

UNHOLY UNION: ST. LOUIS PROSECUTORS AND POLICE UNIONIZE TO MAINTAIN RACIST STATE POWER

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INTRODUCTION

In late December 2018, St. Louis County prosecutors voted to unionize and join the St. Louis Police Officer Association (“SLPOA”), the infamous St. Louis City police union that represents many of the city’s white police officers.¹ This vote came on the heels of former St. Louis County Prosecuting Attorney Bob McCulloch — whose almost three-decade tenure in the position is most defined by his failure to win an indictment of Darren Wilson, the officer who shot and killed Michael Brown — losing re-election and being replaced by Prosecuting Attorney Wesley Bell after a robust and highly successful grassroots campaign aimed at McCulloch’s defeat.² Bell ran on a platform of police accountability and bail reform.³

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1. See Charles Jaco, *Indictments Suggest St. Louis Police are Violent, Racist and Unconstitutional*, ST. LOUIS AM. (Dec. 3, 2018), http://www.stlamerican.com/news/columnists/charles_jaco/indictments-suggest-st-louis-police-are-violent-racist-and-unconstitutional/article_f9f21462-f724-11e8-8783-c3533eb3163d.html. Colloquially, SLPOA is known as the white officers’ union and Ethical Society of Police (ESOP) the Black officers’ union. SLPOA is the recognized bargaining unit representative for the department. ESOP has been active historically only with the St. Louis Metropolitan Police Department, but it expanded to the St. Louis County Police Department in 2018. See *About Us*, ETHICAL SOCIETY OF POLICE, <https://esopstl.org/about-us> (last visited June 3, 2019).
2. See Matt Ferner, *How Activists Ousted St. Louis County’s Notorious Top Prosecutor Bob McCulloch*, HUFFINGTON POST (Aug. 13, 2018), https://www.huffpost.com/entry/st-louis-county-missouri-prosecutor-bob-mcculloch-defeat_n_5b6e0c96e4b0530743c9f032.
3. See *Issues: End Mass Incarceration & Reform Cash Bail*, VOTE WESLEY BELL, <https://www.votewesleybell.com/end-mass-incarceration-and-restore-communities> (last visited Apr. 22, 2019); see also *Issues: Engage the Community to Build Trust Through Transparency*, VOTE WESLEY BELL, <https://www.votewesleybell.com/engage-the-community-to-rebuild-trust-1> (last visited Apr. 22, 2019).

Before he had even been sworn into office, St. Louis County assistant prosecutors voted in a secret ballot to join the ranks of the SLPOA.⁴

This article seeks to share some of the local and historical context that helps us understand the political and racial underpinnings of this move, which we might see as a formalized continuation of the kind of relationship people in the St. Louis region have come to expect, and worked to reject, through popular election. Further, this piece seeks to disrupt binary thinking about unions as being either bad or good, and urges a more nuanced power analysis of ways in which unionization can be used to further justice, moving towards liberation and fairness, but can also be used to concentrate power and perpetuate the economy of anti-black racial capitalism.

First, this article will detail how St. Louis prosecutors joining the SLPOA represents racist backlash to popular support for change. Then, it will explain how such a union furthers an unjust collusion between theoretically distinct arms of the criminal punishment system. With this moment and meaning in mind, the article will zoom out to locate this event within a broader framework of racial capitalism, explaining how bolstering the criminal punishment system in St. Louis contributes to a socio-economic system rooted in the exploitation and neglect of the region's black and brown residents.

Second, this article will examine the role of unions in this process: first reviewing a brief history of unionization — and the ways in which it has been used to challenge *and* perpetuate racial capitalism — then analyzing the role of police (and prosecutors) unions in bolstering the racial capitalist state, before returning to St. Louis to understand the local historical and present intersections of unions, police and prosecutors, and the movement for racial justice.

I. UNIONIZATION OF ST. LOUIS POLICE AND PROSECUTORS IS ABOUT RACISM.

On August 9, 2014, Ferguson Police Officer Darren Wilson murdered 18-year-old Michael Brown. In the wake of Michael Brown's murder, Ferguson and the St. Louis metropolitan region became the focus of national attention when grassroots activists and organizers rose up, protesting the killing of yet another young Black person at the hands of police, and the continued widespread oppression of those Black communities by city and county police departments, prosecutors, and courts. They said, "no more." They drew attention to the ruthless use of poor Black people and communities as personal piggy banks for municipalities, while at the same time being regarded as inherently criminal and disposable, fit to be hunted down and shot, or left to languish in the local debtors' prison.

The city of Ferguson is within St. Louis County, and thus prosecution authority was within the jurisdiction of then St. Louis County Prosecuting

4. See David Hunn, *St. Louis County Prosecutors Vote to Unionize*, ST. LOUIS POST-DISPATCH (Dec. 18, 2019), https://www.stltoday.com/news/local/crime-and-courts/st-louis-county-prosecutors-vote-to-unionize/article_e8422a8f-0fbb-584c-96b6-ff4391b6c6b0.html.

Attorney Bob McCulloch.⁵ In November 2014, Bob McCulloch announced that his office would not bring charges against Darren Wilson. In the wake of this announcement, grassroots organizers and strategists like Kayla Reed, who had been in the streets for months protesting the injustice of Michael Brown's murder, came to, as Reed described in her piece in *The St. Louis American*, "a unanimous, nearly unspoken agreement — Bob McCulloch must be removed from office, no matter the sacrifice or effort it would take."⁶

What followed was four years of a multi-pronged approach to achieve McCulloch's defeat and other goals. This approach included continued direct action and protest in the streets, creation and growth of organizations, and "campaigns around issues of justice that have shifted the public narrative and changed thousands of hearts and minds."⁷ Those campaigns include: #WokeVoterSTL, a campaign led by the grassroots organization Action St. Louis committed to year-round political education on key races and ballot initiatives that impact the Black community, working to elect Kimberly Gardner as the circuit attorney in St. Louis City, fighting against voter photo ID laws in 2016 and Proposition P in 2017, and running an independent campaign for Tishaura Jones for Mayor of St. Louis City.⁸

At the outset of the August 2018 election for Prosecuting Attorney, Bob McCulloch was by far the prohibitive favorite: a nearly thirty-year incumbent, starting with over \$200,000 in his campaign chest and the endorsements of many regional unions, including the SLPOA.⁹ However, organizers like Kayla Reed had built capacity and had a strategy, which they executed with energy, solidarity, and precision.¹⁰ They activated and mobilized thousands of voters, and that effort, combined with Wesley Bell's well-run campaign, achieved what many thought impossible. In the end, Wesley Bell won election over Bob McCulloch by 14%, due in part to a major grassroots organizing campaign, (#ByeBob),¹¹ in what was seen

5. See *St. Louis County Municipalities*, STLOUISCO.COM, <https://www.stlouisco.com/Your-Government/Municipalities> (last visited June 9, 2019).

6. See Kayla Reed, *Kayla Reed on the Unseen Work of Ousting Robert #ByeBob McCulloch*, ST. LOUIS AM. (Dec. 18, 2018), http://www.stlamerican.com/news/political_eye/kayla-reed-on-the-unseen-work-of-ousting-robert-byebob/article_f8ef6524-a0fd-11e8-baf0-4f4b68704ee1.html.

7. *Id.*

8. *See id.*

9. See Aída Chávez & Ryan Grim, *Carpenters, Steamfitters, and Other Trade Unions Coalesced Around Notorious Ferguson Prosecutor. Why?*, THE INTERCEPT (Aug. 9, 2018, 12:34 PM), <https://theintercept.com/2018/08/09/bob-mcculloch-union-backing-bob-mcculloch-ferguson/>; see also *Endorsements*, ROBERT P. MCCULLOCH FOR PROSECUTOR, <http://bobmccullochstl.com/endorsements/> (last visited June 9, 2019).

10. I highly recommend reading Kayla Reed's piece on what the organizing strategy was behind the incredibly successful #ByeBob campaign and the coalition of people and organizations that made it possible. See Reed, *supra* note 6.

11. See Alice Sperti, *Five Years After Ferguson, St. Louis County's New Prosecutor Confronts a Racist Criminal Justice System*, THE INTERCEPT (Jan. 24, 2019, 1:58 PM), <https://theintercept.com/2019/01/24/wesley-bell-st-louis-prosecutor-ferguson/>. Important organizing players in this effort were Action St. Louis, Missouri Faith Voices, Color of Change, Organizations for Black Struggle (OBS), MomsDemand, Coalition

as a clear public referendum for change from the “arrest and incarcerate” philosophy of public safety¹² and a call for reform.

In response to this election, on December 19, 2018, St. Louis County assistant prosecutors made the unprecedented move to join the SLPOA.¹³ This choice raises serious questions: why would prosecutors unionize at all?¹⁴ Why at this moment?¹⁵ And, why choose the SLPOA, a police

Against Police Crimes and Repression (CAPCR), ACLU Missouri, and Missouri Organizing and Voter Engagement Collaborative (MOVE).

