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formation in the client's personnel file (such as inaccurate rap sheet information and consumer reports) that may affect any future applications with any public agency or other employers is a good idea.

For clients with prior criminal histories, the experience of working with and watching an advocate who understands and articulates their personal struggles while recognizing their strengths generally improves the clients' ability to advocate for themselves—regardless of the outcome of the litigation. This collaborative interaction with the client is not only a teaching opportunity but also a valuable lesson. For some clients, the positive experience changes how they perceive themselves, and that, in turn, changes their outlook.

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Amending the Illinois Wage Payment and Collection Act: An Organizing Victory Against Wage Theft

Illinois Senate Bill (S.B.) 3568, which Gov. Patrick Quinn signed into law on July 30, 2010, amended the Illinois Wage Payment and Collection Act and gave low-wage Illinois workers some of the nation's strongest protections against wage theft (see 820 ILL. COMP. STAT. 115/1 *et seq.* (2011), <http://1.usa.gov/q5cAU6>). S.B. 3568 creates new deterrents against wage theft by increasing civil and criminal penalties against violators, especially repeat offenders; gives the Illinois Department of Labor more efficient and effective enforcement mechanisms to combat wage theft; and protects workers from retaliation by employers if workers pursue their rights by complaining about wage theft in court, before government agencies, or even to community organizations.

The passage of S.B. 3568 culminates nearly two years of organizing by Illinois Just Pay for All. The coalition's member organizations documented wage theft, identified some of the law's main inadequacies, and organized their worker members to advocate before the state legislature to obtain greater protections. The Just Pay for All Coalition's collaboration with the Illinois Department of Labor, legislators, and our worker members can offer valuable lessons for state-level campaigns in Illinois or elsewhere.

The Coalition

Just Pay for All's member organizations, the Chicago Workers Collaborative, Latino Union of Chicago, and Centro Trabajadores Unidos, represent and organize low-wage and immigrant workers throughout the greater Chicago area. Working Hands Legal Clinic, also a coalition member, offers to Chicago worker centers legal support ranging from litigation to drafting legislation. The coalition has had legislative victories. In 2005

worker centers in Chicago helped achieve passage of the Illinois Day and Temporary Labor Services Act (820 ILL. COMP. STAT. 175/1 *et seq.* (2011)), which gave Illinois the country's most aggressive protections for temporary staffing agency workers. The coalition has since successfully advocated several amendments to that law to protect it from attack by the fast-growing temp-agency industry. Worker centers were also responsible for the Illinois Minimum Wage Law amendments (820 ILL. COMP. STAT. 105/1 *et seq.* (2011)) that increase the damages available for workers denied wages owed them and prevent staffing industry workers from being labeled "probationary" and thus earning a lower rate. The coalition supported the passage of the Employee Classification Act (820 ILL. COMP. STAT. 185/1 *et seq.* (2011)) and the Illinois Human Rights Act amendments that made people subjected to abusive use of the E-Verify database (which is supposed to inform employers about an individual's eligibility to work in the United States) a protected class, along with giving the class a private right of action.

One key element in Just Pay for All's most recent legislative success was its collaborative relationship with the state agencies charged with combating wage theft. Just Pay for All has always strived to maintain this relationship, even in the face of disagreements between coalition members and, for example, the Illinois Department of Labor. This collaboration has allowed us to learn about the limitations with which the department struggles in combating wage theft, and thus to work with the department and supportive legislators in crafting legislation to overcome those limitations. Studies that documented the gravity of wage theft and its impact on low-wage communities in Illinois, and indeed nationwide, were also useful in marshalling support for the bill.

The coalition's model itself was a significant resource. Worker centers' presence in low-wage and immigrant communities gives worker centers insight into workers' needs—in fact, workers who become victims of wage theft often turn first to these centers. Working Hands Legal Clinic augments the centers' services with legal resources and can, for example, translate worker centers' insight into wage theft and the challenges that low-wage workers face into responsive legislation.

