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# CEI ACHIEVEMENT REPORT

An Abridged Summary of 2019 Accomplishments

## Ideas to Research



## Research to Advocacy



## Advocacy to Policy Change



## Overview

The Competitive Enterprise Institute is widely recognized as a leader among free-market organizations battling regulatory overreach. Each year our work is cited thousands of times in major media outlets, relied upon by scholars and other free-market advocates, and used by members of Congress, executive branch officials, and other policymakers as the basis for reform actions and proposals.

CEI was among the first organizations in the free-market movement to combine the serious scholarship of traditional think tanks with the aggressive advocacy of activist organizations, pursuing a full-service approach to advancing free-market public policy solutions. We publish original and insightful analysis that makes the case for reform and then use that intellectual ammunition to craft advocacy campaigns designed to effect public policy change. In addition to producing scholarly studies, CEI policy analysts write 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.

We also build coalitions, joining with allies to advance specific reforms at the state, national, and international levels. We meet regularly with members of Congress and senior congressional staffers, regulatory agency staff, and senior administration officials to engage in direct advocacy. When appropriate, we also pursue our pro-freedom advocacy in court, initiating lawsuits to challenge the constitutionality of dubious statutes and the legality of

onerous regulations. In the past nine years, the U.S. Supreme Court has heard four of our advocacy-related cases, with two wins and one case still pending. We have also achieved victory in a large number of lower court cases, which similarly helps ensure greater economic liberty and a stronger rule of law.

Founded in 1984, CEI is an effective advocate for freedom on a wide range of critical policy issues. Our work moves decision-making power toward individuals, families, and communities and away from inflexible, unresponsive regulatory agencies. Our core programmatic centers—the Center for Economic Freedom, Center for Technology and Innovation, Center for Energy and Environment, Center for Advancing Capitalism, and Center for Law and Litigation—address such pressing issues as regulatory and administrative law reform, banking and financial policy, energy production and use, environmental protection, technology and communications, transportation, labor and employment policy, health care, and consumer product regulation. We celebrated our 35th anniversary in 2019 with a number of important policy victories. And, as an organization, CEI also made a number of significant internal, structural improvements, including the addition of several highly regarded policy experts to the staff.

The most important programmatic victories in 2019 include:

- Wayne Crews’s work on the informal regulatory edicts he calls “regulatory dark matter” inspired President Trump to issue two executive orders to help curb secret or unlawful

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*CEI Policy Analyst Trey Kovacs worked with members of Congress to make it easier for railway and airline workers to decline union membership and seek reform of their unions.*

bureaucratic interpretations of rules and guard against unfair or unexpected penalties for non-compliance. Crews laid out a plan for using executive orders to rein in regulatory dark matter in an October 2018 paper titled *A Partial Eclipse of the Administrative State*.

- CEI's years of work advocating against the Paris Climate Agreement bore fruit when the U.S. State Department announced it would withdraw the United States from the Agreement.
- A joint Interior Department-National Marine Fisheries Service final rule, which will reform the Endangered Species Act's implementing regulations, cited CEI's research and analysis extensively to justify the rule changes.
- CEI Policy Analyst Trey Kovacs worked with members of Congress and other allies to persuade the National Mediation Board to reform union organizing regulations under the Railway Labor Act to make it easier for railway and airline workers to decline union membership and seek reform of their unions.
- The Energy Department granted CEI's petition to revise its damaging energy efficiency rule for dishwashing machines.
- Due in part to CEI's collaborative efforts with a coalition of allied organizations, the Center for Medicare and Medicaid Services issued a rule that will end the practice of automatic union dues deductions from

payments to home healthcare providers.

This is just a small sample of CEI's achievements during the past year as we enter 2020 with a bigger and more effective policy staff.

- Gregory Conko, a former CEI Senior Fellow and Executive Director, returned to CEI following three years as Deputy Director of the George Mason University Law & Economics Center. Conko will once again lead CEI's work on health policy, food and drug regulation, and related science and public health matters.
- Patrick Hedger previously served as Director of Policy at the FreedomWorks Foundation. He joins CEI to address technology and communications policy issues.
- Mario Loyola recently served as Associate Director for Regulatory Reform in the White House Council on Environmental Quality and as an advisor to Sen. Ben Sasse (R-NE). At CEI, he will work on a variety of regulatory reform issues.
- Patrick Michaels, a long-time Research Professor of Environmental Sciences at the University of Virginia and former Director of the Cato Institute Center for the Study of Science, will bolster CEI's energy and environmental policy work.

We look forward to a productive new year. The following report highlights some of CEI's 2019 accomplishments.

## Center for Technology and Innovation

### Regulatory Reform

One of the features that make CEI an effective reform advocate is our ability to make good policy good politics. Many other organizations work on regulatory reform. But CEI creates both powerful intellectual ammunition and a compelling case for reform that others have come to rely upon, making us a “go to” resource among scholars, advocates, and policymakers.

For example, in May 2019, CEI released the 26th anniversary edition of the well-known study, *Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State*. Written by CEI Vice President for Policy Wayne Crews, the annual report shines a light on the large and under-appreciated “hidden tax” of federal regulation. The latest edition concludes that federal regulations and intervention cost Americans \$1.9 trillion each year, or nearly \$15,000 per U.S. household—more than Americans spend on any category in their family budget except housing.

