THE LAW OF GEOGRAPHIC LABOR MARKET INEQUALITY

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Policymakers and scholars have directed renewed attention to the law's contributions to producing economic inequality, but the legal dimensions of geographic inequality have received much less scrutiny. At its core, geographic inequality is a function of how the national income gets spatially divided between capital and labor. While labor's share of national income has declined as a general matter, the workers who have suffered most at the expense of capital are workers in rural and distressed communities. Recent empirical research on rural and distressed labor markets reveals an important structural cause: disproportionately high levels of employer market power with weak, if any, countervailing worker power to check it. While federal labor market regulation was intended to prevent this outcome nationally, it has failed these workers and the communities they support, contributing to and reinforcing geographic inequality. The failure of our legal infrastructure erodes economic self-determination in a place-based manner. But it also generates place-specific and place-salient resentment, perceptions of democratic disempowerment, and significant political polarization between spaces of wealth generation and wealth extraction.

This Article is the first comprehensive effort to tackle the legal sources of geographic labor market inequality. It documents the convergence of unique labor market failures in rural and distressed labor markets and identifies how federal labor market regulation has contributed to and exacerbated those failures to employers' benefit and at workers' expense. Specifically, it describes how rural and distressed labor markets have unusually high levels of labor market concentration, market thinness, and natural monopsony, worsening market frictions—matching costs, search and mobility costs, and information asymmetries—that exist in thicker, more competitive urban labor markets. Neither federal employment policy nor labor, employment, and antitrust rules have recognized these geographically-specific realities. Instead, while appearing to operate in a place-neutral manner, the legal infrastructure they jointly create carves out and deregulates the types of labor markets, categories of workers, and employer conduct that are most prevalent in rural and distressed environments. They are thus ill-adapted to remedy market failures unique to rural and distressed spaces to ensure workers' access to livable wages and countervailing leverage against employers. The Article reconceptualizes labor market regulation through a place-based policy lens, adapting and tailoring existing regulatory tools and proposing broader, more interventionist efforts to restructure and regulate the employment bargain outside of thick urban markets. It draws from historical examples of workforce investment and successful economic governance in markets facing similar characteristics to propose solutions that can revive rural and distressed communities by increasing worker power and generating diversified and high-quality job growth.

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INTRODUCTION

Workers in rural and distressed communities are mobilizing to protest employer power over their wages and working conditions but also over the vibrancy and growth of their communities. Nearly 900 coal miners have been on strike in Brookwood, Alabama, for 20 months and counting, the longest strike in Alabama's history.[1] Workers in Amazon fulfillment centers in Schodack, New York, and Moreno Valley, California, have petitioned for union elections protesting grueling working conditions in just-in-time warehousing and packaging work.[2] Workers in Chipotle and Starbucks stores in Augusta, Maine, and Buffalo and Cheektowaga, New York, are seeking union representation to demand better employment terms at the bargaining table from their blockbuster employers.[3] Call center workers that navigate callers through the Medicare and Affordable Care Act bureaucracy in London, KY, Bogalusa, LA, and Hattiesburg, MS, have walked out on strike, protesting restrictive breaks and unfair attendance policies.[4] Nurses and doctors in upstate New York, Alabama, and other states have sued hospitals under antitrust law for wage-fixing and no-poaching agreements that suppress their mobility and pay.[5] Chicken processing workers in rural facilities in Alabama, Arkansas, Kentucky, Mississippi, Pennsylvania, West Virginia, and more have sued dominant corporate poultry processing firms for wage-fixing while those same firms have brazenly ignored worker safety in meat and poultry production.[6] Meanwhile, poultry contract growers have petitioned the Federal Trade Commission (FTC) to investigate dominant poultry firms that set their pay through a ruinous combination of "tournament" competitions and vertical restraints that force three-quarters of them to live below the poverty line, losing money two out of three years.[7]

These local struggles expose just some of the structural limitations to worker power in rural and distressed communities, communities whose labor markets have unique characteristics that present complex regulatory challenges.[8] First, employers can have more market power to dictate wages

[1] Stephan Bisaha, *Alabama Coal Miners Begin Their 20th Month on Strike*, NPR (Dec. 1, 2022), https://www.npr.org/2022/12/01/1139992968/alabama-coal-miners-strike-20-months.

