

**A SECOND GILDED AGE:  
HOW CONCENTRATED CORPORATE POWER  
UNDERMINES SHARED PROSPERITY**

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**VIRTUAL HEARING**  
BEFORE THE  
**JOINT ECONOMIC COMMITTEE**  
OF THE  
**CONGRESS OF THE UNITED STATES**  
ONE HUNDRED SEVENTEENTH CONGRESS  
FIRST SESSION

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# **A SECOND GILDED AGE: HOW CONCENTRATED CORPORATE POWER UNDERMINES SHARED PROSPERITY**

**WEDNESDAY, JULY 14, 2021**

UNITED STATES CONGRESS,  
JOINT ECONOMIC COMMITTEE,  
*Washington, DC.*

The WebEx virtual hearing was convened, pursuant to notice, at 2:30 p.m., before the Joint Economic Committee, Hon. Donald S. Beyer Jr., Chairman, presiding.

**Representatives present:** Beyer, Beatty, Pocan, Peters, and Schweikert

**Senators present:** Klobuchar, Hassan, Lee, and Warnock

**Staff present:** Vanessa Brown Calder, Sean Gogolin, Devin Gould, Tamara Fucile, Owen Haaga, Erica Handloff, Colleen Healy, Jeremy Johnson, Christina King, Adam Michel, Michael Pearson, Alexander Schunk, Nita Somasundaram, Sydney Thomas, Jackie Varas, and Emily Volk

## **OPENING STATEMENT OF HON. DONALD BEYER JR., CHAIRMAN, A U.S. REPRESENTATIVE FROM THE COMMONWEALTH OF VIRGINIA**

**Chairman Beyer.** This hearing will come to order. I would like to welcome everyone to today's hearing focused on the economic impact of concentrated corporate power. I was encouraged to see President Biden's signing of an Executive Order just last week taking action on this very issue.

I want to thank each of our distinguished witnesses for sharing their expertise today. We have a world-class panel, and I know we are all going to be excited to hear from them.

Access to opportunity, open markets, and fair competition are fundamental to advancing shared prosperity in our country.

Competition in markets leads to lower prices and higher quality goods and services, ensuring that consumers do not overpay for the products and services they rely on, whether it is a vital medication or broadband internet.

Workers also benefit when businesses compete for their labor. Competition for worker incentivizes firms to pay good wages or risk losing their workers to competitors, and thereby serving as a counterbalance to rising corporate power and enabling workers to bargain for better working conditions. And competitive markets allow everyday Americans to take a chance on an idea and start a busi-

ness. Or maybe they innovate on a product and make it more affordable.

Research shows the possibility of new entrants into a market compels existing firms to continue investing in people and capital to stay ahead, which also elevates the United States as a leader in the global economy.

We are here today because corporate concentration imperils shared prosperity and exacerbates economic inequality.

Across industries—including health care, financial services, telecommunications, agriculture and more—we are seeing much higher levels of concentration than were there three decades ago. And evidence shows this has led to weaker business investment, higher prices for consumers, and lower wages for workers.

This consolidation of corporate power has allowed the wealthiest at the top to capture a larger share of the gains from economic growth. Amid record-breaking profits, corporations are paying less in taxes today than they did 30 years ago, while investing 10 cents less per dollar of profit. All of this has led to reduced productivity gains in concentrated industries and slower growth economy-wide.

This is a problem because consumers are bearing the burden. On average, we pay about twice as much for cellphone plans than some of our friends in other advanced economies with more providers. The same is true for broadband access. With more competition, hard-working Americans could save billions each year.

Our workers are also paying for this in the form of stagnant wages. Research shows the median American household loses an estimated \$5,000 each year through reduced wages and higher prices caused by a lack of competition.

Now how did we get here?

The explosion of mergers and acquisitions have played a key role in the consolidation of industries. Over the past 40 years, they have been allowed to proceed at an unprecedented pace, and the same holds for an array of anticompetitive practices by industry leaders.

This is due in part to our failed experiment with a more lax enforcement of antitrust laws and the under-funding of Federal enforcement agencies.

During this time, our economy has lost half of its firms on a per capita basis. This has disproportionately impacted marginalized communities where we've seen a disappearance of independent grocery stores, pharmacies, and community banks.

The rise of non-compete agreements is also part of the story. At least 1 in 3 businesses require that workers sign non-compete agreements, which suppress workers' wages, hinder the ability to pursue better opportunities and contribute to persistent racial and gender disparities. And about 1 in 5 workers without a college education is subject to these non-compete agreements.

The good news is that there are steps that we as a country can take to reduce this concentration of corporate power, and we will hear more about these proposals from our expert panel today.

Additionally, there have been productive bipartisan conversations here on Capitol Hill about how to best tackle these challenges. Following a bipartisan investigation that uncovered evidence of ample anticompetitive practices, the House Judiciary Committee recently

approved six bipartisan bills to address business concentration and bolster competition on digital platforms.

In the Senate, my dear friend and colleague Senator Klobuchar wrote an entire book about antitrust, the challenges we face, and what we can do to make our economy more competitive. Earlier this year, the Senator introduced the Competition and Antitrust Law Enforcement Reform Act. Among other things, this bill would give Federal enforcers more resources to do their jobs and strengthen prohibitions on anticompetitive conduct. The Senator will tell us more about this and some of her other ideas shortly.

We have an opportunity now to restore a competitive economy and advance shared prosperity. President Biden's Executive Order advances a whole-of-government approach to promote fair competition, and it is now our turn to act here in Congress with bold and decisive action. And this is why I look forward to the testimonies and insights of our witnesses today.

Now I would like to turn this over to Senator Mike Lee, another leading voice in this space, for his opening statement. Senator Lee, the floor is yours.

[The prepared statement of Chairman Beyer appears in the Submissions for the Record on page 34.]

**OPENING STATEMENT OF HON. MIKE LEE, RANKING MEMBER,  
A U.S. SENATOR FROM UTAH**

**Senator Lee.** Thank you very much, Mr. Chairman.

From our earliest days, it has been businesses both large and small that have been the backbone of our country. And as Calvin Coolidge once put it: The chief business of the American people is business. From colonial farmers to pioneering homesteaders, to merchants, craftsmen, and professionals, American entrepreneurs have sought to build a better life for themselves and achieve the American Dream.

For centuries, Americans who are innovative have come together through commerce and competition to improve life for themselves and their families and their communities.

It is no surprise, then, that American businesses are a source of local and national pride. They are often more than just a place to work. They add vitality into our neighborhoods, our towns, our cities, and communities.

Businesses are also the heartbeat of our economy. Small businesses in particular represent about half of all private-sector jobs in the United States, nearly half of the U.S. GDP, and they account for two out of every three jobs created in the United States today.

Over the years, we have seen the rise of a number of big businesses, and today we are again witnessing the increasing market power of a few large firms. Of course this raises some important questions, that a lot of people are concerned, understandably, that the largeness of certain enterprises makes them dangerous—some say, inherently dangerous to small businesses and to consumers and to workers.

However, the fact is that big is not always bad. But neither is it always good. And we should not be forced to pretend that it is either one way or the other. To imply that we should support or defend a business simply based on its size is unserious and it is

meant to move the conversation away from a firm's specific conduct.

The rise of some highly visible large firms is oftentimes a product of their greater market-based innovations. The prospect of gaining a larger market share incentivizes competition that can lead to better products and services at lower prices. Market share won through competition should be celebrated not punished.

Changing technology and increasing investment in software processes and R&D may also be an important factor. In industries where these investments are protected by patents, policy has explicitly created government-granted monopolies. We allow this because the prospect of collecting monopoly profits acts as an incentive for firms to innovate and invest in new ideas.

In other areas, new investments are associated with higher productivity gains, especially in the high-tech and consumer sectors, suggesting that these businesses have gained greater efficiencies through market competition. But there are other factors behind industry concentration, factors that could indeed be cause for concern and deserve our attention.

For instance, government regulations impose huge, stifling barriers to new business creation and protect existing firms from competition. From 2010 to 2020, the U.S. Government imposed an average of 365 new regulations each year affecting everything from how farmers make their living, to which employees small business owners are legally allowed to hire, to how many workers they can afford to pay.

These regulations impose tremendous costs on American businesses, workers, and taxpayers, costing an average of \$81 billion per year and requiring 77 million hours of paperwork annually.

This burden disproportionately falls on small businesses and startups. In fact, there is plenty of evidence showing that regulatory accumulation reduces the number of small businesses relative to larger ones. In this regard, Federal, State, and local regulations are locking out small businesses from competing, and thus further entrenching big businesses.

Reducing regulatory requirements on American business would help foster more market competition. With more market competition, the more competition any time you are going to increase quality and reduce prices, and that is good for consumers.

Antitrust enforcement has also been declining for decades. Some monopolies are indeed bad, and those that rise or remain through anticompetitive and exclusionary conduct and not through competition on the merits stand in the way of free markets, and they degrade the options available to consumers.

A proper response in this regard is to modernize antitrust laws to find the right balance between over-enforcement and under-enforcement. That is exactly why I have introduced the Tougher Enforcement Against Monopolists, or TEAM Act, which would preserve free-market competition by codifying the Consumer Welfare Standard and strengthening enforcement against companies that engage in anticompetitive behavior.

Other efforts like the Administration's recent Executive Order on competition unfortunately missed the mark by overstepping the President's authority and massively expanding Federal regulatory

power. But whatever action we take, we ought to remember that big businesses are not necessarily harmful if workers continue to find well-paying jobs and consumers continue to benefit from high-quality, diverse, and low-cost goods and services. The ability for them to do that of course is always enhanced by robust competition.

The beauty of our free-market economy is that whatever your cause or your career, your success depends on your service. The way to look out for yourself is to look out for those around you. The way to get ahead is to help other people do the same, and to put your God-given talents and efforts to work in the service of your neighbor.

In the process of earning money and building wealth, individuals can add value to other peoples' lives. In all of our efforts going forward, we ought to ensure that businesses both large and small are able to keep doing just that. And I am hopeful that today's hearing will aid us in achieving this goal.

Thank you.

**Chairman Beyer.** Senator Lee, thank you very much. And thank you for introducing the team effort. That is very much in the right direction.

[The prepared statement of Senator Lee appears in the Submissions for the Record on page 35.]

It is now my honor to introduce the distinguished Senator from Minnesota, Senator Klobuchar, who has just written a book titled *Antitrust*. There is no confusion about what the book is about. If I can quote from a review of The New York Times, it says, "It is an impressive work of scholarship, deeply researched, highly informative, and it is surprisingly readable in the bargain."

Senator Klobuchar, we will never forget the picture of you announcing for President in the snow storm, but we would love to hear what you have to say about antitrust, so we look forward to it.

#### **OPENING STATEMENT OF HON. AMY KLOBUCHAR, A U.S. SENATOR FROM MINNESOTA**

**Senator Klobuchar.** Well thank you, Mr. Chairman. And since I have the floor, I will now read all 600 pages of the book into the record. No, I will try to give a summary of my views.

I first want to thank you for having the foresight of having this hearing. I want to thank my colleague, Senator Lee. We had a hearing yesterday in our subcommittee together on what we can do about pharmaceutical prices, and we have introduced a number of bills together, including one with Representatives Buck and Cicilline to give the State Attorney General more tools to use as we take on this major problem of monopolies.

I think we all know in our different ways that America has a monopoly problem. Whether you are a cattle producer trying to bring your beef to market, whether you are someone that is trying to get a deal on online travel and suddenly find out that all the websites you go to, 90 percent of them are owned by really two companies, whether you are someone that wants to get a fair price on a prescription drug where we know we have seen such enormous price increases in America over the last few decades. And then finally,

of course, if you are someone that is trying to get the truth off of social media platforms, or you are trying to protect your privacy. And you wonder why there are not all these bells and whistles that would do that, or why Google was able to, or Facebook, hold an entire country hostage, which is the country of Australia when they simply tried to charge for content and make sure that the news organizations were getting a fair deal.

Well, this is about monopolies. And I truly appreciated the title of your hearing because this is something that has gone on since the gilded age, and it could be well characterized, as you called it, as the second gilded age in this country. And I think the answers are right before us.

There is a focus, as there should be, on some specific solutions. Senator Lee and I had an incredible hearing on App Stores in which we actually had to push Apple to even get us a witness. And we did, and we had companies from Spotify to Match.com testify about how much they had to pay out just to use the App stores, which are pretty much today's modern websites.

There are things we can do in that area. There are things we can do from patents, patent thickening, patent thickets to the issues that we have with pay-for-delay in pharma. There is privacy legislation to be passed.

But then let's go a step further. I think we need an overhaul of our antitrust laws, if you really want to get at all these things at once, switching the burden for the big mega mergers, looking back into some very consolidated industries, not all industries, but the most consolidated ones where you have dominant players to figure out what needs to be done. Do some assets have to be divested? Do we have to put better bumpers in place on consent decrees and agreements? And all of this, to me, leads to something that Senator Lee mentioned, which is enforcement.

And I don't think that our agencies can take on the biggest companies the world has ever known with Band-Aids and duct tape. And that is why Senator Grassley and I passed in the U.S. Senate our bill to change the merger fee structure, which has not happened for decades, which is now over in the House and I know has some good, strong bipartisan support which, without hurting any small companies or mergers in small companies, would actually bring in over \$100 million because of the way we changed the structure for the FTC and for the DOJ Antitrust Division.

So that is number one.

Number two is what I have already mentioned, the standard change.

And number three is something that you had the foresight to look at, which is other things that can be done like allowing workers to go to another job if they want to go, very radical, with non-compete agreements being used only in the circumstances that fit them, as opposed to the front-line workers. Making sure that, to me, immigration reform is a piece of this. And making sure that we have the workers that we need when we are facing a labor shortage.

And then also looking at our STEM education and allowing new workers to go into the workforce. I just bring up a few of those ideas, but there are many, many more. And I just want to thank

you, Mr. Chairman, for this hearing and the Ranking Member. And I am really excited. And I think there are some really good things in the White House's, President Biden's Executive Order. And if you don't think he means business when he is governing right now, he just came over to the Senate Caucus today and I think we all know he means business.

And, secondly, the work that we can do here on a bipartisan basis in Congress. And I do want to say that I have gotten to know Representative Buck, and of course Cicilline, quite well, and I really appreciate their bipartisan efforts over in your House of Representatives.

So thank you for allowing me to say a few words.

**Chairman Beyer.** Senator Klobuchar, thank you very much. And thank you for writing the 600-page book that gives us a blueprint for much of what we can do. It is wonderful to have you on this committee.

**Senator Klobuchar.** Thank you.

**Chairman Beyer.** I would now like to introduce our four distinguished witnesses. Dr. Thomas Philippon is the Professor of Finance at New York University Stern School of Business. He has published widely on macroeconomics and finance, including the market power of large firms. His 2019 book, *The Great Reversal*, explores the causes and consequences of increased concentration and decreased competition in the U.S. economy. His research finds that American consumers, workers, and potential new entrants are shouldering the cost of rising corporate consolidation. Dr. Philippon has a Ph.D. in Economics from the Massachusetts Institute of Technology, and is in Paris tonight on Bastille Day, and I would like to note that we freed him from the prison today in order to testify.

Dr. Kate Bahn is the Director of Labor Market Policy and Interim Chief Economist at the Washington Center for Equitable Growth. Her research focuses on gender, race, and ethnicity in the labor market, care work, and monopsony. She has written extensively about the impact of the lack of competition in labor markets, and how it gives employer's unfair wage-setting power, to undercut the earnings of workers and increase their own profits. Her work shows how increasing workers' bargaining power has strengthening the unions can counteract the effects of employers' market power. Dr. Bahn received her Ph.D. in Economics from the New School for Social Research.

Ms. Stacy Mitchell is the Co-Director of the Institute for Local Self-Reliance where she directs its independent business initiative. Her research and reporting have focused on the importance of small businesses, and the public policies driving their decline and she has analyzed the shift in antitrust policy toward maximizing efficiency over promoting fair and open markets for all competitors. She is the author of the book *Big Box Swindle*, which details how mega retailers are fueling many of our most pressing social and economic challenges. Ms. Mitchell has a Bachelor's Degree in American Economic and Labor History from McAllister College.

Finally, Mr. Chris Edwards is a prior legacy employee from the Joint Economic Committee, and Chris is now the Director of Tax Policy Studies at the Cato Institute. He previously served as senior

economist for the Republican staff for the Joint Economic Committee. He is recognized for his work on Federal and State tax and budget issues. In addition to his work with the JEC, Mr. Edwards has served as a manager with PriceWaterhouseCoopers, and as an economist with the Tax Foundation. Mr. Edwards has an M.A. in Economics from the George Mason University.

Dr. Philippon, let's begin with your testimony and then we will continue in the order of introductions. Dr. Philippon, the floor is yours.

**STATEMENT OF DR. THOMAS PHILIPPON, MAX L. HEINE PROFESSOR OF FINANCE, NEW YORK UNIVERSITY, STERN SCHOOL OF BUSINESS, NEW YORK, NY**

**Dr. Philippon.** Thank you, Chairman Beyer, Vice Chairman Heinrich, and Ranking Member Lee for giving me the opportunity to testify in front of you today.

So I would like to divide my remarks into two parts: just a quick review of the evidence, what we know and what we do not know. And then I would like to explain the main consequences of existing market power and growth. And then in conclusion, I will give some policy options.

So first the evidence. While obviously the first, the most discussed, the most popular evidence is concentration. And indeed, we have seen that many industries have become more concentrated over the past 20 years. Now concentration is an important warning sign because it can suggest that some firms have increased their market power.

But concentration is not by itself a concluding indicator. And the main reason is concentration can increase for various reasons. Like was just said, big is not always bad. So instead of looking at market share at a point in time, which is what concentration does, I find it useful to consider how market shares can change over time. And in a competing industry, we might very well have a departure at the point in time, but if the industry is competitive, we don't expect that firm to remain dominant forever.

And unfortunately, if you look at the data, this kind of hasty reshuffling has increased over the past 20 years. If you look at the largest 100 firms in the U.S. in the year 2000, you will see that 55 out of these 100 firms were relative newcomers.

If you look at 2019, and again you look at the 100 largest firms in the U.S., the fraction of newcomers instead of being 55 percent is now down to 29 percent. The 71 auto firms had been in the top 100 for every year over the past 10 years. So this reshuffling has decreased over time.

Another indicator which is important, obviously, is profits, payouts, and investments. Now the share of after-tax corporate profits and GDP has increased by roughly 50 percent in 2000. Again, that might not be an issue if high profits led to high investment. The problem is, as you know, what happened. Investment in fact has been relatively weak, and instead firms have not chosen their higher profit to include investment. Instead, they have used their profit to increase their payout to shareholders. So the ratio of payout to total assets has roughly doubled since 2000.



Now there are many other industry studies that are detailed and show that consumers pay higher prices that are too high. They also are studies that look at the labor market. But let me now turn to the consequences.

So there is a broad review of the evidence and I think that prices in the U.S. are somewhere between 7 or 8 percent higher today than they would be if competition had remained as healthy as it was in the late 1990s. So what are the consequences?

Well, first, higher prices. So the median household spends about \$5,300 a year. I estimate that they pay about 7 or 8 percent to high prices. That means that they pay about \$3,700 each year in monopoly rent. If you add that for all the households in the U.S., you get about \$600 billion in excess monopoly rent.

Now this is to a lower living standard and higher inequality. Now the study at the end of the story does not take into account the impacts of competition and growth on investment and productivity. Once you factor in the impact of competition on investment, then you find that if we could return to the high level of competition that we had 20 years ago, GDP would increase by about 5 percent, which is a trillion dollars.

Finally, because increased investment would lead to higher real wages, it also would gain not just a consumer prices but also as workers, higher real wages. So, if you go back to this median household, we discussed earlier, the improvement in living standards would be something like \$5,000 once you take into account the growth, lower prices and higher wages.

So to conclude, I think that this shows that the stakes are high. To make it short, if you improve competition, the same as cutting taxes for working families by \$600 billion per year, except you don't have to actually increase the deficit to do it.

We will also boost the economics something like a trillion dollars each year, so the stakes are high. The policy changes are real, because we don't know for sure what are the better tools, and exactly which to act first, but I think that if you review the evidence very broadly you see four goals that would be useful in all cases.

First, tighten up the reviews.

Second, reduce barriers to entry.

Third, improve price transparency.

And fourth, reduce switching costs for consumers.

Thank you very much for the opportunity to testify.

[The prepared statement of Dr. Philippon appears in the Submissions for the Record on page 37.]

**Chairman Beyer.** Thank you, Dr. Philippon, very much. We will come back to you with many questions in the minutes to come. Now let me introduce Dr. Kate Bahn for her testimony.

**STATEMENT OF DR. KATE BAHN, DIRECTOR OF LABOR MARKET POLICY AND INTERIM CHIEF ECONOMIST, WASHINGTON CENTER FOR EQUITABLE GROWTH, WASHINGTON, DC**

**Dr. Bahn.** Thank you, Chair Beyer, Ranking Member Lee, and Members of the Joint Economic Committee, for inviting me to testify today. My name is Kate Bahn and I am the Director of Labor

Market Policy and Interim Chief Economist at the Washington Center for Equitable Growth.

