴⁹ There were four other cities in Wisconsin that had enacted city-wide living wage laws (Eau Claire, Lacrosse, Madison, and Milwaukee), which were subsequently repealed by state law in 2005.

¹⁵⁰ In addition to covering city employees, contractors, and businesses receiving financial assistance from the city, the Santa Fe ordinance applies to “[b]usinesses required to have a business license or business registration from the city of Santa Fe who, during any given month, have twenty-five (25) or more workers. . . .” Santa Fe Living Wage Ordinance, § 28-1.5(A)(1)-(4).

¹⁵¹ *New Mexicans for Free Enterprise v City of Santa Fe*, 126 P 3d 1149 (NM Ct App 2005). See also Christine Niemczyk, Comment, *Boxing Out Big Box Retailers: The Legal and Social Impact of Big Box Living Wage Legislation*, 40 J Marshall L Rev 1339, 1351–53 (2007).

¹⁵² Some cities have passed ordinances covering areas that are publicly owned or controlled. San Francisco passed an ordinance applying to workers in San Francisco Airport in 1999. Michael Reich, Peter Hall, and Ken Jacobs, *Living Wage Policies at the San Francisco Airport: Impacts on Workers and Businesses*, 44 Indus Relat 106, 107 (2005). Berkeley’s ordinance applies to businesses over a certain size operating in the Berkeley Marina, which is held in public trust. *RUI One Corp*, 371 F3d at 1144–46. In 2001, an ordinance similar to the LAX Enhancement Zone Ordinance was passed in Santa Monica, California, which applied to all firms (mostly hotels) within a 1.5 mile Coastal Zone along Santa Monica’s beachfront. Erskine and Marblestone, *The Movement Takes the Lead* at 251 (cited in note 35). This ordinance, however, was defeated in a citywide referendum that was marred by a disinformation campaign by business opponents to the law. *Id* at 254.

cally, they argue that the hotels “derive significant and unique business benefits from their close proximity to LAX” and may therefore be required to meet city-imposed wage standards.¹⁵³

The campaign for the LAX ordinance began in 2006 when labor and community organizers launched an effort to extend the existing living wage ordinance to hotel workers along Century Boulevard, the main thoroughfare leading into LAX, which is lined with large hotels catering to travelers. As with the campaign for the 1997 Los Angeles Living Wage Ordinance, LAANE spearheaded the organizing drive, this time in coordination with UNITE HERE, the merged garment and hotel union that has focused on organizing low-wage workers.¹⁵⁴ In addition to LAANE and UNITE HERE, the Coalition for a New Century, as it was called, included familiar economic justice players, including the Los Angeles County Federation of Labor and CLUE. The coalition organized numerous protests, including one “sit down” in the middle of Century Boulevard in which over three hundred people were arrested, including two city council members.¹⁵⁵ With the support of labor-friendly city council members and Mayor Antonio Villaraigosa—a former union organizer—the coalition succeeded in getting the ordinance approved on November 15, 2006, and signed by Mayor Villaraigosa on November 27, 2006.¹⁵⁶

Following the passage of the ordinance, the business lobby quickly mobilized a counter-effort to collect enough signatures to hold a ballot referendum to repeal the law. Calling themselves Save LA Jobs, the group’s backers included hotel representatives and the Los Angeles Chamber of Commerce.¹⁵⁷ Mayor Villaraigosa and the city council attempted to broker a deal with industry representatives in an effort to circumvent the referendum, which it was estimated would have cost the city \$2.5 million dollars.

¹⁵³ LA Municipal Code § 104.101.

¹⁵⁴ UNITE HERE was formed in 2004 from the merger of the formerly independent unions UNITE and HERE. UNITE HERE is part of the Change to Win coalition of unions that split from the AFL-CIO, in part, to focus more energy on organizing low-wage and immigrant workers. In May 2009, however, a large faction of UNITE workers left the merged union to become an affiliate of the SEIU called Workers United. Peter Dreier, *Divorce—Union Style*, *The Nation* (Aug 12, 2009).

¹⁵⁵ Joe Mathews, *Unions Targeting the LAX Area*, *LA Times* B1 (Nov 25, 2006); Peter Dreier, *Living-Wage Victory in LA*, *The Nation* (Feb 5, 2007).

¹⁵⁶ Joe Mathews and Duke Helfand, *Airport Hotels Ordered to Pay a “Living Wage,”* *LA Times* A1 (Nov 16, 2006); Duke Helfand, *Mayor Signs “Living Wage” Law*, *LA Times* B4 (Nov 28, 2006).

¹⁵⁷ Jim Newton, *Deception Alleged in Petition Bid*, *LA Times* B3 (Dec 16, 2006); Joe Mathews, *“Living Wage” Foes Collect Signatures*, *LA Times* B5 (Dec 29, 2006).

The city council rescinded the original ordinance and agreed to negotiate a new one more favorable to the hotels.¹⁵⁸

With the apparent backing of the business groups, the city council passed the revised ordinance in February 2007.¹⁵⁹ The ordinance included the same living wage rates as the repealed ordinance (\$9.39 with health benefits and \$10.64 without), but added a number of new provisions, including a phased-in implementation, as well as the inclusion of an “Airport Hospitality Enhancement Zone” that would provide hotels with financial incentives for infrastructure and other modernization projects.¹⁶⁰ In addition, the revised ordinance required the city to study its effect on the hotels, their customers, and the workers, and also implemented new “procedures for further regulation” designed to create standards for the enactment of any further living wage laws.¹⁶¹ As part of these procedures, the city agreed to conduct a study (with the opportunity for public input) prior to the enactment of new living wage laws and to refrain from imposing new living wage requirements “unless the industry and region to be regulated receive business benefits stemming from a City asset that match or exceed the benefit from proximity to LAX received by Hotels in the Airport Hospitality Enhancement Zone.”¹⁶²

However, despite the apparent accord in support of the revised LAX ordinance, the hotels immediately filed a legal challenge to the new law, arguing that it was not substantially different from the previous one and therefore the city’s decision to rescind the initial version of the ordinance was an illegal attempt to circumvent the referendum process.¹⁶³ A superior court judge agreed and ruled to block the living wage ordinance from going into effect. The court of appeals unanimously reversed the trial court, holding that the new ordinance was not essentially similar to the old and therefore not barred by the rule against repeal.¹⁶⁴

¹⁵⁸ Joe Mathews, *Deal May Be Near on “Living Wage” Vote*, LA Times B1 (Jan 31, 2007).

¹⁵⁹ LA Ordinance No 178432, amending LA Municipal Code ch X, art 4 (Feb 26, 2007).

¹⁶⁰ LA Municipal Code §§ 104.103, 104.106.

¹⁶¹ *Id.* at § 104.144. See also Joe Mathews and Duke Helfand, *Battle Over Living Wage Skirted*, LA Times B1 (Feb 1, 2007); Peter Dreier, *Living-Wage Victory in LA*, The Nation (cited in note 155).

¹⁶² LA Municipal Code § 104.114(B). These procedures can be bypassed “if the industry to be regulated has so many employees being paid less than living wage as to have a significant negative effect on the City economy as a whole.” *Id.* at § 104.114(C).

¹⁶³ Joe Mathews and Steve Hyman, *Council OKs New Living Wage Law*, LA Times B3 (Feb 14, 2007).

¹⁶⁴ *Rubalcava v Martinez*, 158 Cal App 4th 563, 576–577 (Cal App Ct 2008). See also Steve Hyman, *L.A. Living Wage Law is Upheld*, LA Times B1 (Dec 28, 2007).

The hotels appealed yet again, this time to the state supreme court, which eventually declined to hear the case, effectively ending the hotels' legal challenge. Following the California Supreme Court's decision, most of the hotels began implementing the living wage. However, Hilton decided to continue the fight alone and challenged the ordinance on equal protection grounds in federal court; that case was also dismissed.¹⁶⁵ The ordinance is expected to cover up to 3,500 hotel workers within the Enhancement Zone.¹⁶⁶

II. IMPLICATIONS

It is not possible to draw robust, generalizable conclusions about the role of local government law in reshaping the low-wage workplace based solely on the Los Angeles experience, which is a product of the city's particular political and economic context. Nor can we make any strong claims about the future role of local government law in fostering worker organizing or restructuring low-wage industries particularly given the significant domestic political realignment, which has made national-level policy making on labor issues potentially more appealing and plausible. Nonetheless, it is possible to step back from the details of the policies we have catalogued here to discern general patterns that may be helpful in guiding scholars and activists interested in the potential of local government law as a lever of low-wage market reform. Toward this end, this Part examines some of the opportunities and constraints associated with local low-wage worker initiatives by cataloguing the actors involved, highlighting the industry sectors targeted for local regulation, identifying policy objectives, examining how the initiatives are framed to policy makers, suggesting basic criteria to assess policy impact, and exploring the central challenge of replication.

