Bold Ideas, Emerging Leaders

Roosevelt Network
Emerging Fellows Journal

2023

Roosevelt Network

Roosevelt Network Staff

Katie Kirchner, National Director
Alyssa Beauchamp
Robert-Thomas Jones
Eric A. Paul
Alex Trefftz
Elijah Wilson

Roosevelt Network Alumni

Iván Cazarín
Gracie Fleming
Emma Horst-Martz
Jas Johl
Maggie King
Manon Steel
Joe Swanson

Roosevelt Institute Staff and Project Contributors

Alí Bustamante
Emily Carew
Emily DiVito
Beryl Frishtick
Claire Greilich
Sonya Gurwitt
Hiba Hafiz
Matt Hughes
Alice Janigro
Suzanne Kahn
Niko Lusiani
Brian Mandel
Keesa McKoy
Sanjay Pinto
Shahrzad Shams
Anthony Thomas
Aastha Uprety
Ariela Weinberger

Who We Are

The Roosevelt Network develops and supports undergraduate college students and early career professionals—in particular, those who hold identities historically denied political power—to be the next generation of leaders in the progressive policy ecosystem. We are creating a pipeline of new leaders who champion ideas that rebalance power in our economy and democracy. As a program of the Roosevelt Institute stewarding the legacy of Eleanor and Franklin Roosevelt into the 21st century, we believe that we can rewrite the rules by changing who writes them.

About the Emerging Fellowship Program

The Roosevelt Network's Emerging Fellowship is a yearlong fellowship experience focused on policy writing and designed for students in the last one to two years of their undergraduate degree program. This rigorous and advanced fellowship offers progressive-minded students the opportunity to dive deeper into policy research and writing, receive mentorship from Network alumni and Roosevelt Institute staff, be in community with other passionate policy wonks, and ground themselves in Roosevelt's vision for a just economy and multiracial democracy. Fellowship alumni become members of our national Network, with continued opportunities for mentorship and programming for young professionals.

Table of Contents

Foreword

Dear reader,

Have you ever found yourself saying: "Hopefully the young people will save us" while you're watching the news or scrolling the internet for anything that makes the state of things seem less bleak?

I understand that impulse—young people can be inspiring. But young people are not a monolithic finished product. Each young person—like you, like me, like all of us—is on a journey. They're trying to understand: What choices led to the world as they know it? Can they trust the narratives they've been taught about heroes and villains? Can they dare to have hope that anything they do matters?

If you're reading this, it means that you are interested in the ideas that our Network's young people have for the future of their communities. And if, as you're reading this, you find yourself inspired by these ideas from our emerging leaders, then I ask you: What are *you* doing *now* to be in community with them in the long-term fight to rebalance power in our economy and democracy?

I have some ideas, of course.

The Roosevelt Network has been a moral and political home for progressive young folks for nearly 20 years. Our staff works every day to help each new cohort understand how we got here and how we can combine the power of bold new ideas with the power of a network. Building a moral and political home for people takes time and it takes trust—especially as we operate in an era of rapid change, misinformation, radicalization, nihilism, isolation (I could keep going, but I won't). A political home might be the difference between a young person spending their career in the progressive movement versus burning out or giving up.

So after you read the ideas of our 2023 Emerging Fellows, perhaps you'll want to sign up as a mentor for a young person. Maybe you yourself are a young person and you'll want to apply to one of our fellowships and make the Network your political home. Maybe you're someone who can donate to our work.

Whatever the choice is for you, I hope that you know we only go onward together. The young people might save us, but not without investment from all of us to make it possible.

Onward,
Katie Kirchner
National Director, Roosevelt Network

Worker Power and Economic Security

Cooperative Colorado: Locking in Prosperity

By Tom Byron

Introduction

As new laws like the Inflation Reduction Act revive interest in public investment, labor advocacy, and green manufacturing (Sullivan 2023), Colorado is poised to enjoy another decade of rapid growth. But growth alone is not enough to secure shared prosperity for Coloradans—not when corporate greed captured so much of the state's economic growth over the past 10 years (Abidh and Danninger 2017). The suite of progressive policies enacted by the Biden administration offers an opportunity to rebalance economic power in states like Colorado, where for far too long, workers have not reaped the benefits of the growth they helped to create. As the American economy enters an era of rapid transformation, worker ownership offers a model of governance that empowers workers. As the US continues to find its way beyond neoliberalism, Colorado can take the lead in building a cooperative economy that puts workers first.

Forty years of neoliberal economics concentrated power in private hands and encouraged cost-cutting, union-busting, off-shoring of manufacturing, and other policies that saw labor as the enemy. Neoliberal policies funneled money and political support into corporations that prioritized quarterly profits above all, building giant companies that dominate the US economy to this day and that hold enormous power not just over their employees, but the entire American political system. The doctrine of "shareholder primacy" entrenched CEO and corporate board power, freezing out labor, consumers, and the public at large. Even during the rapid economic growth of the 1990s and 2000s, many Americans experienced increasing job precarity, outsourcing, and wage stagnation, despite soaring corporate profits (Gerstle 2023). With little say in how their jobs were run, or any direct share in the profits they helped make, workers were left relatively powerless.

The history of cooperative and worker-owned companies provides a unique, democratic alternative to both the neoliberal "shareholder" model and the New Deal "stakeholder" model. Though there are many kinds of cooperatives—from shared ownership of apartment buildings, to agricultural marketing cooperatives, to consumer-owned rural electric utilities—this brief will focus on worker cooperatives and other forms of employee-owned companies. By giving other stakeholders, like workers and consumers, a direct share in profits and control over management decisions, cooperatives can secure better working conditions and lock in a more equal economy by establishing democratic workplaces. This model has proven successful and popular, providing stable employment, encouraging productivity (Blasi, Freeman, and Kruse 2014), and enjoying support from most Americans (Josephs 2022). But like the neoliberal transition of the 1990s or Roosevelt's New Deal, a cooperative economy needs a government that wants it to succeed. At the state level, Colorado can build on its past successes in democratic ownership by giving worker-owned businesses the same access to finance enjoyed by other start-ups and small businesses.

Neoliberal Consequences, Cooperative Possibilities

Neoliberalism encouraged the state to direct money and resources toward private companies, privatize public services, and campaign on the ostensible benefits of unrestricted corporate power. It advanced a vision of a dynamic, productive private sector fueled by the profit motive and held back by the supposedly outdated systems of taxation and regulation. But despite the laissez-faire ideology it espoused, the shift toward neoliberalism required regular government interventions, ranging from direct bailouts to constant changes in rules and regulations.

The vision touted by neoliberals led to stagnating productivity, skyrocketing economic inequality, and the rise of unstable employment. Worker productivity, a central measure of growth in economics, has been relatively stagnant since the 1970s, with the exception of a temporary boost in the 1990s that subsided by 2001 (Cowen 2011). Stagnant wages, tax cuts for the wealthy, and large returns to capital income ensured that the rich benefited the most from economic growth. Moreover, the collapse of the labor movement, the rise of at-will employment and gig work, and the shift from a manufacturing to a service economy all compounded precarious employment; regular Americans could never feel secure in their jobs (Bhattacharya and Ray 2022), and employers had trouble gaining loyalty and buy-in from their workers (Knowledge at Wharton Staff 2012). Wages stayed stagnant even in a booming economy (DeSilver 2022), at-will and gig employment made job loss a looming threat, and workers had little control over their work while the profits they helped make went to investors. Meanwhile, companies faced slowing national GDP growth, workers had little reason to see themselves as a valuable part of the organization, and employers found themselves having difficulties retaining their best employees.

The consequences of decades of neoliberalism came to a head in 2008, with the worst recession since the Great Depression. Government plans to reduce inequality through widespread homeownership were hijacked by banks, crashing the economy and leading to a decade of high unemployment and low economic growth (Becker, Stolberg, and Labaton 2008). Even in the aftermath of the financial crisis, there is little political appetite for large-scale state employment policies, like jobs programs or work guarantees. And even when the political will is mustered and they are brought to the floor, these policies typically die in a gridlocked Congress. American workers are left feeling squeezed from every angle, with little recourse.

Meanwhile, corporate economists, shareholders, and managers are unwilling to look to democratic solutions to problems of talent retention and productivity. The outcomes they say they want—increased productivity, greater growth, and loyal employees—all require giving workers real power and ownership over their jobs. Democracy and shared ownership are good for workers, employers, and all of society, but require that management share its wealth and authority.

Colorado has been a champion of cooperative companies for decades. All kinds of cooperatives are common around the state, including veterans' credit unions in Colorado Springs, rural electric cooperatives in the western slope, driver-owned taxi services in Denver, and popular restaurants throughout the state (Sexton 2022). Worker-owned businesses are created either through a group of worker-owners coming together to start a new company, or through a conversion of ownership whereby workers purchase all or part of an existing company they already work for. These firms enjoy widespread bipartisan public support, with supermajorities of both Democrats and Republicans stating a preference to work in an employee-owned company (Josephs 2022). They are also more productive, with higher profits, more equal wages, and lower turnover (Blasi, Freeman, and Kruse 2014). Both companies and their employees benefit from incorporating workers into profit-sharing and management decisions. Workers get a direct stake in making their workplace more profitable, and at best, have a say in how their jobs are done. Employers can better retain loyal, highly motivated workers, and can benefit from federal and state tax breaks like the Employee Stock Ownership Plan (ESOP) (NCEO 2020). Granting ownership to workers blurs the line between management and employee, shareholder and stakeholder.

Despite the benefits of employee ownership, there are challenges to creating a worker-owned business. First, employees have limited access to the capital necessary to buy a stake in their companies. Like private start-ups, they often have trouble finding financing. As University of Colorado Boulder professor Nathan Schneider discussed in a 2023 interview, many private banks and venture capital firms have no interest in investing in employee-owned firms, often because these firms are so rare that investors feel unsure of their prospects.[1] Second, the process to transition from a "traditional" private firm to some form of cooperative or employee-owned business is complicated and expensive. Colorado has made headway in solving this problem, offering tax breaks and subsidies through the state Employee Ownership Office (Colorado Office of Economic Development and International Trade 2023a). Finally, a successful transition to employee ownership requires that workers be organized enough to make an offer and manage their stake in the company. But low unionization rates and tensions between unions and worker-owned businesses have made integration with existing unions difficult. The American system of collective bargaining, organized by enterprise instead of workplace or sector, gives worker-owned firms little incentive to maintain union membership when they no longer need to negotiate with management. And workers who are not unionized often lack the organization, expertise, money, and negotiating power necessary to purchase their company or strike out on their own.

As a result, worker ownership is most often a "way out" for owners who are looking to retire, shut down, or otherwise liquidate their businesses, instead of a standard path for start-ups to follow or for mature companies to pursue. Many businesses become worker-owned almost by accident, or worse, as a way to pass off unproductive companies for quick cash. For example, the North Coast Brass and Copper Company only offered sale to its employees when the plant was about to close, and the employee-owned firm was able to stay afloat for no longer than a few years (Olson 2023b).

To be sure, there are cooperative sectors without these problems, but they were created with strict legal limits to solve problems that private capital did not want to touch. Credit unions are both popular and influential, but as consumer cooperatives, they are often limited in how they can lend while keeping their status as credit unions. Rural electric cooperatives are profitable, widespread, and have a long history in the west, but must exist in the narrow band of rural electrification and utility services (Colorado Rural Electric Association 2023). Agricultural cooperatives are a vital part of American farm life, but they provide a marketing benefit to help individual farms pool their resources to sell their goods. There are individual legal structures, trade organizations, tax benefits, federal offices, and lobbyists for each of these organizations, but they are bound by the charters and laws that created them. Those horizons were set low because all of these organizations tackle low-margin markets, providing services to people that traditional finance saw no reason to help.

1 Nathan Schneider (Assistant Professor, University of Colorado Boulder), in discussion with author, July 5, 2023, Boulder, CO.

What a Cooperative Economy Needs

Employee ownership is overwhelmingly popular across party lines, has a strong history in the US, and is linked to core American values of justice and democracy (Blasi, Freeman, and Kruse 2014). But just as start-ups, small businesses, factories, and tech companies built their power with the help of government subsidies, loans, and streamlined legal procedures, so too do cooperatives. The neoliberal transfer of wealth and power to private companies and shareholders was a policy choice, based on a vision of the future that saw private wealth as the engine of prosperity. Colorado has a chance to embrace a new vision of worker ownership and make the state a leader in the national conversation about a post-neoliberal economy.

Different types of cooperative and employee-owned businesses are limited by capital access and existing legal structures. The success stories of agricultural cooperatives and rural electric utilities are forced to remain confined in their sectors with little incentive to work beyond their fields. But according to labor economist Douglas Kruse, contrary to the assumptions regarding those legal structures, there is no specific set of industries that benefit most from cooperatives.[2] The tax benefits from programs like ESOP apply only to specific ownership models, existing organizations and accumulated wealth are siloed in different sectors, and there is no generalized "cooperative movement" to meet the current moment. Colorado cannot do much to solve the larger legal problems on its own; that is a task for the federal government. But state governments can play the role of market makers, giving workers the backing they need to access capital and acquire ownership of their workplaces.

Colorado already lends money to start-ups through the Colorado Startup Loan Fund, with the state guaranteeing loans under $150,000 from "mission-driven lenders" to businesses that are "unable to qualify for traditional financing" (Colorado Office of Economic Development and International Trade 2023b). The state has a few programs targeting rural businesses, like the Rural Jump-Start Program, some targeting small businesses, such as Cash Collateral Support, and some that focus on promoting women- and minority-owned businesses. The state recognizes that rural areas, small businesses, start-ups, and businesses owned by women and people of color need additional support with financing, and uses its power to help these businesses. Though often start-ups or small businesses in their own right, cooperatives and worker-owned businesses need targeted assistance through financing, legal aid, and political backing. These supports go hand-in-hand and help to reinforce each other and strengthen cooperatives, as a clear and flexible legal structure makes formation easy, access to capital creates opportunities for profit, and profitable firms under that structure reinforce political support for these policies.

This is the same process that made the stock market and mass stock ownership a reality in the late 1800s. The people, companies, and leaders of the time had a vision of an economy in which regular people could invest their savings in company stock, and companies could finance exciting ideas by amassing popular support, instead of applying for bank loans. Without that vision, the necessary legal support and financial resources would not have materialized. Governments created a new market where none like it had existed before, formed a new type of company that anyone could start, and fostered widespread support by giving regular people access to the dividends. Cooperative economics needs the same kind of vision and state support, with the potential to be far more transformative for workers.

Worker ownership must be front and center in the conversation, an option as easy and popular as "going public," and a standard path for any firm to take at any point in its lifespan. Start-ups must know that a democratic, cooperative structure is just as easy to create as a private company. Employees themselves

2 Douglas Kruse (Distinguished Professor, Rutgers University), video interview with author, July 13, 2023.

need to know about this new corporate form even more than management, because without their buy-in, any cooperative business will fail. And because cooperatives are relatively rare today, employee ownership needs the kind of support that small businesses and start-ups have long enjoyed. Private companies and the broader ideology of shareholder capitalism have the advantage of more than a century of tradition, law, lobbying, and profits to back them up. Governments should build worker ownership infrastructure as part of the larger project of post-neoliberal economics, and understand that cooperatives work best when combined with many other progressive, worker-friendly policies. The greatest successes of the ESOP model came when paired with union or state support (Olson 2023a), and its failures were often a result of abuse by corporations in the neoliberal era. State and federal governments must prevent that abuse and ensure that the most profitable and productive firms have incentives to democratize ownership.

Recommendations for Colorado

Colorado should encourage worker-owned businesses so that gains from recent economic growth benefit workers, drawing from the state's long history of cooperative leadership and worker ownership. Policy should build on the existing Colorado Employee Ownership Office, with an emphasis on streamlining and encouraging the process of employee ownership for every type of firm. Colorado can work with private business, finance, unions, and non-union workforces to make employee ownership and cooperatives a central part of the Colorado story in the next decade of state economic growth.

The Colorado Startup Loan Fund organizes microloans from nonprofit lenders to create a self-sustaining source of capital for companies that have trouble finding traditional financing. Colorado should build on the success of this program by creating a Colorado Employee Ownership Loan Fund under the existing Employee Ownership Office. The Colorado Employee Ownership Loan Fund should partner with existing nonprofit lenders, like the Colorado Solidarity Fund. This fund would provide conversion financing for existing firms, and seed capital for start-up cooperatives in Colorado, using the paid back loans to finance future businesses with little cost to the state.

Governor Jared Polis and other Colorado politicians have already taken the first steps toward forging this vision. Thanks to legal efforts by the governor and the state legislature, the Colorado Employee Ownership Office already includes tax credits and support for the legal costs of conversion, along with a guide that helps readers navigate the tangled web of laws related to the formation of a worker-owned business (Colorado Office of Economic Development and International Trade 2023). Federal representatives like Sen. John Hickenlooper (D-CO) and Rep. Joe Neguse (D-CO) have both sponsored the Capital for Cooperatives Act in Washington, a bill that would require the Small Business Administration to provide capital to all types of cooperatives (Latour 2021). Finally, the prevalence of existing Colorado cooperative businesses help to form a potential base of support across traditional divides.

Colorado politicians should build on this progress, embracing cooperatives and employee ownership as a key part of the state's economic future. Coloradan representatives in Congress should promote the bipartisan popularity of these ideas, state lawyers should demand that federal agencies follow through on promises of federal funding, and the governor's office should use its access to the workers and business owners of Colorado to encourage conversion into employee-owned businesses. By linking this type of ownership to the rapid economic transformations promised by the bipartisan Infrastructure Investment and Jobs Act, the energy investments of the Inflation Reduction Act, and the manufacturing boom set off by the CHIPS and Science Act, Colorado can take a stand for a more just economy, in which the benefits of growth are shared, and stakeholders everywhere have a say in the construction of their economic future.

Beyond politics, state provision of financing is crucial. Despite state guarantees for conversion loans, cooperative conversion lawyer Jason Wiener points out that most private finance is still hesitant to fund worker ownership transitions. Long term, these financial markets are central to the larger project of cooperative economics, but in the short term, state financing and assistance can help prove the potential of this model. By ensuring that bills like the Mainstream Employee Ownership Act are enforced, Colorado can secure federal money from the Small Business Administration to support conversions. Colorado's consistent support for both small businesses and start-ups shows that the state can back specific business models, provided they have potential to build local wealth and garner popular support. Worker-owned and cooperative businesses are partway to the status of state-supported business models already, and creating an Employee Ownership Loan Fund can give the Employee Ownership Office a tool to support community businesses. This program would use an existing structure already successful in Colorado to solve one of the key problems of the cooperative economy. With support from federal funding sources like the Small Business Administration, and a growing base of political support, the fund could expand its operations, setting Colorado apart as a haven for employee-owned companies. Moreover, a successful Cooperative Loan Fund is likely to attract more interest from private capital and give politicians an incentive to push for federal reforms. Colorado has a chance to harness a dynamic economy, draw on its tradition of worker ownership to fix the failures of neoliberal policies, and serve as a leader in building a new kind of American economics: one that is fair, equal, and democratic by design.

Conclusion

So, what does a cooperative economy need? Legal changes, capital access, and consistent government support. Policy can solve the first two problems, but the last is also a matter of politics. Any successful economic program, whether it promotes small business or privatizes an entire industry, needs to build a base of support to reward politicians for implementing it. The cooperative economy has unique possibilities in this regard, but governments must show considerable support for these models before worker-owners and other pro-cooperative voters are a meaningful force in Colorado politics.

Colorado can take the lead in crafting a new paradigm for prosperity, and lay the foundations for a more dynamic, democratic, and just business model. A post-neoliberal world is taking shape, and the Biden administration has already shown its willingness to shape markets, promote investment, and support worker ownership. By embracing cooperatives as a key plank of the new economic platform, Colorado can build on its reputation as a national leader in clean energy development (Booth 2023) by continuing to chart a pro-worker path forward.

While employee-owned firms are already common, they are not part of a narrative about economic progress. People rarely search for them, or demand their company adopt employee ownership. When people try to start a new employee-owned company, or convert an existing one, they find that capital is rare and the process is far more complicated than a traditional start-up. And though worker ownership remains popular in polling, people do not see worker-owned start-ups as a real option for their own lives. This leads to a cycle of rarity, where the small number of worker-owned firms creates unfamiliarity, and unfamiliarity means business professionals and governments, it has never enjoyed the same government support as start-ups or small businesses. But by leaning on existing systems and cultures, building a matching system to bring capital and new cooperatives together, and providing enough capital to kick off an employee ownership boom, employee-owned companies can become a vital new way to build community wealth.

About the Author

Tom Byron (he/him) is a recent graduate of Colorado College, where he earned a BA in political science. Born and raised in Arlington, Virginia, Tom's Colorado family and proximity to Washington, DC, fostered his interest in economic justice, public service, and the politics of the Mountain West. During high school and as an undergraduate, Tom worked in field and campus campaign organizing in both Virginia and Colorado, ranging from Colorado Springs school board races to the Virginia House of Delegates to the Colorado Democratic Party Coordinated Campaign. He began his work in policy writing through the Roosevelt Network, which encouraged his interest in the role of corporate and labor power in American life. After graduating, Tom was selected as a 2023–24 Coro Fellow in Public Affairs, and is working in St. Louis, Missouri, with his cohort.

Acknowledgments

First, I need to thank Alyssa Beauchamp for everything she's done for me in the past few years. Without her, I might never have found the Emerging Fellowship at all, and her advice, mentorship, and encouragement have been invaluable to both this project and my growth as a policy writer. Katie Kirchner, Robert-Thomas Jones, Elijah Wilson, and the entire Roosevelt Network team have kept this program going strong, helped me whenever I've needed it, and built an incredible community for all of us throughout the fellowship. Thank you all for the work you do, and the rare opportunity you've given me during my time with the Network. Thank you to Iván Cazarín and Eamon Ross for their mentorship and editing assistance, and to Sanjay Pinto, Sharhzad Shams, Claire Greilich, and Aastha Uprety for their tireless work editing this piece. I would like to thank Professor Nathan Schneider, Professor Douglas Kruse, Professor William Castellano, Dr. Minsun Ji, and Mr. Jason Weiner for speaking to me about worker ownership and cooperatives in Colorado. Interviewing them gave me insight into the legal and economic factors that led to the current worker ownership landscape, and every one of them was beyond generous with their time. And though they remain anonymous, the employees who spoke to me about profit-sharing in their own workplaces were vital to this project, and I thank them for their contributions. Lastly, I want to thank Margaret Mixer, Adele Matter, Lark BenDaniel, and Jay Byron for their patience, insight, and friendship during the writing of this brief.

References

Cooperative Colorado: Locking in Prosperity

Abdih, Yasser, and Stephan Danninger. 2017. "What Explains the Decline of the US Labor Share of Income? An Analysis of State and Industry Level Data." IMF Working Paper. Washington, DC: International Monetary Fund. https://www.imf.org/en/Publications/WP/Issues/2017/07/24/What-Explains-the-Decline-of-the-U-S-45086.

Becker, Jo, Sheryl Gay Stolberg, and Stephen Labaton. 2008. "Bush Drive for Home Ownership Fueled Housing Bubble." *New York Times*, December 21, 2008. https://www.nytimes.com/2008/12/21/business/worldbusiness/21iht-admin.4.18853088.html.

Bhattacharya, Anasua, and Tapas Ray. 2022. *Precarious Work, Job Stress, and Health-Related Quality of Life*. Atlanta, GA: Centers for Disease Control and Prevention. https://stacks.cdc.gov/view/cdc/124425/cdc_124425_DS1.pdf.

Blasi, Joseph R., Richard B. Freeman, and Douglas Kruse. 2014. *The Citizen's Share: Putting Ownership Back into Democracy*. New Haven, CT: Yale University Press.

Booth, Michael. 2023. "What's Driving Sudden Flare of Solar Energy and Storage in Colorado?" *The Colorado Sun*, July 21, 2023. https://coloradosun.com/2023/07/21/colorado-renewable-energy-surge-project-growth/.

Colorado Office of Economic Development and International Trade. 2023a. "Colorado Employee Ownership Office." Colorado Office of Economic Development and International Trade. Accessed July 19, 2023. https://oedit.colorado.gov/colorado-employee-ownership-office.

———— 2023b. "Colorado Startup Loan Fund." Colorado Office of Economic Development and International Trade. Accessed July 19, 2023. https://oedit.colorado.gov/colorado-startup-loan-fund.

———— 2023c. "Employee Ownership Grant." Colorado Office of Economic Development and International Trade. Accessed July 19, 2023. https://oedit.colorado.gov/employee-ownership-grant.

Colorado Rural Electric Association. 2022. "What Sets Co-Ops Apart." Colorado's Electric Cooperatives. Accessed September 26, 2023. https://crea.coop/what-sets-co-ops-apart/.

Cowen, Tyler. 2011. *The Great Stagnation: How America Ate All the Low-Hanging Fruit of Modern History, Got Sick, and Will (Eventually) Feel Better*. New York: Dutton.

DeSilver, Drew. 2018. "For Most US Workers, Real Wages Have Barely Budged in Decades." Pew Research Center, August 7, 2018. https://www.pewresearch.org/short-reads/2018/08/07/for-most-us-workers-real-wages-have-barely-budged-for-decades/.

Gerstle, Gary. 2022. *Rise and Fall of the Neoliberal Order: America and the World in the Free Market Era*. Oxford, UK: Oxford University Press.

Josephs, Mary. 2022. “Who Says Unions and ESOPs Don’t Mingle?” *Forbes*, December 21, 2022. https://www.forbes.com/sites/maryjosephs/2022/12/20/who-says-unions-and-esops-dont-mingle/?sh=369005c93927.

Knowledge at Wharton Staff. 2012. “Declining Employee Loyalty: A Casualty of the New Workplace.” *Knowledge at Wharton*, Wharton School of Business, May 9, 2012. https://knowledge.wharton.upenn.edu/article/declining-employee-loyalty-a-casualty-of-the-new-workplace/.

Latour, Kate. 2021. “Rep. Joe Neguse Introduces Capital for Cooperatives Act in House.” National Cooperative Business Association CLUSA International (NCBA CLUSA), December 21, 2021. https://ncbaclusa.coop/blog/rep-joe-neguse-introduces-capital-for-cooperatives-act-in-house/.

National Center for Employee Ownership (NCEO). 2020. “How an Employee Stock Ownership Plan (ESOP) Works.” NCEO, August 24, 2020. https://www.nceo.org/articles/esop-employee-stock-ownership-plan.

Olson, Deborah Groban. 2023a “National Forge Company & IUNFE.” ESOP Law. Accessed September 26, 2023. https://www.esoplaw.com/case-studies-full/national-forge-company.

_______ 2023b. “North Coast Brass and Copper Co.” ESOP Law. Accessed September 26, 2023. https://www.esoplaw.com/case-studies-full/north-coast-brass-and-copper-co.

Sexton, Josie. 2022. “A Trend-Setting Denver Restaurant Group Is Now Employee-Owned.” *The Denver Post*, June 16, 2022. https://www.denverpost.com/2022/06/15/employee-owned-restaurants-edible-beats-denver/.

Sullivan, Jake. 2023. “Remarks by National Security Advisor Jake Sullivan on Renewing American Economic Leadership at the Brookings Institution.” The White House. April 27, 2023. https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/04/27/remarks-by-national-security-advisor-jake-sullivan-on-renewing-american-economic-leadership-at-the-brookings-institution/.

State Preemption: Antidemocratic and Anti-Worker Tools of Austerity

By Macy Stacher

Introduction

The United States faces persistent crises of economic instability, poverty, climbing costs, and inequality that state and federal governments have yet to adequately address (Piketty 2020). With this leadership vacuum, city and municipal governments have stepped up to legislate solutions for working families, but many state legislatures are intervening to limit local control (Phillips 2017). Pennsylvania's 2006 minimum wage law raised the state minimum wage to $7.15 per hour while preempting and prohibiting local wage hike ordinances in cities and municipalities from Philadelphia to Erie (43 Pa. Stat. Ann. § 333.114a). Initially derived from the Supremacy Clause of the United States Constitution, **preemption** is a legal doctrine that empowers state governments to limit the legislative jurisdiction of lower levels of government (Cornel LII). Preemption rules also act as policy tools that are interpreted by courts and implemented in a wide array of policy matters (NLC 2018). The most common preemption policy tool is a **ceiling preemption**: a prohibition on enacting local laws that exceed higher-level government standards (ChangeLab Solutions 2019).

Both as a legal doctrine and policy tool, state preemption standardizes laws across a state by nullifying rules and regulations that conflict with state legislative policy agendas, with the goal of reining in policy decisions made by rogue municipalities (Diller 2007, Riverstone-Newell 2017, ChangeLab Solutions 2019). As state legislatures increasingly invoke preemption rules across various policy arenas, discourse surrounding the politics of preemption and its use as a tool to disempower local governments in ideological opposition to their respective state legislatures has also increased (Greenberg 2016, Badger 2017). State preemption of economic policies enacted by local governments—such as minimum wage increases, rent control laws, labor regulations, prevailing wage standards, paid leave laws, and gig-worker protections—is on the rise in state legislatures across the nation (EPI 2017). Despite American voters' overwhelming endorsement of abandoning failed neoliberal policies (DFP 2018), state lawmakers invoking preemption rules often do so to entrench extremely unpopular deregulatory agendas in progressive strongholds. So far in 2023, Local Solutions Support Center, an organization committed to protecting local democracy and combatting state preemption, has documented over 650 "abusive preemption bills" (LSSC 2023). These so-called "Death Star" bills signal worrisome strides toward the complete elimination of local control (LSSC 2023). As we approach nearly two decades of minimum wage preemption in Pennsylvania, state legislators must cease their encroachment on the democratic will of local communities. Pennsylvania should repeal minimum wage preemption, along with its broad set of restrictions on local control, to enable democratic responsiveness in cities like Philadelphia, where voters have expressed support for a living wage and greater economic security.

In this policy brief, I first dissect Pennsylvania's economic challenges and local efforts to combat income inequality, before delving into the historical roots and corporate influences behind the state's preemption doctrine. Through comparative analyses and focused case studies, I highlight the antidemocratic implications of preemption in Pennsylvania and offer actionable recommendations to foster economic justice and empower local governance.

An Economy Failing the Working People of Pennsylvania

Economic inequality is on the rise across the United States and is concentrated in big cities like Philadelphia, which ranks sixth among American cities with the highest income inequality (Economy League 2022). Between 2010 and 2020, Philadelphia experienced a 6 percent increase in its Gini coefficient, a numerical index measuring income inequality (Economy League 2022). This comes as recent studies highlight a continuous shrinking of the American middle class (Kochar et al. 2022). As a key part of America's manufacturing core, Philadelphia once had a thriving middle class. However, since the late 20th century, many industrial cities in the Rust Belt have transitioned from manufacturing economies to precarious, low-wage service economies (Sassen 1990). These cities have witnessed increased "deaths of despair," also understood as long-term bleak economic conditions and high unemployment that result in greater addiction rates, falling life expectancies, and premature deaths from alcohol use and suicide—all of which have been shown to be associated with deindustrialization (Sassen 1990, Scheiring et al. 2020).

Neoliberal reforms—such as slashing social safety nets and incentivizing global trade—spurred this turn-of-the-century economic transformation and facilitated transfers of wealth to the top 1 percent of income earners at the expense of working people. Numerous waves of tax cuts across a range of presidential administrations led to a disproportionately large share of economic growth becoming siloed to the 1 percent, even after accounting for tax-based wealth transfers (Koechlin 2013, Stone et al. 2020). The 1 percent's income has tripled since the 1980s, while wages for the bottom 50 percent have remained relatively stagnant (Piketty et al. 2016). Meanwhile, union density has plummeted, resulting in suppressed wages and decreased bargaining power for low-income workers (Piketty et. al 2016).

Another factor compounding economic inequality is the federal minimum wage, which has not kept pace with growth in worker productivity or increases in the cost of living or inflation. Both the Pennsylvania General Assembly and the United States Congress' unwillingness to increase the minimum wage to meet the rising cost of living has had devastating economic consequences for Philadelphians; the purchasing power of Philadelphia's minimum wage has fallen more than 50 percent since 1968 (BLS 2023). The economic conditions for working Philadelphians are dreary. Nearly 23 percent of Philadelphians live in poverty and the cost of housing doubled the rate of wage growth between 2000 and 2022; meanwhile, cynical experts incorrectly lambasted the negligible wage growth struggling workers have recently accrued as inflation-inducing (Census Bureau 2022, USA Facts 2023, Levitz 2023). Had the federal minimum wage kept pace with productivity growth, as of 2020 it would be $21.45 per hour, or $43,000 per year for full-time work (Baker 2022). This is in stark contrast to the approximately $15,000 annual salary when working at the $7.25 federal minimum wage.

Anti-worker state governments invoking preemption contribute to the staggering inequality and deterioration of rights American workers face by squashing local solutions to widespread economic injustice. With state preemption, medium- to large-sized Pennsylvania cities with high poverty rates—such as Braddock, where 31 percent of the population lives in poverty (Census Reporter 2021)—are prevented from locally responding to economic insecurity.

Local Responses to Income Inequality

As the public raises concerns over economic unfairness and widespread financial hardship, many local policymakers have responded to state and federal inaction by attempting to deliver on a local progressive economic agenda. Local minimum wage ordinances are often enacted in urban areas and large cities with greater costs of living, and "are intended to mitigate those higher costs" and to "keep workers out of poverty and to increase consumer purchasing power to spur economic growth" (Marotta and Greene 2019). Economists have found that local wage hikes create substantial raises for low-wage, low-education, and young workers; reduce wage inequality; and decrease job turnover (Dube and Lindner 2021).

State governments have challenged these efforts under state preemption rules. Forty-seven localities have enacted minimum wage ordinances higher than their state floors (EPI 2023), but other municipalities have tried to enact wage hikes that have since been nullified through state preemption. Through various preemption mechanisms, 29 states have preempted local minimum wage ordinances, 42 states have preempted local taxing and spending powers, 20 have preempted municipal broadband provision, 23 have preempted paid leave mandates, and 41 have preempted gig economy regulations (EPI 2019, NLC 2018).

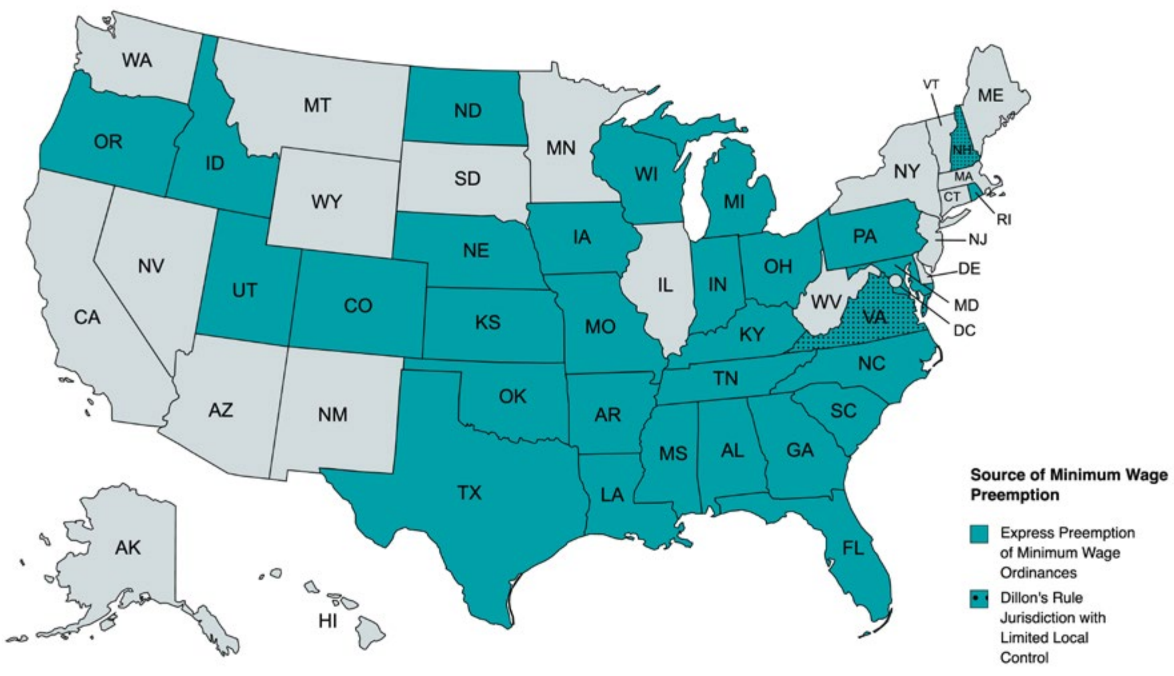
When states refuse to tackle income inequality and instead roll back progress toward income equality, they hurt American workers. When states fail to meet the moral imperative to defend workers' rights and preemption hampers the local capacity to meet this need, they produce a regulatory vacuum that allows inequality to fester. It wasn't until 2020 that Philadelphia created a municipal department of labor to crack down on rampant wage theft and labor law violations, a role that all cities with the exception of Philadelphia would be unable to serve under current restrictions on local autonomy dictated by state law. A report from Temple University's Beasley School of Law found that in any given workweek, 128,476 workers experience minimum wage violations in the Philadelphia area, while just under 400,000 workers face violations statewide (Reed et al. 2015). Since the Philadelphia Department of Labor's inception, it has recovered millions of dollars through enforcement and compliance efforts, including $493,140 in FY 2023 for victims of wage theft and other labor violations, including local paid sick leave and fair workweek violations. As a Class I city—cities with more than 1 million residents—Philadelphia enjoys greater regulatory autonomy under Pennsylvania state law (PA DCED 2023). The city government is therefore uniquely positioned to ensure workers are protected under local law when state agencies and lawmakers fail to step in (PA DCED 2023). Cities below the 1 million resident threshold do not enjoy the same level of autonomy under state law. In practice, this means that mid-sized cities and small towns in Pennsylvania face greater barriers to local control.

Foundations of Preemption

Discrepancies in regulatory authority between larger cities and smaller ones in the same state raise broader questions surrounding preemption. Why is it that some cities and towns are permitted to regulate economic activity in some states but not others? Local authority is an important topic in state constitutional jurisprudence and varies greatly from state to state. Over the years, two competing doctrinal rules have emerged to define the scope of local government authority: Dillon's Rule and Home Rule. Dillon's Rule holds that local governments have only the powers expressly granted to them by state law, and any ambiguity between local law and state law should be resolved in favor of the state (Diller 2007; Richardson 2011). In contrast, Home Rule grants local governments broader authority to enact legislation and regulate local affairs without interference from the state, unless expressly prohibited by state law. Home Rule is a more permissive approach to local governance, allowing municipalities to exercise greater autonomy and flexibility in addressing local issues (Riverstone-Newell 2017; Richardson 2011). While Pennsylvania is a Home Rule state, localities must adopt a Home Rule Charter to exercise, approve, and determine the terms and conditions of self-governance. Furthermore, Home Rule municipalities have additional legal classifications based on population size that enable the state to regulate local activity and regulation while providing exemptions or specifications for particular jurisdictions. For example, Philadelphia and Scranton are Home Rule cities with differing restraints on local authority based on state statutes, the state constitution, the Home Rule Charter, and judge-made law (PA DCED 2023, Act of Apr. 21, 1949, P.L. 665, No. 155). Local regulation, legal precedent, and state law often conflict with one another, creating political confrontations across Pennsylvania and other states with complex preemption rules. State preemption of labor protections often lead to such confrontations, as state governments assert their authority to limit local labor regulations.

Despite the more relaxed approach embraced by Home Rule states, preemption is not solely a problem for Dillon's Rule states. In fact, regardless of whether they are Dillon's Rule or Home Rule states, all states that have minimum wage preemption utilize express preemption or explicit limitation on local authority by state law, with the exception of Virginia and New Hampshire (NLC 2018) (figure 1). Some scholars see this confusing, often contradictory jumble of legal interpretations and preemptions of local power as part of a larger project to defeat the idea of government as a guarantor of rights. The neoliberal project has evolved to use the tools of preemption to proactively remove democratic mechanisms for responding to entrenched corporate interests (Lafer 2017). As a result, in many cases citizens cannot express their democratic right to make their views toward redistributive policies heard at the ballot box, let alone have those views implemented as policy. This deterioration of political self-determination is a developing crisis of local democracy and is spreading across the nation (Graves 2023).

Figure 1: States with Minimum Wage Preemption and Sources of Preemption



Source: National League of Cities

Corporate Interests, Preemption, and "Death Star" Bills

Pennsylvania has only one type of express economic policy preemption. Other states with conservative legislatures have taken much bolder action to curtail local autonomy and progress. Fighting against future attempts at expanding preemption laws and "Death Star" bills is vital to ensure further antidemocratic drift in Pennsylvania. Other states show the dangers of broadening preemption laws. In May of 2023, the state senate in Texas passed House Bill 2127, a "Death Star" preemption bill that, if enacted, would eliminate local autonomy and self-governance "in eight different areas, including labor, finance, and the environment" (Houston Public Media 2023). In effect, this means that in absence of previous local water break mandates, many workers will be placed at higher risk of heat stroke and death on the job. In a back-and-forth between lawmakers, the constitutionality of the bill came into question by State Sen. Brandon Creighton (D-TX) for its direct conflict with Texas' constitutionalized Home Rule.

Many critics of preemption are rejecting a view of the strategy as a values-neutral policy tool: Preemption is inherently undemocratic. In a segment of MSNBC's "Symone," Symone Sanders-Townsend held a sit-down in Washington, DC, with Democratic mayors in red states to spotlight the authoritarian potential of preemption and how the doctrine has been used to attack progress in majority Black and minority cities. Mayor Quinton Lucas of Kansas City—a city where workers and people of color were hit hardest by minimum wage preemption—describes preemption as a "state-takeover where there can be local solutions," explaining that:

> [A]ll these laws and bills, they're not about making people safer. They are not about anything other than pure, unadulterated control. And we mentioned race before because it is important; control of Black people, of Black people's choices, and those who live around us. (Sanders 2023)

These bills are about more than ensuring the proper legislative body is in charge of economic policy solutions. Overall, state preemption undermines local democracy, stifles progressive policy experimentation, and exacerbates income inequality (Michener 2023, Badger 2017).

