

ARTICLES

**Riding the Silver Tsunami in Pursuit of Economic
Democracy: Economic Inequality, Baby Boomers,
and Worker Cooperatives**

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ABSTRACT

The “American Dream,” a national ethos centered on the belief in equal opportunity and upward socio-economic mobility through hard work, has evolved significantly over time. Originally, it embodied ideals of liberty, justice, and economic democracy, opposing excessive wealth accumulation and economic inequality. However, over the 20th century, it became synonymous with individual economic success, particularly represented by Baby Boomers who thrived in the post-World War II economic boom. Today, Americans face an increasingly wide income and wealth gap that echoes the conditions of the late 19th and early 20th centuries, raising questions about the Dream’s accessibility and relevance. This Article explores how worker cooperatives, which emphasize shared prosperity and democratic ownership, offer a pathway to reinvigorate the American Dream in the 21st century. By converting aging businesses owned by Baby Boomers into worker cooperatives, we can move toward an inclusive economic model that fosters social mobility, equitable opportunity, and sustainable prosperity. This Article examines the history, current conditions, and potential of worker cooperatives as a transformative business model for America’s economic future.

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I. INTRODUCTION

The United States of America is considered the “land of opportunity” and its national ethos is the belief that no matter where someone’s story begins, they can achieve upward socio-economic mobility and prosperity through hard work and determination.¹ Coined the “American Dream,” this collective national ideal envisions “the individual capitalist striving in a free-market world.”² Indeed, the picture of the 20th-century American Dream was that of the entrepreneur seeking an economically better life by working hard and going into business for themselves. For the Baby Boomer generation, achieving the American Dream meant individual economic success, primarily in the form of home ownership, and a life economically better than one’s parents or caregivers.³ Some of the richest (white) men in America—including Jeff Bezos, founder of Amazon; Bill Gates, founder of Microsoft; Mark Zuckerberg, founder of Facebook; and Elon Musk, owner of the social media platform X (formerly known as Twitter), each worth billions of dollars—are seen by many as today’s manifestations of this individualistic 20th-century American Dream.⁴

1. Jennifer Wolak & David A.M. Peterson, *The Dynamic American Dream*, 64 AM. J. OF POL. SCI. 968–81 (2020), <https://doi.org/10.1111/ajps.12522>; see also Judith L. Fox, *The American Dream: A Historical Perspective*, 61 WASHBURN L. J. 441 (2021-2022), <https://ssrn.com/abstract=4733205>; Gabriel Borelli, *Americans are Split Over the State of the American Dream*, PEW RSCH. CTR. (July 2, 2024), <https://www.pewresearch.org/short-reads/2024/07/02/americans-are-split-over-the-state-of-the-american-dream/> (last visited October 4, 2024).

2. SARAH CHURCHWELL, BEHOLD, AMERICA: THE ENTANGLED HISTORY OF “AMERICA FIRST” AND “THE AMERICAN DREAM” 3 (1st ed., 2018).

3. Wolak & Peterson, *supra* note 1.

4. Devin Sean Martin, *The 2023 Forbes 400: The 20 Richest People In America*, FORBES (Oct. 3, 2023, 6:00 AM) <https://www.forbes.com/sites/devinseanmartin/2023/10/03/the-2023-forbes-400-the-20-richest-people-in-america/>.

The widespread use of the phrase “American Dream,” and one which reflects a shared cultural and political American ideal, began during the late 19th and early 20th centuries.⁵ This timespan encompasses historical periods commonly referred to as Reconstruction, the Gilded Age, and the Progressive Era.⁶ It was during the Progressive Era that the phrase “American Dream” was first used to signify a national collective ideal—one of economic democracy and equality—not one of individual pursuits for property or wealth.⁷ The first uses of the phrase focused on the ideals that formed America: liberty, justice, and equality.⁸ While the use of the phrase today is almost exclusively tied to the pursuit of property (economic interests), the initial iterations of “American Dream” opposed economic inequality, free-market capitalism, the excessive accumulation of wealth, and the risks they posed to justice and equality. The phrase was originally used to describe “the social dream of justice and equality *against* individual aspiration and personal success.”⁹

From the turn of the 20th century until the 1950s, “the phrase was repurposed by each generation, until the Cold War, when it became an argument for a consumer capitalist version of democracy.”¹⁰ The “American Dream” came to be understood for what it looked like—a house, car, and all the trappings of modern life—rather than the ideals it first represented.¹¹ This version—the 20th-century American Dream—has persisted for almost 75 years.¹² The 60 years following World War II were the most prosperous years for the United States, and this version of the American Dream seemed to be working for the citizenry. Middle- and low-income families were particularly enamored with the American Dream during this time in which the average American could afford to buy a home, a car, and support their family with a full-time job.¹³

Baby Boomers, born between 1946 and 1964, benefitted the most from this post-World War II period of economic prosperity,¹⁴ sometimes referred to as the “Golden Age of Capitalism.”¹⁵ Beginning in 1945 and lasting until the 1973-

5. See Britannica, *The Progressive Era: Key Facts*, <https://www.britannica.com/summary/The-Progressive-Era-Key-Facts> (last visited March 7, 2024).

6. Churchwell, *supra* note 2, at 28.

7. *Id.* at 23.

8. *Id.*

9. *Id.*

10. Anna Diamond, *The Original Meanings of the “American Dream” and “America First” Were Starkly Different from How We Use Them Today*, SMITHSONIAN MAG. (Oct. 2018), <https://www.smithsonianmag.com/history/ behold-america-american-dream-slogan-book-sarah-churchwell-180970311/>.

11. *Id.*

12. *Id.*

13. Jordan Weissmann, *60 Years of American Economic History, Told in 1 Graph*, ATLANTIC (Aug. 23, 2012), <https://www.theatlantic.com/business/archive/2012/08/60-years-of-american-economic-history-told-in-1-graph/261503/>.

14. Carmen Ang, *Ranking U.S. Generations on Their Power and Influence Over Society*, VISUAL CAPITALIST (May 6, 2021), <https://www.visualcapitalist.com/ranking-u-s-generations-on-their-power-and-influence-over-society/>.

15. Aaron O’Neill, *Post-World War II economic boom-Statistics & Facts*, STATISTA (July 3, 2024) <https://www.statista.com/topics/8096/post-wwii-economic-boom/>.

1975 recession,¹⁶ not only were Baby Boomers born into this prosperity, but they also spent their primary working years in a relatively stable and thriving economy.¹⁷ “The baby boomers ‘grew up in an era when there was something close to full employment almost all the time. Wages were going up with productivity, and productivity was going up very fast. Incomes were growing at the rate of 2% a year, something that we haven’t seen since.’”¹⁸ Baby Boomers are the poster-children of the 20th-century American Dream, holding 53% of all U.S. household wealth.¹⁹ More importantly, and the focus of this Article, the Baby Boomer generation owns 2.9 million U.S. businesses, all of which are or will soon be facing some transition as those owners look to retirement.²⁰

For subsequent generations, the meaning of the “American Dream” and whether it is achievable have come into question,²¹ which is understandable as the Millennial Generation (Millennials) and Generation Z (Gen Z)²² struggle economically.²³ Unlike the stable, prosperous economy of Baby Boomers’ working years, the economy for Millennials has been anything but stable and prosperous.²⁴ Entering their working years at the start of the Great Recession, Millennials have faced reduced economic opportunity.²⁵ “Negative effects include higher rates of underemployment and unemployment, wage stagnation or declines, and limited economic mobility. Millennials are less likely to earn more than their parents than any previous generation in American history.”²⁶ Millennials have relatedly also

16. *Id.*

17. Ang, *supra* note 14.

18. Ben White, *How the baby boomers broke America*, POLITICO (Oct. 26, 2019, 1:41 PM), <https://www.politico.eu/article/how-baby-boomers-broke-america/>.

19. Ang, *supra* note 14.

20. *Small business closure crisis*, PROJECT EQUITY, <https://project-equity.org/communities/small-business-closure-crisis/> (last visited Aug. 2, 2023). While identifying generational boundaries is not an exact science, the Baby Boomer generation is 19 years, ranging from 1946-1964, and is the only generation officially identified by the U.S. Census Bureau. *See also* Michael Dimock, *Defining generations: Where Millennials end and Generation Z begins*, PEW RSCH. CTR. (Jan. 17, 2019), <https://www.pewresearch.org/short-reads/2019/01/17/where-millennials-end-and-generation-z-begins/>.

21. Borelli, *supra* note 1.

22. The generation following Baby Boomers is referred to as Generation X and ranges from 1965-1980. “Millennials” refers to the generation born between 1981-1996, while Generation Z is the first generation of the 21st century and spans the years 1997-2012. *See* Dimock, *supra* note 20.

23. Giulia Carbonaro, *Young Americans’ Financial Struggles Compared to Boomers Revealed*, NEWSWEEK (Jan. 18, 2024, 9:34 AM), <https://www.newsweek.com/young-americans-financial-struggles-compared-boomers-revealed-1850740>.

24. Ang, *supra* note 14 (“In contrast, Millennials entered the workforce during the Great Recession and have seen only tenuous economic and wage growth, impacting their ability to accumulate wealth. Combine this with crippling amounts of student debt, and it’s no surprise that Millennials have nearly 50% less wealth than other generations (Boomers, Gen X) at a comparable age.”).

25. Martin Heinrich, *The Economic State of Millennials in America*, JOINT ECON. COMM. DEMOCRATS 1, https://www.jec.senate.gov/public/_cache/files/7ec953a2-1a28-4371-83c2-bcc8a3a825c7/the-economic-state-of-millennials-in-america.pdf (last visited Sept. 11, 2024).

26. *Id.* Millennials also carry the weight of the student loan crisis. Hannah Bareham, *Which Generation Has the Most Student Loan Debt?*, YAHOO FIN. (Aug. 31, 2023), <https://finance.yahoo.com/news/generation-most-student-loan-debt-181711022.html>.

struggled to attain home ownership, inhibiting their ability to build generational wealth.²⁷

Today's economy is not the one Baby Boomers grew up or thrived in, but more closely resembles the economy of the Reconstruction Era, Gilded Age, and Progressive Era (GAPE) when the American Dream ethos was born.²⁸ We stand at the close of the first quarter of the 21st century facing many of the same socio-economic and political questions, as well as many of the same ills including comparable economic inequality,²⁹ monopolistic companies,³⁰ worker and labor struggles,³¹ and racism. More than a century ago, we used strategies such as constitutional amendments (the Thirteenth, Fourteenth, and Fifteenth Amendments),³² legislation (antitrust, civil rights, and the New Deal administrative regime),³³ and labor organizing³⁴ to address these national concerns. Arguably, America is still struggling

27. Heinrich, *supra* note 25.

28. Nathan Smith & Doc Louallen, *We Are in a Second Gilded Age, Some Experts Say*, ABC NEWS (Oct. 25, 2024), <https://abcnews.go.com/US/experts-gilded-age/story?id=115067246>. See also Justin Klawans, *America Might Be in a Second Gilded Age*, THE WEEK (Nov. 5, 2024), <https://theweek.com/business/economy/america-second-gilded-age-inequality-social-change-economy>.

29. Shannon Rieger, *Reducing Economic Inequality through Democratic Worker-Ownership*, THE CENTURY FOUND. (Aug. 10, 2016), <https://tcf.org/content/report/reducing-economic-inequality-democratic-worker-ownership/>.

30. In our current capitalist economy, monopolies are understood to be a natural part of the process and have generally been accepted, unless it can be shown that the monopoly is a result of unfair practices and not the natural market. See Dana Kerr, *Google is defiant after losing antitrust lawsuit and being called a 'monopolist'*, NAT'L. PUB. RADIO (Aug. 6, 2024, 4:44 AM), <https://www.npr.org/2024/08/06/nx-s1-5064669/google-loses-antitrust-monopoly-justice-department-lawsuit>.

31. Drew Desilver, *2023 Saw Some of the Biggest, Hardest-Fought Labor Disputes in Recent Decades*, PEW RSCH. CTR. (Jan. 4, 2024), <https://www.pewresearch.org/short-reads/2024/01/04/2023-saw-some-of-the-biggest-hardest-fought-labor-disputes-in-recent-decades/> ("2023 was the most active year overall for major labor disputes in more than two decades, according to our analysis of BLS data on major work stoppages.").

32. The Thirteenth Amendment abolished slavery, U.S. CONST. amend. XIII § 1, the Fourteenth Amendment provides equal protection under the law, U.S. CONST. amend. XIV § 1, and the Fifteenth Amendment granted voting rights to Black men, U.S. CONST. amend. XV § 1.

33. See *The Antitrust Laws*, FED. TRADE COMM'N, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws> (last visited Nov. 8, 2024) (articulating that The Sherman Anti-Trust Act of 1890 was the United States' first antitrust legislation with the policy objective "to protect the process of competition for the benefit of consumers, making sure there are strong incentives for business to operate efficiently, keep prices down, and keep quality up"); Eric Foner, *Civil Rights During Reconstruction*, PBS AM. EXPERIENCE, <https://www.pbs.org/wgbh/americanexperience/features/reconstruction-civil-rights-during-reconstruction/> (last visited Nov. 8, 2024) (explaining that the Civil Rights Act of 1875, which was later declared unconstitutional, made racial discrimination in public accommodations, such as hotels and transportation, illegal).

34. In the late 19th and early 20th centuries, as the industrial revolution mechanized production, many craftspeople were displaced and working conditions declined. See *The Early Labor Movement*, PBS, <https://www.pbs.org/opb/historydetectives/feature/the-early-labor-movement/> (last visited Nov. 11, 2024). Labor organizing through unions such as the National Labor Union, the Knights of Labor, and the American Federation of Labor became workers' mode of fighting for improved wages, working conditions, and reasonable working hours. See also *Labor Movement*, HIST. (Oct. 29, 2009), https://www.history.com/topics/19th-century/labor#section_2.

to achieve and define its post-Reconstruction American Dream³⁵, identity, and interracial democracy, and today we find ourselves facing rising economic inequality which threatens all facets of our society, much like it did over a century ago.

The beauty of human experience is our privilege of hindsight—our ability to reflect upon and learn from experience. Although over a century years ago, our policies focused on promoting the free-market economy, we can learn from these historical parallels, make a different choice, and define the 21st-century American Dream as one that echoes the origin of the phrase and that truly pursues economic democracy and prosperity for all—promoting economic equality, equitable opportunity, and social mobility. Yesterday's strategies for combating economic inequality were designed to regulate and reign in corporate power for the benefit of workers, but our policies and strategies for the future must also include opportunities not just for the capitalist wages for labor paradigm, but also for diverse, widespread ownership over capital and resources. We must not only engage in long-term thinking and problem-solving, but we must also draw upon the original and true ideals of the American Dream and consider the long-term well-being of all stakeholders. This can be done by considering models of economic democracy where the sole corporate purpose or duty is not profit for shareholders above all else, but rather “a system of checks and balances on economic power and support for the right of citizens to actively participate in the economy regardless of social status, race, gender, etc.”³⁶ The worker cooperative is one such model or business structure.

The worker cooperative is an uncommon business entity in the United States compared to the corporation or limited liability company, but cooperatives do exist on a small scale.³⁷ The primary characteristics of worker cooperatives are: (1) the workers own the business and participate in its success based on their labor contribution, and (2) the workers have representation throughout the business governance structure and process, adopting a one worker, one vote philosophy.³⁸ Generally, worker cooperatives are values-driven and adopt community-

35. See generally, Steven Levitsky, *The Third Founding: The Rise of Multiracial Democracy and the Authoritarian Reaction against It*, 110 CAL. L. REV. 1991 (December 2022); Angela Glover Blackwell, *How We Achieve a Multiracial Democracy in the United States*, STAN. SOCIAL INNOVATION REV. 19, 22 (2023), https://ssir.org/articles/entry/how_we_achieve_a_multiracial_democracy; Joe R. Feagin, *Heeding Black Voices: The Court, Brown, and Challenges in Building a Multiracial Democracy*, 66 U. PITT. L. REV. 57 (Fall 2004).

36. Nadia Johannisova & Stephan Wolf, *Economic Democracy: A Path for the Future?*, 44 FUTURES 562, 564 (2012).

37. Benjamin Gillies, *Worker Cooperatives: A Bipartisan Solution to America's Growing Income Inequality*, HARV. KENNEDY SCH. (June 15, 2016), <https://studentreview.hks.harvard.edu/worker-cooperatives-a-bipartisan-solution-to-americas-growing-income>. See also Elaine W. Wilson, *Cooperatives: The First Social Enterprise*, 66 DEPAUL L. REV. 1013, 1020 (2017). Historically, the most successful cooperatives in the U.S. have been agricultural cooperatives. *Id.* In 2002, 3.1 million farmers were members in 3,140 cooperatives providing marketing, supplies, and other agriculturally related services. KIMBERLY A. ZEULI & ROBERT CROPP, COOPERATIVES: PRINCIPLES AND PRACTICES IN THE 21ST CENTURY 3 (2004). In total, approximately 48,000 cooperatives operate throughout all sectors, serving 120 million members. *Id.* This includes purchasing, consumer, financial, utility, housing, food, and worker cooperatives. *Id.* at 3-4.

