Social Justice Unionism: Intersectionality in the Twenty-First Century Workplace

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INTRODUCTION

In *"Strike with Pride": Unionizing as an LGBTQ Rights Strategy*,[1] a remarkable wave of organizing at Starbucks tests two pillars of work law: the anti-discrimination precepts of Title VII of the Civil Rights Act,[2] and the labor activism protections afforded even earlier under the National Labor Relations Act (NLRA).[3] Amid waves of workers who struck retailers, Hollywood studios, express-mail facilities, and automaker assembly lines in recent years—Professor Leonore Carpenter examines how, for low-wage LGBTQ workers, Title VII's legal structures disincentivize private enforcement and can scarcely compete with the solidarism and power-shifting the NLRA was intended to protect.[4] Starbucks baristas' latest "Strike with Pride" campaign trained a national spotlight on workers realizing radically different ways of operating, defying the stereotype of unionizing drives focused only on economic terms of employment.[5] Carpenter's argument is persuasive, richly documented, and

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[1] *See generally* Leonore F. Carpenter, *"Strike with Pride": Unionizing as an LGBTQ Rights Strategy*, 85 OHIO ST. L.J. 743 (2024).

[2] Title VII of the Civil Rights Act of 1964; 42 U.S.C. § 2000e-2.

[3] *See* National Labor Relations Act of 1935, Pub. L. No. 74-198, §§ 7, 8(a)(1), 49 Stat. 449, 449, 452 (1935) (codified at 29 U.S.C. §§ 157, 158(a)(1)).

[4] *See, e.g.*, JANE MCALEVY, A COLLECTIVE BARGAIN 3 (2021); 29 U.S.C. §§ 157, 158(a)(1)).

[5] Carpenter, *supra* note 1, at 744–46, 801–03.

illuminates how unions bear the brunt of mediating identities, particularly for queer workers whose right to exist remain in dire contention.[6]

Our Essay responds from the vantage point of a new presidential administration, one openly antagonistic toward LGBTQIA+ communities, and a Roberts Court unwilling to recognize that a state law banning gender-affirming care—core medical treatments received by transgender youth—warrants heightened constitutional scrutiny.[7] In a flurry of policy pronouncements in January 2025, President Trump purported to redefine biological sex and deny the existence of transgender, intersex, non-binary, and gender non-conforming people in federal programs, services, and education, notwithstanding *Bostock* v. *Clayton County* and decades of related precedent.[8] In the years since Trump's first term, discussions about power and structural crises rarely feature commentary focused on poor and working-class LGBTQ communities, nor discussions about power and structural crises, even when it was clear their civil rights gains would be among the first targeted for elimination by the far right. Carpenter argues that workers struggling across multiple dimensions of precarity—class, sexual orientation, gender identity, and health—surely

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[6] *See* Shirley Lin, *Dehumanization "Because of" Sex: The Multiaxial Approach to the Title VII Rights of Sexual Minorities*, 24 LEWIS & CLARK L. REV. 731, 783 (2020); *cf.* Jeremiah Ho, *Colonizing Queerness*, 95 U. COLO. L. REV. 889, 893 (2024) (observing that legal victories grant mainstream recognition for queer identities but "often miss recalibrating our underlying values and norms toward notions of true and substantive equality").

[7] United States v. Skirmetti, 145 S.Ct. 1816, 1834–36 (2025).

[8] Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, 90 Fed. Reg. 8615, 8615 (Jan. 20, 2025); Ending Radical Indoctrination in K-12 Schooling, 90 Fed. Reg. 8853, 8854 (Jan. 29, 2025) (threatening to withhold or rescind federal funds from schools that "directly or indirectly support or subsidize the instruction, advancement, or promotion of gender ideology or discriminatory equity ideology"). Indeed, the second Trump administration outdone the far–right's blueprint *Project 2025*, which decried the *Bostock* decision and urged the executive branch to reverse-engineer binary sex and gender distinctions. THE HERITAGE FDN., PROJ. 2025, MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE 584–86 (2023) (urging agencies to withdraw regulations, notices, and guidances applying *Bostock* "broadly outside hiring and firing" as "unlawful," and amplify exceptions for religious belief under the First Amendment, Religious Freedom Restoration Act of 1993, Title VII, and religious-conscience exceptions); *See also id.* at 332 (exhorting the Education Department to rescind regulations offering a non-binary category in OCR data collection).

