

Poverty & Race

POVERTY & RACE RESEARCH ACTION COUNCIL

January/February 2013

Volume 22: Number 1

Given the decline in labor union membership and influence, on top of the recent anti-union states campaigns, I responded positively to Richard Kahlenberg's suggestion that we organize a Forum around his (and co-author Moshe Marvit's) new book, Why Labor Organizing Should Be a Civil Right. I asked several well-known figures from the labor and civil rights worlds, plus some academics and public interest group leaders, to provide their commentaries on the article below, a précis of the Kahlenberg/Marvit book. Their interesting and useful views appear on the pages that follow - CH

A Civil Right to Organize

by Richard D. Kahlenberg & Moshe Z. Marvit

On April 4, 1968, when Dr. Martin Luther King, Jr. was tragically gunned down in Memphis, Tennessee, he stood at the intersection of two great forces for greater human dignity: the Civil Rights Movement and the labor movement. King was in Memphis, it should be remembered, to support striking black sanitation workers who marched with King carrying posters with the iconic message, "I AM A MAN."

The signs had resonance in part because, as black Americans, the sanitation workers were sick of being derisively referred to by racist whites as "boy." But in addition, as garbage collectors, they were tired of being

poorly treated by management and by fellow citizens, who looked down upon them. Because their employer would not provide them with a place to shower after work, garbage collectors were shunned by bus drivers and fellow passengers and often had to walk home. Managers, failing to fully recognize the basic humanity of sanitation workers, refused to install safety features on garbage trucks. After two sanitation workers were accidentally crushed to death by a defective packing mechanism on a garbage truck, 1,300 workers went on strike. Their message, "I AM A MAN," contained a powerful demand for better treatment.

King rallied with sanitation workers and affirmed their dual message of racial and economic justice. "Whenever you are engaged in work that serves humanity and is for the building of humanity, it has dignity and it has worth," King told American Federation of State, County and Municipal Employees (AFSCME) workers in March 1968. He told them, "All labor has dignity."

King had long seen the connection between the labor and civil rights

movements as engines for human equality for men and women alike. While some racist union locals famously resisted progress for blacks, most were far more progressive on issues of civil rights than society as a whole. The massive labor federation, the American Federation of Labor and the Congress of Industrial Organizations (AFL-CIO), became a critical supporter of civil rights legislation, including the 1964 Civil Rights Act, which, in Title VII, forbade racial discrimination in employment. In a 1961 speech to the AFL-CIO, King declared, "Our needs are identical with

(Please turn to page 2)

Richard D. Kahlenberg (Kahlenberg@tcf.org) is a Senior Fellow at The Century Foundation.

Moshe Z. Marvit (mzmarvit@gmail.com) is a labor and civil rights attorney.

They coauthored Why Labor Organizing Should Be A Civil Right: Rebuilding a Middle Class Democracy by Enhancing Worker Voice (Century Foundation Press, 2012), from which this essay is adapted.

CONTENTS:

| | |
|--------------------------------|-----------|
| Right to Organize | 1 |
| South Africa's | |
| Low-Cost Housing ... | 3 |
| Thompson v. HUD | 7 |
| Commentaries on | |
| Kahlenberg/Marvit | 13 |
| Kahlenberg/Marvit | |
| Respond | 17 |
| Resources | 20 |

(ORGANIZE: Cont. from page 1)

labor's needs: decent wages, fair working conditions, livable housing, old age security, health and welfare measures, conditions in which families can grow, have education for their children, and respect in the community.... The duality of interests of labor and Negroes makes any crisis which lacerates you a crisis from which we bleed."

In the last year of his life, King had begun a multi-racial Poor People's Campaign, and in his final Sunday sermon, delivered at the National Cathedral in Washington, DC, he called his vision of economic justice nothing less than his "last, greatest dream." In Memphis, King recounted the great victories for civil rights in Montgomery and Selma, and suggested, "You are going beyond purely civil rights questions to questions of human rights," raising "the economic issue." People must not only have the right to sit at a lunch counter, but also the right to afford a hamburger, he told the audience.

What Came of King's Twin Dreams?

In the years since King was struck down, enormous improvements have been made in racial attitudes and in the life chances of African Americans. The black middle class has grown significantly, the number of black pro-

fessionals has increased, and the black/white educational gap on such matters as high school graduation rates has shrunk dramatically. While far more progress needs to be made, we have since 1968 witnessed a sea change in racial attitudes, culminating in the once inconceivable idea of a black American President being elected. As Harvard Law professor Randall Kennedy has written in his 2011 book, *The Persistence of the Color Line: Racial Politics and the Obama Presidency*: "One of the great achievements

Labor organizing shares with the Civil Rights Movement the basic quest for human dignity.

of the Civil Rights Revolution was its delegitimization of racial prejudice." In that sense, the 1964 Civil Rights Act has proven a tremendous success. Among the broader public in America and internationally, the Civil Rights Movement is rightly regarded as iconic in the struggle for human dignity and inclusion. While more work surely needs to be done, the trajectory on race is generally pointed in the right direction.

By contrast, since the 1960s, the American labor movement has seen enormous setbacks. Labor once dreamed that, with the vanquishing of Jim Crow, the racism that had kept working-class whites in the South from uniting with blacks would diminish and Southern states could be unionized. But organized labor did not conquer the South; instead, to a significant degree, Southern anti-union practices have spread through much of the country. From its peak in the mid-1950s, organized labor has declined from more than one-third of private sector workers (and one-half of the industrial workforce) to less than one-tenth. Today, even public sector unionism is under attack in several states. Meanwhile, economic inequality has skyrocketed to the point that the top 1% of Americans own more than the bot-

tom 90%, and income from productivity gains have gone almost exclusively to the top 10%. Economists agree the two phenomena are connected, and that rising economic inequality in America is due in some significant measure to the weakness of the American labor movement.

The Civil Rights and National Labor Relations Acts

There are many factors that help explain why the nation has progressed on King's vision for civil rights while it has moved backward on his emphasis on the importance of economic equality and union strength. However, among the most important—and the easiest to remedy—is the substantial difference between the strength of our laws on civil rights and on labor. Seventy-five years of experience with the National Labor Relations Act of 1935 (NLRA) and 45 years of experience with Title VII of the Civil Rights Act of 1964 suggest that the former has proven largely ineffectual in protecting workers, while the latter has been quite successful in diminishing discrimination and changing social attitudes.

The 1964 Civil Rights Act, subsequently amended in 1991, provides powerful penalties for employers who discriminate on the basis of race, sex, national origin or religion. Under the 1991 amendments, employment discrimination remedies have been expanded to include not only back pay but compensatory and punitive damages up to \$300,000. Civil rights laws also provide plaintiffs with the opportunity to pursue legal discovery, something that employers assiduously seek to avoid. Furthermore, plaintiffs are given access to jury trials; and when plaintiffs prevail, defendants are liable for up to double the hourly rate for plaintiffs' attorneys' fees.

Under the NLRA, it is likewise illegal to discriminate against employees for trying to organize a union, be-

(Please turn to page 9)

Poverty and Race (ISSN 1075-3591) is published six times a year by the Poverty & Race Research Action Council, 1200 18th Street NW, Suite 200, Washington, DC 20036, 202/906-8023, fax: 202/842-2885, E-mail: info@prrac.org. Chester Hartman, Editor. Subscriptions are \$25/year, \$45/two years. Foreign postage extra. Articles, article suggestions, letters and general comments are welcome, as are notices of publications, conferences, job openings, etc. for our Resources Section. Articles generally may be reprinted, providing PRRAC gives advance permission.

© Copyright 2013 by the Poverty & Race Research Action Council. All rights reserved.

Beyond Bricks and Mortar: South Africa's Low-Cost Housing Program 18 Years after Democracy

by Caroline Wanjiku Kihato

"Everyone has a right to have access to adequate housing ... the state must take reasonable legislative and other measures within its available resources to achieve progressive realization of this right."

The South African Constitution, 1996

Phindile tightened the belt of her heavy black coat and stuffed the scarf around her neck to fend off the chilly August winds. Her body gave an involuntary shudder as she waited for a mini-bus taxi to take her to work at one of Johannesburg's wealthy northern suburbs. From the frozen streetlights, she could make out the silhouette of the even-patterned Reconstruction and Development Program houses. RDP houses—as they are known colloquially—are homes for low-income South Africans, provided by the country's post-apartheid government. A typical house is 36 square meters, with an open-plan bedroom, lounge and kitchen and separate bathroom (Moolla et al., 2011). In an hour and a half, it would be light and the humdrum of daybreak would swallow the night's silence as families prepared to go to work, send children to school or open their businesses. For now, the 4am quiet provided her much-needed stillness before the busy day ahead.

Phindile is among 3 million South African families who have benefited from the government's housing program. In 1994, the democratically elected African National Congress (ANC) government embarked on the Reconstruction and Development Program—an ambitious framework for building a democratic non-racial future for South Africa. The RDP document reads: "Our history has been a bitter one dominated by colonialism, racism,

apartheid, sexism and repressive labor policies. Our income distribution is racially distorted and ranks as one of the most unequal in the world—lavish wealth and abject poverty characterize our society" (ANC, 1994: 2). Given apartheid's legacy, the new government committed to providing housing for all. In what would be a remarkable, if ambitious, housing policy, President Mandela's government and subsequent administrations embarked on building poor South Africans a place they could call home and start

Three million families have benefited from the government's housing programs.

their life in a new South Africa with dignity and hope for a better future. Over the last 18 years, South Africa has spent R60bn (USD7.5bn) and delivered 3 million houses to poor households (FFC, 2012).

Phindile was born in Soweto in 1969, 17 miles from Johannesburg's city center. Soweto, which is short for South Western townships, began as a settlement in 1905 that housed black laborers who worked in the city's gold mines and the growing manufacturing and service industries. Phindile's mother was a domestic worker who made a living cleaning and taking care of white families' homes and children. When Phindile turned two, her mother could no longer afford to keep her and her older sister in Soweto. "She was suffering because she worked for an Afrikaans family who would pay her and then take her money away. If she

refused to give them the money they had paid her, they threatened to fire her." I was sitting at a dining table across from Phindile in an apartment in one of Johannesburg's wealthy suburbs where she worked as a domestic cleaner once a week. She looked at me and continued, "My mother had no choice but to take me to my granny in Richmond in rural Kwa Zulu." Phindile spent 18 years with her grandmother. On the rare occasions that she and her sister visited their mother in Johannesburg, apartheid's racist laws reminded them that they were not welcome. "I remember one holiday, we stayed in my mother's small room in Orange Grove (a former white suburb in Johannesburg) in the garden of her *baas*' [Afrikaans word for boss] house. Every time we heard the *madam* coming, my mother would hide us under the bed and tell us to keep quiet. We stayed in the room silent because it was illegal for us to be there. You had to carry a *dopass* (pass) to live in Johannesburg if you were black at that time, and my mother's pass could be taken away just because she had her children with her."

Apartheid's Laws

Apartheid's laws forbade blacks to own land or property in white South Africa. Indeed, black people were considered temporary sojourners to the city, a place where they had temporary residence for the duration of their working lives. As Johannesburg's economy grew in the 50s and 60s, large black townships like Soweto were built miles from the city's center to

(Please turn to page 4)

Caroline Wanjiku Kihato (*wanjiku.kihato@gmail.com*) is a writer and researcher on migration and urbanization in Africa. She lives in Johannesburg.

house black laborers. Politically, blacks were permanent outsiders, with no suffrage or decision-making powers to determine how the city was run. Moreover, apartheid laws forbade the location of business and industry in places like Soweto. With no industry, there was no revenue to invest in infrastructure, schools and urban services. In fact, black families paid more for water and electricity in apartheid South Africa than wealthy families because they lacked the industries that subsidized household consumption. What money black working-class families made was spent in white areas—this expenditure made white areas richer and poor areas poorer. The apartheid city was a divided one, where those who toiled in its mines and worked in its industries lived in third-world squalid conditions, while a white minority lived in first-world comforts.

