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# REVIVING COMPETITION, PART 6: REBUILDING AMERICA'S ECONOMIC LEADERSHIP AND COMBATTING CORPORATE PROFITEERING

## HEARING

BEFORE THE

SUBCOMMITTEE ON ANTITRUST, COMMERCIAL, AND ADMINISTRATIVE LAW

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTEENTH CONGRESS

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# REVIVING COMPETITION, PART 6: REBUILDING AMERICA'S ECONOMIC LEADERSHIP AND COMBATTING CORPORATE PROFITEERING

**Tuesday, May 17, 2022**

HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON ANTITRUST, COMMERCIAL, AND ADMINISTRATIVE LAW

COMMITTEE ON THE JUDICIARY

*Washington, DC*

The Committee met, pursuant to call, at 1:00 p.m., in Room 2141, Rayburn House Office Building, Hon. David N. Cicilline [Chair of the Subcommittee] presiding.

*Members present:* Representatives Cicilline, Neguse, Swalwell, Jones, Jeffries, Raskin, Jayapal, Demings, Scanlon, Dean, Johnson of Georgia, Jordan, Buck, Issa, Johnson of Louisiana, Steube, Bishop, Fitzgerald, Bentz, and Owens.

*Staff present:* John Doty, Senior Advisor and Deputy Staff Director; David Greengrass, Senior Counsel;Cierra Fontenot, Chief Clerk; John Williams, Parliamentarian and Senior Counsel; Keenan Keller, Senior Counsel; Slade Bond, Chief Counsel for Antitrust, Commercial, and Administrative Law; Phillip Berenbroick, Counsel for Antitrust, Commercial, and Administrative Law; Mary Helen Wimberly, Detailee for Antitrust, Commercial, and Administrative Law; Joseph Van Wye, Professional Staff Member/Legislative Aide for Antitrust, Commercial, and Administrative Law; Douglas Geho, Minority Chief Counsel for Administrative Law; Andrea Woodard, Minority Professional Staff Member; Kiley Bidelman, Minority Clerk; and Bradley Craigmyle, Minority DOJ Detailee.

Mr. CICILLINE. The Subcommittee will come to order. Without objection, the Chair is authorized to declare recesses of the Committee at any time.

Good morning and welcome to today's hearing examining how corporate consolidation and profiteering have led to supply shortages and high prices across the country.

I'd like to remind Members that we've established an email address and distribution list to circulate exhibits, motions, or other written materials that Members might want to offer as part of today's hearing.

If you would like to submit materials, please send them to the email address that has been previously distributed to your offices,

and we will circulate the materials to Members and staff as quickly as we can.

I would ask all Members to please mute your microphones when you are not speaking. This will help prevent feedback and other technical issues. You may unmute yourself any time you seek recognition.

I now recognize myself for an opening statement.

As a country, we're all fed up with crisis after crisis caused by giant corporations lining their pockets while the rest of America struggles to make ends meet. The latest crisis is a crippling shortage of baby formula. Over 40 percent of the most popular baby formula products are out of stock.

Parents of infants with allergies are desperate find the specialty formulas that their children need to survive. When parents can find formulas in stores, the price is up almost 20 percent over what it was a year ago. This is completely unacceptable.

We know why it's happening. Just two companies control 80 percent of baby formula production in the United States. When something goes wrong with one of them, the entire country feels the consequences. We're seeing this today.

The largest U.S. formula producer, Abbott, shut down one of its plants in February due to bacterial contamination. Because of the loss of one plant of one company, formula shelves are empty. We do not have the diversity of other, smaller companies capable of picking up the slack. Our supply chain is not resilient or nimble enough.

We understand how grave problem this is. Baby formula shortage is a case study of the market concentration problems plaguing the U.S. economy. When we allow corporations to concentrate their control, we allow them to concentrate all production capacity, and that concentrates a risk.

It's a system designed to maximize short-term profits at the expense of safety and resiliency, and we're now suffering because of it. While hardworking Americans are feeling the pinch, big corporations are not. Gas prices provide the perfect example. They have hit record highs, over four dollars a gallon in nearly every State.

Here is what is telling: Big Oil's profits are also at record highs. Last year, major oil companies posted their highest profits in nearly a decade. This year, Chevron's first quarter profits quadrupled over last year. Exxon Mobile and BP at least doubled their first quarter profits, and Shell's profits hit a new record high.

American families are hurting, workers have been furloughed due to supply chain disruptions, paychecks are stretched, consumers are paying more and getting less. Meanwhile, corporate executives are doing better than ever.

According to the *Wall Street Journal*, the total compensation for most executives rose by 12 percent, while the median pay for CEOs at the biggest U.S. companies reached $15 million last year, a record for the sixth consecutive year.

Certainly, part of what has caused high consumer prices include crises that are largely beyond our control, such as the COVID–19 pandemic and Putin's war on Ukraine. These events also laid bare the deeper and more systemic diseases that have been plaguing our country for decades now.

American economic leadership has been undermined by years of consolidation, under-investment, and focus on short-terms profits at the expense of everything else. As Professor Reich has written, and I quote,

> There's a deeper structural reason for inflation, one that appears to be growing worse: The economic concentration of the American economy in the hands of relatively few corporate giants with the power to raise prices.

As my colleague and friend, Senator Amy Klobuchar, said, and I quote,

> America's market power problem cuts across our entire economy. We see it in everything from cat food to caskets.

Because of corporate consolidation, wages have stagnated and consumer prices across the board are climbing higher and higher. All the while, corporations are reporting windfall profit margins in one sector after another, taking advantage of the current crises to raise prices even higher.

As the Economic Policy Institute recently reported, "Since the onset of the pandemic, nearly 54 of the spike in the costs of goods and services is attributable to higher profits margins by corporations."

Over the past several decades, the largest corporations have chronically under-invested in research and development and in their workforce. In fact, instead of investing in more resilient supply chains, innovation, new facilities, or workers, the firms in the S&P 500 spent 91 percent of their income on share buybacks or dividends between 2009–2018.

Meanwhile, they have shipped jobs and manufacturing overseas and become strategic partners with America's adversaries. While this system is working great for wealthy CEOs and Wall Street, it's a disaster for working Americans, who are struggling with high prices, empty shelves, and few competitive alternatives in the marketplace. It's unsustainable in the long-term because it threatens our economic prosperity and our national security.

Americans are angry, they're fed up with CEOs boasting that record profits are being fueled by the pain being inflicted on working families. Americans are overwhelmingly demanding that Congress end the corporate greed and runaway consolidation that are at the heart of this crisis.

Today's hearing is an opportunity for us to explore the root causes of these concerns and to hear about solutions. I thank our panel of esteemed Witnesses for appearing before us.

I now recognize the distinguished gentleman from the State of Colorado, the Ranking Member of the Antitrust Subcommittee, Mr. Buck, for his opening statement.

Mr. BUCK. Thank you, Mr. Chair.

This is the second hearing in this Subcommittee entitled Reviving Competition. How tragic it is that an economy that should be growing and recovering from government-mandated lockdowns is instead stagnating in uncertainty over record-setting inflation, labor shortages, and a crippled supply chain.

Americans face disastrous economic headwinds, and the Biden Administration has doubled down on its failed policies. At our last hearing on this subject, inflation was seven percent, now it's 8.3

percent. A gallon of gas was $3.31, now it's $4.33. Beef went from $4.55–4.92. I suggest we stop holding hearings.

Perhaps most concerning, however, is the shortage in baby formula. Young mothers in my district are driving hours to find formula and feed their babies. The most vulnerable population in America doesn't have a stable source of food, and Congress hasn't done a thing about it.

Of course, we just passed a $40 billion Ukraine aid package that included funds for global food security. Working families in the United States cannot feed their children, yet we're sending billions of dollars to countries that aren't even impacted by the war in Eastern Europe. To make matters worse, there wasn't even a requirement that the food in these programs come from U.S. producers.

CNN, no friend to Republican talking points, recently tasked a reporter with tracking down baby formula. They used the Biden Administration's new highly touted tools. The result: Hours on hold and no clear direction for parents in need to purchase formula.

We can have a philosophical debate over the concentration of power in different sectors of our economy. I welcome a discussion of Amazon's quick acquisition of Whole Foods and its anticompetitive pricing and delivery practices that force small, independent grocers out of business.

To suggest that changes to competition policy will put formula back on the shelves for consumers is disconnected from reality, especially when the Biden Administration is busy shipping pallets of formula to the southern border for illegal immigrants.

The Biden Administration and congressional Democrats need to stop hiding behind scapegoats and finally address the root causes of skyrocketing inflation. Between profligate spending, unabashed union protectionism, and radical environmentalism, it's no wonder how we got here.

Since January, the price and availability of goods has gone from an expensive headache to a potentially disastrous shortage of critical products. If this is not addressed, I fear the statistics I'll be reading at the next hearing on this subject will be far worse.

Mr. Chair, I yield back.

Mr. CICILLINE. I thank the gentleman. Now, I will introduce today's Witnesses. Again, I thank our Witnesses for joining us today.

Our first Witness, the Honorable Robert Reich, is the Carmel P. Friesen Professor of Public Policy at the University of California Berkeley's Goldman School of Public Policy.

During the Clinton Administration, Professor Reich served as the Secretary of Labor. *Time Magazine* named him one of the ten most effective cabinet secretaries of the 20th century. He has written and published 18 books, including bestsellers "Aftershock" and "The Common Good."

Professor Reich is a founding editor of the American Prospect, a founder of Inequality Media, co-creator of the documentary series Inequality for All, and a member of the American Academy of Arts and Sciences. Additionally, he currently serves as a Senior Fellow at the Blum Center.

Professor Reich received his bachelor's degree from Dartmouth University, his master's degree from Oxford University, and his JD from Yale Law School.

Today's second Witness is Dr. Rakeen Mabud, the Chief Economist and Managing Director of Policy and Research at the Groundwork Collaborative. At Groundwork, Dr. Mabud has led their efforts to explain how economic trends impact people's lives, with a focus on serious structural disparities and on investigating how corporate profiteering exacerbates inflation.

Before joining the Groundwork Collaborative, Dr. Mabud helped develop economic policy as a Special Assistant in the Office of Economic Policy at the Treasury Department. Dr. Mabud also serves as a board member for the National Employment Law Project.

She has been widely published in some of the nation's most prominent publications, including the *New York Times, The Washington Post*, and *NPR*. Dr. Mabud received her bachelor's degree from Wellesley College and her Ph.D. in Government from Harvard University.

Our third Witness is Barry C. Lynn, the Executive Director at Open Markets Institute. Mr. Lynn is a leading expert on the threat monopolies pose to our democracy, economy, security, and individual liberties. He's written three books and has been published widely by national publications, including *The Economist, Rolling Stone, The New Yorker*, and *The Wall Street Journal*. Prior to the helming the *Open Markets Institute*, Mr. Lynn was the Executive Editor of *Global Business Magazine* and a correspondent for the *Associated Press*, and *Agence France-Presse* in South America.

Mr. Lynn received his bachelor's degree from Columbia University.

Today's last Witness is Patrice Onwuka the Director of the Center for Economic Opportunity at the Independent Women's Forum. Ms. Onwuka Has worked in policy and advocacy in DC for more than a decade. Additionally, Ms. Onwuka is a Senior Adjutant Fellow with the Philanthropy Roundtable and Tony Blankley Fellow at the Steamboat Institute.

She's a frequent guest on Fox News and a co-host of O'Connor and Company, a show on DC's leading talk radio station. She also hosts a column called *The New Agenda for Black Women* on *Newsmax.com* and is a contributor to the *Washington Examiner*.

Ms. Onwuka received her bachelor's degree from Tufts University and her master's degree from Boston College.

We welcome all our distinguished Witnesses and thank them for their participation. I will begin by swearing in our Witnesses and ask the Witnesses to turn on their audio if you are appearing virtually. Make sure that we can see you. Please raise your right hand while I administer the oath.

Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

Let the record reflect that the Witnesses answered in the affirmative, and I thank you. I would remind the Witnesses that your written testimony will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in five minutes.

To help you stay within that timeframe, there's a timing light on your screen. When the light switches from green to yellow, you have one minute to conclude your testimony. When the light turns red, it signals that your five minutes have expired.

I'll begin by recognizing Professor Reich for five minutes.

**STATEMENT OF THE HONORABLE ROBERT REICH**

Mr. REICH. Thank you, Mr. Chair and Members of the Committee.

The Commerce Department recently reported that corporate profits are at a 70-year high. Now, this raises an obvious question: When corporate and corporations are so flush with cash, why are they raising prices?

Now, it's not solely because of the increasing costs of supplies and components and labor. Corporations enjoying record profits in a competitive economy would absorb these costs, keeping their prices down to prevent competitors from grabbing away customers.

The underlying problem is large American corporations have so much market power, they can raise prices with impunity. Since the 1980s, two-thirds of all American industries have become more concentrated, making it easy for corporations to informally coordinate price increases with a handful of other companies in their same industry without risking the possibility of losing customers who have no other choice.

Airlines, for example, have merged from 12 carriers in 1980 to four today, which now control 80 percent of domestic seating capacity. Three giant cable companies dominate broadband. A handful of drug companies control the pharmaceutical industry. Two giant firms dominate consumer staples.

Three global alliances now control 80 percent of global container ship capacity. Four giants control over 80 percent of meat processing. The biggest U.S. oil companies, headed by Chevron and Exxon Mobile, boasted near-record profits last year, but they're raising prices at the pump nonetheless because they don't worry about losing market share to competitors.

Meat prices are soaring because the four giant meat processing corporations that dominate the industry are using their market power to extract even bigger profit margins for themselves, according to the White House National Economic Council.

Corporate executives brag about their pricing power on their earnings calls with Wall Street. The CEO of Tyson Foods credits his company's profits with its "successful pricing strategies." The head of 3M boasts of a "marvelous job in driving price." The CFO of Hormel says, "We've done a great job with our pricing." So on and so forth.

One reason baby formula is out of stock is lack of competition. The largest producer, with more than 40 percent of the market, is Abbott. After four babies were hospitalized and two died from bacterial infections, the FDA appropriately recalled Abbott's baby formula products, leaving families that depend on infant formula in the lurch.

Now, it would be one thing if corporations were using their profits to invest in higher productivity, better product quality, and so

on. They're using them to buy back their own shares of stock to deliver higher returns to shareholders.

Stock buybacks hit a record last year. This year is on track to exceed that record. The oil giants are planning to buy back even more than last year. Abbott, instead of investing in safety of its factory, bought back billions of dollars of shares.

Big corporations doing what their shareholders want them to do, maximize profits and share values. Unless or until there are laws preventing them from doing this, they will continue to do this.

So, I recommend that the Congress and the Administration:

(1) Strengthen antitrust laws and enforcement.
(2) Prevent price-gouging. The Federal Trade Commission has the power to carry out investigations and impose penalties under existing law.
(3) Tax windfall profits, profits of large corporations that exceed their average profit level from 2015–2019.
(4) Finally, tax buybacks.

This would make companies think twice before putting shareholders ahead of American families.

Congress and the Administration have the power to stop corporations enjoying the highest profits in seven years from raising their prices, thereby requiring American workers and consumers to subsidize wealthy investors.

Thank you.

[The prepared statement of Mr. Reich follows:]

United States House of Representatives

Judiciary Committee

Subcommittee on Antitrust, Commercial, and Administrative Law

# Hearings on Reviving Competition: Rebuilding America's Economic Leadership and Combatting Corporate Profiteering

May 17, 2022

Testimony of Robert B. Reich

Mr. Chairman and members of the Committee,

My name is Robert Reich. I am currently Chancellor's Professor of Public Policy at the Goldman School of Public Policy at the University of California at Berkeley. In the Clinton Administration I served as Secretary of Labor. In the Carter Administration I directed the Policy Planning Staff of the Federal Trade Commission. In the Ford Administration I served as Assistant to the Solicitor General. I am the author of eighteen books about the American political economy.

Corporate concentration is one cause of the inflation we are now experiencing in the United States. It is not the only cause. Supply bottlenecks, pent-up demand, China's response to another strain of COVID, rising oil and food prices related to the war in Ukraine, are all contributing. Surely, corporations with the power to raise prices would already have been exploiting their pricing power before the current spate of inflation. But there seems little doubt that many corporations have been using this inflation as cover to raise prices further. In my prepared testimony I will present evidence of this, discuss why this entails an upward distribution of income and wealth from average working people to corporations and their shareholders, and suggest what government should and should *not* do to deal with this.

## 1. Corporations with near-record profits are raising prices because they don't face meaningful competition

The Commerce Department reported at the end of March that corporate profits were at a 70-year high.[1] This raises an obvious question: When corporations are so flush with cash, why are they raising prices?

They are *not* raising prices *solely* because of the increasing costs of supplies and components and of labor (which are real but expected when an economy goes suddenly from a pandemic-induced deep freeze due to meeting the soaring demands of consumers who are emerging from the pandemic). Corporations enjoying record profits in a healthy competitive economy would *absorb* these costs. Instead, they're passing

[1] https://www.bea.gov/data/income-saving/corporate-profits

these costs on to consumers in the form of higher prices. Why? Because they *can*. And they can because they don't face meaningful competition.

If markets were competitive, companies would keep their prices down to prevent competitors from grabbing away customers. It is far easier to take big markups when there aren't major competitors to undercut you.[2] As the White House National Economic Council put it in a December report: "Businesses that face meaningful competition can't [maintain high profit margins and pass on higher costs to consumers], because they would lose business to a competitor that did not hike its margins."[3]

The underlying problem is that large American corporations have so much market power they can raise prices with impunity. Since the 1980s, two-thirds of all American industries have become more concentrated.[4] This concentration gives corporations the power to raise prices because it makes it easy for them to informally coordinate price increases with the handful of other companies in their same industry — without risking the possibility of losing customers, who have no other choice. They appear to be using the cover of inflation to do this to an even greater extent than they did before the current inflationary cycle.

## 2. The Evidence

Corporations have been using the *excuse* of increasing costs to raise prices and make fatter profits. For example:

Starbucks is raising its prices to consumers, blaming the rising costs of supplies. But Starbucks is so profitable it could easily absorb these costs – it reported a 31% increase in yearly profits.[5] Why didn't it just swallow the cost increases? Ditto for McDonald's

[2] https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/
[3] https://www.whitehouse.gov/briefing-room/blog/2021/12/10/recent-data-show-dominant-meat-processing-companies-are-taking-advantage-of-market-power-to-raise-prices-and-grow-profit-margins/
[4] https://hbr.org/2018/03/is-lack-of-competition-strangling-the-u-s-economy
[5] https://www.nytimes.com/2022/02/01/business/starbucks-prices.

and Chipotle, whose revenues have soared but who are nonetheless raising prices.[6] The reason they're raising prices rather than absorbing increased costs is they have pricing power in their locales.

In April, Procter & Gamble announced it would start charging more for consumer staples ranging from diapers to toilet paper, citing "rising costs for raw materials, such as resin and pulp, and higher expenses to transport goods."[7] But P&G continues to rake in huge profits. After its price increases went into effect, it reported a whopping 24.7 percent profit margin. It even spent $3 billion during the fourth quarter buying back its own stock.[8] The reason it could raise prices and rake in more money is P&G faces very little competition. The lion's share of the market for diapers (to take one example) is controlled by just two companies – P&G and Kimberly-Clark – which coordinate their prices and production. It was hardly a coincidence that Kimberly-Clark announced price increases similar to P&G's at the same time P&G announced its own price increases.[9]

Or consider another consumer product duopoly – PepsiCo (the parent company of Frito-Lay, Gatorade, Quaker, Tropicana, and other brands), and Coca-Cola. In April, PepsiCo announced it was increasing prices, blaming "higher costs for some ingredients, freight, and labor."[10] Yet PepsiCo recorded $3 billion in operating profits through September.[11] If PepsiCo faced tough competition, it could never have gotten away with it. Consumers would have deserted it for lower-priced competitors. But PepsiCo appears to have colluded with its only major competitor, Coca-Cola – which announced similar price increases at about the same time as PepsiCo and has increased its own profit margins to 28.9 percent.[12]

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[6] ttps://money.com/chipotle-starbucks-mcdonalds-price-increases/
[7] https://www.wsj.com/articles/procter-gamble-will-raise-prices-in-september-11618916498?redirect=amp
[8] https://www.cnbc.com/2021/10/19/procter-gamble-pg-q1-2022-earnings.html
[9] https://www.cnbc.com/2021/03/31/higher-commodity-costs-lead-to-price-hikes-from-kimberly-clark.html
[10] https://www.cnbc.com/2021/07/13/pepsico-and-conagra-plan-to-battle-rising-costs-with-higher-prices.html
[11] https://finance.yahoo.com/news/pepsico-earnings-q2-2021-103318871.html
[12] https://d1io3yog0oux5.cloudfront.net/_fd5695e7395cd38ea318a62ddca3817e/cocacolacompany/news/2021-10-27_Coca_Cola_Reports_Continued_Momentum_and_Strong_1040.pdf

All have been able to pass cost increases on to consumers in the form of higher prices because they face so little competition. As Chipotle's chief financial officer said, "Our ultimate goal ... is to fully protect our margins."[13]

The *New York Times* recently pointed out that "corporate executives have spent recent earnings calls [with Wall Street analysts] bragging about their newfound power to raise prices, *often predicting that it will last*" (emphasis added).[14]

As Hostess's C.E.O. told shareholders last quarter, "When all prices go up, it helps."[15] The head of research for the bank Barclay's said much the same: "The longer inflation lasts and the more widespread it is, the more air cover it gives companies to raise prices."[16]

The CEO of Tyson foods credited his company's "successful pricing strategies."[17] The head of 3M boasted of a "marvelous job in driving price."[18]

The Chief Financial Officer of Constellation Brands, the parent company of Modelo and Corona beers, told investors in January that the company wants to "take as much as [we] can" from customers.[19] (Publicly, however, the company has blamed rising material costs for their increased prices.) The grocery food brand Hormel saw a 19 percent increase in operating income in the first quarter of 2022. Their CFO's response to these soaring profits? "We've done a great job with our pricing."[20]

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[13] https://www.nytimes.com/2022/01/21/business/fast-food-prices-inflation.html
[14] https://www.nytimes.com/2022/02/27/business/economy/price-increases-inflation.html
[15] https://www.fool.com/earnings/call-transcripts/2022/03/02/hostess-brands-inc-twnk-q4-2021-earnings-call-tran/?source=iedfolrf0000001
[16] https://www.bloomberg.com/news/articles/2022-01-14/inflation-risks-getting-sticky-as-big-firms-flex-pricing-power
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[19] https://twitter.com/owenslindsay1/status/1493963096737656839
[20] https://www.minnpost.com/community-voices/2022/03/its-not-just-inflation-its-price-gouging/

Big Oil, too, has hit a gusher. Although major oil companies have faced increasing costs for crude oil, their profit margins are so large they could easily absorb those costs. The biggest oil companies (Shell, Chevron, BP, and Exxon) posted near-record profits last year, totaling $75 billion.[21] But they're passing the costs on to consumers in the form of higher price at the pump and for heating oil, and keeping their record profits. How can they do this? They don't worry about losing market share to competitors.

Or consider ocean shipping. Three global alliances control now control 80 percent of global container ship capacity[22] and control 95% of the critical East-West trade lines. This consolidation happened rapidly over the last decade.