On the Court's historically remedial approaches to sex as a social trait historically, *see* Bostock v. Clayton Cnty., 590 U.S. 644 (2020); Naomi Schoenbaum, *Rethinking Sex as Biology Under Equal Protection*, 58 U.C. DAVIS L. REV. 905, 911–14 (2024) (reexaminating equal protection sex-equality jurisprudence to conclude that "biology" was not a basis for heightened scruntiny until decades later, "upon the success of the doctrine's effort to combat sex stereotypes"); Lin, *supra* note 6, at 747–59 (contrasting broader Title VII analysis of discrimination across contexts of sex as a social trait against anti-classificationist Court methods from constitutional law, as discernable from *Bostock*'s plurality of judicial approaches while under appeal); *Skirmetti*, 145 S. Ct. at 1834 ("We have not yet considered whether *Bostock's* reasoning reaches beyond" Title VII's workplace context.).

should be the core beneficiaries of law's protections, yet are left in the cold.[9] Indeed, so many campaigns in the labor resurgence embrace *social justice unionism*—labor organizing that publicly and internally aligns with goals of social movements that extend beyond the worksite to surrounding communities.[10] To elevate the strategies of Starbucks Workers United (SWU) recognizes the make–do nature of much of the new organizing that leans on the NLRA, even in workplaces where no mature union has an established presence.[11] Because multiply marginalized groups face commensurately more resistance to their demands, Carpenter boldly names the implications of her critique for two bedrock legal institutions: (1) mainstream LGBTQ civil rights organizations, which traditionally invest the lion's share of their resources and attention to court-centric wins such as *Bostock v. Clayton County*; and (2) service organizations providing safety-net services and support for queer communities.[12] For them, legal victories sounding in equality are the most visible, yet are perpetually at risk of becoming symbolic.

The stories about law in *Strike with Pride* will likely resonate with legal audiences and practitioners who desire more from the rights regimes Americans inherited from prior generations. Its critiques chiefly evaluate access to justice within existing legal advocacy parameters, duly focusing on material measures of wellness and dignity. Extending the discussion Carpenter has begun, we observe that the twenty-first century upsurge in organizing demands an accounting from work law beyond the distribution of rights across socioeconomic class. The unrest that spurred a renaissance of new, intersectional organizing models is particularly poignant as U.S. society is

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[9] *E.g.*, Carpenter, *supra* note 1, at 745–46.

[10] *See* Keeanga-Yamahtta Taylor, *What's at Stake in the Fight Over Reopening Schools*, THE NEW YORKER (Feb. 9, 2021) (observing Chicago Teachers' Union 2012 strike for "The Schools Chicago Students Deserve" exemplified social justice unionism); Veena Dubal, *The New Racial Wage Code*, 15 HARV. L. & POL'Y REV. 511, 540 n.139 (2021) (defining social justice unionism to center social equity, and not just economic equity, member "control and activism, participatory democracy, broad alliances, innovate tactics, and a focus on the far-reaching goals such as justice and equality.") (quoting VANESSA TAIT, POOR WORKER'S UNIONS: REBUILDING LABOR FROM BELOW 9 (2016)). Fight for Fifteen's organizing of McDonalds workers in collaboration with #MeToo's movement against sexual abuse represented even more layered coordination, as FFF itself comprised a strategic industrial campaign launched by a mature labor union.

[11] *See generally* JAZ BRISACK, GET ON THE JOB AND ORGANIZE: STANDING UP FOR A BETTER WORKPLACE AND A BETTER WORLD (2024) (providing first-hand account of organizing the first unionized Starbucks café in Buffalo, N.Y. and co-founding SWU); *see* Shirley Lin, *Race, Solidarity, and Commerce: Work Law as Privatized Public Law*, 55 ARIZ. ST. L.J. 813, 816–17 (2023) [hereinafter *Race, Solidarity, and Commerce*]. Michael Oswalt has referred to the non-traditional leadership of the recent, militant waves of labor organizing tongue–in–cheek as "disorganized labor." Michael M. Oswalt, *Disorganized Labor (Law)*, 44 YALE L. & POL'Y REV. (forthcoming, 2025) (on file with author).

[12] Carpenter, *supra* note 1, at 799–802 (discussing Derrick Bell's "interest convergence theory").

increasingly marred by hyperpolarization and steep corrosion of the rule of law.[13] Acknowledging anti-queer violence and other attacks on communities' security, her analysis arrives amid dramatic changes within the broader literature—in workplace diversity, rising awareness of the dynamics between identities and movements, and greater disillusionment with economic policies.

Accordingly, this Essay advances three main responses to Carpenter's important critiques. The first two are structural, addressing the nested dualities that drive Carpenter's analysis. The third is in the vein of expanding the critical legal traditions *Strike with Pride* invokes to meet additional challenges.

In Part I, we argue that modern interplay between Title VII and NLRA is complex, and the expressive effects of each law are more difficult to measure. We advance the claim that centering the needs of LGBTQ workers in low-paying professions warrants more extended focus on members' needs within unions and campaigns. In Part II, we argue that for labor organizations, the utility of Title VII and *Bostock* warrants more extensive examination. Finally, in Part III we advance the claim that twenty-first century labor organizing, when intersectional and fully inclusive in its solidarity, will be able to build power even during a time of economic retrenchment.