[2] Suhauna Hussain, *Amazon Workers at Moreno Valley Warehouse File for Union Election*, LATIMES.COM (Oct. 11, 2022), https://www.latimes.com/business/story/2022-10-11/amazon-workers-moreno-valley-union-petition; Rick Karlin, *Union Activists, Supporters Rally and Urge "Yes" Vote on Amazon Union*, TIMESUNION.COM (Oct. 10, 2022), https://www.timesunion.com/news/article/Union-activists-supporters-rally-and-a-urge-17499820.php.

[3] Amelia Lucas & Kate Rogers, *Chipotle Union Files Complaint With Labor Board* (Jul. 20, 2022), https://www.cnbc.com/2022/07/20/chipotle-union-files-complaint-with-labor-board-after-unionizing-restaurant-shut-down.html; Samantha Christmann, *Starbucks Has Closed Two Stores That Tried to Unionize*, BUFFALONEWS.COM (Aug. 26, 2022), https://buffalonews.com/business/local/starbucks-has-closed-two-stores-that-tried-to-unionize-and-says-its-a-coincidence/article_f26c6e66-2c57-11ec-a67b-a7b1e4d31b59.html.

[4] CWA Press Release, *Federal Contractors Organizing with CWA Strike Against Maximus*, CWA-UNION.ORG (Aug. 11, 2022), https://cwa-union.org/news/e-newsletter/2022-08-11.

[5] *See, e.g.*, Jeff Miles, *The Nursing Shortage, Wage-Information Sharing Among Competing Hospitals, and the Antitrust Laws*, 7 HOUS. J. HEALTH L. & POL'Y 305 (2007); Emery Dalesio, *Lawsuit: Duke, UNC Agreed to Not Hire Each Other's Doctors*, ASSOCIATED PRESS (Jan. 2, 2018), https://apnews.com/article/nc-state-wire-duke-university-north-america-lawsuits-us-news-675793130b184364a9d0d8e7764c05cc.

[6] *See Jien et al., v. Perdue et al.*, Case No. 1:19-cv-02521-ELH (D. Md. filed Aug. 30, 2019); Taylor Telford, *Covid Cases and Deaths Grossly Underestimated Among Meatpackers*, WASH. POST (Oct. 27, 2021), https://www.washingtonpost.com/business/2021/10/27/meatpacking-house-report/.

[7] Hiba Hafiz & Nathan Miller, *Competitive Edge: Big Ag's Monopsony Problem* (Wash. Ctr. for Equitable Growth, Feb. 18, 2021), https://equitablegrowth.org/competitive-edge-big-ags-monopsony-problem-how-market-dominance-harms-u-s-workers-and-consumers/.

[8] Federal agencies have a range of definitions of "rural" and "not rural" areas, focused on population numbers, population density, and primary economic characteristics. *See, e.g.*, U.S. Health Resources & Servs. Admin. (HRSA), *Defining*

and working conditions because lower demand creates conditions of what economists term "natural monopoly" and/or "natural monopsony"—it is more efficient for a single firm (as compared to two or more competing firms) to supply or purchase services in many rural and distressed areas.[9] A regional hospital is a good example. Because demand in sparsely populated and poor counties does not ordinarily exceed the need for one regional hospital, and hospital care is costly, that entire demand is best satisfied at the lowest cost by one firm rather than two or more, leaving nurses and doctors with limited options for employment in those counties.[10]

Additional market failures are also pervasive in rural and distressed labor markets. They are thinner than urban markets with fewer employers and employees, so proper matching is harder and costlier.[11] Limited employment pairings where demand and supply functions are highly sensitive to wages make these labor markets *imperfectly competitive*. In areas with declining industries, cities and employment levels are shrinking, and workers' skills are not perfect matches for employers in emerging industries, reducing their incentive to enter.[12] Job loss and higher unemployment in distressed areas has a "reverse multiplier effect": for each manufacturing job lost, 1.6 additional jobs outside that sector are eventually lost in those communities.[13] Sparsely populated rural areas and distressed cities with declining infrastructure have limited public transportation options, increasing commuting costs and workers' search costs for employment options. With fewer and more distant employers, workers face higher information asymmetries: it is harder for them to compare compensation from different employers to play them off each other and choose their best option. Those asymmetries are exacerbated by the importance of social capital in employment transactions: workers get and maintain jobs in the context of other economic and non-economic relationships in smaller communities. They are debtors, mentees, siblings, classmates, and friends with their co-workers and bosses, making it harder to leave both because of potential relational, reputational, and networking losses they would forfeit and because they may prefer staying close to family and friends that provide critical financial and care-giving networks. Combined, these market characteristics mean that employers in rural and distressed communities can have significant buyer power over workers.

