

2022



CEI ACHIEVEMENT REPORT

A SUMMARY OF 2022 ACCOMPLISHMENTS



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LETTER FROM THE PRESIDENT



Born and raised in Illinois, I quickly learned the importance of contour tilling. By tilling and planting across and around the sweeping hillsides of various tributaries to the magnificent Mississippi, much more land went into production. Working with what they were given, farmers didn't have to give up on the land. They could operate modern machinery safely while protecting soil nutrients and water from washing away.

Last month, trailing by ten points at halftime superstar quarterback Patrick Mahomes led the Kansas City Chiefs to a stunning victory over the Philadelphia Eagles in the Super Bowl. It was an amazing comeback and one for the record books.

What does an ancient farming technique have in common with the spectacle of professional football? Both cases demonstrate how a small band of people can overcome what appears to be an overwhelming or natural disadvantage to come out on top. It is the same with the Competitive Enterprise Institute during 2022. We know how to win regardless of the political environment.

Last year we had to contend with a hyper-aggressive regulatory agenda from the Biden administration. Animated by “whole of government” approaches to equity, climate and other hot-button issues and apparently unconstrained by the plain meaning of the law, regulators went wild. Meanwhile, Congress was controlled by the President's party and focused on spending bills that only deepen our annual deficits and our overall debt.

What came of it? As this report will demonstrate, if not for CEI, two important legislative victories would not have happened. If not for CEI, significant regulatory initiatives would have proceeded without impediment.

We have a long-term vision to put more authority for crucial decisions in the hands of families, communities, and free enterprise. We exist to fundamentally reform a largely unaccountable regulatory state. Because CEI's mission is independent of politics, we must find a way to win no matter what else is happening and regardless of which party or ideology appears ascendant. With the help of devoted supporters, the amazing thing is that we find a way to win.

Feeling good about our principles is not sufficient. CEI's mission calls us to change policy and that is both why we are here and what we do everyday. The report you hold documents one year of these achievements. In addition to federal law related to financial regulation and climate treaties, CEI was instrumental in multiple statehouses including on legislative changes to civil asset seizure laws. Our team collaborated with a shrinking coalition of allies to successfully block a major expansion of antitrust regulation.

From meetings of the United Nations to state lawmakers, CEI's expertise is in demand. Details on the extraordinary media coverage of our ideas – and your values – is found in the following pages. Nowhere on the political landscape is another organization as productive with only three dozen people. We won't stop because we are fighting for you; we are fighting for all of us to have a better future.

In liberty,

A handwritten signature in blue ink that reads "Kent Lassman". The signature is written in a cursive, flowing style with a long horizontal line extending to the right.

Kent Lassman
President and CEO

REGULATORY REFORM CEI advocates for reform not only of individual regulations, but of the rulemaking process. Decades of accumulating regulatory burdens weigh heavily on America’s workers, consumers, businesses, and families. Worse, the way agencies develop, promulgate, and enforce regulations 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. During that time, our Energy and Environment team has become the most effective advocate of the free market approach to environmental policy in Washington. Our work shows that property rights, freedom of contract, and marketplace incentives provide better means of preserving the environment, internalizing pollution costs, and conserving resources than do regulatory command and control policies.

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

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

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

EXECUTIVE SUMMARY

CEI’s policy and legal teams spent much of the past year pursuing changes on a variety of regulatory fronts, including defeating labor and employment policies that would favor union leadership over workers, opposing policies that would make energy more expensive, continuing to challenge the unconstitutional taxes on unrealized income, and successfully blocking every major antitrust expansion bill.

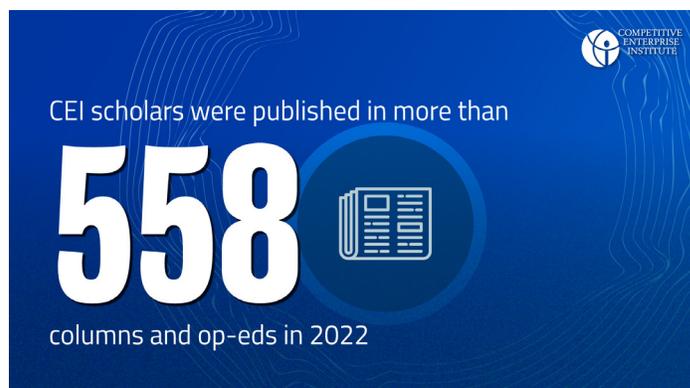
As an advocate for freedom on a wide range of critical economic and regulatory policy issues, CEI carried out initiatives to educate the public, the media, and policy makers on the importance of stopping federal agency overreach and strengthening private sector innovation and entrepreneurship. We engaged policy makers at every stage of the process, helping to transform ideas into practical policies.

The past year marked the second year of an aggressive regulatory agenda by the Biden administration. In the wake of COVID-19 lockdown measures, American workers, consumers, and investors faced a tightened economic landscape curtailed by one of the most expansive regulatory agendas in history. CEI will continue to focus resources on fighting harmful proposals while seeking opportunities for advancing sound policy reforms. While some of the Biden administration’s plans depend on Congress passing legislation, a large portion continue to be implemented through executive or administrative orders.



At the same time, we achieved noteworthy institutional developments, such as hiring more talented members to our team to work on areas including environmental policy and defending capitalism, transitioning to a

hybrid model for both in-person and online events, and welcoming in-person participants to a majority of events for the first time since the pandemic shutdowns. We continued to host online gatherings, relaunched the New York City luncheon series, got back on the road for the annual CEI Summit, and more than doubled attendance at the Julian L. Simon Memorial Award Dinner compared to the previous year. Despite the challenges of post-pandemic event planning, CEI has steadily expanded its audience reach and capacity in the last three years. In 2022, we hosted nearly 2,500 guests at 45 events.



After a two-year pause on destination gatherings, CEI held its sixth annual Summit in Santa Fe, New Mexico during rodeo weekend. CEI experts and guest speakers distilled lessons from successful efforts to liberalize industries and communities from pandemic policy responses. Notably, amid palpable excitement and vibrancy for both CEI and the destination, many repeat summit attendees remarked that Santa Fe exceeded all previous summits. First-time guests accounted for more than a third of attendees. In the opening session at the New Mexico History Museum, a supporter preceded a question with, “CEI is a national treasure.” The energy continued throughout the weekend and was recharged on the last day of sessions by former Arizona Governor Doug Ducey.