12. See CLOSE THE WORKHOUSE CAMPAIGN, CLOSE THE WORKHOUSE: A PLAN TO CLOSE THE WORKHOUSE & PROMOTE A NEW VISION FOR ST. LOUIS 27(2018), <https://static1.squarespace.com/static/5ada6072372b96dbb234ee99/t/5b9a794f2b6a288509f95e2e/1536850265821/A+Plan+to+Close+the+Workhouse+-+Final+09122018.pdf> (describing the “arrest and incarcerate” philosophy of public safety).
13. See Akela Lacy, *Before Criminal Justice Reformer Is Even Sworn In, St. Louis Prosecutors Have Joined a Police Union*, THE INTERCEPT (Dec. 20, 2018, 3:42 PM), <https://theintercept.com/2018/12/20/wesley-bell-st-louis-prosecutor-police-union/>; see also Tony Messenger, *St. Louis County Prosecutors Seek to Join Police Union Before Wesley Bell Takes Over*, ST. LOUIS POST-DISPATCH (Dec. 16, 2018), https://www.stltoday.com/news/local/columns/tony-messenger/messenger-st-louis-county-prosecutors-seek-to-join-police-union/article_f489d57d-a6a2-5a95-a4c2-44dab7d73767.html (“There [were] 60 attorneys and investigators eligible to vote, among them investigator Joe Steiger, the former president of the police association when he was a detective in the St. Louis Metropolitan Police Department.”).
14. It is far less common for prosecutors’ offices than for police departments to unionize. The Los Angeles County Deputy DAs have been unionized since 2010. *About the ADDA, ASS’N DEPUTY DISTRICT ATT’YS FOR L.A. COUNTY*, <https://www.laadda.com/about-us/> (last visited June 9, 2019). The Los Angeles County Deputy DAs’s president also argued against a bill in California to bring in an outside prosecutor in cases of police shootings. Radley Balko, *Prosecutors’ Union Inadvertently Demonstrates Why Local Prosecutors Shouldn’t Investigate Police Shootings*, WASH. POST (June 23, 2015), https://www.washingtonpost.com/news/the-watch/wp/2015/06/23/prosecutors-union-inadvertently-demonstrates-why-local-prosecutors-shouldnt-investigate-police-shootings/?utm_term=.76080308e456. Other examples of prosecutors unionizing include the Clark County Prosecutors Association, Klamath County District Attorney’s Association in Oregon, and the Polk County Deputy District Attorneys Sub Local 173 - 2 American Federation of State County and Municipal Employees. See CLARK COUNTY BOARD OF COUNTY COMMISSIONERS, AGREEMENT BETWEEN THE COUNTY OF CLARK AND THE CLARK COUNTY PROSECUTORS ASSOCIATION (2017), <https://www.clarkcountynv.gov/human-resources/services/Documents/Clark%20County%20Prosecutors%20Assoc.%202017.pdf>; KLAMATH COUNTY, COLLECTIVE BARGAINING AGREEMENT BETWEEN KLAMATH DISTRICT ATTORNEYS’ ASSOCIATION AND KLAMATH COUNTY (2015), <http://www.klamathcounty.org/DocumentCenter/View/695/Deputy-District-Attorneys-Association?bidId=> POLK COUNTY BOARD OF COMMISSIONERS, COLLECTIVE BARGAINING AGREEMENT BETWEEN POLK COUNTY, OREGON AND POLK COUNTY DEPUTY DISTRICT ATTORNEYS (2017), https://www.oregonafscme.org/docs/contracts/Polk_County_Deputy_District_Attorneys_L173_2.pdf. The Deputy District Attorney Association in Riverside County, California “acts . . . as the bargaining unit on behalf of non-management Deputy District Attorney, County Counsel attorney, and other county-employed attorneys with the County of Riverside.” See *Welcome*, RIVERSIDE COUNTY DEPUTY DISTRICT ATTORNEY ASSOCIATION, <http://rcddaa.org/> (last visited June 9, 2019). The Washington State Council of City and County Employees has negotiated labor contracts for prosecutors in that state. See CITY OF SEATTLE, AGREEMENT BY AND BETWEEN THE CITY OF SEATTLE AND THE WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES (2015), <http://www.seattle.gov/personnel/resources/pubs/L21-PA.pdf>. But there exists no record of prosecutors unionizing with a police union for representation in contractual bargaining. That said, in 2018, District Attorneys in New

union? Why not organize with firefighters, or carpenters, or the sprinkler fitters union?

The SLPOA is not just any police union. The SLPOA is a notoriously racist,¹⁶ violent,¹⁷ and murderous organization, from their representatives to the membership. As local journalist and activist Charles Jaco writes, “the St. Louis Police Officers Association (SLPOA) is a ‘labor union’ in the same way the Ku Klux Klan is a ‘fraternal organization.’ The description is technically correct as far as it goes. But it doesn’t go nearly far enough.”¹⁸ SLPOA has encouraged the targeting of protestors and those that support police accountability, “once tweeting an article listing 46 St. Louis-area businesses that signed a letter protesting the acquittal of cop Jason Stockley in the murder of Anthony Lamar Smith.¹⁹ The tweet, later deleted, read: ‘For what it’s worth . . . a list of STL businesses that hate cops and sympathize with vandals, brought to you by a tabloid birdcage liner that hates cops and sympathizes with vandals.’”²⁰ One of SLPOA’s representatives, and former Missouri State legislator, Jeff Roohda, wrote a

Mexico voted to join the Communication Workers of America union, which also represents deputy sheriffs and other public and private sector employees in New Mexico. *Third Judicial District Attorneys Vote for Union Representation*, LAS CRUCES SUN NEWS (Feb. 22, 2018), <https://www.lcsun-news.com/story/news/local/2018/02/22/third-judicial-district-attorneys-vote-union-representation/365476002/>. The Illinois Police Association, which is a lobbying group for police officers in the state, opens its membership to “duly authorized prosecutors and their assistants during their term of office.” See ILLINOIS POLICE ASSOCIATION, <https://www.ipacops.org/> (last visited June 9, 2019). Similarly, the Maryland Chief of Police Association’s membership also includes prosecutors and is also involved in lobbying for police issues. See *Membership*, MARYLAND CHIEFS OF POLICE ASSOCIATION, <https://www.marylandchiefs.org/membership-information> (last visited June 9, 2019). However, neither of these entities represents prosecutors in contractual negotiations.

15. One interpretation is that assistant prosecutors and investigators were concerned that the new boss would come in, clean house, and replace them with his own people. Bell did fire three prosecutors, the first of whom was assistant prosecutor Kathi Alizadeh who was in charge of presenting evidence and overseeing the case against Darren Wilson to the grand jury. See Owen Daugherty, *Prosecutor in Michael Brown Shooting Case Fired*, THE HILL (Jan. 2, 2019), <https://thehill.com/homenews/state-watch/423574-prosecutor-who-provided-evidence-to-grand-jury-that-didnt-indict-officer>.
16. See Jaco, *supra* note 1; see also Charles Jaco, *Staff Prosecutors Joining Police Union Sends Wesley Bell a Message*, ST. LOUIS AM. (Dec. 19, 2018), http://www.stlamerican.com/news/columnists/charles_jaco/staff-prosecutors-joining-police-union-sends-wesley-bell-a-message/article_f7cef224-03a7-11e9-874a-4b02da70a715.html.
17. See Julia Jacobs, *St. Louis Police Officers Charged With Beating Undercover Detective at 2017 Protest*, N.Y. TIMES (Nov. 29, 2018), <https://www.nytimes.com/2018/11/29/us/st-louis-police-indicted-protest.html>.
18. See Jaco, *Staff Prosecutors*, *supra* note 1. (“Like most cop unions, the St. Louis Police Officers Association is not affiliated with the AFL-CIO, but instead belongs to the 103-year old Fraternal Order of Police, the country’s largest police bargaining unit. Interestingly, the FOP has always refused to call itself a union and has always referred to itself as a ‘fraternal organization,’ a choice dating from the early 20th century, when cops were used to break unions.”).
19. See *id.*
20. See *id.*

book he's titled, "Ferghistan: The War on the Police," and has committed to direct some of the proceeds from book sales to Darren Wilson.²¹

Even if the St. Louis county assistant prosecutors were determined to unionize with police, they had other options. The city of St. Louis has two police unions: the majority white SLPOA and the Ethical Society of Police (ESOP), "a group of majority Black police officers founded to address race-based discrimination in the community and within the county police department."²² Sergeant Heather Taylor, President of ESOP, called the move by assistant prosecutors "unheard of,"²³ adding, "[w]hen it's all said and done, it's about race."²⁴ "We can sugarcoat it all we want. They've been under Bob McCulloch for almost 30 years, and they've never come together to unionize. Suddenly, when Wesley Bell wins, the people voted him in over McCulloch. . .and suddenly they want to become a union."²⁵

Prosecutors' concerns about the difference between Bell and McCulloch are clear. Take a quick look at the social media accounts of the SLPOA and St. Louis County Police Association (SLCPA) and you will see post after post deriding Kim Gardner and Wesley Bell, the area's two top prosecutors elected on platforms of accountability and reform, using phrases like "#kimshady" and "Wesley 'Buster' Bell: The Union Buster."²⁶ The accounts consistently push a narrative that these two new Black prosecutors are handing out get out of jail free cards, are the enemies of cops, and are responsible for violence.²⁷ As Taylor concludes, "the issues that are prevalent in St. Louis County that are race-based, the issues that Wesley Bell ran on — change and ending cash bail and reform in the criminal justice system — from a prosecutor's standpoint are very different, vastly different from what McCulloch was about."²⁸

A. Unionization of St. Louis police and prosecutors furthers an unjust collusion between theoretically distinct arms of the criminal punishment system.