Rural Population, https://www.hrsa.gov/rural-health/about-us/what-is-rural; U.S. Dep't of Agriculture, Econ. Rsch. Serv., *Rural Classifications*, https://www.ers.usda.gov/topics/rural-economy-population/rural-classifications. "Distressed" communities are primarily defined through economic indicators focused on well-being and decline. *See, e.g.*, Econ. Innovation Grp., *Distressed Communities Index (DCI)*, https://eig.org/distressed-communities/. The broader literature defines "rural" and "distressed" communities through socio-economic, cultural, and identitarian criteria like population numbers and density, poverty rates, unemployment, foreclosure rates, educational attainment, median income ratios, changes in employment and business establishments, and economic dependence on metropolitan areas. *See, e.g.*, MICHELLE WILDE ANDERSON, THE FIGHT TO SAVE THE TOWN 5 (2021); Marc Edelman, *Hollowed Out Heartland*, 82 J. RURAL STUD. 505 (2021). I adopt the more expansive understandings of "rural" and "distressed" here, referring to non-metro areas with populations lower than 50,000 people as well as communities in "distress" with place-based poverty and low-income median income below two-thirds of the state level. *See* Michelle Wilde Anderson, *The New Minimal Cities*, 123 YALE L.J. 1118, 1130-51 (2014).

[9] For "natural monopoly," *see*, *e.g.*, ROBERT PINDYCK & DANIEL RUBINFELD, MICROECONOMICS 50 (5th ed. 2001).

[10] *See, e.g.*, U.S. Treasury Dep't, *State of Labor Market Competition* 6, 23 (2022), https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf; Gary Hart et al., *Rural Health Care Providers*, 18 J. RURAL HEALTH 211 (2002); Monica Giancotti et al., *Efficiency and Optimal Size of Hospitals*, PLOS ONE (Mar. 29, 2017), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5371367.

[11] See, e.g., Monica Fisher, *Why Is US Poverty Higher in Nonmetropolitan Areas?*, 38 GROWTH & CHANGE 56 (2007); Robert Gibbs, *Rural Labor Markets in the Era of Welfare Reform*, 16 RURAL AM. 11 (2001).

[12] *See, e.g.*, ENRICO MORETTI, THE NEW GEOGRAPHY OF JOBS 23 (2012).

[13] *Id.* at 24.

A standard justification for government regulation is the need to overcome market failures which, absent state intervention, would result in losses to overall welfare.[14] In the labor regulatory sphere, employment policy, antitrust, and labor and employment law are meant to increase high-quality employment options and remedy market failures that decrease consumer, worker, or broader social welfare.

But federal labor market regulation has either been indifferent to or actively enabled what geographers term a "spatial division of labor", incentivizing or deregulating employer conduct that exploits geographic labor market differentiation to enable mobile capital accumulation.[15] At its most benign, labor market regulation has assumed a geographic uniformity in how labor markets function and that workers choose employers in thick, relatively competitive labor markets—characteristics of urban labor markets—ignoring complications of markets that function along other characteristics or with more severe market failures, like rural and distressed labor markets.[16] Neoliberal public and urban economists have supported such a place-neutral view to economic regulation, arguing that any application of regulation in place-specific ways is counterproductive relative to market-regulating forces. Workers, they have posited, are (or ought to be) indifferent across space with respect to their employment options, and if they confront bad employers or adverse employment outcomes, they can move—or threaten to move—to better-paying jobs in growing cities, preserving a "spatial equilibrium" that equalizes welfare.[17] Place-based labor policies should thus be condemned, they contend, because favoring one location will only introduce better jobs that draw outside talent at locals' expense—improving one place to impoverish another and displacing native workers. Even worse, new, higher-paid workers increase housing demand and native housing costs, so any local wage increases would merely accrue to local landlords at workers' expense, defeating the purpose of place-based investment and reducing overall welfare.[18]

But mounting empirical evidence presents a starkly different picture of labor market realities, revealing the assumptions of the spatial equilibrium model as flawed.[19] Workers are not moving to higher-wage localities, and there are substantial regulatory barriers to their ability to do so.[20] Geographic inequality is increasing, conventional redistribution through tax-and-transfer has failed to remedy it, and current regulation is compounding it.[21] Work is becoming more locally anchored with service sector growth, particularly jobs that are not automatable and must be performed in person.[22] So even if the heroic assumptions of the spatial equilibrium model were attainable, it would create a regulatory Catch-22: public policy can either promote labor mobility at the expense of critical service

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[14] *See, e.g.*, STEPHEN BREYER, REGULATION AND ITS REFORMS 7-9 (1982).