Hundreds of reporters, scholars and policymakers, including more than a dozen members of Congress, have cited *Ten Thousand Commandments* to make the case for regulatory policy reform. Sen. Mike Lee (R-UT) sent a Dear Colleague letter to other senators endorsing it, and his staff requested

additional copies for him to distribute personally to the members of the Senate Steering Committee. Sen. Lee also invited Crews to speak to a Senate Steering Committee meeting attended by the Majority Leader, Majority Whip, and dozens of other senators.

*Ten Thousand Commandments*, and much of Wayne’s other work, also exposes the poorly-understood phenomenon known as “regulatory dark matter,” the thousands of executive branch and independent agency actions—including guidance documents, memoranda, bulletins, letters, and other edicts—that are not subject to the same procedural rules and democratic accountability as official regulations, but which often have real, binding regulatory effects. Crews was among the first scholars to draw attention to regulatory dark matter—he even coined the term. And his work has been used as the building block for significant reform efforts.

In recognition of his leadership in the battle for regulatory reform, Crews was invited to

## Ten Thousand Commandments

- **Wayne Crews spoke to an audience of 30 senators**
- **Cited in the *Economic Report of the President***
- **Quoted in Justice Neil Gorsuch’s book**



participate in the Republican Study Committee’s Task Force on Government Efficiency, Accountability, and Reform. The task force’s founders cited his extensive catalog of the cost and complexity of federal regulation among the reasons for creating the task force. So, when Wayne speaks about regulatory reform, members of Congress and other important policymakers listen. *Ten Thousand Commandments* was cited in the 2019 *Economic Report of the President* and in Supreme Court Justice Neil Gorsuch’s 2019 book, *A Republic, If You Can Keep It*.

Crews’s work on regulatory dark matter has also achieved tangible results. In October 2019, President Trump issued two executive orders aimed at curbing the practice of agencies using guidance documents to implement policy without accountability, as Crews recommended in a 2018 paper. The first order requires agencies to disclose and document all existing guidance documents and submit new “significant” guidance documents for public review, while the other prohibits agencies from

*Jessica Melugin, Associate, Director for Technology and Innovation, was interviewed nearly half a dozen times on cable news in defense of market competition.*

using guidance documents as the basis for regulatory enforcement actions.

### *Big Tech and Antitrust*

CEI has long been among the most active free-market organizations working on antitrust policy, and our policy staff are ardent skeptics of government management of marketplace competition. Although antitrust enforcement has not been front-page news for most of the past two decades, a pro-intervention movement has continued to rail against big business and tried to stoke populist fears about market concentration. A December 2019 *New York Times* article documented how major liberal foundations and individual donors are financing this modern trust-busting movement with millions of dollars in donations each year. So, when Democrats won a majority in the House of Representatives in 2018, the antitrust movement was poised for a resurgence, with attacks on the business giants of our day: big technology and communications firms like Google, Facebook, Apple, and Amazon.

CEI's task is to counter the neo-trust busters' case by raising awareness of the problems and abuses associated with federal and state-led antitrust investigations against technology companies and highly-regulated industries. Our analysis, advocacy, and outreach explain why antitrust regulation actually harms consumers and, ironically, tends to concentrate power in fewer hands while enabling government rent-seeking. In numerous newspaper op-eds, blog posts, and media appearances, CEI made the pro-consumer case for corporate mergers like the ones

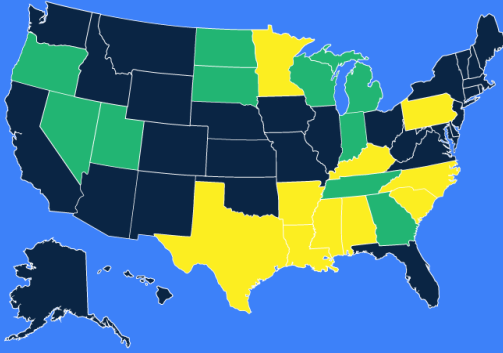
between CBS and Viacom and between T-Mobile and Sprint. Our analysis and advocacy on the latter case showed why the merger was likely to benefit consumers, as neither company would be able to create a viable 5G network on its own.

CEI was also active in defense of Google, Amazon, Facebook, and other big tech companies from politically-motivated investigations by state attorneys general. Jessica Melugin, Associate Director for Technology and Innovation, wrote numerous op-eds and blog posts, and was interviewed nearly half a dozen times on TV news programs in defense of market competition. Senior Fellow Mario Loyola penned an op-ed on the topic for *The Atlantic*. CEI also opposed proposals to break up big tech companies like Amazon, Google, Facebook, and Apple, emphasizing the damage such plans would inflict on consumers, workers, investors, and the future of technology.

