

# CORPORATE SOCIOPATHY, “GREEDFLATION,” AND THE FADING POWER OF ANTITRUST: HOW CAN THE LEGAL PROFESSION STEP UP?

*Benjamin R. Syroka\**

## INTRODUCTION

In 1906, Eugene Debs took the stage at a union hall in Pottsville, Pennsylvania. He told the buzzing crowd: “The simple truth is, that competition in industrial life belongs to the past, and is practically outgrown. The time is approaching when it will be no longer possible.”<sup>1</sup> Fast forward a century, and one has to ask, “Have we proven Debs right?”

American companies have consolidated power across industries at alarming rates over the course of the last several decades. Much of this consolidation flew under the radar of the general public—most folks are too busy working and paying bills to exert mental energy on America’s corporate mechanisms. Not anymore. After what seems like endless months of corporate misfortune, people took notice.

For instance, over the 2023 Christmas Holiday, Southwest Airlines canceled 16,700 flights—leaving thousands of passengers stranded for multiple days.<sup>2</sup> Although bad weather may have been a precipitating factor, the crisis was “a problem of [Southwest’s] own making,” the company decided “to spend \$5.6 billion on stock buybacks in the three years leading up to the pandemic rather than making investments in infrastructure to be better prepared for extreme weather events....”<sup>3</sup> “Senator Elizabeth Warren blamed the ‘disaster’ on the ‘consolidation in the airline industry...’ that left customers with ‘fewer choices & higher prices.’”<sup>4</sup>

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\* This Article is dedicated to my Mom, Wendy Syroka, who served 32 selfless years as a “cog in the corporate machine,” and taught me to always be wary of promises from the C-suite and never buy groceries without a coupon. A huge thank you to the University of Toledo Law Review for their hard work on this piece and the opportunity to publish it in a periodical that I hold in such high regard. And to Bre Hitchen—a masterful editor, and even better sounding board.

1. EUGENE V. DEBS, DEBS: HIS LIFE, WRITINGS AND SPEECHES 147 (The Appeal to Reason 1908).

2. Kaitlyn Radde, *Southwest Faces Investigation over Holiday Travel Disaster as It Posts a \$220M Loss*, NPR (Jan. 26, 2023, 11:32 AM), <https://www.npr.org/2023/01/26/1151667801/southwest-airlines-investigation-losses-holiday-travel-cancellations>.

3. Jake Johnson, *Southwest Airlines Spent \$5.6 Billion on Shareholder Gifts in Years Ahead of Mass Cancellation Crisis*, COMMON DREAMS (Dec. 28, 2022), <https://www.commondreams.org/news/southwest-airlines-shareholder-gifts>.

4. James Bickerton, *How Southwest Airlines Went from World’s Best to ‘Disaster,’* NEWSWEEK (Dec. 29, 2022, 12:27 PM), <https://www.newsweek.com/how-southwest-airlines-went-worlds-best-disaster-1770221>.

Or look at the recent Norfolk Southern disaster in East Palestine, Ohio—the largest industry train derailment since 1978.<sup>5</sup> This accident—which occurred a few hours from that Pennsylvania hall where Debs warned residents of the risks of corporate monopoly at the turn of the 20th century—sent a “mushroom cloud of carcinogenic vinyl chloride” into the sky above the town.<sup>6</sup> Norfolk Southern spent years lobbying against Congressional safety regulations.<sup>7</sup> “[T]he company helped kill a federal safety rule aimed at upgrading the rail industry’s Civil War-era braking systems....”<sup>8</sup> Its lobbying efforts were so successful that the company ensured that the train carrying these toxic chemicals would not be classified as “high-hazard,” which would have subjected it to slower speed regulations.<sup>9</sup>

How did we get here? The answer is simple: profit margins. Corporations in this country are sociopathic—they show no regard for right and wrong or for the well-being of general consumers.<sup>10</sup> In reality, they aren’t allowed to do so. Corporations have a singular duty to increase shareholder value.<sup>11</sup>

In the decade leading up to the COVID-19 pandemic, “major airline companies—including American, Delta, United, and Southwest—[] used a whopping 96% of their cash flows on stock buybacks.”<sup>12</sup> A stock buy-back is “a process by which companies buy back their own stock to reduce the number of shares floating in the market, increas[ing] each individual shareholder’s earnings per share.”<sup>13</sup> Fewer shares of the “metaphorical pie” outstanding means more pie for those who own slices.<sup>14</sup> The railroad industry did the same thing. Instead of investing in improved safety features like electronic braking systems the rail industry, “including Norfolk Southern, spent \$191 billion on stock buybacks and shareholder dividends between 2011 and 2021, far more than the \$138 billion those firms spent on capital investments in the same time period.”<sup>15</sup>

These corporate mishaps have galvanized much of the public in opposition to corporate malfeasance. But they are not the primary focus of this article; they

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5. Daniel Boguslaw & Lee Fang, *Norfolk Southern Argued Against “Emotional Evocations of ‘Deadly Chemicals’” After 2005 Derailment: After East Palestine, as in 2005, Harmful Chemical Releases Are Unlikely to Affect the Rail Company’s Stock Price or Bottom Line*, THE INTERCEPT (Feb. 23, 2023, 4:23 PM), <https://theintercept.com/2023/02/23/east-palestine-norfolk-southern/>.

6. *Id.*

7. David Shepardson, *Norfolk Southern Faces Harsh US Senate Criticism After Ohio Derailment*, REUTERS (Mar. 9, 2023, 10:59 PM), <https://www.reuters.com/world/us/congress-must-strengthen-safety-regulations-after-derailment-senator-2023-03-09/>.

8. David Sirota et al., *Rail Companies Blocked Safety Rules Before Ohio Derailment*, THE LEVER (Feb. 8, 2023), <https://www.levernews.com/rail-companies-blocked-safety-rules-before-ohio-derailment/>.

9. *Id.*

10. *Antisocial Personality Disorder*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/antisocial-personality-disorder/symptoms-causes/syc-20353928#:> (last visited Sept. 10, 2023).

11. *See* *Dodge v. Ford Motor Co.*, 170 N.W. 668, 682 (Mich. 1919).

12. Aryan Ranjan, *When Is Enough Enough?: How COVID-19 Exposed the Airline Industry’s Obsession with Stock Buybacks*, COLUM. POL. REV. (Aug. 31, 2021), [cpreview.org/blog/2021/8/when-is-enough-enough-how-covid-19-exposed-the-airline-industrys-obsession-with-stock-buybacks](https://www.cpreview.org/blog/2021/8/when-is-enough-enough-how-covid-19-exposed-the-airline-industrys-obsession-with-stock-buybacks).

13. *Id.*

14. *Id.*

15. Sirota et al., *supra* note 8.

merely represent a tipping point. While some professors and attorneys are talking about the effects of lobbying and deregulation,<sup>16</sup> most consumers have even more pressing concerns—their wallets. We’ve seen a historic rise in prices that has left consumers nationwide feeling the squeeze.<sup>17</sup> This wave of corporate greed and monopolistic behavior has significantly impacted consumers across multiple industries. Prices for essential consumer goods like meat, eggs, and fuel have skyrocketed.<sup>18</sup> While the media pushes a narrative of “inflation,” corporations continue to rake in record profits quarter after quarter.<sup>19</sup> Making matters worse, the false inflation narrative allowed the Federal Reserve to justify raising interest rates, worsening market conditions for labor and workers.<sup>20</sup>

The legal community has not escaped criticism, as many understand that lawyers, and not just corporate executives, share some responsibility for the current state of affairs. Critics argue that the legal community has failed to uphold its duty to the public by not pushing for the enforcement of antitrust laws such as the Sherman Act.<sup>21</sup> This lack of enforcement has contributed to the rise of corporate consolidation within industries, disasters resulting from insufficient capital improvement, and “greedflation”—a term for corporations using cost increases for raw materials and labor as an “excuse” to raise prices and expand profit margins to new heights....<sup>22</sup> Meanwhile, the legal community has been accused of celebrating tactics that allow corporations to avoid responsibility, as evidenced by American Lawyer’s “litigator of the year” distinction given to the lawyer

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16. See generally Robert H. Lande & Sandeep Vaheesan, *Ban All Big Mergers. Period.: A Simple Law Would Stop the U.S. Government from Rubber-Stamping Corporate Consolidation*, THE ATL. (Feb. 25, 2021), <https://www.theatlantic.com/ideas/archive/2021/02/ban-all-big-mergers/618131/> (discussing the effects of large mergers and why regulation through legislation is needed).

17. Lucia Mutikani, *Households Squeezed as U.S. Consumer Prices Accelerate; More Pain Coming*, REUTERS (Mar. 10, 2022, 7:41 PM), <https://www.reuters.com/business/us-consumer-prices-accelerate-february-weekly-jobless-claims-rise-2022-03-10/>.

18. Timothy Smith, *Inflation Skyrockets Amid Soaring Energy and Food Prices*, INVESTOPEDIA (Nov. 11, 2021), <https://www.investopedia.com/inflation-skyrockets-amid-soaring-energy-food-prices-5209225>; Greg Iacurci, *School Lunch, Eggs and Airfare: Why Inflation Soared for 10 Items in 2022*, CNBC (Jan. 13, 2023, 5:52 PM), <https://www.cnbc.com/2023/01/13/why-inflation-hit-these-10-items-hardest-in-2022.html>.