[15] For "spatial division of labor," *see* Adrian Smith, *Spatial Division of Labor*, *in* ENCYCLOPEDIA OF HUMAN GEOGRAPHY 348-54 (Rob Kitchin ed. 2009).

[16] For local variation in labor markets, *see* Enrico Moretti, *Local Labor Markets*, *in* 4B HANDBOOK OF LABOR ECONOMICS 1238-91 (2010).

[17] For "spatial equilibrium" theory, *see* Ed Glaeser & Joshua Gottlieb, *The Wealth of Cities*, 47 J. ECON. LIT. 983 (2009).

[18] *See id.*; David Schleicher, *The City as a Law and Economic Subject*, 2010 U. ILL. L. REV. 1507, 1515-29 (2010) (providing a literature review).

[19] *See infra* Part II.A.

[20] *See* David Schleicher, *Stuck! The Law and Economics of Residential Stability*, 127 YALE L.J. 78, 111-49 (2017) (collecting literature).

[21] *See* Alex Raskolnikov, *Distributional Arguments, In Reverse*, 105 MINN. L. REV. 1583, 1602-24 (2021).

[22] *See, e.g.*, James Davis et al., *Rural America at a Glance: 2022 Edition* (USDA ERS No. 246, 2022), https://www.ers.usda.gov/publications/pub-details/?pubid=105154 [hereinafter, *Rural America at a Glance*]; Econ. Innovation Grp., *Distressed Communities: Key Findings* (2021), https://eig.org/distressed-communities/key-findings/.

provision in rural and distressed communities or it can raise obstacles to mobility to preserve a healthy service sector at the expense of relegating workers to employer monopsony.

But more than mere indifference to the place-specific realities of how labor markets function, our labor regulatory infrastructure has actively contributed to geographic inequality by enabling employer monopsony and decimating worker strength in rural and distressed communities.[23] This Article identifies, from the ground up, how and why that infrastructure—and specifically, federal employment policy, antitrust law, and labor and employment law and enforcement—has placed such workers in an impasse with limited bargaining leverage to improve their economic fates through work.

First, federal employment policy has generated geographically divergent outcomes as a result of monetary, fiscal, and trade policy decisions. Anti-inflationary monetary policy has disparately impacted rural and distressed areas in recession where local officials trapped in a single currency union cannot expand the money supply to lift demand and real wage growth. Federal fiscal investment has been anemic to fill the gap, shifting from viewing un- and underemployment as a structural deficiency of a free market economy requiring significant spending, centralized regulation, and some form of public option to viewing it as human capital-based problem best delegated to local and private sector control.[24] Restructuring federal workforce investment along New Federalism and neoliberal principles placed states in competition for both federal aid and large private employers, creating a geographically divergent "race to the bottom" with no uniform federal standards. Highly localized provision and variation of social insurance also makes it harder for workers in rural and distressed communities to adjust to economic shocks and exacerbates already high mobility costs.[25] Adjusting is even more difficult where shrinking tax bases and fiscal conservatism have shrunk the pool of available safety net funds workers are eligible for.[26] Even worse, workforce development programs subsidized employers and firmly placed them in control of allocating human capital investment while welfare reforms made any employment—even underpaid and unsafe work—a necessary condition for benefits relief. Overall, federal employment policy has created the background conditions that strengthen employer power in rural and distressed labor markets.

Second, antitrust enforcement has failed to challenge dominant employers in rural and distressed communities and even enabled employer conduct that reduces worker power. Courts have immunized mere possession of monopoly or monopsony power—"no-fault" monopoly—under antitrust law.[27] So antitrust law does not reach employers' monopsonistic wage-setting under conditions of "natural monopsony".[28] Additionally, antitrust regulators have ignored the labor market effects of corporate consolidation even as labor market concentration in rural/non-metro labor markets has reached high and very high levels associated with lower posted wages across occupations.[29]

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[23] Workers in rural and distressed communities also have fewer employment options due to broader financial, transportation, and communications deregulation. *See, e.g.*, Ann Eisenberg, *Economic Regulation in Rural America*, 98 WASH. U. L. REV. 737 (2021). Following the 2008 financial crash, industrial job loss in non-metro areas plummeted relative to metro areas, suffering a 35 percent loss in manufacturing employment. Keith Orejel, *Why Trump Won Rural America*, DISSENT (Oct. 16, 2017), https://www.dissentmagazine.org/online_articles/rural-vote-trump-economy-manufacturing.

