

2021



CEI ACHIEVEMENT REPORT

A SUMMARY OF 2021 ACCOMPLISHMENTS



Section 230 Explained



November 3, 2021

Ban Overboard: Exploring Solutions to Ocean Pollution

By Angela Logomasi, Ph.D.*

OnPOINT

No. 274



OnPOINT

June 16, 2021

No. 270

The Protect the Right to Organize Act Empowers Unions at Workers' Expense

Union Wish-List Bill Would Undermine Workers' Freedom of Association
By Sean Higgins*

The Protecting the Right to Organize (PRO) Act is touted by its supporters as advancing the rights of workers.¹ However, it does little to expand the rights of individual workers. Instead, its main provisions would give organized labor greater power to compel workers to join unions in order to keep their jobs. Union leaders would not need the PRO Act if most workers were as eager to unionize as they and their allies claim.²

Much news coverage and commentary on the legislation has implied that the right to organize itself is severely limited, but that is hardly the case. Private sector workers have had the right to collectively bargain since at least 1935, when Congress passed the National Labor Relations Act (NLRA), which makes it illegal for an employer to fire or punish workers for engaging in union activities. It also requires employers to negotiate a contract with a union that the government has recognized as the workers' exclusive bargaining representative.

The above applies if workers want a union, but not all workers see the advantage in having one. Currently, only 6.3 percent of private sector workers are union members, down from 20.1 percent in 1983.³ The PRO Act is meant to reverse that downward trend. It is the most extensive overhaul of the NLRA since the 1947 Taft-Hartley Amendments to the law.⁴

However, unlike Taft-Hartley, which allowed state legislatures to enact right to work laws to give individual workers the choice of whether or not to join a union, the PRO Act skews the law to compel workers to join unions. It also amends the Labor-Management Reporting and Disclosure Act (LMRDA), which could potentially give the Secretary of Labor new powers to act unilaterally.

Here is what the PRO Act actually does:

Abolish All Right to Work Laws. A common feature of union-management contracts is a provision known as a "security clause." These require the business to fire any worker who refuses to join the union that represents the employees or at least pay a fee to the union in lieu of dues. The individual worker has no say in the matter. The employer typically deducts the fees directly from the worker's paycheck. Workers in 27 states are protected from this practice by right to work laws, which prohibit contracts with security clauses.⁵ The

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WHY CONSERVATIVES SHOULD EMBRACE CONTENT MODERATION



LABOR OF LOVE

A Fred Smith Story



EDITED BY KENT LASSMAN,
AMANDA FRANCE, AND IVAN OSORIO



November 3, 2021

Ban Overboard: Exploring Solutions to Ocean Pollution

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OnPOINT

No. 274

"They're Taking My Stuff!"

What You Need to Know about Seizure and Forfeiture

By Dan Greenberg

September 2021



ISSUE ANALYSIS 2021 NO. 1

CEI NATIONAL POLL



2021

CEI NATIONAL POLL

TEN THOUSAND COMMANDMENTS

[An Annual Snapshot of the Federal Regulatory State]

CLYDE WAYNE CREWS JR.

What's Wrong with the Green New Deal?



FREE to PROSPER



A Pro-Growth Agenda for the 117th Congress



November 22, 2021

Docket ID No. CEQ-2021-0002, National Environmental Policy Act Implementing Regulations Revisions, Notice of Proposed Rulemaking

Comments of the Competitive Enterprise Institute (CEI)

Thank you for the opportunity to comment on the Council on Environmental Quality's (CEQ) proposal to modify certain aspects of its regulations implementing the National Environmental Policy Act (NEPA).¹ CEI's comments focus on CEQ's proposed revisions to its July 2020 implementing regulations defining "environmental effects." Specifically, CEQ proposes to:

- Remove language defining "effects" as impacts "that are reasonably foreseeable and have a reasonably close causal relationship" to agency actions.



WHY CORPORATIONS SHOULD PASS ON ESG-INVESTING

By Richard Morrison



WEBmemo

May 5, 2021

No. 61

Frequently Asked Questions on ESG Theory

Adapted from the study

Environmental, Social, and Governance Theory: Defusing a Major Threat to Shareholder Rights

By Richard Morrison*

Q: What does "ESG" stand for?

A: ESG is short for "environmental, social, and governance." It is a theory of investing that calls for corporations to elevate the interests of other "stakeholder" groups to the same status as shareholders, and to actively engage in environmental and social activism in addition to producing products and services.

Q: Where did ESG theory come from?

A: The term "ESG" was first used in a report published by the United Nations Global Compact in 2004, but has a long history of similar, predecessor concepts both in academic literature and in the business world. Similar concepts include "corporate social responsibility," "corporate social performance," "socially responsible investing," "stakeholder capitalism," "shared value creation," the "triple bottom line," and "impact investing," among others.

Q: Is there a history of corporate leaders embracing "social responsibility" policies?

A: Modern capitalists like Ben Cohen and Jerry Greenfield of Ben & Jerry's are far from the first corporate founders to profess a public commitment to socially enlightened management. The last two centuries of Anglo-American business history are filled with quirky free thinkers and high-minded theorists who were driven by their own vision of business virtue, though many of their expectations would clash with modern standards.

Q: How does ESG as a system of ethics for business differ from more traditional expectations?

A: Individual business owners or corporate officers may be under any number of ethical obligations, depending on their status—for example, as a citizen, parent, Christian, environmentalist, Freemason, or volunteer leader—but those roles and responsibilities are independent of the firm. The traditional understanding of the corporation allows it to focus on the purpose for which it was constituted—profitably producing goods and services—

* Richard Morrison is a research fellow and director of the Center for Advancing Capitalism at the Competitive Enterprise Institute.

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GLASGOW COP26



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LETTER FROM THE PRESIDENT



In grade school my parents invested in a set of the *World Book Encyclopedia*. The heavy books, richly textured with gold embossed letters on the spine, had a special place of honor in the family room. Ostensibly, they were purchased to help the four Lassman children with homework and to improve our chances to get into college. I treated them like a personal treasure and pored over their pages for years. It was hard to imagine any important topic the *World Book* didn't cover. Apparently, the authors and editors had seen, visited, studied, and explained everything.

Sometimes I reflect on the breadth and depth of those encyclopedias when I think about our contemporary regulatory state. From agriculture to aviation to zoonotic pathogens, Americans regulate nearly everything and the federal government seems to have an agency, bureau, commission, or office for it all.

Much of that activity is counterproductive. All too often, our regulatory systems—for creating, evaluating, changing, and even repealing rules about economic activity—create more harms, more costs, and more failures than benefits or opportunity. It is a tragic irony: Regulation intended to bring order, reduce risk, and eliminate social harms routinely limits human potential in practice.

At CEI, we work to remove as much power and regulatory decision making as possible from bureaucrats and politicians and entrust that authority to families, communities, and free enterprise. That aim scales perfectly; what is good for the individual is also good for a nation of more than 335 million people spanning a continent and the world's largest ocean.

It is difficult and specialized work, but we do it with good cheer regardless of who wins or loses at the ballot box. That cheerful optimism keeps us on guard against the cynicism that pervades too many policymaking institutions.

Within these pages you'll find where 2021 afforded us some policy victories in turning back the worst excesses of central planners. In some areas, we focused on educating policymakers, the media, and the public because many of those excesses have been a century in the making and will take a generation to unwind. Still, many of CEI's achievements lie in helping to clear the path toward a restored system of ordered liberty.

Whatever the political winds, we at CEI remain steadfast, focused on expanding and disseminating our deep, encyclopedic knowledge about the regulatory state—its federal agencies, bureaus, commissions, and boards that oversee so much of our lives—and look for ways to restrain it. You can count on us to help move America forward, toward a future where the boundaries of freedom are expanded.

In liberty,

A handwritten signature in blue ink that reads "Kent Lassman". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kent Lassman
President and CEO

REGULATORY REFORM CEI advocates for reform, not only of individual regulations, but of the rulemaking process. Decades of accumulating regulatory burdens weigh heavily on America's workers, consumers, businesses, and families. Worse, the way agencies develop, promulgate, and enforce regulations suffers from a lack of transparency, democratic accountability, and fidelity to a constitutional rule of law. Our regulatory process reform efforts are aimed at increasing agency transparency and accountability and ensuring that regulatory policy conforms to the Constitution and does more good than harm.