19. Robert Reich, *Corporate Greed, Not Wages, Is Behind Inflation. It's Time for Price Controls*, THE GUARDIAN (Sept. 25, 2022, 6:20 AM), <https://www.theguardian.com/commentisfree/2022/sep/25/inflation-price-controls-robert-reich>; Manuel Bojorquez, *Inflation or “Corporate Greed”? Meat Prices Increased by Double Digits During Pandemic*, CBS NEWS (Mar. 9, 2022, 8:47 PM), <https://www.cbsnews.com/news/meat-prices-pandemic-inflation-corporate-greed/>.

20. Luca Goldmansour, *Media Prescribe More ‘Pain’ for Workers as Inflation’s Only Cure*, FAIR (Dec. 19, 2022) <https://fair.org/home/media-prescribe-more-pain-for-workers-as-inflations-only-cure/>.

21. Lande & Vaheesan, *supra* note 16.

22. Will Daniel, *‘We May Be Looking at the End of Capitalism’: One of the World’s Oldest and Largest Investment Banks Warns ‘Greedflation’ Has Gone Too Far*, FORTUNE (Apr. 5, 2023, 4:53 PM), <https://fortune.com/2023/04/05/end-of-capitalism-inflation-greedflation-societe-generale-corporate-profits/>.

responsible for the Johnson & Johnson corporate shell scheme devised to avoid payouts to class-action plaintiffs diagnosed with cancer.<sup>23</sup>

The legal community plays a vital role in promoting a fair and competitive market in the United States. The enforcement of antitrust and anticompetition laws is essential to protect consumers and foster faith in the American legal system. However, to effectively advocate for consumers, the legal community must raise awareness, support enforcement of antitrust law, and provide resources and pathways for careers in public-interest law. In many ways, the legal community has failed to play the essential role in advancing consumer rights and holding corporations accountable.

This article will outline the background of the major antitrust laws, and the cases that shaped the way America treats large corporations. It will also describe the recent trend of nonenforcement—specific instances where the Sherman Act has not been enforced—leading to the elevated price of consumer goods (due to consolidation) and the corresponding increase in corporate profits. Next, it will explore the need for competent attorneys to pursue enforcement—both in national impact litigation, and smaller state-level enforcement actions. Finally, it will propose some simple steps the legal community, primarily through legal education, can take to help protect the public from market manipulation, and mitigate the effects of the monopolistic vice grips currently squeezing the working-class consumers.

## I. THE SHERMAN ACT: REIGNING IN UNFETTERED CAPITALISM

The late 19th and early 20th centuries saw the rise of monopolies and trusts in the United States.<sup>24</sup> This period, known as the Gilded Age, was marked by the rise of powerful industrialists, sometimes referred to as the “robber barons,” who amassed vast fortunes by establishing monopolies and trusts in key industries.<sup>25</sup> Their companies, such as Standard Oil, the American Tobacco Company, and the Sugar Trust, wielded immense power and influence.<sup>26</sup>

This period was also characterized by a widening wealth gap and rampant corporate greed.<sup>27</sup> The sheer size of these companies empowered them to control their respective markets, stifle competition, and harm consumers through predatory pricing and other anticompetitive practices. And the robber barons’

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23. Brian Mann, *Rich Companies Are Using a Quiet Tactic to Block Lawsuits: Bankruptcy*, NPR (Apr. 2, 2022, 7:00 AM), <https://www.npr.org/2022/04/02/1082871843/rich-companies-are-using-a-quiet-tactic-to-block-lawsuits-bankruptcy>; Ross Todd, *Against All Odds: Litigator of the Year Allison Brown of Skadden, Arps, Slate, Meagher & Flom*, THE AM. LAW. (Dec. 2022/Jan. 2023), <https://www.skadden.com/-/media/files/news/2022/11/litigator-of-the-year.pdf>.

24. RUDOLPH J.R. PERITZ, *COMPETITION POLICY IN AMERICA 1888-1992: HISTORY, RHETORIC, LAW 15-20* (Oxford Univ. Press 1st ed. 1996).

25. RICHARD WHITE, *THE REPUBLIC FOR WHICH IT STANDS: THE UNITED STATES DURING RECONSTRUCTION AND THE GILDED AGE, 1865-1896* 7 (David M. Kennedy ed., Oxford Univ. Press 1st ed. 2017).

26. RON CHERNOW, *TITAN: THE LIFE OF JOHN D. ROCKEFELLER, SR.* 293-94 (Random House 1998).

27. *Id.*

influence extended beyond the realm of business, as they exerted considerable control over the political system, often dictating policies that favored their interests at the expense of workers and consumers.<sup>28</sup> All of this led to worse labor conditions and higher prices for consumers.<sup>29</sup>

In 1890, public outrage over the unchecked power of these monopolies eventually led to the enactment of the Sherman Antitrust Act.<sup>30</sup> The goal of the Sherman Act was to curb anti-competitive practices;<sup>31</sup> Congress hoped to preserve competition and protect consumers from monopolistic and anticompetitive practices.<sup>32</sup> Now, at least in theory, it was illegal for businesses to conspire to limit competition or monopolize any part of the market.<sup>33</sup> Despite passage of antitrust laws, enforcement was weak. As discussed below, it was not until the early 20th century, under President Theodore Roosevelt, that the government began to take a more aggressive stance against monopolies.<sup>34</sup>

The Sherman Act has two main sections: Section 1 prohibits contracts, combinations, or conspiracies in restraint of trade or commerce; and Section 2 makes it illegal to monopolize or attempt to monopolize any part of trade or commerce.<sup>35</sup> The Federal Trade Commission (FTC) is charged with enforcing the Act.<sup>36</sup> Established in 1914 by the Federal Trade Commission Act, the FTC's primary mission is to protect consumers and promote competition by preventing anticompetitive business practices, including monopolies and cartels.<sup>37</sup>

The Sherman Act functions as one of the few exceptions to the American principle that the legal system will not interfere with corporate decision making.<sup>38</sup> The Act grants the government the authority to take legal action against entities

28. MATTHEW JOSEPHSON, *THE ROBBER BARONS: THE GREAT AMERICAN CAPITALISTS 1861-1901*, 355 (Harcourt, Brace and Co. 1934).

29. *See generally* JACOB RIIS, *HOW THE OTHER HALF LIVES: STUDIES AMONG THE TENEMENTS OF NEW YORK* (Scribner & Sons 1890) (examining the squalid living conditions of working-class New York laborers in the late 19th century).

30. PERITZ, *supra* note 24, at 9.

31. *United States v. Trans-Missouri Freight Ass'n*, 166 U.S. 290, 312 (1897).

32. Herbert Hovenkamp, *The Sherman Act and the Classical Theory of Competition*, 74 *IOWA L. REV.* 1019, 1020 (1989).

33. 15 U.S.C. §§ 1-7.

34. RICHARD HOFSTADTER, *THE AGE OF REFORM: FROM BRYAN TO F.D.R.* 245-46 (Knopf 1955).

35. 15 U.S.C. §§ 1-2.

36. *A Brief Overview of the Federal Trade Commission's Investigative, Law Enforcement, and Rulemaking Authority*, FED. TRADE COMM'N (May 2021), <https://www.ftc.gov/about-ftc/mission/enforcement-authority>.

37. *About the FTC*, FED. TRADE COMM'N, <https://www.ftc.gov/about-ftc> (last visited July 16, 2023).

38. *See Dodge v. Ford Motor Co.*, 170 N.W. 668, 682 ("Courts of equity will not interfere in the management of the directors unless it is clearly made to appear that they are guilty of fraud or misappropriation of the corporate funds, or refuse to declare a dividend when the corporation has a surplus of net profits which it can, without detriment to its business, divide among its stockholders, and when a refusal to do so would amount to such an abuse of discretion as would constitute a fraud, or breach of that good faith which they are bound to exercise towards the stockholders." (quoting *Hunter v. Roberts, Trop & Co.*, 47 N.W. 131, 134 (Mich. 1890))).

engaging in anticompetitive behavior.<sup>39</sup> Over the years, several major court cases have shaped the interpretation and enforcement of the Act.

#### A. *Reigning in Monopolies*

Beginning in the early 20th century, several key enforcement actions reigned in corporate monopolies. The first involved Standard Oil Company, which controlled approximately 90% of the U.S. oil market.<sup>40</sup> In 1911, the Supreme Court held that Standard Oil's monopoly constituted an "unreasonable" restraint of trade under Section 1.<sup>41</sup> The Court ordered the breakup of Standard Oil into thirty-four smaller companies.<sup>42</sup> The rationale behind this precedent-setting decision was that monopolies and trusts stifle competition, leading to higher prices and reduced innovation.<sup>43</sup>

Similarly, *United States v. American Tobacco*<sup>44</sup> was a "virtual replay" of the *Standard Oil* case—the American Tobacco Company controlled approximately 90% of the U.S. tobacco market.<sup>45</sup> The Supreme Court held that the company's practices constituted an unreasonable restraint of trade under Section 1,<sup>46</sup> and remanded with specific instructions to break the company up into smaller entities.<sup>47</sup> The rationale was nearly identical to *Standard Oil*.

Antitrust enforcement was a federal priority at that time. Three years later, Congress took another step towards breaking up the monopolies. Congress passed the Clayton Antitrust Act in 1914, which banned "price discrimination and anti-competitive mergers," and "declared strikes, boycotts, and labor unions legal under federal law."<sup>48</sup>

But what about Section 2 of the Sherman Act? In 1966, the Court set forth the standard in *United States v. Grinnell*.<sup>49</sup> "The offense of monopoly under § 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident."<sup>50</sup> Decades later, in *United States v. AT&T*

39. *A Brief Overview*, *supra* note 36.