Corporate lobbyists and special interest groups are a driving force behind the use of preemption to institute fiscal austerity in municipalities, deregulate local economies, and insulate corporations from accountability to the public. The American Legislative Exchange Council (ALEC) is the chief architect of the preemption reforms that have proliferated across the nation. ALEC is a nonprofit organization that brings together state legislators and private sector representatives to develop model bills, often promoting conservative and pro-business policies. While ALEC states its aim is to foster limited government, free markets, and federalism, critics argue that its model legislation disproportionately serves corporate and special interest agendas at the expense of workers' rights and local autonomy. Since the beginning of the 21st century, state legislatures across the country have enacted preemption bills that undercut local control (Graves 2023). These bills share a striking resemblance to ALEC's "model" preemption legislation (Graves 2023). A USA *Today* investigation discovered that between 2010 and 2018, nearly 3,000 ALEC model bills and 10,000 modified copies of their bills have been introduced in state legislatures, with over 600 becoming law. The investigation concluded that ALEC leads the "largest unreported special-interest campaign in American politics" (Sanchez and O'Dell 2019). The organization's mission statement would have the public believe otherwise:

> Decisions that impact individual, local communities should be made at the local level. Genuine accountability to hardworking taxpayers comes from state and local legislators working with community members to determine a plan of action that is right for each individual state, city or town.

ALEC's agenda is clear: Mobilize state legislators and lobbyists to strip local governments of power when they stand in the way of ALEC's corporate agenda. In the same stride, it pushes local right-to-work ordinances that would decimate worker power (Greenberg 2016, Graves 2023). The following quote from ALEC's model legislation sums up the organization's anti-worker sentiments and objectives: "Local variations in mandated wage rates threaten many businesses with a loss of employees to areas which require higher mandated wage rates" (ALEC 2013). Large corporations, many of which hold ALEC membership, see worker power in the labor market as a threat to unilateral corporate control and malfeasance. Anti-worker, anti-regulation, and pro-monopolistic politics are consistent with the views espoused by ALEC's leadership and their membership of corporate elites. ALEC's membership and corporate board has included companies and executives from Koch Companies, Walmart, AT&T, Pfizer, ExxonMobil, UPS, and Amazon. The special interest group is led by top staffers for former Speaker of the House and Reaganomics champion Newt Gingrich and has financial ties to right-wing billionaire Leonard Leo (Graves 2023). Without a robust, organized, pro-worker response against preemption, ALEC's extreme, deregulatory, and anti-worker agenda risks being enshrined for an entire generation, or more worryingly, permanently.

While ALEC hasn't advertised its efforts to push preemption in Pennsylvania, the fingerprints of corporate and special interest groups can be found all over the fight for preemption in the commonwealth. And the battle is not limited to minimum wage preemption alone. Efforts to preempt noneconomic policies like gun regulation or single-use plastic bans also exist, with the same antidemocratic, anti-worker motivations fueling them.

There are at least 24 active state lawmakers that have documented ties to the American Legislative Exchange Committee within the commonwealth of Pennsylvania (SourceWatch 2023). Republican State Rep. Seth Grove is ALEC's Pennsylvania state chair and was named 2017 Legislator of the Year by the organization. In almost every legislative session, Grove has introduced labor policy preemption that would eliminate local pro-worker policies like Philadelphia's paid leave and fair workweek laws, the Domestic Workers' Bill of Rights, and the city labor department. Grove and other ALEC-aligned corporate interest groups like the PA Chamber of Business and Industry condemn local ordinances, claiming they "creat[e] a patchwork system" that burdens employers with administrative expenses and costs for local regulation (PA Chamber of Business & Industry 2017, Grove 2018). In 2021, the PA Chamber, Rep. Grove, and other preemption advocates clashed with trade unions after pushing another preemption bill, this time to overturn prevailing wage standards in order to cut costs for the construction trades during the COVID-19 pandemic (Caruso 2021). Unsurprisingly, Grove has accepted over $48,500 in campaign contributions from the construction trades and nearly $40,000 from lobbyists, many of which are strongly against higher wages, benefits, and safety standards (FollowTheMoney 2023). Most significantly, the state representative received $5,500 from the Pennsylvania Restaurant Association, a group that brought legal challenges to Pittsburgh's paid sick leave provision (FollowTheMoney 2023). How is dark money and lobbyist cash able to flow under the table, garnering legislators' support for preemption and escaping the public spotlight? Flashy "Death Star" preemption bills in Florida and Texas are making national headlines while Pennsylvania's incrementalist, single-issue preemption goes underreported. The American Heart Association's community advocacy director for Philadelphia and leader of the cross-issue PA Preemption Coalition, Jacob Zychick, shared insights about the dominance of issue-based preemption advocacy in Pennsylvania and its relationship with Pennsylvania's campaign finance regime:

> There are legal and strategic reasons they didn't want to do widespread preemption. Quick, quiet, and backroom preemptions have made it through [the legislature] under the radar, and very weak state campaign finance laws are a big reason why . . . In Pennsylvania, if I were [ALEC/preemption lobbyist], I would be confused why we would want to draw attention to Harrisburg with a full-on campaign.[3]

3 Zychick, Jacob (Community Advocacy Director, American Heart Association), video interview with author, August 17, 2023.

In essence, Zychick is underscoring the dangers of unchecked corporate influence, especially when it operates in the shadows. These corrupt activities emphasize the need for stronger campaign finance regulations to ensure transparency and accountability throughout the legislative process across the board, not just when it comes to fighting preemption.

In speaking with local Philadelphia advocates from organizations focusing on varying issues, all shared similar sentiments as it relates to the politics of preemption and the obstacles it poses. Whether it's diluting the political capital of majority-minority constituencies and overwhelmingly progressive cities, preemption is a top-down and paternalistic weapon of state law that dictates for a community what type of government they can or cannot have. The Executive Director of CeaseFirePA, Adam Garber, emphasized the voracious opposition of conservative state legislators and lobbyists to progressive local agendas in cities they don't represent: "Democrat-led cities are enacting ordinances that are too popular for [special interests] to challenge locally, so they run to the state [legislature] to cut Democrat-led cities off at the knees."[4]

With the financial backing of the National Rifle Association (NRA), Pennsylvania state legislators enacted punitive preemption provisions that would force taxpayers to foot the NRA's legal bills when challenging local firearms regulations, inflicting severe financial penalties on municipalities enacting such regulations (Giffords Law Center 2023). In addition, the preemption provisions granted individuals located anywhere in the commonwealth legal standing to sue local government and officials without ever stepping foot in or feeling the impact of gun control in cities like Pittsburgh. Ultimately, the punitive preemption measure was rejected in court due to a procedural barrier imposed by a single-subject bill clause in the state constitution. However, even in the temporary success of punitive preemptive measures, corporate interests use the law to overburden and dismantle the regulatory state and effective local governance.

From Missouri to Michigan: Assessing the Arguments for and Failures of Preemption

While there is limited research on the impact of a preemption repeal and subsequent minimum wage hike in Philadelphia, we can look to states that have enacted or repealed preemption and instituted local wage hikes as proxies for evaluating the potential impact of similar policies in Pennsylvania.

In 2017, Missouri amended a 2015 law to extend preemption and nullify a St. Louis minimum wage raise enacted prior to the original state law, effectively halting Kansas City minimum wage referendum efforts (Mo. HB 1193 & 1194 § 290.500-530; Huizar and Lathrop 2019).

Some scholars, think tanks, and trade associations argue that state preemption can mitigate the negative outcomes they believe are associated with local labor regulations. Neumark and Wascher (2007) find that larger minimum wage increases can lead to a reduction in job growth, particularly for low-skilled workers, and to lower employment for young workers. Similar pro-preemption resources and advocates suggest that local wage ordinances may inadvertently harm the very workers they aim to help, as businesses may reflexively cut back on hiring or reduce hours to offset increased labor costs (Neumark and Wascher 2007; ALEC 2013). A study of the short-lived St. Louis wage hike conducted by economists at the Employment Policies Institute attributed job loss for young workers between the ages of 16 and 24 to the minimum wage hike (Macpherson and Even 2017). These economists suggest that by preempting ordinances like St. Louis', state governments can protect vulnerable workers from potential job losses, ensure a more stable labor market, and reduce the cost of doing business.

4 Garber, Adam (Executive director, CeaseFire PA), video interview with author, August 15, 2023.

The negative effects of minimum wage preemption far outweigh the limited downsides to local wage hikes and negligible (possibly nonexistent), quantifiable, positive economic impacts of preemption. An extensive review of the economic effects of city-level minimum wages found “no discernible effect on employment” and in fact, more than 60 percent of assessments of local wage hikes identified a positive employment rate impact (Dube and Lindner 2021). Why? Because perfectly competitive labor markets rarely, if ever, exist in reality. The same review also pointed out that business reallocation in response to local wage hikes is limited, but even “when such spillover occurs” the size is unknown (Dube and Lindner 2021). The National Employment Law Project’s report on minimum wage preemption calculated a national annual sum of almost $1.5 billion in lost wages across the nation’s 12 municipalities with nullified wage hikes. The state of Missouri is alone responsible for more than one-third of the country’s preemption-induced wage loss, with Kansas City losing $401,700,000 in wages and St. Louis $179,200,000. And while the federal poverty rate is 11.6 percent, the 12 affected jurisdictions have poverty rates ranging from 20 percent to 71 percent, demonstrating that wage policy preemption disproportionately targets cities with higher concentrations of low-wage workers and low-income families (Huizar and Lathrop 2019). Uniform labor policies imposed through preemption are insensitive and unaccommodating to local labor market conditions in states like Missouri, where the cost of living index is substantially higher in cities like Kansas City (94.9) than the statewide index (89.1) (MERIC 2023). An additional $5,535 a year in wages per person in Kansas City would chip away at pervasive economic insecurity for low-wage workers in a municipality with a higher cost of living than the state average (Huizar and Lathrop 2019).

Corporate interests and lobbyist organizations that have come out publicly against preemption repeals argue that repeals would result in a “patchwork” of regulations that places costly administrative burdens on businesses operating across jurisdictions (Saltsman 2018). In June 2023, the Michigan House of Representatives held a hearing on a bill to repeal minimum wage preemption. The Grand Rapids Chamber of Commerce and Michigan Retailers Association testified that uniform labor regulations will attract businesses to states with preemptive laws, leading to job growth and economic development. Their testimony suggests that when intrastate labor laws are consistent, businesses can better plan for expansion and operational costs, ultimately benefiting both businesses and workers. Amy Drumm, Senior Vice President for Michigan Retailers Association stated:

> [W]e are concerned about the confusion that would happen for small business owners who are trying to comply with multiple different jurisdictions who are adopting multiple new policies that we again feel are best implemented at the state level. (Michigan Retailers Association 2023)

Some arguments for preemption explain that preemption could reduce transaction costs for businesses operating in multiple jurisdictions within a state. By standardizing regulations across the state, businesses might avoid the complexities and additional expenses associated with navigating different local ordinances. For example, when a state preempts local minimum wage laws and establishes a single minimum wage, employers do not have to track and comply with varying wage rates across different cities or counties. An Urban Institute study of the effects of patchwork regulation and preemption notes that theoretically, regulatory variance in labor policies—such as local minimum wages—and their associated “compliance costs for smaller businesses operating in multiple jurisdictions could presumably be more noticeable” than similar costs for larger enterprises (Treskon et al. 2021). These transaction costs might translate into additional needs for human resources and legal compliance professionals, which could burden smaller businesses that have limited capacity and resources to adapt; however, the same study did not find any noticeable transaction costs between locales with local regulation and those without or across any economic literature on preemption and patchwork regulation.

One conservative elected official in Michigan argued that by raising wages, municipalities will incentivize businesses to leave, reducing the locality’s tax base and ultimately risking local bankruptcy (House Labor Committee Hearing 2023). A number of ALEC legislators across the country have made this point without providing any data on reductions in local government revenues in states that have not preempted local regulations. Moreover, the Urban Institute study also explains that "little evidence exists . . . that a patchwork of local laws harms businesses, residents, and consumers" (Treskon et al. 2021). The analysis additionally highlights that proponents of preemption often cite the total costs of regulation, rather than the marginal cost of regulatory variance for individual firms (Treskon et al. 2021). No existing literature shows that municipal minimum wages hinder competition for commerce or trigger business reallocations; on the contrary, an assortment of studies show that local labor policies lead to several-point reductions in poverty, increased household earnings and spending, and improved health outcomes (Marotta and Greene 2019).

In fact, the sponsor of HB 4237, Michigan's preemption repeal bill, State Rep. Joey Andrews (D-MI), makes a unique argument about what can be distilled to cities and states using local regulation as a sort of competition for workers won by those jurisdictions that can best guarantee an affordable living. In border towns in Michigan, teachers and many other workers reside in Indiana because of the lower cost of living prompted by inadequate wages and benefits and high housing costs (House Labor Committee Hearing 2023). In addition, the recent repeal of the state's "Right-to-Work" law and HB 4237's proposed repeal of the Local Government Labor Regulatory Limitation Act would chip away at the devastating 2015 "Death Star" bill in Michigan, which undercut union and worker power by outlawing local project labor agreements and minimum wage ordinances (Lawler 2015).

A repeal of labor policy preemption would strengthen economic conditions for Michiganders, but only one other state has successfully repealed minimum wage preemption: Colorado. State legislators deployed pro-worker economic rationales in a mounted effort to repeal state preemption in Colorado. In 2019, after significant political pressure, Governor Jared Polis signed a bill repealing a 1998 ban on local minimum wage regulation (HB19-1210, Colorado General Assembly, 2019 session). Since the bill was enacted, Denver passed an inflation-adjusting minimum wage hike, increasing the floor from $11.10 to $17.29 between 2019 and 2023. The preemption repeal paired with the Denver wage hike had immensely positive economic outcomes. An economic analysis conducted by the National Employment Law Project after the repeal found that between 2019 and 2022, the city added 61,000 jobs (Lathrop 2023). And now the city of Boulder is moving to enact a $25 minimum wage with the leadership of local labor and business organizations (Fisher 2023), despite the empty threats of business retreat that are often made by corporate lobbyists.

Preemption in Pennsylvania and the Need for a Minimum Wage Hike

While neighboring states have advanced their minimum wage policies, Pennsylvania's adherence to preemption has not only failed to attract businesses, but has also exacerbated job loss, population decline, and wage disparities, underscoring the urgent need for a minimum wage hike and local economic autonomy. If the aforementioned conservative arguments were correct, the wage hikes implemented in the states bordering Pennsylvania would result in businesses migrating into the state to avoid their home state's supposedly burdensome regulations. State Rep. Nick Pisciottano (D-PA) refutes this argument, noting:

> This is a way that Pennsylvania has to compete . . . we didn't see all these jobs move from Ohio and West Virginia into Pennsylvania because the minimum wage is higher in those states. That didn't happen. Or else we wouldn't be losing population and losing jobs. (Labor and Industry Committee Hearing 2023)

Since the pandemic, Pennsylvania has experienced job loss and significant population decline totaling 17 percent between 2020 and 2022 (Axios 2023). This is underscored by the fact that all states bordering Pennsylvania have a higher minimum wage, as illustrated by Table 1. Crucially, two-thirds of Pennsylvania's bordering states have passed a $15 minimum wage that will be enacted by 2025.

Table 1: Minimum Wage of States Bordering Pennsylvania in 2023

State	Minimum Wage Rate
Pennsylvania	$7.25*
Ohio**	$10.10
Maryland	$13.25 or $12.80***
Delaware	$11.75
New York	$15.00 or $14.20****
New Jersey	$14.13
West Virginia**	$8.75

* Statutory floor is $7.15 so the $7.25 federal minimum wage prevails

** Denotes states bordering PA that will not have enacted a $15 minimum wage by 2025

*** Rate for small business

**** State floor outside of Nassau, Suffolk, and Westchester Counties and New York City

Evidence regarding the quantifiable impact of state preemption of labor policy reinforces the previous arguments for a wage hike and local economic control. One study found that minimum wage preemption contributed to up to 3.5 percent of infant deaths (600 deaths in 2018), and a dollar increase in the minimum wage could reduce infant mortality by up to 1.8 percent (Wolf et al. 2022). The researchers ran a statistical model creating mortality risk assessments associated with hypothetical and politically feasible county-level minimum wage and paid leave mandates. The same study found that in some cases, repealing preemption of paid sick leave could reduce deaths associated with suicide, homicide, and alcoholism by up to 5 percent. Additionally, a study of the country's largest local minimum wage hikes found that every 10 percent increase in the minimum wage produced up to 2.5 percent increases in earnings for food service workers while maintaining zero job loss (Allegretto et al. 2018).

Repealing Pennsylvania's minimum wage preemption would allow cities like Philadelphia to enact a living wage. According to MIT's Living Wage Calculator, a living wage for a single adult living in Philadelphia is $17.53 per hour. For a two-parent household with one child and one working adult, $11.07 is a poverty wage. The living wage for a three-member family with two working adults would be a sizable $20.47 per hour. The state minimum wage stands at almost $4.00 less than the poverty wage for a given family of three with one working parent. Additionally, Philadelphia's cost of living is 8.4 percent higher than the national average, while the city's real minimum wage of $6.69 ranks at one of the nation's lowest when adjusted for the cost of living (SmartAsset 2023). In Pennsylvania, 31.2 percent of workers—419,000 of which are single-parent households—make less than $15 an hour, with notable racial disparities: 54 percent are Hispanic workers, 47.6 percent are Black, and 27.2 percent are white (Henderson 2022). Research suggests that enacting a living wage would reduce racial disparities in income and wealth inequality. The civil rights-era federal hikes increased the minimum wage to its greatest purchasing power in the entire history of the policy and were critical to reducing Black-white income disparities in the following years (Derenoncourt and Montialoux 2021). The Keystone Research Center found that a $15 minimum wage would improve the lives of over 1.34 million workers, a supermajority of whom are women and 30 percent of whom are people of color (Kovach 2023). The swath of evidence showing beneficial impacts of local minimum wage increases and preemption repeals suggest that both would greatly benefit working people in Philadelphia and across the commonwealth.

Roadblocks and Recommendations

With a more deferential form of constitutional Home Rule or repeals of preemption, how might cities like Philadelphia respond? What do progressive economic regulations at the local level mean for working Americans?

In 2022, Democrats obtained a majority in the Pennsylvania House, and the newly elected Democratic Governor Josh Shapiro campaigned on a $15 minimum wage. For many state officials, a minimum wage hike and preemption repeal are a top policy priority and a plethora of minimum wage hike proposals exist. The most expansive bill, HB 1135, offers an inflation-adjusting wage hike to $21 per hour by 2028, moves to eliminate the tipped wage, and repeals preemption. The bill that passed out of the House Labor and Industry Committee and the State House institutes a hike to only $15 ($6 tipped wage for waiters, bartenders, etc.) by 2026, followed by yearly inflation adjustments and noticeably omits a preemption repeal. While many elected Democrats have signaled support for local control, Labor and Industry Chair Jason Dawkins (D-PA) said, “I don’t believe that will happen” (Caruso 2023). A coalition of organizations across the state led by POWER Interfaith, a Pennsylvania-based organization mobilizing religious congregations from various traditions in the Greater Philadelphia area to promote economic justice, racial equity, and education reform, among other issues, organized for a living wage hike and preemption repeal leading up to the yearly budget negotiations. Statewide organizing director Sara Melton explained why the repeal might have fallen through:

> Historically repeal to preemption has been in house bills coming out of the Democratic Party—but when it became real we noticed one of two things: 1) That legislators didn’t really know what preemption was. Some organizations in the coalition worked on educating lawmakers on preemption . . . [and] 2) A set of democratic lawmakers didn’t want it in the bill. Republicans didn’t have a hand in stopping it. The Democrats in the committee had full control and couldn’t agree on preemption . . . [The repeal] had been included in the past iterations but when it had the chance to actually pass, it was left out. And we don’t know the role that industry played in it not coming to a head.[5]

Melton’s quote reveals that the challenges to repealing preemption are multifaceted and not solely based on party lines. Melton’s insights shed light on two significant barriers: a lack of understanding about preemption among legislators and internal disagreements within the Democratic Party.
The fact that some legislators were unaware of what preemption entails underscores the importance of continuous education and advocacy. The internal discord within the Democratic Party is equally troubling. Melton’s observation that the repeal was omitted when it had a genuine chance of passing suggests that there might be underlying political dynamics or external pressures, possibly from industry stakeholders, influencing the decision-making process. This revelation raises questions about the transparency, motivations, and sincerity behind some lawmakers’ perhaps superficial support for a minimum wage hike in a divided legislature.

5 Melton, Sara (Statewide Organizing Director, POWER Interfaith). Phone conversation with author, August 23, 2023.

Pennsylvania House Bill 1500, which would raise the minimum wage to $15 an hour, is a companion bill to a State Senate GOP proposal, Bill 743, introduced by Republican State Sen. Daniel Laughlin. When the House bill was introduced, many of Laughlin's GOP colleagues were citing a conservative think tank report suggesting the bill would kill 86,000 jobs across the commonwealth (Even and Macpherson 2023). Democratic lawmakers are calling HB 1500 a compromise bill, but with a Republican majority in the State Senate, it is unlikely that the statewide wage hike will be signed into law. Regardless, preemption would remain a pertinent issue with or without the statewide increase.

Creating a 21st-Century Home Rule for Pennsylvania to Foster Economic Justice from the Bottom Up

The state legislature should take the following steps:

1. Move to enact HB 1135 to establish a statewide living wage and repeal preemption, or at least enact a standalone preemption repeal
2. Amend Pennsylvania's Home Rule Charter to:
    a. Enshrine deference to local control and delegate broad police powers to local governments for purposes of regulating local interests (Briffault 2004); and
    b. Adopt a "Presumption against State Preemption Principle" to prohibit implied and punitive preemption and require enactment of express ceiling preemptions to meet a "substantial state interest [that is] narrowly tailored" (NLC 2020) to meet its purported rationale for enactment.

In practice, adopting these provisions would mean that Pennsylvania state courts rarely strike down local policies on issues that the state shares an interest in. Moreover, state lawmakers cannot cite uniformity as a substantial state interest when the fundamental principle of Home Rule is to allow local variation and innovation to best accommodate local and community needs. An adequate minimum or living wage for someone living in Philadelphia is not the same as an adequate minimum or living wage for someone living in a rural county with lower costs of living. A community-centered approach to policymaking means tailoring solutions to a given constituency. A living wage for a single adult living in Cameron County, Pennsylvania is $3 less than for those living in Philadelphia (MIT Living Wage 2023), and might require a different statutory floor with a slower transition because of varying economic conditions.

The issues of conflicting state interest and the latitude of local regulatory authority have been the subject of litigation in recent years. Trade associations and other business interests launched several legal challenges to Pittburgh's paid sick leave and building safety code ordinances in *Pa. Rest. & Lodging Ass'n v. City of Pittsburgh and Bldg. Owners & Managers Ass'n of Pittsburgh v. City of Pittsburgh*. These challenges were based on Home Rule restrictions on business regulations for localities of the Class II size or smaller. The challenge ultimately resulted in the Pennsylvania Supreme Court sustaining the Paid Sick Leave Act and overturning the Safe & Secure Buildings Act. But the source of legal ambiguity remains, making future conservative legal challenges likely:

> A municipality which adopts a home rule charter shall not determine duties, responsibilities or requirements placed upon businesses, occupations and employers . . . except as expressly provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities. (53 Pa.C.S. § 2962[f])

Without former Democratic Governor Tom Wolf's deterrent threat to veto paid leave preemption if it were to pass the State House and Senate (Shelly 2015), the prior court decision to preserve local autonomy would have likely been overturned. Additionally, a bill restricting local climate action and green energy policy would have likely become law without Governor Wolf's 2022 veto (Phillips 2022). What's more, without major changes to the commonwealth's Home Rule regime, there's little stopping a GOP trifecta or state legislature with a Democratic Governor sympathetic to preemption from enacting a "Death Star" bill. And yet, these state-created restrictions on local authority are fundamentally at odds with the intent of the Constitutional Home Rule principle enshrined in Pennsylvania law. Self-governance inequities between different localities in Pennsylvania are also counterproductive to a deferential view toward local control. As a result, rural constituencies are particularly affected when preemption takes away the means for responsive and effective local government and effectively bars delivery of vital protections. In addition to the aforementioned recommendations, a robust Home Rule should also permit uniform authority to regulate business and labor rights across all classes of municipalities. This can be accomplished by further amending § 2962(f) to read as follows:

> A municipality which adopts a home rule charter shall have the authority to determine duties, responsibilities or requirements placed upon businesses, occupations and employers without regard to a class or classes of municipalities.

These proposed changes would put more money in the pockets of working people and greatly improve quality of life from Erie to Philadelphia.

Conclusion

Twenty-first century conservative state legislatures have become the enemy of local progress for workers' rights and poverty reduction. Now more than ever, working families are subject to low and stagnant wages and spikes in costs of living. State preemption prohibits local solutions to these consequential issues and instead imposes top-down, one-size-fits-all policies that are often influenced by and protective of corporate interests. This is fundamentally at odds with what most Americans want; minimum wage preemption is deeply unpopular and undemocratic. A majority of voters believe that Americans need to make around $26 an hour to have a decent living, and the vast majority of voters—including Republicans—support a $20 minimum wage (Blank 2023).

Amidst this backdrop, local control offers a concrete solution to advancing progress toward a living wage for all and economic justice and workers' rights more broadly. Local governments understand the unique challenges faced by their constituents and are more likely to implement legislation that reflects the reality of the communities they serve. They recognize the growing inequities in wealth distribution, the widening gap between the rich and poor, and the increasing need for stable, well-paying jobs that ensure workers are adequately compensated for their labor. Under local control, solutions can be tailored to local economies and accommodate diverse economic environments. Moreover, local control empowers communities to attain economic justice by establishing local standards for wages, benefits, and working conditions that respect both the dignity of labor and the cost of living specific to a given area.

Home Rule is the embodiment of local control and expanding it is a viable route to counter the inhibitions imposed by state preemption. An expanded Home Rule system strengthens the democratic participation of citizens at a local level, bringing to life the principle of governance "of the people, by the people, for the people." It allows for municipalities to set wage laws that reflect local living costs, consequently fostering a more equitable society where people are not just surviving, but thriving. In addition, Home Rule holds the potential to create a fair balance of power between workers and corporations—a balance that, under state legislatures, is all too often skewed toward corporate interests. By expanding Home Rule, we give communities the ability to shape policies that reflect the will and the needs of their citizens, rather than broad, corporate-backed, state-level mandates. Therefore, it is essential that we work toward expanding Home Rule, endorsing local control, and striving for living wages, economic justice, and workers' rights. Decision-making power should be returned to the hands of those directly affected by the outcomes of these policies.

About the Author

Macy Stacher is a student at the University of Pennsylvania graduating with a BA in political science and a master of science in social policy in 2024. Macy is committed to building a multiracial working-class movement dedicated to raising marginalized communities' standards of living and guaranteeing that all Americans can live a life of dignity and respect.

At Penn, Macy is the president of the QuestBridge Scholars Network, a scholarship community that supports low-income students like himself. He developed a passion for labor policy and economic justice as an active political organizer on campus, where he has spearheaded resident assistants' unionization efforts and mobilized voters to elect progressives across Philadelphia. Upon graduating, Macy intends to delve into economic research and engage in legal advocacy to amplify worker power.

Acknowledgments

I would like to express gratitude to Alyssa Beauchamp and Emma Horst-Martz for their mentorship, guidance, and immense support throughout the fellowship and the process of developing my policy brief. I am grateful to Emma Horst-Martz, Dr. Hiba Hafiz, Shahrzad Shams, Claire Greilich, and Katie Kirchner for sharing their time, insight, and expertise in providing feedback on my drafts. I would also like to thank Jacob Zychick, Jeff Garis, Sara Melton, and Adam Garber for taking the time to speak with me about their crucial advocacy against state preemption. Finally, I would like to share my appreciation for the Roosevelt Institute for offering this invaluable research opportunity and for the organization's efforts to invest in the next generation of progressive policy leaders.

References

State Preemption: Antidemocratic and Anti-Worker Tools of Austerity

Allegretto, Sylvia A., Anna Godoey, Carl Nadler, and Michael Reich. 2018. *The New Wave of Local Minimum Wage Policies: Evidence from Six Cities*. Berkeley, CA: Institute for Research on Labor and Employment. https://irle.berkeley.edu/files/2018/09/The-New-Wave-of-Local-Minimum-Wage-Policies.pdf.

American Legislative Exchange Council (ALEC). 2013. “Living Wage Mandate Preemption Act.” November 16, 2017. https://alec.org/model-policy/living-wage-mandate-preemption-act/.

_______ 2018. “Representative Seth Grove: Legislator of the Week and Year.” ALEC. February 12, 2018. https://alec.org/article/representative-seth-grove-legislator-of-the-week-and-year/.

Avilucea, Isaac. 2023. “Pennsylvania’s Population Drops during Pandemic.” *Axios*, April 11, 2023. https://www.axios.com/local/philadelphia/2023/04/11/pennsylvania-population-shrinks-during-pandemic-2020-2022.

Badger, Emily. 2017. “Blue Cities Want to Make Their Own Rules. Red States Won’t Let Them.” *New York Times*, July 6, 2017. https://www.nytimes.com/2017/07/06/upshot/blue-cities-want-to-make-their-own-rules-red-states-wont-let-them.html.

Biggs, Andrew G., and Mark J. Perry. 2014. “A National Minimum Wage Is a Bad Fit for Low-Cost Communities.” American Enterprise Institute (AEI), March 26, 2014. https://www.aei.org/articles/a-national-minimum-wage-is-a-bad-fit-for-low-cost-communities/.

Blank, Lew. 2023. “$7.25 Isn’t Cutting It in This Economy. Voters Support Raising the Minimum Wage to $20 per Hour.” Data for Progress, May 24, 2023. https://www.dataforprogress.org/blog/2023/5/24/725-isnt-cutting-it-in-this-economy-voters-support-raising-the-minimum-wage-to-20-per-hour.

Briffault, Richard. 2004. “Home Rule for the Twenty-First Century.” *The Urban Lawyer* 36, no. 2 (Spring): 253–72. http://www.jstor.org/stable/27895486.

Building Owners & Managers Assoc. v. City of Pittsburgh, 2017 WL 2153216 (Pa. Cmwlth); Pa. Restaurant & Lodging Assoc. v. City of Pittsburgh, 2017 WL 2153813 (Pa. Cmwlth.), allocatur granted Nov. 29, 2017, appeal dockets 57-64 WAP 2017 (consolidated for briefing and oral argument).

“Campaign Finance Database for State Representative Seth M. Grove.” FollowTheMoney.org. Accessed August 20, 2023. https://www.followthemoney.org/entity-details?eid=13006133.

Caruso, Stephen. 2021. “Looking to Boost Minimum Wage, PA Dems Want to End Preemption. That’s a Heavy Lift.” *Penn Capital-Star*, January 6, 2021. https://www.penncapital-star.com/government-politics/looking-to-boost-minimum-wage-pa-dems-want-to-end-preemption-thats-a-heavy-lift/.

_______ 2023. “Why Some State Lawmakers Think This Will Be the Year Pa. Raises Its Minimum Wage.” *Spotlight PA*, June 13, 2023. https://www.spotlightpa.org/news/2023/06/pa-minimum-wage-raise-legislature/.

ChangeLab Solutions. 2019. "Fundamentals of Preemption." https://www.changelabsolutions.org/sites/default/files/2019-07/Fundamentals_of_Preemption_FINAL_20190621.pdf.

Colorado General Assembly. HB19-1210, "Local Government Minimum Wage." 2019 Regular Session. https://leg.colorado.gov/bills/hb19-1210.

Derenoncourt, Ellora, and Claire Montialoux. 2021. "Minimum Wages and Racial Inequality." *The Quarterly Journal of Economics* 136, no. 1 (February): 169–228. https://doi.org/10.1093/qje/qjaa031.

Diller, Paul. 2007. "Intrastate Preemption." *Boston University Law Review* 87: 1113-76. https://www.bu.edu/law/journals-archive/bulr/volume87n5/documents/DILLER_v2.pdf.

Dube, Arindrajit, and Attila Lindner. 2021. "City Limits: What Do Local-Area Minimum Wages Do?" *Journal of Economic Perspectives* 35, no. 1 (Winter): 27-50. https://doi.org/10.1257/jep.35.1.27.

Economy League. 2022. "Income Inequality in Philadelphia – The 2020 Gini Coefficient." Leading Indicators. https://www.economyleague.org/resources/income-inequality-philadelphia-2020-gini-coefficient.

Even, William, and David Macpherson. 2023. "A $15 Minimum Wage in Pennsylvania Would Cost Nearly 86,000 Jobs." Employment Policies Institute, June 2023. https://minimumwage.com/2023/06/new-data-15-wage-bill-to-kill-86000-jobs-in-pennsylvania/.

Fisher, Amber. 2023. "Boulder Area Labor Council Calls for $25 Minimum Wage by 2028." *Longmont Leader*, April 23, 2023. https://www.longmontleader.com/local-business/boulder-area-labor-council-calls-for-25-minimum-wage-by-2028-6891885.

Graves, Lisa. 2023. "Alec, 'Model' Legislation, and Preemption." *Local Solutions Support Center* (blog), March 15, 2023. https://www.supportdemocracy.org/the-latest/alec-model-legislation-and-preemption.

Giffords Law Center to Prevent Gun Violence. 2023. "Preemption of Local Laws in Pennsylvania." Published January 5, 2023. https://giffords.org/lawcenter/state-laws/preemption-of-local-laws-in-pennsylvania/#footnote_4_15764.

Greenberg, Melissa. 2016. "The Politics of Preemption and Local Labor Laws: From Minimum Wage to Right-to-Work." OnLabor, May 2, 2016. https://onlabor.org/the-politics-of-preemption-and-local-labor-laws-from-minimum-wage-to-right-to-work/.

Grove, Seth. 2018. "Grove Bill to Re-Establish Uniformity in Workplace Policy Approved by Committee." Press release, September 26, 2018. https://www.pahousegop.com/News/71/Latest-News/Grove-Bill-to-Re-Establish-Uniformity-in-Workplace-Policy-Approved-by-Committee-.

Henderson, Kaitlyn. 2022. *The Crisis of Low Wages in the* US. Washington, DC: Oxfam America https://www.oxfamamerica.org/explore/research-publications/the-crisis-of-low-wages-in-the-us/.

Huizar, Laura, and Yannet Lathrop. 2019. *Fighting Wage Preemption: How Workers Have Lost Billions in Wages and How We Can Restore Local Democracy*. New York: National Employment Law Project. https://s27147.pcdn.co/wp-content/uploads/Fighting-Wage-Preemption-Report-7-19.pdf.

Kovach, Claire. 2023. “Analysis: Raising PA’s Minimum Wage Via HB1500 Would Benefit 1.34 Million Pennsylvanians.” *Keystone Research Center; PA Budget and Policy Center* (blog). June 28, 2023. https://krc-pbpc.org/research_publication/analysis-raising-pas-minimum-wage-via-hb1500-would-benefit-1-34-million-pennsylvanians/.

Lathrop, Yannet. 2023. *In Support of HB 4237, Which Would Repeal Preemption and Allow Local Governments to Raise Wages and Adopt Other Labor Protections*. Testimony presented before the Michigan House Labor Committee, June 15, 2023. https://www.nelp.org/publication/nelp-testimony-in-support-of-hb-4237-which-would-repeal-preemption-and-allow-local-governments-to-raise-wages/.

Lawler, Emily. 2015. “Gov. Rick Snyder Signs ‘Death Star’ Bill Prohibiting Local Wage, Benefits Ordinances.” *Michigan Live*, June 30, 2015. https://www.mlive.com/lansing-news/2015/06/gov_rick_snyder_signs_death_st.html.

Local Solutions Support Center (LSSC). 2023. “2023 Mid-Session Overview.” LSSC, May 3, 2023. https://www.supportdemocracy.org/the-latest/2023-mid-session-report-explores-national-trends-in-abusive-preemption-legislation.

Macpherson, David, and William Even. 2017. *The Impact of an $11 Minimum Wage in St. Louis*. Washington, DC: Employment Policies Institute. https://epionline.org/studies/5624/.

Marotta, John, and Solomon Greene. Rep. 2019. *Minimum Wages: What Does the Research Tell Us about the Effectiveness of Local Action*. Washington, DC: Urban Institute.https://www.urban.org/sites/default/files/publication/99645/minimum_wages._what_does_the_research_tell_us_about_the_effectiveness_of_local_action_0.pdf.

Michener, Jamila. 2023. “Entrenching Inequity, Eroding Democracy: State Preemption of Local Housing Policy.” *Journal of Health Politics, Policy and Law* 48, no. 2 (April): 157-185. https://read.dukeupress.edu/jhppl/article-abstract/48/2/157/318651/Entrenching-Inequity-Eroding-Democracy-State?redirectedFrom=fulltext.

Michigan House of Representatives, Labor Committee. 2023. Hearing on House Bill 4237. Testimony by Michigan Retailers Association. June 15, 2023. https://www.house.mi.gov/VideoArchivePlayer?video=HLABO-061523.mp4.

________ 2023. Hearing on House Bill 4237. Testimony by State Representative Joey Andrews. June 15, 2023. https://www.house.mi.gov/VideoArchivePlayer?video=HLABO-061523.mp4.

Missouri Economic Research and Information Center (MERIC). 2023. “Cost of Living Data Series.” https://meric.mo.gov/data/cost-living-data-series.

Neumark, David, and William L. Wascher. 2007. “Minimum Wages and Employment: A Review of Evidence from the New Minimum Wage Research.” Working Paper no. 12663. NBER Working Paper Series. Cambridge, MA: National Bureau of Economic Research. https://www.nber.org/system/files/working_papers/w12663/w12663.pdf.

Pennsylvania Chamber of Business & Industry. 2017. “State Preemption of Local Leave Mandate Bill Clears Senate Committee.” PA Chamber of Business & Industry. February 6, 2017. https://www.columbiamontourchamber.com/2017/02/06/state-preemption-of-local-leave-mandate-bill-clears-senate-committee/.

Pennsylvania Department of Community & Economic Development (PA DCED). 2023. "Home Rule in Pennsylvania." PA Governor's Center for Local Government Services. April 2023. https://dced.pa.gov/download/Home%20Rule%20PA/?wpdmdl=57752.

Pennsylvania House of Representatives, Labor & Industry Committee. Hearing on House Bill 1333 and 1354. June 13, 2023. https://www.legis.state.pa.us/cfdocs/legis/CMS/ArchiveDetails.cfm?SessYear=2023&MeetingId=2962&Code=-1&Chamber=H.

Phillips, Lauren E. 2017. "Impeding Innovation: State Preemption of Progressive Local Regulations." *Columbia Law Review* 117, no. 8 (December): 2225–63. http://www.jstor.org/stable/44464882.

Phillips, Susan. 2022. "Gov. Wolf Vetoes GOP Effort to Block Local Climate Legislation." WHYY, July 14, 2022. https://whyy.org/articles/gov-wolf-vetoes-gop-block-local-climate-legislation/.

Piketty, Thomas. Capital and Ideology. Translated by Arthur Goldhammer. The Belknap Press of Harvard University Press, 2020.

Piketty, Thomas, Emmanuel Saez, and Gabriel Zucman. 2016. "Distributional National Accounts: Methods and Estimates for the United States." Working Paper o. 22945. NBER Working Paper Series. Cambridge, MA: National Bureau of Economic Research. https://doi.org/10.3386/w22945.

Richardson, Jesse J. Jr. 2011. "Dillon's Rule is From Mars, Home Rule is From Venus: Local Government Autonomy and the Rules of Statutory Construction." *Publius: The Journal of Federalism* 41, no. 4 (October): 662-685. https://doi.org/10.1093/publius/pjr030.

Riverstone-Newell, Lori. 2017. "The Rise of State Preemption Laws in Response to Local Policy Innovation." *Publius* 47, no. 3 (Summer): 403–25. http://www.jstor.org/stable/44505518.

Saltsman, Michael. 2018. "The Case Against Florida Cities Joining the Fight for $15." *Forbes*, March 14, 2018. https://www.forbes.com/sites/michaelsaltsman/2018/03/14/the-case-against-florida-cities-joining-the-fight-for-15/?sh=5455382f5a2a.

Sanchez, Yvonne Wingett, and Rob O'Dell. 2019. "What Is ALEC? 'The Most Effective Organization' for Conservatives, Says Newt Gingrich." USA *Today*, April 3, 2019. https://www.usatoday.com/story/news/investigations/2019/04/03/alec-american-legislative-exchange-council-model-bills-republican-conservative-devos-gingrich/3162357002/.

Sanders, Symone. "Three Democratic Mayors Unpack the Impact of Preemption on Leadership." Symone on MSNBC, June 4, 2023. Video, 9:38. https://www.msnbc.com/symone/watch/three-democratic-mayors-unpack-the-impact-of-preemption-on-leadership-179993669866.

Schneider, Andrew. 2023. "Texas Senate Advances 'Death Star Bill' Preempting Self-Government Powers of Cities and Counties." *Houston Public Media*, May 16, 2023. https://www.houstonpublicmedia.org/articles/news/politics/2023/05/16/451827/texas-senate-advances-death-star-bill-preempting-self-government-powers-of-cities-and-counties/.

