THE FUTURE of WORK WAGES & LABOR

FINDINGS & POLICY RECOMMENDATIONS

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Introduction

As a country, we have become out of touch with the needs of the American people. The media reports on the health of the stock market as an indicator of the wellbeing of our economy, but the average worker has little to no financial interest in Wall Street. We need to get back to basics and truly invest our time and resources in the American worker.

This is a principle that we all share. We are four geographically diverse Members of Congress with different backgrounds, but a shared interest in restoring the focus to workers. We are former state and local legislators, labor leaders, and civic and community activists.

In March 2016, after working together on the U.S. House Committee on Education and the Workforce, Congressmen Mark DeSaulnier and Mark Pocan met with Wage and Hour Administrator Dr. David Weil from the Obama-era Department of Labor. At that meeting, the group began to discuss the changing nature of work and its impact on the workforce. That meeting served as the first in a long series and helped launch the Future of Work, Wages, and Labor. Congressmen DeSaulnier and Pocan were soon joined by Congresswoman Debbie Dingell and Congressman Donald Norcross, both of whom were eager to unpack the complex factors at play.

Throughout this effort, we have traveled across the country and met with researchers, experts, academics, and workers to gain insights into the state of American Labor. We have also hosted briefings in Washington, D.C. to share those insights with other interested policymakers. Below is an accounting of the public meetings (a full listing of participants can be found in Appendix A):

September 7, 2016: D.C. Briefing: "Future of Work" with Roosevelt Institute

January 17, 2017: Regional Meeting: Northern California

March 22, 2017: D.C. Briefing: "US Anti-Trust Policy's Impact on Collective Bargaining, Wage Stagnation, and Economic Growth" with New America Foundation and Washington Center for Equitable Growth

April 20, 2017: Regional Meeting: Wisconsin

May 24, 2017: D.C. Briefing: "Why Have Wages Stagnated" with Economic Policy Institute, Center for Economic and Policy Research, and AFL-CIO

June 19, 2017: Regional Meeting: Michigan

August 4, 2017: Regional Meeting: New Jersey

September 6, 2017: D.C. Briefing: "21st Century Workers' Rights Forum" with Communications Workers of America, United Mine Workers of America, SAG-AFTRA, Economic Policy Institute, National Employment Law Project, AFL-CIO, United Auto Workers, and AFSCME

September 25, 2017: Regional Meeting: Massachusetts

Our findings solidified what we already knew: America's workers are some of the most productive in the world and they need our support to see their full potential. We need to learn from the hard lessons of the Industrial Revolution when economic transformation allowed for consolidation of America's wealth in the hands of very few, along with widespread insecurity for average people, and was followed by slow progress that caused long-term harm to our workforce and put us on the path to the Great Depression. Our workers deserve a faster, more effective response this time. We cannot leave anyone behind. The issues facing the workforce are imminent and need to be addressed now before too much damage is done.

Setting the Stage

The Future of Work
In today's ever-changing economy, the jobs that are in demand are not necessarily the same jobs that were in demand 10, 50, or 100 years ago. From 1947 to 2009, manufacturing jobs shrank from more than a quarter of the gross domestic product to a ninth. In the same time frame, white-collar work started at less than one fifth and rocketed to nearly half. Government, retail, information, and construction all have stayed relatively constant at about one third of the economy.[i]

If you look a bit deeper, however, there is more at play. While the number of manufacturing jobs shrank immensely over 60 years, the manufacturing industry itself boomed. Indexed to 1945, manufacturing output has increased six times in that same time frame.[ii]

This is just one case study in the complex relationship of the work of the future in the United States. Some industries are relying on fewer workers to do the same, if not more, work. Other industries, however, are changing in ways that will make it difficult to predict their effect on the labor market.

Take, for example, driverless vehicles. Many companies are racing to make this technology available on a large scale in five to ten years. Its impact on jobs, however, will be dynamic over time and across industries. Some studies estimate that the number of jobs will decrease as driving professions will be less in demand. Other studies indicate that there will be an increased need for technology jobs to understand and deploy this kind of technology and still more trade jobs to work on the vehicles themselves. At the same time, the first few years of deployment of this technology will require additional supervision within the vehicles themselves, which may lead to a temporary *increase* in the number of driving professionals needed.[iii]

What we have learned from our research and meetings is that no one job or sector will be affected the same way going forward and that leading experts in their fields disagree over what the jobs of tomorrow will be and how the changes will impact workers today. What we have learned from history, however, is that this transition will happen quickly and its effects will be felt deeply by families across the country. We must engage in thoughtful research and conversations now to make sure that we do not leave people behind in the inevitable transition. We have the ability to shape how an increase in automation and technology will impact our workforce if we move quickly and enact thoughtful policies.

<u>Changes in Corporations</u>:
Technological change is not the only factor driving the changing nature of work. Changes to rules, regulations, and economic policy, along with concurrent changes to business practices, have altered the relationship between businesses and the workers they employ. Changes to tax policy, corporate governance, and antitrust policy have shifted corporate priorities from investing profits in workers and job-creating expansion to paying out shareholders and CEOs. Every corporation includes a number of stakeholders – managers and shareholders, but also workers, other businesses in the supply chain, and customers. When businesses are generating profits and sharing them across these stakeholders, everyone benefits. But today, most publicly traded

corporations operate only to reward their managers and shareholders. This means not only giving the lion's share of profits to CEOs and shareholders, but even reducing the wages and benefits to workers, squeezing smaller suppliers to produce more for less, and gouging customers when possible. This drive for higher shareholder prices, combined with the increasing power of employers over employees, has led firms to reduce their obligations to employees by using contract workers. The phenomenon, often referred to as the "fissured workplace," describes the trend of workers being paid as contractors rather than direct employees.[iv] Without the direct employment relationship, workers are not eligible for traditional benefits received from employers and studies show that their compensation is often lower than their counterparts in a traditional employer-employee relationship. An estimated 29 million people in just 10 industries studied are impacted by this phenomenon according to the U.S. Department of Labor, and the problem continues to grow.[v]

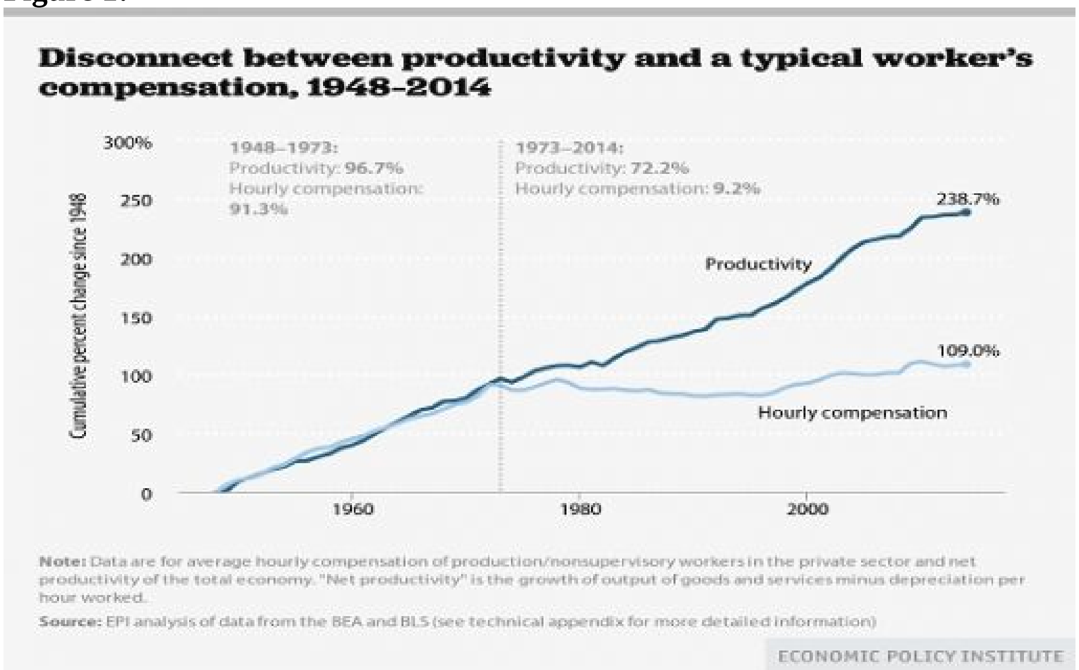
In a more competitive environment, workers (and suppliers and customers) could simply look elsewhere. But lax antitrust enforcement has allowed firms to consolidate across industries, resulting in a smaller and smaller number of employers being able to control the wages and conditions of a larger and larger share of workers. Today, the majority of labor markets are highly concentrated. This is especially true in rural areas where only one or two employers are posting jobs for a given occupation at a time. This means employers have the discretion to set wages and working conditions on their own terms, without fearing that their workers could check their power by finding another job.

If these trends remain un-addressed, working Americans will see more instability in their jobs, regardless of technological change.