38. *What Is a Worker Cooperative?*, DEMOCRACY AT WORK INST., <https://institute.coop/what-worker-cooperative> (last visited Sept. 27, 2024).

focused purposes,³⁹ offering a pathway to economic engagement based on shared prosperity.⁴⁰

In this Article, I argue that the conditions are fertile for a widespread seeding of worker cooperative businesses into the American business landscape, primarily through the conversion of existing, aging businesses owned by the Baby Boomer generation into worker cooperatives. Part II discusses the historical context in which the phrase the “American Dream” and its ideology was born. Part III addresses 21st-century economic inequality and its threat to democracy and the American Dream, drawing parallels to the Gilded Age and Progressive Era. Part IV defines economic democracy and discusses the worker cooperative as a tool to achieve economic democracy. Lastly, Part V describes why the conditions are ripe for the expansion of worker cooperatives as a business model in the United States.

II. THE AMERICAN DREAM IN HISTORICAL CONTEXT

While the essence of the American Dream as a national ethos stems from Thomas Jefferson’s belief in democratic equality,⁴¹ or each citizen’s right to “life, liberty, and the pursuit of happiness,”⁴² the earliest use of the phrase “American Dream” to connote a shared national value or ideal was in 1895, not long before the turn of the 20th century.⁴³ In a speech commemorating the 75th birthday of Ulysses S. Grant, the speaker not only praised Grant for “protecting the Union”⁴⁴ during the Civil War, but focused on the nation itself, stating:

“Oh, critic and cynic, dreamer and doubter, behold America, as this day she stands before her history and her heroes. See her millions of people, her free institutions, her equal laws, her generous opportunities, her schoolhouse and her churches; you see misfortunes and defects, for not yet is fully realized the American dream; you surely see her mighty progress toward the fulfillment of her philosophy.”⁴⁵

39. *Id.*

40. *Tools: Employee Ownership*, THE ASPEN INST. (Sept. 22, 2023), <https://www.aspeninstitute.org/longform/job-quality-tools-library/section-4-strengthening-practices-to-improve-job-quality/tools-employee-ownership/>.

41. CHURCHWELL, *supra* note 2, at 3.

42. *Id.* at 2.

43. *Id.* Prior to the publication of CHURCHWELL, *supra* note 2, the phrase “American Dream” had been attributed to historian James Truslow Adams when he coined the term in post-Great Depression book *The Epic of America*. James Jeffrey, *Remember the Original Meaning of the American Dream*, INTELLECTUAL TAKEOUT (May 22, 2019), <https://intellectuالتakeout.org/2019/05/remembering-the-original-meaning-of-the-american-dream/>; see also JAMES TRUSLOW ADAMS, *THE EPIC OF AMERICA* (1931).

44. Churchwell, *supra* note 2, at 25.

45. *Id.*

Although the speaker does not elaborate on the character or description of what the unrealized dream may be, they were speaking to a shared, national fundamental understanding or assumption—one that not only included “generous opportunities,” but “institutional freedom, religious freedom, equality under the law, and universal education.”⁴⁶ Any mention of the American Dream in relation to economic success scolded the concentration of wealth as “un-American”⁴⁷ for the threat it posed to “national ideals of equality and justice.”⁴⁸

It is easy to understand the origin of the American Dream as a national philosophy and the rhetoric used to define its initial meaning when considered in its historical context beginning with the post-Civil War Reconstruction Era through the Progressive Era—periods of tremendous change and modernization for America.⁴⁹ Spanning the late 19th and early 20th centuries, this time was transformative and instrumental in forming the modern United States.⁵⁰ Analyzing the period from Reconstruction through the Progressive Era “incorporates Reconstruction historians’ emphasis on race and citizenship with the emphasis of scholars of the Gilded Age and Progressive era on labor and capital, the construction of American liberalism, and the construction of the American state—all of which are inseparable.”⁵¹ Viewing this period holistically identifies “a ferocious contest over the proper role of government in American society;”⁵² a role that works for *all* people and all *citizens*, or a limited one that promotes big business.⁵³ Inherent in this contest was the struggle over defining “citizen” as the future of the nation depended on who would have a voice in its reconstruction and evolution towards a modern, industrialized nation.⁵⁴ Although the Civil War and its aftermath led the nation to focus on the suffrage of former slaves—gender, class, and ethnicity were also included in the discussion—as the Civil War upended the “traditional American belief that a good voter must be a white man who owned property.”⁵⁵

Reconstruction, or the time immediately following the U.S. Civil War (1865-1877), was a period of massive change for America as the country struggled with remedying the injustices of slavery and its social, economic, and political

46. *Id.* at 26.

47. *Id.* (referencing an October 9, 1899, *Brooklyn Daily Eagle* article disapproving of a Vermont landowner’s decision to build a 4,000 acre estate with sixty rooms, making it the largest property in the U.S. at the time, and a *Leavenworth Times* editorial from July 14, 1908 questioning the inequity of pay between various jobs or professions and the need for “the equitable distribution of wealth”).

48. *Id.* at 27. James Truslow Adams, in his book *The Epic of America*, also discussed that the “American Dream” encompassed more than just economic opportunity, but also advocated against privilege. Jeffrey, *supra* note 43.

49. Heather Cox Richardson, *Reconstructing the Gilded Age and Progressive Era*, in *A COMPANION TO THE GILDED AGE AND PROGRESSIVE ERA* 7, 7 (Christopher McKnight Nichols & Nancy C. Unger eds., 2017).

50. *See id.*

51. *Id.* at 10.

52. *Id.*

53. *Id.* at 11.

54. *Id.*

55. *Id.*

influence,⁵⁶ and what that meant for a nation that had never existed without slavery. The former Confederate states were devastated physically, economically, and politically. The national focus was on rebuilding the South and reuniting the country.⁵⁷ Simultaneously, nearly four million enslaved people were freed into a new multiracial society without any consensus of what this new reality would look like.⁵⁸ Many white Southerners, Northerners, and President Lincoln's successor, Andrew Johnson, envisioned a society where formerly enslaved individuals and people of color generally were "free," but had no true civil rights or involvement in government.⁵⁹ On the other side were Black Southerners and Northern Republicans who fought to ensure that the formerly enslaved were secured natural and civil rights before the former Confederate states were readmitted to the United States.⁶⁰

For those who were freed, land was an important issue.⁶¹ Land was freedom. Ownership was freedom. "The person who is dependent, economically dependent on someone else for their livelihood, is not truly free."⁶³ Indeed, no one knew better than formerly enslaved individuals that economic independence was the foundation of freedom, and in the South's largely agricultural society, economic independence required ownership of land.⁶⁴ On the one hand, distributing the

56. *Radical Republican*, BRITANNICA (July 20, 1998), <https://www.britannica.com/topic/Radical-Republican>; Eric Foner et al., *Eric Foner's "Reconstruction" at Twenty-Five*, 14 J. GILDED AGE & PROG. ERA 13, 14 (2014).

57. *Overview: Civil War and Reconstruction, 1861-1877*, LIBR. OF CONG., <https://www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/civil-war-and-reconstruction-1861-1877/overview/> (last visited July 30, 2024).

58. Farrell Evans, *Reconstruction: A Timeline of the Post-Civil War Era*, HIST. (Feb. 3, 2021), <https://www.history.com/news/reconstruction-timeline-steps>. See also Steven Levitsky, *The Third Founding: The Rise of Multiracial Democracy and the Authoritarian Reaction Against It*, 110 CAL. L. REV. 1991, 1991 (2022) ("A multiracial democracy is simply a democracy in a diverse society in which those basic rights are universally protected across ethnic groups; in other words, where the rights of individuals of all ethnic groups are protected equally."). Although the U.S. officially became a multiracial democracy "on paper" in the 1960s, we still have much to achieve for a true multiracial democracy, although progress is being made.

59. *The Travails of Reconstruction*, LIBR. OF CONG., <https://www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/civil-war-and-reconstruction-1861-1877/travails-of-reconstruction/> (last visited Sept. 27, 2024).

60. *Id.*

61. *Rebuilding the South After the War*, PBS AM. EXPERIENCE <https://www.pbs.org/wgbh/americanexperience/features/reconstruction-rebuilding-south-after-war/> (last visited Aug. 1, 2024).

62. *Id.* See also Mary Wood, *Why Land Redistribution to Former Slaves Unraveled After the Civil War*, UNIV. OF VA. SCH. OF L. (Oct. 29, 2019), <https://www.law.virginia.edu/news/201910/why-land-redistribution-former-slaves-unraveled-after-civil-war>. In January 1865, General William T. Sherman issued Field Order No. 15 which promised the redistribution of confederate land in South Carolina, Georgia, and Florida be redistributed to freed slaves. President Andrew Johnson returned those lands to their white owners later that year.

63. *Rebuilding the South After the War*, *supra* note 61. African American thought-leader of the time, Booker T. Washington, advocated for economic freedom and believed, once achieved, African Americans would also find social, political, and cultural equality. ALAN AXELROD, *THE GILDED AGE: 1876-1912 OVERTURE TO THE AMERICAN CENTURY* 242 (2017).

64. *Rebuilding the South After the War*, *supra* note 61.

plantation land to Black men could create more problems among the planter class.⁶⁵ On the other, how could the South be a democratic society if the major economic resources remained in the hands of a small group of white wealthy landowners with “landless workers working for them” for poverty wages or worse?⁶⁶ That is, if Southern society were to truly change and get away from the social structure of slavery and the ownership of humans, large exploitative plantations—big business entities—would have to be dissolved.⁶⁷

The question of who should bear the cost of this new multiracial democracy was also at the heart of the public policy debate.⁶⁸ The devastation of the South required rebuilding and significant resources, so not only were citizens and politicians debating how to build cities, roads, governments, and society,⁶⁹ but also, who should pay for it? Who should be taxed? And at what level?⁷⁰

During the Reconstruction Era, America was struggling with an identity crisis. The Civil War left a wound that could not be healed without considering fundamental questions that would define modern American society.⁷¹ Slavery and indentured servitude were outlawed,⁷² except for those found guilty of felonies, and masses of Black Americans entered the workforce for the first time.⁷³ The people were faced with new ideas about what it meant to be American, how to define citizenship, the role of the federal government, and what freedom means.⁷⁴ But first, whether or not the people at the time realized it, to abolish slavery, they had to consider what slavery as a system was in the first place.⁷⁵

What was abolished? Was it labor without wages? Is that what was abolished, so now people have to pay wages and that is the meaning of emancipation? Is slavery a broad system of racial inequality? And if that’s abolished, other consequences flow out of emancipation. Is it a system of unequal power in which some people exercise power over others in the society? Is that what’s abolished? What is necessary to

65. *Id.*

66. *Id.*

67. *Id.*; Beverly Wilson Palmer & Holly Byers Ochoa, “Reconstruction,” *September 6, 1865*, PENNSYLVANIA HIST.: A J. OF MID-ATLANTIC STUD. Vol. 60 No. 2, 207 (April 1993), <https://www.jstor.org/stable/27773619?seq=12>. Politician, lawyer, and equality advocate, Thaddeus Stevens, stated in a speech on Reconstruction on September 6, 1865, “The whole fabric of Southern Society must be changed, and never can it be done if this opportunity is lost. Without this, this government can never be, as it never has been, a true republic.” He recognized and argued that returning governance and the economy to the confederate states would squander the opportunity to become a more perfect union.

68. *Rebuilding the South After the War*, *supra* note 61.

69. *Id.*

70. *Id.*

71. Eric Foner & David S. Tanenhaus, *The Original Intent of the Fourteenth Amendment: A Conversation with Eric Foner*, 6 NEV. L.J. 425, 427 (2005), <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1368&context=nlj>.

72. U.S. CONST amend. XIII, §1.

73. Foner & Tanenhaus, *supra* note 71.

74. *Id.*

75. *Rebuilding the South After the War*, *supra* note 61.

secure the abolition of that? What does it mean to be a free American? What further social changes are needed in a society that was resting on slavery to fulfill the promise of the abolition of slavery?⁷⁶

The abolition of slavery “raised all sorts of questions about what new systems, what new institutions, what new principles had to be implemented.”⁷⁷ In the end, Reconstruction is viewed by many historians as a commendable, yet unfinished, experiment in multiracial democracy,⁷⁸ responsible for altering the definition of U.S. citizenship, and for redefining the roles and responsibilities of government through the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution,⁷⁹ which abolished slavery, enshrined equal treatment under the law, and granted Black men the right to vote, respectively.

It was during this stage of rebuilding and rebirth when the idea of the American Dream as an ethos began to form. The Dream’s essence is found in the Reconstruction Amendments, and the 14th Amendment in particular. These Amendments preserved in the U.S. Constitution a recognition that “our fundamental liberties become stronger when our institutions are responsive to everyone—that when all people are served by our democratic institutions, all have a stake in protecting them.”⁸⁰

Unfortunately, Reconstruction ended, unfinished, with the Compromise of 1877 when Democrats agreed to accept President Rutherford B. Hayes’ victory in the 1876 presidential election so long as he agreed to withdraw all remaining federal troops in the South and to appoint a southerner to his cabinet.⁸¹ Support for Reconstruction was already waning, largely due to the economic downturn of 1873 resulting in high unemployment and dropping prices, which hindered the economic recovery in the South.⁸² With this downturn, political and legal leadership abandoned the efforts of realizing racial and economic justice, and turned their energy toward industrialization and corporatism. At the same time, several

76. Foner & Tanenhaus, *supra* note 71, at 429.

77. *Id.*

78. *Reconstruction*, HIST. (updated Jan. 24, 2024), <https://www.history.com/topics/american-civil-war/reconstruction>.

79. *Radical Republican*, ENCYC. BRITANNICA (last visited Jul. 17, 2024), <https://www.britannica.com/topic/Radical-Republican>; Eric Foner, *The Buried Promise of the Reconstruction Amendments*, THE NEW YORKER (Sept. 27, 2019), <https://www.newyorker.com/news/q-and-a/the-buried-promise-of-the-reconstruction-amendments>.

80. Glover Blackwell, *supra* note 35, at 22. Republican U.S. House Representative John Bingham, the primary author of Section One of the Fourteenth Amendment, in his speech “One Country, One Constitution, One People” (1866) set forth his belief for and vision of a Constitution which would protect the equal rights of all citizens. See John Bingham, *One Country, One Constitution, One People*, NAT’L CONST. CTR. (1866), <https://constitutioncenter.org/the-constitution/historic-document-library/detail/john-bingham-one-country-one-constitution-one-people-1866>.

81. Evans, *supra* note 58.

82. Sarah Pruitt, *How the 1876 Election Tested the Constitution and Effectively Ended Reconstruction*, HIST. (updated August 18, 2020), <https://www.history.com/news/reconstruction-1876-election-rutherford-hayes>.

key U.S. Supreme Court decisions chipped away at the promise of the Reconstruction-era constitutional amendments and laws designed to ensure equal protection of all citizens.⁸³ A new nation had emerged, but it was not the nation of freedom so many had hoped for.

While rebuilding the Union post-Civil War, the United States was also expanding westward as railroads connected more regions of the country to the national economy.⁸⁴ Spanning from the late 19th to early 20th centuries, advances in manufacturing, transportation, and information lead to the mass production of goods; greater citizen mobility; and news, ideas, and information spreading more quickly and widely via telegraph, newspapers, and radio.⁸⁵ America was experiencing its second industrial revolution, continuing its post-Civil War transformation from a largely agrarian society into a modern 20th century capitalist, industrialized democracy.⁸⁶

From the late 1800s to early 1900s,⁸⁷ the Second Industrial Revolution resulted in massive growth in petroleum refining, steel manufacturing, electrical power, and railroads that transformed society,⁸⁸ creating a new class of wealthy industrialists and entrepreneurs⁸⁹ such as Rockefeller, Carnegie, and Vanderbilt. Beginning with the development of the railroads, these white businessmen—“Captains of Industry” to some and “robber barons” to others—built their fortunes and empires by controlling every stage of production, from raw materials to final product.⁹⁰ Assisted by bankers and financiers, this ambitious new class of businessmen formed trusts or corporate conglomerates designed to control all aspects of the industry under a singular, unified management.⁹¹ They also conspired to limit their business competition and bribed politicians to ensure laws remained pro-business.⁹² This Gilded

83. *Id.*

84. LIBR. OF CONG., *Rise of Industrial America, 1876-1900*, <https://www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/rise-of-industrial-america-1876-1900/overview/> (last visited Aug. 13, 2024); Christopher Klein, *How Gilded Age Corruption Led to the Progressive Era*, HIST. (updated August 23, 2023), <https://www.history.com/news/gilded-age-progressive-era-reforms>.

85. Eric Niiler, *How the Second Industrial Revolution Changed Americans' Lives*, HIST. (updated July 25, 2023), <https://www.history.com/news/second-industrial-revolution-advances>.

86. Library of Congress, *supra* note 84; Noam Maggor, *American Capitalism: From the Atlantic Economy to Domestic Industrialization*, in *A COMPANION TO THE GILDED AGE AND PROGRESSIVE ERA* 205, 207 (Christopher McKnight Nichols & Nancy C. Unger eds., 2017); Richardson, *supra* note 49, at 7.

87. Patrick Kiger, *8 Groundbreaking Inventions from the Second Industrial Revolution*, HIST. (updated September 11, 2023), <https://www.history.com/news/second-industrial-revolution-inventions>.

88. *Id.*; LIBR. OF CONG, *supra* note 84; Edward O'Donnell, *Are We Living in the Gilded Age 2.0?*, HIST. (updated September 11, 2023), <https://www.history.com/news/second-gilded-age-income-inequality> (“Between 1860 and 1900, U.S. Factory output soared from \$1.9 billion to \$13 billion, an increase of nearly 600%. By 1900 the U.S. boasted the most powerful industrial economy in the world.”).

89. *Id.*

90. AXELROD, *supra* note 63, at 75; Maggor, *supra* note 86, at 205.

91. AXELROD, *supra* note 63. The Standard Oil Company, owned by the first billionaire, John D. Rockefeller, used this strategy allowing him to amass greater and greater wealth and power.