Shelly, Jared. 2015. "Wolf Promises Veto of Sick-Leave-Killing Bill." *PhillyMag*, April 24, 2015, sec. City Life. https://www.phillymag.com/news/2015/04/24/wolf-promises-veto-of-sick-leave-killing-bill/.

SourceWatch. 2023. "Pennsylvania ALEC Politicians." Center for Media and Democracy. Last updated March 2023. https://www.sourcewatch.org/index.php/Pennsylvania_ALEC_Politicians.

Stone, Chad, Danilo Trisi, Arloc Sherman, and Jennifer Beltrán. 2020. "A Guide to Statistics on Historical Trends in Income Inequality." Center on Budget and Policy Priorities, January 13, 2020. https://www.cbpp.org/research/a-guide-to-statistics-on-historical-trends-in-income-inequality.

Treskon, Mark, John Marotta, and Prasanna Rajasekaran. 2021. "Do the Effects of a Regulatory Patchwork Justify State Preemption of Local Laws?" Urban Institute, January 2021. https://www.urban.org/sites/default/files/publication/103422/do-the-effects-of-a-regulatory-patchwork-justify-state-preemption-of-local-law.pdf.

Wolf, Douglas A., Jennifer Karas Montez, and Shannon M. Monnat. 2022. "US State Preemption Laws and Working-Age Mortality." *American Journal of Preventive Medicine* 63, no. 5: 681–88. https://www.ajpmonline.org/article/S0749-3797(22)00330-0/fulltext.

Worker Voice Ensuring Equity, Dignity, and Quality Care: How Unions Mitigate Harm in Electronic Visit Verification (EVV) and Medicaid Reform

By Hunter Akridge

Introduction

The COVID-19 pandemic showed us the importance of our frontline care workforce. This includes doctors and nurses as well as other home care workers who are often overlooked and unseen. These workers are critical to our national care infrastructure and will be even more so going forward. The United States faces a demographic transition where there will be more demand for long-term home care support services. By 2040, there will be nearly 81 million adults 65 and older, a 44 percent increase from 2020 (Vespa, Medina, and Armstrong 2020). Seventy percent of those in that age bracket will need long-term care services (Johnson 2019). Therefore, home care will be one of the fastest-growing occupations, with more than a 25.4 percent increase in employment over the next decade (US Bureau of Labor Statistics 2022). This is building on already staggering growth (See Figure 1 below) (US Bureau of Labor Statistics n.d.).

Employment of Home Health and Personal Care Aides

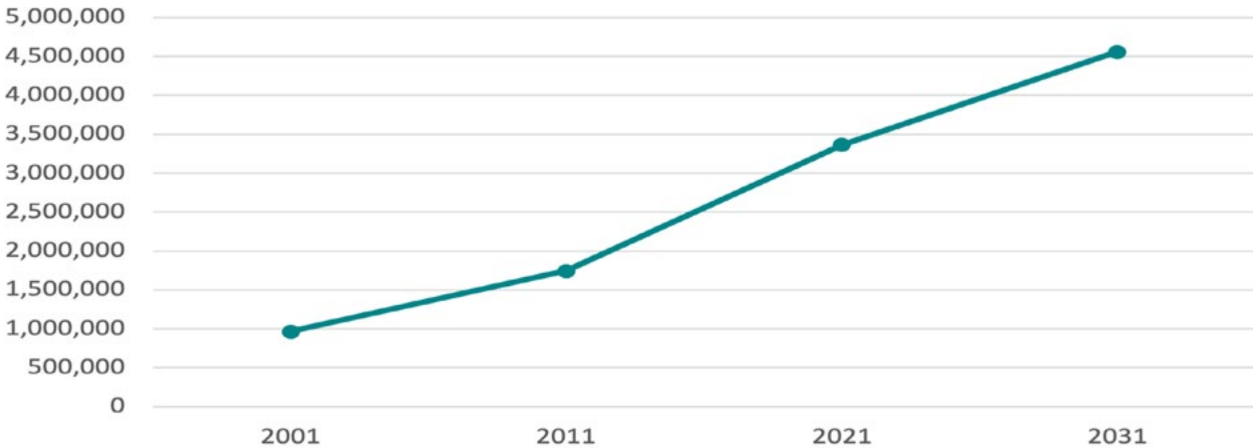


Figure 1. This chart visualizes the rapid increase in home health and personal care aide employment from 2001 to 2021 and the projected increase by 2031. Source: Bureau of Labor Statistics OEWS and Employment Projections databases.

For many, avoiding institutionalization by aging at home is a matter of personal dignity and belonging (AARP 2021) and has been documented to improve health outcomes (Lizano-Díez et al. 2022). Institutionalization is also more costly both for those in need of care and the state (Curioni et al. 2023). Home care workers enable folks to continue living in their homes and communities, to age in place even when they cannot do so independently. Home care workers help the elderly and people with disabilities with "activities of daily living" (ADLs). This includes eating and drinking, bathing, using the restroom, helping them access their community, going to doctors appointments, and so much more. Home care workers take the burdens off of families, and especially women, who might otherwise be providing informal, unpaid care to elderly relatives and/or relatives with disabilities (AARP, National Alliance for Caregiving 2020). This allows parents and adult children to enter the labor force, thus increasing the workforce participation rate, which strengthens economic growth and gender equity (Stepick and Tran 2022; Buckman et al. 2021). Home care is the kind of work that takes a high degree of skill and professionalism while also requiring skilled emotional labor and relational care. Yet home care workers are too often paid poverty wages, given few opportunities for training and advancement, and tracked with ever more invasive digital technologies.

Electronic Visit Verification (EVV) is mandated by the 21st Century Cures Act to verify that a provider has arrived at the client's home and has provided services. The Act was intended to prevent fraud and reduce waste in Medicaid spending. However, in practice, EVV has led to persistent issues like wage theft and unnecessary increased monitoring and reporting burdens (Mateescu 2021). The lack of workers or disability voices in the design and implementation of both EVV policy and resulting technological solutions has led to harm (Mateescu 2021). But that was not inevitable. This policy brief highlights the role of organized labor in mitigating these harms by ensuring adequate training for care providers, curtailing the invasive nature of EVV, and garnering protections for worker data. This can be seen in Washington State, where Service Employees International Union (SEIU) 775 bargained over the EVV implementation process and directly supported home care providers, and in California, where SEIU 2015 successfully engaged the stakeholder process to win similar protections for its members.

States without home care unions and few protections for workers have seen some of the most dramatic negative outcomes. EVV as a case study points to the need for policy that ensures workplace technology codetermination, enhancing the ability for workers to mobilize through unions, and a new legal infrastructure for worker data rights. For home care workers, this means supporting sectoral bargaining at the state level and having a meaningful seat at the table at the Centers for Medicaid and Medicare Services (CMS), which provide guidelines about EVV. But for worker voice to successfully be implemented at every level of the design and implementation process, worker power needs to be strengthened across the board. This brief highlights and recommends policies like the Protecting the Right to Organize (PRO) Act, which has the potential to rebalance the outsized power of employers that currently allows them to discourage unionization and inhibit unions from succeeding in contract negotiations.

Background

The devaluing of paid home care work is linked to the historical and deeply entrenched devaluing of unpaid home care work. In the mid-20th century, working-class white men received a so-called "family wage," often with the support of a union, which provided a salary sufficient to support a wife at home performing reproductive labor, cleaning, cooking, and providing child and often elder care (Winant 2021). From the vantage point of an economist, reproductive labor, historically encoded as "women's work," supports the waged workforce, and subsidizes and enables the economy writ large.[6] The women performing reproductive labor for a wage were often Black women, working in white families' homes as domestic help, home and childcare providers, and in institutional care contexts. This racializing of home care work is a direct legacy of slavery, which also seeded conditions of economic need that compelled many Black women to sell their labor for a wage (Davis 1983). Those doing this labor, which was often one of the few employment opportunities open to women of color, received poverty wages. They were excluded from the Fair Labor Standards Act of 1937, and essentially, like farmworkers, were cast outside federal labor protections (Lieberman et al. 2021). This historical injustice was not redressed until 2015 when, with pressure from labor advocacy groups, the Department of Labor (DOL) extended minimum wage and overtime protections to most home care workers (Lieberman et al. 2021).

Even as the demographic structure of our society has changed and exceedingly more care work is done within a market rather than through familial obligation, compensation remains low. Home care workers often make at or near their state's minimum wage with a national median pay of $14.15 an hour (US Bureau of Labor Statistics 2023). The decades-long transition to an economy dominated by 1970s neoliberal policies has been characterized by the increasing outsourcing of care work to the market without undoing the structural dependence on the devaluing of women's work (Duffy 2011; Cooper 2019). Home care workers are paid so little and are often invisible to policymakers not because their labor is not essential, but because of who they are and their lack of access to cultural, economic, and political power. The gendering and racialization of home care work continues to this day. The home care workforce is overwhelmingly female and disproportionately women of color, often immigrants (Banerjee et al. 2021). Home care workers also often serve a vulnerable population who are disproportionately poor and disabled.

Home care work today is primarily funded through Medicaid's Home and Community Based Services (HCBS) (Lieberman et al. 2021). But in many states, these services are underfunded and are not set up to support home care workers adequately. Medicaid reimbursement rates remain low (Lieberman et al. 2021). Reporting burdens also create additional hurdles for home care workers. Low compensation, bureaucratic red tape, and emerging digital surveillance technologies contribute to an ongoing shortage of home care workers. In 2020, there were almost 700,000 openings for home care jobs across the country, reflecting an ongoing labor shortage (Oldenburg 2022; Krebs 2022). In many states there are waitlists and/or stringent requirements to access HCBS, leading the elderly to spend down their assets (American Council on Aging 2022).

Home care workers and advocates seeking to change these conditions have met challenges due to legacies of exclusion from labor protections. Home care workers in most states are unable to unionize or can only do so at the level of individual agencies, which often only employ, at most, dozens of home care workers. This has made changing state policies around the use of Medicaid and discretionary funds to invest in home care workers difficult. This is because there are few ways for home care workers to collectively advocate for themselves.

However, through innovative models where local or state governments can act as the employer of record, unionization has been possible and even expanded in recent years. California's example is telling. In the early 1990s, home care workers in the state's In-Home Supportive Services (IHSS) program were essentially independent contractors. This status made exercising collective power through a union illegal under the 1935 National Labor Relations Act (NLRA) (Lieberman et al. 2021). As a result, they pushed for establishing county-level public authorities as employers of record. When these entities were established, unions of home care workers could be created too. A coalition of labor and disability advocates argued that establishing collective bargaining rights would not only raise wages, but improve the quality of care

6 In this piece, "women's work" is used to refer to historically gendered reproductive labor including elder care, childcare, and domestic labor such as cooking, cleaning, and other activities of daily living.

(Heinritz-Canterbury 2002). It was this argument that won over communities and lawmakers. In states where home care workers have unionized, like California, there are higher wages, increased training opportunities, and arguably better care for those receiving Medicaid HCBS (Banerjee et al. 2021; Lieberman et al. 2021; Schulte and Robertson 2021). These state level developments directly push back on the racist, sexist, and classist legacies embedded in the neoliberal administration of home care in a way that federal policy has not.

The most recent Medicaid reform did not meaningfully address our crisis of care, and may have made it worse. Leading up to these reforms, people with disabilities and their advocates have pushed for states to move away from an institutional model of care. In response to demand and advocacy from the disability community, HCBS have expanded dramatically over the past three decades (Lewis et al. 2017; Knight 2020). This represents a significant advancement for the autonomy and agency of people with disabilities. But this expanded autonomy was not without pushback (Knight 2020). Concern mounted about fraud, waste, and abuse in HCBS. A number of egregious instances of fraud and abuse made national news and fit conveniently into a Republican narrative around broader government waste and incompetence. A number of policy reports and op-eds from fiscally conservative think tanks, like the Cato Institute, pushed for Medicaid reform to address this fraud (e.g., Cannon 2011; Matthews 2012). As a solution, Pew Report highlighted provider screening practices designed to keep “bad providers” out (Pew Charitable Trusts, MacArthur Foundation 2013).

Medicaid service recipients and home care providers were imagined as potential criminals, reflecting an entrenched classist bias against public service recipients. In this same period when HCBS were expanding, the gendered and racialized trope of the “welfare queen” was used to denigrate welfare recipients (Wacquant 2009). This trope draws on racist ideas of Black women staying home to care for their children and community as lazy, freeloading on public benefits. This cultural logic refuses to see women’s work as work, and especially to see Black women’s work as valuable—buttressing a neoliberal political economy that dually saw the retrenchment of state-funded social welfare programs and the expansion of the carceral state.

A key event in this retrenchment process was the 1996 bipartisan consensus around welfare reform that made safety net programs, including Medicaid, harder to access by imposing work requirements and time limits (Wacquant 2009). In poor communities, this also resulted in fewer women being home to offer in-kind exchange of care—including home elder and disability care (Michel 2013). The minimization of state welfare both expanded the need for home care workers and encouraged the formalization of home care through Medicaid-funded personal care services. This period also saw the emergence of precursors to EVV in home care. This includes attempts at standardizing the care labor process—inducing more burdens on care providers. Providers found themselves filling out checklists and documenting minute aspects of their work (Glaser 2021). This did little to stay the persistent belief in widespread fraud.

The Government Accountability Office (GAO) continued to warn of fraud risks (“GAO’s 2013 High-Risk Update” 2013) and the Office of Inspector General (OSI) issued reports on fraud, recommending background checks and the need for further tracking of workers, pointing specifically to home care workers and HCBS (US Department of Health and Human Services n.d.). The primary imagined scenario of fraud was collusion between patients and their home care providers who, outside the gaze of managers and health-care administrators, would presumably defraud the system with doctored time sheets.

Concerns around fraud shaped the political landscape of Medicaid reform leading up to the passage of the 21st Century Cures Act. And it was corporate, rather than worker, interests that were well-represented in its drafting (Lupkin 2016). This legislation saw some of the most intense lobbying in recent memory (Lupkin 2016). It became a Christmas Tree bill with opportunities for lobbyists to push for sections tangentially related to the main purpose of the legislation but that would buoy corporate interests. Health-care technology companies including Sandata Technologies and HealthStar spent hundreds of thousands of dollars in lobbying leading up to the introduction of the EVV requirement (ProPublica n.d.).

Sandata Technologies specifically donated to members of the influential Energy & Commerce Committee in the House, where the bill was introduced by Rep. Brett Guthrie (R-KY) (Carr 2022; ProPublica n.d.). In the proposed legislation, there were six requirements of an EVV system (21st Century Cures Act 2016). These software systems were required to report data on the type of service performed, the individual receiving the service, the data of the service, the location of the service, the individual providing the service, and the time the service begins and ends. Many of these data points were already being collected on timesheets but rarely in a way that required home care providers to document these services as they were happening or with digital surveillance technology. EVV held the promise that electronic modernization could, at least theoretically, address concerns about fraud, waste, and abuse in Medicaid HCBS. The Congressional Budget Office (CBO) estimated $290 million in savings over a 10-year period. This positive savings rating ensured the "rider" which outlined EVV in the last section of the "Title XXII Medicaid Mental Health Coverage" remained in place (CBO 2016).

Following the passage of the 21st Century Cures Act, a May 2017 congressional hearing on "Combating Waste, Fraud, and Abuse in Medicaid's Personal Care Services Program" made the connection between EVV and the persistent belief in widespread fraud explicit (Combating Waste, Fraud, and Abuse in Medicaid's Personal Care Services Program 2017). Deputy Inspector of General Health and Human Services (HHS) Christi Grimm reported that "fraud is very common in personal care. We've opened 200 investigations since 2012 and our Medicaid Fraud Control Units, it comprises one-third of their criminal convictions" (Combating Waste, Fraud, and Abuse in Medicaid's Personal Care Services Program 2017). A recent analysis of the available evidence found a 0.02 percent conviction rate for home care workers in self-directed Medicaid programs (Applied Self-Direction 2022). In answering Republican lawmakers concerned with the integrity of Medicaid HCBS at the 2017 hearing, HHS officials offered promises of better data collection, standardization, and tracking measures—which includes EVV. Leading up to this 2017 hearing states were already scrambling to design EVV solutions.

EVV can be seen in a broader context of digital technologies increasingly being framed as solutions to curtail government spending and modernize the delivery of public services. In the mid-2010s, states began adopting algorithmically driven automated decision-making to cut services. When states have implemented new data-driven systems to limit Medicare eligibility, the effects have too often been disastrous for service recipients (Eubanks 2018). More recently, predictive analytics companies have sought to profit from the digital transformations and extended these harms (SpringML n.d.; Ross and Herman 2023). For example, the Google-backed start-up SpringML is one of many businesses that use EVV data to generate a rating for the probability of fraudulent claims (Fisher and Adini 2023).

These scores could be used to automatically discipline or fire home care workers and usher in unwanted scrutiny for Medicaid recipients. Little is known about how EVV data is being used and this is an area for further research. What is known is that the amount of money being spent on EVV solutions is staggering. Software service firms have been able to make a series of lucrative contracts with states from a section of the act that was supposed to end up generating savings. Through a public records request, it was found that the state of Texas alone has spent over $150 million on an EVV solution since 2015. Regardless of how states are using data collected from EVV, the everyday, often seemingly ordinary, operations of EVV software have created additional burdens for home care workers and HCBS recipients.

The 21st Century Cures Act mandates a stakeholder engagement process to prevent harm and to ensure EVV is "minimally burdensome" (21st Century Cures Act 2016). However, requirements are sufficiently vague enough to allow states with a limited labor and disability advocacy presence to prioritize compliance over the unique, varied, and serious concerns of both home care workers and those in need of care (Mateescu 2021). Arkansas is a prime example. Arkansas solicited public comments, leading up to EVV implementation in December 2020 but did not hold public hearings. Public comments came only from home care agencies and there is no evidence of the state soliciting feedback from providers or their advocates. Home care agencies in Arkansas are reimbursed through Medicaid but employ home care workers directly. While agencies may be interested in reducing turnover, they also have an incentive to enhance their managerial oversight and control through EVV. The Arkansas Department of Health Services (DHS) held a Q&A and training session during the implementation process for providers, but this was inadequate to prevent the problems that followed.

Researchers Virginia Eubanks and Alexandra Mateescu found issues with persistently delayed payments that affected hundreds of low-income providers across the state because of EVV implementation (Eubanks and Mateescu 2021). They describe the experience of one provider who only found out about the new EVV requirement four days before its mandated use, which required the provider to purchase a smartphone and to learn the new software, only to run into issues. Glitches on the app and problems receiving payment abounded. Her next two-week pay period was denied and she was short $900 that she needed to pay for groceries and keep the lights on.

The median wage for home care providers in Arkansas is $12.56 an hour, just above the state's $11 minimum wage (US Bureau of Labor Statistics 2023; Arkansas Department of Labor and Licensing n.d.). These are low-wage workers often just getting by. To workers already facing degrading wages, EVV presents additional burdens. Arkansas uses GPS-based geofencing for clocking in and out that must take place at a client's home, which does not allow for clocking in or out during community services. With the advent of EVV, going to the doctor, seeing friends, and picking up groceries are no longer counted as essential services for the elderly and disabled. Disability advocate Karin Willison has written that "[e]lectronic visit verification is the equivalent of putting an ankle monitor on people with disabilities and telling us where we can and can't go" (2023). Furthermore, there are no exemptions for live-in providers, which raises serious questions about what it means to be "on" and "off" the clock when family members are also employed as care aides.

This process of minimal stakeholder engagement seen in Arkansas resulted in an EVV system that prioritized CMS compliance over the needs of home care providers and those in need of home-based services. The implementation of EVV has intensified a crisis of care where providers are not adequately paid for the critical work they do and because of this, quality suffers. EVV was a largely unfunded mandate and has resulted in states like Arkansas spending hundreds of thousands of dollars since 2020 to implement the solution. A financial impact evaluation found that the state would be paying software vendor AuthentiCare a steep $365,729 in the first year of implementation, and $241,800 the following year (Arkansas Department of Human Services 2019). As the National Council for Independent Living has argued, "[t]he burgeoning cost of EVV robs public coffers of funds that should be more efficiently utilized to adequately fund living wages and benefits for workers" (National Council on Independent Living 2020).

Policy Analysis

Labor and disability rights groups foresaw the harms created through the EVV implementation process in Arkansas and other states. As disability rights and labor groups pushed for caution and to remove geolocation tracking, states ran into implementation challenges. Congress pushed back the timeline for EVV implementation twice: first until 2020 and then 2021. During this period, various groups mobilized under the banner #StopEVV, including the National Council on Independent Living, the Disability Rights Education and Defense Fund, Disability Rights California, the American Civil Liberties Union (ACLU), and labor unions that represent home care providers.

In California, a 2018 joint statement from labor unions United Domestic Workers/American Federation of State, County, and Municipal Employees (UDW/AFSCME Local 3930) and Service Employees International Union (SEIU) Local 2015 warned that EVV "would make receiving services in the home and community more difficult and restrictive" and would exacerbate existing labor shortages by eroding job quality (UDW/AFSCME Local 3930, SEIU Local 2015 2017). These groups first called for an end to EVV and have since moved to push for reforms such as removing geolocation tracking requirements. Many of these groups continue to advocate for more training for both providers and clients and for EVV data protection, as EVV has now been implemented in almost all states for workers providing home-based Medicaid services (Medicaid.gov n.d.). Much can be learned from these critical efforts and states where EVV implementation has been less burdensome.

The coalition of disability advocates and unions in California was particularly strong and together won protections for workers and Medicaid service recipients with EVV implementation. The California Department of Social Services (CDSS) held a series of stakeholder meetings where home care workers, people with disabilities, and community advocates made their voices heard. With fear and confusion spreading about EVV, particularly after news of 2018 pilot outcomes in states like Ohio had been released, SEIU mobilized their members. It held town halls across the state, sent out surveys, and held listening sessions with home care workers. The voices of these workers directly shaped how the union advocated for a minimally invasive version of EVV. This campaign built on the union's historical efforts to form coalitions with advocates for the elderly and disabled. This coalition succeeded in pushing forward wage increases, more training for home care workers, and, eventually, minimally invasive EVVs.

The EVV system implemented in California in late 2020 extended the existing digital timesheet system and did not create the burdens home care workers in states like Arkansas experienced. However, CMS deemed the California EVV solution noncompliant for not using GPS, which forced them to begin paying millions of dollars in fees. The union then worked with the state and California Department of Health Care Services (DHCS) to design a compliant, minimally invasive solution—unlike most other states' EVV systems. The California DHCS maintained exceptions for home care workers who live with those they serve. GPS tracking is required only when clocking in and out, when workers are in the client's home. Home care workers can clock in and out in the community and are not required to log individual tasks. The union also established privacy and data protections. Leading up to the implementation of the new EVV system in July 2023, the union held hundreds of training sessions with members and prepared them for the transition. During the implementation process, the union logged worker concerns and issues that may have arisen with the technology, and served as a safeguard against wage theft. It also has continued to advocate for language accessibility of the EVV application, which, given the diversity of the home care workforce, is a significant issue.

There is a similar story in Washington State, but there the union was able to engage with the state using different bargaining mechanisms. At the time of implementation, Washington was the employer of record for Individual Providers (IPs) operating independent of private agencies. So unlike in California, EVV could be a direct subject of collective bargaining. Through a special bargaining process, SEIU 775 reached an agreement in 2020 that secured exemptions from EVV for providers who live in the same household as their client, which covers family care providers. The agreement also allowed for data and biometric privacy protections, limiting the way EVV data can be used, and may effectively preempt the use of predictive analytics by third parties contracted by the state. It additionally provided secure protections for providers who make errors or struggle with the implementation process (SEIU 775 2020). While geolocation tracking is required, providers may clock in and out at any location where services take place, in the home or in the community.

With a different stakeholder engagement process, unions achieved similar wins for home care providers in both states. The union played a critical role in ensuring EVV was minimally burdensome and that worker voices were heard. SEIU 775 held listening sessions, elicited feedback from members, advocated for proper training, language localization, and escalated concerns as they emerged. An advocacy organization or union with a similar function simply does not exist in states like Arkansas, where home care workers are less organized and do not have mechanisms for exercising collective power.

To ensure the equitable implementation and use of EVV and future Medicaid policy more generally, workers need to have a seat at the table, especially at the state level. EVV implementation processes vary widely depending on the quality of stakeholder engagement. Representation is also important at the federal level, given the design of new Medicaid policy in Congress and state guidelines at CMS. If worker voice had been present from the beginning, many of the subsequent issues with EVV could have been avoided. By mandating EVV, Congress also directly benefited software firms contracting with state-level agencies. The digital infrastructure for home care work could instead be reimagined as a public service that could be designed with worker voice. An initiative of SEIU 775 might serve as a model for what this could look like. In 2015, SEIU 775 negotiated and won funding to develop an independent platform for providers to find consumers in need of care. This matching platform, Carina, protects workers' data and privacy and is designed with their input. Instead of contracting to unaccountable third parties, states might instead partner with unions to build EVV systems directly that work for providers and consumers of home and community-based Medicaid services alike.

Recommendations

Ensuring home care workers can effectively exercise their agency and project their voice requires a policy infrastructure that supports unions and cooperatives. Organizers in states like Washington and California have demonstrated the importance of unions to ensure quality care, training, and support for both home care workers and those they serve (Lieberman et al. 2021). All home care workers deserve to have collective representation and the ability to build power through unions.

Home care workers in California, Connecticut, Illinois, Massachusetts, Minnesota, Oregon, Vermont, and Washington have all established county- or state-level government entities as employers of record that manage and administer HCBS. This goes along with a consumer-directed model of home care in which people with disabilities and the elderly can contract with a home care worker directly. The benefits of this approach are clear for service recipients and providers. CMS could tie future matching funds to transitioning to a consumer-directed model of home care. This would be a first step toward sectoral bargaining for home care workers across the country. This policy measure also helps states ensure expanded opportunities for quality home care in the face of a demographic transition. For these reasons alone, states need to seek a transition to consumer-direct models of home care—even independent of federal funding.

However, current federal labor policy creates additional hurdles. In 2014, Supreme Court ruling *Harris v. Quinn* established that home care unions could not collect fees from non-members, who nonetheless benefited from their collective bargaining efforts (Rogers 2014). This and state-level, so-called right-to-work laws could be undone through federal legislation. The Protecting the Right to Organize (PRO) Act, introduced to Congress in 2021, could accomplish this while establishing other protections for workers that would simplify the process of forming a union (McNicholas, Poydock, and Rhinehart 2021). Once all home care workers are represented in a union, they would be able to effectively exercise their voice at every level. This could hopefully lead to a more equitable future where the union that represents this workforce of overwhelmingly women, and disproportionately women of color, can actively shape Medicaid policy. What would the technologies home care workers interface with look like if they were designed not to criminalize, but to support and assist workers? This is a question that cannot, and should not, be answered without worker voice.

As seen in the case of California's past EVV noncompliance, the CMS holds enormous power in shaping Medicaid policy. Policy for HCBS should be determined through a model of codetermination—where home care unions and disability advocates are a part of the design of policy guidelines at CMS. This would have to be accomplished through new federal legislation. In addition to ensuring more equitable policy guidelines, this model could strengthen existing stakeholder consultation requirements. CMS selectively enforced EVV legislation to deem California noncompliant, while granting good faith exemptions and letters of compliance to states that had weak stakeholder engagement processes, like Arkansas. Codetermination of these decisions could ensure this pattern does not repeat.

In addition to shaping a policy environment that would strengthen home care unions, we need a new framework for worker data rights in a digital age. Workers need the right to have their privacy protected from invasive surveillance and the right not to have automated systems use their data to make decisions about their employment. A framework for worker data rights has been outlined in a recent UC Berkeley Labor Center report and Stop Spying Bosses Act introduced to the House in 2023 (Bernhardt et al. 2021; AI Now Institute 2023).

While federal legislation has stalled, there is potential for state action, including in California with the proposed California Workplace Technology Accountability Act. Some states have sought to extend protections for particularly vulnerable workers, including in Minnesota where the Warehouse Worker Protection Act directly challenges unaccountable algorithmic management. We can envision states establishing protections for other sectors, including home care workers. Workers should have a say over what data is collected about them and how it is being used. There is legitimate fear that EVV is facilitating the collection of data that could be used to harm home care workers and public benefits recipients. With new schemes for profiting off of the collection of data about the administering of government services, we need robust protections that go beyond privacy and facilitate worker voice in the design and implementation of new workplace technologies.

Conclusion

Home care workers are a critical part of our national care infrastructure, yet too often have been left behind by state and federal policy. When we fail to invest in home care workers, quality of care suffers and home and community-based services become all the more scarce. Yet this has continued to take place, perpetuating legacies of systemic injustice. Home care workers are a workforce that is highly racialized and gendered and serves a vulnerable population. The cultural attitudes that devalue the labor of home care and disparage public service recipients see home care workers as potential causes of fraud, waste, and abuse. The requirements introduced for EVV are a symptom of these deeply entrenched attitudes.

In many states, EVV applications were rolled out without worker voice—leading to wage theft, decreased autonomy for people with disabilities, and other harms. However, in some states, workers who had been able to build power through unionization were able to introduce safeguards and ease the implementation process. Unions in Washington State and California enabled home care workers to have a voice in the shaping of EVV state guidelines. These states serve as a model for others in advancing the dignity of home care workers and service recipients alike. In the face of a demographic transition across the country and continued digital transformations, this task is more critical than ever. This brief recommends states enable home care unionization by adopting a consumer-direct model of home care, establishing government entities as employers of record. This paves the way for sectoral bargaining and building capacity to address ongoing challenges like EVV.

About the Author

Hunter Akridge is a research associate in the Tech Solidarity Lab at Carnegie Mellon University, where he researches the impact of technologies on essential workers. Having recently graduated from Emory University with degrees in anthropology and economics, he brings a critically informed and social science perspective to research on emerging technologies in workforce contexts. Hunter has worked on movement-aligned research projects on and with ride-hail, home care, transit, and childcare workers. For example, in his current role, one of Hunter's projects involves collaborating with the AFL-CIO Technology Institute and ATU/TWU to uncover the experiences of bus operators in the context of ongoing transit automation. He plans to enroll at Princeton's PhD program in anthropology in the fall of 2024 to continue doing movement-aligned research and critical scholarship.

Acknowledgments

I would like to thank all of the community partners that I consulted with for this project. This includes the policy directors of SEIU 2015, Brandi Wolf, and SEIU 7775, Alexis Rodrich, who helped fill in important background and context to EVV initiatives in California and Washington state respectively. I would like to acknowledge the advice, feedback, and input from former Roosevelt Network deputy director Alyssa Beauchamp and take this opportunity to thank all of the Roosevelt Institute staff who have helped get this policy brief to publication.

References

Worker Voice Ensuring Equity, Dignity, and Quality Care

21st Century Cures Act, H.R. Res. 34, 114th Cong. (2016) https://www.congress.gov/114/plaws/publ255/PLAW-114publ255.pdf.

AARP. 2021. "Where We Live, Where We Age: Trends in Home and Community Preferences." AARP. https://livablecommunities.aarpinternational.org/.

AARP, National Alliance for Caregiving. 2020. "*Caregiving in the US*" 2020. Family Caregiving. AARP; National Alliance for Caregiving. https://www.aarp.org/content/dam/aarp/ppi/2020/05/full-report-caregiving-in-the-united-states.doi.10.26419-2Fppi.00103.001.pdf.

AI Now Institute. 2023. "Algorithmic Management: Restraining Workplace Surveillance." Landscape, Labor & Tech. AI Now Institute. https://ainowinstitute.org/publication/algorithmic-management.

American Council on Aging. 2022. "Spending Down Assets to Become Medicaid Eligible for Nursing Home / Long Term Care." 2022. *American Council on Aging* (blog). December 14, 2022. https://www.medicaidplanningassistance.org/medicaid-spend-down/.

Applied Self-Direction. 2022. "Fraud in Self-Directed Personal Care Services: What Does the Data Tell Us?" Applied Self-Direction. https://www.appliedselfdirection.com/sites/default/files/Fraud%20in%20Self-Direction%20Slides.pdf.

Arkansas Department of Human Services. 2019. "Electronic Visit Verification (EVV) Implementation." Division of Medical Services, memo, June 2019. https://www.arkleg.state.ar.us/Home/FTPDocument?path=%2FAssembly%2FMeeting+Attachments%2F430%2F3536%2FExhibit+I-+Dept.+of+Human+Services%2C+Division+of+Medical+Services.pdf

Banerjee, Asha, Elise Gould, and Marokey Sawo. 2021. *Setting Higher Wages for Child Care and Home Health Care Workers Is Long Overdue*. Washington, DC: Economic Policy Institute. https://www.epi.org/publication/higher-wages-for-child-care-and-home-health-care-workers/.

Bernhardt, Annette, Reem Suleiman, and Kresge. 2021. "Data and Algorithms at Work: The Case for Worker Technology Rights." *UC Berkeley Labor Center* (blog). November 3, 2021. https://laborcenter.berkeley.edu/data-algorithms-at-work/.

Buckman, Shelby R., Laura Y. Choi, Mary C. Daly, and Lily M. Seitelman. 2021. "The Economic Gains from Equity." 2021–11. *San Francisco Fed*. Federal Reserve Bank of San Francisco. https://www.frbsf.org/economic-research/publications/working-papers/2021/11/.

Cannon, Michael F. 2011. "Entitlement Bandits — How the Ryan Plan Would Curb Medicare and Medicaid Fraud." *Cato Institute* (blog). July 4, 2011. https://www.cato.org/commentary/entitlement-bandits-how-ryan-plan-would-curb-medicare-medicaid-fraud.

Carr, Charlie. 2022. “The Real Story Behind Electronic Visit Verification The Myth of Fraud and the Waste of Billions of Taxpayer Dollars to Support It.” May 27, 2022. http://www.charliecarr.com/new-blog/2022/5/27/the-real-story-behind-electronic-visit-verification-the-myth-of-fraud-and-the-waste-of-billions-of-taxpayer-dollars-to-support-itnbspnbspnbspnbspnbspnbspnbsp.

Combating Waste, Fraud, and Abuse in Medicaid’s Personal Care Services Program, before House Comm. on Energy and Commerce, 115th Cong. (2017) https://www.govinfo.gov/content/pkg/CHRG-115hhrg26132/pdf/CHRG-115hhrg26132.pdf.

Congressional Budget Office (CBO). 2016. “Direct Spending And Revenue Effects For H.R. 34, The 21st Century Cures Act.” CBO, November 29, 2016. https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/hr34amendment5.pdf.

Cooper, Melinda. 2017. *Family Values: Between Neoliberalism and the New Social Conservatism*. Near Futures. New York: Zone Books.

Curioni, Cintia, Ana Carolina Silva, Jorginete Damião, Andrea Castro, Miguel Huang, Taianah Barroso, Daniel Araujo, and Renata Guerra. 2023. “The Cost-Effectiveness of Homecare Services for Adults and Older Adults: A Systematic Review.” *International Journal of Environmental Research and Public Health* 20 (4): 3373. https://doi.org/10.3390/ijerph20043373.

Davis, Angela Y. 1983. *Women, Race & Class*. 1st Vintage Books ed. New York: Vintage Books.

Duffy, Mignon. 2011. *Making Care Count: A Century of Gender, Race, and Paid Care Work*. New Brunswick, N.J: Rutgers University Press.

Eubanks, Virginia. 2018. *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor.* First Picador edition. New York: Picador St. Martin’s Press.

Eubanks, Virginia, and Alexandra Mateescu. 2021. “‘We Don’t Deserve This’: New App Places US Caregivers under Digital Surveillance.” *The Guardian*, July 28, 2021, sec. US news. https://www.theguardian.com/us-news/2021/jul/28/digital-surveillance-caregivers-artificial-intelligence.

Federal Reserve Bank of San Francisco, Lina Stepick, Brooke Ada Tran, and Stanford University. 2022. “The Rapidly Growing Home Care Sector and Labor Force Participation.” *Federal Reserve Bank of San Francisco, Community Development Research Brief Series*, March, 01–22. https://doi.org/10.24148/cdrb2022-02.

Fisher, Peter, and Sindhu Adini. 2022 “Four Ways States Use Digital Tools to Deliver Critical Services.” *Google Cloud* (blog), March 3, 2022. https://cloud.google.com/blog/topics/public-sector/four-ways-states-use-digital-tools-deliver-critical-services.

Glaser, Alana Lee. 2021. “Uberized Care: Employment Status, Surveillance, and Technological Erasure in the Home Health Care Sector.” *Anthropology of Work Review* 42 (1): 24–34. https://doi.org/10.1111/awr.12215.

Heinritz-Canterbury, Janet. 2002. “Collaborating to Improve In-Home Supportive Services: Stakeholder Perspectives on Implementing California’s Public Authorities.” Paraprofessional Healthcare Institute. https://www.phinational.org/wp-content/uploads/2017/07/CA-PA-Report.pdf.

Johnson, Richard W. 2019. “What Is the Lifetime Risk of Needing and Receiving Long-Term Services and Supports?” Office of Assistant Secretary for Planning and Evaluation. https://aspe.hhs.gov/reports/what-lifetime-risk-needing-receiving-long-term-services-supports-0.

Knight, Amber. 2021. “Unfinished Business: Deinstitutionalization and Medicaid Policy.” *Politics, Groups, and Identities* 9 (2): 395–408. https://doi.org/10.1080/21565503.2020.1854324.

Krebs, Natalie. 2022. “A Shortage of Health Aides Is Forcing out Those Who Wish to Get Care at Home.” *NPR*, May 5, 2022, sec. Health Inc. https://www.npr.org/sections/health-shots/2022/05/05/1095050780/a-shortage-of-health-aides-is-forcing-out-those-who-wish-to-get-care-at-home.

Lewis, Elizabeth, Steve Eiken, Angela Amos, and Paul Saucier. 2017. “The Growth of Managed Long-Term Services and Supports Programs: 2017 Update.” http://www.advancingstates.org/sites/nasuad/files/mltssp-inventory-update-2017.pdf.

Lieberman, Abbie, Aaron Loewenberg, Ivy Love, Robertson Cassandra, and Lul Tesfai. 2021. “Valuing Home and Child Care Workers: Policies and Strategies That Support Organizing, Empowerment, and Prosperity.” New America. http://newamerica.org/new-practice-lab/reports/valuing-home-child-care-workers/.

Lizano-Díez, Irene, Sonia Amaral-Rohter, Lucía Pérez-Carbonell, and Susana Aceituno. 2022. “Impact of Home Care Services on Patient and Economic Outcomes: A Targeted Review.” *Home Health Care Management & Practice* 34 (2): 148–62. https://doi.org/10.1177/10848223211038305.

Lupkin, Sydney. 2016. “Legislation That Would Shape FDA And NIH Triggers Lobbying Frenzy.” *NPR*, November 25, 2016, sec. Policy-ish. https://www.npr.org/sections/health-shots/2016/11/25/503176370/legislation-that-would-shape-fda-and-nih-triggers-lobbying-frenzy.

Mateescu, Alexandra. 2021. “Electronic Visit Verification: The Weight of Surveillance and the Fracturing of Care.” *SSRN Electronic Journal*. https://doi.org/10.2139/ssrn.4181895.

Matthews, Merrill. 2012. “Medicare And Medicaid Fraud Is Costing Taxpayers Billions.” *Institute for Policy Innovation* (blog). May 31, 2012. https://www.ipi.org/ipi_issues/detail/medicare-and-medicaid-fraud-is-costing-taxpayers-billions.

McNicholas, Celine, Margaret Poydock, and Lynn Rhinehart. 2021. “How the PRO Act Restores Workers’ Right to Unionize.” *Economic Policy Institute* (blog), February 4, 2021. https://www.epi.org/publication/pro-act-problem-solution-chart/.

Medicaid.gov. n.d. “EVV Compliance Status for Personal Care Services by State or Territory.” Medicaid.gov. Accessed May 26, 2023. https://www.medicaid.gov/medicaid/home-community-based-services/guidance/electronic-visit-verification/evv-compliance-status-for-personal-care-services-state-or-territory/index.html.

Michel, Sonya. 2013. *Child Care Policy at the Crossroads: Gender and Welfare State Restructuring*. 1st ed. Routledge. https://doi.org/10.4324/9781315023144.

National Council on Independent Living. 2018. “Electronic Visit Verification (EVV) Task Force Statement of Principles and Goals.” National Council on Independent Living. https://www.ncil.org/wp-content/uploads/2018/10/10-15-18-EVV-Principles-and-Goals.pdf.

———. 2020. “The Need for Federal Protections in Electronic Visit Verification.” National Council on Independent Living. https://ncil.org/wp-content/uploads/2020/08/8-2-20-CALL-TO-ACTION.pdf.

Oldenburg, Ann. 2022. “Nationwide Caregiver Shortage Felt By Older Adults.” 2022. AARP, November 10, 2022. https://www.aarp.org/caregiving/basics/info-2022/in-home-caregiver-shortage.html.

Pew Charitable Trusts, MacArthur Foundation. 2013. *Combating Medicaid Fraud and Abuse*. Health Care Challenges in the States. Pew Charitable Trusts. http://bit.ly/1AiQKMM.

ProPublica. n.d. “Lobbying Arrangements Results for ‘Sandata Technologies.’” ProPublica. Accessed July 6, 2023. https://projects.propublica.org/represent/lobbying/search?search=sandata+AND+technologies.

Rogers, Joel. 2014. “Why ‘Harris v. Quinn’ Has Labor Very, Very Nervous.” *The Nation*, March 27, 2014. https://www.thenation.com/article/archive/why-harris-v-quinn-has-labor-very-very-nervous/.

Ross, Casey, and Herman. 2023. “Denied by AI: How Medicare Advantage Plans Use Algorithms to Cut off Care for Seniors in Need.” STAT (blog). March 13, 2023. https://www.statnews.com/2023/03/13/medicare-advantage-plans-denial-artificial-intelligence/.

