LABOR RIGHTS FOR PLATFORM WORKERS: A RESPONSE TO *SOCIAL CHANGE'S* 2016 SYMPOSIUM

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I. INTRODUCTION

At *Social Change*'s 2016 Symposium, "Dishwashers, Domestic Workers, & Day Laborers: Can Alternative Labor Organizing Revive the Labor Movement?," several panelists spoke about organizing efforts among drivers whose employment status is contested. The panelists discussed Uber drivers, truckers at Los Angeles area ports, and shuttle bus drivers transporting Silicon Valley workers. Uber drivers and port truckers have been classified as independent contractors instead of employees and have thereby been deprived of rights and benefits under labor and employment laws. In the past few years, unions have organized many shuttle bus drivers, who usually work for companies that contract with tech giants such as Facebook, Google and Apple.[1] However, the organizing situation is more complicated for Uber and Lyft drivers, as well as many port truck drivers, because the companies they work for do not consider them employees.

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1. Kristen V. Brown, *Google Giving Bus Drivers a Raise, but Not Everyone Is Happy*, S.F. GATE (Mar. 12, 2015, 12:37 PM), http://www.sfgate.com/business/article/Google-giving-bus-drivers-a-raise-but-not-6130328.php.

Uber drivers, port truck drivers in Los Angeles and Long Beach, and bus drivers who transport tech workers to and from work in Silicon Valley have all sought unionization to improve their pay and work conditions.[2] But some of these drivers face special challenges in organizing because the companies they work for classify them as independent contractors rather than as employees.[3] Labor law protects the rights of employees to unionize,[4] but non-employee workers—such as independent contractors—are on shakier footing when they attempt to advocate collectively to ameliorate poor pay and working conditions.

These workers have little bargaining power relative to their employers and are often dependent on their employers for their livelihood; given the nature of this relationship, these workers should be considered employees. Still, the default is that they are deprived of employment protections unless they prevail in arduous litigation or costly individual arbitration.[5] This issue has become even more pressing with the rise of "platform economy" companies such as Uber, Lyft, Shyp, and TaskRabbit, characterized by platforms that connect workers with consumers to perform short-term tasks, such as driving a passenger to the airport.[6] While some of these platforms are online, it is important to note that more traditional companies, like taxi dispatches, perform a similar function—for example, connecting drivers with passengers—and should also be considered platform companies.

Legislatures have begun to address these limitations in labor law protections by proposing or passing laws allowing some workers not classified as employees to bargain collectively through unions or union-like entities. The City of Seattle, for example, recently passed a law allowing unions or union-like groups to organize Uber and Lyft drivers, as well as more traditional taxi drivers, and

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2. Jon Weinberg, *Gig News: Union Files NLRB Petition to Represent Uber Drivers in New York*, ONLABOR (Feb. 3, 2016), https://onlabor.org/2016/02/03/gig-news-union-files-nlrb-petition-to-represent-uber-drivers-in-new-york/; Daina Beth Solomon, *Port Truck Drivers Plan Sixth Strike Against Company*, L.A. TIMES (July 20, 2015, 4:07 PM), http://www.latimes.com/business/la-fi-port-trucker-protest-20150720-story.html; Julia Love, *Teamsters Seek to Unionize More Tech Shuttle Bus Drivers in Silicon Valley*, MERCURY NEWS (last updated Aug. 12, 2016, 5:52 AM), http://www.mercurynews.com/2015/02/25/teamsters-seek-to-unionize-more-tech-shuttle-bus-drivers-in-silicon-valley/.

3. *See* O'Connor v. Uber Techs., 82 F.Supp.3d 1133, 1137−38 (N.D. Cal. 2015); Andrew Khouri, *Trucker Strike at Ports of L.A. and Long Beach Ends*, L.A. TIMES (Nov. 21, 2014, 5:38 PM), http://www.latimes.com/business/la-fi-trucker-strike-20141121-story.html.

4. 29 U.S.C. § 157 (2012).

5. *See, e.g.*, Mohamed v. Uber Techs., Inc., 836 F.3d 1102 (9th Cir. 2016) (finding Uber's arbitration agreements enforceable); O'Connor v. Uber Techs., Inc., No. 13-cv-03826-EMC, 2016 WL 4398271 (N.D. Cal. Aug. 18, 2016) (rejecting settlement of class action alleging Uber drivers were misclassified as independent contractors); Cotter v. Lyft, Inc., 176 F.Supp.3d 930 (N.D. Cal. 2016) (rejecting settlement of class action alleging Lyft drivers were misclassified as independent contractors).