40. *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1, 33 (1911).

41. *Id.* at 80.

42. *May 15, 1911 | Supreme Court Orders Standard Oil Company to Be Broken Up*, N.Y. TIMES (May 15, 1911), <https://archive.nytimes.com/learning.blogs.nytimes.com/2012/05/15/may-15-1911-supreme-court-orders-standard-oil-to-be-broken-up/>.

43. CHERNOW, *supra* note 26, at 268-69.

44. *See United States v. Am. Tobacco*, 221 U.S. 106 (1911).

45. *See* D.T. Armentano, *Antitrust History: The American Tobacco Case of 1911*, FOUND. FOR FREE ECON. EDUC. (Mar. 1, 1971), <https://fee.org/articles/antitrust-history-the-american-tobacco-case-of-1911/>.

46. *Am. Tobacco*, 221 U.S. at 184.

47. *Id.* at 188.

48. *Historical Highlights: The Clayton Antitrust Act*, U.S. H.R., <https://history.house.gov/HistoricalHighlight/Detail/15032424979> (last visited Sept. 10, 2023).

49. *See United States v. Grinnell Corp.*, 384 U.S. 563, 572-73 (1966).

50. *Id.* at 570-71.

(1982),<sup>51</sup> the federal government, still keen on breaking up monopolies, sued AT&T, alleging that the company's monopoly over telecommunications services violated the Sherman Act.<sup>52</sup> The court held that AT&T's monopoly was unlawful, leading to the breakup of the company into seven regional "Baby Bell" companies.<sup>53</sup>

### B. Modern Jurisprudence Shift

If Congress passed laws and the federal government enforced those laws for all those years, why have things gotten worse? In recent decades, antitrust laws have not been adequately enforced against large companies.<sup>54</sup> The first issue is judicial narrowing of antitrust law.

For instance, in 1984, the Supreme Court addressed the legality of "tying arrangement," which the Fifth Circuit had found to be an illegal restraint of trade under the Sherman Act.<sup>55</sup> In *Jefferson Parish*, a hospital contracted with a firm of anesthesiologists requiring all anesthesia work at the hospital to be done by a single firm.<sup>56</sup> The Court held such an arrangement was lawful because plaintiff failed to establish that the hospital had a "dominant" market position.<sup>57</sup>

More recently, in *Ohio v. American Express*, the Court focused on the credit-card company's "anti-steering" provisions, which restricted merchants from encouraging customers to use other credit cards with lower fees.<sup>58</sup> The Court held that the plaintiffs failed to prove these provisions were anticompetitive, as they did not demonstrate harm to the entire credit card market.<sup>59</sup>

American antitrust case law has failed to keep up with emerging technologies. Just look at the growing power and influence of large technology companies like Google.<sup>60</sup> In 2020, the Department of Justice and eleven State Attorneys General finally brought an enforcement action against Google, alleging antitrust violations under the Sherman Act.<sup>61</sup> The case, ongoing at the time this article was written, focuses on Google's alleged monopolistic practices in the search and advertising markets and could have significant implications for

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51. See *United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 222-25 (D.D.C. 1983).

52. *Id.* at 139.

53. Jose Pagliery, *How AT&T Got Busted Up and Pieced Back Together*, CNN BUSINESS (May 20, 2014, 9:30 AM), <https://money.cnn.com/2014/05/20/technology/att-merger-history/index.html>.

54. Lina M. Khan, *The Separation of Platforms and Commerce*, 119 COLUM. L. REV. 973, 976 (2019).

55. *Jefferson Par. Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 2 (1984).

56. *Id.* at 4.

57. *Id.* at 27.

58. *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2280 (2018).

59. It is worth noting that the Court then avoided *American Express* entirely the following year when deciding *Apple Inc. v. Pepper*, 139 S. Ct. 1514 (2019). In that case, the Supreme Court allowed iPhone users to sue Apple for alleged antitrust violations related to the company's App Store.

60. TIM WU, *THE CURSE OF BIGNESS: ANTITRUST IN THE NEW GILDED AGE* 119-26 (New York: Columbia Global Reports, 2018).

61. Complaint, at 2, *United States v. Google LLC*, No. 1:20-cv-03010 (D.D.C. Oct. 20, 2020), available at <https://www.justice.gov/opa/press-release/file/1328941/download>.

platform-based technology businesses.<sup>62</sup> But we're way behind. For instance, European antitrust authorities already acted on this years ago—fining Google over \$7.5 billion between 2017 and 2019 for anticompetitive practices.<sup>63</sup>

### C. *Looking the Other Way*

Despite some recent litigation efforts, corporate consolidation and anticompetitive practices continue to persist in the American economy. As prices for essential consumer goods rose dramatically in recent years, the media pushed a narrative of “inflation” without adequately addressing the root causes of these price increases. In many cases, large corporations have deftly manipulated market conditions to their advantage, leading to higher profits for themselves and increased financial burdens on consumers.

As outlined above, while there have been notable cases of antitrust enforcement, such as the breakup of AT&T in the 1980s,<sup>64</sup> or the Microsoft antitrust case in the late 1990s,<sup>65</sup> enforcement has been inconsistent and insufficient. This has allowed corporations to continue engaging in anti-competitive practices with little fear of repercussion, further exacerbating the problem of monopolies and corporate greed.

So what changed? Two words: antitrust enforcement. Since the 1970s, America turned course on antitrust enforcement. “The government is supposed to use antitrust law to ensure competition and stop companies from becoming so big that they push everyone else out. Basically, antitrust is supposed to prevent anticompetitive monopolies.”<sup>66</sup> But over the past several decades, “regulators, enforcers, and the courts have taken a laxer attitude toward antitrust, which has resulted in more mergers, and companies growing to the point that it’s too hard for rivals to stay in the game.”<sup>67</sup> Specially, in the latter half of the 20th century, the FTC adopted a more lenient approach towards corporate mergers, allowing many of them to proceed without intervention.<sup>68</sup> This trend can be attributed to several factors, including the rise of the Chicago School of antitrust analysis, which emphasized the efficiency benefits of mergers and downplayed potential

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62. *See generally id.*

63. Ashley Gold & Sara Fischer, *Justice Department Sues Google for “Corrupting” Ad Market*, AXIOS (Jan. 24, 2023), <https://www.axios.com/2023/01/24/justice-department-google-antitrust-law-suit>.

64. Pagliery, *supra* note 53.

65. GARY REBACK, *FREE THE MARKET!: WHY ONLY GOVERNMENT CAN KEEP THE MARKETPLACE COMPETITIVE* 160-235 (2009).

66. Emily Stewart, *America’s Monopoly Problem, Explained by Your Internet Bill: We Should Be Asking the Government and Corporate America How We Got Here. Instead, We Just Keep Handing Over Our Money*, VOX (Feb. 18, 2020, 7:00 AM), <https://www.vox.com/the-goods/2020/2/18/21126347/antitrust-monopolies-internet-telecommunications-cheerleading>.

67. *Id.*

68. *Id.* *See also* Richard A. Posner, *The Chicago School of Antitrust Analysis*, 127 UNIV. PA. L. REV. 925, 933 (1979) (outlining the rise of the Chicago School, which believed “only explicit price fixing and very large horizontal mergers (mergers to monopoly) were worthy of serious concern”).



anticompetitive harms.<sup>69</sup> As a result, the FTC, as well as other antitrust enforcement agencies like the Department of Justice, grew cautious of challenging mergers, which lead to increased consolidation in various industries.<sup>70</sup>

It is important to note that in recent years, however, the FTC has taken a more aggressive stance towards healthcare mergers, recognizing the potential for anticompetitive effects in this critical sector of the economy.<sup>71</sup> The agency has successfully challenged a handful of high-profile healthcare mergers, including the proposed merger between Advocate Health Care and NorthShore University Health System, in 2016,<sup>72</sup> the proposed merger between RWJBarnabas Health and Saint Peter's Healthcare System, in 2022,<sup>73</sup> and the proposed merger between Hackensack Meridian Health, Inc. and Englewood Healthcare Foundation, in 2022.<sup>74</sup> These actions reflect the government's prioritization of the growing public concern over healthcare prices, care quality, and access to care for consumers.

But despite increased scrutiny of healthcare mergers, the FTC has been less aggressive in challenging mergers in other industries affecting consumers, such as the meat industry. For instance, the FTC stood aside and watched the merger between JBS USA and Pilgrim's Pride, in 2009,<sup>75</sup> allowing further consolidation in an industry that has been consolidating at a rapid pace for decades.<sup>76</sup> Critics have noted that such mergers in the meat industry have contributed to increased market power, reduced competition, and higher prices for consumers.<sup>77</sup>

Similarly, the FTC has faced criticism for not doing enough to prevent consolidation in other industries like technology, telecommunications, and agriculture.<sup>78</sup> For instance, look at your internet bill. "In 2017, the average monthly cost of broadband in America was \$66.17; in France, it was \$38.10, in Germany, \$35.71, and in South Korea, \$29.90." Once again, "a lot of it comes down to competition—or, rather, lack thereof."<sup>79</sup>

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69. Posner, *supra* note 68, at 925-33; ROBERT BORK, *THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF* 116-62 (1<sup>st</sup> ed. 1978).

70. Stewart, *supra* note 66.

71. Thomas L. Greaney, *The Affordable Care Act and Competition Policy: Antidote or Placebo?*, 89 OR. L. REV. 811, 824 (2011).

