

2023



# CEI ACHIEVEMENT REPORT

A SUMMARY OF 2023 ACCOMPLISHMENTS



**THE FTC MUST  
BE RESPONSIVE  
TO CONGRESS  
& CONSUMERS**



PAID FOR BY THE COMPETITIVE ENTERPRISE INSTITUTE

**Free the  
Economy**



**Ugh, Capitalism  
with Jeremiah  
Johnson**



**Constitutional Restoration**

How to rebuild the separation of powers

By Dan Greenberg and Devin Watkins

June 2023

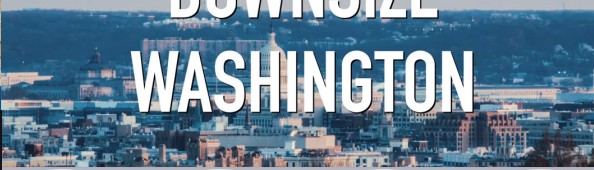
**Conflict of Justice**

Making the case for administrative law court reform

By Stone Washington and Ryan Young



**IT'S TIME TO  
DOWNSIZE  
WASHINGTON**



**2023**

**TEN  
THOUSAND  
COMMANDMENTS**

[ An Annual Snapshot of the  
Federal Regulatory State ]

CLYDE WAYNE CREWS JR.



**OnPOINT**

April 11, 2023

No. 285

**M&As Are A-Okay**

How Mergers and Acquisitions Help Entrepreneurs and Drive Innovation

By Jessica Melugin

*"If economists wished to study the horse, they wouldn't go and look at horses. They'd sit in their studies and say to themselves, 'What would I do if I were a horse?'"*

- Ronald Coase, quoting fellow economist Ely Devons'

Fretting about "killer acquisitions" and "kill zones" is common among regulators in Washington these days, but entrepreneurs and investors at work in the tech industry intrinsically understand the myriad benefits of mergers and acquisitions (M&A) for founders, buyers, and end users. The economic evidence does not support new regulations to prevent or curtail mergers and acquisitions. Rather, it aligns with the positive experience of tech entrepreneurs and investors in the marketplace.



**WHY CONGRESS  
SHOULD PASS A FEDERAL  
DATA PRIVACY FRAMEWORK**

By Jessica Melugin



**OnPOINT**

March 1, 2023

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**Two Wrongs Don't Make a Right to Repair**

How State "Right to Repair" Legislation Harms Consumers and Innovation

By Alex Reinauer

Should you have the legal right to fix your own stuff? At first glance, the answer would seem like a simple "yes." That simple answer is at the heart of the growing right to repair movement, a coalition comprised of repair enthusiasts and consumer advocates.

**Five Myths of Civil Forfeiture**

SECOND EDITION

By Dan Greenberg

April 2023



**The FTC is Harming Consumers and Innovation**

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# LETTER FROM THE PRESIDENT



The human mind is an amazing pattern-seeking machine. As a basic principle of evolutionary biology, our repeated interactions create the patterns necessary to assess risk, successfully pursue resources, and avoid an untimely demise. This survival mechanism helped produce a wonderfully powerful brain designed to make decisions.

From whether or not to hit the snooze button in the morning or to have a snack between meals, we constantly make decisions by balancing costs and benefits. One study shows that in a typical day, we each make about 35,000 decisions. That is a lot of choices.

But what about the decisions, the important ones that shape our lives, that are taken from us by regulatory agencies?

Where and when we work? What is the nature of compensation for that labor – time off, insurance, money, recognition? Can we *really* utilize and improve the property we own? Are we, in simple or complex associations with others, empowered to make commercial decisions about the markets we pursue, the customer service we provide, or the capital investments we make?

The ways regulation creates unnecessary and costly barriers to what we can do with our property, with our time and ingenuity, and our future are limited only by the imagination. So it is important to limit the overall effects, especially the net costs, of specific regulation. That is where CEI shines. With your help, we eliminate unnecessary regulatory controls and unleash human potential. Regardless of which party or faction is in charge of various political institutions, CEI is the hammer blasting away at the regulatory state. And we pursue these aims because embedded in our work is the central belief that the locus of decision-making for economic activity must shift toward individuals, families, communities, and private enterprise.

Last year, CEI experts provided expert testimony at more than a dozen Congressional hearings and were quoted, published, interviewed, cited, or mentioned more than 6,200 times. Our landmark Supreme Court case, *Moore v. US*, took on excess regulation in the tax system and CEI’s “Eye on FTC” campaign became the tip of the spear against abuse at one of Washington’s most powerful regulatory agencies, the Federal Trade Commission.

That’s just the beginning and throughout the following pages you’ll see more evidence of our remarkable year and why, with your support, CEI continues to be America’s most effective advocate of regulatory reforms.

Ultimately, we can choose to make decisions in one of two ways. Americans can lean toward fixed, undemocratic and unaccountable, rigid rules rooted in coercion or we can go the other direction. We can lean toward voluntary arrangements among people who chart their own lives, strong property rights, robust price systems and a freer, more dynamic, healthier economy. This is a decision that more people, especially more policymakers, can get behind and CEI’s mission is to help them find their way.

In liberty,

A handwritten signature in blue ink that reads "Kent Lassman". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Kent Lassman  
President and CEO

**REGULATORY PROCESS 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 lacks 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, onerous regulations based on junk science and fear-mongering, and efforts to restrict and ration energy. 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 to preserve the environment, internalize pollution costs, and conserve 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 is the leader among free-market organizations battling regulatory overreach. In 2023, we advanced several significant policy initiatives on a range of issues including financial policy, energy production and use, environmental protection, technology, labor policy, health care, and regulatory process reform.



CEI is a safeguard for Americans’ constitutional and economic freedoms against policies coming from the Biden administration and the progressive regulatory state. The president’s “whole of government” approach has enlarged federal bureaucracy and led to a strained economy. Throughout the past year, CEI policy experts educated members of Congress, state policymakers, and the general public. We showed them how to seize opportunities for regulatory reform that will ensure a resilient economy in the long term.

In addition to scholarly studies, CEI policy analysts produced timely commentaries for major news organizations, appeared on television and radio programs, promoted reform ideas through digital and online forums, and engaged with other experts involved in the same key policy areas. We opposed economically damaging proposals ranging from radical energy and environmental restrictions to the legal and cultural threats to free enterprise from misguided ESG policies.

On Dec. 5, CEI appeared before the US Supreme Court for arguments in the potentially precedent-setting case *Moore v. United States*. A victory would enforce an important constitutional limitation on Congress’s taxing power. It would also help guard against national wealth taxes.

The case has received a great deal of media coverage. Many stories have displayed panic from the progressive left who realize we mean to put an end to big

government’s wealth tax aspirations. *Moore v. United States* is the product of a long-term vision and a willingness to fight on every front against the regulatory state. We provide more details about the case in the Law and Litigation section of this report.

We welcomed the reopening of Capitol Hill this year by hosting a pair of briefings there. The first briefing covered CEI’s Agenda for Congress with remarks by Rep. Bob Good (R-VA). The second briefing looked at how the Federal Trade Commission hampers small business activity with Rep. Beth Van Duyne (R-TX).

We also increased the number of regional events, New York City luncheons, and Alfred E. Kahn Discussions; launched our first hybrid event programs; and more than doubled the number of CEI-hosted coalition meetings. This last year, CEI expanded its event programming by 50 percent and audience by 17 percent. In total, CEI hosted more than 2,800 guests at 66 events.

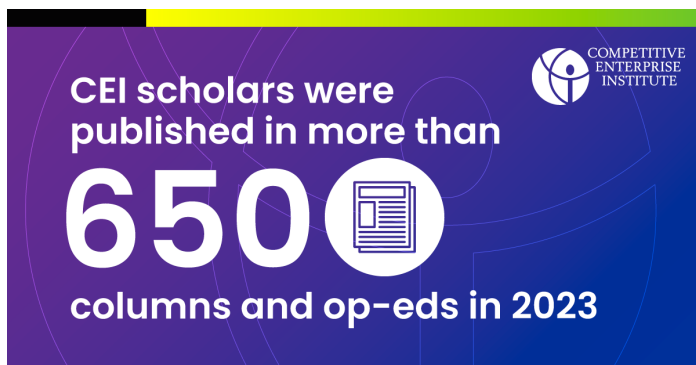


From June 1 to 4, the team hosted its seventh annual policy summit in Lake Tahoe. The destination fulfilled a goal to push the program westward. Despite the distance for the organization’s core East Coast supporters and the ever-increasing cost of travel and events, attendance increased by 20 percent.