The Future of Wages

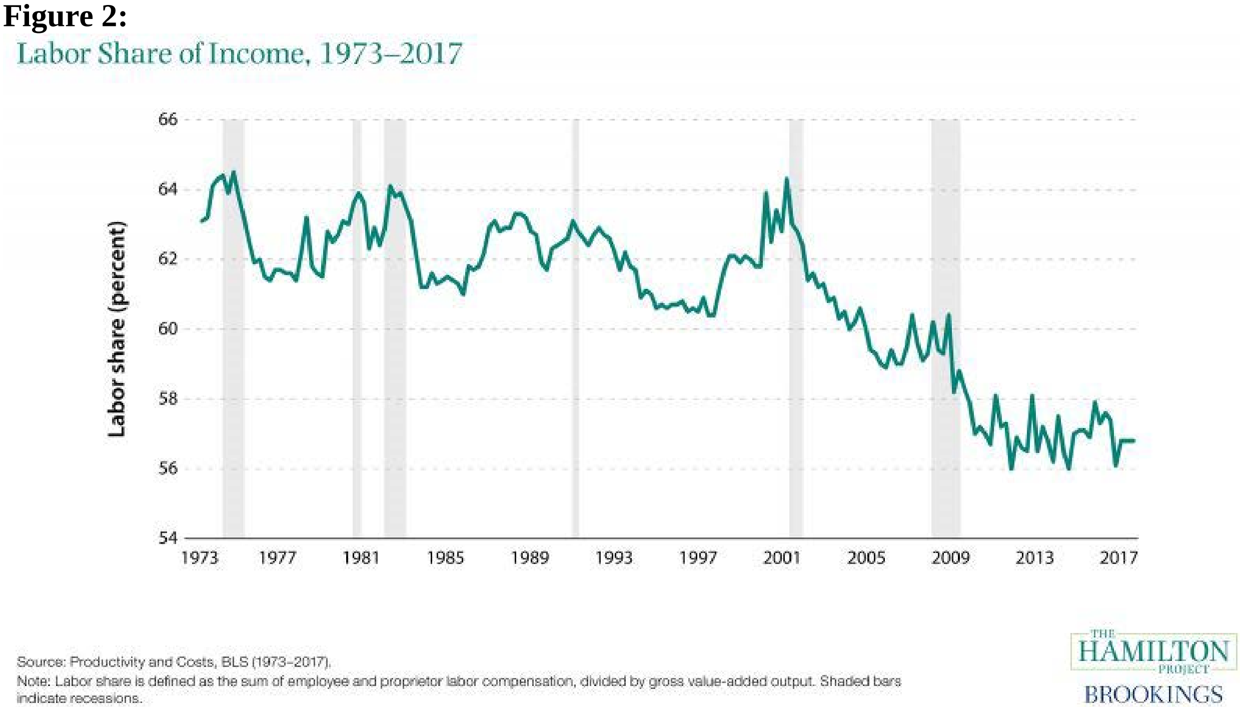
We are living through a time of long-term wage stagnation for the American worker. In 2017, wages were only 10 percent higher than they were in 1973, showing annual real wage growth just below 0.2 percent.[vi] At the same time, however, worker productivity is soaring. Between 1973 and 2016, worker productivity increased by almost 74 percent, but hourly pay only increased by 12.5 percent. That productivity has grown 5.9 times more than pay is alarming.[vii]

Figure 1:



Many factors have impacted low wage growth, as reflected in the decline of workers' income as a share of economic output. The portion of national income received by workers fell from 64.5 percent in 1974 Q3 to 56.8 percent in 2017 Q2.[viii] Among the reasons for this phenomenon are technological progress and offshoring of labor-intensive production where compensation is typically lower. Another undeniable reason is corporate greed.

Figure 2:



Shifts in policy and business strategies over the last forty years have led managers to prioritize rewarding shareholders and CEOs rather than investing in worker compensation or job-creating strategies. The recent tax cuts are just the latest example of this trend. In the first quarter of 2018, 57 percent of corporate savings due to tax cuts went to shareholders as either stock buybacks or dividends, compared with just 6 percent going to employees in the form of wage increases, bonuses, or benefits.[ix]

Starting in the 1980s, corporations began to adopt the idea that a firm's primary purpose is to serve shareholders. Over the next several decades, policymakers rolled back regulations that had essentially banned share buybacks and lowered taxes on dividends and capital gains, making it easier and more lucrative for CEOs to reward shareholders and inflate stock prices. Today, payouts to wealthy shareholders account for more than 90 percent of all corporate profits. In fact, this shareholder-first approach casts workers as a cost-center to squeeze by cutting wages and benefits or shifting workers to contract employment.

Some workers, however, have fared better than others. Workers' wages in the top quarter have seen a 27 percent increase and the upper-middle quarter have seen wages increase by 12 percent. The bottom 20 percent of workers, however have actually seen their real wages fall over the same period.[x] This kind of unequal growth has not always been a fixture of the U.S. economy, though, with overall income growth actually tilted toward the lower end of the distribution from 1946 through 1980 and incomes rising faster in the bottom half of the income distribution than in the top 10 percent or top 1 percent.[xi]

Another major factor in the decline in wages is the decrease in union membership.[xii]

The Future of Labor

Every person in the labor market today owes a debt of gratitude to labor unions. Without them, many of the policies we take for granted would not exist or would be severely diminished. Among them are:

- The 40-hour work week
- Paid sick leave
- Child labor laws
- Social Security
- Minimum wage
- Paid family leave
- Employer-based health coverage
- Workplace safety laws[xiii]

The benefits of being represented by a labor union are also numerous. The relative decline of union membership over the last 35 years has coincided with a decline in the middle class' share of national income.[xiv] It is also true that during the height of labor union membership, in the 1940s and 50s, income inequality was at its lowest point in American history.[xv]

Empirically, union members are in many ways better off than their non-union counterparts. A report compiled by the Democratic Staff of the U.S. House Committee on Education and the Workforce has a more complete analysis of the multitude of positive contributions unions make to our society, but a selection is below.

Unions raise wages of unionized workers by almost 20 percent and raise total compensation, including wages and benefits, by 28 percent.[xvi] The benefits are even more pronounced for workers of color. Women are also better off with union representation, with the size of the wage gap being half as big in union jobs than in the economy as a whole.[xvii] The most significant financial advantage for union workers, however, is non-wage compensation. Union workers are more likely to receive paid leave, are up to 28 percent more likely to have employer-sponsored health insurance, and are up to 54 percent more likely to be enrolled in employer-sponsored pensions. Not only do workers have better access to pensions, but their employers contribute an average of 28 percent more toward pensions than non-union employers.[xix]

The benefits of unionization are felt far beyond the individual worker. Geographic union density tends to lead to higher wages and benefits for all workers regardless of union status because of increased competition. Even the businesses that sometimes fight unionization receive benefits – with higher worker retention and productivity.[xx]

Union organizing, however, has become increasingly difficult over the years. Employers have become more and more hostile to workers taking collective action, as evidenced by a number of statistics from a recent study published by the Economic Policy Institute. When workers become interested in forming unions:

- 54 percent of employers threaten workers in such meetings;
- 75 percent hire outside consultants to run anti-union campaigns;
- An employee who engages in union organizing faces a one in five chance of getting fired;
- Nearly 60 percent of employers threaten to close or relocate their businesses if workers elect to form a union;
- When workers become interested in forming unions, 92 percent of private-sector employers force employees to attend closed-door meetings to hear anti-union propaganda; 80 percent require supervisors to attend training sessions on attacking unions; 78 percent require that supervisors deliver anti-union messages to workers they oversee; and 75 percent hire outside consultants to run anti-union campaigns.[xxi]

Unfortunately, labor organizing faces even higher barriers in light of the decision in *Janus v. American Federation of State, County, and Municipal Employees, Council 31,* in which a corporate-friendly Supreme Court majority ruled that agency fees charged to non-union members by public-sector unions violated the First Amendment. Because public sector unions are obligated to represent all employees in the bargaining unit regardless of union membership, agency fees are critical to offset the financial burden of conducting essential union functions on their behalf. Without this financial support, unions anticipate experiencing a significant "free-rider" challenge and have already been forced to cut back on staff and other expenses.

A decrease in union financial resources is not a byproduct, but in fact a goal of corporate interests seeking to further skew the power balance in their favor. Frank Manzo of the Illinois Economic Policy Institute and Robert Bruno of the University of Illinois at Urbana-Champaign project that union membership of state and local governments could drop by 8.2 percentage points because of this decision.[xxii] This has a compounding effect, because fewer members translates to fewer resources, preventing the union from engaging in aggressive action and organizing. A weaker union will be less capable of advocating for wage increases, worker safety, and adequate benefits for workers, resulting in the further consolidation of power in the hands of CEOs and shareholders. All experts agree that while the decision is only applicable to public unions, attacks on private unions are not far behind.

Key Proposals

Although no single policy change will fix the issues facing our workforce, we have laid out a series of proposals below that will help tip the scales back in favor of American workers. The key proposals are those that will have a more immediate, significant impact and that research almost universally acknowledges as beneficial.

Strengthen Countervailing Forces

The balance of power between workers and their employers has shifted drastically in favor of employers over the last 100 years. This comes after decades of decreasing labor union participation and increasing influence of employers in our economy and our political institutions. Employers are opting to increase profits at the expense of their workforce in an effort to maintain more power over their employees. This trend is exemplified by the fact that worker productivity is skyrocketing while worker wages are stagnant.[xxiii] Employers cut wages, benefits, and misclassify workers all to stay ahead of their competitors.

Finding the right balance of power is crucial for the American people. It allows workers to better assert their rights to safe workplaces and fair compensation, often leading to workers feeling more invested in their work and their employer. This, in turn, can improve worker productivity, spur innovation, and provide pathways for upward mobility.[xxiv] All of this results in a better, cheaper product for consumers.