At the 2022 Julian L. Simon Memorial Award Dinner, 440 guests represented a record 94 percent of registrants in attendance at the National Portrait Gallery and Smithsonian American Art Museum for “Disco Night at the Museum.” The flagship event attracted long-time allies Philanthropy Roundtable, Reason Foundation, and State Policy Network, among others, as first-time sponsors. Distinguished guests included Federal Energy

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Regulatory Commissioner James Danly and staff, Utah Solicitor General Melissa Holyoak, and Daily Caller News Foundation President Adele Malpass. Keynote speaker Tim Harford and master of ceremonies Charles C. W. Cooke delivered remarks from the stage. Simon Award winner Balaji S. Srinivasan engaged the crowd with his ideas for creating decentralized, digital countries, called Network States.

Other event highlights included an Alfred E. Kahn Discussion in February featuring John William Pope Foundation President John Hood on the future of freedom. The conversation built on a coalition, led by CEI Vice President for Strategy Iain Murray, that brings together free market allies concerned about the repudiation of economic freedom in today's policy debates, especially on the political right.



Among online gatherings, CEI Senior Fellow Richard Morrison hosted two online panel discussions and a book forum on the legality and risks of environmental, social, and governance (ESG) investing. Featured guests included *Fossil Future* author Alex Epstein, former Labor Secretary Eugene Scalia, and Wharton business ethics professor Christina Parajon Skinner. Our webinars concentrated on timely discussions of pending policy proposals and received notable press mentions. In November, *The Washington Times* covered a panel of CEI experts on the supply chain crisis and quoted Senior Fellow Marlo Lewis, Jr. on the Federal Trade Commission's overreach:

It's all a matter of supply and demand, but alleging corporate skullduggery makes for political theater—It's demagoguery. This is an attempt to somehow discredit American enterprises in general.

We continued to expand media reach by proactively meeting with reporters to establish new strategic

relationships and deepen existing ones.

CEI's Fred L. Smith, Jr. Values Based Communications Studio, inaugurated in spring 2022, has helped us make remote interview appearances more convenient for our experts and our interview segments more professional for our media partners. It also economizes by allowing us to film more of CEI's video content in-house.

Our policy and litigation efforts continued to receive high-value, positive coverage. Between October 2021 and September 2022, CEI experts were quoted, published, interviewed, cited, or mentioned more than 4,700 times. CEI experts were cited by national outlets including Fox News and Fox Business, the *Wall Street Journal*, *New York Times*, *Washington Post*, *American Banker*, *Bloomberg Law*, *The Hill*, *Politico*, *E&E News*, *Reason*, *Washington Examiner*, and *National Review*—and in syndicated columns by John Stossel, James Freeman, and Vernonique de Rugy. Broadcast highlights included C-SPAN's "Washington Journal," Fox Business shows "Mornings with Maria" and "Varney & Co.," and the Lars Larsen and David Webb radio shows.



Throughout the year, CEI President Kent Lassman met with politicians and lawmakers with a national profile—including former Vice President Mike Pence, former Secretary of State Mike Pompeo, senior staff members for former Rep. Liz Cheney (R-WY), Florida Governor Ron DeSantis, former Maryland Governor Larry Hogan, and former Arizona Governor Doug Ducey—to educate them and their associates on the necessity for regulatory reform, and why CEI is the premier organization to assist in advancing regulatory reform proposals. These meetings will continue throughout 2023.

Moreover, 20 months after initiating a project to tackle abusive asset forfeiture, it became clear at the end of 2022 that CEI has made a difference on the issue. Over

REGULATORY REFORM

CEI is dedicated to reforming the processes that federal agencies use to develop and enforce new regulatory policies. In October 2022, CEI released *Ten Thousand Commandments*, an annual survey of the size, scope, and cost of federal regulations and how they affect American consumers, businesses, and the United States economy. Written by Fred L. Smith, Jr. Fellow in Regulatory Studies Wayne Crews, the report shines a light on the large and underappreciated hidden tax of America’s regulatory state. The current edition marks 28 years since the first report was published in 1993.

The 2022 edition covers an assortment of regulatory data plus President Biden’s dismantling of regulatory oversight and pursuit of whole-of-government regulatory campaigns tasking every agency to act on objectives like equity, climate, competition policy, and digital currencies. The report also covers Biden’s exploitation of emergency declarations in relation to the COVID-19 pandemic or climate issues.

Ten Thousand Commandments shows how federal regulations cost Americans at least \$1.927 trillion annually, or nearly \$15,000 per household, or 8 percent of U.S. gross domestic product each year. This immense burden does not include the weight of regulatory dark matter—the tens of thousands of guidance documents, 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. The federal leviathan’s efforts to avoid public scrutiny and accountability make CEI’s regulatory reform work all the more important today.

Although we succeeded in convincing the Trump administration to issue an executive order to require disclosure of guidance documents on agency portals, as well as rules establishing public protections, the Biden reversed course. Yet CEI’s efforts to inventory regulatory dark matter resulted in increasing the catalog of guidance documents that could be easily located.

CEI’s work on regulatory dark matter continues to be frequently cited. We received mentions in the *New Yorker* and *Salon* on coining the term. Other notable citations include the Republican Study Committee’s 122-page 2022 *Blueprint to Save America* and mentions in the *Harvard Journal of Law* and by members of Congress like

Sen. James Lankford (R-OK).

Throughout 2022, our scholars and legal experts produced scores of articles and made numerous radio and podcast appearances on rolling back the administrative state. Our work in the area has involved numerous written analyses of Biden’s whole-of-government efforts. The *Washington Examiner* cited some of these efforts in March and April 2022.