I. RESISTING DUALITIES IN LAW

Our first claim addresses a duality driving the commentary, one near-axiomatic among labor and employment scholars. Carpenter's critique juxtaposes Title VII against the NLRA—i.e., social identity versus class; individual versus collective. *Strike with Pride* charts a near-symmetrical alignment of LGBTQ non-profit advocacy groups that favor the former by privileging expensive anti-discrimination law battles under Title VII, to the exclusion of building and shifting power to workers fighting multiple layers of exploitation under the NLRA. How might we address the tensions wrought by shifts in lawmakers' policy preferences for the workplace without stoking long-simmering rivalries on the ground?[14]

In response, we wish to extend critical space to discuss how movements pick up where the law passes these battles onto communities, as movement actors both formal and informal are potential legal clients as well.[15] When

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[13] *See* RESIST/DEFEND/REIMAGINE PEDAGOGY: LEGAL EDUCATION AGAINST AUTHORITARIANISM 5 (Shirley Lin & Meena Roldan Oberdick eds., 2024); George Chidi, *Liberal Supreme Court Justices' Dissents Reveal Concerns that the US Faces a Crisis*, THE GUARDIAN (Jun. 27, 2025), https://www.theguardian.com/us-news/2025/jun/27/us-supreme-court-dissents [https://perma.cc/4M6H-4Y8W]; Trump v. CASA, Inc., 245 S.Ct. 2540, 2596 (2025) (Sotomayor, J., dissenting) ("The rule of law is not a given in this Nation, nor any other. It is a precept of our democracy that will endure only if those brave enough in every branch fight for its survival.").

[14] *Race, Solidarity, and Commerce*, *supra* note 11, at 823.

[15] *Cf. id.* at 823 ("[C]ampaigns today routinely contest work law's racial politics, and require advocacy, if not adept lawyers, who do not take legal tenets for granted.").

addressing the interplay between labor and employment law—Carpenter's analysis treads familiar ground. Title VII's institutional design has garnered decades of scholarly opprobrium, with considerable momentum early on from those most closely identified with traditional labor law.[16] In 1992, as labor unions markedly declined in the course of successively hostile judicial interpretations of labor law, Katherine Van Wezel Stone posed two seminal questions about anti-discrimination law:

> Do these new individual rights signify a fundamental change in the system of legal regulation of employment in this country? Or are they merely an accretion to, or embellishment of, the New Deal system of collective bargaining?[17]

Employment law scholars joined the chorus as Title VII individual and class actions wound their way through courts. With the hindsight of the interpretive bents of Chief Justices Rehnquist and Roberts, they particularized concerns over Title VII's low success rates and politicization.[18] Other commentators grappled with unions' legal obligations as their memberships became increasingly diverse, but not necessarily cohesive.[19] The distinctive natures of the frameworks alone, however, do not make zero-sum dynamics inevitable.[20] Like the NLRA, the effectiveness of anti-discrimination statutes are vulnerable to broader political–economic ideologies.

Carpenter addresses the devastating levels of precarity of LGBTQ workers continue to face, and links these disparities to the failure of Title VII's rights framework to avoid these outcomes.[21] The causes of economic insecurity across LGBTQ communities are unclear despite its prevalance, but she suggests lower pay and overrepresentation in low-wage industries are salient factors. She locates conspicuous gaps in work law for low-wage LGBTQ employees in the form of a *de facto* socioeconomic screen: Title VII's statutory damage caps and

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[16] *See id.* at 816–17.

[17] Katherine Van Wezel Stone, *The Legacy of Industrial Pluralism: The Tension Between Individual Employment Rights and the New Deal Collective Bargaining System*, 59 U. CHI. L. REV. 575, 576 (1992).

[18] *E.g.*, Rachel Kahn Best et al., *Multiple Disadvantages: An Empirical Test of Intersectionality Theory in EEO Litigation*, 45 L. & SOC'Y REV. 991, 1009, 1011 (2011); Deborah Dinner, *Beyond "Best Practices": Employment-Discrimination Law in the Neoliberal Era*, 92 IND. L.J. 1059, 1066, 1069 (2017).

[19] Michael Z. Green, *Reading* Ricci *and* Pyett *to Provide Racial Justice Through Union Arbitration*, 87 IND. L.J. 367, 402–04 (2012); Marion Crain, *Feminizing Unions: Challenging the Gendered Structure of Wage Labor*, 89 MICH. L. REV. 1155, 1172 (1991); *Race, Solidarity, and Commerce*, *supra* note 11, at 864; ANA AVENDAÑO, SOLIDARITY BETRAYED: HOW UNIONS ENABLE SEXUAL HARASSMENT—AND HOW THEY CAN DO BETTER 110–14 (2025).