72. *FTC v. Advoc. Health Care Network*, 841 F.3d 460 (7th Cir. 2016).

73. *FTC Sues to Block Merger Between New Jersey Healthcare Rivals RWJBarnabas Health and Saint Peter's Healthcare System: Agency Alleges that Deal Would Increase Prices and Reduce Quality of Care for Patients by Eliminating Head-to-Head Competition*, FED. TRADE COMM'N (June 2, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-sues-block-merger-between-new-jersey-healthcare-rivals-rwjbarnabas-health-saint-peters>.

74. *Hackensack Meridian Health, Inc. and Englewood Healthcare Foundation, In the Matter of*, FED. TRADE COMM'N (July 6, 2022), <https://www.ftc.gov/legal-library/browse/cases-proceedings/2010044-hackensack-meridian-health-inc-englewood-healthcare-foundation-matter>.

75. Stacey Roberts, *Pilgrim's, JBS Get U.S. Nod: Majority Stake Cleared for Firm*, ARK. DEMOCRAT GAZETTE (Oct. 15, 2019, 3:55 AM), <https://www.arkansasonline.com/news/2009/oct/15/pilgrims-jbs-get-us-nod-20091015/>.

76. James M. MacDonald et al., *Consolidation in U.S. Meatpacking*, U.S. DEP'T AGRIC. (Feb. 2000), [https://www.ers.usda.gov/webdocs/publications/41108/18011\\_aer785\\_1\\_.pdf](https://www.ers.usda.gov/webdocs/publications/41108/18011_aer785_1_.pdf).

77. *Id.* at iii.

78. Stewart, *supra* note 66.

79. *Id.*

In sum, the FTC's reluctance to challenge mergers has contributed to the rise of dominant firms with significant market power, which—as outlined above—harm consumers through higher prices, reduced innovation, and limited choice.<sup>80</sup> This reluctance to block mergers has raised concerns about the effectiveness of antitrust enforcement in addressing the growing concentration of market power.

Greater scrutiny of mergers, particularly in industries critical to consumer protection, is needed to ensure a competitive landscape that benefits consumers. The next section highlights the need for a more comprehensive understanding of the effects of lack of antitrust enforcement, and what the legal community can do to shape the narrative.

## II. THE CURRENT STATE OF CORPORATE CONSOLIDATION: BUSINESS AS USUAL

The concentration of corporate power raises the same concerns that prompted the enactment of antitrust laws in the first place—increased anticompetitive behavior leads to negative consequences for the public. Though important to note that certain industries, such as the telecommunications industry after the breakup of AT&T in the 1980s, have experienced a relative decrease in consolidation in recent years.<sup>81</sup> If one compares the current state of corporations to the turn of the century, the number of monopolies has significantly increased in many industries. Again, the technology sector serves as a prime example—with companies like Google, Facebook, and Amazon dominating their respective markets.<sup>82</sup>

### A. *Raking It In*

The consolidation of corporate power has led to a decline in bargaining power for labor, as large corporations have more leverage over workers, which allows companies to dictate favorable terms.<sup>83</sup> This further exacerbates income inequality and erodes the financial stability of the average worker. While the specific level of consolidation may vary across industries, the overall trend towards large conglomerates controlling huge market shares has resulted in negative consequences for consumers and workers, including stagnant wages, inferior benefits, and more difficult and dangerous working conditions.

The negative consequences of consolidation on consumers are especially apparent in the transportation, meat, and fuel industries, where a handful of large corporations dominate their respective markets. For example, just four companies—Tyson Foods, JBS, Cargill, and National Beef—control 85% of the U.S. beef market.<sup>84</sup> These four corporations, who “murdered the competition” in recent years have “settled [multi-million-dollar] lawsuits over price-fixing just this

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80. Reich, *supra* note 19.

81. Gerald R. Faulhaber, *The Future of Wireless Telecommunications: Spectrum as a Critical Resource*, 18 INFO. ECON. & POL'Y 256, 269-70 (2006).

82. Lina M. Khan, *Amazon's Antitrust Paradox*, 126 YALE L. J. 710, 795 (2017).

83. David Autor et al., *The Fall of the Labor Share and the Rise of Superstar Firms*, 33 Q. J. ECON. 701, 704 (2020).

84. Goldmansour, *supra* note 20.

year.”<sup>85</sup> For instance, JBS “agreed to pay \$20 million to settle a lawsuit with consumers that accused the giant meat producer of conspiring with other meat companies to inflate the price of pork.”<sup>86</sup> But that’s a paltry sum compared to the numbers on the company’s earnings sheet: “JBS had a record net profit of \$4.4 billion for the 12-month period ending March 31, 2022—a 70% increase over the previous 12 months.”<sup>87</sup> Tyson cranked out even more impressive margins, “record[ing] \$4.1 billion net profit for the year ending March 31, 2022—a 91% increase over the previous 12 months.”<sup>88</sup>

Likewise, in the transportation sector, major airlines like Delta, United, and American have consolidated their positions through mergers and acquisitions.<sup>89</sup> “The airline industry has gone from 12 carriers in 1980 to just four today, all rapidly raising ticket prices.”<sup>90</sup> The same trend is visible in the fuel industry, with a handful of multinational corporations like ExxonMobil, Chevron, and Marathon dominating the domestic market.<sup>91</sup> Travel is now more expensive across the board—whether you plan to fly or take the family minivan.<sup>92</sup>

Nonenforcement of the monopoly provisions of Sherman and Clayton Acts has accelerated the issue in the past decade. “[O]ut of the 78 proposed mergers from 2015 to 2019 in which the smaller firm was valued at more than \$10 billion, the federal government attempted to block a grand total of only five on antitrust grounds and successfully stopped just three of them.”<sup>93</sup> The following year, “a district judge allowed T-Mobile (with a premerger equity valuation of more than \$50 billion) to acquire Sprint for \$30 billion and gave control of the national wireless market to just three carriers.”<sup>94</sup>

And it’s not only rising costs that consumers have begun to notice. The current state of unfettered corporate control is evident in other ways. Just look at skyrocketing executive pay, which has increased by 940% since 1978.<sup>95</sup>

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85. *Id.*

86. Josh Funk & The Associated Press, *Are You Paying Too Much for Bacon? One of the Big Meat Producers Just Settled a Price-Fixing Lawsuit for \$20 Million*, *FORTUNE* (Sept. 20, 2022, 5:45 AM), <https://fortune.com/2022/09/20/why-meat-prices-high-bacon-pork-jbs-price-fixing-settlement/>.

87. Warren Fiske, *‘Big Four’ Meat Packers Are Seeing Record Profits*, *POLITIFACT* (June 30, 2022), <https://www.politifact.com/factchecks/2022/jun/30/abigail-spanberger/big-four-meat-packer-s-are-seeing-record-profits-sp/>.

88. *Id.*

89. Ranjan, *supra* note 12.

90. Reich, *supra* note 19.

91. *Leading Oil and Gas Companies Based on Revenue in the United States as of 2022*, *STATISTA* (Aug. 25, 2023), <https://www.statista.com/statistics/257417/top-10-oil-and-gas-companies-worldwide-based-on-revenue/>.

92. Nathan Diller, *How Soaring Gas Prices Are Affecting the Cost of Flights*, *WASH. POST* (Mar. 10, 2022), <https://www.washingtonpost.com/travel/2022/03/10/gas-prices-affect-cost-flights/>.

93. Lande & Vaheesan, *supra* note 16.

94. *Id.*

95. Lawrence Mishel & Julia Wolfe, *CEO Compensation Has Grown 940% Since 1978: Typical Worker Compensation Has Risen Only 12% During That Time*, *ECON. POL’Y INST.* (Aug. 14, 2019), <https://www.epi.org/publication/ceo-compensation-2018/>.

Meanwhile, typical worker pay has only risen by 12% during this same period.<sup>96</sup> As outlined above,<sup>97</sup> corporations have increasingly engaged in stock buybacks to boost value for shareholders (oftentimes company executives) value, at the expense of investments in employee safety, research, and development of capital improvements. Just ask the citizens of East Palestine, Ohio.

Amidst this climate of non-scrutiny and backdrop of nonenforcement, companies have seized the opportunity:

Corporate profit margins are at their highest level in 70 years, and CEOs cannot help but tout in earnings calls how they have taken advantage of the media commotion around inflation to boost profits. “A little bit of inflation is always good in our business,” the CEO of Kroger said last June. “What we are very good at is pricing,” the CEO of Colgate-Palmolive added in October. “Inflation is being enhanced by exploitation, with companies seeing a ‘once-in-a-generation opportunity’ to raise prices.”<sup>98</sup>

And they have been successful. Corporations have recently set record profits quarter after quarter. For instance, Cal-Maine Foods, the largest egg producer in the United States, reported that its revenue doubled and profit surged 718% last quarter due to their egg-price hikes.<sup>99</sup> Likewise, ExxonMobil, raked in \$55.7 billion in profits, eclipsing its prior record of \$45.2 billion in 2008.<sup>100</sup> As will be explained below, the legal community plays an integral role in this cycle, as top law graduates often join large law firms to defend these corporations, and often become the “client” themselves, taking roles as in-house counsel and serving on corporate boards.<sup>101</sup>

### B. *The Squeeze*

While the Sherman Act and other antitrust laws were intended to protect consumers from the negative effects of monopolies, evidence suggests that consumers may not be faring much better today than they were at the turn of the 20th century. Despite some variations across industries, the overall trend toward consolidation has diminished competition and increased the potential for anti-competitive practices. This has significant implications for workers, who now have

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96. *Id.*

97. Johnson, *supra* note 3.

98. Ines Santos & Luca Goldmansour, *Blaming Workers, Hiding Profits in Primetime Inflation Coverage*, FAIR (Apr. 21, 2022), <https://fair.org/home/blaming-workers-hiding-profits-in-primetime-inflation-coverage/>.