In addition to competition and antitrust concerns, CEI has also defended free speech on the Internet. Section 230 of the Communications Decency Act of 1996, a once-obscure legal provision, has become a flashpoint for industry critics who have accused online platforms like Twitter, Facebook, Google, and YouTube of everything from blocking access to conservative viewpoints to facilitating terrorism. CEI emphasized how the protections of Section 230 helped build the Internet and kept it free and prosperous. CEI was active on the issue, pursuing defenses against attacks by both the progressive left and the nationalist and populist right. Among other activities, CEI Vice President Iain Murray penned an op-ed on the topic, which was published by Fox Business.



## 20 states made CEI-recommended automated vehicle platooning reforms in the past 4 years



### Transportation

CEI is the single most active free-market organization working on emerging transportation technologies, particularly automated vehicle policy. Our scholars regularly advise senior government officials on these matters. And national and state-based free-market groups have asked CEI Senior Fellow Marc Scribner to provide intellectual ammunition, generate support for positive policy changes, and advocate before regulatory agencies, members of Congress, and state policymakers.

In the past year, CEI submitted comments on emerging vehicle technologies to regulatory agencies including the National Highway Traffic Safety Administration, Federal Motor Carrier Safety Administration, Federal Highway Administration, Federal Railroad Administration, and the Office of the Secretary Transportation. In July 2019, CEI published the fourth annual edition of our highly anticipated report, *Authorizing Automated Vehicle Platooning: A Guide for*

*State Legislators*. The document serves as a reference manual for state legislators and regulators as they develop policies for truck platooning, and it provides those officials with state-specific model legislation. Since CEI began the project in 2016, 20 states have adopted our recommendations, either in whole or in part.

Importantly, Scribner has earned respect among members of Congress on both sides of the political aisle and was invited by both parties to testify at congressional hearings during the past year. In March 2019, he testified before the House Committee on Ways and Means on funding for surface transportation infrastructure as the lone witness for Republicans (and the lone witness to oppose more than doubling the federal gas tax). Three weeks later, House Committee on Transportation and Infrastructure Chairman Peter DeFazio (D-OR) invited him to testify on airport financing reform for the majority party. Scribner was again invited by Transportation and Infrastructure Committee

Ranking Member Sam Graves (R-MO) in September to testify on traffic congestion management. Scribner is working with members of Congress on both sides of the aisle to inject markets and innovative practices into transportation infrastructure finance and management.

### Center for Energy and Environment

#### *Paris Climate Agreement*

After Donald Trump was elected president, CEI worked to persuade the new administration to follow through on Trump's campaign promise to withdraw the United States from the Paris Climate Agreement. In a major victory for CEI, the U.S. State Department notified the United Nations in November 2019 that the United States would withdraw from the Agreement on November 4, 2020, the first day withdrawal is possible under the Agreement's procedures. Along with the Environmental Protection Agency's (EPA) rollback of the Obama-era Clean Power Plan, the Paris Agreement withdrawal is arguably the most significant deregulatory action taken by the Trump administration. Several commenters characterized CEI as playing the leading role in advocating for the decision.

Despite opposition within the administration, CEI's advocacy work—including published studies, articles and op-eds, extensive media outreach, and direct advocacy with senior White House staff and

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congressional leadership—and the work of our network of Cooler Heads Coalition partners, helped convince the administration to withdraw from the Paris Agreement through its official process.

### *Clean Power Plan*

The Clean Power Plan (CPP) was President Obama's marquee domestic environmental policy and the regulatory centerpiece of his emission reduction pledge under the Paris Climate Agreement. It would have imposed draconian carbon dioxide emission standards for all existing power plants in an effort to decarbonize the U.S. electric power sector. Consequently, defeating the CPP was among CEI's highest priorities during the past few years. We were delighted in July 2019, when the EPA published a final rule that repealed the CPP and proposed to replace it with a more sensible Affordable Clean Energy rule (ACE).

With extensive legal and economic analysis, media outreach, and direct advocacy, CEI's policy experts played a major role in the case against the Obama-era EPA's greenhouse gas rules, including the CPP. Additionally, CEI joined a coalition of policy organizations to challenge the CPP in court on both constitutional and statutory grounds.

Unfortunately, the ACE replacement rule has its own legal and policy shortcomings, and CEI has joined a lawsuit challenging the statutory basis of that new proposal. Nevertheless, we will continue to pursue improvements to the proposal through our advocacy and litigation.

### *Fuel Economy*

Corporate Average Fuel Economy (CAFE) standards force automakers to build smaller, less crashworthy cars. CEI has led the opposition to CAFE since the 1980s. In August 2018, the EPA and National Highway Traffic Safety Administration (NHTSA) proposed the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule—a major rollback of the Obama administration's CAFE and motor vehicle carbon dioxide emission standards, which were set to become increasingly more stringent through model year 2025.

As originally proposed, the SAFE Rule would have frozen the standards at the model year 2020 levels. More importantly, it would also have rescinded California's power to regulate fuel economy. The agencies later decided to finalize the SAFE Rule in two stages. In September 2019, they published Part One, dubbed the One Program Rule. It confirms withdrawal of a previously-granted waiver allowing California to set its own emissions standards, and it emphasizes that California's rule is void and of no effect.