Summit highlights included a sunset cruise to Lake Tahoe’s Emerald Bay and a tour of the Buffalo Creek Art Center, owned by CEI friends Steve and Lana Hardy. Guest speakers included Heterodox Academy President John Tomasi on improving intellectual diversity in academia; Securities and Exchange Commissioner Hester Peirce on how the SEC’s ESG policies conflict with the federal government’s proper role in society; and Rep. Kevin Kiley (R-CA) on the challenges to protect worker rights against obstructive unions.

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On Sept. 28, CEI hosted 420 attendees at its flagship Julian L. Simon Memorial Award Dinner. Held at the National Portrait Gallery and Smithsonian American Art Museum, guests enjoyed an *Elvis: All Shook Up*-themed night. *Reason* Editor-at-Large and Elvis double Nick Gillespie was the master of ceremonies. David Simon, son of the event's namesake, presented this year's Julian L. Simon Memorial Awards to Gale L. Pooley and Marian L. Tupy, coauthors of *Superabundance: The Story of Population Growth, Innovation, and Human Flourishing on an Infinitely Bountiful Planet*. CEI President Kent Lassman interviewed Annie Duke, celebrity poker champion and author of *Quit: The Power of Knowing When to Walk Away*, who gave insightful recommendations for quitting overregulation.



A record 22 members of the media attended the gala this year. Jennifer Harper covered the occasion in her *Washington Times*, *Inside the Beltway* column.

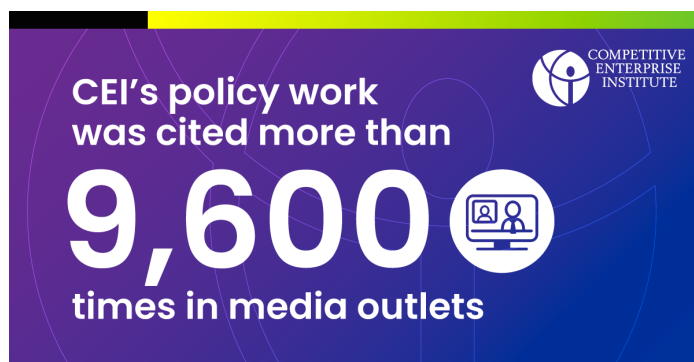
CEI's Alfred E. Kahn Discussion series brings together scholars and policy influencers to discuss the most pressing deregulatory issues and opportunities. We held five roundtable Kahn Discussions this year, matching the series' frequency of its 2017 inaugural year. Talks featured former Federal Trade Commission officials Tim Muris, Bruce Kobayashi, and Christine Wilson, former British Prime Minister Liz Truss, and former Labor Secretary Eugene Scalia. In the last Kahn Discussion of the year, one week before the Supreme Court arguments in *Moore v. United States*, BakerHostetler partner and lead counsel Andrew Grossman laid out the stakes of the case.

We also hosted an online event on the *Moore* case, which was covered by *Politico Pro* and *The Center Square*. C-SPAN re-broadcast two CEI book forums with authors Todd Myers and Mark Calabria. Additional webinars covered the favorable Supreme Court ruling on the Waters of the United States (WOTUS) case, crucial CDC

reforms, and the overwhelming need for permitting reform to stay competitive in the global market.

CEI provided expert witnesses at a record number of congressional hearings. CEI fellows testified in-person at 11 hearings, plus provided two written testimonies to Senate committees. We have also helped congressional staff to prepare for hearings or introduce legislation. With an increased presence before Congress, CEI is directly reaching lawmakers and influencing congressional scrutiny of the regulatory state.

CEI entered the podcast space. We successfully launched the weekly *Free the Economy* podcast in December 2022 and the monthly *How the World Works* podcast and video series in August of 2023. The podcasts have drawn more than 31,800 total combined downloads as of mid-December and are already establishing base audiences. CEI is building and influencing audiences in the digital space to counter ESG measures and heavy-handed regulations.



Our policy and litigation efforts continued to receive high-value and positive coverage. In 2023, CEI experts were quoted, published, interviewed, cited, or mentioned more than 9,600 times. CEI experts were cited by national outlets including CNBC, C-SPAN, Fox Business, Marketplace and NPR, The Sean Hannity Show, *Politico*, *The Wall Street Journal*, *The Hill*, and Yahoo News. TV highlights included C-SPAN's *Washington Journal*, CNBC's "Last Call," Fox Business's "Mornings with Maria," and Fox News's "Fox & Friends First." From October 1, 2022 through October 3, 2023, CEI experts conducted 50 television interviews.

Noteworthy achievements extend to every CEI policy center, as outlined in this report. Through involvement at every stage of the policy making process, CEI once again shaped laws that encourage transparency and accountability.

# SPECIAL PROJECT: EYE ON FTC



In January 2023, CEI launched an initiative, “Eye on FTC,” to expose abuses of power at the Federal Trade Commission. FTC officials have the statutory mission to guard consumer interests and promote business competition. Yet current Chair Lina Khan leads aggressive antitrust actions and promotes policies that increasingly interrupt commerce, raise barriers to entry, harm consumers, and increase the scope of government.

Eye on FTC puts the rogue agency in the spotlight as CEI and allies fend off this attack on private enterprise through research, news, analysis, and key partnerships such as with former FTC Chairman Timothy J. Muris. The campaign’s website serves as a hub to highlight and distribute the work of CEI experts as well as others from across the policy community. In its inaugural year, the initiative garnered coverage from national outlets, including Bloomberg and Politico.

Among major Eye on FTC papers, CEI published studies by Muris, former FTC Director of the Bureau of Economics Bruce Kobayashi, and economist Joseph W. Sullivan. Eye on FTC also amplified CEI experts’ regulatory comments filed with the agency. We argued against the FTC’s Non-Compete Clause Rule, 2023 Draft Merger Guidelines, and

Premerger Notification; Reporting and Waiting Period Requirements.

Eye on FTC was the basis for several events, including multiple Alfred E. Kahn dinner discussions, panels at CEI’s 2023 policy summit in Lake Tahoe, and Capitol Hill briefings.

In 2024, the program expands to leverage the early success of Eye on FTC as a resource for policymakers, allies, and the public. The campaign’s focus extends beyond the much-discussed tech companies as the FTC increasingly aims expanded government powers at other industries, including groceries, oil and gas, and health insurance. CEI analysts use opportunities to make new allies who are now realizing that Khan and other regulators are going too far.

We plan more research, outreach, coalition work, media appearances, and events to continue to expose how the Federal Trade Commission is unaccountable and not adhering to tested and accepted practices of economic or legal analysis. We will also submit additional regulatory comments, file amicus briefs, and evaluate potential legal challenges to obstructive FTC measures as necessary.



# REGULATORY PROCESS REFORM

CEI is dedicated to reforming the processes agencies use to develop and enforce new regulatory policies. To this end, CEI publishes *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State*. The report captures the size, scope, and cost of federal regulations, and how they affect American consumers, businesses, and the US economy at large. Author and Fred L. Smith Fellow in Regulatory Studies Wayne Crews spotlights the large and under-appreciated “hidden tax” of America’s regulatory state.

Findings from the 2022 edition were cited numerous times this year on the House floor, including a four-minute-long citation by Rep. Harriet Hageman (R-WY) during a House Judiciary markup session.

In November 2023, CEI released the latest edition of *Ten Thousand Commandments*. The current issue marks 30 years since the first report was published as part of the *Journal of Regulation and Social Costs* in 1993. This year’s report covers the effects of the Biden administration’s “whole of government” directive to federal agencies to prioritize progressive political goals like equity and climate change. Crews finds that whole of government interventions have accelerated spending and expanded the regulatory state, leading to more centralized economic and social regulatory power in the federal government and shifting decision-making away from local governments and households. *Ten Thousand Commandments* also offers solutions to make the rulemaking process more transparent, constrained by law, and accountable. Ideas include requiring congressional approval for significant agency rules, regulatory sunseting and budgeting, and annual regulatory transparency report cards.