Given apartheid's legacy, the democratic government's housing program could not have come at a better time. In many ways, South Africa's liberation was as much a political as an economic one. Black urban dwellers were now not only able to vote for their local councilors and have a say in how money was spent in the city, they also had the opportunity to have equity in it—own property or a piece of land which they could bequeath to their children. Indeed, the transfer of houses to the poor through the housing program aimed at just this—leveling the inequalities of apartheid and providing an asset to people who had been denied rights to the city. The notion of housing as an asset was an important one. Housing was seen as the means through which the poor

could borrow, invest and grow their wealth in ways that would improve their life trajectories and get them out of the structural barriers created by the apartheid state. The housing program was a means of giving full meaning to the term citizenship, for a majority who had for so long been excluded from South Africa's wealth.

But recent hearings held by the constitutionally-mandated Financial and Fiscal Commission (FFC) have highlighted that the government's supply-side approach has set itself up for the impossible task of catching a moving target. No matter how many houses the state provides, the list for qualifying households earning less than R3,500 (USD 438) per month continues to grow. Even with its impressive record of delivery, 2 million South Africans remain homeless. Yet despite the government's redistributive efforts,

The program has been dogged by corruption.

economists calculate that since the democratic government has come into power, the gini coefficient, which measures inequality, has increased and is among the highest in the world (Leibrandt, 2012). The 2011 census puts the country's unemployment rate at 29.8%. When comparing the black and white populations, the inequality is stark. Fully, 35.6% of the black population is unemployed in South Africa, while only 5.9% of whites are unemployed. With the current population growth rates, migration to cities and the economic downturn, the number of households needing state assistance is likely to increase.

Spatial Marginalization

But there are other problems facing the housing program. By the late 1990s, both scholars and practitioners began to point out that the emphasis on the delivery of bricks and mortar overshadowed the importance of building sustainable communities (Huchzermeyer, 2001; Rust, 2003).

Analysts contended that the poor location of the subsidized homes—often at the margins of cities where land is affordable—the lack of social infrastructure such as schools, police stations and clinics; and the “ghettoization” of the poor was inadvertently creating unviable, dysfunctional settlements. A recent study of subsidized housing across the country showed that few have viable economies (Shisaka, 2011). Those built around the city are located in peri-urban areas, about 18 to 25 miles out of town, where transport is non-existent or too expensive for residents to travel to find work. Yet it is not just that these settlements are spatially marginalized. Even where they are well-located—such as Thembalethu, which is close to the tourist town of George in the Western Cape, beaches, nature reserves and a thriving service economy—they remain economically isolated. Indeed, Thembalethu remains poor despite its location close to the former white town of George (Shisaka, 2011). Unwittingly, the democratic government's housing program has perpetuated the marginalization of poor black households—failing to unite apartheid's racial divisions. The Department of Human Settlements has made attempts to review its policies and build mixed-income households, but the success of these initiatives has been dampened by middle-class not-in-my-back-yard fears of race and class integration. The outcome has been that poor urban households continue to live far from work and business opportunities, while the well-to-do live in high-walled enclosures in areas with world-class infrastructure, schools and economic opportunities.

A year before Mandela's release and the end of apartheid, Phindile moved to Johannesburg. “I came because you know at home when you are young they would test your virginity every month. One day my boyfriend took my virginity and I knew if the big mama's, the virginity testers, found out everybody would be talking badly about me.” Phindile's eyes fixed on her ironing as she continued, “knowing what would happen to me, I tried

**Visit PRRAC's
website at
www.prrac.org**

to hide in the trees so I would not be tested. But the old women found me and forced me to walk through the village to test. That is when they found out I was not a virgin, and everybody knew. It was a big shame for me, and I had to leave the rural areas and go to Johannesburg.” Using her mother’s connections in Johannesburg, she slowly got piece jobs as a domestic worker—a day here and there, where she cleaned people’s houses and did their laundry for a daily rate. A few years later, she married and had two children, a boy and a girl, and was just settling into building her family when her husband was killed in a car accident. With the loss of an income in the household, Phindile’s life was plunged into disarray and teetered on the brink of poverty. “I was desperate. I had two small children, my husband had died and I was living in a one-room *mkhukhu* (shack) and paying too much for rent.” Phindile had heard about the government’s housing program, and she and her late husband had put their names on the municipal council list in Thembisa (a township east of Johannesburg) to receive a house. “I was on the list for more than ten years. Many people would come and ask us to pay a lot of money, promising us a house. I would pay because I was desperate. I don’t know how many people I paid and how many lists I never went on. There was a lot of corruption, our names were never called for a house.”

Phindile’s experience is not unique. One of the FFC’s findings has been that the housing program has been dogged by corruption, with local officials extorting money from vulnerable households with promises of an RDP house which they never receive. And it is not just the very poor who are falling for these scams. The extent of corruption was brought home two months ago in a recent exposé into the fraudulent sale of land in Lenasia, a township south of Johannesburg. It is alleged that some government officials were illegally selling and issuing fraudulent titles to unsuspecting working-class families. The private sector has not been blameless. A household

Thanks for your contributions to PRRAC!

Marc Bendick, Jr.
Joel Blau
Bradford Brown
Harry Carey
Amy Eppler-Epstein
Fair Housing Center of
Metropolitan Detroit
Joseph Feinberg
Ellen Feingold
Paul Fischer
Henry Freedman
Daniel Goldstein
Jeremiah Goldstein
Alice Henkin
Henry Kahn &
Mickey Gillmor
Ken Kimerling
Paul Kivel

Catie Marshall
Nancy McArdle
Michael Meltsner
Don Nakanishi
Fred Pincus
Yale & Barbara Rabin
Allan Rodgers
Tony Sarmiento
Emmett Schaefer
Tony Schuman
Darian Shaw
John & Laura Lee Simon
Sidney & Ethel Socolar
Girardeau Spann
Greg Squires
Gwen Urey
Jay Wilkinson
Jody Yetzer

You can also donate online at www.prrac.org

survey conducted by Statistics South Africa showed that one-third of RDP beneficiaries were unhappy with the quality of the houses (Masombuka, 2010). The corruption, delays and substandard housing has sparked nationwide service delivery protests, with people marching against the continued exclusion of the poor in South Africa’s teen-age democracy.

With the government so actively involved in the housing sector, experts have argued that it has distorted the housing market, creating a gap where a large number of households who earn too much to qualify for the subsidy, but too little to get a bank loan, remain without adequate and affordable choices for shelter. But the government also admits that it can no longer afford to sustain such an ambitious program—coffers are just too limited to provide housing for all in the same way as it envisaged 18 years ago. In April 2011, the Housing Minister Tokyo Sexwale told Parliament that “the current increasing dependency and pressure on the state are not sustainable for the country going forward. Somewhere, sometime in the future,”

he argued, “there will come a need to have a cutoff point on the government’s subsidized housing, where people can begin to do things for themselves.”

Beyond Bricks and Mortar

After waiting ten years, Phindile’s desperation for a home where she could raise her children reached its peak. “One day, I picked myself up and went to the council in Thembisa and pleaded with them. ‘You eat my money,’ I told them, ‘you take other people and give them a house, and because I don’t have a husband you don’t take me.’ I think that man felt sorry for me, and one day they called my name to go to the RDP house.”

There is a bright side to South Africa’s housing program—one that is not measureable in Rands and cents or in the number of bricks delivered. “For the first time in my life, I felt like a somebody, I had a home,” Phindile said to me. “When I got my key I could not believe it. I jumped up and

(Please turn to page 6)

(SOUTH AFRICA: Cont. from page 5)

down, I screamed until my children were worried about me. I barely had any furniture to fill the house, but I did not care. The first thing I bought myself was a red dress, I remember buying it for R40 (USD5) in Johannesburg, I wanted to be presentable when I went to church to thank God.” Sarah Charlton, based at the School of Architecture and Planning at the University of the Witwatersrand in Johannesburg, argues that for many beneficiaries, the house is more than the bricks and mortar that provide shelter. “On it, beneficiaries pin immeasurable outcomes, such as dignity, pride and hope for the future. Although dignity has no immediate material benefits, it is integral in developing people’s capabilities, aspirations and beliefs in themselves which may translate into tangible material benefit. This is not to say that the challenges of race, inequality and shelter are unimportant, but that these need to be seen within the context of the less tangible gains around identity, belonging and a sense of self.”

The Department of Human Settlements is also currently revisiting its housing policy, trying to find ways it can support poor South African households while building sustainable human settlements with limited public resources. Eighteen years into democracy, the Department is asking difficult questions around whether an entitlement program that was aimed at redressing the ills of the past still applies for new generations of black South Africans. Indeed, it has to question whether it can afford to provide housing for future generations in the same way as it has been doing. Mark Napier, director of Urban LandMark—a non-profit organization in Pretoria, that aims to make urban land markets work for the poor—put it this way: “If you’ve got new household formation, coming out of households already living in government housing and people who were born after independence, do the same issues around reparations apply as those of your parents who lived under apartheid? But

at the top of officials’ minds,” Napier continued, “is their constitutional mandate to provide adequate shelter to all.” It is precisely how policymakers resolve this dilemma that will shape the nature of low-cost housing interventions in South Africa. Amidst the entitlement debate remains a concern for developing mixed-race and -income settlements. According to Sarah Charlton, “what we seem to be creating is fruit bowl developments, rather than fruit salads or smoothies.” But the need to build non-racial, mixed-income settlements seems to have taken a back seat in the Department’s new housing policy review, where the ma-

The housing program gave full citizenship for the majority.

ajor concern seems to be the fiscal and economic sustainability of the program. Of course, achieving fiscal sustainability and racial and class integration

are not mutually exclusive. But it remains to be seen whether the next generation of South Africa’s housing policy for low-income households creates a more diverse and inclusionary society.

Phindile still is a domestic worker and leaves her home at 4am every weekday. But over the seven years she has had her house, she has saved to build five extra rooms for rent to meet an ever-growing demand for housing from migrants moving to the city. “Something happened to me when I got that house,” she said to me one afternoon in her living room. “I changed, I had the courage to become what I wanted.” The extra rental income helps her buy clothes for her children and pay for school fees.

“I have also built a room for my mother so that she can retire and have a place to stay where her grandchildren can play without worrying about the madam.” She smiled as she poured me a second cup of tea. “No words can explain how that feels.” □

References

- African National Congress (1994) *The Reconstruction and Development Programme: A Policy Framework*. Johannesburg: African National Congress
- Financial and Fiscal Commission (FFC) (2012) *Building an inclusionary housing market: Shifting the paradigm for housing delivery in South Africa*. Presentation to the FinMark Forum on 25 April, 2012
- Huchzermeyer, Marie (2001) Housing for the poor? Negotiated housing policy in South Africa *Habitat International*, 25:303-331
- Leibrandt, Murray (2012) *Inequality in South Africa and Brazil, can we trust the numbers?* Johannesburg: Center for Development Enterprise
- Masombuka, Siphon (2010) “A third of RDP houses are ‘sub-standard’” *Sowetan* 8 September, 2010
- Moolla, Raeesa, Kotze, Nico, Block, Liz. (2011) *Housing satisfaction and quality of life in RDP houses in Braamfischerville, Soweto: A South African case study*
- Rust, Kecia (2003) *No short-cuts: South Africa’s progress in implementing its housing policy, 1994-2002*. Johannesburg: Institute for Housing of Southern Africa
- Shisaka (2011) *Report on a qualitative study on three communities*. Johannesburg: Shisaka Development Management Services
- Statistics South Africa (2012) *Quarterly labor force survey, July-September, 2012*. Statistics South Africa: Pretoria

From the Class Action Fairness Hearing in *Thompson et al. v. HUD*: Declarations of Congressman Elijah Cummings, Ms. Michelle Green, Ms. Nicole Smith and Ms. Carmen Thompson

We were honored to be seated with many clients, reporters and other onlookers at the final federal court hearing in late November to review and approve the class action settlement in the long-running Thompson v. HUD public housing desegregation case, which has led to the development of what is probably the most effective housing mobility program currently operating in the country. The program—begun under a partial settlement several years ago—has already helped over 1,800 low-income families move from high-poverty neighborhoods to low-poverty communities, and the enhanced opportunities those moves represent (especially educational quality, neighborhood safety and job access). The new settlement increases the size of the program by an additional 2,600 vouchers—along with other regional fair housing provisions. (For more information on the Thompson settlement, go to www.prrac.org/projects/baltimore.php).