As CEI Senior Fellow Marlo Lewis explained in testimony before the House Government Reform and Oversight Committee in October 2019, California's motor vehicle carbon dioxide emission standards inherently regulate fuel economy and, as such, violate the Energy Policy and Conservation Act, which prohibits states from adopting or enforcing laws or regulations "related to" fuel economy.

EPA and NHTSA have yet to finalize Part Two, which will revise the carbon dioxide and mileage standards for



model years 2020-2026. The agencies apparently now favor increasing the stringency of the standards, but less rapidly than required by the existing (Obama-era) rule. By relaxing the standards, the SAFE Rule should help limit the cost increases that price millions of middle-income households out of the market for newer, cleaner, safer, more fuel-efficient vehicles. More importantly, the SAFE Rule will improve the institutional framework shaping the selection of fuel economy standards. Having terminated California's de facto power to regulate fuel economy, the EPA and NHTSA should face less pressure to ignore, discount, or deny the adverse impacts of fuel economy standards on vehicle affordability and occupant safety.

### *Endangered Species Act*

CEI is one of the few free-market organizations working to reform the Endangered Species Act (ESA), which undermines property rights, imposes huge economic costs, and does little to protect threatened and endangered species. The ESA has been a major target of CEI's analysis and advocacy work for nearly three decades, and our efforts have finally begun to bear fruit.

In August 2019, the Department of the Interior and the Department of Commerce's National Marine Fisheries Service published a final rule that will reform the ESA's implementing regulations. Changes include major improvements in the listing and delisting process, the designation of critical habitat for listed species, and the interagency consultation process for species. In addition, the new rule will restore the distinction between endangered and threatened species, and the way the two categories are intended to be addressed, which is spelled out in the

statute but has been ignored by the Interior Department for decades.

Now-former CEI scholar Rob Gordon filed comments on the proposal, published a widely circulated study on the Endangered Species Act's economic impacts, and met with dozens of stakeholders and policymakers to advocate for the reforms proposed in his study. His work paid off, as many of his comments and recommendations are reflected in the final rule. The reforms are now being challenged in court by a coalition of environmental organizations, but Gordon has since left CEI for a position as a senior adviser on scientific issues at the Interior Department, where he will be able to help defend the reforms he advocated while at CEI.

### *Permitting Reform*

CEI continues to work with the Trump administration on ways to reduce the permitting burden. Most of this effort has focused on energy production and energy infrastructure, and is in support of the administration's permitting reform and energy dominance agendas.

In 2019, we contributed pro-reform comments to numerous Administration actions, including two regarding the National Environmental Policy Act and one regarding the Clean Water Act. In addition, CEI experts wrote extensively on the need for energy permitting reform, most notably on several high-profile natural gas pipeline rejections and their consequences for both producers and consumers.

On non-energy permitting, we contributed to the effort to approve the Pebble Mine in Alaska, most

*Many of former CEI scholar Rob Gordon's comments and recommendations are reflected in the reformed Endangered Species Act rules.*

*CEI filed a Request for Correction and explained the flaws in the EPA's Bristol Bay Watershed Assessment. The agency later withdrew its proposed veto of the Pebble Mine that was based on the BBWA.*

notably by filing a Request for Correction under the Information Quality Act of EPA's Bristol Bay Watershed Assessment (BBWA). Reaching out to the Department of the Interior, the Army Corps of Engineers, the State of Alaska, and other regulating bodies, CEI explained the flaws in the BBWA, most notably that the assessment is entirely speculative as it was compiled before the mine application had even been submitted to the government. Although the EPA continues to stall on responding to our petition, we can claim partial victory as the agency has withdrawn its proposed veto of the mine that was based on the BBWA.

### **Center for Economic Freedom**

#### *Labor and Employment*

On the labor and employment policy front, CEI and other reform advocates have made it a priority to work with the National Labor Relations Board (NLRB), Department of Labor (DOL), and other federal labor regulators to roll back as much of the Obama-era policy agenda as possible, and we have seen some successes. We have also advocated before relevant congressional and state legislative committees to oppose legislation that would reduce employee freedom, end certain types of work arrangement, and increase the cost of doing business. Chief among these are efforts to abolish Right-to-Work protections and to reclassify gig economy workers as employees rather than independent contractors. One of our most significant targets this past year was the union-backed Protecting the Right to Organize Act, which would make it more difficult for businesses to hire independent contractors instead of employees, eliminate state Right-to-Work laws,

impose a rigid "joint employer" burden that would make businesses liable for the actions of another company's workers that perform tasks for that business, and end secret ballot provisions for union elections, among other things. Just days after the bill made its way to the floor of the House, CEI hosted a policy event on Capitol Hill with Rep. Virginia Foxx (R-NC), at which we helped educate dozens of congressional staffers about how the legislation would radically alter labor relations law while disregarding worker choice with destructive economic effect. The legislation is still pending, but our efforts have armed members of Congress and their senior staff with the intellectual ammunition necessary to oppose its passage.