St. Louis prosecutors unionizing with the SLPOA is a move that frustrates a public referendum on prosecutorial impotence in cases of police wrongdoing. Prosecutors paying dues to, and being represented by, a police union further degrades the possibility of the department effectively

21. See Kate Briquetlet, 'Ferghanistan' Author: I'm Giving the Profits to Darren Wilson, DAILY BEAST (Aug. 12, 2015, 1:13 AM), <https://www.thedailybeast.com/ferghanistan-author-im-giving-the-profits-to-darren-wilson?ref=scroll>.

22. See Lacy, *supra* note 13.

23. *Id.*

24. *Id.*

25. *Id.*

26. See, e.g., St. Louis Police Officers Association (@stlouispolice.officersassociation), FACEBOOK (Feb. 26, 2019), <https://www.facebook.com/stlouispolice.officersassociation/posts/wesley-buster-bell-the-union-busterplease-email-buster-bell-at-wesleybellpastlou/947068078831995/>; see also SLPOA (@SLPOA), TWITTER (Mar. 6, 2019, 10:19 AM), <https://twitter.com/SLPOA/status/1103344300652457984>.

27. SLPOA (@SLPOA), TWITTER, <https://twitter.com/SLPOA?lang=en> (last visited June 9, 2019).

28. See Lacy, *supra* note 13.

holding officers accountable (and, theoretically, the possibility of prosecutors holding police accountable for wrongdoing).

Police are endowed with special powers to make arrests and use force, including deadly force.²⁹ Prosecutors are given power to charge, investigate, and try cases against people accused of crimes.³⁰ The execution of each of these powers is given broad discretion. Even when acting as separate entities, the police and prosecutors have the ability to effect great harm to those who come into contact with them, or those indirectly affected by them.

St. Louis County prosecutors, in electing SLPOA as their union, have chosen to pay dues and be represented by the same union that fights to protect the jobs of police officers after they murder Black people. The same union that will fight increased oversight and disciplinary policies and checks. These same prosecutors are responsible for investigating and bringing charges against those same police officers. That conflict of interest further shifts allegiances and feelings of duty inward, away from the community on behalf of which these public servants are supposed to execute these powers.³¹ In the same way that it would be inappropriate for judges to unionize with the police, or the prosecutors, or correctional of-

29. The police officer's duty broadly is to protect life and property within a jurisdiction and enforce laws and ordinances. Drawing from a job posting from a St. Louis City, duties include: patrolling a district or assigned area; investigating offenses and any suspicious conditions, makes arrests, recovers property, transports prisoners to appropriate facilities, and prepares proper reports; testifying in court as required; enforcing traffic and parking regulations, incidents, issuing tickets to traffic violators, and collects bond monies. See *Applying To: Police Officer (Trainee)*, CITY OF ST. LOUIS, MO (Nov. 3, 2014), <https://www.stlouis-mo.gov/jobs/job-detail.cfm?job=1671&detail=1>.

30. The office of the prosecutor is responsible for prosecutions within its jurisdiction. Prosecutors direct investigations, advise police on matters of law, enter charges and prosecute those charges, and also dismiss or decline to prosecute. The duty of the prosecutor is to seek justice, not to merely convict. See ABA Standards for Criminal Justice: The Function of the Prosecutor (4th ed. 2017), https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crim_just_standards_pfunc_blk/. The duties of the SL County prosecutor's office, which is governed by Chapter 56 of the Missouri Code, are to "ensure[] that the laws of the State are enforced within St. Louis County, prosecute[] violators of the law, and act[] as legal counsel to the Board of Supervisors." See *Law and Public Safety*, STLOUISCO.COM, <https://www.stlouisco.com/Law-and-Public-Safety> (last visited June 9, 2019); MO. REV. STAT. c. 56 (1982), <http://revisor.mo.gov/main/ViewChapter.aspx?chapter=56> (Please note that the St. Louis County website mistakenly states that the St. Louis County Prosecuting Attorney is governed by Chapter 331 of the Missouri Code rather than the correct law, Chapter 56). The County Attorney ensures that the laws of the State are enforced within St. Louis County, prosecutes violators of the law, and acts as legal counsel to the Board of Supervisors.

31. "Conflict of interest" is a term of art and discourse within legal doctrine. This section draws on that discourse in spirit, but not in doctrinal legal argumentation. Rather, this section seeks to make salient the relevant conflict of interest through an analysis of power. Importantly, even absent unionization, the role of prosecutors in investigating and prosecuting police should represent a legal conflict of interest. See Kate Levine, *Who Shouldn't Prosecute the Police*, 101 IOWA L. REV. 1447 (May 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2654463.

ficers, there is an inherent conflict of interest in further aligning the interests of these entities.³²

This is not an abstract fear. As those living and working in Ferguson, St. Louis, and surrounding areas can attest, police and prosecutors were already too enmeshed. When a public servant, whether prosecutor or police officer, acted in abusive or unlawful ways,³³ they were rarely held accountable.³⁴ Even before unionizing, prosecutors demonstrated the lack of political will, character, and ability to serve their roles with respect to

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32. See Lacy, *supra* note 13 (“There is nothing wrong with them becoming a union. That’s a great thing,” [Heather] Taylor said. “But you want to unionize with police officers. . . . It smells rotten. You’re expecting prosecutors as it is to turn a blind eye when they’re prosecuting cops. And that is difficult, as we know — we see the stories all around the country — the issues with even presenting cases against cops and winning those cases. So what is going to happen when a case has been presented, and St. Louis County has to prosecute one of their own?”); see also Tony Messenger, *Pro-Union Lawsuit Could Invalidate Election that Tied St. Louis County Prosecutors to City Cops*, ST. LOUIS POST-DISPATCH (Jan. 24, 2019) https://www.stltoday.com/news/local/columns/tony-messenger/messenger-pro-union-lawsuit-could-invalidate-election-that-tied-st/article_d07a9023-a32a-59fa-bed7-e22eb5f2e903.html; Debra Cassens Weiss, *Conflict Questions Raised About Prosecutors’ Vote to Join Police Union*, ABA JOURNAL (Dec. 21, 2018, 11:28 AM), <http://www.abajournal.com/news/article/conflict-questions-raised-about-st.-louis-county-prosecutors-vote-to-join-police-union>; American Civil Liberties Union of Missouri, *Statement on Prosecutors’ Decision to Join St. Louis Police Officers Association*, ACLU OF MISSOURI (Dec. 18, 2018, 10:15 AM), <https://www.aclu-mo.org/en/news/statement-prosecutors-decision-join-st-louis-police-officers-association>; see also Lacy, *supra* note 13 (describing ACLU of Missouri’s opposition to the prosecutors’ move, citing “serious ethical conflicts” and an “abdication of the responsibility” of prosecuting attorneys who choose to “place themselves under direct governing authority of the police union.”).
33. There is a discourse within the abolitionist movement that suggests “police brutality” is simply a part of “policing”; that police commit many acts of violence to black and brown communities within the scope of their employment, and that even those acts referred to as “brutality” are rarely deemed illegal or criminal by the criminal punishment system or internal accountability mechanisms. While there are those that step egregiously outside of the container of normalized police violence, we should incorporate both functions into our notions of policing.
34. Police across the United States are shielded from public accountability for their abusive acts. According to a USA Today investigative report in collaboration with Invisible Institute, “at least 85,000 law enforcement officers across the USA have been investigated or disciplined for misconduct over the past decade, an investigation by USA TODAY Network found. Officers have beaten members of the public, planted evidence and used their badges to harass women. They have lied, stolen, dealt drugs, driven drunk and abused their spouses. Despite their role as public servants, the men and women who swear an oath to keep communities safe can generally avoid public scrutiny for their misdeeds. The records of their misconduct are filed away, rarely seen by anyone outside their departments. Police unions and their political allies have worked to put special protections in place ensuring some records are shielded from public view, or even destroyed.” See John Kelly & Mark Nichols, *We Found 85,000 Cops Who’ve Been Investigated for Misconduct. Now You Can Read Their Records*, USA TODAY (May 23, 2019, 7:33 AM), https://www.usatoday.com/in-depth/news/investigations/2019/04/24/usa-today-revealing-misconduct-records-police-cops/3223984002/?fbclid=IwAR2s1RgJDxMcoKo_iniqYdtOpRS D6hAe_VmK3zEtz1FSMloafjF9NXds8PE.

pursuing accountability for police officer wrongdoing.³⁵ This is demonstrated, in St. Louis as well as communities across the country, by the lack of indictments and handling of cases of police use of force and murder, the tendency of prosecutors to cave into police backlash, and in their own statements dripping with bias.³⁶

Tying together the interests of these entities destroys checks between their functions.³⁷ Miriam Krinsky, founder and executive director of Fair and Just Prosecution, a national nonprofit that advises prosecutors on best practices and advocates for criminal justice reform, was “disappointed” and “deeply troubled” by the St. Louis County prosecutors’ move.³⁸ Krinsky stated that, “[t]here are some inherent conflicts that inevitably arise between prosecutors and law enforcement officers.”³⁹ This is particularly true in instances of police use of force and officer killings of citizens, in which the relationship between prosecutors and police leads to a highly suspect process and set of outcomes.⁴⁰

As explained above, this union or collusion between police and prosecutors is not surprising because it has been ongoing in many ways for many years. Police and prosecutors have, perhaps since the creation of local police, colluded to enforce and perpetuate anti-blackness for profit and power. There is also a rich history of unionization being used as an instrument to legally protect white structural power and perpetuate anti-blackness.⁴¹ But the consolidation of these instruments of powers in such a striking way calls us to examine the malfeasance and abuse that is likely to flow from the normalization and formalization of this partnership. Further, this consolidation calls us to more deeply reevaluate any role at all for these systems. The prosecutors’ decision to organize explicitly with SLPOA, and the commitment of prosecutors and police to operate on each other’s behalf, removes some of the theoretical safeguards of their separation. It also leads us to face the reality that these entities have never been separate.