The most important element of the coalition's success, however, was the workers' presence. From drawing attention to the problem by protesting against employers who stole their wages to telling their stories to state legislators, the workers' own advocacy on behalf of their communities was compelling and could not be ignored.

Wage Theft in Illinois

Wage theft—or nonpayment of wages—has reached epidemic proportions in Illinois and across the nation. In the Chicago area alone an astounding \$7.3 million in wages is stolen from workers every week (Nik Theodore *et al.*, Center for Urban Economic Development, University of Illinois at Chicago, *Unregulated Work in Chicago: The Breakdown of Workplace Protections in the Low-Wage Labor Market* (April 2010), <http://bit.ly/mY9j6n>). Dozens of national studies have also uncovered severe wage payment violations (see, e.g., Annette Bernhard *et al.*, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (2009), <http://bit.ly/qwDiib>).

Wage theft disproportionately harms low-income Illinois residents and vulnerable groups of workers. Contingent workers, such as day laborers who seek work on specific street corners and temporary laborers working with staffing agencies, are likely to be the victims of particularly severe wage theft. A recent study found that 66 percent of day laborers in the Midwest experienced wage theft within a two-month period (Abel Valenzuela Jr. et al., *On the Corner: Day Labor in the United States* 14 (Jan. 2006), <http://bit.ly/urn0g7>). Many of these workers receive the minimum wage or less, and those who manage to work full-time and year-round at the Illinois minimum wage of \$8.25 per hour gross just over \$16,000 annually, with no benefits. Since many of them are given work by temporary staffing agencies only about 70 percent of the year, their annual earnings are roughly \$11,000, significantly below poverty level. Because it affects the poorest families, wage theft perpetuates other social problems, among them homelessness, lack of proper medical care for the worker or family members, lack of educational opportunity, and crime.

The problem has been exacerbated by systemic inadequacies within the legal system that fail to reflect the realities of wage theft in the new economy. One example of these inadequacies was the Illinois Department of Labor's lack of authority to enforce wage laws when unscrupulous employers violated these laws. If individuals under investigation for wage theft by the department ignored the department, the department's only recourse was to close the case and send it to the attorney general's office for enforcement. If that office decided to pursue the case, it would have to file a complaint in state court and begin enforcement essentially *de novo*. The attorney general's office also has limited resources and cannot possibly pursue a significant number of wage-theft claims against employers who blithely ignore the labor department.

To make the problem worse, in *Andrews v. Kowa Printing Incorporated* (838 N.E.2d 894, 900–901 (Ill. 2005)), the Illinois Supreme Court interpreted the Illinois Wage Payment Collection Act as creating a heightened standard for individual employer liability. Despite the language of the Illinois statute being almost identical to federal and other state wage laws that impose individual liability without proving a “knowing” violation, the court interpreted Section 13 of the Act to require just that, thereby severely limiting individual liability for wage theft. The decision further eroded the Act's effectiveness, especially in a new economy where many employers, particularly the unscrupulous among them, are not incorporated and operate as individuals. Recognizing these challenges, Just Pay for All spearheaded a coalition effort to correct these systemic inadequacies and pass the most sweeping changes in Illinois's wage-theft law in more than thirty-five years.

Building Relationships

Over several years Just Pay for All and its member organizations built a collaborative relationship with the labor department and the attorney general's office, as well as with other agencies and organizations charged with enforcing wage laws in Illinois. The Chicago Workers' Collaborative and the Latino Union of Chicago, for example, were original members of the Chicago Area Workers' Rights Initiative, a task force assembled in 1999 to tackle Chicago-area wage theft. The relation-

ship built with these agencies was essential to the passage of S.B. 3568.