While Henry Ford is often referenced as a "high road" employer who saw the value of empowering his workers, there are numerous examples in today's economy that prove that businesses do not have to choose between their bottom line and their employees. One often-cited case is Costco, which was named America's Best Employer 2017.[xxv] Among its accolades, the company offers health insurance, dependent care assistance programs, and 401(k) plans to its part-time staff, has starting pay well above minimum wage, and promotes almost exclusively from within. At the same time, Costco has seen its profits increase year-over-year.[xxvi]

As we know, not all employers will make the same kinds of choices that Costco makes and we cannot sit around and wait while more workers are abused through the system of power imbalance. Congress must enact reforms that redistribute power to workers.

<u>Overturn *Citizens United*</u>

Individuals like the Koch brothers have their voices amplified by the donations they make and what they are seeking is often de-regulation or outright anti-worker policies to line their pockets. That necessarily takes the power away from working people who do not have the financial freedom to pay for the same kind of influence. Reforming our campaign finance system to even the playing field would go a long way toward ensuring that the rules and regulations we pass in government are in the best interest of the American people, not just the top one percent.

The 2016 election cycle was the most expensive election on record, with over $6.9 billion spent on the Presidential and Congressional elections combined, a 120 percent increase over the 2000 elections. The cost of Congressional elections has spiked even further, with over $4.2 billion spent in 2016, a 155 percent increase from the 2000 elections.[xxvii] A major factor for this increase in spending is the *Citizens United v. FEC* decision in 2012 that led to the creation of Super PACs and the exponential increase in independent expenditures. These contributions inherently lead to undue influence by a select few individuals or industries over politicians, changing the conversation from what is objectively in the best interest of the American people to what is in the best interest of the people and corporations who pay to get officials elected.

To combat this influence, Congress should:

- Overturn the *Citizens United* decision;

- Pass the Government by the People Act (H.R. 20), which provides citizens with a tax credit for campaign contributions that can be matched by a Freedom From Influence Matching Fund if the candidate agrees to a limit on large donations[xxix]; and

- Explore public financing of campaigns.

<u>Strengthen Antitrust Enforcement</u>

Since the Department of Justice and the Federal Trade Commission (FTC) limited the scope of antitrust reviews to consider only the impact on consumers as it relates to price, the United States has seen massive corporate consolidation. Increased consolidation reduces the number of jobs as monopolies curb production, but also weakens workers' bargaining power, and contributes to stagnant wages and an unsafe work environment.[xxx] This is called monopsony. When the term monopsony is used to describe a labor market, the classic example is of a "company town": where there is only one main employer, giving the company the power to set wages and rendering the town's workers powerless to bargain for better wages or working conditions. Labor market monopsony exists when firms are able to wield power over their suppliers—in this case, suppliers of labor, i.e., workers. A raft of new evidence demonstrates U.S. labor markets are highly concentrated, and that this concentration reduces wages.

> **Focus on the Poultry Industry:** Regardless of corporate consolidation, the poultry industry is one of the harshest environments in all American workplaces. Every day, 250,000 men and women stand shoulder to shoulder on both sides of long conveyor belts, most using scissors or knives, in cold, damp, loud conditions, making the same forceful cuts thousands upon thousands of times a day. On a typical line, the average worker handles 40 birds a minute.
>
> Workers in the poultry industry are injured at nearly twice the rate of other workers in private industry, and face seven times the rate of illness compared to the same workers. Making matters worse, GAO released a report last year that said poultry plant owners foster a work environment in which workers are afraid to speak to federal inspectors or other third party advocates. Sadly, poultry has the 11th highest number of work-related amputations and hospitalizations, more than saw mills and the construction industry.
>
> Two companies make almost half of the chickens and chicken products sold in the U.S., and profits are soaring. The consolidation is taking place on both a horizontal and a

vertical level. Consider: Tyson Foods, the largest poultry company, owns the breeding company that determines which birds are raised, the slaughterhouses where they are processed, and the trucking lines that deliver the meat to consumers.

Unfortunately, the market shares and efficiency gains enjoyed by the company's shareholders and executives is not without cost. That cost is borne by workers, since Tysons has the 4th most number of amputations reported nationwide. They are not alone – JBS/Pilgrims Pride, the other large American poultry company, ranks 6th on the same list.[xxxi]

The above example is just one of many, and the list of problematic industries is long. In order to improve antitrust enforcement, we should:

- Ensure that public interest and public service requirements are overseen by the companies' traditional regulator, i.e. the US Department of Agriculture (USDA) along with Department of Justice and the FTC, in approving or rejecting a proposed merger.

As Roosevelt Institute Fellow Marshall Steinbaum suggests in his recent report, "A Missing Link: The Role of Antitrust Law in Rectifying Employer Power in our High-Profit, Low-Wage Economy," to deal directly with labor market monospony we should:

- Expand merger review to include analyses of merger effects in labor markets, including an analysis of the "coordinated effects" of a proposed merger;
- Provide new resources for antitrust authorities;
- Expressly include "monopsony" in federal antitrust statutes; and
- Ban non-compete, no-poaching agreements, and other types of restraints on competition in the labor market, as well as mandatory arbitration in employment contracts.

Further, as Brookings Institution's Bill Galston and Clara Hendrickson suggest in their report, "A policy at peace with itself: Anti-trust Remedies for Our Concentrated, Uncompetitive Economy", Congress must:

- Reinvigorate the structural presumption and tighten the standards for horizontal mergers;
- Update the non-horizontal merger guidelines;
- Institute an enforcement regime to deal with predatory pricing, both business to business and in relation to labor; and
- Reduce the costs of anti-trust enforcement.[xxxii]

Ban Stock Buybacks and Curb the Shareholder-First Economy

Over the last forty years, tax laws, regulatory changes, and new corporate behaviors have led to the "shareholder-first corporation," where CEOs and managers focus on share price - directing corporate funds to shareholder payouts. Corporate profits or even corporate debt may have once funded innovative new projects or new hires or worker wages. In the 1960s and 1970s, 40 cents were invested for every dollar a company earned or borrowed—but since the 1980s, less than 10 cents of each borrowed dollar is invested. Instead, executives are using their profits to pay themselves and their wealthy shareholders. Today, payouts to wealthy shareholders account for more than 90 percent of all corporate profits.[xxxiii]

This has led to skyrocketing use of stock buybacks - when companies purchase back their own stock from shareholders in an open market and reabsorb the ownership that was previously sold to other investors. The practice was essentially banned except under rare circumstances until 1982, since it can be used as a strategy for companies to artificially raise their open market stock prices and boost earnings per share (EPS).

The increased stock price does not reflect an actual improvement in the processes of the company, and may serve as a cover for financial difficulties. Stock buybacks are an excuse for companies to reward stockholders and increase dividends while avoiding employee compensation or investment. In an investigation of 449 companies listed on S&P from 2003-2012, companies used 54 percent of earnings to buy back its own stock and 37 percent on dividends of their earnings.[xxxiv] An analysis of 2017 tax cuts found that company benefits to workers were $6 billion, while shareholder benefits were $171 billion. Rising shareholder payouts are linked with declining employee compensation and increased income inequality. Gains of stock buybacks are also concentrated among the already-wealthy.[xxxv] Less than half of American households own stock, whereas 94 percent of households in the top one percent of income distribution own stock.[xxxvi]

In addition, stock buyback programs present a conflict of interest as corporate executives own large shares of company stocks while their compensation also increases with EPS. It is possible for executives to raise their pay by millions of dollars through timely buyback operations. Implementation of buyback programs is solely determined by executives and financial professionals with no board or government oversight.[xxxvii] Because reporting on buyback programs is only required in aggregated quarterly reports, there is virtually no data on whether or not a company's buybacks are within the SEC's daily safe harbor limits.[xxxviii]

Though stock buybacks have been increasing since the 1980s, they have doubled since the passage of the 2017 Republican Tax Cuts and Jobs Act.[xxxix] Companies have authorized more than $200 billion in new stock buyback programs, some that are 30 times more valuable than increases in employee compensation.[xl] The SEC must act to regulate stock buyback programs, investigate for market manipulation, and help close the wealth gap between workers and the top one percent.

A report from NELP and the Roosevelt Institute encourages the following remedies to ensure corporate wealth goes to more productive, job creating uses[xli]:

- Affirmatively ban open-market stock buybacks;

- Tax wealth at the same rate as work. Taxing capital gains at the same rate as we tax income would reduce the benefit of share buybacks to shareholders looking to sell in the short-term. It would also curb executive pay by making stock options, which have played a large role in driving high levels of CEO pay, less tax advantageous.

- Constrain executive pay. Share buybacks not only inflate stock prices, but also executive pay packages, creating an incentive for CEOs to boost their own earnings. Congress should discourage the exorbitant rates of CEO pay that siphon money from more productive activities. Raising the top marginal tax rate would discourage CEOs from bargaining for ever-higher salaries.

- Pass the Reward Work Act (H.R. 6096 and S. 2605), sponsored by Congressman Keith Ellison and Senator Tammy Baldwin. The bill would eliminate the legal safe harbor for stock buybacks and would for the first time in US history require companies to give workers the right to directly elect one-third of the board of directors.