92. Klein, *supra* note 84.

Age⁹³ produced the first billionaire, John D. Rockefeller, and thousands of millionaires.⁹⁴ And with this accumulation of money and resources came “ostentatious displays of wealth,”⁹⁵ political power, worker exploitation, and corruption.⁹⁶

Coined “The Gilded Age” because of the false, shiny exterior masking the internal rot, the era was marked by extreme luxury and opulence (the gilded outside), and extreme poverty (the lead core). Deemed “conspicuous consumption” by economist and sociologist Thorstein Veblen, the wealthiest members of Gilded Age society unapologetically and openly displayed their riches with elaborate mansions, clothing, events, adornments, jewelry, and other luxuries of modern life in industrial America.⁹⁷ However, at the same time, the workers employed by these Gilded Age elite only worked part of the year, under horrendously dangerous sweatshop conditions, for little pay, and in the absence of any safety regulations.⁹⁸ This environment was ripe for the support of and membership in labor unions, which raised awareness about working conditions and wages through strikes and work stoppages,⁹⁹ and demanded a shorter work day (eight hours), higher pay, and workplace safety.¹⁰⁰ In the late 1880s, approximately 40% of industrial workers earned below the poverty line of \$500 per year.¹⁰¹ By 1890, the corrupt corporate titans, or the wealthiest 1% of the population, owned 51% of America’s real and personal property, while the bottom 44% owned only 1.2% of the country’s real and personal property.¹⁰² The top 12% of the U.S. population owned 86% of all wealth.¹⁰³

The economic inequality was visible to the naked eye. As the wealthy immodestly displayed their riches, unrest steeped in the tenement apartments, settlement houses, and streets of the urban landscape where immigrants and the working class toiled.¹⁰⁴ Growing increasingly aware of the robber barons’ ability to “bend democracy to their will”¹⁰⁵ through their influence over lawmakers and

93. Richardson, *supra* note 49.

94. Christopher Klein, *How the Gilded Age’s Top 1 Percent Thrived on Corruption*, HIST. (updated September 11, 2023), <https://www.history.com/news/gilded-age-corruption-corporate-wealth>; Chase Peterson-Withorn, *From Rockefeller to Ford, See Forbes’ 1918 Ranking Of The Richest People In America*, FORBES (Sept. 19, 2017, 8:03 AM), <https://www.forbes.com/sites/chasewithorn/2017/09/19/the-first-forbes-list-see-who-the-richest-americans-were-in-1918/>.

95. AXELROD, *supra* note 63, at 80.

96. Patrick Kiger, *How Robber Barons Flaunted Their Money During the Gilded Age*, HIST. (updated September 26, 2023), <https://www.history.com/news/robber-barons-gilded-age-wealth>.

97. *Id.*

98. *Progress and Poverty: Industrial Capitalism in the Gilded Age, 1877-1893*, WHO BUILT AMERICA?, <https://www.whobuiltamerica.org/reader/chapter/progress-and-poverty-industrial-capitalism-in-the-gilded-age-1877-1893> (last visited Jan. 6, 2025).

99. LIBR. OF CONG., *supra* note 84; *Id.*

100. BRITANNICA, *supra* note 5.

101. Klein, *supra* note 84; *see also The Gilded Age*, PBS, <https://www.pbs.org/wgbh/americanexperience/features/carnegie-gilded/> (last visited August 14, 2024).

102. Klein, *supra* note 84.

103. O’Donnell, *supra* note 88.

104. Charles E. Orser Jr., *Why the Gilded Age . . . and Why Now?*, Vol. 16, No. 4, INT. J. HIST. ARCHAEOLGY., 623, 625 (2012); *See also* O’Donnell, *supra* note 88.

105. O’Donnell, *supra* note 88.

their use of corruption, workers organized close to 37,000 labor strikes protesting deplorable working conditions and wages.¹⁰⁶ Some of these strikes became so violent they involved police and state and local military, with some strikes resulting in lost lives.¹⁰⁷ With the wealthy seemingly in control of the capital, production, labor, distribution, and lawmakers, the foundational value and aspiration that America was a place where everyone could prosper, no matter their beginnings, was called into question.¹⁰⁸

The phrase “American Dream” became an abbreviation for a shared national value—equality of opportunity and prosperity—and a protest to inequality.¹⁰⁹ Against this backdrop of robber barons, greedy corporate titans, unconscionable worker exploitation, and corruption, the question arose again—for whom does the federal government work? In response, Progressivism and its era were born. Progressives sought to make American society better and safer for everyone by holding big business responsible through greater regulation, fighting corrupt government, and advocating for improved factory conditions and improved living conditions in the poorest neighborhoods.¹¹⁰ Progressive Era leaders focused on the most pressing issues of the time: labor, suffrage, economic reform (limiting monopolies), environmental protections, and welfare of the poor, including immigrants.¹¹¹ They also hoped to make the world more democratic.¹¹² It was in this context that “American Dream” became a warning to Americans that the collective equality and freedom upon which their democracy had been formed was at risk so long as unbridled capitalism and the obscene individual accumulation of wealth were allowed to continue.¹¹³

III. 21ST CENTURY ECONOMIC INEQUALITY, ITS THREATS, AND A RETURN TO THE TRUE MEANING OF THE AMERICAN DREAM

A. *Economic Inequality*

It is easy to draw parallels between the events, challenges, struggles, and tensions we face today and those of Reconstruction and GAPE. Just as the world was

106. *Id.*

107. *Id.* Two infamous and violent strikes include the Homestead Steel Strike (1892) and the Pullman Strike (1894). Patrick J. Kiger, *10 Major Labor Strikes Throughout US History*, HIST. (updated August 6, 2024) <https://www.history.com/news/strikes-labor-movement>. The Homestead Steel Strike between the Amalgamated Association of Iron and Steel Workers and the CEO of Carnegie Steel, Henry Clay Frick, broke out when Frick cut pay for workers and refused to negotiate with the union. *Id.* Due to violence between the strikers and Frick, state militia were called in to quell the strike. *Id.* The Pullman Strike, in support of railroad workers, shut down railway travel through 27 states, leading to President Grover Cleveland activating 10,000 federal troops to suppress the strike. *Id.*

108. Kiger, *supra* note 96.

109. CHURCHWELL, *supra* note 2, at 26, 29.

110. LIBR. OF CONG., *Progressive Era to New Era, 1900-1929*, <https://www.loc.gov/classroom-materials/united-states-history-primary-source-timeline/progressive-era-to-new-era-1900-1929/overview/> (last visited March 7, 2024).

111. BRITANNICA, *supra* note 5.

112. LIBR. OF CONG., *supra* note 110.

113. CHURCHWELL, *supra* note 2, at 29.

experiencing its second industrial revolution during that time, the world today is amid its fourth industrial revolution.¹¹⁴ “Industry 4.0” or “4IR”¹¹⁵ reflects the advancement of technology and is “characterized by widespread adoption of artificial intelligence, automation and other digital technologies”¹¹⁶ which will not only lead to more efficient and cheaper manufacturing due to smart technologies and increased automation,¹¹⁷ but it will radically change “how and where people live and their relationships to one another,”¹¹⁸ upending our economies. As a nation, we are also still trying to decide who has a say in our government and whom the federal government should serve. The most striking parallel between GAPE and today, however, is the extreme economic inequality.¹¹⁹

The United States is five years removed from the start of the COVID-19 pandemic which caused a “severe economic trauma.”¹²⁰ As the virus spread across the

114. WORLD ECON. F., *The Global Social Mobility Report 2020: Equality, Opportunity, and a New Economic Imperative*, 4 (2020) http://www3.weforum.org/docs/Global_Social_Mobility_Report.pdf (last visited September 27, 2024).

115. *Id.*

116. Charlotte Edmond, *What does Industry 4.0 mean for workers?*, <https://www.weforum.org/agenda/2024/01/industry-4-fourth-industrial-revolution-workers/> (last visited August 17, 2024).

117. WORLD ECON. F., *supra* note 114; see also Bernard Marr, *What is Industry 4.0? Here's A Super Easy Explanation for Anyone*, FORBES (September 2, 2018) <https://www.forbes.com/sites/bernardmarr/2018/09/02/what-is-industry-4-0-heres-a-super-easy-explanation-for-anyone/> (last visited August 17, 2024). “Ultimately, it’s the network of these machines that are digitally connected with one another and create and share information that results in the true power of Industry 4.0.” *Id.* We do not fully yet grasp the impact this revolution will have on society, but it is clear that “the Fourth is evolving at an exponential rather than a linear pace. Moreover, it is disrupting almost every industry in every country. And the breadth and depth of these changes herald the transformation of entire systems of production, management, and governance. Klaus Schwab, *The Fourth Industrial Revolution: what it means, how to respond*, WORLD ECON. F. (January 14, 2016), <https://www.weforum.org/agenda/2016/01/the-fourth-industrial-revolution-what-it-means-and-how-to-respond/> (last visited September 27, 2024).

118. MIT Technology Review Insights, *The Promise of the Fourth Industrial Revolution* (November 19, 2020), https://wp.technologyreview.com/wp-content/uploads/2020/11/The-promise-of-the-fourth-industrial-revolution_111920.pdf (last visited August 17, 2024).

119. O’Donnell, *supra* note 88; see also Rick Hampson, *America’s Gilded Ages: Then and now, and how they differ*, USA TODAY (May 17, 2018, 2:17 PM), <https://www.usatoday.com/story/news/2018/05/17/americas-gilded-ages-then-and-now-and-how-they-differ/615185002/> (last visited August 16, 2024); Ethan Wolff-Mann, *Super rich’s wealth concentration surpasses Gilded Age levels*, YAHOO FIN. (July 7, 2021), <https://finance.yahoo.com/news/super-richs-wealth-concentration-surpasses-gilded-age-levels-210802327.html> (last visited August 16, 2024); Lily Rothman, *The Gilded Age and How American Income Inequality Changed*, TIME (February 5, 2018, 10:30 AM), <https://time.com/5122375/american-inequality-gilded-age/> (last visited August 16, 2024); Jim Martin, *This second Gilded Age is full of economic disparity and monopolies*, DENVER POST (July 25, 2024, 10:21 AM), <https://www.denverpost.com/2024/07/24/wealth-inequality-middle-glass-gilded-age/> (last visited August 16, 2024); Rupert Neate, *World’s witnessing a new Gilded Age as billionaires’ wealth swells to \$6tn*, THE GUARDIAN (October 26, 2017, 11:48 AM), <https://www.theguardian.com/business/2017/oct/26/worlds-witnessing-a-new-gilded-age-as-billionaires-wealth-swells-to-6tn> (last visited August 16, 2024).

120. Rachel Lerman & Abha Bhattarai, *11 Charts That Show How Covid Changed the U.S. Economy*, WASHINGTON POST (March 16, 2024, 7:00 AM), <https://www.washingtonpost.com/business/2024/03/16/economy-recovery-covid-unemployment-wages-debt-groceries/> (last visited September 27, 2024). The COVID-19 pandemic also ended the recovery and economic expansion following the Great Recession of 2007-2009 which was one of the “deepest downturns of the U.S. economy since World War II.” *Id.* See also Josh Bivens, *The post-pandemic recovery is an economic policy success story*, ECON. POL’Y INST.,

country, governors issued shelter-at-home orders, businesses were forced to close, and millions of Americans lost their jobs.¹²¹ The trauma caused by this economic shutdown led to unprecedented unemployment, supply chain problems, a sharp contraction in spending, and sharp increases in prices.¹²² Thanks in large part to substantial governmental intervention to stave off an economic collapse,¹²³ most experts report the U.S. economy has or is still steady from the trauma of COVID-19. The labor market is strong with an unemployment rate below 4% for over two years.¹²⁴ Workers' wages are beginning to outpace inflation, and workers are seeing greater capacity for spending and saving.¹²⁵ However, consumers continue to feel the pinch of inflation as it remains, at the time of writing, above the Federal Reserve Bank's goal of 2%. Where the rate of savings among Americans skyrocketed during the pandemic as people stayed home, in 2024 most Americans dipped into savings at a higher rate than pre-pandemic levels in order to make ends meet.¹²⁶ Family debt loads have skyrocketed as people try to keep up with the rising costs of goods and services.¹²⁷ For example, groceries cost 25% more in 2024 than they did four years before.¹²⁸ While there is reason to be hopeful about today's economy and that of the immediate future even while inflation persists, we cannot

<https://www.epi.org/blog/the-post-pandemic-recovery-is-an-economic-policy-success-story-policy-makers-took-the-best-way-through-a-rocky-path/> (last visited October 18, 2024). Felix Richter, *How Is the US Economy Doing after COVID-19?*, WORLD ECON. F. (February 2, 2023), <https://www.weforum.org/agenda/2023/02/us-economy-covid19-inflation/> (last visited September 27, 2024).

121. *Id.*

122. David Leonhardt, *What's Going on With the U.S. Economy?*, N.Y. TIMES (February 14, 2024), <https://www.nytimes.com/2024/02/14/briefing/us-economy-inflation-covid.html> (last visited September 27, 2024); Bivens, *supra* note 120.

123. Center on Budget and Policy Priorities, *Chart Book: Tracking the Recovery from the Pandemic Recession* (June 9, 2022), <https://www.cbpp.org/research/economy/tracking-the-recovery-from-the-pandemic-recession> (last accessed September 27, 2024).

124. Alicia Wallace, Elizabeth Buchwald, Bryan Mena, & Nicole Goodkind, *Another Shockingly Good Jobs Report Shows America's Economy Is Booming* (February 2, 2024, 5:20 PM), <https://www.cnn.com/business/live-news/jobs-report-january-02-02-24/index.html> (last visited September 27, 2024). The United States has not experienced an unemployment rate below 4% for this length of time since the 1960s. Lerman and Bhattarai, *supra* note 120.

125. Leonhardt, *supra* note 122. "Inflation is a general increase in prices, which will cause a loss of purchasing power over time, meaning your dollar will not go as far tomorrow as it did today. It is typically expressed as the annual change in prices for everyday goods and services such as food, furniture, apparel, transportation and toys." Talmon Joseph Smith, *Can America Turn a Productivity Boomlet Into a Boom?*, N.Y. TIMES (February 14, 2024), <https://www.nytimes.com/2024/02/14/business/economy/productivity-economy.html>. "Once inflation rises, it can remain high for years (as it did from the late 1960s to the early 1980s). Workers demand higher raises, and businesses, facing higher costs, raise prices even more. The dynamic is reinforcing. When inflation soared in 2021, some economists thought the pattern was repeating. They predicted that only a deep recession would bring a return to normalcy. These dark predictions, however, turned out to be wrong. Instead, inflation started falling rapidly in 2022. The end of the stimulus programs, combined with the end of most supply-chain problems, was enough to reduce price increases." Leonhardt, *supra* note 122.

126. Lerman & Bhattarai, *supra* note 120.

127. *Id.*

128. *Id.*

ignore that economic inequality¹²⁹ remains rampant in our society as the rich get substantially richer every day.¹³⁰

As of April 2024, there are 2,781 billionaires in the world with a combined worth of \$14.2 trillion.¹³¹ The United States has 813 billionaires—the most of any other country—worth a combined \$5.7 trillion.¹³² In fact, 14 of the top 20 richest people in the world are American citizens, including eight billionaires in the top 10.¹³³ These extremely wealthy individuals and the other members of the top 10% of all earners within the United States own almost three-quarters (70%) of the country's total wealth,¹³⁴ many of whom increased their wealth by 30% in the past year alone.¹³⁵ And this trend has only been growing since the 1970s.¹³⁶ The top 1% of income earners in the U.S., or those earning \$652,657 or more annually, “have more than doubled their share of the nation's income since the mid-twentieth century.”¹³⁷ As of 2021, the top 0.01% of the richest families in the U.S. owned 10% of the country's wealth, surpassing the 1913 Gilded Age peak when a comparable percentage of wealthy families owned 9% of the country's

129. Economic inequality refers broadly to economic differences among societal groups. Susannah Snider, *Economic Inequality: What It Is and How It Impacts You*, U.S. NEWS & WORLD REP. (March 21, 2019, 9:00 AM) <https://money.usnews.com/money/personal-finance/family-finance/articles/economic-inequality-what-it-is-and-how-it-impacts-you> (last visited September 27, 2024). Income and wealth inequality refer to the distribution of income and assets across a population. *Id.* Higher income and wealth inequality signal an uneven or less equal distribution across the population. *Introduction to Inequality*, INT'L MONETARY FUND, <https://www.imf.org/en/Topics/Inequality/introduction-to-inequality> (last visited September 27, 2024); see also Urban Institute, *Nine Charts About Wealth Inequality in America* (April 25, 2024), <https://apps.urban.org/features/wealth-inequality-charts/> (last visited September 27, 2024); Gloria Guzman & Melissa Kollar, *Income in the United States: 2022*, U.S. CENSUS BUREAU, <https://www.census.gov/library/publications/2023/demo/p60-279.html?os=vb.&ref=app> (last visited September 27, 2024).

130. Estelle Sommeiller & Mark Price, *The new gilded age: Income inequality in the U.S. by state, metropolitan area, and county*, ECON. POL'Y INST., <https://www.epi.org/publication/the-new-gilded-age-income-inequality-in-the-u-s-by-state-metropolitan-area-and-county/> (last visited September 27, 2024); see also Carmen Huertas-Noble, *Worker-Owned and Unionized Worker-Owned Cooperatives: Two Tools to Address Income Inequality*, 22 CLINICAL L. REV. 325 (2016).

