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MEMO

Moment of Decision: Some Strategic Implications of Recent Attacks on Worker Centers and Other Low-Wage Worker/Immigrant Organizing

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Overview

Evidence is mounting of a coordinated, *national* effort by industry to target worker centers and the broader extra-union worker organizing sector. The pattern of recent attacks indicates both a growing frequency and intensity and a *shift in strategy*—trends that demand strategic assessment on the part of worker centers and the broader low-wage worker sector. The business community, its front groups, and allies are now deploying a range of PR, legislative, and legal tactics that assail not only specific worker groups and campaigns, but also *the sector as a whole*. We believe they are marshaling their resources—and honing their PR message—for a full-blown campaign aimed at defunding and defanging what many regard as the most dynamic sector of worker organizing.

Organized opponents aim to subject all worker organizing to the same financial reporting and internal structuring requirements that unions face. They aim to impose severe restraints on charitable contributions and to limit or ban secondary boycotts (among other activities). If these opponents are successful, the low-wage worker sector—including groups with no active relationships with unions—could be hobbled.

For many worker organizing groups, forceful opposition is nothing new. Some worker centers have endured and even thrived in the face of relentless attacks. However, such attacks have typically come from business associations, their front groups, and/or right-wing organizations within a given sector (e.g. restaurant, fast food, domestic labor, health care, day labor, etc.). We find that *the arena for the current attack campaign has now shifted*—at least in part—to a national campaign. Individual or sectoral responses, while necessary, may prove insufficient to the current challenge.

Further, while some elements of the still-emerging campaign to take down the entire sector—such as claims that worker centers are “union front organizations”—are not new, we caution against the conclusion that this is merely more of the same old thing. We instead advise that sector leaders and their allies seize this moment of impending crisis and shifting opposition strategy—for strategic evaluation and recalibration.

The stakes are high, and the threat should not be underestimated. We have in recent years witnessed the dismantling of important social justice movement infrastructure by well-coordinated, right-wing attacks. These successes have emboldened industry and the Right, and they are moving aggressively to eliminate the capacity of social justice movements to fight. For the worker center movement, we see a storm coming. There is an opportunity to prepare. This is a *moment of decision*.

Background

Political Research Associates has been investigating organized opponents of social justice movements—including labor and immigrant rights—for more than 30 years. Our analysis also draws upon historical lessons from a range of social justice struggles and movements for change.

During the fall of 2013, several worker center organizations alerted Political Research Associates to escalating opposition attacks and asked us to help assess what could be done about them. We agreed to look into it. In November 2013, the U.S. Chamber of Commerce issued a [“strategic assessment”](#) of worker centers that helped to bring the opposition’s shifting strategy into clearer focus. (We will delve further into the Chamber report later in this memo.)

At the request of organizers, this memo was prepared quickly—in time for a strategic convening in early January of 2014. This document thus represents our *preliminary assessment*, intended to alert the low-wage worker/immigrant organizing sector and suggest a possible framework for discussion and action. We base some of our early findings on conversations with organizers, academics, and legal experts from the field, further supplemented by documentary research. Still, there are additional key sources that we would wish to consult before writing a more comprehensive assessment. We offer this memo, then, as a *point of departure for strategic discussion* among movement leaders and their allies, not as a set of fixed conclusions and recommendations. This memo serves as our initial contribution to what we hope will become a *collective assessment* of both the threat and opportunity in this new strategic context. We invite feedback as we continue our work with the sector to strengthen its capacity to fight and win.

Contents

In this memo, we:

- Explain the types of attacks and offer a partial timeline of recent developments;
- Consider why the opposition has decided to take on the entire worker organizing field;
- Provide an initial assessment of worker centers’ vulnerabilities and the opposition threat, including possible future lines of attack; and
- Suggest some strategic questions for the worker center and low-wage/immigrant organizing sector to consider in formulating strategy.

The Opposition’s Campaign

[US Chamber of Commerce official Glenn] Spencer said he is briefing Chamber members across the country on worker centers and talking to lawmakers about the groups. Williams with Worker Center Watch said his group would be writing op-eds, running ads and mobilizing activists on the ground to provide “a counter-effort” to worker centers.

The group has support from businesses, but Williams refused to disclose its donors.

—From a report in The Hill by Kevin Bogardus, 10.9.2013

As described above, previous attacks on worker centers have generally targeted specific worker centers or specific organizing campaigns through legal strategies or PR campaigns. . In 2012, for instance, a

restaurant-industry backed PR group calling itself “ROC Exposed” ran a full-page attack ad against ROC United in the *Wall Street Journal*. Some cities and towns have passed ordinances banning day laborers from soliciting work from motorists. Yet we are now seeing a new wave of attacks on worker centers and low-wage and immigrant organizing, in which opponents are targeting groups broadly and collectively. We (and the experts we spoke with to prepare this memo) identify three main opposition fronts:

- **Legal attacks**, including a proliferation of law review articles, legal briefs, and lawsuits;
- **Public relations attacks**, including op-eds in major news outlets and trade associations, press releases, scholarly reports and journal articles, advertisements, and even web videos (including one from Rick Berman’s Center for Union Factsⁱ that uses Nazis as stand-ins for worker centers);
- **Legislative attacks**, whereby Republican members of Congress or state legislatures act as proxies for corporate interests.

We offer a selective recent timeline of these attacks to help illustrate the unfolding of a coordinated opposition strategy. Please note that this timeline reflects our still-developing awareness of attacks across the broad sector.