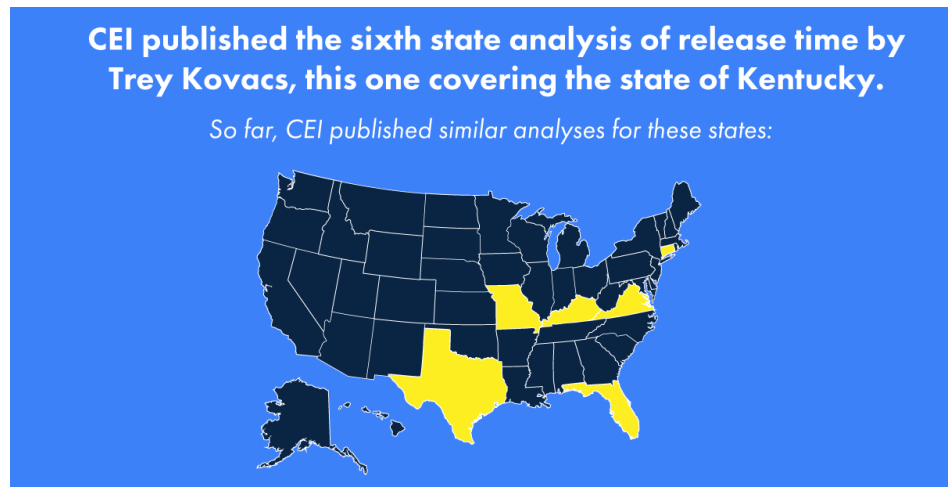
CEI also worked closely with allies to defend Americans who receive and perform home healthcare services from having their Medicaid benefits raided by unions. Since 2000, union dues have been deducted automatically out of Medicaid payments for home-care providers. But many of the individuals who perform these services are family members, not professional health workers, and they have no interest in joining a union. Due in part to the efforts of our coalition, the Center for Medicare and Medicaid Services issued a rule to end this practice.

CEI Policy Analyst Trey Kovacs also contributed to the expansion of free choice among employees covered by the Railway Labor Act (RLA). For decades, labor policies promulgated under the RLA imposed significant hurdles that made it very difficult for railway and airline workers to opt out of union membership. But in January 2019, the National Mediation Board (NMB), which oversees the RLA, published a final rule to make it easier for individual workers to decline

union membership and stop paying dues. The rule also lays out a pathway to permit a majority of workers to vote to decertify a labor union. The NMB cited Kovacs's comments multiple times to justify its landmark policy change.

At the Labor Department, CEI submitted comments on reforming an Obama administration proposed overtime rule for hourly wage employees. The Labor Department published its final rule in 2019, and the worst provisions were stripped or reformulated as CEI recommended. Our efforts to expose a campaign to force conservative NLRB members to recuse themselves from decisions, based on dubious interpretations of ethics standards, helped relieve pressure on the Board. CEI went on the offensive by filing a formal complaint against the NLRB's Inspector General, who raised the false alarms. The complaint and related Freedom of Information Act requests were cited in numerous national publications, including *The Wall Street Journal*, *Bloomberg*, and *Politico*.

Following the 2018 Supreme Court ruling in *Janus v. AFSCME*, which reins in the power of labor unions to collect fees from non-member public employees, government unions have put more emphasis on release time to supplement their losses. Labor union release time is a policy that allows government employees to do union work, including political lobbying, instead of the jobs



taxpayers pay them to do. Kovacs has been working in tandem with state-based think tanks and advocacy groups, publishing research to help our local partners conduct effective advocacy campaigns. In December 2019, CEI published *Union Time on the Taxpayer Dime*, his sixth state analysis of release time, for the state of Kentucky. Before Kentucky, Kovacs penned similar analyses for the states of Florida, Texas, Missouri, Connecticut, and Virginia.

Finally, CEI analysts did yeoman's work battling the "Fight for 15" efforts to raise federal and state minimum wages, including the federal Raise the Wage Act proposal. That bill passed the House but is unlikely to pass the Senate. Still, Senate staffers and coalition partners reached out to CEI for data and advice on how to frame the debate. We published a study on minimum wage tradeoffs that garnered coverage in newspapers and radio shows across the country, including in states with pending or recent minimum wage increases. We also earned coverage in national

outlets including *Politico*, *Reason*, the *Washington Examiner*, and trade publications such as *Employee Benefit News*.

### *Consumer Freedom*

CEI was also very active on the consumer freedom front during the past year. Senior Fellow Michelle Minton's 2018 study, *Fear Profiteers: How E-cigarette Panic Benefits Activists*, helped make her a "go to" source for expert analysis, and she was invited to speak at conferences and to brief policymakers numerous times throughout 2019. The *Fear Profiteers* study and her other work on vaping and e-cigarettes were cited frequently by policymakers and scholars, putting her front and center in the debate over one of the most high-profile consumer freedom issues of the past year.

The Food and Drug Administration (FDA) has taken a heavy-handed approach toward e-cigarettes, despite acknowledging that vaping products are important tools for



# CEI'S VIRAL BLOG POST: 1,085,034 views



those trying to quit smoking tobacco. But in the wake of several high-profile illnesses caused by tainted, black-market THC vapor products, the FDA redoubled its attacks on vaping.