¹⁶⁵ Howard Fine, *L.A. Living Wage Law Upheld*, LA Bus J (Apr 11, 2008), available at <<http://www.labusinessjournal.com/article.asp?aID=87294014.8540134.1611558.79788903.1710826.256&aID2=123957>> (last visited Apr 9, 2009); Howard Fine, *Hilton Takes Last Stand in War on "Living Wage,"* 30 LA Bus J 27 (July 7, 2008), available at <<http://www.encyclopedia.com/doc/1G1-181855574.html>> (last visited Aug 5, 2009); Howard Fine, *Judge Dismisses Hotel's Suit Against Living Wage*, LA Bus J (Oct 2, 2008), available at <<http://www.communitybenefits.org/downloads/Judge%20Dismisses%20Hotel%20Suit%20Against%20Living%20Wage%2010.2.08.pdf>> (last visited Apr 9, 2009).

¹⁶⁶ Duke Helfand, *Mayor Signs "Living Wage" Law*, LA Times B4 (Nov 28, 2006).

A. Actors

Which groups have sponsored low-wage worker initiatives and who are their allies? These initiatives are a product of new, flexible forms of labor activism in which community groups, labor unions, and workers come together in different organizational configurations out of a sense of strategic solidarity to advance a range of objectives, including organizing, education, and policy reform. Table 1 lists the Los Angeles low-wage worker initiatives discussed above and provides information about the organizational composition of the coalitions that advanced them, including the lead community organizations, union partners, and other organizations that participated as coalition allies.

TABLE 1: ORGANIZATIONAL SPONSORS

Initiative	Coalition	Organizations in Coalition
LA Living Wage Ord. (1997)	LA Living Wage Coal.	Lead Organization: LAANE Union Partners: HERE, SEIU Coalition Members: ACORN, AGENDA, Cal. Immigrant Workers Ass'n, Cal. Network for a New Economy, CLUE, Coalition LA, Communities for a Better Env't, Esperanza Cmty. Housing Corp., UCLA Labor Ctr.
Cmty. Benefits Agreements (2001, 2004, 2007)	Figueroa Corridor Coal. for Econ. Justice	Lead Organization: SAJE Union Partners: HERE, SEIU Coalition Members: ACORN, AGENDA, All People's Christian Ctr., Blazers Youth Servs., Budlong & Jefferson Block Club, Cent. American Resource Center, CHIRLA, Coal. LA, Cmty. Coal., Concerned Citizens of S. Cent. LA, El Rescate, Env'tl. Defense, Episcopal Church of St. Phillip the Evangelist, Esperanza Cmty. Housing Corp., Faithful Serv. Baptist Church, First United Methodist Church, LAANE, Neighbors for an Improved Cmty., St. Agnes Catholic Church, St. John's Episcopal Church, St. John's Well Child Ctr., St. Mark's Lutheran Church, Student Coal. Against Labor Exploitation, United Univ. Church
	LAX Coal. for Econ., Env'tl. & Educational Justice	Lead Organization: LAANE Union Partners: SEIU, Teamsters Coalition Members: AGENDA, AME Minister's Alliance, Cal. Env'tl. Rights Alliance, CLUE, Coal. for Clean Air, Communities for a Better Env't, Cmty. Coal., Cmty. Coal. for Change, Env'tl. Defense, Inglewood Coal. for Drug & Violence Prevention, Inglewood Democratic Club, Lenox Coordinating Council, LA Council of Churches, Nation of Islam—LA, Natural Resources Defense Council, Physicians for Social Responsibility Los Angeles
	Grand Ave. Comm. Benefits Coal.	Lead Organization: SAJE Union Partners: None Coalition Members: CD Tech, Concerned Citizens of South Central LA, LA Cmty. Action Network
Superstores Ord. (2004)	Coal. for a Better Inglewood	Lead Organization: LAANE Union Partners: UFCW, UNITE HERE Coalition Members: CLUE, Coal. LA, Cmty. Coal., Inglewood Coal. for Drug & Violence Prev't'n, Inglewood Democratic Club, Neighbor to Neighbor Action Fund
Sweat-Free Proc. Ord. (2004)	Anti-Sweat. Ord. Working Group	Lead Organization: Sweatshop Watch Union Partners: UNITE Coalition Members: GWC, No More Sweatshops, Progressive Jewish Alliance
LAX Enhancem't Zone Ord. (2007)	Coal. for a New Century	Lead Organization: LAANE Union Partners: UNITE HERE Coalition Members: Christ Liberty Tabernacle, CLUE, Coal. for a Better Inglewood, Congregation B'nai Tikvah, Hamilton United Methodist Church, Holy Faith Episcopal Church, Inglewood Coal. for the Prevention of Drugs & Violence, LAX Coal. for Econ., Env'tl & Educ. Justice, Progressive Jewish Alliance
Home Improv't Stores Ord. (2008)	NDLON	Lead Organization: NDLON Union Partners: None Coalition Members: NDLON member organizations (CHILRA, IDEPSCA)
CRA Constr. Careers & Project Stabilization Policy (2008)	Constr. Careers Initiative Coal.	Lead Organization: LAANE Union Partners: LA Co. Fed. of Labor Coalition Members: AGENDA, Bethel A.M.E., Black Trade Unionists, Communities in Schools, Cmty. Coal., Ex-Offender Action Network, Homeboy Indus., LA/Orange Co. Building Trades Council, S. Christian Leadership Conference, UCLA Labor Ctr., United Job Creation Council
Clean Trucks Program (2008)	Coal. for Clean & Safe Ports	Lead Organization: LAANE Union Partners: Change to Win, Int'l Ass'n of Machinists, Int'l Brotherhood of Electrical Workers, LA Co. Fed. of Labor, SEIU, Teamsters, UNITE HERE Coalition Members: Am. Lung Ass'n of Cal., CHIRLA, CLUE, Coal. for Clean Air, Coal. for a Safe Environment, Communities for a Better Env't., Communities for Clean Ports, East Yard Communities for Env't'l Justice, Engineers & Architects Ass'n LA, Green LA Port Working Group, Harbor Watts Econ. Dev. Corp., Hermandad Mexicana Latinoamericana, LA/Long Beach Labor Coalition, Long Beach Alliance for Children with Asthma, Long Beach Cmty. Partners Council, Long Beach Greens, Mexican Am. Political Ass'n, NAACP Carson/Torrance, Natural Resources Defense Council, Physicians for Social Responsibility, Progressive Christians Uniting, San Pedro Democratic Club, Sierra Club Harbor Vision Task Force, Teachers Ass'n of Long Beach, S. Cal. Council of Laborers
Grocery Reinv. Act (pending)	Alliance for Healthy & Resp. Grocery Stores	Lead Organization: LAANE Union Partners: LA Co. Fed. of Labor, SEIU, UFCW Coalition Members: AGENDA, Alliance for Democracy—LA Chapter, Asian Pac. Am. Labor Alliance, Cal. Ass'n of Prof'l Employees, Cal. Food & Justice Coal., CLUE, Coal. for Clean Air, Coal. LA, Cmty. Coal., Cmty. Health Council, Cmty. Servs. Unlimited, IDEPSCA, Iraq Veterans Against the War, Korean Immigrant Workers Advocates, LA Voice PICO, Livable Places, Northeast Democratic Club of LA, Plaza Cmty. Ctr., UCLA Labor Ctr., Urban & Env'tl Policy Inst.

A number of interesting patterns emerge. First, with respect to the lead organizations, LAANE has been the key player in promoting local low-wage worker initiatives, playing a lead role in six of the nine initiatives. The only two initiatives in which LAANE was not involved were those that grew directly out of immigrant worker organizing—with the Sweat-Free Procurement Ordinance emerging out of antisweatshop organizing in the garment industry led by Sweatshop Watch, the Garment Worker Center, and APALC, and the Home Improvement Stores Ordinance promoted by NDLO and its member organizations, IDEPSCA and CHIRLA. We treat CBAs as a single initiative, but note that LAANE played different roles in the three main agreements negotiated in Los Angeles: LAANE played a supportive role to SAJE in the Figueroa Corridor Coalition, took the lead in the LAX Coalition, and was not involved in the Grand Avenue Community Benefits Coalition. In the remaining six initiatives (Los Angeles Living Wage Ordinance, Superstores Ordinance, LAX Enhancement Zone Ordinance, CRA Construction Careers and Project Stabilization Policy, Clean Trucks Program, and Grocery Reinvestment Act), LAANE organized and staffed the coalitions responsible for advancing the campaigns. It is important to highlight that these LAANE-led initiatives have the strongest connection to the organized labor movement in that each has resulted in (or, in the case of the Grocery Reinvestment Act, is seeking to result in) a local ordinance that indirectly supports unionization—a point to which we return below in our discussion of objectives. This union nexus follows from the origin and mission of LAANE, which was formed with union backing to mediate between unions and community groups in order to advance a progressive labor agenda.¹⁶⁷ By contrast, the Sweat-Free Procurement Ordinance and Home Improvement Stores Ordinance reflect efforts by immigrant rights groups to benefit non-unionized immigrant workers. In the community benefits context, the leadership of SAJE in the Figueroa Corridor and Grand Avenue campaigns suggests its influence as a grassroots community organizing group focused on development and displacement in the downtown area, where both projects are located.