2012

November 19: Law review article titled “Labor Organizations by Another Name: The Worker Center Movement and its Evolution into Coverage under the NLRA and LMRDA,” by Stefan Marculewicz and Jennifer Thomas, published in *The Federalist Society* journal. Marculewicz and Thomas argue that worker centers should be considered labor organizationsⁱⁱ and should thus be regulated in the same way as unions. Such regulations would require worker centers to: disclose all financial transactions to the government and the general public; change internal governance and structures to match those of unions; stop accepting charitable donations; and stop conducting secondary boycotts. This article is passed around in business circles and becomes the foundation for the business community’s legal argument against worker centers.

2013

2013: Right-wing-controlled state legislatures such as Florida and Wisconsin introduce ALEC-sponsored “kill shot” legislation to prohibit new laws mandating employers to provide paid sick days. We expect these attempts to continue through 2014.

July 23: Reps. John Kline (R-MN) and Phil Roe (R-TN), chair and subcommittee chair of the House Committee on Education and the Workforce, send a letter to Secretary of Labor Tom Perez requesting that he investigate whether six worker centers should be designated as “labor organizations” under the LMRDA. Secretary Perez denies their request.

July 24: *Wall Street Journal* reporter Kris Maher publishes an [article](#) titled “Worker Centers Offer a Backdoor Approach to Union Organizing,” which draws heavily on quotes from Marculewicz and the Center for Union Facts to tie worker centers to unions. While Maher mentions worker centers that do not receive union money, such as Coalition of Immokalee Workers and Domestic Workers United, he also describes worker centers such as the carwasheros campaign of Make the Road New York, which does receive funding directly from the Retail Wholesale and Department Store Union (RWDSU). The

article also traces money from SEIU to New York Communities for Change, which organized the Fast Food Forward one-day strikes. Given Maher's reputation as a fair and balanced labor reporter, this report could be particularly damaging to worker centers because it gives credibility to the charge that they are labor organizations that "deal with" employers directly.

September 18: The National Restaurant Association writes [a letter](#) to Reps. Kline and Roe, thanking them in advance for holding a Congressional hearing on worker centers.

September 19: Reps. Kline and Roe convene [a hearing](#) of the House Subcommittee on Health, Employment, Labor and Pensions titled "The Future of Union Organizing," which features a series of speakers testifying on ties between unions and worker centers and the need for changes in U.S. labor law. These speakers include David Burton of the National Small Business Association and Stefan Marculewicz of Littler Mendelson. Marculewicz is the "star witness," calling for worker centers to be brought into the LMRDA reporting requirements. In his testimony, Marculewicz states that worker centers are "directly engaging employers or groups of employers to effectuate change in the wages, hours and terms and conditions of workers they claim to represent." Since the hearing, a flurry of law review articles and newspaper op-eds are published that echo the call for worker centers to be treated the same as unions under the law.

October 28: A tax advice firm called Organization Management, Inc. (OMI) publishes a [special report](#) titled "Worker Centers: Charities or Labor Organizations Masquerading as Charities, and the Impact of an IRS Decision on the Question." Having failed to get either the U.S. Department of Labor or the NLRB to designate worker centers as labor organizations, OMI recommends that business leaders approach the IRS instead.

October 29: The Employment Policies Institute (A Berman PR website) publishes an [op-ed](#) in the *Wall Street Journal* titled "Who Really Employs Minimum Wage Workers?" The piece argues that most fast food restaurants are operated by mom-and-pop franchises that cannot afford to pay a higher minimum wage to workers.

November: Center for Union Facts (another Berman website) releases a [Youtube video](#) comparing Black Friday protest groups and worker centers to Nazis.

November 1: Reps. Kline and Roe [send a request](#) to the Secretary of Health and Human Services, Kathleen Sebelius, asking her "to provide information concerning the role of worker centers in implementing the *Patient Protection and Affordable Care Act* (ACA)." Capitalizing on a press announcement about two worker centers that received grants to train healthcare navigators, Kline and Roe try to insinuate that worker centers are benefiting from public funds allocated under the ACA.

November 21: The U.S. Chamber of Commerce publishes "The Emerging Role of Worker Centers in Union Organizing," a [48-page report](#) by retired George Washington University political science & public affairs professor Jarol Manheim. The report, which mostly maintains a dispassionate tone, serves three basic ends: 1) maps the worker center and other extra-union low-wage worker sector; 2) defines these groups/networks as "union front groups" (UFOs); and 3) maps foundation funding for the sector. The report puts particular emphasis on worker centers that focus on supply chains, like the Food Chain Workers' Alliance. Using the term "foundation activism," Manheim claims that foundations are working with or are backed by unions to fund coordinated worker actions. Manheim cites a total of \$57 million

as the amount donated by these funders to worker centers and claims that foundations are influencing worker centers as much as unions are: “The Ben & Jerry’s Foundation funded the research it would use to establish its bona fides and extend its influence. In that sense, the Alliance is in some significant measure a creature of the foundations themselves.”

While the report stops short of recommending specific strategies for defunding the sector, its foundation mapping conveys several key messages:

- The low-wage worker sector is a well-funded threat, justifying a *forceful coordinated initiative to take them down*.
- Whereas federal labor law prohibits unions from receiving charitable foundation grants, these “union front groups” have circumvented that restriction.
 - This circumvention casts doubt on the legitimacy of these organizations’ tax status.
 - This forecasts a legislative strategy to restrict/end public funding to any of the groups identified as a UFO.
- The sector is at least partially a creature of the foundations, suggesting foundations as one target of a defunding strategy.