[20] Green, *supra* note 19, at 374.

[21] Carpenter, *supra* note 1, at 750–53.

shortages in legal representation.[22] Carpenter aptly notes that they limit *Bostock*'s efficacy for individual low-wage workers,[23] but disparate impact class actions, disparate treatment class actions, and pattern-or-practice liability were envisioned early in the rights regime, and remain actionable,[24] often litigated by unions and other movement organizations.[25] The labels of "individual rights" and "symbolic" may be better understood as the remnants of interpretive arson, rather than the original building given form by Congress. To be sure, today's labor organizers often find the NLRB marginally effective in securing remedies or government oversight amid a wave of reprisals by Starbucks to quash activism.[26]

Judging a law's effectiveness by its statutory language also poses natural difficulties, however.[27] Provisions do not reflect how laws ultimately interact with one another, and protections are likely to be undercounted because the problems they avoid in the workplace exist in absentia. *Bostock*'s unmistakable holding that gender identity or sexual orientation discrimination are unlawful "sex" discrimination did not only deter epithets. The decision fulfilled Title VII's pathbreaking role as an anti-violence statute, as it has over the arc of sex discrimination jurisprudence. When workers are said to be in conflict with one another, whether Title VII and NLRA can be harmonized often turns upon whether each rights regime is purportedly interpreted under private-law or public-law methods.[28] From the view of social justice unionism, -non-

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[22] Specifically, Carpenter argues that Title VII's damages structure disserves low-wage individuals in that damage caps on compensatory and punitive damages, such as lost wages that are often the most easily provable damages, undermines the policy goals by disincentivizing employee action and thus, employer compliance. *Id.* at 761–62.

[23] *Id.* at 745–46, 779–81.

[24] *See* Pauline T. Kim, *Addressing Systemic Discrimination: Public Enforcement and the Role of the EEOC*, 95 B.U. L. REV. 1133, 1134 (2015). With fee-shifting to incentivize representation of civil rights plaintiffs, it is the infrastructure required to litigate collective actions such as class-plaintiff investigation, management, and consulting expert fees for the cases that EEOC counsel do not have the capacity to litigate poses additional bottlenecks.

[25] *See infra* notes 48–50 and accompanying discussion.

[26] Steven Greenhouse, *Will Starbucks' Union-busting Stifle a Union Rebirth in the US?*, THE GUARDIAN (Aug. 28, 2023), https://www.theguardian.com/us-news/2023/aug/28/will-starbucks-union-busting-stifle-a-union-rebirth-in-the-us [https://perma.cc/2M2U-EDRS]. *See also* Jaz Brisack, *The Supreme Court Ruling in the Starbucks Case Proves the Law Won't Save Labor*, N.Y. TIMES (June 15, 2024), https://www.nytimes.com/2024/06/15/opinion/starbucks-nlrb-striking-workers.html (last visited Sep. 7, 2025, 6:20 PM) ("Starbucks has figured out an ingenious plan to get around labor law, which is: break so many labor laws so fast that the National Labor Relations Board simply can't keep up in enforcing the law.").

[27] Once Congress enacted Title VII, "the law's strictures, limitations, and omissions - coupled with the court's constructions and interpretations - have simply failed to capture a great deal of what has befallen" those in the workplace. KERRI LYNN STONE, PANES OF THE GLASS CEILING: THE UNSPOKEN BELIEFS BEHIND THE LAW'S FAILURE TO HELP WOMEN ACHIEVE PROFESSIONAL PARITY 2 (2022).

[28] *See Race, Solidarity, and Commerce*, *supra* note 11, at 846–63.

discrimination values advance collective bargaining and thus remains a vital part of a union's modern legal arsenal.[29]

Carpenter suggests Starbucks' removal of Pride-related materials from stores in 2023—which led to approximately 150 locations to strike in response—did not only revolve around conceptions of harassment.[30] The campaign did not protest individual or aggregate claims, as the workers were arguably "organizing" instead of filing Title VII discrimination complaints.[31] The inference to be drawn, then, is that *Bostock* did not secure baristas' path to fair treatment. The administrative processes of the National Labor Relations Board are certainly more robust than the EEOC's, and more strongly associated with collective worker action. But *Obergefell* and *Bostock* marked a crucial shift in destigmatizing LGBTQIA+ identities to expand support for minoritized members.[32]