DEREGULATION AND ECONOMIC FREEDOM CEI's deregulatory work addresses many of the industries and activities where long-established, often paternalistic regulatory policies tend to stymie the creation and evolution of new products, services, technologies, business practices, and work arrangements. Key issue areas include banking and securities regulation, consumer finance, labor law and employment policy, consumer product regulation, and trade policy. These issue areas require our experts to have a firm understanding of existing regulation, regulation's monetary and social costs, and an appreciation of the ways in which technology and innovation present new challenges and prospects for reform.

ENERGY AND ENVIRONMENT CEI opposes environmental alarmism, conservation policies based on junk science and fear-mongering, and efforts to restrict and ration energy. During that time, our Energy and Environment team has become the most effective advocate of the free market approach to environmental policy in Washington. Our work shows that property rights, freedom of contract, and marketplace incentives provide better means of preserving the environment, internalizing pollution costs, and conserving resources than do regulatory command and control policies.

TECHNOLOGY AND INNOVATION CEI's Technology and Innovation experts work to keep the regulatory state from encroaching upon frontier industries and ensure that 21st century technologies are not shackled by 20th century regulations. In industries characterized by rapid change and cutting-edge innovation, market discipline is better than government regulation at ensuring effective competition and consumer protection. Innovation tends to make the world safer, healthier, wealthier, and more consumer-friendly, while government regulation tends to short-circuit innovation while entrenching politically favored businesses and technologies.

ADVANCING CAPITALISM CEI's Advancing Capitalism initiative works to promote a better, more robust understanding of the values and virtues of capitalism, free markets, and economic liberty. It complements the work of CEI's policy experts, based on the premise that advancing free market public policies is easier when policymakers and the public understand how capitalism not only makes people wealthier and healthier, but also advances other important values, such as fairness and justice.

LAW AND LITIGATION As a vertically integrated public policy organization, CEI often engages in litigation as a major part of its advocacy program. CEI's Law and Litigation team initiates lawsuits on behalf of CEI or allied individuals and organizations, and it weighs in on cases with amicus briefs. In 2021, we launched a new project focused on reforming civil asset forfeiture laws. This latest initiative is aimed at securing federal and state legislation to fundamentally reform forfeiture practices around the country. The momentum for reform is building, but more remains to be done.

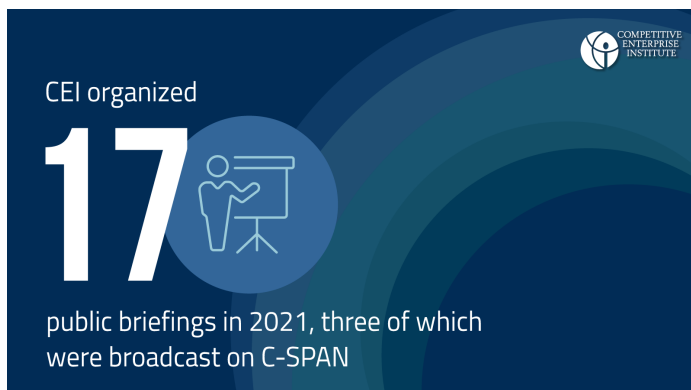
EXECUTIVE SUMMARY

CEI spent much of the past year pursuing changes on a variety of regulatory fronts, including defeating union-driven labor and employment policies, promoting federal and state legislation to permanently remove regulatory barriers hindering telemedicine and remote health services, opposing energy-use restrictions such as carbon taxes, litigating against auto fuel-efficiency mandates, and challenging the Mandatory Repatriation Tax.

The year 2021 was a transitional one not only for the nation, but for CEI as an organization. Not only did we witness the easing of more COVID-19 lockdown measures, but the regulatory policy landscape changed substantially with the election of Joe Biden. The president set one of the most aggressive regulatory agendas in history, so CEI spent an even greater amount of time fighting harmful proposals. At the same time, we saw many positive achievements, including transitioning to a hybrid model for hosting both in-person and online events, welcoming staff back into the office, hiring more talented members to work on areas including civil forfeiture and environmental policy, and bringing back the annual Julian L. Simon Memorial Award Dinner.

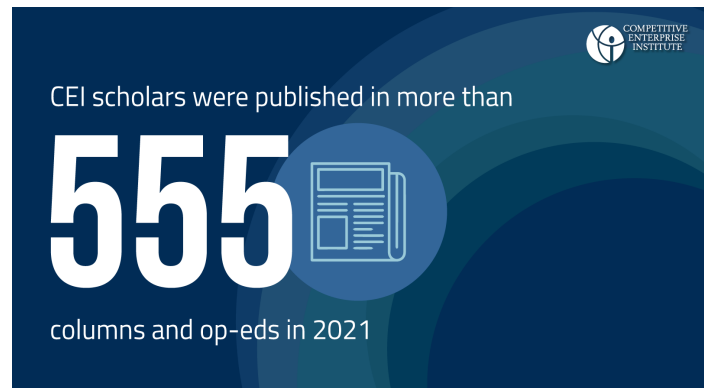
We published *Free to Prosper: A Pro-Growth Agenda for the 117th Congress*, the latest edition of CEI's biennial book-length compendium of policy proposals across all of CEI's issue areas, released at the start of each new Congress.

The 2021 edition of *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State* provides the first, and most comprehensive, look at the Trump administration's regulatory record.



CEI organized 17 public briefings, as 2021 marked the second year of CEI's online events program. On average, 85 attendees joined the events live, with several hundred watching the archived footage. C-SPAN broadcast three CEI programs last year: book forums for *The Property Species* and *The Dictatorship of Woke Capital*, as well as a policy forum with then-Environmental Protection Agency (EPA) Administrator Andrew Wheeler.

In June, CEI hosted an Alfred E. Kahn Roundtable Dinner on how to advance long-lasting regulatory reform, featuring remarks by former Secretary of Transportation and Secretary of Labor Elaine L. Chao, at the Planet Word Museum.



The flagship event in 2021 was the Julian L. Simon Memorial Award Dinner and Summit, hosted at the REACH at the John F. Kennedy Center for the Performing Arts on September 21. CEI honored New York University Professor William Easterly with the 2021 Julian L. Simon Award. Professor Joseph Henrich, who chairs Harvard University's Department of Human Evolutionary Biology, delivered keynote remarks. The fitting theme for this year was "Stranger than Politics: Escape the Bureaucratic Upside Down," inspired by the hit Netflix series *Stranger Things*. Master of ceremonies and *Dispatch* columnist Chris Stirewalt captured the spirit of the event—and of CEI's work—in his opening remarks:

My father used to say ... you can be happy, you can be right, but not usually both. ... CEI is the exception that proves that rule. CEI is a place where people are happy about the work they do; they're engaged in their cause with an optimistic, loving spirit. ... CEI

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manages to keep a spirit of hope, optimism, and enthusiasm. ... Fred Smith helped create a thing of beauty that Washington owes something to because of the bravery, kindness, and decency you evince while never backing down, never flinching from the cause that you love.

The next morning, CEI hosted a half-day policy summit for several dozen supporters in the Justice Forum at the REACH. The summit featured one-on-one conversations with Easterly and Henrich and the launch event for CEI's new civil asset forfeiture reform project.

We also released *Labor of Love: A Fred Smith Story*, a collection of previously published essays and articles by CEI founder Fred L. Smith, Jr. The underlying themes of Fred's work, spanning more than 30 years, still resonate today—evidence of the timelessness of CEI's ideas. His work still informs many of today's national policy debates.



CEI launched its civil asset forfeiture reform initiative, led by a team of experts with decades of experience on the issue. Part of CEI's Law and Litigation work, the project is aimed at securing federal and state legislation to fundamentally reform forfeiture around the country. The momentum for reform is building across the nation, but more needs to be done. In just the past six years, lawmakers in Maine, New Mexico, Nebraska, and North Carolina have abolished civil forfeiture and now require a criminal conviction before property is forfeited. CEI is also pursuing important legislation in Michigan. We produced an accessible citizens' guide on what to do when facing the asset forfeiture regime and promoted it to the media and to allies at the Institute for Justice, the American Legislative Exchange Council, and state think tanks.