¹⁶⁷ LAANE's board of directors includes the president of the Los Angeles County Federation of Labor, the director of the UCLA Labor Center, the regional coordinator of the SEIU, the business manager of the International Brotherhood of Electrical Workers, the regional organizing directory for the Teamsters, and the president of UNITE HERE. See LAANE, *Board of Directors*, available at <<http://74.10.59.52/laane/board.htm>> (last visited Aug 5, 2009).

The pattern of union involvement follows a similar logic. In general, the presence of unions as partners in particular initiatives suggests potential linkages between the initiatives and the unions' membership. For example, the UFCW's involvement with the Superstores Ordinance reflected its interest in protecting unionized grocery workers from Wal-Mart; UNITE HERE's involvement in the LAX Enhancement Zone Ordinance was related to its hotel unionization drive; the Teamsters support of the Clean Trucks Program reflected the fact that it would have converted drivers into truck company employees open to unionization; and the UFCW's support for the Grocery Reinvestment Act again suggests its interest in promoting unionized groceries in low-income neighborhoods. The involvement of a broader range of unions without direct stakes in some of the initiatives may reflect an effort to promote interunion solidarity and cross-jurisdictional collaboration. Also, it is significant that the unions involved in these campaigns are predominantly Change to Win unions, with the SEIU, UNITE HERE, UFCW, and Teamsters playing central roles.

Finally, the list of allied organizations reveals important connections and continuities. For one, there is a strong presence of progressive religious groups that spans across the initiatives. Beginning with the Living Wage Ordinance in 1997, CLUE—the coalition of religious organizations formed during the living wage campaign to support low-wage workers—has been a steadfast supporter of low-wage worker initiatives, particularly those advanced by LAANE. CLUE was a coalition member in all of the initiatives in which LAANE was the lead organization except in the Construction Careers Initiative Coalition, which likely reflects the fact that the CRA policy did not involve large-scale community mobilizations (in part because LAANE's director, Madeline Janis, is also a CRA Commissioner). The Progressive Jewish Alliance was another group whose political commitment to economic justice drove its involvement in the Anti-Sweatshop Ordinance Working Group and Coalition for a New Century. While CLUE's consistent involvement across initiatives is explained by its broad antipoverty mission, the involvement of other religious groups in initiative campaigns often suggests more particularized organizational interests. For example, in the Figueroa Corridor Coalition, the participation of church groups like Episcopal Church of St. Phillip the Evangelist, St. Mark's Lutheran Church, and United University Church stemmed from their physical location in the Figueroa Corridor community and their

connection to residents affected by development pressures. Similarly, the Coalition for a New Century included a number of local churches.

Environmental groups played important roles in initiatives with environmental justice connections: the California Environmental Rights Alliance, Environmental Defense, Communities for a Better Environment (“CBE”), and the Natural Resources Defense Council (“NRDC”) in the LAX Coalition, which advocated for noise reduction measures as part of the CBA; CBE, the NRDC and a number of other environmental groups in the Clean Trucks Program, which sought to reduce truck diesel emissions. Similarly, community development organizations—Esperanza Community Housing Corporation and Concerned Citizens for South Central Los Angeles—were prominent in CBA campaigns with a focus on affordable housing (Figueroa Corridor and Grand Avenue). Finally, grassroots community organizing groups ACORN, AGENDA, and the Community Coalition played a role in a number of campaign coalitions: Los Angeles Living Wage (ACORN, AGENDA); Figueroa Corridor (ACORN, AGENDA, Community Coalition); LAX Coalition (AGENDA, Community Coalition); Coalition for a Better Inglewood (Community Coalition); Construction Careers Initiative Coalition (AGENDA, Community Coalition); and Alliance for Healthy and Responsible Grocery Stores (AGENDA, Community Coalition).

B. Industry Targets

Which industries do the low-wage initiatives seek to regulate? In general, the turn to local government law as a way of impacting the low-wage market grows out of the broader economic restructuring over the past half-century that has altered the terrain of work. The basic story is familiar and well documented: there has been a significant shift from mass industrial production—anchored in one location and centered on a single large firm—to “flexible” production arrangements that transcend geographic boundaries and cut across many firms.¹⁶⁸ This shift is the product of the complex interplay of macroeconomic forces (the liberalization of global trade and capital), technological change (the transformation in communications), and organizational restructuring within firms (the demise of internal labor markets

¹⁶⁸ See Lichtenstein, *State of the Union* at 215 (cited in note 3); Stone, *From Widgets to Digits* at 67–86 (cited in note 3).

and the rise of part-time employment, contingent work, and subcontracting).¹⁶⁹ The reorganization of production has, in turn, undercut traditional unionism based on single-employer drives for majority worker recognition,¹⁷⁰ contributing to the steep decline in private sector union density.¹⁷¹ Against this backdrop, some commentators have called for a “new agenda” for organized labor adapted to the realities of contemporary economic organization.¹⁷² A centerpiece of this strategy is the identification of appropriate targets for labor organizing and policy initiatives. Because of the risks of capital flight inherent in the globalized manufacturing sector, increased attention has been focused on targeting nonexportable industries tied to local economies—because they offer inherently immobile services, have fiscal ties to local governments, or gain economic benefits through association with larger regional economies.¹⁷³

Before looking at the industries targeted by the Los Angeles initiatives, it is useful to provide a picture of the trajectory of the Los Angeles economy and how it has impacted low-wage work. From 1996 to 2006, the trends in Los Angeles followed broader national patterns, with manufacturing jobs declining by more than 170 thousand, replaced largely by jobs in the service sector.¹⁷⁴ The ten industries that posted the largest growth over the decade were all in the service sector: (1) leisure and hospitality; (2) health and social services; (3) professional and business services; (4) retail trade; (5) construction; (6) financial activities; (7) educational services; (8) wholesale trade; (9) other services;¹⁷⁵

¹⁶⁹ See generally Katherine V.W. Stone, *Flexibilization, Globalization, and Privatization: The Three Challenges to Labor Rights in Our Time*, 44 *Osgoode Hall L J* 77 (2006).

¹⁷⁰ See Joel Rogers, *A Strategy for Labor*, 34 *Indus Rel* 367, 368–81 (1995).

¹⁷¹ Stone, *From Widgets to Digits* at 196 (cited in note 3).

¹⁷² Lichtenstein, *State of the Union* at 260 (cited in note 3).

¹⁷³ See Stone, 44 *Osgoode Hall L J* at 90–92 (cited in note 169).

¹⁷⁴ See Los Angeles Alliance for a New Economy, *Poverty, Jobs and the Los Angeles Economy: An Analysis of U.S. Census Data and the Challenges Facing Our Region 9* (2007) [hereinafter LAANE, 2007 *Census Analysis*]. See also Paul More, et al, *The Other Los Angeles: The Working Poor in the City of the 21st Century* vii (Los Angeles Alliance for a New Economy 2000) available at <http://74.10.59.52/laane/docs/research/TheOtherLosAngeles_es.pdf> (last visited Sept 8, 2009) (noting that service sector employment had increased by nearly 50 percent between 1985 and 2000, contributing to the growth of the working poor in Los Angeles to approximately one million workers).

¹⁷⁵ “Other services” include “activities such as equipment and machinery repairing, promoting or administering religious activities, grantmaking, advocacy, and providing drycleaning and laundry services, personal care service, death care services, pet care services, photofinishing services, temporary parking services, and dating services. Private households that engage in employing workers on or about the premises in activities primarily concerned with the operation of the household are included in this sector.” U.S.

and (10) transportation.¹⁷⁶ Drawing upon 2006 U.S. Census data, LAANE ranked these industries by poverty rate, measured as the percent of workers within each industry with incomes below 200 percent of the federal poverty line for a family of four. Those industries with the highest poverty rates were: leisure and hospitality (39.9 percent); construction (37.8 percent); other services (37.8 percent); retail trade (32.4 percent); wholesale trade (27.1 percent); transportation (25.1 percent); professional and business services (24.3 percent); and health and social services (21.3 percent).¹⁷⁷

Table 2 lists the industry categories targeted by the Los Angeles low-wage worker initiatives. As it shows, the proponents of the Los Angeles initiatives are largely following the strategy of targeting geographically anchored service sector industries that are characterized by both high rates of growth and poverty.