6. *See* Brishen Rogers, *Employment Rights in the Platform Economy: Getting Back to Basics*, 10 HARV. L. & POL'Y REV. 479, 480 (2016).

requiring the companies to engage in good-faith bargaining with the groups.[7] Similar legislation potentially impacting non-employee workers in many industries across the platform economy has been introduced in California.[8]

This response will look at legislation supporting collective bargaining among non-employee workers, the legal landscape against which this legislation takes place, and ways in which these laws differ from, and might improve upon, the National Labor Relations Act (NLRA),[9] which governs organizing and collective bargaining between employers and employees.

II.
WHY IS LEGISLATION NECESSARY?

Why do non-employee workers need special legislation to engage in collective bargaining? What prevents them from forming a union and seeking to bargain collectively with their employers? This section briefly summarizes the legal background against which the Seattle and California legislation arose.

Worker organizing and collective bargaining occurs under two interacting regimes of law – one positive (that is, enabling and protecting certain behavior), and one negative (that is, prohibiting certain behavior).[10]

A. Labor Law

The positive regime operating in the background here is that of labor law. Generally speaking, the National Labor Relations Act (NLRA) requires employers to bargain in good faith with a union chosen by workers to represent them in collective bargaining with their employer.[11] More broadly, Section 7 of the NLRA protects employees who participate in what it terms "concerted activities."[12] While concerted activities may include efforts to form a union or otherwise organize workers to advocate for their self-interest with their employers, its meaning is broader than that and includes, as the phrase suggests, any efforts of workers to

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7. Seattle Mun. Code § 6.310.735 (2015); Nick Wingfield & Mike Isaac, *Seattle Will Allow Uber and Lyft Drivers to Form Unions*, N.Y. TIMES (Dec. 14, 2015), http://www.nytimes.com /2015/12/15/technology/seattle-clears-the-way-for-uber-drivers-to-form-a-union.html.

8. A.B. 1727, 2015-16 Reg. Sess. (Cal. 2016); Jennifer Van Grove, *California Bill Would Let Gig Workers Organize for Collective Bargaining*, L.A. TIMES (Mar. 11, 2016, 8:50 AM), http://www.latimes.com/business/la-fi-gig-workers-bill-20160310-story.html.

9. 29 U.S.C. §§ 151-69 (2012).

10. Of course, much worker organizing takes place in the shadow of these regimes, with workers advocating for improved pay and conditions outside of a traditional union structure. *See* Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. REV. 407, 428−37 (1995); *see generally* Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L.J. 950 (1979).

11. 29 U.S.C. § 158(a)(5) (2012).

12. 29 U.S.C. § 157.

engage collectively – including for instance, Facebook posts criticizing an employer, or informal efforts to improve working conditions, as long as they are not purely individual.[13]

Labor law also seeks to protect workers from employer retaliation when the workers engage in concerted activities. That is, an employer is prohibited from terminating or otherwise penalizing a worker because that worker engaged in protected activity (i.e., concerted activities) under Section 7. While the enforcement remedies upholding this prohibition are limited and often ineffective,[14] independent contractors lack even these protections because they are explicitly carved out from the coverage of the NLRA.[15]

The NLRA has come under a well-deserved "tsunami of criticism"[16] from scholars and practitioners for its inadequate protections for concerted worker action and meaningful collective bargaining.[17] The federal labor law regime plants many obstacles in the way of unionization and effective collective bargaining. For example, the NLRA gives employers too much latitude to interfere with workers' unionization efforts and restricts unions' access to workers to communicate with them about the benefits of unionizing.[18] Furthermore, independent contractors are excluded from even the ineffective protection the NLRA affords. The Seattle and California legislation address some of the NLRA's shortfalls and allow for more robust organizing and collective bargaining.