131. Devin Sean Martin, *The Countries With The Most Billionaires 2024* (April 3, 2024, 10:00 AM), <https://www.forbes.com/sites/devinseanmartin/2024/04/02/the-countries-with-the-most-billionaires-2024/> (last visited September 27, 2024).

132. *Id.* This is a 10% increase from last year's total number of U.S. billionaires, which was 735.

133. *Id.*

134. Justin Klawans, *American Wealth Disparity by the Numbers*, THE WEEK (August 24, 2023), <https://theweek.com/finance/1025975/american-wealth-disparity-numbers> (last visited September 27, 2024); see also Nikki McCann Ramirez, *Billionaires Are Hoarding Trillions in Untaxed Wealth. They Want the Supreme Court to Keep It That Way*, ROLLING STONE (January 5, 2024), <https://www.rollingstone.com/politics/politics-news/america-ultra-wealthy-trillions-untaxed-profits-2022-1234940717/> (last visited September 27, 2024).

135. Martin, *supra* note 131.

136. Chad Stone, Danilo Trisi, Arloc Sherman, & Jenniver Beltran, *A Guide to Statistics on Historical Trends in Income Inequality*, CTR. ON BUDGET AND POL'Y PRIORITIES (January 13, 2020), <https://www.cbpp.org/research/poverty-and-inequality/a-guide-to-statistics-on-historical-trends-in-income-inequality>; see also Wolak & Peterson, *supra* note 1, at 969.

137. Phil Parvin, Alan Thomas & John Tomasi, *Democracy, Capital, and the Rise of the New Inequality*, 45 POL. THEORY (2017), <https://www.jstor.org/stable/26419451> (last visited Apr. 15, 2024).

wealth.¹³⁸ Notably, in the late 1970s, 0.01% of the richest families in the U.S. only owned 2% of the country's wealth.¹³⁹

Meanwhile, income and wealth growth have remained stagnant for most families for the past 50 years.¹⁴⁰ Employment is one of the most important relationships for an adult with almost two-thirds of working adults in traditional work-for-wages employment.¹⁴¹ The promise to be paid for one's labor is a fundamental and sacred contract between employer and employee. In 1938, the Fair Labor Standards Act (FLSA)¹⁴² was enacted to ensure workers could maintain a minimum standard of living¹⁴³ by setting a floor on what workers could earn per hour,¹⁴⁴ 25 cents at the time.¹⁴⁵ Currently, and since 2009, the federal minimum wage is \$7.25 per hour.¹⁴⁶ The 2022 median household income was \$75,000.¹⁴⁷ At least 38 million people or 11.6% of the population live in poverty, and this number has not changed much since the 1960s when President Johnson declared his war on poverty.¹⁴⁸

The federal minimum wage currently has a purchasing power that is 31% less than that of its peak value in 1968,¹⁴⁹ demonstrating how severely the true value of wages have declined over time. Over the past 15 years, since Congress last approved an increase in the federal minimum wage, its purchasing power has declined 17% or \$3,000 in annual wage earnings.¹⁵⁰ Since 1968, this deterioration equates to a loss in annual earnings of \$6,800.¹⁵¹ Since the FLSA's inception and through the 1960s, increased productivity led to wage increases that kept pace

138. Wolff-Mann, *supra* note 119.

139. *Id.*

140. Leonhardt, *supra* note 122; *see also* Wolak & Peterson, *supra* note 1.

141. Brett McDonnell & Matthew T. Bodie, *From Mandates to Governance: Restructuring the Employment Relationship*, 81 MD. L. REV. 887 (2022); *see also* Bureau of Labor Statistics, *Table A-1. Employment Status of the Civilian Population by Sex and Age - 2024 Q01 Results*, <https://www.bls.gov/news.release/empsit.t01.htm> (last visited April 26, 2024).

142. David Cooper, *Raising the Federal Minimum Wage to \$15 by 2024 would lift pay for nearly 40 million workers*, ECON. POL'Y INST., <https://www.epi.org/publication/raising-the-federal-minimum-wage-to-15-by-2024-would-lift-pay-for-nearly-40-million-workers/> (last visited August 19, 2024).

143. Fair Labor Standards Act, 29 U.S.C. §8 (1938).

144. *Id.*

145. Kelly Anne Smith, *What you Need to Know About the Minimum Wage Debate*, FORBES, <https://www.forbes.com/advisor/personal-finance/minimum-wage-debate/> (last visited August 19, 2024); Fair Labor Standards Act, *supra* note 143.

146. Bureau of Labor Statistics, *May 2023 National Occupational Employment and Wage Estimates*, https://www.bls.gov/oes/current/oes_nat.htm#23-0000 (last visited September 27, 2024).

147. Guzman & Kollar, *supra* note 129.

148. Klawans, *supra* note 134.

149. David Cooper, *Congress Has Never Let the Federal Minimum Wage Erode for This Long*, ECON. POL'Y INST. (June 17, 2019), <https://www.epi.org/publication/congress-has-never-let-the-federal-minimum-wage-erode-for-this-long/> (last visited September 27, 2024); *see also* Cooper, *supra* note 142 (discussing that in 1968, the purchasing power of the minimum wage was \$10.15 per hour in 2018 dollars).

150. Cooper, *supra* note 142.

151. *Id.*

with inflation; as the nation became economically stronger, so did its workers.¹⁵² But after 1968, wage growth slowed despite continued increases in productivity in part due to lawmakers' inability to preserve the minimum wage.¹⁵³ If minimum wage had kept pace with productivity, it would be \$22 per hour today.¹⁵⁴ Ultimately, this means that today's labor force has to work more hours to pay for life's essentials, leaving fewer dollars at the end of the month to save or invest.

Meanwhile, as workers' wages have lost value, executive level pay has gone from being 20 times more than the typical workers' wages in 1965 to 344 times greater in 2022.¹⁵⁵ Corporate profits as a share of GDP have risen 7% which should translate to higher wages—but wages as a percentage of Gross Domestic Product (GDP) have *fallen* 7% since mid-1970s.¹⁵⁶ Where such increases in productivity should have led to higher wages for workers, instead, failed government policy has allowed inflation to chip away at the buying power of the workers' hourly wage,¹⁵⁷ while corporate executives, in particular, continue to receive obscene levels of compensation.¹⁵⁸ The disconnect between productivity and worker pay has allowed "capital owners (rather than workers) to claim a larger share of income and allowed those at the very top of the pay distribution to claim a larger share of overall wages."¹⁵⁹

This declining value of wages means workers and their families struggle to support themselves,¹⁶⁰ prevents them from moving up the income ladder, cements their socio-economic position (lack of opportunity),¹⁶¹ and prohibits access to and ownership over capital and other assets,¹⁶² which are critical for building wealth. Overall, since the 1970s, there has been more movement up the income ladder than down.¹⁶³ For example, during the 48 year period from 1971 to 2019,

152. Kelly Anne Smith, *What you Need to Know About the Minimum Wage Debate*, FORBES (February 26, 2021), <https://www.forbes.com/advisor/personal-finance/minimum-wage-debate/> (last visited August 19, 2024).

153. *Id.*; Cooper, *supra* note 142.

154. Cooper, *supra* note 142.

155. *CEO versus worker pay U.S. 2022*, STATISTA, <https://www.statista.com/statistics/261463/ceo-to-worker-compensation-ratio-of-top-firms-in-the-us/> (last visited Sept. 27, 2024).

156. Hilary Abell, *The Case for Employee Ownership: Why philanthropy and government should invest in this powerful business model*, PROJECT EQUITY 9 (May 2020), <https://project-equity.org/publication/case-for-employee-ownership> (last visited Sept. 27, 2024) (emphasis added).

157. Cooper, *supra* note 149 ("In theory, Congress makes periodic amendments to the FLSA, increasing the federal minimum wage so that even the lowest-paid jobs in the economy still pay enough for workers to meet their needs, and helping ensure that low-wage workers benefit from economywide improvements in productivity, wages, and living standards.").

158. Huertas-Noble, *supra* note 130, at 327.

159. *Id.* at 332 (quoting *The Top 10 Charts of 2014*, ECON. POL'Y INST. (December 18, 2014), <http://www.epi.org/publication/the-top-10-charts-of-2014>).

160. Huertas-Noble, *supra* note 130, at 331-32.

161. *Id.*

162. Sommeiller & Price, *supra* note 130.

163. Juliana Menasce Horowitz, Ruth Igielnik, & Rakesh Kochhar, *Most Americans Say There is Too Much Economic Inequality in the U.S., But Fewer Than Half Call it a Top Priority*, PEW RSCH. CTR. (Jan. 9, 2020), <https://www.pewresearch.org/social-trends/2020/01/09/trends-in-income-and-wealth-inequality/>.

more people moved up the ladder into the upper-income tier (from 14% to 20%) than moved down the ladder into the lower-income tier (increased from 25% to 29%).¹⁶⁴ Most alarming, however, is the shrinking of the U.S. middle class, which used to comprise the majority of Americans, and is key to the success of our democracy.¹⁶⁵ Between 1971 and 2019, the share of U.S. adults living in middle-income households decreased 10% from 61% to 51%.¹⁶⁶ This shrinkage has occurred slowly over time with each decade reporting a smaller number of adult Americans living in middle-income households.¹⁶⁷

Within the past fifty years, the median middle-class income increased from \$58,100 to \$86,600, with a total gain of 49%.¹⁶⁸ At first glance, a 49% increase seems like a good economic indicator, and perhaps it would be when considered in isolation, but the increases realized by the middle-class over the last half century were significantly less than those realized by the upper-class.¹⁶⁹ Between 1970 and 2018, the median income for upper-class households increased from \$126,100 to \$207,400—a 64% increase.¹⁷⁰ These trends have not changed since the 1980s and demonstrate the extreme and growing economic inequality in the United States.¹⁷¹

B. The Problem with Economic Inequality

Economic inequality and its runaway pace pose a danger to our society.¹⁷² High levels of economic inequality can lead to opportunity gaps and the loss of social mobility; increase the political influence of the rich while marginalizing that of middle and lower classes; and delegitimize our democratic republic.¹⁷³

1. Loss of Opportunity and Socio-Economic Mobility

Economic inequality creates opportunity gaps or opportunity inequality.¹⁷⁴ Opportunity is the key to upward socio-economic mobility.¹⁷⁵ The opportunity to

164. *Id.* at 16.

165. *Id.*; see also Huertas-Noble, *supra* note 130, at 4 (“Middle-income households” are those with income that is two-thirds to double the U.S. median household income.); Richard Fry, *Are you in the American middle class? Find out with our income calculator*, PEW RSCH. CTR. <https://www.pewresearch.org/short-reads/2024/09/16/are-you-in-the-american-middle-class/> (last visited November 11, 2024) (showing that in 2022, the income of middle-class households ranged from \$56,000 to \$169,800 for a three-person household).

166. Horowitz et al., *supra* note 163, at 15.

167. *Id.*

168. *Id.* at 16.

169. *Id.*

170. *Id.*

171. *Id.*

172. WORLD ECON. F., *supra* note 114, at 4.

173. Huertas-Noble, *supra* note 130, at 334.

174. Snider, *supra* note 129.

175. WORLD ECON. F., *supra* note 114, at 9. Socio-economic mobility is movement up or down the socio-economic ladder “whereby people see their circumstances become better or worse off than those of their parents or within their own lifetimes.” *Id.* “Absolute upward social mobility” refers to the ability of children to move up the ladder and experience socio-economic prosperity better than that of their

receive an education and training. The opportunity to exchange one's labor for wages. The opportunity to own property and assets, and to build wealth. The opportunity to meet people, build a social network, and engage in community. The opportunity to live in healthy and safe living conditions and communities. The opportunity to fully develop one's talents and gifts. Opportunity allows individuals to capitalize upon their human potential to earn a living from their efforts, prosper, and move up the socio-economic ladder.

Ideally, an individual's capacity to prosper and flourish in the world and as a human would not be dependent upon their place of birth or background.¹⁷⁶ But today, the zip code of an individual's birthplace and childhood often predicts the opportunities available to them¹⁷⁷ and in most cases dictates educational achievement, type of work, and the level of wages they will earn.¹⁷⁸ The greater amount of income and wealth a family has, the greater the opportunity,¹⁷⁹ which translates into attending and graduating from better schools, having access to broader social circles, more and better employment opportunities, and having stable marriages and healthier kids.¹⁸⁰ Families with more money and economic security can provide more to their children not only economically, but through leveraging class and status to create a smorgasbord of opportunity.¹⁸¹

Conversely, children born into poverty and less economically prosperous families face a steeper climb up the socio-economic ladder than those born into more affluent families.¹⁸² For the least affluent, life's most basic and essential needs can be a heavy burden.¹⁸³ As inflation rises, those with less income and resources feel the pinch more than wealthier families because more income goes to the increased cost of food, housing, clothing, and other life essentials.¹⁸⁴ When

parents. Absolute social mobility may be the result of an overall increase in prosperity for a county, but even when a country experiences increased affluence overall, individual socio-economic status may remain the same. Therefore, "relative social mobility" is used to more accurately describe an individual's socio-economic mobility compared to their parents. *Id.*

176. *Id.* at 10 ("Furthermore, while the above analysis holds true across countries and generations, it is important to recognize that, in most countries, individuals from certain groups—whether defined by gender, religion, ethnicity, race, socio-economic background or geographic location—are historically disadvantaged, and low social mobility perpetuates and deepens those inequalities. These circumstances contribute to less cohesive economies and societies, in which much human potential continues to be tragically wasted.").

177. *Id.* at 4.

178. *Id.*

179. Eli Wald, *Serfdom Without Overlords: Lawyers and the Fight Against Class Inequality* (U. LOUISVILLE L. REV. Working Paper No. 16-26), at 279, <https://ssrn.com/abstract=2809836>; See also WORLD ECON. F., *supra* note 114, at 4.

180. *Id.* at 272-73.

181. *Id.*

182. WORLD ECON. F., *supra* note 114, at 10.

183. *What Does Living at the Poverty Line Look Like?*, USAFACTS.ORG, <https://usafacts.org/articles/what-does-living-at-the-poverty-line-look-like/> (last visited Sept. 27, 2024).

184. *Id.* For example, those whose annual income was \$30,000 or less paid 41.2% of their income on housing, while the national average is 33.8%. These disparities also exist for food, healthcare, and childcare.

a family's income is consumed by life's basic needs, there is little to no opportunity at any level.

Over time, these inequalities of opportunity become entrenched, continuing generational cycles of economic and social inequalities,¹⁸⁵ influencing individual daily lives and “well-being, but also shap[ing] how they view the societies they live in.”¹⁸⁶ Indeed, since the mid-1970s, the rungs on the socio-economic ladder have moved farther apart, and movement up the rungs has become harder or “sticky.”¹⁸⁷ While the majority of Americans do have higher incomes compared to their parents at the same age,¹⁸⁸ those who begin life on the bottom rungs, and those at the top, are likely to remain there throughout their lifetimes.¹⁸⁹ This pattern holds true when examining family wealth.¹⁹⁰ Sixty-six percent of those raised in the bottom of the ladder will remain there.¹⁹¹ While income and wealth gains have occurred broadly overall, these gains have, in many circumstances, not been sufficient to move people up the rungs of the ladder.¹⁹² The ability to move up the ladder is also influenced by factors such as race and education.¹⁹³

The economic costs to society for sticky rungs on the ladder are both real and potential. Economic growth and prosperity are widely shared societal goals because they matter to everyone.¹⁹⁴ Not only does economic growth create jobs and improve income and wealth opportunities, but economic growth is necessary for movement up the socio-economic ladder.¹⁹⁵ A lack of social mobility may curb economic growth for several reasons.¹⁹⁶ First, generations of sticky socio-economic mobility have led to multi-generational and semi-permanent economically disadvantaged individuals, families, and communities which require investment in

185. WORLD ECON. F., *supra* note 114, at 10.

186. Eunkyung Lee, & Yeosun Yoon, *Heading Up or Stuck Down Here? The Effect of Perceived Economic Mobility on Subjective Social Status and Brand Identification*, 12(3) SAGE OPEN, 1(2022).

187. THE RUSSEL SAGE FOUNDATION, WHAT WE KNOW ABOUT ECONOMIC INEQUALITY AND SOCIAL MOBILITY IN THE UNITED STATES 4 (2016), https://www.russellsage.org/sites/default/files/RSFissuebriefs_0.pdf; *see also* PEW CHARITABLE TRUSTS, PURSUING THE AMERICAN DREAM: ECONOMIC MOBILITY ACROSS GENERATION 2 (2012), https://www.pewtrusts.org/~media/legacy/uploadedfiles/pes_assets/2012/pursuingamericandreampdf.pdf.

188. PEW CHARITABLE TRUSTS, *supra* note 188.

189. *Id.* (“Forty-three percent of Americans raised in the bottom quintile remain stuck in the bottom as adults, and 70 percent remain below the middle. Forty percent raised in the top quintile remain at the top as adults, and 63 percent remain above the middle.”).

190. *Id.*

191. *Id.*

192. *Id.* at 9.

193. *Id.* at 3. People of color have a harder time earning more and creating more wealth when compared to their parents than white people. Black people are also more likely to be stuck on the bottom rungs of the ladder, and to fall from middle rungs to those lower on the ladder. People with a four-year college education are more likely to be upwardly mobile from bottom rungs and the college education prevents falling from higher rungs to lower ones.

194. Richard V. Reeves, *The Economic Case for Social Mobility*, BROOKINGS INST. (Aug. 16, 2013) <https://www.brookings.edu/articles/the-economic-case-for-social-mobility/> (last visited Sept. 14, 2024).