99. Derek Saul, *Country’s Largest Egg Producer Saw Profits Surge 718% Amid Shortage*, FORBES (Mar. 29, 2023, 10:27 AM), <https://www.forbes.com/sites/dereksaul/2023/03/29/countrys-largest-egg-producer-saw-profits-surge-718-amid-shortage/?sh=20b87945e9c5>.

100. Cathy Bussewitz & The Associated Press, *Exxon Mobil’s Record \$55.7 Billion Profit Last Year Fuels Criticism that It Cashed in on War and Sky-High Gasoline Prices*, FORTUNE (Jan. 31, 2023, 3:27 PM), <https://fortune.com/2023/01/31/exxon-mobil-record-profit-2022-ukraine-war-high-gas-prices/>.

101. Matt Spiegel, *8 Benefits (and 5 Drawbacks!) of Working in a Large Law Firm*, NAT’L L. REV. (Apr. 26, 2022), <https://www.natlawreview.com/article/8-benefits-and-5-drawbacks-working-large-law-firm>.

less buying power due to stagnating wages and rising costs of living.<sup>102</sup> According to the Economic Policy Institute, the median hourly wage in the United States has increased by only 0.2% per year between 1979 and 2021, while productivity has grown by 72.2% over the same period.<sup>103</sup>

This growing wage-productivity gap has contributed to the widening income inequality in the country. At certain points of the past century, particularly in the 1970s and '80s, the increased efficiency provided by consolidated operations led to higher wages at larger commercial facilities, such as beef-processing plants.<sup>104</sup> But this trend has reversed—companies have been able to drive up profits through consolidation without supplying their workers with a corresponding bump in wages.<sup>105</sup>

At the same time, the cost of living has increased dramatically. For example, meat prices have risen dramatically in recent years, with the consumer price index for meat, poultry, fish, and eggs increasing by 11.4% between 2020 and 2021.<sup>106</sup> Fuel prices have also surged, with the U.S. average price of gasoline jumping from \$2.17 per gallon in 2020 to \$3.27 in 2021.<sup>107</sup>

“Since the trough of the COVID-19 recession in the second quarter of 2020, overall prices in the [consumer goods] sector have risen at an annualized rate of 6.1%—a pronounced acceleration over the 1.8% price growth that characterized the pre-pandemic business cycle of 2007–2019.”<sup>108</sup> Unsurprisingly, “over half of this increase (53.9%) can be attributed to fatter profit margins, with labor costs contributing less than 8% of this increase.”<sup>109</sup> This shocking profit increase is not

102. Lawrence Mishel et al., *Wage Stagnation in Nine Charts*, ECON. POL'Y INST. 1, 11 (Jan. 6, 2015), <https://www.epi.org/publication/charting-wage-stagnation/>.

103. Josh Bivens & Lawrence Mishel, *Understanding the Historic Divergence Between Productivity and a Typical Worker's Pay*, ECON. POL'Y INST. 1, 3 (Sept. 2, 2015), <https://www.epi.org/publication/understanding-the-historic-divergence-between-productivity-and-a-typical-workers-pay-why-it-matters-and-why-its-real/>. See also Joseph E. Aldy & W. Kip Viscusi, *Age Variations in Workers' Value of a Statistical Life* 1, 16 (Mar. 2004), [https://www.law.harvard.edu/programs/olin\\_center/papers/pdf/468.pdf](https://www.law.harvard.edu/programs/olin_center/papers/pdf/468.pdf).

104. See MacDonald, *supra* note 76, at 15. (“In 1977, mean wages rose steadily with plant size in cattle and hog slaughter plants [], a pattern typical for manufacturing. The largest (1,000 or more employees) plants' average hourly wages were 23 percent above the industry average, 30 to 45 percent above wages at small (less than 500 employees) plants, and more than double the wages of workers in poultry slaughter plants. Five years later, plants with 1,000 or more workers paid average wages of \$10 an hour, still 10 percent above the industry average, 20 to 40 percent above small plant wages, and almost twice the average wage in poultry plants. But by 1992, wages in large cattle and hog plants had fallen sharply in nominal terms and dramatically in real terms.”) (citations omitted).

105. *Id.* at 17.

106. *Economic News Release: Consumer Price Index Summary*, U.S. BUR. OF LAB. STAT., <https://www.bls.gov/news.release/cpi.nr0.htm> (last visited Sept. 11, 2023).

107. See *Gasoline and Diesel Fuel Update*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/petroleum/gasdiesel/> (last visited Sept. 11, 2023) (excel sheets provide data regarding fuel prices in 2020 and 2021).

108. Josh Bivens, *Corporate Profits Have Contributed Disproportionately to Inflation. How Should Policymakers Respond?*, WORKING ECON. BLOG (Apr. 21, 2022, 2:43 PM), <https://www.epi.org/blog/corporate-profits-have-contributed-disproportionately-to-inflation-how-should-policymakers-respond/>.

109. *Id.*

normal—it's a bug, not a feature, of our economy. "From 1979 to 2019, profits only contributed about 11% to price growth and labor costs over 60%."<sup>110</sup>

These price increases have dramatically outpaced real wages. "Wages in the U.S. have stagnated since the early 1970s. Between 1979 and 2020, workers' wages grew by 17.5% while productivity grew over three times as fast at 61.8%."<sup>111</sup> "When adjusted for inflation, American workers are earning just 12 cents more today than they did in 1972."<sup>112</sup> Wages simply haven't kept up: "Most workers' paychecks are shrinking in terms of real purchasing power. Rather than causing inflation, wages are actually reducing inflationary pressures."<sup>113</sup>

But that's not all. Corporate consolidation has removed the competitive check on price gouging. This is a particular area of concern during times of crisis. For example, during the COVID-19 pandemic, companies such as 3M were accused of price gouging for personal protective equipment, leading to lawsuits and investigations after the fact.<sup>114</sup> Similarly, pharmaceutical companies have come under fire for exorbitant pricing of life-saving drugs, such as the case of Turing Pharmaceuticals raising the price of Daraprim, used to treat malaria, by over 5,000%.<sup>115</sup>

Not to mention, the environmental impacts of consolidation, which affect us all.<sup>116</sup> Accidents and pollution related to industrial shipping have significant environmental and economic consequences.<sup>117</sup> For instance, in 2021 alone, there were over 2,700 maritime accidents reported globally.<sup>118</sup> Additionally, the industrial shipping industry is responsible for around 3% of global greenhouse gas

110. *Id.*

111. Juhohn Lee, *Why American Wages Haven't Grown Despite Increases in Productivity*, CNBC (July 19, 2022, 1:02 PM), <https://www.cnbc.com/2022/07/19/heres-how-labor-dynamism-affects-wage-growth-in-america.html>.

112. Jing Pan, *'Make Your Moves as Soon as Possible': US Workers Earned Just 12 Cents More in 2022 Than They Did in 1972 — Adjusted for Inflation: 3 Ways to Boost Your Purchasing Power in 2023*, YAHOO FIN. (Mar. 2, 2023), <https://www.yahoo.com/lifestyle/something-concern-us-us-workers-150000437.html>.

113. Robert Weiner et al., *Weiner and Treichel: Leaders Should Listen to Bernie Sander's Points on Inflation*, MANCHESTER J., [https://www.manchesterjournal.com/opinion/columnists/weiner-and-treichel-leaders-should-listen-to-bernie-sanders-points-on-inflation/article\\_84459e62-b392-11ed-83d5-d701315c3e64.html?wallit\\_nosession=1](https://www.manchesterjournal.com/opinion/columnists/weiner-and-treichel-leaders-should-listen-to-bernie-sanders-points-on-inflation/article_84459e62-b392-11ed-83d5-d701315c3e64.html?wallit_nosession=1) (last updated Feb. 23, 2023).

114. Jonathan Stempel, *3M Wins Injunction Against Mask Seller Accused of Price Gouging*, REUTERS (May 5, 2020, 1:28 PM), <https://www.reuters.com/article/us-health-coronavirus-3m-lawsuit/3m-wins-injunction-against-mask-seller-accused-of-price-gouging-idUSKBN22H2GK>.

115. Andrew Pollack, *Drug Goes from \$13.50 a Tablet to \$750, Overnight*, N.Y. TIMES (Sept. 20, 2015), [nytimes.com/2015/09/21/business/a-huge-overnight-increase-in-a-drugs-price-raises-protest.html](https://www.nytimes.com/2015/09/21/business/a-huge-overnight-increase-in-a-drugs-price-raises-protest.html).

116. See EUR. MAR. SAFETY AGENCY, ANNUAL OVERVIEW OF MARINE CASUALTIES AND ACCIDENTS 2021 39 (Dec. 15, 2021), <https://www.emsa.europa.eu/publications/download/6955/4266/23.html> (outlining the pollution caused by industrial shipping accidents).

117. *Gasoline and Diesel Fuel Update*, *supra* note 107.

118. EMSA: *Annual Overview of Marine Casualties and Incidents 2022*, SAFTEY4SEA (Nov. 30, 2022), <https://safety4sea.com/emsa-annual-overview-of-marine-casualties-and-incidents-2022/>.

emissions.<sup>119</sup> The East Palestine disaster, referenced above,<sup>120</sup> is just the most recent example of the hazards created by inadequate regulation and oversight in the transportation sector.