Before workers collectively agree to strike or campaign, support for Pride must be a norm for queer and non-queer colleagues alike. These grievances must be legitimate and important enough for everyone to risk retaliation, even the loss of their paychecks, from a company renown for union-busting.[33] How broader society justifies laws bear as much importance to the public as the mechanisms for enforcing them. Tying anti-LGTBQ animus to serious material and economic harm, as SWU activists have, sidesteps the divide-and-conquer approach typical of historical discourse, e.g., pitting race "versus" class, and sex "versus" class. These expansions in grounds for solidarity have enormous significance for queer workers who need to get jobs and keep them.[34] Moreover, legal theories that do not reflect lived experience legitimize dominant views of sex and gender: institutions to persist in expressive harms that reverberate, such as denial of job-protected parental leave for same-sex couples, or only making available binary-sex-segregated bathrooms.[35]

SWU's strategies ultimately suggest that in the hands of unions with intersectional approaches to accountability, Title VII and the NLRA are mutually enforcing. Anti-discrimination law stands to strengthen workers "by

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[29] Stone, *supra* note 17, at 576–77.

[30] *See* Carpenter, *supra* note 1, at 744–45.

[31] *See id.* at 746.

[32] *See generally* Obergefell v. Hodges, 576 U.S. 644 (2015); Bostock v. Clayton Cnty., 590 U.S. 644 (2020).

[33] MCALEVY, *supra* note 4, at 157–58 (describing "high participation" secured by successful unionizing is 80 percent of a constituency, and for a strike, "no less than 90 percent"); *see generally,* BRISACK, *supra* note 11 (providing first-hand account of organizing the first unionized Starbucks café); Brisack, *supra* note 26 ("U.S. labor law contains no penalties for firing workers in retaliation for organizing — only remedies. If the courts rule that workers were unlawfully fired, they are entitled to reinstatement and back pay, minus their interim earnings. In practice, the court process can take years, and workers frequently receive significantly reduced back pay.").

[34] Richard Blum, *Equality with Power: Fighting for Economic Justice at Work*, 10 THE SCHOLAR & FEMINIST ONLINE (2012).

[35] Lin, *supra* note 6, at 756.

setting a floor above which unions negotiate by removing the more general issues from the bargaining table," per Stone.[36] Mutual aid and other activism protesting discrimination at work are protected labor interests, as the National Labor Relations Board finally recognized in 2014,[37] but today's organizers do not stop there. The potential for change extends beyond what can be documented (or distorted) in formal litigation.

II. LOCATING SHARED SOURCES OF POWER FROM LAW AND ADVOCACY MOVEMENTS

The second contrast arises as to Carpenter's audiences for her most provocative insights elevating labor organizing over anti-discrimination lawsuits. Legal advocates are presumed to implement lessons learned on behalf of clients and other legal beneficiaries. Sharing Carpenter's concern for access to justice, we urge scholars as a whole to address those immediately poised to help themselves, as well. How should workers and mainstream labor movements beyond SWU respond to attacks against the LGBTQ communities? The most pointed critiques in *Strike with Pride* are reserved for mainstream LGBTQ advocacy groups, particularly those that wholly rely on legal liberals for their lawyers and philanthropy.[38] Considering the wildcat successes of unionizing efforts like Starbucks Workers United and the relative silence of the most deeply resourced organizations, Carpenter's arguments ought to reach all who want to redress inequality in the workplace or ensure existing unions and other labor organizations are truly representative.[39] Carpenter demonstrates how Human Rights Campaign's highly publicized, annual Corporate Equality Index failed to even register Starbucks's relentless and deeply resourced attacks against unionizing efforts. HRC's refusal to issue any statement on the treatment of SWU reflects the financial "entanglements" that conspicuously erase class-conscious support for struggling LGBTQ workers.[40] Although two other

[36] Stone, *supra* note 17, at 577.

[37] *See Race, Solidarity, and Commerce*, *supra* note 11, at 856–57, discussing Fresh & Easy Neighborhood Mkt., Inc., 361 N.L.R.B. 151, 154 (2014).

[38] Indeed, the broader role of class and elitism within the non-profit sector warrants additional commentary. *E.g.*, Blum, *supra* note 34 (comparing H.R. 2015, 110th Congress (2007) with H.R. 3685, 110th Congress (2007)) ("During 2007, the elites of our communities were divided over whether prohibiting arbitrary and hostile treatment of gender nonconforming members of our communities was just too much to expect."). *See also* THE ACTION LAB & THE FORGE, POWER TO WIN 50–76 (reporting social movement organizers' criticisms of funding structures of non-profits and movements, and related barriers to building power).

[39] *See* Law360, Starbucks Unionization Tracker, Law360, (last updated May 16, 2025)https://www.law360.com/employment-authority/starbucks-tracker [https://perma.cc/7X3M-TGU3] (reflecting 573 certified Starbucks unit locations).