Schulte, Brigid, and Cassandra Robertson. 2021. “Mother and Daughter Do the Same Job. Why Does One Make $9 More an Hour?” *New York Times*, May 10, 2021, sec. Opinion. https://www.nytimes.com/2021/05/10/opinion/home-health-wages.html.

Service Employees International Union (SEIU) 775. 2020. “Memorandum of Understanding Between the State of Washington and Service Employees International Union 775: Electronic Visit Verification.” SEIU 775. https://seiu775.org/wp-content/uploads/2021/07/State-of-Washington-2021-2023-CBA.pdf.

SpringML. n.d. “Improper Payments.” *SpringML, Inc.* (blog). Accessed May 24, 2023. https://www.springml.com/improper-payments/.

UDW/AFSCME Local 3930, SEIU Local 2015. 2017. “Joint Comments in Response to DRAFT Request for Information (RFI) on Electronic Visit Verification (EVV).” UDW/AFSCME Local 3930 and SEIU Local 2015. https://dredf.org/wp-content/uploads/2018/03/SEIU-UDW-Joint-Response-to-Draft-RFI-10-20-17.pdf.

US Bureau of Labor Statistics. 2022. “Employment by Detailed Occupation.” Employment Projections. US Bureau of Labor Statistics. https://www.bls.gov/emp/tables/emp-by-detailed-occupation.htm.

———. 2023. “Home Health and Personal Care Aides.” 2023. Occupational Employment and Wage Statistics. US Bureau of Labor Statistics. https://www.bls.gov/oes/current/oes311120.htm.

———. n.d. “Occupational Employment and Wage Statistics.” US Bureau of Labor Statistics. Accessed August 20, 2023. https://www.bls.gov/oes/.

US Department of Health and Human Services. n.d. “Medicaid Fraud Control Units (MFCUs).” US Department of Health and Human Services. Office of Inspector General. Accessed August 20, 2023. https://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/.

US Government Accountability Office (GAO). 2013. "GAO's 2013 High-Risk Update: Medicare and Medicaid." Testimony of Kathleen M. King and Carolyn L. Yocom before the House Subcommittee on Health, Committee on Energy and Commerce. US Government Accountability Office. https://www.gao.gov/assets/gao-13-433t.pdf.

Vespa, Jonathan, Lauren Medina, and David M Armstrong. 2020. "Demographic Turning Points for the United States: Population Projections for 2020 to 2060." Current Population Reports. United States Census Bureau. https://www.census.gov/library/publications/2020/demo/p25-1144.html.

Wacquant, Loïc J. D. 2009. *Punishing the Poor: The Neoliberal Government of Social Insecurity*. Politics, History, and Culture. Durham, NC: Duke University Press.

Willison, Karin. 2023. "How Electronic Visit Verification (EVV) Invades the Privacy of People With Disabilities." The Mighty, July 17, 2023. https://themighty.com/topic/disability/electronic-visit-verification-gps-tracking-disabled-people/.

Winant, Gabriel. 2021. *The Next Shift: The Fall of Industry and the Rise of Health Care in Rust Belt America*. Cambridge, Massachusetts: Harvard University Press.

Race and Democracy

Addressing Systemic Barriers for Working-Class Candidates Running for US Federal and Wisconsin Elected Offices

By Angela Maloney

Introduction

In the United States, the working class—those employed in manual labor, the service industry, or clerical jobs—represent over half of the labor force, but make up only 10 percent of elected city council representatives, 3 percent of elected members of state legislatures, and a mere 2 percent of Congress (Carnes 2018a). More than 50 percent of legislators in the 116th Congress were millionaires (Evers-Hillstrom 2022), a group that makes up just 8.8 percent of the US population (McCain 2023). Research shows that overwhelmingly, working-class people are disproportionately underrepresented at all levels of government. This is because most working-class people lack the personal finances, time, and political capital to enter races. Flexibility in time, finances, and political capital give wealthy candidates access to party leaders who recruit candidates and support campaigns, and these candidates have the excess savings to afford income lost due to campaigning. Furthermore, working-class candidates' ability to succeed in elections at both the federal and state levels is often viewed with skepticism stemming from bias by party leaders. In Wisconsin, for example, former Senate candidate Mandela Barnes notes that working-class candidates' electoral chances are constantly under scrutiny, as they face questions such as, "Are you ready?" and "Can you win?" This scrutiny influences both endorsements and funding from influential political organizations, as well as how candidates view themselves. When asked by a news outlet about this impact on lack of diversity among elected officials, Barnes said the following:

> It's not a particular group or race of people that asks the question, it just always gets asked. It creates a barrier and creates a burden for candidates, as well. Sometimes it can impact a candidate's own confidence. Whether they believe in themselves as ready, it makes them question whether they are actually ready or not, when they're more than ready. So what that means is that it would help be able to close the gap. (Trussoni 2023)

This all-encompassing reality continues to fuel disproportionate class representation in both the US federal and Wisconsin state governments. To address disproportionate class representation, campaign regulations must be reexamined and the government must intervene to ensure equity of opportunity for candidates from all socioeconomic backgrounds in the campaign system.

Background

Disproportionately low working-class representation is a fixture of the American political system. Since the early 1960s, the share of working-class people in both state legislatures and Congress has barely risen. According to data collected by Nicholas Carnes in his 2018 book *The Cash Ceiling: Why Only the Rich Run for Office—and What We Can Do about It*, the share of working-class people in Congress has never risen above 5 percent (Carnes 2018a). In state legislatures, working-class representation has actually declined slightly since the mid-1990s, dropping and remaining below 5 percent (Carnes 2018a). This phenomenon is especially striking considering the significant progress other socially oppressed groups have made in political representation in the last few decades. For example, the share of women in Congress has risen from less than 5 percent to 17 percent between 1961 and 2011. During this same time period, the share of women in state legislatures rose from below 10 percent to almost 25 percent. In the last 50 years, the number of racial minorities in Congress has doubled (Carnes 2018a). In contrast, the share of congressional members from working-class backgrounds has remained remarkably steady over the last century. According to Carnes,"between one- and two-thirds of representatives [are] lawyers" and the business class makes up about 20 percent of Congress (Carnes 2012). This makes the lack of working-class representation a rare constant in American politics; wealth and political capital remain a prerequisite for running successful campaigns.

It is critical to understand the history and influence of money in politics as an exacerbating and preluding factor when discussing the root causes of disproportionate professional-class representation in elected offices. While the 1907 Tillman Act prohibits corporations from contributing directly to federal campaigns, political action committees (PACs) still allow for indirect contributions and influence. The 1976 Supreme Court case Buckley v. Valeo reinforced the indirect influence of large corporations and wealthy individuals by ruling that the government "cannot place limits on campaign expenditures, expenditures by a candidate from personal resources, or independent expenditures by groups supporting the campaign" (Buckley v. Valeo 1976). The Supreme Court argued this "soft money" spending on campaigns is equivalent to free speech and therefore cannot be limited. Furthermore, the 2010 Supreme Court decision Citizens United v. FEC ruled that "corporations (and, by extension, unions and other groups) may make unlimited expenditures on messages encouraging votes for or against specific candidates, so long as they're not coordinated with candidates or parties" (OpenSecrets n.d.). As a result, more money is spent on modern US elections than ever before, with corporations and wealthy donors garnering more and more influence to handpick professional-class candidates and influence the electoral system through their donations and endorsements. Most recently, "at least $5.7 billion was spent on 2020's presidential election, while more than $8.7 billion was spent on congressional elections" (OpenSecrets n.d.).

The root causes of disproportionate class representation in elected offices can also be better understood within the context of neoliberal policy and ideology. Neoliberalism began to dominate political and economic thought in the 1980s. Its ideology is encompassed by the belief that "markets allocate scarce resources, promote efficient growth and secure individual liberty better than governments" (Kammas 2023). In this context, it makes sense that we see rolled-back government regulation of campaign finance and rules over the last 40 years. The expectation has been that the "free market" will self-regulate the influence of money and social class in elections. Since neoliberal thinking was popularized in the 1980s, the campaign and political systems have become more of a political industrial complex within which private money and influence supersedes equitable access and ability to benefit from campaigns, a public good. However, this mindset is flawed. The campaign system cannot self-regulate and necessitates government policy intervention to ensure class equity.

Without proportional working-class representation in elected offices, wealthy interests supersede the political will of the working-class majority. While working-class Americans overwhelmingly support increasing taxes on the top 10 percent of earners, this policy struggles to gain support in legislative bodies (Madland and Wall 2020). Similar trends persist with policies aimed at expanding social safety nets and protections for workers. Through studying patterns in roll call votes, Carnes was able to determine that "representatives who entered politics after careers in profit-oriented professions—farm owners, businesspeople, and other private-sector professionals—voted substantially more conservatively than other members" (Carnes 2012). The same study also found that private-sector professional elected officials were less likely to vote in line with the policy priorities of the AFL-CIO, a prominent labor union in the US, and elected officials who came from a working-class background were "20 to 50 percentage points more likely to support policies such as social welfare programs, regulation of the private sector, government-backed healthcare and efforts to reduce economic inequality" (Carnes 2012). On the state level, "states with fewer legislators from the working class spend billions less on social welfare each year, offer less generous unemployment benefits and tax corporations at lower rates" (Carnes 2012). This means that confronting the shortage of economic diversity in elected offices is key to addressing a root cause of socioeconomic injustice written into policy.

Together, these patterns and trends present a clear picture of how we arrived where we are today through the influence of money in politics and neoliberal ideology. The context behind a chronic lack of working-class representation at the federal and state levels is a result of ideological legal and regulatory choices that have created an unequal system. Lack of class representation in elected offices is a result of systemic bias propped up by pro-market, neoliberal campaign policies and rules that favor professional-class candidates and their pro-business interests.

Policy Analysis

Notably, voters do not prefer professional-class candidates. In fact, research shows a consistent lack of voter bias based on class in choosing candidates. A study of voters in the US, Argentina, and Britain found that voters are historically just as likely to vote for working-class candidates as they are middle- and upper-class candidates. Based on the survey conducted in the three countries, occupation had a minuscule effect on voters' willingness to vote for candidates (Carnes and Lupu 2016). Other factors, such as policy stances and personal likeability, played a larger role in determining whether a voter wanted to vote for a candidate (Carnes and Lupu 2016). Furthermore, voters in all three countries found working-class candidates to be just as qualified as other candidates running for office (Carnes and Lupu 2016). Trends in working-class elected officials' effectiveness, based on constituent perspective, reinforce these findings and show working-class people's ability to successfully lead. One survey completed in Latin America even found "descriptive representation of the working class is associated with enhanced evaluations of the legislature" (Barnes and Saxton 2019).

Systemic factors, not associated with the quality of candidates, drive disproportionate class representation in elected offices. A campaign system dependent on recruitment by party leaders and big donors allows biases to cloud who is encouraged to run and what campaigns get endorsements and funding. In a 2013 survey of county-level party leaders from across the country, Carnes found party leaders express their favor for professional-class candidates. Based on preconceived stereotypes against working-class candidates, 30 percent of party leaders "said workers are worse at campaigning, more than half said that workers were harder to recruit and two-thirds of local party leaders worried that workers would make bad fundraisers" (Carnes 2018b). As a result, party leaders stray toward the perceived "safer" choice in candidates. By recruiting professional-class candidates, party leaders are hoping their candidates will be more individually efficient and require less support from the party. Furthermore, if a party leader is from a professional background themself, their social circle is more likely to be dominated by other professionals. Even if they don't have a bias against working-class candidates, they may simply not know a working-class person they would encourage to run for office. As a result, many quality potential working-class candidates are overlooked by established parties and donors.

Second, running a successful campaign has evolved to require quite a bit of personal wealth and time. Unlike many other countries, the United States has no regulations dictating how long a campaign period is (Kurtzleben 2015) For candidates, this has resulted in taking an increasingly longer time off work and away from family to campaign before primaries. This phenomenon is exacerbated as well by the need for candidates to fundraise increasingly larger amounts, which requires more time on the phones and on the campaign trail. While a more well-off candidate may have the financial means to take an extended amount of time off of work, live on a reduced income, and rely on others to pick up family obligations, working-class candidates often do not have these luxuries. Furthermore, while running for office doesn't require investment of personal finances, the reality is that many candidates do invest their own money to fund campaign expenses. According to OpenSecrets, "self-financing made up 8 percent of the record $3.6 billion of total campaign funds raised by federal candidates during the 2022 election cycle" (Sayki 2023). During the 2022 Wisconsin governor's race, Michels Corporation, candidate Tim Michels's business, contributed $5 million to his campaign between July and August of that year (Lehr 2022). Working-class candidates are unable to provide this type of personal financing either.

The impact of neoliberal ideology is also seen here in the particular barriers working-class candidates face. Neoliberalism expects equality in outcomes without first addressing past harms and unequal starting points for marginalized candidates. One of the largest barriers, lack of political capital and favor from established political parties, is a direct result of neoliberal policy. Established parties preferring professional-class candidates implies that they see enhanced value in those who can be the most "efficient" in the free-market capitalist system. It implies that they see nothing wrong with those who rise to the top of the capitalist system also gaining favor in the political system. Furthermore, lack of finances and time for working-class candidates to run campaigns carries a neoliberal skew that the free-market extends to the political system. It implies that money and privatization should be allowed to influence campaigns and American democracy.

Recommendations

First and foremost, taking action to reform our campaign system to ensure equity requires a more in-depth understanding of the extent, impact, and causes of the lack of class diversity in elected offices. To reach this point, we need expanded research on working-class candidates and the intersection of class and the campaign system, as well as data specific to the State of Wisconsin.

However, one immediately applicable policy solution to provide the needed government intervention to support working-class candidates in Wisconsin is standard regulation of the use of campaign funds for personal use. With adoption of a standard policy, candidates would be guaranteed a mechanism through which to fill the gap of campaign-related lost wages and personal expenses.

At the federal level, there is already a Federal Election Commission (FEC) exemption in place for "personal use" of campaign funds (FEC n.d.). Candidates are allowed to use campaign funds for "wage replacement" starting after the federal filing deadline for their federal election (FEC n.d.). Candidates can draw funds up to their earnings from the previous tax filing year or to the amount of the salary allotted to the elected official holding the office they are running for, whichever is lower (FEC n.d.). Wisconsin does not offer a standard exemption for campaign funds to replace candidate income as stated in Wis. Stat. § 11.1208, which says "a [campaign] committee may not make a disbursement . . . for the committee's or an individual's strictly personal use" (Wisconsin State Legislature 2023). Wisconsin is one of 12 states that allows for campaign spending at the state level to be spent on childcare expenses; however, this is only on a case-by-case basis and Wisconsin statute remains ambiguous on "personal use" of campaign funds for any other expenses, including "wage replacement" (Wisconsin Ethics Commission 2018). As of right now, if a candidate wanted to use campaign funds for wage replacement, they would have to make an individual plea to the Wisconsin Election Commission that replacement of wages is not an expense they would have irrespective of campaigning and therefore is not "strictly personal use."

This omission of a "wage replacement" exemption is inconsistent with federal election regulations, and it creates an additional barrier for working-class candidates. As campaign seasons become longer and more intensive, campaigning puts an even larger burden on working-class candidates who are forced to work full-time jobs on top of the demands of running for office (Ackley 2021). As such, the potential inability to draw a wage from campaign funds inhibits working-class people's capacities to run for state office.

Specifically, Wisconsin's amended policy should include the following provisions:

1. Candidates may receive compensation equivalent to their salary the prior fiscal year or the salary of the office for which they are running, whichever is lower. In the case that a candidate's prior fiscal year adjusted gross income was less than $31,200, they may earn up to $31,200 per/year.
2. Candidates may use campaign funds for the purpose of "wage replacement" as soon as 25 percent of signatures needed to declare candidacy have been collected.
3. Wages may only be allocated up until the end of the month of the election in which the candidate is on the ballot.
4. Campaign funds allocated toward "wage replacement" must be reported to the Wisconsin Election Commission each quarter.

The proposed changes closely follow § 113.1 of the Federal Election Commission (FEC n.d.). However, this legislation would allow candidates expanded time to receive "wage replacement" with the intent of providing more support to working-class candidates. This would allow for candidates to receive wage replacement even when collecting signatures before filing to run, a process which itself can take months. Furthermore, the proposed policy provides a base pay of $31,200. As a result, Wisconsin state "wage replacement" would provide ample financial support to working-class candidates throughout their whole campaign and candidates who were previously earning a wage lower than $15/hour, unemployed, or stay-at-home caregivers. This proposed legislation would also help curb hesitations from party leaders who are hesitant to support working-class candidates because of the extra financial support they may need directly from the party. Lastly, the proposed policy also includes oversight by the Wisconsin Election Commission in order to protect against any possible misuse of wage-replacement allowances.

Conclusion

Working-class people make up over half of the population but a disproportionately small number of elected officials at all levels of government in the United States. Lack of working-class representation in our government stems not from voter preference or lack of quality working-class candidates. Disproportionate representation of the professional class stems from larger systemic issues: the time and personal wealth needed to run for office, deficiencies in the candidate recruitment process, and influence of big money and politics. As campaigns get more expensive and campaign seasons longer, working-class people cannot afford the time and personal expense needed to campaign. Furthermore, many working-class candidates are overlooked in the recruitment process of political parties, the resources and political capital of which are typically needed to successfully launch a campaign and garner support from donors. This matters because without proportionate representation of social class within our elected offices, the voice of the working class will continue to be drowned out by pro-business, professional-class politicians.

Increasing working-class representation at any level of government is no small feat, and requires targeted government regulation that dismantles neoliberal thinking. One regulatory possibility that can immediately be implemented in the State of Wisconsin is revising "personal use" regulations of campaign funds. A new regulation could set a standard for candidates to be able to use campaign donations for wage replacement to offset hours they are not able to work due to campaign obligations. Furthermore, class representation in elected offices could also benefit from further research in this currently under-researched area. If we are able to achieve class equality in elected offices, our democracy will not only better reflect its proclaimed representative nature, but also become more responsive to the needs of working-class people—the majority of Americans.

About the Author

Angela Maloney (she/her), a native of Madison, Wisconsin, is a recent May 2023 graduate of the University of Wisconsin-Madison, where she doubled majored in community and nonprofit leadership and international studies: politics and policy in the global economy, with minors in public policy, Chicano/Latino studies, development economics, and leadership. She has been involved in grassroots organizing, working on campus to expand students' access to the ballot and working off campus as a labor organizer. As president and strategic planning officer of the Zoe Bayliss Student Housing Cooperative, the last student housing cooperative in the state of Wisconsin, Angela works to ensure that students have affordable housing options. She has also served as a caseworker in the Office of Wisconsin Governor Tony Evers and as a legislative intern with the Washington, DC, office of Rep. Mark Pocan (D-WI). Angela is currently pursuing a master of public affairs and a career focused on expanding working-class representation in elected office at all levels of government. In her free time, she likes spending time in nature, running, and appreciating classic vines.

Acknowledgments

I would like to acknowledge and give my warmest thanks first and foremost to the Roosevelt Institute for taking me on as a fellow and to Alyssa Beauchamp and Katie Kirchner for reading the many drafts of my paper and offering me sage guidance. I would like to thank Professor Nicholas Carnes for meeting with me and answering my emails to help me in my research and share his expertise. I would also like to thank the Wisconsin governor's office for letting me use their conference room to take cohort calls and always supporting me to take on new ventures while I also worked there. Finally, I would like to thank my family and friends for their endless support of my academic passions.

References

Addressing Systemic Barriers for Working-Class Candidates Running for US Federal and Wisconsin Elected Offices

Ackley, Kate. 2021. "FEC Reviewing Rules on Salaries, Benefits for Candidates." Roll Call, June 30, 2021. https://www.rollcall.com/2021/06/29/fec-reviewing-rules-on-salaries-benefits-for-candidates/.

Barnes, Tiffany D., and Gregory W. Saxton. 2019. "Working-Class Legislators and Perceptions of Representation in Latin America." *Political Research Quarterly* 72, no. 4 (2019): 910–28. https://doi.org/10.1177/1065912919829583.

Berger, Max. 2022. "Investigation: The Super Pacs Trying to Take down Working Class Candidates for Congress." More Perfect Union, May 17, 2022. https://perfectunion.us/investigation-super-pacs-working-class-candidates-2022/.

Buckley v. Valeo, 424 US 1, No. 75-436 (1976), https://supreme.justia.com/cases/federal/us/424/1/.

Carnes, Nicolas. 2012. "Does the Numerical Underrepresentation of the Working Class in Congress Matter?" Legislative Studies Quarterly 37, no. 1 (February) 2012. https://www.opensecrets.org/downloads/Carnes_LSQ_Revised_Submission.pdf.

_______ 2018a. *The Cash Ceiling: Why Only the Rich Run For Office--and What We Can Do about It*. Princeton, NJ: Princeton University Press. https://www.jstor.org/stable/j.ctv39x4w6.

_______ 2023. *Seeking More Working-Class Americans in Congress*. Boston, MA: Federal Reserve Bank of Boston. https://www.bostonfed.org/-/media/Documents/cb/Carnes-seeking-more-working-class-americans-in-congress.pdf

Carnes, Nicholas, and Noam Lupu. 2016. "Do Voters Dislike Working-Class Candidates? Voter Biases and the Descriptive Underrepresentation of the Working Class: American Political Science Review." *American Political Science Review* 110, no. 4 (November): 832-844. https://www.cambridge.org/core/journals/american-political-science-review/article/abs/do-voters-dislike-workingclass-candidates-voter-biases-and-the-descriptive-underrepresentation-of-the-working-class/2C06FFF09BDD1853313A5CB39A9FFF5B.

_______ 2023. "The Economic Backgrounds of Politicians." *Annual Review of Political Science* 26: 253-70. https://doi.org/10.1146/annurev-polisci-051921-102946.

Evers-Hillstrom, Karl. 2019. "State of Money in Politics: The Price of Victory Is Steep." OpenSecrets, February 19, 2019. https://www.opensecrets.org/news/2019/02/state-of-money-in-politics-the-price-of-victory-is-steep/.

_______ 2022."Majority of Lawmakers in 116th Congress Are Millionaires." OpenSecrets, October 19, 2022. https://www.opensecrets.org/news/2020/04/majority-of-lawmakers-millionaires/.

Federal Election Commission (FEC). n.d."Personal Use." FEC.gov. Accessed June 30, 2023. https://www.fec.gov/help-candidates-and-committees/making-disbursements/personal-use/

Ferris, Sarah. 2020."'America Made It about Race': Candidates of Color Still Grapple with Deep-Rooted Barriers." *Politico*, August 7, 2020. https://www.politico.com/news/2020/07/20/congressional-candidates-of-color-366416.

Giorno, Taylor. 2023. "Business Interests Spent $3.5 Billion on Federal Political Contributions during the 2022 Cycle." OpenSecrets, January 27, 2023. https://www.opensecrets.org/news/2023/01/business-interests-spent-3-5-billion-on-federal-political-contributions-during-the-2022-cycle/.

Help America Run Act, H.R. Res. 1623, 116th Cong. (2019-2020). https://www.congress.gov/bill/116th-congress/house-bill/1623.

Justia US Law. 2020. "2020 Wisconsin Statutes & Annotations Chapter 11. Campaign Financing. 11.1208 Unlawful Political Disbursements and Obligations." Justia US Law. Accessed June 30, 2023. https://law.justia.com/codes/wisconsin/2020/chapter-11/section-11-1208/.

Kammas, Anthony. 2023. "What Is Neoliberalism? A Political Scientist Explains the Use and Evolution of the Term." USCDornsife, April 19, 2023. https://dornsife.usc.edu/news/stories/what-is-neoliberalism/.

Kurtzleben, Danielle. 2015. "Why Are US Elections so Much Longer than Other Countries'?" *NPR*, October 21, 2015. https://www.npr.org/sections/itsallpolitics/2015/10/21/450238156/canadas-11-week-campaign-reminds-us-that-american-elections-are-much-longer.

Lehr, Sarah. 2022. "Wisconsin Governor's Race: Michels Continues to Pour Millions of His Own Dollars into Campaign." *Wisconsin Public Radio*, September 29, 2022. https://www.wpr.org/wisconsin-governors-race-michels-continues-pour-millions-his-own-dollars-campaign#:~:text=Republican%20Tim%20Michels%20continues%20to,filed%20campaign%20finance%20reports%20show.

Madland, David, and Malkie Wall. 2020. *Working-Class Americans in All States Support Progressive Economic Policies*. Washington, DC: Center for American Progress Action. https://www.americanprogressaction.org/article/working-class-americans-states-support-progressive-economic-policies/.

McCain, Abby. 2023. "33 Incredible Millionaire Statistics [2023]: 8.8% of US Adults Are Millionaires." Zippia, February 24, 2023. https://www.zippia.com/advice/millionaire-statistics/.

OpenSecrets. n.d. "Money-in-Politics Timeline." OpenSecrets. Accessed July 3, 2023. https://www.opensecrets.org/resources/learn/timeline.

Sayki, Inci. 2023. "Top Self-Funding Congressional Candidates Were among the 2022 Election Cycle's Biggest Losers." OpenSecrets, February 13, 2023. https://www.opensecrets.org/news/2023/02/top-self-funding-congressional-candidates-were-among-the-2022-midterm-election-cycles-biggest-losers/.

Trussoni, Isaac. 2023. "The Long Run: Mandela Barnes Launches New PAC for Grassroots, Changemaking Candidates." *Madison*365, February 22, 2023. https://madison365.com/the-long-run-mandela-barnes-launches-new-pac-for-grassroots-changemaking-candidates/.

Wisconsin Ethics Commission. 2018. "Campaign Finance – Use of Campaign Funds for Childcare." Wisconsin Ethics Commission. Accessed June 30, 2023. https://ethics.wi.gov/Resources/18-01_UseofCampaignFundsforChildcare.pdf.

Wisconsin State Legislature. 2023. "Chapter 11: Campaign Financing." Wisconsin Statutes & Annotations. Accessed September 26, 2023. https://docs.legis.wisconsin.gov/statutes/statutes/11/xiii/1303/2/a.

Doing More with More: Advancing Racial Equity in Maryland Higher Education

By Crystal Foretia

Introduction

At the end of June 2023, the United States Supreme Court issued two decisions that undermine the survival of historically Black colleges and universities (HBCUs) and their student bodies. First, the Supreme Court effectively overturned race-conscious college admissions policies in *Students for Fair Admissions v. Harvard University* and *Students for Fair Admissions v. University of North Carolina* (Liptak 2023a). Then, the Supreme Court struck down President Joe Biden's first student debt cancellation program in *Biden v. Nebraska*, which would have eliminated $400 billion in student debt (Liptak 2023b). The ruling in both *Students for Fair Admissions* cases will likely increase the demand on HBCUs to fill educational opportunity gaps for prospective Black students (Perry et al. 2023; C. Adams 2022). HBCUs are generally oversubscribed relative to their financial capacities, so they will likely be unable to handle an influx of students without additional state funding.[7] The ruling in *Biden v. Nebraska* will disproportionately impact HBCU graduates, who carry a greater debt burden than those who attend predominantly white institutions (PWIs) (Koch and Swinton 2023).

HBCUs are key social institutions in African American life, as they advance the educational attainment and economic mobility of low-income Black students. Moreover, the students who leave these institutions bring much-needed diversity to their professions and resources to their communities. The health of HBCUs has important implications for shrinking the racial wealth gap, boosting diversity in higher education, and promoting civil rights. Compared to PWIs, HBCUs across the country have faced decades of financial neglect due to anti-Blackness in government policies and the free market. Moreover, those who subscribe to a neoliberal ideology treat education not as a public good, but as the responsibility of each individual. As a result, they claim the government should not play a significant role in securing educational opportunities for African Americans. Commitment to this ideology has produced inequitable outcomes when it comes to student debt burdens, retention rates, and graduation rates for HBCU students, relative to those who attend PWIs. The 15-year lawsuit, *The Coalition for Equity and Excellence in Maryland Higher Education Inc., et al. v. Maryland Higher Education Commission, et al.*, illustrates that Maryland is not exempt from this history of injustice, and that the state needs to repair the harm inflicted upon HBCU students (Coalition for Equity and Excellence v. MHEC 2013).

7 Swinton, Omari H. (Economics Department Chair at Howard University), video interview with author, July 5, 2023.

Background

HBCUs proliferated in the 1860s as agricultural and technical schools for African American students. As part of the broader agenda of Reconstruction, these schools offered African Americans the educational opportunities that slavery and white supremacy denied them prior to the Civil War. Philanthropy has shaped American education at all levels since the mid-1800s (Gasman 2012; Gasman 2007). For HBCUs specifically, private partnerships began by Northern industrialists to (1) invest in the newly emancipated Black labor force and (2) foster an intellectual elite within the Black community (Gasman 2007). HBCUs were not recognized as a distinct class of educational institutions until passage of the Higher Education Act of 1965 (Johnson et al. 2017, 48). The Act defined an HBCU as any public or private institution that was founded before 1964, whose primary mission is to educate African Americans, and has received accreditation from a nationally recognized agency or association approved by the Secretary of Education. As of 2023, 102 HBCUs remain in existence, half of them public and the other half private. Of the 287,000 HBCU students, 76 percent attend a public institution (National Center for Education Statistics n.d.). HBCUs belong to the broader class of "minority-serving institutions" (MSIs), which include Tribal colleges and universities, Hispanic-serving institutions, and other colleges that primarily serve students of color.

During the Obama administration, questions arose over the relevance of HBCUs. Conservative commentators argued that such institutions were unnecessary, and emphasized instances of failed leadership (Cantey et al. 2013, 146; Gasman and Bowman 2011). Negative stories often ignored the relative successes of HBCUs compared to PWIs, such as their higher graduation rates for Black students who struggled academically in high school (Koch and Swinton 2023). In addition to questions of cultural relevance, HBCUs have faced significant financial shortfalls, due to declining enrollment, lack of fundraising, and reduced government aid (Cantey et al. 2013, 147; Johnson et al. 2017, 56). The financial circumstances of HBCUs vary greatly based on endowment size, alumni donations, selectivity, ability to secure external grants and contracts, university leadership, tuition revenue, and public/private status. In 2021, the endowments of Howard University and Spelman College, both private HBCUs, were estimated to be $865.3 million and $570 million respectively. Other HBCUs have significantly smaller endowments, such as Morgan State University, which has an endowment of $41.4 million, and Coppin State University, which has an endowment of $15.1 million. The stronger financial capacity of Howard University and Spelman College means that they are better able to build technological infrastructure, forge private partnerships, and offer new programs.

That said, even the most prestigious HBCUs face significant restraints when it comes to facilities and resources. In the autumn of 2021, Howard University students protested poor housing conditions, citing rats and mold in the dorms (Franklin 2021). Students from Clark Atlanta University, Morehouse College, and Spelman College protested against outdated infrastructure on their campuses that same semester (Dalton 2021). Critically, federal and state funding for HBCUs significantly lags behind predominantly white peer institutions by billions of dollars, despite laws like the Morrill Land Grant Act of 1890, which exist to address these funding gaps (Cantey et al. 2013, 147; Bunn 2021). Federal legislation that would have poured $9 billion into HBCUs for research infrastructure, academic support services, and need-based financial aid stalled in the Senate last year (Lumpkin et al. 2022).

Since Reconstruction, a systemic commitment to white supremacy has prevented HBCUs from receiving resources promised to them by both federal and state governments (Harris 2021). Even "neutral" funding schemes, such as those based on performance or student population, perpetuate racial inequality (Rascoe 2023). In 1969, the US Department of Education's Office of Civil Rights (OCR) ordered 10 states, including Maryland, to desegregate their public higher education systems (Gaines 2023). While Maryland engaged in 30 years of negotiations with OCR to remove vestiges of *de jure* segregation, the state ultimately failed to end its stigmatization of its HBCUs. In 2008, a blue-ribbon commission determined that Maryland's historically Black institutions (HBIs) were "not comparable" to the state's PWIs due to historic divestment: "There are many indicators that suggest that substantial additional resources must be invested in HBIs to overcome the competitive disadvantages caused by prior discriminatory treatment" (Bohanan et al. 2008, 97). Such stigmatization has undermined the social mobility of Black college students in the state.

The socioeconomic profile of HBCU students in Maryland reflects national enrollment trends among public HBCUs. By fall 2021, over 38,000 students were enrolled in an HBCU in Maryland. At each of Maryland's HBCUs (Bowie State University, Coppin State University, Morgan State University, and University of Maryland Eastern Shore), the vast majority of undergraduate students receive financial aid and identify as first-generation and/or low-income (FGLI). At Morgan State, 83 percent of undergraduates were awarded grant aid, while 58 percent of undergraduates took out federal student loans. In fall 2021, 89 percent of Coppin State undergraduates received grant aid, while 66 percent were eligible for federal Pell grants. At the University of Maryland Eastern Shore (UMES), 90 percent of students qualified for financial aid, including scholarships, grants, loans, or a combination thereof. At Bowie State, 89 percent of undergraduates received grant aid.

Despite predominantly serving low-income students, these schools are not meeting their students' *full* financial need. And like many public HBCUs, Maryland's institutions have struggled with retaining students. At Coppin State, as few as 24 percent of undergraduate students graduated within six years by the 2021–22 academic year. Enrollment and funding are inherently intertwined. Discussions over the racial funding gap in Maryland's higher education system came to a head in 2021, when the state settled a 15-year federal lawsuit concerning its differential treatment of Bowie State, Coppin State, Morgan State, and UMES.

In 2006, alumni, students, and prospective students of Maryland's four HBCUs (the Coalition) sued the Maryland Higher Education Commission (MHEC) for violating the 14th Amendment's Equal Protection Clause and Title VI of the 1964 Civil Rights Act. Attorneys representing the Coalition argued that the state violated the directive in *US v. Fordice* (1992) by allowing PWIs to duplicate academic programs that originated at these public HBCUs, a policy that functionally continued the doctrine of "separate but equal" and undermined the ability of HBCUs to recruit students (Hunt Institute 2022, 3-4).

For example, the MHEC approved programs that duplicated Morgan State's master's programs in business administration and public health, as well as three undergraduate programs at UMES (Coalition for Equity and Excellence v. MHEC 2013). In the aggregate, "Maryland's HBCUs offer[ed] 11 non-duplicated, high demand, noncore programs; Maryland's PWIs offer[ed] 122 such programs" (Hunt Institute 2022, 4). This unnecessary program duplication contributed to HBCUs' declining enrollment rates and, consequently, lower funding allocations based on enrollment. The state also deprioritized HBCUs for capital improvement projects, the backlog of which worsened the schools' already inadequate facilities (Carter 2021). The plaintiffs cited issues of leaking roofs, mold, and poor ventilation across the four campuses.[8] Moreover, Maryland had limited the missions of HBCUs to be teaching-oriented, as opposed to research-oriented, which resulted in the state distributing fewer financial resources per student at the HBCUs (Lawyers' Committee 2012). On the basis of unnecessary program duplication, Judge Catherine C. Blake of the US District Court ruled in the plaintiffs' favor and ordered that the parties enter mediation in 2013.

Four years of mediation ensued and ultimately failed. Following a second trial in November 2017, the District Court created a "remedial plan" to resolve the programmatic disparities between PWIs and HBCUs. The following December, the state appealed this decision to the Fourth Circuit Court of Appeals. After hearing oral arguments a year later, the Circuit Court ordered that the parties continue mediation and enter settlement negotiations on January 2, 2019. Mediation ended without resolution in July 2019. Maryland's then-Governor Larry Hogan vetoed House Bill 1260, an emergency appropriations bill which would have

8 Francois, Aderson (Professor of Law, Georgetown University), video interview with author, July 7, 2023.

settled the dispute, citing the economic fallout of COVID-19 in 2020. A near-identical bill, Senate Bill 1, was passed and signed into law in March 2021 to distribute $577 million to HBCUs over the course of 10 years, beginning in FY 2023 (Hunt Institute 2022, 5).

Policy Analysis

The outcome of this lawsuit was a step in the right direction, as it forced the state of Maryland to compensate for its disparate treatment of its HBCUs. In *US v. Fordice* (1992), the Supreme Court ruled that states that enacted *de jure* segregation in higher education must eradicate policies and practices that perpetuate a dual system. The court directed states to end unnecessary program duplication, create funding parity, and be unbiased in how they assign missions to their public universities (US v. Fordice 1992). The settlement agreement brings Maryland's higher education policy closer to the precedent set in *Fordice*. The $577 million will go toward developing new programs, hiring faculty, and expanding financial aid. Senate Bill 1 specifies that the settlement funds do not replace funding that would normally be appropriated annually to HBCUs (Hunt Institute 2022, 5). Perhaps most importantly, the settlement agreement inspired state lawmakers in Tennessee to craft legislation that works toward funding parity for their own HBCU (Weissman 2021).

Despite the clear progress heralded by the settlement, its terms are strictly forward-looking; students who attended these schools prior to the lawsuit's settlement are left with no remedy. Importantly, the lawsuit did *not* dismantle programs at PWIs that were duplicated from preexisting programs at geographically proximate HBCUs. This was the primary remedy the Coalition sought in their lawsuit against the MHEC,[9] as undoing previous program duplication would have erased the vestiges of segregation within Maryland's higher education policy. The district court was particularly critical of the state's program duplication practices, as it found, "60% of the noncore programs at Maryland's HBIs are unnecessarily duplicated, compared with only 18% of Maryland's TWIs' noncore programs" (Coalition for Equity and Excellence v. MHEC 2013).

Moreover, the MHEC has not ended its misbehavior with regard to unnecessary program duplication. Commission members came under fire in July for overturning a decision that blocked a new doctoral program in business analytics at Towson University. The proposed program had been blocked due to the negative impact it would have on enrollment at Morgan State, a school five miles away from Towson that established a similar PhD program in 2001. State legislators and Morgan State administrators believe the new decision violates the settlement agreement, as the new program would be "unreasonably duplicative" (Pugh 2023). In August, legislators convened a workgroup to review how the MHEC approves degree programs, as the current process "has created distrust among the state's higher education institutions, particularly HBCUs" (Gaines 2023). Even if the MHEC revises its policies, the state must make financial investments to rebuild trust.

The desperately needed retrospective relief the settlement failed to provide to HBCU students demands further policy action. The settlement itself fell short of the $1 billion mark HBCU advocates were pushing for. It should also be noted that, in 2019, Governor Hogan attempted to reduce the size of the settlement twice—first to $100 million, then to $200 million (Baca 2019). Governor Hogan had been emboldened by his Democratic predecessor Martin O'Malley, who made a final offer of $40 million prior to leaving office in 2014 (Douglas-Gabriel and Wiggins 2019; Baca 2019). To put it in perspective, UMES, Maryland's only land-

9 Francois, Aderson (Professor of Law, Georgetown University), video interview with author, July 7, 2023.

grant HBCU, was underfunded by $416 million between 1987 and 2020 (S. Adams and Tucker 2022). Some reports estimated the total underfunding to amount to $2.3 billion across the four schools ("The State of Maryland $2.3B HBCU Lawsuit" 2017; Rogers 2013). Around the same time the lawsuit was coming to close, journalist Adam Harris published his book, *The State Must Provide*. In it, Harris proposes several remedies to historic higher education inequalities, which include targeted debt cancellation, cash transfers to students, redistribution of endowments, and changes to funding formulas that advantage institutions with large minority populations (Harris 2021).

Beyond Harris's call for reparations in higher education, a significant body of literature has grown on the historical underfunding of HBCUs. In September 2013, the Association of Public and Land-Grant Universities found that 61 percent of HBCUs established via the 1890 Morrill Land Grant Act did not receive one-to-one matching funds from state governments between 2010 and 2012. As a result, these public HBCUs were underfunded by $57 million in that two-year period (Lee and Keys 2013). By contrast, PWIs established via the 1862 Morrill Land Grant Act received 100 percent of the one-to-one matching funds from their respective states. Persistent underfunding has had other negative effects on HBCUs as well, which create a feedback loop that leads to further underfunding. For example, the *Washington Post* reported that no HBCU has attained R1 status, which is the highest ranking for research universities (Lumpkin et al. 2022). Research rankings impact a university's ability to secure grants at the state and federal levels, and in Maryland, research-oriented colleges receive more funding from the state government than teaching-oriented colleges. The missions designated to HBCUs are all teaching-oriented, which, as the Coalition argued in court proceedings, contributed to HBCUs receiving lower funding allocations than their neighboring PWIs (Lawyers' Committee 2012).

The historical inequities revealed in *Coalition for Equity and Excellence v. MHEC* fit into the broader pattern of public divestment that HBCUs have endured across the country. *Forbes Magazine* found that Black land-grant universities, which includes UMES, were collectively owed $12.8 billion in state funds between 1987 and 2020 (S. Adams and Tucker 2022). The American Council of Education found that, "[b]etween 2003 and 2015, public and private HBCUs experienced steep declines in federal funding per full-time enrolled (FTE) students" (Hunt Institute 2022, 2). Funding injustices are exacerbated by unequal sizes of endowments, the assets of which are necessary for HBCUs' financial stability and security. As *Forbes* notes, "[i]n 2020, the average endowment at the 18 white land-grant schools was $1.9 billion. At the Black schools it was $34 million" (S. Adams and Tucker 2022). The endowments at Bowie State, Coppin State, Morgan State, and UMES are far closer to $34 million than $1.9 billion.

The absence of government resources has inhibited the ability of HBCUs to provide as many opportunities to their students as their predominantly white counterparts can. HBCU administrators have responded to the galling inequities by adopting the mantra of "doing more with less," which often places an undue burden on faculty and staff to succeed with limited institutional support (Gasman and Bowman 2011, 26).[10] At the same time, political commentators often attribute the plight of HBCUs to their alumni not giving enough, to HBCUs' financial mismanagement, and to HBCUs' failures to seek out sufficient private philanthropy. Conservatives at the Heritage Foundation and the American Enterprise Institute as well as Republican lawmakers such as Rep. Greg Murphy (R-NC) treat private partnerships and loans as the pathways to success, without recognizing years of racial discrimination by the state and private actors (Sailor 2020; Schaefer Riley 2021; "Homecoming" 2021).