195. *Id.*; *see also* WORLD ECON. F., *supra* note 114 at 11.

196. Reeves, *supra* note 194.

public welfare programs made necessary to support those living on the bottom rungs with basic life necessities.¹⁹⁷ The dollars used for these public welfare programs could be directed to early child education, infrastructure, and labor development.¹⁹⁸ The perpetuation of poverty caused by a lack of strong socio-economic mobility puts a drain on fiscal resources.¹⁹⁹ Second, a lack of economic growth and socio-economic mobility hinders the labor supply.²⁰⁰ Workers who can move to more economically advantageous locations will do so, weakening the communities from which they depart.²⁰¹

More problematic is the rise in unemployed workers, particularly men, who are not only not working, but are not looking for work.²⁰² While the causes for this trend are multi-faceted and complex, one reason may be “a loss of faith in the market’s capacity to provide upward [socio-economic] movement.”²⁰³ Lastly, there are opportunity costs and the economic loss associated with unrealized human potential and exclusion from the labor market.²⁰⁴ The zip code of one’s childhood may determine one’s potential movement up the socio-economic ladder, but in no way defines one’s abilities and potential. But the innate potential of highly intelligent, innovative, or creative children cannot be realized when they cannot access opportunities for economic growth, and not simply those life needs required to maintain existence such as food, water, and shelter, but other basic life needs like education, safe and healthy living conditions, access to physical and mental healthcare, and everything humans need to thrive in our world. This loss of potential translates to a loss to the economy generally,²⁰⁵ and estimates suggest there could be a loss of 4% of gross domestic product annually.²⁰⁶

2. Rising Economic Inequality

Wealth begets wealth,²⁰⁷ and extreme wealth is “dynastic and multigenerational.”²⁰⁸ Not only do the wealthiest Americans have an unlimited power to purchase (things, land, real property, assets, etc.), but they have power and influence,

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. Gabriela Sandoval, *Excessive Wealth Has Run Amok-This Must Stop*, INEQUALITY.ORG (Mar. 6, 2024), <https://inequality.org/research/excessive-wealth-has-run-amok/> (“But I am saying there is a limit after which increased wealth creates more harm than good. This starts with a simple and obvious point: excessive wealth begets more excessive wealth. Some excessively wealthy individuals have fortunes and balance sheets larger than the gross domestic product (GDP) of entire countries. The ultra-wealthy behave with an insatiable hunger for more individual wealth and power, with no end in sight.”).

208. *See id.*

particularly over the economy, our government, and its democratic institutions.²⁰⁹ The effects of excessive wealth and the policies to perpetuate that wealth in American society are undeniable. The wealthy use investment structures like private equity to increase the long-term value of their investment portfolios and to assemble monopolies that lead to the consolidation of power, influence, and control in our everyday lives.²¹⁰ This can be seen in the housing market, where private-equity real estate investment firms are purchasing single-family homes and mobile homes, rather than individual buyers, thereby inflating housing prices and rents and making it harder for working Americans to achieve home ownership, a primary means for asset building and wealth accumulation.²¹¹ The wealthy not only benefit from, but are also able to influence, the development of governmental policies that contribute to the perpetuation of income and wealth accumulation at the very top of the socio-economic ladder.²¹²

- i. The average American citizen has “little to no independent influence” over U.S. policy,²¹³ and, in reality, our government functions more like a plutocracy than a democracy.²¹⁴

209. *Id.* (“The ultra-wealthy use their excessive wealth to infiltrate and impact all levels and aspects of our society and government. When the government is beholden to the excessively wealthy, it does not represent the people.”) For example, around the time of writing, the United States elected Donald Trump for a second presidential term. Billions of dollars were poured into both candidates’ campaigns. Per the New York Times, \$220 million was contributed to the Trump campaign by three people alone—Elon Musk, Miriam Adelson, and Dick Uihlein. See Theodore Shleifer, Nicholas Nehamas & Michael Gold, *3 Billionaires Poured \$220 Million Into Efforts to Elect Trump*, N.Y. TIMES, <https://www.nytimes.com/live/2024/10/15/us/harris-trump-election> (Oct. 17, 2024). Elon Musk, who donated \$75 million in the quarter ending September 30, 2024, actively campaigned for President Trump by hosting him on his social media platform, X, and appearing at a campaign event in Pennsylvania on October 6, 2024. See Caitlin Dewey, *Elon Musk, the Trump Campaign Surrogate*, VANITY FAIR (Oct. 16, 2024), <https://www.vanityfair.com/news/story/musk-donates-75-million-push-to-elect-trump>. Prior to taking office, President Trump announced the creation of the Department of Government Efficiency (DOGE) and appointed Musk to its helm. See Marc Filippino, Joe Miller & Alex Rogers, *Transcript: Swamp Notes — How Far Can Doge Go?*, FIN. TIMES (Feb. 8, 2025), <https://www.ft.com/content/7184e8a4-7db6-4c3f-aadb-8a6b7aa6b694>; Chris Megerian, *Elon Musk Tightens Grip on Federal Government as Democrats Raise Alarms*, AP NEWS (Feb. 4, 2025, 2:08 PM), <https://apnews.com/article/21153a742fbad86284369bb173ec343c>; Laura Kusisto, *Federal Judge Blocks Elon Musk’s DOGE from Treasury System*, WALL STREET J. (Feb. 8, 2025 8:47 AM), https://www.wsj.com/us-news/law/federal-judge-blocks-elon-musks-doge-from-treasury-system-e0f1e55c?reflink=desktopwebshare_permalink; Exec. Order No. 14,158, 90 Fed. Reg. 8,441 (Jan. 20, 2025).

210. Sandoval, *supra* note 207.

211. *Id.* Billionaires prefer private equity with “nearly 60 percent looking to raise direct private equity investments and 55 percent looking to invest in private equity funds.” This aggressive embrace of private equity exacerbates existing social problems like the lack of affordable housing. For example, Jeff Bezos’ investment in a real estate investment firm that purchases single family homes eliminates the opportunity for an individual or family to invest in affordable housing. *Id.*

212. *Id.*

213. *Id.*

214. *Id.* (“Material Power Index (MPI) researchers have measured the political influence of the wealthiest Americans to estimate how much power this tiny minority wields . . . They found that the 100 wealthiest Americans had 60,000 times more political power than the average American, who is among the least wealthy 90 percent of the nation’s population.”).

Our tax code is an excellent example of a policy both influenced by and designed to benefit the wealthy. Although redistributive in nature,²¹⁵ it is not sufficiently progressive, as it taxes moderate and excessive wealth at the same rate.²¹⁶ “Income, for example, is taxed at 37% for every dollar over \$609,350, whether it exceeds that limit by \$1 or \$10 million.”²¹⁷ But it is far worse than that. Income derived from wealth is taxed at a much lower rate than income that is derived from labor. Income tax on capital gains—that is, gains from an asset or a valuable thing that someone owns, such as stock or real estate—is only taxed if the asset is sold. “Short-term capital gains on assets held for a year or less are taxed based on ordinary income tax brackets, but long-term gains on assets held for more than a year get preferential rates of a maximum of 20% (compared to a top rate on wage income of 37%).”²¹⁸ Even worse, the extremely wealthy are often able to avoid income tax altogether, sheltering assets through the tax code’s treatment of unrealized capital gains, which is zero tax, resulting in some of the wealthiest households paying an effective tax rate of a measly 4.8%.²¹⁹

Philanthropy, a supposed process for doing good, is another mechanism designed by and for the benefit of the wealthy.²²⁰ For example, the wealthy establish philanthropical organizations or foundations, then contribute money to these foundations to receive the tax benefit.²²¹ “For every dollar donated by the excessively wealthy, our government loses—and by extension, the public loses—74 cents of revenue. Foundations are only required to pay out 5% of their assets annually, and many achieve this not by contributing to the public good but by funding their overhead costs, for example.”²²²

The influence that the wealthy wield over our governmental and political system and our policies is dangerous because it undermines the representative nature of our democratic system.²²³ If the 100 wealthiest Americans hold political influence 60,000 times greater than the average American, how are the interests of the middle- and lower-classes adequately represented? And the influence wielded by the wealthy does not occur through legislative policy advocacy alone, but through other mechanisms and channels, and in backroom deals that most American citizens are never privy to.²²⁴ Recently, the media has shone a light on the influence of the wealthy on the judicial system. In a speech to billionaires, conservative strategist and co-chair of the conservative lawyers network the Federalist Society, Leonard Leo, detailed a plan for how billionaires may influence and bring court

215. Scott Hodge, *What Would Income Equality Really Look Like?*, TAX FOUND. (Mar. 5, 2020), <https://taxfoundation.org/blog/income-inequality-redistribute-income/>.

216. Sandoval, *supra* note 207.

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

cases designed to undermine long-standing administrative and constitutional law.²²⁵ Additionally, within the past year, United States Supreme Court Justice Clarence Thomas has come under fire for his personal and professional involvement with the wealthy, powerful, and influential, specifically real estate magnate Harlan Crow.²²⁶ These revelations, and others, raise questions about the influence of the wealthy and dark money on the U.S. political system, particularly following the 2010 *Citizens United* decision, which allowed the wealthy to begin pouring money into political action committees in order to exert influence over U.S. politics.²²⁷

In addition to their power and influence in American politics and policy, the wealthiest Americans also control our food system, media, major e-commerce platforms, and technology companies. While most Americans see an endless number of brands on store shelves, in malls, and online, suggesting a wide range of choice, the reality is that a small set of companies and actors own these brands and increasingly control America's commerce.²²⁸ Similar to the Gilded Age, modern monopolies are all around us. For example, Walmart, owned by the children of its founder Sam Walton,²²⁹ "controls 72 percent of warehouse clubs and super centers in the entire United States," and sells more than 50% of all groceries in the U.S.²³⁰ Amazon, founded by billionaire Jeff Bezos, who also owns the largest share of stock in the company,²³¹ is an e-commerce giant, generally, but dominates in several specific areas, for example, selling 74% of all e-books and 64% of all print books sold online.²³² Four companies own and control the beef, pork, and poultry industries, and in some regions, a single corporation has a complete monopoly on the market.²³³ These modern day monopolies exist in every major industry including pharmaceuticals, hospital systems, appliances, drug stores, internet search engines, software, automobile parts, airlines, candy, home improvement. . . and the list goes on.²³⁴

225. Andrew Perez, *Supreme Court Puppetmaster Explains How Billionaires Can Push America Right*, ROLLING STONE (Mar. 18, 2024), <https://www.rollingstone.com/politics/politics-news/leonardo-supreme-court-billionaires-america-right-1234989877/>.

226. Alison Durkee, *Clarence Thomas: Here Are All the Ethics Scandals Involving the Supreme Court Justice Amid New Ginni Thomas Report*, FORBES (Sept. 4, 2024), <https://www.msn.com/en-us/money/news/clarence-thomas-here-are-all-the-ethics-scandals-involving-the-supreme-court-justice-amid-new-ginni-thomas-report/ar-AA1a0p96?ocid=BingNewsSerp>.

227. *Citizens United v. FEC*, 558 U.S. 310 (2010).

228. OPEN MKTS. INST., *Monopoly By the Numbers*, <https://www.openmarketsinstitute.org/learn/monopoly-by-the-numbers> (last visited Sept. 15, 2024).

229. Adam Roberts, *Who Owns Walmart? How the company's 8 billion shares are divided*, MSN (June 4, 2024), <https://www.msn.com/en-us/money/markets/who-owns-walmart-how-the-company-s-8-billion-shares-are-divided/ar-BB1nCLzS>.

230. OPEN MKTS. INST., *supra* note 228.

231. Matt Frankel, *Who Owns the Most Amazon Stock Besides Jeff Bezos?*, YAHOO FIN. (May 21, 2024), <https://finance.yahoo.com/news/owns-most-amazon-stock-besides-143000040.html>.

232. OPEN MKTS. INST., *supra* note 228.

233. *Id.* ("Two firms, Dean Foods and Dairy Farmers of America control as much as 80-90 percent of the milk supply chain in some states and wield substantial influence across the entire industry.").

234. *Id.*

Control of most major industries in the hands of a few stifles competition, suppresses wage growth, and ultimately leads to greater income inequality, inhibiting the health and well-being of the middle class.²³⁵ First, the resurgence of the monopolization of our economy allows these companies to charge citizens at higher prices for basic goods, healthcare, housing, and services,²³⁶ thereby reducing the purchasing power of consumers and the value of their income.²³⁷ Monopolies are also able to squeeze out their competition, thus limiting consumer choice, including lower cost alternatives.²³⁸ These consequences are magnified for low-income households, contributing to their inability to move up the socio-economic ladder.²³⁹ Monopolization also enables companies to pay their workers less, knowing the laborers have fewer opportunities to seek alternate work from competitors.²⁴⁰ Lastly, the monopolization of the economy and the concentration of power has allowed today's corporations to enrich themselves through corporate stock buybacks and extreme executive compensation.²⁴¹ The United States is experiencing a resurgence and return of the concentration of power and money in "ever-fewer hands."²⁴²

IV. ECONOMIC DEMOCRACY AND THE WORKER COOPERATIVE

American society and the economy faced comparable economic inequality and the concentration of power, money, and influence in the hands of a few over 125 years ago during the Gilded Age and Progressive Era.²⁴³ The causes of economic inequality are varied, ranging from policy to individual choices. The tools we have used in the past to combat economic inequality—unions and collective

235. See Emily Stewart, *America's Monopoly Problem*, In *One Chart*, VOX (Nov. 16, 2018), <https://www.vox.com/2018/11/26/18112651/monopoly-open-markets-institute-report-concentration>.

236. *Income Inequality & Monopoly*, OPEN MKTS. INST., <https://www.openmarketsinstitute.org/learn/income-inequality-monopoly> (last visited Sept. 15, 2024); see also James A. Schmitz, *Because of Monopolies, Income Inequality Significantly Understates Economic Inequality* (Fed. Rsr. Bank of Minneapolis, Working Paper No. 777, March 9, 2021), <https://www.minneapolisfed.org/research/working-papers/because-of-monopolies-income-inequality-significantly-understates-economic-inequality>.

237. Schmitz, *supra* note 236.

238. *Id.*

239. *Id.* at 1 ("The value of income for low-income households, what they can buy with their income, dramatically falls as compared to that of high-income households.").

240. OPEN MKTS. INST., *supra* note 228.

241. Josh Bivens & Jori Kandra, *CEO Pay Has Skyrocketed 1,460% since 1978*, ECON. POL'Y INST. (Oct. 4, 2022), <https://www.epi.org/publication/ceo-pay-in-2021/>. CEOs were paid 399 times as much as a typical worker in 2021. Corporations with adequate resources are able to manipulate their stock prices through stock buybacks and put pressure on other companies to do the same, siphoning resources from other more productive pursuits. See William Lazonick, *Profits Without Prosperity: How Stock Buybacks Manipulate the Market and Leave Most Americans Worse Off*, BROOKINGS INST. (June 1, 2016), <https://www.brookings.edu/wp-content/uploads/2016/06/lazonick.pdf> ("Buybacks bear a considerable part of the responsibility for a damaged U.S. economy. This mode of resource allocation serves to concentrate income and wealth at the top of the distribution and comes at the expense of investment in the types of stable, remunerative career employment opportunities that support a broad-based middle class. When the most profitable corporations are in a downsize-and-distribute mode, sustainable prosperity in the U.S. economy becomes an impossible goal.").

242. Johansova & Wolf, *supra* note 36.

243. ROBERT D. PUTNAM, *THE UPSWING* 8-10 (Simon & Schuster, 2020).

bargaining, monopoly busting, corporate regulation, and pro-worker policies—are still effective in today’s fight against economic inequality, wage stagnation, and corporate greed.²⁴⁴ But just as the citizens of the Gilded Age and Progressive Era fought back against the robber barons and inequality of their time, we too are at a critical juncture where we must innovate and employ new strategies to increase economic well-being for all. The idea that our economic system, in addition to our political one, should also promote equality was the foundational meaning of the “American Dream” when the phrase became popular during the Progressive Era, and this is what we should strive for as we look to the future of our rapidly evolving world.²⁴⁵ We must consider models that promote economic democracy or “*a system of checks and balances on economic power and support for the right to citizens to actively participate in the economy regardless of social status, race, gender, etc.*”²⁴⁶

Broadly, economic democracy is defined as the “general control of an economy by the citizenry.”²⁴⁷ The term “economic democracy” first appeared during the 1920s and was used primarily in the context of democratic governance of business enterprises.²⁴⁸ A more mainstream version of “economic democracy” involves not only democratic governance, but worker ownership over business enterprise through shareholding—the workers own shares in the enterprise, therefore having rights to governance.²⁴⁹ While this model of employee ownership is more democratic, it is still founded in a “one-dollar-one-vote” model—those who hold more shares hold more control.²⁵⁰ A model more aligned with true economic democracy is the cooperative,²⁵¹ which is founded on principles of democracy, equality, and community benefit.²⁵²

244. More recently, these tools have seen an increase in activity. For example, during the first half of fiscal year 2024, union election petitions increased by 35%. *Union Petitions Up 35%, Unfair Labor Practices Charge Filings up 7% in First Half of Fiscal Year 2024*, NAT’L LAB. RELS. BD. (Apr. 9, 2024), <https://www.nlrb.gov/news-outreach/news-story/union-petitions-up-35-unfair-labor-practices-charge-filings-up-7-in-the>.

245. See generally CHURCHWELL, *supra* note 2; Anna Diamond, *The Original Meanings of the “American Dream” and “America First” Were Starkly Different from How We Use Them Today*, SMITHSONIAN MAG. (October 2018), <https://www.smithsonianmag.com/history/behold-american-american-dream-slogan-book-sarah-churchwell-180970311>.