[40] Carpenter, *supra* note 1, at 800–04.

advocacy organizations are named,[41] given the finite, relatively smaller community of advocates at which Carpenter levels these important critiques, an eye to all stakeholders would further expand the basis for lasting ties.

We ask whether the weight of Carpenter's lessons should fall equally, if not more so, on an audience of mainstream unions and workers themselves. In shifting (or in SWU's words, "sharing") power, organized workers face an uphill battle without coordinated activism to hold multinational corporations accountable. They are positioned to demand systemic changes and other commitments onsite, as opposed to advocates monitoring at a remove. Whether employers, unions, and courts then interpret labor and employment law as complementary, or not, is not inherent to the statutes themselves; both frameworks include broad and remedial principles for parties to shape terms in response to movement demands. In this respect, Carpenter's critique of *Bostock*'s limits extends to exponentially larger audiences.

If more stakeholders aligned themselves to support LGBTQ worker mobilization across industries, as Carpenter urges, considerable resources in political education are required to link solidarity with accountability.[42] The baristas' LGBTQ-forward campaigns are an outlier within mainstream labor movements. Landmark opinions such as *Bostock* surface a recognition of sexism and misogyny in homophobia and transphobia, in ways that capture public attention and ratify the full citizenship of LGBTQ community members. But without concerted education, any labor organization that gains the right to exclusively represent workers without addressing stigma and bias that a subset of members may face from other members for their sexual orientation or gender, or as queer workers of color, means that unionization may not improve conditions for them at all.[43] As Carpenter notes, members must first seek enforcement of CBA provisions through union grievance proceedings and potentially arbitration. The exhaustion requirement applies to standalone statutory rights, such that claims of anti-queer bias against an employer must be raised with the union, in parallel with filing a claim to offer the EEOC the requisite opportunity to investigate.[44] Unions that arbitrarily refuse to enforce the provisions may be separately liable for breach of the duty of fair

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[41] *Id.* at n. 206.

[42] Oswalt, *supra* note 11, at 12–13 (noting the role of "internal" organizers who help maintain members' commitments and resolve workplace concerns and the traditional role of funding union halls and candidate canvassing).

[43] *Cf.* Suzanne Mills et al., *Between Inclusion and Disconnection: LGBTQ Workers and the Challenge of Union Renewal*, J. INDUS. RELS., May 21, 2025, at 1 (reporting in study of Canadian unions that "strategies that foster inclusion in the workplace and union local are more likely to promote union engagement among, and social justice for, LGBTQ workers, particularly in places without preexisting support for LGBTQ people").

[44] For these reasons, representation by a union does not eliminate the need for workers to obtain legal advice or representation adept in Title VII if their circumstances raise an actionable discrimination claim. *See also supra* note 15.

representation between the union and employee, along with any relevant non-discrimination provisions in the union's constitution.[45]

Unions ideally foster and create a culture of mutual aid and protection, offering a counterweight to the given power structure in the workplace.[46] Thus, while a mere 6% of private sector workers are unionized, the NLRA's protections for mutual aid and other concerted activism pose positive values from rights working in concert. Joining the procedural and substantive protections of labor contracts, Carpenter acknowledges the potential for collective bargaining agreements to be helpful. CBAs can include specific protective LGBTQ provisions and meaningfully tailored content rather than the broad statements forbidding discrimination typical of these contracts. When motivated to bargain for such terms, unions may include bargained terms such as transgender-inclusive health care and domestic-partner benefits.[47] CBAs offer up models for other contracts, and provided life-saving coverage in many households before *Obergefell* and *Bostock* became federal law, and will continue to do so after *Skirmetti*.

Addressing labor movements frontally, however, raises the specter of reopening old wounds when the stakes vary. Thus, we urge additional narrative about the law that credit optimism for law's meaning in the face of dire antipathy and exploitation. In 2022, Advocates for Transgender Equity (neé Transgender Legal Defense and Education Fund, merged with the National Center for Transgender Equity) announced efforts to defend gender transition benefits in Indiana in a legal partnership with the United Steelworkers union.[48] The health plan offered by U.S. Steel, affected "17,000 hourly employees and their families" excluded from transgender-related health care in the corporation's discretion.[49] A4TE, Indiana Legal Services, USW, and a USW union member with a 19-year- old daughter who is transgender successfully negotiated with the company to remove the care exclusion, without resort to litigation.[50] Law exerts outsized influence on the ground without years of wrangling in court. In addressing unions, members, and legal advocates altogether, someone is bound to step forward.

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[45] *E.g.*, Fowlkes v. Ironworkers Loc. 40, 790 F.3d 378, 387 (2d Cir. 2015) (vacating and remanding for litigation of viable duty of fair representation claim brought by transgender male ironworker, requiring a union "to serve the interests of all members without hostility or discrimination . . . , to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.") (quoting Vaca v. Sipes, 386 U.S. 171, 177 (1967)).