Restore the Value of Labor Throughout the Economy

Labor, as a component of the U.S. economy, has been systematically downgraded over the last forty years through rules and regulations that favor capital over work. This has led to more and more families falling behind, working twice as hard to make ends meet. In order to build the 21st Century economy we need, we must restore the value of work in our economy. While not a cohesive policy proposal, change must start by putting the American worker first in legislative reforms. We must objectively evaluate the proposals that will increase worker training, wages, retention, and safety and use that data to produce evidence-based solutions to today's problems. If workers do not succeed, our economy does not succeed in the long-term.

All of the specific proposals laid out in the report would accomplish this goal, but a few that would be particularly impactful are:

- Promote and strengthen labor unions;

- Raise the federal minimum wage;

- Raise the white collar overtime salary threshold to $47,476 -- double the current level -- as the Obama Administration proposed and tie it to inflation[xlii], with Congress retaining the right to increase it under certain circumstances;

- Require employers to allow employees to earn a minimum of seven paid sick days;

- Establish a 12-week paid family and medical leave standard, administered through a national paid leave fund;

- Create stronger penalties for "wage theft," where an employer denies their workers the wages they are rightfully owed, most commonly by failing to pay overtime or forcing employees to work off-the-clock, paying less than minimum wage, illegally deducting pay or misclassifying employees, or by simply refusing to pay.

Raise the Minimum Wage

The social contract that guided us for generations – that if you work hard and play by the rules you can make it in America – is broken. Hard-working families are being forced to choose rent over clothes, food over medicine, today over tomorrow. This is wrong. No American with a full-time job should struggle to put food on their table or put their child to bed hungry. Until wages rise, this economic anxiety will continue to be the norm. Clearly, America needs a raise.

- The Raise the Wage Act will increase the minimum wage with common-sense predictability over the next seven years to $15 an hour.[xliii]

- If passed, it will help over 41 million low-wage American workers that are now barely making it paycheck to paycheck, including the parents of 19 million American children, and will raise wages for a third of our nation's workforce.

A $15 minimum wage in 2024 would undo the erosion of the value of the real minimum wage that began in the 1980s. In fact by 2019, for the first time in over 50 years, the federal minimum wage would exceed its historical inflation-adjusted high point, set in 1968. Gradually raising the minimum wage to $15 by 2024 would directly lift the wages of 22.5 million workers. On average, these low-wage workers would receive a $3.10 increase in their hourly wage, in today’s dollars. For a directly affected worker who works all year, that translates into a $5,100 increase in annual wage income, a raise of 31.3 percent. Another 19 million workers would benefit from a spillover effect as employers raise wages of workers making more than $15 in order to attract and retain their workforces. All told, this proposal would directly or indirectly lift wages for 41.5 million workers, 29.2 percent of the wage-earning workforce.[xliv]

Over the phase-in period of the increases, the rising wage floor would generate $144 billion in additional wages, which would ripple out to the families of these workers and their communities. Because lower-paid workers spend much of their extra earnings, this injection of wages would help stimulate the economy and spur greater business activity and job growth.[xlv]

Enhance Worker Freedom

One of the many impediments workers face is that they have no freedom within or between jobs. Without that freedom, workers are forced to accept or reject the terms of their employment – leaving them with an impossible choice of asserting themselves or losing the income they depend on. Two of the foremost improvements for worker freedom are flexible, predictable schedules and eliminating non-compete clauses.

In a survey, 80 percent of hourly workers reported fluctuations in the number of hours they work week to week, which averaged 38 percent of their usual weekly hours, making their schedules inconsistent at best. On top of that, their schedules are also unpredictable. In the same survey, 40 percent of these hourly workers reported knowing their schedule a week or less in advance, with more than a quarter having three days or less notice.[xlvi] This kind of scheduling makes it impossible for people to properly plan their weeks to balance other responsibilities, including child care, school work, caregiving obligations, or other jobs.

In a recent Stable Scheduling Study, evidence suggests that pre-arranged schedules benefitted not only the workers, but also the company. Median sales rose by 7 percent and worker productivity rose by 5 percent when workers had predictable schedules.[xlvii] Following the evidence, Congress should:

- Enact the Schedules that Work Act – legislation that requires that schedules be provided to workers two weeks in advance and that provides a cash incentive to employees if their schedules are changed abruptly or if they are assigned to unpredictable schedules, like split shifts or call-in shifts.[xlviii]

For worker freedom between jobs, labor mobility has been decreasing for many years. According to a Brookings Institution study, since the turn of the century, worker mobility has declined by 25 percent.[xlix] Labor mobility has fallen across all classes of workers – for women, for men, for the young, and for the old. Diminished mobility applies downward pressure on wages. It has been clearly established that, during normal times, worker mobility accounts for about 1 percent growth in wages each quarter.[l] During economic downturns, this number goes down as workers stay in their jobs for longer, and the labor market becomes less competitive.

One reason for this decrease in mobility is the increased utilization of non-compete clauses by employers.[li] Firms do this under the premise that they are protecting intellectual property and other key investments, but this claim loses muster when considering the widespread use of non-compete clauses in the low-wage fast food industry. Employers are looking to keep training costs low by minimizing turnover and reducing the need for training, and as such, making labor markets less competitive and suppressing wages. To increase worker freedom and fairness, Congress should:

- Ban all non-compete clauses in employment contracts, with exceptions for senior executives who possess trade secrets. In the 114th Congress, Senators Franken and Murphy introduced the MOVE Act, and Reps. Crowley, Ellison, Sanchez, and Pocan introduced the LADDER Act. Both bills banned the use of non-compete clauses for low-wage workers. This approach should be expanded, as stated above.

Increase Labor Union Participation

Since its peak in the mid-1950s at 35 percent saturation, labor union participation is today at only 10.7 percent.[lii] That represents a 50 percent decline since 1983, the first year the U.S. Bureau of Labor Statistics began tracking this data.[liii] As noted, the decision in *Janus* and future decisions from a corporate friendly Court could result in union participation falling even further.

- Labor law is more than 80 years old, and was written for an entirely different economy than the one we live in today. These laws must be updated to reflect the current needs of the workforce, one of which is to more easily allow for unions to have recourse to challenge impediments to organizing.

- State by state, so-called “right-to-work” free rider laws and other anti-union legislation is having a chilling effect on collective worker action. We expect corporations and the political right to push the boundaries on this front, and these efforts must be defeated.

- Other proposals would undermine public sector union membership, such as targeting official time and payroll deduction of union dues. Congress must stand united against these clear attempts to further weaken union membership.

- We know that companies are going to extreme measures to interfere in union elections. The National Labor Relations Board has a responsibility to enforce the law and make sure that all elections are fair and are not unduly influenced by “union-busting” firms or misinformation.

Supplemental Menu – Ready to Implement

Workplace Democracy Act
The decline of union density has unquestionably contributed to wage stagnation and the economic anxiety that plagues American workers. Workers need easier methods to organize, and union organizers need equal treatment under the law. To accomplish that, Representatives Pocan and Norcross and Senators Sanders and Gillibrand introduced the Workplace Democracy Act. The Workplace Democracy Act would:

- Make it easier for workers to support unions through a majority sign up process by allowing the National Labor Relations Board (NLRB) to certify a union as an exclusive bargaining representative if a majority of eligible workers sign valid authorization cards and the NLRB verifies that majority. Workers will get to elect which process to use to support unionization at their workplace, rather than allowing employers to dictate the course of action;

- Ensure companies cannot undermine a union as the exclusive bargaining representative of employees by denying a first contract. The bill requires an employer to begin negotiating within 10 days of receiving a request from a new union. If no agreement is reached after 90 days of negotiation, the parties can request to enter a compulsory mediation process. If no first contract is reached after 30 more days of mediation, the parties would have a contract imposed upon them through binding arbitration;

- Refine the definition of joint employer for the purposes of collective bargaining to maintain company's bargaining responsibility regardless of whether or not they choose to contract out segments of their labor force; and

- Strengthen the rules that govern the lead-up to union elections. Specifically, it would require mandatory disclosure of monetary rewards paid to anti-union consulting firms; require companies to disclose any anti-union information they disseminate to workers; and impose a monetary penalty of at least $100,000 for each time a firm fails to disclose anti-union contact.

Workplace Action for a Growing Economy (WAGE) Act
Another effort to support unions and collective action to raise wages is the Workplace Action for a Growing Economy (WAGE) Act, which protects the freedom to join a union by providing prompt and fair remedies to deter unfair labor practices. This legislation would:

- Increase transparency by requiring employers to post notices of workers' rights under the National Labor Relations Act (NLRA);

- Create penalties to prevent violations of workers' rights to join unions or engage in collective action. The WAGE Act guarantees penalties equal to twice the amount of an employee's backpay, plus fines up to $50,000, for each violation resulting in discharge or serious economic harm;

- Strengthen remedies for workers who suffer retaliation for exercising their rights under the NLRA. It also guarantees working people a right to seek relief in federal court, similar to rights granted under other civil rights and employment laws;

- Prevent employers from misclassifying their employees as supervisors or independent contractors, and prevent workers from being denied backpay on the basis of their immigration status; and

- Streamline the process for workers to organize a union and negotiate a first contract.