CEI debuted a new video series, "Not a Policy Paper, Just a Thought," a collection of short videos that explain clearly and concisely how certain regulatory proposals harm the economy and consumers.

CEI filed 43 comments to various federal rulemaking bodies and 31 court filings—both by CEI staff and by outside attorneys working in partnership with CEI—and wrote or co-authored four agency coalition letters and five legislative coalition letters. Importantly, submitting comments to a regulatory docket provides CEI with an opportunity to highlight weaknesses in specific policy proposals and to note, for the record, ways in which the proposal exceeds the agency's legal authority.

Our work to challenge the constitutionality of the Mandatory Repatriation Tax gained national media attention. Our goals in this area are to reverse a bad policy and to build legal precedent clarifying that national wealth taxes and national property taxes are unconstitutional. Most recently, the case was highlighted in a September *Wall Street Journal* opinion piece.

We engaged in a court challenge against the IRS that is designed to serve as a bulwark against Sen. Elizabeth Warren's plans to implement a wealth tax.



SPECIAL PROJECT: COP 26 CABLES

CEI DISPATCHES FROM THE U.N. CLIMATE SUMMIT



Throughout 2021, CEI’s Energy and Environment team advanced the goal of a more rational, science-based approach to environmental regulation on a number of fronts. Key among these was the opportunity for several members of CEI’s staff to travel to Glasgow, Scotland, in November to participate in the United Nations climate summit, known as the 26th Conference of the Parties to the United Nations Framework on Climate Change, or COP 26 for short. For decades, CEI has been recognized by the U.N. as a research non-governmental organization with something to offer at its climate policy conclaves. At the meeting, we were one of the very few free market voices among the 20,000 delegates and other attendees—though likely the most effective.

CEI used COP 26 as an opportunity to educate policy makers about the harmful effects of climate alarmism and of policies to restrict energy production and use. During that week, CEI President Kent Lassman filed a series of six “COP 26 Cables” for the “Capital Matters” section of *National Review Online*. As his commentaries explain, the week shaped up to be a big charade among policy makers once again overpromising and

underdelivering. For example, there was a pledge to end deforestation by 2030 that was remarkably similar to a U.N. declaration in 2014 to halve the rate of deforestation by 2020 and end it by 2030. Nearly 200 countries were represented at COP 26 and trillions of dollars in transfer payments were either demanded or promised by various parties. Our coverage was bolstered by the addition of *National Review* roving reporter Kevin D. Williamson, who is collaborating with CEI on a project on the history and culture of the green movement.

With a front row seat to the negotiations, Lassman used his commentaries to highlight the most important developments. These included President Biden announcing new regulatory plans for methane emissions, former President Obama briefly touching down to deliver a speech urging an escalation in the activism that leads to energy restrictions, and special envoy John Kerry’s efforts to seek partners to join the U.S. in crafting more extravagant promises. “Undoubtedly, we’ll see some of these proposals come back to haunt our own regulatory agencies in the coming year,” Lassman noted.

REGULATORY REFORM

CEI works to reform the processes that agencies use to develop and enforce new regulatory policies. In June 2021 CEI released the 28th edition of the annual *Ten Thousand Commandments* report, which shines a light on the large “hidden tax” of federal regulation. It concludes that federal regulations cost Americans \$1.9 trillion each year, or nearly \$15,000 per household. The 2021 edition provides perhaps the most complete survey of the Trump administration’s good and bad regulatory measures.

This immense burden does not even include the weight of regulatory “dark matter,” the tens of thousands of guidance documents, opinion letters, memoranda, and other edicts that administrative agencies issue to businesses and consumers on a dizzying array of topics. Vice President for Policy Wayne Crews was among the first scholars to draw attention to regulatory dark matter—he even coined the term.

Most of President Trump’s executive orders on regulatory reform were overturned as soon as President Biden took office. Nonetheless, we had some notable successes influencing the debate during the past year, such as multiple citations of dark matter and *Ten Thousand Commandments* in the 2021 Economic Report of the President. Even *The New Yorker* noted CEI’s conception of “dark matter.”

We distributed the report on Capitol Hill, along with a “Dear Colleague” letter from Senator Mike Lee (R-UT) urging his fellow Senators to read it and utilize it in their work. Crews also presented his findings at Americans for Tax Reform’s Wednesday Meeting and at meetings hosted by the House Republican Study Committee and Senate Steering Committee.

We marked the release of *Free to Prosper: A Pro-Growth Agenda for the 117th Congress*, and promoted it with an online event featuring Senator Rand Paul (R-KY).

Crews was instrumental in the drafting and introduction of two important pieces of regulatory reform legislation—the Guidance Out of Darkness (GOOD) Act and the Pandemic Preparedness, Response, and Recovery Act to improve agency transparency and accountability. Crews and CEI Government Affairs and Coalitions Manager Matthew Adams also promoted the Pandemic Preparedness, Response, and Recovery Act, which would establish an independent commission to identify which regulations have hindered the nation’s COVID-19 response and compile a repeal package to be submitted to Congress for an up-or-down vote. They also began work on the introduction of an Abuse of Crisis Prevention Act to prohibit the kind of knee-jerk, flash policy we have seen since the start of the COVID-19 pandemic—which happens in every crisis. Such a bill would prioritize deregulatory stimulus and restrict federal spending and abuse of emergency powers. CEI also led the fight against Congressional efforts to undo Trump administration deregulatory rules and legislative measures.

CEI’s Never Needed campaign, which in 2020 helped convince the Trump administration to issue executive orders directing federal agency heads to repeal suspended rules that were unneeded, once again paid off. The visibility it gained for CEI kept us in the minds of editors, producers, reporters, and Capitol Hill staffers as a top source of COVID-relevant regulatory ideas, resulting in proposed legislation, citations in Republican Study Committee reports, and *Ten Thousand Commandments* being featured on C-SPAN’s “Washington Journal.”



TECHNOLOGY AND INNOVATION

ANTITRUST AND COMPETITION POLICY

While antitrust is a mainstay CEI issue, it has risen in prominence in recent years. Perhaps the best known example over the past year was the Federal Trade Commission's (FTC) antitrust complaint against Facebook, alleging that the social media company is a monopoly in violation of antitrust rules.

Critics of large corporations on both the political left and right increasingly see the "bigness" of these firms as *prima facie* evidence of their "badness." Their ire has been focused mainly, though not exclusively, on major companies in the computer technology, Internet, and communications fields. In response, they propose more aggressive enforcement of America's competition and antitrust laws. Both Democrats and Republicans have targeted large technology companies in a series of hearings, proposed legislation to give antitrust enforcers sweeping new powers, and pushed the Federal Trade Commission and the Department of Justice (DOJ) to prosecute unpopular firms. Meanwhile, state attorneys general across the country have launched their own antitrust suits.

CEI's task is to counter the neo-trustbuster's case by raising awareness of the problems and abuses associated with federal and state-led antitrust investigations. CEI's analysis, advocacy, and outreach explain why antitrust regulation harms consumers and, ironically, how it tends to concentrate power in fewer hands while enabling rent-seeking by special interests.

During 2021, CEI experts published a series of in-depth studies, briefing papers, and commentaries that explain how antitrust regulation hinders innovation and competition, why large firms often produce important efficiencies that yield ample benefits for consumers, and why regulators and courts should be constrained to enforcing a narrow, consumer harm-oriented standard, while meeting substantial burdens of proof, rather than attacking any business arrangement that is big, new, or politically unpopular. CEI experts wrote and spoke out against the abandonment of the consumer welfare standard as it relates to extreme policy changes at the FTC, harmful legislation now in Congress, and court cases brought by federal agencies and state attorneys general.

We have had international television appearances on antitrust issues in places as far away as Korea.

In 2021, Technology and Innovation Policy Director Jessica Melugin published numerous op-eds and blog posts in defense of market competition. Her pieces appeared in publications including *Forbes*, the *Orange County Register*, *National Review*, and *Real Clear Policy*. She also discussed the issue in appearances on Fox News and C-SPAN.