Lack of competition doesn't just mean higher consumer prices. It also leads to problems of quality control. In competitive markets, corporations would need to invest in product quality or suffer loss of market share to corporations that maintained or improved product quality. In uncompetitive markets, quality control can suffer.

Why is baby formula out of stock? One big reason is a lack of competition in the baby formula industry. Most of the country's baby formula market is dominated by just four firms. The largest – with some 40 percent[23] of the market -- is Abbott Nutrition – which, according to a whistleblower complaint,[24] failed to fix defective equipment or remedy faulty testing procedures, allowing bacteria to enter the system; and falsified records and covered up blatant violations. After at least four babies were hospitalized and at least two died from bacterial infections, the Food and Drug Administration recalled Abbott's baby formula products -- leaving families that depend on infant formula in the lurch.

[21] https://www.accountable.us/news/big-oil-companies-net-75-billion-in-profit-while-americans-struggle-to-heat-homes-fill-gas-tanks/
[22] https://www.itf-oecd.org/sites/default/files/docs/impact-alliances-container-shipping.pdf
[23] https://money.usnews.com/investing/news/articles/2022-05-10/baby-formula-shortage-forces-cvs-health-to-limit-purchases
[24] https://www.foodsafetynews.com/2022/04/former-employee-blows-whistle-on-baby-formula-production-plant-tied-to-outbreak/

Inflation itself has given some large corporations cover to increase their prices *above* their rising costs. With consumers expecting rising prices, it's easy to tack on some extra beyond the corporation's own increased costs. More than half of the companies surveyed by the business services reviews website Digital.com reported raising prices beyond what was required to offset rising input costs.[25]

Meat prices are soaring because the four giant meat processing corporations that dominate the industry are "using their market power to extract *bigger and bigger* profit margins for themselves," according to a December report from the White House National Economic Council (emphasis added).[26]

### 3. Corporations are using their near-record profits to buy back their shares of stock

What are large corporations doing with their near-record profits? Using them to buy back their own shares of stock to deliver higher returns to their shareholders. Buybacks reduce a company's shares outstanding, pushing its profit-per-share figure higher.

Stock buybacks hit a new record last year. This year is on track to exceed it. In the first two months of 2022, S&P 500 companies disclosed authorizations to buy back $238 billion in stock -- a record pace, according to Goldman Sachs, which expects *$1 trillion of buybacks this year* – an all-time high.[27] Chevron engaged in $1.4 billion in stock buybacks and spent $500 million more on shareholder dividends than it did in 2020. This year, the oil giants are planning to buy back at least $22 billion *more*.[28]

In this context, it's noteworthy that Abbott Nutrition, instead of investing in safety of its factory, bought back billions of dollars of shares.

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[25] https://digital.com/half-of-retail-businesses-using-inflation-to-price-gouge/
[26] https://www.whitehouse.gov/briefing-room/blog/2021/12/10/recent-data-show-dominant-meat-processing-companies-are-taking-advantage-of-market-power-to-raise-prices-and-grow-profit-margins/
[27] https://www.thestreet.com/investing/stock-buybacks-at-record-pace-for-2022
[28] https://www.bloomberg.com/news/articles/2022-03-15/oil-and-gas-share-buybacks-boomed-before-energy-prices-hit-highs?sref=0KUfhQHv

Connect the dots.
(1) Corporations have the highest profits in 70 years.
(2) They have enough market power to pass on higher costs resulting from supply bottlenecks to consumers in the form of higher prices, rather than absorb the costs and accept lower profit margins.
(3) They're utilizing consumer expectations of continued higher prices to raise prices even more than their higher costs, giving them even higher profit margins.
(4) They're using their near-record profits to boost their share prices by buying back a record amount of their shares of stock.
(5) As corporations raise their prices, they're also eroding the value of their workers' wages. Corporations are handing out wage increases to attract or keep workers with one hand, but eliminating those wage increases by raising prices with the other.

What's the result? An upward transfer of income and wealth from consumers and workers – many of whom live from paycheck to paycheck – to shareholders, half of whom are in the richest 1 percent of the population and more than 80 percent of whom are in the richest 10 percent.

Pointing out these connections between corporate pricing power, inflation, and this upward transfer of income and wealth is not "bashing" big business. Big corporations are doing precisely what their shareholders want and expect them to do – maximize profits and share values. But just because this is good for shareholders doesn't mean it's good for the economy, which includes consumers and workers. We may rail at what corporations are doing, but unless or until there are laws preventing them from doing this, they will continue to do so.

Before I get to remedies, I need to discuss and dismiss two red herrings.

### 4. Inflation is *not* due to excessive government spending

The first is that the current inflation is the consequence of too much money chasing too few goods – and that the Biden pandemic relief program enacted in early 2021, in particular, is to blame.

The timing for this case is off. After the pandemic lockdowns, demand began to recover in June 2020 with support from the first tranche of pandemic relief in April 2020. That stimulus contributed modestly to an uptick in inflation in early 2021, but that was a small cost to prevent a protracted deep recession.

Inflation picked up again in April 2021, reaching 4.2 percent [29] on an annualized basis. But given the long lag between fiscal policy changes and changes in prices, it's highly unlikely that the American Rescue Plan, passed in March 2021, was responsible. Much was driven by the rise in energy prices.[30]

### 5. Inflation is *not* due to pay increases for workers.

The second red herring ties the current inflation to increases in worker pay. The Federal Reserve apparently believes that inflation is coming from the wage gains workers have been receiving due to their newfound bargaining leverage in an economy facing worker shortages. Fed chair Jerome Powell openly worries that "the labor market is extremely tight,"[31] to "an unhealthy level."[32] In April, he described the labor market as "unsustainably hot."[33] Speaking just after the May 4 announcement of a half-point increase in interest rates, Powell explained, "you can see that the labor market is out of balance; you can see that there is a labor shortage."[34]

With due respect, this makes no sense. To be sure, wage growth has been fast over the past year relative to the last few decades. But the rise in inflation has *not* been driven by

[29] https://www.statista.com/statistics/273418/unadjusted-monthly-inflation-rate-in-the-us/
[30] https://www.eia.gov/todayinenergy/detail.php?id=51438
[31] https://www.federalreserve.gov/newsevents/speech/powell20220321a.htm
[32] https://www.youtube.com/watch?v=kb5Qn0klO6I
[33] https://www.nytimes.com/2022/04/25/business/economy/us-global-inflation-response.html
[34] https://www.federalreserve.gov/mediacenter/files/FOMCpresconf20220504.pdf

anything that looks like an overheating labor market. In fact, wage growth has lagged far *behind* inflation. That means labor costs are dampening, rather than amplifying, price pressures. Average hourly earnings growth over the last quarter was 4.4 percent (at an annualized rate). If the only change in the economy over the past year had been the acceleration of nominal wage growth, inflation would be roughly 2.5–4.5 percent today, instead of over 8 percent.

Besides, when American corporations are enjoying record profits, why should wage gains lead to price increases? In a healthy economy we would expect corporations to pay the higher wages out of their profits rather than to pass them on to consumers in higher prices. Most American workers have not had much of a real wage increase (adjusted for inflation) in four decades. The labor market is not "unhealthily" tight, as Jerome Powell asserts; corporations are unhealthily fat. Workers do not have too much power; corporations do.

Raising interest rates is the wrong medicine for the wrong disease. Higher interest rates will not stop corporations from using their pricing power. Instead, higher interest rates will slow the economy and potentially cause millions of lower-wage workers to lose their jobs and forfeit long-overdue real wage increases. Higher rates will hurt millions of people who are among the most vulnerable in the economy.

The objective should be to stop big profitable corporations from using their power to raise prices, thereby fueling inflation. The correct medicine is to reduce corporate market power.

**6. Inflation is due to corporate power.**

I have provided ample evidence that inflation is due to corporate pricing power. Given this, I recommend that Congress and the administration take the following steps:

--- ***Strengthen antitrust enforcement.*** As I noted earlier, since the 1980s, two-thirds of all American industries have become more concentrated. Monsanto now sets the prices for most of the nation's seed corn. Wall Street has consolidated into five giant

banks. Airlines have merged from 12 carriers in 1980 to four today, which now control 80 percent of domestic seating capacity. The merger of Boeing and McDonnell Douglas has left the US with just one large producer of civilian aircraft — Boeing. Three giant cable companies dominate broadband (Comcast, AT&T and Verizon). A handful of drug companies control the pharmaceutical industry (Pfizer, Eli Lilly, Johnson & Johnson, Bristol-Myers Squibb and Merck). Two giant firms dominate consumer staples. A handful of national retailers and food outlets dominate local markets. Four giant firms control more than 80 percent of ocean shipping. Four giants control over 80 percent of meat processing. And so on.

Such concentration makes it easy for corporations to coordinate price increases with the handful of other companies in their same market without risking the possibility of losing customers, who have no other choice.

To be sure, antitrust litigation is complex and time consuming. I directed the policy planning staff at the Federal Trade Commission in the Carter Administration and saw this firsthand. Corporate America will do whatever it can to keep its near-record profits. Nonetheless, antitrust is worth the effort over the long term. Corporate concentration continues to harm workers and consumers while rewarding CEOs and investors.

One step Congress can take would be to update and modernize the antitrust laws to undo the damage courts have done to antitrust law over the past 40 years. Despite clear legislative intent, courts have systematically weakened the antitrust laws to focus primarily on price and output rather than protecting the competitive process. Monopolization cases, or Sherman Act Section 2 cases, are very difficult to bring and win today because courts have become extremely deferential to businesses. It is a complicated area, to be sure, given that competitive conduct and exclusionary conduct often look alike. Yet Section 2 enforcement is crucial to the U.S. economy.

--- ***Prevent price gouging.*** One possible initiative in the short term is to reduce price gouging. A bill[35] introduced by Rep. Jan Schakowsky of Illinois, the COVID-19 Price

[35] https://www.congress.gov/bill/117th-congress/house-bill/675/text

Gouging Prevention Act, provides that "it shall be unlawful for any person to sell or offer for sale a good or service at a price that is unconscionably excessive; and indicates the seller is using the circumstances ... to increase prices unreasonably." The bill goes on to direct the Federal Trade Commission to investigate whether the price reasonably reflects "additional costs, not within the control of" the seller, or whether it reflects opportunistic price-gouging. The FTC already has the power to carry out such investigations and impose penalties under existing law.

--- ***Tax windfall profits.*** Senator Sheldon Whitehouse and Rep. Ro Khanna have introduced a windfall profits tax bill that would levy a quarterly tax on large oil companies and distribute the revenue to consumers through a quarterly rebate. The per-barrel tax would be equivalent to half the differential between the pre-pandemic average oil price from 2015 through 2019 and current prices. Senator Bernie Sanders has introduced a temporary emergency measure modeled on the broad-based windfall profits tax implemented during the first and second World Wars and the Korean War, that would levy a 95 percent windfall profits tax on the profits of large corporations that exceed their average profit level from 2015 to 2019.

--- ***Tax stock buybacks.*** Stock buybacks were considered illegal means of manipulating share prices before the Securities and Exchange Commission permitted them in 1984. They should be once again. At the very least, buybacks should be taxed. That would make companies think twice before putting shareholders ahead of American families.

--- ***Invest in care.*** Childcare and elder care investments offer other means of reducing inflationary pressures by boosting expected growth in the supply of labor.[36] They should be part of the policy mix as well.

## Conclusion

[36] https://www.epi.org/blog/child-care-and-elder-care-investments-are-a-tool-for-reducing-inflationary-expectations-without-pain/

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Congress and the administration have the power to stop corporations who are enjoying the highest profits in 70 years from raising their prices – a practice that is requiring American workers and consumers to subsidize wealthy investors. It is preferable for Congress and the administration take direct action against this, rather than for the Federal Reserve to raise interest rates to slow the economy and risk another recession, which will harm average working people.

Mr. CICILLINE. Thank you, Professor Reich. I now recognize Dr. Mabud for five minutes.

**STATEMENT OF DR. RAKEEN MABUD**

Ms. MABUD. Chair Cicilline, Ranking Member Buck, thank you for inviting me to testify today. My name is Rakeen Mabud, and I'm the Chief Economist and Managing Director of Policy and Research at the Groundwork Collaborative.

Groundwork is an economic policy think tank dedicated to advancing a coherent economic world view that produces broadly shared prosperity and abundance for all.

My testimony today will focus on three key points. First, mega-corporations are seeing the highest profit margins in 70 years.

Second, entrenched concentration has facilitated high levels of pricing power by corporate actors for decades. The pandemic, the cover of inflation, and geopolitics has given these companies new opportunities to exercise that pricing power, and investors are egging them on.

Finally, the brunt of these price hikes does not fall evenly across our economy. Small businesses, low-income people, and people on fixed incomes are paying the highest price.

Recent data and research lays bare the role of plain old profiteering in recent price hikes. The Bureau of Economic Analysis corporate profit data released in April revealed that corporate profits of non-financial firms surged 35 percent in 2021, and overall profit margins reached their highest level since 1950.

Recent analysis from the Economic Policy Institute finds that approximately 54 percent of the price increases that consumers are experiencing come from an increase in corporate profits. By contrast, labor costs, primarily wages, and non-labor costs, such as input costs, have only contributed 8 percent and 38 percent, respectively.

Groundwork has combed through hundreds and hundreds of earnings calls where executives tell investors about last quarter's performance and what they can expect going forward. Over and over, the message from corporate America is clear. They aren't just asking consumers to pay for the rising costs, they're going for more.

Some of the most egregious cases are corporations like Visa and Mastercard, a duopoly that controls over 70 percent of the payment network market, which cannot even blame supply chain disruptions for their profiteering. Since credit card companies make their money on a fixed percentage fee off each transaction, inflation means they will automatically see higher returns.

Of course, these companies are not content to stop there. Both Visa and Mastercard also reported that they will be raising fees themselves, that even more in an environment already difficult for small businesses. In short, Visa and Mastercard are using the power afforded through their duopoly control of the market to raise fee on small businesses and consumers who have nowhere else to go.

Wall Street's influence in every corner of our economy makes this period of inflation unique and puts us at risk for a profit-price spiral. As price hikes drive up profits, investor demands for those profits also goes up.

Take oil and gas companies, an industry dominated by seven "super major" companies. Despite the significant hardship that higher gas prices have incurred on families around the country, producers resolutely refuse to increase supply and respond to the increasing price of gas.

As the CEO of Pioneer Oil replied when asked to explain, he said,

> It's all about the shareholders. Our shareholders own this company, they want a return of cash.

In fact, 59 percent of oil and gas executives recently told the Dallas Fed that investor pressure is the primary reason publicly traded oil companies are throttling supply despite high prices. Investors have cashed in across the board. In 2021, S&P 500 firms spent nearly $900 billion on stock buybacks, and U.S. companies paid out nearly $1.5 trillion in dividends to shareholders, both record highs.

Small businesses in particular face unique challenges as they fight to survive in deeply consolidated markets. Small businesses have a harder time navigating global supply chains and large corporations throw their weight around to jump to the front of the line with shipping companies. Meanwhile, small businesses owners sit and wait with empty shelves.

Big business has also strong-armed suppliers into deals that raise prices for small businesses and leave them waiting longer for goods and products. Giants like Walmart and Amazon have the buying power to negotiate more favorable contracts with suppliers in the first place, leaving small businesses struggling to keep up.

Giant corporations' control over supply chains and economy more broadly has supplanted the functioning and resilient system we could have built through robust public investment and free and fair competition. It's not too late, we have many policy tools at our disposal.

Congress can strengthen antitrust laws already on the books, better enforce them when anti-competitive behavior reaches the threshold for price-fixing and collusion, and enact a Federal price-gouging statute to curtail exploitative pricing during emergencies.

Congress can also ensure corporations are paying their fair share of taxes and implement an excess profit tax on mega-corporations when appropriate.

Finally, Congress can make long-overdue investments in our supply chain infrastructure to ensure that large corporations can't game the system and use their market power to rig the playing field further in their favor.

Thank you, and I look forward to your questions.

[The prepared statement of Dr. Mabud follows:]

**Congressional Testimony**

# Reviving Competition, Part 6: Rebuilding America's Economic Leadership and Combating Corporate Profiteering

**Subcommittee on Antitrust, Commercial and Administrative Law**

*Washington, DC*
*May 17, 2022*
*1:00pm ET*

**Rakeen Mabud**
*Chief Economist and Managing Director of Research and Policy*
*Groundwork Collaborative*

## I. Introduction

Chairman Cicillini, Ranking Member Buck, thank you for inviting me to testify today. My name is Rakeen Mabud and I am the Chief Economist and Managing Director of Research and Policy at the Groundwork Collaborative. Groundwork is an economic policy think tank based in Washington, D.C. dedicated to advancing a coherent, economic worldview that produces broadly shared prosperity and abundance for all.

I am grateful to this committee for holding this hearing about the role of corporate power and concentration on the high prices putting pressure on families and small businesses around the country.

My testimony today will focus on three key points:

- First, megacorporations are using their pricing power to push prices up beyond what rising input costs and supply chain snarls would justify. The result is that as families and small businesses around the country face increasing financial precarity, megacorporations are seeing the highest profit margins in 70 years.

- Second, entrenched concentration has afforded megacorporations enormous pricing power, and the pandemic, the cover of inflation, and the war in Ukraine has given these megacorporations the opportunity to use that power.

- Finally, the brunt of these price hikes does not fall evenly across our economy. Small businesses, low-income people, and people on fixed incomes are paying the highest price.

Congress must take on corporate power and the resulting pandemic profiteering by directly tackling these imbalanced power dynamics and corrosive concentrations of corporate power in our economy. That means:

- Congress should ensure rigorous competition in key product markets to keep prices down by strengthening antitrust laws on the books, curtailing mergers that further concentrate industries, and when necessary, consider breaking up dominant firms to reduce unhealthy market competition.

- Lawmakers should continue to urge the Federal Trade Commission (FTC) to use their existing authority to crack down on extractive and exploitative business practices.

- Congress should tax excess profits and corporations more broadly to encourage productive investment and curb corporate profiteering.

- Congress should enact a federal price gouging statute to curtail exploitative pricing during emergencies.

Government action, regulatory and legislative, has the power to foster an economy rooted in shared prosperity and abundance.

## II. Megacorporations are enjoying the highest profit margins in 70 years

While consumers have struggled to navigate both a deadly pandemic and rising costs that have further strapped family budgets, corporations have exploited consumers to enjoy record profits and profit margins.

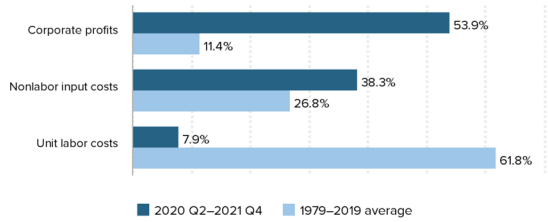
Bureau of Economic Analysis (BEA) data shows that domestic non-financial corporations saw year over year profits increase by 35%. This is the largest annual increase in profits in over a decade.[1] Last year, profit *margins* increased from approximately 10% in 2020 to 14% in 2021 – the highest levels in the past 70 years.[2][3]

A recent analysis from the Economic Policy Institute (EPI) underscores what the BEA data suggests: corporate profit margins are a significant driver of rising prices. Their analysis finds that approximately 54% of the price increases in companies that produce goods and services in the economy come from an increase in corporate profits. By contrast, the same analysis finds that labor costs (primarily wages) and non-labor costs (such as input costs) have contributed only 8% and 38%, respectively.

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[1]Groundwork Collaborative analysis of US Bureau of Economic Analysis Data, National Income and Product Accounts Table 1.14. "Gross Value Added of Domestic Corporate Business in Current Dollars and Gross Value Added of Nonfinancial Domestic Corporate Business in Current and Chained Dollars."
[2] Groundwork Collaborative analysis of US Bureau of Economic Analysis Data, National Income and Product Accounts Table 1.14. "Gross Value Added of Domestic Corporate Business in Current Dollars and Gross Value Added of Nonfinancial Domestic Corporate Business in Current and Chained Dollars."
[3] Matthew Boesler, "Profits Soar as U.S. Corporations Have Best Year Since 1950," *Bloomberg,* March 30, 2022, https://www.bloomberg.com/news/articles/2022-03-30/2021-was-best-year-for-u-s-corporation-profits-since-1950?sref=azsh6QkL.

**Normal and recent contributions to growth in unit prices in the nonfinancial corporate sector**




**Source:** Author's analysis of data from Table 1.15 from the National Income and Product Accounts (NIPA) of the Bureau of Economic Analysis (BEA).

Economic Policy Institute

In other words, despite loud complaints from CEOs about rising labor and input costs and supply chain snarls, corporate revenues have driven the majority of the price hikes that consumers are facing on supermarket shelves.

## II. Entrenched concentration has handed megacorporations enormous pricing power, and the pandemic, the cover of inflation, and the war in Ukraine has given these megacorporations the opportunity to use that power.

The pricing power enjoyed by megacorporations has its roots in entrenched concentration, facilitated by decades of deregulatory policies that led to the privatization of much of our economic infrastructure. Our current supply chain crisis is a direct result of those policy choices, which created an environment where megacorporations not only have the power to set prices, but are also able to profiteer with impunity when the opportunity arises. The presence of Wall Street backing these corporate behemoths has only driven this trend further.

Wall Street's unending quest for maximizing short-term returns, in conjunction with already existing pressures from corporate lobbying, resulted in tremendous pressure to deregulate large swaths of our supply chain – from shipping to our rail network. This was spurred on by policymakers and regulators from both sides greenlighting rampant mergers and acquisitions. As corporate executives eliminated resiliency and increasingly drove down labor standards to minimize costs, our economy was left with a vulnerable and brittle supply chain that facilitates price-gouging and pandemic profiteering during crises.

Corporate concentration has hollowed out and nearly eliminated redundancy in our supply chain, leaving us without enough productive capacity to withstand shifts in demand or

pandemic-induced disruptions in production without supply shortages. The majority of the goods Americans rely on are delivered by as few as three ocean shipping alliances,[4] packed by four meatpackers,[5] and equipped by a single chip maker.[6] If something goes wrong with any of these companies, prices shoot up due to scarcity.

*Concentration leaves the economy vulnerable to profiteering and price gouging.*

The ocean shipping industry provides a stark example of how massive consolidation and concentration has made our economy ripe for profiteering. Over 80% of the ocean shipping industry and 95% of the east-west trade routes are controlled by three alliances: 2M, Ocean Alliance, and THE Alliance.[7] As with other industries, deregulation during the 1980s and 1990s allowed for ocean carriers to build power and consolidate.

The result of these deregulatory policies meant that we ended up with giants that dominated the industry and were able to cash in during the pandemic. Spots for freight shipping on ocean liners cost 10 times more in September 2021 compared to the beginning of 2020. Prices have largely hovered around their September 2021 highs.[8] At the same time, these carriers have seen their profits skyrocket. The world's top five biggest container shipping companies all saw profits increase by triple digit percentages—or $40.86 billion—after raising rates in their 2021 fiscal years.[9] Senate passage of the bipartisan Ocean Shipping Reform Act is an important step towards addressing the entrenched concentration in this industry.