While the coalition's member organizations and state agencies have not always seen eye to eye, we recognize that agency staff members are committed advocates working with limited resources and imperfect laws. The coalition's relationship with the department and the sharing of information allowed the coalition to understand how the department's lack of adjudicative power affected its ability to combat wage theft. Some ten thousand claimants typically file with the department each year; 60 percent of the claims are for \$3,000 or less. In roughly 40 percent of the instances where the department issues a notice of claim to employers for violating wage laws, the employers simply ignore the notice, forcing the department either to refer the case to the attorney general or to close its investigation. While in state or federal court, and indeed in many administrative proceedings, a default judgment may be entered against a party that fails to appear or respond to a complaint, the department had no such authority. Understanding this limitation contributed to the coalition's drafting of legislation that could have the greatest impact at the lowest cost. If the department could adjudicate at least the claims where employers failed to appear, the department could potentially issue millions of dollars' worth of judgments for unpaid wages due low-wage workers. For this reason, Just Pay for All focused on creating a small-claims administrative process to adjudicate claims of \$3,000 or less internally, particularly when employers fail to respond to the department's notices.

Working with the bill's sponsors, the department, and worker centers and their members, Working Hands attorneys helped draft a law that authorized the department to adjudicate these claims. The new small-claims adjudication is being implemented in phases. Effective January 1, 2011, the Illinois Department of Labor has authority to issue default judgments against employers that do not respond to notices of claims involving \$3,000 or less; these judgments may include penalties of up to 20 percent that will go into a fund for enforcement and expanding the use of the new small-claims adjudication.

The coalition sought to increase criminal penalties to give the law a greater deterrent effect. Like the department, the attorney general's office was integral in drafting legislative language that struck a balance between deterrence and fairness. Repeat wage violators may now be found guilty of a Class 4 felony, thereby adding a significant deterrent.

The coalition tapped into the resources and experience of national organizations such as the National Employment Law Project, the National Immigration Law Center, and the National Day Laborer Organizing Network; several staff members of these organizations—e.g., Cathy Ruckelshaus, Chris Newman, and Monica Guizar—have served on Working Hands Legal Clinic's board for years. These connections allowed Chicago worker centers, while sharing their own success with advocates elsewhere, to take advantage of legal research by allies across the country.

Just Pay for All received support from the American Federation of Labor as well as state-based labor groups. This support was essential in avoiding roadblocks in the legislature.

Organizing for Change

While relationship building was key to Just Pay for All's success, the most essential element was the input and presence of workers. Ultimately workers were at the front of the campaign and of the effort to hold all parties accountable for implementing the law after it was passed.

Over five months worker center members traveled every week to Springfield, the state capital, to meet with legislators and explain why the amendments were necessary to curb wage-theft abuse. Legislators were often shocked to hear workers' stories about working for weeks without pay and the impact on their families. Workers' advocacy on their own behalf was always compelling and legislators, we believe, ultimately responded to their constituents.

One example of this effect was Kim Cambra's testimony before the Illinois House of Representatives Labor Committee. As had dozens of others, Cambra had worked for months without pay for a company that manufactured plastic molds for the gardening industry and was in Chapter 11 bankruptcy proceedings. Although the company's owner promised to bring the workers' wages up-to-date, he was simultaneously driving the company into the ground and taking large sums of operating capital money for himself. One of the company's workers happened to see a Chicago Workers' Collaborative action on television and told his coworkers about it. The workers contacted the organization, and eventually the collaborative was meeting with dozens of workers employed at this company. The campaign against the company's owners attracted strong media attention and illustrated the problem of wage theft in Illinois. The stories that Kim and other workers told about being forced to turn to food pantries during the holiday season while continuing to work made the case for this legislation more eloquently than lawyers or organizers ever could have.

Other aspects of the coalition's framing for this campaign are worth mentioning. For instance, the coalition emphasized that the adjudicative system it was proposing, which would tackle wage theft through default judgments and expand as more funds became available through the 20 percent penalties or otherwise, was essentially cost-neutral. This point circumvented opposing arguments that centered on the state's fiscal crisis. The coalition also avoided framing the issue as one primarily affecting immigrants. While the low-wage immigrant worker population certainly suffers wage theft disproportionately, the problem cuts across all demographic groups.