We seek to advance evidence-backed ideas and policies that build strong, stable and broad-based growth. Mounting evidence, which I will review today, demonstrates how the rising concentration of corporate power has increased economic inequality, which has dragged down economic growth. I will explain what causes an economic concept called “Monopsony” and how it impacts different workers. And finally, how policy can push back on employers having significant monopsony power over the market and over workers.

The United States boasts one of the wealthiest economies in the world, but decades of increasing income inequality, job polarization, and stagnant wages for most Americans has plagued our labor market. This has demonstrated that a rising tide does not lift all boats.

Monopsony is a key economic concept to understand in this discussion. Monopsony is the labor market equivalent of the better-known phenomenon of monopoly, but instead of having only one seller of a good or service, there is effectively only one buyer of a good or service. Like monopoly, this phenomenon is not limited to when a firm is strictly the only buyer of labor.

When employers have outsized powers, they are able to set wages for their workers rather than wages being determined by competitive market forces. Given this monopsony power, employers undercut workers.

One recent survey of all economic research on monopsony finds that on average across studies employees have the power to keep wages over one-third less than what they would be in a perfectly competitive market. Firms can use monopsony powers to lower workers’ wages through a number of common occurrences in the labor market.

First, if there are few potential employers.

Second, if workers face job mobility constraints.

Third, if workers can only gather imperfect information about employers and jobs.

Fourth, when workers have divergent preferences for job attributes.

And finally, when workers lack the ability to bargain over wages and working conditions.

While concentrated labor markets are not the norm, they are pervasive across the U.S. Research has found that 60 percent of U.S. local labor markets are highly concentrated. This accounts for 20 percent of employment in the United States, and it has been particularly pernicious in rural areas.

When markets are very concentrated, employers can give workers smaller yearly raises or make working conditions worse, knowing the workers have nowhere to go to find a better job. But as I noted, competition is not the only source of monopsony power. Job mobility, which is the ability to move between jobs, also affects the market and in turn may give employers the power to keep wages below competitive levels.

Job mobility can be limited by non-compete agreements where workers are compelled to sign away their rights to go work for a

direct competitor of their employer. Asymmetric information between employers and workers also influences how workers sort between jobs and puts downward pressure on wage offers.

Workers often know little about the salary range at potential employers, even within their own firms. In contrast, employers know what all their employees are paid and often require applicants to disclose their current salaries or competing job offers, giving them much more information to work with.

And finally, varied worker preferences also give employers the power to undercut wages. Workers who are more likely to face hostile work environments, among them Black workers in primarily White occupations or women in male-dominated fields, may look for workplaces that are more inclusive. Or parents who have primary responsibility for care making for their children may need a more predictable schedule or autonomy over their schedules. This lack of mobility lowers wages. The concentration of corporate power has dire consequences for workers who are already disadvantaged in the U.S. Economy. Workers facing hiring discrimination, pregnant women, Black and Latinex workers, have fewer job offers so they will be forced to accept substandard opportunities. And having an unstable fallback position, without personal wealth or adequate income support, may reduce the ability of a worker to search for a job that is both the best fit and garners the highest possible wages. Employers are able to exploit these conditions by undercutting workers' wages without risking losing their labor supply, amplifying the negative consequences of rising corporate power.

Reversing the trends that caused this "Second Gilded Age" starts with ensuring that the U.S. economy is competitive. The Biden Administration is starting to strengthen enforcement against anti-competitive conduct, but this can go further, including new laws that codify, clarify, and strengthen antitrust law for labor markets.

But antitrust laws are not sufficient. Another important way to address the concentration of corporate power is to build countervailing power for workers—such as the Protecting the Right to Organize Act—that would expand the ability of unions to organize workers, while limiting the employer's ability to exploit workers along multiple axes.

One feature of a monopsonistic labor market is that wages are artificially suppressed, so there is room to raise the floor with tools such as increasing the minimum wage.

Finally, giving workers universal protections and investing in social infrastructure will provide a stable foundation for workers to search for quality jobs.

Building the foundation of security for workers not only directly impacts their well-being, but also provides the foundation for productivity growth through better job matchers and stronger economic growth through increased incomes.

Thank you, and I look forward to your questions.

[The prepared statement of Dr. Bahn appears in the Submissions for the Record on page 46.]

**Chairman Beyer.** Thank you very much, Dr. Bahn. The questions will come, I promise. Let me now introduce Ms. Mitchell, Stacy Mitchell, for your testimony.

**STATEMENT OF MS. STACY MITCHELL, CO-DIRECTOR,  
INSTITUTE FOR LOCAL SELF-RELIANCE, WASHINGTON, DC**

**Ms. Mitchell.** Thank you, and good afternoon, Chairman Beyer, Ranking Member Lee, Senator Klobuchar, and Members of the Committee. Thank you for inviting me to this important hearing.

I am the Co-Director of the Institute for Local Self-Reliance. Several years ago, I set out to study a crucial question: What is killing America's small, independent businesses?

In the 1980s, businesses with fewer than 100 employees accounted for 40 percent of all business revenue. Today, their share has dropped to 20 percent. And this trend has been accelerating. In the last decade, we have lost tens of thousands of small retail owners, distributors, manufacturers, and more.

The story about the decline of small business is that they cannot keep up. We assume big corporations are inherently better and more efficient, but in fact research shows that in many sectors independent businesses outperform. They deliver better products at cheaper prices, and more innovation.

The real answer to what is killing small businesses is rooted in policy choices. Forty years ago, we abandoned our anti-monopoly policies. This has allowed a few corporations to amass extraordinary market power and yield it with impunity. We hear this every day from business owners. People like Ben Oglethorpe who owns the only pharmacy serving a large rural region of Maine. Oglethorpe's family pharmacy is beloved by the community and busy as can be, and yet he worries that he is going to be driven out of business. And that is because CVS and two other powerful pharmacy benefit management companies control how much he is reimbursed for filling prescriptions.

These companies also compete with him. He has watched—CVS has slashed reimbursement rates of independent pharmacies across the country and forced them to close.

We have heard similar stories from craft brewers like Bob Jensen who is an award-winning artist brewery in Chicago who struggled to get his store shown because in his region distribution is controlled by Anheuser-Busch and Coors. And there are many businesses that are blocked from being able to compete online because of Amazon's out-sized market power.

People like Doug Mordaza in Michigan who launched an online business selling hair care products. At first, he did well. He quickly grew to nearly 50 employees. But Amazon's dominance meant that he depended on his marketplace for nearly 90 percent of his sales. Taking advantage of this, Amazon began to ratchet up the fee it charges sellers like Mordaza. By 2020, Amazon was taking nearly half of every dollar his company earned in sales, pushed his business into the red, and forced him to lay off most of his staff.

America has a monopoly problem. It has rendered our economy less innovative. It has fueled rising inequality, and racial injustice. Concentrated market power has made the already steep barriers faced by Black entrepreneurs all but formidable.

As Chairman Beyer noted, many Black and Brown communities lack basic services like grocery stores and pharmacies because of consolidation. The roots of all this can be traced to the 1980s when

the antitrust agencies and the courts made radical changes to our antitrust policies.

They abandoned the long-standing goals of these policies, and instituted a new framework known as the consumer welfare standard. It sounds benign, but this approach has blinded antitrust enforcement. It has allowed, for example, large corporations to use their financial muscle to bankrupt smaller competitors and take market share without actually having to compete for it.

It has led, for example, to predatory pricing which involves selling goods or services for low cost for a sustained period. We have seen Amazon repeatedly do this. It took light that big corporations can win simply by being bigger. A small business might have a better product, but it lacks the financial resources to sustain similar losses.

Predatory pricing was effectively legalized by the Supreme Court in 1992. We see it in many other ways. Antitrust agencies and the courts, for example, allow vertical integration. I mentioned with CVS and Anheuser-Busch and how they have used that to block their smaller competitors from being able to compete.

And third and finally, the current approach has allowed a few tech giants to seize control of our online market. Amazon is so dominant to online shopping traffic that retailers and brands left the site to reach their own market. So, Amazon also directly competes with these same businesses. Amazon routinely uses its gatekeeper power to exploit the businesses selling on its site and finally sellers appropriated their data and copied their best-selling products. And of course, it pockets the growing share of their fees, as I noticed.

If Congress does not act to check Amazon's out-sized power, you are effectively allowing Amazon to function as a kind of private government that regulates and taxes the Nation's commerce and rules over those who engage in it.

In my testimony, I outline several actions that I hope you will take, but I want to underscore particularly the importance as I close here of supporting the big tech legislation that is coming out of the House Judiciary Committee. It is the most important legislation for restoring fair markets for independent businesses.

Thank you, and I look forward to your questions.

[The prepared statement of Ms. Mitchell appears in the Submissions for the Record on page 54.]

**Chairman Beyer.** Ms. Mitchell, thank you very much. We really appreciate it. And now, finally, we hear from Mr. Chris Edwards with the Cato Institute.

**STATEMENT OF MR. CHRIS EDWARDS, DIRECTOR OF TAX  
POLICY STUDIES, CATO INSTITUTE, WASHINGTON, DC**

**Mr. Edwards.** Thank you very much, Chairman Beyer, and Ranking Member Lee. Thanks for inviting me to testify today.

There are growing concerns about rising corporate power and some measures of industry concentration has certainly increased. However, globalization and technology are creating intense competition for big corporations today.

Back in 1980, companies on the S&P 500 list stayed on the list an average of 30 years. Today companies stay on the S&P 500 list an average of just 20 years. The fear of many big corporations

today is that their businesses and industries will get disrupted and overtaken by technology-driven startups.

The leading electric car company today in America is Tesla, not any of the major car companies. The MRNE technology behind COVID-19 vaccination was pioneered by biotech firms Moderna and Biointech, not any of the big pharma giants.

We have seen startups displace corporate giants many times in history. In the 1970s, IBM dominated the computer industry, and the government prosecuted a 13-year antitrust case against them. But then along came Apple Computer and changed everything. In financial services today, swarms of big tech startups are cutting fees and challenging the big banks. This is all benefiting consumers. Tech startups are pushing prices down to zero in some cases. WhatsApp was a startup that now provides free phone service to 2 billion people around the world. Spotify was a startup that is now number one in music streaming, with its YouTube popular free service ahead of giants Amazon and Apple.

The great majority of these tech-driven startups got off the ground with the risk capital funding from angel investors and venture capital. To limit corporate power, Congress should support policies to keep investment flowing to high-growth startups. Airbnb was an angel and venture capital funded startup that now competes against the big hotel companies.

Elon Musk did not found Tesla. Instead, he was actually the original angel investor in Tesla back in 2004. So, Musk helped Tesla get off the ground. Moderna and Biointech were funded by hundreds of millions of dollars of angel and venture capital investments for an entire decade before the pandemic struck last year.

In the news recently I noticed that Breeze Airwaves was launched in 2021 by the same entrepreneur who founded Jet Blue a couple of decades ago. The new airline is funded by \$100 million of angel and venture capital investments that plans to undercut the big airlines with super low-cost flights to under-served markets.

So how can policymakers support startups and take on the big corporations? Well, first I think we need to keep capital gains taxes low. Capital gains are the reward for the high risk that investors undertake in investing in companies like Moderna and Tesla. Unfortunately, President Biden is proposing to sharply increase the capital gains tax rate, but our capital gains rate is already higher than the OECD average. I think a big capital gains tax increase, if applied to startup investing, would be a crushing blow to America's tech industries in particular.

Now currently the Tax Code allows investors in some startups to defer or to eliminate their capital gains taxes. However, I fear that the general thrust of the current proposals such as Senator Wyden's plan to use mark-to-market or accrual accounting for capital gains would kill the benefit of investing in startups. No other OECD country uses accrual or mark-to-market accounting for capital gains.

And lastly, I think policymakers should support open entry in markets. Rising regulatory burdens, as some of the other panelists mentioned, often advantage big companies over small ones. Many reforms during the 1970s and 1980s show that deregulation in-

creases competition and benefits consumers such as airline deregulation and telecom deregulation.

Deregulation allowed startup FedEx in the 1970s to revolutionize package delivery. One of the other panelists mentioned the craft beer industry. Deregulation in the beer industry in the 1970s and 1980s allowed an explosion of craft beer making with hundreds of new producers challenging the big beer oligopoly.

So, in sum, we can limit corporate power to the benefit of consumers by vigorous competition from startups, and I think policy-makers should remove barriers to entry where they can, and they should support low capital gains taxes to encourage investment in high-growth startups.

Thank you very much for holding the hearing.

[The prepared statement of Mr. Edwards appears in the Submissions for the Record on page 66.]

**Chairman Beyer.** Mr. Edwards, thank you very much. And thank you, all of you, for your testimony. We will now begin the round of questions, and I get to go first.

So, Ms. Mitchell, in Senator Lee's opening statement he talked about regulation being the cause of corporate concentration. Mr. Edwards just gave some examples of how deregulation led to more small business growth. But in your talking about the challenges that small businesses face, you did not mention regulation at all. Do you see regulation as the primary reason why small businesses are failing to thrive? Or is it the absence of antitrust enforcement?

**Ms. Mitchell.** It is something of a combination of both but let me put a little bit of perspective on that, which is that what we are seeing is that as large companies amass market power, they also gain political power. And they are using that power to rewrite legislation and regulation in their own favor, and to disadvantage their smaller competitors.

One place where we see this is in the Tax Code. The very complicated Tax Code with lots of loopholes that large corporations that are designed to large corporations to put through. As a result, you have a situation where Amazon for many years has paid effectively no Federal taxes, income taxes. And meanwhile, the local store down the street in your neighborhood is paying an effective Federal tax rate of about 25 percent. That is an example of how our regulations are being warped by concentrated market power to disadvantage fair competition and small businesses, workers, and communities.

**Chairman Beyer.** Thank you. Let me move on, limited time. Dr. Philippon, among your charts you showed that the high profits that corporations have, 9 percent of GDP rather than 6 percent, has not led to higher investment, but rather an increase in share buybacks.

Do you see a specific policy proposal that could rein in those share buybacks?

**Dr. Philippon.** Well, I think the best place for your proposal in general in that case would be to improve competition. The fact that they make a lot of money is not, again, by itself, a bad thing. But in a competitive economy, they would be eager to reinvest their profits in order to grow their company faster.

So if we make competition more intense, I think that the payouts by themselves will decrease simply because some will be

forced to reinvest more of their profits. Now the difference between dividends and buybacks is not, in my view, necessarily a faster duration.

**Chairman Beyer.** You also said that if we had competition—if we had not had this concentration of corporate power, the GDP could be 5 percent higher. Is this a one-time increase of 5 percent? And would the economy grow more quickly if we had this decrease in corporate concentration?

**Dr. Philippon.** So, this is a very deep question. The number I quoted was for the one-time increase, because this is the one that we can know more. Because it is only assumed that some have more pressure and hire more, which is not a controversial statement. It is every economy that can agree with that.

And so, then you can quantify the 5 percent one-time gain. And there is also evidence that competition is good for innovation, in which case it would also improve the growth rate of the economy. I did not include that number because it is hard to quantify, but it is definitely positive. So that would add something.

**Chairman Beyer.** Good. Thank you very much. Dr. Bahn, I have a complicated question for you. On page 3 of your remarks, you have this beautiful graph, the Herfindahl-Hirschman Index. And it shows the concentration of monopsonistic labor market power.

It reminded me awful much about a political map on how Presidential elections are. Is there an alignment, do you think, between political leanings and monopsonistic market share? How would you interpret that?

**Dr. Bahn.** What I am really saying in that map that I included is that rural areas kind of have really high levels of concentration, and so when there is a lower population there are fewer suppliers who end up being dominant in a really small area, but I don't know if we can say anything speculative about the connection between later market competition and political leanings in that area.

**Chairman Beyer.** I do think we need to take that wonderful chart and give it to some political scientists across the political spectrum to see how to interpret that. That is very, very interesting.

I will be back with more, but now since Senator Lee is off voting, I believe, I will now recognize the Ranking Member on the House side of the Joint Economic Committee, my friend Mr. Schweikert, from Arizona.

**Representative Schweikert.** Thank you, Chairman Beyer. This is actually an area that Mr. Beyer and I have actually had conversations with over the years, and it is of great interest. But I think I am going to give you my perspective on why the regulatory side is part of the problem in our failure of design. Let me give you a specific example, and then I am going to turn to Dr. Philippon and Mr. Edwards to see if my disruption theory fits some of your own writing.

I have spent years sitting through hearings on Dodd-Frank. The promise of Dodd-Frank was it was going to become a disruption in financial markets, and we were going to see all sorts of new products and new competition.



Now, a decade later, we functionally see a concentration of the money center banks. And it turns out there is this term called “regulatory arbitrage.” Which means you now needed a much bigger book of business to spread your regulatory costs, therefore it wiped out small regional institutions. Yet, we had facts and the data that said the ultimate thing that created safety and soundness was equity capital.

You could have dramatically dropped the regulatory burden on those regionals and small institutions and kept them dramatically safer and had them chip away at the size of the book of business of the money centers. I use that only as an example because I believe I can show you that from everything from health care to pharmaceuticals, to manufacturing, we are going to have to look in the mirror, Chairman Beyer, that much of what we do in Congress, whether we want to recognize it or not, we act somewhat like it’s a protection racket. We design legislation specifically directing certain types of products, certain types of technologies, certain types of reimbursement, instead of understanding the disruption of technology that surrounds us.

The last example I will give before the questions is, to think about all of our discussions in parts of our country that are underserved with broadband, but yet how often in those very conversations do we understand low Earth orbiting satellites now cover every part of North America and have broadband. But yet we still promote the same type of legislative subsidies that we have been doing for 20 years, instead of understanding the technologies that create the disruption.

Mr. Edwards, I understand your focus is on capital markets. Beyond just capital gains, what else would you do in capital markets to allow those small entrepreneurial upstarts, whether it be from a minority community or just some folk’s creative at universities, to be able to have an equity capital access so that their business plan is not to just be bought out by one of the dominant players? What would you do in the capital markets?

**Mr. Edwards.** Right. Well, Congress has actually made quite a bit of progress in that respect particularly with the Jobs Act in 2012.

**Representative Schweikert.** And I would like to mention two of those bills were mine.

**Mr. Edwards.** Well thank you very much. I think that idea of opening up investment in private equity, in venture capital, in angel investment to more regular Americans, not just wealthy accredited investors, was the way to go. The legalization of equity crowd funding. I think that is fantastic. I think that opens up more diverse flows of money to more diverse types of startups. So I think that was all fantastic.

You know, there is a basic problem that the regulatory cost of being a public company have gone up, which is one of the reasons why we have far fewer IPOs today, and far more of these companies like Uber and the like stay private longer, which I think is a real problem because it deprives middle class investors from gaining the benefits of these big boosts in value from these startup companies.

**Representative Schweikert.** Thank you, Mr. Edwards.

Dr. Philippon, in the last half a minute, touch on some regulatory arbitrage as being one of the barriers to disruption in our marketplace to bringing new products, new costs and new opportunities.

**Dr. Philippon.** Right. So, it's specifically financing—

**Representative Schweikert.** It could be anything, particularly health care as the most regulated.

**Dr. Philippon.** Yes. So, I think that finance and health care stand up as two industries where the balance of regulation and efficiency has not been very good. So, in finance, clearly, we set the tradeoff between safety and competition, and we try to balance the two. But if you look clearly at the data, you see that I don't think we have found the right balance.

The one thing I would point out, though, about Dodd-Frank and the lack, it gets better but it is not perfect. And some of the lack of competition actually comes from the lack of access to data from some of the new startups.

But the two main advantages of income from large banks are (a) the—insurance and (b) the data that they have. If you could induce them to share their data more, you would have more entries into the market.

**Representative Schweikert.** We actually have new legislation for securitized debt to flow information out.

Chairman Beyer, thank you for your patience.

**Chairman Beyer.** Thank you, Congressman Schweikert. And now I present our distinguished author, Senator Klobuchar.

**Senator Klobuchar.** Thank you very much, Mr. Chairman. I want to say one thing I did not say in the opening. I really come at this from a point of wanting to rejuvenate our capitalist system. And as someone who was in the private sector, as I was, representing companies for nearly 15 years, I am not as successful in the private sector as you, Mr. Chairman, but I come at it that way: How can you spur innovation? And how can you make sure that indeed we have the next Google, and we have the next Pfizer, and that we are making sure that these startups have an environment where they cannot only start but they can thrive?

Mr. Philippon, could you talk about—you have some shocking data there about the decline in the amount of competition, and the effect that if that continues really across industry. I am not just talking about tax. Without us at least doing something to enforce the antitrust laws, and why Adam Smith himself, the Godfather of capitalism, warned against a standing army of monopolies that we must always be aware of in order to make capitalism work.

**Dr. Philippon.** Thank you very much, Senator.

So, yes, I think the issue of monopoly is an old one. But to be fair, the reason it is tricky to solve, and I think it is something I do not of course have time to talk about in my remark, is we have to acknowledge that we still have a lot of uncertainty. To return to something that was said earlier, we do not know for sure what is good concentration and what is bad concentration. And in the modern knowledge economy, it is also that intangible assets have become more and more important.

And so, with the rise of this type of asset, it becomes sometimes difficult to decide, especially in real time, what looks like legitimate

concentration, earned by just being small term—from illegitimate concentration.