Sadly, it's not just the ocean shipping industry that showcases how market consolidation has allowed megacorporations to reap massive profits while consumers and workers are left to foot the bill. The meat packing industry also provides a crystal-clear example of how corporations have rigged the economy in their favor. According to a recent analysis from the White House National Economic Council, the four biggest meatpackers have seen their net profit margins go

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[4] "Shipping Alliances: 2M, Ocean Alliance & THE Alliance [2021 Overview]," *Container Xchange,* July 2019, https://www.container-xchange.com/blog/shipping-alliances/
[5] "Explainer: How four big companies control the U.S. beef industry," *Reuters,* June 2021, https://www.reuters.com/business/how-four-big-companies-control-us-beef-industry-2021-06-17/
[6] Yang Jie *et al.,* "The World Relies on One Chip Maker in Taiwan, Leaving Everyone Vulnerable," *Wall Street Journal,* June 2021, https://www.wsj.com/articles/the-world-relies-on-one-chip-maker-in-taiwan-leaving-everyone-vulnerable-11624075400
[7] David Dayen, "Biden Wants to Take Down the Ocean Shipping Cartel," *The American Prospect,* February 28, 2022, https://prospect.org/economy/biden-wants-to-take-down-the-ocean-shipping-cartel/
[8] Peter S. Goodman, "American Importers Accuse Shipping Giants of Profiteering," *The New York Times,* May 4, 2022, https://www.nytimes.com/2022/05/04/business/shipping-container-shortage.html.
[9] Accountable.us, "Top 5 Shipping Companies Saw Profits Spike By Over $40B After Raising Their Rates in 2021," May 2022, https://www.accountable.us/news/report-top-5-shipping-companies-saw-profits-spike-by-over-40b-after-raising-their-rates-in-2021/.

up more than 300%[10] since the start of the pandemic, while consumers continue to face skyrocketing prices.

Consolidation in the meat-packing industry can be traced back to the Reagan administration, which ushered in a period of deregulation. Across all industries, including the meat-packing industry, the Reagan administration stopped enforcing antitrust provisions and allowed big companies to acquire competitors and consolidate their power. As a result four companies, Tyson, Cargill, JBS, and National Beef Packing, now control 85% of the beef industry – in stark contrast to the beef industry in 1977, when the four leading beef firms controlled only 25% of the industry.[1112] These corporations promised that through consolidation, consumers would face lower costs.[13] And yet, these companies have ended up with higher profit margins while consumers faced a 30% jump in beef prices from 2020 to October of 2021.[14] And Q1 earnings reports show that even as their sales fell at the beginning of the year, Tyson continued to bring in massive profits that exceeded analyst expectations.[15]

The auto industry also faces high levels of market concentration.[16] In the U.S., five corporations – General Motors, Toyota, Ford, Stellantis, and Honda — control almost 65% of the market share.[17] Manufacturers in the auto industry cut production in response to pandemic lockdowns and decreased consumer demand. However, as the economy rebounded, car prices skyrocketed and supply has yet to return to pre-pandemic levels. In the last year, consumers have seen a 13.2% jump in new car prices and an alarming 22.7% jump in prices for used cars.[18]

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[10] Brian Deese *et al.*, "Recent Data Show Dominant Meat Processing Companies Are Taking Advantage of Market Power to Raise Prices and Grow Profit Margins," *The White House,* December 2021, https://www.whitehouse.gov/briefing-room/blog/2021/12/10/recent-data-show-dominant-meat-processing-companies-are-taking-advantage-of-market-power-to-raise-prices-and-grow-profit-margins/

[11] Nicole Goodkind, "Meet the 4 meat empires Biden says are unreasonably jacking up prices for Americans," *Fortune*, January 2022, https://fortune.com/2022/01/06/meat-prices-biden-inflation-tyson-cargill-jbs/#:~:text=The%20four%20major%20meat%20companies,%2C%20cattle%2C%20and%20chicken%20markets.

[12] Binyamin Appelbaum, "Building a Better Meatpacking Industry," *The New York Times,* January 15, 2022, https://www.nytimes.com/2022/01/15/opinion/meat-meatpacking-industry.html.

[13] "Who Do You Want Controlling Your Food?," *The New York Times,* January 2022, https://www.nytimes.com/2022/01/28/podcasts/the-daily/beef-prices-cattle-ranchers.html?action=click&module=audio-series-bar&region=header&pgtype=Article

[14] David Lawder, "Analysis: High U.S. meat prices: packer profiteering or capacity crunch?," *Reuters,* January 2022, https://www.reuters.com/business/retail-consumer/high-us-meat-prices-packer-profiteering-or-capacity-crunch-2022-01-19/

[15] Patrick Thomas, "Tyson Foods Profits Soar as Meat Prices Climb," *Wall Street Journal*, May 2022, https://www.wsj.com/articles/tyson-second-quarter-sales-profit-boosted-by-higher-prices-11652099801.

[16] Henry Kallstrom, "What makes the auto industry highly concentrated?," *Yahoo News,* February 2015, https://www.yahoo.com/news/weather/makes-auto-industry-highly-concentrated-140540290.html.

[17] "Big Three Automakers," *Investopedia,* January 2022, https://www.investopedia.com/terms/b/bigthree.asp#:~:text=In%202020%2C%20Toyota%20ranked%20at,%2C%20and%20Nissan%20at%204.2%25.

[18] U.S. Bureau of Labor Statistics, Table 1. Consumer Price Index for All Urban Consumers (CPI-U): U. S. city average, by expenditure category, retrieved from BLS Economic New Release; https://www.bls.gov/news.release/cpi.t01.htm, May 11, 2022.

Manufacturers cite supply chain snarls and higher consumer demand as the reason for the rising prices.[19] However, recent reporting finds that even with the easing of supply shortages, automakers are *choosing* to curtail supply in an attempt to lock-in the current high prices. In the U.S., both General Motors and Ford have signaled they will continue to throttle production to preserve their higher profit margins.[20] A lack of real competition has ensured that the decisions made by a few powerful corporations will have resounding effects on consumers, who will ultimately foot the bill in the form of higher prices.

Corporate consolidation has helped facilitate the profiteering we are seeing today. With control and dominance over the market, these massive corporations can raise prices and pass along expenses to consumers who have nowhere else to turn.

*Corporate power makes work more precarious and entrenches a reliance on low-quality jobs.*

This extreme consolidation has also left us with a bare-bones workforce that relies on vulnerable, precarious workers who are often misclassified and exploited. Take truckers, for instance, a vital puzzle piece in getting goods to grocery store shelves. While big shipping companies such as XPO decry trucker shortages, the truth is that as many as 80% of port truckers are classified as independent contractors.[21]

As Harold Meyerson writes in a piece in The American Prospect about the trucking industry, "As independent contractors, they receive no benefits and aren't covered by minimum-wage statutes. They must pay for their gas, maintenance, rig insurance, and repairs themselves; and, ever since the pandemic clogged the ports with more goods than ever before, they've had to wait in lines for as long as six uncompensated hours before they can access a container and get it on the road. If they get in the wrong line at the port, they literally can't get out, surrounded by other trucks and doomed to waste more time. Many ports don't even provide bathrooms for waiting truckers, because they aren't port employees."[22]

And the reason that so many truckers are facing exploitative working conditions and pay comes down to deregulation. Until the 1980s, truckers, especially those taking on long-haul journeys, were considered employees by companies whose routes and rates were regulated by the Interstate Commerce Commission. Drivers were unionized and could expect a comfortable life with benefits and good pay. The Motor Carrier Act of 1980 precipitated a race to the bottom, deregulating the industry and driving down trucker wages, working conditions, and unionization

[19] Ben Casselman, Car prices rose more slowly in January, but new disruptions loom," *The New York Times,* February 2022, https://www.nytimes.com/2022/02/10/business/economy/car-prices-inflation.html.
[20] "Car Discounts Aren't Coming Back After Pandemic, AutoNation Says," *Bloomberg,* February 2022, https://www.bloomberg.com/news/articles/2022-02-17/car-discounts-aren-t-coming-back-after-pandemic-autonation-says?sref=azsh6QkL.
[21] Harold Meyerson, "Why Trucking Can't Deliver the Goods," *American Prospect,* February 2022. https://prospect.org/economy/why-trucking-cant-deliver-the-goods/
[22] Ibid.

rates. Despite contrary claims, we are not facing a trucker shortage – but rather a shortage of good trucking jobs, spurred on by deregulation of the industry.[23]

### III. Corporations are not shy about how the pandemic and concerns about inflation have been good for business.

Groundwork Collaborative has combed through hundreds of corporate earnings calls to better understand how these megacorporations are exercising their pricing power to make record profits – using inflation, the pandemic, and increasingly the war in Ukraine as cover. Across the board, corporate executives are forthright about what a boon these crises have been for their businesses, especially those which operate in highly-concentrated markets with little to no competition.[24] In short, while the profit motive has always been there, these intersecting crises have given megacorporations the opportunity to extract from consumers by jacking up their prices.

Some of the most egregious cases are corporations like Visa and Mastercard that cannot even blame supply chain disruptions for their profiteering. As Visa's executives said on their Q1 earnings call in April, "Service fees and international fees are basis points on volume. So inflation typically lifts transaction size…net-net, historically, inflation has been positive for us."[25]

In other words, since credit card companies make their money on a fixed percentage fee off of each transaction, inflation means that they can take a bigger cut – even without raising fees. But of course, these companies are not content to stop with the "positive" effects of inflation – both Visa and Mastercard also reported that they would be raising the fees themselves, netting even more in an environment already difficult for small businesses and consumers.[26]

As Senator Durbin, Senator Marshall, Congressman Welch and Congresswoman Van Duyne noted in a letter to Visa and Mastercard executives in April, these companies are taking advantage of the fact that "the current electronic payment system is a clear duopoly that your companies dominate, and you impose fees and rules that merchants, consumers, and small banks have no real choice but to accept…normal competitive market pressures and economics

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[23] Ibid.
[24] Groundwork Collaborative, https://endcorporateprofiteering.org
[25] "Visa (V) Q2 2022 Earnings Call Transcript," *Motley Fool*, April 27, 2022, https://www.fool.com/earnings/call-transcripts/2022/04/27/visa-v-q2-2022-earnings-call-transcript/?source=iedfolrf0000001
[26] Tiffany Ap, "Your no annual fee credit card is costing you $700 a year, US retailers say," *Quartz*, April 26, 2022, https://qz.com/2157995/visa-mastercard-are-upping-merchant-fees/

are not currently at play to constrain your fee rates."[27] Together, the two companies cover over 70% of the payment network market.[28]

Meanwhile, companies like Kimberly-Clark, one half of a major diaper duopoly and a manufacturer of essential household products such as toilet paper and feminine hygiene products, are well aware that they can use the price inelasticity of their goods to jack up prices. Despite inflation and supply chain snarls, the company exceeded investor expectations in Q1, sending its stock surging 9% on the back of their earnings release and higher financial expectations for 2022.[29]

On its Q1 2022 earnings call in April, Kimberly-Clark's CEO seemed well aware that the essential nature of their products meant that they had room to jack up prices without losing consumers: "I do think our strong top line…reflects the essential nature of our categories and the strength of our brands."

In other words, big companies like Kimberly-Clark know they can take advantage of consumers' basic needs because they make price inelastic products, like diapers and cleaning supplies. And because of their significant market share, they know consumers don't have a choice except to accept the price increases. The combination of selling necessities and controlling a significant share of the market gives megacorporations free reign – especially when they can blame inflation for rising prices, rather than their insatiable desire to boost short-term profits.

Finally, take oil and gas companies, an industry dominated by seven "supermajor" companies that hold an overwhelming share of the market. Gasoline prices for consumers increased by roughly 50% over the course of 2021,[30] prior to the conflict in Eastern Europe, and retail gas has risen 32% since January 2022.[3132] Despite the significant hardship that higher gas prices have

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[27] Senator Durbin, "Letter to Mr. Kelly and Mr. Miebach," April 12, 2022, https://www.durbin.senate.gov/imo/media/doc/Letter%20to%20Mr.%20Kelly%20and%20Mr.%20Miebach%20-%20April%2015,%202022.pdf

[28] Medora Lee, "Credit card companies adjust merchant fees. Consumers may pay the price," *USA TODAY*, April 25, 2022, https://www.usatoday.com/story/money/business/2022/04/25/credit-card-fees-processing/7413110001/

[29] Sarah Min, "Stocks making the biggest moves midday: HCA Healthcare, Kimberly-Clark, Gap and more," *CNBC*, April 22. 2022, https://www.cnbc.com/2022/04/22/stocks-making-the-biggest-moves-midday-hca-healthcare-kimberly-clark-gap-and-more.html

[30] "Biden has few options to combat surging gas prices as voters grow concerned about inflation," *CNBC,* October 2021, https://www.cnbc.com/2021/10/25/biden-has-few-options-to-combat-surging-gas-prices-amid-inflation-fears.html

[31] These data predate the conflict in Eastern Europe and we anticipate the increasing volatility as a result of war to continue to push the price of oil higher.

[32] U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: Meats, Poultry, Fish, and Eggs in U.S. City Average [CUSR0000SAF112], retrieved from FRED, Federal Reserve Bank of St. Louis; https://fred.stlouisfed.org/series/CUSR0000SAF112, May 11, 2022.

incurred on families around the country, producers resolutely refused to increase supply to respond to the supply chain issues increasing the price of gas.[33]

As a result, major oil companies are seeing record profits in Q1 2022. BP posted its highest quarterly profit in a decade, ExxonMobil has doubled its profits from last year to $5.48 billion, and Chevron reported a quarterly profit of $6.26 billion, over four times its earnings of $1.4 billion in the first quarter of last year.[34] Meanwhile, shareholder handouts jumped by over $4.5 billion in FY 2021.[35] While recent global shocks[36] like Russia's invasion of Ukraine and the resulting U.S., U.K., and E.U. sanctions against Russia did cause energy and oil prices to climb even higher, subsequent declines in crude oil costs[37] have not translated into relief at the pump. In other words, large oil companies are choosing to keep gas prices high despite lower crude prices to pad their bottom line.

Shareholder pressure to maximize returns has played an important role in the decision to constrain production. In a recent Federal Reserve Bank of Dallas survey, nearly 60% of oil executives said that investor pressure to maintain capital discipline is the primary reason they are restraining production.[38] One oil executive said, "Discipline continues to dominate the industry. Shareholders and lenders continue to demand a return on capital, and until it becomes unavoidably obvious that high energy prices will sustain, there will be no exploration spending."[39]

Pressure and power from shareholders is ensuring that oil companies can raise prices, rake in profits, and pay these same shareholders at the expense of consumers.

**IV. The brunt of these price hikes does not fall evenly across our economy. Small businesses, low-income people, and people on fixed incomes are paying the highest price.**

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[33] "U.S. producers reluctant to drill more oil, despite sky-high gas prices," *CBS News,* March 25, 2022, https://www.cbsnews.com/news/oil-production-prices-us-companies-wont-increase-2022-dallas-fed-survey/

[34] Wyatte Grantham-Philips, "Oil giants reap record profits as war rages in Ukraine, energy prices soar: Here's how much they made," *USA TODAY*, May 7, 2022, https://www.usatoday.com/story/money/economy/2022/05/07/oil-company-record-profits-2022/9686761002/

[35] "Top Corporations in Major CPI Categories Rewarded Shareholders With Over $140 Billion After Raising Prices on Consumers," *Accountable US,* March 10, 2022, https://www.accountable.us/news/report-top-corporations-in-major-cpi-categories-rewarded-shareholders-28-2b-after-raising-prices-on-consumers/#:~:text=Gasoline%3A%20As%20gasoline%20prices%20increased,%244.5%20billion%20in%20FY%202021

[36] "Gas prices are hitting new highs. Here's why — and how long the surge could last," *Washington Post,* March 2022, https://www.washingtonpost.com/business/2022/03/09/gas-prices-going-up-russia-ukraine/

[37] "Why aren't gas prices dropping if oil is getting cheaper?," *Marketplace,* March 2022, https://www.marketplace.org/2022/03/18/why-arent-gas-prices-dropping-if-oil-is-getting-cheaper/

[38] "Dallas Fed Energy Survey," *Federal Reserve Bank of Dallas,* March 23, 2022, https://www.dallasfed.org/research/surveys/des/2022/2201.aspx#tab-questions

[39] Ibid.

Pandemic profiteering highlights the wildly imbalanced power dynamics that continue to decimate the economic security of low-income people of color – communities that have faced a broken economy for decades.[40] Low-income people of color, who already disproportionately face predatory and extractive pricing across a wide swatch of our economy, from payday loans to for profit colleges, also experience a greater proportion of their household budgets taken up by essential goods – the very products that companies are most eager to jack up prices on. Similarly, for those living on a fixed income, across-the-board price increases make already precarious financial situations absolutely untenable.

Like so many other aspects of our economy, the most marginalized groups in our economy are paying the price – all while big corporations and wealthy shareholders see record profits.

Small businesses also face unique challenges since they are forced to operate in highly concentrated markets. From navigating supply chains to maintaining inventories, small businesses face unique challenges that result directly from corporate concentration. Specifically:

- *Small businesses find their limited resources stretched thin as they struggle to maintain inventory and source products consumers need.* A survey of small businesses released by Goldman Sachs in January found that 69% of small businesses said that supply chain issues were negatively affecting their bottom line.[41]

- *Megacorporations are using their outsized power and extensive resources to build exclusive supply-chain end-arounds while small businesses are left out on a lim*b. Given the breakdown in traditional supply chains, some major companies have taken steps to circumvent problem spots by chartering their own cargo ships[42] or creating "pop-up" freight container yards near major ports.[43] Needless to say, these are not feasible options for most small businesses.

- *Big businesses strong-arm suppliers into deals that raise prices for small businesses and leave them waiting longer for goods and products.* Giants like Walmart and Amazon have

[40] From businesses to workers, inflation is taking its toll on Black communities," *The Grio*, January 2022, https://thegrio.com/2022/01/30/inflation-businesses-workers-black-communities/.
[41] "Survey: Small Businesses on the Brink - New Survey Data Shows Omicron Hurting Main Street, Leading Small Business Owners to Overwhelmingly Support Congress Passing Additional Aid," *Goldman Sachs,* January 24, 2022, https://www.goldmansachs.com/citizenship/10000-small-businesses/US/infographics/small-businesses-on-the-brink/index.html
[42] Alex Hammer "Will THIS save Christmas? Target and Home Depot are chartering their OWN cargo ships to beat the US supply chain crunch as global crisis rages," Daily Mail, October 6, 2021, https://www.dailymail.co.uk/news/article-10065537/Target-Home-Depot-chartering-ships-holiday-season-amid-supply-chain-crisis.html
[43] Eric Kulisch, "Walmart rents space for pop-up container yards near major ports", FreightWaves, December 1, 2021, https://www.freightwaves.com/news/walmart-rents-space-for-pop-up-container-yards-near-major-ports

the buying power to negotiate more favorable contracts with suppliers in the first place. In one archetypal example, Walmart used its tremendous market share in the grocery industry to bully suppliers, increasing the number of orders that had to be fulfilled without triggering a 3 percent fine from 70 to 98 percent.[44] Suppliers have little bargaining power to push back against such demands and must prioritize orders to megacorporations at the expense of small businesses. As the Institute for Local Self Reliance found in a March 2022 survey, 65% of small businesses said that a top challenge was big competitors strong-arming suppliers and receiving special discounts from them, which then delays shipments to small businesses and forces suppliers to charge them more.[45]

## V. Congress should curb corporations' power and ability to profiteer by beefing up antitrust enforcement, empowering the FTC to use their existing authority to crack down on profiteering and price gouging, and taxing excess profits in order to create an economy that works for all.

Tackling pandemic profiteering and building a healthy, resilient economy requires checking the outsized power that megacorporations hold over our economy and encouraging productive investment.

Congress must do its part to address corporate concentration and the power that these megacorporations exert on prices, wages, and working conditions.

- Congress should ensure rigorous competition in key product markets and at critical nodes along the supply chain by curtailing mergers that further concentrate industry or by breaking up monopolies. The passage of the Ocean Shipping Reform Act, for example, is an encouraging development that will help to re-regulate the large ocean shipping monopolies that are stoking inflation and gumming up critical points in our supply chain.

- Lawmakers must strengthen antitrust laws already on the books and continue to urge the FTC to use their existing authority to crack down on extractive and exploitative business practices, including price gouging as well as further empower regulators at both the state and federal level to identify price gouging and protect consumers. This should include a federal price gouging statute to curtail exploitative pricing during emergencies.

- Public investment in critical infrastructure can help prevent private corporations from building supply chains that crumble under stress. Congress should make long-overdue

[44] Rose Adams, "Big Business Games the Supply Chain," *The American Prospect,* February 9, 2022, https://prospect.org/economy/big-business-games-the-supply-chain/
[45] "2022 Independent Business Survey: Top Challenges and Policy Priorities," *Institute for Local Self Reliance,* March 30, 2022, https://ilsr.org/2022-survey-businesses/

investments in sectors where we are seeing significant shortages and along key nodes of our supply chain. Congress should also invest in sectors that have been eating into family budgets for decades, such as health care and the care sector.

- Corporations and the super wealthy have enjoyed rock-bottom tax rates for decades,[46] lawmakers should look to increase the corporate tax rate and ensure that CEOs and shareholders pay their fair share. Congress should also explore taxing excess profits, as it did after World War I and World War II, to encourage productive investment and deter price gouging.

- Congress should ensure that workers have the protections they need in the workplace. Securing workers' rights to organize and advocate for stable work, strong wages, and a safe working environment are necessary to counterbalance short-sighted corporate actions that create precarious labor and jeopardize a strong and sustainable recovery.

Taken together, these actions will begin the important work of reorienting our economy towards the people who keep it going: consumers, workers, and small businesses.

## VI. Conclusion

Workers, families, and small businesses around the country are feeling the pressure of higher prices for basic goods and services, while large corporations wield almost unrestricted power and enjoy record profit margins. Large corporations are making everything more expensive, from groceries, to medical supplies, to the inputs small business owners need to sustain their livelihoods. The more sway large corporations have over our economy, the more power they have to profit off the pain of consumers and Main Street.

Addressing this crisis means focusing on all of the reasons that prices are soaring and small businesses are struggling, including the unchecked power of giant corporations and their swarm of lawyers and lobbyists who have rigged our economy in their favor for decades. Corporate consolidation and deregulation has created a brittle system that has allowed big corporations to take advantage of consumers and small businesses over the course of this crisis. Egged on by investors, these megacorporations are using inflation as a cover for rampant profiteering – and it must be stopped.

Our economy works best when it works for all of us, and the path towards an inclusive, resilient economy must include policies that foster competitive markets where consumers, working people, and smaller competitors all have meaningful bargaining power. We need

[46] Tax Policy Center, "How do US corporate income tax rates and revenues compare with other countries'?" May 2020, https://www.taxpolicycenter.org/briefing-book/how-do-us-corporate-income-tax-rates-and-revenues-compare-other-countries

pro-competition safeguards that will shift power to working people, consumers, and small businesses, reduce costs and prices in the long run, and ensure that no one is left behind during the recovery and beyond.

Mr. CICILLINE. Thank you, Dr. Mabud.

I now recognize Mr. Lynn for five minutes.

**STATEMENT OF BARRY C. LYNN**

Mr. LYNN. Chair Cicilline, Ranking Member Buck, Members of the Committee, thank you for inviting me to speak on this set of grave, even existential threats to the American people.

I am Barry Lynn. I direct the Open Markets Institute. It's good to see you all.