Furthermore, neoliberals have compounded the lack of a coordinated governmental effort to invest in HBCUs by using the achievements of HBCU students and alumni to promote individualism, as opposed to collective liberation (Sailor 2020; Schaefer Riley 2021; Bevins et al. 2021). In Maryland, a pertinent example of this phenomena is the BGE Scholars Program. In February 2023, Baltimore Gas and Electric Company

10 Francois, Aderson (Professor of Law, Georgetown University), video interview with author, July 7, 2023.

renewed a $3 million scholarship program to support STEM education at Morgan State, Bowie State, and Coppin State (WMAR Staff 2023). This program, while certainly beneficial to the 45 students accepted into it each year, does little to address the structural inequities that disadvantage Black college students, and instead provides positive press for Maryland's largest natural gas company.

The BGE Scholars program bears significant resemblance to AltFinance, a $90 million initiative created in 2021 to pipeline Atlanta-based HBCU students into the finance industry. AltFinance is a fellowship and scholarship program sponsored by three investment firms, that have each committed $3 million for 10 years (Gottfried 2021). These firms present the initiative as a virtuous endeavor wherein they expand students' opportunity, explaining that "[s]ociety has moved past the notion that a corporation's only job is to make money for its shareholders" (Gottfried 2021). Much like Andrew Carnegie and John D. Rockefeller, the business leaders behind BGE Scholars and AltFinance are making a strategic investment in the Black labor force through their partnerships. However, in the vein of BGE Scholars, AltFinance does not address systemic issues affecting Black people within the financial services industry, such as predatory lending, redlining, and unequal access to banking services.

Private investment in HBCUs has also come through charitable donations. For example, billionaire philanthropist MacKenzie Scott gave Bowie State, Morgan State, and UMES a combined $85 million in December 2020 (Donastorg 2022). While these donations significantly expanded these schools' endowments, Coppin State was not afforded that same generosity. When it comes to ending the racial wealth gap and educational inequalities, programs that frame private actors and corporations as altruistic often obfuscate the importance of publicly funded solutions.

Recommendations

Maryland must treat higher education as a public good to which all Black students are entitled. As such, the state must ensure that debt is no longer a barrier to entry. While the state's HBCUs can use funds from the *Coalition v. MHEC* settlement for "scholarships and financial support services," they are not obligated to do so. To expand on the path set forth by the $577 million settlement, Maryland should increase equity in outcomes for HBCU graduates and increase the retention of current HBCU students. Policy pathways to reach these goals are:

1. **Offering free tuition to Pell-eligible students who attend HBCUs, beginning in the 2025-26 academic year.** Based on admissions data from fall 2021, this policy would positively impact at least 8,500 students across the four schools. The state of Maryland administers four tuition waiver programs for unique student populations; colleges and universities process these waivers internally (not MHEC). Expanding access to need-based financial aid for African American students has been a point of contention in several cases involving HBCUs (US v. Fordice 1992). This will ensure that future HBCU students will not face the debt burden of previous generations and will improve their ability to complete their degrees. Moreover, the uniqueness of this financial aid package will help HBCUs recruit more talent.
2. **Creating a student loan repayment assistance program specific to HBCU graduates with student debt burdens up to $50,000 and who are still residing in Maryland.** Such a state policy would not be unprecedented: The Maryland Higher Education Commission operates six programs to assist student debtors. However, five of these programs base their eligibility on profession. Because the students who attend HBCUs are predominantly FGLI, they incur higher amounts of debt compared to those who attend PWIs (Koch and Swinton 2023). Marylanders are in particular need of student debt relief, as the average amount of debt per borrower is $42,861—the second highest in the nation (Savery 2023).

3. **Allocating refundable tax credits for current HBCU students and recent graduates.** Two existing tax credits prompt this recommendation: the Student Loan Debt Relief Tax Credit and Endowments for Maryland Historically Black Colleges and Universities Tax Credit. The first one can be claimed by anyone who incurred $20,000 in undergraduate student loan debt and had an outstanding balance of $5,000. The second one, which ends on December 31, 2023, allows people to reduce what they owe in income tax if they donate to a Maryland HBCU—not if they attended one. The respective goal of each tax credit is to assist taxpayers pay off their students and to incentivize taxpayers to contribute to the endowments of the state's HBCUs. Providing refundable tax credits to HBCU students and graduates would be conducive to both aforementioned goals.

The aforementioned recommendations recognize higher education as a public good that Black people have historically been denied. They consider HBCU funding and Black student loan debt as issues to be addressed under a reparative model. Policymakers must recognize students as the most important stakeholders in this policy debate. Many students protested before the Maryland General Assembly while the *Coalition v. MHEC* lawsuit was ongoing, with those interviewed citing inequitable facilities and financial aid as their top concerns (Rogers 2013; Baca 2019; Carter 2021).

Perhaps most importantly, these recommendations build on the paradigm shift that began in response to the COVID-19 pandemic, when the federal government gave unprecedented levels of direct monetary relief to individuals and organizations. Collectively, public universities and MSIs received millions in COVID-19 relief from the federal government, and they disbursed that money to students to cover emergency expenses. Some HBCUs, such as Clark Atlanta University, wiped out student account balances through federal COVID-19 relief (Korn 2021). While the threat of the virus has somewhat waned, the $1.6 trillion crisis of student loan debt has not (Liptak 2023b). And though President Biden has initiated a revised version of his student loan forgiveness plan, many will be left behind as a result of the Supreme Court's recent ruling. Given that the above recommendations are modeled after preexisting tuition waivers, student loan assistance programs, and tax credits, they should be able to withstand legal challenges.

Conclusion

For too long, HBCUs have been expected to do more—provide intellectual rigor, emotional validation, and safety to Black students; be engines of economic growth for low-income, Black communities; *and* combat decades of exclusionary policy—with fewer public resources than their predominantly white peers. The age of "doing more with less" must come to an end. Maryland cannot rely on the federal government to alleviate the burden on HBCU students given the two most recent Supreme Court rulings. The decisions in *Students for Fair Admissions v. Harvard*, *Students for Fair Admissions v. UNC*, and *Biden v. Nebraska* affirm a neoliberal worldview, wherein higher education is a "colorblind" meritocracy and the ability to afford such an education is the individual's responsibility. This ideology is diametrically opposed to the survival of HBCUs, as HBCUs cannot thrive in a race-neutral world. Moreover, the overwhelming majority of Maryland's HBCU students cannot foot the bill for their degrees by themselves. Maryland has an obligation to its HBCUs and the communities those HBCUs serve to right the wrong of racial discrimination. The $577 million settlement was a catalyst for discussing racial equity in higher education—it was never meant to be the end of that discussion. By alleviating the debts of HBCU graduates, the Maryland government would be providing a pathway to breaking cycles of generational poverty within low-income Black communities.

About the Author

Crystal Foretia (she/her) is a recent graduate of Columbia University, where she earned a BA in political science and history. Born and raised in Silver Spring, MD, Crystal is the youngest daughter of Cameroonian immigrants. Her identity as a first-generation African-American and her upbringing near Washington, DC, fostered her interests in civil rights, comparative politics, and the history of the African diaspora. As an undergraduate, Crystal conducted policy research, often at the intersection of race and democracy, for the House Judiciary Committee, Center for American Progress, and the Roosevelt Network. Following graduation, Crystal began working as a policy and legislative administrator for the Maryland Department of Juvenile Services, and has been named a 2023 Govern for America Fellow. In her spare time, Crystal writes poetry and visits art exhibitions.

Acknowledgments

Firstly, I want to thank Alyssa Beauchamp, Katie Kirchner, and Manon Steel for their mentorship. They have given me amazing constructive feedback over the last six months. Policy work is nothing without its stakeholders, and The Roosevelt Network gave me the opportunity to interview issue area experts for this paper. I would like to thank Prof. Marybeth Gasman and Prof. Omari Swinton for agreeing to speak with me on their research on HBCUs. I would like to thank Prof. Aderson Francois and Anthony Robinson for speaking to me about their involvement in the case *Coalition for Equity and Excellence v. MHEC*. Their interviews gave me much-needed historical and political context regarding the years-long fight to achieve funding parity for Maryland HBCUs. I want to thank Geoff Newman and Al Dorsett for providing insight into the administrative processes of the MHEC, and to State Sen. Charles Sydnor III (MD-44) for discussing the legislative battles that led to the $577 million settlement agreement.Lastly, I would like to thank my dear friends Alix Swann and Toni Aniugo for sharing their experiences as HBCU students—the most important stakeholders in this policy discussion. As someone who deeply admires the resilience of HBCUs, I hope I've paid these institutions the proper respect as they continue to fight for racial equity.

Claire Greilich also contributed to this project.

References

Doing More with More: Advancing Racial Equity in Maryland Higher Education

Adams, Char. 2022. "The Role of HBCUs in a Post-Affirmative Action America." *NBC News*, November 11, 2022. https://www.nbcnews.com/news/nbcblk/role-hbcus-post-affirmative-action-america-rcna56103.

Adams, Susan, and Hank Tucker. 2022. "How America Cheated Its Black Colleges." *Forbes*, February 1, 2022. https://www.forbes.com/sites/susanadams/2022/02/01/for-hbcus-cheated-out-of-billions-bomb-threats-are-latest-indignity/.

Baca, Nathan. 2019. "Black College Students and Alumni Rally for 'Funding Equality.'" WUSA9, November 4, 2019. https://www.wusa9.com/article/news/local/maryland/rally-for-hbcu-equal-funding/65-0c70be81-533f-44e2-bbcc-44beeb071dcb.

Bevins, Frankki, Kathryn Fox, Duwain Pinder, Jimmy Sarakatsannis, and Shelley Stewart. 2021. "How HBCUs Can Accelerate Black Economic Mobility." McKinsey & Company. July 30, 2021. https://www.mckinsey.com/industries/education/our-insights/how-hbcus-can-accelerate-black-economic-mobility.

Bohanan, John L., Norman R. Augustine, Rachel Hise, Mya Pierce, Erika Schissler, and Dana Tagalicod. 2008. "Final Report." Annapolis, MD: Commission to Develop the Maryland Model for Funding Higher Education. https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/011000/011441/unrestricted/20090330e.pdf.

Bunn, Curtis. 2021. "A New Book Makes the Case That HBCUs Are Owed Reparations." *NBC News*, August 19, 2021. https://www.nbcnews.com/news/nbcblk/new-book-makes-case-hbcus-are-owed-reparations-rcna1713.

Cantey, Nia Imani, Robert Bland, LaKerri R. Mack, and Danielle Joy-Davis. 2013. "Historically Black Colleges and Universities: Sustaining a Culture of Excellence in the Twenty-First Century." *Journal of African American Studies* 17, no. 2 (June): 142–53. https://www.jstor.org/stable/43525452.

Carter, Jarrett, Sr. 2021. "Report: Maryland HBCU Lawsuit, Settlement Will Total More than $2 Billion in Funding for Black Colleges." *Education News Flash*, September 1, 2021. https://educationnewsflash.substack.com/p/report-maryland-hbcu-lawsuit-settlement.

Coalition for Equity and Excellence v. Md. Higher Educ. Comm'n, 977 F. Supp. 2d 507 (D. Md. 2013). https://casetext.com/case/equity-v-md-higher-educ-commn.

Dalton, Martha. 2021. "Students at Atlanta HBCUs Protest for Housing Improvements." WABE. October 20, 2021. https://www.wabe.org/students-at-atlanta-hbcus-protest-for-housing-improvements/. .

Donastorg, Mirtha. 2022. "Last December, MacKenzie Scott Gave More Than $400 Million to HBCUs. Here's Where That Money Has Gone." The Plug. April 20, 2022. https://tpinsights.com/a-year-ago-mackenzie-scott-gave-more-than-400-million-to-hbcus-heres-where-that-money-has-gone/.

Douglas-Gabriel, Danielle, and Ovetta Wiggins. 2019. "HBCU Advocates Wage Campaign to End Maryland Lawsuit." *Washington Post*, November 14, 2019. https://www.washingtonpost.com/local/education/hbcu-advocates-wage-campaign-to-end-maryland-lawsuit/2019/11/13/6514ee00-017d-11ea-8bab-0fc209e065a8_story.html.

Franklin, Jonathan. 2021. "Howard University Students Reach an Agreement with Officials after a Month of Protest." *NPR*, November 15, 2021, sec. Education. https://www.npr.org/2021/11/15/1055929172/howard-university-students-end-protest-housing-agreement.

Gaines, Danielle E. 2023. "Workgroup Sets Sights on Ways to Fix Long-Running Degree Duplication Concerns at Maryland Colleges." *Maryland Matters*. August 15, 2023. https://www.marylandmatters.org/2023/08/15/workgroup-sets-sights-on-ways-to-fix-long-running-degree-duplication-concerns-at-maryland-colleges/.

Gasman, Marybeth. 2007. *Envisioning Black Colleges: A History of the United Negro College Fund*. Baltimore: Johns Hopkins University Press. https://doi.org/10.1353/book.3300.

———. 2012. "What's New Is Old?: Philanthropic Influence on Education." *The Phi Delta Kappan* 93, no. 8: 8–11. https://doi.org/10.1177/003172171209300080.

Gasman, Marybeth, and Nelson Bowman. 2011. "How to Paint a Better Portrait of HBCUs." *Academe* 97, no. 3: 24–27. https://core.ac.uk/download/pdf/76388971.pdf.

Gottfried, Miriam. 2021. "Apollo, Ares and Oaktree Team Up on Initiative to Lure Black Talent." *Wall Street Journal*, June 15, 2021, sec. Markets. https://www.wsj.com/articles/apollo-ares-and-oaktree-team-up-on-initiative-to-lure-black-talent-11623751200.

Harris, Adam. 2021. *The State Must Provide: Why America's Colleges Have Always Been Unequal--and How to Set Them Right*. First edition. New York, NY: Ecco Press.

"Homecoming: The Historical Roots and Continued Contributions of HBCUs." 2021. US House Subcommittee on Higher Education and Workforce Investment. 117th Cong. Zoom. https://www.youtube.com/watch?v=GtWcrYqSoMw.

Hunt Institute. 2022. *Addressing Historic Underfunding of HBCUs: Leveraging Litigation in Maryland*. Durham, NC: Hunt Institute. https://hunt-institute.org/wp-content/uploads/2022/12/2022.12.6_THI_HE_LuminaBrief2.pdf.

Johnson, Glenn S., Vance Gray, Lolita D. Gray, N. Latrice Richardson, Shirley A. Rainey-Brown, Kimberly L. Triplett, and Luisa E. Bowman. 2017. "Historically Black Colleges and Universities (HBCUs) in the Twenty First Century: An Exploratory Case Study Analysis of Their Mission." *Race, Gender & Class* 24, no. 3/4: 44–67. https://www.jstor.org/stable/26529222.

Koch, James V., and Omari H. Swinton. 2023. *Vital and Valuable: The Relevance of HBCUs to American Life and Education*. Black Lives in the Diaspora: Past, Present, Future. New York: Columbia University Press. https://www.degruyter.com/document/doi/10.7312/koch20898/html?lang=en.

Korn, Melissa. 2021. "HBCUs Deploy Covid-19 Pandemic Funds to Forgive Millions in Student Debt." *Wall Street Journal*, July 28, 2021, sec. US. https://www.wsj.com/articles/hbcus-deploy-covid-19-pandemic-funds-to-forgive-millions-in-student-debt-11627464602.

Lawyers' Committee for Civil Rights Under Law. 2012. "Maryland's Failure to Desegregate Its Historically Black Institutions: Policies and Practices Rooted in the De Jure Era." Lawyers' Committee, January 3, 2012. https://lawyerscommittee.org/wp-content/uploads/2015/06/Coalition-v.-MHEC-2012-01-03-Ptfs-Opening-Argument-Presentation.pdf.

Lee, John Michael, and Samaad Wes Keys. 2013. *Land-Grant But Unequal State One-To-One Match Funding For 1890 Land-Grant Universities*. Washington, DC: Association of Public and Land-Grant Universities (APLUs). https://www.aplu.org/wp-content/uploads/land-grant-but-unequal-state-one-to-one-match-funding-for-1890-land-grant-universities.pdf.

Liptak, Adam. 2023a. "Supreme Court Rejects Affirmative Action Programs at Harvard and U.N.C." *New York Times*, June 29, 2023, sec. US. https://www.nytimes.com/2023/06/29/us/politics/supreme-court-admissions-affirmative-action-harvard-unc.html.

_______ 2023b. "Supreme Court Rejects Biden's Student Loan Forgiveness Plan." *New York Times*, June 30, 2023, sec. US. https://www.nytimes.com/2023/06/30/us/student-loan-forgiveness-supreme-court-biden.html.

Lumpkin, Lauren, Nick Anderson, and Danielle Douglas-Gabriel. 2022. "Amid Nationwide Enrollment Drops, Some HBCUs Are Growing. So Are Threats." *Washington Post*, February 18, 2022. www.washingtonpost.com/education/2022/02/11/hbcu-enrollment-growth-bomb-threats/.

National Center for Education Statistics. "Fasts Facts: Historically Black Colleges and Universities." n.d. National Center for Education Statistics. Accessed September 6, 2023. https://nces.ed.gov/fastfacts/display.asp?id=667.

"Panel: Current Issues at Historically Black Colleges and Universities - Handout: The State of Maryland $2.3B HBCU Lawsuit." 2017. *Journal of Collective Bargaining in the Academy*, no. 12 (August). https://doi.org/10.58188/1941-8043.1675.

Perry, Andrew, Hannah Stephens, and Manann Donoghoe. 2023. "The Supreme Court's Decision to Strike down Affirmative Action Means That HBCU Investment Is More Important than Ever." Brookings Institution. June 29, 2023. https://www.brookings.edu/articles/the-supreme-courts-decision-to-strike-down-affirmative-action-means-that-hbcu-investment-is-more-important-than-ever/.

Pugh, Catherine. 2023. "MHEC Officials Overturn Internal Decision to Block New Doctoral Business Program at Towson University, Initially Deemed 'Unreasonably Duplicative' of Morgan State University Offering." *AFRO American Newspapers*, July 23, 2023. http://afro.com/mhec-officials-overturn-internal-decision-to-block-new-doctoral-business-program-at-towson-university-initially-deemed-unreasonably-duplicative-of-morgan-state-university-offering/.

Rascoe, Ayesha. 2023. "HBCUs Have Been Underfunded for Decades. A History of Higher Education Tells Us Why." *NPR*, February 12, 2023, sec. Education. https://www.npr.org/2023/02/12/1156391898/hbcus-have-been-underfunded-for-decades-a-history-of-higher-education-tells-us-w.

Rogers, Teria. 2013. "Protesters Want Parity for Maryland's HBCUs." *AFRO American Newspapers*, February 6, 2013. http://afro.com/protesters-want-parity-for-marylands-hbcus/.

Sailor, Angela. 2020. "HBCUs: They Have Overcome and Will Do So Again." The Heritage Foundation. June 10, 2020. https://www.heritage.org/education/commentary/hbcus-they-have-overcome-and-will-do-so-again.

Savery, Hunter. 2023. "Supreme Court Ruling Could Impact 800,000 MD Student Loan Borrowers." *The Daily Record*, March 1, 2023. https://thedailyrecord.com/2023/03/01/supreme-court-ruling-could-impact-800000-maryland-student-loan-borrowers.

Schaefer Riley, Naomi. 2021. "Overfund the Schools." *American Enterprise Institute (AEI)* (blog). October 18, 2021. https://www.aei.org/op-eds/overfund-the-schools/.

United States v. Fordice, 505 US 717. US Supreme Court (1992). https://supreme.justia.com/cases/federal/us/505/717/.

Weissman, Sara. 2021. "A Debt Long Overdue." Inside Higher Ed. April 25, 2021. www.insidehighered.com/news/2021/04/26/tennessee-state-fights-chronic-underfunding.

WMAR Staff. 2023. "Maryland HBCU's to Receive $3 Million in Grants for BGE Scholars Program." *WMAR 2 News Baltimore*, February 28, 2023, sec. Local News. https://www.wmar2news.com/local/maryland-hbcus-to-receive-3-million-in-grants-for-bge-scholars-program.

New Opportunities for Zoning Reform in Rural Areas

By Jack White

Introduction

Seemingly benign, local zoning codes are the focal point in a lively debate concerning persistent structural barriers to working-class needs, such as economic opportunity and affordable housing. This is because the American regional planning model creates ample opportunities for wealthy residents to dominate local zoning meetings and thwart housing production efforts that seek to serve the common interest. This is especially true in urban settings, where the arcane dynamics of zoning hearings can make it easier to organize a small group of people who espouse NIMBY ("Not In My Back Yard") ideology than to pursue common good projects. This paper draws attention to the need for zoning reform in rural America, an oft-overlooked dimension of the zoning reform debate, which tends to focus on urban settings. In the wake of COVID-19, small-town communities began facing rampant property speculation from outside forces looking to commodify the newly rediscovered benefits of rural living; the result has been a sharp decline in affordable housing opportunities for working-class rural families. These pressures highlight the fact that zoning reforms are just as needed in America's many rural localities as they are in urban ones. In fact, turning an eye to rural reform may be beneficial to a broader zoning reform movement that has often been arrested by urban dynamics; rural areas may not present the same constraints.

Background

The market-driven regime of neoliberalism has provided fertile ground for old forms like exclusionary zoning to flourish in new ways, as wealthy property owners seek to "protect" their property values by preventing lower-income families—particularly families of color—from purchasing homes in their neighborhoods (Goetz et al. 2020). Indeed, neoliberalism's emphasis on market efficiency and individual choice is tailor-made for a zoning debate that often treats housing as a tradable asset, rather than a social necessity (Goetz et al. 2020). By prioritizing property values and profits, exclusionary zoning perpetuates social and economic disparities, deepening inequality (Einstein et al. 2019).

Perhaps the most problematic (and ubiquitous) aspect of zoning history in the United States is its longstanding role in promoting racial and ethnic segregation. In many cases, zoning policies were explicitly designed to create and maintain racial segregation, limiting the movement of Black Americans and other minorities into predominantly white neighborhoods (Ham 1996). For example, the early 20th century saw the adoption of single-family zoning ordinances across the country, which were designed to promote "neighborhood character" (a persistent racist dog whistle) and limit the construction of multi-family housing (Rothstein 2017).

Today, the legacy of racial segregation and exclusionary zoning policies is still felt in communities across the United States (Silver 1991). In many cities, there are still large disparities between predominantly white neighborhoods and minority communities with respect to access to well-resourced schools, good jobs, and other economic opportunities (Lamb 2005). Soaring economic inequality over the past few decades has been compounded by small groups' attempts to weaponize housing policy as a means of ensuring exclusive access to these better opportunities. This has led to growing recognition of the need for zoning reform (Searle and Phibbs 2020).

The roots of the systemic disconnect between zoning processes and democratic action run deep. Zoning laws were intended to offer participatory ways to empower residents to control future development (Whitten 1921). A desire to enhance democratic decision-making fueled the 1907 creation of appointed planning commissions to make local zoning decisions, which only grew in importance throughout the mid-20th century as a means to ensure "community" input (Sager 1969).

How did privileged interests capture the machinery of community planning? As it turns out, reformers were too successful in their push for public input, and the public meetings that they promoted have evolved to become an omnipresent bulwark against building (Monkkonen 2016). Critics argue that public participation schemes mean that "[NIMBY] stakeholders can reject even projects of great public benefit." (Dunkelman 2019). The key mechanism at work here is the fact that wealthy project opponents tend to have more time and political capital than the full-time workers who stand to benefit from new housing (Holleran 2021). As a result, housing advocates complain about the endless delays that public meetings enable, often leading to generational warfare between older homeowners and younger renters; these meetings divide communities into predictable factions and frustrate projects (Bogart 1993).

Political scientists have recently paid renewed critical attention to the question of how public participation really works. Professors Katherine Einstein, Maxwell Palmer, and David Glick demonstrated how "neighborhood defenders" use public meetings to stop development (Einstein et al. 2019). Upon examining meticulous records of planning board meetings in Massachusetts, the three researchers presented evidence that individuals who comment at these meetings are more likely to be white, male, older, homeowners, longtime residents, frequent voters, and opposed to the project in question (Einstein et al. 2019). Additionally, they revealed that public meetings provide opportunities for opponents of a project to prevent or slow down its development (Einstein et al. 2019). These findings support long-standing criticisms that public meetings often thwart community projects, and validate critics' concerns that public zoning hearings often function as a platform for narrow special interests (Einstein et al. 2019). Public participation mechanisms were meant to empower residents to control future development. Instead, they have become a means for elite "neighborhood defenders" to stop development that might create a place for the less-advantaged (Einstein et al. 2019).

By providing a special forum for community members to weigh in on the future of a development, preexisting power disparities between those physically closest to the development (who bear most of its costs and are therefore highly motivated to prevent it) and the more widely dispersed regional population (who stand to more directly benefit from the development) are amplified (Einstein et al. 2019). This compounded power asymmetry is problematic for two reasons. First, it often obstructs the construction of badly needed developments, typically affordable housing (Einstein et al. 2019). And second, those who are unable or unwilling to participate in zoning meetings see their voices drowned out by those who do, even if they voted as recently as the last election (Einstein et al. 2019). In this context, the participatory power of voting has effectively been usurped by a flawed status quo.

This conflict between zoning processes and democratic attempts to create housing has had pernicious effects on local governments. Even when they recognize the need for new, affordable housing, they face legal and political challenges that prevent them from approving development plans. Voting—a more broadly representative aspect of democracy—is degraded, seeding a government that increasingly caters to the privileged. This has weakened an already meek level of government action for the public good, further disempowering those who vote for new housing. For example, voters in a given city might overwhelmingly support a pro-development councilwoman's plans to build affordable housing, but the power of their vote is negated by an unelected planning board that defers to vocal opponents of development.

When voters are not directly affected by or notified of developments outside their immediate neighborhoods, abstract conviction alone is unlikely to motivate them to show up at a community planning meeting and advocate for development (Einstein et al. 2019). This reality is not only harmful to local democracy, but has broader implications for the development and well-being of communities. The effective disempowerment of local voters means that it is even more difficult for new housing units to be introduced and built, even when they are desperately needed. This aggravates issues of housing affordability and availability, which can have troubling consequences for economic growth and social equity.

Policy Analysis

Zoning regulations tend to be especially restrictive of developments in high-opportunity areas (Etienne 2020). This exercises a chilling effect on the housing supply in those areas, making it difficult for working-class families to afford housing in well-resourced neighborhoods (Whittemore 2020). As a result, existing economic segregation is exacerbated (Etienne 2020).

These regulations heighten housing costs, making it difficult for many low-income households to afford even the smallest of homes within city limits (Yglesias 2012). Take, for example, minimum lot size requirements, which require developers to set aside a certain amount of land for each new housing unit. Those requirements limit affordable options (Yglesias 2012).

Nonetheless, America's rural hinterland might hold the key to resolving the democratic dilemma zoning regulations present. Rural areas have unique needs and politics, and their most profound deficiencies (such as population density, economic development, and lack of amenities) are problems that zoning reform could positively impact. At the same time, rural local government may be less susceptible to some of the collective action concerns bedeviling larger polities. For example, rural America may be especially willing and able to experiment with reforms that may face more complex roadblocks in urban settings. Zoning reformers have an opportunity to meaningfully address the plight of rural America while also strengthening the zoning reform movement's track record and securing additional proofs-of-concept that might help advance the broader discourse.

Addressing rural housing challenges is urgent. According to the US Department of Agriculture, rural areas are home to approximately 60 million Americans, accounting for roughly 20 percent of the country's population (St. Louis 2019). Despite making up a significant share of the population, people living in rural areas have historically been left behind due to a lack of accessible amenities and resources such as jobs and housing (Hunter et al. 2005). This exacerbates an already existing rural-urban population divide, as young people move from their rural hometowns to large metropolitan areas and smaller cities across the country. As a result, rural tax bases contract, further threatening the viability of these areas (St. Louis 2019). Taken together, these realities mean that rural America is left facing debilitating economic challenges without younger generations or resources to help support them in their plight.

This trend—which this paper proposes could be altered by forward-looking zoning policies that create affordable and desirable housing—has significant implications for the economic and social well-being of everyone involved in the zoning process. Without residential proximity to jobs, education, and other basic goods and services, rural residents are more likely to experience poverty and poor health outcomes, leading to population decline (Hunter et al. 2005). This, on top of youth flight from these areas, creates a vicious cycle in which businesses and industries are less likely to invest in rural areas, further intensifying economic decline (St. Louis 2019). The rest of the country is not immune from the downstream effects of the hardships facing rural areas; indeed, the persistent economic challenges and concurrent cultural isolation facing people in rural areas have created an opening for demagogic movements that transmute rural frustrations into support for reactionary politics (Denker 2019).

But the crises facing rural America bring one silver lining: Thousands of communities with an urgent desire for reform, paired with the unique political cultures and dynamics of rural regions, allow these communities to more easily swerve the usual collective action roadblocks that bedevil larger areas (Rupasingha et al. 2006). This does not mean that rural areas are absent contentious debate, but that compared to larger constituencies, rural politics feature fewer "moving parts" and a higher degree of intimate familiarity between political actors (Lundin 2015; Pendall 1999). Collective action problems may therefore be less severe in smaller areas. Indeed, NIMBYism tends to occur in larger urban areas where there are more diverse interests and stakeholders, making it easier for NIMBY groups to organize and exert influence (Pendall 1999).

To be sure, such collective action pitfalls are present in all areas, but they may be more tractable among a more limited and integrated pool of stakeholders (Rupasingha et al. 2006). After all, governmental dynamics are likely the biggest difference between urban and rural zoning; many of the underlying zoning policies are essentially quite similar in both types of community. Rural communities are typically zoned based on a hierarchy of land uses—such as agricultural, residential, commercial, and industrial—with each use category subject to specific regulations and restrictions (Linkous 2020). The most onerous restrictions in rural zoning codes (those limiting accessory dwelling units [ADUs], mixed uses, and mobile homes, among others) largely stem from rural areas choosing to emulate aspects of urban zoning codes in the 1960s and 1970s when widespread zoning came into vogue (Oregon State 1971). In an effort to standardize zoning practices, many rural areas simply replicated existing urban zoning codes, often without accounting for the distinct housing needs and histories of their communities; as a result, rural zoning policies have at times unwittingly restricted or outright banned alternative housing options (Linkous 2020; Oregon State 1971).

Research has shown that small rural communities have stronger social networks and higher levels of social capital (Rupasingha et al. 2006). This can be attributed to the tight-knit nature of rural communities and the fact that individuals living there are more likely to know and trust one another (Rupasingha et al. 2006). These characteristics may make it easier for rural communities to mobilize in support of zoning reform. Furthermore, the smaller pool of stakeholders in rural communities means that NIMBYs are less likely to have an outsized impact on zoning decisions (Pendall 1999).

Rural areas may also more easily achieve zoning reforms because of the nature of political institutions in these communities. Small rural communities tend to have less complex political structures with fewer layers of bureaucracy (Lundin 2015). This means that zoning decisions are often made by a smaller group of elected officials who are more likely to be directly accountable to the community (Lundin 2015). In larger areas, zoning decisions are often made by multiple layers of government, which can make it more difficult for citizens to hold elected officials accountable for their decisions.

Mancur Olson—a political scientist who has explored the challenges of collective action and zoning reform in different contexts—has highlighted the difficulties of achieving collective action in groups with more diverse interests, particularly when there are strong incentives for individuals to not participate (Olson 1982). Olson has argued that the smaller the group, the more likely individuals are to participate in collective action, as the benefits of their actions are more concentrated and the costs of indifference more apparent (Olson 1982).

Similarly, Nobel laureate economist Elinor Ostrom has shown that communities are often better equipped to manage common resources, such as land, when they are able to establish clear rules and norms for use, and when there is a strong sense of community ownership and responsibility (Sabetti and Aligică 2014). In the context of zoning reform, Ostrom's work suggests that, compared to urban areas, small rural communities may be better able to achieve positive changes like zoning reform due to their stronger sense of community. In the context of zoning reform, Ostrom's work suggests that, compared to urban areas, small rural communities may be better able to achieve change—whether that's increasing the likelihood of successful collective action, or reducing the influence of organized opposition—due to their stronger sense of community.

Recommendations

Rural areas are in need of housing access and the benefits that come with it, such as increased affordability and population retention. Research shows that these areas may be less susceptible to the zoning complexities facing urban areas, which often allow a disciplined few to hijack the zoning process (Rupasingha et al. 2006). Though smaller places are certainly not immune to hijacking by NIMBYs, the data bears out their potential as a site for meaningful experimentation with zoning reform (Rupasingha et al. 2006). This would not only benefit the broader zoning reform zeitgeist; it could also present a chance to address a host of persistent challenges facing rural America (St. Louis 2019). At the same time, there is a burgeoning bipartisan consensus on the need for zoning reform. For example, both Democratic President Joe Biden and Virginia's Republican governor Glenn Youngkin have put their administrative heft behind zoning reform efforts (Somin 2022).

There are a number of policy actions readily available to local governments who are eager to address exclusionary zoning and related issues. These policy proposals involve allowing accessory dwelling units, legalizing affordable forms of housing (such as mobile homes, modular homes, and manufactured homes), and encouraging mixed-use development—which promote both affordability and economic opportunity for residents.

We can identify specific policy solutions by focusing on ideas that are a good fit in rural areas, where resources are limited, new amenities are needed, and density is less desirable (Galston and Baehler 1995). Several rural-friendly starting points have been discussed in detail in this brief, including ADUs, nontraditional homes, and mixed-use development. Enumerating appropriate approaches further substantiates the potential for rural reforms while also clarifying the positive impact these reforms can have in a rural context, where issues like population density, affordability, and development are at the forefront.

Introducing more permissible zoning policies in residential neighborhoods can help to address those challenges by creating additional housing pathways. This creates more opportunities for rural people to find homes in the places they desire, rather than giving them more reason to leave. Zoning for accessory dwelling units in rural areas offer one policy solution for expanding housing opportunities in those communities. As their name suggests, ADUs are self-contained housing units that are secondary to the primary residence on a single-family lot; these units can either be attached to the main house or constructed as a separate structure, and can vary in size from a small studio to a full-sized apartment (Cobb and Dvorak 2000). Unlike traditional housing developments, ADUs can be built quickly and for as little as $50,000—significantly cheaper than building a new house (Cobb and Dvorak 2000). Furthermore, ADUs can often be built without the need for additional land, which rural communities may wish to preserve for agricultural use. ADUs can even provide a bridge out for individuals experiencing rural homelessness—an oft-overlooked problem (Cobb and Dvorak 2000).

ADUs can be a great solution to the affordable housing crisis everywhere, but they are especially well-suited for rural small towns due to some of the unique characteristics of small-town living. For example, older adults make up a higher percentage of the population in many rural small towns, and this group tends to want to remain in their homes as they continue aging (Jensen et al. 2020). ADUs can provide a way for these homeowners to downsize while still living in their communities. By building an ADU on their property, they can rent out the main house and live in the ADU, which is often smaller and easier to maintain (Jensen et al. 2020). This can help seniors age in place and maintain independence, while also providing affordability for renters. Similarly, ADUs can provide a way for families to stay together by allowing them to create additional housing space on their property that can be used by relatives such as aging parents and siblings in need (Geffner 2018). ADUs allow small towns to increase the supply of housing without costly, large-scale developments (Stacy et al. 2020). Altogether, ADUs are a perfect fit for the idiosyncrasies of rural life.

Another rural-compatible zoning solution is the legalization of nontraditional (such as modular, tiny, or mobile) homes as an alternative to traditional housing. These types of homes, which were once ubiquitous in small towns before modern zoning code adoption, offer significant upsides, including affordability, flexibility, and energy efficiency (Aman and Yarnal 2010). These factors make them an attractive option for those who are looking for an alternative to traditional homes. They offer a ready market entry point for people who may find traditional homes infeasible or inaccessible due to disabilities or cost (Carlin 2014).

Modular homes are prefabricated homes that are constructed in sections or modules in a factory and then transported to the building site for assembly (Bayliss and Bergin 2020). These homes are typically built to meet local building codes (if allowed) and can be designed to fit a variety of styles and sizes (Bayliss and Bergin 2020). Tiny homes, on the other hand, are small—usually under 500 square feet—and can be built on a foundation or on wheels, making them mobile (Carlin 2014). Last but not least, mobile homes are also prefabricated, but they are actually built on a steel frame with wheels for easy transportation (Aman and Yarnal 2010). One of the most significant benefits of modular, tiny, and mobile homes is their affordability (Carlin 2014). These homes are often less expensive than traditional homes because they are constructed in a factory, which reduces construction costs, and are built using standardized materials (Bayliss and Bergin 2020). Additionally, because they are smaller in size, they require less land, which can be a significant factor in areas where land prices are high (Carlin 2014). For those who want to own a home but are unable to afford a traditional homestead, modular, tiny, and mobile homes provide an affordable option (Bayliss and Bergin 2020).

The benefits of nontraditional homes are especially pronounced in rural areas. Though the rural cost of housing may be lower on average than in urban areas, the availability of affordable entry-level housing options is severely limited (Aman and Yarnal 2010). Traditional homes may be expensive, and the construction process can be time-consuming and may require skilled labor that is not readily available. Nontraditional homes, on the other hand, are often less expensive to build, require less skilled labor, and can be completed in a shorter amount of time (Bayliss and Bergin 2020). Additionally, small town housing needs may vary significantly, from retirees looking to downsize to young families looking to purchase their first home; modular, tiny, and mobile homes can be customized to meet a variety of needs, making them an ideal option for these populations (Bayliss and Bergin 2020). Their mobility also allows for easy relocation if needed, which can be beneficial for those who work in rural industries, such as farming and forestry (Aman and Yarnal 2010).

The final idea worth highlighting, mixed-use development, touches upon all aspects of the challenges that rural residents face (Dalbey 2008). Mixed-use development refers to the design and construction of a development project that integrates multiple land uses—such as residential, commercial, and industrial—in a single area (Rabianski and Clements 2007). The central idea behind mixed-use development is to create vibrant, diverse communities that offer residents access to a range of amenities and services in one location while spurring community development (Rabianski and Clements 2007).

In recent years, there has been growing interest in mixed-use development as a solution to the lack of housing, jobs, and amenities in rural America (Dalbey 2008). Mixed-use development addresses a range of challenges. By integrating residential units into mixed-use developments, developers can take advantage of economies of scale and reduce the cost of construction (Rabianski and Clements 2007). This helps make housing more affordable for low- and moderate-income families who may otherwise struggle to find affordable housing in rural communities (Dalbey 2008). Mixed-use development's wholesale approach enhances rural economic vitality, as a mix of commercial and residential developments help to stimulate local businesses while supporting job growth (Rabianski and Clements 2007).

Each of the three approaches discussed—accessory dwelling units, legalizing affordable alternative forms of housing, and encouraging mixed-use development—are supported by data and fall squarely within the zoning and development powers granted to local governments in the United States (Anderson 2020). Rural areas that implement these approaches can help demonstrate how zoning policies can be made to serve the common good, rather than the neoliberal logic of scarcity.

Conclusion

American zoning laws function as a powerful yet oft-forgotten arbiter of who can do what—and where they can do it—in virtually every community in the United States. Zoning presents a rare example of local control in a country where many functions of the government are biased upward toward state and national authorities. Just like any obscure administrative power, land use has been a key component of antidemocratic machinations, including shameful elements of our past and present, like systemic racism and economic segregation.

Zoning continues to be used as a cudgel by which a disciplined minority can oppose common good priorities like affordable housing, economic opportunity, and integrated community development. That is ironic, because local planning systems are ostensibly predicated on a democratic desire to ensure full community input; the reality is quite the opposite, as organized groups utilize the democratic machinery of zoning to execute a stranglehold on the collective priorities they oppose.

Zoning reformers have set forth several ideas that have the potential to ameliorate the negative impacts of restrictive zoning laws, but their hands have been tied by the political and procedural dynamics of the urban locales they have primarily focused on. The evidence herein suggests that it may be time for them to look beyond the usual population centers and instead toward rural places as they plot the movement's future. Not only are rural areas in dire need of the solutions that zoning reform offers, but the close-knit nature of rural public affairs means that reformers may be able to "out-organize" the same collective action roadblocks that exist in more urban locales.

Zoning reform in rural America is critical if we are to address the structural issues of housing affordability and opportunity that affect millions of people. The stakes could not be higher in a country where misguided zoning codes prohibit "the kinds of places that Americans themselves consider authentic and traditional . . . prevent[ing] the building of places that human beings can feel good in and can afford to live in" (Kunstler 1996).

With all of this in mind, it is clear that the zoning landscape in rural America presents a generational opportunity for the reform movement—and vice versa. By providing solutions to rural areas' most pressing challenges (affordability, economic development, and others), a reformist approach heralds relief for places in need. At the same time, the unique politics of rural communities offers a singular stage on which to efficiently promote some of the most promising concepts in land use. The result is a win-win for reformers and the rural localities that can benefit from their ideas.

About the Author

Jack White is a recent graduate of Harvard University, where he studied government with a focus on domestic policy via the undergraduate public policy track. At Harvard, Jack was president of Harvard Undergraduates for Bipartisan Solutions where he oversaw real-world policy projects and hosted world-class speakers. Jack also served as a steering committee member for the Mindich Center for Engaged Scholarship, an organization creating opportunities for students to apply their learning outside the classroom with real-world impact projects. As a Roosevelt Institute emerging fellow, Jack has researched the effects of local regulations on housing accessibility in rural areas. A committed advocate for rural and Indigenous communities like his own, Jack hopes to continue working to address place-based disparities through public service.