### C. *Shaping the Narrative*

Why aren't more people outraged? Simple—the narrative is skewed. The effects of deregulation and corporate consolidation get little airtime. Instead, the corporate media continues to blame workers: “Of the 310 segments that covered inflation, eight identified profiteering as a causal factor, while 50 put the focus on workers, either in the form of labor shortage or supply-side social spending arguments (the latter being a proxy for the former).”<sup>121</sup> “While labor market trends have had an inflationary impact, the disproportionate focus on them, without mention of the underlying conditions that lead to labor shortages in the first place, erases the culpability of corporations.”<sup>122</sup> But the media is laser focused on labor costs, which makes little sense. “As economist Dean Baker explained” in 2021, “it would be a ‘perverse’ solution to inflation to put ‘downward pressure on wages’ by increasing unemployment, when companies are already incentivized to ‘innovate to get around bottlenecks... in ways that could lead to lasting productivity gains.’”<sup>123</sup>

The Federal Reserve plays an instrumental role in shaping the market conditions and resulting narrative. By raising interest rates, the Federal Reserve has made market conditions challenging for labor and workers, further widening the wealth gap, and exacerbating economic inequality. “When inflation hits, this is because of the conditions upon which profits are made. It’s not the fault of profit-making itself.”<sup>124</sup> Rather, the issue has to be “a ‘labor shortage,’ or ‘too much demand,’ which forces the invisible hand to raise prices—and not a shortage of dignified work, or a surplus of people living paycheck to paycheck. Maximal profits are a given, and scarcity for ordinary people is a requirement.”<sup>125</sup>

Why does this matter? The lack of nuanced reporting, especially in regard to price-gouging and record profit setting, means that workers bear the blame for rising costs. “Woe is me. We have no choice but to raise our prices. Our labor costs are going up, our inputs, our inputs.”<sup>126</sup> “But, in reality, companies aren’t being forced to raise prices because of inflation. They’re raising prices because they can.... Inflation sort of disguises these price increases. When prices for everything

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119. Estela Morante, *Roadmap to Decarbonize the Shipping Sector: Technology Development, Consistent Policies and Investment in Research, Development and Innovation*, UNCTAD (Dec. 19, 2022), <https://unctad.org/news/transport-newsletter-article-no-99-fourth-quarter-2022>.

120. Santos & Goldmansour, *supra* note 98.

121. *Id.*

122. *Id.*

123. *Id.*

124. Goldmansour, *supra* at 20.

125. *Id.*

126. Paul Solam & Lee Koromvokis, *Why Corporations Are Reaping Record Profits with Inflation on the Rise*, PBS (Apr. 12, 2022, 6:35 PM), <https://www.pbs.org/newshour/show/why-corporations-are-reaping-record-profits-with-inflation-on-the-rise>.

around you are rising, it's much easier for companies to raise their prices and not experience that consumer blowback."<sup>127</sup> The media has swallowed the corporate narrative hook, line, and sinker; and its consumers that pay the cost.

### III. MOVING THE BALL: THE LEGAL COMMUNITY'S ROLE IN PROTECTING CONSUMERS AND HOLDING CORPORATIONS IN CHECK

The legal community obviously plays a crucial role in all of this. As professionals responsible for advancing, promoting, and helping others comply with the law; we have a significant impact on America's corporate landscape. The legal community therefore shares some blame for the current lack of corporate accountability and abundance of market manipulation. Despite the current state of affairs, it's not too late for the legal community to right the ship, play a vital role in protecting Americans, and hold corporations accountable.

#### A. *Change the Perverse Incentives*

It's no secret the legal community allocates its resources in a way that enforces the corporate power structure. Top law graduates, allured by high salaries, prestigious positions, and the opportunity to work on high-profile cases,<sup>128</sup> flock to BigLaw to zealously defend their corporate clients.

The financials are stark. According to the National Association for Law Placement, the median starting salary for first-year associates at large law firms in 2021 was \$190,000.<sup>129</sup> In comparison, the median salary for public interest law jobs was significantly lower, at around \$60,000.<sup>130</sup> These high salaries provide financial stability and help new lawyers repay their student loans. The same is also true of small and mid-size firms. For instance, "first-year attorneys at a law firm with 50 or fewer attorneys was \$85,000 in 2021, which is 48% higher than the \$57,000 median salary for an entry-level attorney at a legal services organization."<sup>131</sup> Moreover, experienced associates make hundreds of thousands

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127. *Id.*

128. Staci Zaretsky, *Big Law or Bust, The Top Law Schools For Sending Graduates Into High Paying Jobs*, ABOVE THE LAW (May 1, 2023, 11:45 AM), <https://abovethelaw.com/2023/05/biglaw-or-bust-the-top-law-schools-for-sending-graduates-into-high-paying-jobs/>; Debra Cassens Weiss, *A Higher Percentage of Law Grads are Getting Hired by Larger Firms*, ABA J. (Dec. 2, 2021, 9:43 AM), <https://www.abajournal.com/news/article/a-higher-percentage-of-law-grads-are-getting-hired-by-larger-firms>.

129. *Findings on First-Year Salaries from the 2021 Associate Salary Survey*, NAT'L ASS'N FOR L. PLACEMENT (May 2021), <https://www.nalp.org/0521research>.

130. NALP Bulletin, *Findings on First-Year Salaries from the 2018 Public Service Attorney Salary Survey*, NAT'L ASS'N FOR L. PLACEMENT (June 2018), <https://www.nalp.org/0618research>.

131. Charles Toutant, *Doing Good Doesn't Pay Much: Many Entry-Level, Public-Interest Lawyers Make \$57,500 a Year*, N.J. L. J. (June 23, 2022 at 5:18 PM), <https://www.law.com/njlawjournal/2022/06/23/doing-good-doesnt-pay-much-many-entry-level-public-interest-lawyers-make-57500-a-year/>.



of dollars.<sup>132</sup> Career public-interest lawyers can only hope to one day—very close to retirement—make the salary of first-year BigLaw associates.<sup>133</sup>

None of this is groundbreaking news, yet it's important to acknowledge. These job-placement trends ensure that large corporations receive high-quality legal representation. On the other hand, they lead to a shortage of skilled lawyers in public-interest and government positions, which exacerbates the already-existing inequalities within the legal system. This is especially apparent on the state level, where legal-aid organizations lack the resources to pursue civil cases, including consumer-protection litigation and anticompetition challenges.<sup>134</sup>

### B. Create More Public-Interest Attorneys

To counterbalance these trends, the legal community must fund and promote public-interest careers. It starts in law school—making students aware of antitrust and consumer-protection law, supporting public interest scholarships, and partnering with other stakeholders to create pathways for graduates to pursue this work. Encouraging top law graduates to pursue these careers, rather than solely focusing on high-paying, corporate-funded positions, can help bring balance to the legal profession and increase resources dedicated to consumer protection and corporate accountability. There are multiple ways to encourage law students to pursue these careers.

First, education and awareness in legal academia. Law schools should emphasize the importance of public-interest work and impact litigation, integrating these topics into their curricula and exposing students to real-life cases that demonstrate the potential for meaningful change.<sup>135</sup> This can be achieved through course offerings on consumer protection, antitrust law, and related subjects, as well as offering externships programs, and other opportunities for students to gain experience in this field.

This is a perfect role for legal clinics. Some law schools already have successful “consumer protection” clinics, generally focused on consumer debt collection and predatory lending.<sup>136</sup> University of Virginia Law’s Economic and Consumer Justice Clinic has represented plaintiffs in multiple consumer-protection class actions.<sup>137</sup> Similarly, UC Irvine’s Consumer Law Clinic allows students the opportunity to “provide direct representation in state and federal court for

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132. 2023 Associate Salary Survey, NAT’L ASS’N FOR L. PLACEMENT (2023), [https://www.nalp.org/uploads/ASSR/2023\\_ASSR\\_Participants\\_Summary.pdf](https://www.nalp.org/uploads/ASSR/2023_ASSR_Participants_Summary.pdf).

133. NALP’s Public Sector & Public Interest Salary Report Turns Ten!, NAT’L ASS’N FOR L. PLACEMENT (July 2014), <https://www.nalp.org/july14research>.

134. Deborah L. Rhode, *Access to Justice: Connecting Principles to Practice*, 17 GEO. J. LEGAL ETHICS 369, 379-426 (2004).

135. Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 400 (2008).

136. See, e.g., *Consumer Law Clinic*, UNIV. OF WISC. L., <https://law.wisc.edu/eji/clc/> (last visited Sept. 11, 2023); *Consumer Law Clinic*, UNIV. OF CAL. IRVINE L., <https://www.law.uci.edu/academic/s-real-life-learning/clinics/consumer-law.html> (last visited Sept. 11, 2023).