November 25: Worker Center Watch (a Berman website) releases a [web video](#) and sponsors a series of Twitter ads to smear Black Friday protests by OUR Walmart workers.

November 26: Diana Furchtgott-Roth, a senior fellow at the right-wing Manhattan Institute, publishes [an op-ed](#) in the Washington Examiner titled “Worker Centers are Doing Unions’ Dirty Work for the Holidays.” In it, she slams workers centers for taking money from unions, slams SEIU for having underfunded pension plans, and slams ROC for making its own organizers work on Thanksgiving while protesting restaurants that force their employees to do the same.

December 20: Diana Furchtgott-Roth, a senior fellow at the right-wing Manhattan Institute, publishes an [op-ed](#) in the *Wall Street Journal*’s MarketWatch blog titled “The Real Cost of Raising the Minimum Wage.” It is a researched piece explaining how the costs of goods and services will go up if the minimum wage is increased. It is a direct response to ongoing minimum wage campaigns around the country.

Why Attack Worker Centers?

Recent worker center and other extra-union organizing victories have cost corporate America money and caused PR disasters for companies.

- The Coalition of Immokalee Workers has won a series of recent fair food agreements from major fast food corporations, including Burger King, Taco Bell, and Chipotle. The CIW won these agreements through successful secondary boycotts, asking consumers not to buy the companies’ products until they agreed to the CIW’s terms.
- ROC United has won several high-profile lawsuits against restaurant chains over wage theft and discrimination, and it has led successful secondary boycotts against other restaurant groups for their employment practices. These industry groups are not happy: the NY restaurant chain

Fireman Hospitality Group, for instance, had to pay back wages and then counter-sued ROC United, claiming it was a “union front organization.” The judge didn’t agree, and ROC won again.

- In 2012, the National Guestworker Alliance won better workplace protections and hundreds of thousands of dollars in back wages for guestworkers in the supply chain for Hershey’s and Walmart. The win was part of a Labor Department settlement with a logistics firm that handles Hershey’s and Walmart products.
- The National Day Laborer Organizing Network (NDLON) celebrated a victory in 2012 when the U.S. Supreme Court refused to consider a Circuit Court ruling that prevented the city of Redondo Beach, CA, from banning day laborers from soliciting motorists for work. “The court rejected xenophobia and rejected arguments that have nothing to do with the very elemental task of looking for a job,” Jorge-Mario Cabrera of the Coalition for Humane Immigrant Rights of Los Angeles told reporters.
- The National Domestic Workers Alliance and Domestic Workers United have helped Domestic Worker Bill of Rights laws passed in New York and Hawaii, and they now have express support from the White House to pass a national domestic workers’ protections law in Congress.

Victories such as these indicate the growing power of the low-wage and immigrant organizing sector. Our opponents’ researchers monitor these trends. They are aware of the growing importance of worker centers and allies within the larger field of worker organizing. In addition, it is clear that some of the industry associations—such as the National Restaurant Association, the National Retail Federation and their corporate constituents—see the need for a shared strategy to fight the groups that are organizing their workers.

Threat Assessment: Worker Center Vulnerabilities; Current & Potential Attacks

Recent attacks and the Chamber report have targeted groups such as ROC, CIW, FCWA, Fast Food Forward, KIWA, ARISE Chicago, OUR Walmart, Domestic Workers United, and the National Guestworker Alliance. Yet there is little reason to think that future attacks will spare the rest of the field. Other potential targets include allied and advisory groups such as the National Employment Law Project (NELP), funders, and issue-based campaigns. The following section, therefore, calls attention to areas of potential vulnerability for worker centers and their organizing allies, and describes some of the ways that opponents are already exploiting these vulnerabilities. This section also notes additional strategies of attack that are worth anticipating.

Areas of Vulnerability for the Worker Centers/Low Wage/Immigrant Worker Organizing Sector

- One vulnerability is that **worker centers and their organizing allies and funding partners exist as an undefined sector** of the labor movement; there is no consistent name or established identity for them. (Reporter Josh Eidelson coined the term “Alt-Labor” to refer to this burgeoning sector, but this has not been fully adopted or explained in a positive frame to the public.) While there is no doubt strength in the sector’s diversity, this also makes it easier for others to define the sector, as opponents have begun to do.
- Several of the experts we spoke with mentioned that **some worker centers do, in fact, engage in negotiations with employers, or represent a group of workers that work for the same employer**. Some believe these centers may be skating close to the legal definition of a labor

organization. There are differences of opinion as to whether the opposition could eventually persuade the NLRB or the Secretary of Labor that these particular worker centers, or the sector more broadly, should be treated as unions and made to follow the same reporting and disclosure requirements.

- **Worker centers' relationships with their foundation funding partners** may present an area of vulnerability. PR attacks that red-bait worker centers, or that paint them as inept or corrupt financial managers, for instance, could have a chilling impact on worker centers' future chances for accessing foundation money. If successful, efforts to reclassify worker centers as labor organizations (through lawsuits or NLRB rulings) would interfere with foundation funding.
- Another vulnerable spot for worker centers is that **some of them accept public funds** for specified projects or training programs. This proved to be a major vulnerability for ACORN. Republican members of Congress who are part of the opposition to worker centers are trying to find out how exactly these public funds are used. Some experts believe that these findings could also be used to trigger unusually harsh scrutiny from the IRS and Congress, which would be onerous and resource-consuming for worker centers.
- Another vulnerable area is that **many worker centers serve a large percentage of unauthorized workers**. This leaves the sector open to PR attacks, legislative attacks (such as cities and states trying to pass laws prohibiting day laborers from soliciting motorists), and possible increased financial scrutiny.
- **Faith-based worker centers and organizing campaigns rely heavily on support from religious institutions and leaders**. This also creates a potential opening for opponents to apply financial pressure.