[46] 29 U.S.C. §§ 157–158(a)(1).

[47] MIRIAM FRANK, OUT IN THE UNION 3 (2014).

[48] Press Release, A4TE, *USW, TLDEF, ILS Secure Health Care Victory for Workers at U.S. Steel* (July 13, 2022), https://transequality.org/news/usw-tldef-ils-secure-health-care-victory-workers-us-steel [https://perma.cc/2EKD-WUK8].

[49] *Id.*

[50] *See id.*

III. THE INHERENT INTERSECTIONALITY OF 21ST-CENTURY LABOR MOVEMENTS

Work law continues to capture our attention because how workplaces are structured and run offer narratives about distributions of power. For movements to achieve accountability and respond to a multitude of needs, they must embrace and deepen intersectional analysis.[51] The democratic ideals of unions predisposes labor to sit at the crossroads of social change. Thus, we see implied in Carpenter's decision to feature SWU's remarkable campaign a belief that social justice unionism ought to be all unionism.[52]

In the abstract, labor can lead the way. If workers were not keenly reliant upon mainstream LGBTQ organizations to advocate for them, and were at freedom to appoint themselves and fellow labor activists, then perhaps unions offer the chance to break away from the ideological influence of corporate and philanthropic funders to independently fundraise from dues[53] and broader communities of supporters.

Accountability to multiple perspectives and experiences, in law and in organizing, is complicated in practice but necessary for true security and dignity. The risk of overreliance upon statutory labor law to secure change is that the overt politicization of the NLRB and courts demonstrate, time and again, that they are not the most effective arbiters of labor violations. To effect change, unions must be able to inspire members and public action to target the bottom line of companies like Starbucks.[54] As organizations, unions are designed to be more democratic than other major social institutions: continually exposed to reevaluation internally from members, and externally from the public, whose support for campaigns directly translates into their power to persuade and set social norms.[55]

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[51] *See* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 UNIV. CHI. LEGAL F. 139, 148 (1989).

[52] Remarks of Stacy Davis Gates, President, Chicago Teachers Union, Lessons from "Freshman Year" of Movement Co-Governance (Oct. 17, 2024) (notes on file with author); *see also* Michael Z. Green, *Black-Labor Matters* (unpublished manuscript) (on file with author) (positing that Black Lives Matter and the new labor movements represent within resurgent social justice labor organizing an interest convergence).

[53] *See* Oswalt, *supra* note 11, at 14.

[54] Brisack, *supra* note 26 ("Workers' power never came from the NLRB or the courts; we will win labor law reform only when our movement is strong enough to force government action.").

[55] MCALEVY, *supra* note 4, at 156, 158 (identifying most successful unionization principles as democracy and participation, in which a commitment to democracy entails "breaking down the barriers" and "directly confronting racism and sexism"). SWU co-founder Brisack candidly told the press: "The law offers Starbucks innumerable delay tactics and avenues of appeal, so I believe this fight will ultimately be won in the court of public opinion, through a consumer boycott of Starbucks." *See* Dee-Ann Durbin, *U.S. Labor Judge*

To overcome legacies of division, a union must be fully inclusive and intersectional in its praxes toward its members, rethinking leadership, structure, and vision to challenge existing institutions and the systems that shape them.[56] At the same time that warehouse workers won Amazon's first union in New York City by centering campaign demands against systemic racism and ableism, and Whole Foods workers protested discriminatory enforcement of dress codes to disappear references to "Black Lives Matter,"[57] Starbucks café organizers represent a generation of workers pushing back on inherited power structures in ways that are creative and can potentially remake traditional institutions anew.[58] Future critiques of union and other group politics must account for the levels of severity in discrimination for multiply marginalized LGBTQ members, as racism and transphobia remain to be addressed within the LGBTQ community itself.

The deep legacies of anti-queer stigma that persist today surface in Carpenter's extended historical treatment. In looking forward, she urges mainstream LGBTQ organizations to directly support and align with labor organizing by acknowledging a historical disconnect between LGBTQ rights groups and the labor movement. Carpenter invokes interest convergence, Professor Derrick Bell's critique of legal reform efforts as captured by liberal and conservative elites, and points to a state of affairs that has existed unremarked and naturalized for decades.[59]

Even more questions may arise from applying an interest convergence lens: What may come of poor whites who understand their experiences with inequality as rooted in something outside of identity-based claims about power?[60] Among communities within the rainbow, when the far- right targets transgender and non-binary lives to galvanize a white Christian nationalists for the Republican Party, but pulls its punches as to *Bostock*'s holding regarding same-sex attraction? How might critiques of the ways in which labor markets direct LGBTQ workers into low-paying jobs encourage workers to focus on

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Orders Starbucks to Reinstate High-Profile Union Organizer, ASSOC. PRESS (Feb. 8, 2024), https://apnews.com/article/starbucks-union-workers-united-nlrb-brisack-c6b7eef59fb080b862775f79ca5fe469 [https://perma.cc/JHZ4-8VDC].