Senior Fellow Ryan Young had a feature-length article on the bipartisan antitrust revival in the January 2021 issue of *Reason* magazine. He co-authored an op-ed in *The Hill* with former CEI research associate Alex Reinauer about Senator Mike Lee's bill to move all antitrust enforcement into the Department of Justice. It is currently split between the DOJ and the Federal Trade Commission. One of Young's proudest antitrust accomplishments is coining the term "relevant market fallacy," which reappeared in both *Law360* and *Yahoo News*.

Young has done extensive media on antitrust issues, including authoring feature-length articles, blog posts, and commentaries and participating in more than a dozen radio appearances, both on nationally syndicated shows such as the Lars Larson Show and on regional shows across the country. He was quoted in outlets such as Fox News, *Law360*, *TechXplore*, and in Francophone outlets *Le Monde* (Paris) and *Les Affaires* (Canada). He also wrote two antitrust-themed book reviews and was cited in at least one book, as well as a law review article. Behind the scenes, Young contributed to CEI's coalition work and peer-reviewed papers from allied experts at other organizations.

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Antitrust policy extends well beyond big tech. In addition to covering the cases involving Facebook, Google, Amazon, and Apple, Young offered commentary on a case involving JetBlue and American Airlines, as well as President Biden's proposal to fight rising gas prices with an antitrust investigation into oil companies.

In August, CEI released widely cited policy paper by former Federal Trade Commission Chairman Timothy J. Muris and former director of the FTC's Bureau of Economics Bruce Kobayashi. CEI hosted a discussion on antitrust issues with experts from other organizations. Robert Bork, Jr. also joined CEI experts for a book forum on the new edition of the seminal work *The Antitrust Paradox* by late Judge Robert Bork.

As the year progressed, it became clear that the Federal Trade Commission would move aggressively in areas beyond technology industries. CEI experts are ready to make their arguments in these arenas, beginning with Iain Murray's analysis of the FTC's challenge to the mergers of publishers Penguin Random House and Simon & Schuster.

TECHNOLOGY AND TELECOMMUNICATIONS

Telecommunications regulation and Internet freedom are a core part of CEI's policy reform agenda. Our scholars have led the charge to streamline and rationalize Federal Communications Commission (FCC) and Federal Trade Commission rules governing communications services and to lower barriers to market entry in all areas of the media and telecom sector.

In 2015, during the Obama administration, the FCC promulgated its so-called "Open Internet" or net neutrality order, a set of rules forbidding Internet service providers from blocking, throttling, or prioritizing paid digital content—practices the Commission said would lead to sharply higher prices and slower network speeds. With CEI's support, the order was repealed by the Trump administration in 2017. As our research and advocacy projected, Internet speeds have risen more than 85 percent, while prices have remained stable.

CEI has argued against efforts to impose state-level net neutrality regulations. Nevertheless, a progressive constituency for reinstating net neutrality remains, and it is high on the Biden administration's policy agenda in the coming years.

In addition to our work on net neutrality, CEI has been a leading voice in print, on radio and television, and on policy panels against repealing or weakening liability protections for Internet companies under Section 230 of the Communications Decency Act. Section 230, colloquially known as the "First Amendment of the Internet," is a valuable tool to protect free speech online. However, it is now under attack from all sides. Progressives and some conservatives argue that the federal government should regulate social media platforms—and online speech in general—to promote content "objectivity" and "neutrality," much like the Fairness Doctrine, which once governed television and radio content. Conservative supporters of those proposals argue that liberal-leaning tech companies are attempting to "de-platform" conservatives and keep their views out of the mainstream.

CEI was first out of the gate to oppose regulating these platforms as "common carriers"—much like the old Ma Bell telephone monopoly. Early in 2021, CEI's Jessica Melugin appeared on a Federalist Society panel opposite antitrust advocate Hal Singer, moderated by renowned legal scholar Richard Epstein, to discuss the merits of common carrier regulation for social media platforms. In August she spoke at the State Policy Network annual meeting on the "techlash"—the supposed public backlash against tech companies.

Research Fellow Ryan Nabil participated in a successful effort to defeat social media regulation proposals at the American Legislative Exchange Council's annual meeting last summer in Salt Lake City. Nabil's research has also examined regulations related to emerging technologies—such as 5G and satellite-based Internet services, blockchain technology, and artificial intelligence—and advocated for market-friendly regulatory approaches toward emerging technologies. In 2021, he published 20 op-eds and blog posts in outlets including *The Miami Herald*, *The Hill*, *The Seattle Times*, and *The National Interest*.

ENERGY AND ENVIRONMENT

For nearly four decades, CEI has led the opposition to environmental alarmism, conservation policies based on junk science and fear-mongering, and efforts to restrict and ration energy. During that time, CEI's Energy and Environment team has become the most effective advocate of the free market approach to environmental policy in Washington.

One of the things that makes CEI so effective is our leadership of the Cooler Heads Coalition, an informal network of free market-oriented public policy organizations that serves primarily to share information, develop strategies, and coordinate activities related to energy and environmental policy advocacy. The group is led by Energy and Environment Policy Director Myron Ebell. Often, the monthly Cooler Heads Coalition meetings bring together staff from the Environmental Protection Agency, Department of the Interior, relevant congressional committees, and individual House and Senate member offices. A recent meeting featured a presentation by Steven Koonin, chief scientist at the Department of Energy during the Obama administration, who discussed his controversial book, *Unsettled: What Climate Science Tells Us, What It Doesn't, and Why It Matters*, in which he argues that environmental activists have grossly exaggerated the real risks associated with climate change.

Throughout 2021, CEI's Energy and Environment team advanced the goal of a more rational, science-based approach to environmental regulation on a number of fronts. In November, CEI sent four NGO delegates to the United Nations COP 26 climate summit in Glasgow, Scotland, including CEI President Kent Lassman and *National Review* roving reporter and CEI visiting investigative writer Kevin D. Williamson. CEI and Williamson began a partnership in 2021, to be continued through 2022, during which Williamson will write a series of essays on how radical environmentalism has become enmeshed in dominant progressive programs. Following COP 26, Ebell traveled separately to London for meetings with several key U.K. policy makers.

In March, CEI hosted a double book forum on the improving state of the world and the myths of environmental disaster with authors Johan Norberg and Patrick Moore for their respective books, *Open: The Story*

of Human Progress and *Fake Invisible Catastrophes and Threats of Doom*.

Over the course of 2021, CEI released the first three in a series of four papers by Senior Fellow Dr. Angela Logomasini examining the environmental and health benefits of plastics, with the fourth due for publication in early 2022. In November, CEI hosted an online panel with Logomasini and leading plastic materials scientist Dr. Chris DeArmitt.



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September 14, 2021

No. 273

The Immeasurable Benefits of Plastics to Humanity

By Angela Logomasini, Ph.D.*

THE GREEN NEW DEAL AND CONSERVATIVE COMPROMISE PROPOSALS

Climate alarmism has been embraced not only by environmental activists but also by the mainstream media, popular culture, and other institutions dominated by the political left. It has, in turn, yielded dozens of proposals to restrict energy use and increase renewable energy subsidies—many of them compiled in the Green New Deal, introduced in Congress in 2019 by Sen. Edward Markey (D-MA) and Rep. Alexandria Ocasio-Cortez (D-NY).

On an abstract level, the American public is broadly sympathetic to appeals for clean energy, having been fed a steady diet of eco-alarmism by the media and Hollywood. Still, poll after poll show that most Americans prioritize job security and economic growth over costly environmental policies, and they overwhelmingly have

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rejected specific Green New Deal policies. In early 2021, CEI released poll results showing these very conclusions. The poll asked respondents how concerned they were about global warming and how much they were willing to spend to combat it. Still, progressive Democrats are committed to implementing something like the Green New Deal, through a more piecemeal approach if needed, and President Biden has adopted it as the central organizing issue of his administration—to be integrated into the policy agenda of every federal department and agency.

All of our research was shared with coalition partners and other allies in original and summary formats, presented at meetings and in speeches and panel discussions. It also served as the basis for articles and op-eds, conference calls and webinars, and social media posts.