Last June, Crews released a new paper, “The Case for Letting Crises Go to Waste: How an ‘Abuse-of-Crisis Prevention Act’ Can Help Rein in Runaway Government Growth,” in which he argues that the government’s routine “flash policy” responses to crises, most recently during the COVID-19 pandemic, necessitates an Abuse-of-Crisis Prevention Act to reaffirm the boundaries of politicians and the legislation that they can pass. He has spoken on the topic on C-SPAN’s “Washington Journal” and radio and podcasts and has received media coverage from outlets such as the *Washington Examiner*. Crews’s work was cited in numerous books throughout the year, including Peter Wallison’s and John Yoo’s *The Administrative State Before the Supreme Court*, the textbook *Public Administration: Understanding Management, Politics, and Law in the Public Sector*, and the legal textbook *Bad Business Practice: Criminal Law, Regulation and the Reconfiguration of the Business Model*.

President Kent Lassman, Vice President Iain Murray, Director of the Center for Energy and Environment Myron Ebell and several other members of staff played important roles in the Heritage Foundation’s Project 2025 policy working groups, ensuring that many of our regulatory reform ideas are represented in the Project’s recommendations for the next Republican administration.

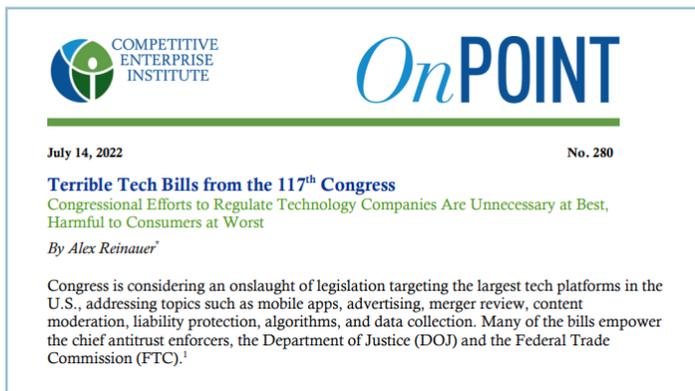
TECHNOLOGY AND INNOVATION

ANTITRUST AND COMPETITION POLICY

We push policymakers toward smarter consumer protection and antitrust policy, and our work has taken on new urgency in recent years. Last year, the Federal Trade Commission (FTC) announced plans to rewrite its merger guidelines, and indicated it will proceed with cases to test its more aggressive approach to competition law.

Critics of large corporations have found allies in Congress, both Democrat and Republican, who increasingly buy into the “big is bad” mantra. They had previously focused their ire mainly against tech and telecom companies, but the mission creep we predicted has expanded to industries ranging from live events to groceries. Thanks in part to efforts from CEI, Congress failed to pass significant antitrust expansion legislation in 2022, but the FTC’s leadership will likely try to institute some of those harmful ideas on its own in 2023, without congressional legislation. We stand ready to challenge those efforts.

CEI works to counter neo-trustbusters by raising awareness of the problems and abuses associated with federal and state-led antitrust investigations. CEI’s analysis, advocacy, and outreach explain why antitrust regulation harms consumers and, ironically, tends to concentrate power in fewer hands while enabling government rent-seeking.



To achieve our goal, CEI experts have published a series of in-depth studies, briefing papers, and commentaries that explain how antitrust regulation hinders innovation and competition, why large firms often produce

important efficiencies that benefit consumers, and why regulators and courts should be constrained to enforcing a narrow, consumer-oriented standard, while meeting substantial burdens of proof, rather than attacking any business arrangement that is big, new, or politically unpopular.

CEI experts have written and spoken against the abandonment of the consumer welfare standard as it relates to extreme policy changes at the FTC, harmful legislation in Congress, and court cases brought by federal agencies and state attorneys general. Our experts have been featured on television, podcasts, satellite and terrestrial talk radio, and online clarifying the harmful consequences of increased antitrust regulation.



In 2022, Jessica Melugin, director of CEI’s Center for Technology and Innovation, published numerous op-eds and blog posts in defense of market competition. Her pieces appeared in publications including *Barron’s*, *National Review*, *Washington Examiner*, and *Real Clear Policy*. She also discussed the issue in regular appearances on Fox Business Network and on former House Speaker Newt Gingrich’s podcast, and addressed a group of public officials at the Washington, D.C. offices of the Ronald Reagan Institute. In November, she published the paper, “Do Claims of App Store Monopoly Have Merit?”

Along with Senior Economist Ryan Young, Melugin filed comments with the FTC on changes to the merger guidelines. She briefed senate staff and spoke to audiences in Washington, D.C., New York City, Houston, Salt Lake City, Santa Fe, and Atlanta throughout the year.

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In May, we published a paper from Adjunct Fellow and Deputy CEO of Swiss Federation of Small and Medium Enterprises Henrique Schneider, “The European Union’s Digital Market Act Seeks to Regulate Competition with Little Regard to Impact on Consumers.”

TECHNOLOGY AND TELECOMMUNICATIONS

Telecommunications regulation and Internet freedom are a core part of 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’s 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 FCC, under Chair Ajit Pai, repealed the order 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.

CEI scholars also advocated against efforts to impose state-level net neutrality regulations, publishing op-eds and meeting with state legislators and policymakers. Nevertheless, a progressive constituency for reinstating net neutrality remains, and it is high on the Biden administration’s policy agenda.

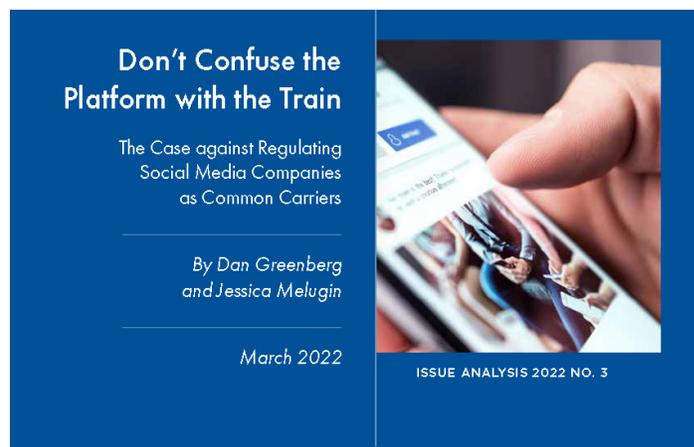
In addition, CEI Research Fellow Ryan Nabil published op-eds and policy reports and submitted regulatory comments in support of reforming the Universal Service Fund (USF), which aims to bring Internet service to underserved areas. In light of more than \$400 billion in broadband funding through the recent American Rescue Plan and the Infrastructure Investment and Jobs Act, CEI experts advocate that Congress and the FCC audit USF broadband subsidies and reconsider why USF programs are still needed. To improve accountability, CEI has argued that Congress should replace the USF

service surcharge and replace it with congressional appropriations.