Where Attacks are Already Occurring and Possible Future Threats

Exploiting the sector's lack of a public identity: The opposition is already taking advantage of the sector's ambiguous definition and its loosely connected elements to frame worker groups as part of the labor "Goliath."

A good example of this is the Chamber report, which represents a move by the Chamber to win the narrative battle. The report puts forth arguments for legal and legislative action to restrict the field of worker organizing, but it needs people to buy into the "Goliath" image to believe in the need for aggressive legal and legislative action. The report frames labor organizations as outdated, bloated bureaucracies that harm business, kill jobs, and hurt workers. The report takes this framing a step further by insinuating the possibility of conspiracy among funders and labor organizations.

While the Chamber report by itself has not shaped defined public debate about the worker center movement, it has generated both blog and news outlet attention to its claims and is a shot across the bow in a coming framing/narrative battle.

The lack of affirmative public messaging about the sector also gives the opposition a chance to construct a narrative for the legal community in which worker centers fulfill a similar purpose as unions and should therefore be legally considered labor organizations. The opposition is already doing this by testing out various labels for the sector in for use in PR campaigns: Union Front Organizations (UFOs), Trojan horses for unions, doing unions' dirty work, etc.

Discouraging funders: The Chamber report is also a good example of an indirect PR attack on the financing structures for the worker centers. By publicly listing and charting all of the foundation partners that fund worker centers, the Chamber is opening them to being harassed by opposition or investigated by Congressional or federal sources. We have already seen harassment directed against ROC's funders, as ROC's opponents have sent letters to the individual members of boards of directors of ROC's foundation funders. In addition, the report could serve to discourage new charitable funders from supporting this field of work.

"Exposing" worker center practices via an O'Keefe/Breitbart style "gotcha" web video: This type of ambush video could damage worker centers in several ways. Videos could "expose" their ties with unions, smear worker centers for working with unauthorized or undocumented immigrants, focus on worker centers receiving public funds, etc. Attacks of this kind seem almost inevitable, and the sector should begin to prepare accordingly.

Legal attacks: Employer groups are searching for ways to convince the courts and the NLRB to regard worker centers as "labor organizations" subject to a stringent regulatory regime. Through law review articles, law firm newsletters, testimony before Congress, and other modes of arguing within the legal community, this campaign is already underway. It may be a matter of time before this question arises in a major lawsuit or NLRB case.

Going after the secondary boycott: Opposition groups are already planning ways to restrict worker centers' use of the secondary boycott. They may try to make an example of one or more groups in order to scare organizers and foundations away from using the secondary boycott tool, as well as to build a case for regulating worker centers more broadly. This may also be one reason the opposition is focused on trying to designate worker centers such as ROC as labor organizations under the LMRDA. It is not just about hurting ROC. Rather, such designations could restrict the ability of all worker centers to use the secondary boycott and open up the field to further restrictions.

Targeting unauthorized worker organizing: It is not difficult to imagine ways that the opposition could exploit the fact that worker centers serve unauthorized workers. They may decide to combine racist and xenophobic PR attacks on immigrant workers with another attack vector: for instance, they may produce an O'Keefe/Breitbart-style "gotcha" video highlighting the services provided for unauthorized workers. At the same time, the opposition could call for an IRS or Congressional audit against the worker center if the center receives taxpayer dollars. They could also try pass state and municipal legislation aimed at limiting the services that worker centers could provide to unauthorized or undocumented workers.

Public policy campaigns: While there is no reason to expect Congress to overcome its current gridlock and to pass national legislation either for or against workers, the opposition can still harness the political process to its advantage. We have already seen Republicans in a few states try to pass pre-emption laws that would prohibit certain worker activities or beneficial workplace policies. Some states, for instance, have tried to pass laws protecting employers from having to provide paid sick days. Others, such as Rhode Island, have bills pending that would ban groups of workers, such as day care workers, from engaging in collective bargaining. We expect this trend to continue, likely facilitated by such right-wing policy networks as the American Legislative Exchange Council.

Pressuring faith groups: Faith-based worker centers could be pressured to stop taking certain actions by their church partners, who may rely on conservative business owners in the community for funding.

As a final note, it is important to recognize that worker organizing is not the only target of organized opponents. As ROC United points out, the National Restaurant Association and “big food” are also targeting the food movement. Anti-immigrant groups assail unauthorized residents (and immigrant communities regardless of status) well beyond the area of employment. These realities affect and inform organizing strategy, and certainly warrant further consideration and discussion.

Strategic Considerations

The campaign to destroy worker centers and the broader non-profit low wage worker organizing sector constitutes a significant and dangerous shift in strategy on the part of organized opponents of worker self-organization. In our view, this is a key *moment of decision* for the worker center and low-wage/immigrant organizing sector. Organizations that have helped to engineer the decline of unions are determined to prevent the rise of new forms of worker and community power that would challenge their dominance. We anticipate intensified PR, legal, and legislative attacks. Underestimating the strategic threat at this moment could have devastating consequences, but a prompt and rigorous strategic reassessment could minimize threats and maximize opportunities.