137. *Economic and Consumer Justice Clinic*, UNIV. OF VA. SCH. OF L., <https://www.law.virginia.edu/clinics/economic-and-consumer-justice-clinic> (last visited Sept. 11, 2023).

violations of California's Unfair Competition Law and other unfair and/or deceptive business practices."<sup>138</sup>

Second, financial support. This can include funding public-interest fellowships, offering loan-repayment-assistance programs, and establishing financial partnerships between law schools, private firms, and public-interest organizations. Scholarships, grants, and loan forgiveness for law students who commit to public interest upon graduation will help remove the financial barriers associated with law school and make these careers more accessible to a broader group of graduates.<sup>139</sup>

Third, mentorship and networking. Law schools can facilitate collaboration between public-interest law organizations and law students, creating opportunities for students to become familiar with attorneys in the files and potentially gain hands-on practical experience. Outside of clinics and law-school networking events, law schools and bar associations can establish mentorship programs that connect law students with experienced public-interest attorneys and organizations, allowing students to build valuable connections and gain practical insights into the field.<sup>140</sup>

Given the importance of this work, the public deserves competent attorneys advocating for their rights. The legal community must ensure that competent attorneys are available to bring these cases on behalf of consumers and the public interest.<sup>141</sup> Law schools should encourage students to pursue these careers—in both the public and private sectors—and equip them with the necessary knowledge for success. By opening the public-interest door to more students, we can help create a legal community that is better equipped to tackle these anticompetition issues, ultimately benefiting the public at large.<sup>142</sup>

A shift in priorities will require resources and support from the legal community, and likely a shift in the way we gauge the quality of legal education. Current metrics “favor the more ‘elite’ law schools that place a significant number of graduates into judicial clerkships or large law firms.”<sup>143</sup> But through funding, clinical programs, and enhanced course offerings, schools can change course,

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138. UNIV. OF CAL. IRVINE L., *supra* note 136.

139. Philip G. Schrag, *Federal Student Loan Repayment Assistance for Public Interest Lawyers and Other Employees of Governments and Nonprofit Organizations*, 36 HOFSTRA L. REV. 27, 60 (2007).

140. Catherine R. Albiston & Rebecca L. Sandefur, *Expanding the Empirical Study of Access to Justice*, 2013 WIS. L. REV. 101, 108 (2013) (noting the “improved skills and expertise for the law students providing representation,” which are currently unstudied benefits for students who participate in access-to-justice programs).

141. Kathryn A. Sabbeth, *What's Money Got to Do With It?: Public Interest Lawyering and Profit*, 91 N.C. L. REV. 441, 466–67 (2014).

142. I, admittedly, had no idea what “antitrust law” even meant for a significant part of law school.

143. Derek T. Muller, *Which Law Schools Are Affected the Most by the USNWR Dropping At-Graduation Employment Rates?*, EXCESS OF DEMOCRACY (Jan. 10, 2023), <https://excessofdemocracy.com/blog/2023/1/which-law-schools-are-affected-the-most-by-the-usnwr-dropping-at-graduation-employment-rates>.

empower the next generation of attorneys to effectively advocate for consumers, and turn tide on corporate consolidation.<sup>144</sup>

Law students may be the future, but what about now? How can the current generation of legal professionals influence this country's corporate landscape? The first answer is to pursue private rights of action.

### C. *Enforce State Anticompetition Laws*

In addition to federal antitrust laws, several state laws exist to address antitrust and anticompetitive practices that harm consumers. State Attorneys General may bring actions to enforce state antitrust laws, which are not preempted by federal law.<sup>145</sup> Several state statutes also provide private rights of action, allowing individuals and class-action plaintiffs to sue for injunctive relief and damages. For instance, under California's Cartwright Act, "[a]ny person who is injured in his or her business or property by reason of anything forbidden or declared unlawful... may sue."<sup>146</sup> The Act therefore "gives a private right to sue for damages and treble damages to each person who suffers harm."<sup>147</sup> After a plaintiff proves actual damages, treble damages are mandatory.<sup>148</sup>

Many of the state statutes are more expansive than federal law. For example, in California, "private lawsuits brought under these state statutes may threaten businesses with liability for conduct that would not violate federal antitrust law."<sup>149</sup>

There are several private rights of action that may be asserted in either state or federal court:

**Unfair competition laws:** In multiple federal district court actions, plaintiffs' complaints have included a cause of action based on the violation of a state unfair competition law.<sup>150</sup> These laws typically prohibit deceptive or unfair business practices, aiming to ensure a level playing field for all market participants.<sup>151</sup>

**Consumer protection laws:** Federal class-action plaintiffs have included causes of action based on violations of a state deceptive trade practices act.<sup>152</sup>

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144. Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355, 360-64 (2008).

145. Alden Abbott, *US Antitrust Laws: A Primer*, MERCATUS CTR. (Mar. 24, 2021), <https://www.mercatus.org/research/policy-briefs/us-antitrust-laws-primer>.

146. CAL. BUS. & PROF. CODE § 16750(a) (West 2009).

147. *Borgeson v. Archer-Daniels Midland Co.*, 909 F. Supp. 709, 717 (C.D. Cal. 1995).

148. Carlton A. Varner & Thomas D. Nevins, *California Antitrust & Unfair Competition Law*, SHEPPARD MULLIN (3d ed. 2003), [https://www.sheppardmullin.com/media/article/84\\_pub209.pdf](https://www.sheppardmullin.com/media/article/84_pub209.pdf).

149. Alden Abbott, *US Antitrust Law: A Primer*, MERCATUS CTR. (Mar. 24, 2021), <https://www.mercatus.org/research/policy-briefs/us-antitrust-laws-primer>.

150. *See, e.g.*, In re Zillow Grp., Inc. Sec. Litig., No. C17-1387, 2018 WL 4735711 (W.D. Wash. Oct. 2, 2018).

151. *A Brief Overview*, *supra* note 36.

152. *See, e.g.*, In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs., & Prod. Liab. Litig., 295 F. Supp. 3d 927, 1018 (N.D. Cal. 2018).

These laws protect consumers from fraudulent or misleading business practices, such as false advertising or bait-and-switch tactics.<sup>153</sup>

**Quasi-contract/unjust enrichment:** Often, consumer class actions include state causes of action based on unjust enrichment theories.<sup>154</sup> This legal concept addresses situations where one party benefits unfairly at the expense of another, without a valid contractual basis for doing so.<sup>155</sup>

**Negligence:** Class-action suits often include causes of action based on negligence.<sup>156</sup> These claims, often involving defective designs, allege the defendant breached a duty of care, resulting in harm to the plaintiff.<sup>157</sup>

**Fraud and deceit:** Many states have causes of action based on the alleged willful and intentional injury plaintiff suffered or defendant's willful and intentional injury, intentional misrepresentations, or negligent misrepresentations.<sup>158</sup>

These state laws offer valuable avenues for redress for consumers who have suffered from anticompetitive practices. Actively pursuing these claims helps ensure that these laws are effective and helps hold companies in check.

#### D. *Other Concrete Ways the Legal Community Can Step Up*

But producing competent public interest attorneys and pursuing state-level anticompetition claims is not all. The legal community can step up in several ways to shape public policy and tip the scales back toward consumers.

**1. Advocate for antitrust enforcement.** “Bold antitrust enforcement is essential. Even the credible threat of antitrust enforcement can deter corporations from raising prices higher than their costs.”<sup>159</sup> There are laws already on the books, why not advocate for greater enforcement? The legal community has a duty to raise awareness among the general public about the importance of antitrust laws and the effect those laws have on consumers. This will lead to more pressure on elected officials to call for enforcement and reform.

Legal scholarship plays an important role in this work. Scholarship identifies gaps in the law and proposes solutions to fill those holes.<sup>160</sup> Scholarship influences policy debates among lawmakers, regulators, and other stakeholders by providing

153. *FTC Restores Rigorous Enforcement of Law Banning Unfair Methods of Competition*, FED. TRADE COMM’N (Nov. 10, 2022), <https://www.ftc.gov/news-events/news/press-releases/2022/11/ftc-restores-rigorous-enforcement-law-banning-unfair-methods-competition>.

154. Daniel R. Karon, *Undoing the Otherwise Perfect Crime—Applying Unjust Enrichment to Consumer Price-Fixing Claims*, 108 W. VA. L. REV. 395, 402-05 (Dec. 2005).

155. *Id.* at 405.

156. *See, e.g.*, In re Katrina Canal Breaches Litig., 495 F.3d 191 (5th Cir. 2007).

157. Marcy Hogan Greer, *Key Developments in Consumer Class Action*, ABA (Sept. 19, 2019), [https://www.americanbar.org/groups/tort\\_trial\\_insurance\\_practice/publications/the\\_brief/2018-19/summer/key-developments-consumer-class-actions/](https://www.americanbar.org/groups/tort_trial_insurance_practice/publications/the_brief/2018-19/summer/key-developments-consumer-class-actions/).

158. *See, e.g.*, In re Am. Express Fin. Advisors Sec. Litig., 672 F. Supp. 2d 112 (S.D.N.Y. 2009).