The report once again tallies the huge and growing cost that federal regulations impose on American businesses and families—\$1.939 trillion annually, or nearly \$15,000 per household and amounting to 7.4 percent of US gross domestic product. This amount exceeds every item in the household budget except housing. A typical American household spends more on embedded regulation than on health care, food, transportation, entertainment, apparel, and services. 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. Crews was among the first scholars to draw attention to regulatory dark matter—he even coined the term.

In May, Crews testified before the House Budget Committee during the first in a series of hearings focused on removing the burdens of government overreach to reignite economic growth. He highlighted the problem of the hidden tax of regulation and the costs that an onslaught of rules inflicts on the American people.

The regulatory studies team additionally participated in major official comments against the Office of Management and Budget’s (OMB) rewrite of “Circular A-4” guidance to agencies on how to conduct regulatory analysis. OMB’s changes raise the threshold for “economically significant” regulations from \$100 million per year to \$200 million, producing reduced oversight and less transparency for important rules. Moreover, since fewer rules will meet the threshold, the final annual number of economically significant orders will not reflect the level of sizeable rules, as many will be left out of the count.

In 2023, CEI filed 39 comments to various federal rulemaking bodies

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The infographic features a dark blue background with a white icon of a person at a podium. The text is in white and yellow. The CEI logo is in the top right corner.

Crews urged Congress to block this initiative altogether. His warnings were showcased in articles and editorials in outlets such as *Washington Examiner*, *Las Vegas Review Journal*, and *The Epoch Times*. Further, Crews was cited in a *Wall Street Journal* editorial on the issue and the article was recently shared on social media by the Senate Committee on Commerce. In total, on this matter and others, Crews was cited six times in the *Wall Street Journal* between November 2022 and October 2023, twice in lead editorials.

The *Wall Street Journal* published “Biden Knocks Opportunity Cost,” an article on the issue of Circular A-4 by Senior Fellow James Broughel, who joined CEI in May.

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The article quickly gained attention. Shortly after its publication in early August, Tomas Philipson of former President Trump's Council of Economic Advisers wrote a letter to the *Journal* praising Broughel's piece. On social media, Geoffrey Manne, president and founder of the International Center for Law and Economics, reposted Broughel's announcement linking to the article.

In November, OMB released final revisions to the bedrock Circular A-4 policy document, cementing the

detrimental changes. With the announcement, OMB has abandoned efficiency as the basis of analysis and is ignoring opportunity costs. The Biden administration is defying common sense and decades of advances in law and economics. Yet compared to the published draft changes, the final rule contains some marginal improvements. We spoke to OMB officials and staff who extensively cited Broughel on what changed from the original draft.

# TECHNOLOGY AND INNOVATION

## ANTITRUST AND COMPETITION POLICY

Antitrust regulation generally harms consumers and, ironically, tends to concentrate power in fewer hands while encouraging rent seeking. CEI continued to make a principled case that the best way to handle large and powerful corporations is by promoting competition and choice in the market. These offer better protections to consumers against abuses of power than unelected bureaucrats in Washington.

basis for several events, including multiple Alfred Kahn dinner discussions, where participants included leading academics, attorneys, and government officials. While increased antitrust enforcement so far has mostly been aimed at tech companies, CEI analysts warned that mission creep is underway. Fortunately, the arguments we are using in the tech field also apply across the economy.

COMPETITIVE ENTERPRISE INSTITUTE **OnPOINT**

April 11, 2023 No. 285

**M&As Are A-Okay**  
How Mergers and Acquisitions Help Entrepreneurs and Drive Innovation  
By Jessica Melugin\*

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- Ronald Coase, quoting fellow economist Ely Devons<sup>1</sup>

Fretting about "killer acquisitions" and "kill zones" is common among regulators in Washington these days, but entrepreneurs and investors at work in the tech industry intrinsically understand the myriad benefits of mergers and acquisitions (M&A) for founders, buyers, and end users. The economic evidence does not support new regulations to prevent or curtail mergers and acquisitions. Rather, it aligns with the positive experience of tech entrepreneurs and investors in the marketplace.

CEI's Eye on FTC project had a successful inaugural year. It earned media mentions in Bloomberg and other news outlets, and is being used as a resource for everyone from practicing attorneys to sitting FTC commissioners. In 2023, the FTC issued new pre-merger notification guidelines as well as new guidelines for approving the mergers themselves. Eye on FTC helped to amplify CEI experts' regulatory comments, papers, and media appearances, as well as our allies' activity. It was the

COMPETITIVE ENTERPRISE INSTITUTE **OnPOINT**

March 1, 2023 No. 284

**Two Wrongs Don't Make a Right to Repair**  
How State "Right to Repair" Legislation Harms Consumers and Innovation  
By Alex Reinauer\*

Should you have the legal right to fix your own stuff? At first glance, the answer would seem like a simple "yes." That simple answer is at the heart of the growing right to repair movement, a coalition comprised of repair enthusiasts and consumer advocates.

In February of last year, Director of the Center for Technology and Innovation Jessica Melugin and Research Fellow Alex Reinauer met with House Energy and Commerce Committee staff for a briefing on FTC oversight. They submitted comments on the FTC's Non-Compete Rule months later. Two additional comments for the year addressed the FTC's and DOJ's draft merger guidelines and the FTC's proposed changes to the premerger notification rules under the Hart-Scott-Rodino Act. Moreover, Melugin submitted a written testimony to the Senate Committee on Commerce, Science, and Transportation on FTC's overreach as it relates to the Pharmacy Benefit Manager Transparency Act of 2023.

Our scholars participated in panels, including the

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American Bar Association’s antitrust series, composed timely press releases and blog posts as news broke, and published analyses of specific bills in Congress and other antitrust topics in national outlets such as *National Review*, *Forbes*, and others. Radio and television appearances included Fox Business, CSPAN, and The Lars Larson Show. Melugin is a frequent guest on Fox Business and recently joined a panel on Fox Business’s Mornings with Maria in New York Fox headquarters for a full three-hour show.

CEI’s antitrust policy analysis was featured in a wide range of national and international news outlets, including the *Orange County Register*, *Washington Examiner*, *Forbes*, *National Review*, *International Business Times*, and *Le Monde*. The antitrust team’s work was also cited by the National Telecommunications and Information Administration and in several law reviews such as the *Harvard Journal on Legislation*, *Stanford Technology Law Review*, *Richmond Journal of Law & Technology*, and *Journal of Law, Economics and Policy*.

CEI includes coverage of United Kingdom and European Union antitrust activities, which can undo gains that we achieve domestically. The UK’s Competition and Markets Authority has already blocked several mergers and acquisitions of domestic firms. Rep. Jeff Duncan (R-SC) sought out the endorsement of Vice President for Strategy and Senior Fellow Iain Murray for his efforts to have the US Trade Representative raise the problem of overactive UK and EU competition regulators.

## TECHNOLOGY AND TELECOMMUNICATIONS

Telecom regulation and internet freedom are core to CEI’s policy agenda. Our experts 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 the telecommunications sector. Our research has shown how FCC regulation of public utilities—such as broadcast television, radio, and telephone system—has stifled innovation and threatened consumer choice.

In 2015, the Obama administration FCC promulgated its 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 since risen more than 85 percent, while prices have remained stable—a must for expanding internet access to all Americans.



In early 2023, CEI’s telecommunications team filed two sets of regulatory comments with the FCC related to massive federal spending on closing the digital divide and the regulatory implementation that threatens that goal. We also submitted comments on net neutrality in the United Kingdom in response to the Office of Communication’s net neutrality review consultation.

Nevertheless, a progressive constituency for reinstating net neutrality remains, and it is high on the Biden administration’s policy agenda.

Kent Lassman, CEI’s president, is part of the Heritage Foundation’s Project 2025 FCC working group—chaired by FCC Commissioner Brendan Carr—which seeks to advise the next administration on telecommunications reforms.

CEI is a leading voice against repealing liability protections for internet companies under Section 230 of the Communications Decency Act. Section 230, colloquially referred to as the First Amendment of the Internet, is a valuable tool protecting companies’ property rights and rights to free speech and association. Progressives and some conservatives have argued that the federal government should regulate online speech to promote content objectivity, much like the Fairness Doctrine that once governed television and radio content. Conservative supporters of regulating online

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speech argue that progressive-leaning tech companies are de-platforming conservatives and keeping 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 was. Common carrier status would require social media sites to replace their own content moderation policies with a standardized federal policy. In March 2023, CEI’s Jessica Melugin joined a panel at the National Review Institute’s biannual Ideas Summit to discuss the issue with former FCC Chairman Ajit Pai. She addressed a related topic on the yet-unclear effects of social media on children in a *Washington Post* letter to the editor in May and as part of a panel at the American Legislative Exchange Council’s 2023 ALEC Conference.