Workers' Freedom to Negotiate Act

The Workers' Freedom to Negotiate Act, which builds on the WAGE Act mentioned above, has support from House Democratic Leader Nancy Pelosi and Senate Democratic Leader Chuck Schumer.[liv] On top of the provisions of the WAGE Act, it strengthens remedies for unfair labor practices and modernizes labor law. Specifically, the Workers' Freedom to Negotiate Act would:

- Prohibit employers from requiring employees to waive their right to engage in joint, collective, or class action litigation;

- Safeguard the ability of unions and employers to agree to assess fair share fees from all employees who benefit from the union's representation, regardless of so-called "right to work laws" designed to prohibit these agreements;

- Prevent employers from requiring employees to participate in antiunion activities such as captive audience meetings designed to persuade employees against supporting the union;

- Prevent employers from interfering in union elections by removing employer standing in representation cases, which exist to determine workers' free choice rather than the employer's preference about how their employees should exercise their rights; and

- Remove limitations on "secondary" activities, including strikes and picketing, in solidarity with workers of other employers.

Explicitly Authorize Works Councils

While labor union participation is declining in the United States, other regions of the world are maintaining strong worker representation. In Europe and Japan, for example, the widespread use of works councils is improving worker voice and employer relationships.[lv] Simply put, the difference between unions and works councils is that works councils prioritize communication between management and employees and collaborate together to implement outside requirements and policies. Labor unions, on the other hand, have more power to bargain for employee rights including wages and benefits. Works councils result in what is often seen as mandatory consultation between management and employees.[lvi]

Works councils and other forms of organizing are not a substitute for a traditional labor union, but during the current assault on labor unions in the United States, alternative forms of representation could be used to protect our workers.

Among the benefits of works councils, they increase productivity, improve worker skill levels, and foster more cooperation between workers and management. Studies have also found that works councils increase the enforcement of regulations, improve mutual trust, and provide more freedom for workers.[lvii]

In recent history, the NLRB has held that works councils are allowed under the NLRA, but they must be elected.[lviii] In 2015, the Volkswagen (VW) Chattanooga plant started to work toward implementing a works council as the only VW plant outside Russia and China without one. Its legality was challenged and the workers saw many more battles toward organizing.[lix] There is no doubt that workers in that plant would have been better off with a works council than with no union representation at all.

- Explicitly authorizing works councils in U.S. labor laws could go a long way toward re-empowering American workers. The success stories from around the globe are a strong indications that works councils can work with, rather than in conflict with, traditional labor unions.

We must be careful to ensure that works councils do not simply become company funded pseudo-unions. The possibilities are exciting, but must be well-crafted.

Explore Sectoral Bargaining

Similar to works councils, sectoral bargaining is a concept that has been successful in Europe and could have positive impacts on American workers. The idea is to have industry-wide standards that are collectively bargained for across all employers.[lx] This approach is more efficient in industries that have similar worker concerns and compensate their employees for similar work.

In the United States, sectoral bargaining was once encouraged by federal law, but was replaced by enterprise bargaining, what we know today, by the NLRA.[lxi] Sectoral bargaining results in less worker turnover at individual companies since terms and conditions of employment are so similar throughout the industry. It also allows workers to benefit from the experiences of other workers in the same field at different companies. This could result in higher wages, better training opportunities, and safer workplace conditions across an industry.[lxii] It gives all companies an incentive to become “high road” employers and less of an incentive to union-bust.

This method of organizing is admittedly radically different than the one we currently rely on in the United States.

- An incremental approach, such as authorizing sectoral bargaining in one sector as a pilot program, would be beneficial to allow workers, employers, and current labor unions the ability to determine whether this kind of approach will work well in the United States.

When first exploring, the government should not be involved as a voice at the table in the negotiations.

Mandatory Worker Representation on Boards

Another way to ensure that workers have a voice in their workplace that is short of creating a labor union is to require worker representation on corporate boards. Due to company hostility, lack of worker interest, or many other factors, full labor unions are not always possible in a workplace. Ensuring that workers' perspectives are being heard on board matters is imperative to ensuring that decisions do not adversely affect workers.

In Germany, the concept is called codetermination. By law, just short of half of the supervisory board of directors is elected by the workers at companies with more than 2,000 employees and one third is elected for companies with at least 500 employees. These positions are in addition to any other labor organizing that may take place at a company, whether it be a labor union or a works council. In Germany, this model has resulted in increased productivity.[lxiii]

The United States has some basis to show that this kind of representation would likely be fruitful. Employee Stock Ownership Plans, in which employees are encouraged to take an ownership stake in their own firms, have results suggesting that the programs increase compensation, productivity, job satisfaction, and profitability. Combining employee ownership with increased employee participation may generate significant returns on investment.[lxiv]

- Requiring mandatory worker representation on the boards of all publicly-held companies would set up a system where worker concerns are always taken into consideration.

Tie Overtime to Inflation

Currently, Americans earning less than $23,660 in certain industries are eligible for time-and-a-half overtime pay for working more than 40 hours a week. This earnings threshold is set by the U.S. Department of Labor and has only been updated once since the 1970s, and as a result, the number of workers covered by the overtime rule has fallen dramatically due to the effects of inflation.[lxv] It is imperative that the American middle class receives fair pay for their work. The current overtime rule covers only a small fraction of Americans, and it is important to protect working families with fair wages. This is why we must tie overtime pay for inflation, so that the economy, not politicians decide when hard working Americans receive overtime pay. Our labor policies should not be stuck in the 1970s.

We need to honor our agreement with workers – that if you make under a certain amount and work more than 40 hours per week, you get overtime. This is a simple and fair protection for the American worker, and one that many businesses already have in place. Congress needs to establish an overtime threshold that is tied to inflation so this problem does not keep repeating itself. To do that, Congress should:

- Enact the Restoring Overtime Pay Act, which codifies the Obama Administration's Overtime Rule which adjusts overtime pay to $47,476 and automatically updates it to keep pace with inflation every three years.

Real Investment in Training

If we are going to invest in helping folks get the job training they need in an increasingly competitive economy, then the government should be running training programs that actually work. Unfortunately, the current system is exacerbating a divide between federal job-training and landing a job in high-demand is growing. We have to make sure these training programs are developing skills focused on finding employment.

A recent Department of Labor report found that current job-training programs are largely ineffective at raising wages.[lxvi] Clearly, there is huge room for improvement, and our goal is to meet this challenge and make these programs work all around the country. These training programs need to train workers in skills that industry actually needs, and ensure that the programs themselves are designed around participants. Combining these two simple benchmarks would go a long way in keeping our promise to the American worker.

In an economy that is in a constant state of evolution and where "disruption" is a good word, the ability for workers to be trained in these new and emerging fields is vital. If a worker in Michigan decides they need to hop over Lake Michigan and work in Wisconsin in a similar field, we need to make sure we provide them with training programs to prepare them for this shift. The ability for folks to climb the ladder towards higher earnings comes by ensuring they have the skills necessary to do so.

Better, More Strategic Labor Law Enforcement

More than any other agency in government, the Wage and Hour Division (WHD) at the Department of Labor is charged with fighting for the little guy and making sure employers play by the rules. The many enforcement duties of WHD include: ensuring American workers are paid the minimum wage and overtime wages they earn; preventing children from being forced to work; protecting individuals who take leave to attend to illness or birth of a child; and ensuring that our employment-based immigration system does not displace American workers or job seekers.[lxvii] WHD investigators turn legal phrases into meaningful protections for hardworking Americans across the country every day.

Workers are not the only ones who benefit from a strong WHD. Since 2010, WHD has begun to transition from a complaint based enforcement program to a strategic program.[lxviii] This allows investigators to use data and analytics to conduct more effective and efficient enforcement, targeting industries and employers with a history of violations and where large numbers of vulnerable workers are found. Between 2010 and 2015, the number of strategic investigations grew from 27 percent to 42 percent. Over that same period the "the percent of [strategic] investigations with no violations fell to 21 percent, down from 30 percent in FY 2010, while the percent of complaint investigations with no violations fell to 18 percent, down from 26 percent in FY 2010."[lxix] Not only does a more successful and efficient enforcement program level the playing field for employers who are in compliance, it also helps reduce compliance costs for all employers. The successes of WHD were only made possible by allocating additional resources to the division, and with that taxpayers have seen a strong return on their investment. Between 2009 and 2016, WHD leveraged an additional $34 million and 87 full time employees to put nearly $1.6 billion in back wages into the pockets of workers.[lxx]

In order to continue this level of effectiveness, we must fully fund the WHD. In addition, we must enact legislation that creates deterrents for employers to commit violations in the first place. Unfortunately, current law creates incentives for unscrupulous employers to cheat workers out of pay and deal with the consequences later. The Wage Theft Prevention and Wage Recovery Act would:

- Require employers to pay *all* wages owed to an employee. Currently, workers can only recover wages at the minimum wage or, for overtime hours, 1.5 times their regular wage;

- Require employers to provide initial disclosures of the terms of their employment and regular paystubs to all employees and create a civil fine for noncompliance;

- Require employers to pay final paychecks within 14 days of separation or by the payday for the pay period, whichever is earlier; the employer will owe the employee in question her daily wage for each day beyond this period that the paycheck goes unpaid, for a maximum of 30 days;

- Create a civil penalty of at least $2,000 if employers violate minimum wage and overtime protections under the FLSA, and—for the first time—enforce the protection guaranteeing workers their full compensation. The Act would also increase the existing civil penalty for willful or repeat violations to $10,000;

- Increase the damages that employees who are victims of wage theft are entitled to, totaling triple the owed wages amount, plus interest assessed on the original owed wages;

- Strengthen protections for employees who are illegally fired by their employer as retaliation for filing a complaint concerning wage theft or cooperating with a DOL investigation;

- Increase the time that employees have to bring a claim for owed wages from two years to four years;

- Make it easier for employees to take collective action to recover their stolen wages by removing the current requirement that employees affirmatively "opt-in" to engage in a collective action under the FLSA; and

- Deter repeat offenses by directing DOL to refer to the Department of Justice for criminal prosecution those employers who consistently violate WHD rules.