[24] *See infra* Part I.A.

[25] Raskolnikov, *supra* note 21, at 1590-93.

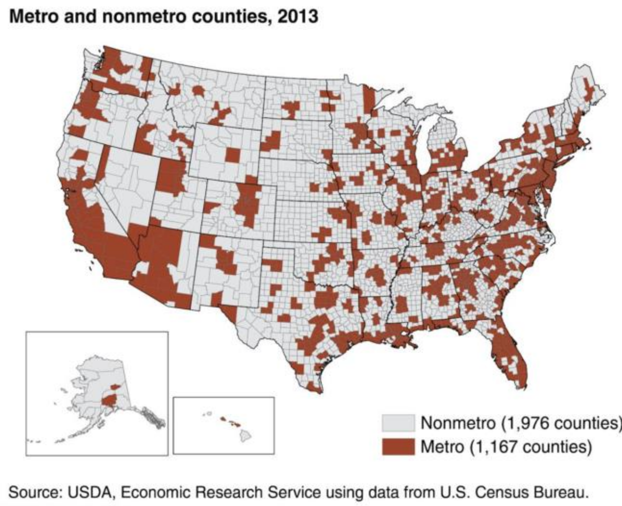
[26] *Id.*

[27] *See, e.g.*, *United States v. Grinnell*, 384 U.S. 563, 570 (1966); *United States v. Microsoft*, 253 F.3d 34, 58 (D.C. Cir. 2001).

[28] *See generally* ROGER BLAIR & JEFFREY HARRISON, MONOPSONY LAW AND ECONOMICS 70-8 (2010).

[29] José Azar et al., *Labor Market Concentration*, 57 HUMAN RES. S168, S179 (2022).

The following maps are illustrative, showing, respectively, counties designated as "non-metropolitan" and county-by-county labor market concentration levels:



Lax merger policy has contributed to labor market concentration in these communities, particularly in rural agriculture, mining, manufacturing, hospital services, and banking.[30] These high levels of concentration have increased employers' wage-setting power and decreased workers' wages.[31] Highly concentrated markets also facilitate employer collusion, suppressing worker pay.[32] Corporate

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[30] Robert Mann, *Bank Competition, Local Labor Markets, and the Racial Employment Gap* (2022), SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4013042; David Arnold, *Mergers and Acquisitions, Local Labor Market Concentration, and Worker Outcomes* (2021), https://darnold199.github.io/madraft.pdf; Elena Prager & Matt Schmitt, *Employer Consolidation and Wages: Evidence from Hospitals*, 111 AM. ECON. REV. 397 (2021); Andrew Meyer, *Market Concentration and Community Banks*, FED. RSRV. BANK (2018), https://www.stlouisfed.org/publications/regional-economist/first-quarter-2018/concentration-community-banks.

[31] *See* Yue Qiu & Aaron Sojourner, *Labor-Market Concentration and Labor Compensation*, ILR REV. (2022), https://doi.org/10.1177/00197939221138759.

[32] *See* Alan Manning, *The Real Thin Theory: Monopsony in Labor Markets*, 10 LAB. ECON. 105, 105 (2003); Eric Posner &

concentration and abusive contracting have been particularly harmful in agricultural markets, a core industry in rural areas. Further, "fly-over" country is at the front lines of workplace restructuring with firms geographically dispersing components of their supply chains across the country. Antitrust policy permitting previously-condemned vertical agreements has propelled widespread vertical disintegration, allowing firms to chase lower labor costs in places with the least labor market regulation and most captive labor pools.[33] Finally, where antitrust law *does* condemn employer conduct, it lacks appropriate remedies for markets with the unique characteristics that rural and distressed labor markets have. For example, a standard antitrust remedy for monopoly or monopsony power is structural: breaking up the firm.[34] But breaking up a dominant grocer into two grocers in a rural area may not increase worker or overall welfare if the grocer is a natural monopoly/monopsony. And ordering firms to terminate anticompetitive conduct in markets that cannot easily "thicken"—either because demand is limited or because firms lack incentives to enter—will fail to prevent the persistence of anticompetitive harms.