Joining a second ALEC panel, she discussed the dangers of regulating artificial intelligence. Senior Fellow James Broughel joined CEI in mid-2023 and has published a major paper, *Rules for Robots*, outlining principles for sound AI regulation. He further wrote extensive

commentary on the Biden administration’s AI Executive Order and other AI policy issues.

### THE CASE FOR NOT RUSHING TO REGULATE AI

CEI Research Fellow Alex Reinauer published a groundbreaking paper on right-to-repair proposals being considered in nearly every state, as well as the federal level. He argues that right-to-repair regulations would make devices like smartphones and tablets more expensive and more damage-prone, while slowing the rate of innovation. Allies in the states and in Washington are using Reinauer’s work to counter these proposals.

## ENERGY AND ENVIRONMENT

For nearly four decades, the Competitive Enterprise Institute has led the opposition to environmental alarmism, energy and environmental 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 against climate change alarmism and for free-market environmental policy in Washington.

From a growing roster of talent to testifying before Congress seven times this year, the team further positioned CEI as a premier organization on the issue. CEI has set a pattern by taking action as a leader, prompting lawmakers and regulators to react.

In March, CEI hired our new director of the Center for Energy and Environment, Daren Bakst, who was a senior scholar at Heritage Foundation for a decade and helped launch that organization’s energy center. New research fellows Patricia Patnode (previously at Mercatus Center) and Paige Lambermont (previously at the Institute for Energy Research) also joined the team.

We continued to lead the Cooler Heads Coalition and maintained cohesion with free-market allies on major energy and environmental issues. The Coalition, an informal network of free market-oriented public policy organizations, serves primarily to share information, develop strategies, and coordinate activities related to energy and environmental policy advocacy. Senior Fellow Myron Ebell headed the group since shortly after its creation decades ago and it is now run by Bakst. The monthly Cooler Heads Coalition meetings feature presentations by top legal and policy experts and staff from individual House and Senate member offices. Featured speakers often underscore the Biden administration’s regulatory overreach, the abuse of spending to achieve a centrally planned energy agenda, and how environmental activists have grossly exaggerated the real risks associated with climate change.

The team launched two new publications. The first, a special briefing series, “Defending the Personal Energy Choices of Americans,” debuted in September. The

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series features articles from leading experts at CEI and other organizations addressing current governmental attacks on the personal energy choices of Americans, such as attempts to severely limit gas-powered vehicles. The series will go beyond articles to include webinars. Second, CEI's new biweekly publication, "The Surge," succeeds the Cooler Heads Digest and features analysis of today's most pressing energy and environmental issues.

Through several initiatives in 2023, the Center for Energy and Environment pressed ahead with the goal of advancing energy and environmental policy that removes harmful government intervention, respects individual freedom, and recognizes the importance of separation of powers, as outlined below:

### APPROPRIATIONS AND THE IRA

CEI has been especially proactive challenging the "green" subsidies in the Inflation Reduction Act and heavily focused on using the appropriations process to achieve policy objectives. On the first anniversary of the law in August, as proponents celebrated, CEI organized a coalition letter with more than 40 signatories that called for dismantling these subsidies. Fox News reported on this important letter.

### APPLIANCE EFFICIENCY STANDARDS

Decades ago, dishwashers took only an hour to produce a clean, dry load of dishes. Today, it takes more than two hours, and the dishes are often neither clean nor dry. This change is largely the result of the Department of Energy's increasingly stringent energy and water standards, which today increasingly apply to other appliances and home features like furnaces and light bulbs. CEI has advocated against home appliance efficiency standards for more than 30 years. We will continue to fight at the agency level, and in the courts if necessary, to ensure that consumer choice prevails when it comes to home appliances.

In the past year, Senior Fellow Ben Lieberman testified three times before Congress, led major coalition efforts on letters and comments, regularly published op-eds, and discussed the issue on major outlets like Fox News. In May, during his second hearing of the year, Lieberman

spoke against the Biden administration's attacks on gas stoves before a subcommittee of the House Oversight and Accountability Committee. A few weeks later, the House passed two bills that would prohibit federal efforts to target gas stoves.

### ELECTRIC VEHICLES

On April 12, the Environmental Protection Agency (EPA) announced new tailpipe emissions standards with the clear objective to accelerate adoption of electric vehicles. The new rules will force automakers to prioritize electric versions of cars and light trucks beginning with 2027 models. Two of every three cars would be electric by 2032—more than ten times as many electric vehicles as are on the road today. The regulations will lead to higher prices and fewer consumer choices for the sake of an extreme climate agenda.



Through op-eds, media outreach, and official comments, CEI argued against these measures, highlighting the problems with electric vehicles and defending the personal choice of Americans to buy the cars they want to drive. CEI additionally issued a statement in support of the "Preserving Choice in Vehicle Purchases Act," which would prevent the EPA from granting waivers to states that directly or indirectly limit the sale or use of new vehicles with internal combustion engines. The House passed the bill on a bipartisan basis in September. CEI also strongly supported the Choice in Automobile Retail Sales (CARS) Act that would prohibit the EPA from finalizing its vehicle tailpipe emission rule. The House passed the bill in a bipartisan fashion.

### POWER PLANT RULE AND CLEAN AIR ACT

In addition to the vehicle tailpipe rules, the EPA issued its proposed rule to replace its Clean Power Plan, which was struck down by the Supreme Court in June 2022. Unfortunately, like its predecessor, the new rule would set emission reduction standards that would be virtually impossible for power plants to attain. The replacement is another high-profile rule that highlights the high costs imposed by EPA's air regulations. Senior Fellow Marlo Lewis submitted extensive comments against the proposal. CEI also started a new working group on the power plant rule to help coordinate efforts with like-minded groups.

Other activities related to the Clean Air Act were widely circulated op-eds and blog posts on the implications of the Biden administration's attack on gas-powered vehicles, as well as oral testimony and comments on the EPA's proposed mercury rule and the EPA's reconsideration of PM2.5 air quality standards. When it comes to air regulations, the abuse of cost-benefit analysis is a major problem. Both Bakst and Lewis submitted comments on OMB's proposed revisions to Circular A-4. Bakst submitted one of the few comments requesting an extension of the comment period. OMB granted the extension.

### CARBON TARIFFS

As some legislators, even a handful of Republicans, had been pushing the harmful idea of a carbon tariff, the center team took immediate action to get ahead of this threat. This included organizing a new carbon tariff working group to further facilitate communication with allies. It also included publishing high profile op-eds and meeting with legislative staff, including a meeting with a leading carbon tariff senator, to discuss the serious problems with carbon tariffs. These efforts are only the start of what will be a major focus for the center.

### WATERS OF THE UNITED STATES (WOTUS)

In late May, the Supreme Court delivered a major victory to defenders of property rights in *Sackett v. EPA* by determining that the EPA and US Army Corps of Engineers had been exceeding their statutory authority

through an overly broad interpretation of what waters are regulated under Clean Water Act. To build support for the decision and help shape the debate around the landmark case, Bakst—a longtime expert on issues concerning WOTUS—and CEI colleagues organized a webinar held within a week after the Court's decision. The event included an attorney from the Pacific Legal Foundation that represented the Sacketts. The webinar had more than 150 registrants and garnered more than 1,000 views online. Bakst continues his leadership on the issue and is focusing on ensuring proper implementation of the Sackett opinion.

### NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 (NEPA) AND PERMITTING

The Center for Energy and Environment also focuses efforts against overreach by the Council on Environmental Quality (CEQ). The agency was established to ensure compliance with the National Environmental Policy Act of 1969, or NEPA. Under the Biden administration, however, CEQ uses NEPA to align decisions with climate change goals and promotes a net-zero-aligned permitting process—a direct challenge

**COMPETITIVE ENTERPRISE INSTITUTE** *OnPOINT*

#### Four Principles for Real Permitting Reform

Why Congress needs to adopt broad-based reforms  
By Daren Bakst July 27, 2023 | No. 287

Federal legislators continue to focus on permitting reform. For example, the Senate is reportedly working on more ambitious reform than those recently enacted in the debt ceiling bill, the Fiscal Responsibility Act.<sup>2</sup> As Congress works through permitting issues, there are important principles that should guide their work. This *OnPoint* highlights four of these principles that would help to ensure genuine and effective reform to the federal permitting system.