TABLE 2: LOW-WAGE WORKER INITIATIVE BY INDUSTRY

Initiative	Targeted Workers	Industry Category
LA Living Wage Ord.	<ul style="list-style-type: none"> • Airline services, bus services • Janitorial, security, parking • Landscape maintenance • Retail and food services • Social services, home health care 	<ul style="list-style-type: none"> • Transportation • Professional and business services • Other services • Retail trade; leisure and hospitality • Health and social services
Cnty. Benefits Agreements	<ul style="list-style-type: none"> • Construction • Hotel, restaurant, entertainment • Janitorial, security • Retail 	<ul style="list-style-type: none"> • Construction • Leisure and hospitality services • Professional and business services • Retail trade
Superstores Ord.	<ul style="list-style-type: none"> • Grocery 	<ul style="list-style-type: none"> • Retail trade
Sweat-Free Proc. Ord.	<ul style="list-style-type: none"> • Garment 	<ul style="list-style-type: none"> • Manufacturing
LAX Enhancem't Zone Ord.	<ul style="list-style-type: none"> • Hotel 	<ul style="list-style-type: none"> • Leisure and hospitality services
Home Improv't Stores Ord.	<ul style="list-style-type: none"> • Day labor 	<ul style="list-style-type: none"> • Construction; other services
CRA Constr. Careers & Project Stabilization Policy	<ul style="list-style-type: none"> • Construction 	<ul style="list-style-type: none"> • Construction
Clean Trucks Program	<ul style="list-style-type: none"> • Trucking 	<ul style="list-style-type: none"> • Transportation
Grocery Reinv. Act	<ul style="list-style-type: none"> • Grocery 	<ul style="list-style-type: none"> • Retail trade

These industry patterns suggest that the proponents of the Los Angeles low-wage worker initiatives are promoting sectoral strategies targeted not at specific firms but rather at occupational categories within regionally specific industry clusters.¹⁷⁸ With the exception of the Sweat-Free Procurement Ordinance (which

Census Bureau, *81 Other Services (except Public Administration)*, available at <<http://www.census.gov/econ/census02/naics/sector81/81.htm>> (last visited Aug 27, 2009).

¹⁷⁶ LAANE, *2007 Census Analysis* at 10 (cited in note 174).

¹⁷⁷ Los Angeles Alliance for a New Economy, *Poverty, Jobs and the Los Angeles Economy: An Annual Analysis of U.S. Census Data and the Challenges Facing Our Region* 11 (2008) [hereinafter LAANE, *2008 Census Analysis*].

¹⁷⁸ Rogers, 34 *Indus Rel* at 375 (cited in note 170).

targets garment companies with local contracts), all of the initiatives are in service industries dependent on the local economy in ways that permit regulation without the threat of outsourcing. Seven of the initiatives are focused on single industries: the Superstores Ordinance regulates big-box retail stores; the Sweat-Free Procurement Ordinance targets garment companies; the LAX Enhancement Zone is focused on raising wages in the Century Corridor hotels; the Home Improvement Stores Ordinance creates day labor sites at big-box home improvement stores; the CRA Construction Careers and Project Stabilization Policy seeks to create job ladders in the construction trades; the Clean Trucks Program attempts to promote unionization in the trucking sector; and the Grocery Reinvestment Act again targets the grocery sector. The Los Angeles Living Wage Ordinance, as a general living wage policy covering employers with fiscal ties to the city, is targeted to multiple industries, but in practice has primarily affected workers in security and parking, airline services (such as baggage handlers and security screeners), janitorial services, retail and food services, social services, landscape maintenance, and other workers in areas such as bus services and home health care.¹⁷⁹ CBAs vary by project, but are generally designed to affect workers in the construction industry (through local hiring provisions); workers for employers with contracts with the developer, such as security and maintenance companies (through living wage and worker retention provisions); and workers for the ultimate project tenants, such as restaurants, hotels, retail stores, and entertainment venues (through living wage provisions).

C. Objectives

What goals do the low-wage worker initiatives seek to achieve? Our review suggests that the initiatives advance multiple and often overlapping goals: some indirectly support unionization, while others promote alternative workplace and labor movement objectives. Specifically, we identify six initiative goals: (1) creating favorable conditions for future union organizing, (2) raising standards, (3) rewarding labor-friendly employers, (4) developing training programs and job ladders for low-wage workers, (5) enhancing organized labor's political capital, and (6) promoting alliances between organized labor and other constituencies.

¹⁷⁹ Fairris, et al, *Examining the Evidence* at 10 (cited in note 36).

1. Promoting unionization.

While community-labor alliances are designed to break open the traditional paradigm of union recognition and collective bargaining, union partners nonetheless remain committed to promoting traditional forms of employee representation. Accordingly, an important objective of some low-wage worker initiatives is to change background legal rules in ways that reshape worker bargaining power in order to promote unionization. An example of this is the Los Angeles Superstores Ordinance, passed in the wake of the Inglewood Wal-Mart campaign. That ordinance, which requires the city to approve a community impact report before authorizing big-box development, operates to give organized labor more leverage—both with Wal-Mart and with local grocery stores. By threatening to block a Wal-Mart Supercenter development, the law gives leverage to organized labor to negotiate a collective bargaining agreement or, less ambitiously, a community benefits agreement with Wal-Mart as a condition of its market entry. As a practical matter, to the degree that Wal-Mart would prefer not to enter the Los Angeles market under these terms, the law operates as a buffer that improves the bargaining position of the UFCW in negotiations with local grocery stores such as Albertsons, Kroger, and Safeway. As mentioned above, these groceries used the threat of Wal-Mart's entry to win steep concessions from the union in 2003, most significantly the two-tier wage and benefit structure for new hires.¹⁸⁰ After Wal-Mart was defeated and the Superstores Ordinance was passed, the specter of Wal-Mart undercutting unionized grocery prices because of low-cost labor was eliminated, enhancing the UFCW's bargaining power. As evidence of this, in its most recent grocery contract negotiations in 2007, the UFCW was able to win important modifications of the two-tier wage and benefit structure that reestablish parity between new and old workers.¹⁸¹

The Los Angeles Port Clean Trucks Program is another example of an initiative designed to facilitate unionization. By requiring trucking companies to treat drivers as employees rather than as independent contractors as part of their concession agreements, the program attempted to create the potential for the Teamsters to organize drivers.

¹⁸⁰ Cummings, 95 Cal L Rev at 1955 (cited in note 9).

¹⁸¹ Jerry Hirsh, *Grocery Strike Averted as Chains, Union Reach Accord*, LA Times A1 (July 18, 2007).

Living wage ordinances may also serve to restructure the organizing terrain. Traditional living wage ordinances (like the Los Angeles ordinance) that operate through city contracting may function to protect public employee unions by reducing the financial incentive to outsource public functions to private contractors. Additionally, although living wage laws are not necessarily tied to labor organizing campaigns, they can be. The campaign for the LAX Enhancement Zone Ordinance provides one example. Prior to the passage of the ordinance, UNITE HERE targeted the LAX hotels as a key battleground in their national campaign to organize hotel workers. The ordinance offered an additional source of leverage for the union in its organizing drive. By reducing the disparity between unionized wages and the locally mandated living wage, the ordinance reduced the cost to the hotels of unionization, making the benefits of labor peace more attractive. In addition, the LAX Enhancement Zone Ordinance created an exemption for hotels under union contract,¹⁸² thus providing the hotels another incentive to unionize to the degree that a collective bargaining agreement might be viewed as providing greater employer flexibility than the living wage law.¹⁸³

2. Raising standards.

In addition to potentially supporting unionization, living wage laws also advance another goal: raising minimum industry standards above existing federal and state baselines that are deemed inadequate. CBAs also seek to raise minimum standards in low-wage industries, albeit on a targeted project-by-project basis and typically in a weaker fashion. For example, the living wage provision in the Figueroa Corridor agreement provides that the “Developer shall make all reasonable efforts to maximize the number of living wage jobs in the Project,” agreeing to a 70 percent living wage goal.¹⁸⁴ Ultimately, failure to comply with the 70 percent living wage goal does not breach the agreement. Instead, the agreement provides that even if the living wage goal is not met, developer compliance is presumed so long as the developer makes annual living wage reports (detailing the problems of

¹⁸² LA Municipal Code § 104.110.