Over the last year, the American people have learned that extreme concentration of industrial capacity and control has empowered corporations across the economy to engage in the greatest bout of price-gouging in more than half a century. The resulting surge in prices has severely harmed every wage earner and small business owner, indeed, almost every person and family in America.

Yes, other factors—COVID, war—play a role in driving prices higher, but it's the choke pointing of capacity that embeds inflation deep into the structure of the economy. This chokeflation, or stranguflation as we might call it, as harmful as it may be, is also merely a symptom of an even more dangerous set of threats to the security and wellbeing of America as a whole, and every American individual.

That's because the same concentration of capacity and control that corporations pursue to boost their pricing power also radically increases many forms of physical risk. This includes the risks of severe shortages of food, drugs, fuel, and housing, even, as we now know, baby formula.

Severe shortages of the capacity to build weapons, think Stinger missiles. Political coercion of individual corporations or the U.S. government itself by antagonistic foreign powers, China, Russia. Even cascading catastrophic collapses of entire industrial and financial systems.

So, my first main point is that inflation and shortages are two sides of the same coin. The corporate master breaks the factory, the machine, the skilled worker, the technology, so that he may take more for less. It's a swell way to do business, to profit from your own failure.

This breaking can go way too far. Indeed, the breaking in the last 40 years now threatens the security of every American in new and terrifying ways.

My second point, the concentration of capacity behind all these threats is the direct result of antidemocratic competition policies designed precisely to concentrate wealth, power, control, and capacity in the hands of the few.

The process began with Ronald Regan's embrace of Robert Bork's efficiency theory of antitrust. It continued with Bill Clinton's embrace of Larry Summers' efficiency theory for trade. Many understood at the time that it was unwise to put all our eggs in one basket and then to put that basket inside the borders of China.

It was 20 years ago this month that I first detailed these immense political dangers and economic dangers in this cover story for *Harper's*. It's called "Unmade in America, The True Costs of a Global Assembly Line," 20 years ago.

It was 17 years ago this summer that I published an entire book on the issue, "End of the Line," 17 years ago. Others warned as well. In 2002, the first annual report of the U.S. China Security Review Commission fully embraced the warning of supply chain fragility and danger of coercion, 2002, the U.S. government documents.

In 2005, the epidemiologist Michael Osterholm warned of how concentration threatened our supply of N95 masks. That was in 2005.

The warnings were ignored, dismissed, suppressed by executives, economists, antitrust officials, and the financiers who back them. Time and again, year after year, because if the master cannot break, the master cannot take quite so much. So, despite all the warnings, it was the master's right to break that was kept intact.

Third, the good news. This crisis provides a clear and historic imperative to rebuild America's industrial systems in ways that boost both our security and our prosperity, including by fostering the sorts of competition that drive down prices, drive up wages, and jump start true innovation.

Our task is technically simple. Enforce our antimonopoly laws as intended. Update the laws where necessary. Most important, however, is to always remember the main reason to stop corporations from trying to take America is to stop them from breaking America.

Thank you.

[The prepared statement of Mr. Lynn follows:]

# America's BREAK and TAKE Economic System

***How Monopolists Drive Inflation Even as They Destroy National Security***

***Reviving Competition, Part 6:***

**Rebuilding America's Economic Leadership and Combatting Corporate Profiteering**

**Barry C. Lynn**
**Executive Director**
**The Open Markets Institute**

**May 17, 2022**

**INTRODUCTION:**

Over the last year, the American people have learned that extreme and growing concentration of industrial capacity and control has empowered corporations across the economy to engage in the greatest bout of price gouging in nearly a half century. The resulting surge in prices has severely harmed every wage earner and small business owner, and indeed almost every person and every family, in America.

But this *chokeflation* or *stranguflation,* as we might call it, as harmful as it may be, is also merely a symptom of an even more dangerous set of threats to the security and wellbeing of the United States as a whole and to every individual American. That's because the same concentration of capacity and control that increases the pricing power of corporations also radically increases certain forms of physical risk. This includes the risk of severe shortages of food, drugs, fuel, and housing (and, as we've seen in recent weeks, baby formula); of political coercion of individual corporations or the U.S. government by antagonistic foreign powers; of cascading collapses of entire industrial and financial systems; even of war with Russia and/or China.

The concentration of capacity that is behind all these threats to the security and the economic wellbeing is the direct result of anti-democratic competition policies designed precisely to concentrate wealth and power in the hands of the few. Many of these threats have been well understood for years. I personally have studied how concentration threatens the stability and resiliency of industrial systems for more than two decades. But the threats – and their origins in monopolistic concentration of power and control – have been ignored or even suppressed by business executives, financiers, economists, antitrust officials, and other interested actors.

To the extent there is good news it is that this crisis provides a clear and stark imperative to rebuild large portions of America's industrial system in ways that boost both our security *and*

our prosperity, including by fostering the sort of competition that drives down prices, boosts wages, and jumpstarts true innovation. This will also require us, along the way, to rebuild our understanding of the purposes and power of America's traditional antimonopoly regime.

It is a great honor for me to be able to provide this testimony to this subcommittee today. Since 2019, the Subcommittee on Antitrust, Commercial, and Administrative Law under Chairman Cicilline has led the way in understanding the nature and magnitude of the threats by concentration of power and control, their sources in political decision, and how to fix them swiftly and resoundingly. Chairman Cicilline, his staff, and most of the other members of the subcommittee are true heroes, who have already played huge rules in protecting American democracy and national security.

## AMERICA TODAY:
### *DIRE THREATS TO NATIONAL SECURITY AND ECONOMIC WELLBEING*

Extreme concentration of industrial and transportation capacity poses many immediate and direct threats to the security of the United States as a whole, and of individual citizens and families. These include:

- The fragility of entire industrial and financial systems, and the potential for small disruptions in supply or demand to trigger widespread and even catastrophic cascading collapses of essential production and services.
- Direct dependence on China, Russia, and other autocratic and antagonistic regimes for essential goods, components, and services, in ways that expose America as a whole and individual businesses and citizens to coercion, extortion, and control.
- Lack of capacity to produce weapons and other items essential to national defense in a timely and efficient manner.




- Direct dependence on China, Russia, and other autocratic and antagonistic regimes for materials and components needed to produce weapons and other items essential to national defense.
- Structural shortages of grains, cooking oils, fertilizer, fuels and other essential goods due to the political disruption of trading systems characterized by extreme specialization and concentration of production.
- Structural shortages of essential products such as baby formula and pharmaceuticals, due to normal and predictable shut downs of production.
- Structural shortages of goods and components essential to protect the American people against epidemics and other threats to the public health, due to normal and predictable shut downs of production.

This same extreme concentration of industrial and transportation capacity also poses many immediate and direct threats to the economic security, wellbeing, and prosperity of Americans. These include:

- Inflation driven by corporations forging and exploiting manufacturing and processing chokepoints, such as in semiconductors and meat processing.
- Cascading structural inflation in markets downstream from these chokepoints; in the case of semiconductors, for instance, this includes the cost of new cars, rental cars, and used cars.
- Inflation driven by monopolists taking opportunistic advantage of the supply crisis to jack up prices, as we have seen in recent days with the airline and credit card industries.
- The suppression of production technologies and techniques that would lower costs and boost real efficiency, by monopolists exploiting their control of capacity and patent chokepoints and/or simple brute power over markets.

All of these problems are the direct result of bad competition policy over the last 40 years.




A generation ago, United States boasted the most advanced, robust, and thriving industrial system in the world. This was because Americans had used antimonopoly and other competition tools to intentionally engineer our industrial, commercial, and trading systems to break all forms of dangerous dependencies and chokepoints, both at home and abroad, and to ensure competition, resiliency, and innovation. The system that resulted also provided Americans with the ability to use various forms of industrial power to promote peace and progress around the world.

But in the 1980s and 1990s both Republican and Democratic administrations overturned America's traditional antimonopoly regimes, thus opening the door to extreme concentration of capacity and control both domestically and internationally. In addition to the enforcement of antitrust law itself, U.S. administrations during these years also overturned traditional approaches to the regulation of international trade, the governance of the corporation, patent rights and copyright controls, and the regulation of sectors including communications and transportation.

In the years since, a new generation of monopolists and mercantilists have taken advantage of these changes to chokepoint industrial and transportation capacities, often at locations outside the United States, especially within China. Many of this new generation of monopolists and mercantilists have further exploited their power and control to restrict new investment in plants, machinery, and skills. Worse yet, in many instances, these monopolists have exploited their power and control to severely degrade existing industrial capacities through a profoundly reckless strip mining of the factories, machines, ideas, and skills on which our society depends.

None of these threats are new and none should surprise us today. I myself first detailed the growing fragility of international industrial systems – and America's growing exposure to the power of China and other nations – in a cover article in *Harper's* magazine in June 2002, titled




"Unmade in America: The True Cost of a Global Assembly Line." That article was immediately covered in great depth in the first annual report of the U.S. – China Security Review Commission, in July 2002. In 2005, Doubleday published my book *End of the Line: The Rise and Coming Fall of the Global Corporation*, in which I described all these threats in depth, and tied them directly to the overthrow of antimonopoly law in the 1980s and 1990s.

I was not alone. Many others delivered similar warnings. The well-known epidemiologist Michael Osterholm, for instance, in *Foreign Affairs* in July 2005 described how a pandemic would disrupt highly concentrated supply chains, including for such items as the facemasks we need to protect ourselves against the disease itself. In 2010, a World Bank study of the effects of the financial crash of 2008-2009 wrote that concentration within international production networks has an "inherent magnification effect" on shocks. In 2012, Japan's Ministry of Economy, Trade, and Industry published a study of the Tohoku earthquake of 2011 in which it detailed how concentration within the supply chain had created a "diamond structure" of industrial organization that posed existential threats to production systems. In 2014, MIT's top Supply Chain expert Yossi Sheffi wrote that the rise of "systemic supply chain risk" had created the threat of "systemic supply chain disruptions" that can cause "the widespread sustained shortage of a product or service with no alternatives or substitutes available."

## BUILT FOR RESILIENCE

### *AMERICA'S TRADITIONAL INDUSTRIAL STRUCTURES*

The first step to understand the nature and source of today's supply chain crises is to recognize that the structures of the production systems on which America relies today differ radically from those that served our nation in the past.

For most of the decades after the Second World War, right until the last years of the 20th century, most production of products and components was widely distributed in multiple




locations around the world.

First, production was compartmentalized within the borders of the nation state. In the case of products such as automobiles, electronics, metals, and chemicals, for instance, every industrial nation largely produced what it consumed, and then competed with other industrial nations to sell finished goods to smaller nations, and to less industrialized nations.

Second, within most industrialized nations, manufacture of products such as automobiles, electronics, metals, and chemicals was separated into multiple vertically integrated corporations. In the United States, for instance, antimonopoly practice aimed to ensure that at least four corporations competed to make any particular product. Much the same was true of Japan and of Europe as a whole.

Production within corporations was then often further compartmentalized by the distribution of the capacity to manufacture of key components and end products among two or more different factories.

As a result, for most of the 20th century, when something went wrong in one factory or one industrial region somewhere in the world, the overall effects of the disruption were limited to only one company within one country. Further, the widespread distribution of manufacturing capacity and skills that existed then meant that when one company experienced a major supply disruption, it could turn to its competitors for help in keeping its own assembly lines moving and in repairing whatever damage it had suffered.




This structure was no accident. On the contrary it was the direct result of highly intentional and public political decisions that date the founding of the United States

Two decisions were key to establishing the foundations of the industrial system that served Americans so well over the first 200 years of our nation's history.

First was the decision never to depend on any single foreign nation for all or even most of any good essential to the security of the United States or of individual Americans. We see this in the rebellion against the British East India Corporation's trading monopoly, which was obviously a main goal of the Declaration of Independence itself. We see these same ideas made even more clear in the War of 1812, when the American people fought a second war to ensure their complete independence from the British imperial trading system of the 19th Century.

Second was the decision never to accept any similar concentration of control over vital production within the U.S. domestic economy. Here again, a prime goal was to ensure the security of the nation by breaking all dangerous chokepoints on vital industrial and transportation capacities. But we also see a second equally important goal – which is the protection of democracy and individual liberty from all concentrations of industrial and economic power and control.

To achieve this second aim, the American people established the world's first modern, integrated antimonopoly regime to structure markets, control the power of corporations, ensure a universal distribution of property and education, and to ensure that competition within society was not destructive in nature but helped us to achieve fundamental social, political, and economic goals. We see this dramatically in the design of the Constitution itself, the greatest antimonopoly document in human history. We also see this clearly in the




extremely close public control in 19th Century America over all corporations and all financial and banking activities in within the borders of our nation.

Although this system of antimonopoly control broke down at the end of the 19th Century, by early in the 20th Century the American people were well on their way to updating and adapting their traditional principles and goals for the industrial age. The administrations of Woodrow Wilson, Franklin Roosevelt, and Dwight Eisenhower played especially important roles in updating America's antimonopoly law and enforcement, as did key leaders from both parties in Congress.

Through the heart of the 20th Century, the American people fully understood that our antimonopoly political and legal regime was comprised of far more than our antitrust laws. Just as was true in the first century of the Republic, the American people understood that regulation of trade, corporate governance, patent rights, banking and finance, and commodities markets must all be designed to reinforce one another in ways that empower us to achieve our aims. Practically this meant establishing various forms of antimonopoly regulatory and enforcement authority in almost every department and agency of government – including the departments of the Treasury, Transportation, and Agriculture, and the Federal Reserve.

Of great importance as well, the American people established clear and simple "bright line" rules to govern the structure of markets and the structure and behavior of all corporations. A prime goal in doing so was to ensure that no enterprise or bank was ever "too big to fail" and that every entrepreneur enjoyed full freedom to fail in their efforts, without posing any sort of threat to any larger system.

One result of this approach to structuring markets and corporations was a great degree of competition over pricing and the quality of products and services, which helped both to drive

down costs and to drive technological innovation forward. A second result was a natural robustness and resiliency within all the industrial and financial systems structured along these lines.

This robustness and resiliency was not simply a happy byproduct of some abstract belief in the value of competition. On the contrary, just as was true in the founding era of the nation, this industrial robustness and resiliency was very much an intended outcome of how Congress and the Executive design these systems in the 20th Century. In part, this is because a key lesson of both world wars was to reinforce the danger of industrial and transportation choke pointing.

Indeed, the United States government during these years developed a keen understanding of how to exploit any such chokepoints in enemy nations. U.S. strategic bombing doctrine in the Second World War, for instance, focused on identifying and destroying such chokepoints to paralyze the ability of enemy nations to build and deploy weapons, most famously in the raids on Germany's ball bearing industry, highly concentrated in a single facility in the city of Schweinfort.

During the Cold War the threat of nuclear conflict strongly reinforced the imperative to ensure that all of our essential industrial, financial, and communications systems were structured in ways that distributed risk widely and safely. The Pentagon, for instance, in the 1950s played a major role in forcing defense and electronics corporations to distribute their industrial capacities away from traditional industrial zones in the Northeast and Midwest, into southern and western states beyond the range of Soviet bombers.

We see similar thinking in the original conception and design of the Internet, which was engineered to route information around any disruption, in ways that ensure there were no chokepoints to exploit.




**BUILT TO BREAK**
***HOW PRO-MONOPOLY THINKING DESTROYED OUR NATION'S SECURITY***

When the Reagan administration began to overthrow America's 200-year-old antimonopoly regime in the early 1980s, it is unlikely that any officials involved in the effort imagined that one result would be to severely compromise America's national security by creating dangerous chokepoints, including within the borders of foreign adversaries.

On the contrary, in the mid 1980s, when the Japanese government in tandem with Japanese electronics manufacturers attempted to monopolize control over the production of the hardware in personal computers, the Reagan Administration used blunt trade power to block the effort. This included imposing tariffs and import quotas, subsidizing the next generation technologies in the United States, and pressuring U.S. importers to diversify their sourcing of components by buying from non-Japanese manufacturers in South Korea, Taiwan, Singapore, and Europe.

Unfortunately, the Reagan administration's success at imposing an anti-democratic and pro-monopoly competition regime to promote the concentration of power and control in the hands of the few does mark the beginning of the larger political and policy revolution that has destroyed key aspects of America's traditional industrial and economic security.

Over the course of the 1980s and 1990s, the Reagan, Bush, and Clinton administrations radically altered every key component of America's traditional competition regime to favor consolidation of wealth, power, and control in the hands of the few. In doing so, they cleared the way for the radical choke-pointing of industrial capacity and control that so threatens our security – as a nation and as individuals – a today.




Five radical changes in U.S. regulation of industrial competition stand out:

- The 1981 adoption of the "consumer welfare" efficiency test for antitrust enforcement. This changed the goal of enforcement from protecting the bright line rules established by Congress to promoting concentration of capacity and control into duopoly and sometimes straight monopoly structures.

- The 1994 signing of the Uruguay Round of the General Agreement on Tariffs and Trade. (GATT) This agreement – especially as put into effect through the World Trade Organization beginning in 1995 – cleared the way for nations and corporations to use mercantilist means to concentrate capacity and control within their borders.

- The embrace of "shareholder" control over America's industrial corporations in the 1980s and 1990s, through such actions as the Clinton Administration's embrace of replacing executive salaries with stock options.

- The concentration of power in ever fewer and ever bigger private equity funds such as Blackstone Group, through such actions as the 1996 National Securities Markets Improvement Act, which eliminated limits on how much money any one hedge fund could pool from institutional investors.

In combination, these and other changes in competition policy cleared the way for the most powerful actors in our political economy to concentrate control over industrial capacity, and then to strip mine those assets by outsourcing that capacity, offshoring that capacity, and in some cases simply destroying that capacity.

The Chicago School overthrow of America's traditional approach to industrial organization and competition had one other devastating effect. This was to severely limit and in certain respects

entirely destroy our ability as individuals and as a public to understand the effects of this wholesale destruction of industrial capacities and skills. Here again there is no evidence that the advocates of the Chicago School thinking in the Reagan and Clinton administrations intended to destroy our ability to comprehend the effects of the concentration of risk and control that was taking place. On the contrary, their main goal was simply to hide how the concentration of economic power would clear the way for the few to charge higher prices for less, and thereby increase their wealth relative to the rest of society.

The first proof that the new structure of industrial production had become physically unsafe dates to September 21, 1999, when a 7.5 magnitude earthquake struck Taiwan. Within days, computer assembly plants around the world, including in California and Texas, began to shut down. In the weeks to come, Americans learned that a corporation named Taiwan Semiconductor Manufacturing Corporation, backed directly by the Taiwanese government, had concentrated almost all the global capacity to produce certain forms of semiconductors in a few foundries located in the city of Hsinchu.

The 1999 earthquake, in other words, proved that the compartmentalization of production that had protected the American people from the collapse of industrial capacities had begun to break down in fundamentally important ways. Rather than dampen the effects of a localized shock such as an earthquake, the structure of the new system built by the monopolists served both to transmit and amplify the shock.

As Appendix 1 shows we have had many other warnings in the years since, due to the fact that the United States government – operating on Chicago School principles – has allowed a few corporations to place all our eggs in one basket.

As a result we now live in a world where even Normal Accidents, to borrow the phrase of the great systems expert Charles Perrow, can trigger a cascading collapse of industrial and financial systems everywhere.

In some instances, the disruptions affect the production only of a single product, as is true of the recent crash of baby formula or the recent collapse of the systems we rely on for medical masks, testing chemicals, and the iodine solutions required for CT scanners and flouroscopes.[1] In other instances, such as with semconductors and container shipping, the disruptions can trigger cascading effects through multiple industries at the same time.

Far more terrifying yet, it is not at all hard to image events – such as disruptions to normal trading between China and Taiwan, or China and Japan, or China and the United States, that would result in a catastrophic cascading collapse of most of our key industrial and financial systems, all at once.

## TOWARDS A NEW RESILIENCY

### *AMERICA AND ITS ALLIES AWAKE TO THE CRISIS*

The last Biden Administration and a growing number of members of Congress from both parties have started to closely study the effects of the supply chain disruptions of the last two years. In some cases they have also begun to study the sources of problem in the radical revision of competition policy beginning 40 years ago.

The Biden Administration has, for instance, organized deep integrated studies of the structure of supply chain fragility generally, the structures of the semiconductor and battery industries specifically, and all links in the container transportation system, including ocean carriers, ports, railroads, and trucking. In addition, and of fundamental importance, President Biden has condemned the consumer welfare philosophy in the strongest of terms, in a wide ranging

Executive Order on Competition. And Brian Deese, the director of the National Economic Council, recently called for a "Modern American Industrial Strategy," in remarks at the Economic Club of New York.[2]

The Department of Defense has also strongly increased its focus on the threats that concentration of capacity and control poses to the industrial systems we rely on for production of weapons and other defense related materials. In a series of reports in recent years, the Pentagon "cites dozens of examples in which the vitality and resiliency of the US industrial base" has been "acutely affected" by "extreme consolidation of supply chains in areas like aircrafts, ground vehicles, machine tools, missiles, and printed circuit boards, and the risk of dependence on sole source vendors in many others."[3]

As the Pentagon put it in one report, "the number of cases, typically three to seven levels from the top of the supply chain, where there is just one—often fragile—supplier is staggering. This represents a significant deterioration from just a decade ago when three-to-five suppliers existed for the same component, let alone several decades ago, when the US military generally enjoyed dozens of suppliers for each such item."

The U.S. Congress has also dramatically improved its work on these issues, hosting hearings on supply chain fragility, the concentration of capacity and control within the semiconductor industry, and the concentration of pharmaceutical ingredients in China, among other issues.

Importantly, we see growing awareness both in the Biden Administration and in Congress that competition policy is composed of far more than antitrust, and that reformers must also play close attention to trade policy and corporate governance, among other factors.[4]




And we see a fast growing embrace both in the United States and among key Allies of the idea that our nations must work closely together to radically revise how we govern our industrial systems to ensure our common security. Or as Treasury Secretary Janet Yellen put it recently, there is a need to restructure our essential production and trading systems around "trusted partners."[5] Europe's Commissioner for the Internal Market, Thierry Breton, recently made the same points during a speech in Brussels.[6]

Finally, there is a growing consensus on some of the principles that should be used to structure what the next international industrial system should look like. This includes ideas presented at the Shock Proof conference hosted jointly by The Open Markets Institute and the New Approaches to Economic Challenges program of the Organization for Economic Cooperation and Development (OECD), in April 2020. And it includes a framework proposed in the article "Antimonopoly Power," published in *Foreign Affairs* in the July/August 2021 issue.[7]

## THE PATH FORWARD

### *PRACTICAL STEPS TO REBUILD INDUSTRIAL SECURITY*

There is a growing consensus about what we should do to address these problems. But it is important to lay out the full suite of actions that must play a role in building a truly stable and secure industrial system designed to protect the political and economic wellbeing of the American people. Foremost, these include:

- Update our antimonopoly laws to fully address the threats that consolidation poses to our national and individual security, and enforce the laws.
- Overhaul our international trading system to ensure that the rules always promote diversity of production and the distribution of risk. Overhaul our international trading institutions, including restoring the OECD to its proper role as the central venue for education, analysis, and coordination.