We invite leading groups and networks in the sector to discuss and evaluate the merits of our preliminary findings.

We offer the following strategic considerations:

A) Whose frame will define the fight?

It appears to us that the window of opportunity for the sector to define itself and set the terms of debate is still open—but it may not be for much longer. Organized opponents are seeking to define your sector—to opinion leaders, the courts, and legislators—in ways that will make it vulnerable to a plan of attack. Having publicly vilified and created state mechanisms for constraining unions, opponents now seek to force workers centers into that same corral. They are framing workers centers as union front organizations or proto-unions, but they have the challenge of first introducing workers centers, which remain largely unknown entities. They also have the challenge of portraying organizations that represent profoundly marginalized and exploited communities as “Goliath.” The Chamber report has facilitated a communications offensive, and groups (including funders) have been approached by journalists to comment on the opposition’s charges. The window of opportunity is narrowing.

The one who establishes and controls the frame controls the terms of debate. This is presumably not the frame in which organizers and communicators would choose to fight. Consider the punishing effects of the Right’s “illegal” frame with regard to immigrants or “threat to children” frame about LGBTQ people.

We invite you to consider:

- What would it take for the low-wage worker field to define itself with the public and with key opinion and decision makers?
- Is there a need for a robust, coordinated national communications offensive? If so, what should that look like? What infrastructure and resources are needed?
- How might the sector best *respond* to opponents’ PR offensive without *answering* specific charges that draw you into their frame?
- What alternative frame(s) do the best job of neutralizing or defeating opponents’ line of attack?

- What *is* the sector's chosen self-identity?
- Are there particular strengths in the ways that worker centers and other groups have evolved that promote a positive, effective public identity for the movement?¹

B) What more do we need to know?

Whether to create more effective proactive campaigns or to interfere with opponents' lines of attack, our preliminary work indicates the need for substantial additional research. Our discussions with organizing, academic, and legal leaders in this field inform our opinion that there has not been enough power mapping of the organized opponents or analysis of their vulnerabilities. There is a wealth of experience, information, and insight about the sector's opponents that could be aggregated and utilized.

The infrastructure for target/corporate research is declining both within and outside the union movement. PRA receives regular requests for target research to support worker centers; this indicates an unmet need. Some of the research needs/possibilities identified during preparation of this memo include:

- Power mapping of opponents, including money trail, command structure, division of labor, areas of disunity etc.;
- Additional research on opponents' strategies, including further risk assessment re: their opportunities for success on legal, legislative, public relations fronts;
- Monitoring of chosen targets for counter-PR and organizing offensives; and
- Target research to support proactive organizing campaigns of various worker centers/sector organizations.

In light of the above, we invite you to consider:

- What are the priority research needs?
- Which if any of the above research areas are being adequately covered?
- What are some ways to meet the target research needs of the sector? If research infrastructure were expanded, where should that be located?

C) How best to discredit our opponents?

PRA's experience is that a coordinated opposition research and communications effort can diminish opponents' credibility and influence, refocus media and public scrutiny on unsavory players and motives, and draw fire away from movement-builders. It is often advisable for such an effort to be operated independently from the organizing sector. For the last number of years, for example, human rights groups have operated a coordinated research and PR campaign to expose and discredit national anti-immigrant organizations within the White Nationalist John Tanton network. Another example is ALEC Exposed. PRA has coordinated and participated in a variety of such efforts and we invite you to consider:

¹ During the preparation of this memo, we collected from a variety of sources talking points about the worker center movement that may be useful to this communications discussion. We attach them as an appendix, without any expectation that they should be used as-is.

- Is there need for a robust opposition research and communications effort that publicly damages the Chamber, Berman, and other key opponents?
- Could such an effort create opportunities for proactive organizing by the sector? How?
- What types of messengers (e.g. academic, think tank, legal, faith, etc.) would be most effective in monitoring/contesting roles?
- Are there ways we could lead opponents to misdirect their concerns and resources?

D) What are the opportunities for proactive organizing?

The escalating attacks described in this memo highlight the strategic importance of the worker center sector and, in our view, warrant redoubled offensive/proactive organizing efforts and infrastructure. We invite you as organizers to consider:

- Are there organizing strategies that could both build power and break unity among opponents?
- Are there common industry and/or right-wing targets multiple groups/networks should take on?
- What are our best opportunities to force opponents into a defensive posture?
- Beyond research and communications, what elements of infrastructure need greatest attention and investment?
- What legal and legislative options might there be? Given recent legislative successes of workers centers, are there policy initiatives that could both build power and inoculate the sector against opposition strategies?
- What does the overarching sector most need to consolidate gains and build power?

Conclusion

The recent pattern of attacks on worker organizing clearly indicates an escalation and new level of coordination among the opposition groups. But, while we believe this new federation of opponents poses a crisis for worker organizing, we also see in this moment an opportunity. It is an opportunity for worker organizing groups to harness the strategic power that lies in their distributed, diverse grassroots and varied experiences, and get out ahead of the coming storm of attack. Many worker centers have achieved a high level of sophistication in combating their specific industry-based opponents. This expertise is needed as strategy is developed to address opponents' evolving campaign. We hope that the sector will organize a conversation about the shifting strategic landscape outlined in this memo and take seriously the task of addressing what could be crippling attacks on worker organizing. We further hope this document provides worker center leaders and their allies with a useful starting point for this conversation.

In Solidarity,

Political Research Associates

Appendix A: Cast of Characters—Who are the opposition groups?