B. Antitrust Law

The negative legal regime that forms the backdrop for the Seattle and California legislation is antitrust law. The Sherman Antitrust Act prohibits price-fixing and collusion in restraint of trade.[19] The purpose of antitrust law is to prevent businesses from forming monopolies and other forms of unfair competition. While scholars debate whether it was intended to apply to labor union

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13. *See, e.g.*, Three D, LLC v. NLRB, 629 F. App'x. 33, 36−37 (2d Cir. 2015); Pier Sixty LLC, 02-CA-068612 and 02-CA-070797, 362 N.L.R.B. No. 59 (Mar. 31, 2015); Meyers Indus., 281 N.L.R.B. 882, 884−85 (1986), *aff'd. sub nom*. Prill v. NLRB, 835 F.2d 1481 (D.C. Cir. 1987).

14. Cynthia Estlund, *The Ossification of American Labor Law*, 102 COLUM. L. REV. 1527, 1553−54 (2002); Michael H. Gottesman*, In Despair, Starting Over: Imagining a Labor Law for Unorganized Workers*, 69 CHI.-KENT L. REV. 59, 62−63 (1993).

15. *See* 29 U.S.C. § 152(3) (defining "employee" under the NLRA to exclude "any individual having the status of an independent contractor").

16. Kati L. Griffith, *The NLRA Defamation Defense: Doomed Dinosaur or Diamond in the Rough?*, 59 AM. U. L. REV. 1, 2 (2009).

17. *See, e.g.*, Benjamin I. Sachs, *Employment Law as Labor Law*, 29 CARDOZO L. REV. 2685, 2685−86 (2008); Wilma B. Liebman, *Decline and Disenchantment: Reflections on the Aging of the National Labor Relations Board*, 28 BERKELEY J. EMP. & LAB. L. 569, 571−72 (2007).

18. Benjamin I. Sachs, *Despite Preemption: Making Labor Law in Cities & States*, 124 HARV. L. REV. 1153, 1162 (2011).

19. *See* 15 U.S.C. § 1 (2012).

activity,[20] in the pre-New Deal era, the Supreme Court held that strikes and other actions aimed at improving wages and working conditions violated the Sherman Act.[21] This made worker organizing extremely difficult, and led to the passage of the NLRA as well as legislative reform in the antitrust area.

1. The Labor Exemption

In response to the pre-New Deal Supreme Court holding, Congress created a labor exemption to antitrust law, in the form of the Clayton Act[22] in 1914 and the Norris-LaGuardia Act[23] in 1932. Together, these laws and the cases interpreting them form the basis for determining whether worker organizing or collective bargaining is subject to antitrust liability.[24] While it is not altogether clear that antitrust law would apply to worker organizing in the absence of the labor exemption, post-Norris-LaGuardia Act Supreme Court precedent suggests that it may.[25] Courts have also held that the labor exemption does not apply to independent contractor organizing.[26] Thus, workers classified as independent contractors might "find themselves in the position of most workers prior to the New Deal, at once lacking labor protections, yet exposed to antitrust liability for organizing to improve their conditions."[27] And the threat of antitrust liability casts a shadow over non-employee worker organizing.

2. The State Action Exemption

In addition to the labor exemption, there is a state action exemption in antitrust law, first articulated by the Supreme Court in *Parker v. Brown*.[28] There, the Court found that the Sherman Antitrust Act did not restrict "state action or official action directed by a state."[29] The Court subsequently developed a two-part test to determine whether state action is present. The test examines (1) whether the state

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20. *See* Sanjukta Paul, *The Enduring Ambiguities of Antitrust Liability for Worker Collective Action*, 47 LOY. U. CHI. L. J. 969, 997−1000 (2016).

21. Loewe v. Lawlor (Danbury Hatters), 208 U.S. 274 (1908); Paul, *supra* note 19, at 1013−16.

22. 15 U.S.C. § 17.

23. 29 U.S.C. §§ 101 et seq.

24. *See* United States v. Hutcheson, 312 U.S. 219, 229−31 (1941) (explaining that "whether trade union conduct constitutes a violation of the Sherman Law is to be determined only by reading the Sherman Law and § 20 of the Clayton Act and the Norris-LaGuardia Act as a harmonizing text of outlawry of labor conduct"); *see also, e.g.*, Burlington Northern R. Co. v. Bhd. of Maint. of Way Emps., 481 U.S. 429 (1987); Connell Constr. Co. v. Plumbers & Steamfitters Local Union No. 100, 421 U.S. 616 (1975).