End Mandatory Arbitration as a Condition of Employment

Mandatory arbitration is a contract clause that requires any dispute between the employer and employee must be solved through arbitration, rather than through the court system.[lxxi] Making matters worse, federal courts up to and including the Supreme Court have found that these agreements can be coupled with bans on class actions, therefore preventing employees from joining together to fight systemic corporate wrongdoing. The problem has been exacerbated, as a result of the Supreme Court, over the last three decades.

Mandatory arbitration forces employees into a privatized and often inferior shadow court in which they are far less likely to prevail, and if they do prevail, they face greater obstacles to recover their due. Further, once the dispute is arbitrated, there is no legal pathway for appeal and many arbitration agreements lack due process protections found in court.

President Obama sought to remedy this via the federal contracting process, specifically the Fair Pay for Safe Workplaces Executive Order, which among other things required companies to remove mandatory arbitration clauses from employment contracts, and stop requiring it as a term of future employment. [lxxii] However, Congressional Republicans with the support of President Trump repealed the rule.[lxxiii]

To restore workers' rights, Congress should pass the Arbitration Fairness Act, which would:

- Effectively ban all mandatory arbitration as a condition of employment by clarifying that "no pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of an employment dispute, consumer dispute, antitrust dispute, or civil rights dispute."[lxxiv]

Earned Income Tax Credits

Despite forty years of wage stagnation in America, the richest one percent continue to be the winners, most recently with the latest tax overhaul. At the same time, working families are entering the ninth straight year without an increase in the minimum wage.[lxxv] Tax reform must do more to reward working families, and, in turn, build strength in the economy.

Expanding the Earned Income Tax Credit (EITC) to reach more working families, as well as childless workers, is a proven option to successfully put more money back into the pockets of the middle class.[lxxvi] The Grow American Incomes Now (GAIN) Act will make sure all workers can keep more of the money they earned for their work by:

- Nearly doubling the EITC for working families and increasing the credit for childless workers almost six-fold. The maximum tax credit available increases to $12,131 for families with three or more qualifying children; $10,783 with two qualifying children; $6,528 with one qualifying child; and $3,000 with no qualifying children. Currently, a family of three can receive a maximum credit of $6,318 and someone with no children can receive at most a $510 tax credit; and

- Phasing out at higher income levels and remaining fully refundable.

Fairness to Workers in the Wake of Corporate Tax Cuts
In order to fully recharge the American economy, corporations benefiting from a newly-lowered corporate tax rate should invest their windfall in the American workforce, but history suggests that they will not do this proactively. In conjunction with any corporate tax rate decrease, Congress should require companies to:

- Reinvest in their workforce by returning outsourced jobs back to American soil, addressing profit-sharing loopholes and tax incentives, and raising wages for the American workforce.

It is well-past time we lift our economy from the ground up, instead of waiting for corporations to dictate when benefits will trickle down.

In the wake of the tax-code re-write, corporations were quick to herald their imminent tax breaks by promising one-time bonuses, and in some cases, a modest increase to their minimum wage. A true reinvestment of corporate tax breaks, however, would be a meaningful increased minimum wage benefiting the whole of the American workforce. Bigger paychecks for the middle-class cannot be a one-time bonus, or done on a case-by-case basis.

Fair Trade
Our nation's trade policies must focus on outcomes that are fair for the American worker. Agreements like the North American Free Trade Agreement (NAFTA) and U.S.- Korea Free Trade Agreement (KORUS) allowed governments, not markets, to pick winners and losers. Our country's trade agreement text is classified and not available to the public. Providing transparency to folks in every industry and trade allows for increased input and opens the process up those who are not lobbyists. To rectify this, Congress should pass the Promoting Transparency in Trade Act, which:

- Requires the text of trade deals to be published after each round of negotiations.

The special interest provisions embedded in existing trade and globalization deals have real impacts on American jobs and wages. Instead of those provisions, new deals should include robust protections for labor and the environment with a structure for swift and certain enforcement. Doing so will help end the race to the bottom in wages and standards that harms workers in the U.S. and abroad and encourages the offshoring of jobs.

Currency manipulation is another major barrier to fair trade. Countries artificially lower and devalue their own currencies, making goods produced there cheaper for countries abroad. This helps their domestic markets and hurts ours by raising the cost comparison. Workers in the United States can compete with any country on an even playing field, but they cannot compete against protectionist monetary policies put in place by Central Banks. Addressing this issue is vital to the ideals of fair trade.

We have seen that free trade is not free – it comes at a huge cost to so many of us. We must ensure that our trade agreements are *fair*, and do not create an environment where jobs are free to move offshore.

Pursue and Protect Full Employment Policies by the Federal Reserve

As part of its statutory mission, the Federal Reserve is required to "promote full employment and production, increased real income, balanced growth,...adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance... and reasonable price stability."[lxxvii] Republican Members of Congress and prominent members of the Trump Administration, along with their billionaire and corporate allies, have sought to roll back or eliminate this full employment mandate.

To help support our workers and our economy:

- The Federal Reserve should use all tools at its disposal to constantly pursue its full employment mandate;

- Congress must remind both the public at-large and Federal Reserve policymakers of the extraordinary value the full employment mandate plays in the American economy; and

- The Senate must refuse to confirm nominees to the Board of Governors who have called for the narrowing of the Fed's full employment mandate, or who support polices that would undermine the Fed's ability to pursue full employment.

Curb Executive Pay

Income inequality is one of the defining issues facing Americans today. In the United States, income disparity has increased dramatically over the past several decades. The top percentile of Americans control an increasing amount of our nation's wealth, and economic mobility has declined as a result of this trend. The increases in the cost of health care, housing, and education are also driving economic anxiety among working women and men who are seeing their income decrease more and more with inflation. At the same time, executive and CEO pay is rising rapidly. The American worker is seeing their paycheck stay flat, while their CEO's bonus package is more than they will make in their life. With this gap in pay growing, less people have the opportunity to grow and move upward. Information on the Russell 1000, a listing of the top 1,000 U.S. companies, indicates that they have a median CEO to worker pay ratio of 235-to-one and that the average CEO today made $15.7 million annually in 2017.[lxxviii]

It is critical that we work to preserve the American dream. Americans should have confidence they can achieve economic security and a better life for their children through hard work and playing by the rules. Public policy can play a role in encouraging economic mobility and ensuring equal opportunity – workers and shareholders should have a voice in shaping these massive executive payments. While not everyone is going to be a CEO of a large corporation, allowing the vast majority of wealth in this country to consolidate in the top-floors and corner offices of corporations, while workers see no growth in their paycheck is simply not sustainable.

- Congress should pass the CEO Accountability and Responsibility Act (H.R. 3633), which incentivizes companies to improve CEO-to-worker pay ratios by increasing corporate tax rates for publicly traded companies with larger than a 100-to-1 ratio of pay between CEOs and workers. At the same time, the legislation would decrease corporate tax rates on those companies below that threshold.

Card Check

The effort to reform business regulations has outpaced the effort to reform worker protection regulations. The ability for workers to have a voice in the workplace is threatened daily. Under current rules, workers must file a petition with the NLRB demonstrating there is sufficient interest among employees to conduct an election. If petition authorization forms, often referred to as “cards,” affirm at least 30 percent of employees are interested in joining a union, the NLRB will agree to conduct an election. Frequently, these cards demonstrate interest from over 50 percent of voting employees, promising success of a union election.[lxxix] Despite this demonstration of support, workers then face a complicated process, as well as threats, intimidation, coercion, and worse, if an employer does not elect to recognize the union based on a verified 50 percent of votes, that can lasts months or years to get an election, let alone unionization. This all detrimentally affects industrial stability in the economy.

Republicans are attempting to reverse the modest progress made by the Obama Administration in streamlining this process. There is increased manipulation of the system to undermine union support. If successful, representation elections will be delayed by an average of 198 days, sending our workplace representation system back to the dark ages. In cases where a post-election hearing is held to hear challenges to the election, the certification of results were delayed on average by 382 days after the vote, wasting employees’ time and taxpayers’ dollars conducting an election where the outcome is already known does nothing to advance workers’ rights.[lxxx] It only serves to help unscrupulous employers that will stop at nothing to stifle employees’ voices in the workplace.

- Efforts should refocus on streamlining regulations that protect workers’ voice, require neutrality agreements, and authorize the use of majority sign-up, or card check, a policy that would recognize a union if more than 50 percent of employees sign an authorization card.

- Congress should also codify the current NLRA Election Rule enacted in December 2014 and implemented in April 2015 to make it more difficult for the Administration to undermine this practice.

The concept allows workers, rather than corporations, the choice to unionize through a simple majority sign-up process. This process works well at the small number of workplaces that permit it. Union workers are better off by almost every metric. Neutrality agreements and card check support workers' democratic right to choose a representative to bargain for their fair share, raise the wages of working men and women, and pump billions of dollars into the American economy.