In support of these policy proposals, Nabil provided comments to the FCC in April 2022 and published a policy report on telecommunications reform this fall.

In addition to our work on net neutrality, CEI is a leading voice in print, on radio and television, and on policy panels against repealing or weakening liability protections for Internet companies under Section 230 of the Communications Decency Act. Section 230, colloquially referred to as the “First Amendment of the Internet,” is a valuable tool to protect companies’ property rights and rights to free speech and association. However, it is now under attack from all sides.

Progressives and some conservatives have argued that the federal government should regulate social media platforms—and online speech in general—to promote content objectivity, much like the Fairness Doctrine, which once governed television and radio content. Conservative supporters of those proposals argue that liberal-leaning tech companies are attempting to de-platform conservatives and keep their views out of the mainstream.



CEI was first out of the gate to oppose regulating these platforms as “common carriers”—much like the old Ma Bell telephone monopoly. Early in 2022, CEI’s Jessica Melugin and General Counsel Dan Greenberg published a paper on the harms of regulating social media platforms as common carriers. In August 2022, Melugin spoke at the State Policy Network annual meeting on the “techlash”—the supposed public backlash against tech companies

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Ryan Nabil participated in the successful effort to squash social media regulation proposals at the American Legislative Exchange Council’s annual meeting last summer in Salt Lake City. Kent Lassman recently had extensive conversations with incoming chair of the House Energy and Commerce Committee, Rep. Cathy McMorris Rodgers (R-WV), and her lead counsel about regulatory frameworks, privacy regulation, and online speech.

Finally, CEI played an important role in advocating for a pragmatic, market-friendly privacy framework that will be essential to the future of the U.S. digital economy. In the absence of a comprehensive federal privacy framework, a growing number of states—from California to Connecticut—have already passed or currently seek to pass state-level data privacy laws. As a result, American businesses and consumers face an increasingly cumbersome patchwork of state-level privacy rules. Against this backdrop, the Federal Trade Commission (FTC) has sought to act as the nation’s de-facto privacy

regulator without congressional authorization.

Jessica Melugin and Ryan Nabil have argued that Congress will ultimately need to pass a market-friendly federal privacy law that preempts this confusing patchwork of state privacy laws and lays the foundation for future innovation in a digital economy. In November 2022, CEI filed regulatory comments with the FTC arguing why the Commission should refrain from interpreting its statutory authority too broadly and instead work with Congress to develop privacy guidelines. Ultimately, a well-balanced, market-friendly approach that recognizes the competing needs of data privacy and security, innovation, and commercial needs is needed to ensure that innovation and competition prevail in the U.S. digital economy.

ENERGY AND ENVIRONMENT

For nearly four decades, the Competitive Enterprise Institute has led the opposition to environmental alarmism, onerous regulations based on junk science and fear-mongering, and efforts to restrict access to affordable energy. During that time, CEI’s Energy and Environment team has become the most effective advocate of the free-market approach to environmental policy in Washington.

One of the approaches that makes CEI so effective is leadership of the Cooler Heads Coalition, an informal network of free market-oriented public policy organizations that serves primarily to share information, develop strategies, and coordinate activities related to energy and environmental policy advocacy. The Coalition is led by Center for Energy and Environment Director Myron Ebell. The monthly Cooler Heads Coalition meetings regularly feature presentations by staff from the Environmental Protection Agency (EPA), Department of the Interior, relevant congressional committees, and individual House and Senate member offices. Featured

speakers often underscore the case that environmental activists have grossly exaggerated the real risks associated with climate change.



Throughout 2022, CEI’s Center for Energy and Environment advanced the goal of a more rational,

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science-based approach to environmental regulation on a number of fronts. In November, CEI President Kent Lassman, Vice President of Communications Travis Burk, and Senior Fellow Mario Loyola attended the United Nations' climate change conference known as COP 27 in Sharm El-Sheikh, Egypt, as official observers. During COP 26, in 2021, we worked with Kevin Williamson, national correspondent for *The Dispatch*, who joined CEI as part of its delegation in Glasgow, Scotland. Through the partnership, Williamson developed a series of three feature-length articles for *National Review*—including two cover stories—on the 26 conference. In October 2022, Williamson joined the CEI team as Writer-in-Residence.

Several of the Center's other important initiatives in 2022 follow.

WEST VIRGINIA V. EPA

Last year, CEI's legal and policy teams worked together to counter the Clean Power Plan (CPP), a 2015 climate change initiative that attempted to expand the Environmental Protection Agency's authority beyond the Clean Air Act to allow for the centralized planning of the electric system. In June, the Supreme Court struck down the CPP in *West Virginia v. EPA*, declaring that the agency does not have the authority to regulate carbon emissions from power plants. CEI had submitted an amicus brief countering the CPP in December 2021. The Court's expressed positions largely followed several conclusions established in our brief. CEI Senior Fellow Marlo Lewis, Jr. published several opinion pieces detailing the arguments in the case.

CLIMATE CHANGE AND REGULATORY CREEP

In September 2022, the Senate approved the Kigali Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer. The Amendment aims to phase out several types of refrigerant chemicals that are commonly used in air conditioning and refrigeration systems. For years, CEI has advocated against the Kigali Amendment, arguing that it would put American manufacturers at a competitive disadvantage against their Chinese competitors, raise upfront and repair costs on air conditioning and refrigeration for consumers and businesses, and cede control of the issue to the United Nations.

While Senate approval of Kigali as a treaty was not the outcome we had hoped for, there was one silver lining: An amendment, introduced by Sen. Dan Sullivan (R-AK), to remove China's "developing nation" status—which made it eligible for special treatment—under the treaty. Passage of the amendment, introduced at CEI's urging and passed 96-0, speaks to the months of effort by our Energy and Environment team to raise awareness about the dangers of Kigali. We see this amendment as a model for all energy and environmental treaties for which China currently enjoys such favorable treatment.