Because of her detailed yet approachable analysis, Minton has become a leading voice on the issue. A viral blog post, which received over one million page views in its first month, helped rectify public confusion about the lung injury outbreak this past summer, which was caused by black market THC products, not e-cigarettes, as the

CDC intimated. She has also briefed two dozen members of Congress, and continues to recommend an amendment to any vaping-related bills, such as the Tobacco-Free Youth Act, to require independent analysis of the effectiveness and unintended consequences of any proposed restrictions. Minton's op-eds, meetings, and strategic advocacy helped quickly shift the policy environment.

## *Defending Capitalism*

Capitalism, free enterprise, and free trade have come under increasing attack over the past year, not just from the left, but also from a new strain of thought among conservatives. CEI has made it a priority to respond to and counter these attacks.

Vice President Iain Murray has developed an argument that these attacks on capitalism have occurred because of a global political realignment that sees identity as more important than economics. He first outlined these views in his opening keynote speech at FEECon, the annual conference of the Foundation for Economic Education. And he developed them further in a *Wall Street Journal* op-ed and a CEI video. One test of his theory came in the British parliamentary elections, where Murray accurately predicted in an op-ed for *The Hill* that northern working-class districts would turn Conservative. He is also writing a new book examining the phenomenon on both sides of the Atlantic, titled *The Socialist Temptation*.

## *Free Trade*

The Competitive Enterprise Institute was one of the most active voices on free trade in 2019, during a difficult time on the issue. Our arguments against tariffs and in favor of more constructive policies were cited in outlets such as *The Washington Post*, *U.S. News & World Report*, *Politico*, *The Washington Examiner*, and others. Trade barriers were higher at the end of 2019 than at the beginning, but the intellectual tide appears to be turning back toward market-oriented trade policy.

Our paper on reforming the Export-Import Bank caught the attention not just of *Foreign Policy*, *Politico*, and *The Wall Street Journal*, but the agency itself. Following the paper's publication, Ex-Im President Kimberly Reed requested additional information, which led to a two-hour meeting with Reed and four of her senior staff. Though Congress reauthorized Ex-Im, Reed and her staff support transparency reforms and other constructive proposals in the paper, and are keeping an open dialogue with CEI.

The administration appears to be moving into a new phase of trade policy, centered around trade agreements rather than tariffs. If this strategic shift holds, policy could improve markedly—with caveats. CEI has already proven an important voice arguing against folding in trade-unrelated provisions and political payoffs into the agreements, as *The New York*

*Times* and *The Wall Street Journal* have noted. We are opposing USMCA on those grounds, and we worry that these negative precedents could harm future agreements. We are one of Washington's most prominent groups working to make sure they do not.

Iain Murray's contributions to drafting an ideal US-UK agreement with several other organizations, including Member of European Parliament Daniel Hannan's Initiative for Free Trade, are already proving prescient. We are also hopeful that the new phases of a potential US-China trade agreement will open the door to more effective encouragements to Chinese reform than the administration's failed tariff strategy.

### *Financial Policy*

During the past year, CEI has achieved some victories on the consumer finance front. But while we are fortunate to have sympathetic figures in charge of the Consumer Financial Protection Bureau (CFPB), Treasury Department, and Securities and Exchange Commission (SEC), there remains resistance to change within many of the agencies. A media narrative, particularly dominant in coverage of the finance industry, maintains that deregulation benefits mostly big business, when in fact, big firms are frequently the beneficiaries of regulation that harms smaller competitors and creates barriers to market entry. Still, under the current administration, CEI's reform proposals are finding a more welcome audience.

We have developed a good working relationship with CFPB Director Kathy Kraninger, who has been receptive to our reform advocacy. CEI hosted Kraninger for a salon dinner

with other financial policy experts to discuss reform proposals, and CEI staff have met with her on a number of other occasions. One idea we are supporting is Kraninger's expansion of a process initiated under her predecessor to launch several regulatory "sandbox" programs, in which companies can obtain a legal safe harbor for testing innovative products and services. With the support of CEI and other free-market financial policy experts, Kraninger implemented three new policies to encourage compliance and safe harbor protection, including a Compliance Assistance Sandbox that provides a safe harbor from federal and state enforcement actions and private lawsuits for actions that conform with CFPB approvals.

Senior Fellow John Berlau also met with SEC Commissioner Hester Peirce and senior congressional staffers to support the Commission's proposed rule exempting small- and medium-sized public companies from Sarbanes-Oxley's "internal control" mandates, which add significant process and paperwork burdens for many corporate financial decisions. These are often prohibitively expensive for many small businesses.

The SEC is also finalizing a "best interest" regulation for brokerage services, which respects investor choice and liberalizes some antiquated rules. This is a major breakthrough, as it will supplant the Obama administration Labor Department's proposed "fiduciary rule," which CEI spent several years opposing through our research, writing, and advocacy work. Although the SEC proposal is not ideal, it is significantly less burdensome than the fiduciary rule would have been. So, we see this as a real victory.

*With the support of CEI and other free-market financial policy experts, CFPB Director Kathy Kraninger implemented three new policies to encourage compliance and safe harbor protection.*

*CEI's legal challenge to the CFPB led the Justice Department to concede that the CFPB is unconstitutionally structured.*

Throughout the past year, CEI has also been engaged in the ongoing effort to allow financial institutions to conduct business with the state-legal marijuana industry. The SAFE Banking Act, H.R. 1595, passed the House earlier this year and would allow banks and credit unions, as well as ancillary businesses, to service marijuana businesses in states that have legalized its use without being subject to federal prosecution.