¹⁸³ The broader Los Angeles Living Wage Ordinance may also be superseded by a collective bargaining agreement. LA Admin Code § 10.37.12. However, the Los Angeles Living Wage Ordinance has not generally been linked so closely to specific unionization drives.

¹⁸⁴ Cummings, *Mobilization Lawyering* at 322 (cited in note 88).

meeting the living wage goal), notifies the coalition before selecting project tenants, meets with the coalition and prospective tenants to discuss living wage requirements, and “within commercially reasonable limits” takes into account “as a substantial factor” the impact of tenant selection on the living wage goal.¹⁸⁵ By creating an aspirational goal, the agreement gives the coalition leverage to pressure living wage compliance by threatening the developer with negative press for failure to live up to its promise.¹⁸⁶

The Los Angeles Sweat-Free Procurement Ordinance also seeks to raise industry standards by requiring payment of a “procurement living wage” equal to the federal poverty line plus 20 percent for contractors that provide “garments, uniforms, foot apparel, and related accessories.”¹⁸⁷

3. Enforcing legal requirements by rewarding good employers.

The Los Angeles Sweat-Free Procurement Ordinance, while it aims to raise standards among apparel contractors, also seeks to simply enforce minimum legal requirements against city suppliers. It does this by requiring contractors to agree to a Code of Conduct in which they aver compliance with domestic and international labor laws and agree to accept close monitoring of labor practices.¹⁸⁸ The ordinance therefore aims to enhance enforce-

¹⁸⁵ *Id* at 328.

¹⁸⁶ Outside of Los Angeles, another example of an initiative that relies on the local police power to raise standards is the San Francisco Health Care Security Ordinance, passed in 2006. The ordinance is designed to provide health insurance regardless of employment and immigration status, while also imposing minimum health care requirements on employers. First, the Health Access Program provides coverage to all uninsured residents with fees paid through a combination of city funding and individual contributions based on an income sliding scale. San Francisco Admin Code § 14.2 (2006). Second, the ordinance establishes an employer spending requirement for medium and large businesses that operate within city and county limits. The spending requirement establishes two options for employers: they can provide direct insurance to uninsured employees or pay into the city plan. *Id* at §§ 14.1(7), 14.3(a). In 2009, the spending requirement was \$1.85 an hour for large businesses (100 or more employees) and \$1.23 an hour for medium businesses (20-99 employees). Ken Jacobs, *San Francisco Healthcare Security Ordinance*, UC Berkeley Center for Lab Rsch and Educ 2 (2009), available at <laborcenter.berkeley.edu/healthpolicy/sf_security_ordinance.pdf> (last visited Apr 14, 2009). The ordinance was upheld against a challenge by a business trade association on the ground of ERISA preemption. See *Golden Gate Restaurant Association v City and County of San Francisco*, 546 F3d 639 (9th Cir 2008). The case is on appeal to the Supreme Court.

¹⁸⁷ LA Admin Code § 10.43.3.D.

¹⁸⁸ *Id* at §§ 10.43.3.A, B.

ment by sourcing public contracts to companies with good track records that agree to maintain standards and operate with transparency.

4. Influencing labor supply.

Some of the initiatives seek not merely to affect labor standards for already employed workers, but to actually shape the labor pool and channel disadvantaged job seekers into career paths that hold out the potential for higher paying, unionized jobs. In this way, the initiatives seek not just to suppress low-wage work, but to create the infrastructure for disadvantaged workers to access high-wage jobs.¹⁸⁹ The CRA Construction Careers and Project Stabilization Policy, with its local hiring requirement, is the clearest example of this type of initiative. This policy seeks to direct jobs in CRA-subsidized projects to low-income residents who live in the communities where development occurs. By requiring that developers take affirmative steps to facilitate the training and placement of local residents, the policy aims to expand the pool of eligible workers by equipping community members with the skills necessary to engage in project work. Because the policy also requires that CRA projects enter into project labor agreements with unions, the local hiring requirement operates as a way to funnel local workers into union apprentice programs and ultimately unionized construction jobs—thus growing the pool of unionized workers. Other initiatives that include local hiring provisions are CBAs and the Clean Trucks Program.¹⁹⁰

5. Reframing organized labor's commitments.

As the local hiring model suggests, low-wage worker initiatives are often designed to deliver concrete economic benefits to workers outside of the union fold. At times, this is because the initiatives are driven by nonunion groups seeking to protect non-union workers—as in the case of NDLO and the Home Improvement Stores Ordinance. However, even when the unions are central actors in the initiative campaigns, it is clear that an

¹⁸⁹ Rogers, 34 Indus Rel at 377 (cited in note 170).

¹⁹⁰ Los Angeles also has enacted a First Source Hiring Ordinance that requires companies with city contracts over \$25 thousand with a term greater than three months (excluding “construction contracts for a public work of improvement”) to post notices of job openings with first-source referral organizations and agree to interview qualified applicants from those organizations. LA Admin Code §§ 10.44.1, 10.44.2.

important objective is to recast the image of organized labor as an advocate for working people more broadly—and not just a partisan of union members.¹⁹¹ The labor-backed initiatives therefore seek to extend the base of political support for unions—by demonstrating that they can deliver benefits to a broad range of community members—in order to overcome the negative stereotype of labor as a special interest group and improve long-term prospects for increasing union density. As LAANE’s director explained in connection with the living wage campaign, the goal of community-labor activism is to “meet the needs of non-unionized workers, communities and investment-starved neighborhoods for good jobs and mobilize their often untapped resources; and focus not just on winning union recognition at a particular site but to create family-supportive jobs for Los Angeles’s working people—without abandoning the goal of unionizing specific workplaces.”¹⁹² Other examples of organized labor’s attempts to blur the lines between unionized and nonunionized workers include: CBAs, which create living wage and local hiring goals affecting nonunionized workers in sectors such as entertainment, restaurant, and retail services; the LAX Enhancement Zone Ordinance, which raises wages for all Century Corridor hotel workers irrespective of union affiliation; the Sweat-Free Procurement Ordinance, which does the same for city apparel contractors; and the CRA Construction Careers and Project Stabilization Policy, which seeks to transition nonunionized, low-skill workers to higher-paying employment.

6. Forging new alliances.

While low-wage worker initiatives can send a political message about organized labor’s commitment to nonunionized workers, they can also be used to create new and sustainable linkages among progressive groups—some of which have historically been at odds. In the Los Angeles context, there appears to be a clear effort to organize coalitions that transcend political fault lines.

This is perhaps most apparent in the development of labor-environmental alliances. Unions and environmental groups have often clashed over labor’s support for development, which creates jobs, even though it may degrade the environment.¹⁹³ A number

¹⁹¹ See Rogers, 34 Indus Rel at 373 (cited in note 170).

¹⁹² Khalil and Hinson, *The Los Angeles Living Wage Campaign* at 18 (cited in note 23).

¹⁹³ See Brian K. Obach, *Labor and the Environmental Movement: The Quest for Com-*

of low-wage worker initiatives, by contrast, are specifically crafted to bring unions and environmental groups together around shared concerns—promoting a new “blue-green” alliance. The LAX CBA, for example, saw collaboration between the SEIU and Teamsters (which sought to support job training, local hiring, and living wage requirements in connection with jobs created by the airport expansion) and the California Environmental Rights Alliance, CBE, Environmental Defense, and the NRDC (which were concerned with mitigating environmental hazards associated with the expansion, such as noise and air pollution). The Clean Trucks Program again brought labor and environmental groups together around the goal of unionizing truckers and reducing pollution at the port. LAANE’s Grocery Reinvestment Act campaign also attempts to join unions concerned with the availability and quality of grocery jobs with environmentalists concerned with food security and public health.

Additionally, as we suggested above, most of the low-wage worker initiatives seek to enlist support from the progressive wing of the religious community by focusing on poverty and inequality as moral issues (and thus trying to overcome the divisive power of social issues like gay marriage and abortion). The initiatives also make an effort to overcome the legacy of racial exclusion and xenophobia that has marred union practice in the past, evident most recently in the AFL-CIO endorsement of the 1986 employer sanction regime of immigration enforcement. New labor activists seek to cultivate ties with immigrants and workers of color, and this impulse is on display in the Los Angeles initiatives, which generally target industries with high concentrations of both groups. For example, the campaign for the LAX Enhancement Zone Ordinance emphasized the fact that many airport-area hotel workers lived in the communities surrounding LAX, which are predominantly Latino and African American.¹⁹⁴ In an effort to build alliances with communities of color, many of the coalitions incorporated strong representation from immigrant and civil rights groups: the Los Angeles Living Wage Coalition (California Immigrant Workers Association); Figueroa Corridor Coalition for Economic Justice (Central American Resource Center, CHIRLA, and El Rescate); Construction Careers Initia-

mon Ground (MIT 2004).