MANCHIN-SCHUMER PERMITTING BILL

While Sen. Joe Manchin (D-WV) effectively quashed President Biden's Build Back Better proposal in December 2021, the bill was resurrected as the Inflation Reduction Act, which the president signed into law in August 2022. CEI opposed the bill as an expansion of the regulatory state that will lead to higher consumer costs. The Inflation Reduction Act materialized after Sen. Manchin gave Senate Majority Leader Chuck Schumer (D-NY) his support for the bill in exchange for a vote on what he claimed would be a permitting reform bill. The draft of that permitting bill, released in September, included provisions to build several trillions of dollars of high-voltage transmission lines and mandated that the costs be paid for by electricity consumers. CEI experts publicly expressed concern that the bill would harm consumers and property owners and highlighted the new and unprecedented authority created for the Federal Energy Regulatory Commission.



OnPOINT

September 27, 2022

No. 283

Unleashing America's Energy Abundance Permitting Reform Is Vital for Affordable Clean Energy

By Mario Loyola*

As a side deal to the Inflation Reduction Act of August 2022, Sens. Joe Manchin (D-WV) and Chuck Schumer (D-NY) agreed to streamline infrastructure permitting. Of the pending permitting reform bills, the only one with any realistic chance of passage in the current Congress is Sen. Manchin's proposal. That language would be attached to a continuing resolution that must pass by September 30 to continue funding for the federal government into the new fiscal year. Unfortunately, the Manchin bill only tinkers at the margins of a major national problem, and falls far short of what would be required for a clean energy transition by 2035.

In late September, Sens. Manchin and Schumer hoped to include the permitting reform language in a short-term, must-pass, government funding bill. CEI's advocacy

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efforts were instrumental to spread awareness about the bill's detrimental aspects. Senior Fellow Mario Loyola published an *OnPoint* policy briefing paper on the topic that was distributed widely on Capitol Hill. Manchin and Schumer ultimately pulled the permitting reform language from the spending bill at the last minute. We continue to monitor, and prepare to counter, attempts to attach a slimmer version of the bill to "must pass" legislation.

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 fixtures like furnaces and light bulbs. CEI has advocated for reasonable 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.

Last June, Senior Fellow Ben Lieberman testified at a hearing before the House Energy and Commerce Committee on the problems with appliance standards, making the case for less regulation and more consumer choice. On October 5, Lieberman submitted a comment to the Department of Energy on its proposed furnace standards, which will raise costs and reduce choices and features for consumers. About a dozen organizations signed on to our comment. Lieberman recently also submitted a comment on similar setbacks spurred by light bulb regulations. CEI will continue to push back against the misuse of these rules as a climate policy tool.

SEC CLIMATE RISK DISCLOSURE RULE

On behalf of CEI and 39 other free-market organizations, Senior Fellow Marlo Lewis, Jr. and our late colleague Patrick Michaels authored a 55-page comment letter submitted in June 2022 countering the Securities and Exchange Commission's climate-related risk disclosure rule. The official comment challenged the scientific basis and economic rationality of the proposed rule, which would require companies to include certain climate-

related disclosures in their registration statements and periodic reports. The SEC's proposal is the cutting edge of the Biden administration's government-wide agenda to channel "the flow of capital toward climate-aligned investments and away from high-carbon investments." Our comments provide a detailed 10-point critique of the scientific and energy market assumptions on which ESG advocates rely and will serve as a litigation blueprint.

NATURAL GAS PIPELINES

In January 2022, Lewis and Michaels also co-authored two comment letters on the Federal Energy Regulatory Commission's proposal to consider greenhouse gas emissions in Natural Gas Act (NGA) reviews of interstate natural gas pipelines. As we pointed out in our comments, FERC's proposal has no specific statutory authorization and would jeopardize the NGA's principal purpose of ensuring plentiful supplies of natural gas at reasonable prices. We argued that the National Environmental Policy Act (NEPA) review process, which governs NGA project reviews, does not apply to project-related greenhouse gas emissions. Supplemental comments submitted in April 2022 show that even a total ban on new U.S. natural gas pipelines over the next 28 years would have no discernible climate change impacts, strengthening our argument that FERC's proposal is all pain for no gain.

SOCIAL COST OF CARBON

Building on CEI's June 2021 comments to the Office of Management and Budget on the administration's social cost of carbon estimates, Lewis and Michaels developed a critique of the methodologies used in comment letters to the Environmental Protection Agency and the National Highway Traffic Safety Administration in 2021, and most recently to the Federal Energy Regulatory Commission in January 2022. Numerous comments raised major criticisms against the administration's continuing reliance on inflated emission scenarios, originally developed in 2009. The EPA's recently published "Draft Review of the Social Cost of Greenhouse Gases" uses new emission baselines that appear to be more realistic than the previous scenarios. It appears that, unable to rebut our critique, the EPA decided to switch rather than fight. That did not stop the EPA from fiddling with its models to artificially raise social cost of carbon estimates.

DEREGULATION AND ECONOMIC FREEDOM

BANKING AND FINANCE

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

In 2022, CEI continued to support the Office of the Comptroller of the Currency's (OCC) FinTech charter, which allows non-depository financial technology firms to apply for bank charters, and the OCC's regulatory sandbox program, which allows FinTech firms to grow and experiment in an environment largely free from burdensome government regulation for a limited time. We helped defeat two potentially powerful Biden banking nominees to this office, and we continued to highlight their radical writings as examples of the Biden administration's interventionist approach.

In July 2021, Senior Fellow and Director of Finance Policy John Berlau testified on financial inclusion at a hearing before the House Financial Services Committee in support of the Expanding Financial Access for Underserved Communities Act, pointing out the benefit of allowing, but not mandating, credit unions to expand their membership to include a variety of underserved areas. In 2022, with widespread support, the House passed the Act, while expanding the fields of membership for credit unions that seek members. The Credit Union National Association promoted CEI's writings in favor of the bill on social media and in communications with Congress.