CEI Senior Fellow Michelle Minton signed onto a coalition letter in July 2019 in support of the bill. And CEI Policy Analyst Matthew Adams has taken numerous meetings on Capitol Hill to help inform lawmakers and their staff on the merits of such legislation and why it should advance through the Senate. Adams has also written numerous blogposts and an op-ed in *The Washington Times* on the issue. CEI intends to continue to work on marijuana banking legislation throughout the new year.

### **Center for Law and Litigation**

The Center for Law and Litigation works with CEI's policy departments to develop new approaches to rein in regulatory agencies through innovative litigation. The cases we initiate or weigh in on with amicus briefs aim to preserve the constitutional and statutory limits on agency action and promote accountability and transparency. In 2019, CEI had one case argued before the U.S. Supreme Court, and filed a major cert petition with the Court as well. Neither was successful, but both set the stage for future victories. We also had a major win when the Energy Department granted a CEI petition to revise its energy efficiency standards for home dishwashing machines.

### **Supreme Court Cases**

*Frank v. Gaos* is a class action lawsuit in which CEI is challenging the trial court judge's decision to grant a *cy pres award* to charities selected by the plaintiff attorneys instead of disbursing the money to the class of plaintiffs. CEI attorneys argued the case before the Supreme Court in October 2018. Unfortunately, the Court left the case unresolved by remanding it back to the Ninth Circuit for further review of the parties' standing. However, a strong dissent by Justice Clarence Thomas indicates that the Court may still take up the issue again and limit the use of *cy pres awards* in class actions.

(As a side note, in January 2019 the attorneys involved in CEI's Center for Class Action Fairness left CEI to create a new public interest law firm called the Hamilton Lincoln Law Institute. We continue to work with them, and they have our best wishes for success.)

CEI's long-running challenge to the constitutionality of the Consumer Financial Protection Bureau, *State National Bank of Big Spring v. Mnuchin*, came to an end when our cert petition was denied by the Supreme Court in January 2019. The rejection was likely due to Justice Kavanaugh's need to recuse himself due to his prior involvement in the case as a judge on the D.C. Circuit Court of Appeals.

Our case did, however, have one noteworthy result: it led the Department of Justice to switch its position and concede that the CFPB is structured unconstitutionally. The U.S. Solicitor General took this position in his amicus brief to the Supreme Court, extensively citing the



ruling of an earlier CEI Supreme Court victory, *Free Enterprise Fund v. PCAOB*, which held that agency heads that can only be removed by the president “for cause” deprive the president of the ability to exercise adequate control over the executive branch. Importantly, although the Supreme Court declined to hear CEI’s case, in October 2019 it accepted another case, *Seila Law v. CFPB*, which raises the same constitutional issue. CEI submitted an amicus brief in the *Seila Law* case and received high praise from outside commenters. We look forward to oral argument in early March.

### *Lower Court Cases*

In a case now before the D.C. Circuit, CEI is challenging an attempt by the Federal Communications Commission (FCC) to micromanage the internet through the abuse of its merger review powers. In 2016, the FCC approved the merger of Time Warner and two other major cable companies, but only on the condition that they agree to agency demands to offer low-income broadband service and usage-based pricing. Two commissioners strongly dissented, arguing that the FCC improperly used its merger approval power to impose conditions it could not require directly. CEI filed suit on behalf of several customers whose service would suffer as a result. A three-judge panel of the D.C. Circuit Court of Appeals heard the case in September 2019, and a ruling is likely in the coming few months. (CEI is handling this case jointly with attorneys at the Hamilton Lincoln Law Institute.)

CEI is also challenging the constitutionality of a little known but important feature of the 2017 tax reform legislation, called the

Mandatory Repatriations Tax. That provision taxes Americans who own stock in foreign corporations on the value of those companies’ accumulated earnings, even if the earnings are never distributed as dividends to shareholders and if the shareholders never sell the stock. The assessment also reaches back 30 years, making it extremely punitive.

The Internal Revenue Service claims the provision is a tax on income, but because the Washington state couple we represent have not realized any income from the stock, it is in fact a direct tax on their assets—in other words, on their wealth. As such, it violates the Constitution’s prohibition on direct taxation of anything but income, unless the taxes are apportioned among the states.

This was once an obscure issue, but in the past year it has become highly controversial, as national “wealth taxes” of this sort have been proposed by several progressive political figures.

Finally, CEI’s challenge to the Obama administration’s Clean Power Plan ended without a court’s judgement, but still in an effective victory, when the Trump administration EPA repealed the plan and replaced it with a less stringent rule.

Unfortunately, while the agency’s replacement plan is a significant policy improvement, it too rests on shaky legal ground. CEI is now part of a coalition suing the EPA over that issue.