35. See Jaeah Lee, *Ferguson Cop Darren Wilson Is Just the Latest to Go Unprosecuted for a Fatal Shooting*, MOTHER JONES (Nov. 25, 2014), <https://www.motherjones.com/politics/2014/11/darren-wilson-grand-jury-decision-ferguson-police-prosecutions/>.

36. See Radley Balko, *Prosecutors’ Union Inadvertently Demonstrates Why Local Prosecutors Shouldn’t Investigate Police Shootings*, WASH. POST (Jun. 23, 2015), https://www.washingtonpost.com/news/the-watch/wp/2015/06/23/prosecutors-union-inadvertently-demonstrates-why-local-prosecutors-shouldnt-investigate-police-shootings/?utm_term=.40175ebce5c2 (L.A. prosecutors union came out in opposition to legislation requiring special prosecutors in cases of police shootings).

37. Prosecutors are meant to use reasonable discretion to decline to prosecute or pursue cases where there is not probable cause, or where the prosecution of which would not further serve justice. And that means saying no to pursuing charges that police sometimes want prosecutors to pursue. Furthermore, in instances of police misconduct or criminal activity, it is the prosecutor’s responsibility to serve justice by directing a comprehensive investigation, and bringing appropriate charges.

38. See Messenger, *supra* note 2.

39. See *id.*

40. See Kelly & Nichols, *supra* note 34.

41. As will be further discussed below.

B. Bolstering the criminal punishment system supports a system of racial capitalism.

The criminal punishment system in the United States is a mechanism of social control of, and extraction from, colonized, racialized communities. Efforts to further concentrate power and resources, and more deeply interlock in solidarity its component parts, contribute to violence, incarceration, and systematized plunder of communities of color. Thus, St. Louis prosecutors organizing with the SLPOA is a move that should be understood as deepening the hold of racial capitalism within the region, and specifically within its poor Black communities.

Racial capitalism is a way of understanding our social economic past and present.⁴² It comes from Cedric Robinson's challenge to . . .

"the Marxist idea that capitalism was a revolutionary negation of feudalism. Instead it emerged within the feudal order and flowered in the cultural soil of a Western civilization already thoroughly infused with racialism. Capitalism and racism, in other words, did not break from the old order but rather evolved from it to produce a modern world system of 'racial capitalism' dependent on slavery, violence, imperialism, and genocide."⁴³

In the present, the concept of racial capitalism helps us describe and understand the systematized targeting of Black people for surveillance, warehousing, forced labor, and looting by municipal and state entities of the police, the prosecutors, and the courts that we see in cities like Ferguson, of which there are many, and counties like St. Louis County. The systematic murder of Black people by the state is one mechanism of state terrorism, akin to other occupied spaces, that maintains racial capitalism. In the United States, police shoot and kill over 1,000 people each year according to an analysis by Philip Stinson, an associate professor of criminal justice at Bowling Green State University in Ohio.⁴⁴ Few of these killings lead to arrest, and even fewer to conviction.⁴⁵ In St. Louis County between 2004 and 2014, there were 14 fatal officer-involved shootings committed by St. Louis County officers alone.⁴⁶ That does not include

42. There is an entire discourse on racial capitalism, its roots, meaning, limits, and its applicability as a theory. See, e.g., Walter Johnson & Robin D.G. Kelley, *Race Capitalism Justice*, BOS. REV., Forum 1 (Winter 2017).

43. See *id.*

44. See Lee, *supra* note 35; see also Ray Sanchez, *Charging the Police: By the Numbers*, CNN (Sept. 23, 2016), <https://www.cnn.com/2016/09/23/us/police-involved-shooting-charges/index.html> (Estimate is based on figures released by the Justice Department and the Centers for Disease Control and Prevention). The Guardian has an impressive database of police killings in 2015 and 2016; See *The Counter*, THE GUARDIAN, <https://www.theguardian.com/us-news/series/counted-us-police-killings> (last visited June 9, 2019). It includes information about where the killing happened, demographic information, cause of death, and the status of the case.

45. See Jamiles Lartey, *US Police Killings Undercounted by Half, Study Using Guardian Data Finds*, GUARDIAN (Oct. 11, 2017), <https://www.theguardian.com/us-news/2017/oct/11/police-killings-counted-harvard-study>.

46. See Lee, *supra* note 35 (quoting police data collected by David Klinger, a criminologist at the University of Missouri-St. Louis).

fatal shootings by Ferguson police or by officers from various other law enforcement agencies within the County. From the beginning of Bob McCulloch's tenure in 1991 to 2014, there were only five grand jury investigations of officer-involved fatalities, none of which led to an indictment.⁴⁷

Racial capitalism also helps us understand the tethered cities of the St. Louis Region, like the predominantly white and middle to upper middle-class communities of Ladue and Kirkwood, whose existence was built on the dual projects of neglect and exploitation of Black communities.⁴⁸ In the St. Louis region, and in the United States generally, we have a police state existing right alongside a functioning bureaucratic state. As Chris Hayes lays out in his book *A Colony in a Nation*, within our towns and cities, we are maintaining occupied territories, colonies, that sit right alongside the Nation.⁴⁹ In the Nation there are rights, laws, and justice, while in the Colony there is only order. The Colony is maintained under a police state to respond to the interests, needs, and fears of the Nation. The foundation of the Nation, and its creation the Colony, is white fear. This fear is driven by the white commission of, and continued desire for, conquest, imperialism, or, as Ta-Nahesi Coates puts it, plunder.⁵⁰ Importantly, this maintenance of the two realities, two states, two castes, the Nation and the Colony, cannot happen by sheer force of the police alone. They are supported by the political system and its leaders, who themselves are benefited and buoyed whenever they make policy choices that make them appear "tough on crime." They are also supported by nongovernment entities, corporations, and individual actors that benefit from, and invest in, the legitimization of the status quo.

This was a truth that the Black people of the region already understood in the wake of Michael Brown's murder, a truth that folks in the rest of the country were watching unfold only as a dramatic flare up of unrest. This event was the culmination of decades of systemic oppression, rooted in the very structure of these local municipalities, how they came to exist, and how they function now.

First, there is the political and administrative structure: the St. Louis metropolitan area is made up of more than a dozen counties in eastern Missouri and southwestern Illinois, and at the core are St. Louis City and St. Louis County, which consist of a tangled web of 90 municipalities. Most of the nearly 50 municipalities in North County are majority-Black and struggling to make ends meet.⁵¹ Many have their own police force, mayor, city council, and municipal court. Incentivized by their own budget goals and shortfalls, they encourage local police to increase the number of citations in order to drive up revenue. Municipal courts are

47. *Id.*

48. See JACKIE WANG, *CARCERAL CAPITALISM* 141, 182-87, 187-92 (2018) (discussing the racial dimensions of the capitalist state's mechanisms for the looting of poor people, and *how* policing turns the city into an extension of the carceral state); see also Whitney Bennis & Blake Strode, *Debtors' Prison in 21st-Century America*, *ATLANTIC* (Feb. 23, 2016), <https://www.theatlantic.com/business/archive/2016/02/debtors-prison/462378/>.

49. See CHRIS HAYES, *A COLONY IN A NATION* (2017).

50. See TA-NEHESI COATES, *BETWEEN THE WORLD AND ME* 81-82 (2015).

51. Bennis & Strode, *supra* note 48.

the mechanism for collection.⁵² And so the relationship between the administrative structure and local Black citizens is primarily one of extraction.

But the story is deeper, as the original creation of these many municipalities is rooted in the desire to create racially exclusive white communities that could hoard resources and keep Black fellow citizens from enjoying funded public services, like maintained roads, good schools, and parks. As Blake Strode, Executive Director of ArchCity Defenders, and I detailed in our article about the origins and functions of the region's 21st-Century debtors' prisons,

“[t]he municipal landscape of St. Louis County, like so many others in this country, was designed and implemented with the purpose of keeping black people out of certain neighborhoods and making life exceedingly difficult for those who made their way in. The region today is a reflection of that original intent.”⁵³

During the Great Migration, when formerly enslaved people and their descendants moved North from the Deep South seeking employment opportunity and refuge from the oppression of Jim Crow and white supremacist terrorism, St. Louis became a popular destination.⁵⁴ Responding to what was dubbed the “Negro Invasion,” local government officials went about creating segregationist policy mandating that Blacks and whites live on separate, designated blocks, becoming the first city in the country to pass such a measure by popular ballot.⁵⁵ When *Buchanan v. Warley* effectively nullified this law, white communities and city officials used other tools, from zoning laws to restrictive covenants, redlining, and eventually white flight, to accomplish the same aims.⁵⁶ The process included, and continues to include, the constant over-policing and surveillance of Black communities and Black people, inside and outside of these municipalities.⁵⁷

Racial capitalism and the maintenance of the Colony through policing also helps us understand the political rhetorical reality that derides public spending but has an ever ballooning “public safety” budget. In the

52. *Id.*; see also *Mayor: Write More Tickets*, KSDK (Apr. 24, 2014), <https://www.ksdk.com/article/news/local/mayor-write-more-tickets/282158895>.