The hearing was presided over by Judge Marvin Garbis and by Judge Deborah K. Chasanow, Chief Judge for the U.S. District Court for the District of Maryland (who noted the historic importance of the occasion). Eloquent statements were made in support of the settlement by lawyers for HUD, for the City, for the Housing Authority (and by Paul Graziano, director of the Housing Authority), and, for the plaintiff class, by cooperating attorney Peter Buscemi from Morgan Lewis and Josh Civin from the NAACP Legal Defense Fund (supported by cooperating attorneys Andy Freeman from Brown, Goldstein and Levy in Baltimore and Bob Stroup from Levy Ratner in New York City). Several lawyers on both sides of the case made a special point of praising the perseverance of ACLU attorney Barbara Samuels, and her intense dedication to her clients over the 17-year course of the litigation.

But we were particularly moved by the written Declaration submitted by Congressman Elijah Cummings in support of the settlement, and by the personal statements of Michelle Green and Nicole Smith, who addressed the court, as well as the statement submitted by Carmen Thompson, one of the original named plaintiffs in the case. These statements are printed in their entirety below.

— Philip Tegeler, PRRAC

Declaration of Congressman Elijah E. Cummings in Support of Settlement Agreement

(Baltimore, Maryland, November 15, 2012)

1. Although I make this Declaration in my personal rather than official capacity, I note for the record in these proceedings that I currently represent the citizens of Maryland's Seventh Congressional District in the United States House of Representatives. I have had the honor and pleasure to serve in that capacity since 1996. Among other Committee assignments, I presently serve as the ranking minority member of the House Committee on Oversight and Government Reform, and I also am a senior member of the House Transportation Committee and a member of the Joint Economic Committee of the Senate and the House.

2. I wish to commend the United States Department of Housing & Urban Development, the City of Baltimore, the Housing Authority of the City of Baltimore and the Plaintiff Class in this case for reaching a Settlement Agreement that can serve as a model for making real the noble goals of the Fair Housing Act of 1968, passed in the aftermath of Dr. Martin Luther King, Jr.'s assassination as a tribute to the work and legacy of that great civil rights hero.

3. Recognizing that evaluation and approval of the Settlement Agreement is, properly, within the discretion and authority of this Honorable Court, I recognize the value of the Settlement Agreement and, in so expressing my opinion, following the example of another civil rights hero—my predecessor, the late Honorable Parren Mitchell, who submitted testimony in support of an earlier Partial Consent Decree in this case. Like Congressman Mitchell, I recognize that the Balti-

more Housing Mobility Program, which this Settlement Agreement will support and continue, should be supported because it permits many poor African Americans to have the same choices about where to raise their children as others in the Baltimore Region—a truly empowering consequence of this litigation.

4. I applauded this Court's 2005 ruling recognizing that a regional approach to fair housing is essential to overcoming the Baltimore Region's legacy of segregation and the government policies that contributed to it. This Settlement Agreement is a significant step forward toward remedying the Fair Housing Act violations that the Court has found.

5. Critically, the Settlement Agreement will provide needed resources to continue the successful and nationally recognized Baltimore Housing Mobility Program, launched under the prior Partial Consent Decree in this case.

(Please turn to page 8)

(THOMPSON: Continued from page 7)

That Program already has assisted more than 1,800 families who have voluntarily chosen to live in better neighborhoods that offer improved educational and economic opportunities. The Baltimore Housing Mobility Program provides these families the assistance they need to live closer to their jobs and to find neighborhoods with better schools. I have been advised that each family that chooses to participate receives a Housing Choice Voucher, high-quality housing and credit counseling, and support with the transition to their new neighborhood. In those new neighborhoods, participants overwhelmingly report that they feel safer, healthier and more confident about the future facing their children. The continued Program under the Settlement Agreement will provide vouchers and high-quality counseling to assist up to 2,600 additional families to move to Communities of Opportunity.

6. The Baltimore Housing Mobility Program is a sound investment. Its benefits are not limited to families who participate. Rather, the program strengthens the entire Baltimore Region. Indeed, many families eligible to participate in the Baltimore Housing Mobility Program are already working in new jobs as nursing assistants, school bus drivers, and in other jobs critical to our Region's economy.

7. The inspiring stories of participants in the Baltimore Housing Mobility Program echo my own family's journey decades ago when we were able to move from an impoverished neighborhood, near where the Ravens' stadium has since been built, to a community of far greater opportunity in Edmondson Village in West Baltimore. That move opened my eyes to a better world. We were the first Black family on our street, and I had the opportunity to attend integrated and high-quality public schools where I was inspired to excel. It is not an exaggeration to say that the housing moves that my family made were critical to the tremendous opportunities I have had in my life, culminating in my service to the people of Maryland in the prac-

tice of law, the Maryland Legislature and the United States House of Representatives. It is my hope and belief that the Settlement Agreement in this case will provide similar opportunities to thousands of families.

I, ELIJAH E. CUMMINGS, hereby declare that the foregoing is my true act and deed, and I affirm, under penalty of perjury, that the matters and facts set forth herein are true and correct to the best of my knowledge, information and belief.

Statement of Michelle Green (*Thompson v. HUD*)

My name is Michelle Green and I am a resident of Baltimore County. I support the MBQ program and the *Thompson* settlement because it may have saved my sons' lives. I have four boys. I understand that for young Black males the statistics do not look good. My oldest son and I lived in public housing in Lexington Terrace. Many of my family members lived in the same neighborhood. My sister and I often worried about our sons. We understood how difficult it is for decent boys who are trying to do the right thing to avoid violence in the neighborhood.

Unfortunately, our fears were realized in the worst way when my nephew was killed while walking home from our local convenience store. The robbers thought that he had money. He never got to finish high school; he never had a chance. I wanted to give my son a chance to live and a chance to graduate from high school, which was very rare in my neighborhood. The *Thompson* voucher gave him, and my sons that came later, that chance. I knew that the MBQ program would help me to move to a neighborhood that was safe. I also heard that you would not have to wait for 4, 5, or 6 years to get a voucher, like Section 8 or public housing. I knew that 6 years could mean the difference between life and death for a young man in Baltimore City.

As soon as I got my voucher, I moved to a wonderful neighborhood in Columbia. My boys received a warm welcome and felt really safe there. Thankfully, my two oldest sons attended middle school and high school in Columbia [MD]. They were both very active in school sports, and the coaches, the teachers and the students loved them. The day that my oldest son graduated from high school was the proudest moment of my life. He is doing well and is getting licensed to be a forklift operator. My second son also graduated from high school and is planning to apply to colleges. They have made it past the most difficult age and are productive members of society. And they are safe.

Recently, I moved from Columbia to Baltimore County to be closer to the city to care for my grandmother. But I would never move back to Lexington Terrace. My two youngest sons are doing well in our new neighborhood in Catonsville. They get good grades, participate in sports, and are both determined to go to college. The neighbors love them, and they even earn extra money by mowing the neighbors' lawns. I don't worry about my kids' safety anymore. I am less stressed and am able to go to work and even went back to school. I support the *Thompson* settlement because I believe that it can save lives.

Statement of Nicole Smith (*Thompson v. HUD*)

My name is Nicole Smith and I support the *Thompson v. HUD* settlement because of the warm welcome that I received in my new neighborhood in Howard County. I grew up in public housing in Baltimore City and have lived in at least three different public housing projects (Cherry Hill, Murphy Homes and Westport) since I was a child. When I got older, my mom worked hard and was able to purchase a house in a struggling neighborhood in Baltimore. Despite the fact that she and I were working full-time,

we were unable to make ends meet and the house was foreclosed on.

My family and I signed up for public housing and Section 8 in 2004. My name finally came to the top of the public housing waiting list in 2007 at the same time that I learned about the MBQ program through word of mouth. I knew what to expect in public housing: drugs, violence, crime and poor housing. The *Thompson* voucher, on the other hand, would give me an opportunity to move to neighborhoods that I would not otherwise have access to. I chose the MBQ program because it provided a way out for my 11-year-old son and me.

They helped me to clean up my credit, taught me about budgeting, and took me on a housing tour where I saw nice houses, lots of green spaces and young kids playing outside. My son and I found a home in Columbia, and I feel like a part of the community here. After moving through the program, I was able to get a job working for Howard County schools in their Before and After Care program and was just promoted to Assistant Director. I also enrolled in Howard County Community College, and I am studying early childhood education. I hope to be able to go on to receive a bachelor's degree in order become an elementary school teacher.

Not only have I found opportunity and happiness here, but so has my son. In the city, I did not want my son to play outside, he didn't have many friends, and he struggled in school. Here, he is doing very well in school and our neighbors are welcoming—often picking him up after school while I'm working and arranging play dates and carpools. On his birthday, for the first time in his life, I was able to give him a birthday party at a local park. So many kids and parents came from the neighborhood and from his school to show their support for him. I support the settlement because other kids deserve to have the love and support that my son and I have.

Statement of Carmen Thompson (*Thompson v. HUD*)

My name is Carmen Thompson. I support the *Thompson v. HUD* settlement and I am proud to have my name represent the African-American residents of public housing in Baltimore City. As a former resident of Lexington Terrace, I know the constant stress and hardship that families experienced while living there. I decided to do something when my then 7-year-old son walked up to the gate outside

of our high-rise apartment and said, "Mom, I feel like I'm in jail." I knew that something needed to change so I got involved in different organizations that were trying to make a difference for the residents of public housing. We investigated what it was like for people who lived in impacted areas. I personally went door-to-door talking to family after family that had lost a sense of hope because their living conditions were so awful. I could relate to it because my son and I were living in the same conditions. *Thompson* has already helped to solve some of these problems for many former residents and it is important that we continue.

Thankfully, I was able to move from Lexington Terrace right before they demolished it. I've been living in a nice apartment for many years now and it really feels like home. It is very peaceful and quiet. I am thankful for this and am glad that I was able to help families attain a better living situation, have access to better schools, and ultimately live a better life. After 15 years, I am relieved that we were finally able to reach a settlement that will allow many other families to move to opportunity areas. And thank you to the Court for seeing this process through to the end. □

(*ORGANIZE: Cont. from page 2*)

cause lawmakers recognized that firms should not be allowed to use their disproportionate power to intimidate workers. But the penalties and processes under the NLRA are far weaker. If employers are found to have violated the law, they must reinstate any terminated employees and provide them with back pay, normally after a lengthy and arduous process of enforcement. And under the NLRA, there is extremely limited opportunity for discovery and no jury trial. Faced with the prospect of having to negotiate substantial wage and benefit increases with a union, businesses have a strong financial incentive to fire organizing employees and risk paying the

penalties as a cost of doing business. Labor lawyer Thomas Geoghegan writes in his 1991 book, *Which Side Are You On?*: "An employer who didn't break the law would have to be what economists call an 'irrational firm.'"

Amending the Civil Rights Act for Labor Organizing

The central thesis of our new book, *Why Labor Organizing Should Be a Civil Right*, is that the Civil Rights Act should be amended to add protection for employees seeking to organize a union. Just as it is illegal to fire someone for race or gender or national ori-

gin or religion, it would be illegal under the Civil Rights Act to fire someone for trying to organize or join a union.

Title VII of the 1964 Civil Rights Act (which now prohibits discrimination based on race, gender, religion and other factors from wrongful termination and other forms of employment discrimination) would be amended to prohibit discrimination against workers who are attempting to organize a labor union, making them eligible not only for back pay but for compensatory and punitive damages as well. (Alternatively, a stand-alone bill could be offered that would have the effect of adding Title VII-type protections for labor organizing without literally

(Please turn to page 10)

amending the Civil Rights Act.)

We argue that for labor suits under the Civil Rights Act, procedures similar to those of the Equal Employment Opportunity Commission (EEOC) should be followed, but the National Labor Relations Board should continue to administer disputes. This approach would combine a process that has proved effective with an agency that is finely attuned to the nuances of labor law through its more than 75 years of experience handling labor disputes.

Significantly, Title VII remedies for unlawful discharge of unionizing workers would likely be an even more effective deterrent than they have been for racial and gender discrimination, because unlawfully discharged workers trying to form a union would have an important financial reservoir not available to victims of race and gender bias. American labor unions have a total annual income that runs in the billions of dollars. By contrast, civil rights and women's organizations have much smaller financial bases on which to draw, so most women and people of color must rely on contingency lawyers.