Additionally, CEI helped defeat provisions of the Inflation Reduction Act that would have been particularly destructive for business investment and access to capital. We pointed out the destructive nature of a carried interest tax, originally in the bill as a revenue-raising mechanism, to various types of business partnerships.

Sen. Mike Lee (R-UT) recently introduced the Promoting Innovation and Offering the Needed Escape from Exhaustive Regulations (PIONEER) Act, which would

create a federal regulatory sandbox to help free entrepreneurs from needless red tape. He cited CEI's work on the regulatory burden in his press release introducing the bill.



As part of CEI's priority to oppose efforts by the Consumer Financial Protection Bureau to impose burdensome regulations on financial services, CEI led efforts challenging the bureau's proposed rule that would require small business lenders to collect extensive information on the race and gender of loan applicants.

In July, Berlau published a *Wall Street Journal* op-ed on the 20th anniversary of the Sarbanes-Oxley financial law. Following the op-ed's publication, we received interest from Congress on repealing or scaling back the damaging law. CEI experts met with the legislative director for Rep. Scott Fitzgerald (R-WI)—who serves on the Financial Services and Judiciary Committees in the recently inaugurated 118th Congress—to discuss Sarbanes-Oxley repeal and reform. The aide said Rep. Fitzgerald will likely introduce Sarbanes-Oxley legislation based on our ideas in the new Congress.

CEI filed comments with the office of Sen. Pat Toomey (R-PA) pursuant to his call for comments on ideas for a JOBS Act 4.0. These would follow up on the original JOBS Act's deregulatory initiatives to make it easier for smaller companies to raise money from ordinary investors. Toomey listed these comments with attribution to CEI in a compendium of proposals published by his office.

CEI helped build opposition to a proposal by the Federal Reserve to issue a central bank digital currency (CBDC).

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Efforts included a forum with the legislation’s sponsor, Rep. Tom Emmer (R-MN), a paper by former adjunct fellow Paul Jossey, and a *USA Today* op-ed by John Berlau criticizing the concept. In October, Berlau gave the Regulatory Keynote speech at the INFIN MoneyTrends conference in Austin to a wide audience in the consumer finance industry on the dangers of CBDCs to competition and privacy. Also in October, at FreedomWorks’ Mapping the Future of Crypto conference, Berlau discussed both CBDCs and regulation of private cryptocurrency as part of the event’s “Crypto at the Checkout Counter” panel.

Berlau’s work on the implosion of the cryptocurrency exchange FTX was cited by *The Wall Street Journal* and by Real Clear Policy. His recent opportunities to discuss the spectacle and policy lessons include Newsmax’s national Lars Larson radio show and former Rep. Doug Collins’ popular podcast for the Salem Radio Network.

On Dec. 5, Berlau was quoted by the *Daily Mail* in analyzing the Biden-backed American Rescue Plan’s tax reporting requirement for payment apps. Under the requirement, now going into effect, payment platforms from Venmo to eBay must report to the IRS anyone who received \$600 or more selling goods and services. This is becoming a hot-button issue because of its likely damaging regulatory effects and disproportionate harm to certain types of innovation. Berlau pointed out the harm that this could cause to small entrepreneurs and to individuals selling used items who may not owe any taxes, but will have to spend time and resources to prove that. Radio host Mark Levin subsequently read Berlau’s analysis during his broadcast that evening.

LABOR AND EMPLOYMENT

CEI helped raise awareness about the National Labor Relations Board’s (NLRB) efforts to revive the Obama-era joint employer standard, which would expand companies’ liability for workplace violations at other companies, from cases of “direct control” to cases of vaguely defined “indirect control.” The change would vastly expand the NLRB’s regulatory powers, giving it the ability to contrive whatever rationale it may want as a pretext for an investigation. CEI networked with other free market groups and trade associations to raise awareness of the rulemaking and its potential consequences.

We highlighted how the NLRB has been aggressive in other areas as well, including through its proposal to update the Davis-Bacon prevailing wage law in a way that would significantly raise the cost of federally funded infrastructure projects. Through an article by Research Fellow Sean Higgins published in *The Wall Street Journal* in April 2022, CEI also broke the story that the NLRB has targeted mandatory attendance meetings by management during union organizing drives, pushed for increased union access to employer property, and signaled that it favors a rule adopting “card check” union election procedures, which would eliminate the secret ballot in representation votes. All of these changes would tip workplace elections in favor of unions.



We raised public awareness of the Federal Trade Commission’s announcement that it plans to pursue cases against so-called gig economy companies, specifically about their use of computerized algorithms to manage employment aspects of their business. CEI warned companies to be careful in their use of algorithms to prevent giving the FTC a pretext to investigate.

Other important contributions in labor regulations included blog posts and radio interviews on the Inflation Reduction Act. CEI experts highlighted how the Inflation Reduction Act’s billions in new spending on federal energy and environmental projects, combined with the use of prevailing wage rules, would send those projects’ labor costs through the roof. We also made the case that a proposed minimum wage increase would do significant economic harm, hitting low-income workers the hardest. Our policy team has also countered the Biden administration’s attempt to roll back the Trump administration’s updated and streamlined definition of an employer-employee relationship under the Fair Labor Standards Act. This attempt was halted by the courts on the grounds that the White House was too

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hasty in throwing it out and did not submit it to notice and comment as required under the Administrative Procedure Act.

CEI's advocacy further helped halt potential partisan leadership. Last March, after CEI sounded the alarm, the nomination of David Weil to be administrator of the Department of Labor's Wage and Hour Division was defeated 47-53 in the Senate. He had previously run the agency under former President Obama and the nomination threatened to fly under the radar. Weil was expected to reinterpret rules to favor unions over the workers they are supposed to represent.

HEALTH POLICY

Over the past two years, CEI Senior Fellow Dr. Joel M. Zinberg wrote extensively on the economic, health, and legal effects of the COVID-19 pandemic and on the interaction of the health care and legal systems. He has focused on the proper role for government in our nation's health care system and economy and on defining the practical and legal limits of government action in health care.