**Principle 1: Permitting reform should go beyond NEPA reform**

Most permitting reform focuses on reforming the National Environmental Policy Act (NEPA). However, proper permitting reform should go beyond NEPA and address the permitting requirements in numerous statutes, such as the Clean Water Act (CWA) and Endangered Species Act (ESA). These statutes, independent of NEPA, impose major obstacles for property owners and the development of infrastructure projects. For example, the Environmental Protection Agency and the U.S. Army Corps of Engineers have used overbroad and vague definitions of waters to require numerous CWA permits. The Supreme Court's recent decision in *Sackett v. EPA*,<sup>3</sup> which narrows what

to any project anticipated to increase emissions either directly or by inducing economic growth. Yet CEQ has itself acknowledged since 2010 that greenhouse gas emissions of even the largest infrastructure project have no significant effect on the environment. Senior Fellow Marlo Lewis submitted comments against the CEQ's NEPA implementing regulations. In September, he

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testified before the House Natural Resources Oversight Subcommittee on the agency’s systemic overreach.

CEI was involved with release of two major reports on permitting reform during the year. Former Senior Fellow Mario Loyola wrote a report comparing permitting across countries. Bakst wrote a report outlining key principles to inform permitting reform, which includes ensuring that any permitting reform applies across all industries, and is not just an excuse to help favored energy sources, like renewable sources, while disfavoring other energy sources like conventional and reliable generation, such as natural gas. He also made the important argument that permitting reform is not just about NEPA, but also must focus on other laws that hinder development, from the Clean Water Act to the Endangered Species Act.

### USDA SLUSH FUND

Bakst leads the free-market community addressing misuse of the US Department of Agriculture’s Commodity Credit Corporation (CCC). The CCC provides the funding

mechanism for most farm bill programs, but has essentially become a slush fund for special interests and political objectives not achieved through the lawmaking process. The Biden administration has used this fund to spend more than \$3 billion to create new climate programs that were never authorized by Congress. Bakst brings his expertise on the issue to CEI. In July, he raised support for a provision in the House agriculture spending bill that would stop bipartisan governmental abuses of the CCC. CEI also supports the USDA Spending Accountability Act in the Senate, which would amend the underlying statute so that no administration could create such a slush fund.

CEI commands attention from high-level officials on the matter. New Research Fellow Patricia Patnode’s op-ed in *The Gazette* on Oct. 22 garnered a response from US Secretary of Agriculture Tom Vilsack with his own op-ed in the paper on Oct. 31. Patnode offered a rebuttal on Nov. 12, pointing out Vilsack’s elusive arguments that failed to address the crux of the issue: CCC spending programs evade congressional authorization and function as a slush fund.

# DEREGULATION AND ECONOMIC FREEDOM

### BANKING AND FINANCE

CEI seeks to liberalize financial regulation to enable greater innovation in investment mechanisms, reduce paternalistic limits on who can invest, and remove subsidies that incentivize bad investments.

This goal includes opposition to a central bank digital currency (CBDC) by the Federal Reserve. In 2023, efforts culminated in a strong anti-CBDC bill passed by the House Financial Services Committee in September. House Majority Whip Tom Emmer introduced the bill, “CBDC Anti-Surveillance State Act,” early in the year. This initial proposal would have banned the Federal Reserve from directly issuing a CBDC, but there were concerns that the Federal Reserve would be able to circumvent the bill’s prohibitions. CEI and other groups pressed Emmer and his staff to strengthen the legislation. CEI Senior Fellow and Director of Finance Policy John Berlau helped draft a letter from center-right groups. After the release of that letter, Emmer introduced a revised bill that bans

the Federal Reserve from coordinating a CBDC indirectly through a contractor. During committee passage in September, the strengthened bill garnered 60 co-sponsors. It now moves forward for a House floor vote.



To bolster support for strong anti-CBDC legislation, Berlau and CEI intern Ari Patinkin penned an op-ed for *RealClearMarkets* in August that showed growing worldwide opposition to CBDCs from the general public

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in Europe and Africa. In the United States, presidential candidates including Ron DeSantis, Vivek Ramaswamy, and Robert F. Kennedy, Jr. have also voiced opposition to CBDCs in a sign that the issue is taking hold with regular Americans.

In February, Berlau testified at the first hearing of the House Financial Services Committee's Subcommittee on Financial Institutions and Monetary Policy. At the hearing, entitled "Revamping and Revitalizing Banking in the 21st Century," he addressed barriers to entry for new banks, which has led to dearth of startups in the banking sector.

CEI continued to challenge abuse of power by the Consumer Financial Protection Bureau (CFPB). On April 19, the Wall Street Journal featured an op-ed, "CFPB Tries to Censor Speech on Chicago Crime," coauthored by Berlau and Research Fellow Stone Washington on the agency's disturbing assault on free speech. The piece highlighted the CFPB's lawsuit against Chicago real estate



firm Townstone Financial for discrimination, simply because its principal pointed out high crime in Chicago neighborhoods in a podcast. The authors pointed out that even progressive Chicago mayor Brandon Johnson had made similar comments. The piece generated thousands of social media views and responses, as well as follow-up op-eds in the Washington Examiner and the Free Beacon.

CEI also continued to counter the Biden administration's war on what it deems "junk fees." In May, CEI led coalition comments to the CFPB that condemned its proposed \$8 price controls on credit card late fees, pointing out the agency's own finding that this regulation would raise costs on cardholders who paid on time. George Mason University Law Professor (and CEI board member) Todd

Zywicki as well as Americans for Tax Reform and the 60 Plus Association joined CEI's comment letter. CEI also joined a coalition letter in October against the rule, arguing it would harm community banks that issue credit cards and responsible consumers who pay on time. Berlau was quoted in a FoxBusiness.com's subsequent piece covering the coalition letter.

The finance team also remained focused on exposing how overreach by the Securities and Exchange Commission (SEC) in the cryptocurrency sector is harming overall innovation. Statements from Berlau condemned the SEC's lawsuit attempting to shut down the Coinbase cryptocurrency platform, and highlighted rulings against the SEC by judges appointed by presidents of both parties in cases involving cryptocurrency issuer Ripple and crypto fund creator Grayscale.

On June 8, Berlau's CEI statement on X (formerly Twitter) criticizing the SEC's attack on Coinbase garnered more than 5,000 views after it was reposted by the widely followed account @CryptoLawUS, which provides legal and regulatory news for crypto holders. The next day, billionaire celebrity entrepreneur Mark Cuban followed Berlau on the platform. Cuban, who has more than 8 million X followers, has been taking a similar position to CEI in opposition to severe SEC overreach in regulating cryptocurrencies as "securities" without congressional authorization or formal rulemaking. Berlau was also quoted on the topic in The Dispatch and Crowdfund Insider.

Additionally, CEI was among the organizations that called out the SEC for making the section of its website dedicated to its administrative law cases less transparent and less user friendly. CEI's Stone Washington addressed the matter in a blog post in mid-November. In early December, the SEC reversed changes and restored ease of use in the section.

As part of CEI's objective to reduce barriers that restrict access to capital and investor choice, CEI challenged the SEC's "predictive data analytics" rule. Berlau and Senior Fellow James Broughel submitted a comment letter in October telling the SEC to withdraw the rule, which would make artificial intelligence—as well as information sharing about meme stocks like Gamestop—only available to wealthy investors.



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Among other subjects of note, Berlau authored a Forbes piece in June that exposes the stealth effort by the National Association of Insurance Commissioners to impose the European Union’s disastrous Solvency II insurance regulatory framework on the US insurance market, even as the EU itself is scaling back that framework. And Forbes quoted him in early December, in the print magazine and online, chronicling recent bankruptcies and fraud investigations in the residential solar industry, and why it is similar to the mortgage bubble.