Conceivably, writing labor organizing protections into the Civil Rights Act could also spawn a cultural shift in employer behavior. Employers who are found guilty of racial or gender discrimination are today seen to have done something shameful, a seismic shift from the days when business routinely espoused racist and chauvinistic attitudes. Today, there is no lucrative industry to aid employers in thwarting civil rights laws, as there is to keep unions out. Instead, the opposite is found, where employers spend billions of dollars a year on human resource departments in part to ensure that all employees understand the requirements of Title VII.

By contrast, managers are unapologetic about wanting to silence the voice of workers. Wal-Mart CEO Lee Scott, for example, famously said—as quoted by Thomas Frank in the Nov. 19, 2008 *Wall Street Journal*: “We like driving the car and we’re not going to

give the steering wheel to anybody but us.” Shifting labor organizing protections to civil rights legislation could, over time, bring about a cultural shift in which the country sees corporations that fire employees for trying to form a union, join the middle class, and have a say in the workplace, as morally suspect—as they already are seen in Europe.

Advantages to the Civil Rights Approach

Conceptually, an amendment to the Civil Rights Act would not break new ground, as it is already illegal under the NLRA to fire someone for organizing. But amending the Civil Rights Act to protect union organizing would

Adding the right to organize to the Civil Rights Act enhances it.

offer two fundamental advantages. First, it would put teeth into the existing NLRA prohibition by applying the full force of Civil Rights penalties and procedures to businesses that break the law. Today, labor leaders note, “the right to form a union is the only legally guaranteed right that Americans are afraid to exercise” (Steven Greenhouse in the June 25, 1998 *New York Times*). Amending the Civil Rights Act would provide a far more effective deterrent to lawbreaking than the current statute recognizing the theoretical right to organize as authentic.

The second advantage to this approach lies in its potential to break a long-standing political logjam surrounding labor law reform. Amending the Civil Rights Act rather than the NLRA would, for the broader American public, help elevate the debate from the obscure confines of labor law to the higher arena of civil rights, which Americans readily understand. Whereas labor law is seen by many as a body of technical rules governing relations between two sets of “special interests”—business and labor—Americans understand the prin-

ciple of nondiscrimination as an issue of fundamental fairness. Employment rights have long been considered civil rights, and there is no reason to exclude labor rights from this formulation. Framing labor organizing as a civil right could provide a new paradigm that might fundamentally alter the political landscape, breaking the deadlock over reform.

Since passage of the anti-labor Labor-Management Relations Act in the 1940s (known as the Taft-Hartley Act), organized labor has had four major chances to reform labor laws in order to level the playing field for workers. Each time that Democrats have controlled the presidency and both houses in Congress they have sought to alter labor law, and each time they have failed. Under Lyndon Johnson, Democrats fell short in a Senate effort to modify Taft-Hartley. Under Jimmy Carter, labor law reform that would have enhanced penalties for unfair labor practices failed by two votes in a Democratically-controlled Senate. During Bill Clinton's first term, legislation to outlaw the permanent replacement of strikers stalled. And under Barack Obama, the Employee Free Choice Act (EFCA) to stiffen penalties for employer abuses and allow a majority of employees to authorize union representation through “card check” procedures was not even put to a formal vote in the Senate.

The fundamental problem with these efforts was that labor is caught in a political box. In order to achieve reform, labor needs political power, which requires expanding union membership; but in order to grow, unions need labor law reform. As Harvard Law Professor Paul C. Weiler noted more than a decade ago, in the Sept. 4, 1999 *Wall Street Journal*, “No part of American law in the last 50 years has been less amenable to reform than labor law.” The Civil Rights strategy would offer a fresh approach. Republican-controlled bodies of Congress are unlikely to support efforts to strengthen labor under any circumstances, but progressives need to begin developing a new strategy now so that when they do regain full political

power, they do not miss a fifth chance to revitalize labor.

Recent developments suggest that labor may have the public on its side. Following the 2010 elections, Republican governors in Wisconsin, Ohio, Indiana and elsewhere took what had primarily been an assault on private sector collective bargaining rights to the public sector, which had previously faced a more favorable climate. These attacks on public sector collective bargaining prominently raised fundamental issues about the role of labor in American society and energized many progressives who had taken the right of employees to band together collectively for granted. Indeed, recent polling suggests that while the opinions of Americans are mixed on unions, they strongly believe, by margins of two to one, and even three to one, in the basic right of collective bargaining. In November 2011, the people of Ohio overwhelmingly voted to repeal an anti-union law that restricted public employee collective bargaining rights.

Moreover, the attack on public sector unions for receiving more generous pension and health benefits than private sector workers raises the possibility of a different discussion: Rather than pursuing a race to the bottom, where the diminishing benefits of nonunionized private employees are used as a club against unionized public employees, why not take steps to strengthen private sector unionization, so that private sector employees can enjoy the same level of benefits as those enjoyed by those employed in the public sector?

The Civil Rights Act as the Appropriate Vehicle

When we outlined our proposal in an op-ed in the February 29, 2012 *New York Times*, the AFL-CIO's president Rich Trumka endorsed the idea and conservative pundit Ann Coulter denounced it on Fox News on March 12, 2012. In a classic divide-and-conquer strategy, Coulter argued that "Civil rights is for blacks.... Now they [Democrats] want to call everything a

civil right, whether it's women or immigrants, and now, labor unions?!"

We believe that the Civil Rights Act is the right vehicle for protecting those trying to organize a union, for three distinct reasons: (1) labor organizing is a basic human right, which is bound up with an important democratic right of association; (2) strengthening labor advances the values and interests of the Civil Rights Movement by promoting dignity and equality, particularly for people of color; (3) stronger unions can enhance existing protections against discrimination by race, gender, national origin and religion by reducing employer discretion and enhancing processes for redress.

Strengthening labor can advance the larger objectives of the Civil Rights Act itself.

Labor organizing is connected to the fundamental constitutional right of association that is recognized as part of the First Amendment. In a democracy, individuals have a right to join together with others to promote their interests and values. Just as the original Civil Rights Act extended the Fourteenth Amendment's prohibition against government discrimination to apply to private-sector employers, adding anti-discrimination protection for labor organizing extends a First Amendment right against government restraint of free association to apply to private-sector employers. Of course, Congress already extended association rights to the private sector when it passed the 1935 NLRA recognizing the "right to self-organization." Including labor protections in the Civil Rights Act, therefore, does not break new ground conceptually, but it does provide workers with a much better way to hold accountable employers who violate their rights.

Some may believe that civil rights laws should only protect individuals from discrimination based on immutable factors such as race, national origin and gender. However, the Civil

Rights Act was never limited to these immutable characteristics. The 1964 act itself included protection against discrimination based on religion, which is a mutable characteristic. A Christian who converts to Islam, for example, is protected against an employer's religious discrimination; the employer cannot defend discrimination on the basis that the employee chose to convert. A survey of civil rights legislation shows that such laws have incrementally been extended to prohibit discrimination based on behavioral factors such as pregnancy, prior criminal conviction, whistle blowing, indebtedness or bankruptcy.

Significantly, anti-discrimination laws apply even when they could hurt the profitability of a company. In the early days of civil rights law, for example, law firms were not allowed to justify discrimination against black attorneys based on evidence that white clients would not want to work with them. The principle already established under the NLRA and UN Declaration of Human Rights suggests that, even if unions cut into corporate profits, employers cannot abuse their economic power by firing employees for trying to organize.

Moreover, strengthening labor can advance the larger objectives of the Civil Rights Act itself: promoting greater dignity and equality, particularly for people of color. The labor and civil rights movements, while not always allied, are fundamentally bound by similar values, interests, tactics and enemies. Labor recognizes that individuals should be treated with decency, a core belief of the Civil Rights Movement; their emphasis on a shared humanity explains why labor leaders and civil rights advocates refer to one another as brothers and sisters.

Not only do the movements share similar values, King recognized that they have common interests. As a predominantly working people, blacks had much to gain from a stronger union movement. Julian Bond, as chairman of the National Association for the Advancement of Colored People, noted in a 2005 address that minorities are

(Please turn to page 12)

(ORGANIZE: Cont. from page 11)

disproportionately represented in organized labor; that African Americans who are members of unions earn 35% more than nonunionized black people; and that black Americans are more likely than whites to want to join unions. In this way, amending the Civil Rights Act to protect workers trying to organize a union would not diminish the Act's commitment to racial equality; it would extend and affirm that commitment in new ways.

The civil rights and labor movements have also used similar tactics, like civil disobedience, sit-ins and picket lines. And both movements faced a common source of resistance. It is no accident that the eleven states that today are most resistant to unions and have the lowest union density rates are all states that were previously governed by Jim Crow. Historical evidence is clear that the anti-union "right to work" movement was originally aimed at weakening labor's ability to fight against racial segregation.

Finally, stronger unions, by protecting employees against arbitrary dismissals in general, provide an additional shield against the type of racial and gender discrimination that is forbidden by the Civil Rights Act. Most employees currently work "at-will": They can be fired for "good cause, bad cause, or no cause" (the standard definition of "at-will employment"). Unions work to remove arbitrary terminations and the at-will employment system from the workplace, and limit the type of employer discretion that allows discrimination to take place.

**Don't forget
to send us items
for our
Resources
Section.**

Unions also put procedures in place to address grievances, providing an employee with the possibility of faster relief should she suffer from discrimination. In this way, adding the right to organize to the Civil Rights Act does not distract from the original focus of the Act, but rather enhances it through internal non-governmental procedures that can remedy racial discrimination in the workplace in a faster and more efficient manner than litigation.

A Politically Viable Idea?

Labor law reform has been a very tough sell in the United States, but there are considerable political advantages to framing the right to organize as a matter of moral values rather than a battle of raw "interests" (labor versus management); plus the advantages of having a fight over "anti-discrimi-

In Memphis, Martin Luther King understood that the fate of the labor movement and the civil rights community were inextricably bound.

nation law" rather than "labor law."

The rhetoric of "rights" is very powerful in American political discourse. Indeed, when asked to identify government's most important role, 59% say it is to protect individual rights and liberty. "Civil rights" are already a part of the conversation about labor, but, unfortunately, it has been anti-labor forces who employ the rhetoric and symbols of civil rights against workers. The Employee Free Choice Act to improve labor laws failed in part on the argument that workers had a right to a secret ballot. Likewise, for years, business has appropriated the slogan "right to work" to signify state legislation that allows employees to benefit from collective bargaining agreements without paying

their fair share of dues—a tactic that prevailed recently even in the labor stronghold of Michigan. And the "Employee Rights Act," which is the Republican version of labor law reform, uses the language of civil rights against workers.

Belatedly, union leaders are beginning to take back the rhetoric of rights, and the AFL-CIO has sponsored rallies to protest illegal firings, likening the campaign, as reported by Steven Greenhouse in his *New York Times* article cited above, to "a new civil rights movement." Connecting labor to the Civil Rights Movement is especially vital to making the issue easier to understand for young people, who may not personally know any friends or family members who are part of organized labor.

Labor law has become increasingly complex and technical, and is understood by few beyond its practitioners. As a civil right, labor law becomes almost intuitively understandable, and its importance becomes easy to communicate to those outside the field. Whereas labor law reform does not excite people, civil rights do. Thomas Geoghegan writes in *Which Side Are You On?*: "If we only thought of the [NLRA] as a civil rights law, instead of a labor law, then maybe liberals would wake up and do something."

Americans long to be part of something larger than themselves, and just as promoters of equal educational opportunity and a cleaner environment have characterized their causes as part of this generation's Civil Rights Movement, so labor organizing—which shares with the Civil Rights Movement the basic quest for human dignity—has a very strong claim to that mantle. In Memphis, Martin Luther King understood that the fate of the labor movement and the civil rights community were inextricably bound. Now is the time to write the protection of organized labor into the Civil Rights Act itself. □

Commentaries on the Kahlenberg-Marvit Article

Theodore M. Shaw

Professor of Professional Practice, Columbia Law School, tshaw@law.columbia.edu

Richard Kahlenberg's and Moshe Marvit's précis of their book left me with deeply conflicted feelings and reactions. It is provocative and thought-worthy in a manner that requires more time and greater reflection. Consequentially, my initial reactions may not survive further reflection; still, they are strong enough that they demand articulation, if only because I cannot get to where Kahlenberg and Marvit (K&M) are without jumping significant hurdles and reordering long-held principles and beliefs. My own views of class and race invite a "gut rush" acceptance of K&M's thesis; yet I am left with a pro-

found discomfort that defies my ability to organize adequately into thoughts.