Much of CEI's environmental policy work in 2021 was spent educating Republicans in Congress on the harmful nature of "so-called conservative" green proposals. Throughout the past year, CEI experts held dozens of conference calls and online meetings with Capitol Hill staffers to educate them on the costs and other drawbacks of energy rationing policies. CEI experts also leveraged relationships with grassroots advocacy and state public policy organizations to educate the constituents of moderate politicians who support conservative green proposals and provided data, talking points, and messaging tips that their members could use in their own direct advocacy.



SOCIAL COST OF CARBON

Developed by environmental activists more than three decades ago, the social cost of carbon (SCC) is ostensibly an estimate of the economic cost of one ton of carbon dioxide (CO₂) emissions. In an effort to justify tighter environmental regulations, an Obama administration Interagency Working Group published "technical support documents" (TSDs) in 2010, 2013, and 2016 that instructed federal agencies to use its SCC estimates when conducting cost-benefit analyses of any regulation that could lead to energy use reductions. The SCC estimates in the 2013 TSD were about 60 percent higher than in the 2010 TSD—as if climate change, a multi-century phenomenon, got 60 percent worse in just four years.

In September, CEI climate scientist Patrick J. Michaels published an op-ed in *Inside Sources* in which he summarized his review of a Government Accountability Office (GAO) study that recalculated the Obama administration's social cost of carbon estimates. The GAO study, which used standard Office of Management and Budget regulatory accounting practices, resulted in a drop in the SCC's value from \$50 per ton in 2020 to \$7 per ton.

In April, CEI's Marlo Lewis submitted comments to the Federal Energy Regulatory Commission (FERC) making the case that the SCC is too subjective and easily bent to political purposes to inform energy policy.

In June, Patrick Michaels and Marlo Lewis helped to produce a detailed critique of SCC modeling and submitted comments on behalf of 12 free-market organizations to FERC. The comments and analyses will be essential if an opportunity to challenge the final rule is presented.

And in December, Marlo Lewis published a paper debunking the case for a carbon tax—much of which is based on the social cost of carbon.

CARBON TAX

One part of the Green New Deal that has gained traction is a tax on carbon dioxide emissions from combustion of coal, oil, and natural gas. These three fuels provide more than 80 percent of the energy used both in the United States and globally. Progressive environmentalists support carbon taxes as a means to reduce fossil fuel use and fund subsidies for renewable energy sources.

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While a carbon tax uses a price mechanism rather than mandates to reduce emissions, that does not make it a free market policy. Even if a carbon tax were revenue neutral, it would still be economically damaging—the smaller the base on which a tax is levied, the more harmful its effects on investment, employment, and consumer prices. Furthermore, no carbon tax proposal put forward to date has offered any significant deregulation.

In March, CEI co-signed, and helped promote, a coalition letter urging Congress to reject a carbon tax. Signed by 70 free market organizations, the letter warns that a carbon tax would raise the cost of heating a home in the winter and cooling it in the summer, increase gas prices at the gas pump, lower households' effective take home pay, and increase the size and scope of government overall.



Coalition Letter Opposing Any Carbon Tax

March 17, 2021

Dear Members of Congress,

We oppose any carbon tax. A carbon tax raises the cost of heating your home in the winter and cooling your home in the summer. It raises the cost of filling your car. A carbon tax increases the cost of everything Americans buy and lowers Americans' effective take home pay. A carbon tax increases the power, cost and intrusiveness of the government in our lives.

AMERICANS
TAX REFORM



REOPENING AND RESCINDING THE EPA ENDANGERMENT FINDING

Although Congress never expressly authorized the Environmental Protection Agency to regulate greenhouse gas emissions, the Supreme Court ruled in 2007 that the Clean Air Act could be used to regulate them if the agency determined that the gases endanger public health and welfare. Two years later, the EPA issued an “Endangerment Finding” for six greenhouse gases that provides the legal basis for regulating carbon dioxide emissions from coal- and natural gas-fired power plants,

gasoline- and diesel-powered vehicles, cement plants, and other commercial sources. Although the Trump administration repealed several Obama-era energy rules, the legal requirement—and political opportunity—for the EPA to regulate greenhouse gases will continue as long as the Endangerment Finding remains in effect.

In 2017 CEI petitioned the Environmental Protection Agency to reopen and reconsider its 2009 Endangerment Finding, which is the basis for practically all federal regulation of greenhouse gas emissions. In the last days of the Trump administration, the EPA denied CEI's petition. However, in March 2021 the Biden EPA withdrew that denial; we believe that the agency will eventually issue a more elaborate negative response.

Early in 2021, CEI filed a request for correction under the Information Quality Act, asking the EPA to withdraw the Endangerment Finding due to procedural problems found by the agency's own Inspector General. We recently filed a Freedom of Information request for related documents in an attempt to prompt action.

FUEL ECONOMY STANDARDS

Corporate Average Fuel Economy (CAFE) standards were first implemented by Congress in 1975 to reduce oil consumption by increasing the fuel efficiency of cars and light trucks. The standards have pushed automobile fuel efficiency higher, but at the cost of forcing automakers to reduce vehicle weight, which, other things being equal, makes them less crashworthy than heavier ones.

CEI has led the opposition to CAFE for decades. Our work helped stabilize CAFE standards for more than a decade. In September 2019, due in part to CEI's advocacy efforts, the Trump administration reversed course, publishing a proposal to freeze fuel efficiency requirements at the 2020 level and rescinding California's purported authority to establish its own greenhouse gas motor vehicle standards. By the time the final rule was published in March 2020, the Department of Transportation (DOT) had softened its position and promulgated a tightening of the efficiency standard, albeit at a much slower pace than established by the 2010 rule.

However, on Inauguration Day, President Biden issued an executive order directing DOT and the EPA to immediately review, revise, or rescind its Safer Affordable Fuel-Efficient Vehicles Rule (SAFE 1). In April

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and May 2021, the EPA and DOT separately proposed to rescind their respective portions of SAFE 1, and invited public comment. On June 11, 2021, CEI's Marlo Lewis submitted comments on this topic, with eight free market organizations signing on to CEI's comments. In July, he submitted a second set of comments reaffirming SAFE 1's argument that California's tailpipe CO2 standards and mandates are unlawful under both the Energy Policy Conservation Act and the Clean Air Act.

APPLIANCE EFFICIENCY STANDARDS

Government efficiency standards for home appliances are some of the costliest and most problematic regulations imposed by Washington. CEI has been making the case for years that these energy and water efficiency standards drive up prices and reduce consumer choice. We found a receptive audience in the Trump administration, but now every deregulatory move is in the process of being undone by the Biden administration. The Department of Energy (DOE) has launched a new round of even tighter standards for most other home appliances, while several environmental advocacy groups and state attorneys general have filed lawsuits seeking to stop faster dishwashers. In January 2021, CEI filed motions to intervene in those lawsuits and to preserve consumers' choices. In the past year, we also filed comments with the DOE on shower head and light bulb regulations. We raised public awareness of the issue through blog posts, op-eds, and media appearances.

ENDANGERED SPECIES ACT

The Endangered Species Act (ESA) grants the federal government sweeping powers to regulate the use of any land on or near where endangered and threatened species are found. This heavy-handed approach substantially undermines property rights, imposes sizeable economic costs, and does little to protect threatened and endangered species.

During the past year our team leveraged CEI's network of natural resources and property rights activists across the country to keep them up to date on the Biden administration's policy changes and develop strategies to educate the public on how best to stymie new progressive land grabs.

PERMITTING AND NEPA REFORM

The federal permitting process poses one of the most significant impediments to economic growth and job creation, along with federal regulatory restrictions and mandates. Every year, billions of dollars' worth of natural resource, construction, and infrastructure projects are held up and made costlier by the need to secure federal permits from several government agencies. Even the permits themselves often require permits: The National Environmental Policy Act (NEPA) requires federal agencies that supervise such projects to conduct an environmental assessment to measure every conceivable impact on the natural and built environments.

The Trump administration cut much of the red tape facing major infrastructure projects and streamlined the NEPA permitting process, but the Biden administration has delayed these reforms, thereby extending the deadline for agencies to adopt regulations implementing the new NEPA rules by several years.