53. Bennis & Strode, *supra* note 48.

54. *Id.*

55. *Id.*; Richard Rothstein, *The Making of Ferguson*, ECON. POL'Y INST. (Oct. 15, 2014), <https://www.epi.org/publication/making-ferguson/#racial-zoning>.

56. See Bennis & Strode, *supra* note 48; *Buchanan v. Warley*, 245 U.S. 60 (1917).

57. See Bennis & Strode, *supra* note 48 (“While the modern proliferation of debtors’ prisons is an affliction primarily plaguing poor, black municipalities, some parts of St. Louis County that remain almost entirely white continue to resemble the old model of racial exclusion. The City of Ladue is an infamous example of racial targeting in the region. One of the wealthiest cities in the entire country, Ladue is less than 1 percent black. Yet, in 2014 a black driver was 18.5 times more likely to be pulled over than a white driver. Following a stop, a black driver was 2.4 times more likely to be searched and 2.7 times more likely to be arrested.”) (citing ARCH CITY DEFENDERS, *IT’S NOT JUST FERGUSON: MISSOURI SUPREME COURT SHOULD CONSOLIDATE THE MUNICIPAL COURT SYSTEM* (2015), <https://www.archcitydefenders.org/wp-content/uploads/2019/03/Its-Not-Just-Ferguson-Consolidate-the-Municipal-Courts.pdf>).

1970s, “[b]oth in prison, where the philosophy of rehabilitation gave way to one of punishment, and on the street, where arrest was the response to more and more behaviors, policy has become more punitive.”⁵⁸ Guards and cops were not passive recipients of these changes but active agents who played a part in the rightward shift in the 1970s, a period when the politics of “law and order” began to replace concern for civil rights, and where funding was being diverted from other public services towards the criminal punishment system.⁵⁹

St. Louis exemplifies a reality present in many cities across the United States, and at the same time stands as a particularly stark example of these prevalent trends. In looking at the city budget,⁶⁰ it is clear that the overwhelming investment of public funds has gone into the “arrest and incarcerate model.” In the city of 308,626 residents, the City has a General Fund budget, which totals \$517.5M derived tax revenue, grants, and contracts. Of that General Fund, “Public Safety” receives \$290.8M. That pays for a Police Department employee for every 169 people in the city of St. Louis, and one in five city employees is a sworn police officer. This is in contrast to “Human Services,” which was allocated \$1.5M and employs 51 people tasked with serving all of the city’s most vulnerable residents.⁶¹ The passing of Proposition P in late 2017 extends this imbalance further, with approximately \$13 million out of an additional \$19 million in tax revenue slated to go to SLMPD.⁶²

Police and prosecutors are key institutions of the state that maintain and enforce the social economic order of racial capitalism, with the specific task of controlling and extracting of people, resources, and labor from Black communities. That political economic project has been well funded and protected. It is in this context that we must examine the unionization of the St. Louis County assistant prosecutors and the St. Louis Police Officers Association.

58. Rebecca Hill, “*The Common Enemy Is the Boss and the Inmate*”: *Police and Prison Guard Unions in New York in the 1970s-1980s*, 8 *LABOR: STUDIES IN WORKING CLASS HISTORY OF THE AMERICAS* 65, 67-68 (2011) (citing DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* (2001)).

59. *Id.*

60. This section is based on research and analysis done by Z Gorley, Communications Director at ArchCity Defenders. See also *Executive Summary FY2019 Annual Operating Plan*, CITY OF ST. LOUIS, MO: OFFICIAL WEBSITE, <https://www.stlouis-mo.gov/government/departments/budget/documents/upload/FY19-AOP-Executive-Summary-as-adopted.pdf>.

61. See *id.*

62. See Rachel Lippmann, *St. Louis Voters Approve Half-Cent Sales Tax Hike Funding Police and Firefighter Raises*, ST. LOUIS PUBLIC RADIO (Nov. 7, 2017), <https://news.stlpublicradio.org/post/st-louis-voters-approve-half-cent-sales-tax-hike-funding-police-and-firefighter-raises>; see also Ryan J. Reilly, *In St. Louis, the politics of police reform are tougher than ever*, ST. LOUIS AM. (Sept. 12, 2017), http://www.stlamerican.com/news/local_news/in-st-louis-the-politics-of-police-reform-are-tougher/article_33eea176-97ef-11e7-91ea-db9d61847031.html.

II. UNIONIZATION CAN BE, AND HAS BEEN, USED TO CHALLENGE AND PERPETUATE RACIAL CAPITALISM.

Within the United States, unions have played a prominent role in the struggle for economic justice and workers' rights. However, unions, like any institution, structure, or process, are not immune to the contexts in which they sit. In the context of United States racial capitalism, unions have at times represented and strengthened racist economic, political, and state structures, and at times, challenged the racist economic and state order.

This section will review a brief history of unions, first looking at their past and present contributions to challenging racial capitalism, and then highlighting union participation in and perpetuation of racial capitalism. Next, it will examine the role of police unions within this historical framework. Finally, this section will return to St. Louis, to examine the intersection of unions, politics, and current movements for racial justice.

A. *Organized labor has a history of fighting for workers and racial justice.*

Unions are the joining together of people who have a common interest or purpose. Labor unions are associations of people formed for the purpose of advancing their members' interests with respect to wages, benefits, and working conditions. In the United States, unionization gives access to particular rights and protections through the federal and state legal apparatus. In 1935, President Franklin D. Roosevelt signed the National Labor Relations Act (NLRA), which, following from decades of small victories, guaranteed the right to join a union and to strike, and provided a legal framework for collective bargaining.⁶³

Following the passage of the NLRA, organizing efforts took root across the country,⁶⁴ and have served as an important countervailing check on the exploitative power of employers. Labor unions serve as a tool for aggregation and building of power; when workers join together and move with collective action, they increase the costs of acting against the unit or any individual within it. Unions help limit individual risk and spread the costs of bargaining and representation across more people. They also give workers access to skilled, dedicated representation, and can connect them with a wider movement for economic justice. By building power through organizing, the labor and workers' rights movement has effectively lobbied for the eight-hour work day, minimum standards around wages, workplace safety laws, the repeal of child labor, overtime pay, and the weekend.⁶⁵ The increased recognition and strength of unions and organized workers has contributed to better working conditions for workers across the country, both unionized and not.

63. Dan Kaufman, *A Labor Day Reflection on Unions, Race, and Division*, NEW YORKER (Sept. 3, 2018), <https://www.newyorker.com/news/daily-comment/a-labor-day-reflection-on-race-and-unions>.

64. *Id.*

65. See Josh Bivens et al., *How today's unions help working people*, ECON. POL'Y INST. (Aug. 24, 2017), <https://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/>.

There is a tradition within unions of solidarity and cross-racial organizing for economic and racial justice. When the American Federation of Labor (“AFL”) and the Congress of Industrial Organizations (“CIO”) merged in 1955, hundreds of thousands of Black trade unionists became part of an integrated labor movement. A. Philip Randolph, founder of the Brotherhood of Sleeping Car Porters, the first successful Black trade union, and the Negro American Labor Council, became its first vice president.

Randolph and other Black union workers helped fund and initiate the 1963 March on Washington for Jobs and Freedom.⁶⁶ Their work focused on linking the labor movement with the demands for racial equality of the civil rights movement. Dr. King understood the interconnectedness, and tension, between the movements. Jobs were one of the keys to freedom, and unions were and are an important mechanism for good jobs. In April 1968, on the day before Dr. King was assassinated, he was speaking in support of the strike of Black sanitation workers — AFSCME members — who had traveled to Memphis to hear him speak.⁶⁷

Today, we see the power of organized labor in the teachers strikes across the country. Collective action power is being used to not only increase teacher wages — which have not even kept pace with inflation in the past decade, and in some states have even decreased — but also to improve public education and student outcomes. In 2018 and 2019, teachers have gone on strike calling for smaller classroom sizes, more school nurses and guidance counselors, legal support for immigrant students, charter school oversight, and rejection of school closures in low income majority-minority neighborhoods.⁶⁸

Powerful worker collective action also occurs outside the traditional union model. Domestic worker coalitions and worker centers have made huge gains in building movement power, shifting public consciousness, and securing policy victories. These gains improve in tangible ways the lives of domestic workers (and their families), a group primarily composed of women of color, many of them immigrants. One result of these efforts is the 2014 Massachusetts Domestic Workers’ Bill of Rights, which “is the most expansive codification of rights for this long-overlooked part of the labor force ever to be enacted.”⁶⁹

66. *Randolph, A. Philip*, STANFORD: THE MARTIN LUTHER KING, JR. RESEARCH AND EDUCATION INSTITUTE, <https://kinginstitute.stanford.edu/encyclopedia/randolph-philip> (last visited June 3, 2019).

67. *Memphis Sanitation Workers’ Strike*, STANFORD: THE MARTIN LUTHER KING, JR. RESEARCH AND EDUCATION INSTITUTE, <https://kinginstitute.stanford.edu/encyclopedia/memphis-sanitation-workers-strike> (last visited June 3, 2019).

68. See, e.g., Madeline Will, *How Teacher Strikes are Changing*, EDUCATION WEEK (Mar. 5, 2019), <https://www.edweek.org/ew/articles/2019/03/06/how-teacher-strikes-are-changing.html>; see also Alexia Fernández Campbell, *Thousands of Oakland teachers just went on strike. They want more than a pay raise*, VOX (Feb. 21, 2019), <https://www.vox.com/2019/2/21/18233377/oakland-teachers-strike-2019>.