So that is why I think that in the policy framework, especially today given the uncertainty, I think that we should have a very broad approach. I don't think that antitrust itself could solve the issue. I don't think regulation can solve all the issues, especially as we discussed that regulation can cut both ways.

So, I think we need at the same time revival of antitrust, reviewing of regulations, and specifically geared toward again, price transparency; in all the markets where we see the biggest abuse, we see lack of price transparency and barriers to entry.

If we focus on these two things, we go a long way toward improving the situation.

**Senator Klobuchar.** OK, thank you. Dr. Bahn, along those same lines, as you know I have introduced legislation that is a broader approach to reforming our antitrust laws. And do you think we should—and I appreciate the work of the House in their incredible hearings on tech, and we are working with Representatives Cicilline and Buck to introduce versions of their bills. But could you talk briefly about updating our antitrust laws to address concentration in markets, including by the way labor markets, something you have talked about?

**Dr. Bahn.** Yes, Senator Klobuchar. The new legislation that was included in your proposal would codify, clarify, and strengthen antitrust law to protect workers, and this is a really important guide for Federal antitrust agencies and judges in antitrust cases to have the authority to address anticompetitive conduct but clearly lack the means to do so. So, it is really critical that they have that guide, and that it is clearly defined as an issue in labor markets that need to be addressed.

**Senator Klobuchar.** Very good. And maybe you, Ms. Mitchell—by the way, thank you for having the smart decision to go to McAllister College in Minnesota—Ms. Mitchell, could you talk a little bit about the President's Executive Order and why you think it is so important? Because as we look to update our antitrust laws, as so many Congresses before us have done from the Clayton Act to Taft Hartley and beyond, and work that has been done in the past with labor and other things, what do you think we could be doing with the Executive Order? And why is it important to do both things at the same time?

**Ms. Mitchell.** Thank you, Senator. And I really appreciate your leadership on this issue and the legislation that you have introduced. The Executive Order is extraordinary in that it is a repudiation of I think where we have gone wrong. As President Biden said, we have run a 40-year experiment and it has really failed. America is worse off on so many fronts.

The Executive Order I think will begin to harness a variety of tools within the agencies to address concentration and create more fair markets for farmers, small businesses, working people, and communities. I also think it is really important to underscore that this is not a problem that can be solved without Congress, because the courts have taken our laws so far off track that it is really absolutely imperative and urgent that Congress step in.

**Senator Klobuchar.** Alright, thank you very much. And thank you, Mr. Chair. Fourteen seconds over, for a Senator that is pretty good.

**Chairman Beyer.** [Laughing], thank you, Senator, very much. Let me now recognize our honorable friend from Columbus Ohio, Congresswoman Beatty.

**Representative Beatty.** Thank you so much, Chairman Beyer, and certainly to all of my colleagues, and to the witnesses. Thank you for all of your expertise.

My first question is going to go back to you, Dr. Bahn. In your testimony you discuss the rising usage of the non-compete agreement, even in the case for low-wage workers. You also quoted a lot of information by the 20th Century Economist Joan Robinson, who has also examined the lack of—how the lack of competition led to unfair and inefficient economic outcomes.

I read the study, and according to the study of business owners by the Economic Policy Institute, they found that nearly a third of businesses ask all of their employees to sign a non-compete agreement. The Biden Administration recently signed Executive Orders on competition, asking the FTC to ban this practice, with very few exceptions.

What effect do you think this will have on workers in competition?

**Dr. Bahn.** Thank you so much, Representative Beatty. I think that the non-compete agreement issue is a really perfect example of a competitive model not bearing out in the real world. If anything, we think workers paid more for accepting a non-compete are finding the opposite and were finding that they are particularly prevalent for low-wage workers, too. Over 20 percent of low-wage workers are bound by a non-compete.

But what happens when you ban the enforcement of the non-compete, for example as Oregon did in 2008, wages in Oregon went up more quickly for workers in jobs that were previously covered by a non-compete compared to jobs that were not previously covered by a non-compete. So, there is evidence that shows that when you ban them, they the wage will go up more quickly.

The key piece to this that I just also want to mention is that enforcement of labor protections through the Department of Labor is also a critical tool to ensure that workers are not exploited by anti-competitive conduct. So, I think it is really critical to make sure that our enforcement agencies, particularly the Department of Labor, can go after some of this misconduct as well.

**Representative Beatty.** Thank you so much. Maybe Ms. Wilson or Dr. Philippon, for the last—or the past 30 years, our economy has seen a troubling trend of increasing wealth inequality. I am Chair of the Congressional Black Caucus, and we look at the inequities in the racial wealth gap.

It is important for me to ask this question: I was reading another study, and according to the St. Louis research, in 1889 the top 10 percent of Americans owned 67 percent of the United States' wealth. And then more recently, in 2016 or 2018, that number was 77 percent. The bottom 50 percent of United States households saw their share of wealth decrease by 67 percent over that same period of time.

Has growing the market in a monopolistic behavior market contributed to this inequality, do you think? And if so, how?

**Ms. Mitchell.** Sure. Thank you for the question. And, yes, when you concentrate economic power and decision-making, you inevitably concentrate income and wealth. So, we have seen a small number of people gain enormously in this economy, and more and more people are being left behind and harmed by this consolidation. Are the geographics mentioned in this? So, we see a few areas that are seeing good jobs, and lots of other cities and regions in rural areas that are being left behind. And there is a very profound racial dimension to this.

We have lost lots of Black-owned businesses and banks. We have seen, as Dr. Bahn talked about, the effects on wages that have been particularly felt in industries that disproportionately employ people of color. More and more employers are able to take advantage of both racism and economic power to undermine their workforce, and that is serious.

**Representative Beatty.** I will give you my last 30 seconds.

**Dr. Philippon.** Thank you very much. So, I fully agree with what has been said. Both monopoly power and monopoly power will increase inequality. Very much along the line of Dr. Bahn said earlier, people who happen to be in the wrong labor market are going to see their wages depressed by the monopoly power of local employers. The same thing happens at the more microeconomic level, because when monopoly rents are high, the shareholder will gain more. Now of course if every family was a shareholder, then everything would be fine. But if you look at the actual distribution of share of stock, it is very concentrated.

So, when you shift money away from workers, you also increase inequality significantly.

**Representative Beatty.** OK, thank you. And my time is up. Thank you, Mr. Chairman.

**Chairman Beyer.** Thank you, Congresswoman Beatty. Now let me recognize the gentleman from Madison, Wisconsin, Congressman Pocan.

**Representative Pocan.** Thank you very much, Mr. Chairman, and thanks to all the witnesses. It is a great hearing. I appreciate it.

I think, Dr. Philippon, let me ask you the first question. I know you have done a lot of work around broadband. I have co-chaired a bipartisan Rural Broadband Task Force—I'm sorry, a caucus, and I also served on Jim Clyburn's Rural Broadband Task Force. I live in a rural town of 830 people, and about three or four years ago I finally got broadband. Prior to that, I paid \$300 a month for 40 measured gigs of broadband because I got a half-price sale for that amount.

Many states like Wisconsin, and I think the majority of states have laws that you pretty much have to get broadband from the provider that has your area. We were not allowed to form a co-op. We were not allowed to buy from a neighboring community. So, we either went without broadband, or when a company got free money from the Federal Government, they decided to expand it into our area.

You have done a lot of work in this area. Can you talk a bit about this, what we can do to try to make it so that people can have affordable broadband? My broadband now is about \$90 a month in that rural area.

**Dr. Philippon.** Thank you very much for the question. That hits close to home, because that is one of the motivations for writing the book, because I came to the U.S. from Europe 20 years ago. And at that time, connections to the internet were a lot cheaper in the U.S. than in Europe because that market was highly competitive. And so it was a shock for me to see that.

Over the following 20 years, it completely turned around and so now it is actually cheaper to get broadband access in Paris or Germany than it is to get access in Washington, or New York.

So clearly the name of the game will be to increase competition. One of the issues you have in the U.S. is that the setup of democracy is state-by-state. And so, it is very hard to find a solution that would work across the entire country. It has to be state-by-state.

And that means that also I don't think every extension is a solution. We think that including competition by bringing in a new provider is going to be tricky, at least in the short term, which is why probably you have to go state-by-state by first getting directly the prices that are charged, and then state-by-state bring competition. I don't think jumping directly to having many more providers is going to be practical, even though it would be ideal.

**Representative Pocan.** Great. Thank you very much. Ms. Mitchell, I have a question for you. So, I am a small business owner since I was 23 years old, but a small business of 5 employees. These days, they refer to that as a micro business, which most of us hate as a terminology if you are under 20 employees.

But as you have pointed out, the amount of business revenue for small businesses has halved since the 1980s. And even when we were putting together regulation to help small businesses through COVID, honestly, I fought with my own Party at times in understanding small businesses, because we don't have the same year-to-year sort of sales. We don't have, you know, issues that a bigger business has.

Can you talk a little bit about what are the main threats that you are seeing to those small, independent businesses? And, you know, what we could do in the short term around that?

**Ms. Mitchell.** Thank you for the question. Yes, micro business. The other one I think is "Mom & Pop" that people really hate. That was a sort of derogatory comment and I think many business owners hear it.

Yeah, in our research and in the surveys we have done, we have done large national surveys of independent businesses, we do see issues of market power really top that list. There are other concerns, you know, the high cost of health insurance for example is one. But we have seen lots of different kinds of market power issues. The incredible fees that Visa and MasterCard are able to charge, and you can't say no to the credit cards. You have restaurants that, the DoorDash of the world who have also become sort of gatekeepers charging these big tolls, and there is not enough competition there for regulation.

I am really particularly struck by the fact that I think Amazon has just an incredible reach in a different market. Its gatekeeper power across a lot of different sectors. The online is where everything is moving. And if you have a company that controls your access to the online market and competes against you, it is a fundamental problem. And that is why I think the big tech breakup bill is so crucial.

**Representative Pocan.** Yes, and we also let our employees go to the restroom and that somehow makes us less competitive against the Amazons of the world, unfortunately. But I fully appreciate that.

I have 10 seconds, Mr. Chair, and I will yield back.

**Chairman Beyer.** Thank you, Congressman, very much. And now, if Senator Lee is there—I notice his camera is on. I see his staff person occasionally. But if not, I would love to yield to my good friend from San Diego, Congressman Peters.

**Representative Peters.** Thank you, Mr. Chairman. Thanks for holding this hearing. At the risk of repeating some of what Congresswoman Beatty was talking about, I did want to ask a little bit about non-competes.

According to analysis from the Economic Innovation Group, greater enforceability of these contracts reduces new firm entry by 18 percent. And states that enforce non-competes tend to have lower prevailing wages than states that do not enforce.

Overall, one in five workers without a college degree is subject to a non-compete agreement, and 30 to 40 percent are not asked to sign the agreements until they have accepted the position.

Dr. Bahn, I know you have looked at this, and I want to just clarify. Is there any reason a worker that does not have access to proprietary information should be subject to a non-compete agreement? What would those circumstances be?

**Dr. Bahn.** I think there are very few circumstances in which non-compete agreements are especially being compelled to sign a non-compete agreement has an economic justification such as trade secrets. I think, as you are noting, by and large it seems that workers are facing less than optimistic conditions. They cannot bargain over the conditions of the wage offer that they receive, so they have to accept them anyway, and it tends to be some of these low-wage workers with Jimmy Johns, or in the ArcTech example of a player who had non-compete workers for no economic justification.

And as I mentioned to Congresswoman Beatty, it lowers wages. It reduces wage growth. It really is not good for particularly low-wage workers in these markets.

**Representative Peters.** So, you mentioned that. Are there other particular industries where we know this has been especially damaging going from the ability from this labor market to be effective?

**Dr. Bahn.** I am not aware that there are particular industries, but I do know it is something like 20 percent of workers who earn below the median wage in the U.S. are subject to a non-compete agreement, which is a really high level if we consider that low-wage workers are less likely to be in those occupations that we could say justifiably have some sort of economic justification for signing a non-compete agreement.

**Representative Peters.** There was a mention earlier of the President's Executive Order, which I certainly welcome, and I hope it goes a long way to help workers, although I do think that—and maybe you could tell me if you agree—Congressional action is important in this space. I introduced the Workforce Mobility Act, which effectively bans non-compete agreements except in limited circumstances like protecting trade secrets.

In San Diego, the innovation ecosystem is the backbone of the economy. We need policies to make sure that workers can compete everywhere.

Do you believe, Dr. Bahn, that Congressional action is important in this space?

**Dr. Bahn.** I absolutely do. And I think encouraging mobility in the labor market is one of the most important things we can do to have a dynamic and healthy economy. So I think policies that are exclusively designed to encourage worker mobility are what we need to have growth in our labor market going forward from the crisis. And we need explicit legislation.

The current Executive Order is a good start, but it is just that. It encourages the people to address the issue, and I think the responsibility of the Department of Labor is really critical. They have the infrastructure to address labor market violations, and they need to do so.

**Representative Peters.** Maybe I will ask, Ms. Mitchell, do you have an opinion on the extent to which non-compete agreements are a downward force on starting new small businesses in local economies that have been hurt by the pandemic lately?

**Ms Mitchell.** It is absolutely a problem. I mean, not only can workers covered by these non-compete agreements not go out and start their own enterprises in that same field that they have skills in, but it also means if you are a new startup your ability to track those skilled workers is also key. So, it has a huge effect on startups.

**Representative Peters.** Right. Thank you. I wanted to ask a question of Mr. Edwards. Your testimony talked about the importance of open markets. And I wanted to give you the chance to respond to this notion, this concern that has been raised about firms that control the market and compete against the people who are allowed in that market. Doesn't that create an anticompetitive situation that inhibits the ability of private capital invested in new innovation?

**Mr. Edwards.** Well, you know, big corporations have—I agree with the other panelists about regulations and the like are preventing our open entry. But a lot of huge corporations like Amazon got where they are because they used high productivity, and they stay ahead of the pack by investing massively in R&D which has broad-based spillover benefits for the whole economy.

I would not—

**Representative Peters.** I guess the concern I would raise is that Amazon has become the market, and they are competing against the people in the market, and I think that creates an issue. And I take your point on private equity investment and on capital gains. I don't necessarily disagree with that. But I think that is



something that has not been addressed, and it is still a concern for me.

I have exceeded my time, so I yield back. Thank you, Mr. Chairman.

**Chairman Beyer.** Thank you, Scott, very much. And David and Scott, we are going to do another round of questions while we await the return of Senator Lee who has not had a chance to do his first round of questions but should be back shortly.

So, I will begin, but please think about it and you are welcome to ask again. Let me start with Dr. Philippon.

Mr. Edwards talked about supporting risk capital via lower taxes on capital gains. Obviously, that is very much in play with the potential Biden tax plan. How much of a challenge is capital today in the market? And is competition essentially a money problem?

**Dr. Philippon.** Thank you very much. I think it is a very important question. My reading of the evidence today is that it is not the volume of financing that is constraining innovation. I mean when you talk to industry people, they tend to argue that they—money floating around to fund—

So, I don't think the supply of funds are the issue. So, I don't think they think that increasing taxes is a reasonable way would have a very large effect there. But I do think one of the issues, if you look at the exit of firms that do get financing, the fraction of firms that decide to go public and remain independent has decreased significantly over time. And more and more of the firms now, whether forcefully or not, end up being acquired.

And so, I think that in my mind is the bigger issue.

**Chairman Beyer.** Thank you very much. Mr. Edwards, I will get back to you in just a minute on that. Dr. Bahn, you talked about labor's share of income has declined and argue that a larger share of income would be a very good thing for workers.

Would it also lead to faster economic growth? Or what is its impact on economic growth?

**Dr. Bahn.** Sure. Thank you for the question. So, as you noted, the labor share of income has been declining. The way I interpret this is that as far as constraining monopsony power has decreased over time, at the same time that we have seen a growth in capital and less to labor. As Mr. Philippon noted, rising profits have gone to sales rather than investments for innovation growth. And finally, economic research has suggested that the labor share of income is positively correlated with the growth in the long run. So, it is important for the entire economy to ensure that workers are earning the value they produce for growth.

**Chairman Beyer.** You know, one of the big issues for Democrats and Republicans, as long as I have been here, been trying to come up from the more anemic economic growth of the teens, to much faster growth in the next generation.

And then, Ms. Mitchell, we now have these credit deserts with the disappearance of community banks, and just the big, big banks everywhere. The hope was that FinTech firms would fill that gap. Do you see any evidence of that happening?

**Ms. Mitchell.** No, on the Fin side, the kind of lending at the community banks is long term where they are engaged with the business, helping them grow and develop over time, and doing that

with reasonable interest rates, and on reasonable terms. The FinTech operations that we see charge very high rates on short-term loans. They are not based in the same community. When they are under stress during a financial downturn, for example, they may call those loans very quickly, exactly what you do not want to have happen to a business facing a downturn.

So those are not good replacements. I am deeply worried about the decline of community banks and all of our community banks.

**Chairman Beyer.** Great. Thank you very much. I will now yield to Senator Lee, who has returned to us. Senator, thank you for coming back.

**Senator Lee.** Thank you so much, Mr. Chairman.

Mr. Edwards, I would like to start with you. American businesses are some of the most innovative in the world. As you note in your testimony, we are global leaders in computer technology and business services, and in pharmaceutical development, just to name a few.

The most disruptive innovators that is where American businesses and workers are on the leading cutting edge and are often pioneered by new companies entering an existing market to challenge an outdated product or service.

Now you mentioned that the threat of higher taxes could make it harder to fund future innovative startups. Can you elaborate on how tax hikes or threatened tax hikes could make big businesses even bigger? And why market-based competition is such an effective check on corporate power?

**Mr. Edwards.** Well, venture capital is a unique American success story. It is the reason why lists of the most innovative companies in the world, the great majority of them are American because we have had since the late 1970s this massive flow of venture capital partly triggered by a famous 1978 cut in the Federal capital gains tax rate.

Chairman Beyer talked about, a little bit about the flow of funds to startups. It is true. There is a huge flow of funds through startups now, which is fantastic, but I hope they don't break the American system of moderate capital gains taxes and everything we have going on in places like Silicon Valley. Let's not break that.

We are doing great with launching new high-growth businesses. That is the way to challenge these big corporations going forward.

**Senator Lee.** Well thank you. My own State of Utah is fortunate to have had strong economic growth in recent years, as well as one of the strongest pandemic recoveries. Utah currently has one of the lowest unemployment rates in the Nation, and its GDP growth far surpasses the national growth rate. Our population growth over the last decade was also the highest in the Nation.

I attribute the state's resilience and continued economic prosperity to its business-friendly policies and its strong communities, families, and social ties, this is a concept we refer to as "social capital."

So, Mr. Edwards, as you pointed out in your research, many entrepreneurs face increasing tax and regulatory challenges at the Federal, State, and local level. These government impediments make starting and maintaining a thriving business needlessly complex and costly. And at the Federal level, the REINS Act would

give Americans an important check on costly Federal regulation by helping to hold Executive Branch agencies accountable. And I believe the REINS Act would make a meaningful difference for small businesses and entrepreneurs in the long term in particular.

In your view, what are some of the other important reforms that might help clear the path for innovation and support the new business formation?

**Mr. Edwards.** Well, I think this is a problem, and I think Dr. Philippon has talked about this in his research. The regulatory problems at all three levels of government block entrepreneurship. I mean, I applaud President Biden for looking at the issue of occupational licensing.

As you may know, the share of U.S. jobs that have the required occupational licenses have gone up from 5 percent in the 1950s up to over 20 percent today. At the state level, there are Certificate of Need laws that block investment in health care. There is a big problem with the U.S. Air Force. The U.S. Air Force, the way they are run is monopoly governing authority. Hence, the blocked new airline entry into the business.

So, I think there are problems at all three levels of government on the regulatory matters. My last point, back in the 1970s deregulation of airlines, and trucking, and many other industries was very much a bipartisan reform approach that everyone agrees was very successful.

I mentioned the beer industry, which Jimmy Carter deregulated at the Federal level. Airlines, and many other things. So, I think deregulation to help upstart businesses can be bipartisan.

**Senator Lee.** So, with regard to the airports, are you aware of any policy proposal on how we can fix that issue today? I have seen that, where you have got slots out there carefully allocated, and that has made it almost impossible to have new entrants. How do you fix that?

**Mr. Edwards.** So, there's some Brookings' economists who have written extensively about that. There is a problem with dominant carriers in hub airports who write these contracts with a government airport authority that exclude new entrants. The way to fix that is the way they have done it in Britain, which is you privatize the airports like Heathrow as a private airport has a much bigger incentive to open gates to real-time sort of pricing to allow upstart airlines to come in and buy gate space. And a lot of U.S. cities have blocked.

A last point on this is, we have a government authority in New York that owns all three airports. That makes no sense. And in D.C. the same authority owns National and Dulles. Why is that? Why not privatize the airports and let, for example, Reagan and Dulles compete with each other?

So, I think airports are something that again could be a bipartisan reform area.

**Senator Lee.** Well said. Thank you very much. Thank you, Mr. Chairman.

**Chairman Beyer.** Thank you, Senator, very much. I will now recognize—and, Senator, we are doing a second round. So, if you are inclined, we will come back around to you again.

Congressman Peters, the floor is yours.