The coalition avoided attacks on the labor department. The department lacked adequate authority to enforce state laws meant to protect workers from wage theft, and the proposed legislation gave the department tools. This framing was essential in avoiding confrontation with the department and maintaining a cooperative relationship and the implementation of the new law.

Implementation

S.B.3568 was passed by both houses with strong support and was signed into law on July 1, 2010. While this was a great victory, much work remained—drafting regulations, for one. Furthermore, while workers knew that S.B. 3568 would become

effective on January 1, 2011, they also wanted to know when the new small-claims adjudication would be implemented.

In response to such concerns the coalition invited department representatives and legislators who had helped get the bill passed to continue a dialogue on the subject. The department's representatives expressed concern about their budget and the department's ability to implement the new small-claims adjudication in 2011. The dozens of workers present reemphasized their community's need for quick implementation. Many had made multiple trips to Springfield over many months to advocate the law and were not receptive to the notion of delaying implementation. State Rep. Lisa Hernandez, who herself had fought for this law and rallied other legislators, also saw the need for expedited implementation. The department and the coalition committed themselves to working together to design the most cost-neutral mechanism possible to implement the amendments quickly.

Coalition members and the department met several times during subsequent weeks to discuss the drafting of implementing regulations. These meetings enabled worker center members of the coalition, with the assistance of Working Hands, to highlight worker needs and suggest regulatory language that would meet those needs most effectively. The result was the adoption of emergency rules implementing the amendments that took effect on January 1, 2011; the emergency rules contained noteworthy provisions and created a small-claims adjudication while safeguarding all parties' constitutional due process rights.

Under these rules, which have now been adopted as final regulations, when a worker files a claim for owed wages under the Illinois Wage Payment and Collection Act, the department will serve notice of the claim via regular mail and certified mail to an address kept with the department or another state agency with which that employer is obligated to maintain a current address (ILL. ADMIN. CODE tit. 56, § 300.1050 (2011)). If the employer fails to respond, the department begins default proceedings. These regulations provide fair and adequate notice of the claim; they make employers' shirking service, say by operating underground and failing to update their address with the state, harder.

The regulations give claimants the right to bring a representative to investigative hearings and default proceedings (*id.*) This provision opens the door for advocates and worker leaders to support victims of wage theft during administrative hearings and to help make the hearings less cumbersome and intimidating for workers who are unaccustomed to formal proceedings and do not speak English.

The regulations adopted the *Mt. Clemens* burden-shifting framework used in Fair Labor Standards Act cases when employers fail to maintain accurate time and pay records (*Andersen v. Mt. Clemens Pottery Company*, 328 U.S. 680, 687 (1946)). This case stands for the proposition that while plaintiff employees in a wage-and-hour case bear the initial burden of proving the actual hours that they worked as a matter of reasonable inference, an employer who fails to maintain accurate time and payroll records has a difficult time shifting that burden of proof back to the employee. The coalition was aware of instances in different forums where an employer's failure to

keep such records, common in low-wage work, was a barrier to workers' ability to prove their claims. Adoption of the *Mt. Clemens* standard ensures that low-road employers' failure to maintain accurate time and pay records will make claimant employees' meeting their burden of proof during adjudicative hearings easier rather than harder (ILL. ADMIN. CODE tit. 56, § 300.630).

Aftermath

A common question that Just Pay for All coalition members face from advocates elsewhere, following this campaign, is, What has changed? In meetings between the coalition and the labor department in 2011, the department stated that the new small-claims adjudication was effective and was already rendering default judgments against employers who ignored the department's notice of claims. The department also reported a higher rate of mediation success between workers and employers. Indeed, workers' rights advocates have themselves found a greater willingness by employers, upon receiving letters highlighting the new civil and criminal penalties, to pay workers' owed wages.