¹⁹⁴ Century Corridor Commission on Jobs, Tourism and Communities, *Report: Opportunity for All: Creating Shared Prosperity in the Gateway to Los Angeles* 10 (Apr 25, 2006).

tive Coalition (Southern Christian Leadership Conference); Coalition for Clean and Safe Ports (CHIRLA, Hermandad Mexicana Latinoamericana, Mexican American Political Association, NAACP); and the Alliance for Healthy and Responsible Grocery Stories (Asian Pacific American Labor Alliance, IDEPSCA, Korean Immigrant Workers Advocates).

D. Framing

There is a large academic literature that debates the effectiveness of mobilizing legal rights as a means to advance the interests of less powerful social groups.¹⁹⁵ Within labor law, some scholars have suggested that the rights revolution undercut the labor movement by focusing on individual rather than collective grievances,¹⁹⁶ while others have argued that the enforcement of employment rights—for example, the right to minimum wage or the right to be free from discrimination in the workplace—can serve as a spur to worker collective action.¹⁹⁷

An interesting feature of the Los Angeles low-wage worker initiatives is that, in the main, they do not seek to advance individual rights enforcement regimes. Instead, they create different types of legal regimes that fall into two categories. On one side are those initiatives that establish legal frameworks designed to create bargaining environments within which labor groups may effectively organize and negotiate benefits for workers.¹⁹⁸ The best example of this type of initiative is the Los Angeles Superstores Ordinance, which sets up a framework for assessing economic impacts as a starting point for discussions about how to maximize the benefits of big-box retail while minimizing its costs. As such, the ordinance requires that Wal-Mart opponents gather evidence demonstrating the costs of big-box retail borne by particular communities and offer proposals to mitigate such costs. This means that community groups will have to monitor

¹⁹⁵ See, for example, Michael W. McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago 1994); Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago 1991); Stuart A. Scheingold, *The Politics of Rights: Lawyers, Public Policy, and Political Change* (Michigan 2004).

¹⁹⁶ See Lichtenstein, *State of the Union* at 178–211 (cited in note 3).

¹⁹⁷ See Gordon, *Suburban Sweatshops* at 148–84 (cited in note 15); Sachs, 29 *Cardozo L Rev* 2707–2721 (cited in note 4).

¹⁹⁸ See William H. Simon, *Solving Problems vs. Claiming Rights: The Pragmatist Challenge to Legal Liberalism*, 46 *Wm & Mary L Rev* 127, 181–86 (2004) (discussing the emergence of a pragmatic approach to solving social problems characterized by an emphasis on processes of “stakeholder negotiation” in which affected groups come together to bargain over the terms of reform).

proposed developments and provide rigorous empirical documentation of potential impacts. This process is unlikely to completely block a big-box project because the ordinance permits project approval so long as any adverse material impacts are mitigated (though Wal-Mart may opt not to incur the mitigation costs). Nevertheless, the system requires bargaining between Wal-Mart and labor and community stakeholders over the terms of entry, with one possible outcome a CBA, which would include private contractual provisions mandating specific mitigation efforts by Wal-Mart.

CBAs, while creating some provisions enforceable by community groups, also set up ongoing bargaining frameworks, as our previous discussion of the living wage provision in the Figueroa Corridor CBA highlights. Recall that the living wage provision in that agreement created a 70 percent living wage goal for the Staples Center development project and, instead of imposing sanctions for the developer's failure to meet the goal, established a series of steps designed to allow the coalition to monitor and provide input into the developer's tenant selection. Other examples of bargaining-forcing initiatives include the Home Improvement Stores Ordinance, which allows the city to require that big-box home improvement stores submit a mitigation plan that provides suitable space for day laborers; the Port of Los Angeles Clean Trucks Program, which—by mandating a redesignation of truckers as employees—attempts to create the conditions for eventual collective bargaining; and the proposed Grocery Reinvestment Act, which would in theory create a CUP process allowing input by labor and community groups into grocery siting decisions in order to promote the development of more stores in low-income and underserved neighborhoods.

The other category of low-wage worker initiatives creates new legal rights but places the burden of enforcement on local government rather than individual workers. The Los Angeles Living Wage Ordinance exemplifies this approach. Although the ordinance does, in fact, provide that individual employees may bring enforcement actions against employers for failure to pay the living wage rate (and for retaliation and willful violations),¹⁹⁹ the more significant incentive for employer compliance comes through the city's power to terminate employer contracts and debar offending employers from future city contracting opportu-

¹⁹⁹ LA Admin Code § 10.37.6(a).

ities.²⁰⁰ The Sweat-Free Procurement Ordinance establishes a similar framework, while the CRA Construction Careers and Project Stabilization Policy places enforcement authority for local hiring in the CRA itself.²⁰¹

Another important feature of the initiatives we describe is that they are generally framed in terms that do not sound directly in traditional labor and employment law. Rather than emphasize workers' rights or collective action, they are careful to use concepts that break with conventional labor movement rhetoric. For instance, campaigns for CBAs emphasize the need for developers that receive public subsidies to give back to the communities in which they build. The Superstores Ordinance was framed around eliminating economic "blight"; the Home Improvement Stores Ordinance around mitigating a "nuisance"; and the Grocery Reinvestment Act around reversing grocery store "redlining." The Clean Trucks Program emphasized the environmental aspect of the campaign over the labor impact. And even those initiatives focused directly on raising employment standards deployed new rhetorical concepts designed to reframe labor struggles in more sympathetic terms: the "living wage" and "sweat-free" movements being the most important examples.

E. Impact

In the end, the Los Angeles initiatives must be judged by how they have impacted low-wage workers. How successful have they been in improving conditions in Los Angeles's low-wage markets? To adequately answer this question would require more information than we have at our disposal at this stage. It would also require that we engage in the difficult task of comparing the outcomes of very different types of initiatives across a set of standardized metrics. We do not undertake this task here, but rather suggest a framework for thinking about the initiatives' impact. Table 3 lists the initiatives, describes the terms of their application, and summarizes the evidence of impact we were able to obtain from public reports and assessments conducted by the parties involved.

²⁰⁰ Id at § 10.37.6(d).

²⁰¹ *Construction Careers and Project Stabilization Policy* § VII (cited in note 101).