**Representative Peters.** Thank you, Mr. Chairman. I will pick up again with Mr. Edwards just to see if I can get your answer on the concern raised about if it is true that Amazon might have so much owned the market and be competing against the market at the same time, how does that not discourage investment innovation?

**Mr. Edwards.** Well, I think you can see Amazon both ways. I mean, Amazon has been successful because it has been incredibly productive, and it has provided opportunities for millions and millions of small businesses.

I can see that there is an issue that they also compete against small businesses, but there is no reason why new platforms can't arise with a different model and compete against Amazon. I really don't believe that—I think any big corporation can be beat by upstart competitors.

When you look at history, I mean 15 years ago Apple dominated music streaming. Now Spotify has blown them away. It was a small startup in Sweden. So, I think upstarts can take on any company, even the biggest.

**Representative Peters.** You are not really arguing that that is a competitive model, but you are saying someone can just rise up and replace Amazon or compete with Amazon is what you are suggesting?

**Mr. Edwards.** Absolutely. It is not going to happen overnight, but it could well. I don't see any reason why a marketplace could not gravitate to new platforms in the future.

**Representative Peters.** Did you want to address why it is OK to have non-compete agreements in the fast-food industry?

**Mr. Edwards.** So, it's interesting you mentioned you're from California. California has had a ban on non-compete for over a century. I think that has actually been important for the rise of Silicon Valley and high tech in places like San Diego. So, I actually think that is a space issue. Space can solve that problem any time they want if they desire.

**Representative Peters.** I appreciate that, and I appreciate, Mr. Chairman, the chance to hear both sides of it, and I think we are informed. So, thank you very much and I yield back.

**Chairman Beyer.** So, thank you, Congressman Peters. I now recognize Congressman Schweikert for a second round.

**Representative Schweikert.** Thank you, Mr. Chairman. This is one of those conversations where I wish I had one of my charts because there is a hierarchy here of what creates a competitive disruptive economy, and then helps remove or compete away dominant market players.

We see what the Biden Administration has just recently done, and what you have actually just talked about, on some of the Executive Orders using the regulatory mechanism.

My concern—and I want to come back to this—is that many things you and I and our brothers and sisters in Congress do, are actually anticompetitive. And yet often we don't realize we're doing it.

I appreciate, Mr. Edwards, the comment on the Jobs Act, but that is almost a decade ago. And it took how many years to even

get an incremental crowd source funding mechanism, and even then, it barely exists because of the bureaucracy around it.

In many ways, we empower the bureaucracy in such a fashion that an economy that should be running on disruption and that innovation and that creates the price pressures, and the new systems of delivery, you and I keep supporting regulatory environments, reimbursement in health care, and others where I don't think we realize we are not being agnostic.

Think of some of the things we are doing on energy right now where we call out specific types of energy, instead of doing a piece of legislation that says we're agnostic. We don't care if it has these attributes. We don't care what the generation source is. Instead we let innovation and disruption take place.

Mr. Edwards—and I know your specialization has been a taxation capital market—what do we do as policymakers to maximize that disruptive type of economy that in many ways gives everyone a fighting chance to be that successful entrepreneur?

Can you think of items within both the Federal bureaucracy and our legislative agenda that would help that happen?

**Mr. Edwards.** Well, I mean I am in favor of further liberalization of the rules on accredited investors. There is a good argument—

**Representative Schweikert.** That is also my other bill.

**Mr. Edwards.** Right. Right. I mean there's a good argument that we shouldn't even have those rules. I think giving middle class Americans access to investment in private equity, expanding and liberalizing those rules, is an important thing to do.

You know, with capital gains, capital gains is really important not only for the investors—I mentioned angel investors and venture capital—but for the entrepreneurs themselves. If you have a high capital gains tax rate, people are not going to want to be entrepreneurs. They are going to want to go for salary jobs. And also, you know, about three-quarters of all tech firms in Silicon Valley use stock options for employees where the benefit, again, is capital gains.

So, Silicon Valley companies are cash poor. What they have is they can offer stock options. That has been hugely important for Silicon Valley and other tech clusters.

So I am saying let's not break what has worked in the United States for our tech industry.

**Representative Schweikert.** Any thoughts of what we could do in the tech regulatory world for the true sort of micro entrepreneur? Such as, the minority woman who lives down the street from me who is actually starting a series of barbeque trucks.

**Mr. Edwards.** So I just published a study a month or so ago at Cato looking at State and local regulations, and I listed about 15 or 16 different types of regulations.

One very interesting area that is home-based businesses.

Two-thirds of all American businesses are launched at home. But a lot of cities have tight zoning laws that prevent home-based businesses from starting.

Apple was started in a garage. Hewlett Packard was started in a garage. Amazon was started in a garage. Home-based businesses

are really important, and that is something that should be an area of bipartisan reform.

**Representative Schweikert.** Chairman Beyer, we are back to the need for the chart of both the things we can do at the regulatory level for those companies that are using their oligopoly power, but all the way down to regulatory bureaucracy, State and local, and those in the Federal Government from what we do tax-wise and becoming technology neutral, whether it be from health care to environment, to other things. We could probably have that disruptive revolution that creates a much more egalitarian economy. And with that, I yield back.

**Chairman Beyer.** Congressman Schweikert, thank you. I am going to have to get you together with Mr. Hagga of our Joint Economic Committee team who is the only other person I know who is as chartphilic as you are. And with that, let me—I want to thank each of our witnesses today for their expert contributions. Competition is foundational to a strong economy. It helps place the promise of the American Dream within reach for workers and entrepreneurs, but the concentration of corporate market power subverts this promise, worsening economic inequality and hindering productivity and economic growth, as we have heard again and again this afternoon.

To promote shared prosperity, Congress must continue to advance an economy where all can compete and contribute. So thank you to Professor Philippon. We hope that the fireworks are fun tonight on Bastille Day in Paris. Thanks for helping us understand the economics of competition, how to restore open markets, and for explaining how our failed experiment with lax antitrust enforcement has led to reduced investment, weaker productivity growth, higher prices, and stagnant wages.

And thank you to Dr. Bahn for breaking down the word monopsony, and for sharing your expertise on how the erosion of competition in labor markets impacts workers. As you made clear, when employers must compete for labor, it leads to higher wages, more flexible hours, and better benefits for workers, and I am eager to share your chart, the Herfindahl-Hirschman with some political science. There is a lot more to be pulled from that.

And thank you, Ms. Mitchell, for sharing your insights into the challenges that small businesses face, and specifically the examples that you cited from around the country. This is vital to our understanding of how they are impacted by rising corporate power. And your focus on solutions to strengthen communities and to restore the ability of small businesses to compete will guide our work.

We are also grateful to Mr. Edwards. It is always good to have somebody from Cato to come to share your thoughts and expertise with us today.

And it is a special treat to welcome former JEC staff as expert witnesses.

Thanks also to all my colleagues for joining this important discussion and sharing your insights. We have the power to restore competition and build shared prosperity by vigorously enforcing our antitrust laws and adapting them to the 21st Century, by funding our Federal enforcement agencies, and by protecting the rights of workers to organize.

We commit to moving these ideas forward, and as we do this important work we hope to continue to rely on your expertise and good faith. So thank you all for participating today.

The record will remain open for three business days, and this hearing is formally adjourned.

[Whereupon, at 4:04 p.m., Wednesday, July 14, 2021, the hearing was adjourned.]





## **SUBMISSIONS FOR THE RECORD**

PREPARED STATEMENT OF HON. DONALD BEYER JR., CHAIRMAN,  
JOINT ECONOMIC COMMITTEE

This hearing will come to order. I would like to welcome everyone to today's hearing focused on the economic impact of concentrated corporate power. I was encouraged to see President Biden's signing of an Executive Order just last week taking action on this very issue.

I want to thank each of our distinguished witnesses for sharing their expertise today. We have a world-class panel, and I am excited to hear from them.

COMPETITION ENABLES SHARED PROSPERITY

Access to opportunity, open markets and fair competition are fundamental to advancing shared prosperity in our country.

Competition in markets leads to lower prices and higher quality goods and services, ensuring that consumers do not overpay for the products and services they rely on, whether a vital medication or broadband internet.

Workers also benefit when businesses compete for their labor. Competition for workers incentivizes firms to pay good wages or risk losing their workers to competitors, thereby serving as a counterbalance to rising corporate power and enabling workers to bargain for better working conditions.

And competitive markets allow everyday Americans to take a chance on an idea and start a business. Or maybe they innovate on a product and make it more affordable.

Research shows the possibility of new entrants into a market compels existing firms to continue investing in people and capital to stay ahead, which also elevates the United States as a leader in the global economy.

THE PROBLEM

We are here today because corporate concentration imperils shared prosperity and exacerbates economic inequality.

Across industries—including health care, financial services, telecommunications, agriculture and more—we are seeing higher levels of concentration than there were three decades ago. Evidence shows this has led to weaker business investment, higher prices for consumers and lower wages for workers.

This consolidation of corporate power has allowed the wealthiest at the top to capture a larger share of the gains from economic growth: Amid record-breaking profits, corporations are paying less in taxes today than they did 30 years ago while reinvesting 10 cents less per dollar of profit. All of this has led to reduced productivity gains in concentrated industries and slower growth economy-wide.

This is a problem because consumers are bearing the burden. On average, we pay about twice as much for cellphone plans than some of our friends in other advanced economies with more providers. The same is true for broadband access. With more competition, hardworking Americans could save billions each year.

Our workers are also paying for this in the form of stagnant wages. Research shows, the median American household loses an estimated \$5,000 each year through reduced wages and higher prices caused by a lack of competition.

THE CAUSE

How did we get here?

The explosion of mergers and acquisitions have played a key role in the consolidation of industries. Over the past 40 years, they have been allowed to proceed at an unprecedented pace, and the same holds for an array of anticompetitive practices by industry leaders.

This is due in part to our failed experiment with a more lax enforcement of anti-trust laws and the under-funding of Federal enforcement agencies.

During this time, our economy has lost half of its firms on a per capita basis. This has disproportionately impacted marginalized communities, where we've seen a disappearance of independent grocery stores, pharmacies and community banks.

The rise of non-compete agreements is also part of the story. At least 1 in 3 businesses require that workers sign non-compete agreements, which suppress workers' wages, hinder their ability to pursue better opportunities and contribute to persistent racial and gender disparities. About 1 in 5 workers without a college education is subject to these non-compete agreements.

## PROPOSALS TO MAKE PROGRESS

The good news is that there are steps that we as a country can take to reduce this concentration of corporate power. We'll hear more about these proposals from our expert panel today.

Additionally, there have been productive bipartisan conversations here on Capitol Hill about how to best tack these challenges. Following a bipartisan investigation that uncovered evidence of ample anticompetitive practices, the House Judiciary Committee recently approved six bipartisan bills to address business concentration and bolster competition on digital platforms.

In the Senate, my dear friend and colleague, Senator Klobuchar wrote an entire book about antitrust, the challenges we face and what we can do to make our economy more competitive.

Earlier this year, the Senator introduced the Competition and Antitrust Law Enforcement Reform Act. Among other things, this bill would give Federal enforcers more resources to do their jobs and strengthen prohibitions on anticompetitive conduct. The Senator will tell us more about this and some of her other ideas shortly.

## THE OPPORTUNITY BEFORE US

We have an opportunity now to restore a competitive economy and advance shared prosperity.

President Biden's Executive Order advances a whole-of-government approach to promote fair competition, and it is now our turn to act here in Congress with bold and decisive action.

And this is why I look forward to the testimonies and insights of our witnesses today. Now, I would like to turn it over to Senator Lee—another leading voice in this space—for his opening statement.

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PREPARED STATEMENT OF HON. MIKE LEE, RANKING MEMBER,  
JOINT ECONOMIC COMMITTEE

From our earliest days, it has been businesses—both large and small—that have been the backbone of our country. As Calvin Coolidge once put it, “The chief business of the American people is business.”

From colonial farmers, to pioneering homesteaders, to merchants, craftsmen, and professionals, American entrepreneurs have sought to build a better life for themselves and achieve the American dream. For centuries, innovative Americans have come together through commerce and competition to improve life for themselves, their families, and their communities.

It is no surprise, then, that American businesses are a source of local and national pride. They are often more than place to work; they add vitality into our neighborhoods, towns, cities, and communities.

Businesses are also the heartbeat of our economy. Small businesses in particular represent half of all private sector jobs in the U.S., nearly half the U.S. GDP, and account for two out of every three new jobs created in the U.S. today.

Over the years, we have seen the rise of many big businesses, and today we are again witnessing the increasing market power of a few large firms. Of course, this raises important questions. Many people are concerned that the largeness of certain enterprises makes them inherently dangerous to small businesses, to consumers, and to workers.

However, the fact is, big is not always bad—but neither is it always good. And we should not be forced to pretend that it is one way or the other. To imply that we should support or defend a business simply based on its size is unserious and meant to move the conversation away from a firm's specific conduct.

The rise of some highly visible large firms is oftentimes a product of their greater market-based innovations. The prospect of gaining a larger market share incentivizes competition that leads to better products and services at lower prices. Market share won through competition should be celebrated, not punished.

Changing technology and increasing investment in software, processes, and R&D may also be an important factor. In industries where these investments are protected by patents, policy has explicitly created government-granted monopolies. We allow this because the prospect of collecting monopoly profits acts as an incentive for firms to innovate and invest in new ideas.

In other areas, new investments are associated with higher productivity gains—especially in the high-tech and consumer sectors—suggesting that these businesses have gained greater efficiencies through market competition.

But there are other factors behind industry concentration that could indeed be cause for concern and deserve our attention.

For instance, government regulations impose huge, stifling barriers to new business creation and protect existing firms from competition. From 2010 to 2020, the U.S. Government imposed an average of 365 new regulations each year, affecting everything from how farmers make their livings, to which employees small business owners are legally allowed to hire, to how many workers they can afford to pay.

These regulations impose tremendous costs on American businesses, workers, and taxpayers, costing an average of \$81 billion per year and requiring 77 million hours of paperwork annually. This burden disproportionately falls on small businesses and startups. In fact, there is plenty of evidence showing that regulatory accumulation reduces the number of small businesses relative to larger ones.

In this regard, Federal, State, and local regulations are locking out small businesses from competing and thus further entrenching big businesses. Reducing regulatory requirements on American businesses would help foster more market competition.

Antitrust enforcement has also been declining for decades. Some monopolies are indeed bad, and those that rise through anticompetitive and exclusionary conduct—and not through competition on the merits—stand in the way of free markets and degrade the options available to consumers.

A proper response in this regard is to modernize antitrust laws to find the right balance between over-enforcement and under-enforcement. That is exactly why I've introduced the Tougher Enforcement Against Monopolists, or TEAM Act, which would preserve free market competition by codifying the consumer welfare standard and strengthening enforcement against companies that engage in anticompetitive behavior.

Other efforts, like the administration's recent executive order on competition, unfortunately miss the mark by overstepping the president's authority and massively expanding Federal regulatory power.

Whatever action we take, we ought to remember that big businesses are not necessarily harmful if workers continue to find well-paying jobs, and consumers continue to benefit from high-quality, diverse, and low-cost goods and services.

The beauty of our free market economy is that whatever your cause or your career, your success depends on your service. The way to look out for yourself is to look out for those around you. The way to get ahead is to help other people do the same, and to put your God-given talents and efforts to work in the service of your neighbor. In the process of earning money and building wealth, individuals can add value to other people's lives.

In all of our efforts going forward, we ought to ensure that businesses both large and small are able to keep doing just that, and I am hopeful that today's hearing will aid us in achieving this goal.

Thank you.

## Testimony to the Joint Economic Committee Regarding the Concentration of Corporate Power

Thomas Philippon\*

July 14, 2021

Free markets have been a bedrock of the American economy for more than a century. Free and competitive markets have many virtues: they lead to lower prices for consumers; they encourage businesses to hire, invest and innovate; they increase the variety and quality of goods and services; and competitive labor market improve compensation and working conditions.

Recent years, however, have witnessed troubling signs that US markets have become less competitive: most industries have become more concentrated and dominant firms have become more entrenched; prices in several key sectors are significantly higher in the U.S. than in other rich countries; corporate profits have increased while the labor share of national income has decreased; investment has been weak while payouts to shareholders have increased. Several factors probably contribute to each of these facts, but taken together they suggest a significant decline in competition.

In this short essay I will review the evidence, explain why free markets are fragile, and assess the impact of declining competition on the living standards of American families.

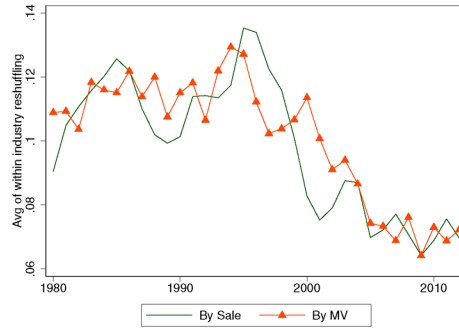
### 1 Evidence

Some studies offer a broad view of the US economy. Others focus on the markets for specific products or services in specific locations. These two types of studies are complementary. With broad studies it can be difficult to isolate confounding factors and establish precise causal mechanisms. Specific studies are not always timely and can miss important trends that cut across several markets.

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\*Max L. Heine Professor of Finance New York University, Stern School of Business New York, NY.

Figure 1: Declining Turnover of Dominant Firms



The figure shows one minus the rank correlation of (sales, market value) over the following 5 years. Sources: Covarrubias et al. (2019), Philippon (2019).

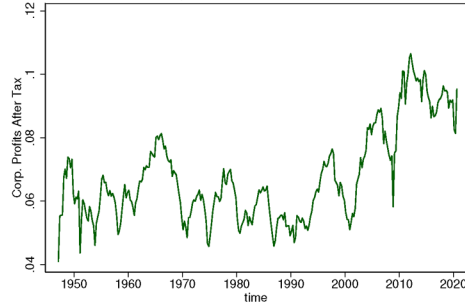
### 1.1 Concentration and Entrenchment

Trends in industry concentration are by far the most discussed in mainstream media, so I will be brief. Many studies have shown that concentration has increased in more than three quarters of US industries since the 1990s (Grullon et al., 2019; Autor et al., 2020). Concentration is a useful but imperfect indicator because it is the outcome of a dynamic process. As a result, concentration can be benign or harmful depending on the underlying driving force. Concentration is beneficial when it is driven by lower trade costs, e.g. lower shipping costs or lower search costs. When these costs are low the best producers expand at the expense of inefficient ones, which improves consumers' welfare and increases concentration simultaneously. This reallocation can happen within a country (geographical expansion, Rossi-Hansberg et al.) or across countries (international trade, Covarrubias et al. (2019)). An important point is that this type of concentration is beneficial precisely because new competitors enter into existing markets. Some industries – in manufacturing, in retail and wholesale trade – fit this pattern, but many – in telecom, air transportation or healthcare – do not.

Instead of looking at the concentration of market shares at a point in time, Figure 1 considers the reshuffling of market shares. In competitive industries entrants should challenge dominant firms and thus we would expect market shares to change over time. To test this idea we rank all large firms – by market value or by revenue – in a particular year, and we rank them again five years later. The change in rankings over a five-year window is a measure of reshuffling. Figure 1 shows that reshuffling has decreased over the past twenty years.<sup>1</sup> We can make similar point by looking at top 100 (or 500) companies. In 2000 only 45 of the largest 100 American companies

<sup>1</sup>Formally the figure shows one minus the rank correlation in year  $t$  and  $t + 5$ . If the correlation between the two rankings is one, it means that the relative position of firms has not changed at all over five years. If it is zero, it means that there has been a complete reshuffling within the industry. We can therefore define reshuffling as one minus the rank correlation.

Figure 2: Corporate Profits  
Corporate Profits over GDP



Sources: NIPA and Financial Accounts of the United States.

had been in the top 100 every year between 1991 and 2000. In 2019 that figure was 71 out of 100. I find this statistic useful because it provides a dynamic view of the economy. It suggests that dominant firms have become more entrenched over the past 20 years.

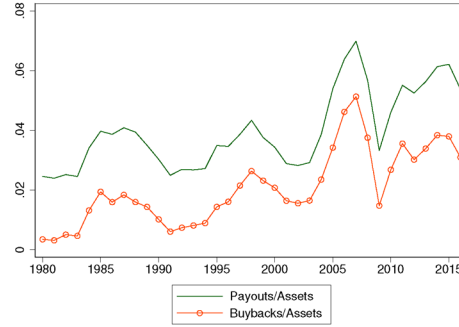
## 1.2 Corporate Profits

Figure 2 shows the evolution of after-tax non-financial corporate profits in the US since 1946. After-tax profit used to fluctuate around 6% of GDP for most of the post-war period. After 2000, however, they increased substantially to around 9% of GDP. Several factors could explain this evolution. Technological change, for instance, could have increased the role of capital in production. This explanation would imply a boom in investment, however, and Gutiérrez and Philippon (2017) show that investment - both tangible and intangible - has been lower than expected over the past 20 years.

High corporate profits did not, in fact, lead to high investment, but, as Figure 3 shows, to high payouts to shareholders. Figure 3 also shows that the increase in payouts is entirely explained by the increase in share buybacks. Dividends have been roughly constant as a share of assets.