69. Natalicia Tracy, Tim Sieber & Susan ScD Moir, *INVISIBLE NO MORE: Domestic workers organizing in Massachusetts and beyond*, LABOR STUDIES FACULTY PUBLICATION SERIES 2 (Oct. 2014), https://scholarworks.umb.edu/cgi/viewcontent.cgi?article=1000&context=laborstudies_faculty_pubs.

Union membership also contributes to the accumulation of wealth for workers, particularly workers of color, and to shrinking of the racial wealth gap. From 2010 to 2016, nonwhite families who were also union members had a median wealth that was almost five times — 485.1 percent — as large as the median wealth of nonunion nonwhite families.⁷⁰ Unionizing can mean material differences for Black families, not just with respect to wages, but also with respect to health care access, retirement, and job security.⁷¹

However, unionization rates have declined steeply across all racial and ethnic groups, including Black workers over the past four decades.⁷² Black workers are still more likely than any other race or ethnicity to be unionized: in 2017, 12.6 percent of Black workers and 10.7 percent of the entire workforce were represented by unions.⁷³ However these numbers are down from 31.7 percent and 23.3 percent, respectively, in 1983.⁷⁴ This workforce-wide decline in unionization “has occurred alongside, and contributed to, an increase in overall wage inequality, as well as the widening Black-white wage gap.”⁷⁵

Of course, the solidarity struggle for racial and economic justice work remains a work-in-progress. Unions are not inherently anti-racist or a bastion of racial justice, and have in other ways, past and present contributed to the terrorizing for Black and Brown communities and the exclusion of Black and Brown workers. As Richard Trumka, President of the AFL-CIO, acknowledged at his address to the Missouri AFL-CIO Convention on Sept. 15, 2014, in the aftermath of Michael Brown’s murder: “Racism is part of our inheritance as Americans. Every city, every state and every region of this country has its own deep history with racism. And so does the labor movement.”⁷⁶

70. See Christian E. Weller and David Madland, *Union Membership Narrows the Racial Wealth Gap for Families of Color*, CTR. AM. PROGRESS (Sept. 4, 2018), <https://www.americanprogress.org/issues/economy/reports/2018/09/04/454781/union-membership-narrows-racial-wealth-gap-families-color/>.

71. See Cherrie Bucknor, *Black Workers, Unions, and Inequality*, CTR. ECON. & POL’Y RES., <http://cepr.net/publications/reports/black-workers-unions-and-inequality>, (“Black union workers are also 17.4 percentage points more likely than non-union Blacks to have employer-provided health insurance, and 18.3 percentage points more likely to have an employer-sponsored retirement plan.”).

72. See Natalie Spievack, *Can labor unions help close the black-white wage gap?*, URB. INST. (Feb. 2, 2019), <https://www.urban.org/urban-wire/can-labor-unions-help-close-black-white-wage-gap> (“In 1983, 31.7 percent of black workers and 23.3 percent of the entire workforce were unionized. In 2017, those numbers had fallen to 12.6 percent and 10.7 percent, respectively (largely because of global competition, deindustrialization, and the passage of right-to-work laws in several states).”).

73. See *id.*

74. *Id.*

75. See Bucknor, *supra* note 71.

76. See Richard L. Trumka, *Trumka: Our brother killed our sister’s son*, AFL-CIO (Sept. 15, 2014), <https://aflcio.org/speeches/trumka-our-brother-killed-our-sisters-son> (“Now, some people might ask me why our labor movement should be involved in all that has happened since the tragic death of Michael Brown in Ferguson. And I want to answer that question directly. How can we not be involved? Union members’ lives have been profoundly damaged in ways that cannot be fixed. Lesley McSpadden, Michael Brown’s mother who works in a grocery store, is our sister, an

B. *Organized labor has a history of fighting for racist economic systems.*

The history of racism in the labor movement is one as old as the labor movement itself. On July 13, 1863 a mob of union Irish dockworkers started a multiday riot in New York City in reaction to a new law that subjected every man within a certain age range to the draft unless they could pay the fee to be exempted. But, more fundamentally, workers were rioting in response to the Emancipation Proclamation. They feared that currently free Black northerners, exempt from the draft because they had not been considered citizens, as well as currently and recently freed Black people migrating from the south, would take the jobs of white men. "From the time of Lincoln's election in 1860, the Democratic Party had warned New York's Irish and German residents to prepare for the emancipation of slaves and the resultant labor competition when southern blacks would supposedly flee north."⁷⁷ To these New Yorkers, the Emancipation Proclamation was confirmation of their worst fears.⁷⁸ The new federal draft law was simply fuel to the fire. At the end of the carnage, eleven Black men had been lynched, more than 100 people had been killed, and an orphanage for Black children had been burned down.⁷⁹

As Leslie Harris writes of the actions and motivations of the rioters in her book *In the Shadow of Slavery: African Americans in New York City, 1626-1863*:

"With these actions white workers enacted their desires to eradicate the working-class black male presence from the city. The Longshoreman's Association, a white labor union, patrolled the piers during the riots, insisting that 'the colored people must and shall be driven to other parts of industry.' But 'other parts of industry,' such as cartmen and hack drivers, not to mention skilled artisans, also sought to exclude black workers. The riots gave all these workers license to physically remove blacks not only from worksites, but also from neighborhoods and leisure spaces."⁸⁰

AFL-CIO union member and Darren Wilson, the officer who killed Michael Brown, is a union member too and he is our brother. Our brother killed our sister's son and we do not have to wait for the judgment of prosecutors or courts to tell us how terrible this is.").

77. See LESLIE M. HARRIS, *IN THE SHADOW OF SLAVERY: AFRICAN AMERICANS IN NEW YORK CITY 1626-1863* 279-88 (2003).

78. *Id.* ("In the month preceding the July 1863 lottery, in a pattern similar to the 1834 anti-abolition riots, antiwar newspaper editors published inflammatory attacks on the draft law aimed at inciting the white working class. They criticized the federal government's intrusion into local affairs on behalf of the 'nigger war.'").

79. *Id.* (noting that the two hundred and thirty-three children who lived there escaped); see also Kaufman, *supra* note 63.

80. Even labor historians have been a part of the entrenchment of racial politics in the labor and union movement. In Herbert Hill's essay *The Problem of Race in American Labor History*, he details how labor historians of the early and mid 1900s either ignored Black workers and other workers of color all together or, if mentioned, cited them as a problem for white labor unions. Hill explains that Selig Perlman, a prominent labor historian from that period and representative of the perspective of many of his peers, "wrote that 'the most important single factor in the history of American labor' was its success in excluding what he called 'Mongolian labor' from the work force and in securing the adoption of the Chinese Exclusion Act of 1882, the

Those benefiting most from racial capitalism understood unions as a tool – one that undoubtedly could be used to upset the racist economic order and build solidarity and power within the working class, but also one that could be used to maintain a racist economic hierarchy. They stoked the fires of racial hatred, conquest, and fear. And yet, it is not the case that powerful capitalists and conservative politicians were simply tricking working-class whites into hurting themselves by remaining committed to white supremacy over building power with workers of color. White workers have at many times organized on their own initiative to maintain the racial capitalist system that, while harmful to themselves as well, still extends a property interest in whiteness that has value in the real world, including access to better paying and more secure jobs, less competition for desirable property, access to public services, and more.⁸¹ These dynamics have manifested in a number of configurations since the Civil War.

Until after the turn of the 20th century, craft unions, unions restricted to workers possessing a particular skill, restricted Black workers from their ranks.⁸² Lucrative vocations like plumbing, carpentry, and plastering were often only open to white people. Management shrewdly exploited that practice by using Black workers to break strikes.⁸³

In the 1930's the formation of industrial labor groups, where all workers within an industry are organized within the same union regardless of skill, began to erode some of the racial barriers, and demonstrate a pathway to more worker power in organizing across race. For example, the CIO welcomed Black workers.⁸⁴

However, racial capitalism was also built into the very structure of the aforementioned NLRA. Although the NLRA provided important protections for unionizing, not all workers were granted those rights. Importantly, agricultural workers and domestic service workers were explicitly excluded.⁸⁵ This exemption had clear racial implications at the time of passage (which survive today), as an overwhelming share of the laborers in these lines of work, past and present, are people of color.⁸⁶

first explicitly racist immigration law in American history." See Herbert Hill, *The Problem of Race in American Labor History*, 24 *REVIEWS AM. HIST.* 189 (1996).

81. See Cheryl Harris, *Whiteness as Property*, 106 *HARV. L. REV.* 1707, 1780 n. 301 (1993).

82. See Kenneth B. Noble, *The Black Ascent In Union Politics*, *N. Y. TIMES* (Jan. 8, 1989), <https://www.nytimes.com/1989/01/08/weekinreview/the-nation-the-black-ascent-in-union-politics.html>.

83. *Id.*

84. *Id.* ("If only, some say, as a step toward ending their role as strikebreakers. . .").

85. See 29 U.S.C. § 152(3) (explaining that the term "employee" does not include independent contractors, agricultural or domestic workers, employees hired by a parent or spouse, managers, and workers already covered by the Railway Labor Act).