- Provide direct public investment to support the rebuilding of vital industrial capacities, especially keystone capacities such as semiconductors, chemicals, electronics components, and essential minerals and materials.
- Severely restrict shareholder control over U.S. corporations that produce vital goods and services, and restore a stakeholder approach to th3 governance of U.S. corporations.
- Work with allies to eliminate the last vestiges of the "consumer welfare" competition philosophy, wherever it that ideology may affect the security of the United States and its allies. This should include the European Commission's Directorate General of Competition.
- Restore bright line rules to govern U.S. competition policy, and eliminate the role economists and economic models play in the enforcement of competition policy in the United States.
- Work with key allies to address the extreme concentration of control over all data vital to industrial production and trade, both now and potentially in the future, by breaking the chokeholds of Google, Amazon, Apple, and other digital platforms.

In addition, there are many actions we can take now to address these dangerous concentrations of power, control, and capacity, even as we look to rebuild our larger industrial and regulatory systems. For instance, beginning immediately, we should ensure that all U.S. government departments and agencies use all of their competition enforcement powers to address today's crisis, as President Biden has instructed. Specifically, we should:

- Demand that the U.S. Department of Agriculture immediately use its full authority to break up and restructure America's dangerously concentrated meat processing and grain growing and trading industries.
- Demand that U.S. Department of Transportation immediately use its full authority to regulate airlines, railroads, and other transportation monopolies to ensure they provide ample service at a fair cost.




- Demand that the Securities and Exchange Commission and Commodities Future Trading Commission use their full antimonopoly authorities to address the misuse of data by trading corporations, as well as the way commodities are priced within the international system.
- Impose windfall taxes on any monopolist that abuses its power to extort the public.
- Coordinate much more closely with our G7 allies to design and drive forward a common antimonopoly agenda.

## APPENDIX I

***A LIST OF EVENTS THAT TRIGGERED INDUSTRIAL SHUT DOWNS***

- Great Jiji Earthquake in Taiwan, September 21, 1999.
- September 11, 2001 attacks on the World Trade Center and Pentagon.
- SARS Epidemic of 2003.
- Loss of half of U.S. seasonal flu vaccine production capacity in 2004.
- Niigata earthquake in 2007.
- Melamine pet food recall of 2007.
- Wall Street crash of 2008 and effect on international production systems.
- Bailout of General Motors and Chrysler in 2009.
- Iceland volcano explosion of 2010
- China embargo of rare earth shipments to Japan in September 2010.
- Tohoku triple disaster of March 2011.
- Floods in Thailand in July 2011
- Chinese Vitamin C cartel in 2013
- U.S. sanctions Chinese electronics corporation ZTE, April 2018.
- U.S. sanctions Chinese electronics corporation Huawei, Fall 2018
- Collapse of supplies for Covid tests, facemasks, and PPE, 2020.
- Semiconductor shortage begins to affect manufacturing, June 2020.
- Port of Los Angeles/Long Beach begins to shut down, February 2021.
- Colonial Pipeline ransomware attack, May 2021.
- Stranding of the Ever Given Container ship in the Suez Canal, June 2021
- Union Pacific and BNSF report congestion in Chicago, June 2021.
- Baby formula shortage worsens after Abbott plant shut down, Feb. 2022.
- Ukraine war creates shortage of fertilizer, cooking oils, and grains, Feb. 2022.
- U.S. supply of CT scan material cut off by China plant closure, May 2022

## ADDITIONAL READING

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- *Cornered: The New Monopoly Capitalism and the Economics of Destruction*, Barry Lynn, Wiley, 2010.
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[2] Brian Deese, Remarks on a Modern American Industrial Strategy, the White House, April 20, 2022.
[3] Asher Schecter, "Pentagon Report Points to Two Major Risks to National Security: Consolidation and Shareholder Capitalism," *ProMarket*, January 25, 2021.
[4] Rana Foroohar, "The World Needs a 12-Step Programme for Better Trade," *Financial Times*, May 8, 2022. Gavin Bade, "Biden's Trade Team: RIP Globalization," *Politico*, May 8, 2022.
[5] Alan Rappeport, "Treasury Secretary Janet Yellen Calls for a Reshaping of Global Supply Chains that are 'Not Secure,'" *New York Times*, April 21, 2022.
[6] Simon Van Dorpe, "EU, US Need to Reduce Supply-Chain Dependency on Single Countries," *Politico*, April 22, 2022.
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Mr. CICILLINE. Thank you, Mr. Lynn.

Ms. Onwuka, you are now recognized for five minutes.

**STATEMENT OF PATRICE ONWUKA**

Ms. ONWUKA. Thank you, Chair Cicilline, Ranking Member Buck, and Members of this Committee. Thank you for having me appear today.

My name is Patrice Onwuka, and I'm the Director of the Center for Economic Opportunity at the Independent Women's Forum. We are a nonprofit organization committed to increasing the number of women who value free markets and personal liberty. My work focuses on the economy as well as expanding opportunities for women.

Now, as we emerge from this pandemic, it's been encouraging to see the recovery of women's participation in the labor force. The tight labor market has rewarded them with rising wages and increased flexible work. Rapid inflation has placed these gains at risk.

As we know, inflation rose 8.3 percent in April over the past 12 months, and prices are rising in every major category, with significant increases in energy, food, and shelter. For another month in a row, women have watched inflation erode their purchasing power, and households have been forced to do more with less.

The hardest hit, as we've heard, are the low-income households and those on fixed budgets, such as the elderly. Women know what this means. We drive 70–80 percent of consumer purchasing power, and so we're attentive to what inflation—what choices our families have to make because of it.

Gasoline hit another record today at $4.52 a gallon. A year ago, it was $3.04, and two years ago $1.96. So, and even worse, parents of newborns and babies face the dual hardship of rising prices on baby formula as well as its unprecedented baby formula shortage.

Americans are right to worry about inflation and to see it as the top issue facing them. Congress and the Biden Administration are wrong to scapegoat a few specific industries for this kitchen-table problem. This is an attempt to deflect attention for how failed policies and massive Federal spending are at the root of inflation.

Arguments about today's spiking inflation due to price-gouging are disingenuous. Furthermore, solutions could raise, not lower, prices for American households. Price-gouging usually occurs in a narrow market over a short period of time. However, prices have been rising for over a year and have spiked on items in every sector. Are large and small companies colluding to raise their prices?

Now, sure, we've heard a lot about corporate profits today rising. Profits do rise with inflation. They also did plummet during the beginning of the pandemic. Profit is not a bad thing. Economists are skeptical of the price-gouging allegation against large companies.

A survey of two out of three—two out of three economists from America's top universities, including MIT, Harvard, Yale, Stanford, disagree with the quote—the question, "Is dominant corporations in uncompetitive markets taking advantage of their market power to raise prices to increase the profit margins lead to today's inflation?" Again, two out of three said no.

In fact, some industries with the largest price increases are highly competitive. We've heard a little bit about gasoline. Well, the top five companies providing gasoline in this country, not one of them owns more than 12½ percent of the market share. The top five, about 36 percent of the market share in total.

So, new legislation that cracks down on mergers and acquisitions or attempts to control prices will not lower them but lead to higher prices and stifle the innovation that leads to more options for consumers.

No doubt, supply chain issues and disruptions, labor market shortages are at play and increase the cost of production. Demand has been extraordinary, and, unfortunately, we haven't heard enough about demand here today.

From March 2020–March 2021, the U.S. Government made massive direct payments to American households through stimulus, expanded unemployment insurance, mortgage, and student loan forbearance. That kept demand humming along.

The American Rescue Plan in 2021 added significant cash payments, including the expanded child tax credit at a time when millions of worker—of jobs had been recovered, at a time when vaccines were being distributed, and the economy was experiencing a tremendous rebound.

The Federal Reserve also engaged in hyperexpansionary monetary policy. Quote, "There is a chance that microeconomic stimulus on a scale closer to World War II levels than normal recession levels will set off inflationary pressures of a kind we have not seen in a generation." Former Obama Administration Treasury Secretary Larry Summers in early 2021.

He was right. The Federal Reserve Bank of San Francisco estimates that the American Rescue Plan added three percentage points to inflation. So, driving down inflation ought to be a key area to reduce inflation. That includes not passing new stimulus or increased fiscal spending on new entitlement and student loan forgiveness.

Maybe Congress could spend some time ramping—figuring out how to ramp up supply by raising labor force participating, reducing import restrictions, reducing regulations, keeping corporate tax rates low, and encouraging oil drilling, and then going after price-gouging. American households truly are hurting. Thank you.

[The prepared statement of Ms. Onwuka follows:]

Independent® Women's Forum

**Testimony to the United States House of Representatives**
**Committee on the Judiciary**

**Subcommittee on Antitrust, Commercial, and Administrative Law**
**Hearing: Reviving Competition, Part 6: Rebuilding America's Economic Leadership and Combating Corporate Profiteering**

**Patrice Onwuka**
**Director, Center for Economic Opportunity**
**Independent Women's Forum**

**Washington, D.C.**
**May 17, 2022**

Chairman Cicilline, Ranking Member Buck, and Members of the Committee thank you for inviting me to appear today.

My name is Patrice Onwuka, and I am the director of the Center for Economic Opportunity at Independent Women's Forum. We are a nonprofit organization, committed to increasing the number of women who value free markets and personal liberty. We advance policies that enhance people's freedom, opportunities, and well-being. My work focuses on expanding opportunities for women.

As we emerge from this pandemic as a nation, it has been encouraging to see the recovery of women's participation in the labor force. As disruptions to in-person learning have finally disappeared, working parents have the certainty to seek out employment. The tight labor market has rewarded them with rising wages and increased flexible work opportunities. For women, greater pay and greater flexibility will lead to greater financial security and work-life balance.

Rapid inflation has placed these gains at risk. Inflation rose 8.3% in April over the past twelve months. Prices have risen across every major spending category with significant increases in energy, food, and shelter. Although wages increased, real average hourly earnings decreased 2.6% (seasonally adjusted). For another month in a row, women have watched inflation erode their buying power, and households have been forced to do more with less.

At one time, prices were spiking in just a few categories of spending, but that is no longer the case. Price increases are broad-based, and they are negatively affecting the budgets of every American household. The heaviest economic pressure is borne by low-income households and those on fixed budgets, such as the elderly, who spend disproportionately more of their budgets on groceries and gas.

Women are keenly aware of the impact of 8.3% inflation on family budgets, and it's devastating. Daily, women spend more time than men making economic decisions for their families about consumer goods and services. They drive 70-80% of all consumer purchasing through buying power and the influence they wield over purchasing decisions. They have been sensitive to rapid price increases that began in mid-2021 and have had to adjust household spending habits in the wake of shortages.

Food prices increased 9.4% last month–the largest 12-month increase since ending April 1981. Prices on household staples such as beef, eggs, chicken, milk, and cereal have all risen by double-digit rates over the past year.

Shelter costs–one of the biggest household expenditures each month–are rising rapidly at 5.1% over the past year. Yet, that overall inflation number masks how rapidly rent is rising or just how much more families must spend to keep a roof over their heads. January's average asking rent rose 15.2% and home prices in December climbed 18.8% from the year prior.

From tuition costs to haircuts to shoes, parenting has become significantly more expensive.

Driving to and from work or shuttling kids around from school to sports and activities is markedly more expensive as well. Gasoline hit its highest recorded price yesterday, May 16, 2022, at $4.48, but one year ago it was $3.04 and about $1.96 on average for the month of May 2020.

Now, parents of newborns and babies face the dual hardship of an unprecedented baby formula shortage concurrently with rising prices on baby formula. Currently, 43% of baby formula inventory was out of stock nationally, up from 18% at the start of 2022 and 3% from the same time in 2021.

Three out of four babies below the age of six months in the U.S. consume baby formula, some have dietary restrictions that require a specialized formula. This has placed many families in the vulnerable position of making desperate social media pleas to find a nutrition source for their littles. This new economic crisis is one of life or death for the littlest members of our society.

Americans are worried about inflation and the state of the economy. Recently, U.S. consumer sentiment fell to its lowest level in nearly a dozen years as worries about inflation persisted. Some 94% of voters are concerned or upset about inflation. This is the top concern for Americans.

Americans look to Congress and the White House for answers and solutions. For months President Joe Biden and Treasury Secretary Janet Yellen held that inflation was "temporary" or "transitory." They made the case for additional stimulus spending through a multi-trillion dollar package of domestic spending priorities and denied the connection between inflation and federal policy. The President also recently discussed price-gouging and antitrust investigations into industries that have raised their prices.

Voters do not think that Washington has the right answers. Some 47% of people said the president's policies to get inflation under control were "hurting," compared with only 22%, who said they were "helping."

**Price gouging is not the driver of inflation**

Arguments that today's spiking inflation is due to price gouging are disingenuous. Scapegoating specific industries for widespread economic problems will not address this kitchen-table problem. Furthermore, they could raise – not lower – prices for American households.

Price "gouging" usually occurs in a narrow market over a short period of time such as when prices for refrigerated food spike in the wake of a massive power outage caused by a big storm. These prices naturally decrease as power is restored and new inventory arrives.

Prices have been rising for a year and have spiked on items in every sector, not because companies have colluded to charge more. The economy is experiencing the effects of significant, sustained demand and a short supply of goods.

Corporate profits are rising, but profit rises with inflation. (They also plummeted during the beginning of the pandemic.) Previously, if prices rose on an item, consumers would buy less of it. Today, consumers are willing to pay more because they have amassed significant savings during the pandemic and are still spending it.

At the same time, supply-chain disruptions and labor shortages have increased the costs of the production of goods and services. U.S. producer prices soared 11% in April 2022 from a year earlier. According to the

National Federal of Independent Business, a third (32%) of small business owners reported that inflation is their single most important problem in operating their business. This is the highest reading from the organization's optimism index since 1980.

There is no evidence that sticker prices are rising because businesses are taking advantage of the pandemic to hike their prices. Often, they are passing along rising costs. One significant cost increase has been labor. Historically, labor costs have represented roughly two-thirds of costs for businesses. In 2020, goods and service-producing industries did not have substantial wage growth. In 2021, wage increases nearly doubled for businesses in both types of industries.

Economists are skeptical of the price-gouging allegation against large companies. In a survey of economists from America's top universities including MIT, Harvard, Yale, Stanford, and the University of Chicago, 67% disagreed that "dominant corporations in uncompetitive markets taking advantage of their market power to raise prices in order to increase their profit margins" is a significant driver of inflation. Three out of four (75%) disagree that stronger antitrust interventions over the next year will lower inflation.

Perhaps their skepticism stems from the fact that some industries with the largest price increases are highly competitive. Take for example, the gasoline sector. Gasoline prices are highly volatile, and prices increased by over 40% in April from 2021. Of the five largest companies operating in the U.S.—Shell, Exxon, Chevron, Speedway, and BP– not one of them owns more than a 12.5% market share. Together, they control 36% of market share.

Investigations into specific industries will not yield lower prices, nor would new legislation that cracks down on mergers and acquisitions. Absent record-breaking levels of inflation, large companies typically can and do lower prices for consumers even as they enjoy greater profits.

**Government Spending and Monetary Policy are Drivers of Inflation**

The major factors behind inflation have been excessive monetary and fiscal policy, particularly over the past year.

Lockdowns led to a significant shift in consumer spending away from services to goods. Remarkably, household spending on goods soared 20% above the pre-pandemic levels by May 2021. This was fueled by federal stimulus.

From March 2020 to March 2021, the U.S. government made massive direct payments to American households. The first and second rounds of stimulus payments, along with other benefits, such as expanded unemployment insurance and mortgage and student loan forbearance, kept demand for goods strong.

Additionally, the American Rescue Plan in 2021 added significant cash payments, including the expanded child tax credit payments, at a time when millions of jobs had been recovered, vaccines were being distributed, and the economy was experiencing a tremendous rebound. Americans enjoyed spending power from the large savings they amassed during lockdowns and from these federal payouts.

The Federal Reserve (Fed) also engaged in hyper-expansionary monetary policy. This aided the auto industry and contributed to the housing price boom.

Supply could not meet such high demand for goods because of supply-chain disruptions and labor shortages. This drove prices to rise on some specific items that depended on imported raw materials and final goods such as semiconductors and computer chips as well as on autos. Today, inflation ranges on items across the economy.

Economists raised inflationary alarms about the American Rescue Plan in early 2021. Former Obama administration Treasury Secretary Larry Summers questioned President Biden's $1.9-trillion Covid-relief plan writing, "There is a chance that macroeconomic stimulus on a scale closer to World War II levels than normal recession levels will set off inflationary pressures of a kind we have not seen in a generation." At the time inflation was *below* the Federal Reserve's 2% target rate. Today, the inflation rate is over 4 times that.

The Federal Reserve Bank of San Francisco estimates that the American Rescue Plan added at least 3 percentage points to inflation. Although inflation has risen around the world, it is higher here than it is abroad because of excessive transfer payments.

**Solutions**

It will take time for inflation to fall back to pre-pandemic levels. Unfortunately, American households are unlikely to gain much relief at the grocery store and the gas pump. They may also experience unexpected shortages as the baby formula crisis has demonstrated.

Driving demand down will be key to reducing inflation. The Fed has already begun to unwind its aggressive monetary policy by raising interest rates. This should slow purchases in the housing and auto industries. Households are also spending down their pandemic savings. Thus, another stimulus package or increased fiscal spending on new entitlements and student loan forgiveness are not the right solutions. They would put more dollars into the economy and fuel price increases.

In polling, the American people recognize that more inflationary fiscal policy is unwarranted. Some 46% of the people believe that the Build Back Better Plan (BBB) would push inflation higher. Similarly, according to a recent POLITICO-Harvard survey, nearly half believe that both the BBB and the infrastructure bill will increase inflation.

Ramping up supply by raising labor force participation, perhaps reducing import restrictions, keeping corporate tax rates low, and encouraging oil drilling, will reign in inflation. Congress and the administration should also reduce regulations to reduce costs for businesses. Antitrust interventions would be ill-advised because they would further drive up consumer prices.

American households are hurting. Women want solutions that will increase their purchasing power and allow them to enjoy their wage gains and flexibility. Congress should focus on solutions that actually increase the supply of goods and services and reduce elevated demand to tackle inflation in a meaningful way.

Mr. CICILLINE. Thank you very much. The Committee will stand in recess briefly votes have been called. There are only two votes, and we'll come back as soon as those votes are concluded.

I beg the indulgence of our Witnesses, and we'll return. We'll stand in recess.

[Whereupon, the above-entitled matter went off the record at 1:32 p.m.]

Mr. CICILLINE. The Committee will come to order, and I want to thank, again, the Witnesses for the indulgence and the Members of the Subcommittee.

We will now proceed under the five-minute rule, and I will recognize first the gentlelady from Florida, Ms. Demings, for five minutes.

Ms. DEMINGS. Thank you so much, Mr. Chair, and again, thank you to our Witnesses for your indulgence and for being with us today.

We all know that prices are rising, and Americans are feeling it, especially at the gas pump where prices are spiking to their highest point ever.

Instead of increasing production to meet demand, major oil companies are spending on buy backs and dividends, bragging of record profits. I'm sure we all heard the audio.

Exxon Mobil, Shell, Chevron, and BP each reported their largest profits in eight years with the four companies totaling profits approximately $71.5 billion in 2021.

Again, of course, we're not here today to talk about profits necessarily. God bless them. We are here to make sure that they are not taking advantage of a tough time and continuing to work in the best interests of the American people.

These oil and gas companies are able to keep prices high and bank record profits because they have very little competition. The lack of meaningful competition means there are no competitive checks on bad behavior such as profiteering by dominant corporations.

We do need stronger enforcement and successful execution of existing antitrust laws and policies. I think we say that in just about every hearing.

So, my first question is for Dr. Mabud. Can you give us some examples of companies that have used inflation and, unfortunately, the pandemic as cover to raise prices and increase profits?

Ms. MABUD. Absolutely. Thank you for that question.

What we hear in these earnings calls is that in sector after sector CEOs are blaming inflation, supply chain snarls, basically, everything but their own need to profiteer for higher prices.

This is especially the case for companies like Kimberly-Clark, which produces what economists called price inelastic goods, essentially, essentials that parents who need diapers are going to pay whatever they need for diapers. So, Kimberly-Clark has the market power and the ability to jack up prices because they know they're not going to lose consumers if they do so.

Ms. DEMINGS. Thank you so much.

Professor, what are the consequences of the reduced successful enforcement of antitrust laws?

Mr. REICH. Well, Congresswoman, what we've seen over, really, the past decades are that the courts have reduced the scope and effectiveness of antitrust as a means of maintaining the competition and the competitive process.

The result of that is that more and more corporations dominate their industries. They have the power to set prices.

They have the power to, basically, generate profits that are not being poured back into production or going into higher wages. Their profits are going more and more into stock buy backs that reward their shareholders but don't really help the overall economy.

The bottom-line consequence for all of this is not only higher prices that are necessary but also lower quality goods, as we see with regard to Abbott nutrition and the baby formula problem—crisis, really—that's gripping America.

That would not have been a crisis if that particular industry, like many other industries, was not so concentrated in the hands of a handful of producers, and Abbott is the largest producer.

So, you see how vulnerable this degree of concentration makes all of us.

Ms. DEMINGS. Thank you so much, Professor.

Mr. Lynn, the Department of Energy has reported that global clean energy markets are expected to reach $23 trillion by the end of this decade. However, the United States currently likes the manufacturing capabilities necessary to actively participate in many of these markets.

As I was walking in the door, you were saying when we put all our eggs into one basket the problems that can result from that. What are some of the causes of the loss of domestic manufacturing capacity and how can we reverse these trends and bring back more manufacturing back to the USA?

Mr. LYNN. I will answer that with one word—silicon. North of 95 percent of all silicon ingots come out of China. These are the ingots that are used to manufacture photovoltaic panels around the world. It didn't used to be that way.

These ingots used to be made in United States, used to be made in many places around the United States. The Chinese concentrated that power in ways that would give them the ability to choke off and control the manufacture of panels at their desire.

What do we do about it? We open new silicon refining and ingot manufacturing facilities in the United States. There are mines all over that could be opened. There's one in West Virginia on the Ohio River. We could do that tomorrow.

Ms. DEMINGS. Thank you so much. Thank you to all our Witnesses again, and Mr. Chair, I yield back.

Mr. CICILLINE. The gentlelady yields back.

I would now normally recognize the Ranking Member, but he's asked that I recognize the gentleman from Wisconsin, Mr. Fitzgerald, for five minutes.

Mr. FITZGERALD. Thank you, Mr. Chair.

To Ms. Onwuka, the root causes of inflation, I think, were not driven by private sector. The inflation that we're feeling now is the result of government intervention and probably some reckless spending.

Coronavirus didn't cause our supply chain issues. Shutting down the economy did, and I think now what we're seeing is some of my colleagues on the other side of the aisle are trying to convince the American people that the only solution would be more government and it's not going to work.

Just last week, Congresswoman Schakowsky introduced the so-called Price Gouging Prevention Act. This bill, supported by some of my colleagues, again, on the other aisle would make the FTC the arbiter of what constitutes unreasonable price increases.

If this were to become law, companies—there would be no incentive for them to raise wages because they would be taken to court and be loaded up with many legal bills.

So, when prices are fixed too low and companies stop producing, which is what we saw during the '70s with the Arab oil embargo, can you just give us your thoughts or elaborate a little bit on policies such as price fixing that, in this bill or in President Biden's recent, quote, "plan to fight inflation" unquote, how it's not going to work or how it's poorly thought out?

Ms. ONWUKA. Thank you, sir. It's so interesting that we're talking about price controls because they don't work on many levels.