Public Service Freedom to Negotiate Act

Research shows that union members employed by a state government earn 17 percent more than their non-union counterparts, and union members employed by a local government earn 35 percent more than their non-union counterparts.[lxxxi]

Unfortunately, many states outright prohibit their public-sector employees from engaging in collective bargaining to improve wages or working conditions. As demonstrated by this year's wave of strikes by teachers fighting for decent pay and school funding, our public services depend on the well-being of the professionals who protect and serve the public.

To stand with the public sector unions that fight for our country's 17.3 million public employees including teachers, police officers, and firefighters, Congress should pass the Public Service Freedom to Negotiate Act, which empowers the Federal Labor Relations Authority to protect the rights of state, territorial, and local government employees to:

- Form, join, or assist unions, to bargain collectively, and to join together to engage in other activities to improve their working conditions;

- Have their union recognized by their public employer through democratic procedures;

- Have a procedure for resolving any impasses in collective bargaining, and to authorize the deduction of fees to support the union; and

- Have all rights, responsibilities, and protections enforced by state law.

Indexing the Minimum Wage

As discussed above, raising the minimum wage to $15 an hour would help over 41 million low-wage American workers, including the parents of 19 million American children. This policy alone would raise wages for a third of our nation's workforce.[lxxxii] Raising the wage, however, is a short-term solution.

In addition to increasing the minimum wage, the Raise the Wage Act requires that wage to be adjusted based on the percentage increase, if any, in the median hourly wages of all employees. Other options for continually updating the minimum wage would be to set it to increase if inequality reaches a certain threshold. As a particularly bold measure, it could be tied to economy-wide productivity growth. Between 1938 and 1968, wages and productivity rose in tandem in the absence of formal indexation. Since then, however, 90 percent of workers' pay has lagged far behind productivity growth (Figure 1).[lxxxiii] Using this measure would cause the minimum wage to skyrocket, but might have the effect of making the minimum wage higher than median wages. In fact, EPI estimates that in 2024 the minimum wage would be $21.36 with this measure.

Ban Rate Setting for Independent Contractors

More and more American firms are shedding workers and focusing on “core competencies.” Segmented industries and workplaces have higher rates of wage theft, workplace injuries, and lead to stagnant wages. We have addressed some of this problem via a stronger joint employer standard, but another chronic symptom of the problem is one related to misuse and abuse of independent contractors. In a society where so much of our safety net is tied to one’s job status, it is critical to prevent employers from abusing this classification and ensure that workers are protected when companies do utilize it.

In order to protect against misclassification, Congress should enact the following reforms:

- Adopt FLSA’s “suffer or permit” test into other federal statutes;
- In industries where misclassification and fissuring are endemic, define workers as employees of whatever firms purchase their labor;
- Develop concrete guidance for courts and agencies required to apply such statutes; and
- Place the burden of proof on the party seeking to avoid employment status.

Additionally, Congress must establish procedural safeguards during contract negotiations to better ensure that workers know their legal rights. Employees often think, for example, that they have protections against unfair dismissal, that employers cannot hire permanent strike replacements, and that they have a right to refuse dangerous work. Employees who are misclassified as independent contractors may not recognize that they have different legal rights than employees.

In other contexts in which parties to contracts have unequal information, regulators and courts have often responded by requiring or strongly encouraging parties with more information to disclose it. The mandated HUD disclosures prior to entering into a residential real estate transaction are one example. Absent such disclosures, the contract is simply invalid.[lxxxv]

Requiring firms to disclose the following to workers prior to entering into a labor contract could reduce the incidence of misclassification:

- The fact that as an independent contractor, the worker is ineligible for various labor and employment law protections;
- Data on the incidence of misclassification generally, and in their particular industry;
- A summary of any recent court and agency decisions in their industry finding workers to be misclassified or finding questions of fact regarding misclassification;
- A clear statement that they have the right to contest their employment status, and that if they are found to be employees they will be eligible for numerous additional rights;

- A clear statement that nothing they sign today determines their employment status, but rather that status is determined by a number of factors, including the degree of control exercised by the firm hiring them, the existence of entrepreneurial opportunities in their work with that firm, and their economic dependence upon the firm; and

- Contact information for local administrative agencies, workforce development boards, and legal services organizations that could help them contest their employment status.

Any failure to disclose any of the following would result in the worker being classified as an employee; the employer being liable for treble damages for any economic harm suffered though wage/hour violations, failure to reimburse expenses, and failure to withhold taxes; and the employer being liable to cover any legal fees incurred by workers or administrative agencies to enforce their legal rights.

In addition, requiring firms to have independent worker representatives present, and available to explain workers' rights to them, prior to entering a valid employment contract, could reduce the incidence of misclassification. Those worker representatives could be attorneys, law students, or individuals certified by a local workforce development board or other worker rights nonprofit.

Supplemental Menu – For Further Exploration

Universal Basic Income
A concept that researchers are beginning to explore is Universal Basic Income (UBI), or the idea of providing unconditional periodic cash payments to all individuals with no means test or requirement to work. Proponents of UBI suggest that it decreases poverty and income inequality, improves the economy, and empowers people with less traditional, non-paid roles, like non-working parents and caregivers. Opponents, however, argue that individuals with higher income or wealth should not be eligible, that the program is prohibitively expensive, and that it may disincentivize work. Studies currently underway in Finland, Ontario, the Netherlands, Kenya, and a few anticipated in California should provide better data on UBI's effectiveness.[lxxxvi] Any exploration of UBI should focus on supplementing, not replacing, labor unions.

Government as Employer of Last Resort
During the Great Depression, President Franklin D. Roosevelt created the Works Progress Administration (WPA), which provided financial assistance to unemployed Americans in exchange for temporary work, many in the construction industry. WPA helped employ 3 million workers in 1935 alone.[lxxxvii] It is worth exploring whether the American people would benefit by having the government serve, at least temporarily, as an employer of last resort. It could provide training and financial assistance to our workers while helping improve our crumbling infrastructure and assist already-understaffed industries.

Portable Benefits
With the proliferation of contract work and non-traditional employer-employee relationships, fewer workers have access to benefits through their jobs. We believe that there should be a government-sponsored alternative for those workers. Without it, they have to pay for 100 percent of their health insurance costs, take a loss for every sick or vacation day they have to use, and have no employer contribution or assistance with retirement savings.

Finding the right balance requires more research and input. What we do know, however, is that we must provide a safety net for workers who are penalized through no fault of their own. We must explore including at least health insurance, retirement, family leave, sick leave, and short-term disability.

Using Union Pensions to Save Union Jobs
For decades in America, we have lived by the social contract that anyone who works hard and plays by the rules should be able to earn a place in the middle class. That principle is the foundation of the American Dream. Defined-benefit plans offered by corporations, more commonly known as pensions, helped make that dream a reality for millions. When it came time to retire, these Americans could rely on predictable sources of income every month, in addition to Social Security and whatever personal investments they made over the years. In short, they could retire with dignity.

Unfortunately in recent years, defined-benefit plans have become the exception. In their place, corporate leaders have opted for defined-contribution plans like 401(k)s. These plans have their advantages, but fail to provide the stability and predictability of defined benefits. If the stock market tanks, the worker loses everything. It is time to make sure that hard-working Americans have the peace of mind they deserve in retirement. They have paid into the system. They have done more than their fair-share for our society and economy. In retirement, the least they deserve is a stable pension.

A driver of this shift has been the shedding of pension liabilities in bankruptcy proceedings. Workers who participate in defined-benefit pension plans are making a conscious choice to plan for their futures and the futures of their families. By choosing to make contributions to a pension plan, they are electing to defer their hard-earned wages in order to earn pension benefits for their retirement. Over the last half century, unscrupulous employers have taken their companies through a bankruptcy, shirked their responsibilities and promises to the workers who built that company, and reemerged from bankruptcy as highly profitable businesses. If you work hard and play by the rules, you should be able to afford to care for your family and retire with dignity. Congress needs to work to prioritize pensions and:

- Protect retirees from having their benefits completely cut by requiring pension benefits be at least partially paid out before paying any other claims in bankruptcy;

- Incentivize more employers to enact defined benefit plans; and

- Proactively address the pension crisis so millions of currently working and currently retired workers can rely on their benefits in retirement.

Wealth Tax

The President's economic advisors and the President himself have spoken of getting out of paying taxes because he is "smart."[lxxxviii] Billionaire Leona Helmsley even famously said "only the little people pay taxes."[lxxxix] These things have some truth to them – it is much easier for rich people and corporations to get away with paying little or no taxes on their income and assets. The estate tax and capital gains taxes are two systems that are set up for the rich to easily bypass or undermine. Revenue from the estate tax has been dropping for years despite wealth becoming concentrated in fewer hands. The Congressional Budget Office estimates that a loophole in the capital gains tax allows heirs to save $50 billion a year.[xc] In the meantime, middle- and low-income Americans foot the tax bill for federal programs that they depend on.

Then-President Teddy Roosevelt warned that "a small class of enormously wealthy and economically powerful men, whose chief object is to hold and increase their power" could destroy American democracy.[xci] His answer was to tax wealth, which created the estate tax and the capital gains tax. Since their creation, both have been eroded. With more wealth came more political power, which they have used to reduce their tax burdens. We must find another way to tax big wealth so the rich pay their fair share.