These trends reflect in part the rise of intangible assets past 40 years (Crouzet and Eberly, 2019). Intangible expenses explain a large part of the rise in markups documented by (De Loecker et al., 2020). Intangible assets can blur the line between efficient and inefficient concentration: they make some firms more productive but also create barriers to entry.

Figure 3: Payouts to Shareholders



Total Payouts (Dividends+Buybacks) in Green; Buybacks in Red Circles. All series are scaled by total assets. Sources: Compustat and Gutiérrez and Philippon (2018).

### 1.3 Labor Markets

Industry consolidation can affect workers as well as consumers. Monopoly and monopsony power have broadly similar implications for the distribution of national income. Dominant employers can mark down wages and have weak incentives to improve working conditions. They can also impose noncompete agreements on their employees. Azar et al. (2017) show that employers in many local labor markets enjoy monopsony power. The academic discussion centers around the size of the effect. Schubert et al. (2021) argue that the aggregate impact is relatively small since most U.S. workers are not in highly concentrated labor markets, but they find that a subset of workers experience meaningful negative wage effects from employer monopsony power. Stansbury and Summers (2020), on the other hand, emphasize the decline in unionization and argue that a decrease in labor power (the opposite of monopsony) can account for recent trends in the US economy.

### 1.4 Specific Studies

We must complement the broad trends discussed above with detailed studies of specific industries. For instance, Gaynor and Town (2012) study Hospital consolidation and show that they generally results in higher prices, and Gaynor (2021) provides a recent review of competition in the US healthcare system. Micro studies make it possible to carefully study prices, how they relate to costs, and how they vary across locations (Cooper et al., 2019, 2021). Faccio and Zingales (2017) estimate that US consumers would gain \$65b a year if US mobile service prices were in line with German ones, and Philippon (2021) shows that American consumers pay more for broadband and wireless services than consumers in other industrialized nations.



Several studies point out that the weakening of antitrust enforcement is at least partly responsible for the decline in competition (Kwoka, 2015). Ashenfelter et al. (2014) survey 49 studies that estimates the price effects of consummated horizontal mergers in 21 industries over 30 years. Of the 49 studies surveyed, 36 find evidence of merger-induced price increases.

### 1.5 Take Away

Several economic forces are always simultaneously at play in a large and diversified economy such as that of the US. The conclusion of our rapid review of the literature is not that every industry has experienced a rise in market power. Some industries are subject to increasing foreign competition. The bulk of the evidence suggests, however, that many industries have become less competitive and that excessive market power has become a serious issue.

## 2 Consequences for Consumers and Workers

The economic consequences of monopoly power are complex so I find it useful to decompose them into redistribution effects (inequality and transfers of wealth) and production effects (investment, productivity growth).

### 2.1 Direct Impact on Consumers

Let us start with the redistribution effects. Combining data on prices, wages, concentration and investment, Philippon (2019) concludes that prices in the US are somewhere between 7% and 8% too high. The typical household spends about \$53,000 each year. Increased monopoly rents over the past 20 years thus represent an additional cash outlay of about about \$3,700 per year. This is a significant expense. According to the 2019 Report on the Economic Well-Being of U.S. Households from the Federal Reserve, “relatively small, unexpected expenses, such as a car repair or a modest medical bill, can be a hardship for many families.” In their survey, only about 60% of adults report that they would be able to cover a hypothetical expense of \$400 with cash (or its equivalent).

If we aggregate these extra payments across all households, we find that American families pay around \$600 billion each year in excessive monopoly rents. These transfers of wealth increase inequality because capital income is more highly concentrated than labor income. The median household does not earn much capital income compared to households in the top deciles or percentiles of the income distribution.

### 2.2 Impact on Growth

Let us now turn to production effects. The estimates we have just discussed reflect direct wealth transfers from households to corporations, and from workers to shareholders, but they do not take into account changes in quantities of goods and services produced. Market power not only redistributes income, but it also affects GDP. To understand the full consequences of monopoly power we must therefore take into account its impact on investment, employment,

and production. Economists use models to answer this type of question.<sup>2</sup> I will use a simple model to perform the following thought experiment: suppose we could roll back the barriers to entry, undo the bad mergers, and somehow return to the level of competition we had in the late 1990s. How much better off would we be?

We start from an economy where GDP is 100 units and labor earns 65 of these units, so the labor share is exactly 65%, which is its historical value until 2000. Firms include a 5% markup in their (gross) output prices and their net profits exactly cover their fixed costs. This corresponds to a standard economy with free entry. We then engineer an increase in gross markups from 5% to 10%.<sup>3</sup> The demand for capital, labor and intermediate inputs decreases. In this economy with lower competition, GDP drops to 95 units and labor income drops to 58 units. The new labor share is therefore  $58/95 = 0.61$ , which is in line with the decline observed in the US. The stock of productive private capital decreases by 10%, consistent with Gutiérrez and Philippon (2017).

Let us put these numbers into perspective. US GDP is about \$20 trillion. If we could make the economy as competitive as it was 20 years ago, this would increase by 5% to \$21 trillion. The compensation of employees is about \$11 trillion. In a competitive economy it would be  $65/58 \times 11 = \$12.3$  trillion. These calculations suggest that the lack of competition has deprived American workers of about \$1.3 trillion of labor income each year. For the median households, this represents a decrease in living standards of more than \$5,000 per year. These calculations give us a sense of the magnitude of the benefits that enhanced competition would bring.

### 3 Free Markets as a Public Good

In the conclusion of my recent book, *The Great Reversal* (Philippon, 2019), I write that free markets are surprisingly good, and surprisingly fragile. I would like to conclude this essay by explaining why. The list of industries where dominant firms threaten free and competitive markets is long and diverse. It includes widely different types of goods, services, and technologies, which appears puzzling at first, and suggests that some fundamental economic principle must be at play.

Free markets are fragile because of a collective action problem (Olson, 1965). Since – by definition – market power is concentrated, the dominant players can coordinate to maintain and reinforce it. The beneficiaries of free markets, on the other hand, are at best loosely connected and face a nearly insurmountable collective action problem. One internet service provider and one landlord can effectively restrict the options of many tenants.

Free markets, then, are a kind of public good, like clean air or clean water. We all benefit from them, but our individual incentives to protect them are rather weak. This is why we need public institutions to protect free

<sup>2</sup>A model is a set of equations that represent the decisions of economic agents and the clearing of all markets. For instance, households supply labor and make consumption/saving decisions. Firms hire capital, labor and intermediate inputs, and compete with each other to supply the goods and services that households and other businesses want to buy. They understand that demand is elastic: they lose customers if they set their prices too high. All of these decisions can be written as mathematical objects. We can also incorporate the decisions of the government (taxes, spending, regulations) and the central bank (interest rates).

<sup>3</sup>There is an important technical point here. Because intermediate inputs are also marked up, value added markups increase by more than gross output markups. How much more depends on the details of the production process (e.g., linear vs. roundabout) but with an intermediate revenue share around 0.4, this increase of 5 percentage points in gross output markups corresponds to an increase of 7 to 9 p.p. in value added markups.

markets, so that consumers, workers and small firms can trust the prices they see and focus on making the right decisions without excessive fear of being abused by market power.

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**Kate Bahn**  
**Washington Center for Equitable Growth**  
**Testimony before the Joint Economic Committee,**  
**Hearing on “A Second Gilded Age: How Concentrated Corporate Power Undermines Shared Prosperity”**

**July 14, 2021**

Thank you Chair Beyer, Ranking Member Lee, and members of the Joint Economic Committee for inviting me to testify today. My name is Kate Bahn and I am the Director of Labor Market Policy and the interim Chief Economist at the Washington Center for Equitable Growth. We seek to advance evidence-backed ideas and policies that promote strong, stable and broad-based growth. Core to this mission is understanding the ways in which inequality has distorted, subverted and obstructed economic growth in recent decades.

Mounting evidence, which I will review today, demonstrates how the rising concentration of corporate power has increased economic inequality and made the U.S. economy less efficient. Reversing the trends that have led to a “second gilded age” is critical to encouraging a resilient economic recovery following the pandemic-induced economic crisis of 2020 and encouraging a healthy, competitive economy for the future.

**Introduction**

The United States boasts one of the wealthiest economies in the world, but decades of increasing income inequality, job polarization, and stagnant wages for most Americans has plagued our labor market and demonstrated that a rising tide does not lift all boats. Furthermore, economic evidence demonstrates how inequality results in an inefficient allocation of talent and resources while increasing corporate concentration that enriches the few while holding back the entire economy from its potential. Understanding the causes and consequences of the concentration of corporate power will guide policymaking in order to ensure that the economic recovery in the next phase of the pandemic will be broadly shared and ensure a more resilient economy.

“Monopsony” is a key economic concept to understand in this discussion. Monopsony is the labor market equivalent of the better-known phenomenon of “monopoly,” but instead of having only one producer of a good or service, there is effectively only one buyer of a good or service, such as only one employer hiring people’s labor in a company town. Like in monopoly,

this phenomenon is not limited to when a firm is strictly the *only* buyer of labor. Today I will explain the circumstances and effects of employers having significant monopsony power over the market and over workers.

When employers have outsized power in employment relationships, they are able to set wages for their workers, rather than wages being determined by competitive market forces. Given this monopsony power, employers undercut workers. This means paying them less than the value they contribute to production. [One recent survey of all the economic research on monopsony finds that, on average across studies, employers have the power to keep wages over one-third less than they would be in a perfectly competitive market.](#) Put another way, in a theoretical competitive market, if an employer cut wages then all workers would quit. But in reality, [these estimates are the equivalent](#) of a firm cutting wages by 5 percent yet only losing 10 percent to 20 percent of their workers, thus growing their profits without significantly impacting their business.

It is not only important for workers to earn a fair share so they can support themselves and their families, but also critical to ensure that our economy rebuilds to be stronger and more resilient. Prior to the current public health crisis and resulting recession, earnings inequality had been growing since at least the 1980s while the labor share of national income has been declining in same period. This is cause for concern as [recent evidence](#) suggests that the labor share of income has a positive impact on GDP growth in the long-run.

The unprecedented economic shock caused by the coronavirus pandemic revealed how economic inequality leads to a fragile economy, where those with the least are hit the hardest, [amplifying recessions](#) since lower-income workers typically spend more of their income in the economy. But the crisis also demonstrated how economic policy targeted toward workers and families can provide a foundation for growth. This is because workers are the economy, and pushing back against the concentration corporate power by providing resources to workers is the foundation for strong, stable and broadly shared growth.

#### The Causes of Monopsony

The concept of monopsony was initially developed by the early 20th century economist Joan Robinson, who examined how lack of competition led to unfair and inefficient economic outcomes. The prototypical example of monopsony is a company town, where there is one very dominant employer and workers have no choice but to accept low wages since they have no outside options. This is the most extreme case, but it is important to note that firms have monopsony power in any circumstance where workers aren't moving between jobs seamlessly in search of the highest wages they can get.

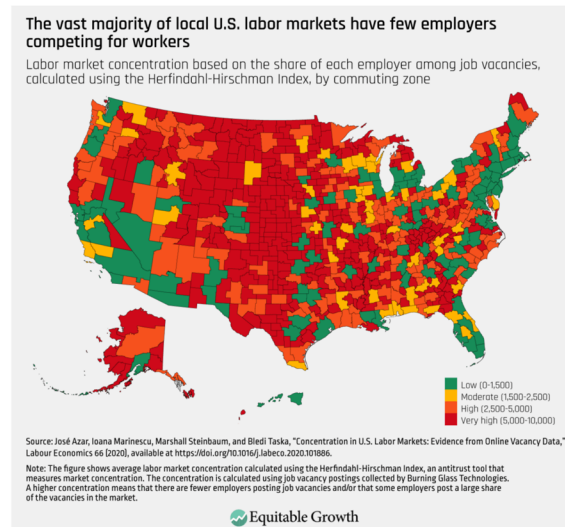
Firms can use monopsony power to lower workers' wages any time workers:

- Have few potential employers
- Face job mobility constraints
- Can only gather imperfect information about employers and jobs
- Have divergent preferences for job attributes
- Lack the ability to bargain over those offers

I will go through each of these factors in turn and demonstrate how labor markets are unique compared to other markets in dealing with competitive forces.

While concentrated labor markets are not the norm, they are pervasive across the United States, especially within certain sectors or locations. When markets are very concentrated, employers can give workers smaller yearly raises or make working conditions worse, knowing that their workers have nowhere to go to find a better job with better pay. (See Figure 1.)

Figure 1





A study published in the journal *Labour Economics* by economists Jose Azar, Ioana Marinescu, and Marshall Steinbaum finds that 60 percent of U.S. local labor markets are highly concentrated as defined by U.S. antitrust authorities' 2010 horizontal merger guidelines. This accounts for 20 percent of employment in the United States. Research by economists Gregor Schubert, Anna Stansbury, and Bledi Tsaka goes further by estimating [workers' outside options](#), or the likelihood a worker is able to change into a different occupation or industry. This study finds that even with a more expansive definition of job opportunities more than 10 percent of the U.S. workforce is in local labor markets where pay is being suppressed by employer concentration by at least 2 percent, and a significant proportion of these workers facing few outside options are facing pay suppression of 5 percent or more. As [study co-author Anna Stansbury noted](#), "for a typical full-time workers making \$50,000 a year, a 2 percent pay reduction is equivalent to losing \$1,000 per year and a 5 percent pay reduction is equivalent to losing \$2,500 per year."

Certain sectors are now very concentrated, such as the healthcare industry. [In a paper](#) by the economists Elena Prager and Matt Schmitt, they find that hospital mergers led to [negative wage growth](#) among skilled workers such as nurses or pharmacy workers. Consolidation and outsized employer power, alongside other phenomenon such as [the fissuring of the workplace](#), may have broader impacts on the structure of the U.S. labor market when it affects the overall structure of the labor market, including the hollowing out of middle class jobs that have historically been a pathway for upward mobility.

Research by sociologist Rachel Dwyer finds that [job polarization in care work](#) sectors such as healthcare, which is heavily concentrated, is a primary cause of overall job polarization in the United States, where there are fewer middle-income jobs and growing employment at the low end and the high end of the labor market. Downward pressure on wages in high-growth industries such as healthcare can impact employment opportunities for all Americans.

But as I noted, concentration is not the only source of monopsony power. Job mobility—the ability to easily move between jobs—also affects labor markets and, in turn, may give employers power to set wages below competitive levels. Job mobility can be limited by anticompetitive conduct, where employers intentionally limit the ability of their employees to find other jobs or employers collude with each other to set pay standards—even when there are technically many employers in a local labor market. Noncompete agreements, where workers sign away their right to go work for a direct competitor of their employer, have become pervasive, including [among low-wage workers](#) where there is arguably no justification to limit worker mobility due to the necessity to protect trade secrets.

Research by economists Evan Starr and Michael Lipsitz found that after [the Oregon state ban on noncompete agreements in 2008](#) job mobility increased by 12 percent to 18 percent and wages

grew 4.5 percent more in occupations with high noncompete usage compared to those with low noncompete usage. The Executive Order by the Biden Administration released on Friday, July 9, explicitly asked the Federal Trade Commission to ban or limit these agreements.

But other factors influence mobility between jobs, including transportation networks and personal constraints on commute time. The greater importance of a shorter commute time for women workers contributes to the gender wage gap since [it limits women's job searches](#). Employer-provided healthcare discourages changing jobs, or what economists' call "job lock." Research by economists Adriana Kugler and Ammar Farooq found that more generous Medicaid eligibility [reduced job lock](#) and increased the likelihood that workers changed jobs into higher paying occupations. A variety of real-life factors affect how workers switch jobs, which in turn can affect how much power employers will have over setting wages.

Asymmetric information between employers and workers also influences how workers sort between jobs and puts downward pressure on wage offers. Workers often know little about the salary range at potential employers or even within their own firms. A "[salary taboo](#)" discourages workers from asking their colleagues their salary or disclosing their own. In contrast, employers know what all their employees are paid and often require applicants to disclose their current salaries or competing job offers, giving them much more information to work with.

In scenarios where a new salary transparency regime was instituted, such as [one study of public-sector workers in California](#), workers were more likely to quit their jobs once they knew the pay scales within their workplaces, which, in effect, is a competitive market response to greater information. Likewise, [employers may have imperfect information](#) about the ability of job applicants, so wage offers to new employers may not be connected to workers' abilities.

And finally, heterogeneous worker preferences, where individual preferences for attributes of jobs are unique and varied, also gives employers the power to undercut wages. Workers are not fully compensated for the tradeoff between their preferences and the job offers employers make. Workers who are more likely to face hostile work environments, among them Black workers in primarily White occupations or [women in male-dominated fields](#), may prefer workplaces that are more inclusive. Or parents who have primary responsibility for caretaking for their children may need more a predictable schedule or autonomy over their schedules. But research on so-called [compensating wage differentials](#) finds that workers are not fully compensated for these imperfect tradeoffs they make in their job choices.

#### How Monopsony Exacerbates Economic Disparities

The concentration of corporate power has dire consequences for workers who are already disadvantaged in the U.S. economy. Regional economic divergence between urban and rural areas is exacerbated when there are few job options for workers in less-populated parts of the country. Workers facing hiring discrimination will have fewer job offers, so they'll be forced to accept substandard opportunities. Outside life circumstances, such as being the primary caretaker for children in a family as women are more likely to be, may limit the scope of a worker's job search. And having an unstable fallback position, without personal wealth or adequate income supports, may reduce the ability of a worker to search for a job that is both the best fit and garners the highest possible wages. Employers are able to exploit these conditions by undercutting workers' wages without risking losing their labor supply, amplifying the negative consequences of rising corporate power.

The rise of monopsony across the United States has heightened economic challenges in particular in rural areas, depressing wages below what they would otherwise be. Labor markets in rural areas are much [more likely to be concentrated](#), which may partially explain why [urban labor markets have higher wages](#) where competition for workers is higher. As researcher Zoe Willingham and economist Olugbenga Ajilore have written, this has amounted to [the reemergence of the modern company town](#) in many rural areas. One case in point: [Research by economist Justin Wiltshire](#) finds that Walmart Supercenters push down both earnings and employment across the counties where they were opened compared to counties where a Walmart Supercenter was proposed but blocked locally. Walmart is able to do this because in those counties it is the dominant employer of retail workers, giving it the power to set wage rates, compared to areas where there were many different retailers competing for workers.

[My own research with economist Mark Stelzner](#) examines how external conditions of structural racism and sexism give individual employers the ability to exploit workers along the lines of race, ethnicity, and gender. One such way is that the vast wealth divide between Black, Latinx, and White Americans makes it harder for Black and Latinx workers to search for jobs when taking time out of the labor force exposes them to a much greater financial risk. If Black and Latinx workers don't have the financial cushion to maintain job search periods without income or adequate income support such as Unemployment Insurance, then they are less likely to quit jobs that offer low wages or poor working conditions.

[Women workers also face unique barriers](#), such as hostile working conditions including sexual harassment. Insufficient legal protections or workplace recourse can leave women neither able to combat the harassment nor leave their jobs without wealth to manage the search for a job with better conditions. The result is employers facing little risk of their workers quitting, giving them the power to undercut wages. And women workers face additional constraints to job

mobility imposed by a disproportionate care burden within families. If a woman is the primary caretaker for children or other family members with care needs, then this will reduce the geographic scope of her job search and may limit acceptable job schedules. This results in women being less likely to move around for jobs within their occupation in search of the best pay they can receive.

The aggregate result of these individual family constraints are employers' ability to offer women lower wages. Research on teachers has found that [women teachers are over-represented in lower paying school districts](#), which may be partially explained by women's lower ability to search around for the highest paying position. On top of this, within school districts pay differences between women and men are also significant, which demonstrates how lower bargaining power for women persists despite rigid pay structures.

Mainstream economic orthodoxy has argued that wages are set by competitive forces, so proactive policies to raise wages and increase worker power would limit the potential for economic growth that comes from competition. **Yet the broad research indicates that the U.S. labor market is anything but competitive, including evidence that monopsonistic labor markets give employers the power to suppress wages by more than one-third.** In fact, one insight from the monopsony framework developed by Joan Robinson in the early 20th century is that raising wages and increasing worker power actually encourages the outcomes that would exist in a competitive labor market, with greater earnings alongside higher employment levels.

#### **How to Push Back on Corporate Power Through a Robust, Pro-Competition Policy Agenda**

Reversing the trends that caused this "Second Gilded Age" starts with ensuring that the U.S. economy is competitive. Robust antitrust enforcement of existing laws against concentration and anticompetitive conduct is the first step toward ensuring that economic progress is shared between workers and employers. The Biden Administration is also starting to strengthen enforcement against anticompetitive conduct, including excessive use of non-compete agreements. But this can go further, including [new laws](#) that would codify, clarify, and strengthen antitrust law for labor markets. Without significant legal precedent for antitrust protections in labor markets, enforcers have little recourse to protect workers, but legislation can pave the way.