On a theoretical level, the idea of setting prices, which is likely to happen for the government to set prices below the market level, would, obviously, increase the demand and supply would not keep up with it.

That is exactly what we have now in terms of shortages when we look at baby formula. We don't have—that's not what we want across the entire economy. You referenced it just now.

Historically, we have seen price controls not work. We look back to President Nixon trying to control oil and gas prices. It's not economic. It's the idea that we can use—that technocrats, for example, can somehow determine the best prices across the country, across millions of products in our entire economy across our entire nation is a recipe for failure.

So, when I see things like price controls showing up in pieces of legislation, they may be well intended we have already seen historically the consequence that happens. So, as I mentioned, when we talk about what's driving inflation, we have not heard enough about demand, and demand—certainly, supply has been shortened for many different reasons but demand was inflated because Congress decided to give American households quite a lot of stimulus in lots of different forms, regardless of whether or not the realities really warranted that, particularly, back in 2001.

So, we are now living with the consequences of that.

Mr. FITZGERALD. Very good. Just one other kind of secondary effect, I guess, is the way I would describe it, we have just saw double digit increase in the price of farmland in my home State of Wisconsin and, obviously, it's tied directly to the price of production, crops, and the yields that are affected by the cost of land.

Can you talk a little bit about kind of that bigger picture on not only just farmland in Wisconsin, but automobiles and other major purchases that consumers may be looking at in the future?

Ms. ONWUKA. Absolutely. So, at Independent Women's Forum we actually put together a price tracker that looks at some of the cost increases every month on things that American households are

looking at and purchasing. Obviously, used cars are increasing, everything from shoes to, boy, the milk and I buy lots of milk because I have two toddlers right now.

When you think about things like what goes into the production of those goods that get onto our shelves, the cost of fertilizer that feeds that leads to produce or feeds cattle, for example, there's so many increases on the production side and the producer price index, certainly, has hit a new—almost a new high last month.

Those costs are being—some of them are being borne by large companies and small companies, and they pass that on to consumers in the form of higher prices.

So, when we—I worry when I hear about price gouging being the only reason why things like farmland or the cost of meat is rising because there's so many other costs that I think a lot of companies are actually eating that don't get passed on, and some that get passed on.

Labor costs are rising, and when we look at goods-producing companies as well as service-producing companies, we didn't see labor costs substantially rising in 2020. We did see them rising substantially in 2021 because of worker shortages.

Well, why did we have worker shortages? Well, there's plenty of stimulus going into American households that discouraged work. So, lots of these factors are going into what's driving inflation—demand and supply.

Mr. FITZGERALD. Thank you, Mr. Chair. I yield back.

Mr. CICILLINE. Thank you. I thank the gentleman for yielding back.

I would just note that the bill you're referring to I'm proud to be a co-sponsor of. It's not a price control bill. It's an anti-gouging bill, and as you know, Mr. Fitzgerald, there's an anti-gouging bill in the State of Wisconsin that I know you in the past supported.

So, I just want to be clear it's not a price control bill. So, I want the record to be clear on that.

I now recognize the gentlelady from Pennsylvania, Ms. Scanlon, for five minutes.

Ms. SCANLON. Thank you, Chair Cicilline, and thank you to our expert Witnesses for joining us here today.

This hearing to address how we need to update our antitrust laws to combat market consolidation, anti-competitive behavior, and corporate profiteering could not be more timely.

In recent weeks, families in my district and across America have been struggling to find infant formula after a plant closure created a national infant formula shortage. There couldn't be a stronger example of how market consolidation in our economy can hurt everyday Americans.

Critical supply chains for things like food and energy production have become increasingly fragile as past Administrations failed to do adequate oversight. The consolidation has put the U.S. on a dangerous path towards more frequent and severe supply chain disruptions and the infant formula is just one of the ones we have been examining. Meatpacking is another good example.

So, when we have these disruptions, they halt vital supply chains and have really devastating consequences for Americans. Earlier today, my colleagues and I sent a letter urging the Administration

and its constituent agencies to take corrective measures to increase the supply of baby formula in the short term but also to examine long-term solutions and restore competition and resilience in the market to prevent future disruptions.

So, I know that Congress and the Administration can solve this problem together so I'm really looking forward to hearing what our experts have to say by way of some suggestions.

So, Secretary Reich, I know you've tweeted some opinions on this subject already today. I would like to look at what kind of things should Congress do to update our antitrust laws to fix the problems created by decades of anti-enforcement philosophy?

Mr. REICH. Congresswoman, there are a number of specific steps that Congress can take. One area that has caused a great deal of confusion and the courts have constricted antitrust authority has to do with section 2 of the Sherman Act.

Now, I understand the confusion. I understand what the courts have been doing. I understand why they've been doing it.

The net effect is, basically, to enable more and more monopolization and to require a very high threshold with regard to the courts need to find and what prosecutors need to show to prove monopolization, and that's one area that I would zero in on.

Another area that is extremely important has to do with the Federal Trade Commission's authority under section 5 to go after various mergers, and it used to be that they could go after mergers even before those mergers occurred. I think Congress ought to restore and strengthen that authority as well.

Ms. SCANLON. Thank you. So, we find ourselves in a position where there have already been multiple mergers within the infant formula sector.

Mr. Lynn, do you see any way to get us out of this situation? One thing that's been suggested is possibly using the WIC program to try to be empowered through increased funding and resources to be part of the solution. Can you help us out there?

Mr. LYNN. Yes. Thank you. Government purchasing is one—is actually a power that can be used to concentrate the market, or it can be used to deconcentrate and create more competition within the market.

Procurement is one of our most important tools. It has—for most of our history it was used to promote competition.

So, absolutely, government procurement through the WIC program can be used to establish more providers and to ensure that there is resiliency in the system such as by ensuring that there's sort of extra capacity that is available in case of a crisis. We should never be running a system like this at 100 percent of capacity ever.

Ms. SCANLON. Yeah. I think that goes to something Dr. Mabud may have discussed, which is the sort of knife-edge supply chains that can't really handle fluctuation. Can you comment on that, Doctor?

Ms. MABUD. Absolutely. Over the last 50 years, mega corporations have shaped our supply chains into the brittle system that we have today so that when we experience shocks, whether that's a plant shutting down that produces baby formula or a pandemic, we experience bottlenecks and shortages that drive up prices, and big

corporations can use their dominance in markets to hike up those prices, especially when they have the cover of inflation.

I think we can build an economy that can handle additional demand without breaking, and I look forward to Congress making those critical investments.

Ms. SCANLON. Thank you. I see my time has expired. I yield back.

Mr. CICILLINE. The gentlelady yields back.

I now recognize the gentleman from Oregon, Mr. Bentz, for five minutes.

Mr. BENTZ. Thank you, Mr. Chair.

This is a question eventually for Ms. Onwuka. Here's the background for it.

State Street, BlackRock, and Vanguard currently control about 20 percent of the S&P 500. Now, they're not using that control for the benefit of the investors. They're using it for carrying out a political agenda. Yet, today, we have not heard a peep about that huge accumulation of capital. Not a peep. We have heard about the companies that they own.

Now, what I understand from reading, of course, they're doing is making it almost impossible for gas companies—natural gas companies—to get the financing to put in pipelines, and assuming they could get the financing, we find that there are huge barriers being constructed at the bureaucratic level to prevent those pipelines from ever being built.

Yet, Europe is facing an existential crisis when it comes to energy, which could only be solved with natural gas making its way across the ocean. Yet, we don't seem to have the ability because of this huge accumulation of capital by State Street, Blackrock, Vanguard, because they're bringing that leverage against banks that they happen to control not to lend the money.

Can you comment?

Ms. ONWUKA. I think you've hit on some of the hypocrisy that we're seeing here when it comes to what companies are—it's okay for them to aggregate wealth and power and how they leverage them for different reasons.

I think you've, certainly, laid out a compelling argument there. I don't really have anything else to add to it.

Mr. BENTZ. Thank you.

Mr. Lynn, you mentioned that we should be opening mines all over the United States. I happen to agree with you. In fact, in my Natural Resource Committee we have heard over and over and over again about why we shouldn't open mines.

We have heard examples of water being interfered with, with cultural values being upset, you name it, any number of reasons why we shouldn't mine copper, why we shouldn't mine lithium, why we shouldn't mine uranium, why we shouldn't mine nickel, why we shouldn't mine, in other words, anything.

My question to you is how do we tell the American people about the damage the crazy position we have put ourselves in, not unlike Europe relying upon Russia for all that oil and gas, and here we are in the United States the same exact position.

Yet, we can't seem to touch any of these minerals right under our feet. Can you comment?

Mr. LYNN. Thank you, Congressman. It's a fundamentally important issue. I certainly understand why there is concerns about certain types of mining practices and I, also, I feel the pain for people who have love for the land, but I also understand that this is a fundamental issue of national security.

When we depend 100 percent on foreign powers for anything, whether it's a component in our computers, whether it's a component in our drugs, or whether it is a mineral that goes into the supply chains, that puts us at risk. That gives the people who we cannot trust power over us.

So, we must find a way to actually open up more mines and open up more production, not just in the United States but within the confines of the G–7 nations with whom we are integrated.

Mr. BENTZ. Thank you.

Ms. Onwuka, back to you for my last question. It happens that three years ago the price of natural gas per MMBtu was $3. A few minutes ago, I checked just while I was waiting to ask my questions. It's at $8.31. So, it's gone from $3–8.31, and this is, of course, for natural gas.

We get a lot of talk about people going to the pump. We don't have as much talk about people trying to heat their homes. Here we have an increase of almost 300 percent.

So, can you comment on the challenges that a family is going to face this winter when their natural gas heating prices, not to mention businesses across all the United States that use natural gas? Can you comment on that?

Ms. ONWUKA. Absolutely. I actually wanted to read a quote from—we receive stories from regular Americans, from your constituents every day looking at the rising costs that they are experiencing, and home heating bills are one of those areas that we continue to track, one of those areas where we are seeing so many families struggling.

I do think it's one of those areas where it's going to continue to be an issue this fall. We, certainly, heard many stories from people who—families who could not afford to heat their homes or they were making very tough decisions, choices when it came to how their family budget, which was, obviously, decreasing—their real wages were actually decreasing because of inflation.

They were making some tough choices and I think that is going to continue to be an issue until we figure out how to get back to a place where we recognize our energy sources should be—our energy policy should respect all different types of energy sources, including natural gas.

Mr. BENTZ. Thank you so much. I yield back.

Mr. CICILLINE. Before I recognize the next speaker, it looked like the Ranking Member wanted to say something about—no? Okay.

I now recognize the distinguished gentleman from California, Mr. Swalwell, for five minutes.

Mr. SWALWELL. Thank you, Chair, for this important hearing.

I have to say top of mind for me with a six-month-old who eats like a horse. His baby formula and this issue is touching households across the country, and it needs a solution, and it needs a solution yesterday.

Unfortunately, a lot of moms across America see finger pointing in Washington. They hear that this is Joe Biden's fault. I didn't know maybe Joe Biden had a baby formula factory behind the White House, I didn't know about that he's not operating. I don't think that's the case.

They're hearing solutions that we should take the baby formula that's at the border for children who are detained with their parents and take their baby formula and let them starve and then put that baby formula in America.

They're not really hearing solutions that are realistic or that don't kill a baby at the border to have political theater in the United States.

So, Mr. Lynn, my first question for you is, is it realistic that President Biden could invoke the Defense Production Act to increase production of baby formula?

Mr. LYNN. It's realistic. (Inaudible) it's actually necessary. I think that the fundamental point here is that this is not a zero-sum situation.

We don't have to be moving formula from the border to Chicago, it's like we need to be treating everybody the same. We need to be increasing production immediately.

I think there was a major move yesterday to get the plant reopened. There's a major move to sort of bring production in from Ireland and elsewhere. So, I think the Biden Administration is taking ample actions immediately to improve the situation across the United States.

What we need to be doing now is actually focusing in this room on how to ensure that this never happens again. How do we ensure that there is sufficient competition within this system, so that the corporations are not able to run their capacity at 100 percent?

When a corporation is running their capacity as 100 percent, that is usually an indication of market power.

Mr. SWALWELL. Mr. Lynn, is there any reason that EU-regulated baby formula isn't good enough to import in the United States?

Mr. LYNN. I don't believe so. I was just in Europe last week and there's a lot of things we can learn from Europe. I doubt that there's anything wrong with the EU baby formula.

Mr. SWALWELL. We want to have the highest standards for baby formula, right. This is our most precious citizens of our population. It would seem to me that if it's good enough for European babies it would be good enough for the FDA.

Also, the last Administration discouraged imports of baby formula from Canada in the reauthorized North American trade agreement and, again, I would offer that Canadian standards are probably just as good if not tougher than in the United States.

I guess one last thought on baby formula. When you say we want to make sure this doesn't happen again, going back to what you said as it relates to market power, what could you do to diversify the production of baby formula in the United States, so it didn't happen again?

Mr. LYNN. It's sort of a two-tier problem. You got concentration in retail, and you got concentration in production. So, you actually have to attack it at both the level of retail and the level of production.

The extreme concentration of power in the retailers actually has driven a lot of the concentration within production.

So, there's simple rules that can be imposed immediately that reduce the power of the retailers and those are generally anti-discrimination laws that restrict their ability to engage in monopsonistic manipulation of suppliers, and then you sort of deal with the concentration within the suppliers.

Mr. SWALWELL. Mr. Lynn, your solutions are common sense. They're doable and, as a Democratic Member of Congress, it doesn't reek of any partisanship and I think that's what most moms in America want, right.

Most moms and dads in America want right now. They just want solutions, and I thank the Chair for a solution-driven hearing on what we can do with this crisis.

I yield back.

Mr. CICILLINE. I thank the gentleman.

I now recognize the Ranking Member of the Full Committee, Mr. Jordan from Ohio, for five minutes.

Mr. JORDAN. Thank you, Mr. Chair.

Mr. Lynn, three weeks ago, you issued a press statement following my statement on Elon Musk and Twitter, byline Washington. In response to Elon Musk buying Twitter, Open Markets Institute Director Barry Lynn issues the following statement, and I quote from there the second sentence."The Open Markets Institute believes that the deal poses a direct threat to American democracy and free speech."

Do you remember that statement you issued?

Mr. LYNN. I do, Congressman.

Mr. JORDAN. I was just curious. Nineteen months ago, when Twitter locked out the *New York Post* out of their account because of the Hunter Biden story, was that a threat to free speech?

Mr. LYNN. I'd go back further, Congressman. Actually, in the summer of 2018, I made the case that when Facebook and Twitter were cutting off Alex Jones, I said that was a threat to democracy and free speech.

Mr. JORDAN. So, when they banned the story in the—October of 2020, would you call that a direct threat to democracy? I mean, I look at the day's running up to the most important election we have, the Presidential election, and they keep a story from the American people.

So, you would agree with me that was a threat to democracy?

Mr. LYNN. I think that the threat to democracy is to have allowed so much of our media to be captured—the control over so much of our media to be captured by a few people in Silicon Valley.

Mr. JORDAN. That's not what I asked you. I asked you was that—the fact that they blocked that story, was that a threat to free speech and democracy?

Mr. LYNN. I think we see threats to free speech and democracy every day in this country and they're opposed by the power [inaudible].

Mr. JORDAN. Again, you're not answering the question I asked you. I asked you specifically about that example. In the run up to our most important election we have a story about Hunter Biden's

laptop that 51 former intelligence agents told us was Russian disinformation.

We know that was false because the *Washington Post* told us two months ago that it was true. I'm just saying, was that a direct threat to democracy and free speech, as you just said in your press release from three weeks ago?

Mr. LYNN. I don't think my press release from three weeks ago had anything to do with what you're talking about. I do believe that, as I said before, the concentration of power in the hands of Mark Zuckerberg and the junta at Google—

Mr. JORDAN. Did you issue a press release last—

Mr. LYNN. —is a fundamental danger to our democracy and I am—actually have been thrilled by the ability of this Committee to address the problem at the bottom of this to deal with this threat to our democracy.

Mr. JORDAN. I just want to ask you a question. Did you issue a press release in October of 2020 when that story came out and the *New York Post* was locked out of their account? Did you issue a press release then saying this was a direct threat to democracy and free speech?

Mr. LYNN. No, I did not, sir.

Mr. JORDAN. How about two months ago when *The Washington Post* told us that story was actually true, that the Hunter Biden laptop was actually real, the eyewitness, Mr. Bobulinski, was real?

*The Washington Post* did two stories within, like, four minutes. Did you issue a press release then saying that what happened before was a direct attack on democracy?

Mr. LYNN. No. What we have been doing, Congressman, is focusing on the larger structural problems of our communications system, which also I know that this Committee—Subcommittee has done a wonderful job of actually highlighting those problems and working to solve them, and I believe that's the way to deal with this.

It's not to focus on individual problems, but to focus on the fundamental structures that pose direct threats to our democracy.

Mr. JORDAN. Have you talked to anyone at the FTC about Elon Musk's attempt to buy Twitter?

Mr. LYNN. I have not, Congressman.

Mr. JORDAN. You've not talked to anyone?

Mr. LYNN. I have not spoken to anyone at the FTC about Elon Musk trying to buy Twitter.

Mr. JORDAN. You just issued the press release.

Mr. LYNN. I just want to—if there's any doubt about this, I'm a huge fan of Elon Musk. I think he's done wonderful things for the world. So, I think what he's done with Tesla is fantastic.

I think what he's done with SpaceX is fantastic. I just think you can't have too much power concentrated in the hands of one person and that is pretty much the theme of everything that we do at the Open Markets Institute.

Mr. JORDAN. Do you think—do you agree—it's been announced a few weeks ago that the Biden Administration and the Department of Homeland Security has formed a Disinformation Governance Board? Do you agree with the formation of that board?

Mr. LYNN. I think that there is a problem of disinformation in this country that is, largely, due to the structure of regulation over the platforms that control our communications in this country.

Mr. JORDAN. Do you think it's okay for a government to decide what kind of information, which is exactly what this Disinformation Governance Board—you think that's okay?

Mr. LYNN. I did not say that. I said it is important for the people of the United States—

Mr. JORDAN. Well, let me just ask you really simple. Do you support the formation of the board or not?

Mr. CICILLINE. The time of the gentleman has expired but the Witness may answer the question.

Mr. LYNN. I don't know enough about that particular issue to say yes or no.

Mr. JORDAN. Come on, Mr. Lynn. You can give an answer to that question. Do you support it or not?

Mr. CICILLINE. The time of the gentleman has expired.

I now recognize the gentleman—

Mr. JORDAN. You said he could answer the question. I'm just trying to get him to answer.

Mr. CICILLINE. He answered it already, Mr. —

Mr. JORDAN. I'm just trying to get a yes or no answer, Mr. Chair.

Mr. CICILLINE. I accommodated you as much as I could. I now recognize the gentleman from New York, Mr. Jones, for five minutes.

Mr. JONES. Good afternoon, everyone, and thank you, Mr. Chair, and all our Witnesses. I'm grateful for this opportunity to work with you to improve our economy and lower costs for the American people.

Secretary Reich, it's an honor to speak with you this afternoon and I'm very grateful for your testimony. I want to ask you about some unsolicited testimony that we have received over the last week from one of the richest human beings who has ever lived, Jeff Bezos, Executive Chair of Amazon.

It all started when President Biden tweeted,

> You want to bring down inflation? Let's make sure the wealthiest corporations pay their fair share.

Jeff Bezos, who's enormous corporation paid nothing, nothing, in Federal taxes during the first two years of the Trump Administration and which still pays a lower rate than the average American, thought that he knew better.

He tweeted, quote,

> Raising corporate taxes is fine to discuss. Taming inflation is critical to discuss. Mushing them together is just misdirection.

Mr. Secretary, let me ask you directly, how would making the wealthiest corporations pay their fair share help bring down inflation?

You got to unmute yourself, sir.

Mr. REICH. Congressman, the answer is very direct and easily understood. If corporations pay their fair share, that means that other Americans don't have to pay as much. They can afford such things as childcare, which enables them to be more productive. It

enables most of America, therefore, to generate more output, which brings down inflation.

When you have the second richest man in America saying that the President ought to do this or this and presides—that particular man, presides over a corporation that paid zero taxes in 2018 and over the last four years has paid, as far as I understand, a rate of about 13 percent on one of the largest sort of incomes—corporate incomes—in the United States, if not the world, whereas most Americans are paying a much, much higher rate, you've just got to say to yourself, this is rich, in all senses of that term.

Mr. JONES. Well, thank you. A few days later, we heard from Mr. Bozos. We heard more from Mr. Bezos, who has so much money, by the way, that he could give every Amazon employee a $100,000 bonus and still have as much in the bank as he had when the pandemic began. Can you believe that?

Mr. Bezos continued,

> Well, in fact, the Administration tried hard to inject even more stimulus into an already overheated inflationary economy and only Manchin saved them from themselves. Inflation is a regressive tax that most hurts the least affluent. Misdirection doesn't help the country.

I had no idea that Jeff Bezos, who could singlehandedly fund pre-K for every child in America, but would rather spend his money on vanity trips to space and cowboy hats cared so much about the, quote, "least affluent."

Mr. Secretary, in your written testimony you noted that investing in care would help reduce inflationary pressures. Would you explain for us how the provisions of Build Back Better would help the American people deal with inflation?

Mr. REICH. Absolutely, Congressman.

First, if we had and every American family had access to good high quality childcare, that would enable so many more people in the United States to work, to be productive, because they are productive, therefore, the entire economy would be larger. Therefore, we would have less inflationary pressure.

There are many other provisions in the Build Back Better bill that will also improve overall productivity. It's also the case with regard to the bipartisan infrastructure bill. Infrastructure is another public investment.

All these public investments are investments in the future productivity of the United States and, as such, they improve the capacity of American workers to do better and simultaneously enlarge the capacity and output of the United States, all anti-inflationary steps.

Mr. JONES. Thank you, Mr. Secretary.

Build Back Better and the bipartisan infrastructure law sound like great pieces of legislation to lower crisis for Americans and to lower inflation in this country.

I yield back, Mr. Chair.

Mr. CICILLINE. The gentleman yields back.

I now recognize the gentleman from Louisiana, Mr. Johnson, for five minutes.

Mr. JOHNSON of Louisiana. Thank you, Mr. Chair.

When Joe Biden was sworn in as President, the average retail price of gasoline was $2.38 a gallon. On Monday, according to AAA,

it was $4.48. Many parts of the country have seen much higher prices, and this is not an accident. These are policy choices that led us here.

Nor is it primarily due to Russia's war on Ukraine, as President Biden would like everybody to believe, because gas prices had already risen 48 percent since he took office.

The rise in price is the direct result of this Administration's assault on the oil and gas industry. On his first day in office, he canceled the Keystone XL pipeline. That was expected to bring more than 800,000 barrels of oil from Canada to the U.S. every single day.

Not even a week later, President Biden signed his Executive Order to put a moratorium on oil and gas leasing on Federal lands, and just last week, the Administration cancelled three lease sales in the Gulf of Mexico and Alaska. Why? Because they're pursuing a radical environmental agenda for the Green New Deal.

It's destroying our economy. It's killing American consumers and they seem not to care.

Ms. Onwuka, it seems to me that the Biden Administration spends a lot of time blaming oil companies for prices, but isn't that a little bit hypocritical since they want to make it harder to produce fossil fuels?