Update WARN Act
The Worker Adjustment and Retraining Notification (WARN) Act, enacted in 1988, offers protection to workers, their families, and communities by requiring employers to provide notice 60 days in advance of covered plant closings and covered mass layoffs. The intent of the law is to ensure that workers and communities can plan for a job loss and make alternative arrangements.[xcii]

At the time of its passage, the 60 day notice may have been enough. In today's society, it falls woefully short. The operation of a facility could be the difference between the economic viability of a community or the nail in its coffin. The WARN Act should be updated to require the closing or relocating company to mitigate the impact that its moving will have on the local community. This would discourage companies from moving for slight tax incentives or to rely on shifting their jobs overseas. The mitigation money could be used to create or strengthen job training programs or to help employees transition into new opportunities. Rather than relocate and face what may be significant financial costs, businesses may instead choose to remain in a community and invest in the local workforce.

Appendix A: Public Meeting Participants

August 24, 2016: Meeting with UCLA Labor Center

- Victor Narro, Project Director
- Janna Shadduck Hernandez, Project Director, UCLA Center for Labor Research and Education
- Cinthia Flores, DRC Manager

September 7, 2016: D.C. Briefing: “Future of Work”

- Nell Abernathy, Roosevelt Institute
- Michelle Miller, Coworker.org
- K. Sabeel Rahman, Brooklyn Law and Roosevelt Institute

January 17, 2017: Regional Meeting: Northern California

- Derrick Kualapai, Business Manager, U.A. Local 342
- Al Garcia, Apprenticeship Program Training Director, U.A. Local 342
- Ken Jacobs, Chair, UC Berkeley Institute for Research on Labor & Employment
- Annette Bernhardt, IRLE—Future of work/Contracting out
- David Card, Economics—Causes of inequality, union effects
- Kristen Harknett , IRLE Visiting Scholar—Scheduling
- Hillary Hoynes, Economics and Public Policy—Role of the safety net
- Saru Jayaraman, Public Policy/Restaurant Opportunities Center
- Erin Kerrison, Social Welfare—Barriers to employment for the formerly incarcerated
- Paul Pierson, Political Science—Countervailing forces
- Steven Pitts, IRLE
- Michael Reich, IRLE, Economics – National Minimum Wage
- Nari Rhee, IRLE — Retirement security
- Jesse Rothstein, IRLE, Public Policy
- Charles Varner, Associate Director, Center on Poverty and Inequality, Stanford University
- Art Pulaski, Chief Officer, California Labor Federation
- Doug Bloch, Political Director for Teamsters Joint Council 7
- Lou Paulson, President, California Professional Firefighters
- Tom Baca, International Vice President of the Western States Section, International Brotherhood of Boilermakers
- Bob Alvarado, Executive Officer of the Northern California Carpenters Regional Council

March 22, 2017: D.C. Briefing: “US Anti-Trust Policy’s Impact on Collective Bargaining, Wage Stagnation, and Economic Growth”

- Marshall Steinbaum, Senior Economist and Fellow, Roosevelt Institute
- Barry Lynn, Director of Open Markets Program, New America Foundation
- John Schmitt, Research Director, the Washington Center for Equitable Growth

April 20, 2017: Regional Meeting: Wisconsin

- Joel Rogers – Director of COWS, UW-Madison
- Lonnie Berger – Director of the Institute for Research on Poverty, UW- Madison
- Maria Cancian – former Director of the Institute for Research on Poverty, UW-Madison
- Kathy Cramer – Director of the Morgridge Center for Public Service, UW-Madison; Author – The Politics of Resentment
- Laura Dresser – Associate Director of COWS, UW-Madison
- Charles Franklin – Director of the Marquette Law School Poll, Marquette University
- Linn Posey Maddox – Educational Policy Studies, UW-Madison
- Michael Massoglia – Sociology, UW-Madison
- Karen Timberlake – Michael Best Strategies
- David Weil – Questrom School of Business, Boston University; former Administrator of the Wage and Hour Division, Department of Labor
- Nell Abernathy – Vice President, Research and Policy, Roosevelt Institute
- Phil Neuenfeldt, President, WI AFL-CIO
- Gretchen Lowe, AFSCME Retirees
- Kevin Bishop, USW
- Marshall Bown, USW Local 1533
- Dan Burke, LIUNA Local 464
- Troy Johnson, Rock County Central Labor Council
- Mahlon Mitchell, PFFW Local 311
- Keith Steffen, NALC
- Mark Reihl, ED of the WI State Council of Carpenters
- Terry McGowan, President and Business Manager of Operating Engineers Local 139
- Jeff Mehrhoff, Business Manager and Secretary-Treasurer IUPAT District Council 7
- Kevin Gundlach, ED of the South Central Federation of Labor, AFL-CIO

May 24, 2017: D.C. Briefing: "Why Have Wages Stagnated"

- L. Josh Bivens, Vice President of Policy and Research, Economic Policy Institute
- Eileen Applebaum, Senior Economist, Center for Economic and Policy Research
- Kelly Ross, Deputy Policy Director, AFL-CIO

June 19, 2017: Regional Meeting: Michigan

- Dr. Bruce Pietrykowski, Director of the Center for Labor and Community Studies at the University of Michigan-Dearborn
- Michael Barr, Professor of Public Policy, University of Michigan
- Scott Derue, Dean, Stephen Ross School of Business, University of Michigan
- Dr. Dale Belman, Professor, School of Human Resources and Labor Relations, MSU
- Dr. Roland Zullo, Researcher, Institute for Research on Labor, Employment, and the Economy, University of Michigan
- Dr. David Reynolds, Labor Researcher, University of Michigan
- Dr. Marick Masters, Director, Labor Studies, Wayne State University

- Dr. Luke Shaefer, Director, Poverty Solutions, University of Michigan
- Dr. Trina Shanks, Associate Professor of Social Work, School of Social Work, University of Michigan
- Dennis Williams – President; United Auto Workers
- James P. Hoffa – General President; International Brotherhood of Teamsters
- Paula Herbart, President-Elect, Michigan Education Association
- Rory Gamble, Director Region 1A United Auto Workers
- Mike Stone, Director, Michigan CAP, United Auto Workers
- Lisa Canada, Political Director, Michigan Regional Council of Carpenters
- David Hecker, President, AFT-Michigan

August 4, 2017: Regional Meeting: New Jersey

- Phoebe Haddon, Chancellor, Rutgers University-Camden
- Dana Redd, Mayor Camden City
- Joel Naroff, Naroff Economic Advisors
- Jon Whiten, Vice President, NJ Policy Perspective
- James Narron, First Vice President and COO, Philadelphia Federal Reserve
- Theresa Singleton, Senior Vice President and Community Affairs Officer, Philadelphia Federal Reserve
- Patrice Mareschal, Assistant Professor of Public Policy, Rutgers University-Camden
- Robert Asaro-Angelo, Former Secretary Representative, Eastern Region US DOL
- Dr. Kris Singh, President & CEO, Holtec International
- Carol McCormick, Camden County College Corporate Training Institute
- Howard Wells, President, Teamsters 676
- Senator Steve Sweeney, New Jersey Senate President
- Charlie Wowkanech, President, New Jersey AFL-CIO
- Bob McDevitt, President, Unite Here Local 54
- Milly Silva, Executive Vice President, 1199SEIU
- Barbara Rosen, Secretary Treasurer, Health Professionals and Allied Employees
- Seth Hahn, Political Director, Communications Workers of America
- Dan Cosner, President, The South Jersey Building Trades

September 6, 2017: D.C. Briefing

- Chris Shelton, President, CWA
- Phil Smith, Public Affairs Director, UMW
- Mary Cavallaro, Vice President for Broadcast, SAG-AFTRA
- Heidi Schuerholtz, Chief Economist, EPI
- Debbie Berkowitz, Senior Fellow, NELP
- Matt Ginsburg, Associate General Counsel, AFL-CIO
- Steve Kreisberg, Director of Research and Collective Bargaining, AFSCME
- Josh Nassar, UAW
- Steve Cochran, UAW Local 42 President

September 25, 2017: Regional Meeting: Massachusetts

- Thomas Kochan, Co-Director, MIT Sloan Institute for Work and Employment Research. Mr. Kochan focuses on the need to update America's work and employment policies, institutions, and practices to catch up with a changing workforce and economy.
- Lawrence (Larry) Katz, Elisabeth Allison Professor of Economics at Harvard University and Research Associate of the NBER
- Richard Freeman, Herbert Ascherman Professor of Economics at Harvard University, Co-Director of the Labor and Worklife Program at Harvard Law School, Senior Research Fellow on Labour Markets at the Centre for Economic Performance (London School of Economics), directs the Science and Engineering Workforce Project (SEWP) at NBER
- David Weil, Dean of the Heller School for Social Policy and Management at Brandeis University
- Zeynep Ton, Adjunct Associate Professor of Operations Management. Ms. Ton is currently examining how organizations can design and manage their operations in a way that satisfies employees, customers, and investors simultaneously
- Erik Brynjolfsson, Co-Director of MIT Initiative on the Digital Economy, Professor at MIT Sloan School of Management, Research Associate at NBER, Co-author of Race Against the Machine
- Frank Levy, Daniel Rose Professor Emeritus at MIT and a Senior Research Associate in the Department of Health Care Policy of Harvard Medical School – impact of computerized work and offshoring on the U.S. occupations, skill demands and income
- Lisa Lynch, Provost and Chief Academic Officer of Brandeis University, Maurice B. Hexter Professor of Social and Economic Policy
- Sharon Block, Executive Director, Labor and Worklife Program at Harvard Law School. Ms. Block was the Principal Deputy Assistant Secretary for Policy at the U.S. Department of Labor

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