Acknowledgments

I would like to thank the staff of the Emerging Fellows program for their consistent assistance throughout the writing process. Additionally, I wish to extend gratitude to nonprofits like Page One and Blue Ridge Habitat for Humanity for helping me to understand the overlooked housing challenges that face working people in many small towns. Finally, I am grateful for the many leaders on both sides of the aisle who are beginning to recognize that excessive housing regulations hamper people's freedom to flourish in the local communities they love.

References

New Opportunities for Zoning Reform in Rural Areas

Advisory Commission on Regulatory Barriers to Affordable Housing. 1991. "*Not In My Backyard*": *Removing Barriers to Affordable Housing*. Washington, DC: Housing and Urban Development. https://www.huduser.gov/publications/pdf/notinmybackyard.pdf.

Aman, Destiny D., and Brent Yarnal. 2010. "Home Sweet Mobile Home? Benefits and Challenges of Mobile Home Ownership in Rural Pennsylvania." *Applied Geography* 30, no. 1 (January): 84-95. https://doi.org/10.1016/j.apgeog.2009.09.001.

Anderson, Michael. 2020. "Portland Just Passed the Best Low-Density Zoning Reform in US History." *Sightline Institute* (blog), August 11, 2020. https://www.sightline.org/2020/08/11/on-wednesday-portland-will-pass-the-best-low-density-zoning-reform-in-us-history/.

Bayliss, Simon, and Bergin, Rory. 2020. *The Modular Housing Handbook*. Milton Park, Abingdon-on-Thames, Oxfordshire, England, UK: Routledge.

Bogart, William T. 1993. "'What Big Teeth You Have!': Identifying the Motivations for Exclusionary Zoning." *Urban Studies* 30, no. 10: 1669–81. https://doi.org/10.1080/00420989320081651.

Carlin, Timothy Michael. 2014. "Tiny Homes: Improving Carbon Footprint and the American Lifestyle on a Large Scale." *Celebrating Scholarship & Creativity Day* 35 (April). https://digitalcommons.csbsju.edu/cgi/viewcontent.cgi?article=1034&context=elce_cscday.

Cobb, Rodney L., and Scott Dvorak. 2000. *Accessory Dwelling Units: Model State Act and Local Ordinance*. Washington, DC: AARP, Public Policy Institute. http://chhoa.metamediacom.com/wp-content/uploads/ARRP-Model-State-Local-Ordinance-d17158_dwell.pdf.

Dalbey, Matthew. 2008. "Implementing Smart Growth Strategies in Rural America: Development Patterns That Support Public Health Goals." *Journal of Public Health Management and Practice* 14, no. 3: 238-43. https://pubmed.ncbi.nlm.nih.gov/18408548/.

Denker, Angela. 2019. *Red State Christians: Understanding the Voters Who Elected Donald Trump*. Minneapolis, MN: Fortress Press.

Dunkelman, M. 2019. "This Is Why Your Holiday Travel Is Awful." *Politico*, November 29, 2019. https://www.politico.com/news/magazine/2019/11/29/penn-station-robert-caro-073564.

Einstein, Katherine Levine, David M. Glick and Maxwell Palmer. 2019. *Neighborhood Defenders*. Cambridge, UK: Cambridge University Press. https://doi.org/10.1017/9781108769495.

Etienne, Harley F. 2020. "The Single-Family Home Genie." *Journal of the American Planning Association* 86, no. 1: 126–127. https://doi.org/10.1080/01944363.2019.1689018.

Federal Reserve Bank of St. Louis. 2019. "Looking at the Urban-Rural Divide in Economic Growth." *On the Economy* (blog), July 30, 2019. https://www.stlouisfed.org/on-the-economy/2019/july/looking-urban-rural-divide-economic-growth.

Galston, William A., and Karen Baehler. 1995. *Rural Development in the United States: Connecting Theory, Practice, and Possibilities*. Washington, DC: Island Press.

Geffner, Thomas. 2018. "Towards a Smaller Housing Paradigm: A Literature Review of Accessory Dwelling Units and Micro Apartments." (BA thesis, Portland State University, 2018) https://doi.org/10.15760/honors.520.

Goetz, Edward G., Rashad A. Williams, and Anthony Damiano. 2020. "Whiteness and Urban Planning." *Journal of the American Planning Association* 86, no. 2: 142–56. https://doi.org/10.1080/01944363.2019.1693907.

Ham, Bernard K. 1996. "Exclusionary Zoning and Racial Segregation: A Reconsideration of the Mount Laurel Doctrine." *Seton Hall Constitutional Law Journal* 7: 577–616.

Holleran, Max. 2021. "Millennial 'YIMBYs' and Boomer 'NIMBYs': Generational Views on Housing Affordability in the United States." *The Sociological Review* 69, no. 4: 846–61. https://doi.org/10.1177/0038026120916121.

Hunter Lori M., Jason D. Boardman, and Jarron M. Saint Onge. 2005. "The Association between Natural Amenities, Rural Population Growth, and Long-Term Residents' Economic Well-Being." *Rural Sociology* 70, no. 4 (December): 452–69. https://doi.org/10.1526%2F0036011054776012714.

Jensen, Leif, Shannon M. Monnat, John J. Green, Lori M. Hunter, and Martin J. Sliwinski. 2020. "Rural Population Health and Aging: Toward a Multilevel and Multidimensional Research Agenda for the 2020s." *American Journal of Public Health* 110, no. 9: 1328–31. https://doi.org/10.2105/ajph.2020.305782.

Kunstler, James Howard. 1996. "Home From Nowhere." *The Atlantic Monthly*, September 1996. https://www.theatlantic.com/magazine/archive/1996/09/home-from-nowhere/376664/.

Lamb, Charles M. 2005. *Housing Segregation in Suburban America since* 1960. Cambridge, UK: Cambridge University Press.

Linkous, Evangeline R. 2020. "Rural Zoning: Land Use Policy in a Contested and Neglected Landscape." in *Zoning*, edited by Elliott Sclar et al., 55–79. New York: Routledge. https://doi.org/10.4324/9780429489228-4.

Lundin, Steve. 2015. *The Closest Governments to the People.* Municipal Research and Services Center of Washington, Washington State University. https://mrsc.org/getmedia/1c25ae05-968c-4edd-8039-af0cf958baa7/closest-governments-to-the-people.pdf.

Monkkonen, Paavo. 2016. "Understanding and Challenging Opposition to Housing Construction in California's Urban Areas." White Paper. University of California, Los Angeles. https://dx.doi.org/10.2139/ssrn.3459823

Olson, Mancur. 1982. *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities.* New Haven, CT: Yale University Press.

Oregon State University Extension Service. 1971. *Rural Zoning: A Suggested County Ordinance Format and Illustrative Examples of Use Zone Provisions*. Rev. Corvallis: Bureau of Governmental Research and Service, School of Public Affairs, University of Oregon.

Pendall, Rolf. 1999. "Opposition to Housing: NIMBY and Beyond." *Urban Affairs Review* 35, no. 1 (September): 112–36. https://doi.org/10.1177/10780879922184310.

Rabianski, Joseph S., and J. Sherwood Clements. 2007. *Mixed-Use Development: A Review of Professional Literature*. Herndon, VA: The National Association of Industrial and Office Properties Research Foundation. https://www.cdfa.net/cdfa/cdfaweb.nsf/ord/e85f455bb30951708825793600673c68/$file/mixed-use.pdf.

Rothstein, R. 2017. *The Color of Law: A Forgotten History of How Our Government Segregated America*. New York: Liveright Publishing.

Rupasingha, Anil, Stephan J. Goetz, and David Freshwater. 2006. "The Production of Social Capital in US Counties." *The Journal of Socio-Economics* 35, no. 1 (February): 83–101. https://doi.org/10.1016/j.socec.2005.11.001.

Sabetti, Filippo, and Paul Dragoș Aligică. 2014. *Choice, Rules and Collective Action: The Ostroms on the Study of Institutions and Governance*. Colchester, UK: ECPR Press.

Sager, Lawrence G. 1969. "Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent." *Stanford Law Review* 21, no. 4 (April): 767–800. https://doi.org/10.2307/1227567.

Searle, Glen, and Peter Phibbs. 2020. "Ending Single-Family Zoning: Is There a Plan B?" Journal of the American Planning Association 86, no. 1 (January): 121–22. https://doi.org/10.1080/01944363.2019.1689013.

Silver, Christopher. 1991. "The Racial Origins of Zoning: Southern Cities from 1910–40." *Planning Perspectives* 6, no. 2: 189–205. https://doi.org/10.1080/02665439108725726.

Somin, Ilya. 2022. "Virginia Governor Glenn Youngkin Seeks to Expand Housing by Curbing Zoning." *Reason*, December, 2022. https://reason.com/volokh/2022/12/09/virginia-governor-glenn-youngkin-seeks-to-expand-housing-by-curb-zoning/.

Stacy, Christina, Eleanor Noble, Jorge Morales-Burnett, and Lydia Lo. 2020. "Designing Accessory Dwelling Unit Regulations." *Urban Institute*, November 2020. https://www.urban.org/sites/default/files/publication/103275/designing-accessory-dwelling-unit-regulations.pdf.

Whittemore, Andrew H. 2020. "Exclusionary Zoning: Origins, Open Suburbs, and Contemporary Debates." *Journal of the American Planning Association* 87, no. 2: 167–80. https://doi.org/10.1080/01944363.2020.1828146.

Whitten, R. H. 1921. *Zoning and Living Conditions*. Proceedings of the Joint Conference on City, Regional, State, and National Planning, 13, 22–30.

Yglesias, Matthew. 2012. *The Rent is Too Damn High: What to Do About It, and Why It Matters More Than You Think*. New York: Simon and Schuster.

Corporate Power

Addressing the Corporate Consolidation of Medical Providers in the Kansas City Metropolitan Area

By Pratik Thakur

Introduction

Recently, Kansas City has experienced rapid health-care consolidation. There has been a wave of mergers and acquisitions among local medical providers, especially due to the financial losses many of them faced during the pandemic. As these health systems expand by acquiring or integrating with their competitors, they gain the ability to dictate prices for administering care in the area because of minimal competition. Consequently, their rising dominance in the market can lead to higher costs for patients with no evident improvement in the quality of care provided.

The rise of corporate power in medical services limits access to affordable, high-value care in favor of greater revenue. Immediate government intervention against this type of consolidation—such as gaining state approval transactions and restricting anticompetitive contracts—is necessary.

Overall, this brief aims to reveal how the Kansas and Missouri state governments can design antitrust infrastructures that curb health provider consolidation in Kansas City. The recommended policy changes will promote competition and improve pricing and quality of care for patients.

Background

Hospitals talk about consolidation—which happens through mergers and acquisitions (M&A)—as being beneficial because medical providers can pool resources and enhance care delivery in terms of both cost and quality, but that's not supported by data. In a study led by scholars at Harvard Medical School, acquisitions by other hospitals did not lead to substantial differences in readmission or mortality rates; in fact, patients had moderately worse experiences after acquisitions (Beaulieu et al. 2020).

Notably, this sector has two types of consolidation: horizontal and vertical. First, horizontal consolidation occurs when two providers at a similar level join together. A prominent example is the 1998 merger of New York Hospital and Presbyterian Hospital, which formed NewYork-Presbyterian Hospital in New York City (Corwin et al. 2003). Horizontal consolidation can also occur on a smaller scale, such as when two small physician-owned practices merge in a community.

Vertical consolidation takes place when a more prominent provider acquires a smaller counterpart. An example of this is when a hospital purchases a physician-owned clinic. In California, researchers found that in areas of low competition, hospitals acquiring physician practices are linked with higher prices for outpatient visits and insurance premiums (Scheffler et al. 2018).

Private equity also plays a major—and detrimental—role in this issue of vertical consolidation. These firms attempt to extract as much money as possible from their acquisitions to maximize profits, meaning patient health is not a priority. In New Jersey, 17 percent of private equity-backed nursing homes had a higher chance of experiencing a COVID-19 infection and death among patients and staff compared to nursing homes owned by public, nonprofit, and other for-profit entities (Atkins 2021).

Furthermore, medical practices owned by private equity businesses had comparatively higher prices for patients and demonstrated a shift toward using advanced practice providers, like physician assistants and nurse practitioners (NPs) (Dov Bruch et al. 2023; Singh et al. 2022). According to the National Bureau of Economic Research, when compared to physicians, NPs who provided emergency care independently increased the length of stay for patients by 11 percent and grew 30-day preventable hospitalizations by 20 percent (Chan and Chen 2022). Overall, private equity doesn't invest in proper staffing, causing the patient to suffer. From 2013 to 2016, private equity firms acquired 355 physician practices, or 1,426 sites and 5,714 physicians, highlighting its rising national prominence across different specialties (Zhu et al. 2020).

It is evident that both types of consolidation cause harm to patients and providers, outweighing any suggested benefits.

Policy deficiencies in both states allow such consolidation to persist. In Kansas, for example, the state legislature lacks requirements for M&A transaction notices, reviews, and approval processes (NCSL 2023). There are also no anticompetitive contract term restrictions, such as noncompete and all-or-nothing clauses (NCSL 2023). Meanwhile, Missouri doesn't have a certificate of public advantage, a legislative tool that mandates increased oversight of a hospital after a health-care merger (NCSL 2023). These measures, which can place more restrictions on consolidation and which Kansas and Missouri state governments currently lack, already exist in states like New York and Washington.

The Federal Trade Commission's (FTC) regulations behind consolidation are also inefficient. The first is the Herfindahl-Hirschman Index, a formula that quantifies the concentration level in a market and how it is affected by mergers and new entities but fails to account for cross-market transactions and multiple geographic regions (Cicchiello and Gustafsson 2021). Next, the significant transaction threshold for automatic FTC review is too high at $92 million, as most health-care M&A deals are under this amount (Cicchiello and Gustafsson 2021). In addition, the FTC has outdated guidelines for horizontal mergers, as they do not consider its impact on quality, choice, and innovation (Cicchiello and Gustafsson 2021). Moreover, the FTC does not effectively regulate vertical integration as well, relying on providers to promise they will maintain good behavior and not engage in anticompetitive practices after their mergers (Cicchiello and Gustafsson 2021).

Policy Analysis

Harms of Consolidation

As health-care consolidation continues to rise, so will its harmful effects. In reference to Hackensack Meridian Health's proposed acquisition of the Englewood Healthcare Foundation, Lindsay Kryzak, the FTC Office of Public Affairs Director, stated, "Too many hospital mergers lead to jacked up prices and diminished care for patients most in need" (AHIP 2021). These sentiments are echoed in a study showing that the average annual marketplace insurance premiums in regions with health-care monopolies are 5 percent higher than in less-concentrated areas (AHIP 2021). Hospital consolidation trends are only increasing: From 2007 to 2017, 19 percent of hospital markets, serving 11.2 million Americans, had only one hospital system (AHIP 2021).

Similarly, a PricewaterhouseCoopers (PwC) report found no correlation between size and quality of care or cost per encounter in health systems with multiple facilities (Kaul et al. 2016). This finding can be attributed to how consolidated hospitals operate as de facto holding companies, a collection of highly autonomous hospitals, rather than cooperating with one another (Kaul et al. 2016).

Health care's purpose is to improve people's well-being without placing an undue financial burden on patients. Therefore, health care should be considered a public good, and the government should regulate these private markets.

Still, there are counterarguments that attempt to demonstrate how the corporate consolidation of medical providers has benefits. For instance, the Dartmouth-Hitchcock Medical Center in New Hampshire used its affiliate network to create a standardized care protocol for common conditions and procedures (Birkmeyer 2015). Yet, each patient has their own preexisting conditions and circumstances affecting their health. So, to attain better health outcomes, personalized care is still needed over creating a uniform system.

In essence, the pro-consolidation argument states that inadequate communication between providers can cause an increase in health-care spending (King 2017). Accordingly, strategies to increase coordination, like M&A, can help solve such problems (King 2017). Nevertheless, despite the reforms in provider payments and the health-care ecosystem encouraging consolidation, government regulation limits how much consolidation can actually occur (King 2017). That is why proponents will claim that hospitals merge because of market forces and that the government should not intervene, creating a conflict with public policy.

Overall, medical services are becoming more concentrated and will eventually reach monopolistic levels, allowing a minimal number of providers to determine what prices to charge for care (Rosalsky 2021). As these providers gain a greater ability to set market prices, they can also decrease the quality of their services because patients do not have other options.

Consolidation in Kansas City

Kansas City has a long history of provider consolidation. In the late 1950s, Kansas City's two segregated hospitals were losing city money because of the operations costs to run both separately, so the city council supported a merger to reduce costs, forming what is now known as the University Health system (Wells 2022). In more recent decades, health-care consolidation deals, such as the 253-bed Trinity Lutheran Hospital and 198-bed St. Mary's Hospital in 1988, also occurred (Kusserow 1991). In 2003, the Hospital Corporation of America (HCA), the nation's largest health system, purchased a dozen hospitals from Kansas City-based Health Midwest for $1.125 billion (Creswell 2013).

There has been a flurry of recent M&A transactions in the area. In early 2023, Olathe Health and Miami County Medical Center joined the University of Kansas Health System, adding care and clinic locations in multiple counties. Bob Page, CEO and President of the University of Kansas Health System, said that "coming together as one health system" will give patients the "opportunity to access the most advanced care in a more seamless way" (Olathe Health 2023).

Notably, on May 31, 2023, it was announced that BJC Healthcare, which operates Barnes-Jewish Hospital and other providers in the St. Louis area, would merge with St. Luke's health system in the Kansas City metro. According to BJC President Richard Liekweg, this $10 billion merger will allow both institutions to "further invest in [their] teams, advance the use of technologies and data to support [their] providers and caregivers, and improve the health of [their] communities" (Fentem 2023). This planned merger is still subject to regulatory approval.

In both instances, health-care leadership espouses only these presumed benefits of mergers and acquisitions to the patients and community, failing to mention possible negative impacts.

Recommendations

Consolidation leads to price increases because payers like insurance companies have limited options with which to contract. With higher medical prices, providers can earn more revenue from patients. Clearly, financial incentives exist for hospitals to merge and/or acquire practices because they can gain more power in the market.

Current antitrust legislation supports hospital consolidation because of how health care's local markets are defined when using tertiary hospital catchment areas or hospital referral regions. Hospital referral regions (HRRs) were made from the patterns of referrals among hospitalization in the cardiovascular and neurosurgery sectors from the 1992–1993 Medicare data (Kocher et al. 2021). Antitrust enforcement agencies still use these HRRs even though they are outdated. HRRs also incorporate a larger region than what is viable for patients: The Manhattan HRR, for example, contains all five New York City boroughs despite the lower likelihood that Manhattan residents will travel outside their own borough for treatments (Kocher et al. 2021). Overall, the power of a consolidated hospital to set market prices is greater than it appears in its HRR market share.

Additionally, the FTC does not have the authority to enforce antitrust rules on nonprofit hospitals, which is troubling since two-thirds of the 92 total mergers and acquisitions in 2019 involved nonprofit entities (Schwartz et al. 2020; Kaufman Hall 2020). Overall, it is clear that these policies dampen the federal government's authority. Therefore, state intervention is needed, especially among nonprofit providers, to have a more immediate impact on the Kansas City metro area.

First, Kansas must institute transaction notice, review, and approval, which means that hospitals, health systems, physician groups, and private investment firms are required to notify authorized state entities (like the state attorney general or state health agency) of proposed mergers or contractual affiliations for approval (NCSL 2023). Standards that can be used include determining whether the transaction harms health-care competition, increases prices for consumers, and limits access to health-care services (NCSL 2023).

Next, Kansas must restrict anticompetitive health plan contract terms. An example of these terms includes the "all-or-nothing" clause, a requirement "that an insurer must contract with all facilities in a health system if they want to contract with any facilities in the system" (NCSL 2023). Another example is the exclusive contracting clause which is a "contractual agreement in which a provider prevents the insurer from contracting with other competitive providers" (NCSL 2023).

To fight consolidation in Missouri, state lawmakers must add a certificate of public advantage. This means that after the approval of a health-care merger, there must be increased oversight afterward in exchange (NCSL 2023). Missouri already has anticompetitive health plan contract term restrictions (NCSL 2023).

It is crucial that Kansas and Missouri both have the same policies in place so that they can build a stronger case against health-care consolidation in the Kansas City metro area.

Furthermore, both states can use value-based payment (VBP) models through their Medicaid programs (MACPAC n.d.). Compared to the standard fee-for-service (FFS) reimbursement, VBP pays providers based on their quality of care. So, if hospitals begin delivering low-value care after consolidating, they won't be compensated as much. In addition, having a state competition index to check market power in both Kansas and Missouri will be useful as well (Miller 2023). This index would provide greater, more organized insight into the major health-care entities in these states.

As a case study on how Kansas and Missouri can also address the effects of M&A, the California state government received a $575 million settlement with Sutter Health for their successful consolidation efforts (Office of Attorney General Rob Bonta 2021). In addition, California lawmakers implemented new regulations to limit what Sutter charges patients for out-of-network services and increase transparency by permitting insurers, employers, and self-funded payers to give plan members access to pricing and quality information (Office of Attorney General Rob Bonta 2021). Furthermore, they can halt measures that deny patients access to lower-cost plans, stop all-or-nothing contracting deals, cease anticompetitive bundling of services and products, and prevent anticompetitive practices by clearly defining clinical integration to include patient quality of care (Office of Attorney General Rob Bonta 2021). This case provides another policy framework for the Kansas and Missouri state governments to use when challenging these consolidation cases in the Kansas City metropolitan area.

California's policies also counteract and expose fallacies in neoliberal ideals. Under that worldview, the free market, operating without government intervention, should lead to more and better choices for the consumer. Consolidation contradicts these ideals because when hospitals merge, patients have fewer options to receive care.

Intersectionality comes into consideration as well with this issue. For example, if a major hospital system is bought by a Christian-based provider, patients who want care for abortions or LGBTQ+-affirming services may be restricted depending on the provider's beliefs and regulations. It is imperative to address these potential concerns by ensuring there are many options for patient care.

Moreover, consolidation has harmed women's health with subpar, high-cost care. Specifically, it negatively impacts "women's access to and quality of health care, particularly before, during, and after childbirth" (Flynn et al. 2019). In addition, consolidation harms "labor markets and working conditions" for women, with providers not facing as much competition and having a greater market share (Flynn et al. 2019).

If state governments play a stronger regulatory role and limit what mergers and acquisitions can take place, patients will have access to more affordable, high-quality care through greater competition among medical providers. By maintaining sustainable structures to prevent consolidation in the Kansas City area, state governments can address the long-term needs of the local communities in Kansas and Missouri and improve their well-being.

With these major stakeholders on board, such changes will provide comprehensive support for this consolidation issue and result in an actionable change in the Kansas City metro area. Additionally, it will counteract the lobbying power of hospitals since they are usually the largest employers in congressional districts (Haberkorn 2013). Having public advocates in general to challenge this issue can help state officials understand the damaging effects of medical M&A and learn what actions they can take to reduce these developments.

Conclusion

The consolidation of hospitals and health systems has accelerated in the United States because more of these entities are losing money due to the pandemic. Although this integration between providers can generate profits on their end, it creates monopolistic market shares in their respective regions.

Even though some consolidation issues—like the aforementioned Sutter Health case in California—were resolved to an extent, such worrying developments still occur throughout the country, such as in the Kansas City metropolitan area. Since this location spans two states, Kansas and Missouri, this requires a more nuanced examination of how to best mitigate this increasing rate of consolidation. During the pandemic, health-care providers proceeded to use consolidation for financial gain at the expense of their patients. To prevent such trends from accelerating, bi-state government entities in Kansas and Missouri must overcome this growing corporate power harming the Kansas City public.

Although some federal regulations exist to tackle this challenge, they are not enough to address consolidation comprehensively. Therefore, both Kansas and Missouri state governments must revise their policies to directly resolve this rise in mergers and acquisitions in Kansas City for the benefit of their patients.

About the Author

A Kansas native, Pratik Thakur earned his BA with honors from the University of Southern California, where he studied biology, health policy, and economics. He was also elected to Phi Beta Kappa and the Order of the Laurel and the Palm, the university's highest distinction. As a Leonard D. Schaeffer Fellow in Government Service, Pratik interned at the Centers for Medicare and Medicaid Services. Through the USC Provost's Fellowship, he conducted health policy research at the USC Sol Price School of Public Policy, with his work featured by the Schaeffer Center for Health Policy and Economics. On campus, Pratik was chapter president of Share a Meal, a nonprofit that provides burritos and water to unhoused communities in Los Angeles. Overall, Pratik is passionate about advancing health outcomes and care delivery by intersecting medicine and policymaking.

Acknowledgments

I would like to thank the entire Roosevelt Network staff for their support during this fellowship, especially Alyssa Beauchamp, Robert-Thomas Jones, and Katie Kirchner for their guidance during the research and writing process. I would also like to thank Emily DiVito from the Roosevelt Institute's corporate power program for her insight into this multifaceted issue. Finally, I would like to highlight Dr. Glenn Melnick, from the University of Southern California, for introducing me to this topic of health-care consolidation during college.

References

Addressing the Corporate Consolidation of Medical Providers in the Kansas City Metropolitan Area

AHIP. 2021. "How Hospital Consolidation Hurts Americans." AHIP, August 26, 2021. https://www.ahip.org/news/articles/how-hospital-consolidation-hurts-americans.

Atkins, Melea. 2021. *The Impact of Private Equity on Nursing Home Care: Recommendations for Policymakers*. New York: Roosevelt Institute. https://rooseveltinstitute.org/wp-content/uploads/2021/04/RI_NursingHomesandPE_IssueBrief_202104.pdf.

Beaulieu, Nancy D., Leemore S. Dafny, Bruce E. Landon, Jesse B. Dalton, Ifedayo Kuye, and J. Michael McWilliams. 2020. "Changes in Quality of Care after Hospital Mergers and Acquisitions." *New England Journal of Medicine* 382, no. 1: 51-59. https://www.nejm.org/doi/10.1056/NEJMsa1901383.

Birkmeyer, John D. 2015. "Why Health Care Mergers Can Be Good for Patients." Harvard Business Review, September 30, 2015. https://hbr.org/2015/09/why-health-care-mergers-can-be-good-for-patients.

Chan Jr., David C., and Yiquin Chen. 2022. "The Productivity of Professions: Evidence from the Emergency Department." Working Paper No. 30608. NBER Working Paper Series. Cambridge, MA: National Bureau of Economic Research. https://www.nber.org/system/files/working_papers/w30608/w30608.pdf

Cicchiello, Aimee, and Lovisa Gustafsson. 2021. "Federal Antitrust Tools Are Inadequate to Prevent Anticompetitive Health Care Consolidation." *Commonwealth Fund* (blog). May 13, 2021. https://www.commonwealthfund.org/blog/2021/federal-antitrust-tools-are-inadequate-prevent-anticompetitive-health-care-consolidation.

Corwin, Steven J., Mary Reich Cooper, Joan M. Leiman, Dina E. Stein, Herbert Pardes, and Michael A. Berman. 2003. Model for a Merger: New York-Presbyterian's Use of Service Lines to Bring Two Academic Medical Centers Together. *Academic Medicine* 78, no. 11: 1114-1120. https://pubmed.ncbi.nlm.nih.gov/14604869/.

Creswell, Julie. 2013. "Judge Orders HCA to Pay $162 Million to Foundation." *New York Times*, January 24, 2013. https://www.nytimes.com/2013/01/25/business/hca-must-pay-kansas-city-foundation-162-million.html.

Davis, Jim. 1996. "St. Joseph and St. Mary's Wed Health Services." *Kansas City Business Journal*, October 13, 1996. https://www.bizjournals.com/kansascity/stories/1996/10/14/story4.html.

Dov Bruch, Joseph, Canyon Foot, Yashaswini Singh, Zirui Song, Daniel Polsky, and Jane M. Zhu. 2023. "Workforce Composition in Private Equity–Acquired versus Non–Private Equity–Acquired Physician Practices." *Health Affairs* 42, no. 1: 121-129. https://www.healthaffairs.org/doi/10.1377/hlthaff.2022.00308.

Feinberg, Bruce, Dana Macher, Michael Kolodziej, and Mark S. Soberman. 2018. "Factors Behind Healthcare Consolidation." Youtube video, AJMC, October 3, 2018. https://www.youtube.com/watch?v=n8u91kYiwzA

Fentem, Sarah. 2023. "BJC Announces Plans for $10 Billion Merger with Kansas City Health System." St. Louis Public Radio, May 31, 2023. https://news.stlpublicradio.org/health-science-environment/2023-05-31/bjc-announces-plans-for-10-billion-merger-with-kansas-city-health-system.

Flynn, Andrea, Rakeen Mabud, and Emma Chessen. 2019. *The Plight Of Health Care In Rural America: How Hospital Mergers And Closures Harm Women*. New York: Roosevelt Institute. https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI_Hospital-Mergers_Issue-brief_201905.pdf.

Haberkorn, Jennifer. 2013. "Hospitals Flex Lobbying Muscle" *Politico*, January 7, 2013. https://www.politico.com/story/2013/01/hospitals-flex-lobbying-muscle-to-bypass-some-cuts-085814?hp=l6.

Kaufman Hall. 2020. "2019 M&A in Review: In Pursuit of the New Bases of Competition" https://www.kaufmanhall.com/sites/default/files/documents/2020-01/2019_mergers_and_acquisitions_report_kaufmanhall.pdf.

Kaul, Anil, K.R. Prabha, and Suman Katragadda. 2016. *Size Should Matter: Five Ways to Help Healthcare Systems Realize the Benefits of Scale*. London: PwC. https://www.strategyand.pwc.com/us/en/reports/2016/size-should-matter.pdf.

King, Michael W. 2017. "Health Care Efficiencies: Consolidation and Alternative Models vs. Health Care and Antitrust Regulation–Irreconcilable Differences?" *American Journal of Law & Medicine* 43, no. 4: 426-467. https://pubmed.ncbi.nlm.nih.gov/29452560/.

Kocher, Robert P., Soleil Shah, and Amol S. Navathe. 2021. "Overcoming the Market Dominance of Hospitals." JAMA 325, no. 10: 929-930. https://pubmed.ncbi.nlm.nih.gov/33605976/.

Kusserow Richaed P. 1991. *The Effects of Hospital Mergers on the Availability of Services: A Case Study of Eight Major Hospital Mergers*. Washington, DC: Department of Health and Human Services Office of Inspector General. https://oig.hhs.gov/oei/reports/oei-04-91-00500.pdf.

Medicaid and CHIP Payment and Access Commission (MACPAC). n.d. "Value-Based Purchasing." MACPAC. https://www.macpac.gov/subtopic/value-based-purchasing/.

Miller, Brian. 2023. "Hospital Consolidation: Problems and Policy Solutions." Powerpoint presentation, Philip R. Lee Institute for Health Policy, San Francisco, CA, May 17, 2023. https://www.youtube.com/watch?v=YX_FXc5z_EE.

National Conference of State Legislatures (NCSL). 2023. *Health System Consolidation*. Washington, DC: NCSL. https://www.ncsl.org/health/health-system-consolidation

Office of Attorney General Rob Bonta. 2021. "Attorney General Bonta Announces Final Approval of $575 Million Settlement with Sutter Health Resolving Allegations of Anti-Competitive Practices" State of California Department of Justice, August 27, 2021. https://oag.ca.gov/news/press-releases/attorney-general-bonta-announces-final-approval-575-million-settlement-sutter.

Olathe Health. 2023. "Olathe Health Joins The University of Kansas Health System." Olathe Health, January 5, 2023. https://www.olathehealth.org/newsroom/olathe-health-joins-the-university-of-kansas-health-system/.

Rosalsky, Greg. 2021. "The Untamed Rise Of Hospital Monopolies" *NPR*, July 20, 2021. https://www.npr.org/sections/money/2021/07/20/1017631111/the-untamed-rise-of-hospital-monopolies.

Scheffler, Richard M., Daniel R. Arnold, and Christopher M. Whaley. 2018. "Consolidation Trends in California's Health Care System: Impacts on Aca Premiums and Outpatient Visit Prices." *Health Affairs* 37, no. 9: 1409-1416. https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2018.0472.

Schwartz, Karyn, Eric Lopez, Matthew Rae, and Tricia Neuman. 2020. *What We Know About Provider Consolidation*. San Francisco, CA: Kaiser Family Foundation. https://www.kff.org/health-costs/issue-brief/what-we-know-about-provider-consolidation/.

Singh, Yashaswini, Zirui Song, and Daniel Polsky. 2022. "Association of Private Equity Acquisition of Physician Practices with Changes in Health Care Spending and Utilization." *JAMA Health Forum* 3, no. 9. https://jamanetwork.com/journals/jama-health-forum/fullarticle/2795946.

Wells, Michael. 2022. "A Tale of Two Hospitals: KCQ Investigates the End of Kansas City's Segregated Hospital System." KC History, February 25, 2022. https://kchistory.org/blog/tale-two-hospitals-kcq-investigates-end-kansas-citys-segregated-hospital-system.

Zhu, Jane M., Lynn M. Hua, and Daniel Polsky. 2020. "Private Equity Acquisitions of Physician Medical Groups Across Specialties, 2013-2016." *JAMA* 323, no. 7 (February): 663–65. https://doi.org/10.1001/jama.2019.21844.

Corporate Influence on Private Prisons and Mass Incarceration in Alabama

By Eriko Darcy

Introduction

This policy brief explores the impacts of private prisons and corporate power on mass incarceration in the United States and examines the unique case of Alabama, where one plan to build private prisons was halted in 2021. After a 2020 Department of Justice (DOJ) investigation exposed systemic violence in the state's prison system, the crux of the state government's solution was to construct two private prisons. Lawmakers and individuals who stood to profit from the building of private prisons ultimately failed to take control of the state's jail system due to organized grassroots opposition. However, Alabama's prison system is still notorious for violent facilities, with over 270 deaths in custody and 19 homicides in 2022 alone (Equal Justice Initiative 2023).

This brief will examine the rise of private prisons across the country and the arguments in support of privatization. The critique of private prisons connects to a wider critique of neoliberalism and the belief that private enterprise is more efficient and effective than the public sector in delivering goods and services. Ultimately, though, private corporations do not fix the problems of the public carceral system or the issue of mass incarceration. On the contrary, they exacerbate the problem by attaching profit motives to incarceration. The role of private stakeholders and the political capital they wield within the American carceral system must therefore be addressed, condemned, and eliminated. Instead of seeking private solutions to mass incarceration, state governments should reallocate funds from the carceral system to welfare programs and other social services (such as health care, education, and reentry programs) and prohibit political campaign donations from corporations that have a clear conflict of interest and a financial stake in the outcome of legislation. Such an approach would reduce, rather than aggravate, the mass incarceration problem, and would also provide major economic benefits, since it is unsustainable for states to overfund their carceral systems while divesting from welfare programs.

Background

In January 2021, President Joe Biden issued an executive order ending all DOJ contracts with private prison corporations. While the executive order was an important step toward cutting ties between the federal government and for-profit corporations that earn money from prison contracts, it had some significant shortcomings. First, while the federal government can no longer sign or renew contracts with private prison corporations, these rules do not apply to state and local governments. The executive order also does not affect Immigration and Customs Enforcement (ICE) contracts because ICE is not part of the DOJ (Eisen 2021). The omission of ICE from the executive order is significant because approximately 80 percent of ICE detention beds are owned or managed by for-profit entities (Eisen 2021). Rather than addressing the private prisons issue head-on, the executive order creates a scenario in which for-profit firms can sign contracts directly with states rather than with the federal government.

The emergence of private prisons is relatively recent. The US mass incarceration crisis began during the 1980s—also known as the tough-on-crime era—with a sharp spike in harmful and severe crime policies. These policies resulted in overcrowded public prisons, and, without enough beds to hold the influx of incarcerated people, the number of for-profit prisons across several states and the federal system began increasing. The residual effects of this era persist today, as nearly 100,000 individuals are held in private prisons across 27 states (Budd and Monazzam 2023). However, the use of private prisons varies widely across states. On one end of the spectrum is Montana, which houses nearly half of its incarcerated population in private facilities. Nearly on par with Montana are Hawaii, New Mexico, and Tennessee—these states also have high private prison populations ranging from 35 percent to 45 percent of their total incarcerated population (Budd and Monazzam 2023).

The private prison sector has four main corporate players: CoreCivic, GEO Group, LaSalle Corrections, and Management and Training Corporation. Even with the executive order in place, these corporations are still wildly profitable. During GEO Group's second quarter earnings call in 2021, executives reported that while two of their facilities would close as a result of the executive order, the company renewed five contracts with the Bureau of Prisons and secured a new contract in Tampa, Florida (Seeking Alpha 2021). CoreCivic has seen similar success. Only three months after the order was signed, CoreCivic signed a new three-year contract in Ohio (Eisen 2021). These cases show that measures focused solely at the federal level are inadequate in preventing the proliferation of private prison systems.

The private prison industry faces significant opposition from surrounding communities, advocacy groups, human rights organizations, and research groups. There is the moral argument that the concept of an entity profiting from mass incarceration is inherently wrong and that some legal and state functions simply should not and cannot be delegated to private corporations (Cummings and Craig 2020). Others argue that the profit incentive of private entities creates adverse conditions in private facilities as corporations try to cut operating costs (Cummings and Craig 2020). Alabama's existing carceral system is one of the most dangerous in the country: Alabama leads the nation when it comes to in-custody murders, at eight times the national average (Gould 2023). Its prisons also have the highest rates of suicide (most of which take place in solitary confinement), assault by officers, drug trafficking by prison staff, and rape. The widespread violence led the DOJ to sue Alabama in 2020, citing violations of Eighth Amendment rights due to failure to protect incarcerated individuals from violence and sexual abuse, and failure to provide safe and humane conditions of confinement (DOJ 2020). While the state acknowledged its ongoing issues, it denied any constitutional violations.

The call to build more prisons came in response to this investigation. Governor Kay Ivey and her supporters cited the plan to build two mega-prisons as a major step toward ameliorating the decades of neglect within the public prison system and as a means of addressing serious overcrowding issues (Ramey 2021). This proposed solution did not hold up for long. Barclays Capital, the initial underwriter for the deal between the state of Alabama and CoreCivic, first sought $633 million in private activity bonds (bonds that are open to a small number of institutional investors) and another $215 million in private place bonds (bonds that are open to individuals and banks) (Simon 2021). This deal failed to receive a massive inflow of investors as it took place against the backdrop of the nationwide Black Lives Matter movement, a social and civil rights movement that emerged in the early 2010s in response to systemic racism and violence against Black people and communities, and a growing consciousness of ethical investing. Barclays' role in this deal was particularly notable as the firm had publicly announced in 2019 that they would stop financing for-profit prisons and businesses that detain immigrants. Local advocacy groups in Alabama, such as the Woods Foundation, Worth Rises, Communities Not Prisons, Alabama Students Against Prisons, and the Alabama Appleseed Center for Law and Justice, also quickly mobilized, resulting in Barclays not only backing out of the deal but also being pulled from the American Sustainable Business Council and Social Venture Circle (Simon 2021). As the financing of Alabama's private prisons crumbled, so did all preexisting plans to build private mega-prisons.

The failed Barclays deal is a key example of how neoliberal ideology promotes privatization as a solution to policy problems. Policymakers in Alabama turned to private companies to step in where the state was "failing," reinforcing the idea that privatization is more efficient at delivering public goods and services. However, as advocates successfully pointed out, the reality is that private prisons have led to clear abuses of human rights, skyrocketing incarceration rates, and a lack of accountability due to profit motives. A justice system that actually centers justice cannot be driven by neoliberal ideology.

The rise in mass incarceration, also called the development of the penal state, occurred in conjunction with market-oriented policies. Such policies sought to reduce the state's involvement in welfare, and largely accepted the idea that prisons serve as a deterrent to breaking the law. The pillars of free market economics were combined with tougher law-and-order policies. The successes of politicians who were "tough on crime" gave way to a rightward shift in debates on law and order. Neoliberalism drives the carceral state; its commitment to privatization is at the core in the expansion of for-profit prisons, privately run immigration detention facilities, and private parole and probation services (Gottschalk 2015). The welfare-averse policies and politics at the center of neoliberalism sustain a steady flow of inmates (Gottschalk 2015). Neoliberal policies have seen cuts to programs across education, job training, and health services—programs that are necessary to reduce high incarceration rates (Visher and Eason 2021).

Neoliberalism espouses the belief that private enterprise is more efficient and effective than the public sector in operating social infrastructure, and neoliberal proponents have made this argument in support of prison privatization. Private prison companies have long lobbied for policies to increase incarceration rates (e.g., mandatory minimum sentencing laws and harsher drug sentencing) to increase profits (Poyker and Dippel 2019). During the 2016 election cycle, private prison companies donated a record $1.6 million to political parties, candidates, and outside spending groups (OpenSecrets 2023). By lobbying and donating to political campaigns, private prison corporations can influence legislators to enact harsher sentencing laws and guidelines. This lobbying has given way to a private prison industry that has a financial incentive to create and maintain high levels of incarceration, rather than focus on rehabilitation and decreasing recidivism rates. The privatization of prisons has also led to a lack of transparency and accountability, poor conditions for incarcerated individuals, and an apparent conflict of interest between the profit motives of prison companies and the overarching goals of the criminal justice system (Office of Senator Elizabeth Warren 2020). Studies have repeatedly found that private prisons provide no significant or systematic cost savings when compared to public prisons (White et al. 2020).