25. FTC v. Superior Court Trial Lawyers Ass'n, 493 U.S. 411 (1990).

26. Taylor v. Local No. 7, 353 F.2d 593, 605−06 (4th Cir. 1965); *see also* Int'l Ass'n of Heat & Frost Insulators v. United Contractors Ass'n, 483 F.2d 384 (3d. Cir. 1973).

27. Paul, *supra* note 19, at 969.

28. 317 U.S. 341 (1943).

29. *Id.* at 351.

has clearly articulated an intent to displace market forces with regulation; and (2) whether government officials actively supervise the regulated parties' conduct, to prevent private price-fixing against the public interest. When both are present, the activity does not violate federal antitrust laws.[30]

The state action exemption applies to municipalities as well. However, when the actor is a municipality, a slightly different framework applies because municipalities are presumed to act in the public interest. Like private actors, a municipality may act anti-competitively when the state has clearly articulated an intent to "displace competition with regulation" in an area affecting municipal services.[31] However, when the actor engaged in regulated activity is a municipality, the state need not actively supervise the conduct. The active supervision requirement is intended to prevent private price-fixing agreements that benefit only the private actors, rather than furthering the interests the state intended when it authorized regulation.[32] Because municipalities are presumed to act in the public interest, the risk that they are engaged in private price-fixing arrangements is minimal or non-existent. Thus, active supervision by the state is not required.[33]

Labor and antitrust law, combined with Seattle and California legislators' concern that companies may deny workers basic labor and employment protections by classifying them as independent contractors rather than employees,[34] form the legal backdrop against which California and Seattle have considered new legislation.

III.
THE LEGISLATION

The Seattle and California legislation, and potential future efforts, could allow for expanded, innovative worker organizing where traditional labor law has lagged behind. While a full comparison of the new legislation with the NLRA is beyond the scope of this piece, I will discuss some differences between the NLRA and the new legislation, which is intended to address some of the NLRA's problems.

A. Scope of Coverage

Both the Seattle and California legislation are meant to facilitate organizing and collective bargaining by allowing certain kinds of workers to organize into units with which the companies for which they work must negotiate over certain

30. Steven Semeraro, *Demystifying Antitrust State Action Doctrine*, 24 HARV. J.L. & PUB. POL'Y 203, 211−12 (2000).

31. Hallie v. City of Eau Claire, 471 U.S. 34, 44 (1985).

32. *Id.* at 46−47.

33. *Id.*

34. *See generally* REBECCA SMITH & SARAH LEBERSTEIN, NAT'L EMP'T LAW PROJECT, RIGHTS ON DEMAND: ENSURING WORKPLACE STANDARDS AND WORKER SECURITY IN THE ON-DEMAND ECONOMY 3–6 (2015), http://www.nelp.org/content/uploads/Rights-On-Demand-Report.pdf (discussing labor and employment issues with the gig economy).

terms and conditions of the work, such as pay and insurance.[35] The Seattle law covers "driver coordinators" – entities such as taxicab companies, dispatch services, and platform-based transportation network companies (Seattle's nomenclature for companies such as Uber and Lyft) that engage "for-hire drivers" – people who drive taxicabs, for-hire vehicles, or transportation network company-endorsed vehicles in Seattle.[36] The California proposal covers a broader swath of workers and companies, extending to all "hosting platforms" which comprise "facilit[ies] for connecting people or entities seeking to hire people for work with people seeking to perform that work," internet-based or otherwise, and the workers designated by them as independent contractors.[37]

B. Improvements on the NLRA

The Seattle law improves on federal labor law in several ways. First, it allows a union to be certified based on a card check process,[38] whereby the group collects driver signatures (including electronically) rather than needing to go through an election.[39] The NLRA only requires an employer to recognize a union after a "notoriously slow" National Labor Relations Board (NLRB) elections process.[40] While employers sometimes enter into card check agreements with unions, the NLRA does not require them to do so. This was the subject of an NLRA reform effort in the last decade, in the form of the Employee Free Choice Act, which would have required the NLRB to certify unions based on a card check.[41] Perhaps most importantly, the Seattle law gives teeth to the good-faith bargaining obligation by requiring that if the parties cannot reach agreement within three months, either party can call for binding arbitration in which an arbitrator determines the terms of the contract.[42]

The California proposal also contains a unique feature that has been the subject of scholarly debate around the concept of minority or members-only unions (unions that represent only a minority of employees).[43] Namely, it requires

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35. SEATTLE MUN. CODE § 6.310.735(H); Assemb. B. 1727, 2015–16 Reg. Sess. (Ca. 2016) (to be codified at CAL. LAB. CODE § 1081(d)(1)).