The invocation of Dr. Martin Luther King's last campaign, grounded in an understanding of historical and contemporary relationship between class and race, and of the need to adopt the politics of a movement for racial and economic justice, exerts a powerfully seductive force on progressives. Dr. King did not want to go to Memphis, but the strike by black sanitation workers appealed to his core beliefs in a way that coincided with his development as a leader that took him beyond the

struggle against racial segregation and discrimination. By 1968, King could no longer stay silent about the Vietnam War and American militarism. Nor could he pursue his dream of a just society without addressing economic inequality, not only for black Americans whose struggle against racial discrimination had left them economically disadvantaged, but for *all* Americans. King was charting new territory, not because no American had challenged economic injustice before him, or even because no African-American leader had done so. King's position as the pre-eminent and eloquent Civil Rights Movement spokesperson, as Nobel Peace Prize laureate, and as an international human rights advocate, uniquely positioned him to challenge the conscience of America, even if it was by no means certain that if he had lived his campaign against poverty would have succeeded. Indeed, it is the unfinished nature of his life's work that invites 21st Century advocates and activists from varying ideological backgrounds to claim him. Right-wing conservatives embrace their version of Dr. King in support of a color-blind paradigm that would render illegal all conscious efforts to voluntarily address systemic vestiges of slavery and Jim Crow segregation. Progressives invoke King in their quest to awaken the Nation to the dangers and the injustice of the yawning chasm between "the 99%" and working- and middle-class Americans.

K&M correctly point to the complex role of labor unions during the era of the Civil Rights Movement. Labor unions were, in some instances, some of the biggest obstacles to equal employment opportunity. On the national level, however, labor became some of the staunchest allies of the Civil Rights Movement. Today, pub-

(Please turn to page 14)

Ross Eisenbrey

Vice President, Economic Policy Institute, reisenbrey@epi.org

I disagree with a fundamental premise of the article. The premise is that the Civil Rights Act has so improved the status of black Americans that we should use the same legal model to improve the status of workers. But as the authors note, Dr. King did not accept that legal rights, even backed by strong sanctions, are enough. We have to judge the success of the Civil Rights Act with a yardstick that includes economic progress: "People must not only have the right to sit at a lunch counter, but also the right to afford a hamburger."

However great the improvements for African Americans have been in legal rights and social relations, the economic gains have been less impressive:

- In January 1966, the ratio of black median family income to white median family income was 60%. Forty-five years later, in January 2011, the ratio was virtually unchanged: 63%.
- The ratio of median household

wealth among blacks and whites has worsened over the past three decades, falling from a tiny 6.6% in 1983 to an even tinier 5.0% in 2010. Even in absolute terms, median black household wealth is less today than in 1983.

- The homeownership rate for black families was 45% in 2011, essentially unchanged since 1975, the first year for which we have racial data.
- And by some measures, residential segregation is no less today than it was in 1950.

I support much stronger sanctions for employer violations of employee rights to organize, to bargain collectively, and to strike. But the economic results obtained from the Civil Rights Act make me skeptical that the authors have found a silver bullet. I believe much more powerful tools will be necessary to restore these rights and make them as effective as they were in the 1940s and 1950s. □

(SHAW: Cont. from page 13)

lic employee unions represent a disproportionate number of black and brown people in the labor force, and unions in general have largely aligned their interests with those of people of color. This alignment is clearly visible in partisan politics at the state and local level, with the Republican Party seen as the party of white people and the wealthy, and the Democrats viewed as the party of “minorities” and labor. And of course, regardless of how much of 21st Century economic polarization is attributable to the weakened position of American labor unions, K&M correctly point to the assault on labor and the right to organize as an important battleground between conservatives and progressives. The right of work-

ers to unionize is as old as the labor movement in America; late 19th and early 20th Century America far surpasses the bitter political debates that characterize our time. Nonetheless, contemporary assaults on the right to organize pose profound threats to the well-being of working- and middle-class people in the United States, and raise important civil and human rights issues.

My discomfort with K&M is not with their belief that the right of labor to organize should be recognized as a civil right. My discomfort stems from a sense that while K&M pay lip service to the fact that “more work surely needs to be done,” their sense that “the trajectory on race is generally pointed in the right direction” may give more ground to those who are arguing that

in the age of Obama we have entered into a “post-racial” America. At a time when conscious efforts to address stubborn, intractable and systemic racial inequality for many African Americans and other people of color are under assault from the forces of “color-blindness,” we cannot let up. Kahlenberg for some time has promoted the notion of class-conscious affirmative action or diversity efforts as a response to the assault on race-conscious affirmative action and diversity efforts. While I suffer no illusions about the fact that many, if not most, progressives have abandoned and fled the terminology of “affirmative action,” or the facts about the direction of the Supreme Court as presently constituted, and while as a matter of principle I independently believe in the im-

Julius Getman

Professor of Law, Univ. of Texas School of Law, JGetman@law.utexas.edu

It is time to amend the National Labor Relations Act. It has failed to meet the stated statutory goal of “encouraging the practice and procedure of collective bargaining,” and it has failed to protect the right of employees to unionize. Kahlenberg and Marvit recognize the law’s weakness and suggest strengthening it by bringing the right to organize under the Civil Rights Act. This would have the beneficial effect of increasing penalties imposed on employers who discharge or otherwise penalize union supporters. They suggest that the National Labor Relations Board administer the new approach, describing the Board as “an agency that is finely attuned to the nuances of labor law through its more than 75 years of experience handling labor disputes.”

Kahlenberg and Marvit anticipate a cultural change occurring once this new approach is tried. They see their proposed change in the law as a step towards making anti-union discrimination as culturally despised as racism. If this occurs, employers might stop opposing unions so fiercely. “Conceivably, writing labor organizing protections into the Civil Rights Act could

also spawn a cultural shift in employer behavior. Employers who are found guilty of racial or gender discrimination are today seen to have done something shameful,” they write.

I favor their proposal because it would grant significant protection to employees who are now legally vulnerable to economic devastation. I do not, however, see this as something likely to have a major effect on organizing. It would not eliminate the advantages that employers now have in campaigning against unions, such as the right to make captive audience speeches and to keep union organizers off their premises. It is unlikely to alter the pro-employer bias of the courts. Nor would it be wise for unions and their supporters to anticipate this law leading to “a cultural shift in employer behavior.”

I think that the authors are too kind to the NLRB. It would, for example, have been extremely difficult for observers to note any deep understanding of nuances in the decisions of the Bush Board. If Romney had won, there is reason to believe that the Board would have become openly and consistently anti-union and anti-worker.

Finding a way to make the Board less of a political battleground would itself be a significant reform.

A cultural shift in attitudes towards unions would be highly desirable. I do not believe that it can be achieved to any significant extent by using the language or applying the law of employment discrimination. It will require more sweeping changes in the law, such as prohibiting the hiring of permanent replacements in strikes and eliminating or reducing the secondary boycott prohibitions. It will also require changes in the labor movement, such as more consistent mobilizing of the rank-and-file, continuing aggressive struggle against the “malefactors of great wealth” (think Walmart and Sheldon Adelson), and making common cause with other progressive movements. There is reason to be hopeful that needed changes are in fact taking place, but the process is slow and the obstacles formidable.

Despite my criticisms, the authors are to be commended for stimulating discussion about needed changes in our dysfunctional labor laws. □

portance and the correctness of addressing class-based inequality, I refuse to surrender to the intellectual or legal equation of race-conscious affirmative action and racism. I support, as does Kahlenberg, class-based affirmative action, but I refuse to cede the ground he has ceded on issues of race. Nor do I believe that the tremendous progress to which he and Marvit rightly point is reason to think that we need to shift our focus to a greater degree on issues of economic inequality. We are presently facing an assault on diversity efforts in admission to selective institutions of higher education, an avenue that has desegregated leadership and

governance in America for the last 35 years. We face an assault on the constitutionality of the Voting Rights Act. The Fair Housing Act is under assault, and indeed the underpinnings of Title VII of the Civil Rights Act of 1964, which K&M venerate so dearly, are in the crosshairs of radical conservatives whose race project since the days of the Warren Court has been to undo its jurisprudence.

It is this reality that leads me to my core concern with K&M's proposal. Civil rights legislation has been successful, and many Americans have come to an understanding of its importance they once did not have. None-

theless, since the enactment of Title VII, which K&M propose to amend, and of The Voting Rights Act of 1965, and of the Fair Housing Act of 1968 (which shares the standard known as "the effects test" with Title VII, despised by radical conservatives), these statutes have never been completely safe. They have been under assault by the progenitors of the radical right-wing race project. They have been opened for amendment only when necessity demanded it and when the politics of the moment allowed or demanded it. Opening Title VII for amendment two years after the Supreme Court's decision in *Ricci*, with a House of Representatives in control of radical conservatives, is a risky proposition at best.

Moreover, the amendment to Title VII proposed by K&M would change the nature of a long-existing statute. Even granting their "religion" retort to the "immutable characteristics" argument some might pose to K&M, there is another distinction their proposal would create. Whether it is race, gender, national origin or religion, these are all aspects of who and what we are. (Yes, arguably one can change religion, but I doubt that takes religion out of the "who or what we are" category.) Organizing is "what we do." In other words, to borrow terminology from a Supreme Court decision, the protected class to be added to Title VII is arguably "analytically distinct" from those already in the statute. That does not mean the classification could not be protected in independent legislation; it may pose a question of "fit."

In sum, I support the effort to create the right of labor to organize as a civil right. I support the effort to bring human rights norms to the United States that would, among other things, protect the right of labor to organize. For tactical as well as conceptual reasons, I do not support opening Title VII at this time to rest protection of the right of labor to organize there. I believe that independent legislation is a better path toward the ends K&M seek. □

(Please turn to page 16)

Leo W. Gerard

International President, United Steelworkers, lgerard@usw.org

Unions put power in the hands of working people, just as the vote put power in the hands of black people. Immediately after President Abraham Lincoln emancipated the slaves, former slave-holders—that is, the wealthy of the Confederacy—conspired to prevent black people from exercising their franchise, to prevent them from wielding the power of the vote to improve their lives. Immediately after the Wagner Act was passed in 1935, right-wing politicians, at the behest of robber barons, conspired to prevent working people from exercising the right to organize enshrined in the law, a right that enabled working people to improve their lives.

Over the years, those intent on denying black people their human rights devised numerous ways to obstruct them from voting, including poll taxes, literacy tests and terrorization by the KKK. They lynched black people to repress an entire race. They lynched union organizers to repress a powerful idea. The great Rev. Martin Luther King embraced unionization as a method for all working people to ensure that they received a just portion of the profits derived from the fruit of their labor. On the day he died, he had supported striking Memphis sanitation workers who carried signs

that said, "I AM A MAN."

Inherent in manhood—in personhood—is self-determination. For self-determination, a person must have the ability to exercise the right to vote. And for self-determination, people must have the ability to support themselves and their families. In recent years, right-wingers have once again openly and actively sought to deny the vote to whole categories of people, including the poor and black people, by demanding specific photo identification at polling places. And they've passed union suppression laws in state after state.