Ms. ONWUKA. Well, absolutely. I think what we're seeing is a war on energy right now, particularly fossil fuels. Let me read you an interesting quote from someone. I meant to get to it earlier and I couldn't find it. This person said—this gentleman, actually Paul Lamier,

> The price of home heating oil under Trump was about $2.25 per gallon. Under Biden, now I have to pay $5.09 per gallon. To fill up my gas tank with Trump and his energy independence policies I was paying $2 per gallon. Under Biden I spend $4.45 per gallon. This is insane and has to stop.

I think this represents a lot—the perspective of many Americans who recognize when you are pursuing an agenda, whether it's clean energy or whatever you'd like to call it, there is going to be tradeoffs that has to be made, and when you continue to make one particular or two particular industries your target—your enemy—making it difficult for companies to be able to produce more oil now and in the future, obviously, it's going to have some negative impacts and that shows up in the prices.

You laid out some of those examples—the cancellation of the Keystone XL pipeline, the freezing of new gas drilling leases on Federal land. There's so many more.

It's so interesting, when you look at the totality of all these policies, it bears out at the gas pump, frankly.

Mr. JOHNSON of Louisiana. It does, and the great irony—the tragedy of all of it is that if you turn down domestic supply, if you make it impossible for us to meet the demand for fossil fuels here—oil and gas—it means that we got to go hat in hand to OPEC, Russia, and Saudi Arabia to get our demand met with the supply from overseas.

Guess what? The supply overseas is produced in a much less clean and efficient manner. So, ironically, they're doing more harm to the environment with these crazy policies. It makes no sense.

Last week, the Administration released the Biden/Harris inflation plan to deal with inflation, right. It includes increasing fuel economy regulations for cars and a pie in the sky goal of ensuring, quote, "one of every two cars sold in 2030 burns no fossil fuels."

It's odd to me that our President and Vice President really think that imposing more regulations on our auto industry is actually going to somehow lower the costs.

What's your reaction to this plan? How ridiculous is this? Does it look—is it as ridiculous as it looks on its face?

Ms. ONWUKA. I think it is. I think when reading through the plan, I didn't see anything that's not the—any policies that are going to actually reduce costs today or in the future, frankly, and whether you're talking about energy policies or some of the other things that are included as well as some of the ideas, including Build Back Better that we have heard today, are supposed to be anti-inflationary.

Well, they're the definition of inflationary when we consider what the American Rescue Plan did in adding points to the inflation rate right now. So, I don't see that the inflation policy that the White House has put out is going to make anything better.

I think it's going to make things worse.

Mr. JOHNSON of Louisiana. This so-called anti-inflation plan also mentions fuel economy regulations for trucks. So, imposing new requirements on the trucking industry seems to be a drag on our economy, given the important role that truckers play in the supply chain.

So, do you think we should be fighting rising prices by making it harder for trucks to deliver the goods that we use every day?

Ms. ONWUKA. Absolutely not. When I spoke to a trucker in Missouri—he actually owns a trucking business and he trains new truckers—and he said one of the challenges right now that they're facing in the trucking industry, they can't get manpower, in part, because of wages, but also because of the Federal regulations when it comes to what truck drivers can do, how they have to work, how their compensation is tied to stops and the amount of driving that they can do.

So, when we're in the middle of a pandemic with shortages, with difficulties getting goods from our ports to our store shelves, the last thing we need to do is increase regulations on the brave people who are out there every day getting our goods to our store shelves, and this is from a trucker in Missouri, someone who knows the industry quite well.

Mr. JOHNSON of Louisiana. The pain is felt across the board. We need to reverse these policies. I yield back.

Mr. CICILLINE. The gentleman yields back.

I know that we had Mr. Jeffries and Mr. Raskin on the screen, but I want to go next to Mr. Raskin. He is back. I recognize the very distinguished gentleman from Maryland, Professor Raskin, for five minutes.

Mr. RASKIN. Thank you very much.

The biggest producer of baby formula domestically is Abbott Labs, which controls 40 percent of the market. In February, they recalled formula produced at their Michigan plant in Sturgis because of bacterial contamination. That plant has been shut down

ever since. At the end of March, instead of investing in making its manufacturing plant safer, Abbott Labs bought back $2.3 billion in an effort to boost share prices.

So, Mr. Lynn, what are the circumstances that would incentivize Abbott to spend money on enriching investors instead of innovating or increasing production at a time of crisis?

Mr. LYNN. Thank you, Congressman.

I mean, the incentives that would lead a corporation to favor payouts to its investors, rather than the building out of new capacity at a time of crisis, is simple. They control the marketplace. They have no fear. No one is challenging them.

So, if you have no fear—

Mr. RASKIN. You are attributing this to a lack of competition, then, to concentration in the market, is that right?

Mr. LYNN. Absolutely. Actually, I think these numbers, what you will see often when we look at numbers that show certain corporations 40 percent, another one has 35 percent, often those numbers are much higher within certain regions. In agriculture markets, you often see 100 percent consolidation in particular regions when a single corporation buys all the production of chicken or milk, or whatever. So, yes, consolidation is at the heart of all of this.

Mr. RASKIN. Thank you.

Professor Reich, do you agree that is a structural problem, that a company like Abbott would not be investing in its plant to expand production and capacity, but would be doing a buyback. Is that a problem related to concentration in the field? If so, what can Congress do to eliminate these kinds of perverse incentives for companies to buy back stock, rather than invest in industry?

Mr. REICH. Congressman, there are two problems, and they are related. One has to do with concentration. As we have been talking about, in the baby formula industry you have a very, very few companies, and Abbott is the largest. So, that it makes the entire system and American consumers very vulnerable when you have only one major producer, and that one major producer is shut down for a good reason, because it was not investing in quality control.

Which gets to the second point having to do with buybacks. Before 1984, the Securities and Exchange Commission did not allow buybacks. This was considered to be market manipulation. Ronald Reagan, President Reagan's Securities and Exchange Commission decided that it was not market manipulation, allowed corporate buybacks. What we see now is a record amount of buybacks. Adjusted for inflation, last year was record; it looks like this year, according to Citibank, it is going to be even a larger amount of buybacks.

Well, instead of making investments in their plant, making sure that their plant was safe, what we saw with regard to this Abbott Nutrition is that they simply wanted to make their investors richer by buying back shares of stock. We are seeing this across the country.

These two problems are, indeed, structural problems. What Congress can do is not only enforce and strengthen the antitrust laws, but also can make buybacks either illegal or tax buybacks.

Mr. RASKIN. Well, let me pursue that for a second, because I feel like my eyes are opening here. So, there is testimony that, between

2009–2018, in that decade, firms in the S&P 500 distributed 91 percent of their net income back to shareholders in the form of stock buybacks and dividends. So, there was paltry sums going into research and development, new facilities, training new workers, and so on.

So, this, in fact, is, I think you are suggesting, a central problem, not some kind of peripheral issue. Is that right?

Mr. REICH. Yes, this is a central problem; it is a growing problem.

Mr. RASKIN. Well, I appreciate your testimony very much.

Mr. Chair, thank you for calling this really urgently important hearing that goes right to the question of what we are dealing with in the baby formula crisis.

I yield back.

Mr. CICILLINE. The gentleman yields back.

I now recognize the gentleman from California, the distinguished Mr. Issa, for five minutes.

Mr. ISSA. Thank you, Mr. Chair.

Ms. Onwuka, I am confused. A little while ago, I understood some of my Democrat colleagues, your other panelists, to say that, if you put money back in the consumers' hands, they will spend it in a way that will reduce inflation. Did you hear that?

Ms. ONWUKA. I think I did, yes, sir.

Mr. ISSA. So, this is interesting. A stock buyback and dividend payouts, that puts money in the consumers' hands, sometimes directly, sometimes through pensions, and so on. A tax cut puts money back into the individual's hands. All these things to put money in individual hands do seem to be well worthwhile, and we certainly encourage it.

Let's go through this. Isn't one of the two problems right now we have in inflation, one is excess demand by lots of money being printed out of the government, too much money, if you will, being out there, and supply chain interruptions? Those are the two biggest reasons, right?

Ms. ONWUKA. Yes.

Mr. ISSA. The third being the tremendous price increase of petrochemicals because of supply being limited by the policies of this Administration.

Ms. ONWUKA. Yes.

Mr. ISSA. So, I am trying to understand. We are having a hearing on antitrust, and I have heard no testimony so far about these companies making dramatically excess profits. Amazon has been bashed constantly, when, in fact, most of its divisions don't make any profits. The one that makes a lot of profits, which is the one that right now is running the servers probably for this hearing, its biggest customer is the government.

So, am I missing something or are we having an antitrust hearing so we can bash corporate profits, even if they are distributed to the consumer?

Ms. ONWUKA. From what I have heard, yes, I have heard quite a lot about profits today. I have not heard a lot about demand, excessive demand, and the source of that being the Federal government in generous stimulus, probably unnecessary stimulus, at different times over the past couple of years.

Mr. ISSA. Well, I would like to go back to supply chain. Supply chain disruption, some of it is outside of our control. What is going on in China, what is going on in Russia and Ukraine somewhat is out of our control.

If you would comment on the rising fuel prices of all sorts in the United States, how much of that is within our control and could be changed? Oh, by the way, those are very large companies. They have large market share. We will just have a given of why we are asking.

Ms. ONWUKA. Well, it is certainly, as I mentioned earlier, the top five largest companies, oil-producing companies in this country only control about 36 percent of the market share. So, there is still a lot of competition in the oil industry. That is number 1.

Number 2, yes, rising prices, oil prices certainly go into everything from transportation costs, rising costs there, to just heating your home, as we talked about before. So, those are all going to be underpinning a lot of the inflation.

When we talk about why there are supply chain disruptions, we also have to talk about the labor cost and the fact that labor has been—people have been sitting on the sidelines of the economy. Why have they done that? Again, that goes back to demand. When you pay people to stay at home, when you forgive their or put on hold their student loan payments, you are putting a lot of money in the hands of regular people. That is fine, but that is going to drive demand. I haven't heard a lot of solutions on how we address that.

Mr. ISSA. No hearing in Congress these days is complete if you don't talk about climate change. So, let me bring the subject up.

Currently, Germany and other countries, because of the situation in Europe, are turning back on coal-fired plants. Huge amounts of additional coal are being burned as a result of current disruptions. The United States is unable to answer with additional clean natural gas or other fuels because of policies. How much of what would drive down the global price of oil and natural gas, and eliminate the need for relatively high carbon coal, would occur if the policies of this Administration were at least favorable to the finance of those types of enterprises?

Ms. ONWUKA. Well, I think we can look back at President Trump's Administration, when we were a net exporter, right, of natural gas. So, to put us back in a position where we are not vulnerable to the whims of other countries, even dictators, but in a position where we can actually help the world not be vulnerable to those same geopolitical issues, I think that is where we need to get back to. Policies that take us away from there that we have seen over the past year, unfortunately, put us in that vulnerable position.

Mr. ISSA. Mr. Lynn, there won't be time to ask you the question you didn't answer for the Ranking Member—

Mr. CICILLINE. The time of the gentleman has expired, but I will let you—

Mr. ISSA. I hope in the future that we would answer a question yes or no when it can be answered yes or no, and then, go on to the rest of it. I was deeply disappointed. I know you are better than that.

Mr. CICILLINE. I will say, Mr. Lynn, I was gratified to see that you are a man of integrity, you answered the question truthfully, and despite the fact that the Member of Congress didn't like the answer, you pressed. I admire you for that.

So, with that, I now recognize the gentlelady from Washington, Ms. Jayapal, for five minutes.

Ms. JAYAPAL. Thank you, Mr. Chair.

The pandemic has hemorrhaged the global supply chain. Corporate monopolies have worsened conditions. This past year, corporate monopolies in various industries made record profits, and we are going to keep talking about these profits because they are crucial to this discussion. At the same time, essential products like meat, toilet paper, and baby formula flew off the shelves and rose to outrageous prices.

My home State of Washington currently has the fourth highest gas prices, with prices in King County, where I live, currently at $5.07 per gallon. Oil and gas companies, as you have heard my colleagues on the other side talk about, want to try to attribute these prices to pandemic delays and wartime sanctions, or to the Biden Administration itself, instead of to profiteering. Let's look at the facts.

First, Shell made $9.1 billion in profit from January–March, almost three times what it made in the same period last year, while Exxon raked in $8.8 billion, a near threefold increase over 2021.

Second, even before the pandemic, U.S. producers lowered production and raised prices to increase profits for investors. Even though demand has increased, production of oil remains slowed. One CEO even stated that, even if the price goes to $200 a barrel, they are not going to step up production.

Dr. Mabud, why is oil production still experiencing these delays? What's going on?

Ms. MABUD. Yes, thank you for this really important question.

Oil and gas companies, as you note, are making record profits, all while families around the country are struggling to get their kids to school and pay for their drive to work. As gasoline prices increased almost 50 percent in 2021, the three biggest U.S. oil companies benefitted from those higher profits and prices. They saw their previously negative profits jump nearly $87.5 billion, while boosting shareholder handouts by $4.5 billion in 2021, and that trend has only continued in 2022.

Let's be clear. This is not about rising input costs. Even as the price of crude has started to come down in recent weeks, the gas prices have stayed sky-high, and consumers are really paying the price. Large oil companies are simply choosing to keep oil prices high, despite lower crude prices, to pad their bottom line and to pay out to their shareholders.

Ms. JAYAPAL. Thank you.

Dr. Reich, big oil has achieved its highest profits in a decade, as many people have pointed out. Twenty-eight major fossil fuel businesses made a combined $93.3 billion in the first three months of 2022, a 127 percent increase from the same period in 2021. What have corporations done with these profits and why don't we see them reflected in the average American's price at the pump?

Mr. REICH. Well, the simple answer, Congresswoman, is that they have bought back their shares of stock in an effort to raise their stock prices. This is not a new phenomenon, but it is new in the sense of how much they are doing right now. They are not pouring these profits back into production. They are not pouring the profits back into higher wages. They are not pouring the profits back into research and development. They are pouring the profits into raising share prices.

In terms of the United States economy overall, that is not a plus. In fact, the question that all of you, this hearing is really focusing on is quite simple and direct. When corporations are so flush—that is, they are enjoying the largest profits in 70 years—why are they raising prices? They should not be raising prices, particularly when they are just those profits to turn around and buy back shares of stock. American consumers are paying the price.

Ms. JAYAPAL. Exactly the right question.

Mr. Lynn, gasoline is not a regulated commodity, which means that producers and retailers are free to charge whatever price they choose. Big oil blames pandemic delays, the Russian invasion of Ukraine, but prices were rising long before Russia's invasion. How has the freedom of big oil to set their own prices impacted the middle-class and lower-income earners?

Mr. LYNN. Thank you, Congresswoman. You cut to the heart of the issue here.

What we see is a remarkably weirdly structured system with oil. You see a series of bottlenecks, starting with OPEC, and you see it with the majors who actually have control over most of the big wells around the world. Then, you see a power at the concentrated level of refining. There has not been a new refinery open in the United States since 1978. It is the same footprint it was in 1978.

Then, you have the commodities markets in which, on top of this deeply industrialized system in which the amount of oil can be guaranteed pretty much week after week, month after month, year after year, it is industrialized. Yet, then, we have the prices jumping up and down.

Ms. JAYAPAL. Thank you.

Mr. LYNN. So, the market itself, the market structure is actually one of the places we want to be looking at because the market doesn't make sense.

Ms. JAYAPAL. Well, thank you.

Dr. Mabud, despite the suggestion—

Mr. CICILLINE. The time of the gentlelady has long expired.

Ms. JAYAPAL. Okay. Thank you. I couldn't see the time clock. Thank you, Mr. Chair. I yield back.

Mr. CICILLINE. The gentlelady yields back.

I now recognize the gentleman from Utah, Mr. Owens, for five minutes.

Mr. OWENS. Thank you. Thank you so much.

Utah is one of the most vibrant and fastest-growing economies in the nation, thanks to a strong, well-educated, trained workforce, booming tech industry, and innovative collaboration between business and government. So, it is especially crushing to see the inflated cost of living in Utah at 10.2 percent, which is two percent above the national average.

Unfortunately, we have returned to the 1960 days of Carter, a time when our government forgot the basic 101 of economics and the impact of hyper-spending and Federal price controls on a recovering economy. As it was with my generation in the 1970s, today's generation of young Americans will see in real time the impact of Democrats' failed economy and economic policies. Everything costs more—rent, food, gas, clothes, and vacations as loss of income. They will never forget this moment, and their bank accounts won't, either.

As it was with President Carter, history will not treat kindly the Biden Administration and a Democratic-controlled Congress' policies of 2021–2022. They are robbing hardworking American men and women of their wages and hurting their families.

The constituents I hear from on a daily basis consider the increased cost of living a very serious problem. The buck stops at President Biden and his Administration, who has had missteps from day one. He destroyed America's energy independence by closing the Keystone Pipeline, pulling our own petroleum reserves, and then, selling the oil to China—until last week, stopping oil leasing in Alaska and the Gulf of Mexico, and then, blaming the oil industry and the local service stations for price gouging.

It is worth taking note that this week gas prices hit another record high. You can't make this stuff up. At the end of the day, President Biden and his policies did this. I love the title of this hearing, "Rebuilding America's Economic Leadership." If we are to rebuild America's leadership, it is up to our President and the Democratic Party to own up to their own disastrous decisions and change their ways.

Mr. President, it is time to show true leadership and stop the blame game. Pointing the fingers at everybody else for every chaos, a self-created chaos, is not working.

Ms. Onwuka, it seems like, first, in Utah we had prices of gas down to $2, a little bit more. In California, it has always been high, $4–5 more. Is it because they are price gouging in California, and they are not doing it in Utah? I am trying to figure out what the difference is there. Is it policies or just because these bad oil companies are doing in the California people?

Ms. ONWUKA. I think, at the State level, policies around taxes on gas, on gasoline, come into play. Regulations, when it comes to the gas and oil industries, also come into play. So, I suspect that is what is going on in the different locations.

Mr. OWENS. Do you have anything else you want to add to the fact that it appears that those who were taking risks, providing services, and doing it at a much cheaper price just about two or three years ago, why they are now the enemy of the other side of the aisle here? Any comments? Any thoughts?

Ms. ONWUKA. I think that it is sad that we are at the point where our Federal policy seems to do a disservice to those people who are risk-takers, who are willing to invest, to start companies. We are talking about antitrust. So, when small companies that provide great value build itself up to a point where it can be bought, acquired by another larger company, and then, create added new value to the consumers, who raise higher prices and new kind of

products. So, I do think it is a disservice that we are doing to these companies.

Mr. OWENS. I look forward to the day that we educate our young people again the way the free market works.

Ms. ONWUKA. Yes.

Mr. OWENS. The more competition, the lower the price, the better the product—that is the way that has been the American way. Envy has never worked for building a nation.

I just want to let the other side of the aisle know that Robin Hood is a good movie, but it doesn't work. It never has. You look to the Robin Hood attitude of taking from the rich and give it to the poor. It is what has happened in Cuba. It is what happened to Venezuela. It is what happened to Russia. Any place there is tyranny, you have this idea: You take away from the risk-takers, the builders—by the way, by people who have never built a thing. Those who have never built a business never understand the risk that it takes and how it is to reinvest. Those who reinvest and look for a vision and a future, they will do it in a very smart way. Unfortunately, those who have never done it will never get it.

So, I look forward to being in a position, as we get into this new Congress, that we are going to start teaching our young people the free market once again, be proud of who we are, and to applaud the risk-takers and the builders in our country that make our country great.

Thank you so much, and I yield back.

Mr. CICILLINE. The gentleman yields back.

I now recognize the distinguished Chair of the Democratic Caucus, the gentleman from New York, Mr. Jeffries, for five minutes.

Mr. JEFFRIES. I thank you, Chair Cicilline, for your continued leadership with respect to making sure that we can right-size our economy, free market economy, well-regulated, but one that works for everyday Americans, not against them, and appreciate your continued leadership in the context of these hearings.

I think what we hope to accomplish, generally—certainly, my perspective—is not to take from the rich to give to the poor, but to stop the rich from taking the productivity gains from everyday Americans, particularly, over the last four decades, and basically, hoarding it for themselves in a manner that has undermined the great American middle class and those who aspire to be part of it.

Secretary Reich, thank you for your service over the years.

Would it be fair to say that, effectively, while the productivity of the American people has increased dramatically over the last four decades—I think in excess of 275 percent—basically, less than 10 percent of those productivity gains have actually been received by everyday Americans, by working-class folks, and by the middle class or those who aspire to be part of it? The overwhelming majority of those productivity gains have gone to the privileged few?

Mr. REICH. Yes, in the short answer, Congressman. I think that what we are talking about here in terms of markets that are rigged, that are, essentially, noncompetitive, in which a handful of companies can easily coordinate, and do coordinate, to raise prices, and are doing it even more under the cover of inflation, is another way, another symptom, of the underlying problem that you are pointing out.

We have not seen this degree of inequality in terms of concentrated income and wealth at the top of America in over 100 years. The result is that, although the country is much more productive than it used to be five, or 10, or 40 years ago, the typical American is not doing that much better, adjusted for inflation.

To make this a partisan issue, to blame one party or another, does a disservice to the United States. We have got to get and adapt the structure of our economy, and the laws and regulations governing the economy, particularly antitrust, to a new era in which we have a record degree of corporate profits, corporate concentration, and corporate buybacks.

Mr. JEFFRIES. Well, thank you for that clarification. I think, foundationally, we shouldn't have this particular discussion at this moment in isolation as it relates to the profit-taking that is occurring and clear evidence that certain corporations are taking advantage of an inflationary moment that may exist for a variety of reasons, and they will be connected to supply chain dynamics emanating from the pandemic, to continue to pad their profits, to the detriment of the American consumer. So, there is not an isolated situation. We have actually seen a march in this regard for 40 years.

No one is suggesting that the American people should somehow have a windfall. The American people's productivity has earned them a raise; they just haven't gotten it. Instead, what they have actually gotten in this moment are higher prices by individuals seeking to take advantage of the moment.

Dr. Mabud, corporations are seeing record profits, including oil companies and some of the meat processors, and others. These savings, these profits, aren't being passed along in any way toward the consumer. Can that be explained?

Ms. MABUD. Absolutely. Groundwork has been listening to hundreds of earnings calls. I believe that we should listen to what the CEOs are telling us, right, which is that they are really eager to jack up prices on consumers, all while bringing in record profits and issuing stock buybacks for their shareholders.

I mean, EPI has done some great analysis here that shows that 54 percent of the price hikes that consumers are seeing are due to corporate profits, whereas, only 38 percent and eight percent, respectively, are due to input costs rising and wages. So, the delta here, the difference between prices and profits is going straight into the pockets of CEOs and shareholders.

Mr. JEFFRIES. Thank you very much to all the Witnesses.

I yield back my time.

Mr. CICILLINE. The gentleman yields back.

I now recognize the gentleman from Georgia, Mr. Johnson, for five minutes.

Mr. JOHNSON of Georgia. Thank you, Mr. Chair.

In the beef-processing industry, four dominant companies control 85 percent of the market. Wall Street has consolidated into five banks, and airlines have merged into just four major airlines. We have three major cable companies controlling broadband and three dominant baby formula companies controlling 95 percent of the market.

This widespread consolidation throughout the marketplace has allowed these dominant firms to set the rules of the game, and this has created an interconnected and very inefficient supply chain that has endangered the lives and strained America's wallets during this pandemic—all in the name of profit.