Much of this work grows out of Zinberg's work prior to joining CEI when he was senior economist and general counsel on the President's Council of Economic Advisers (CEA) from 2017 to 2019. While at CEA, Zinberg helped draft a proposal to utilize public-private partnerships to spur innovation and expedite production of new vaccines for potential influenza pandemics—a proposal that just months later led to Operation Warp Speed, which significantly aided the unprecedentedly rapid development—10 months—of new vaccines for COVID-19. His work on the health care chapters of the Economic Report of the President demonstrated that markets

can and do work in health care and are superior to government-run systems.

Zinberg has appeared in numerous interviews on C-SPAN, including "Washington Journal," on Fox News and Fox Business, and on multiple radio programs during the past year. He has written numerous opinion pieces for *The Wall Street Journal*, *New York Post*, *National Review*, *City Journal*, and syndicated pieces for *Inside Sources*. He has also written on the evolving Supreme Court jurisprudence on limits to the administrative state and a return to constitutional norms that require policy to be made by Congress and not unelected bureaucrats. He also explored the superiority of decision-making and actions by local governments, private businesses, non-profit organizations, and civil society institutions as compared to centralized federal government mandates. Furthermore, he exposed the deleterious impact that the Inflation Reduction Act will have on medical innovation and how the public health emergency is being unnecessarily extended in order to expand government health care programs such as Medicaid to millions of ineligible beneficiaries.

ADVANCING CAPITALISM

Capitalism has been the most dynamic force for economic progress in history, enabling billions of people to rise out of poverty and creating unprecedented human flourishing. Yet, it remains under attack. Anti-free market and illiberal rhetoric has become even more pronounced during the past two years as progressive advocates exploit the still-struggling American economy. Instead of defending their values, many business leaders often bow to trendy anticapitalistic pressures.



The team at CEI’s Center for Advancing Capitalism works to promote a healthier, more robust understanding of the values and virtues of capitalism, free markets, and economic liberty. The Center’s studies, articles, and public appearances debunk the myth that capitalism is exploitative and is leaving a less healthy, less fair, and less productive world for future generations. Center initiatives complement CEI’s core policy work, based on the premise that advancing free market public policies is easier when policy makers and the public understand how capitalism not only makes people wealthier, but also advances other important values and concerns, such as fairness and justice.

During the past year, CEI experts at the Center for Advancing Capitalism once again pursued an aggressive agenda that included:

- Emphasizing the opportunities for private contract and voluntary association to solve the problems for which new laws and regulations are often proposed as solutions.
- Advocating for reforming existing regulations and restraint in issuing new regulations, such as rules

from agencies like the Securities and Exchange Commission on corporate governance.

- Emphasizing that the most important threats arising from politicized investing is to workers and retirees rather than to big corporations themselves.
- Persuading business leaders to use their networks to defend freedom just as progressives use their networks to convey progressive ideas.

Additionally, CEI policy experts coordinated with a wide array of policy allies on proposed legislation and oversight topics for state legislatures and the 118th Congress. Our policy and legal teams filed regulatory comments on major rules relating to pension protection, climate finance, and the SEC’s naming restrictions on investment funds.



To counter the movement toward ESG (environmental, social, and governance) goals, we hosted policy events with authors and experts on ESG and financial regulation topics. We also added a new research fellow, Stone Washington, to CEI’s roster. Joining CEI in December, Washington will contribute to the center’s analysis on financial regulation and politicized investment in the context of ESG. He is already producing new short-form writing and will author a major study on constitutional limits to federal ESG policy.

CEI Research Fellow Joshua Bandoch is working on a book on persuasion, and has produced spinoff pieces

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advancing his arguments to broader audiences. Taken together, it is an ambitious project to teach others how to persuade people to free market values.

In June, CEI published a study by Senior Fellow Richard Morrison, “The SEC’s Costly Power Grab,” which explains how the SEC’s climate disclosure rule falls outside of the Commission’s jurisdiction and expertise. The rule could impose massive costs on U.S. public companies for the benefit of merely a handful of the largest asset

management and accounting firms. And it will have the opposite effect of its goal in that capital allocation decisions will increase risk and result in lower returns for investors. Ultimately, rather than tilt in a particular political direction, the agency should abandon this rulemaking and return to its original position that registrant firms only need to disclose climate-related risks that meet the traditional definition of being financially material to investors.

LAW AND LITIGATION

As part of 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 contribute to with amicus briefs, aim to preserve the constitutional and statutory limits on regulatory agencies’ actions and promote accountability and transparency. We had success in the past year in slowing or stopping the implementation of harmful regulations and in holding agencies accountable to the public and ensure their power is constrained by statute and the Constitution.

CEI’s Center for Law and Litigation pursued a number of tactical goals in 2022, including the following:

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

CEI brought a constitutional challenge to the Mandatory Repatriation Tax, which was part of the 2017 Trump tax reform package. CEI, with pro bono counsel from Baker Hostetler, is representing a Washington State couple who own shares in an Indian company that makes equipment for small-scale farmers. The couple has never sold any shares or received any dividends, but they were hit with a retroactive tax because the increase in the value of their shares was “deemed” income.

In our view, the tax violates the apportionment requirement for direct taxes under the Constitution’s Article I, Section 9, Clause 4. In significant respects, the tax at issue is conceptually similar to the Billionaire

Minimum Income Tax proposed by President Biden and to an earlier proposal by Sen. Elizabeth Warren (D-MA). More fundamentally, the Ninth Circuit panel ruling upholding the tax evaded addressing the fundamental distinction between taxes on income and taxes on wealth.

In July, CEI requested *en banc* review of that ruling. The review was recently denied but CEI earned a strong dissent signed by four judges which will aid CEI’s presentation of a cert petition to the Supreme Court. In February 2023, we released a short web video highlighting the case aimed at drawing attention to the issue and educating allies on the case.

SUBJECT THE NATIONAL CLIMATE TASK FORCE TO AGENCY ACCOUNTABILITY

At the outset of his term, President Biden announced a whole-of-government approach to addressing climate change, encompassing both domestic agencies and those handling national security and foreign policy. He put Obama EPA Administrator Gina McCarthy in charge of a National Climate Task Force, with more than 20 members, many of them agency heads. The Task Force characterizes itself as purely advisory, and therefore exempt from the Freedom of Information Act (FOIA) and rulemaking and open meeting laws. But the Task Force has gone far beyond advising the president. It has developed national greenhouse gas emission targets and has become heavily involved in how agencies prioritize and manage their activities, with the goal of developing a

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government-wide approach to climate policy.