During the past year, CEI Senior Fellow Mario Loyola wrote extensively on the need for NEPA reform and worked on several permitting reform legislative proposals with several Senators. Many of his proposals were incorporated into the current legislative package on infrastructure. He published several articles on the topic, including in *The Wall Street Journal* and *National Review*, in which he made the case that the reform made NEPA more predictable, a change that is likely to be reversed by the Biden administration.

WSJ | OPINION



OPINION | COMMENTARY

It Takes Lots of Permits to Save the Planet

Every new energy project has to go through a convoluted and unpredictable federal approval process.

By Mario Loyola
April 4, 2021 4:14 pm ET

DEREGULATION AND ECONOMIC FREEDOM

BANKING AND FINANCE

CEI has long sought to liberalize financial regulation to enable greater innovation in investment mechanisms, reduce paternalistic limits on who can invest, and remove overt and implicit subsidies that incentivize bad investments. For example, we have long supported eliminating a Securities and Exchange Commission rule that allows only wealthy individuals to invest in non-publicly traded corporate stocks, initial public stock offerings, and other equity offerings that regulators consider to be overly risky.

In 2021, our focus in banking and finance issues included advocacy in support of the Office of the Comptroller of the Currency's (OCC) FinTech charter (for "financial technology"), which allows non-depository financial technology firms to apply for bank charters, and the OCC's "regulatory sandbox" program, which allows FinTech firms to grow and experiment in an environment largely free from burdensome government regulation.

CEI also fought to restore the "valid when made" and "true lender" doctrines through legislation so that the terms of a loan in one state are honored in another state. We also advocated for ending the government conservatorship of the government-sponsored enterprises Fannie Mae and Freddie Mac, and for phasing out their government support.

In May, former Consumer Financial Protection Bureau Taskforce Chair and George Mason University Law Professor Todd Zywicki and National Credit Union Administration Vice Chairman Kyle Hauptman joined CEI experts to discuss market mechanisms for improving access to capital, credit, and financial inclusion.

In July, Senior Fellow John Berlau testified on financial inclusion at a hearing before the House Financial Services Committee in support of the Expanding Financial Access for Underserved Communities Act, which would allow, but not mandate, credit unions to expand their membership to include a variety of underserved areas. Berlau and Adjunct Fellow Paul Jossey published a series of op-eds in *Forbes* and other publications highlighting the downsides of a provision in the budget reconciliation bill that would ban Individual Retirement Accounts



from investing in nearly all companies that are not fully publicly traded. A piece by Berlau was cited in two articles by the popular trade website *Crowdfund Insider*. Fortunately, in October 2021 the Biden administration and the House dropped the provision from its revised framework for the reconciliation bill, a major victory for CEI.

Berlau's work over the past year also focused on showing why the Annual Percentage Rate (APR) is a poor measure of the cost of a short-term loan. Berlau and Government Affairs and Coalitions Manager Matt Adams co-authored a paper showing why the APR mandate in the decades-old Truth in Lending Act is an inappropriate measure of the cost of short-term loans. Berlau wrote an op-ed for *Inside Sources* that was picked up by the *Boston Herald*. In July, Berlau testified before the House Financial Services Committee in a hearing on access to the banking system and wrote about the issue in *National Review*. Unfortunately, the "true lender" rule was defeated on a party line vote, but the arguments about the flawed APR helped take the wind out of the sales of the APR cap legislation, which has attracted bipartisan opposition and has yet to make it out of committee.

For years, CEI has pushed for both clarity and minimal red tape in the cryptocurrency sector, working with grassroots activists to push for those goals. Today blockchain entrepreneurs are a vital part of the nation's economy. In March, John Berlau and Ryan Nabil filed comments with the Treasury Department's Financial Crimes Enforcement Network arguing that its digital wallet reporting rules would stifle innovation and violate consumer privacy. *The Wall Street Journal* published a

letter by Berlau on the dangers of state-run central bank digital currency versus private cryptocurrency.

John Berlau and Paul Jossey drew attention to efforts to regulate the highly innovative financial sectors of cryptocurrency and crowdfunding. The bipartisan infrastructure package's cryptocurrency tax reporting provisions could undermine this vital part of America's digital infrastructure. In *Forbes*, Berlau explained how the bill's definition of "broker" for cryptocurrency vastly exceeds the long-established one for brokers of other financial services.

Berlau also wrote statements on behalf of CEI, joined a coalition letter, and conducted media interviews opposing the nomination of President Biden's nominee for Comptroller of the Currency, Saule Omarova, who recently withdrew her name from consideration.

CEI's Ryan Nabil spearheaded a project to meet the growing demand by policymakers to understand best practices in designing sandbox programs, which allow startup firms to grow and experiment in an environment largely free from burdensome regulation for a limited time. To date, Nabil has published op-eds on regulatory sandboxes in *Real Clear Policy*, *the Hill*, and the University of Denver's Unlocking Legal Regulation Knowledge Center.

Nabil and Berlau co-authored comments to the Department of the Treasury on proposed regulations related to cryptocurrency. Their work was highlighted by the House Energy and Commerce Committee.

Continued interest in John Berlau's book *George Washington, Entrepreneur*, which looks at the Founding Father's contributions to the economic life of the early republic, earned Berlau a series of high-profile media interviews, including on nationally syndicated radio shows the John Batchelor Program and the Jim Bohannon Show, and an invitation to speak at Family Reunion of the National Society of Washington Family Descendants in Mount Vernon.

LABOR AND EMPLOYMENT

The Protecting the Right to Organize (PRO) Act, a central part of the President's agenda, represents the most radical change in labor and employment law since the New Deal. Democrats have attempted to incorporate parts of the PRO Act into other legislation that is more likely to pass, such as the budget reconciliation bill. In 2021, CEI's Sean Higgins highlighted the harmful elements of the PRO Act, such as its "gig economy" provisions, which would make it more difficult for businesses to hire independent contractors instead of employees. He coordinated with other free market organizations to bring attention to the legislation's destructive provision. This helped undermine the narrative pushed by Democrats, and echoed by most media outlets, that the PRO Act is a moderate piece of legislation that merely bolsters workers' right to organize.

Thanks in part to these efforts, momentum in Congress for the PRO Act appears to have faded. The legislation is stalled in the Senate due to opposition from Democratic Senators from West Virginia and Arizona, which are right to work states. Efforts by CEI to publicize the legislation's repeal of all right to work laws helped raise the issue's prominence. Certain provisions of the PRO Act, mostly related to agency fines and enforcement, were included in the budget reconciliation bill, but the more significant provisions mentioned above were left out.

Higgins has continued to establish his position as a go-to labor analyst for both media and private industry. He published op-eds in *Fortune*, *The Hill*, *Reason*, *National Review*, and the *Washington Examiner*, and was featured on a National Public Radio forum, providing the sole free market perspective in a panel of otherwise pro-organized labor commenters. He established himself as an expert on high-profile issues like the union vote at an Amazon facility in Bessemer, Alabama, and the backlogs at west coast ports exacerbating the supply chain crisis.

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CEI pushed back against calls for increasing the minimum wage above \$15, making the case that it hinders hiring and that, when combined with increased unemployment payments, it threatens a back-door imposition of a universal basic income.

SUPPLY CHAIN AND INFLATION

2021 brought a novel economic problem to the nation in the form of a supply chain crisis. Severe backups at ports, especially on the west coast, that resulted in freighter ships being anchored offshore for weeks before they could offload their cargo caused shortages of goods and contributed to rising inflation. Our research suggests that regulation played a major role in the emergence of these problems, which impose unnecessary costs on American households. Vice President for Strategy Iain Murray coordinated work on CEI's responses to the emerging supply chain and inflation difficulties in the second half of 2021.



CEI's Sean Higgins was at the forefront of explaining how the crisis came to be and the policies and regulations that made it worse. While most news outlets pointed to delays brought on by COVID-19 safety measures as the main cause, he explained in numerous blog posts, media interviews, and a CEI

online forum the central role of longshore unions in creating the crisis. Union contracts limited the number of shifts at the ports, preventing them from operating on a 24/7 basis. Unions also fought to prevent automation at the ports. As a consequence, U.S. ports are among the least efficient in the industrialized world. He also showed how other regulatory problems exacerbating the crisis, such as federal rules limiting the amount of time truckers can spend on the road and California's AB5 law, which threatens to put independent truckers out of business in the Golden state.