86. Despite this exclusion, there are stunning examples of workers organizing anyway and winning huge gains. Latinx and Filipinx agricultural workers in California formed the United Farm Workers in late 1950 and engaged in massive collective action. The UFW is still active and doing incredible work today. See, e.g., *UFW History*, UNITED FARM WORKERS, <https://ufw.org/research/history/ufw-history/> (last visited June 3, 2019).

Racial capitalism has also continued to animate the anti-union, or “right-to-work,” movement.⁸⁷ In the 1940’s, Vance Muse, a conservative, white supremacist, and anti-Semite activist from Texas, started the “right-to-work” movement with the purpose of disrupting the power of unions to foster “race-mixing,” and thus further build worker power.⁸⁸ The movement enjoyed significant success. “[B]y 1947 eleven states, most of them in the South, had passed right-to-work laws, either through their legislatures or by amending their constitutions.”⁸⁹ That same year, on the federal level, the Taft-Hartley Act was passed, enshrining a state’s right to enact a “right-to-work” law. Muse’s efforts have had staying power. Currently, there are twenty-seven right-to-work states.⁹⁰

While unionization and worker organizing can be critical mechanisms to seek more justice and less inequality, they are also tools that have been leveraged for racism, sexism, xenophobia, and entrenchment of inequality. Police unions have often been used to further this latter set of aims.

C. Police unionization has been used to build power for the racial capitalist state.

There are many unionized police departments, though prosecutors’ unions are significantly less common.⁹¹ Like unions in other contexts, unionizing police and unionizing prosecutors increases their power.⁹² Specifically, it increases their abilities to lobby for policies that expand their budgets, their discretion, job security, and impunity, and to shape and perpetuate the criminal punishment narrative. Police unions build power through unionization and then leverage that power to support candidates and measures that further invest public resources into the carceral mechanisms of the police and prisons, as well as working staunchly against any efforts to limit police discretion, provide civilian oversight, or make

87. See Kaufman, *supra* note 63 (defining “right-to-work laws” as those that “allow workers in a unionized workplace to opt out of paying union dues, thus eroding the union’s financial standing and its bargaining power”; “Muse’s campaign was soon taken over by corporate labor antagonists, including Fred Koch, the Kansas oil magnate and father of Charles and David Koch. There are now twenty-seven right-to-work states.”).

88. See Michael Pierce, *Vance Muse and the Racist Origins of Right-to-Work*, AM. CONST. SOC’Y: ACSBLOG, (Feb. 22, 2018), https://www.acslaw.org/expertforum/vance-muse-and-the-racist-origins-of-right-to-work/#_edn1 (“Vance Muse of the Christian American Association, a larger-than-life Texan whose own grandson described him as ‘a white supremacist, an anti-Semite, and a Communist-baiter, a man who beat on labor unions not on behalf of working people, as he said, but because he was paid to do so.’”); see also Kaufman, *supra* note 63.

89. See Kaufman, *supra* note 63.

90. *Right-To-Work Resources*, NAT’L CONFERENCE STATE LEGISLATURES, <http://www.ncsl.org/research/labor-and-employment/right-to-work-laws-and-bills.aspx> (last visited June 3, 2019).

91. See *supra* note 14 (describing the author’s research findings on prosecutors’ unions).

92. Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 GEO. WASH. L. REV. 712, 756 (2017), <https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=3828&context=facpubs> (“In large departments, the individuals holding these full-time paid positions control a multimillion-dollar budget amassed from union dues. This gives them enormous power to influence public policy because they can donate a portion of these funds to politicians viewed as friendly to their interests.”).

meaningful changes to discipline policies. This is in addition to the power to influence further investment and protection of the Police Chief and administration, who also use these mechanisms to further legitimize their function, and to deride efforts to curb police violence and lack of accountability.

Over the past few decades, political support from those politicians within both Republican and Democratic parties that bill themselves as “tough on crime” has meant that while other public unions are vilified and have their budgets slashed, police unions are excepted from these measures. For example, during New York City’s near bankruptcy in 1975, unionized municipal workers were blamed for their “ironclad” control of New York City’s budget, while police and prison guards were largely accepted.⁹³ In fact, police and prison guard unions emerged from the fiscal crisis more powerful than ever.⁹⁴ As Rebecca Hill writes in *The Common Enemy is the Boss and the Inmate: Police and Prison Guard Unions in New York in the 1970s-1980s*, “both entities continued to gain power and clout, successfully using union dollars to lobby for increased dollars, harsher penalties, criminalization of more behaviors, increased police autonomy on the streets, and increased security measures within prisons.”⁹⁵

Missouri provides an example of the disparate treatment of police and prison guard unions from other public unions in the continuing assault on public-sector unions and their political power. In June 2018, as one of his final acts before resigning amid scandal, Gov. Eric Greitens signed into law HB 1413 a “paycheck protection” law.⁹⁶ “The measure would limit the power of public-sector unions by allowing workers to decline to allow the union to spend part of its dues for political purposes. It also requires regular recertification elections, as well as raises the bar on what is necessary for those elections to succeed.”⁹⁷ “Specifically, all unionized government employees — other than first-responders and law enforcement officers — would have to opt in to have unions withdraw dues from their paychecks.”⁹⁸

That exception is important, and illustrates the hypocrisy of those touting the bill. The rhetoric being used to support this legislation, and legislation like it, focuses on worker liberty, free speech, and right to contract. But the carve outs for law enforcement cut against these principles. Do policy makers’ concerns for workers and worker liberty not extend to police and first responders? Or, as is plainly the case, do they want to preserve the political power and funding of a group and institution that

93. See Hill, *supra* note 58.

94. *Id.*

95. *Id.*

96. See Kurt Erickson, *In two Friday decisions, Missouri judges block anti-union laws pushed by Republicans, Greitens*, ST. LOUIS POST-DISPATCH (Mar. 8, 2019), https://www.stltoday.com/news/local/govt-and-politics/in-two-friday-decisions-missouri-judges-block-anti-union-laws/article_cc7bf250-2fb1-51af-812e-b892c36bf4a5.html; see also Alice Speri, *Five Years After Ferguson, St. Louis County’s New Prosecutor Confronts A Racist Criminal Justice System*, INTERCEPT (Jan 24, 2019), <https://theintercept.com/2019/01/24/wesley-bell-st-louis-prosecutor-ferguson/>.

97. See Erickson, *supra* note 96.

98. See *id.*

overwhelmingly supports candidates that commit to further investment in the arrest and incarcerate model?

Though this specific legislation was recently curtailed,⁹⁹ conservatives want these laws to block progressive power, as unions tend to support Democratic candidates and campaigns.¹⁰⁰ They also want to undermine worker power. Any unions that are not imbued with state power are being targeted. Police and correctional officer unions are enjoying carve outs and vocal support from the conservative right. That protection, despite other anti-union and “pro worker” rhetoric, is coming in a moment when those public actors in the criminal punishment system are facing powerful calls for reform from the broader community as a result of successful community organizing.

D. The intersection of labor, politics, and racial justice movement in St. Louis.

In the St. Louis region, there is a gap between the politics of union-worker issues and racial equity issues. Those representing labor have not always been supportive of the efforts and aims of those organizing for racial justice, despite support from racial justice movement for workers. That history is deeply rooted.

In the early 1900s, more than 100 manufacturing plants opened in and around East St. Louis, catalyzing the city’s growth by about 9 percent in a decade.¹⁰¹ Among those moving to the region were Black people migrating from Southern states with the hope of landing work and a safer place to settle.¹⁰² Their arrival excited factory owners at the prospect of cheap labor and angered white laborers.¹⁰³ On May 23, 1917, a leader of the Central Trades and Labor Union wrote to its delegates: “The immigration of the Southern Negro into our city for the past eight months has reached the point where drastic action must be taken if we intend to work and live peaceably in this community.”¹⁰⁴ Union members were called on to demand that the city government “take some action to retard this growing menace and also devise a way to get rid of a certain portion of those who are already here.”¹⁰⁵

99. See MO. CONST. art. I, § 29 (1945) (citing *Indep. Nat. Educ. Ass’n v. Indep. Sch. Dist.*, 223 S.W.3d 131 (Mo. 2007) (“Section applies to public employees as well as private sector employees.”)).

100. See *Labor*, OPENSECRETS, <https://www.opensecrets.org/industries/indus.php?ind=P> (last visited June 3, 2019) (“Total labor sector campaign contributions topped peaked during the 2016 election cycle, when groups and individuals poured more than \$217 million into races nationwide. Almost 90 percent of those contributions went to Democrats, which is consistent with at least two decades of labor contribution trends.”).

101. See Doug Moore, *100 years later, East St. Louis stops to remember the riots that made indelible mark on city*, ST. LOUIS POST-DISPATCH (June 28, 2017), https://www.stltoday.com/news/local/crime-and-courts/years-later-east-st-louis-stops-to-remember-the-riots/article_7972666b-6508-5f76-a582-aa52d4bef8ba.html.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

Five days after this letter, white union workers, leaving an evening city council meeting, took to the streets and began harassing and assaulting Black people on sight.¹⁰⁶ While no one was killed in this event, five weeks later, after weeks of heightened tensions, white men in a Ford shot into the homes of Black families at night on July 1, 1917.¹⁰⁷ After this, Black men from the neighborhood took up arms and gathered to guard the street. Later that night, they shot into a Ford coming down the street with two white men who turned out to be police officers in plain clothes.¹⁰⁸ The next morning, after a meeting at the Labor Temple where white workers were encouraged to go home and get their guns, “thousands of blacks were driven out of their homes, beaten, burned and shot.”¹⁰⁹ The total number of casualties are unknown, though historians say the official count of 48 people is vastly underestimated, and that the real numbers could be as high as 250 people murdered, many structures and homes burned and thousands left homeless.¹¹⁰ The massacre in East St. Louis just over 100 years ago continues to impact the city today.¹¹¹ Throughout the region, the intersections and boundaries drawn around race, class, union status, and the government apparatus remain a tangled web.