246. Johanisova & Wolf, *supra* note 36, at 564.

247. David Schweickart, *Economic Democracy: A Worthy Socialism that Would Really Work*, 56 SCI. & SOC’Y 9, 19 (Spring 1992).

248. Johanisova & Wolf, *supra* note 36.

249. *Id.*

250. *Id.*; *FAQs on ESOPs and Employee Ownership*, NAT’L CTR. FOR EMP. OWNERSHIP, <https://www.esop.org/articles/faqs-esops-employee-ownership.php#> (last visited Oct. 1, 2024). The Employee Stock Ownership Plan (ESOP) is an example of this model. An ESOP is “an employee benefit plan that buys and holds company stock in accounts for the benefit of participants.” ESOPs are the most common form of employee ownership in the United States with approximately 6,500 covering 14.7 million participants (employees).

251. Johanisova & Wolf, *supra* note 36.

252. Elaine Waterhouse Wilson, *Cooperatives: The First Social Enterprise*, 66 DEPAUL L. REV. 1013, 1016 (2017).

The cooperative differs from the most common business enterprises in that its governance structure is based on “one-member-one-vote.”²⁵³ Therefore decisions of the entity, a cooperative, are in the hands of the members or stakeholders, each holding equal decision-making power.²⁵⁴ The members or stakeholders of a cooperative may be workers, consumers, or producers.²⁵⁵ Another unique characteristic of the cooperative is that its sole purpose is not to create a profit and enrich the pockets of its shareholders, but rather to provide a benefit to its members and other stakeholders.²⁵⁶

A worker cooperative is a business entity that is owned and managed by its members—the workers.²⁵⁷ Unlike the more common investor-owned business, the mission of a worker cooperative is not just to make a profit, but to also benefit the workers, and other stakeholders.²⁵⁸ Most cooperatives not only provide for “one-member-one-vote” per worker, but also require participation in business governance.²⁵⁹ Workers govern the cooperative as a democracy with each worker-owner having an equal stake and vote in the business, and all profits are returned to the worker-owners.²⁶⁰

A. *The History of Cooperatives in the United States*

The first cooperative recognized in the United States, a mutual fire insurance company, was founded in 1752 by Benjamin Franklin.²⁶¹ Almost 100 years later, in 1844, the Rochdale Equitable Pioneers Society was formed in Rochdale, England.²⁶² The Rochdale cooperative is considered the beginning of the modern cooperative era because it was the first to establish formal cooperative principles.²⁶³ In the United States, cooperatives truly began to take root in the early

253. Johanisova & Wolf, *supra* note 36; *see also* Schweickart, *supra* note 247, at 20.

254. Johanisova & Wolf, *supra* note 36.

255. Johanisova & Wolf, *supra* note 36; *see also* Wilson, *supra* note 252.

256. Johanisova & Wolf, *supra* note 36.

257. Wilson, *supra* note 252.

258. KIMBERLY ZEULI & ROBERT A. CROPP, COOPERATIVES: PRINCIPLES AND PRACTICES IN THE 21ST CENTURY 37 (Univ. of Wisconsin Ctr. for Cooperatives, 2004).

259. Brett H. McDonnell & Matthew T. Bodie, *From Mandates to Governance: Restructuring the Employment Relationship*, 81 MD. L. REV. 887, 930 (2022).

260. For information about the general benefits of worker cooperatives, *see Worker Co-Ops*, NTL. COOP. BUS. ASSOC. CLUSA INT’L (last visited Oct. 7, 2024), <https://ncbaclusa.coop/resources/co-op-sectors/worker-co-ops/>.

261. Lynn Pittman, *History of Cooperatives in the United States: An Overview*, CTR. FOR COOPS., UNIV. OF WISCONSIN-MADISON (Dec. 2018). *See also History of Worker Cooperatives*, WORKER OWNERSHIP RES. & COOP. SERVS. (last visited Sept. 18, 2024), <https://workercooperatives.org/history/>.

262. WORKER OWNERSHIP RES. & COOP. SERVS., *History of Worker Cooperatives*, (last visited Sept. 18, 2024), <https://workercooperatives.org/history/>; *see also* Wilson, *supra* note 252. The Rochdale Pioneers opened a general store (purchasing cooperative) which was operated by its members for its members who were mostly from the textile industry. *Id.* at 1019. These weavers banded together to combat unscrupulous merchants, and “to form arrangements for the pecuniary benefit and improvement of the social and domestic condition of its members.” *Id.* at 1019 (quoting Brett Fairbairn, *The Meaning of Rochdale: The Rochdale Pioneers and the Cooperative Principles*, 2 (1994)); *see also* Zeuli & Cropp, *supra* note 258.

263. WORKER OWNERSHIP RES. & COOP. SERVS., *supra* note 262. *See also* Wilson, *supra* note 252.

1800s among dairy and cheese farmers.²⁶⁴ Due to the economic conditions of the time, farmers formed cooperatives to counter conditions such as “low prices, wide marketing margins, high freight charges, and high interest rates.”²⁶⁵ Cooperatives continued to develop throughout the 19th century, including agricultural, marketing, purchasing, and retail cooperative stores for consumer products.²⁶⁶

It was not until the Gilded Age and Progressive Era, however, that the cooperative movement more broadly became interested in worker cooperatives.²⁶⁷ Like most pro-worker movements and policies that originated in the late 19th and early 20th centuries, the interest in cooperatives was in response to economic upheaval of the Civil War and the monopolies and excessive wealth of the time.²⁶⁸ Laborers and artisans, responding to the working conditions of the era, believed in cooperation as “an escape from industrial misery.”²⁶⁹ The belief was “that in order for liberty, equal rights and the pursuit of happiness to flourish, social conditions would have to be revolutionized: cooperative would have to supersede ‘wage-slavery,’ so that economic reality could be made consistent with America’s democratic form of government.”²⁷⁰ It was believed that cooperative principles were more aligned with our democratic form of government than the capitalistic system of the time.²⁷¹ Indeed, this movement towards what is now defined as “economic democracy” was aligned with the American Dream rhetoric of the time. This dream inspired the development of cooperatives for decades.²⁷²

In the 1860s, the National Labor Union supported cooperative efforts and sponsored their creation, including petitioning Congress for \$25 million on the establishment of cooperative businesses.²⁷³ Another group, the Knights of Crispin, founded in 1867 and comprised of shoemakers, was a union that avidly promoted cooperative principles and encouraged each branch lodge to form cooperatives.²⁷⁴ Throughout the 1870s, the Knights of Crispin organized cooperative stores and factories in Massachusetts, greater New England, New York, and New Jersey.²⁷⁵ Unfortunately, most of the cooperative business entities that were born during the 1860s and 1870s did not survive the many economic downturns and

264. Lynn Pittman, *History of Cooperatives in the United States: An Overview*, CTR. FOR COOPS., UNIV. OF WISCONSIN-MADISON (Dec. 2018), https://resources.uwcc.wisc.edu/History_of_Cooperatives.pdf

265. *Id.* at 2.

266. *Id.* at 3.

267. *Id.* at 4.

268. *Id.* at 3; see also Christopher Wright, *Worker Cooperatives and Revolution: History and Possibilities in the United States* (2010) (M.A. thesis, Univ. of Massachusetts, Boston); Zeuli & Cropp, *supra* note 258. Cooperative development in the United States was in response to market failures, economic downturns, technological development, pro-cooperative advocacy, and political and governmental interest. *Id.*

269. Wright, *supra* note 268, at 89.

270. *Id.* at 90.

271. *Id.*

272. *Id.*

273. *Id.*

274. *Id.* at 91.

275. *Id.*

depressions of the time.²⁷⁶ However, in the 1880s, the Knights of Labor picked up where prior organizations left off and eventually became a national organization with 750,000 members.²⁷⁷ While the Knights of Labor was a union, “[t]he overarching purpose of the organization was ‘to associate our own labors; to establish co-operative institutions such as will tend to supersede the wage-system, by the introduction of a co-operative industrial system.’”²⁷⁸ Between 1880 and 1888, approximately 334 worker cooperatives were born in 35 of 38 states.²⁷⁹ Over time, the Knights of Labor organized cooperatives, lobbied politicians, and organized labor strikes.²⁸⁰ The workers of the cooperative movement “genuinely believed that they could rise from being ‘rented slaves’ to become cooperators in control of their work and wages, living in revitalized and stabilized communities, no longer subject to periods of unemployment.”²⁸¹

Unfortunately, by the end of the 19th century, the cooperative movement buckled to market forces and “the war waged on it by the business classes.”²⁸² It became clear that the cooperative movement would not succeed without a large-scale assault on the capitalist wage-system which required more than the localized and regional approach adopted by the Knights of Labor.²⁸³ By the 1890s “the great dream of building a national cooperative economy was effectively over.”²⁸⁴

Throughout the 20th century, the cooperative movement ebbed and flowed, with cooperatives forming in various industries from agriculture to food to housing cooperatives.²⁸⁵ It is estimated that worker cooperative membership peaked at approximately 17,000 people in 1979.²⁸⁶ Today, worker cooperatives are still uncommon. Through its 2023 Economic Census, the Democracy at Work Institute identified 751 worker cooperatives in the United States, but estimates

276. *Id.* at 93.

277. *Id.* at 94. By the 1880s, the Knights of Labor was the largest labor organization worldwide and was instrumental in bringing success to the cooperative movement at the time. *See also* Gowri J. Krishna, *Worker Cooperative Creation As Progressive Lawyering? Moving Beyond the One-Person, One-Vote Floor*, 34 BERKELEY J. EMP. & LAB. L. 65, 79 (2013).

278. Wright, *supra* note 269, at 94.

279. *Id.*

280. *Id.*

281. *Id.*

282. *Id.* at 102; *see also* Krishna, *supra* note 278, at 78. Worker cooperatives were harder to form in the capitalist system because the “worker solidarity and the network of cooperatives” were threats to the labor market, employers, and capitalism as a whole.

283. Wright *supra* note 269, at 103.

284. *Id.*; Krishna, *supra* note 278, at 79. By the 1890s, the Knights of Labor no longer had power, and the cooperative movement of the era died with it.

285. Wright, *supra* note 269, at 103; Krishna, *supra* note 278, at 79. During the Great Depression, cooperatives sprung to life again due to a 25% unemployment rate and a desire to create jobs. During the social justice movement of the 1960s, “educated, middle-class countercultural and anti-authoritarian” individuals “rebe[led] against American individualism and materialism,” creating another wave of cooperative development, largely “connected to radical communication media” including printing presses, bookstores, and film production. Krishna, *supra* note 278, at 80.

286. Wright, *supra* note 268, at 125.

the true number is closer to 1,300 worker cooperatives.²⁸⁷ This is a 20% increase in just the past two years, and a threefold increase in the past three years.²⁸⁸ According to this study, the 751 identified worker cooperatives employ \$483,285,529 million in gross revenue.²⁸⁹ The median age of the worker cooperative in the U.S. is nine years old, has a median size of six workers, and a median firm revenue of approximately \$607,081.²⁹⁰ Furthermore, approximately 31% of the respondents to the survey reported having converted a previously existing business to a cooperative.²⁹¹ These data suggest we are seeing an upswing in the cooperative movement, including conversions from traditional business entities.²⁹²

B. *The Benefits of Worker Cooperatives*

Cooperatives generally, and worker cooperatives more specifically, are values-driven businesses where the worker and community are at the heart of the entity's purpose and are prioritized.²⁹³ The International Cooperative Alliance (ICA) defines a cooperative as "an autonomous association of persons united voluntarily to meet their common economic, social, and cultural needs and aspirations through a jointly owned and democratically controlled enterprise."²⁹⁴ The ICA identifies seven principles of cooperative ownership: (1) Voluntary and open membership; (2) Democratic member control; (3) Member economic participation; (4) Autonomy and independence; (5) Education, training and information; (6) Cooperation among cooperatives; and (7) Concern for community.²⁹⁵

Cooperatives, in principle, are open to anyone regardless of gender, social, racial, political, or religious affiliation,²⁹⁶ and membership must be uncoerced.²⁹⁷

287. 2023 *State of the Sector: Worker Cooperatives and Democratic Workplaces in the U.S.*, DEMOCRACY AT WORK INST. (last visited Sept. 20, 2024), <https://issuu.com/wearedawi/docs/sots-3>.

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

292. Krishna, *supra* note 277, at 80 (quoting Immanuel Ness, *Worker Cooperatives in the United States: A Historic Perspective and Contemporary Assessment*, WORKERS CONTROL (Mar. 16, 2012),

293. *The Benefits of Worker Cooperatives*, DEMOCRACY AT WORK INST., <https://institute.coop/benefits-worker-cooperatives> (last visited Sept. 20, 2024); *see also* Wilson, *supra* note 37; Krishna, *supra* note 277, at 81. Within the last 25 years, cooperative development has been more common among vulnerable immigrant workers. Because immigrant workers are particularly vulnerable due to language barriers, low-wages, and employer exploitation, cooperatives help workers experience higher wages, better working conditions, improved job security, and provide empowerment through participation in governance.

294. INT'L COOP. ALL., *Cooperative identity, values & principles*, <https://ica.coop/en/whats-coop/co-operative-identity-values-principles> (last visited Oct. 1, 2024) (explaining that the ICA unites, represents, and serves cooperatives worldwide).

295. INT'L COOP. ALL., *supra* note 294; *see also* E.G. NADEAU, *THE COOPERATIVE SOLUTION: HOW THE UNITED STATES CAN TAME RECESSIONS, REDUCE INEQUALITY, AND PROTECT THE ENVIRONMENT*, 4 (2012). Wilson, *supra* note 37, at 1022; Zeuli & Cropp, *supra* note 258, at 1; Krishna, *supra* note 277, at 83.

296. INT'L COOP. ALL., *supra* note 294; Nadeau, *supra* note 295, at 4.

297. Zeuli & Cropp, *supra* note 258, at 1. Based in cooperation and mutual benefit, coercion or compulsion to be a member in a cooperative is contrary to its basic principles.

They require democratic control of the organization through their membership and one-member-one-vote structure.²⁹⁸ Members are active participants in policy- and decision-making, with equitable contribution to and democratic control of the organization's capital.²⁹⁹ While cooperative members often receive some compensation on the contributed capital, profit is often reinvested in the cooperative to further its development, benefit its members, and support the pursuits of the cooperative.³⁰⁰ Cooperatives operate as autonomous bodies under control of their members and ensure any partnerships with other businesses or organizations continue to be founded on democratic principles.³⁰¹ Cooperatives ensure their members, management, employees, and other stakeholders receive the education and training needed to "contribute effectively" to their cooperative's development and operation.³⁰² Not only do cooperatives support their members, but they participate in the broader cooperative community and movement, working at local, national, and international levels to promote democratic ownership.³⁰³ Lastly, and of significance, cooperatives "work for sustainable development of their communities through policies approved by their members."³⁰⁴ The cooperative is not only a mechanism for economic activity, but also a mechanism for social change.³⁰⁵

The ICA definition and principles are in stark contrast to the purpose and motivation behind traditional business models.³⁰⁶ Although both cooperatives and traditional business entities exist in the market economy and require profitability, unlike cooperatives, traditional businesses are driven by the primary purpose of generating income for their investors.³⁰⁷ This dichotomy demonstrates why cooperatives have the potential to "be antidotes" to the "disastrous

298. Nadeau, *supra* note 295, at 4; Zeuli & Cropp, *supra* note 258, at 2 (stating that democratic governance through equitable voting rights is the "hallmark of cooperatives"); Krishna, *supra* note 277, at 77.

299. Nadeau, *supra* note 295, at 4; Zeuli & Cropp, *supra* note 258, at 2.

300. Nadeau, *supra* note 295, at 4–5.

301. *Id.* at 5.

302. *Id.* See also Zeuli & Cropp, *supra* note 258, at 45.

303. Nadeau, *supra* note 295, at 5.

304. *Id.*; Wilson, *supra* note 37, at 1022.

305. Wilson, *supra* note 37, at 1022; Krishna, *supra* note 277, at 84 ("... [I]nforming the general public about cooperatives, working with other cooperatives to strengthen the cooperative movement, and engaging in community development ... help[s] to build a growing cooperative movement that can serve as an alternative to capitalist control.").