But antitrust actions alone are not sufficient when the sources of monopsony power also come from inherent, unique features of the U.S. labor market compared to other markets such as commodities. For this reason, another important way to address the concentration of corporate power is to build countervailing power for workers. In practice, proposed policies—such as the [Protecting the Right to Organize \(PRO\) Act](#) that would expand the ability of unions to organize

workers alongside institutions, including a more effective National Labor Relations Board, which upholds current U.S. labor organizing laws, with modern enforcement capabilities—would limit employers’ ability to exploit workers along multiple axes. The need for more pro-labor policies is increasingly evident as employers’ monopsony power mounts, [given the inverse relationship between decreasing worker power as measured by union density and rising income inequality](#), partially due to an anti-labor policy and institutional environment since the 1970s, and as racial and gender wage disparities remain persistent and are likely to worsen due to [differences in unemployment amid the coronavirus pandemic](#).

One feature of a monopsonistic labor market is that wages are artificially suppressed, so there is room to raise the floor with tools such as increasing the minimum wage and exploring the possibility of wage boards. Minimum wages have been shown to be [a critical tool for reducing the wage divide between Black and White workers](#), and the falling real value of the minimum wage has exacerbated pay disparities. Increasing the statutory minimum wage would limit the ability of employers to exploit the conditions of structural racism. Going beyond this could include [wage boards](#), which would raise wages within occupations or industries, such as has been done in Arizona, Colorado, California, New Jersey, and New York. In a monopsonistic labor market, raising wages with these tools replicates the labor market outcomes that would exist in a hypothetical perfectly competitive market.

Finally, giving workers universal protections and the social infrastructure policies discussed in my testimony would provide a stable foundation for workers to search for quality jobs where they can be as productive as possible and earn the value they contribute to the economy and society. This includes effective anti-discrimination enforcement and workplace safety standards to ensure workers receive job offers and equitable pay and are not stuck working in hostile environments. This includes family economic security policies that help families manage care needs and engage in the labor market, such as paid family and medical leave, paid sick time, accessible and affordable childcare, and scheduling stability, giving workers more space to find the best fit for their employment. And this includes income supports that give workers an outside option so they can find better jobs. [Unemployment insurance expansions](#) and Medicaid expansions have both been shown to increase the likelihood that workers will match into higher paying jobs. Building the foundation of security for workers not only directly impacts their wellbeing but also provides the foundation for productivity growth through better job matches and stronger economic growth through increased incomes. Boosting workers’ economic security is an effective tool for pushing back against the tide of concentrating corporate power.



**Hearing: A Second Gilded Age: How Concentrated Corporate  
Power Undermines Shared Prosperity**

*Testimony before the*  
U.S. Congress  
Joint Economic Committee

Stacy Mitchell  
Co-Executive Director  
Institute for Local Self-Reliance

July 14, 2021

Good afternoon Chairman Beyer, Ranking Member Lee, and Members of the Committee. Thank you for holding this important hearing and inviting me to participate. My name is Stacy Mitchell. I am the co-director of the Institute for Local Self-Reliance (ILSR), a national research and policy organization founded in 1974 with a mission to challenge concentrated power and foster thriving local communities.

### **What's Killing America's Independent Businesses?**

More than a decade ago, I started an initiative within the organization focused on independent business. The goal was to study the question of why small and independent businesses have been disappearing across much of our economy. Small businesses have been declining at startling rates. In the 1980s businesses with fewer than 100 employees accounted for 40 percent of all business revenue nationwide. Today their share has fallen to about 20 percent.<sup>1</sup> Although this decline has been underway for some time, it's accelerated dramatically in the last decade. In the space of a few years, the United States has lost tens of thousands of independent retailers, distributors, manufacturers, and more.<sup>2</sup>

The problem isn't just that existing businesses are failing; it's also that fewer new businesses are forming. Prior to the pandemic, the startup rate had fallen sharply nationwide. In 2018, more businesses closed than were started in America – the first time on record that has happened during a period of economic expansion.<sup>3</sup>

The story we've long told ourselves about the decline of small businesses is that they can't compete. We assume that large corporations are inherently better and more effective, that they operate more efficiently, that they produce superior products and services. We assume that the giant corporations that dominate our economy are simply winning the competitive fight.

But research by my organization and the work of other scholars has found that in many sectors, independent businesses outperform their bigger rivals, delivering better services, cheaper prices, and more innovation.<sup>4</sup> What's more, we find that independent businesses perform vital functions within their industries and communities that big companies are simply unable match.<sup>5</sup>

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<sup>1</sup> ILSR calculation based on U.S. Economic Census data.

<sup>2</sup> Between 2007 and 2017, the number of small retailers fell by 65,000, and about 40 percent of the nation's small apparel, toy, and sporting goods makers disappeared. ILSR calculation based on U.S. Economic Census data.

<sup>3</sup> "Dynamism diagnostics: Five observations from the latest data," Kenan Fikri, Economic Innovation Group, October 1, 2020.

<sup>4</sup> "Monopoly Power and the Decline of Small Business," Stacy Mitchell, Institute for Local Self-Reliance, August 10, 2016. See also: "Small Pharmacies Beat Big Chains at Delivering Vaccines. Don't Look So Shocked," Stacy Mitchell, *The Washington Post*, February 5, 2021.

<sup>5</sup> "Monopoly Power and the Decline of Small Business," Stacy Mitchell, Institute for Local Self-Reliance, August 10, 2016.

Independent businesses are disappearing not because they can't compete; they are, in fact, well-equipped to do so. The real issue is that we have made a series of policy choices that have doomed them. In particular, we abandoned our anti-monopoly policies. This has allowed a few corporations to amass extraordinary market power and wield it with impunity. Rather than compete on the merits, these dominant firms have used their financial muscle and control over key chokepoints in the distribution system to exclude and crush their smaller rivals.

Concentrated market power is the leading threat to independent businesses. This is what our research has found. It's also what business owners across the country have been telling us for years. I'd like to share a few of their stories with you.

Seven years ago, Ben Okafor, a pharmacist and immigrant from Nigeria, opened Family Pharmacy in the town of Eastport, in a rural region of Maine. It was the first pharmacy to operate in the area for more than a decade. Before then, residents had to drive 40 minutes each way to pick up a prescription. Family Pharmacy is beloved by the community; most days Okafor is so busy that he and his staff barely have time to answer the phone. According to Consumer Reports, independent pharmacies like Okafor's provide lower prices and better health care than the chains. Yet Okafor worries that he's going to be driven out of business. He's watched as CVS and other powerful pharmacy conglomerates have used their control over prescription drug reimbursement rates to self-deal and force independent pharmacies out of the market. Okafor worries Family Pharmacy could be next.<sup>6</sup>

On the south side of Chicago, Bob Jensen owned and operated the award-winning Argus Brewery for years before the pandemic's shutdown of restaurants forced him out of business. But the pandemic was merely the final straw; long before then, the exclusionary actions of distributors controlled by Anheuser-Busch and Molson Coors made it nearly impossible for Jensen to get his beers on store shelves and bar taps around the region. These anti-competitive tactics are a main reason that, despite the popularity of craft brews, Anheuser-Busch and Molson Coors still capture 65 percent of the U.S. beer market.<sup>7</sup>

Jimmy Wright has around 35 people working at his grocery store, Wright's Market, in Opelika, Alabama, where it's served local residents since the early 1970s and today has hundreds of 5-star ratings on Google. But despite its high marks with customers, Wright's Market faces an uncertain future. Walmart and other big chains have been using their clout as major buyers to demand special discounts and terms from suppliers. Wright's can't access these deals and instead faces even higher prices as suppliers make up their lost margin by charging stores like his even

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<sup>6</sup> "A Rebirth Of Indie Pharmacies Could Cure Rural Ills," Stacy Mitchell and Charlie Thaxton, *The American Conservative*, Nov. 5, 2019

<sup>7</sup> "Break Up Budweiser," Ron Knox, *Slate*, July 9, 2020



more. He wants to compete, Wright says, but it's not easy when the big chain stores don't have to play by the same rules.<sup>8</sup>

In 2014, Doug Mrdeza, a former barber in Michigan, launched a business selling hair products online. Three years ago when his business, Top Shelf Brands, hit *Inc.* magazine's list of America's fastest growing companies, Mrdeza said it was "like living the dream." Today, Mrdeza has had to lay off nearly all of his employees. Like most businesses that sell online, Amazon's dominance of the online market means that Mrdeza depends on Amazon for 90 percent of his sales. That dependence has allowed Amazon to ratchet up the fees it charges sellers like Mrdeza. Between commission fees and the growing number of services, such as advertising, that Amazon compels Mrdeza to buy, nearly half of every dollar Top Shelf Brands earns now goes to Amazon.<sup>9</sup> These growing fees had largely capsized Mrdeza's business. Then last year, Amazon abruptly suspended his selling account and forced him into a lengthy arbitration process just to recover his inventory.

As these stories show, America has a monopoly problem. And the harm extends far beyond the many entrepreneurs who've seen their dreams and livelihoods destroyed. The decline of competition has rendered the U.S. economy less dynamic and innovative, and less able to thrive globally.

Market concentration is also fueling our nation's increasingly extreme inequality, which in turn is destabilizing our families, communities, and democracy. As small businesses and startups disappear, dominant corporations have more leverage over workers. According to an extensive body of scholarship, they have used that leverage to push down wages and impose grueling and even dangerous working conditions.<sup>10</sup>

Consolidation of our markets has also led to vast inequality between regions. The Big Tech giants have concentrated high-paying jobs in a handful of metro areas. Meanwhile many of the independent businesses and mid-sized companies that anchored cities like St Louis and Columbus have closed their doors or been swallowed up by mergers. The situation is even more dire across much of rural America, where locally owned businesses have shuttered and family farms and ranches have fallen victim to the predations of agribusiness giants.<sup>11</sup>

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<sup>8</sup> Author correspondence with Jimmy Wright, February 2021. Also see: "Why small grocery stores are (still) out of toilet paper," Nathaniel Meyersohn, *CNN Business*, Mar. 10, 2021; "Fighting the Big Grocery Monopoly," Claire Kelloway, *Washington Monthly*, May 13, 2021.

<sup>9</sup> "Amazon's Monopoly Tollbooth," Stacy Mitchell, Ron Knox and Zach Freed, ILSR, July 2020.

<sup>10</sup> "Concentration in US Labor Markets: Evidence from Online Vacancy Data," Jose Azar, Ioana Elena Marinescu, Marshall Steinbaum, Bledi Taska, 2018; "Antitrust Remedies for Labor Market Power," Suresh Naidu, Eric A. Posner and Eric Glen Weyl, *Harvard Law Review*, Forthcoming.

<sup>11</sup> "Rural Distress and the Concentration of Financial and Economic Power," Testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, Stacy Mitchell, April 20, 2021.

Most concerning of all, corporate concentration has exacerbated racial injustice. The ability of dominant corporations to abuse and exclude small businesses has made the already steep barriers faced by Black entrepreneurs all but insurmountable. As a consequence, there are fewer Black-owned businesses today than there were in the 1970s.<sup>12</sup> At the same time, Black and brown communities have been on the losing end of worsening employment conditions, as dominant corporations, such as Amazon and Smithfield, have used their market power to push down wages in warehousing, package delivery, meatpacking, and other industries that employ large numbers of people of color.

### **The Policy Roots of America's Monopoly Crisis**

The roots of this crisis can be traced to the 1970s and 1980s, when both the Democratic and Republican parties abandoned anti-monopoly as a bedrock of their economic policies and instead embraced consolidation. It's hard to overstate how radical this reversal was. For decades, Americans had relied on our antitrust laws to ensure fair and open markets for entrepreneurs and workers, extend prosperity to every corner of the country, and act as check on concentrations of private power that could threaten our liberty and democracy.

But 40 years ago, under the influence of thinkers like Robert Bork and Richard Posner, the antitrust agencies and ultimately the Supreme Court abandoned these goals and instituted a new ideological framework to guide antitrust enforcement. This framework made maximizing efficiency the goal of antitrust policy. It became known as the “consumer welfare” standard.

It sounds benign, even beneficial, but embedded within this approach are several dubious assumptions that have blinded and enfeebled antitrust enforcement. One is that bigger corporations are naturally more efficient and superior, and therefore enforcers and judges should look favorably on consolidation. Another is that blatantly anticompetitive market structures and tactics are perfectly fine as long as there's a plausible case that they benefit consumers. As a consequence, we now have decades of case law that allows corporations to amass monopoly power and wield it against their smaller competitors so long as they do it under the guise of consumer benefit.

This court-made law directly contradicts Congress's intent in enacting the antitrust laws. It has also left Americans demonstrably worse off. In the name of benefitting people as consumers, monopolists have been allowed to bully, coerce, and steal from them as producers — as suppliers, creators, farmers, workers, and entrepreneurs. The consumer welfare standard has also, rather ironically, done a poor job of protecting people's interests as consumers. We have ample evidence today that the complex and supposedly predictive economic modeling that underpins

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<sup>12</sup> “The Decline of Black Business,” Brian S. Feldman, *Washington Monthly*, May 2017.

the consumer welfare standard is deeply flawed. In a retrospective study of mergers approved by the antitrust agencies, John Kwoka, an economist at Northeastern University, found that in about three-quarters of these mergers, prices rose after the merger, rather than fall as predicted.<sup>13</sup>

I'd like to highlight three ways in particular that the current approach to antitrust enforcement has undercut the ability of independent businesses to compete — no matter how great their ideas, how efficient their operations, or how hard they work.

**First, under the current antitrust doctrine, large corporations are allowed to use their size and financial might to crush smaller businesses and take market share without having to compete for it.**

We see this when big retailers like Walmart use their leverage as major buyers of goods to coerce suppliers into giving them discounts while raising the prices that their smaller competitors must pay for the same items. This violates the 1936 Robinson-Patman Act, but under the consumer welfare framework, the enforcement agencies stopped enforcing the law more than 30 years ago. Today, Walmart controls much of our food system. In 43 metropolitan areas and 160 smaller markets, Walmart captures more than 50 percent of grocery sales. In 38 of these regions, Walmart's share of the grocery market is 70 percent or more.<sup>14</sup> As a consequence, many small, family-owned grocery retailers have gone under. These closures have been particularly devastating in Black neighborhoods and small rural towns, many of which no longer have a grocery store at all. Moreover, research has shown that when only a few big buyers dominate an industry, it reduces the income of production workers all the way up the supply chain.<sup>15</sup>

Another way that large, highly capitalized corporations can bankrupt smaller competitors is through predatory pricing. This involves selling goods or services below cost for a sustained period in order to eliminate competition. In the 20<sup>th</sup> century, Congress repeatedly recognized and legislated against predatory pricing, and for decades, such behavior drew antitrust enforcement action. But, in a series of rulings in the 1980s and 1990s, the Supreme Court took a favorable view of the tactic and adopted a narrow "recoupment" standard that effectively made predatory pricing legal.<sup>16</sup>

This opened the way for companies with deep ties to Wall Street, including most notably Amazon, to use predatory pricing to systematically bankrupt competitors and take market share.

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<sup>13</sup> "Does Merger Control Work? A Retrospective on U.S. Enforcement Actions and Merger Outcomes," John E. Kwoka Jr, *Antitrust Law Journal*, April 4, 2012.

<sup>14</sup> "Walmart's Monopolization of Local Grocery Markets," Stacy Mitchell, Institute for Local Self-Reliance, June 2019.

<sup>15</sup> "Wage Stagnation and Buyer Power: How Buyer-Supplier Relations Affect U.S. Workers' Wages, 1978 to 2014," Nathan Wilmers, *American Sociological Review*, Mar. 27, 2018.

<sup>16</sup> "Amazon's Antitrust Paradox," Lina Khan, *Yale Law Journal*, 2017.

During its first six years, Amazon lost more than \$3 billion selling books below cost, driving rivals out of business. Amazon now accounts for more than half of U.S. book sales. Similarly, when Amazon faced competition from upstart online retailers, including Zappos and Diapers.com, it responded by losing hundreds of millions of dollars selling shoes and diapers at a loss.<sup>17</sup> It worked: unable to sustain financial losses of that magnitude without going bankrupt, both Diapers.com and Zappos agreed to be acquired by Amazon. Amazon still uses this tactic today. Analysts have reported, for example, that it loses significant amounts of money on its new same-day shipping service, to the detriment of neighborhood convenience stores that lack similar backing from Wall Street.<sup>18</sup> It has lost as much as \$700 million a year on Prime Video to keep shoppers locked into its Prime ecosystem.<sup>19</sup> Indeed, given Amazon's ability to cross-subsidize such losses from its cloud computing division and other business lines, as well as its Wall Street backing, there's no end to the industries that it can take over through predatory pricing.

**Second, the current antitrust doctrine has allowed powerful corporation to vertically integrate, gaining control over multiple levels of the supply chain, which enables them to impose increased costs and structural barriers on their small competitors.** One striking example are pharmacy benefit management companies (PBMs), which contract with health insurers to set rules for prescription benefits, including how much pharmacies are reimbursed for filling prescriptions. Three PBMs control more than 70 percent of the market. All three, including the largest, CVS Health, are vertically integrated companies that own their own retail and mail order pharmacies. Not surprisingly, CVS and the other PBMs have been slashing reimbursement rates to independent pharmacies. In some states, CVS even restricts people with certain insurance plans from choosing an independent pharmacy. As newspapers across the country have documented, these predatory practices are forcing many independent pharmacies out of business.<sup>20</sup>

Similarly, two years ago, the antitrust agencies allowed Staples to buy one of only two wholesalers that supply independent office supply dealers, forcing them to share data and revenue with their biggest competitor.<sup>21</sup> Or consider the dominant meat processor Tyson Foods,

<sup>17</sup> "Investigation of Competition in Digital Markets," U.S. House of Representatives, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, 2020, at 263

<sup>18</sup> "Amazon's Profit Falls Sharply As Company Buys Growth," Karen Weise, *The New York Times*, October 24, 2019.

<sup>19</sup> "Amazon Prime Instant Video Is A Huge Loss Leader," Adam Levy, *The Motley Fool*, Feb. 22, 2017.

<sup>20</sup> "CVS Caremark Cut Payments to Pharmacies Amid \$70 Billion Deal to Buy Aetna," Marty Schladen and Lucas Sullivan, *The Columbus Dispatch*, June 24, 2018; "How the FTC Protected the Market Power of Pharmacy Benefit Managers, Stacy Mitchell and Zach Freed, ProMarket, Feb. 19, 2021; Side Effects: An Ongoing Investigation on the Rising Costs of Prescription Drugs," *The Columbus Dispatch*; "The Growing Problem of Pharmacy Deserts," Fred Gebhart, *Drug Topics*, Sept 24, 2019; "Independently Owned Pharmacy Closures in Rural America, 2003-2018," Abiodun Salako, Fred Ullrich, and Keith J. Mueller, *Rural Policy Brief*, July 2018.

<sup>21</sup> "How the Federal Government Rigs the Game Against Small Businesses: An FTC-approved merger will help Staples and Amazon crush the independent office-supply industry," Stacy Mitchell, *Washington Monthly*, Feb. 26, 2019.

which has completed more than two dozen mergers, allowing it to gain control of nearly every step in the meat production process, from raising livestock to delivering packaged products to stores. Tyson's vertical integration has hurt small farmers and has gutted the independent business ecosystem that existed to serve agriculture markets in small towns and other rural communities.<sup>22</sup>

Powerful corporations can also achieve these same ends through exclusionary contracts with other companies in the supply chain, as Anheuser-Busch and Molson Coors have done by inserting terms in their contracts with beer distributors that block smaller breweries from getting space on store shelves.<sup>23</sup> Although these kinds of exclusionary arrangements by dominant corporations clearly harm competition and put independent businesses at a structural disadvantage, under the current antitrust framework, they are generally accepted by enforcers and the courts on the assumption that they reduce costs for the dominant firm and therefore count as "efficiencies."

Third, and finally, the current approach to antitrust has blinded enforcers and the courts to the dangerous monopolization of our online markets. A few tech giants mediate and control the exchange of goods, services, and information in our digital markets. These powerful gatekeepers not only control market access, but also directly compete with the businesses that depend on them. Their extraordinary power constitutes the single biggest threat facing the nation's independent retailers, manufacturers, consumer brands, service providers, and other small businesses across scores of industries.

In the case of Amazon, more than two-thirds of online shoppers begin their product search on Amazon, and its site captures about 50 percent of online spending in the U.S.<sup>24</sup> This dominance allows Amazon to function as a gatekeeper: retailers and brands must sell on its site to reach much of the online market. This dependence is risky and leaves many businesses living in fear of arbitrary or retaliatory behavior by Amazon; changes to Amazon's search algorithms or selling terms can cause their sales to evaporate overnight.<sup>25</sup>

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<sup>22</sup> *The Meat Racket*, Christopher Leonard, *Simon & Schuster*, 2015; "The Problem of Agricultural Concentration: The Case of the Tyson IBP Merger," David R. Moeller, *Drake Journal of Agricultural Law*, March 2003; "Our History," TysonFoods.com, accessed July 12, 2021.

<sup>23</sup> "Craft Brewers Take Issue With AB InBev Distribution Plan," Tripp Mickle, *Wall Street Journal*, Dec. 7, 2015; "Break Up Budweiser," Ron Knox, *Slate*, July 9, 2020.

<sup>24</sup> "Investigation of Competition in Digital Markets," U.S. House of Representatives, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, 2020, at 254 and 256.

<sup>25</sup> House Investigation at 74.