### LABOR REGULATIONS

On Oct. 26, the National Labor Relations Board (NLRB) revived the Obama-era joint employer standard by issuing its new rule outlining the relationship between contractors and businesses under the National Labor Relations Act (NLRA). The new joint employer standard sets an expansive interpretation of employer liability between companies that in any way share employees. The rule increases companies’ liability for workplace violations at other companies from cases of “direct control” to cases of vaguely defined “indirect control.” Theoretically, any business that interacts with any other business can now be said to have indirect control over the latter’s policies. The change vastly widens the NLRB’s regulatory authority, giving officials the ability to contrive whatever rationale they may want as a pretext for an investigation.

Throughout the past four years, CEI organized other free market groups and trade associations to oppose the NLRB’s joint-employer plans. In December 2022, CEI experts at its Center for Economic Freedom submitted official comments to the agency. Though the NLRB addressed some of our comments in its rule announcement in October, it nonetheless released a final rule that fails to consider the best interest of workers and affected businesses. CEI Research Fellow Sean Higgins critiqued the announcement, explaining that the NLRB is implementing a vast expansion of corporate legal liability, while granting itself an all-purpose justification for any case it wishes to pursue.

Much of CEI’s focus this past year has been on examining the historical and current implications of the NLRA. In August, CEI published a comprehensive analysis by Higgins, entitled *The Forgotten History of the Wagner Act*.

Higgins delves into primary sources from the Senate debate in the 1930s about the law, shattering the narrative frequently invoked by unions and their allies that the NLRA made it federal policy to promote unionization. The paper demonstrates that, from the start, the federal government was supposed to be a neutral arbiter between management and workers. This revelation is significant because the false claim that federal policy is pro-unionization has ceded considerable rhetorical ground to unions in political debates over legislation and key appointments.



The paper was cited by other free-market groups, as well as the US Chamber of Commerce, which cited it extensively in relation to its opposition to the re-appointment of incumbent National Labor Relations Board member Gwynne Wilcox.

CEI also advocated against the NLRB’s new rule, issued in August, reforming the process of union workplace elections. Changes create an open invitation for union organizers to cheat in those elections. The rule defers questions about voter eligibility in workplace elections until after the ballots are counted, mooted the purpose of the question and giving unions a clear incentive to cheat their way to victory.

In November, Higgins served as a witness before the Senate Committee on Health, Education, Labor, and Pensions. He raised the issues around the NLRB’s

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misuse of the National Labor Relations Act and forced unionization policies.

The labor policy team also helped to stall Julie Su's nomination to be secretary of the Department of Labor, which has now failed. In blog posts, op-eds, and radio interviews, CEI experts brought attention to her record as a radical advocate for unions and for California's AB5 law. They underscored Su's belief that labor agencies should have armed law enforcement officers that would handcuff violators of regulations and force them to do perp walks in front of cameras. The heightened attention resulted in Su's nomination losing momentum and languishing in the Senate.

### HEALTH CARE POLICY

CEI Senior Fellow Dr. Joel M. Zinberg focuses on the proper role for government in our nation's health care system and economy and on defining the practical and legal limits on government actions in the health care arena. Dr. Zinberg recently released a major study, *A Free Market Solution for Drug Distribution*, on the role Pharmacy Benefits Managers (PBMs) play in our complex drug distribution system. He documented that PBMs are a pro-competitive solution that grew out of the free market to reduce costs for health insurance plan sponsors and their patient-subscribers and to enable increased consumption of beneficial medications. He further details how current legislative proposals that seek to limit the rebates and discounts PBMs negotiate and to require them to disclose proprietary contractual information will be counterproductive and result in increased costs and decreased competition.

In a joint CEI and Paragon Health Institute project, *Unauthorized and Unprepared: Refocusing the CDC after COVID-19*, Dr. Zinberg extensively investigated how and why the Centers for Disease Control and Prevention failed during the pandemic and suggested how Congress

can reform the agency. Much of the problem stems from mission creep, abetted by the fact that the CDC has never been authorized by Congress. CDC grew within the executive branch into a large agency with diverse priorities, such as climate change and health equity, that have nothing to do with its primary purpose of protecting the nation from communicable disease threats. Less than 10 percent of its resources are devoted to infectious diseases. Moreover, many CDC programs duplicate efforts in other government agencies. This lack of focus left the agency unprepared to prevent the pandemic and ill equipped to combat it once it arrived. Congress must authorize the CDC for the first time, refocusing it on the primary mission of combating infectious diseases, removing off-mission programs, and creating guardrails for effective oversight.

Dr. Zinberg met with congressional health leaders in both the House and Senate and with the leadership at the Congressional Budget Office. He was recently the featured luncheon speaker at the Republican Study Committee, a group of more than 100 conservative House Republicans, where he presented the findings of his paper *Freedom Wins*, which documented that more severe pandemic lockdown measures had no impact on health but disastrous impacts on economic and educational outcomes. He also discussed his CDC paper, as well as other health and scientific issues, with the members.

Dr. Zinberg continues to author numerous op-eds and make frequent media appearances on his recent papers and on a variety of other issues involving health care, law, and public policy. These have included multiple op-eds in *The Wall Street Journal*, *National Review*, the *New York Post*, *City Journal*, *Fox News*, the *Washington Examiner*, the *Washington Times*, and other publications, as well as interviews on various podcasts including *C-SPAN's Washington Journal*, and appearances on both national (various Fox programs) and local TV and radio stations.

## ADVANCING CAPITALISM

The team of experts at CEI's Center for Advancing Capitalism (CAC) promotes a healthier, more robust understanding of the values and virtues of capitalism,

free markets, and economic liberty. CAC's studies, articles, public appearances, and podcasts debunk the myth that capitalism is exploitative and is leaving a less

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healthy, less fair, and less productive world to future generations. The center complements CEI's core policy centers. Selling free market public policies is easier when policy makers and the public understand how capitalism makes people wealthier while advancing other important values and concerns, such as fairness and justice. It is the programmatic extension of CEI's highest honor, the Julian L. Simon Award.

Capitalism has been the most dynamic force for economic progress in history, raising billions of people out of poverty, and delivering unprecedented human flourishing. But we face an intensely hostile progressive regulatory environment. CAC must persist with an aggressive agenda to counter anti-free market and illiberal rhetoric. During the past year, the center once again pursued goals such as:

- Defending the free market on cultural as well as economic grounds, emphasizing the moral value of economic freedom;
- Producing material to demonstrate that capitalism can advance multiple values that Americans cherish—freedom, stability, and community—as well as prosperity;
- Working with market-oriented legislators and federal officials to advance sound finance and governance policies and push back against Biden administration overreach;
- Working with allies in state-level policy and activist organizations and in state politics to promote anti-cronyism policies at the state level;
- Challenging populist conservative enthusiasm for industrial policy and central planning; and,
- Emphasizing the threat of financial weaponization from policymakers with ESG-related priorities.

CEI's work demonstrates the relationship between economic deregulation and strong private sector innovation and entrepreneurship, and how America's free enterprise system is the best economic system to create wealth and ensure prosperity. CEI delivers this message through its new podcasts. The Center for Advancing Capitalism launched the first podcast, *Free the Economy*, in December 2022. Every week, host and senior fellow, Richard Morrison, delves into the morality and wealth-producing opportunities of a free economic

system. Guests include writers, thought leaders, and experts from allied organizations. The podcast is available on several platforms and produces its own flow of branded social media content. News topics mentioned on the podcast also frequently serve as spin-off themes for blog posts on [cei.org](http://cei.org).



CEI launched its second podcast in August with writer-in-residence Kevin D. Williamson called “How the World Works.” The podcast features Williamson in conversation with notable guests about work, specifically, the jobs he and his guests have had, why work matters, the role of work in our economy, and policy ideas for helping workers and employers get the most out of the work they do. Work involves more than hours put in and paychecks cashed; it is an integral part of our communities and how we learn to serve one another.

CAC's growing Markets and the Right coalition, which assesses, responds to, and develops new approaches to the attack on free markets from the national conservative right, produced several offshoot initiatives this year. Markets and the Right gatherings led to CEI's significant contributions to the Freedom Conservatism Statement of Principles. Vice President and Senior Fellow Iain Murray, who leads Markets and the Right, and CEI President Kent Lassman helped draft the Statement of Principles to affirm the ideals of the American conservative movement. Launched with about 80 signatories, the statement now has more than 230. The effort has fostered substantial debate about the future direction of the conservative movement.