The amendments are a significant achievement in the fight against wage theft in Illinois and for Just Pay for All's coalition work, and the small-claims adjudication established through S.B. 3568 has the potential to render millions of dollars worth of judgments. However, obtaining a judgment is only half the battle. Workers still have to collect on those judgments. The coalition's work in other forums such as small claims, state circuit, and federal courts will also continue to render significant judgments; collecting on those judgments could be a challenge. And workers are not alone in having a vested interest in collecting; those judgments represent unpaid payroll and income taxes at a time of severe fiscal crisis. As these judgments start to accumulate, workers and their advocates will face the next question: what challenges will low-wage workers face in trying to collect their wages, and how can collection of owed wages be made easier? The answers to these questions will define the next stage in the fight against wage theft in Illinois.

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Left High and Dry: Water Utility Shutoffs and Tenants in Foreclosed Properties

It's Monday morning, and Marlene's apartment is bustling with children getting ready for school. There is a line outside the bathroom, the cereal box is being passed around the table, and Marlene is pushing her kids to get ready faster so they won't be late. When Marlene closes and locks the door behind them as the children start their walk to school, she says a quick prayer that her home would not get robbed again while

she is at work as a security guard protecting other people's valuables.

Marlene's two-bedroom apartment, carved out of a dilapidated single-family home in Miami's Liberty City, is a foreclosed property. Marlene was duped into renting the apartment from a landlord who failed to disclose that the apartment was in foreclosure. Marlene discovered this only after having moved in a few months when her landlord stopped paying the water utility company and failed to repair the home.

Things deteriorated further when ownership of the home was transferred to the foreclosing bank. Marlene and her six kids were subjected to twenty-three days without water service as the bank scrambled to hire a realtor and pay the local water company. Marlene and her children had to carry buckets of water from a neighbor's house in order to bathe, brush their teeth, and flush the toilet. Marlene complained numerous times about other repairs needed, but the bank refused to attend to them. Instead the bank attempted to obtain a writ of possession to throw Marlene out of her apartment. With windows and doors that do not close, a ceiling that leaks from water damage, a kitchen infested with roaches, and a fear of rats biting her children while they sleep, Marlene and her children are paying for the foreclosure crisis with their lives.

Knocking on the doors of thousands of renters in foreclosed properties across Miami, law students interning with the Community Justice Project of Florida Legal Services met Marlene in 2009. Their clinic, the Community Lawyering Clinic at the University of Miami School of Law, started a community outreach and education project entitled Project No One Leaves Miami modeled after an innovative project of the same name at Harvard Law School. Little did the students know that in two short years the work of their small clinic would culminate in the passage of county legislation ending water utility shutoffs in foreclosed apartment buildings. What started as a small tenant education program blossomed into a transformative advocacy project that created policy change, shifted public discourse, and planted the seeds of a tenants' rights movement in Miami.

This is the story of a two-year campaign from the perspective of Community Justice Project attorneys, who created the Community Lawyering Clinic to train the next generation of socially conscious legal advocates committed to building the power of low-income communities. We decided to share our story because it offers lessons for many different types of advocates—attorneys, clinical professors, law students, and organizers—not just because of what we won but also (and perhaps more important) how we won and who helped win it.

The Protecting Tenants at Foreclosure Act

Our story begins in 2008, at the height of the subprime market crash, while the foreclosure crisis wreaked havoc across America. When the foreclosure crisis reached epidemic proportions, housing advocates across the country were the canaries in the coal mine. Our experiences with other crises had taught us that when disasters strike (either man-made or natural) they disproportionately affect the most vulnerable. But none of us could have imagined how bad it would be: the estimate is that by the end of 2012 the foreclosure crisis will have drained over \$193 billion in wealth from the African American community



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