36. SEATTLE MUN. CODE §§ 6.310.110, 6.310.735.

37. Cal. Assemb. B. 1727.

38. Card check refers to employees signing cards indicating they want unionization at their workplace, instead of holding an NLRB-supervised election. The advantage of a card check process is that it can take place before the employer is aware that workers are seeking to unionize; this way the employer is less likely to "interfere coercively with employee decisionmaking on the question of unionization." *See* Benjamin I. Sachs, *Enabling Employee Free Choice: A Structural Approach to the Rules of Union Organizing*, 123 HARV. L. REV. 655, 670 (2010).

39. SEATTLE MUN. CODE § 6.310.735(F).

40. Sachs, *supra* note 17, at 1163.

41. Employee Free Choice Act of 2007, H.R. 800, 110th Cong. § 2 (2007).

42. SEATTLE MUN. CODE § 6.310.735(I).

43. *See generally* Catherine Fisk & Xenia Tashlitsky, *Imagine a World Where Employers Are Required to Bargain With Minority Unions*, 27 A.B.A. J. LAB. & EMP. L. 1 (2012); Charles J. Morris,

companies to bargain with workers regardless of whether the majority of workers at that company are seeking unionization. The NLRB has never interpreted the NLRA to *require* that a company bargain with a minority union, although such bargaining is *allowed* under the NLRA.[44] The California proposal would require good-faith bargaining with any group of 10 or more workers.[45]

The California proposal also gives teeth to the prohibition on retaliation. It provides workers with a private right of action for violation of its anti-retaliation provisions (which prohibit companies from terminating or otherwise penalizing workers who assert their rights under the law) and allows a broader range of remedies for retaliation than those available under the NLRA.[46]

C. Antitrust Avoidance

The California proposal squarely passes the first prong of the state action exemption, as it articulates a clear intent to displace market forces with regulation of collective bargaining. It would likely also pass the second, "active supervision" prong of the state action exemption because a state agency is charged with facilitating collective bargaining, including providing mediation services and meeting space for negotiations. The California law also defines concerted action and collective bargaining under the law as labor disputes, which may insulate them from antitrust scrutiny under the labor exemptions.[47]

The Seattle legislation presents a more complex question. Washington state law specifically authorizes municipalities to regulate for-hire and taxicab transportation.[48] This legislation recognizes that regulation of transportation is an essential government function. Thus, Washington has clearly articulated an intent that municipalities regulate in the areas of for-hire and taxi transportation, enabling the Seattle legislation to avoid antitrust challenges under the first prong of the state action exemption.

The active supervision question is less clear and turns, in part, on the identity of the actor engaged in regulated activity.[49] As noted above, there is no requirement of active supervision when the municipality itself is the actor engaged

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THE BLUE EAGLE AT WORK: RECLAIMING DEMOCRATIC RIGHTS IN THE AMERICAN WORKPLACE (Cornell Univ. Press 2005).

44. Fisk & Tashlitsky, *supra* note 42, at 2.

45. Cal. Assemb. B. 1727.

46. *Compare* Cal. Assemb. B. 1727 (providing for all legal and equitable remedies and treble damages for willful violations) *with* 29 U.S.C. § 160(c) (listing reinstatement of employment and payment of backpay as possible remedies for unfair employment actions). *See also* Sachs, *supra* note 16, at 2695 (noting that no punitive damages are available under the NLRA).