In 1944, President Franklin Delano Roosevelt proposed a second Bill of Rights, what he called an Economic Bill of Rights. He said: "We cannot be content, no matter how high that general standard of living may be, if some fraction of our people—whether it be one-third or one-fifth or one-tenth—is ill-fed, ill-clothed, ill-housed, and insecure." Unfortunately, this great proposal was one he did not live to achieve. Now, collective bargaining is among the only methods working people can use to assure their economic rights. Like voting rights, the right to unionize should be strengthened, not weakened. □

Sheryll Cashin

Professor of Law, Georgetown Law Center, cashins@law.georgetown.edu

I will leave it to others more expert than me to comment on the substantive merits of the proposal to amend the Civil Rights Act put forth by Richard Kahlenberg and Moshe Marvit. I will say this: They are surely on to something important, perhaps transformative. I agree with them and Dr. King that there is a profound congruence between the goals of the labor movement and the demand for universal human dignity that animated the Civil Rights Movement. The forgotten march, The Poor People's Cam-

paign of 1968, which King envisioned but did not live to see to fruition, embodied this convergence. The Campaign would bring blacks, Chicanos, Native Americans and rural whites from invisible hamlets of poverty to occupy the National Mall in a tent city that lasted six weeks. As King imagined it, this multiracial coalition united by economic oppression would kickstart the second phase of the Movement. Mere civil rights, the ability to sit at any lunch counter, were irrelevant without economic means, and so

he conceived of a civilly disobedient campaign to put pressure on national leaders to adopt an "economic bill of rights."

The Campaign is forgotten largely because it was unsuccessful and ended badly, with a forced eviction by police. Sound familiar? It is ironic that Kahlenberg and Marvit seek to leverage the success of the Civil Rights Act in order to improve the political saliency of the labor movement. They acknowledge, as they must, that politics is currently set against their proposal, just as politics is currently set against common sense. What is missing from most progressive issue briefs is a strategic plan for altering the political landscape in order to make progressive policy choices possible. The real unfinished business of the Civil Rights Movement is completing the Beloved Community that King imagined. In 1956, when the Movement was in its infancy, King delivered a speech entitled, "Facing the Challenge of a New Age." He expounded on the ultimate ends of the civil rights revolution that Rosa Parks had ignited a year before. The end of the Movement was not the rights of Negroes per se but reconciliation and the creation of the Beloved Community.

In pragmatic terms for progressives today, that means bringing more working-class whites into their multiracial tent. While pundits and armchair analysts lecture Republicans about demographics and its Latino problem, the GOP is able to adopt "right-to-work" laws in states like Michigan and Indiana in part because the party has become a cultural home for blue-collar workingmen. Without a multiracial majority that consistently gets to 55% in elections and policy battles, there is little chance of enacting sound policies that might promote collective bargaining, much less correct the underlying structures that create racial and economic inequality. In the case of

Larry Cohen

President, Communication Workers of America

Using Dr. King as their vehicle, Kahlenberg and Marvit write on how Labor and Civil Rights are intertwined, and they note the ascension of civil rights and decline of labor rights since the 1960s.

On a tactical level, our partners in the Civil Rights Movement tell me that they would be opposed to opening the Civil Rights Act, but would be supportive of adding private right of action to their existing support for collective action in the workplace.

Any such initiative will be the target of the same sustained U.S. Chamber of Commerce campaign which has rolled back worker rights, our standard of living and the U.S. economy. In the U.S., our collective bargaining framework has been systematically destroyed by the Chamber's 40-year campaign, resulting in flat real wages for 30 years.

This frame is correct for the United States, but not globally. In Brazil, South Korea and South Africa, we've seen the rise of strong labor movements linked to political movements from the ashes of military dictatorships or even worse, apartheid. Their success should embolden us to see the possibilities of a resurgent movement linking work-

ers' rights to other economic justice and democracy issues.

Let's note that the U.S. House of Representatives, led by Speaker Pelosi, overwhelmingly passed the Employee Free Choice Act. In the U.S. Senate, we had a majority as well, but the expansion of filibuster rules prevented even debate not only on Employee Free Choice but nearly every major piece of legislation passed by the House in the last Congress. Richard and Moshe dismiss Free Choice too quickly and incorrectly.

Yes, in 2013 we must broaden our approach to workers' rights in many ways, and speak to 100 million U.S. working women and men, currently with no effective bargaining or organizing rights. We should include encouragement for new forms of collective action as well as the private right of action.

Our democracy is corrupted. Money is not speech. Corporations are not people. Our path to change must rely on massive movement-building, uniting economic justice and democracy.

[Pls. if you have feedback you'd like to get to him, send it to me—chartman@prrac.org—and I'll pass all such on to him—CH] □

anti-democratic measures like super-majority requirements to break a filibuster in the U.S., even more cross-racial political cohesion is required. We can begin to reconcile, to move past racial resentments, and create a politics of economic fairness by being quite intentional in our choice of policies and language. Our best hope for a saner politics is a language based upon common harms and the common weal. The best place to start in building multiracial, multi-class coalitions for the common good is with numerous faith-based coalitions that are already working in scores of communities, often in a bi-

partisan manner. Elsewhere, I have written about this wonderful, righteous work. (See Cashin, “Shall We Overcome? Transcending Race, Class and Ideology Through Interest Convergence,” *79 St. John’s L. Rev.* 253-91 (2005)).

Throughout American history, economic elites used racial categories and racism to drive a wedge between working-class whites and people of color they might ally with. In the colonial era, indentured servitude gave way to white freedom and black slavery, so that white servants no longer had incentive to join blacks in revolt, as they

did in Bacon’s Rebellion. In the late-19th Century, Jim Crow laws proliferated when a biracial farmers’ alliance threatened to change unfair financial policies imposed by elites. And the GOP devised a cynical, race-coded Southern strategy that broke up the multiracial alliance that made the New Deal possible. Given this history and its current manifestations, intentional efforts are sorely needed to begin to rebuild trust among “we the people” and to fully realize the Beloved Community. □

Randi Weingarten

President, American Federation of Teachers, rweingar@aft.org

We’ve always been a nation built on the simple belief that everyone deserves equal access to economic opportunity and a path to the American dream. That no matter who you are or where you are from—immigrant or native-born—each of us should have a fair shot to achieve our dreams and care for our families. Today, that fair shot, that path to economic opportunity, is under attack by a group of elites seeking to enrich themselves at the expense of the rest of us.

And one of the biggest threats to economic opportunity is the coordinated effort to strip Americans of their right to collectively bargain for fair wages and benefits and a better life for their families and communities. Consider this: Between 1973 and 2007, union membership in the private sector dropped from more than 34% to 8%. During that time, wage inequality in the private sector increased by more than 40%. As we saw in Michigan, extremist politicians continue to ram through policies dubbed “right-to-work” which instead choke the ability of unions to act effectively. These so-called “right-to-work” laws have depressed wages and suppressed the ability of workers to collectively bargain. Today, when workers seek to join unions, 25% of employers fire at least one pro-union worker. And workers

are routinely harassed, intimidated and threatened for trying to form or join a union.

We know that workers who belong to unions earn 28% more than non-union workers; nearly 87% of union workers have guaranteed pensions; and 84% of union workers have jobs that provide health insurance benefits. Back when more than one-third of Americans belonged to unions, we were able to set wage-and-benefit standards for entire industries—for union and non-union workers alike.

This attack on the fundamental right of workers to freely join unions not only threatens economic opportunity but also the strength of our democracy, by taking out the only true way—at either the bargaining table or the ballot box—that working families can have a say in their own destiny. Collective bargaining is a necessary part of a capitalist democracy; it ensures economic fairness and reduces income inequality. Given how the scales have tipped against working families, and that economic inequality is at the highest level since the Great Depression, it is time to amend the Civil Rights Act to make it illegal to fire or discriminate against workers who are trying to form a union and to better their lives and their communities. □

Kahlenberg & Marvit Respond

We are grateful that such eminent scholars, labor and civil rights leaders have taken the time to consider our argument and offered such thoughtful responses. Though we cannot address all the important issues the commentators raise in the depth they deserve, we will address here some of their central concerns, and look forward to continuing this conversation as the debates over labor law reform develop.

Each of the commentators agrees that stronger legal protections must be afforded labor rights, and several general themes stand out in the responses. Julius Getman, Larry Cohen and Theodore Shaw each make political arguments concerning the viability of our proposal, the tactic of opening up the Civil Rights Act, and additional political changes that must accompany any successful labor law reform effort. Shaw extends this critique to also question whether our proposal marks a premature shift from focusing on race to focusing on class. He also questions whether protections for activity belong in legislation designed to protect identity. Randi Weingarten argues that collective action by workers can help them enhance their economic positions and political voices. Sheryll Cashin suggests that in addition to looking to King’s Poor People’s Campaign, we

(Please turn to page 18)

(RESPONSE: Continued from page 17)

must look towards his idea of the Beloved Community, especially with regard to building multi-class, multi-racial coalitions. Ross Eisenbrey questions the success of the Civil Rights Act in terms of economic improvements for African Americans, and therefore wonders whether labor reform should be built on discrimination law. Leo Gerard, using a civil rights frame, looks at the historical parallels between the opponents of labor and opponents of voting rights for African Americans, arguing that both forms of suppression constitute power grabs.

Eisenbrey takes issue with our characterization of the Civil Rights Act as a success. He argues that though the Civil Rights Act may have improved the social and legal relations of African Americans, it has not significantly improved the economic conditions of African Americans. Eisenbrey is correct that much more needs to be done to improve economic conditions of African Americans, and the national data he provides illustrate that point well. However, he too quickly dismisses the importance of the dramatic legal and social shifts with race that have occurred since the 1960s. The conferral of legal rights has created norms in America that would have been unimaginable in America 50 years ago. This shift, however incomplete it is, is a positive development that would not have been possible without legislation. Labor is in need of a similar shift, and if our proposal aids in a change in attitudes towards labor, it will open the door for the additional reforms proposed by Julius Getman. Indeed, as Leo Gerard notes, joining a union and bargaining collectively are “among the only methods working people can use to assure their economic rights.” As such, the economic goals of the Civil Rights Act will be further achieved by making labor organizing a civil right.

Larry Cohen and Theodore Shaw each support passing legislation to make labor organizing a civil right,

but believe that the Civil Rights Act should not be opened at this time. As Shaw correctly notes, civil rights laws “have never been completely safe,” and there is a danger in opening up the Act when both the Supreme Court and the House of Representatives are dominated by radical conservatives. These concerns are reasonable, and the problems associated are easily avoided in a manner that does not significantly alter our proposal. Several pieces of civil rights reform, including the Age Discrimination in Employment Act (ADEA), which created civil rights protections for age discrimination, were accomplished through stand-alone legislation. Similarly, a stand-alone bill, which tracks the language of the Civil Rights Act and writes civil rights into our labor law, would have the same practical benefit as opening up the Civil Rights Act. By pursuing stand-alone labor reform legislation, we can avoid any potential dangers associated with amending the vital protections of the Civil Rights Act.

Julius Getman agrees that the protections offered by civil rights legislation would benefit workers and unions, but remains skeptical that the law would lead to any significant change in conduct by employers. He points to the extreme advantages employers currently enjoy with respect to organizing campaigns, and suggests focusing also on legislation prohibiting the hiring of permanent replacements and eliminating prohibitions on secondary boycotts.

Our proposal to make labor organizing a civil right would do much to protect workers from the high levels of discrimination and retaliation they currently face. Furthermore, it would help shift the debate from one over the private interests of employers and unions to one of basic rights of workers. We do not view our proposal as the singular answer to revitalize labor, nor do we think there is such a silver bullet. Getman is indeed correct that repealing Taft-Hartley and limiting or banning the permanent replacement of strikers is necessary to have a robust labor movement in America. How-

ever, such bills have repeatedly failed to make it through Congress under the best political conditions. The current climate in Washington and weakness of labor mean that direct labor law reform is likely impossible in the near future. Part of the political problem is the result of filibuster, as Cohen suggests, but even prior to the modern expansion of the filibuster, pro-labor legal reform proved elusive.

In order to pass these more traditional forms of labor law reform, a higher percentage of employees would need to benefit from union coverage, and labor would need to be stronger. Our proposal attempts to get around this Catch 22—where labor must be strengthened in order to effectuate significant reform but significant reform is necessary in order to strengthen labor. Randi Weingarten raises precisely this point when she discusses how the political positions of workers are diminished by low union density. She writes that “the attack on the fundamental right of workers to freely join unions not only threatens economic opportunity but also the strength of our democracy, by taking out the only true way—at either the bargaining table or the ballot box—that working families can have a say in their own destiny.” Similarly, Leo Gerard argues that essential components of self-determination are economic security and the right to a free vote. Opponents of labor have shown a propensity to attack both, and the response should be to strengthen the right to vote and the right to act collectively. Strengthening the right to join a union and bargain collectively holds the hope of creating a political environment under which workers can achieve further progressive reforms. With the increasing difficulty of passing traditional labor law reform, we propose that the debate should be centered around the civil rights of workers to associate and have a voice in the workplace. Civil and individual rights present a far more powerful and compelling argument to most Americans than the technical and often obscure confines of labor law.