[56] *Race, Solidarity, and Commerce*, *supra* note 11, at 864 ("Intersectional visions move to the foreground today as keenly relevant to most workplaces [but race] has remained the third rail of legal analysis.").

[57] *Id.* at 872

[58] We thank Ricky Blum for this helpful perspective from current union movement work.

[59] *See* Derrick A. Bell Jr., Comment, *Brown v. Board of Education and The Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 523 (1980).

[60] *E.g.*, RICHARD T. FORD, RIGHTS GONE WRONG 10 ("It's tempting to insist that we just need more of the same—that we've only been too timid in enforcing civil rights laws or too conservative in interpreting them.").

persuading other non-elites experiencing segregation to rethink the economic incentives protected by law?[61]

Historical accounts of LGBTQ and labor movements premised solely upon "schism" risk forgetting more radical pasts and futures. Systems of law overwhelmingly privilege acts documenting discrimination—through claims-filing, headlines, and settlements—over acts documenting solidarity and intersectional legal thought.[62] Here, Carpenter's deeply researched accounts of the relationship between historic LGBTQ and Civil Rights movements, with separate paths and ideation from today's more intersectional labor movements, covers much ground and suggests areas where inroads have been made.[63] More work remains in achieving labor advocacy that is inclusive of LGBTQIA+ concerns but does not rely solely on already-overtaxed individual workers, often singly represented, to assume leadership.

As Suzanne Franzway and Mary Margaret Fonow observe, queer activism can revitalize labor, "but to do so, it will need to challenge the homophobia, transphobia and sexual politics of organized labor and insist that unions live up to their democratic ideals."[64] Feminists and racial justice advocates in labor have "had to leverage their alliances with other activists, advocacy groups and grassroots organizations outside the formal boundaries of unions" to integrate new strategies and approaches around equity.[65]

Ricky Blum, a decades-long activist within Legal Aid Society's union and new-labor caucuses across industries, invites

> communities on the whole to follow a broadly conceived political agenda, and to participate actively in the workplace justice movements that can be found around the country Fundamentally, we have to recognize and fight for the inherent right to productive work and the entitlement to earn enough to live a happy life on our own terms. Only this kind of broader change in the basic relationships that define our positions in the workplace can give us the economic justice and stability that we need to live our lives freely as queer people.[66]

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[61] MARGOT CANADAY, QUEER CAREER: SEXUALITY AND WORK IN MODERN AMERICA 39 (2023).

[62] *See e.g.*, FRANK, *supra* note 47; Richard Blum, *Queer Workers in the American Workplace*, 33 THE NEW LAB. F. 103 (2024) (reviewing MARGOT CANADAY, QUEER CAREER: SEXUALITY AND WORK IN MODERN AMERICA (2023)).

[63] Carpenter, *supra* note 1, at 791–93.

[64] Suzanne Franzway & Mary Margaret Fonow, *Queer Activism, Feminism and The Transnational Labor Movement*, 7 THE SCHOLAR & FEMINIST ONLINE (Summer 2009), https://sfonline.barnard.edu/queer-activism-feminism-and-the-transnational-labor-movement [https://perma.cc/97UB-7EJL].

[65] *Id.*

[66] Blum, *supra* note 34.

Forging connections between movements requires an intent to replace mistrust with a recognition of shared goals.[67] Coalition building horizontally, as between feminists and racial justice advocates, leverages the hard truths from history toward genuine community building. As Carpenter emphasizes, entities with inapposite legal and economic incentives predictably cannot serve these ends. At times these entities are unaccountable movements, at other times, they are corporations or funders, and at present, they include the federal government and courts.

CONCLUSION

We are witnessing and being called to improve upon the systems of law and power we inherited as workers, colleagues, advocates, and community educators. Responding to threats to norms of fairness, humanity, and rule of law will require resisting the pull of history and the weaponization of law against movements challenging economic and social exploitation altogether. Ever resourceful, labor movements pull what they can use from law—principles, narrative, or a respite—despite what law does not protect. Carpenter demonstrates that it is possible to take up these challenges with courage and collective energy.

[67] *E.g.*, Shirley Lin, *Mass Accommodations: Signposts to a Hidden Jurisprudence*, 74 EMORY L.J. 313, 374–78 (2024) (discussing how legal rules and social norms shape barriers to coalitions that equally seek to mitigate harm between mainstream disability rights advocates and abolitionists).