159. Reich, *supra* note 19.

160. Deborah L. Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1335 (Mar. 2002).

empirical evidence, theoretical insights, and practical recommendations.<sup>161</sup> This may promote more effective and targeted policy interventions to address corporate misconduct and enforce antitrust laws.<sup>162</sup>

Legal scholarship moves the ball,<sup>163</sup> but so does crafting and endorsing legislation. The legal community and legal academy should also work (*i.e.*, pro bono) with other stakeholders, such as consumer-advocacy groups, and environmental organizations, and lawmakers to build coalitions and raise awareness among the public.<sup>164</sup> Ultimately, the goal should be not only to enforce the laws currently on the books, but also to apply pressure necessary to enact stronger legislation. For instance, several legal scholars have endorsed the recently introduced “Competition and Antitrust Law Enforcement Reform Act.”<sup>165</sup> The legislation “will give federal enforcers the resources they need to do their jobs, strengthen prohibitions on anticompetitive conduct and mergers, and make additional reforms to improve enforcement” and is aimed “to reinvigorate America’s antitrust laws and restore competition to American markets.”<sup>166</sup>

**2. Encourage and support whistleblower protections.** The legal community can work to strengthen and promote whistleblower protections, ensuring that those who report corporate wrongdoing are not punished in return. These protections are critical to maintaining trust in the legal system and encouraging future whistleblowers to come forward. If employees believe that they will face retaliation or adverse consequences for reporting illegal activities, they will be less likely to do so, allowing antitrust violations to continue unchecked.<sup>167</sup>

Whistleblowers are critical because they are uniquely positioned to bring anticompetitive practices to light. Employees of companies engaged in unlawful anticompetitive practices, such as price-fixing or bid-rigging, are often the first to witness these illegal activities.<sup>168</sup> The legal community can facilitate the detection and investigation of antitrust offenses—which might otherwise go unnoticed—by providing safe and secure channels for whistleblowers to report.<sup>169</sup> Safe reporting also has a deterrent effect. Effective whistleblower protection laws increase the risk of exposure and therefore create disincentives for companies to violate

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161. George J. Stigler, *Nobel Lecture: The Process and Progress of Economics*, 91 J. POL. ECON. 529-45 (1983).

162. *Id.*

163. *Id.*

164. *See, e.g.*, Lande & Vaheesan, *supra* note 16.

165. Amy Klobuchar, *Senator Klobuchar Introduces Sweeping Bill to Promote Competition and Improve Antitrust Enforcement*, SENATE.GOV (Feb. 4, 2021), <https://www.klobuchar.senate.gov/public/index.cfm/2021/2/senator-klobuchar-introduces-sweeping-bill-to-promote-competition-and-improve-antitrust-enforcement>.

166. *Id.*

167. Legal Pol’y & Rsch. Unit and Legal Prac. Div., *Whistleblower Protections: A Guide*, INT’L BAR ASS’N (Apr. 2018), <https://www.ibanet.org/MediaHandler?id=a8bac0a9-ea7e-472d-a48e-ee76cb3cdef8>.

168. Off. of Pub. Affs., *Antitrust Division Observes National Whistleblower Appreciation Day*, U.S. DEP’T OF JUST. (July 30, 2021), <https://www.justice.gov/opa/pr/antitrust-division-observes-national-whistleblower-appreciation-day-0>.

169. *Id.*

antitrust and consumer-protection laws.<sup>170</sup> Company executives may be less inclined to violate the law if they know that employees can report these activities without fear of retaliation.

**3. Promote and Publicize Impact Litigation.** Impact litigation, aimed at creating broad societal change, is essential to combat anticompetitive behavior and protect consumers. Specifically, public-interest impact litigation refers to legal cases brought by private attorneys or public-interest organizations with the primary goal of achieving broad social change or reform, rather than simply addressing a dispute between individual disputes.<sup>171</sup> These cases often focus on issues that affect large swaths of the public, such as civil rights, environmental protection, consumer protection, and antitrust law.<sup>172</sup> They aim to set legal precedents that can help shape the interpretation and enforcement of laws, ultimately leading to systemic changes that benefit society as a whole.<sup>173</sup>

This is particularly important for consumers and antitrust law, for a few reasons. Such suits can target unfair business practices, monopolies, and other anticompetitive behaviors that negatively affect consumers on a broad scale.<sup>174</sup> Impact suits, advanced by law-school funded legal clinics, consumer-advocacy groups, government entities, or even private firms, can help promote fair competition and protect consumer rights. If successful, these cases can establish important legal precedents that not only guide future court decisions and enforcement actions related to consumer protection and antitrust law, but also shape public narrative and perception.<sup>175</sup> For example, the 2001 landmark antitrust case *United States v. Microsoft Corp.*,<sup>176</sup> still influences technology monopolies, shaping enforcement actions and legal interpretations to the present day. Impact litigation creates change through the litigation process while also drawing attention to issues, potentially prompting legislative action or policy changes to better protect the public and promote competition.<sup>177</sup>

**4. Advocate for stronger corporate governance.** The legal community should push for reforms in corporate governance, including executive-

170. *Whistleblower Protections*, *supra* note 167, at 18-19.

171. *Impact Litigation: An Introductory Guide*, AM. U. WASHINGTON COLL. OF L. CTR. FOR HUMAN RIGHTS AND HUMANITARIAN L. (2016), <https://www.wcl.american.edu/impact/initiatives-programs/center/publications/documents/impact-litigation-an-introductory-guide/>.

172. *Id.* at 2031.

173. *Impact Litigation*, *supra* note 171.

174. Spencer Weber Waller, *Prosecution by Regulation: The Changing Nature of Antitrust Enforcement*, 77 OR. L. REV. 1383, 1383-84 (1998).

175. See *United States v. Microsoft Corp.*, 253 F.3d 34 (D.C. Cir. 2001).

176. Robert H. Lande, *Consumer Choice as the Ultimate Goal of Antitrust*, 62 UNIV. PITT. L. REV. 503, 511-13 (2001) (explaining why *Microsoft* “dramatically illustrate[d] how consumer choice [has] emerg[ed] as an explicit paradigm for antitrust”).

177. Political scientists pay relatively little attention to “ordinary statutory enforcement actions filed... by private plaintiffs,” but are keenly interested “in litigation filed or orchestrated by interest groups, and suits filed against government agencies seeking to enjoin or revise the policy decisions of administrators...” that are “aimed at shaping national policy, and while in some circumstances there may be economic motivations for the policies sought by organized interests, economic recovery in the suit itself is typically not a central issue.” Sean Farhang, *Public Regulation and Private Lawsuits in the American Separation of Powers System*, 52 AM. J. POL. SCI. 821, 823 (2008).

compensation structures, decision-making processes, and board diversity. Such changes have the potential to create a more balanced and accountable system.

Current executive compensation structures incentivize short-term profit maximization at the expense of long-term sustainability and ethical conduct.<sup>178</sup> By pushing for reforms that align executive compensation with long-term performance and the broader interests of stakeholders, lawyers can promote responsible corporate behavior and reduce corrupt practices and shortsighted corporate decision making.<sup>179</sup>

Ethical behavior can also stem from the inside out. Lawyers, often called on to fill leadership roles, should be ethical leaders. Lawyers can make important contributions to board rooms, particularly on account of their understanding of corporate governance and alertness for possible risks.<sup>180</sup> Bar associations and other professional groups should emphasize the importance of upholding the public interest and promoting responsible corporate governance.<sup>181</sup> As members of corporate boards and advisors to corporations, lawyers have the opportunity to lead by example, advocating for and implementing responsible governance practice, and prioritizing long-term, ethical business principles.<sup>182</sup>

Board diversity is another area in which lawyers can create a change. Diverse boards are more likely to bring a wider range of perspectives and experiences to the decision-making process.<sup>183</sup> This results in more effective oversight, better risk management, and fewer Norfolk Southern-like disasters.<sup>184</sup> Further, research suggests that companies with more diverse boards are less prone to fraud and other forms of corporate misconduct.<sup>185</sup> Promoting greater board diversity will foster more ethical and transparent corporate governance.

## CONCLUSION

In the face of corporate consolidation across industries, monopolies, and price gouging, the legal community must take a more proactive role in promoting consumer rights and ensuring fair business practices. If this country is going to shift the rising tide of anticompetitive practices, the legal community should

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178. LUCIAN ARYE BEBCHUK & JESSE M. FRIED, *PAY WITHOUT PERFORMANCE: THE UNFULFILLED PROMISE OF EXECUTIVE COMPENSATION, PART II: POWER AND PLAY* 184 (Harv. Univ. Press 2004).

179. See generally Kevin J. Murphy, *Executive Compensation: Where We Are, and How We Got There*, 2 Part A HANDBOOK OF THE ECON. OF FIN. 211 (2012).

180. Howard Brod Brownstein, *Serving on a Corporate Board: What Lawyers Need to Know*, THE PRACTICAL LAWYER 13 (April 2021), [https://images.learn.ali-cle.org/Web/AmericanLawInstitute/%7bdd9f102b-0221-4c10-aa52-5fdc5cb9a026%7d\\_TPL2104\\_Brownstein.pdf](https://images.learn.ali-cle.org/Web/AmericanLawInstitute/%7bdd9f102b-0221-4c10-aa52-5fdc5cb9a026%7d_TPL2104_Brownstein.pdf).

181. DEBORAH L. RHODE, *LAWYERS AS LEADERS* 173 (Oxford Univ. Press 1st ed. 2013).

182. Brownstein, *supra* note 180.

183. David Carter et al., *Corporate Governance, Board Diversity, and Firm Value*, 38 FIN. REV. 33, 36-37 (2003).

184. *Id.* at 36 (“Homogeneity at the top of a company is believed to result in a narrow perspective while diverse top managers take a broader view. The result of diversity at the top is a better understanding of the complexities of the environment and more astute decisions.”).

185. Laura H. Posner, *Board Diversity Is Critical to Protect Shareholders, Bottom Line*, BL (Sept. 15, 2021, 4:01 AM), <https://news.bloomberglaw.com/securities-law/board-diversity-is-critical-to-protect-shareholders-bottom-line>.

undoubtedly be at the forefront. Law schools—and the profession at large—must expose students to (and fund) public-interest careers, advocate for stricter enforcement of antitrust laws, and serve as responsible leaders. The legal community, traditionally the protector of consumer rights and the public interest, has the ability—and the responsibility—to protect Americans and keep corporations in check. If not us, who will?