CEI filed several FOIA requests in spring 2022 with both McCarthy and officials at the various Task Force member agencies. After receiving no response from the National Climate Task Force, we filed in Federal District Court in Washington, D.C. Representation is being provided by the Dechert Law Firm, with CEI attorneys acting as co-counsel. To date, the trial court has failed to act on several long-pending motions before it. CEI recently filed a motion to preserve evidence in the wake of McCarthy's retirement.



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

In February, 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. But the Clean Air Act, under which these rules are issued, 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. While the Clean Air Act authorizes emissions standards on a vehicle-by-vehicle basis, the new EPA standards go far beyond that, with provisions for emissions credit trading between companies and multiplier credits for electric cars.

CEI's case has been consolidated with other challenges filed by several state and industry groups.

MAKE FURTHER PROGRESS ON CIVIL ASSET FORFEITURE REFORM

CEI General Counsel Dan Greenberg testified on civil forfeiture reform bills in New Hampshire, Vermont, and Tennessee early in 2022. He continues to provide technical assistance and guidance to lawmakers, prosecutors, and other interested parties on reforms in this area. CEI also filed an amicus brief on a related issue, asking the Supreme Court to take up a challenge to the state practice of seizing people's homes for small tax delinquencies, selling the houses, and then keeping the entirety of the gross proceeds—rather than the portion necessary to satisfy the debt, regardless of how small the debt was. This case is still pending before the Supreme Court.

Greenberg also wrote and was featured in CEI's first video on civil asset forfeiture, which was released during the summer and targeted to state legislators. Furthermore, as a Constitution Partner at the State Policy Network (SPN) Annual Meeting in Atlanta last fall, he co-hosted a breakout session with the Institute for Justice to discuss our state level advocacy for civil forfeiture reform. His presentation at the conference led to follow-up meetings with SPN representatives from several states, with whom Greenberg continues to work on civil forfeiture meetings.

FEDERAL GUIDELINES ON SALT

In late 2021, the Department of Health and Human Services (HHS) issued Sodium Reduction Goals for all food manufacturers to reduce salt levels in their products. CEI challenged HHS' failure to submit this scientific determination to peer review, as required by the Office of Management and Budget. HHS has, so far, provided no information despite missing the deadline to do so by nearly a year. CEI is currently working to publicize the fact that, one year after its issuance, HHS still has not explained its failure to submit its salt guidelines to peer review. HHS' inaction is especially notable in this instance, because a sizable body of scientific research indicates that reduced salt consumption can pose major medical risks.

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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.

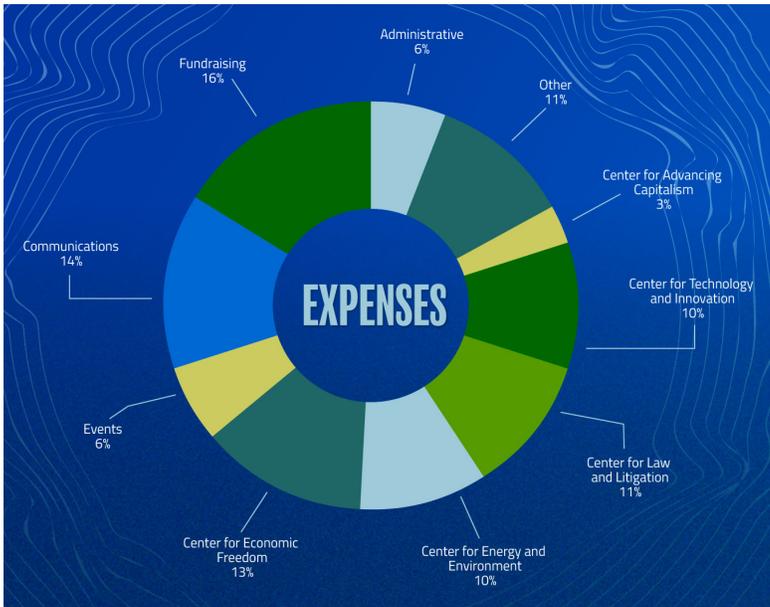
PURSUING STRATEGIC LITIGATION

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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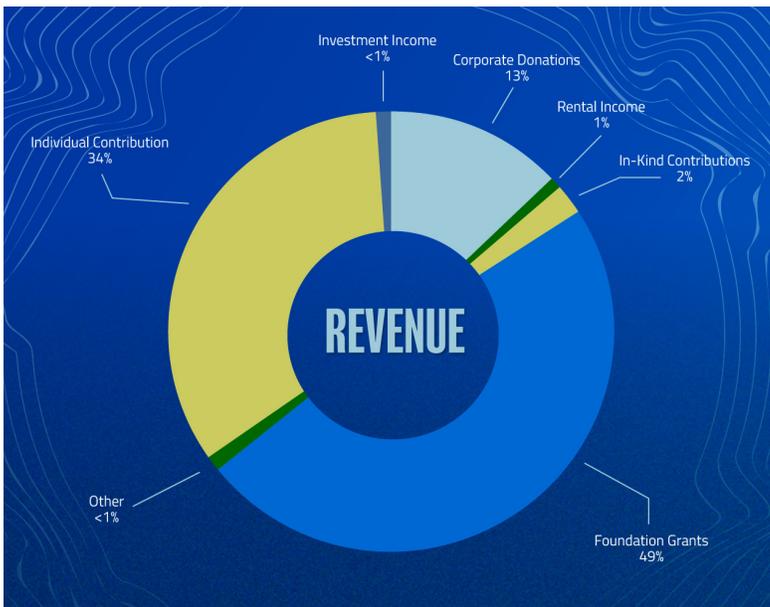


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CEI raised \$7.96 million in contributions from individuals, charitable foundations, and corporations during the 2022 fiscal year. Additional non-contribution revenue brought total income to \$8.2 million.

Expenses for the year totaled \$7.14 million, with 77 percent of that going to programmatic expenses of our five policy areas, communications, and events.



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