47. Cal. Assemb. B. 1727. The California proposal also addresses California antitrust law.

48. REV. CODE ANN. §§ 46.72.001, 81.72.200 (West 2014).

49. *See* Vivian Dong, *U.S. Chamber of Commerce to Seattle: Collective Bargaining for Uber Drivers Violates Antitrust*, ONLABOR (Apr. 14, 2016), https://onlabor.org/2016/04/14/u-s-chamber-of-commerce-alleges-seattle-collective-bargaining-rights-for-uber-lyft-drivers-violates-federal-antitrust-laws/.

in regulated activity. The Seattle law charges a city official with designating groups that may seek to represent drivers, approving or rejecting collectively bargained-for contracts, and promulgating rules under the law.[50] Thus, there is active government supervision of the activity, though at the city rather than the state level. Given how closely engaged the city official is required to be under the law, it may also be said that the city itself is engaging in the bargaining activity. Opponents of the legislation may argue, however, that private actors (namely driver groups and companies such as Uber and Lyft), not the city, engage in the collective bargaining under the law. Thus, it is not entirely clear whether the legislation would be required to pass the "active supervision" prong of the state action exemption. Nevertheless, if the legislation were required to pass the "active supervision" prong, the city's close supervision meets the requirement's purpose – namely, it insures that private actors are not engaging in price-fixing that benefits only them, but instead fulfills broader public interests.

IV.
CONCLUSION

Laws extending collective bargaining rights to non-employee workers represent one of several types of proposals to increase protection for these workers. These proposals also include creating an intermediate category in the law to extend some, but not all, rights of employment to these workers[51] and portable benefits schemes whereby benefits like paid time off and workers' compensation would stay with workers from one job to another.[52] While these solutions may improve some workers' pay and work conditions, they may also perpetuate the exclusion of workers from even the minimal rights and protections of employment status.

Thus, in a sense, the Seattle and California measures are compromise measures. They do not directly address the lack of employment protections for these workers by, for instance, updating or clarifying statutory definitions of "employee" or designating certain categories of workers as employees.[53] For example, California could, and should, change its statutory definition of

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50. *See* SEATTLE MUN. CODE §§ 6.310.110, 6.310.735.

51. *See* Seth D. Harris & Alan B. Kreuger, *A Proposal for Modernizing Labor Laws for Twenty-First Century Work: The "Independent Worker"*, The Hamilton Project, Brookings Institution, Discussion Paper 2015-10 (2015); Elizabeth Kennedy, *Freedom from Independence: Collective Bargaining Rights for "Dependent Contractors"*, 26 BERKELEY J. EMP. & LAB. LAW 143 (2005).

52. *See generally* Mark R. Warner, Opinion, *Asking Tough Questions About the Gig Economy*, WASH. POST (June 18, 2015), https://www.washingtonpost.com/opinions/asking-tough-questions-about-the-gig-economy/2015/06/18/b43f2d0a-1461-11e5-9ddc-e3353542100c_story.html?utm_term=.05f384c48d17; *Common Ground for Independent Workers*, Medium (Nov. 9, 2015), https://medium.com/the-wtf-economy/common-ground-for-independent-workers-83f3fbcf548f#.l9l6uv97n; Nick Hanauer & David Rolf, *Shared Security, Shared Growth*, 37 DEMOCRACY 6 (2015), http://democracyjournal.org/magazine/37/shared-security-shared-growth/.

53. *See* Smith & Leberstein, *supra* note 33, at 10.

"employee" to make clear that those who work for a hosting platform are employees.[54] In the meantime, legislators may see the collective bargaining measures as a middle-ground effort[55] to alter the imbalance of power between these workers and companies on more worker-friendly terms than federal labor law has provided.

These laws are also experiments. The Seattle law has already been subject to legal challenge, based in part on the antitrust issues discussed above. [56] If both laws survive legal challenges (assuming the California law is enacted), workers may be able to engage in union organizing and collective bargaining under some of the more favorable rules for which scholars and practitioners have been advocating for many years.

54. BRISHEN ROGERS, AM. CONSTITUTION SOC'Y FOR LAW & POLICY: REDEFINING EMPLOYMENT FOR THE MODERN ECONOMY (Oct. 2016); https://www.acslaw.org/sites/default/files/Redefining _Employment_for_the_Modern_Economy.pdf.

55. *See* Estlund, *supra* note 13, at 1528−29.

56. The Chamber of Commerce has already challenged the Seattle law on antitrust and preemption grounds. Although the case was dismissed for lack of standing, the Chamber or other groups will likely challenge the law again. Chamber of Commerce v. City of Seattle, No. C16-0322RSL, 2016 WL 4595981 (W.D. Wash. Aug. 9, 2016).