Worse, Amazon uses its power as a gatekeeper to bully and exploit the businesses selling on its site. It has spied on sellers, appropriated their data, and then used this information to copy their best-selling products, giving its knock-off versions superior placement in the search results.<sup>26</sup>

By imposing more and higher fees on sellers, Amazon also pockets a growing share of the revenue that sellers generate. Amazon keeps an average of 30 percent of each sale businesses make on its site, up from 19 percent in 2014.<sup>27</sup> Last year Amazon netted \$90 billion in fees from sellers, twice the revenue of AWS, its enormous cloud computing division.<sup>28</sup> These high fees make it nearly impossible to sustain a profitable business. As a result, “the vast majority of those who start selling on Amazon’s site fail within a few years.”<sup>29</sup>

On top of this, Amazon often abruptly suspends sellers’ accounts and seizes their inventory, shutting down their livelihoods overnight. Sellers have only limited recourse: Amazon’s terms of service deny them access to the courts.<sup>30</sup>

For many independent businesses, Amazon’s whims and dictates are now the law of the land. They’re as subordinate to tech giant as any feudal peasant once was to the lord of the manner. Aware of Amazon’s long history of aggressively retaliating against companies that publicly challenge it, many businesses, both small and large, are too afraid to speak up.

If Congress does not act to check Amazon’s power, you are allowing Amazon to function as a kind of autocracy — a private government that regulates the nation’s commerce, rules over those who engage in it, and punishes anyone who dares to speak against it.

### **Congress’s Urgent Task**

Last Friday, President Biden said, “We’re now 40 years into the experiment of letting giant corporations accumulate more and more power. And what have we gotten from it? Less growth, weakened investment, fewer small businesses. Too many Americans who feel left behind.... I believe the experiment failed.”

He is not alone. Most Americans, including, according to polls, most Democrats and Republicans, share that view. And within Congress, there is a rapidly growing understanding that we have a monopoly crisis that calls for decisive and urgent action. Senator Klobuchar has

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<sup>26</sup> House Investigation at 274-282; “Amazon Scooped Up Data From Its Own Sellers to Launch Competing Products,” Dana Mattioli, *The Wall Street Journal*, April 23, 2020; “Amazon Met With Startups About Investing, Then Launched Competing Products,” Dana Mattioli and Cara Lombardo, *The Wall Street Journal*, July 23, 2020.

<sup>27</sup> “Amazon’s Monopoly Tollbooth,” Stacy Mitchell, Ron Knox and Zach Freed, ILSR, July 28, 2020.

<sup>28</sup> ILSR calculation from Amazon’s 10-K filings and data from eMarketer.

<sup>29</sup> “Amazon’s Monopoly Tollbooth,” Stacy Mitchell, Ron Knox and Zach Freed, ILSR, July 28, 2020;

<sup>30</sup> “Prime and Punishment: Dirty Dealing in the \$175 Billion Amazon Marketplace,” Josh Dzieza, *The Verge*, Dec. 19, 2018; House Investigation at 272-273.

introduced important legislation to reinvigorate our antitrust policies, and the House Judiciary Committee has passed an excellent set of bipartisan bills that to break up the Big Tech companies and require their platforms to adhere to rules of fair dealing.

It's crucial that Congress act. While there is much that the Federal Trade Commission and Department of Justice can and should do, as I've noted, the agencies are hamstrung by decades of judicial re-writing of the antitrust laws, rendering our enforcement tools so distorted and limited that enforcers cannot tackle the depth of the market concentration problem we face or alleviate many of the harms we're seeing. This is particularly true in our digital markets, where the monopoly power of the tech giants is so sweeping and entrenched that the narrow cases available to enforcers are unlikely to solve the underlying structural issues and, in any case, would take many years to carry out.

I'd like to urge you to take five steps.

#### ***1. Pass the Big Tech bills***

First, I urge you to support and prioritize the Big Tech legislation coming out of the House Judiciary Committee. The most important measure in the package is the structural separation bill, which would break up these companies by barring them from both owning a dominant digital platform and operating a business that sell goods and services on that platform. This is a basic and longstanding principle of anti-monopoly policy in the United States: Any firm that provides critical infrastructure to other firms should not compete with its customers. It's the reason that, in the National Bank Act of 1864, Congress barred banks from owning industrial and commercial enterprises. It's the reason that Congress blocked railroad companies from carrying products that they had produced or manufactured. Structural separation rules have also been adopted for both the telecommunications and television industries.

Amazon's business model creates a fundamental conflict of interest. For small businesses, Amazon is both a gatekeeper that they must rely on to reach online shoppers and an aggressive competitor selling its own goods and services to those same shoppers. Unless lawmakers eliminate this conflict of interest through structural separation, Amazon will continue to have an overwhelming incentive and ample opportunity to use its gatekeeper power to preference its own interests while exploiting and undermining smaller competitors.

Passing a structural separation bill would end Amazon's documented history of self-dealing and force the newly-spun-off companies created by the breakup to actually compete on price and quality against innovative startups. Without passage of the structural separation bill, Amazon will continue to leverage the market power and data gleaned from its dominant platforms to take

over one industry after another. Amazon has already used its platform power to make major inroads into pivotal sectors such as consumer products, logistics, healthcare, and finance.

## ***2. Clarify the intent of the antitrust laws***

Second, Congress must reaffirm that the intent of the antitrust laws is to safeguard the competitive process and disperse economic power. Given how far enforcers and the courts have strayed, this is urgently needed. By turning the focus of antitrust enforcement back to questions of market structure, competitive process, and concentrated power, Congress can ensure that these laws once again work to promote their intended values and goals.

## ***3. Ban anti-competitive conduct by dominant firms***

Congress should establish bright-line rules prohibiting particular kinds of conduct for companies that meet a certain threshold of scale and market power. For firms with market dominance, specific behaviors, including sustained below-cost selling, tying, and other forms of exclusionary conduct, should be considered outright violations of the law without the need to prove competitive harm.

## ***4. Set a higher bar for mergers***

To stem the tide of corporate concentration, Congress must a higher bar for corporate mergers and ban acquisitions by corporations that already have monopoly power. In reviewing mergers the enforcement agencies should consider the impact of these deals on market structure, competing businesses, suppliers, workers, and local communities. Enforcers should be attuned to the ways these deals can exacerbate inequality and further racial injustice.

## ***5. Ensure the antitrust agencies have the oversight and resources to do their job***

Finally, it's imperative that the agencies have the oversight and the resources they need to enforce the laws. If you watched the Federal Trade Commission's recent open meeting under the leadership of Chair Lina Khan, you witnessed a stream of grocers, cattle ranchers, pharmacists and other small business owners and representatives pleading with the agency to address blatant market power abuses in their industries. There is a lot of urgent work to do and agencies like the Federal Trade Commission are going to need the resources to do it.

## **Conclusion**

As Congress takes up legislation to strengthen and reinforce the antitrust laws, you will no doubt be inundated by lobbyists for corporate giants. We saw this happen when the House Judiciary



Committee debated the Big Tech bills. Lobbyists for Amazon, Apple, Google, and Facebook inundated Congressional offices, working night and day to drown out the voices of small independent businesses. At times, Amazon and the other tech giants even claimed to speak for small businesses, arguing that allowing their market power to go unchecked was somehow good for the nation's entrepreneurs.

Small businesses of course don't have even a fraction of the lobbying resources that the tech giants have. It's difficult enough for them to take time away from the daily demands of their businesses to follow the legislative process and reach out to your offices. When they do, I implore you to listen. Their stories tell a harrowing tale of how monopoly power is harming this country — and their stories can help guide you to the solutions we so urgently need.

Thank you.



**Corporate Power and Shared Prosperity**

**Statement of**

**Chris Edwards  
Director of Tax Policy Studies  
Cato Institute**

**before the**

**Joint Economic Committee  
United States Congress**

**July 14, 2021**

Chairman Beyer, Ranking Member Lee, and members of the committee, thank you for inviting me to testify before today's hearing, "A Second Gilded Age: How Concentrated Corporate Power Undermines Shared Prosperity."

Before the economy fell into recession during the pandemic, it was delivering shared prosperity. In 2019, the unemployment rate fell to a 50-year low, wages were rising strongly, and wealth was rising the fastest for lower-income groups.<sup>1</sup> Today, the economy is growing again, and we should be headed back toward pre-pandemic levels of prosperity.

I will discuss how leading corporations invest heavily in research, which gives them an edge in the marketplace but also generates broad benefits to society. At the same time, large corporations in every industry are being challenged and disrupted by technology driven startups. Vigorous competition by well-funded startups is the best way to check corporate power in our dynamic economy.

Policymakers should focus on reducing industry entry barriers and encouraging flows of risk capital to startups aimed at challenging dominant firms. Proposed capital gains tax increases would undermine the startup ecosystem and reduce competition, especially in America's technology industries.

### **Corporate Concentration**

There are growing concerns in Congress about rising corporate power. Senator Elizabeth Warren (D-MA) said we should not "let a handful of monopolists dominate our economy."<sup>2</sup> Senator Josh Hawley (R-MO) said big technology companies are the "gravest threat to American liberty since the monopolies of the Gilded Age," and that the companies are a "techno-oligarchy with overwhelming economic and political power."<sup>3</sup>

Is there a monopoly problem in the economy? My colleague Ryan Bourne surveyed the academic literature on concentration and found that measures of national industry concentration have risen in recent decades, but that measures of local concentration have fallen.<sup>4</sup> When a national coffee shop company adds locations to its chain, for example, national concentration in the industry may rise, but in many neighborhoods local competition would increase and consumers would benefit.

Rising national concentration in some industries is driven by a small number of highly productive companies that are expanding output but not raising prices. In a study for the Census Bureau, Sharat Ganapati found that from 1972 to 2012 increases in industry concentration were correlated with productivity and output growth but not correlated with price changes.<sup>5</sup> By contrast, monopolies are a concern when they constrain output and raise prices.

Consider the historical example of the U.S. automobile industry. The number of U.S. car makers fell from 253 in 1908 to just 44 in 1929, at which time about 80 percent of output was from Ford, General Motors, and Chrysler. As the industry was consolidating, it was also innovating and cutting prices—Ford slashed the price of its Model T from \$825 in 1908 to just \$290 by 1927.<sup>6</sup>

Back then, Ford was also known for paying high wages, which was made possible by the firm's high productivity. Today, the higher productivity of large corporations is reflected in the higher wages they pay. In 2019, average wages in establishments with fewer than 100 workers were \$976 per week compared to \$1,914 per week for those with more than 1,000 workers.<sup>7</sup>

International competition should also be considered regarding industry concentration. A recent study by Federal Reserve economists found that concentration in manufacturing has increased when considering just firms located in the United States, but including imports changes the results. Using detailed Census data they found that "once foreign firms' sales in the U.S. are taken into account, market concentration did not rise but instead remained flat between 1992 and 2012."<sup>8</sup>

The global economy does enable successful multinational corporations to become huge, but it also makes them vulnerable to competition from everywhere. Germany's Aldi grocery stores, for example, are currently growing rapidly across the United States, challenging dominant grocery chains. Spotify was a startup in Sweden but has grown to become the largest music streaming service, ahead of Amazon Music and Apple Music.<sup>9</sup> Consumers are the beneficiaries—Aldi is undercutting even Walmart with its super discount grocery prices, and Spotify offers massively popular free streaming.<sup>10</sup>

Some of the largest corporations are the most innovative. Their "corporate power" comes from investing their profits from global sales into research. PWC ranked the global companies with the most research spending in 2018, and 7 of the top 10 were U.S. multinationals in technology and pharmaceuticals.<sup>11</sup> Similarly, Boston Consulting Group produced a list of the "most innovative" companies globally, and 14 of the top 20 are large U.S. corporations.<sup>12</sup> Two-thirds of U.S. business research and development is done by the largest corporations of more than 5,000 employees.<sup>13</sup>

It is beneficial that the United States has large and profitable corporations investing in innovation because that creates broad-based spillover benefits. Economist William Nordhaus estimated that "only a miniscule fraction of the social returns from technological advances over the 1948–2001 period was captured by producers, indicating that most of the benefits of technological change are passed on to consumers rather than captured by producers."<sup>14</sup> He found that businesses received only about two percent of the benefits from their innovations, with the rest accruing to consumers.

Large corporations may be highly profitable if they are able to stay ahead of the pack on new products and technologies. But it is hard to stay ahead of the pack because high profits attract more competitors. Only 52 companies from the 1955 list of Fortune 500 companies are still on the list today.<sup>15</sup> Indeed, the churn rate of top corporations has increased over time. Companies in the S&P 500 Index in 1980 stayed on the list for more than 30 years, on average, but today the average is down to about 20 years.<sup>16</sup>

### **Disruptive Innovation**

Rather than being all-powerful, large corporations today fear that their markets will be disrupted by upstart competition. Many times, we have seen new companies with new

technologies shaking up industries with better products at lower prices. Former Harvard Business School professor Clayton Christensen highlighted the importance of such disruptive innovations that take dominant companies by surprise and undercut their businesses.<sup>17</sup> He found this pattern in computers, disk drives, steel mills, retailers, motorcycles, ships, transistor radios, construction equipment, and other industries over the decades.

IBM dominated the mainframe computer market in the 1960s but was slow to recognize the shift to minicomputers, which were pioneered by new firms such as Digital Equipment Corporation. Then both mainframe and minicomputer firms missed the shift to personal computers pioneered by Apple and other startups in the late 1970s. Then Apple and IBM initially missed the shift to portable computers pioneered by Compaq in the 1980s. Then Dell Computer soared to the top with better machines shipped direct to the consumer.

New products and technologies are usually pioneered by new companies. Ridesharing was pioneered by startup Uber, not taxi companies. The home lodging industry was pioneered by startup Airbnb, not hotel companies. The leading electric car company in America is Tesla, not any of the major car producers, which is remarkable given the huge capital investment and marketing budgets of the majors.

The mRNA technology that led to the spectacular success of COVID-19 vaccination in America was pioneered by young biotech firms Moderna and BioNTech, not by the big pharmaceutical companies. One of the largest pharmaceutical firms, Merck, seems to have totally misjudged mRNA technology. Merck had examined it but “preferred to focus on proven technologies” instead, reported the *Wall Street Journal*.<sup>18</sup> In July 2020, Merck’s chief executive “told an online audience hosted by Harvard University that those raising hopes for a widely available vaccine by the end of this year are doing ‘a grave disservice to the public.’”<sup>19</sup>

The lesson is that the largest corporations make mistakes, and upstart competitors are eager to fill the void. The future is complex and unknowable and even the most sophisticated big corporations falter. As technology and markets keep changing, we will continue to see upstarts successfully challenging big corporations, and we will see turnover among the largest corporations in America.

Many dominant corporations in U.S. history have been surpassed by upstarts. By the 1870s, Western Union had gobbled up dozens of telegraph companies to become a virtual monopolist with 90 percent of the nation’s telegraph system.<sup>20</sup> Policymakers at the time were alarmed, and they called for regulating the company or for the government to buy the system or build its own competing system. But then technology shifted. Western Union was in the best position to invent the telephone but missed it and was slow to realize the potential of Alexander Graham Bell’s 1876 invention. Western Union’s president described the telephone as a “toy” and rejected Bell’s initial offer to sell him the patent rights.<sup>21</sup>

Today, big corporations may be more vulnerable than ever. The PC revolution of the 1980s and internet revolution of the 1990s gave small businesses the computer power that previously only big businesses could afford. More recently, technologies such as cloud computing, open-source software, computer simulation, and 3D printing have further reduced the costs of starting companies and performing research. The *Wall Street Journal*

reports that two dozen startups are exploring nuclear fusion as a clean energy source: “Advances in computing, precision machinery and synthetic materials have allowed scientists to design reactors a fraction of the size and cost of those just a few years ago. Lower price tags have put fusion within reach of private investors, allowing ventures to sprout.”<sup>22</sup>

CNBC publishes a list of young “disruptor” companies launching “attacks on the status quo in many industries,” including finance, health care, energy, transportation, and consumer products.<sup>23</sup> Who benefits from all the disruption? Consumers do as upstart companies try to take business from big corporations and cut prices.

That is the goal, for example, of swarms of “fintech” companies invading the financial services industry. Neobanks—such as Chime with 12 million customers—offer basic account services online with lower fees than traditional banks. Some neobanks are targeting underserved communities such as Fair, which provides low-cost multilingual services to immigrant communities. There are online lending services such as Fundera, and payments services such as Square. Billionaire Mark Cuban backed startup Dave, which aims to cut bank overdraft fees, while Affirm “seeks to cut credit card companies out of the online shopping process by offering a way for consumers to secure immediate, short-term loans for purchases.”<sup>24</sup>

Robinhood was launched in 2013 to provide commission-free stock trades. The company wants to “provide everyone with access to the financial markets, not just the wealthy.”<sup>25</sup> More recently, Robinhood is aiming to “crack open one of Wall Street’s oldest clubs: those getting distribution of IPOs at the offering price, before shares begin trading. That early access gives investors a shot at the vaunted IPO ‘pop,’” or price appreciation.<sup>26</sup>

Historically, the “largest financial rewards [have gone] to innovators who improved the lifestyle not of the wealthy few, but of the less-wealthy many.”<sup>27</sup> Today’s innovators are following in the footsteps of Henry Ford, Sam Walton, and many others who got rich cutting prices for the poor.

### **Supporting Risk Capital**

The economy needs entrepreneurs with big ambitions to disrupt industries and challenge dominant companies. But it also needs to fund those entrepreneurs with risk capital. Fast-growing startups in financial services, energy, biotech, renewable energy, batteries, and other dynamic industries are funded by wealthy angel investors and venture capital (VC). To limit corporate power, policymakers should support policies to keep capital flowing to growth-oriented startups.

Most leading U.S. technology companies began as startups that survived the early years with cash infusions and guidance from wealthy angels and VCs. Almost three-quarters of initial public offerings (IPOs) of recent years have been of VC-backed companies.<sup>28</sup> In 2020, wealthy angels invested \$25 billion into startups and VCs pumped \$166 billion into startups and young growth companies.<sup>29</sup> Moderna and BioNTech were funded by hundreds of millions of dollars of angel and VC investment.

Why is risk capital crucial? Because many potentially high-growth startups do not have substantial hard assets for collateral, and so they rely on equity investments, not bank loans. They depend on investors willing to take high risks and wait 5 to 10 years before a possible successful exit. Only about 1 in 10 angel and VC investments are big hits, but some of those hits become major corporations that drive the U.S. economy. When they exit successful businesses, entrepreneurs, angels, and VCs often realize capital gains and plough their money back into new startups. That virtuous cycle of wealth reinvestment is key to the success of innovation hubs such as Silicon Valley.

Here are three ways that policymakers can support risk capital.

First, policymakers should ensure that regulations permit large and diverse flows of angel and VC investment to startups. The JOBS Act of 2012 legalized equity crowdfunding and liberalized rules for accredited and nonaccredited investors. Congress and regulators should consider further reforms.

Second, policymakers should reduce the regulatory costs of public companies. The main exit for investors in startups used to be IPOs, but IPOs have declined in number, perhaps partly because of the higher regulatory costs of going public following the 2002 Sarbanes-Oxley law. The number of U.S. IPOs averaged 205 a year in the 1980s and 409 a year in the 1990s, but then just 126 a year since 2000.<sup>30</sup> Congress partly mitigated costs with provisions in the JOBS Act to lighten compliance burdens for “emerging growth companies.”<sup>31</sup>

The main way that entrepreneurs and investors in high-growth companies exit these days is a merger or acquisition (M&A).<sup>32</sup> Major technology companies such as Apple, Microsoft, Google, Facebook, and Amazon make numerous acquisitions every year. In turn, that may contribute to the dominance of large companies in the marketplace. While federal policymakers are concerned about the power of big technology companies, federal rules that have raised the costs of going public may be partly to blame by inducing startups to favor an M&A over remaining as independent public companies.

Third, policymakers should keep capital gains taxes low. A capital gain is the financial reward for the effort, patience, and high risks that entrepreneurs and investors undertake in high-growth startups. The top federal tax rate on long-term capital gains is 23.8 percent, and with average state taxes included the top rate is about 28 percent. That is substantially higher than the average rate in the Organisation of Economic Co-operation and Development countries of 19.1 percent.<sup>33</sup> Yet the Biden administration is proposing to raise the top federal rate to 43.4 percent, and thus the top federal-state rate to about 48 percent.<sup>34</sup> If applied to startup investing, that would be a crushing blow to America’s innovation and technology industries.

Current provisions of the tax code allow investors and entrepreneurs in some startups to defer or eliminate capital gains taxes on exit. However, I fear that the general thrust of recent proposals—such as a proposal from Senator Ron Wyden (D-OR)—to treat capital gains as ordinary income would result in greatly reducing the benefits of startup investing.<sup>35</sup>

Without beneficial capital gains tax treatment, technology entrepreneurs would rather take salary jobs, investors would move their funds to safer assets such as tax-free municipal

bonds, and employees currently lured to technology companies by stock options would instead favor large and stable corporations. I urge policymakers not to upset the decades-long consensus that keeping a low capital gains tax rate is important for sustaining America's lead in innovation industries.