Higgins highlighted the role of the market in addressing the crisis, noting how vacancies in transportation and logistics were being rapidly filled and how major retailers and manufacturers were creating inventive workarounds to keep stores fully stocked.

Iain Murray and Mario Loyola also published well-received pieces on the supply chain crisis. Ryan Young wrote on both this the supply chain issue and inflation, appearing on C-SPAN'S "Washington Journal" and on the nationally syndicated Lars Larson Show. Marlo Lewis highlighted the role of energy suppression policies in exacerbating both problems and attempts to utilize the crisis to institute radical changes in energy policy that will create new supply chain crises of their own. In November Murray, Young, Higgins, and Lewis summarized their research in a CEI policy panel.

HEALTH POLICY

The ongoing COVID-19 pandemic has shed light on major problems in the way health care and medical technologies are regulated in the United States. From lengthy delays in the approval of diagnostic test kits and personal protective equipment to certificate of need laws and occupational licensing restrictions that prevent clinics and hospitals from adding new capacity, the overregulation of America's health care system helped

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turn a disease outbreak into a nationwide medical crisis.

CEI Senior Fellow Dr. Joel M. Zinberg helped to raise awareness of many of the Food and Drug Administration's (FDA) policy missteps and advocated for repeal of the premarket medical device and test kit approval policy. He also has written extensively on the development of COVID vaccines and the federal government's Project Warp Speed, which helped facilitate more rapid clinical testing and expedited FDA reviews. The Warp Speed concept grew out of a proposal to expedite production of epidemic flu vaccines that Zinberg worked on in 2018 and 2019, when he served as general counsel to the Council of Economic Advisors.

SUPPLY SIDE SNAFU

FEAT. IAIN MURRAY, SEAN HIGGINS, MARLO LEWIS, AND
RYAN YOUNG

NOVEMBER 30, 2021



Throughout the past year, Zinberg devoted a considerable amount of time to exploring the impact of the COVID-19 pandemic on our nation's economy and on personal health and well-being. He also has written on the legal issues associated with vaccine mandates, including the efficacy and side effects of lockdowns and other government mandates versus private initiatives by businesses and individuals to mitigate the impact of the pandemic. An important focus has been on the practical and legal limits on government's power to impose mandates and other regulations. This will continue to be the focus of his work over the coming year.

Zinberg has done numerous interviews on C-SPAN, appeared on the Dana Loesch Show, and written more than two dozen opinion pieces for the *New York Post*, *National Review Online*, and *City Journal*. He has concluded that, although the Supreme Court would most likely permit state governments to mandate COVID vaccination, doing so would raise a number of personal privacy and religious issues. Zinberg has explained

why private businesses, non-profit organizations, and civil society institutions have an incentive to promote voluntary vaccination, and why a totally or mostly voluntary approach would be superior to sweeping government mandates.

CEI Senior Fellow Michelle Minton continued CEI's work on reforming governmental approaches to public health, focusing on the harmful effects of existing regulations and the current public health information establishment. One of her most significant projects centered on preventing the destruction of the safer nicotine industry through misguided regulation. Minton's research aims to expose the global network of anti-tobacco interests that have commandeered tobacco regulation around the world, blocking life-saving innovations like nicotine vapor products, heated tobacco, snus, and other risk-reducing nicotine products.

CEI's work on tobacco harm reduction also helped to thwart an effort to enact prohibition through regulation of safer nicotine products in the U.S., compelling the FDA to issue its first-ever approval of the sale of several noncombustible nicotine products "for the protection of public health." This helped to prevent the destruction of the alternative nicotine market, and also helped undermine the narrative behind many international anti-vaping efforts.



Don't Ban E-Cigarette Delivery by Mail

By MICHELLE MINTON | March 10, 2021 6:30 AM



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Minton also conducted research showing how many of the problems in public health regulation can be traced, at least in part, to the increasing centralization of health policies. For instance, in the U.S., local health governance is reliant on—if not completely forfeited to—federal authorities, such as the FDA and the Centers for Disease Control and Prevention. These national health agencies, in turn, are heavily influenced by international authorities, like the World Health Organization. But, as Minton and other CEI experts have highlighted throughout the COVID-19 pandemic, mission creep and a lack of transparency in these health super-agencies has undermined their ability to effectively address complex health issues. Her work advocates for a return to a more restrained approach to health regulation, greater transparency, and respect for personal autonomy in health matters.

TRADE

CEI analysts continued to doggedly make the case for free trade in an era of growing protectionism, while laying the groundwork for longer-term reforms. With President Biden adopting the Trump trade playbook—with added pandering to green and labor interests—Ryan Young and Iain Murray defended sound trade policies in a variety of outlets, including in CEI's *Agenda for Congress* and a related launch event featuring Senator Rand Paul; opinion pieces in the *Washington Examiner*, *National Review*, *The Dispatch*, and daily newspapers across the country; national radio shows such as Lars Larson; television shows such as C-SPAN's "Washington Journal;" and mentions in *USA Today* and other national outlets.

While the best we can hope for in the short term is damage control, there are reasons for optimism over the long term. We are already advancing constructive proposals for upcoming trade agreements with the United Kingdom and the European Union, rebuilding the World Trade Organization's dispute resolution mechanism, and countering China's increasing illiberalism. And we are marketing those ideas to Capitol Hill and agency staff, the press, and the general public.

THE FUTURE OF ECONOMIC FREEDOM

Iain Murray also continued his work on the ongoing global political realignment away from economics and toward identity issues, writing about its implications in various policy areas, such as conservative attitudes toward business and the rise of the "woke" corporation. In addition, building on CEI's work on cryptocurrency, he has promoted decentralization as the answer to many of our current regulatory problems, such as the promise of decentralized social media to dilute the power of large social media platforms. However, the potential for such decentralization is imperiled by regulation of technology and finance. Given that, his work in this area has centered on raising awareness as much as in fighting regulation. His writings on these topics have appeared in *The Dispatch*, *The American Conservative*, and *National Review*.

In 2021, Murray also expanded his analysis of the rise of modern American socialism that began with his book *The Socialist Temptation*, with recent interviews on the topic with *The Washington Times* and Fox News' Bret Baier.

ADVANCING CAPITALISM

Capitalism has been the most dynamic force for economic progress in history, enabling billions of people to rise out of poverty and delivering unprecedented human flourishing. But capitalism is under attack. Instead of defending their contributions to society's well-being, many business leaders often bow to anticapitalistic pressures.

CEI's Advancing Capitalism initiative promotes a better, more robust understanding of the values and virtues of capitalism, free markets, and economic liberty. The initiative's studies, articles, and public appearances seek to debunk the myth that capitalism is exploitative and is leaving a less healthy, less fair, and less productive world to future generations. It complements CEI's core policy work, based on the premise that advancing free market policies is easier when policy makers and the public understand how capitalism not only makes people wealthier, but also advances other important values, such as fairness and justice.

During the past year, CEI's Advancing Capitalism initiative pursued an aggressive agenda that included the following:

- Emphasized opportunities for private contract and voluntary association to solve the problems for which new laws and regulations are often proposed as a solution.
- Advocated for reform of existing regulations and greater restraint in issuing of new regulations, such as rules on corporate governance from the Securities and Exchange Commission.
- Explained how the biggest threats arising from politicized investing are against workers and to retirees rather than big corporations.
- Persuaded business leaders to use their networks in defense of freedom, just as "woke capitalists" use their networks to convey progressive ideas.

We also published a significant amount of material on corporate governance, specifically the growing movement for environmental, social, and governance (ESG) goals, which poses a direct threat to the property rights of investors. CEI Research Fellow Richard Morrison published op-eds and articles on the topic in *Forbes*, *Newsweek*, *National Review*, the *Washington Examiner*, and *Inside Sources*, as well as reviews of recent economics books published in *Reason* and *Cato Journal* and by the Foundation for Economic Education.

CEI published a study by Morrison, "Environmental, Social, and Governance Theory: Defusing a Major Threat to Shareholder Rights," which recommends strategies to counter rising anti-corporate activism. Experts also published articles and op-eds on free enterprise, finance, and corporate governance in *Fortune*, the *Harvard Law School Forum on Corporate Governance*, *National Review*, *Law & Liberty*, and the Foundation for Economic Education, among other outlets. Morrison hosted an online panel on the future of ESG Investing with experts from *National Review's* "Capital Matters" and the Cato Institute.