So, I want to thank you, Mr. Chair, for holding this hearing, and I look forward to an answer to this question from Ms. Onwuka. Ms. Onwuka, you would not disagree with me that there is a correlation between rising gas prices and rising oil company profits, correct?

Ms. ONWUKA. Thank you, Congressman.

When inflation happens—

Mr. JOHNSON of Georgia. Is that correct? Is that correct—

Ms. ONWUKA. Sorry, I was just going to—

Mr. JOHNSON of Georgia. —that there is a correlation between rising gas prices and rising oil company profits?

Ms. ONWUKA. Profits and inflation go hand-in-hand.

Mr. JOHNSON of Georgia. Well, profits and rising costs go hand-in-hand, too, do they not?

Ms. ONWUKA. Profits and inflation can go hand-in-hand, and when the prices fall, sir, also, you see profits fall. Thank you.

Mr. JOHNSON of Georgia. Well, Ms. Onwuka, let me ask, since you don't want to answer that question, let me see if you will answer this question. To what degree has oil company price gouging contributed to the spike in gas prices?

Ms. ONWUKA. I don't think that there is evidence that you can point to, or anyone can point to, to say that it is price gouging that is leading to—

Mr. JOHNSON of Georgia. Well, let me ask Mr. Reich the same question. What do you think, sir?

Mr. REICH. I am sorry, Congressman, could you repeat that question?

Mr. JOHNSON of Georgia. To what degree has oil company price gouging contributed to the spike in gas prices?

Mr. REICH. Well, it has contributed substantially in the sense that, if we define gouging, price gouging, as using your market power, your power to raise prices when you don't have to raise prices, when you are, basically, having enough profits that you could easily absorb the increase in cost of inputs, which in the oil company we are talking about crude oil prices going up, that is price gouging—taking advantage of an inflationary environment to hide the fact that you are raising your prices and costing consumers more, when, otherwise, you would not; you certainly, in a competitive system, you would not be doing that. That would be my definition of gouging, absolutely.

Mr. JOHNSON of Georgia. Thank you.

The Economic Policy Institute recently observed that, since the onset of the pandemic, nearly 54 percent of the spike in the cost of goods and services can be attributed to increased corporate profit margins. Mr. Reich, if our markets were truly competitive, it stands to reason that companies would keep their prices down to prevent competitors from stealing customers, correct?

Mr. REICH. Absolutely. That is kind of a principle that I think is easily understood. If you are in a competitive market, you are

going to do everything you possibly can do to keep your prices down. Otherwise, competitors are going to grab market share away from you.

That is what we see in the competitive parts of our economy. Too much of our economy right now, though, is uncompetitive, dominated by big companies that don't have to worry about raising prices and losing market share.

Mr. JOHNSON of Georgia. Thank you.

My colleagues on the other side of the aisle have said that these price hikes are due to inflation, but, Mr. Reich, you have written extensively on this, and you disagree. Why do the increases that we see have less to do with inflation and more to do with corporate power to raise prices?

Mr. REICH. Well, they have to do with corporate power to raise prices in the sense that corporations now—and we know this—have a higher degree of profitability than they have had in 70 years. Now, where are those profits coming from? The profits are coming partly from an increase in pent-up demand after the pandemic, but also from the fact that they don't have adequate competition.

If they had adequate competition, they would keep their prices down. They have the power to raise their prices. They have been saying on earnings calls, again and again, they have been crowing about it; they have been boasting about their ability to increase, maintain and increase their profit margins using the cover of inflation. I think that is the critical point here. They don't want to be seen as raising their prices to increase their profitability, but they are using inflation as an excuse for raising prices and increasing their profitability.

Mr. JOHNSON of Georgia. Thank you, and I yield back.

Mr. CICILLINE. The time of the gentleman has expired.

I will now recognize the distinguished Ranking Member of this Subcommittee, Mr. Buck from Colorado, for five minutes.

Mr. BUCK. Thank you, Mr. Chair.

Mr. Lynn, first, thank you for talking about mining—a difficult subject for folks on one side of the aisle to talk about and a little bit easier on my side of the aisle, and really a head-scratcher sometimes when we think about rare earth metals and the fact that many of those are no longer mined here in the United States. Most of those have been transferred—and I think you mentioned this with silicon—have been transferred to China. Most of the production has been taken up in China.

Any guess whether we do a better job of mining in a clean way here in this country or whether China does a better job of mining in an earth-friendly way?

Mr. LYNN. This is pure speculation, but I actually would assume that mining in the United States will be more highly regulated and will result in a cleaner outcome.

Mr. BUCK. I would make the same assumption. I am not a miner, and so, I am not sure, but that would be my assumption.

The baby formula plant, the Abbott plant, was closed on February 17th. You have mentioned that Abbott has a 40 percent market share, and I think that we can all agree that that plant produces substantial amount for Abbott Labs. I don't think anybody is disagreeing with closing the plant, given what happened. Was it

foreseeable that, if you close a major producer like that, we would have a shortage at some point in the future, whether it is a month or three months?

Mr. LYNN. Yes, it was absolutely foreseeable. We have seen this many times in the past. I mean, actually, in my book Cornered, I spent a long time looking at what happens with the shutdown of a single cat food facility. This was 2007, and it, basically, stripped out all the cat food across the entire nation. It was a shutdown of a single facility, but almost every single brand was purchasing out of that one facility.

Mr. BUCK. Ms. Onwuka, I want to ask you a question. You mentioned—and I am hoping, I wrote this down, and I hope I got it right—you don't hear a lot about solutions for demand. I think that is what you said. I have got one, and I am just wondering if you would comment on it.

Ms. ONWUKA. Yes, Ranking Member. I mean, I think if—

Mr. BUCK. Well, let me ask you the solution that I have, and then, ask you to comment on it. My solution is that the Federal government stop spending so much darn money.

Ms. ONWUKA. I think that is a great solution.

Mr. BUCK. There you go. We agree. Why?

Ms. ONWUKA. Because we have a track record, and we can look back over the past year, in particular, to see that, when the economic conditions of the country are improving, that is not the time for excessive stimulus—whether that is expanding entitlements, whether that is in expanding direct payments to American families—because it becomes a disincentive to work, particularly if it is unattached to work requirements.

So, that is what we saw driving the labor shortages, but we also saw a demand, not just return to pre-pandemic levels, but exceed that. So, demand is driving, is chasing after too few goods being supplied by the country.

Mr. BUCK. I want to get to another line here. My daughter, son-in-law, and daughter-in-law are all in the oil and gas industry. If I don't come to their defense, Thanksgiving dinner will be a very quiet, quiet dinner.

An oil and gas company, from the time they apply for a permit to the time they put a drill bit in the ground is about one year. Once that drill bit is in the ground and they start producing, they have a life—and it varies—but the lifetime of a well, the production actually starts decreasing dramatically after the one-year point.

So, to say that oil and gas companies have some control over the profit, when the oil is flowing, a certain amount of oil is flowing, and the price is more determined on a world market, especially by OPEC and other countries, I think is unfair. I just wanted to give you the opportunity to comment on that, understanding my Thanksgiving dinner dilemma.

[Laughter.]

Ms. ONWUKA. Thank you, Ranking Member. I don't want you to get into any trouble with your children.

I think it is very interesting when we talk about signals. Federal policy can send signals to industries about the intentions when it comes to, in this instance, energy, and what the approach should be to treating different types of companies within industries dif-

ferently than others. I think the signal has been sent when it comes to oil and gas and natural gas, that this is not going to be a friendly environment for them to continue to produce.

So, when you talk about cancelling leases to be able to drill, when you talk about cancelling pipelines, when you increase the regulations to make it so onerous to go into production, then, obviously, that is going to have a negative impact, both in the short term, but also in the long term.

As I mentioned earlier, we should be in a position of energy strength, not of energy vulnerability, particularly to other countries.

Mr. BUCK. I thank you.

I yield back.

Mr. CICILLINE. The gentleman yields back. Thank you.

Secretary Reich, critics of the Biden Administration have tried to use inflation and supply chain disruptions, and even Russia's attack on Ukraine, to score some political advantage. Sadly, I think you saw some of that during this hearing.

So, I am going to ask you very directly, because of your extraordinary experience and scholarly work, are government spending, taxes, regulation, and workers causing the inflation and supply chain fragility that we are facing? If not, what factors are contributing to the current crisis?

Mr. REICH. Mr. Chair, the largest factors have to do with the pandemic, the end of the pandemic, and the sudden increase in pent-up demand for goods, and second, with the end of the pandemic, all sorts of supply chain issues, both domestically and internationally, because it is very difficult to crank up an economy relatively suddenly. Maybe not, it doesn't feel like relatively suddenly. When you look at the complexity of those supply chains, it is relatively sudden.

Now, where does that leave the issue of concentration? Undoubtedly, concentration in terms of corporations that are not competitive is adding to the problem. It is not, in my judgment, the core problem or the first or only problem, but it is a large and growing problem. It is a large and growing problem for the economy overall.

As we see with the baby formula problem, it is not just with regard to increasing prices; it is also with regard to vulnerability to plants that have to be shut down or supplies that have to be in some way constrained. If we are dependent on fewer and fewer big corporations, we are more and more vulnerable.

So, realistically—and putting the politics aside—this Committee, and also the Senate Antitrust Subcommittee—really does have a lot of work to do to bring antitrust laws up-to-date and make sure that we have bold and strong antitrust enforcement and laws that enable our antitrust enforcers to break up the big monopolies that now dominate the American economy.

Mr. CICILLINE. Thank you very much, Mr. Secretary.

Dr. Mabud, I want to respond very directly to the claim that was made by Ms. Onwuka about there being a lot of competition in the oil industry. Over half of the world's oil supply and 90 percent of the world's oil reserves are controlled by a cartel of nationalized oil companies known as OPEC—OPEC Plus, actually—which is led by Russia and Saudi Arabia.

In the private sector, super-major oil companies are vertically integrated at every level of the supply chain; thus, exerting influence far beyond what their market share in any single market might suggest. The oil and gas industry are hardly, in my view, a model of competition, as demonstrated by the fact that big oil has seen its highest profits in decades.

So, I would like you to respond directly to that claim that there is lots of competition in the oil industry, and what is the principal cause of the increase at the gas pump?

Ms. MABUD. What you point out is exactly correct. This is a deeply, deeply concentrated industry, and each of these companies have enormous amounts of market power that they are using in this moment, right?

I mentioned before crude prices are starting to come down; prices at the pump are still high. What we are seeing is that, in Q1, BP posted its highest quarterly profit in a decade. ExxonMobil doubled its profits from last year to $5.48 billion, and Chevron reported a quarterly profit of $6.26 billion, which is over four times its earnings of $1.4 billion over the first quarter of last year. So, keeping gas prices sky-high is easy for these companies because they have such market dominance and are able to assert that market dominance.

Mr. CICILLINE. Thank you so much.

Mr. Lynn, you testified that just a generation ago the United States boasted the most advanced, robust, and thriving industrial system in the world, thanks to antimonopoly policy and other competition tools. In my home State of Rhode Island, manufacturing is really written into our DNA—the birthplace of the Industrial Revolution, where good-paying manufacturing jobs helped build our middle class, but over the years we have lost these jobs to other countries.

So, beyond reviving our competition system, what reforms do you recommend for reclaiming America's identity as leaders in manufacturing and innovation?

Mr. LYNN. The use of trade policy to break all concentrations of power and control and capacity in places like China that do two things. They threaten us because we become dependent on an antagonistic nation for fundamental supplies. It also allows them to jack up prices. There is a vitamin C antitrust case which focuses on the way that the Chinese vitamin cartel has jacked up this fundamental supply.

So, trade has always been one of the most important tools that we have used to deal with concentration of power and create opportunity for manufacturers here in the United States to compete. We should have a robust protectionist trade policy that protects the American people from concentrations of power and protects the international system on which we depend for promoting a peaceful international set of democracies.

Second is corporate governance. We need to use corporate governance to, basically, ensure that the corporations work for us.

Mr. CICILLINE. Great. Thank you so much.

I want to thank the Witnesses for their testimony today and my colleagues on both sides of the aisle.

This hearing has made clear that with concentrated power comes concentrated risk, whether it is America's energy supply or the availability of baby formula. We have heard this story over and over again.

Earlier this year, this Subcommittee examined the harms caused by high levels of economic concentration in America's food supply chain. We heard compelling testimony from Witnesses that monopoly power was leading to high prices and food shortages for consumers. Supply chains are brittle or broken. Farmers and ranchers are struggling to survive, but the largest meat packers and distributors have raked in record profits.

All options must be on the table. We need to update and modernize our antitrust laws, and then, give enforcers the resources they need to stop anticompetitive conduct and ensure the marketplace is competitive.

We need to pursue criminal charges for corporate executives who engage in cartel activities, such as price fixing, and we need to prohibit price gouging and explore whether tools like price controls can be used to address inflation and corporate profiteering.

We must bring other policy tools to bear as well. We need to incentivize investment in the United States and discourage outsourcing. We need to reorient our tax policies towards long-term economic growth and sustainability, not short-term profits and share buybacks. Most importantly, we need to strengthen worker protections and protect the rights of workers to organize.

Finally, we should utilize the Defense Production Act to ensure that we have sufficient supplies of essential goods and to crack down on bad-faith hoarding of scarce products to resell at exorbitant prices.

Again, thank you to the Witnesses.

This concludes today's hearing.

Without objection, all Members will have five legislative days to submit additional written materials, additional written questions for the Witnesses, or additional materials for the record.

I believe I have a unanimous consent request to include into the record a letter from the National Retail Federation. Without objection.

[The information follows:]

## MR. CICILLINE FOR THE RECORD

NRF National Retail Federation

May 17, 2022

The Honorable Jerrold Nadler
Chairman, Committee on the Judiciary
U.S. House of Representatives

The Honorable Jim Jordan
Ranking Member, Committee on the Judiciary
U.S. House of Representatives

The Honorable David Cicilline
Chair, Subcommittee on Antitrust, Commercial, and Administrative Law
U.S. House of Representatives

The Honorable Ken Buck
Ranking Mem., Subcommittee on Antitrust, Commercial, and Administrative Law
U.S. House of Representatives

Re: Today's Subcommittee Hearing on Reviving Competition, Part 6: Rebuilding Americas Economic Leadership and Combatting Corporate Profiteering

Dear Chairman Nadler, Ranking Member Jordan, Chair Cicilline, and Ranking Member Buck:

The National Retail Federation appreciates your holding a subcommittee hearing today on the important issue of price gouging. To protect American consumers, NRF supports efforts to rid the marketplace of bad actors who deceive consumers through unfair or deceptive acts or practices, including illegal price-gouging activity that violates existing price-gouging laws in nearly 40 states. We are concerned, however, with the prospect of new federal legislation to address problems that have complex origins as the result of the COVID-19 pandemic and may not be the product of illicit price-gouging behavior. Moreover, we are concerned that the proposed authority to be granted to the Federal Trade Commission (FTC) may not be narrowly tailored to target price-gouging activity on essential goods and services at risk of such fraud. We believe that, equipped with such discretionary authority, the FTC could have a broader impact on pricing of all goods in the economy with unintended and counter-productive results leading to greater price increases for consumers.

NRF, the world's largest retail trade association, passionately advocates for the people, brands, policies and ideas that help retail thrive. NRF empowers the industry that powers the economy. Retail is the nation's largest private-sector employer, contributing $3.9 trillion to annual GDP and supporting one in four U.S. jobs — 52 million working Americans. For over a century, NRF has been a voice for every retailer and every retail job, educating, inspiring and communicating the powerful impact retail has on local communities and global economies.

**Supply Chain and Inflationary Pressures on Cost of Goods**

The current supply chain crisis has been affecting companies both large and small who are being impacted by disruptions at every stage of the supply chain. In general, the demand for goods and materials continues to far outpace the availability of supply to make and move those

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products through the global supply chain, resulting in significant congestion and increased costs and fees, which are leading to increased inflation.

We continue to see disruptions originating overseas that threatens to again shut down foreign factories and foreign ports. There continue to be shortages in available materials and workforce to produce goods both here and abroad, a shortage of empty containers to transport the goods, a lack of available capacity aboard maritime vessels, continuing port congestion affecting U.S. ports and challenges with chassis availability and empty container returns.

These disruptions have all added more time and costs to NRF members' supply chains. Retailers have been working to mitigate these challenges throughout the pandemic, especially in advance of the all-important holiday season. They have taken many steps to try to mitigate the disruptions, which included bringing in products earlier, looking for alternate sourcing, using alternate ports and using air freight instead of ocean freight. Again, all of these options have added time and costs to their supply chains.

Even having taken these steps, retailers continued to face ongoing disruption and challenges with getting their cargo in a timely manner. While we have seen some improvements in the supply chain since late 2021, there are ongoing challenges including the COVID lockdowns in Shanghai and the war in Ukraine which are adding additional pressure to the supply chain. In a February 2022 benchmarking survey, many NRF members said that the supply chain disruptions would continue well into 2022. Respondents continue to say that U.S. port congestion, ocean carrier capacity and workforce shortages are the top areas where they are seeing supply chain disruptions. They also noted that their supply chain costs continue to rise.

In general, the unprecedented consumer demand over the past couple of years has certainly had a major part to play in supply chain disruption as retailers try to keep up. There has been a $1 trillion shift in consumer spending from services (travel, entertainment, etc.) to goods, which has put upward pressure on goods' prices. Many expect inflation to peak during the latter half of 2022, though this is dependent on a number of factors including easing of pressure on the supply chain and softening consumer demand.

Retailers continue to take extraordinary steps to ensure products are available to consumers. Even with these steps, many constraints remain in the ability to quickly move cargo from the ports, especially as more vessels continue to wait to berth and unload. Some of the key constraints continue to be specific to port operations and empty return policies and the availability of chassis. Retailers want to pick up their cargo, but have difficulty when truckers are not able to make appointments, return empty containers or have a chassis available.

A softening of consumer demand will certainly help to alleviate the pressures on the supply chain. The May 2022 NRF Global Port Tracker continues to forecast imports to continue to increase through 2022, but at a single digit rate as opposed to the double-digit rate we witnessed in 2021.

There are specific ways that Congress and the Administration can help alleviate some of the supply chain disruptions, but we caution that some aggressive policy interventions to address the broader inflation could aggravate, rather than alleviate, inflationary trends.

The Administration needs to take a leadership role in addressing the ongoing congestion issues. Many are systemic issues that need to be addressed to avoid future supply chain disruptions. We would recommend the following actions for the administration:

- Convene all affected stakeholders to discuss the current supply chain issues and identify short, medium and long-term solutions;
- Pass the Ocean Shipping Reform Act of 2021;
- Codify the Federal Maritime Commission's Interpretive Rule on Demurrage and Detention;
- Develop a national freight portal;
- Ensure we have a sufficiently trained workforce;
- Evaluate whether or not our ports are operating in a manner that truly meet the needs of a 21st century global supply chain; and
- Provide tariff relief.

**Federal Price Gouging Legislation**

Retail is a highly competitive industry with transparent pricing and highly fungible and substitutable products. If shoppers see a price they don't like, they will shop in other places or for other products.

Additionally, we are in an environment where it is not just consumer prices that are rising. It is important for lawmakers to recognize that costs are also rising for retailers just as they are for the average household. Retailers are paying higher energy bills and rents, not to mention the increasing cost of goods, transportation and wages:

- The Producer Price Index (PPI) was up 11% on an annual basis in April;
- General freight trucking prices have increased by 40% and deep sea freight by 25% year-over-year; and
- Wages for retail frontline workers are increasing faster than the average U.S. wage.

Inflation is causing retailers' profitability to take a hit. Seven out of the ten largest retailers have seen net profit margins either stay flat or decrease in the most recent quarter when compared to their average net margin over the past four quarters.

Considering these factors, when it comes to the price-gouging as an economic theory on the cause of higher prices, we urge lawmakers to consider what the top economists are saying. In a poll of over 40 of the top economists in the country, Chicago Booth's Initiative on Global Markets program asked if '***a significant factor behind today's higher US inflation is dominant corporations in uncompetitive markets taking advantage of their market power to raise prices in order to increase their profit margins***'. The program found that 67% of the economists disagreed with this statement with only 7% agreeing. We appreciate that members of the House have engaged in genuine efforts to develop bipartisan federal price gouging legislation that is

narrowly tailored to address the unfair or deceptive acts or practices that nearly 80% of the states have targeted with their own enacted state laws. Key elements of state price gouging laws include government authority that is provided during an emergency that is principally focused on excessive prices for essential goods and services that are not accounted for by other cost factors in the marketplace. As demonstrated by the discussion of supply chain and inflationary pressures above, the retail industry has seen a very marked increase in well-documented economic and trade factors that have raised the prices of all goods impacted by those factors.

The price increases generally across the retail industry are therefore not the result of specific companies' intentional acts of fraud or deception, from which state price gouging laws are designed to protect consumers. It is therefore imperative that any federal price gouging legislation be modeled on the language in state laws that provides exceptions to the governmental authority in cases where price increases are due to market costs outside the control of the individual business. Unfortunately, in many of the federal price gouging bills we have seen since the pandemic began, there is insufficient language in the bill to protect against the potential unintended consequences that retailers whose prices rose due to cost increases in the supply chain and/or inflation may face potential allegations from the FTC or state attorneys general that they engaged in price gouging.

Price-gouging bills have also included look-back periods to compare prices of goods alleged to be the product of price gouging to the average cost of the same good sold during a specified period – in some bills, like H.R. 675, that reference period is the 2019 Thanksgiving-to-Christmas holiday season. We think comparing prices over more than two years is very likely to lead to determinations in most cases that today's prices are indeed higher, but that does not mean the FTC should conclude, by matter of interpreting a statute's definition, that the sellers of these goods are engaged in *unlawful* price-gouging behavior when the price increases can be simply explained by factors causing the cost of those goods to rise over the two-year period.

We are also concerned with extending the enforcement authority of the FTC and state attorneys general to a proposed federal law that would not preempt any of the existing price gouging laws in over 40 state and federal territorial jurisdictions, including the District of Columbia.[1] In addition to state attorneys general enforcing their own laws in these jurisdictions, having 50 more interpretations of the federal law (in addition to the FTC's own interpretation) will only exponentially increase the likelihood of inconsistent application and enforcement of a federal law that may serve as merely one of a great number of disparate laws regulating the price of goods across the country. If the federal law does not preempt state laws, the relatively few states who lack a price gouging law would be free to pass their own new price gouging law that goes beyond it and potentially conflicts with the newly passed federal law.

With today's hearing representing the committee's first significant review of this issue, we look forward to being a resource to you and other members as you consider the range of economic factors impacting the price of goods. We urge you to consider that any proposed price gouging legislation designed to protect consumers from bad actors can and should be properly

[1] National Conference of State Legislatures, *Price Gouging State Statutes,* May 17, 2021, accessible at: https://www.ncsl.org/research/financial-services-and-commerce/price-gouging-state-statutes.aspx

tailored to avoid inadvertently covering well-intentioned businesses setting prices in good faith under challenging economic conditions to serve their customers as best they can.

Sincerely,



David French
Senior Vice President
Government Relations

cc: Members of the Committee
on the Judiciary

Mr. CICILLINE. With that, this hearing is adjourned.
[Whereupon, at 3:46 p.m., the Subcommittee was adjourned.]

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