CEI hosted numerous Freedom Conservatism strategy sessions and Morrison interviewed several signatories of the Statement of Principles on the *Free the Economy* podcast. Recent episodes have featured Ashley Baker of the Committee for Justice, Carrie Conko of State Policy

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Network, Brooke Medina of the John Locke Foundation, Ed Tarnowski of EdChoice, Vance Ginn of the Pelican Institute, Patrick Hedger of the Taxpayer Protection Alliance, and FREOPP's Avik Roy, who described the origins of the Freedom Conservatism project during his appearance.

In research and advocacy, CAC experts continued to conduct policy research and provide regulatory comments on related federal proceedings. The Center's fellows were often solicited for comment on stories related to financial regulation on ESG by media outlets and allies in the liberty movement. Additionally, in September, Morrison and Murray released their assessment of the 50th anniversary of the Lewis Powell Memo, evaluating where the center-right coalition has been throughout the past five decades and arguing for a continued alliance of conservatives and libertarians on economic issues.

The CAC team increased speaking engagements at campus events, conferences, and other key gatherings focused on the future of freedom and free markets. Morrison was a panelist at Florida International University's second annual Environment Forum on Science and Public Choice. He also joined the panel at a "Pints and Policy" event hosted by Americans For Prosperity with New Hampshire Assistant Attorney General Mark Dell'Orfano. Local news media covered the event, which was attended by several members of

the New Hampshire legislature. He participated in free-market movement events like FREOPP's 2023 Freedom and Progress conference, State Policy Network's 2023 annual meeting in Chicago, FreedomFest in Memphis, Liberty University's CEO Summit, and the Breakthrough Institute's Ecomodernism conference.

CEI Research Fellow Stone Washington received the "Outstanding Leadership Award" at the Law 2.0 Conference this past summer in Las Vegas. The award is conferred on people who have made a distinct contribution to their respective area of the law. As part of the CAC team, Washington produces short articles and op-eds while working on a detailed study of the SEC's climate disclosure rule and its wider implications for administrative law. He was the only policy researcher selected for the award this year, as well as the youngest recipient.

CAC scholars also participated in CEI events. At CEI's policy summit in Lake Tahoe in June, CEI hosted policy leaders from around the country including SEC Commissioner Hester Peirce and Rep. Kevin Kiley (R-CA). Morrison led the conversation with Peirce with an interview on ESG and financial regulation issues. In August, CAC hosted CEI's Alfred E. Kahn Dinner focused on the risks of ESG investing. The dinner featured former Secretary of Labor Eugene Scalia and included a roundtable of policymakers, scholars, and liberty movement allies.

## LAW AND LITIGATION

As a vertically-integrated public policy organization, CEI's legal program is part of each policy initiative within the four policy centers. The cases that we initiate, or those that we contribute to with amicus briefs, aim to preserve the constitutional and statutory limits on regulatory agencies' actions and promote accountability and transparency.

CEI's Center for Law and Litigation pursued a number of tactical goals in 2023, including the following:

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

In 2019, CEI brought a constitutional challenge to the Mandatory Repatriation Tax of the 2017 Tax Cuts and Jobs Act. CEI, with pro bono counsel from BakerHostetler, is co-counsel and represents a couple from Washington state who own shares in an Indian company that makes equipment for small-scale farmers. The couple had never sold any shares or received any dividends prior to receiving a retroactive tax bill from the

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IRS, who deemed the increase in the value of their shares as income.

The Ninth Circuit panel upheld the tax but did not address the fundamental distinction between taxes on income and taxes on wealth. In July 2022, CEI requested en banc review of that ruling. The review was denied but CEI earned a strong dissent signed by four judges. In February 2023, we asked the Supreme Court to hear the case and released a short web video drawing attention to the issue and educating allies on the case. The Supreme Court accepted our cert petition and heard arguments in *Moore v. United States* on Dec. 5. The case garnered the attention of major media outlets and had more than 1,200 media citations in just the first 30 hours following the arguments.



### END THE EPA'S ATTEMPT TO FORCE A TRANSITION TO ELECTRIC VEHICLES

In February 2022, CEI filed suit against the Environmental Protection Agency's attempt to issue its own version of Corporate Average Fuel Economy (CAFE) standards for new vehicles, after years of acting jointly with the Department of Transportation. Unlike those earlier standards, the new EPA rule is aimed at eventually pushing the auto industry to produce only electric vehicles. The Clean Air Act contains no clear authorization for such a major industry transformation.

The Supreme Court has ruled that, under the "major questions doctrine," agencies cannot impose such far-reaching changes unless Congress has clearly authorized them. CEI's case was consolidated with other challenges filed by several state and industry groups. Our opening brief was filed November 3, 2022. After the EPA's response in February, we filed our reply brief on April 18. Oral argument was held in the D.C. Circuit on September 14.

We are currently waiting for the opinion of the Court.

### DEFEND CEI'S WORK IN BRINGING CONSUMER CHOICE TO THE MARKET

In October 2020, the Department of Energy (DOE) partially deregulated dishwashers. This was the direct result of a petition that CEI had filed two years earlier, which demonstrated that its stringent efficiency standards had drastically impaired dishwasher performance. That petition also served as a blueprint for DOE's deregulation of washers and driers.

When several environmental groups and California sued to block this deregulation, CEI intervened to defend it. But those cases were put on hold when DOE sought to reconsider the deregulation.

The Biden administration started the process of undoing that reform on the president's first day in office. The

An infographic with a purple and blue background. It features the text "In 2023, we initiated 30 court filings by CEI staff with outside attorneys working in partnership with CEI". The number "30" is large and white, with a scale of justice icon next to it. The CEI logo is in the top right corner.

In 2023, we initiated 30 court filings by CEI staff with outside attorneys working in partnership with CEI

agency process for revoking those regulatory reforms was completed in January 2022. In March of that year, we convinced 12 states to challenge the revocation of this reform in the Fifth Circuit. We assisted their arguments with amicus briefs. Oral argument was on March 8, 2023. At the close of 2023, the case was still pending in the Fifth Circuit.

### CONTINUE AMICUS SUPPORT FOR CONSTITUTIONAL RIGHTS

CEI has submitted several successful amicus briefs to the US Supreme Court. One recent amicus brief focused on *Tyler v. Hennepin County*, in which the Supreme

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Court unanimously ruled earlier this year that states cannot take the equity in people's homes without just compensation. CEI also filed an amicus brief in *Loper Bright Enterprises v. Raimondo*, asking the Supreme Court to overturn Chevron deference to administrative agencies. CEI had previously asked the Court to consider *Loper Bright Enterprises v. Raimondo*. CEI filed another amicus brief in *SEC v. Jarkesy*, which explores the nature of the right to a jury trial in such agency proceedings.

### PROGRESS ON CIVIL ASSET FORFEITURE REFORM

In May, CEI published a second edition of one of its previous studies on civil forfeiture, *Five Myths of Civil Asset Forfeiture*, by Dan Greenberg. The second edition contains updated, previously unavailable data about the size and scope of civil forfeiture. Greenberg continues to provide technical assistance and guidance to lawmakers, prosecutors, and other interested parties on reforms in this area. He has also published several op-eds on the topic.

In June, the House Judiciary Committee passed the latest version of the Fifth Amendment Integrity Restoration Act, a civil forfeiture reform bill out of committee unanimously by a vote of 26-0. Notably, the newest version of the bill extended its protections beyond judicial forfeiture to administrative forfeiture—a reform recommended by CEI's policy statements on changes to civil forfeiture statutes. This is arguably the most significant federal legislative progress for civil forfeiture reform in history.

### FEDERAL GUIDELINES ON SALT

In October 2021, the Department of Health and Human Services issued Sodium Reduction Goals for all food manufacturers to reduce salt levels in their products. CEI challenged HHS's failure to submit this scientific determination to peer review, as required by OMB rules. HHS has responded by taking one extension of time after another. CEI is now working to publicize the fact that, nearly two years after its issuance, HHS still has not explained its failure to have its salt guidelines peer-reviewed. HHS's inaction is especially notable in this context, because a sizable body of scientific research indicates that reduced salt consumption can pose major medical risks.

We received a response from the Food and Drug Administration on September 13, 2023 denying our request for correction. That was preceded by 10 different responses from FDA, one about every two months, asking for another two months' time. On October 10, we appealed.