Policy Analysis

Tough-on-crime policies and draconian sentencing laws remain at the core of astronomical mass incarceration rates in many states. Alabama exhibits both of these drivers through its Habitual Felony Offender Act, an example of a statutory mechanism that has escalated our reliance on the prison industrial complex to solve our society's issues. Since this law was passed in 1979, Alabama's prison population has ballooned (Alabama Appleseed 2023). The Habitual Felony Offender Act reinforces harsh sentencing, often life sentences, for individuals whose crimes do not necessarily warrant them. The Act mandates life in prison without parole for anyone convicted of a Class A felony if that individual has previously been convicted of any three felonies. In many cases, individuals have no extensive history of violence; some have childhood adjustment issues, come from troubled backgrounds, or have a history of drug abuse, and many are emotionally traumatized (Alabama Appleseed 2023). The Habitual Felony Offender Act robs the state of money it should invest in health care, mental health care, and underserved communities, as it costs nearly $15,000 to incarcerate one individual for one year (Vera Institute 2017). From a purely economic standpoint, the state of Alabama is not able to *afford* mass incarceration, as we can see from its horrible prison conditions, overcrowding, and its inability to hire and train prison guards (DOJ 2016). Due to the Habitual Felony Offender Act, Alabama also has an aging prison population with skyrocketing health-care costs. The ballooning of the prison population, partly due to harsh sentencing, led lawmakers to turn to privatization as the solution.

But privatization is not the answer. Supporters of private prisons cite cost savings as the major appeal (Blumenstein et al. 2007). It is important to note, however, that the studies determining these cost savings are often funded by private prison corporations, giving way to clear biases and skewed peer review. Studies conducted by third parties have shown that the cost efficiency and safety of private prisons are worse than their public counterparts. Meanwhile, the Delaware County Jail Oversight Board of Pennsylvania conducted a study that determined a county could save up to $7 million per year by moving away from privatization (Simon 2021).

Given the empirical fallacies of common pro-privatization arguments that private facilities are safer and more economical, we must now examine how to limit the role of corporate power in our carceral system. First, building more prisons is not the appropriate response to mass incarceration. Alabama's initial private prison project and failed Barclays deal would have been an incredible misuse of funds, as it reserved approximately $400 million (nearly 20 percent of its federal COVID-19 funding) from the American Rescue Plan (Eisen 2021). The billion-dollar cost for construction should have been allocated to support underserved communities, and invested in education, health care, and rehabilitative services (Chandler 2023). Following the block of the private prison, the state remains in limbo with regards to how to address its prison system.

We must also acknowledge the racial disparities in prisons. In 12 states across the country, including Alabama, more than half of the prison population is Black—for reference, 26.8 percent of Alabama's population is Black (Nellis 2021). Black and Latinx people are incarcerated in state prisons at almost 5 times and 1.3 times the rate of white people, respectively (Nellis 2021). Historically, segregation and "redlining" (exclusionary tactics in real estate that racially discriminate) have relegated Black communities to underserved areas with major structural disadvantages that translate to subpar investment in education, nutrition and access to food, mental and physical health care, and employment (Jackson 2021). These factors have been correlated with higher levels of crime, policing and surveillance, arrests, and an increased likelihood of health disorders such as substance abuse and mental illness. It is a dangerous mistake to proliferate the use of prisons (public or private) without understanding the contexts and circumstances in which many incarcerated individuals live—as the use of prisons does not address the root causes of crime.

Recommendations

A multifaceted approach to reform is necessary to limit the role of corporate power in our carceral system. These prongs include sentencing reform, investing in communities to address the root causes of mass incarceration, and limiting corporate power in politics.

Sentencing reform must be enacted to alleviate the overcrowding of public prisons, which is often used as an excuse for privatization. States should create a structure for judges to review life sentences without parole. This reform practice would be particularly important in Alabama, where judges must abide by the Habitual Felony Offender Act. The reform would give judges discretion to "look back" and reevaluate the sentenced individual, which could help reduce prison overcrowding and end life without parole sentences for those who have exhibited changed and rehabilitated behavior. This mechanism also allows for a review of who poses a risk to public safety and who does not. Those who are ready to reenter society (e.g., those who completed job training and education programs or who do not exhibit a history of infractions) should be able to do so. These reforms will also reduce costs and strengthen alternatives to incarceration (e.g., halfway houses).

Investing in historically underserved communities is an especially important solution when looking at the demographics of underserved communities and the demographics of our prison populations. In Alabama, funds that are allocated toward over-policing, surveillance, and imprisoning individuals under the Habitual Felony Offender Act should be reallocated. The Alabama legislature passed its General Fund budget and Gov. Ivey signed the state's budgets on June 1, 2023. This was a record-breaking $3 billion dollar budget with nearly $662 million (over 20 percent) allocated to the Alabama Department of Corrections, $112 million (~4 percent) directed toward the Alabama Law Enforcement Agency, and $88 million (~3 percent) allocated to the Alabama Bureau of Pardons and Paroles (Cason 2023). The allocations from the general fund to support the Department of Corrections are bloated and the outcomes are subpar; meanwhile, Alabama falls far behind when it comes to education funding. The state ranks 42nd in funding and 41st in school spending (Hanson 2022). By divesting from the Department of Corrections and reallocating funds toward education and mental and physical health care, Alabama can ensure that prisons are no longer the catchall mechanism to rehabilitate and reintegrate individuals back into society.

While organizers in Alabama were able to halt one attempt at privatization in their prison systems, this issue persists across the country. In Ohio, Texas, Montana, and Idaho, CoreCivic has been sued for increased violence within prisons and for human rights abuses (Rossi 2018). In April 2018, formerly detained immigrants filed a class action lawsuit against CoreCivic, citing the use of "forced labor" at a facility in Georgia. In September 2017, the state of Washington filed a lawsuit against GEO Group for paying detainees only $1 a day for their labor. Detainees in Colorado also sued GEO Group for wage theft in 2014 (Holpuch 2018). Through these suits, we see a continuous and repetitive pattern of private prison corporations robbing individuals of their human rights. CoreCivic is also known for its tactic of swooping into states facing budgetary crises and claiming to provide revenue-boosting avenues that will help the state (Rossi 2018). This was the context in which CoreCivic came to Alabama—the state operates violent and overcrowded public prisons and CoreCivic floated a plan it claimed would reap high revenues and ameliorate prison conditions. While this plan did not pass in Alabama, it did pass in Montana. In 2017, Montana Governor Steve Bullock convened a special session to fix the state's $75 million budget deficit (Rossi 2018). During this time, CoreCivic owned the only for-profit prison in Montana. As its contract with the state neared its expiration date, CoreCivic brought an offer stating that if the Governor agreed to extend the contract for another two years, the corporation would return $34 million that Montana had been accumulating via a "buy back" fund (Rossi 2018). While dubious, this deal passed and CoreCivic continues to wield significant political power in the state.

CoreCivic and other prison corporations are known to donate to state lawmakers to secure future contracts, a practice which should be outlawed. Alabama is one of five states (including Nebraska, Oregon, Utah, and Virginia) that allow corporations to donate unlimited amounts of money to state campaigns (NCSL 2019). When Alabama was still entertaining its private prison contracts, private prisons donated tens of thousands of dollars to Alabama lawmakers and their campaigns (Burkhalter 2019). Gov. Ivey received a combined $12,500 from GEO Group and CoreCivic (Burkhalter 2019). These are clear conflicts of interest. While federal candidates must abide by campaign contribution guidelines administered by the Federal

Elections Commission, state, county, and municipal candidates have no such requirement. In Alabama, campaign financing is largely regulated by the secretary of state, and appeals must be made to the current officeholder. This practice can lead to further conflicts of interest, a lack of independence due to the secretary of state having partisan affiliations, limited checks and balances, and diminished transparency as campaign finance regulation is concentrated in the hands of one office. By prohibiting donations from corporations and their PACs, groups that have clear conflicts of interest and a financial stake in outcomes of legislation, we can limit the political muscle of corporations in the criminal justice context.

Conclusion

The issue of private prisons is a complicated one that involves powerful stakeholders. This problem also ties into a wider critique of neoliberalism, which ignores the historical contexts of inequality and presumes that all individuals have equal choice and opportunity in determining the trajectories of their lives.

In discussing how to phase out or limit the power of private prison corporations, it is important to note the inherent dissonance between a for-profit institution and an institution that incarcerates individuals. There is a critical conflict of interest when a state partners with corporations that have a vested financial interest in incarcerating individuals. These corporations make money by entering into contracts with state and local governments and managing private prison facilities. But these contracts can only take place where there are not enough beds in public prisons to hold all convicted individuals. Additionally, private prison contracts normally require the local government to keep the private facility full, forcing the surrounding communities to drive people into the carceral system. Over 60 percent of private prison contracts require a specific occupancy rate, which is typically around 90 percent. In other words, 90 percent of beds must be filled at all times (Cohen 2015). Some contracts operate on a 100 percent occupancy guarantee (Cohen 2015).

We can begin to limit the power of private prison corporations by limiting their ability to donate to state and local elections, thereby limiting their corporate power. Since 1989, GEO Group and CoreCivic have contributed more than $10 million to candidates and spent almost $25 million on lobbying efforts (Cohen 2015). Limiting the private prison industry's political networks is the first step in inhibiting the ability of private corporations to win contracts with counties and state governments—and eventually phase them out entirely. By tackling the issues of mass incarceration with sentencing reform, reallocating funds from the carceral system toward health care and rehabilitation, and limiting the political maneuvers of private prison corporations, we can dismantle mass incarceration and corporate power.

About the Author

Eriko Darcy is a student-athlete pursuing a double major in economics and political science at Wellesley College. During the 2022–23 school year, Eriko studied politics and economics at the University of Oxford, St. Peter's College. Hailing from Chicago, Eriko is not only committed to her academic pursuits but also excels as a sprinter on her college's track and field team. Driven by a deep-seated commitment to criminal justice reform, Eriko's journey in advocacy began with her involvement as a volunteer at the Woods Foundation. Through her dedicated efforts, she played an integral role in investigating cases of wrongful convictions and advocating for fair sentencing practices. This experience ignited a passion for addressing systemic issues within the criminal justice system. Beyond her academic and athletic achievements, Eriko is also a talented pianist. She has organized and performed in fundraising concerts with her sister, Kimiko, that highlight pressing social justice concerns. Eriko's multifaceted involvement underscores her dedication to creating positive change at the intersection of law, policy, and music.

Acknowledgments

I extend my deepest appreciation to Alyssa Beauchamp for her unwavering guidance and support throughout the entire process of developing this policy brief. My gratitude also goes to Joe Swanson for his exceptional mentorship, which has been a guiding light in navigating the challenges and intricacies of this fellowship journey. My sincere thanks go to Lauren Faraino of the Woods Foundation for her insights and assistance. I am also grateful to Carla Crowder, Dana Sweeney, and Ronald McKeithen of the Alabama Appleseed Center for Law and Justice for sharing their expertise and perspectives. I extend my thanks to Veronica Johnson at the Alabama Justice Initiative for generously dedicating her time and insights, and to Katie Kirchner and Shahrzad Shams of the Roosevelt Institute for their diligent efforts in the editing process. I wish to express my appreciation to all of the fellows in this cohort for their camaraderie, inspiring discussions, and collaborative spirit throughout the fellowship experience. Lastly, I would like to thank my family and friends for their unwavering support and encouragement.

References

Corporate Influence on Private Prisons and Mass Incarceration in Alabama

Alabama Appleseed Center for Law & Justice. 2023 Condemned. Montgomery, AL: Alabama Appleseed. http://alabamaappleseed.org/wp-content/uploads/2023/03/Alabama-Appleseed-Condemned-Report-2023.pdf.

Budd, Kristen, and Niki Monazzam. 2023. *Private Prisons in the United States*. Washington, DC: The Sentencing Project. https://www.sentencingproject.org/reports/private-prisons-in-the-united-states/.

Blumenstein, James, Mark Cohen, and Suman Seth. "Do Government Agencies Respond to Market Pressures? Evidence from Private Prisons." Vanderbilt Law and Economics Research Paper No. 03-16, October 22, 2003. https://ssrn.com/abstract=441007.

Burkhalter, Eddie. 2019. "Private Prison, Detention Companies Spending on Alabama Politicians." *Alabama Political Reporter*, September 16, 2019. https://www.alreporter.com/2019/09/16/private-prison-detention-companies-spending-on-alabama-politicians/.

Cason, Mike. 2023. "Alabama House Unanimously Passes Record $3 Billion General Fund Budget." *Advance Local*, April 26, 2023. https://www.al.com/news/2023/04/alabama-house-to-consider-record-3-billion-general-fund-budget.html.

Chandler, Kim. 2023. "Cost Estimate on New Alabama Prison Jumps $300 Million." *Associated Press*, March 15, 2023. https://apnews.com/article/alabama-prison-construction-pandemic-funds-221f9873495e4d89a5e96934f6e27b3d.

Cohen, Michael. 2015. "How For-Profit Prisons Have Become the Biggest Lobby No One Is Talking About." *Washington Post*, April 28, 2015. https://www.washingtonpost.com/posteverything/wp/2015/04/28/how-for-profit-prisons-have-become-the-biggest-lobby-no-one-is-talking-about/.

Cummings, André Douglas Pond, and Robert Craig. 2020. "Abolishing Private Prisons: A Constitutional and Moral Imperative." *University of Baltimore Law Review* 49, no. 3 (June). https://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=2072&context=ublr.

Eisen, Lauren-Brooke. 2021. "Breaking Down Biden's Order to Eliminate DOJ Private Prison Contracts." Brennan Center for Justice, August 27, 2021. https://www.brennancenter.org/our-work/research-reports/breaking-down-bidens-order-eliminate-doj-private-prison-contracts.

Equal Justice Initiative. 2023. "Third Alabama Prison Homicide in a Month." Equal Justice Initiative, March 9, 2023. https://eji.org/news/felix-ortega-third-alabama-prison-homicide-in-a-month/.

Gottschalk, Marie. 2015. "The Folly of Neoliberal Prison Reform." *Boston Review*, June 8, 2015. https://www.bostonreview.net/articles/marie-gottschalk-neoliberal-prison-reform-caught/.

Gould, Cynthia. 2023. "Murders, Rapes, Suicides: Alabama Prisons Among the Most Violent in Country." WPMI, March 9, 2023. https://mynbc15.com/news/local/murders-rapes-suicides-al-prisons-in-a-freefall-with-overcrowding-and-understaffing-inmates-dept-of-corrections-alabama-state-legislature.

Hanson, Melanie. 2022. "US Public Education Spending Statistics" EducationData.org, June 15, 2022. https://educationdata.org/public-education-spending-statistics.

Holpuch, Amanda. 2018. "Private Prison Companies Served with Lawsuits over Using Detainee Labor." *The Guardian*, November 25, 2018. https://www.theguardian.com/us-news/2018/nov/25/private-prison-companies-served-with-lawsuits-over-usng-detainee-labor.

Jackson, Candace. 2021. "What Is Redlining?" *New York Times*, August 17, 2021. https://www.nytimes.com/2021/08/17/realestate/what-is-redlining.html.

Mai, Chris, and Ram Subramanian. 2017. "Prison Spending in 2015." in *The Price of Prisons*. New York: Vera Institute. https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending.

National Institute of Corrections. 2020. "Alabama 2020: The Jail System." 2020. https://nicic.gov/resources/nic-library/state-statistics/2020/alabama-2020.

National Conference of State Legislatures, 2019. "Campaign Contribution Limits: Overview." NCSL. Last updated October 4, 2019. https://www.ncsl.org/elections-and-campaigns/campaign-contribution-limits-overview.

Nellis, Ashley. 2021. *The Color of Justice: Racial and Ethnic Disparity in State Prisons*. Washington, DC: The Sentencing Project. https://www.sentencingproject.org/app/uploads/2022/08/The-Color-of-Justice-Racial-and-Ethnic-Disparity-in-State-Prisons.pdf.

Office of Senator Elizabeth Warren. 2020. *The Accreditation Con: A Broken Prison and Detention Facility Accreditation System That Puts Profits Over People*. Washington, DC: Office of Senator Elizabeth Warren. https://www.warren.senate.gov/imo/media/doc/The%20Accreditation%20Con%20-%20December%202020.pdf.

OpenSecrets. 2023. "For-Profit Prisons." 2023. https://www.opensecrets.org/industries/indus.php?ind=G7000.

Poyker, Michael, and Christian Dippel. 2019. "How Private Prisons Affect Sentencing." Centre for Economic Policy Research, August 6, 2019. https://cepr.org/voxeu/columns/how-private-prisons-affect-sentencing.

Ramey, Andrea. 2021. "Alabama Governor Signs 30 Year Prison Leases." NBC15 *News*, February 1, 2021. https://mynbc15.com/news/local/alabama-governor-signs-30-year-prison-leases.

Rossi, SK. 2018. "Private Prison Giant CoreCivic Manipulates Montana Into Renewing Its Contract." ACLU, August 8, 2018. https://www.aclu.org/news/smart-justice/private-prison-giant-corecivic-manipulates-montana-renewing.

Seeking Alpha. 2021. *The GEO Group's (GEO) CEO Jose Gordo on Q2 2021 Results - Earnings Call Transcript*, 2021. https://seekingalpha.com/article/4445091-geo-groups-geo-ceo-jose-gordo-on-q2-2021-r esults-earnings-call-transcript.

Simon, Morgan. 2021. "Toxic Alabama Private Prison Deal Falling Apart With Barclays Exit." *Forbes*, April 21, 2021. https://www.forbes.com/sites/morgansimon/2021/04/21/toxic-alabama-private-prison-deal-falling-apart-with-barclays-exit/.

United States Census Bureau. "QuickFacts: Alabama." July 1, 2022. https://www.census.gov/quickfacts/fact/table/AL/PST045222.

US Department of Justice. 2016. *Review of the Federal Bureau of Prisons' Monitoring of Contract Prisons*. Evaluation and Inspections Division 16-06. https://oig.justice.gov/reports/2016/e1606.pdf.

______ 2020. "Justice Department Files Lawsuit Against the State of Alabama for Unconstitutional Conditions in State's Prisons for Men." Press release, December 9, 2020. https://www.justice.gov/opa/pr/justice-department-files-lawsuit-against-state-alabama-unconstitutional-conditions-states.

Visher, Christy, and John Eason. 2021. *A Better Path Forward for Criminal Justice: Changing Prisons to Help People Change*. Washington, DC: Brookings Institute. https://www.brookings.edu/articles/a-better-path-forward-for-criminal-justice-changing-prisons-to-help-people-change/.

White, Weston, Alves Pena Anita, and Stephan Weiler. 2020. "Going Private: Are Private Prisons Cost-Saving Options for States?" *Growth and Change: A Journal of Urban and Regional Policy* 51, no. 3 (September). https://doi.org/10.1111/grow.12388.

Corporate Welfare in the Sports Industry: Stadium Subsidies and Tax Exemptions in New York State

By Jason Guallpa

Introduction: Corporate Power And Albany

In New York's sports entertainment industry, corporate welfare regarding stadium infrastructure has become the byproduct of corporate power's consolidation and exertion.[1] In 2022, Terry Pegula, owner of the Buffalo Bills, benefited from a record $850 million direct government infrastructure subsidy[2] tied to New Highmark Stadium from New York State (NYS) (Ferré-Sadurní 2022). In New York City, Madison Square Entertainment continues to benefit from a property tax exemption clause on its Madison Square Garden (MSG) property. These corporate giveaways follow a cycle. Massive wealth affords corporate sport entities the luxury to hire prestigious lobbying firms, shape public messaging, and play an influential role in local campaigns in order to consolidate their corporate power. When sports executives contemplate relocating their team, they assert that government subsidies and tax breaks are essential for the sustained operation of their business. Without these incentives, corporate owners threaten NYS with the potential relocation of their teams—and the consequential loss of economic activity and benefits (Breech 2021).

Corporate lobbying efforts and public messaging abuse this narrative, and in return, corporations are rewarded with government subsidies and tax benefits. The well over a billion dollars in sports entertainment-related tax benefits[3] in 2022 alone comes at a time where 50 percent of working-age New Yorkers are struggling to cover their basic needs and expect to see little benefit from these private sports entertainment giveaways (Kucklick and Manzer 2023). Moreover, the continuation of corporate welfare is detrimental to working class communities' access to government resources, as corporate handouts directly cut into the government revenue needed to fund economic and social welfare programs. NYS can counter the increasing influence of corporate power among sports owners by initiating a phased reduction of tax exemptions and benefits for both existing and prospective sports teams. This effort should be accompanied by the enforcement of project transparency measures and the discontinuation of direct subsidies for all forthcoming stadiums.

1 Corporate welfare is defined by the Oxford English Dictionary as "government support or subsidy of private business . . . through tax incentives." Corporate power is defined as corporate America "controlling essential decisions around resource production and distribution." For the purpose of this policy brief, the definition of corporate welfare and power should be interpreted as defined here.

2 An infrastructure subsidy of $850 million is classified as a government investment as opposed to a tax benefit.

3 The sports entertainment industry (or sports industry) is defined as major domestic sports teams participating in competitive sports in NYS. This includes local teams from the National Football League, Major League Baseball, National Basketball Association, Major League Soccer, and National Hockey League.

A Brief Look Back: Major Teams and Stadiums

In 1983, the New York Jets relocated from Shea Stadium located in Flushing, Queens, to Giants Stadium located in the Meadowlands, New Jersey. For then-owner Leon Hess, a $53 million dollar NYS government-funded renovation proposal was not enough to overcome the increasing NYC rent, lack of seat availability, and the profitable opportunity that was waiting in New Jersey (Eskenazi 1983). For passionate New York sports fans, the idea of a team's relocation threatens the identity and pride of the team's supporters, creating a void for many. For New York State, this creates an incentive to keep multimillion-dollar teams in the state. The owners of New York sport teams leverage enthusiastic fan bases to their advantage in order to receive generous corporate subsidies, tax benefits, and tax exemptions.

In the last two decades, the owners of the major sports teams New York Yankees, New York Mets, Brooklyn Nets, and Buffalo Bills have benefited significantly from local and state government public subsidies to finance the construction of their new home stadiums, as noted in table 1. Moreover, direct public subsidies weren't the only form of corporate welfare handed to major sport teams in NYS. MSG currently has no expiration date on its property tax exemption clause granted under former New York governor Ed Koch's tenure, which as of 2023, is responsible for reducing NYS government revenues an estimated $42 million dollars annually (Turnquist 2023a). NYS government subsidies utilized for stadiums over the last two decades have been generous—government resources that could be otherwise be spent on direct welfare programs for working class New Yorkers for immediate relief.

Table 1: Private/Public Cost Summary for Major Stadiums in New York State (2004–2023)

Stadium	Yankees Stadium	Citi Field	Barclays Center	Highmark Stadium
Project Approval	June 2005	April 2006	December 2006	March 2022
Date Opened	April 2009	March 2009	September 2012	Expected 2026
Governor	George E. Pataki	George E. Pataki	George E. Pataki	Kathy Hochul
Mayor	Michael R. Bloomberg	Michael R. Bloomberg	Michael R. Bloomberg	Jo Ann Litwin Clinton
Sports Team	NY Yankees	NY Mets	Brooklyn Nets	Buffalo Bills
Owner	George Steinbrenner	Fred Wilpon	Bruce C. Ratner	Terry and Kim Pegula
State and Local Direct Funding	$337.67	$152	$260.30	$850
Total Public Cost	$1,186.43	$614.40	$526.90	$850
Total Private Cost	$1,122.50	$216.20	$473.10	$800
Total Project Cost	$2,308.93	$830.60	$1,000	$1,650

Notes: All values in millions. Total public cost includes forgone public revenue and funding from all public sources. Total public cost of Highmark Stadium does not include annual maintenance costs, property tax exemptions, and tax exemptions for municipal bond interest. Highmark Stadium total cost is subject to change.
Sources: Bagli 2018; Wawrow 2023; deMause 2009

The Corporate Power Playbook

The course of action corporations take to receive handouts, demonstrating the immense power corporate influence has over public government, follows a pattern. When a lease is set to expire, the sport team's owners express interest for a new stadium at a discounted price from the government. If government aid is insufficient, they threaten to take their business elsewhere as leverage for better terms. This exertion of corporate power—threatening the state government with moving multimillion-dollar businesses, and with it, jobs, economic activity, and cultural unity—has become common practice.

In 2005, New York Yankees owner George M. Steinbrenner was looking to New Jersey as a possible relocation spot, or at the very least, leverage to get what he wanted in New York—a generous tax break package (Sandomir 2008). In 2006, the New York Yankees won city council approval to build a new stadium along with government tax-exempt bonds and direct public financing (Hu 2006). In 2021, Terry Pegula, the co-owner of the Buffalo Bills, threatened to leave Orchard Park if a government-financed deal for a new stadium could not be reached (O'Shei 2022). The following year, the Bills' Highmark Stadium accounted for the largest corporate handout for stadiums to date in New York history at $850 million (table 1). The practice of the NYS government offering corporate handouts to multimillionaire sport team owners hasn't shown any signs of restraint.

Lobbying and Campaign Donations

Corporate power consolidates through aggressive lobbying and donations toward a candidates' campaigns and political PACs, and is a common practice among millionaire sport team owners in New York. Through these tactics, a proposal of a million-dollar real estate investment with active lobbying and donations will receive more political attention than the local community's need for a street light. Sport team owners understand Albany is the final decision maker and leverage the political situation at hand to their advantage.

Corporate executive Bruce Ratner[4] bought the New Jersey Nets in 2004 for $300 million dollars, expressing his desire to move the team to an arena in downtown Brooklyn (Sandomir and Bagli 2004). The catch was that the envisioned arena would require the demolition of homes for 864 people and 237 jobs, in addition to the necessity of a multimillion-dollar government subsidy package (Sandomir and Bagli 2004). In the following years, Ratner was among the biggest spenders in the state on lobbying politicians, donating to state government campaigns and financing housing and community groups in the Atlantic Yards area (Bagli and Berger 2012). Ratner hired Richard J. Lipsky, a well-known lobbyist in Albany, who allowed Ratner to become a notable figure in state government by building relationships with NYS government officials and top power brokers (Bagli and Berger 2012). With the support of NYS governor George Pataki and state assembly speaker Sheldon Silver, the Nets found a new home in Atlantic Yards, Brooklyn, in 2006 (Confessore 2006).

In Queens, New York, Fred Wilpon, the multimillionaire owner of the New York Mets (1980–2020), desired a government-financed stadium renovation and publicized this ambition in 1998 (Sandomir 2005). Working on this project for years, Wilpon donated $25,000 to Gov. Pataki's campaign in 2001, and again in 2005, to ensure his concerns for his desired project were heard (NYSBOE 2023). In April 2006, the city council approved the project (Rhoades 2006), and in November of the same year, Wilpon, alongside Michael Bloomberg and Pataki, broke ground on the new stadium (Chan 2006b).

4 Owner of the Nets basketball team from 2004 to 2010, and co-owner from 2010 to 2015.

In Manhattan, owner of Madison Square Entertainment and the New York Knicks, James Dolan, has enjoyed a 50-year property tax break granted in 1973 by former governor Ed Koch. If Albany legislators reversed the MSG property tax exemption, it would allow for an estimated $42 million in property tax revenue (Turnquist 2023b). A bill put forward by Brian Kavanagh seeking to reverse the tax exemption clause, like the one given to MSG, has been in committee since March 2023 (NY State Senate 2023). For Dolan, fighting legislation aimed at ending multimillion-dollar tax breaks is cheaper than paying the actual taxes the legislation aims to enact. MSG has spent more than $231,000 on state-level lobbying firms, with records showing it lobbied specifically against state Sen. Kavanagh's repeal bill in at least 2019 and 2021 (Garber 2023). In the 2022 NYS election, the governor's seat, 63 state senate seats, and all 150 state assembly seats were up for grabs. That same year, James Dolan donated $69,700 to Gov. Kathy Hochul's 2022 democratic primary reelection campaign and over $230,000 to "business-friendly" assembly race candidates (Coltin 2022). MSG continues to hold their tax-exemption status till this day.

Ratner's utilization of his multimillion-dollar wealth to push for the approval of the Barclays Center project is just one example of corporate power abuse to control essential decisions around resource distribution (direct government subsidies and public land approval), and in this case, against local community consensus in Brooklyn (Newman 2020). For Dolan, lobbying has protected MSG's property tax exemption status, in addition to protecting the MSG's stadium and theater from NYC Penn Station redesigns. Dolan's dismissive attitude toward multiple proposed Penn Station redesigns has further impeded the public from gaining access to reliable, modern, and safe transportation hubs in the center of Manhattan (Kimmelman 2023). This again is an example of corporate power influencing essential decisions around resource distribution (in this case, property tax exemption and land development) at the cost of an improved public transportation system in Penn Station and access to additional tax revenue from property taxes.

Broken Promises and Economic Fallacies

The lucrative appeal of jobs, wages, and economic growth associated with a new stadium will always be seen as beneficial. It is the selling point of any proposed stadium project—a necessary advertisement to persuade the local community and stakeholders for approval. However, oftentimes the projections and promises fall well short of their potential, negatively impacting the local community that was promised a multitude of benefits. There are no penalties for broken promises by millionaire owners—only negative consequences for the community whose approval was based on false promises.

The Brooklyn Nets had promised an estimated 105 full-time jobs and 18,000 to 19,000 seasonal part-time jobs at the Barclays Center prior to its opening day (Yakowicz 2012). The team fell well short of its goal. In the words of former Assembly Member Hakeem Jeffries, "the project was presented as a field of dreams but has turned into a cemetery of broken promises" (Haddon 2012). The Barclays Center received pushback from community members and politicians for not bringing their job numbers to fruition, notably among communities of color who were most impacted by the project. Community members who were adamant about the project based on the original promises quickly pushed back when the promises were broken, but the damage was already done.

In 2006, the city of New York negotiated a government-financed Yankees stadium in return for a community benefits agreement (CBA)[5] from Yankees owner George Steinbrenner, which included charitable donations to the local community. The New Yankee Stadium Community Benefits Fund was intended to distribute

5 "A community benefits agreement (CBA) is a legally enforceable contract between a coalition of community-based organizations and the developer of a proposed project. In exchange for the coalition's public support of the project in the approval process, the developer agrees to contribute benefits to the local community if the project moves forward." (Source: PolicyLink)

almost $40 million in cash grants and sports equipment along with other incentives to community organizations in the Bronx over four decades (Hauser 2017). A *New York Times* report found the charity operated with little oversight or public accountability. The charity chose to neglect local organizations within the stadium's vicinity and opted to fund wealthier parts of the Bronx not affected by the stadium's construction (Hauser 2017). According to the *Times*, of the $6.8 million distributed by the charity fund between 2008 and 2015, only 30 percent went to charities occupying the same ZIP code as Yankee Stadium or four bordering ZIP codes (Hauser 2017). The Highbridge/Concourse neighborhood, where Yankee Stadium is located, has one of the highest poverty rates in New York City (NYU Furman Center 2021), and is seeing an inequitable amount of community benefits from the project compared to their wealthier counterparts.

Yankee Stadium, which had 25 acres of treasured public parkland seized for the project and failed to fulfill its promised goals of aiding the local neighborhood, infuriated the community (Chan 2006a). Local community members originally agreed to the project believing the CBA would address some of the neighborhood's economic shortfalls, but on the contrary, the charity outsourced a majority of funding to organizations outside the impacted areas.

The Hochul administration projects the construction of the Buffalo Bills' New Highmark Stadium will result in 10,000 union labor construction jobs (Office of Governor Hochul 2023). The talking point of construction jobs, paraded by supporters, masks the lower figures of permanent employment created by the stadium. Stadium employment tends to be low paying, seasonal and part-time, employment that is often exempted from common full-time benefits such as paid time off, sick leave, social security, vacation time, health insurance, and retirement plans. This places additional strain on workers to find work elsewhere after the season ends, or during the season should hours and pay be insufficient. According to ZipRecruiter, the average hourly wage at Yankee Stadium and Mets Stadium is $18 and $16 an hour respectively (Ziprecruiter 2023), a wage short of the necessary $25 hourly living wage needed to survive in New York City (MIT 2023). Similarly, the Barclays Center offered pay just above the minimum wage (Yakowicz 2012) during its opening year in 2012. In addition to poor pay and benefits, stadium workers receive disproportionate access to the stadium's profitability—if any at all. Rather, stadium profitability inequitably benefits coaches, players, and sports owners, who are overwhelmingly compensated well above the New York state average salary (Zimbalist and Noll 1997). With stagnant job opportunities and wage growth for locals, sports stadiums overwhelmingly fail to bring a stable labor market to justify the cost of government direct subsidies.

The claim that a government-financed multimillion-dollar stadium that would create a positive fiscal return is inconclusive; rather, empirical research indicates the opposite—negative return—is true. A 2006 survey sent to 210 economists found 85 percent of respondents agreed that local and state governments in the United States should eliminate subsidies afforded to professional sports franchises (Whaples 2006). In a 2017 poll by the Clark Center for Global Market, 83 percent of the economists surveyed agreed that "[p]roviding state and local subsidies to build stadiums for professional sports teams is likely to cost the relevant taxpayers more than any local economic benefits that are generated" (Wolla 2017).

In Chicago, sports economist Michael Leeds conducted a study examining the economic impact of the home stadiums belonging to the Cubs, White Sox, Bears, Blackhawks, and Bulls. His findings concluded that the income generated by those teams had an impact on the city's economy of less than 1 percent and had little to no ripple economic effect (Scheer 2021).

In New York, a 2009 IBO analysis study examining the cost of subsidizing the Barclays Center concluded the city would lose nearly $40 million over the next 30 years (IBO 2009). Victor Matheson, a sports financial analyst, argued the Buffalo Bills deal as “one of the worst stadium deals in recent memory” (Dart 2022). Matheson said the deal keeps taxpayers on the hook for $850 million in construction costs, in addition to operating costs for the new stadium estimated to cost the state $10 million annually (Dart 2022). The findings of deficits and negative fiscal returns are consistent with research on stadium economic impact across the United States. A comprehensive survey of more than 130 studies about the impact of sports franchises on local economies stated nearly all empirical studies have found little to no tangible impacts of sports teams and facilities on local economic activity, and venue subsidies typically far exceed any observed economic benefits (Bradbury et al. 2022).

Recommendations

To rightsize the power that corporate sports teams have, NYS should discontinue property tax exemptions for certain real property that is used for home games for professional sports teams in New York City. Additionally, NYS should alter the trend of direct funding of future stadium projects, as empirical research has shown the fiscal return to be minimal, negative, and expensive. In doing so, opportunities to reinvest in communities, establish greater government willpower, and undertake greater economic projects is possible.

Reject corporate power: NYS government rejecting corporate subsidies would signal to major sports executives that fearmongering rhetoric, lobbying, and campaign donations aren’t sufficient mechanisms to influence the decision-making process regarding public resource distribution. This shift in rejecting corporate subsidies is a government tool to curb corporate power and was partly realized in the new stadium agreement between the New York City Football Club and Adam’s administration in November 2022, with the key principle of the deal being a 100 percent privately funded stadium (Rubinstein and Belson 2022). The public is also receptive to this approach; a 2022 poll found 60 percent of New Yorkers disapprove of direct government subsidies for the Bills’ Stadium (Siena College 2022).

Create better economic opportunities: The New York City economy has proven it can survive without renewing stadium infrastructure, as evidenced by the relocation of the NY Giants and NY Jets to the Meadowlands over 40 years ago. The failed development of a West Side football stadium in 2012 (Curbed 2015) was replaced by the Hudson Yards Development Project, which was projected to create $500 million dollars in annual revenue and 55,000 jobs, in addition to building 20,000 apartments, including 5,000 affordable units (AppleSeed 2016). The Hudson Yard Project is indicative of an economy able to exist without the public financing of stadiums; rather, alternatives exist that provide a greater return on investment for the New York City economy and people.

Invest in the working class: Tax revenue utilized for corporate welfare is detrimental to working class communities’ access to available public resources. Reversing course on corporate welfare would allow additional tax revenue into state coffers, enabling the government to fund social welfare programs and alternate public infrastructure projects that directly benefit working class communities. The Urban Institute found funding government policy programs, such as transitional jobs programs, senior and disability tax credits, and increased government SNAP benefits, are effective measures at curbing poverty in New York City (Giannarelli et al. 2015). Additionally, public infrastructure projects such as the Interborough Express, estimated to benefit 260,000 workers and 900,000 residents, are always in need of public funding (MTA 2023).

Standardize Community Benefits Agreements (CBAs): Community groups often suffer from major issues regarding funding, expertise, and manpower, preventing them from effectively overseeing CBAs. In some cases, community groups are financed by developers themselves (deMause 2022a), or aren't in a majority consensus with CBAs (deMause 2022b).[6] New York State can begin to standardize CBAs to resolve most issues. This includes language focused on the guarantee of local hiring, living wages, and appropriate clauses. It further includes language on penalties for failing to meet the CBA's timeline or objectives. Given the complexities and variance of each CBA, there may be several versions of a standardized CBA designed for specific environments. The standardization of CBAs would provide community groups easy access to CBA resources, in addition to appropriate safeguards and measures to ensure corporate accountability to their contractual obligations.

By taxing forgone corporate revenue, establishing CBA transparency, and promoting greater government intervention in economic policy that increases the well-being of people, these recommendations run counter to the policies and ideology of neoliberalism.

Conclusion

Economic opportunities exist for working-class communities outside of corporate sports projects. The trend of corporate welfare in the sports entertainment industry has continued in NYS, but by addressing the issue and decreasing corporate welfare tax packages, Albany could begin the process of redirecting funding from corporate interests to social programs, ultimately benefiting the working class. The reinvestment of government resources directly toward working-class communities can bring in systemic economic mobility, equity, and sustainability.

6 CBAs require neither the full nor majority consensus of all community organizations. One organization's approval can typically suffice.

About the Author

Jason Guallpa is a senior enrolled at the Zicklin School of Business at Baruch College currently pursuing a major in computer information systems accompanied by a minor in economics. At Baruch, Jason is a treasury member at the Ecuadorian Club, an organization dedicated to sharing Ecuadorian culture across collegiate institutions. Outside of academia, Jason is a rugby player for the Gotham Knight Rugby Club, a club dedicated to creating an inclusive environment for the LGBTQ community and other underrepresented groups. Jason also currently holds the position of a data fellow at Bluebonnet Data. In this role, he provides technical support for nonprofit organizations dedicated to enhancing working-class communities. As an advocate for community and progressive change, Jason aspires to make a meaningful impact by contributing to policy changes at either the nonprofit or government level.

Acknowledgments

I would like to thank everyone at the Roosevelt Network for their support throughout the program. A great thanks to Alyssa Beuachamp, who always found the perfect words of encouragement and advice throughout the process, and Robert-Thomas Jones and Katie Kirchner for their support throughout the program's tenure. I would also like to extend my gratitude to Emily DiVito from the Roosevelt Institute's corporate power program for her incredible insight and feedback. Finally, I would like to thank Iván Cazarín for their expertise on tax policy and guidance throughout the research and policy writing process.

References

New York State's Corporate Welfare in the Sports Industry: Stadium Subsidies and Tax Exemptions

Appleseed. 2016. *An Investment That's Paying Off: The Economic and Fiscal Impact of the Development of Hudson Yards*. New York: Appleseed. https://www.appleseedinc.com/hudson-yards.

Bradbury, John Charles, Dennis Coates, and Brad R. Humphreys. 2022. "The Impact of Professional Sports Franchises and Venues on Local Economies: A Comprehensive Survey." *Journal of Economic Surveys*, Forthcoming. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4022547.

Bagli, Charles V. 2018. "So Many Seats, So Many Tax Breaks." *New York Times*, July 11, 2018. https://www.nytimes.com/2018/07/11/nyregion/stadiums-arenas-funding-nyc.html.

Bagli, Charles V., and Joseph Berger. 2012. "Nets Helped Clear Path for Builder in Brooklyn." *New York Times*, September 26, 2012. https://www.nytimes.com/2012/09/27/nyregion/for-developer-bruce-ratner-nets-purchase-aided-atlantic-yards-project.html.

Breech, John. 2021. "Bills Future in Buffalo Uncertain after 2022: Team Won't Renew Lease in City without New Stadium Deal in Place." CBS, September 3, 2021. https://www.cbssports.com/nfl/news/bills-future-in-buffalo-uncertain-after-2022-team-wont-renew-lease-in-city-without-new-stadium-deal-in-place/.

Chan, Sewell. 2006a. "Yankees Break Ground on Stadium." *New York Times*, August 17, 2006. https://www.nytimes.com/2006/08/17/nyregion/17stadium.html.

________ 2006b. "Mets Break Ground on New Stadium." *New York Times*, November 13, 2006. https://www.nytimes.com/2006/11/13/sports/baseball/13cnd-shea.html.

Coltin, Jeff. 2022. "Knicks Owner James Dolan's Super PAC Is Spending in Assembly Primaries." *City & State* NY, June 28, 2022. https://www.cityandstateny.com/politics/2022/06/knicks-owner-james-dolans-super-pac-spending-assembly-primaries/368715/.

Confessore, Nicholas. 2006. "State Board Approves Atlantic Yards Project." *New York Times*, December 20, 2006. https://www.nytimes.com/2006/12/20/nyregion/20cnd-brooklyn.html.

Curbed. 2015. "How the New York Jets Very Nearly Got a West Side Stadium." *Curbed* NY, January 30, 2015. https://ny.curbed.com/2015/1/30/9997132/how-the-new-york-jets-very-nearly-got-a-west-side-stadium.

Dart, Tom. 2022. "The Bills Are Getting a $1.4bn Stadium, but Taxpayers Will Pick Up the Tab." *The Guardian*, October 5, 2022. https://www.theguardian.com/sport/2022/oct/05/buffalo-bills-new-stadium.

deMause, Neil. 2009. "Private/Public Cost Breakdown for New Yankees/Mets Stadiums." Field of Schemes, January 2009. https://www.fieldofschemes.com/documents/Yanks-Mets-costs.pdf.

———. 2022a. "What Ever Happened to CBAs? The Rise and Fall of 'Community Benefits Agreements' in NYC." *City Limits*, January 18, 2022. https://citylimits.org/2022/01/18/the-rise-and-fall-of-community-benefits-agreements-in-nyc/.