306. Nadeau, *supra* note 295, at 6–7.

307. *Id.*; see also Ann M. Lipton, *Every Billionaire Is a Policy Failure*, 18 VA. L. & BUS. REV. 327, 395 (2024) (defining the "shareholder primacy" doctrine as the practice of corporate boards of directors that "prioritize shareholder wealth over the welfare of other constituencies"); William W. Bratton, *Berle XIV: Developing A 21st Century Corporate Governance Model: Symposium Article: Shareholder Primacy Versus Shareholder Accountability*, 47 SEATTLE U. L. REV. 405, 405 (2024) ("Shareholder primacy builds on a pair of norms. The first is substantive and concerns purpose the firm should be managed for the shareholders' financial benefit. The second norm is procedural and concerns power shareholders should be able to tell managers how to run the firm. Once put into operation, the two norms are supposed to ensure that market control over production, and hence economic efficiency, is maximized.").

consequences” of the traditional profit-only model, including economic inequality and an imbalance of power.³⁰⁸

Most importantly, employee ownership is better for workers.³⁰⁹ But it is also good for business: “‘over 100 studies across many countries indicate that employee ownership is generally linked to better productivity, higher pay, job stability and long-term survival of the business entity.’”³¹⁰ For example, the Democracy at Work Institute determined that worker cooperatives from all industries typically had profit margins that were “8.5% higher than the average private firm (6.4% vs. 5.9%).”³¹¹ Employee ownership also affects employee behavior increasing performance, loyalty, innovation, and reducing turnover.³¹² For workers, employee ownership leads to improved pay and benefits, more opportunities for personal and professional growth, and a pathway for asset building.³¹³

Generally, worker-members of worker cooperatives report their income was “about the same or better” than other workers in their field or prior positions.³¹⁴ According to an unpublished white paper prepared by the Democracy at Work Institute,³¹⁵ worker-owners earned two dollars more per hour at their worker cooperative than those in traditional employment.³¹⁶ Additionally, workers report generally that the benefits provided at worker cooperatives better meet their families’ needs.³¹⁷ Indeed, analysis of specific worker cooperatives demonstrates the financial benefits to worker-members. For example, workers of a greenhouse cleaning cooperative increased their household incomes by seventy to eighty percent on average while also generating wealth through individual capital accounts where savings were accumulated.³¹⁸ A cleaning company, formed in Eureka,

308. Nadeau, *supra* note 295, at 12–13. For the general benefits of worker cooperatives and case studies, see NT’L COOP. BUS. ASSOC. CLUSA INT’L, *supra* note 261; Margaret Lund, *A Multi-Stakeholder Cooperatives Manual*, COOP. DEV. CTR. AT KENT STATE UNIV., <https://www.oecokent.org/cooperatives/worker-owned-cooperatives> (last visited Oct. 18, 2024).

309. See Abell, *supra* note 156, at 13.

310. *Id.* at 12 (citing Douglas Kruse 2016, citing meta-study published by Earnest O’Boyle et al., *Employee ownership and firm performance: a meta-analysis*, 26(4) HUM. RES. MGMT. J., 425 (2016)). See also Virginie Pérotin, *What do we really know about worker co-operatives?*, Co-Op. UK, 18 (Nov. 19, 2018), https://www.uk.coop/sites/default/files/2020-10/worker_co-op_report.pdf (last visited Oct. 18, 2024) (citing Fathi Fakhfakh et al., *Productivity, capital and labor in labor managed and conventional firms*, 65(4) INDUS. AND LAB. REL. REV. 847, 878 (2012)) (noting that overall, worker cooperatives organize production more efficiently, even suggesting that some industries that rely on traditional firm structure would actually improve rates of employment and capital if they used production strategies employed by worker cooperatives).

311. Abell, *supra* note 156, at 12.

312. *Id.* at 13.

313. *Id.*

314. *Id.* at 13–15.

315. *Id.* at 15 (citing Laura Hanson Schlachter, WHITE PAPER: PRELIMINARY ANALYSIS OF THE WORKER CO-OP CENSUS DATA, DEMOCRACY AT WORK INST., (2017)).

316. *Id.*

317. *Id.*

318. *Id.* (citing Hilary Abell, *Worker Cooperatives: Pathways to Scale*, DEMOCRACY COLLAB., <https://www.project-equity.org/about-us/publications/worker-cooperatives-pathways-to-scale> (last visited Sept. 20, 2024)).

California and sold to employees seven years after its founding, reported that its workers' (janitors) total compensation was more than the unionized janitors serving the county in which the worker cooperative was based.³¹⁹ A worker cooperative for home health care workers (one of the lowest paid jobs), provided paid time off (fifteen days) and free dental benefits and life insurance.³²⁰ Additionally, all workers are afforded the opportunity to build their own full-time schedules, and long-term employees are guaranteed thirty hours of pay notwithstanding hours actually worked—a benefit that protects workers from the volatility of the industry.³²¹

Because they create ownership for their employees, worker cooperatives are instrumental to employees building wealth and accumulating assets.³²² Asset accumulation occurs through “patronage,” a system where the profits received are in proportion to the labor contributed.³²³ When the cooperative is profitable, it disburses the patronage to the worker-members' capital account, while the remainder is distributed directly among the members.³²⁴ Membership shares do not appreciate in value, but they entitle their holder to patronage.³²⁵ The Democracy at Work Institute reported that median patronage distribution among survey participants was in excess of \$2,300.³²⁶ Traditional businesses that have converted to the worker cooperative structure also achieve asset building success.³²⁷

Additionally, employees of worker-owned enterprises experience greater job security and stability.³²⁸ Worker-owned enterprises experience fewer layoffs, lower attrition rates, and employees typically have greater control over scheduling.³²⁹ During the last two economic recessions, prior to the COVID-19 pandemic, employee-owned enterprises experienced fewer reductions in workforce as compared to similar firms without employee ownership.³³⁰ For example, at the height of the Great Recession, only 2.6% of employee-owned firms were laid off compared to 12.3% of traditional businesses.³³¹ Also during the Great Recession, the Mondragon Cooperative Corporation³³² of Basque, Spain—which includes

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.* at 16.

323. *Id.* See also Carmen Huertas-Noble, *supra* note 130, at 339; Zeuli & Cropp, *supra* note 258.

324. Abell, *supra* note 156, at 16–17.

325. *Id.* at 17.

326. *Id.*

327. *Id.*

328. *Id.* at 20. See also Pérotin, *supra* note 310, at 20; Jessica Gordon Nembhard, HOW. U. CTR. ON RACE AND WEALTH & JOHN JAY COLL., *White Paper: Benefits and Impacts of Cooperatives*, 1 (2014) <https://geo.coop/sites/default/files/0213-benefits-and-impacts-of-cooperatives.pdf> (last visited Oct. 18, 2024).

329. Abell, *supra* note 156, at 21.

330. *Id.* at 21 (citing Douglas Kruse, *Does Employee Ownership Improve Performance?*, IZA WORLD OF LAB. (2016)).

331. *Id.*

332. *The Mondragon Cooperative Gives Lesson in Democracy*, KNOWLEDGE AT WHARTON (2005), <https://knowledge.wharton.upenn.edu/article/the-mondragon-cooperative-gives-lessons-in-democracy/>

under its umbrella 250 worker-owned cooperatives, employing 85,000 people—experienced virtually no layoffs as the enterprise instituted pay cuts for its management, and those workers who were laid off were subsequently hired by other cooperatives under the Mondragon umbrella.³³³ For these reasons, the Mondragon Cooperative Corporation has been considered “recession-proof.”³³⁴

Another reason workers of employee-owned firms typically experience greater job security and stability than traditional entities is due to longer tenure and greater individual control over scheduling.³³⁵ The largest U.S. worker cooperative, Cooperative Home Care Associates (CHCA), has over 2,000 employees and experiences low turnover, with 65% of its new hires in 2016 remaining employed by CHCA a year later, whereas comparable non-employee owned businesses only retained 37% of their new hires during the same period.³³⁶ When workers have individualized control over their schedules, the business culture is worker- and family-focused, contributing to overall greater worker satisfaction.³³⁷

Because the cooperative principles include concern for the community and shared prosperity, worker cooperatives provide continued circulation of profits within the community,³³⁸ higher rates of civic participation, community development, and reduced inequality.³³⁹ Worker cooperatives and other employee-owned businesses are typically owned by workers from the local community, and therefore more money is circulated within the local economy.³⁴⁰ For example, in the restaurant industry, 65.5% of revenue earned by independent restaurants is recirculated into the local economy compared to only 34.5% of chain restaurants.³⁴¹ Profit earned by cooperative businesses is typically reinvested in the business and distributed to the members, therefore, the money remains local—with the business and its workers, both of whom reinvest in the community through community focused business purpose and investment, and worker consumerism.³⁴²

(last visited Sept. 20, 2024); George Cheney et al., *Worker Cooperatives as an Organizational Alternative: Challenges, Achievements and Promise in Business Governance and Ownership*, 5, 21 ORGANIZATION 591, 593 (2014), <https://journals.sagepub.com/doi/full/10.1177/1350508414539784> (last visited Oct. 7, 2024). Given its presence in various sectors, including financial, industrial, technology, and education, the Mondragon Cooperative Corporation serves as a model for the breadth of opportunities available to the cooperative structure.

333. Abell, *supra* note 156, at 21 (citing Giles Tremlett, *Mondragon: Spain's giant co-operative where times are hard but few go bust*, THE GUARDIAN (Mar. 7, 2013), <https://www.theguardian.com/world/2013/mar/07/mondragon-spains-giant-cooperative> (last visited Sept. 20, 2024).

334. Abell, *supra* note 156, at 21 (citing Tremlett, *supra* note 333).

335. Abell, *supra* note 156, at 21–22.

336. *Id.* at 21.

337. *Id.*

338. Huertas-Noble, *supra* note 130, at 340. *See also* Nembhard, *supra* note 328, at 1.

339. Abell, *supra* note 156, at 24. *See also* *The Benefits of Workers Cooperatives*, DEMOCRACY AT WORK INST., <https://institute.coop/benefits-worker-cooperatives> (last visited Sept. 21, 2024).

340. Abell, *supra* note 156, at 24. *See also* NT'L COOP. BUS. ASSOC. CLUSA INT'L, *How to Create Economic Growth With Cooperatives* (July 1, 2022), <https://ncbaclusa.coop/blog/how-to-create-economic-growth-with-cooperatives/>.

341. Abell, *supra* note 156, at 24.

342. NT'L COOP. BUS. ASSOC. CLUSA INT'L, *supra* note 340.

Additionally, though this point is not well-researched, employee-owned businesses could potentially promote civic engagement.³⁴³ Results of a 2017 worker cooperative survey revealed that employee-owned businesses have higher rates of volunteerism compared to traditional businesses (46% vs. 30% respectively).³⁴⁴ Research has also demonstrated a connection between community development and cooperatives.³⁴⁵ A 1995 survey among 20 worker cooperatives concluded that:

“Worker ownership and participation enhanced cooperatives’ ability to generate quality employment for people in the community but outside the economic mainstream. They also identified other positive influences of cooperatives on their communities: (1) provision of social services to the workers and their families through the cooperatives’ programs or referrals to other social agencies and (2) participation in joint business strategies in the community or in the industry they belong to.”³⁴⁶

Most importantly, and the primary focus of this Article, is the opportunity worker cooperatives present to reduce the alarmingly high level of economic inequality in the United States.³⁴⁷ As highlighted, *supra*, the concentration of wealth within the top 1% of wealth-holders, and the erosion of the middle class has risen at concerning levels over the last several decades. Among those at the top, the largest asset is business ownership, “accounting for \$10.8 million, or 38% of their entire portfolio.”³⁴⁸ Among the top 10% of asset holders, 29% is composed of direct ownership in business enterprises.³⁴⁹ “The wealthiest 10% of Americans own 94% of business wealth, 92% of directly held shares of public companies, and 93% of stock mutual funds.”³⁵⁰ Business ownership among the lower rungs of the socio-economic ladder is “inconsequential,”³⁵¹ owning only 0.25% of businesses through company stock and ownership in public company shares.³⁵² These data demonstrate the importance of business ownership in asset accumulation and wealth

343. Abell, *supra* note 156, at 24. See also Laura Hanson Schlacter & Olga Prushinskaya, *How Economic Democracy Impacts Workers, Firms, and Communities*, DEMOCRACY AT WORK INSTITUTE, <https://democracy.institute.coop/how-economic-democracy-impacts-workers-firms-and-communities> (last visited Sept. 21, 2024).

344. Abell, *supra* note 156, at 25.

345. *Id.*

346. Abell, *supra* note 156, at 25 (quoting Sangdong Tak, *Cooperative Membership and Community Engagement: Findings From a Latin American Survey*, 32 SOC. F. 566 (2017).)

347. Project Equity, *Business Resiliency Through Employee Ownership: The Kaiser Permanente Pilot*, 4 (March 2023) https://project-equity.org/wp-content/uploads/2023/06/KP_Learning_Report_2023.pdf (last visited October 18, 2024).

348. Thomas Dudley & Ethan Rouen, *Employee Ownership and Wealth Inequality: A Path to Reducing Wealth Concentration*, 3 (Harv. Bus. Sch., Working Paper No. 22-021, 2021), https://www.hbs.edu/ris/Publication%20Files/Rouen_Emp_Own_Whitepaper_012122_946e1825-829e-44f8-aaa9-f4f1b9fbad46.pdf (last visited Sept. 21, 2024).

349. *Id.*

350. *Id.*

351. *Id.*

352. *Id.*

building, but also suggest that promoting business ownership and more widely distributing ownership among the population could have a significant impact on reducing economic inequality.³⁵³ If 30% of all American businesses were employee-owned (including cooperatives and employee stock ownership plans), the average American household would see their net worth almost double while those on the bottom rungs of the ladder would experience a four-fold increase in net worth.³⁵⁴

V. THE TIMING IS RIGHT TO RIDE THE SILVER TSUNAMI

Much like 100 years ago, Americans are looking for ways to realize the American Dream—upward economic mobility—and to ensure opportunities are available to everyone. However, today’s struggle and challenges are not simply about improving working conditions and wages, although those are still problems and concerns. First, we face a potential crisis if efforts are not made to preserve small businesses owned by the Baby Boomer generation as they transition to the retirement years.³⁵⁵ Second, the infrastructure, policy, and community support is in place to support worker cooperative development. The conditions are fertile for a resurgence of the cooperative movement and the seeding of worker cooperatives throughout the United States.

A. *The Silver Tsunami is on the Horizon*

The “Silver Tsunami” refers to the aging of the generation born post-World War II, between 1946 and 1964, and the wave of effects resulting from that aging.³⁵⁶ The year 1946 experienced a 20% increase in the birth rate than the year prior, adding 3.4 million babies to the population.³⁵⁷ A year later, in 1947, 3.8 million more babies were born.³⁵⁸ Finally, beginning in 1952, 3.9 million or more babies were born every year until 1964 which is typically considered the end year of the generation.³⁵⁹ In total, from 1946 to 1964, 76.4 million babies were born, making up almost 40% of the United States population at the time.³⁶⁰ Considering almost half of the U.S. population at the time was born within those 18 years, it is understandable that the generation is commonly referred to as “Baby Boomers” or “Boomers.”³⁶¹ Currently, Baby Boomers are the second

353. *Id.*

354. Marjorie Kelly & Karen Kahn, *The Case for Investing in Employee Ownership*, STANFORD SOC. INNOVATION REV. (Jan. 3, 2022), https://ssir.org/articles/entry/the_case_for_investing_in_employee_ownership.

355. Abell, *supra* note 156, at 28.

356. *Baby Boomers - Year Range, Definition & Facts*, HIST. (June 7, 2019), <https://www.history.com/topics/1960s/baby-boomers-1>.

357. *Id.*

358. *Id.*

359. *Id.*

360. *Id.*

361. *2020 Census Will Help Policymakers Prepare for the Incoming Wave of Aging Boomers*, CENSUS.GOV, <https://www.census.gov/library/stories/2019/12/by-2030-all-baby-boomers-will-be-age-65-or-older.html> (last visited Jul 24, 2023). The “Millennial Generation” consists of those born between about 1982 and 2000.

largest generation next to that of their children—Millennials.³⁶² It is estimated that there are 73 million Baby Boomers living today,³⁶³ ranging in age from 60 to 79 years old. Within the next decade, even the youngest Baby Boomers will be of retirement age, or “silver,” bringing with them a potential “tsunami” of social and economic crises, including the loss of millions of their small businesses.³⁶⁴

Small business ownership is the epitome of the 20th-century American Dream, and for the Baby Boomer generation this was true. Approximately 2.9 million U.S. businesses are owned by a Baby Boomer³⁶⁵ accounting for more than half of all privately held businesses with employees³⁶⁶ or 32.1 million people and \$1.3 trillion in payroll annually.³⁶⁷ Within the next decade, however, every Baby Boomer will be of retirement age. What will happen to these businesses and their employees? What will happen to the communities in which they operate? Aside from the impact upon Baby Boomers themselves, this silvering of Baby Boomer small businesses will impact employment, local communities, and economies.

Small business is the lifeblood of the U.S. economy.³⁶⁸ Small business, defined as “an independent business having fewer than 500 employees,”³⁶⁹ accounts for 99% of all businesses nationwide and 43.5% of the gross domestic product of the United States.³⁷⁰ “Employer Firms” are those with at least one employee.³⁷¹ Small business employer firms comprise 99.7% of all businesses with paid employees, employ 61.7 million people or 46.4% of private sector employment, and account

362. *Id.*

363. *Id.*

364. John Wright, *9 Earth-Shaking Things That Will Happen After Baby Boomers Retire*, NEWSFUL (Aug. 30, 2023) <https://newsfulonline.com/bad-things-that-will-happen-after-baby-boomers-retire/>; Joe Walsh, *The Silver Tsunami’s Impact on Main Street*, FORBES (Nov. 7, 2024), <https://www.forbes.com/councils/forbesbusinesscouncil/2024/11/07/the-silver-tsunamis-impact-on-main-street/>; Gene Marks, *Why the Looming ‘Silver Tsunami’ Could Put 2.5 Million Jobs at Risk*, WASH. POST (May 9, 2017), <https://www.washingtonpost.com/news/on-small-business/wp/2017/05/09/why-the-looming-silver-tsunami-could-put-25-million-jobs-at-risk/>.

365. Project Equity, *supra* note 347.

366. Brian Headd, *Business Ownership Demographics*, U.S. SMALL BUS. ADMIN., OFF. OF ADVOCACY (March 2021), <https://advocacy.sba.gov/wp-content/uploads/2021/03/Business-Ownership-Demographics-Fact-Sheet.pdf>. Also overrepresented among non-employer firms with 35% of firms owned by individuals aged 55 and over.