### SUBJECT THE NATIONAL CLIMATE TASK FORCE TO AGENCY ACCOUNTABILITY

President Biden's National Climate Task Force (NCTF), with more than 20 members including many agency heads, characterizes itself as purely advisory and therefore exempt from the Freedom of Information Act 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, with the goal of developing a government-wide approach to climate policy.

CEI filed several Freedom of Information requests in spring 2022. After receiving practically no response, we filed in Federal District Court in Washington, D.C. However, the district court judge has disagreed with us. The judge decided that the NCTF was not actually an agency subject to FOIA; rather, the judge found that the NCTF functions like a discussion forum. In evaluating the costs and likelihood of success before a hostile D.C. Circuit, we have decided not to appeal the decision. Any appeal could establish stronger precedent that the NCTF is not subject to FOIA.

### ENCOURAGE REGULATORS AND ADMINISTRATORS TO OBEY THE LAW AND COMPLY WITH THE CONSTITUTION

CEI has previously argued in court that the current funding structure of the CFPB does not comply with the US Constitution's appropriations requirements. The Supreme Court has now decided to examine that issue. As Congress watches the development of that litigation, it is now considering what reforms might appropriately be made to the agency, such as requiring the CFPB to be funded by Congress.

Rep. Andy Barr (R-KY), chairman of a subcommittee of the House Financial Services Committee, asked CEI

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attorney Devin Watkins to testify on reforms to the CFPB. On March 9, Watkins testified that CFPB funding should go through the congressional appropriations process, that pertinent rulemaking should be a necessary component of CFPB enforcement, and that CFPB fines should only be issued after a finding of wrongdoing by juries. Watkins also recently published an op-ed in *Inside Sources* on this matter. In addition, in June, Watkins and Greenberg coauthored a new CEI study, *Constitutional Restoration: How to Rebuild the Separation of Powers*, which advocated reforms to restore constitutional restraints on federal power.

In the summer, we hired a new lawyer, David McFadden, to head efforts to ensure that the regulatory comments we submit are of high quality. McFadden has authored one comment, co-authored another, and edited seven comments from CEI analysts.

## ADVANCE CEI-RELATED ISSUES AND PERSPECTIVES THROUGH THE WORK OF KEVIN WILLIAMSON

CEI's Writer-in-Residence Kevin D. Williamson is one of the country's leading conservative columnists. Williamson's work focuses on a broad range of regulatory, energy, and cultural issues, from his continuing coverage of counterproductive environmental and energy policies to health care and property rights. In March, CEI published his monograph, *Inside the Carbon Cult*. His first CEI op-ed piece was recently published in *USA Today*. He also hosts the new podcast, "How the World Works."



Master of Ceremonies Nick Gillespie of *Reason* entering the stage at our 2023 Julian L. Simon Memorial Award Dinner

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Founded in 1984, the Competitive Enterprise Institute is America's leading advocate of regulatory reform on a wide range of policy issues. We fight for less regulation, more freedom, and fairness for all. Our proven comprehensive approach to advancing public policy turns policy proposals into concrete reforms.

## PRODUCING RESEARCH AND ANALYSIS

Each year CEI scholars publish dozens of exhaustive peer-reviewed studies making the case for policy reforms. Our research and analysis are cited thousands of times annually 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. CEI policy analysts produce timely commentaries for major news organizations, appear on television, radio programs and podcasts, promote reform ideas through digital and online forums, and engage with other experts who cover economic policy areas.

## PERSUADING POLICY MAKERS

With research, analysis, and policy proposals in hand, we craft advocacy campaigns to change minds and transform public policy. CEI experts meet regularly with members of Congress and state legislators, legislative staff, agency leaders, and administration officials. We leverage research and expertise to build strategic coalitions and to pursue policy reforms. And we actively participate in the regulatory process by testifying at congressional and agency hearings and meetings, and by filing comments on proposed rules, guidance documents, and other agency proposals.

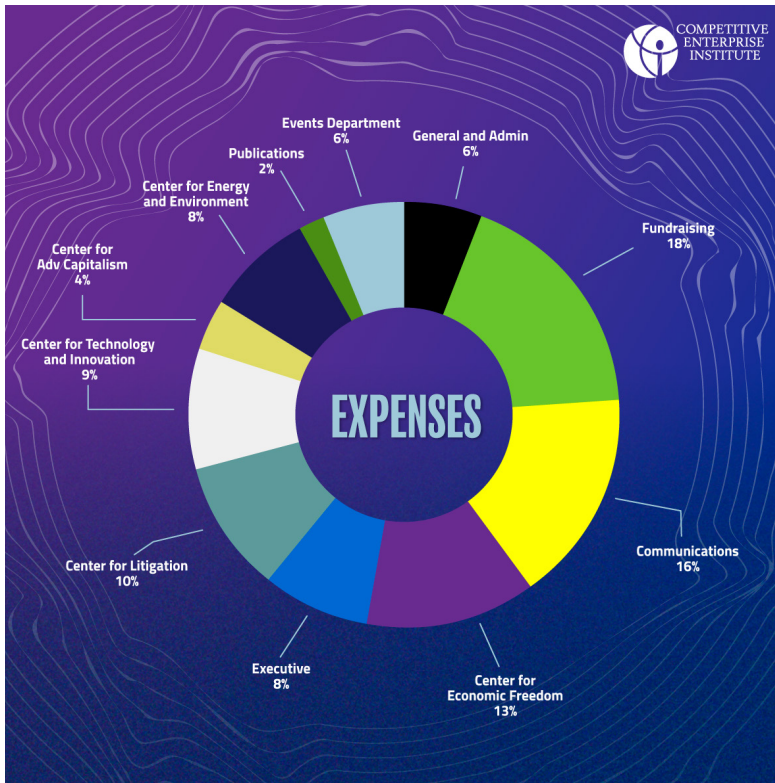
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CEI initiates lawsuits and files amicus briefs that challenge the constitutionality of dubious statutes and the legality of onerous regulations. We have won precedent-setting rulings from the U.S. Supreme Court and lower federal courts. But no matter the venue, CEI's cases advance regulatory reform, increased government transparency and accountability, and a stronger commitment to the rule of law.



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# FINANCIAL SUMMARY

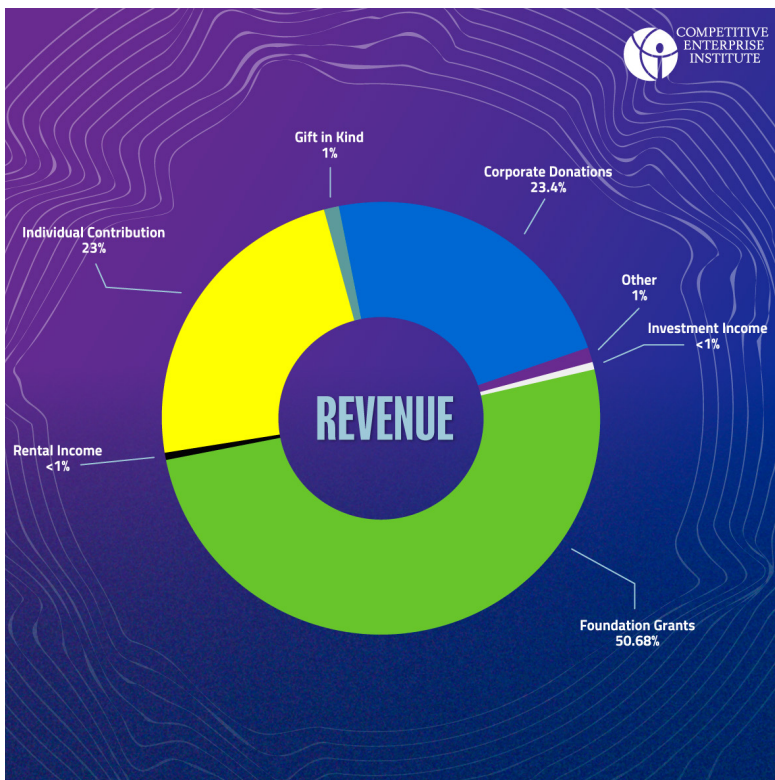


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CEI raised \$10.4 million in contributions from individuals, charitable foundations, and corporations during the 2023 fiscal year. Additional non-contribution revenue brought total income to \$10.67 million.

Expenses for the year totaled \$9 million, with 77 percent going to programmatic expenses office policy areas, communications and events.



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