There are several categories of groups that are actively working against extra-union or alt-labor organizing groups. We are not able to list all of them, because some have managed to keep their identities hidden. This is a preliminary list of associations involved in attacks on extra-union and/or alt-labor organizing groups.

Industry associations:

- **The U.S. Chamber of Commerce (and its sub-group, called the Workforce Freedom Initiative)**
- **The National Restaurant Association**
- **The National Retail Federation**
- **The International Franchise Association**
- **The National Small Business Association**
- **The Grocery Manufacturers' Association (GMA)**

PR Firms:

Berman and Company: This is the for-profit public relations company owned by Richard “Rick” Berman, a notorious, no-holds-barred, hired gun who lobbies Congress and runs campaigns on behalf of corporations that prefer to remain hidden. Berman protects the anonymity of his corporate clients by setting up 501(c)(3) nonprofit organizations, which do not have to disclose their donor lists. He then uses these nonprofit organizations to run smear campaigns against unions, worker centers, and other activist groups. These nonprofit groups include:

- **The Center for Union Facts**
- **ROC Exposed**
- **Worker Center Watch**
- **Employment Policies Institute**
- **MinimumWage.com**
- **BlackLieDay.com (targeted last year's Black Friday strikes)**
- **The Center for Consumer Freedom (attacks the food movement)**
- **The Enterprise Freedom Committee (runs political ads)**

Berman lists himself as executive director on the websites of all of these groups and dozens more. If you come across an online campaign that appears to attack workers, you can easily find out whether Berman is involved by checking the staff pages. Others on his staff include **Michael Saltsman** and **J. Justin Hoover**, both of whom pen op-eds that regularly appear in newspapers. More information on Berman's activities can be found at BermanExposed.org.

Parquet Public Affairs: This is the PR firm owned by former Walmart executive and Darden Restaurants PR chief **Joseph Kefauver**. Recently, Kefauver's group produced a series of web ads and a YouTube video smearing the November 2013 Black Friday protests led by OUR Walmart. Kefauver's group also has built a website that redirects search engine searches away from OUR Walmart.

OurWalmartFactCheck.com: This is the anti-OUR Walmart site that owns the OurWalmart.org domain. When you search for OUR Walmart, you are taken here instead of the real OUR Walmart site, which is **ForRespect.org**.

Lawyers, Law Firms, and Human Resources Specialists:

- **Stefan Marculewicz**, a shareholder at Littler Mendelson and a frequent author of attacks on worker centers
- **Michael Lotito**, HR specialist at The Workplace Policy Institute of Littler Mendelson
- **Tom Davis** and others at Ogletree and Deakins
- **Richard Alaniz** at Alaniz and Schraeder

Members of Congress/Formers NLRB members:

John Kline (R-MN) and Phil Roe (R-TN) are both members of the House Committee on Education and the Workforce. Kline chairs the committee, and Roe chairs the Subcommittee on Health, Employment, Labor, and Pensions (HELP). According to the watchdog group OpenSecrets, both receive significant donations from industry groups and large businesses in the healthcare, retail, and food sectors.

Former members of the National Labor Relations Board who have made statements against worker center organizing include **Peter Schaumber**, **Ronald Meisburg**, and **John Raudabaugh**.

Foundations:

The Walton Family Foundation: This is the charity associated with the Walton Family, which owns Walmart. The foundation funds some of the other groups and activities we have listed here.

Think Tanks and Academics:

Jarol Manheim: Professor Emeritus at George Washington University's School of Public Affairs, Manheim wrote the 2013 Chamber report on worker centers. He is the author of several books on how corporations can combat and avoid corporate campaigns. Manheim now consults for various business groups in the U.S. and abroad on PR strategy.

The Manhattan Institute: This is a right-wing, corporate-backed think tank that has produced several op-eds and at least one report decrying minimum wage campaigns and worker centers. These have been written by Senior Fellow Diana Furchtgott-Roth, former chief economist for the U.S. Department of Labor under President George W. Bush. The Manhattan Institute receives money from The Walton Family Foundation, among other groups.

The Mercatus Center at Georgetown University: This is a conservative think tank funded in part by the Koch Foundation, the philanthropic arm of Koch Industries, owned by Charles and David Koch of ALEC fame. The Mercatus Center has recently begun publishing articles looking at SEIU's role in pushing for state laws allowing day care workers to organize.

Appendix B: Draft Talking Points

Note: These are drawn from the academics and legal and organizing experts we spoke with for our report and are not intended to be a fixed set of talking points to be used as-is. We are passing them along from the experts we spoke with, but they are not a product of PRA.

Worker Centers are stepping in where government isn't doing its job.

There's no "cop on the beat" ...Our labor enforcement regime, as set forth in the Fair Labor Standards Act of 1938 (wage and hour, overtime, no child labor...) assumes there will be comprehensive workplace monitoring and enforcement. But this isn't happening...that's where worker centers come in.

Worker centers are community-based mediating institutions that provide support to low-wage, primarily immigrant workers.

Collective action, not collective bargaining

Within local labor markets, worker centers often target particular industries and employers for attention, but they do not bargain over contracts.