### **Supporting Open Markets**

Despite the dynamism in technology industries, the U.S. economy has shifted toward larger businesses and away from smaller businesses and startups in recent decades. Between 1998 and 2017, the number of small firms (less than 500 employees) increased 7 percent, while the number of large firms (more than 500 employees) increased 23 percent.<sup>36</sup> Meanwhile, the U.S. business startup rate has drifted downward, falling from more than 10 percent in the early 1980s to 8 percent in 2018.<sup>37</sup>

What is causing this economic shift? Many economists point to rising regulation as one factor.<sup>38</sup> There are economies of scale in regulatory compliance, which favors large companies over small ones, and large companies can use their political power to create industry entry barriers. A 2019 study by Germán Gutiérrez and Thomas Philippon found that free entry to U.S. industries has stagnated the past 20 years.<sup>39</sup> They found that “regulations drive down the entry and growth of small firms relative to large ones, particularly in industries with high lobbying expenditures. We conclude that lobbying and regulations have caused free entry to fail.”<sup>40</sup>

Regulations tend to accumulate over time, and so reform-minded policymakers should proactively look for outdated and anti-competitive rules to repeal. When policymakers deregulate, entrepreneurs rush in and challenge dominant companies. Deregulation tends to increase competition and benefit consumers.

There are many examples from the 1970s and 1980s. Deregulation allowed MCI Corporation to challenge the AT&T telephone monopoly and slash long distance prices.<sup>41</sup> Deregulation allowed Fed Ex to revolutionize package and express letter delivery, which had been dominated by a stagnant oligopoly of big companies and the U.S. Postal Service. Deregulation in the beer industry led to an explosion of craft beer making as hundreds of new producers challenged a moribund oligopoly of big producers.

Airline deregulation in the 1970s allowed low-cost startups to challenge major carriers. Most recently, Breeze Airways was launched in 2021 by David Neeleman, who had previously founded JetBlue. Neeleman has pumped \$17 million of his own money into Breeze and gathered \$83 million in risk capital from angels and VCs.<sup>42</sup> Breeze will offer super low-cost direct flights connecting underserved U.S. markets.

Some regulations were loosened during the pandemic to positive effect. Federal and state reforms have expanded the provision of telehealth services, and startups in the industry are booming. VC investment in telehealth soared 70 percent in 2020 as governments loosened the rules.<sup>43</sup>

These are successes, but there is more work to do. In the beer industry, state distribution rules continue to favor big breweries over small ones. In aviation, dominant airlines at airports can use their clout to block new competitors and their access to airport gates. In



health care, 34 states have certificate-of-need rules that create barriers to new businesses and investments. These sorts of restrictions are anti-competitive and anti-consumer and should be repealed.

Some federal policymakers favor using antitrust rules to limit corporate power, but I would urge caution. A review of a century of antitrust policy by Brookings Institution economists found “no evidence that antitrust policy in the areas of monopolization, collusion, and mergers has provided much benefit to consumers and, in some instances, we find evidence that it may have lowered consumer welfare.”<sup>44</sup> In the past, antitrust actions against technology giants such as IBM and Xerox were counterproductive, and it was upstart competitors that ultimately limited the power of these once-dominant companies.

The best approach to limiting corporate power to the benefit of consumers is vigorous competition from startup businesses. Policymakers should favor regulatory and tax policies that remove entry barriers from industries and encourage challenges from well-funded entrepreneurs.

Thank you for holding these important hearings.

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<sup>1</sup> The bottom two income quintiles saw their net wealth rise faster than other groups during the 2016 to 2019 period. See Board of Governors of the Federal Reserve System, “Changes in U.S. Family Finances from 2016 to 2019: Evidence from the Survey of Consumer Finances,” September 2020, Table 2. Regarding wage growth, see [www.atlantafed.org/chcs/wage-growth-tracker](http://www.atlantafed.org/chcs/wage-growth-tracker).

<sup>2</sup> Wbur.org, “What Breaking Up Big Tech Might Look Like,” October 21, 2019.

<sup>3</sup> Dominic Rushe and Daniel Strauss, “Josh Hawley rails at big tech firms but records show he has invested in them,” *The Guardian*, April 29, 2021. These are quotes from the senator’s book.

<sup>4</sup> Ryan Bourne, “Does Rising Industry Concentration Signify Monopoly Power?” Economic Policy Brief no. 2, Cato Institute, February 13, 2020.

<sup>5</sup> Sharat Ganapati, “Growing Oligopolies, Prices, Output, and Productivity,” Center for Economic Studies, U.S. Census Bureau, November 2018.

<sup>6</sup> History.com, “Automobile History,” August 21, 2018, [www.history.com/topics/inventions/automobiles](http://www.history.com/topics/inventions/automobiles).

<sup>7</sup> U.S. Bureau of Labor Statistics, “Quarterly Census of Employment and Wages: Employment and Wages, Annual Averages 2019,” Table 4, [www.bls.gov/cew/publications/employment-and-wages-annual-averages/2019/home.htm#tables](http://www.bls.gov/cew/publications/employment-and-wages-annual-averages/2019/home.htm#tables).

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<sup>8</sup> Mary Amity and Sebastian Heise, "U.S. Market Concentration and Import Competition," Staff Report no. 968, Federal Reserve Bank of New York, May 2021. And see Scott Lincicome, "Senator Hawley Hates Monopolies and Loves Freedom (Except When He Doesn't)," Cato Institute, April 14, 2021.

<sup>9</sup> [www.businessofapps.com/data/spotify-statistics](http://www.businessofapps.com/data/spotify-statistics).

<sup>10</sup> Michael Timmermann, "Aldi vs. Kroger vs. Walmart: Which Grocery Store Has the Lowest Prices?" Clark.com, February 18, 2019.

<sup>11</sup> PWC, "2018 Global Innovation 1000: What the Top Innovators Get Right," October 2018, p. 32.

<sup>12</sup> Boston Consulting Group, "Most Innovative Companies 2021: Overcoming the Innovation Readiness Gap," April 2021, Exhibit 3.

<sup>13</sup> National Science Foundation, "Business Research and Development: 2018," December 16, 2020, Table 2. This is based on domestic R&D paid for by the company.

<sup>14</sup> William D. Nordhaus, "Schumpeterian Profits in the American Economy: Theory and Measurement," National Bureau of Economic Research Working Paper no. 10433, April 2004.

<sup>15</sup> Mark J. Perry, "Comparing 1955's Fortune 500 to 2019's Fortune 500," FEE.org, May 24, 2019.

<sup>16</sup> S. Patrick Viguerie, Ned Calder, and Brian Hindo, "2021 Corporate Longevity Forecast," Innosight, May 2021, Chart 1.

<sup>17</sup> Clayton M. Christensen, *The Innovators Dilemma: When New Technologies Cause Great Firms to Fail* (Boston: Harvard Business Review Press, 1997).

<sup>18</sup> Gregory Zuckerman and Jared S. Hopkins, "Why Merck Is Playing Catch-Up in the Coronavirus Vaccine Chase," *Wall Street Journal*, October 23, 2020.

<sup>19</sup> Gregory Zuckerman and Jared S. Hopkins, "Why Merck Is Playing Catch-Up in the Coronavirus Vaccine Chase," *Wall Street Journal*, October 23, 2020.

<sup>20</sup> Tomas Nonnenmacher, "History of the U.S. Telegraph Industry," EH.net, August 14, 2001.

<sup>21</sup> Larry Schweikart, *The Entrepreneurial Adventure: A History of Business in the United States* (New York: Harcourt Brace & Company, 2000), p. 320.

<sup>22</sup> Daniel Michaels, "Fusion Startups Step in to Realize Decades-Old Clean Power Dream," *Wall Street Journal*, February 6, 2020.

<sup>23</sup> CNBC.com, "Disruptor 50," [www.cnbc.com/cnbc-disruptors](http://www.cnbc.com/cnbc-disruptors).

<sup>24</sup> Julia Kagan, "Financial Technology – Fintech," Investopedia, June 25, 2019.

<sup>25</sup> <https://robinhood.com/us/en/support/articles/our-story>.

<sup>26</sup> Telis Demos, "The IPO Club Might Finally Have You as a Member. Still Want In?" *Wall Street Journal*, June 4, 2021.

<sup>27</sup> Nathan Rosenberg and L.E. Birdzell, Jr. *How the West Grew Rich* (New York: Basic Books, 1986), p. 27.

<sup>28</sup> IPO data available at Jay Ritter's website, <https://site.warrington.ufl.edu/ritter/ipo-data>.

<sup>29</sup> Jeffrey Sohl, "The Angel Market in 2020: Return of the Seed and Start-Up Stage Market for Angels," Center for Venture Research, May 19, 2021. And see National Venture Capital Association and Pitchbook, "Venture Monitor," Q1 2021.

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<sup>31</sup> Companies with revenues of less than \$1.1 billion annually are subject to fewer disclosures and reporting requirements for the five years after an IPO.

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- <sup>37</sup> Congressional Budget Office, "Federal Policies in Response to Declining Entrepreneurship," December 29, 2020.
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- <sup>40</sup> Gutiérrez and Philippon, "The Failure of Free Entry," National Bureau of Economic Research, Working Paper no. 26001, June 2019.
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- <sup>43</sup> Brian Gormley, "Telemedicine Startups Seek to Build on 2020 Momentum," *Wall Street Journal*, January 4, 2021.
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RESPONSE FROM DR. PHILIPPON TO QUESTIONS FOR THE RECORD SUBMITTED BY  
SENATOR MARK KELLY

**1. Dr. Philippon, I'd like to ask about drug pricing. The Kaiser Family Foundation did an analysis that found that the 250 top-selling drugs in Part D with only one manufacturer and no generic or biosimilar—so no competition—make up seven percent of all Part D covered drugs, but 60 percent of Part D spending.**

**There are about 45 million people who have Part D plans. That's a lot of leverage that the HHS Secretary would have to make these drugs cheaper if he were allowed to negotiate prices. Doesn't it make sense for Medicare to be able to negotiate the price of drugs, including those that have no competitors in the market?**

Yes, it absolutely makes sense for Medicare to be able to negotiate drug prices. If you look around the world, you see that in essentially all countries the domestic equivalents of Medicare do in fact negotiate prices. The U.S. is the only country where this does not happen and is also the country where households face the highest prices.

There are several other issues with Medicare payment policies. For instance, they create an incentive for physician practices to be owned by hospitals, since Medicare pays more for the same service when the practice is owned by a hospital than when it is independent (Martin Gaynor, 2021, "Antitrust Applied: Hospital Consolidation Concerns and Solutions").

**2. To all witnesses:**

**President Biden's executive order last week included the creation of a White House Competition Council to coordinate competition policy across agencies to ensure a cohesive Federal approach. From your perspective, how can this council be most effective in creating positive outcomes for the American consumer? Is there anything in particular you hope it takes on—or anything you hope it avoids?**

I think that the creation of the Council is an excellent idea. The council should embolden existing regulatory agencies and coordinate their actions. Many of these agencies have not been active enough in recent years.

In addition to health care costs, I think that prioritizing fixed monthly bills would be useful: cell phone, internet, utilities, health insurance. Households have little flexibility in adjusting these expenses and any reduction in prices would immediately improve their living standards.

RESPONSE FROM DR. BAHN TO QUESTIONS FOR THE RECORD SUBMITTED BY  
SENATOR MARK KELLY

**1. Dr. Bahn, you've done a lot of work around how a lack of competition among employers and the inability for workers to easily move between jobs is bad for the worker—that it can give an employer more latitude to reduce wages and benefits.**

**I'm curious how this looks right now, as we are trying to claw our way out of this pandemic. What do you predict the long-term impact of the pandemic on lack of competition among employers to be? Is it too soon to know?**

The public health crisis may have business-side impacts that reduce competition among employers for workers. Research has found that small businesses are often in more financially fragile positions that make them more likely to close during an economic crisis like the recent recession. As small businesses risk closure, "big box" stores become more economically dominant. This may exacerbate the dominance of large businesses as employers, who will have more wage-setting power in absence of competitors for workers. Particularly in rural areas, the wage-setting power of large employers may lead to spillover effects and put downward pressure on earnings across a geographic area. Research on Walmart Supercenters has found that the opening of a supercenter will lower wages in the surrounding areas.

But in addition to the effects of business size, the pandemic may exacerbate limited worker mobility due to other causes. The continuing public health crisis may increase what economists call search frictions—hindrances to being able to easily search for and match into an appropriate job—which ultimately reduce competition and thereby suppress wages. For instance, the pandemic has made many workers hesitant to take jobs that pose a health risk, reducing their potential number of viable employers and making it harder to move between jobs as a result. When workers aren't able to move between jobs, employers can exploit this by paying them less.

In this context, access to health services, like health insurance, may be more critical as a labor market policy. For instance, research on variation in Medicaid generosity has found that better access to Medicaid increased the likelihood that workers are able to move into a job with better pay, and this was even before the public health crisis we continue to face.

These forces that lead to lower competition for workers are part of a long-term trend that pre-dates the recent economic crisis and the pandemic, and has led to stagnant wages. The pandemic risks entrenching these forces. While it is still too soon to tell whether the pandemic-specific forces will have a structural effect on the economy, it is still important to increase competition in the labor market so that workers can share in the value they create for the American economy and reverse long-running trends in rising economic inequality.

What's critical to understand here is that factors that limit worker mobility between jobs, not just employer concentration across geographic space, lead to lower competition by giving employers the power to undercut wages without losing their workforce. This points to policy solutions. As I noted in my written testimony, supporting worker power is a critical tool that will help balance employers' ability to undercut wages for a variety of reasons by giving workers the ability to collectively bargain over wages and bring them closer to the levels that would exist in a competitive market. This is primarily done through supporting workers' right to organize unions, including provisions currently in the Protecting the Right to Organize Act. In addition to this, universal worker protections, like anti-discrimination protections, and social infrastructure policies like income supports such as Unemployment Insurance and health insurance programs like Medicaid, also give workers the stable foundation necessary to finding the best job for themselves where they can be safe and earn a secure living.

## **2. All witnesses:**

**President Biden's executive order last week included the creation of a White House Competition Council to coordinate competition policy across agencies to ensure a cohesive Federal approach. From your perspective, how can this council be most effective in creating positive outcomes for the American consumer? Is there anything in particular you hope it takes on—or anything you hope it avoids?**

The Department of Labor is a critical enforcement agency for labor rights and job quality, including mitigating the impact of anticompetitive conduct. Evidence has demonstrated that, even in the presence of legal protections, many employers still violate the law with little recourse for workers in an individual complaint-based system. Effective enforcement not only helps workers whose employers have charges brought against them, but it has a chilling effect so other employers are less likely to violate labor rights or engage in anticompetitive conduct. The Department of Labor has a vast worker enforcement infrastructure, including the ability to carry out strategic enforcement—where investigations are conducted in industries and occupations that are more likely to have violations—so including our primary labor protection agency in addressing competition is an important piece of ensuring workers receive their fair share in an economy currently stacked against them.

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RESPONSE FROM MS. MITCHELL TO QUESTIONS FOR THE RECORD SUBMITTED BY  
SENATOR MARK KELLY

**1. Ms. Mitchell, in Arizona 99 percent of businesses are considered small businesses. These are the businesses at risk of having the scale tilted against them by big companies who have more control over shared suppliers. Then these businesses got hit again in the pandemic, which is why I led the push to include the SBA Community Navigator Pilot Program in the American Rescue Plan to provide assistance to small businesses that faced barriers accessing COVID relief.**

**How do we combat both of these forces—consolidation plus the challenges of the pandemic—to keep our small businesses strong? What are ways that communities themselves can strengthen small business?**

Thank you, Senator Kelly, for your questions. And, thank you for your stewardship of the Community Navigator Pilot Program. It is bringing crucial guidance and resources to thousands of small businesses throughout the country.

Corporate consolidation has been one of the greatest threats to small business growth and development in the United States for several decades. In the 1980s, big box stores—Walmart, in particular—used their outsized market leverage to undercut prices, selling products at a loss in order to force out small businesses and control local markets. Category killers, like Home Depot and Staples, have dominated

regional markets, eliminating small business competitors in their respective categories. Bank consolidations have starved small businesses of needed capital. Amazon controls the platform on which hundreds of thousands of small businesses sell products, then uses the information it gleans from them to unfairly compete against them. We heard just this past week from a realtor in Rhode Island about challenges her industry is facing from big tech platforms like Zillow, which is gaining breadth and depth by buying both direct competitors and also real estate transaction services.

The challenge of enforcing corporate consolidation lies largely with the Federal Trade Commission, with the Department of Justice's Antitrust Division, and with Congress, and this is absolutely crucial to leveling the playing field for small businesses. But there ARE some pre-emptive and corrective actions that communities can undertake to strengthen small business.

First and foremost, communities can create economic development plans that truly prioritize small businesses—businesses whose profits remain local and that build local wealth. This has implications for everything from a community's procurement practices to its comprehensive plan and zoning code. It is ludicrous that low-income communities that desperately need access to the healthy food that full-service grocery stores provide are being overrun by dollar stores whose limited food offerings are mostly processed and preserved, not fresh, constricting the market for full-service grocery stores—but this is the unfortunate byproduct of local planning practices that underestimate the market power of dollar stores and the deep pockets of their attorneys to challenge local planning decisions. Communities can also ensure that ample and equitable capital is available for small business loans and equity investments and that local lenders have adequate liquidity to meet these needs. They can build a robust technical assistance infrastructure to provide training and mentorship at all levels, from young entrepreneurs to retiring owners hoping to transition their businesses to new owners—this is at the heart of the Community Navigator Pilot Program, a program which we hope will continue in the future. They can invest in local solutions to delivery and fulfillment challenges, such as supporting locally owned restaurant meal delivery services. They can overhaul their municipal and institutional procurement policies to streamline procurement for small businesses and ensure that the procurement process eliminates barriers to minority-, women-, and veteran-owned businesses and actively invites their participation. They can insist that developers demonstrate that there is adequate market demand to support new commercial space as a condition of development. All of these potential actions are hallmarks of community economic development strategies that recognize that small businesses build local wealth, rather than extracting local wealth for corporate expansion or for the benefit of distant investors, and that small business development should be at the forefront of our economic development planning.

**2. Ms. Mitchell, during the state work period I visited Chandler-Gilbert Community College, which is part of Maricopa Community Colleges. Maricopa has partnered with Intel to create our state's first AI certificate and degree program. As AI development accelerates, the immediate thought is often that it's going to take away human jobs—but that's not necessarily the case. Maricopa is providing the skills training that becomes increasingly necessary as technology develops.**

**Could you talk about how AI and technology come into play when we're talking about consolidation and market power? And more to the skills training side, could you speak to the benefits of skills training to give a worker greater control and autonomy over their job movement and career progression?**

The Big Tech firms use AI in a number of ways to entrench their market power. I can't speak to skills training.

**3. All witnesses:**

**President Biden's executive order last week included the creation of a White House Competition Council to coordinate competition policy across agencies to ensure a cohesive Federal approach. From your perspective, how can this council be most effective in creating positive outcomes for the American consumer? Is there anything in particular you hope it takes on—or anything you hope it avoids?**

President Biden signed a sweeping Executive Order (EO) aimed at undoing concentrated corporate control and ending decades of consolidation throughout our economy. The order includes 72 initiatives that direct cabinet-level departments in the Executive Branch and encourage independent agencies such as the Federal Trade Commission (FTC) to identify and root out "overconcentration, monopolization

and unfair competition” in the industries they oversee. Because the Executive Branch oversees a multitude of industries, including health care, transportation, agriculture, and telecommunications, the order and the directives it contains represents one of the most significant shifts in U.S. competition policy in the past half-century. My organization applauded the Administration for the EO, but our concern is the agencies will not deliver on the expansive intent of the EO.

The White House Competition Council, led by the Director of the National Economic Council, will play an important role to ensure the agencies deliver. As described in the EO, the Competition Council will monitor the progress and execution of the initiatives. It will also play a key role in coordinating the Federal Government’s response to the rising power of large corporations in the economy. We would like to see the Competition Council build in mechanisms for greater transparency, oversight and accountability so stakeholders, advocates and the public at large to engage with the Council. This should include:

- Create public forums to engage key stakeholders and frontlines communities. The Competition Council should hold public forums designed to directly engage the public on competition policy matters. The Competition Council could coordinate “listening sessions” focusing on specific industries to help identify competition and consolidation issues and engage frontline communities, such as business owners, workers, advocates and other key stakeholders in the policy-making process. There is precedent for this. The Obama administration hosted field hearings on agriculture issues. More recently, under Chair Lina Khan, the FTC holds monthly open meetings where the public can engage directly with the FTC. Establishing these mechanisms to engage the public not only informs effective policymaking, but also legitimizes government action by establishing a public record and creating greater transparency over the process.
- Establish industry-specific working groups. The EO addresses concentration and monopolization in a range of industries spanning from healthcare, defense, Big tech to agriculture. Each of these industries are unique, and as such, deserve industry-specific solutions to address competition issues. We encourage the Competition Council to create sub-groups, organized by industry, to identify concentration and monopoly issues in that industry and design tailored government action. These working groups would also include, as needed, the antitrust agencies along to consider rulemaking or other actions to resolve those issues.
- Regular reporting on the Council’s activities and agency execution of the EO. The White House should produce and publicly release a quarterly report summarizing the Competition Council’s work and the Federal Government’s progress on the EO. This should include an analysis summarizing any barriers or challenges inhibiting the agencies from delivering on the mandate. It should also include analysis of any necessary legislative changes.