### *Energy Efficiency Rules*

In a another out-of-court victory for CEI, the Department of Energy (DOE) granted CEI’s petition to revise its

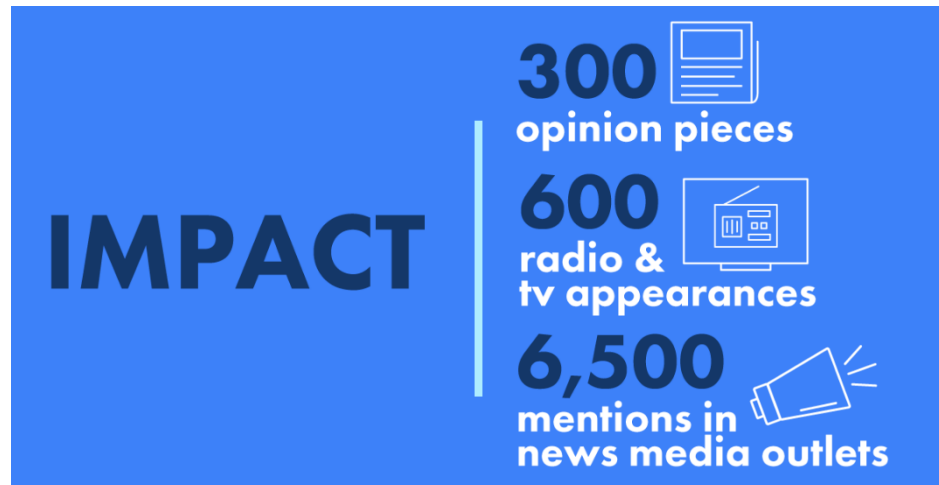
*CEI’s amicus brief in the Seila Law v. CFPB case, which raises the same constitutional issue as our former challenge, received high praise from outside commenters.*

onerous energy efficiency rule for home dishwashing machines. Over the years, DOE regulations have drastically reduced the amount of electricity and water that dishwashers can use. As a result, a typical wash cycle that once took less than one hour now takes over two-and-a-half hours, and often leaves dishes unclean.

In 2018, CEI petitioned the DOE to amend its rules to return to a more reasonable standard. Our petition drew several thousand public comments, ninety-seven percent of which favored our proposal. It also gained significant public and media attention. And in July 2019 the Department granted our request and began a formal rulemaking on the issue. We are optimistic about the outcome.

## Communications and Marketing

Due to several recent investments of time and resources made by CEI's communications department, the organization was well positioned this year to engage a variety of audiences to achieve our policy goals. Our media relations and government relations staff members work closely with CEI's policy experts to complement their research and analysis with strategic media outreach, digital marketing, coalition building, and direct advocacy to reach decision makers and influencers at all stages of the policy process—from voters to coalition partners, and from members of



Congress to senior administration officials.

### Media Outreach

In order to reach our target audiences, CEI connects with people both inside and beyond the Beltway using traditional, earned media. CEI's media outreach team leverages existing media relationships and builds new ones in order to ensure our research and analysis are featured in news reports, so our expert commentary can be read in newspapers or online, seen on television, and heard on the radio. In 2019, news media outlets cited CEI and its policy analysts over 6,500 times, a nearly 10 percent increase over the prior year. CEI experts published over 300 opinion pieces and appeared or had their work discussed on over 600 radio and television programs.

### Digital Marketing

In the past year, CEI's Facebook fan base has grown by 41 percent, and our Twitter audience grew by 16 percent. In 2020, CEI projects Facebook

and Twitter audiences to grow by an additional 20 percent on both platforms. CEI's social audiences include many policy experts, journalists, congressional and agency staffers, political appointees, and grassroots activists. CEI engages an average of 2,259 people per week, and reaches more than 28,000 people each week on Facebook. On Twitter, CEI averages more than 98,000 total impressions each week.

In 2019, CEI used social media advertising to grow the subscriber list for our weekly email newsletter, *The Bulletin*, by 50 percent. Through organic search and paid advertising our website, [cei.org](http://cei.org), received an average of 217,657 visitors and 266,225 total page views per month in the past year. Thanks to two viral hits, CEI.org received the most website traffic in its history, reaching nearly 3.5 million pageviews in 2019.

With more than 1.3 million video views, 2019 was a breakout year for reaching online users with CEI-produced video content. Our policy videos were also shown at coalition meetings and

Capitol Hill policy briefings. We challenged Chuck Todd and NBC's Meet the Press in a video ad campaign that engaged more than 12,700 users on social media and drove 2,450 new subscriptions to our newsletter.

### *Government Affairs*

The government affairs team is a critical part of CEI's mission to make good policy good politics. Through dynamic engagement

with policymakers, CEI is able to effectively influence policy outcomes. After decades of excellent scholarship, CEI has established itself as a trusted resource for both Congress and the White House. As a result, these institutions seek advice from CEI on a broad range of topics. Whether we are fighting a regulation or supporting a piece of legislation, CEI develops plans to ensure we reach members of Congress, administration officials, and federal agency

staffers with the right message at the right time.

In addition to scores of agency briefings by CEI experts, CEI's president, Kent Lassman, was invited to meet with and brief cabinet officials, agency leaders, White House staff, House leadership, and Senate committee chairmen on the research and policy proposals of CEI's team.

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