- *Worker centers as hybrids:* All of them combine elements of different types of organizations, including social service agencies, fraternal organizations, settlement house models, community organizing groups, and unions.
- *Services:* Centers provide services, from legal assistance and ESL classes to check-cashing, but they also play an important matchmaking role in introducing their members to services available through other agencies, such as health clinics. Many function as clearinghouses on employment law—writing and distributing “know your rights” handbooks and fact sheets and conducting ongoing workshops.
- *Coalitional:* Centers seek out alliances with religious institutions and government agencies, and they seek to work closely with other worker centers, non-profit agencies, community organizations and activist groups in many formal and informal coalitions.
- *“Organizing,” not just service and advocacy:* As discussed above, worker centers all profess to engage in organizing as well as service provision and advocacy. This organizing may take different forms depending upon the center, but all centers share a common commitment to providing a means through which workers can take action.
- *Leadership development and internal democracy:* Most centers place enormous emphasis on democratic decision-making. They focus on putting processes in place to involve workers on an ongoing basis and work to develop the skills of worker leaders so that they are able to participate meaningfully in guiding organizations.
- *Broad agendas:* While centers place particular emphasis on work-related problems, they have a broad orientation and generally respond to the wide variety of issues faced by recent immigrants to the United States. They often tackle immigration law reform and related issues like drivers' licenses and social security no-match letters, as well as housing, education, healthcare and criminal justice issues.

The organizing and advocacy work that worker centers do seeks to achieve five primary goals:

- 1) Build a movement of low-wage (largely immigrant of color) workers who are engaged in movement-building activities like leadership development, popular education and who are in coalition with broader movements around globalization.
- 2) Frame the issues low wage immigrant workers face in human rights terms.
- 3) Raise wages and improve working conditions in low wage industries.
- 4) Stop racial and ethnic discrimination and normalize the status of immigrant workers.
- 5) Deal with issues of “immigrant incorporation/integration”: schools, housing, healthcare, discrimination, etc.

Worker centers are playing a unique role.

- They have emerged as central components of the immigrant community infrastructure and are playing an indispensable role in helping immigrants and other low-wage workers of color navigate the world of work.
- They are gateway organizations that are providing information, training, and services and are acting as mediating institutions between workers and broader society.

Additional draft talking points:

Worker centers are not unions but rather community-based organizations that assist low-wage workers.

- Worker centers are not unions but rather community-based institutions that—like churches, settlement houses, and legal aid bureaus—provide assistance to low-wage workers with employment issues.
- Worker centers often assist workers in the contingent workforce, including domestic workers and day laborers. These workers often are not covered by basic workplace laws and/or may experience severe violations of these laws, like wage theft, unsafe work conditions, and sexual harassment.
- Worker centers help workers who experience these violations secure legal assistance, , advocate before government bodies for better labor law enforcement or to improve workplace laws, and provide training to workers so they can improve their own workplaces.

Worker centers do not collectively bargain with employers, so they are not covered by the disclosure laws that apply to labor unions.

- The Labor-Management Reporting and Disclosure Act (LMRDA) applies to organizations like unions that collectively bargain with employers. Worker centers do not engage in collective bargaining and therefore are not covered by the LMRDA.
- Instead, worker centers, like churches and charitable organizations, are non-profits that are required to comply with the laws that regulate such organizations.

Worker centers often work together with unions to improve conditions for low-wage workers, but that doesn't mean they are unions.

- Worker centers sometimes work with unions to improve conditions for low-wage workers, such as by supporting laws against wage theft or directing workers who want to collectively bargain with their employer to a union that can help them.

- But just because a worker center works with a union doesn't mean that a worker center *is* a union. Unions regularly work together with groups like churches, United Way, and civil rights organizations. No one would claim that these groups are unions just because they sometimes work with unions.

Appendix C: Works Cited and Relevant Links

Jarol Manheim, *The Emerging Role of Worker Centers in Union Organizing*, U.S. Chamber of Commerce Workforce Freedom Initiative, November 2013,
<http://www.workforcefreedom.com/sites/default/files/WFI%20Manheim%20Study%2011-21-2013.pdf>.

Stefan Marculewicz and Jennifer Thomas, "Labor Organizations by Another Name: The Worker Center Movement and its Evolution into Coverage under the NLRA and LMRDA," *Engage: The Journal of the Federalist Society Practice Groups* 13, no. 3 (October 2012), www.fed-soc.org/publications/detail/labor-organizations-by-another-name-the-worker-center-movement-and-its-evolution-into-coverage-under-the-nlra-and-lmrda.

Kris Maher, "Worker Centers offer a backdoor approach to union organizing," *Wall Street Journal*, July 24, 2013, <http://online.wsj.com/news/articles/SB10001424127887324144304578622050818960988>.

Kevin Bogardus, "Chamber takes aim at worker centers," *The Hill*, October 9, 2013,
<http://thehill.com/business-a-lobbying/191011-chamber-takes-aim-at-worker-centers-over-funding>.

Ilyse Schuman, "Littler shareholder Stefan Marculewicz discusses rise of 'worker centers' during congressional hearing," Littler Mendelson," September 19, 2013,
www.lexology.com/library/detail.aspx?g=02c68634-e612-4ee8-b837-1ad1eaeec27e.

Webcast of "The Future of Union Organizing" hearing, Subcommittee on Health, Employment, Labor, and Pensions, recorded on September 19, 2013,
www.edworkforce.house.gov/calendar/eventsingle.aspx%3fEventID=349699. (Note: at the time of this writing, a full transcript of the hearing was not yet available through the Government Printing Office.)

National Restaurant Association to Chairman Kline and Chairman Roe, September 18, 2013,
http://www.restaurant.org/Downloads/PDFs/News-Research/20130920_NRA_letter_future_union_organizing.