In the aftermath of Michael Brown’s murder, protestors in the streets called for justice for Black Lives, and those protestors were met by counterprotesters. Each side had representatives from local labor factions, and the breakdown of solidarity was clear. As Kayla Reed noticed, those union protestors on the side of Black Lives Matter movement were “were typically young and affiliated with ‘Fight for \$15’. . . but trade unionists. . . often stood with the counterprotesters.”¹¹²

That’s why Reed and other organizers were not surprised that essentially every union, with the exception of SEIU Missouri State Council, endorsed McCulloch over Bell for Prosecuting Attorney. Local unions, especially trade unions like the Sprinkler Fitters Local 268, who gave \$1,000 to McCulloch’s campaign, cited McCulloch’s record on being pro-union, a reliable presence at rallies, and a strong incumbent. When asked

106. *Id.*

107. See Tim O’Neil, *Look Back 250 • Race hatred, workforce tensions explode in East St. Louis in 1917*, ST. LOUIS POST-DISPATCH (Sept. 21, 2014), https://www.stltoday.com/news/local/illinois/look-back-race-hatred-workforce-tensions-explode-in-east-st/article_9bfa1b5d-c627-5dc7-b1da-6d58993f3ecb.html.

108. *Id.*

109. *Id.*

110. See Moore, *supra* note 101 (“St. Clair County authorities eventually charged more than 140 people, most of them white and including police officers and East St. Louis Mayor Fred Mollman, who did little to stop the carnage. Indictments against the officers were ‘lost’, and the charge against the mayor was dropped.”).

111. See Mary Delach Leonard, *100 years later: Group is placing historical markers at sites of 1917 East St. Louis race riot*, ST. LOUIS PUB. RADIO (June 5, 2017), <https://news.stlpublicradio.org/post/100-years-later-group-placing-historical-markers-sites-1917-east-st-louis-race-riot#stream/0>.

112. Aída Chávez & Ryan Grim, *Carpenters, Steamfitters, And Other Trade Unions Coalesced Around Notorious Ferguson Prosecutor. Why?*, INTERCEPT (Aug. 9, 2018, 12:34 PM), <https://theintercept.com/2018/08/09/bob-mcculloch-union-backing-bob-mcculloch-ferguson/>.

about their support of McCulloch, and whether McCulloch ran his office in a racist way, Mike Mahler, President of Sprinkler Fitters Local 268, said he did not.¹¹³ Mahler opined that the unfairness in the system was that it was stacked against all poor people, not just Black people.¹¹⁴ “The next guy’s going to find out that it’s nice to have all these idealistic ideas, sometimes it’s not easy to accomplish. I think Bob was a very fair person.”¹¹⁵

The August 7th election was also important because of a popular referendum on the ballot, Proposition A,¹¹⁶ which would have significantly damaged unions in the state by making fair share requirements illegal in union shops.¹¹⁷ Unions worked hard to defeat adoption of this “right to work law.” Criminal justice reform advocates pushing for Bob McCulloch’s removal and Bell’s election also supported the efforts to defeat the “right to work law” by including literature urging voters to vote “no” on Proposition A in their canvassing.¹¹⁸

Both the criminal justice advocates and the unions appear to have made an impact at the polls. Bell was elected St. Louis County Prosecutor, beating McCulloch by about 14 percentage points.¹¹⁹ Proposition A was defeated in a landslide, opposed by 73 percent of voters, with two thirds of those votes coming from St. Louis County. As was reported in *The Intercept* after the election, “the results suggest that most progressives who voted for Bell also sided with the unions in solidarity. The unions, meanwhile, voted for their own interests on the right-to-work law, but voted against the criminal justice reform movement.”¹²⁰

Again, none of this is news to folks on the ground, given the complicated relationship between the Black community and unions, a relationship that can come with benefits and protection for Black workers and families who are able to pierce unions’ often insular and segregated ranks, despite the general inequality and a history of unions aligning with the kind of “law and order rhetoric” and practice that they came to expect from public officials like McCulloch.¹²¹

113. *Id.*

114. *Id.*

115. *Id.*

116. *2018 Ballot Measures*, MO. SEC’Y STATE’S OFF., <https://www.sos.mo.gov/elections/petitions/2018BallotMeasures> (last visited June 3, 2019).

117. Fair share fees are administrative fees collected from non-union workers paychecks in unions shops to help offset the costs of bargaining, and compensate for the benefits non-union workers gain from having the union bargain for contractual terms on their behalf. Last year, in *Janus v. AFSCME*, the Supreme Court ruled that non-union workers do not need to pay fair share fees because requiring them to do so would violate their First Amendment rights, overturning over 40 years of precedent and dealing a punishing blow to public unions nationwide. See Alana Semuels, *Is This the End of Public-Sector Unions in America?*, *Atlantic* (June 27, 2018), <https://www.theatlantic.com/politics/archive/2018/06/janus-afscme-public-sector-unions/563879/>.

118. See Chávez & Grim, *supra* note 112.

119. See Astead W. Herndon, *Wesley Bell, Ferguson Councilman, Unseats St. Louis County Prosecutor*, *N.Y. TIMES* (Aug. 8, 2018), <https://www.nytimes.com/2018/08/08/us/politics/wesley-bell-st-louis-election-result.html>.

120. See Chávez & Grim, *supra* note 112.

121. *See id.*

Organizers like Reed can understand that in the era of Trumpism, Walkerism, and harsh anti-unionism, unions are grasping for the bedfellows like McCulloch with whom they know and feel comfortable. However, Reed thinks they are missing a crucial opportunity to build power and make change across community: “They’re not recognizing the force of grassroots power and what that could do for their workers,” she said. “It’s almost like a self-inflicted wound they’re giving themselves.”¹²²

CONCLUSION

St. Louis County deserves to have a public administration that is well functioning, accountable, and fair. It deserves public services that promote human dignity and wellbeing, that are aimed at reducing harm and inequality, and increasing justice. It deserves a system that deals with harm in a fair, measured way, rooted in the community’s values, history, and needs. It deserves a public system that holds its public servants to a higher standard, not a lower one, or extends de facto impunity. If it is to have a police force and a prosecutor’s office, those offices should be accountable to the community they serve. The St. Louis County assistant prosecutors unionizing with the SLPOA moves St. Louis County further away from all of those goals. It is a closing of ranks, a commitment to alliance and allegiance to each other rather than to the public.

Unions have the power to fight or perpetuate racial injustice, and there is a long, mixed history of those efforts. Unions have fought to exclude and oppress. They have also provided Black people and other people of color with important benefits and mechanisms for organizing for economic and racial justice. There might be some situations where it is difficult to know whether unionization, or union action, is serving or curtailing the racial justice movement. St. Louis County assistant prosecutors unionizing with the SLPOA is power-building in response to some of the most powerful racial justice movement organizing of our time. It involves one of the most salient contemporary incidents of racial injustice, the killing of Michael Brown, and involves two institutions directly implicated in that injustice. This is not of those “difficult to know” situations.

This new union does raise explicit questions about the continued existence of prosecutors and police, whether unionized or not. The roles of police and prosecutors, as currently structured, serve to further the exploitation, looting, and killing of Black and brown people in Missouri cities and counties. This unionization will only further contribute to these entities’ power building. This novel public union has been forged to shield its members from calls for change and reform from the very people to which these public servants are meant to answer. It should be seen as the deepening collusion of dangerous power that it is, because, in some ways, this union is not new at all. It is the squeezing of already clasped hands that do not want to be pulled apart. But the hands are clasped

122. *See id.*

around the necks of poor communities of color in St. Louis County, and they must be pried away.¹²³

123. How or what should we do next to get their hands off our necks? This article is not focused on what should come next, as organizers and those most connected to what's happening in St. Louis and the region are best situated to understand the needs and goals of the community, and are already hard at work. However, the following ideas follow from the analysis in this article, and could be interrogated as possible goals and strategies. Most immediately (1) Do not allow assistant prosecutors to remain a part of SLPOA. They are only amplifying their power to act in concert, to influence politicians, to increase their budgets, and to use those dollars to fund additional lobbying to support the arrest and incarcerate model. Possible legal avenues for this challenge could draw on conflict of interest doctrine, separation of powers doctrine, and more broadly administrative law and anti-trust law. Specifically, one could argue that the legality of unionization should include a power analysis, and under that theory, that a union of police and prosecutors should be illegal because police and prosecutors unionizing concentrates too much power. *See, e.g.,* Stephen Rushin, *Police Union Contracts*, 66 DUKE L. J. 1191 (2017). One could also raise procedural challenges that SLPOA is a not proper bargaining unit, or that the election did not meet requirements. Wesley Bell has already argued that he will not recognize the union, because the Circuit Court's recent decision casts doubt on the legality of the prosecutors vote given it was not overseen by a public mediator. In service of broader abolitionist aims, additional goals should include (2a) decreasing the funding going to these entities by diverting funding towards social services, or paying people directly and ultimately (2b) divesting completely from these flawed and failing public entities.