367. Project Equity, *Small Business Closure Crisis*, <https://project-equity.org/communities/small-business-closure-crisis/> (last visited Oct. 18, 2024). The full impact of small business employment is not the 32.1 million employees alone, but we must consider the equal number of homes full of other individuals benefitting from the employment.

368. Martin Rowinski, *Council Post: How Small Businesses Drive The American Economy*, FORBES, <https://www.forbes.com/sites/forbesbusinesscouncil/2022/03/25/how-small-businesses-drive-the-american-economy/> (last visited Aug. 19, 2023); Elisabeth Natter, *What Are the Benefits of Businesses for the Local Economy?*, <https://smallbusiness.chron.com/benefits-businesses-local-economy-265.html> (last visited Aug. 21, 2023).

369. Office of Advocacy, Small Business Administration, *Frequently Asked Questions About Small Business* (2023), <https://advocacy.sba.gov/wp-content/uploads/2023/03/Frequently-Asked-Questions-About-Small-Business-March-2023-508c.pdf>. (last visited Aug. 16, 2023).

370. *Id.*

371. *Id.*

for 39.4% or \$2.9 trillion in private sector payroll.³⁷² Employer firms with fewer than 20 employees make up 89% of all U.S. businesses.³⁷³ Between 1995 and 2021, small business was responsible for 62.7% of new job creation.³⁷⁴ The net job change among small businesses negatively spiked with the loss of 8.6 million small business jobs in the second quarter 2020 due to the COVID-19 pandemic, but small business employment rebounded quickly.³⁷⁵ Small business employer firms less than two years old average six employees, while firms 20 years old or older average 60 employees.³⁷⁶ Healthcare and social assistance, accommodation and food services, and retail trade are the top three industries for small business employment.³⁷⁷

Unfortunately, however, an overwhelming majority (85%) of small businesses have no succession plan in place,³⁷⁸ and only 15% of family-owned businesses transition to the next generation.³⁷⁹ Of those businesses that attempt to sell to a third-party buyer, only 10-30% succeed, while the remainder either close or are sold to non-local entities.³⁸⁰ The COVID-19 pandemic also accelerated the rate of small business closure and “opportunistic business acquisitions that further consolidate wealth.”³⁸¹ Transitioning these aging businesses to employee ownership, specifically worker cooperatives, provides the opportunity to preserve these businesses, ensure the business’ legacies, and create avenues of asset and wealth-building for the employees who have worked alongside the owners to build the business.³⁸²

Worker cooperatives are excellent models for business conversion for a variety of reasons. The benefits to the business include maximizing innovation

372. *Id.*; Adam Grundy, *Small Business Week 2022: How Small Businesses Impact Our Economy* (May 4, 2022), <https://www.census.gov/library/stories/2022/05/how-small-businesses-impact-economy.html>.

373. Brett Theodos & Dennis Su, *Small Business Ownership and Finance: A Landscape Scan of the Historical Underpinnings of Current Conditions*, URBAN INST. 1 (March 2023), <https://www.urban.org/research/publication/small-business-ownership-and-finance>.

374. Office of Advocacy, *supra* note 369.

375. *Id.* at 2. The Accommodations and Food industry was most impacted by the COVID-19 pandemic, with 44.7% of those businesses still negatively impacted as late as April 2022.

376. *Id.*

377. Office of Advocacy, SBA, *Small Businesses Drive Job Growth in United States; They Account for 1.8 Million Net New Jobs, Latest Data Show* (Apr. 24, 2019), <https://advocacy.sba.gov/2019/04/24/small-businesses-drive-job-growth-in-united-states-they-account-for-1-8-million-net-new-jobs-latest-data-show/>.

378. Alison Lingane & Shannon Rieger, *Case Studies: Business Conversions to Workers Cooperatives*, PROJECT EQUITY 7 (2015) https://project-equity.org/wp-content/uploads/2023/06/Case-Studies_Business-Conversions-to-Worker-Cooperatives_ProjectEquity.pdf (last visited Oct. 18, 2024) (“Fewer than half of those expecting to retire in five years and one-third of those expecting to retire in the next 10 years have actually named a successor.” (quoting A. McGrory-Dixon, *Small Business Owners Should Start Succession Planning Earlier*, BENEFITSPRO (Jan. 24, 2012), <https://www.benefitspro.com/2012/01/24/small-business-owners-should-start-succession-plan/?slreturn=20241018152500>)).

379. Abell, *supra* note 156, at 29. *See also* Lingane & Rieger, *supra* note 378, at 7.

380. Abell, *supra* note 156, at 29.

381. *Id.*

382. *Id.*

through collaboration of important and impactful individuals (employees),³⁸³ attracting and retaining valuable workers who desire to not only provide labor, but to participate in the governance of the business;³⁸⁴ and creating community support which contributes to the long-term longevity of the enterprise.³⁸⁵ For the small business owner, conversion to a worker cooperative is beneficial because it can make their exit from the business easier, also increasing the privacy of the transaction.³⁸⁶ More importantly, the departing owner leaves the entity knowing it has been left in the hands of “experienced, competent, invested individuals.”³⁸⁷ Lastly, conversion to a worker cooperative is good for the community, as it ensures successful businesses remain, workers retain employment (and are afforded the opportunity to create wealth), and wealth remains in the community, contributing to its overall health and wellbeing.³⁸⁸

B. The Infrastructure, Policy, and Community Support are Ripe for Riding the Wave to Worker Cooperative Conversion

1. Policy

On March 19, 2024, Representatives Ro Khanna, (CA-17), Jamaal Bowman (NY-16), and Rashida Tlaib (MI-12) introduced the National Worker Cooperative Development and Support Act (H.R. 7721), with the purpose of expanding worker-owned cooperative businesses in the United States.³⁸⁹ The legislation would authorize and make various federal agencies responsible for implementing programs and initiatives to support worker cooperatives.³⁹⁰ The various federal agencies include the Small Business Administration (SBA), Internal Revenue Service (IRS), Department of the Treasury, Department of Commerce, United States Department of Agriculture (USDA), and Department of Labor (DOL).³⁹¹ The legislation authorizes these agencies to review and propose regulations and remove barriers to widespread development of worker cooperatives by “facilitating

383. *Legal Guide to Cooperative Conversions*, CO-OPLAW.ORG (Aug. 4, 2016), <https://app.selc-coopl原因-law-production.kube.v1.colab.coop/knowledge-base/legal-guide-cooperative-conversions/> (last visited October 18, 2024).

384. *Id.*

385. *Id.*

386. *Id.*

387. *Id.*

388. *Id.*; see also Brian Headd, *The Importance of Business Ownership to Wealth*, SMALL BUS. ADMIN., OFF. OF ADVOCACY (August 2021), <https://advocacy.sba.gov/wp-content/uploads/2021/08/Small-Business-Facts-Business-Owner-Wealth.pdf> (last visited August 21, 2023).

389. *The National Worker Cooperative Development and Support Act shines a light on strong, high-road cooperative jobs with federal agencies*, U.S. FED’N OF WORKER COOP. (Mar. 18, 2024), <https://www.usworker.coop/blog/workercoopdevsupportact/> (hereinafter U.S. Worker Cooperative); *Understanding Community Development Financial Institutions and their Impact in Low- and Moderate-Income Neighborhoods*, FED. RESERVE BANK OF SAN FRANCISCO CMTY. DEV. INNOVATION REV. Winter 2020-2021, <https://doi.org/10.24148/cdir2021-01> (last visited October 1, 2024) (explaining that a Community Development Financial Institution (CDFI) is a mission-driven financial institution serving low-income communities and individuals).

390. *Id.*; see also National Worker Cooperative Development and Support Act, H.R. 7721, 118th Congress, 2d Session, introduced March 19, 2024.

391. U.S. Worker Cooperative, *supra* note 389.

access to capital, providing education, outreach, technical assistance, and conducting research on worker co-ops.”³⁹² The bill would also create the United States Council on Worker Cooperatives within the DOL, which would direct and organize federal activities, propose a strategy to include the development of and conversion to worker cooperatives as part of a broader economic development plan, identify and propose strategies to overcome barriers, oversee research and educational activities, and provide Congress with reporting on the progress of worker cooperative development and proposals for the future.³⁹³ Lastly, the legislation creates a funding pilot program through the Small Business Administration which would provide loans through Community Financial Development Institutions (CFDIs) totaling \$60 million over 10 years for education and activities directing at creating, converting, and managing worker cooperatives in the United States.³⁹⁴

“The inspiration behind this legislation comes from seeing the positive impacts that worker cooperatives are having in communities across this country. Worker-owned businesses empower employees to have a voice in their workplace and share in the company’s success. They promote more equitable distributions of wealth and anchor jobs locally. In my own district in Silicon Valley, I’ve had the chance to visit worker cooperatives ranging from a home care agency to a pizza shop to a brewery to a bakery. Seeing firsthand how employee ownership transforms people’s lives and livelihoods made me want to help spread this business model. As our nation confronts rising inequality and workforce displacement from automation, we need bottom-up economic models that give workers ownership stakes.”³⁹⁵

Representative Khanna also acknowledged the coming Silver Tsunami as impetus for introducing the bill, noting that the National Worker Cooperative Development and Support Act would provide the support and resources necessary to ensure those businesses that wish to convert to worker cooperatives are able to do so.³⁹⁶ He said, “I believe widespread worker ownership is not only good policy, but also fully aligned with American values of liberty, democracy, and fair opportunity. My hope is this legislation seeds an ownership economy that lives up to those ideals.”³⁹⁷

Also at the federal level, the Worker Ownership, Readiness, and Knowledge Act (WORK ACT), signed into law in December 2023, authorized \$50 million

392. *Id.*

393. *Id.*

394. *Id.*

395. *Id.* (quoting Representative Ro Khanna (CA)).

396. *Id.*

397. *Id.* (quoting Representative Ro Khanna (CA)).

over five years to start an employee ownership initiative within the DOL,³⁹⁸ which was launched in July 2024 as the Division of Employee Ownership.³⁹⁹ The Division is tasked with encouraging employee ownership by supporting existing programs and creating new ones; collecting information from the states about their efforts, techniques, and programs aimed at promoting employee ownership; engaging in outreach, education, and training to workers and companies about employee ownership, its benefits, and opportunities for succession planning; and providing technical assistance.⁴⁰⁰ Although the future of these initiatives is in doubt under President Trump's administration, they nevertheless underscore the widespread support for worker cooperatives and employee ownership models.

2. Municipal, Educational Institution, and Other Support Organizations

In addition to support for worker cooperatives at a federal level, an increasing number of communities and municipalities are supporting worker cooperative development.⁴⁰¹ A 2016 report prepared by The Imagined Economy Project identified the efforts of 10 U.S. cities to develop worker cooperatives within their local economies.⁴⁰² The report noted three strategies employed by these cities to support cooperative development, including the Anchor, Ecosystem, and Preference approaches.⁴⁰³ The Anchor approach identifies the "procurement needs of anchor institutions like hospitals and universities" and develops worker cooperatives to meet those needs.⁴⁰⁴ This approach has been used in Cleveland, Rochester, and Richmond.⁴⁰⁵ The Ecosystem Approach, employed by Richmond, California, New York, Minneapolis, and Austin, develops a network of "developers, incubators, educators, and lenders charged with starting or converting worker-owned businesses."⁴⁰⁶ Lastly, the Preference Approach gives worker-cooperatives the advantage of being preferred for governmental contracts and vending, and is a strategy being used in Berkeley and Oakland, California.⁴⁰⁷

398. See *WORK Act signed into law, authorizing \$50M toward worker ownership*, U.S. FED'N OF WORKER COOP. (Feb. 1., 2023), <https://www.usworker.coop/blog/work-act-signed-into-law-appropriating-50-toward-worker-ownership/>.

399. See *Department of Labor announces Division of Employee Ownership and names Chief from the worker ownership movement*, U.S. FED'N OF WORKER COOP. (Jul. 24, 2024), <https://www.usworker.coop/blog/department-of-labor-announces-division-of-employee-ownership/>.

400. *Id.*

401. Huertas-Noble, *supra* note 130.

402. These cities include Oakland, Berkeley, and Richmond, California; Austin, Texas; Minneapolis, Minnesota; Madison, Wisconsin; Cleveland, Ohio; Rochester, New York; New York, New York; and Richmond, Virginia. See Michelle Camou, *Cities Developing Worker Co-ops: Efforts in Ten Cities*, MAYORS INNOVATION, <https://mayorsinnovation.wiscweb.wisc.edu/wp-content/uploads/sites/868/2019/12/Winter-2019-Cities-Developing-Worker-Co-ops.pdf> (last visited Sept. 21, 2024).

403. *Id.* at 1.

404. *Id.*

405. *Id.*

406. *Id.* at 2.

407. *Id.*

When surveyed, the 10 cities reported various reasons for pursuing worker cooperative development within their communities.⁴⁰⁸ Five of the cities reported economic inclusion as a reason for pursuing worker cooperatives and viewed them as a mechanism for connecting “their most vulnerable populations to the economy.”⁴⁰⁹ For example, Austin noted they had identified thousands of “hard-to-employ”⁴¹⁰ citizens and viewed worker cooperatives as a pathway into the labor market.⁴¹¹ Minneapolis also viewed worker cooperatives as an on-ramp into the market economy for its low-income residents that would otherwise be unable to access capital for business development.⁴¹² Rochester, New York and Richmond, Virginia reported a desire to invest in inner-city neighborhoods with high concentrations of poverty.⁴¹³ Lastly, four of the ten cities cited improved job quality as an outcome.⁴¹⁴

In addition to local and regional efforts to develop worker cooperatives, several educational institutions have programs or centers dedicated to employee ownership and/or worker cooperatives. For example, in Ohio there is the Ohio Employee Ownership Center (OEOC) at Kent State University.⁴¹⁵ Established in 1987, OEOC provides outreach, information and education, and technical assistance to businesses and employees pursuing employee ownership over business enterprise.⁴¹⁶ OEOC provides various services and support, including a Cooperative Development Center which focuses on starting and supporting projects focused on cooperative development including conversion to worker cooperatives as business succession planning.⁴¹⁷ Similarly, through its Employee Ownership Online Education Program, Rutgers School of Management and Labor Relations Worker Cooperative Education Program provides free, online learning modules for individuals to learn more about worker cooperatives.⁴¹⁸ The Cornell SC Johnson College of Business, Cooperative Enterprise Program engages in research on the impact of worker cooperatives as a community and economic development tool, and provides training and technical assistance to cooperatives and their leaders.⁴¹⁹ While not an exhaustive list of educational institutions supporting cooperatives, these

408. *Id.* at 4.

409. *Id.*

410. *Id.*

411. *Id.*

412. *Id.*

413. *Id.*

414. *Id.* at 5.

415. Kent State University, Ohio Employee Ownership Center, *About*, <https://www.oeockent.org/> about (last visited Oct. 18, 2024).

416. Kent State University, Ohio Employee Ownership Center, *Overview of OEOC Programs*, <https://www.oeockent.org/about/overview-of-oeoc-programs> (last visited Oct. 18, 2024).

417. *Id.*

418. See Rutgers-New Brunswick, School of Management and Labor Relations, *A Worker Cooperative Education Program*, <https://smlr.rutgers.edu/worker-cooperative-education-program> (last visited Oct. 18, 2024).

419. See Cornell SC Johnson College of Business, <https://cooperatives.dyson.cornell.edu/> (last visited Oct. 18, 2024).

examples demonstrate that there are a multitude of resources that educate and support the development of cooperative businesses in the United States.

Other resources include organizations that directly research, advocate for, and support worker cooperative development and conversion. The United States Federation of Worker Cooperatives (USFWC) is the “national grassroots membership organization for worker cooperatives and democratic workplaces.”⁴²⁰ Founded in 2004, USFWC includes over 400 businesses and members, and represents the estimated 1,000 worker cooperatives operating in the United States.⁴²¹ The organization not only advocates on behalf of worker cooperatives, but offers benefits to its members and seeks to connect them to the broader worker cooperative and economic justice movements.⁴²² Another important organization and a sister to USFWC is the Democracy at Work Institute (DAWI). Created in 2013, its mission is to “ensure that worker cooperative development in economically and socially marginalized communities is adequately **supported, effective, and strategically directed**.”⁴²³ Together, these organizations offer a plethora of programs, resources, and advocacy at the national level to support and grow the cooperative movement; a piece that was absent during the cooperative movement of the late 19th century.

VI. CONCLUSION

The American Dream, initially defined by ideals of democratic equality, liberty, and shared prosperity, has gradually shifted to symbolize individual pursuit of wealth and property ownership. Today, as America confronts challenges reminiscent of the Reconstruction, Gilded Age, and Progressive Era periods—economic inequality, monopolistic power, and socio-political divisions—the original ethos of the American Dream is increasingly relevant. This Article argues that worker cooperatives offer a viable path to restoring economic democracy by promoting shared ownership and equitable wealth distribution. As Baby Boomer-owned businesses face succession challenges with the approaching “Silver Tsunami,” the conversion of these businesses into worker cooperatives presents a unique opportunity to preserve jobs, support local communities, and build wealth for workers. With emerging policy support, municipal initiatives, and a growing network of advocates and educational resources, the conditions are ripe for a resurgence of the cooperative movement. By embracing worker cooperatives, the United States can redefine the American Dream for the 21st century—one that ensures economic opportunity and prosperity for all, not just the few.

420. *About the USFWC*, U.S. FED’N OF WORKER COOP, <https://www.usworker.coop/about/> (last visited Oct. 18, 2024).

421. *Id.*

422. *Id.*

423. Democracy at Work Institute, *About*, <https://institute.coop/about> (last visited Oct. 18, 2024) (emphasis in original).