Heidi Abegg, "Worker Centers: Charities or Labor Organizations Masquerading as Charities, and the Impact of an IRS Decision on the Question," Organization Management, Inc., October 28, 2013,
http://www.wc-b.com/userfiles/file/OMI_Special_Report.pdf.

"Leading Labor Experts Expose Black Friday Protest Campaign," PR Newswire, Nov. 27, 2013,
<http://www.prnewswire.com/news-releases/leading-labor-experts-expose-black-friday-protest-campaign-233610721.html>.

Tiffany Hsu, "Impact of fast-food minimum wage boost: Experts face off," *Los Angeles Times*, August 29, 2013, <http://articles.latimes.com/2013/aug/29/business/la-fi-mo-fast-food-minimum-wage-protests-20130828>.

“Hitler Finds Out About Black Friday Strikes” (video), Center for Union Facts, published Nov. 21, 2013, <http://www.youtube.com/watch?v=WgvpJHGnodc&list=UUU4uR-HQmaeiwdgbofFE1Bg&feature=c4-overview>.

Lee Fang, “Former Walmart Exec Leads Shadowy Smear Campaign Against Black Friday Activists,” *The Nation*, Nov. 26, 2013, <http://www.thenation.com/blog/177376/former-wal-mart-exec-leads-shadowy-smear-campaign-against-black-friday-activists>.

Mark Drajem and Brian Wingfield, “Union Busting by Profiting From Non-Profit May Breach IRS,” *Bloomberg News*, Nov. 2, 2012, <http://www.bloomberg.com/news/2012-11-02/union-busting-by-profiting-from-non-profit-may-breach-irs.html>.

Caroline E. Mayer and Amy Joyce, “The Escalating Obesity Wars,” *Washington Post*, April 27, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/04/26/AR2005042601259.html>.

Michael Saltzman, “Who Really Employs Minimum Wage Workers?” *Wall Street Journal*, Oct. 29, 2013, republished at <http://www.epionline.org/oped/who-really-employs-minimum-wage-workers/>.

Lisa Graves, “Corporate America's New Scam: PR Firm Poses as Think Tank,” Center for Media and Democracy’s PR Watch, Nov. 12, 2013, <http://www.prwatch.org/news/2013/11/12306/don%E2%80%99t-be-hoodwinked-pr-firm-posing-think-tank>.

Max Mihelich, “Worker Centers Are Center of Attention,” *Workforce*, Nov. 8, 2013, <http://www.workforce.com/articles/20030-worker-centers-are-center-of-attention>.

Diana Furchtgott-Roth, “What You Should Know About Job-Killing Worker Centers,” *RealClearMarkets*, July 30, 2013, http://www.realclearmarkets.com/articles/2013/07/30/what_you_should_know_about_job_killing_worker_centers_100510.html.

Diana Furchtgott-Roth, “Worker Centers are Doing Unions’ Dirty Work for the Holidays,” *Washington Examiner*, Nov. 26, 2013, www.washingtonexaminer.com/worker-centers-are-doing-unions-dirty-work-for-the-holidays/article/2539857.

Diana Furchtgott-Roth, “The Real Cost of Raising the Minimum Wage,” *MarketWatch*, *Wall Street Journal*, Dec. 20, 2013, <http://www.marketwatch.com/story/the-real-cost-of-raising-the-minimum-wage-2013-12-20>.

Harold P. Coxson, Andrew Duke Frederick, Mark Stublely, “The Rise Of “Worker Centers”: Big Labor’s Trojan Horse,” *The Employment Law Authority*, November/December 2013, <http://www.shrm.org/Publications/hrmagazine/EditorialContent/2013/1213/Pages/1213-worker-centers.aspx>.

ⁱ PR NOTE: Berman and Company

A note about Berman and Co.: This is the for-profit public relations company owned by Richard “Rick” Berman, a notorious hired gun who lobbies Congress and runs disinformation campaigns on behalf of corporations that prefer to remain hidden. Best known among labor activists for his Center for Union Facts website, Berman protects the anonymity of his corporate clients by setting up 501(c)(3) nonprofit organizations, which do not have to disclose their donor lists. Berman then uses these nonprofit groups to run smear campaigns against unions, worker centers, and other activist groups. These groups include:

- ROC Exposed
- Worker Center Watch
- Employment Policies Institute
- MinimumWage.com
- The Center for Union Facts
- The Center for Consumer Freedom (on the food movement)

Berman lists himself as executive director on the websites of all of these groups and dozens more. If you come across an online campaign that appears to attack workers, you can easily find out whether Berman is involved by checking the staff pages. More information on Berman’s activities can be found at BermanExposed.org.

ii What is a “labor organization” under the Labor Management Reporting and Disclosure Act (LMRDA)? Benjamin Sachs, a professor of labor law at Harvard, offers the following description: “As under the NLRA, in order to qualify as an LMRDA labor organization, a worker center would have to exist ‘for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay . . . or other terms or conditions of employment.’ This determination would be made by the Secretary of Labor, not the NLRB, but if the Board’s caselaw is any guide, the great majority of worker centers would not fit the bill. This is because the ‘dealing-with’ requirement is satisfied only when there is a ‘pattern or practice’ of bilateral exchange between the organization and management that extends ‘over time.’ (E.I. Du Pont de Nemours & Co., 311 NLRB 893, 894 (1993)). The kinds of demands that worker centers usually make, often as part of an attempt to enforce legal rights, do not satisfy this statutory requirement.’