As Sheryll Cashin argues in her re-

sponse, in order for progressive politics to advance, coalitions must be built that defy traditional boundaries. Cashin makes the important argument that in addition to King's Poor People's Campaign, labor should also look to the principles of his Beloved Community. Central to King's Beloved Community is the building of multi-racial, multi-class coalitions around common principles. Though labor fights for the dignity and voice of workers, it is too often politically, legally and socially isolated. Opponents make the incorrect charge that unions fight only for their own members, often at the expense of other workers. We believe that building a movement around labor organizing as a civil right universalizes the cause in important respects. Learning from the Civil Rights Movement, and partnering more closely with civil rights organizations, will help labor build the community and interfaith coalitions that were central to the Civil Rights Movement.

Though the protections of the Civil Rights Act would not eliminate the advantages employers have, it would do much to change their behavior by changing the employer calculus of violating workers' rights. In addition to the increased penalties available under the Civil Rights Act, employees and unions would gain meaningful access to the courts. Getman rightly acknowledges the "pro-employer bias of the courts" and suggests that our proposal would do nothing to change that. However, workers need not win in court in order to enjoy the significant benefits of a private right of action. The courts, as Arthur Kinoy made clear in the labor battles of the 1950s, are a political institution in which labor should seek a voice. Using the liberal rules of pre-trial discovery, discriminated-against workers and unions would be able to depose management under penalty of perjury, examine the employer's books, read e-mails and memos with anti-union consultants, and have access to the inner workings of the company. In short, this would allow workers and unions to disrupt

employers in a manner currently unavailable. Furthermore, workers and unions need not win in court in order to succeed in a lawsuit. Because of the costs and uncertainty of litigation, the majority of employment discrimination cases settle well before trial. In this context, such settlement negotiations can be fruitful venues for securing important concessions in organizing campaigns, such as a card check or neutrality agreement.

Getman also suggests that "finding a way to make the Board less of a political battleground would itself be a significant reform." Though not the primary purpose, our proposal may lead to this shift. One of the reasons the Board finds itself in the middle of political battles is that it has exclusive jurisdiction over labor disputes. Reducing funding for the Board or appointing Members who are openly hostile to labor are effective tactics because workers must proceed through the Board process. However, if workers have a private right of action, the Board loses its place as the sole labor battleground.

Shaw writes that although he is supportive of the idea of making labor organizing a civil right, he is concerned that our proposal may give ground to those who argue we are in a "post-racial America." He argues that any legislation making organizing a civil right should not shift the focus from race to class, and points out that one of us (Kahlenberg) is a long-time proponent of replacing race-based with class-based affirmative action in education. There are principled reasons to favor or oppose Kahlenberg's position on affirmative action in education, but our argument on labor organizing as a civil right is different. We do not call for replacing one kind of approach with another, as in the debates on race-based or class-based affirmative action. Rather, here we suggest supplementing the protected categories in the Civil Rights Act with an additional category that would help advance some of the original goals of the Act. Our intent is not to shift the focus away from race and towards class, but rather to address

some of the intractable issues of class with some of the legal tools that have helped change attitudes and culture on race.

Additionally, Shaw characterizes the protections of civil rights legislation as protecting "who or what we are" (even when mutable), rather than "what we do." He argues that conduct-based protections are analytically distinct from identity-based protections, and that the two may not fit in the same legislation. However, stand-alone legislation, as discussed above, does not require the two to co-exist in the same legislation. The deeper point here is well-taken: that going beyond the original categories of the Civil Rights Act is a conceptual leap. However, federal and state civil rights legislation has already made this leap by including as protected categories pregnancy, past criminal conviction, bankruptcy, unemployment and the like. The civil rights framework has already been extended beyond identity categories to cover conduct. The question of whether conduct is appropriate for civil rights protections should hinge on two issues: whether the additional category would help promote the original purpose of the Civil Rights Act, and whether the conduct is linked to a fundamental or constitutional right. As described in our article above, our proposal meets both of these criteria.

Each of the commentators discusses the poison of our current politics, describing it as "corrupted" and "set against common sense." However desperate this political situation may be, the one positive benefit to this reality is that it forces progressives to build broad-based coalitions rather than individually proceeding along narrow political interests. Our proposal of making labor organizing a civil right is premised on the importance of such coalitions. This alone will not revitalize labor, but it will help workers vindicate long-held rights and help labor promote other progressive policies. □

Resources

Most Resources are available directly from the issuing organization, either on their website (if given) or via other contact information listed. Materials published by PRRAC are available through our website: www.prrac.org.

Prices include the shipping/handling (s/h) charge when this information is provided to PRRAC. "No price listed" items often are free.

When ordering items from PRRAC: SASE = self-addressed stamped envelope (46¢ unless otherwise indicated). Orders may not be placed by telephone or fax. Please indicate from which issue of P&R you are ordering.

Race/Racism

- **Segregation: A Global History of Divided Cities**, by Carl Nightingale (482 pp., 2012, \$35), has been published by Univ. of Chicago Press. [13713]

- **Women and the Civil Rights Movement** is a Univ. of Maryland course taught by Dr. Elsa Barkley Brown of the Depts. of History & Women's Studies. Inf. available at www.coursera/course/womencivilrights [13738]

- **"The End of Segregation? Hardly: A More Nuanced View from the New York Metropolitan Region,"** by Richard Alba & Steven Romalewski, (? pp., n.d.) is available (no price given) from The Center for Urban Research of the CUNY Graduate Center, 365 Fifth Ave., #6202,

NYC, NY 10016, 212/817-2030.

- **"Puerto Ricans in Ohio, 2010"** (4 pp., Dec. 2012) is available (possibly free) from The Center for Puerto Rican Studies, 695 Park Ave., NYC, NY 10065, 212/772-5688, centropr.hunter.cuny.edu

Poverty/Welfare

- **"Giving Justice and Opportunity a Name"** is the 23-page Biennial Report 2010-2011 from the Sargent Shriver National Center on Poverty Law. Available (likely free) from them at 50 E. Washington St., #500, Chicago, IL 60602, 312/263-3830, www.povertylaw.org [13731]

- **"Concentrated Poverty: A Critical Analysis"** (15 pp.), by Herbert J. Gans, appeared in the May/June 2010 issue of *Challenge*, published by M.E. Sharpe. [13736]

Criminal Justice

- **The Sentencing Project's 2011 Annual Report** (celebrating 25 years of research and advocacy for reform -- 13 pp.) is available (likely free) from them, 1705 DeSales St. NW, 8th fl., Wash., DC 20036, 202/628-0871, www.sentencingproject.org [13735]

Economic/Community Development

- **"The State of Lending in America and its Impact on U.S. Households,"** by Debbie Bocian, Delvin Davis, Sonia Garrison & Bill Sermons (119 pp., Dec. 2012), has been published by the Center for Responsible Lending. Available (no price given) from them at 202/349-1851, Bill.Sermons@responsiblelending.org [13737]

- **Housing Policy Debate** will publish a special issue on the Community Development Block Grant Program, edited by Prof. William Rohe of the Univ. of North Carolina. Deadline for Abstracts, March 31, 2013. 919/962-3077

Education

- **"Failure Is Not an Option: How Principals, Teachers, Students and Parents from Ohio's High-Achieving, High-Poverty Schools Explain Their Success,"** by Carolin Hagelskamp & Christopher DiStasi (64 pp., 2012), is available (no price listed) from Public Agenda, 6 E. 39th St., NYC, NY 10016, 212/686-6610, jgupta@publicagenda.org [13711]

- **"Do Federally Assisted Households Have Access to High Performing Schools?,"** by Ingrid Gould Ellen & Karen Mertens Horn (24 pp., Nov. 2012), is available on PRRAC's website, www.prrac.org . [13716]

- **"Teacher Absence as a Leading Indicator of Student Achievement,"** by Raegen Miller (Nov. 2012, 24 pp.), is available (no price listed) from the Center for American Progress, 1333 H St. NW, 10th fl., Wash., DC 20005, 202/682-1611. [13719]

- **"Keeping Irreplaceables in D.C. Public Schools: Lessons in Smart Teacher Retention"** (20 pp., 2012) from the New Teacher Project is available at tnp.org/ideas-and-innovations/view/keeping-irreplaceables-in-dc-public-schools [13720]

- **"How Strong Are U.S. Teacher Unions? A State-by-State Comparison,"** by Amber M. Winkler, Janie Scull & Dara Zeehandelaar (405 pp., Oct. 2012), is available (no price given) from the Thomas B. Fordham Institute, www.edexcellence.net/publications/how-strong-are-us-teacher-unions.html [13721]

- **"Title IX at 40: Working to Ensure Gender Equity in Education"** (7 pp., 2012) is available (no price given) from the National Coalition for Women & Girls in Education, consisting of the American Assn. of University Women (202/785-7700), National Women's Law Center (202/588-5180) & American Federation of Teachers (202/879-4400). [13741]

- **The Forum on Educational Accountability** can be contacted via Monty Neill at 617/335-2115. [13746]

- **"Principles of Effective Expanded Learning Programs: A Vision Built on the Afterschool Approach"** (4 pp., Jan. 2012) is available (possibly free) from The Afterschool Alliance, 1616 H St. NW, #820, Wash., DC 20006, 866/KIDS-TODAY [13747]

- **"School Boards: Leading the Way on Expanded Learning Opportunities"** (3 pp., n.d.) is available (possibly free) from the National School Boards Assn., 1680 Duke St., Alexandria, VA 22314-3493, 703/838-6722, www.nsba.org [13748]

- **Faculty Diversity:** The American Federation of Teachers has several resources on faculty diversity, available at www.aft.org/issues/highered/diversity.cfm [13745]

- **"Making the Difference: Research and Practice in Community Schools: Executive Summary"** (7 pp., n.d.) is available (no price listed) from the Coalition for Community Schools, 1001 Conn. Ave. NW, #310, Wash., DC 20036, 202/822-8405, x156, ccs@iel.org, www.communityschools.org [13749]

- **"How Washington, DC Schools Cheat Their Students Twice,"** by Caleb Rossiter, is available at <http://dianeravitch.net/2012/12/02cheating-students-in-dc-with-phony-credentials>

- **"Perspectives on the Future of Teacher Preparation in the Digital Age"** was a Dec. 11, 2012 Webinar organized by the Alliance for Excellent Education.

Inf. from all4ed@all4ed.org [13722]

- **"Rodriguez at 40: Exploring New Paths to Equal Education Opportunity,"** co-sponsored by the Univ. of Richmond School of Law & the Charles Hamilton Houston Inst. for Race & Justice, will take place **March 8, 2013** at the Univ. of Richmond School of Law. Confirmed speakers at this free event include Charles Ogletree, Derek Black, Susan Eaton & Amy Stuart Wells. Inf. from conf. organizer Kimberly Jenkins Robinson, krobins2@richmond.edu [13742]

Employment/ Labor/ Jobs Policy

- **"Home Economics: The Invisible and Unregulated World of Domestic Work"** (68 pp., Nov. 2012) is available (no price given) from The National Domestic Workers Alliance, 330 7th Ave., 19th fl., NYC, NY 10001-5010, 646/360-5806. [13708]

- **"Economic Recovery and Social Investment: A Strategy to Create Good Jobs in the Service Sector,"** by Robert Kuttner (14 pp., Nov. 2012), is available (no price given) from Demos, 220 Fifth Ave., 2nd fl., NYC, NY 10001, 212/633-1405. [13710]

- **"Promoting Racial and Ethnic Diversity in the Faculty: What Higher Education Unions Can Do"** (36 pp., 2010) is available (no price given) from AFT Higher Education, 202/879-4400, www.aft.org/pdfs/highered/facultydiversity0310.pdf [13744]

- ***No More Invisible Man: Race and Gender in Men's Work***, by Adia Harvey Wingfield (212 pp., 2012, \$79.50), has been published by Temple Univ. Press, 800/621-2736.