———. 2022b. "When Developers Promise Community Benefits, Who Holds Them Accountable?" *City Limits*, June 17, 2022. https://citylimits.org/2022/06/17/when-developers-promise-community-benefits-who-holds-them-accountable/.

Eskenazi, Gerald. 1983. "Why Jets Are Leaving Shea Stadium." *New York Times*, October 26, 1983. https://www.nytimes.com/1983/10/26/sports/why-jets-are-leaving-shea-stadium.html.

Ferré-Sadurní, Luis. 2022. "Buffalo Bills Strike Deal for Taxpayer-Funded $1.4 Billion Stadium." *New York Times*, March 28, 2022. https://www.nytimes.com/2022/03/28/nyregion/buffalo-bills-stadium-deal.html.

Garber, Nick. 2023. "The Aggressive Lobbying That Keeps New York's Zombie Tax Breaks in Place." *Crain's New York*, March 23, 2023. https://www.crainsnewyork.com/politics/aggressive-lobbying-keeps-new-yorks-tax-breaks-intact.

Giannarelli, Linda, Laura Wheaton, and Joyce Morton. 2015. *How Much Could Policy Changes Reduce Poverty in New York City?* Washington, DC: Urban Institute. https://www.urban.org/sites/default/files/publication/43706/2000136-How-Much-Could-Policy-Changes-Reduce-Poverty-in-New-York-City.pdf.

Haddon, Heather. 2012. "Brooklyn Arena Criticized on Hiring." *Wall Street Journal*, January 23, 2012. https://www.wsj.com/articles/SB10001424052970203718504577177390852461060.

Hauser, Micah. 2017. "Yankees Charity Neglects Stadium's Neighbors." *New York Times*, June 27, 2017. https://www.nytimes.com/2017/06/27/sports/baseball/yankee-stadium-charity.html.

Hu, Winnie. 2006. "Yankees Win as Council Approves Stadium." *New York Times*, April 6, 2006. https://www.nytimes.com/2006/04/06/nyregion/yankees-win-as-council-approves-stadium.html.

Office of Governor Kathy Hochul. 2023. "Governor Hochul, Buffalo Bills, and Erie County Announce Start of Construction on New, State-of-the-Art Buffalo Bills Football Stadium." Press release, Governor Kathy Hochul, June 5, 2023. https://www.governor.ny.gov/news/governor-hochul-buffalo-bills-and-erie-county-announce-start-construction-new-state-art.

Kimmelman, Michael. 2023. "Penn Station Is a Perpetual Mess. Change May Be at Hand." *New York Times*, July 7, 2023. https://www.nytimes.com/2023/07/07/arts/design/penn-station-renovation-proposals.html.

Kucklick, Annie, and Lisa Manzer. 2023. *Overlooked and Undercounted: Struggling to Make Ends Meet in New York City* 2023. Report prepared for the Fund for the City of New York and United Way of New York City. Seattle: Center for Women's Welfare, University of Washington School of Social Work. https://unitedwaynyc.org/true-cost-of-living/.

Massachusetts Institute for Technology (MIT). "Living Wage Calculation for New York County, New York." MIT Living Wage Calculator. Accessed August 22, 2023. https://livingwage.mit.edu/counties/36061.

Metropolitan Transit Authority (MTA) “Interborough Express (IBX) Frequently Asked Questions” Accessed November 13, 2023. https://new.mta.info/document/87606.

New York State Board of Elections. N.d. “Public Reporting System: Contributions.” https://publicreporting.elections.ny.gov/Contributions/Contributions.

New York University Furman Center. “Highbridge/Concourse Neighborhood Profile.” Neighborhood Profiles. Accessed November 13, 2023. https://furmancenter.org/neighborhoods/view/highbridge-concourse.

New York State Senate. 2023. “2023-S1632A.” NYSenate.gov, January 2023. https://www.nysenate.gov/legislation/bills/2023/S1632/amendment/A.

Newman, Andy. 2020 “How a Once-Loathed Brooklyn Arena Became a Protest Epicenter.” *New York Times*, June 16, 2020. https://www.nytimes.com/2020/06/16/nyregion/barclays-center-protests.html.

O’Shei, Tim. 2022. “Behind Bills Stadium Talks, Threat to Leave Was Real and Everyone Knew It.” *Buffalo News*, May 1, 2022. https://buffalonews.com/news/local/analysis-behind-bills-stadium-talks-threat-to-leave-was-real-and-everyone-knew-it/article_4d719b24-c8bb-11ec-a48c-87d3a664823a.html.

Rhoades, Liz. 2006. “City Council, Mets Clinch Stadium Deal.” *Queens Chronicle*, April 27, 2006. https://www.qchron.com/editions/western/city-council-mets-clinch-stadium-deal/article_f172a250-60d4-5c42-ace4-cca24fd80507.html.

Rubinstein, Dana, and Ken Belson. 2022. “New York City Reaches Deal to Build Soccer Stadium in Queens.” *New York Times*, November 15, 2022. https://www.nytimes.com/2022/11/15/nyregion/soccer-stadium-nycfc-willets.html.

Sandomir, Richard. 2005. The Mets Finally Get Their New Stadium, but They Have to Pay for It.” *New York Times*, June 13, 2005. https://www.nytimes.com/2005/06/13/sports/baseball/the-mets-finally-get-their-new-stadium-but-they-have-to-pay.html.

________ 2008. “Yankees Say They Would Have Left Bronx If Pushed.” *New York Times*, October 25, 2008. https://www.nytimes.com/2008/10/25/sports/baseball/25yankees.html.

Sandomir, Richard, and Charles V. Bagli. 2004. “Brooklyn Developer Reaches Deal to Buy New Jersey Nets.” *New York Times*, January 21, 2004. https://www.nytimes.com/2004/01/21/sports/basketball/brooklyn-developer-reaches-deal-to-buy-new-jersey-nets.html.

Scheer, Mark. 2021. “Little Economic Benefit from New Stadium.” *Investigative Post*, December 13, 2021. https://www.investigativepost.org/2021/12/13/little-economic-benefit-from-new-stadium/.

Siena College. 2022 “Voters Overwhelmingly Approve of Suspending NYS Gas Tax Through 2022; Nearly as Strongly Disapprove of the State’s $600M for a New Bills Stadium; Modest Approval for Bond Act, To-Go Drinks, NYC Casinos.” Press release, Siena Research Institute, April 25, 2022. https://scri.siena.edu/wp-content/uploads/2022/04/SNY-April-2022-Poll-Release-4-25-22-FINAL.pdf.

Turnquist, Alaina. 2023a. “Public Investment and Subsidies for New York City Major League Sports Facilities.” City of New York Independent Budget Office, March 29, 2023. https://www.ibo.nyc.ny.us/iboreports/stadium-subsidies-letter-memo-march-2023.pdf.

_______ 2023b. *An Examination of the Madison Square Garden Property Tax Exemption*. New York: Independent Budget Office. https://www.ibo.nyc.ny.us/iboreports/an-examination-of-the-madison-square-garden-property-tax-exemption-july-2023.pdf.

Wawrow, John. 2023. “New Buffalo Bills Stadium Cost Overruns Approaching $300m, AP Sources Say.” *Associated Press*, August 9, 2023. https://apnews.com/article/bills-new-stadium-cost-overruns-9846e00bd063cf2e8b12406af66c6ef9.

Whaples, Robert. 2006. “Do Economists Agree on Anything? Yes!” *The Economists’ Voice* 3, no. 9 (November): 1–6. https://people.uwec.edu/jamelsem/fte/fte/efl/teacher_stuff/articles/economists_agree.pdf.

Wolla, Scott A. 2017. “The Economics of Subsidizing Sports Stadiums.” *The Big Picture*, July 18, 2017. https://ritholtz.com/2017/07/economics-subsidizing-sports-stadiums/.

Yakowicz, Will. 2012. “Barclays Center to Only Offer Approximately 105 Full-Time Jobs.” *Park Slope, NY Patch*, May 2, 2012. https://patch.com/new-york/parkslope/barclays-center-to-offer-approximately-only-105-full-time-jobs.

Zimbalist, Andrew, and Roger G. Noll. 1997. “Sports, Jobs, & Taxes: Are New Stadiums Worth the Cost?” Brookings, June 1, 1997. https://www.brookings.edu/articles/sports-jobs-taxes-are-new-stadiums-worth-the-cost/.

Ziprecruiter. “Yankee Stadium Salary in New York: Hourly Rate (Nov, 2023).” Ziprecruiter, November 2023. https://www.ziprecruiter.com/Salaries/Yankee-Stadium-Salary--in-New-York.

Climate Change and Economic Transformation

Beyond the Freeze: A Progressive Vision to Improve the Texas Power Grid and Invest in the New Economy

By Rogelio Meixueiro

Introduction

When natural disaster strikes, political posturing and infighting often make it difficult to fully understand the extent of what happened and who is responsible for the response or lack thereof. This is especially true for complex infrastructure and regulatory failures like the Texas freeze of 2021. In February 2021, Winter Storm Uri exposed the severe outcomes of neoliberal policies that for decades have favored market-driven privatization of the Texas power grid over its resilience and reliability for consumers and communities across the state. Covering approximately 90 percent of the state's electrical load, many were surprised when the grid failed to meet the needs of millions of freezing Texans during a snowstorm that paralyzed the state (Krauss et al. 2021). The Texas power grid's inadequate infrastructure left more than 4.5 million households (roughly 10 million Texans) without electricity at its peak, some for several days (Busby et al. 2021), and it exposed the vulnerabilities and shortcomings in the state's energy systems. Texans dealt with widespread food and water shortages, burst pipes, and the dire consequences of seeking warmth—including house fires, carbon monoxide poisoning, and hypothermia (Jeanty 2022). The state Department of Health and Human Services released a final report placing the number of dead at 246 (Svitek 2022). AccuWeather estimated economic losses from lost output and damage to be $130 billion in Texas alone, and $155 billion for the country as a whole (Busby et al. 2021).

The impact of this devastating event was indelible and felt by families and taxpayers, reflecting a tragedy that inflicted significant and long-lasting harm on our communities. The Texas grid failure highlights the need for a comprehensive progressive vision that tackles inadequate infrastructure, lack of regulatory oversight, and the state government's failure to address the growing threat of extreme weather events. To improve the Texas electric grid's resilience and reliability, it is imperative for local and state legislators to invest in climate infrastructure with a focus on weatherization, transportation, and storage, as well as to enact meaningful regulatory oversight over the state energy sectors and departments that will usher in the transition toward the new economy.

But as the saying goes, "everything is bigger in Texas," including our complicated relationship with climate policy. Before exploring recommendations to invest in infrastructure and increase regulatory energy oversight, it is important to understand the background circumstances, including the historic decisions that lead to the separation of the Texas power grid from the national North American grids. Such changes continue to play a key role in the deregulated Texas power grid that focuses on the wholesale of electricity, which enabled the price gouging many consumers experienced during the freeze. A transition to a new economy will require political will fueled by broad public support. In this proposal I argue that the energy transition must be democratized, decentralized, and decarbonized in order to center the well-being of Texans and to enable the required shift away from nonrenewables and toward a power grid that champions resilience and reliability for all consumers and communities.

A History of Deregulation

The unique structure and the deregulation of the Texas energy grid sets it apart from the rest of the United States, but getting to where we are today took decades of neoliberal decisions that have had a lasting impact on the state's energy landscape. Key among these decisions was the separation of the Texas power grid from the national North American grids. This move, rooted in a desire for energy independence, set the stage for a unique market-driven approach to electricity (Cohn 2022). Over the years, Texas embraced a neoliberal stance, favoring market-driven privatization. The focus on a wholesale electricity market, coupled with limited regulatory oversight, created an environment susceptible to profit-driven decisions rather than a steadfast commitment to resilience and reliability. Understanding this history is crucial to unraveling the complex dynamics that contributed to the devastating consequences of the Texas winter freeze in 2021.

Texas's state energy grid separates from the two national grids, Eastern and Western interconnections. The differentiation of the Texas electrical grid from those in other states is primarily rooted in historical and regulatory factors. In 1935, President Franklin D. Roosevelt signed the Federal Power Act, establishing the Federal Power Commission to oversee interstate electricity sales. Texas utilities however, managed to evade federal regulations by remaining within state boundaries (Galbraith 2011), a maneuver that allowed them to remain outside the purview of the Federal Power Commission that the rest of the union stayed in.

This distinction and separation is crucial because, in many other states, electricity systems are interconnected and subject to federal regulations. The interconnectedness of power grids across states fosters a unified and collaborative approach to energy management. In contrast, Texas opted for an independent stance, creating its own self-contained grid. This autonomous grid, commonly known as the Electric Reliability Council of Texas (ERCOT), which is managed by a board of directors appointed by the Texas governor, operates solely within the state's boundaries, preventing it from being subject to federal regulation. While the grid autonomy provided Texas with a unique level of control over its energy policies, it also meant that during crises, such as the Texas winter freeze of 2021, the state had to rely solely on its internal resources and it was incapable of receiving support from neighboring national grids (Krauss et al. 2021; Magie 2021).

The late 20th century witnessed transformative shifts in the Texas energy landscape, as demonstrated by the introduction of deregulation and market-oriented reforms. The enactment of Senate Bill 7 in 1999 signaled a significant break from established regulatory frameworks and set the stage for the Texas energy market's reform (Fermin 2021). This legislation represented a calculated step toward a more decentralized and market-driven approach that introduced competition and intensified concerns for energy resilience and reliability.

The culmination of historical and structural choices, outlined in the implementation of market-oriented reforms overseen by the Public Utility Commission of Texas (PUC) in 1999, set the stage for the transformative shift in Texas's energy dynamics. This shift, offering consumers the opportunity to choose their electricity providers, not only aimed to enhance the state's competitiveness and promote energy independence but also resulted in the removal of Federal Energy Regulatory Commission (FERC) oversight over Texas's electricity output. These developments paved the way for the chaos witnessed during and after Winter Storm Uri, exposing the vulnerabilities ingrained in decades-long neoliberal policies.

The Aftermath of the Freeze

In February 2021, Winter Storm Uri laid bare the fragility of the Texas power grid, revealing the severe consequences of market-oriented reforms. Covering approximately 90 percent of the state's electrical load, many were surprised when the grid failed to meet the needs of millions of freezing Texans during a snowstorm that paralyzed the state (Krauss et al. 2021). The Texas power grid's inadequate infrastructure left millions without power, exposed vulnerabilities, and highlighted the shortcomings in the state's energy systems. At its peak, Winter Storm Uri's fury left widespread food and water shortages, burst pipes, and dire consequences for those seeking warmth as they faced house fires, carbon monoxide poisoning, and hypothermia (Jeanty 2022). With 246 lives lost reported by the state's health department and economic losses surpassing $130 billion in Texas alone, the tragic toll underscored the imperative for a progressive approach to address the systemic flaws exposed by the crisis.

The failure of the ERCOT energy grid was primarily a policy one. Prior to the 2021 disaster, Texas faced similar threats to its energy infrastructure. In February 2011, the Groundhog Day blizzard caused blackouts in upwards of 75 percent of the state (Jeanty 2022). In 2019, an assessment by the North American Electric Reliability Corporation (NERC) reported that ERCOT's grid had one of the United States' lowest reserve margins of any operator in the state, which is alarming considering the large volume of energy Texas utilizes (Jeanty 2022). The Texas legislature chose to ignore the warnings made by NERC, and two years later it was the people of Texas who paid the price of lawmakers' negligence.

In the midst of the crisis, peak generation reached 68.8 gigawatts (GW) on February 14 and demand was forecasted to rise to 76.8 GW the next morning (Stein 2021), a significant increase from its regular levels. As demand rose and supply fell, ERCOT declared an Energy Emergency Alert (EEA) which shut down the system and allowed ERCOT to implement "controlled outages'" with the intention to stabilize the energy system (Douglas 2021b). What was initially expected to be rolling blackouts became, for many Texans, multi-day power outages. The repercussions of neoliberal policies that favored market-driven privatization of the power grid over its resilience and reliability were felt severely: heightened environmental damage, decreased public safety, record-breaking electrical bills, and ultimately the loss of many lives (Buttorff 2021).

As suggested by economist Richard Wolff, had those enduring the brunt of the extreme weather conditions been in charge of the energy industry, they would have recognized the imperative to prepare for extreme weather events (Hazeyen 2021). While politicians like Gov. Greg Abbott (R-TX) and Sen. Ted Cruz (R-TX) faced deserved criticism for their response and even departure during the crisis, the media's focus on the Senator's trip to Cancun obscured the deep-rooted, systemic issues within the US energy sector. The ERCOT unregulated open-market grid failed, and it presents an undeniable risk for the future of our country (Stafford 2021).

Infrastructure and Regulatory Oversight

The Texas power grid failure was not solely a result of extreme weather; it exposed critical vulnerabilities in the state's energy systems, exacerbated by inadequate infrastructure and a lack of regulatory oversight. Long-term emphasis on market-driven privatization neglected investments in weatherization, leaving the grid ill-prepared for extreme weather events. The failure of regulatory bodies to enforce stringent standards further amplified the impact. To fortify the resilience and reliability of the Texas electric grid, there is a pressing need for substantial investments in climate infrastructure, particularly in weatherization, transportation, and storage. Equally important is the establishment of robust regulatory oversight mechanisms to ensure accountability and readiness for future challenges.

Texas has a diverse portfolio of power generators, the largest segment of which is natural gas, making up almost half of the state's capacity. The second-largest segment is wind turbines, making up almost a third of the energy provided. After the 2011 Groundhog Day blizzard, which closely resembled the 2021 Texas freeze, FERC and NERC in a joint study determined that winterizing equipment on all 162 gas-powered plants in Texas could cost up to $95 million, and winterizing the state's 13,000 wind turbines with upgraded blade coatings, cold-weather lubricants, and de-icing drones would mitigate ice formation in most instances at lower cost (Golding et al. 2021). A downside, however, is the lack of adequate battery storage technology for renewable energy, which reinforces Texas's dependency on fossil fuels and nonrenewable energy and highlights a need for investment in renewable energy infrastructure.

A long-term investment in climate infrastructure, including weatherization in conjunction with renewable energy production and storage, is a progressive change that is required to protect and make Texas communities more resilient. That way, instead of hoping extreme weather events like the Groundhog Day blizzard and Winter Storm Uri do not happen again, the state can take proactive measures to safeguard and prepare the state's energy grid.

The absence of strong energy regulations to enforce weatherization, ensure oversight over energy suppliers, and identify the true costs and benefits of interconnection to the North America grids are significant components of the unpreparedness of Texas's energy grid for future extreme weather events. The 1999 Texas Senate Bill 7 established an unregulated energy market to lower prices (Fermin 2021), making ERCOT the energy regulator of the state. ERCOT was a nonprofit corporation with board members representing every sector of the utility market, from generators to utilities to consumers. ERCOT's job is to oversee the entire system; in other words, they manage the operators of each generation facility and tell them when to start and stop running according to the electrical demand. They are also responsible for scheduled outages, and the wholesale market of electricity by setting prices and handling the transactions between electricity sellers and buyers (Busby et al. 2021). However, the winter freeze that followed became one for the history books, with impacts across the entire state, and with a far more important take away: the need to drastically improve ERCOT.

ERCOT failed to recognize that producers had no incentive to update their infrastructure to withstand emergency weather conditions, and insufficient regulatory measures allowed for negligence and shortcomings in the management and maintenance of the power grid, jeopardizing its stability (Blunt and Gold 2021). Natural gas wells and pipelines were particularly vulnerable to cold temperatures. Not only did gas streams contain water vapor that froze by itself, that water vapor combined with hydrocarbons created hydrates that solidified the pipes with temperatures well above the freezing point (Douglas 2021a). In addition, many roads were completely impassable during the storm which made it nearly impossible for energy suppliers to transport resources to keep up with the high consumer demand (Castellanos et al. 2023).

The deliberate choices that Texas politicians made in favor of a market-driven policy meant that energy suppliers could raise their prices as demand increased, especially during peak times, taking advantage of consumers during a crisis (Kornfield and Firozi 2021). Texans experienced skyrocketed wholesale prices due to the incredible demand caused by the storm, as even power plants were competing with residential homes that used gas for heating. The emphasis of elected officials on short-term price reductions overlooked the importance of federal regulatory measures for the system's overall resilience and reliability, which became the primary policy failure.

But the potential for transformative change remains within reach. Through the implementation of a progressive approach to energy regulation, Texas can invest in infrastructure to weatherize and prepare generators for extreme weather events, while transitioning away from our reliance on fossil fuels and toward a renewable energy grid that centers the safety and well-being of all Texas families.

Democratizing, Decentralizing, and Decarbonizing the Texas Energy Grid

The severe impact of the winter storm on the state's natural gas production, resulting in nearly half grinding to a halt due to extremely low temperatures, underscores the vulnerability of Texas's energy infrastructure (York 2021). This vulnerability calls for a comprehensive revaluation that not only addresses technological upgrades but also emphasizes the importance of democratizing the power grid. While it is possible to "winterize" power plants, natural gas production, and wind turbines to prevent such disruptions, many generators have yet to make the necessary investments, even after upgrades following the 2011 winter storm. Experts emphasize the need for upgrading equipment, incentivizing power conservation, and embracing smart appliances to enhance resilience, but ultimately the current paradigm highlights the need for much bolder action that gives consumers the power by democratizing the institution that regulates the state's energy.

In the aftermath of the February winter storm, the need for a more resilient energy infrastructure in Texas has become increasingly apparent. Instead of relying solely on costly standby generators, a transformative approach involves decentralizing energy storage across the state. Establishing energy hubs in major cities, equipped with the capabilities and resources to invest in advanced energy storage technologies, can significantly bolster the grid's resilience. These energy hubs, strategically located in metropolitan areas, would not only enhance local reliability but also serve as crucial nodes in a decentralized network. By connecting these hubs to neighboring power grids within the state and even extending collaboration to Mexico, Texas can achieve a more interconnected and resilient energy system. This decentralized model not only mitigates the financial barriers associated with individual standby generators but also ensures a more efficient and collaborative use of resources.

The hesitance to allocate resources for weather protection and maintenance arises from a landscape dominated by cost-conscious utilities competing for budget-conscious consumers. This lack of financial incentive has rendered critical components, such as wind turbines and power lines, inadequately equipped to withstand extreme weather events. This vulnerability is further magnified by a systemic oversight—the failure to adequately consider the escalating frequency of cold weather events in the state's infrastructure plans. Consequently, a paradigm shift is imperative, one that not only addresses immediate resilience challenges but is intricately connected to the broader imperative of decarbonization. Embracing comprehensive weather-proofing measures and fortifying infrastructure against extreme conditions is not only an immediate necessity but an integral part of transitioning toward a more sustainable, low-carbon energy future for Texas.

The imperative lies in democratizing, decentralizing, and decarbonizing the state's energy grid. The historical focus on wholesale electricity markets and centralized control has proven inadequate in fostering resilience and reliability. A shift toward a new economy demands a commitment to inclusivity with decision-making power distributed among communities. Furthermore, transitioning away from fossil fuels is essential to addressing the environmental impact (Webber 2021). A decentralized energy grid, coupled with democratized decision-making processes, will not only enhance reliability but also empower communities and individuals to actively participate in shaping and decarbonizing their energy future.

Recommendations for Texas

To overcome the challenges laid bare by the Texas winter freeze and historical deregulation, comprehensive recommendations must be implemented. Local and state legislators should prioritize significant investments in climate infrastructure, focusing on weatherization, transportation, and energy storage. Simultaneously, the establishment of robust regulatory oversight is paramount to ensure accountability and proactive measures in the face of extreme weather events. However, true resilience lies in a paradigm shift toward democratizing, decentralizing, and decarbonizing the energy sector. Engaging the public, empowering communities, and transitioning to renewable energy sources will lay the foundation for a more resilient and sustainable Texas power grid.

To fortify Texas's electric grid against future challenges, a multifaceted approach is necessary. Winterizing equipment for gas plants and wind farms, as recommended by FERC and NERC, in combination with an increase in regulatory oversight are crucial for preventing grid failures during extreme weather events. While acknowledging the estimated costs involved in weatherization, a phased approach that starts with critical facilities and progressively expands can be useful in mitigating financial burdens.

While ERCOT manages the grid, the Texas Railroad Commission's role in regulating gas supplies and the Texas state legislature's oversight responsibilities underscore the need for a comprehensive, coordinated effort across agencies and institutions to fortify the grid. The Texas legislature, which played a key role in deregulating the energy sector in the 1970s, 1995, and 1999, holds once again the key to championing policy changes necessary for grid resilience and reliability. The recommendations are as follows:

Investments in Energy Infrastructure

(a) Weatherization

The Texas legislature should mandate energy producers and regulators follow FERC's recommendations of weatherization starting with critical facilities. FERC's 2019 recommendations on weatherization of the power plants were advisory, and the state did not make weatherization mandatory while nearly 1,800 units failed at 356 electricity generation facilities during the 2021 freeze (Busby et al. 2021).

Weatherization of mechanical aspects of the grid must go hand in hand with investments in energy-saving measures for buildings, which play a pivotal role in energy consumption. Texas consumes the most energy of any state in the country but ranks 29th in the country in terms of energy efficiency of its buildings (Fortuna 2021). Installing heat pumps, LED lights, and insulation can reduce energy demand, especially in low-income and communities of color (Matson and Ayyagari 2021). Recognizing that extreme weather events in Texas can take various forms, from freezes to heatwaves, preparations need to encompass a wide range of scenarios. This diversified and inclusive approach can fortify the Texas grid against the unpredictable challenges posed by its unique environmental conditions.

(b) Renewable Energy

Texas's political leaders, including Gov. Greg Abbott (R-TX) and Lt. Gov. Dan Patrick (R-TX), blamed power generators—renewable energy sources, in particular—for the outages. Given the fact that over 50 percent of Texas's energy comes from nonrenewables, it is imperative for the state to prioritize renewables moving forward. The strategy must involve investing in battery storage and backup generators, especially considering the resilience demonstrated by hospitals and schools during Winter Storm Uri. Their ability to operate independently, relying on generators, underscored the importance of decentralized backup power storage.

The Texas legislature surpluses in collaboration with federal funding from infrastructure bills like the Inflation Reduction Act (IRA) should provide local governments funding for renewable energy generators and storage, ensuring government buildings, hospitals and schools act as an emergency line of support for our communities. Likewise, by recognizing the heightened importance of healthcare and education facilities during emergencies like a pandemic, Texas should prioritize them as resilient power suppliers. Strategic investments in energy storage capacity, coupled with efficient and durable storage mechanisms, can ensure a reliable supply of power during critical times of need (Busby et al. 2021).

Improvements in Energy Oversight

(c) Texas Public Utility Commission

In times of trouble, it may be that your neighbor or your neighbor's neighbor can help. With unpredictable extreme weather events and high power prices becoming more common, the Texas Public Utility Commission (PUC) should recognize that interregional transmission allows for a better response to energy demands (Fermin 2021). In Texas, electricity is bought and sold in an energy-only market, which means that power generators are paid for what they produce. Under the PUC vision after the 2021 winter freeze, the providers could purchase credits in advance if they believed they could save money or if they wanted to lock in a set price. But that is optional—making it mandatory for providers to set a price prior to known weather events would prevent them from price gouging consumers.

Given the historic failures of a wholesale market and the recent Houston Court of Appeals ruling in which Texas energy providers are not required to generate energy during a weather emergency (Buchele 2023), the PUC should embrace a capacity market approach, a framework used in places such as Pennsylvania and nearby states, a market that Texas has long resisted. In a capacity market, generators get paid years in advance for promising to supply power during times of high demand with the commitment to pay back money if they fail to do so. It is uncertain if this switch would have prevented the effects of the 2021 Winter Freeze, but researchers now share that it would have secured energy for hundreds of Texans in need.

(d) Electric Reliability Council of Texas

ERCOT avoids some federal regulation by being self-contained in Texas with limited connections to other states. While imported power would not have fully compensated for the loss of production inside Texas during the freeze, it is possible that a few GW of additional capacity would have ameliorated the worst outcomes at the peak of the crisis. To address the unique challenges posed by Texas's historical opposition to FERC regulation, a fundamental shift in perspective is required.

A collaborative approach involving FERC, NERC, and state regulators is essential. Coordinated efforts can bridge the gap between Texas's autonomy and national standards, fostering a more interconnected and resilient grid. Additionally, the PUC, with its role in price control, must align its policies with the imperatives of grid reliability and resilience. Most importantly, however, is ensuring Texans are capable of keeping the ERCOT board of directors accountable. While the 87th Texas legislature's SB2 allows for the governor to appoint a committee of experts that would be tasked with finding the right people to serve the board (Zou 2021), a public component is missing in that policy. Just like school boards or even ports of trade, ERCOT, the energy manager of Texas, should have directors that are elected so that Texans can have a say on who regulates the state's energy. The Texas legislature should modify the structure of ERCOT to allow for democratic participation in the board appointment process.

(e) Comprehensive Energy Transition Study

Although some Texas politicians still worry that increasing interconnections between grids could hurt Texas energy independence, many energy experts have shared—including during a 2022 *Texas Tribune* panel discussion (Hernandez 2022) about changes to the state's power grid—that long-held fears of additional federal oversight have dissuaded Texas from fully connecting to the national power networks. This connection would allow the state to benefit from not just buying, but also selling energy to the rest of the country. According to an analysis for the American Council on Renewable Energy, during events like the Texas freeze, each additional gigawatt of transmission capacity connecting the Texas power grid with neighboring states could have saved nearly $1 billion and prevented blackouts in around 200,000 Texas homes (Goggin 2021).

A potential compromise would be for the state of Texas to commit to NERC's standards on reliability upgrades and some enhanced interconnections in exchange for FERC's promise not to impose a capacity market or other major overhauls in the state's market design (Busby et al. 2021). Furthermore, as the largest producer of energy in the country, selling electricity would allow Texas to pay for additional improvements to the stability of the state's grid. The Texas legislature needs to fund a comprehensive energy transition study for Texans to better understand the benefits and downsides of connecting the Texas grid to the national grids.

Conclusion

The Texas winter freeze of 2021 was a stark reminder of the consequences of decades-long neoliberal policies and a lack of preparedness in the face of extreme weather events. To fortify the Texas power grid for the future, it is essential to learn from history, invest in climate infrastructure, and implement robust regulatory oversight. However, the transformative change required goes beyond mere adjustments; it necessitates a shift toward democratizing, decentralizing, and decarbonizing the energy sector. Only through such a progressive vision can Texas build a resilient and reliable power grid that prioritizes the well-being of its citizens and communities, steering away from the pitfalls of market-driven privatization that led to the disastrous outcomes of the Texas winter freeze.

Reacting to crises is the common protocol in the US; however, what we need is common-sense, data-driven hazard mitigation protocols in place to prevent the devastation Texans have experienced (Jeanty 2022). The Texas power grid's failure during Winter Storm Uri brought to light the severe consequences of prioritizing market-driven privatization over resilience and reliability. The resulting economic losses, environmental damage, and loss of lives underscore the urgency for a comprehensive progressive vision to address the challenges faced by the state's energy infrastructure. The historical context of Texas's decentralized grid and the policy decisions that led to its vulnerabilities emphasize the need for transformative change. The policy recommendations put forward include a dual-focused approach: investing in weatherization and renewable energy infrastructure while strengthening energy oversight.

The multifaceted strategy advocates for mandatory weatherization measures, starting with critical facilities and progressively expanding to fortify the grid against extreme weather events. This approach aligns with the recommendations of FERC and NERC, acknowledging the estimated costs involved and emphasizing a phased implementation to mitigate financial burdens. Simultaneously, recognizing the importance of energy-saving measures for buildings, such as heat pumps and LED lights, plays a pivotal role in reducing energy demand, especially in vulnerable communities.

Improvements in energy oversight are crucial to address the unique challenges posed by Texas's historical opposition to federal regulation. A collaborative effort involving FERC, NERC, and state regulators is essential to bridge the gap between Texas's autonomy and national standards. This includes changes in the price setting of the Texas PUC, democratization of the energy regulator ERCOT, and a comprehensive study to identify the true costs and benefits of interconnection with national energy grids. Aligning the Texas legislature's policies with grid reliability and resilience is imperative, ensuring a balance between state autonomy and national standards. Let us envision a state where reliable, clean, and affordable energy powers our homes, fuels our industries, and uplifts our communities. Together, we can harness the power of progress and build a legacy of energy resilience that reflects the true spirit of the Lone Star State.

About the Author

Rogelio "Rojo" Meixueiro is a student of environmental science and public policy at the University of Texas in Arlington, focusing his academic endeavors on the convergence of environmental stewardship and social justice. As a first-generation Indigenous American student, he takes great pride in his ancestral ties to Oaxaca, Mexico.

Rogelio has successfully integrated his scholarly interests with practical community organizing in recent years. Amidst the COVID-19 pandemic, he played a role in organizing endeavors centered around public health and the rights of essential workers across the Dallas-Fort Worth metroplex. It was during the Texas winter freeze in 2021 that Rogelio organized mutual aid efforts and coordinated initiatives in the metroplex that offered crucial assistance to address language access and environmental justice for individuals in Black and Latino neighborhoods impacted by the severe weather conditions. He now advocates for progressive policy that strengthens the rights of working families across Texas at the state and federal level. His viewpoint as a community organizer and his personal affiliation with social movements fuels his dedication to establishing a more equitable and just future for all people.

Acknowledgments

Padiuxh!

I would like to express immense gratitude to Alyssa Beauchamp, Katie Kirchner, Robert-Thomas Jones and the rest of the Roosevelt Network team for their support throughout the fellowship. I thank my network mentor Emma Horst-Martz for their guidance through the process of developing my policy brief. Thank you to Alí R. Bustamante and Shahrzad Shams for sharing their time, insight, and expertise to provide feedback on my drafts. I would also like to thank the environmental department of the City of Dallas for taking the time to speak with me about their work on the Community Climate Action Plan, and the countless community organizers for their crucial advocacy in favor of improvements to the Texas electrical grid. I would like to share my appreciation for the Roosevelt Institute in providing this invaluable research opportunity and for their efforts to invest in the next generation of progressive policy leaders like myself. Lastly, but certainly not least, I want to thank the workers of my community in Oak Cliff and Dallas for always showing up and inspiring me to pursue my dream of one day writing policy for our families. Gracias de todo corazón.

References

Beyond the Freeze: A Progressive Vision to Improve the Texas Power Grid and Invest in the New Economy

Blunt, Katherine, and Russell Gold. 2021. "The Texas Freeze: Why the Power Grid Failed." *Wall Street Journal*, February 19, 2021, sec. US. https://www.wsj.com/articles/texas-freeze-power-grid-failure-electricity-market-incentives-11613777856.

Buchele, Mose. 2023. "Texas Power Plants Have No Responsibility to Provide Electricity in Emergencies, Judges Rule." *Texas Public Radio*, December 16, 2023. https://www.tpr.org/environment/2023-12-16/texas-power-plants-have-no-responsibility-to-provide-electricity-in-emergencies-judges-rule.

Busby, Joshua, Kyri Baker, Morgan D. Bazilian, Alex Q. Gilbert, Emily Grubert, Varun Rai, Joshua D. Rhodes, Sarang Shidore, Caitlin A. Smith, Michael E. Webber. 2021. "Cascading Risks: Understanding the 2021 Winter Blackout in Texas." *Energy Research & Social Science* 77 (July): 102106. https://doi.org/10.1016/j.erss.2021.102106.

Buttorff, Gail, Ramanan Krishnamoorti, Pablo M. Pinto, Sunny M. C. Wong. 2021. *Reliability and the Texas Power Grid in the Aftermath of Winter Storm Uri*. Houston, TX: University of Houston. https://uh.edu/uh-energy/research/forbes-blog/failure-of-texas-power-grid/content/tegs-report-6-24-2021.pdf.

Castellanos, Sergio, Jerry Potts, Helena Tiedmann, Sarah Alverson, Yael R. Glazer, Andrew Robison, Suzanne Russo, et al. 2023. "A Synthesis and Review of Exacerbated Inequities from the February 2021 Winter Storm (Uri) in Texas and the Risks Moving Forward." *Progress in Energy* 5 (1): 012003. https://doi.org/10.1088/2516-1083/aca9b4.

Cohn, Julie A. 2022. "Connecting Past and Future: A History of Texas' Isolated Power Grid." Center for Energy Studies, Baker Institute for Public Policy at Rice University, December 1, 2022. https://www.bakerinstitute.org/research/connecting-past-and-future-history-texas-isolated-power-grid.

Douglas, Erin. 2021a. "Texas Largely Relies on Natural Gas for Power. It Wasn't Ready for the Extreme Cold," *Texas Tribune*, February 16, 2021. https://www.texastribune.org/2021/02/16/natural-gas-power-storm/.

_______ 2021b. "Texas Was 'Seconds and Minutes' Away from Catastrophic Monthslong Blackouts, Officials Say." *Texas Tribune*, February 18, 2021. https://www.texastribune.org/2021/02/18/texas-power-outages-ercot/.

Fermin, Tiffany. 2021. "Texas Power Grid: Economics and Climate Change." Roosevelt House Public Policy Institute at Hunter College, March 4, 2021. http://www.roosevelthouse.hunter.cuny.edu/?forum-post=texas-power-grid-economics-climate-change.

Fortuna, Carolyn. 2021. "Houston Chronicle Says Texas Failed To Build In Energy Efficiency To Plan For Climate Extremes," *CleanTechnica*, February 28, 2021. https://cleantechnica.com/2021/02/28/houston-chronicle-says-texas-failed-to-build-in-energy-efficiency-to-plan-for-climate-extremes.

Galbraith, Kate. 2011. "Texplainer: Why Does Texas Have Its Own Power Grid?" *Texas Tribune*, February 8, 2011. https://www.texastribune.org/2011/02/08/texplainer-why-does-texas-have-its-own-power-grid/.

Goggin, Michael. 2021. "Transmission Makes the Power System Resilient to Extreme Weather," Grid Strategies LLC, prepared for ACORE, July 2021. https://acore.org/wp-content/uploads/2021/07/GS_Resilient-Transmission_proof.pdf.

Golding, Garrett, Anil Kumar, and Karel Mertens. 2021. "Cost of Texas' 2021 Deep Freeze Justifies Weatherization." Federal Reserve Bank of Dallas, April 15, 2021. https://www.dallasfed.org/research/economics/2021/0415.

Hazeyen, Ruya. 2021. "The Texas Crisis: Neoliberalism's Tipping Point." *Massachusetts Daily Collegian*, March 2, 2021. https://dailycollegian.com/2021/03/the-texas-crisis-neoliberalisms-tipping-point/.

Hernandez, Emily. 2022. "Watch: Lawmakers, Community Members and Experts Discuss the Impact of the February 2021 Storm." *Texas Tribune*, February 10, 2022. https://www.texastribune.org/2022/02/09/texas-winter-storm-one-year-later/.

Jeanty, Julia. 2022. "Texas' Grid Resiliency in a Changing Climate." *Data for Progress*, February 18, 2022. https://www.dataforprogress.org/memos/2022/2/18/texas-grid-resiliency-in-a-changing-climate.

Kornfield, Meryl, and Paulina Firozi. 2021. "Some Texans Received Electric Bills up to $17,000 after the Storm. How Does That Happen?" *Washington Post*, February 21, 2021. https://www.washingtonpost.com/nation/2021/02/21/texas-high-electric-bills/.

Krauss, Clifford, Manny Fernandez, Ivan Penn, and Rick Rojas. 2021. "How Texas' Drive for Energy Independence Set It up for Disaster." *New York Times*, February 21, 2021, sec. US. https://www.nytimes.com/2021/02/21/us/texas-electricity-ercot-blackouts.html.

Magie, Andrew. 2021. "Texas' Grid Worked Exactly as It Was Designed, and That's the Problem." Aesir Energy Advisors, May 7, 2021. https://www.aesirenergyadvisors.com/analyses/2021-5-7/2021-texas-power-crisis-texas-grid-reacted-exactly-as-it-was-designed-and-thats-the-problem.

Matson, John, and Sneha Ayyagari. 2021. "Efficient, Resilient Buildings Can Help Texas Weather the Next Crisis." RMI, March 25, 2021. https://rmi.org/efficient-resilient-buildings-can-help-texas-weather-the-next-crisis/.

Stafford, Paul. 2021. "Millions of Texans Are Freezing Right Now—Our Deregulated Electrical Grid Is to Blame." *Jacobin*, February 2021. https://jacobin.com/2021/02/texas-power-electricity-grid-weather-winter-storm.

Stein, Sam. 2021. "Biden's Slow Start," *Politico*, February 23, 2021. https://www.politico.com/newsletters/politico-nightly/2021/02/23/bidens-slow-start-491861.

Svitek, Patrick. 2022. "Texas Puts Final Estimate of Winter Storm Death Toll at 246." *Texas Tribune*, January 2, 2022. https://www.texastribune.org/2022/01/02/texas-winter-storm-final-death-toll-246/.

Webber, Michael. 2021. "Texas' Power Grid Should Diversify." *Waco Tribune*, March 5, 2021. https://wacotrib.com/opinion/columnists/michael-webber-texas-power-grid-should-diversify/article_43ac5a04-7de2-11eb-b21a-3727f1f61c06.html.

York, Stephen. 2021. “Texas Natural Gas Production Fell by Almost Half during Recent Cold Snap.” *Today in Energy* (blog). US Energy Information Administration. February 25, 2021. https://www.eia.gov/todayinenergy/detail.php?id=46896.

Zou, Isabella. 2021. “Texas Power Generation Companies Will Have to Better Prepare for Extreme Weather under Bills Gov. Greg Abbott Signed into Law.” *Texas Tribune*, June 8, 2021. https://www.texastribune.org/2021/06/08/greg-abbott-texas-power-grid-ercot/.

Roosevelt Network

rooseveltinstitute.org