TABLE 3: APPLICATION AND IMPACT OF LOW-WAGE WORKER INITIATIVES

Initiative		Application	Impact
LA Living Wage Ord.		<ul style="list-style-type: none"> Employers with city service contracts over \$25,000, lessees/licenses on city property, or city financial assistance recipients required to pay employees living wage rate 	<ul style="list-style-type: none"> Ordinance raised pay (directly and indirectly) in approximately 9,600 jobs Most jobs covered by the ordinance were at airports and most in firms that were service contractors of city or airlines Ordinance imposed mandatory wage increase that raised pay for 7,700 jobs by an average of \$2,600 per year; it also caused firms to provide nonmandated raises that increased the pay of 1,900 workers by an average of \$1,300 per year Minimal job loss reported (estimated at 112 jobs) due to increased wage requirement
Cmty. Benefits Agreements	Figueroa Corridor Cmty. Benefits Agreement	<ul style="list-style-type: none"> Developer required to make reasonable efforts to meet 70% living wage goal for project Developer required to fund First Source Referral System and project employers agree to make efforts to hire local residents from the System 	<ul style="list-style-type: none"> All permanent jobs in phase 1 of development meet living wage standards 50% of jobs in phase 1 of development meet local hiring requirements As of 2006, developer had provided \$62,000 in seed funding to support job training program
	LAX Cmty. Benefits Agreement	<ul style="list-style-type: none"> Airport contractors, lessees, and licensees required to meet local hiring goals Airport required to provide \$15 million over 5 years for job training 	<ul style="list-style-type: none"> Federal Aviation Administration approval was granted for the local hiring provision, the implementation of which was deemed "in progress" as of 2007 As of 2007, the Federal Aviation Administration had not yet approved the job training provision
	Grand Avenue Cmty. Benefits Agreement	<ul style="list-style-type: none"> Employers agreed to 30% local hiring goal (which includes a 10% at-risk hiring goal) for construction and permanent jobs Developer required to pay \$500,000 for job training All permanent jobs subject to living wage policy 	<ul style="list-style-type: none"> Estimated to create 29,000 construction and 5,900 permanent jobs, which would equate to 8,700 local hires for construction and 1,770 local hires for permanent jobs Estimated to create 5,900 permanent living wage jobs Because of recession, no development has yet started
Superstores Ord.		<ul style="list-style-type: none"> Big-box retail stores with groceries required to undertake economic impact report and mitigate negative economic impacts as a condition of project approval 	<ul style="list-style-type: none"> No Wal-Mart Supercenters have opened in Los Angeles In 2007 union contract negotiations with Los Angeles-area groceries, the UFCW won the repeal of a two-tier employment structure implemented in 2003
Sweat-Free Proc. Ord.		<ul style="list-style-type: none"> City contractors required to comply with applicable laws and submit to monitoring Apparel contractors required to pay "procurement living wage" 	<ul style="list-style-type: none"> Not available
LAX Enhancem't Zone Ord.		<ul style="list-style-type: none"> Requires hotels in LAX area to pay living wage rate 	<ul style="list-style-type: none"> 4 of 13 LAX-area hotels signed union contracts covering 1,000 workers, which LAANE reports will amount to over \$12 million in additional wages through 2012
Home Improv't Stores Ord.		<ul style="list-style-type: none"> At city's discretion, big-box home improvement stores required to establish sites for day laborers, when necessary to accommodate their job-seeking, as a condition of project approval 	<ul style="list-style-type: none"> As a result of recession, there have been no sites created, although Home Depot has thirteen proposed stores that will require compliance with the ordinance
CRA Constr. Careers & Project Stabilization Policy		<ul style="list-style-type: none"> Projects with more than \$500,000 in public improvement funds or \$1 million in CRA subsidies required to comply with local hiring provisions targeting local residents and disadvantaged workers 	<ul style="list-style-type: none"> Forecast to create 5,000 jobs for local residents over the next five years but the recession has stalled development and there is no evidence of current impact
Clean Trucks Program		<ul style="list-style-type: none"> Trucking companies required to enter concession agreements to access port Under agreements, trucking companies required to transition drivers to employees, meet local hiring goals, and retrofit or replace trucks to meet environmental standards 	<ul style="list-style-type: none"> Forecast to convert approximately 15,000 truckers to employees and raise their wages by estimated 40%, resulting in increased trucker income of approximately \$175 million annually Legal challenges make program implementation uncertain
Grocery Reinv. Act		<ul style="list-style-type: none"> Policy has not been finalized 	<ul style="list-style-type: none"> Not available

As Table 3 suggests, the criteria for assessing impact depends on the way in which the goals of the various initiatives are understood. Where the initiative's goal is to increase wages, impact is amenable to direct measurement. According to the study done of the Los Angeles Living Wage Ordinance, nearly 9,600 workers received pay increases as a result of the ordinance; most covered jobs were at the Los Angeles or Ontario airports and most were in firms that were service contractors to the city or the airlines.²⁰² Approximately 7,700 workers received mandatory raises that averaged \$2,600 per year, for a total aggregate pay increase of roughly \$20 million.²⁰³ An estimated 1,900 workers also received nonmandated "indirect" wage increases (to maintain wage differentials at their firms) that averaged \$1,300, for a total aggregate increase of nearly \$2.5 million.²⁰⁴ The study found that covered employers did not significantly cut jobs in response to the higher wage requirement, estimating that only 112 jobs were lost as a result of the ordinance.²⁰⁵ No comparable study has yet been done of the LAX Enhancement Zone Ordinance; however, in that case, its impact may also be measured by the extent to which LAX-area hotels have become unionized in its wake. According to LAANE, four of the area's thirteen hotels have been unionized since the Coalition for a New Century campaign began, raising the wages of approximately one thousand workers by over \$12 million through 2012.²⁰⁶ With respect to the Clean Trucks Program, proponents claimed that based on wage data, the redesignation of approximately fifteen thousand truckers from independent contractors to employees would raise their average annual income by approximately \$175 million.²⁰⁷ However, this increase may not be realized because of the trucking companies' legal challenge, which has blocked implementation thus far.

Of the remaining initiatives for which we have information, a few general observations can be made. For one, it is important to note that all (CBAs, the Superstores Ordinance, the Home Im-

²⁰² Fairris, et al, *Examining the Evidence* at 2 (cited in note 36).

²⁰³ *Id* at 43.

²⁰⁴ *Id* at 45.

²⁰⁵ *Id* at 2.

²⁰⁶ Century Corridor Commission on Jobs, Tourism and Communities, *Report: Opportunity for All: Creating Shared Prosperity in the Gateway to Los Angeles* 4 (cited in note 194); LAANE, *About the New Century Campaign*, available at <<http://laane.org/>> (last visited Aug 5, 2009).

²⁰⁷ LAANE, *The Road to Shared Prosperity* at 15 (cited in note 65).

provement Stores Ordinance, and the CRA Construction Careers and Project Stabilization Policy) are tied to the development process—and thus are subject to uncertainty based on fluctuations in development cycles. Because of the economic downturn, some of the initiatives have had no impact because no development has occurred. This is true of the Home Improvement Stores Ordinance. Because of the economic downturn, Home Depot has been slow to move forward on development plans. As a result, there are currently no day labor sites that have been created under the ordinance, although Home Depot has thirteen proposed stores pending that will require compliance with the CUP process.²⁰⁸ Stalled development has also affected the CRA Construction Careers and Project Stabilization Policy, which was forecast to create five thousand jobs for local residents, but has proceeded more slowly than anticipated.

No development has occurred under the Superstores Ordinance either, but that appears less related to economic conditions and more a result of the ordinance itself. Specifically, Wal-Mart has chosen not to go through the economic impact report process created by the Superstores Ordinance as a condition of development. As we suggested above, that may be counted as a victory for its proponents: by keeping Wal-Mart Supercenters out of Los Angeles, unionized grocery workers gained leverage to negotiate a better collective bargaining agreement in 2007.

The CBAs have been differentially affected by economic conditions based on when the development was approved. The CBA associated with the Grand Avenue development, which received final project approval in 2007, has been most impacted by the recession, which has prevented any development to date. When established, the Grand Avenue CBA was forecast to create twenty-nine thousand construction jobs, approximately 30 percent of which (8,700) would go to local residents and at-risk individuals under the local hiring provisions.²⁰⁹ The CBA was also forecast to create 5,900 permanent living wage jobs, approximately 30 percent of which (1,770) would go to local residents and at-risk indi-

²⁰⁸ Email from Victor Narro, Project Director, UCLA Downtown Labor Center, to Scott Cummings, Professor of Law, UCLA School of Law (June 25, 2009) (on file with the author).

²⁰⁹ Grand Avenue Project, *Summary of Community Benefits Attachment H at 1*, available at <http://www.crala.org/internet-site/Meetings/upload/01042007_1.pdf> (last visited Aug 27, 2009).

viduals.²¹⁰ However, because no development has yet commenced, there has been no progress made on CBA compliance.

The LAX CBA, approved by the city in 2004, has also been slow to proceed, less for economic reasons, but rather because of the relationship between the city-owned airport and Federal Aviation Administration (“FAA”) regulators who have the power to approve certain airport expenditures and programs. As of 2007, Los Angeles World Airports—the city entity that owns and operates the airport facility—reported that the promised allocation of \$15 million in job training funds had been blocked by the failure to gain FAA approval and that the local hiring provisions, which had been approved, were still “in progress.”²¹¹

The most substantial progress has been made on the Figueroa Corridor CBA, which was signed in 2001 (with final project approval following in 2005). The L.A. Live project officially opened in 2007 and completion of the third (and final) phase of development—which includes theatres, hotels, and residences—is scheduled for 2010. Phase one of the development was completed in 2007 with the opening of Nokia Theatre, a 7,100-seat theatre that hosts events such as the American Music Awards and the Emmys. According to the developer, all of the jobs in the Nokia Theatre meet the living wage requirements of the CBA and half of the jobs are held by local residents in compliance with the local hiring requirement.²¹² There is no information available, however, on CBA compliance for phase two of the development, which included restaurants and entertainment venues (such as The GRAMMY Museum, ESPN Zone, The Farm of Beverly Hills, Lawry’s, and Starbucks) that are in industry sectors generally associated with lower wage rates. With respect to the local hiring and job training provisions of the CBA, a 2006 Status Update from the coalition stated that a job training program was established in August 2003 and that the developer had provided \$62 thousand (out of a promised total of \$100 thousand) in seed funding to support the program.²¹³

²¹⁰ Id. The CBA provides that “[a]ll permanent jobs [are] subject to CRA’s Living Wage Policy, including jobs provided by Project tenants, i.e. restaurants, grocery store and retail outlets.” Id at 2.