Food/ Nutrition/ Hunger

- ***Cultivating Food Justice: Race, Class, and Sustainability***, eds. Alison Hope Alkon & Julian Agyeman (404 pp., 2011, \$27), has been published by MIT Press. [13703]

Health

- **"Housing Transitions and Low Birth Weight Among Low-Income Women: Longitudinal Study of the Perinatal Consequences of Changing Public Housing Policy,"** by Michael R. Kramer et al., appeared in the Dec. 2012 issue of *The American Journal of Public Health*, [13707]

- **"Health of Puerto Ricans in the United States, 2000-2010,"** by Anna Rosofsky & Judith Aponte, is a 4-page, Nov. 2012 Research Brief, available (possibly free) from Hunter College's Center for Puerto Rican Studies, 695 Park Ave., NYC, NY 10065, 212/772-5688, centerpr.hunter.cuny.edu [13714]

- **"Understanding the Health Impact of Racism—And Trying to Reverse It,"** by Naa Oyo Kwate, appeared in the Dec. 2012 issue of *Health Affairs*, www.healthaffairs.org [13730]

- **"Fostering Healthy Families Through Stable Housing: The Role of the Health Care System"** (3

pp., Nov. 2012) is available (possibly free) from the National Institute for Health Care Management, 1225 19th St. NW, #710, Wash., DC 20036, nihcm.org/images/stories/Childrens_health_and_housing_fact_sheet.pdf

Housing

- ***The Affordable Housing Reader***, eds. J. Rosie Tighe & Elizabeth J. Mueller (2012, 592 pp.), has been published by Routledge. [13700]

- **"Profiles of Risk: Race and Housing Instability"** is a 6-page, Nov. 2012 Research Brief, available (possibly free) from the Institute for Children, Poverty & Homelessness, 212/358-8086, x1204, I.Bazerjian@ICPHusa.org [13715]

- ***Racial Democracy and the Black Metropolis: Housing Policy in Postwar Chicago***, by Preston H. Smith II (433 pp., 2012), has been published by Univ. Minn. Press, www.upress.umn.edu [13728]

- **"Losing Ground: The Struggle of Moderate-Income Households to Afford the Rising Costs of Housing and Transportation"** is a 26-page Oct. 2012 report from the Center for Housing Policy & the Center for Neighborhood Technology. Available (no price given) from either org. -- 202/466-2121 (former), 773/278-4800 (latter). [13739]

- **"Eviction (Without) Notice: Renters and the Foreclosure Crisis"** (2012) is available (no price given) from Eric Tars at the National Law Center on Homelessness & Poverty, 1411 K St. NW, #1400, Wash., DC

20005, 202/635-2535, http://www.nlchp.org/view_report.cfm?id=389

- **“Participatory Democracy and Public Housing”** was a Dec. 3, 2012 roundtable discussion at the Wilson Center Comparative Urban Studies Program. Inf. at culp@wilsoncenter.org
- **“The Human Right to Housing: A Report Card on U.S. Policy”** was a free Webinar, put on by the National Law Center on Homelessness & Poverty, that took place Dec. 10, 2012. Inf. from Eric Tars at the Center, 1411 K St. NW, #1400, Wash., DC 20005, 202/638-2535. [13712]
- **“The National Center for Healthy Housing”** is holding its 20th anniv. Leadership Conf., **Feb. 13-15, 2013** in NYC. Inf. from the Alliance, 10320 Little Patuxent Pkwy., Columbia, MD 21044, pdodge@nchh.org [13709]
- **The National Low Income Housing Coalition** (headed by former PRRAC Bd. member Sheila Crowley) is holding its annual Spring Conference **March 17-20, 2013** in Washington, DC. Inf. from them at 727 15th St. NW, 6th fl., Wash., DC 20005, 202/662-1530, bill@nlihc.org
- **“Changing America: The Emancipation Proclamation, 1853 and the March on Washington, 1963”** is a first-rate exhibit at the Smithsonian National Museum of African American History and Culture, which is temporarily housed at the National Museum of American History, until its own building, on the

Mall, is completed in 2015. Be sure to catch it if you live near DC or are coming for a meeting, vacation, whatever. It will be there until **Sept. 15, 2013**. More inf. at NMAAHC.SI.EDU

Immigration

- **Abused: The Postville Raid** is a full-length documentary (2011?) on the 2008 ICE raid at a Postville, Iowa kosher slaughterhouse, where 800 armed ICE agents arrested/handcuffed/chained 389 immigrant workers. Upcoming screenings/further inf. from the Foundation for Child Development, 295 Madison Ave., 40th fl., NYC, NY 10017, 212/867-5777, abusedthe.postvilleraid.blogspot.com [13724]
- **“Legal Violence: How Immigration Enforcement Affects Families, Schools, and Workplaces”** was a Dec. 11, 2012 webcast from the Center for American Progress. Inf. from 202/682-1611, events@americanprogress.org [13733]

Miscellaneous

- **The 99%: How the Occupy Wall Street Movement is Changing America**, eds. Don Hazen, Tara Lohan & Lynn Parramore (259 pp., 2011, \$16.95), has been published by AlterNet Books, 101 Spear St., #203, SF, CA 94105. 77 short essays/interviews by/with Amy Goodman, Noam Chomsky, Eliot Spitzer, Naomi Klein et al. [13697]
- **Fire on the Prairie: Harold Washington, Chicago Politics and the**

Roots of the Obama Presidency, by Gary Rivlin (312 pp., 2012, \$32.95), has been published in a revised edition by Temple Univ. Press. [13704]

- **The Power of Urban Ethnic Places: Cultural Heritage and Community Life**, by Jan Lin (280 pp., 2011, \$34.95), has been published by Abingdon, Routledge [13723]
- **The City After Abandonment**, eds. Margaret Dewar & June Manning Thomas (Oct. 2012, \$75 -- but a 20% discount available using discount code P4V8), has been published by Univ. of Pennsylvania Press. [13725]
- **“Does Participatory Governance Matter?: Exploring the Nature and Impact of Participatory Reforms,”** by Brian Wampler & Stephanie L. McNulty (41 pp., 2012?), is available (no price given) from the Woodrow Wilson International Center for Scholars, One Woodrow Wilson Plaza, 1300 Pennsylvania Ave. NW, Wash., DC 20004-3027, www.wilsoncenter.org/cusp [13727]

- **National Conference on Media Reform**, sponsored by Free Press, will take place **April 5-7, 2013** in Denver. Inf. from <http://conference.freepress.net>, or 40 Main St., #301, Florence, MA 01062.

Job Opportunities/Fellowships/Grants

- **The National Low Income Housing Coali-**

tion (headed by former PRRAC Bd. member Sheila Crowley) is seeking to fill 2 positions: an **Outreach Associate** and a **Research Analyst**. Ltr./salary reqs./resume/writing sample to Bill Shields, bill@nlihc.org

- **The Center for Law & Social Policy** (PRRAC’s office partner) will be hiring a new **Director**, as Alan Houseman (one of PRRAC’s founding Bd. members), who has held the position for 32 years, has announced his intention to retire at the end of 2013. Readers who want to suggest possible candidates (or apply themselves) should contact Katie McNerney of LeaderFit, 202/997-8992, kmcnerney@leaderfit.org
- **The Texas Low Income Housing Service** (Galveston) is seeking a **Staffer** to continue their work on the Gulf Coast. Detailed inf. available at <http://texashousers.net/2012/12/12/job-announcement-galveston-based-housing-policy-analyst-planner-advocate-community-outreach-specialist/> Other contact: Chrishelle Palay, 713/828-4560, chrishelle@texashousing.org
- **The Congressional Hunger Center** is accepting applications for its Emerson National Hunger Fellows (16-20 are appointed annually). Modest pay, late Aug., 2013 start date. Applications due **Jan. 14, 2013**. <http://www.emersonapplication.org>. Questions?: fellows@hungercenter.org, 202/547-7022, x29.

PRRAC'S SOCIAL SCIENCE ADVISORY BOARD

Dolores Acevedo-Garcia
Brandeis Univ.

Xavier de Souza Briggs
Massachusetts Institute of Technology

Camille Zubrinsky Charles
Dept. of Sociology, Univ. of Pennsylvania

Stefanie DeLuca
Johns Hopkins Univ.

Ingrid Gould Ellen
New York Univ.
Wagner School of Public Service

Lance Freeman
Columbia Univ. School of Architecture,
Planning and Preservation

John Goering
Baruch College, City Univ. of New York

Heidi Hartmann
Inst. for Women's Policy Research (Wash., DC)

William Kornblum
CUNY Center for Social Research

Harriette McAdoo
Michigan State Dept. of Sociology

Fernando Mendoza
Dept. of Pediatrics, Stanford Univ.

Roslyn Arlin Mickelson
Univ. of No. Carolina-Charlotte

Pedro Noguera
New York Univ. School of Education

Paul Ong
UCLA School of Public Policy
& Social Research

Gary Orfield
UCLA Civil Rights Project

Gregory D. Squires
Dept. of Sociology, George Washington Univ.

Margery Austin Turner
The Urban Institute (Wash., DC)

Margaret Weir
Dept. of Political Science
Univ. of California, Berkeley

David Williams
Harvard School of Public Health

**If You Are Not Already a *P&R* Subscriber,
Please Use the Coupon Below.**

Sign Me Up! 1 year (\$25) or 2 years (\$45)

Please enclose check made out to PRRAC or a purchase order from your institution.

Name _____

Address _____

Address Line 2 _____

City, State, Zip _____

Telephone: _____ email: _____

*Mail to: Poverty & Race Research Action Council
1200 18th Street NW • Suite 200 • Washington, DC 20036*

Poverty & Race Research Action Council

1200 18th Street NW • Suite 200
Washington, DC 20036
202/906-8023 FAX: 202/842-2885
E-mail: info@prrac.org
Website: www.prrac.org

Nonprofit
U.S. Postage
PAID
Jefferson City, MO
Permit No. 210

Address Service Requested

1-2/13

POVERTY & RACE RESEARCH ACTION COUNCIL *Board of Directors/Staff*

CHAIR

John Charles Boger
*University of North Carolina
School of Law
Chapel Hill, NC*

VICE-CHAIR

José Padilla
*California Rural Legal
Assistance
San Francisco, CA*

SECRETARY

john powell
*Haas Institute for a
Fair and Inclusive Society
University of California-
Berkeley
Berkeley, CA*

TREASURER

Spence Limbocker
*Neighborhood Funders
Group
Annandale, VA*

Janis Bowdler

*National Council
of La Raza
Washington, DC*

John Brittain

*University of the District
of Columbia School of
Law
Washington, DC*

Sheryll Cashin

*Georgetown University
Law Center
Washington, DC*

Craig Flournoy

*Southern Methodist
University
Dallas, TX*

Damon Hewitt

*NAACP Legal Defense
and Educational
Fund, Inc.
New York, NY*

Olati Johnson

*Columbia Law School
New York, NY*

Elizabeth Julian

*Inclusive Communities
Project
Dallas, TX*

Demetria McCain

*Inclusive Communities
Project
Dallas, TX*

S.M. Miller

*The Commonwealth Institute
Cambridge, MA*

Don Nakanishi

*University of California
Los Angeles, CA*

Dennis Parker

*American Civil Liberties
Union
New York, NY*

Anthony Sarmiento

*Senior Service America
Silver Spring, MD*

Theodore M. Shaw

*Columbia Law School
New York, NY*

Brian Smedley

*Health Policy Institute
Joint Center for Political and
Economic Studies
Washington, DC*

Catherine Tactaquin

*National Network for
Immigrant & Refugee Rights
Oakland, CA*

Camille Holmes Wood

*National Legal Aid &
Defender Assn.
Washington, DC*

*[Organizations listed for
identification purposes only]*

Philip Tegeler

President/Executive Director

Chester Hartman

Director of Research

Megan Haberle

Policy Counsel

Gina Chirichigno

*Co-Director
One Nation Indivisible*

Ebony Gayles

Law & Policy Fellow

Silva Mathema

Research Fellow

Michael Hilton

Law & Policy Fellow