CEI hosted a panel in December on the Department of Labor's proposed rule encouraging pension fund managers to consider environmental, social, and governance factors in their investment decisions. Former Secretary of Labor Eugene Scalia delivered keynote remarks.



LAW AND LITIGATION

CEI's Center for Law and Litigation pursued several tactical goals during 2021, including the following.

WIN THE MICHAEL MANN CASE

In July, CEI won a major victory in a case first brought against us in 2012, when Penn State University Professor Michael E. Mann demanded that CEI retract and apologize for a post on its blog written by an adjunct scholar. In July, the trial judge granted CEI's summary judgment motion and struck down Mann's claims against us, based on his failure to produce sufficient evidence of possible malice by CEI to warrant jury consideration. Several days after that ruling, the judge struck all seven of Mann's expert witnesses from the case, but allowed our statistical expert, a Wharton statistics professor, to remain. And in September the judge denied Mann's request to reconsider his ruling dismissing us from the case. While Mann can still appeal the judge's rulings to a higher court after the trial is over, the recent ruling was a major win for CEI.

DEFEAT THE IRS' ATTEMPT TO EVADE THE CONSTITUTION'S RESTRICTION ON DIRECT TAXES

CEI completed a briefing in the Ninth Circuit in our constitutional challenge to the Mandatory Repatriation Tax, which was part of the Trump administration's tax reform package. The tax is similar in principle to Sen. Elizabeth Warren's (D-MA) "Ultra-Millionaire Tax" proposal. Both violate the apportionment requirement for direct taxes under the Constitution's Article I, Section 9, Clause 4. CEI filed the case, *Moore v. United States*, in September 2019 in U.S. District Court in Seattle. CEI, with outside pro bono counsel, is representing a Washington state couple who own shares in an Indian company that makes equipment for small-scale farmers. They have never sold any shares or received any dividends, but the IRS hit them with a retroactive tax on the grounds that the increase in share value was "deemed" to be income. In January 2021, a federal district court ruled against us, largely on the shaky ground that certain Supreme Court precedents have been undercut by lower court rulings.

HOLD CLIMATE CZAR GINA MCCARTHY AND HER NATIONAL CLIMATE TASK FORCE ACCOUNTABLE

At the outset of his term, President Biden announced a "whole of government" approach to addressing climate change. He named former Environmental Protection Agency Administrator Gina McCarthy as National Climate Advisor, in charge of a National Climate Task Force consisting of more than 20 members, many of them agency heads.

The Task Force characterizes itself as purely advisory in nature and therefore exempt from such statutes as the Freedom of Information Act (FOIA) and rulemaking and open meeting laws. But the Task Force has gone far beyond advising the President. It has developed national greenhouse gas emission targets and has become heavily involved in how agencies prioritize and manage their activities, all aimed at developing a government-wide approach to addressing climate change. CEI filed several FOIA requests in the spring of 2021 with both Gina McCarthy's office and the various Task Force member agencies. After receiving no response, we filed suit, with representation by the Dechert Law Firm, with CEI attorneys acting as co-counsel.



In 2021, we initiated

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court filings by CEI staff and with outside attorneys working in partnership with CEI

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ABOUT CEI

Founded in 1984, the Competitive Enterprise Institute is widely recognized as a leading and effective advocate for freedom on a wide range of critical economic and regulatory policy issues. Each year, our research and analysis are cited thousands of times in major media outlets, relied upon by scholars and advocates, and used by members of Congress, executive branch officials, and other federal and state policymakers as the basis for reform actions and proposals. Our work provides policymakers with user-friendly data and analysis, as well as concrete, actionable reform proposals.

CEI was among the first free market organizations founded expressly to pursue a full-service approach to public policy. We not only publish original and insightful analysis, we then use that intellectual ammunition to craft advocacy and education campaigns designed to change minds and transform policy.

In addition to producing scholarly studies, CEI policy analysts produce timely commentaries for major news organizations, appear on television and radio programs, promote reform ideas through digital and online forums, and engage with other experts who cover our key policy areas.

CEI experts also meet regularly with members of Congress and state legislators, legislative staff, department heads and agency leaders, and senior administration officials to engage in direct advocacy. We participate actively in the regulatory process by testifying at congressional and agency hearings, and by filing comments on proposed agency rules. We also regularly partner with coalition allies to pursue reforms at the state and local levels of government.

Through an active law and litigation program, CEI initiates lawsuits and files amicus briefs in cases that challenge the constitutionality of dubious statutes and the legality of onerous regulations. Our litigation program has won multiple precedent-setting rulings from the U.S. Supreme Court, lower federal appeals courts, and state courts. But no matter the venue, CEI's legal work has proven effective at achieving greater economic liberty, increased government transparency and accountability, and a stronger commitment to the rule of law.



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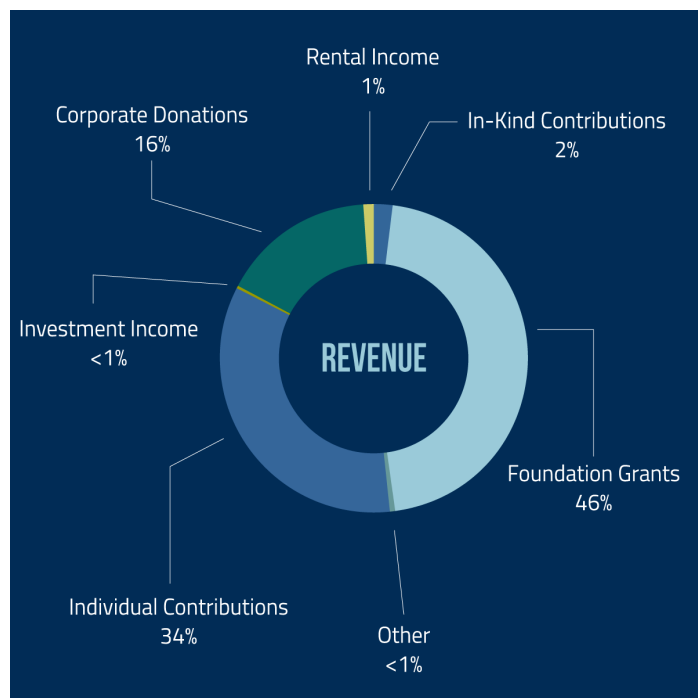
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Expenses for the year totaled \$6.87 million, with 65 percent of that going to programmatic expenses of our five policy areas, communications, and events.



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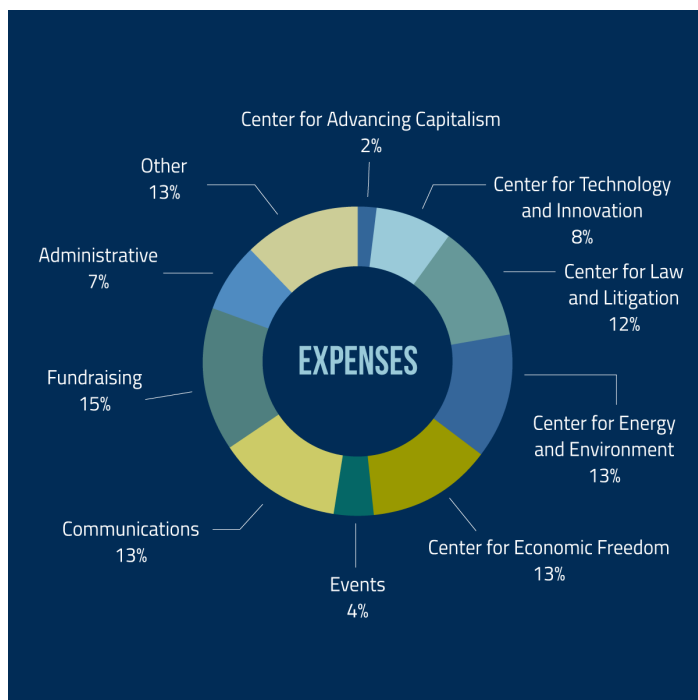
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