²¹¹ Los Angeles World Airports, *LAX Master Plan, Community Benefits Agreement (CBA) 2007 Annual Progress Report* 12–13 (cited in note 96).

²¹² Telephone Interview with Martha Saucedo, Vice President of Community Affairs, AEG Worldwide (Aug 26, 2009).

²¹³ L.A. Live, *Community Benefits Program, Status Update* (March 2006), available at http://www.edf.org/documents/5196_LALive_CBAupdate.pdf.

F. Challenge

The advent of low-wage worker initiatives as a local labor strategy raises the crucial challenge of achieving scale. How are local initiatives replicated and extended to different cities with distinct legal regimes and political dynamics? Is localism a viable national labor strategy? Our research cannot answer these questions, but it does reveal the emergence of national networks of community and labor activists that are attempting to coordinate campaigns and share information. The existence of these networks does not overcome many of the challenges of localism—including the risk of inconsistent standards and the absence of regulation in localities that lack a strong labor presence. However, by facilitating the exchange of information, the networks may allow activists to more easily learn about successful models, avoid mistakes, and draw upon allies for technical assistance and resource support. There are a number of developing networks that relate to the Los Angeles initiatives.

The living wage movement, with nearly 140 living wage ordinances passed nationwide, has been one of the most successful national efforts to improve conditions for low-wage workers. In terms of national coordination, it has been particularly successful in disseminating a basic legal model that connects living wage requirements to service contracting. This success is attributable, in part, to the effectiveness of national intermediary groups that facilitate networking and the exchange of substantive and strategic information. The most prominent is ACORN's Living Wage Resource Center, which provides a comprehensive list of living wage campaigns, offers links to other living wage groups, and publishes information on running effective campaigns.²¹⁴ The Brennan Center's Economic Justice Project (which recently merged with the National Employment Law Project) has also played an important role in providing legal and technical assistance to support living wage drives.²¹⁵

A range of formal and informal networks have also developed to draw attention to big-box mobilizations across the country and foster greater coordination.²¹⁶ On the legal front, lawyers

²¹⁴ See ACORN, *Living Wage Resource Center*, available at <<http://www.livingwagecampaign.org/>> (last visited Aug 5, 2009).

²¹⁵ See Brennan Center for Justice, *Living Wage Laws*, available at <http://www.brennancenter.org/content/pages/living_wage_laws> (last visited Aug 5, 2009).

²¹⁶ See Steven Greenhouse, *Opponents of Wal-Mart to Coordinate Efforts*, NY Times 20 (Apr 3, 2005).

active on the Los Angeles Superstores campaign have developed expertise that has positioned them as a valuable resource for national groups. Those lawyers have served as nodes of information exchange, giving advice to community-labor groups around the country on drafting big-box ordinances.²¹⁷ The Brennan Center for Justice has again lent crucial legal support in drafting ordinances and defending them from legal attack.²¹⁸ Labor groups at both the local and national level have played critical roles in devising ordinances and deliberately exporting them to new locations. LAANE, in particular, has become a key actor in promoting and coordinating anti-Wal-Mart campaigns, producing a resource guide that outlines a range of legal and organizing responses to Wal-Mart development and that distills the collective experience of community-labor groups around the country.²¹⁹ The California Partnership for Working Families was created with strong union support to provide national-level technical assistance and coordination for community-labor alliances in an effort to “build community and reshape regional economies to transform the lives of workers and communities.”²²⁰ The Partnership has been active in supporting Wal-Mart campaigns and helping devise policy tools such as community impact reports.²²¹

The CBA movement has followed a similar trajectory. After the success of the Figueroa Corridor CBA, there have been efforts to deepen organizational connections, expand community resources, and develop higher-level coordination in order to exert a sustained political influence over development decisions. LAANE has provided some coordination of campaigns in the Los Angeles area, while the Partnership for Working Families has also played a crucial national leadership role: developing a CBA handbook, keeping a list of current agreements, and providing technical assistance to campaigns around the country.²²² Recently, the Partnership launched the Community Benefits Law Center with two lawyers who provide assistance on CBA campaigns

²¹⁷ Cummings, 95 Cal L Rev at 1983 (cited in note 9).

²¹⁸ See Brennan Center for Justice, *Job Standards & Accountability for Large Retailers*, available at <http://www.brennancenter.org/content/pages/job_standards_accountability_for_large_retailers> (last visited July 7, 2009).

²¹⁹ See Gray-Barkan, 35 Soc Pol at 37–38 (cited in note 111).

²²⁰ The Partnership for Working Families, *Vision*, available at <<http://www.communitybenefits.org/article.php?list=type&type=15>> (last visited Aug 5, 2009).

²²¹ Cummings, 95 Cal L Rev at 1984 (cited in note 9).

²²² The Partnership for Working Families, *Community Benefits Agreements*, available at <<http://www.communitybenefits.org/article.php?list=type&type=39>> (last visited Aug 5, 2009).

across the country.²²³ Good Jobs First, a national organization that has focused on tracking development subsidies, has also operated as an information clearinghouse for campaigns promoting “accountable development.”²²⁴ In addition, there have been conferences, academic journal articles, and websites devoted to sharing information about CBAs.²²⁵ One consequence of these efforts has been that developers in Los Angeles—and across the country—now recognize that negotiating over community benefits is part of the overall redevelopment process. As CBAs become more familiar, however, some have questioned whether they have been co-opted in certain instances by developers and city officials who are able to gain approval for projects by negotiating agreements with preferred groups that may not reflect the full range of community concerns.²²⁶

As this overview suggests, low-wage worker advocacy networks are developing in a number of areas, although they still remain relatively decentralized and fluid. A central challenge for low-wage worker activists will be not just to sustain their growth, but also to link them together across substantive areas in order to promote a coherent national agenda, and to build stronger ties to organized labor and other progressive movements in order to expand their scope and power.

CONCLUSION

This Article has surveyed the architecture of local government initiatives that advocates have pursued in Los Angeles to address the needs of low-wage workers. It is an effort to trace the connections between local government power and low-wage worker reforms, catalogue what has worked and what has not, and provide possible templates for initiatives in other jurisdictions. In so doing, we have concentrated on a series of low-wage worker initiatives advanced during an era of strong political con-

²²³ See Community Benefits Law Center, *Staff*, available at <<http://www.communitybenefits.org/legal/staff.html>> (last visited Aug 5, 2009).

²²⁴ See Good Jobs First, *An Overview of Accountable Development*, available at <http://www.goodjobsfirst.org/accountable_development/overview.cfm> (last visited Aug 5, 2009).

²²⁵ See, for example, *Community Benefits Agreements*, 17 J of Affordable Housing & Community Dev L 1-175 (Fall 2007/Winter 2008); *Community Benefits Agreements*, available at <<http://communitybenefits.blogspot.com>> (last visited Aug 5, 2009).

²²⁶ See Julian Gross, *Community Benefits Agreements: Definitions, Values, and Legal Enforceability*, 17 J of Affordable Housing & Community Dev L 35, 41 (Fall 2007/Winter 2008).

servatism at the federal level. The perception by labor activists of limited opportunities for national reform during this period helps to explain some of the impetus for this local approach. The advent of a federal administration more amenable to low-wage worker and immigrant rights has raised hope among labor activists that new laws and regulatory policies will alleviate some of the worst forms of abuse. This may pull more advocacy resources toward the federal level and dissipate some of the energy—and even need—for locally targeted efforts. Yet it remains to be seen whether significant labor reform will pass and, if so, how far it will go. In the meantime, the economic crisis has further destabilized the economic environment of low-wage workers, eliminating jobs and making them more vulnerable to exploitation. Invariably, federal labor law reform—should it come—will not be able to comprehensively change low-wage markets, while local advocates and decision makers will be well-positioned to adapt policies to the unique structure of local conditions. As low-wage worker advocacy moves forward, it therefore seems likely that local initiatives that complement the federal regulatory structure will continue to be part of the movement to reshape low-wage work.

In conclusion, it bears emphasizing that we have chosen to focus our analysis on how local government law has been turned to labor-related ends and the implications of locally targeted advocacy for the contemporary labor movement. As such, we have not probed the implications of low-wage worker initiatives for local government law itself. It seems clear, however, that just as local government law has been used to reshape labor, labor is changing local government law—which has been stretched beyond its traditional focus on service provision and land use regulation to reach into the workplace in ways that suggest a potentially significant transformation. How broad this transformation is and what implications it has for local government planning are important avenues of future inquiry. What seems clear at this point is that as greater attention is paid to the sub-national region as a central locus of economic activity, local governments will play a larger role in regulating not just the scope and nature of economic development, but the terms on which its benefits are distributed in the workplace setting.