Labor law has also failed to protect workers in rural and distressed communities. While the National Labor Relations Act (NLRA) was intended to increase workers' countervailing power against employers, judicial and congressional erosion of its scope, applicability, and protections has contributed to anemic union density.[35] This erosion has hit rural and distressed communities most. First, Congress excluded from NLRA protection workers with higher labor market participation rates in rural and distressed communities: public sector employees, farmworkers, and domestic workers, including home care workers necessary for health care provision where hospitals are scarce.[36] Second, statutory amendments and NLRA doctrine have incentivized the spatial reorganization of production, resulting in workplace fissuring in undiversified labor markets with cheaper labor inputs, increasing geographic inequality. The 1947 Taft-Hartley Amendments enabled states to pass "right-to-work" laws prohibiting union security agreements, increasing unions' organizing costs.[37] Twenty-seven states—with the largest rural populations per capita—have passed such legislation,[38] reducing union density and wage levels in those states.[39] Union density is abysmal in traditionally rural industries—4.7 percent in farming, fishing, and forestry and 3.1 percent in agriculture and related industries.[40] Further, labor law has made collective bargaining beyond a single firm—sector-wide bargaining—nearly impossible while allowing employers to close facilities when workers unionize, increasing workers'

Jonathan Masur, *Horizontal Collusion and Parallel Wage-Setting*, 90 U. CHI. L. REV. (2023). For employer collusion in rural and distressed labor markets, *see, e.g.*, *supra* notes 5 & 6.

[33] *See* DAVID WEIL, THE FISSURED WORKPLACE (2016); Hiba Hafiz, *The Brand Defense*, 43 BERKELEY J. EMPL. & LAB. L. 1 (2021); Hiba Hafiz, *Structural Labor Rights*, 119 MICH. L. REV. 651 (2021).

[34] *See generally* U.S. Dep't of Justice, Antitrust Div., *Merger Remedies Manual* 6-26 (2020), https://www.justice.gov/atr/page/file/1312416/download; Hiba Hafiz, *Rethinking Breakups*, 71 DUKE L.J. 1491, 1502-05 (2021).

[35] *See* Hafiz, *Structural Labor Rights*, *supra* note 33, at 664-73; *Union Members,* BUREAU LAB. STAT. (Jan. 20, 2022), https://www.bls.gov/news.release/pdf/union2.pdf.

[36] *See* PAUL FRYMER, BLACK AND BLUE 27-28 (2008); Juan Perea, *The Echoes of Slavery*, 72 OHIO ST. L.J. 95, 118-24 (2011); Malkie Wall, *Essential Work, Disposable Workers* (Ctr. for Am. Progress, 2020), https://www.americanprogressaction.org/article/essential-work-disposable-workers-home-care-workers-need-labor-protections/.

[37] Labor-Management Relations Act of 1947, § 14(b), 61 Stat. 151 (1947).

[38] *See* Practical Law Lab. & Empl., *State Right-To-Work Laws Chart*, THOMPSON REUTERS (2022), https://us.practicallaw.thomsonreuters.com/4-523-8622.

[39] Nicole Fortin et al., *Right-to-Work Laws, Unionization, and Wage Setting* (NBER Working Paper 30098, 2022), https://www.nber.org/papers/w30098.

[40] *Union Members*, *supra* note 35, at Table 3.

organizing costs and prompting firms in non-union industries to relocate when successful unionization campaigns drive them to compete more aggressively with rivals on labor costs.[41] Protecting firm closures and closure threats in highly-dependent communities also chills organizing drives in those communities. Doctrine narrowing joint-employer liability has made it challenging for supply chain workers in rural and distressed communities to demand that upstream employers collectively bargain and more fairly distribute profits.[42] Third, the labor law was designed to be most effective in regulating large, industrial workplaces and is structurally deficient in regulating smaller, dispersed employers without a significant amount of resources, which Congress has consistently denied enforcement agencies, particularly in rural areas. Finally, the NLRA's remedies are notoriously weak and even more ineffective in social-capital based workplaces and thinner markets where workers are highly dependent on relationships with employers and word-of-mouth to maintain employment.

Employment law has also contributed to geographic inequality. While federal employment law grants all covered workers the same baseline protections, states and localities can lift and expand federal floors and have in Democratic strongholds, increasing geographic divergence. This is particularly true with respect to minimum wage laws. Minimum wage law in states with predominantly rural populations has significantly lagged worker productivity, and most are not pegged to inflation, leaving workers particularly vulnerable to tight, anti-inflationary monetary policy.[43] Employment law relegated to state regulation—most importantly, workers' compensation and unemployment insurance—grants workers in blue states more benefits and exit options than workers in red states. Second, employment law exemptions exclude small employers and categories of workers most prevalent in rural and distressed labor markets. Finally, like labor law, employment law enforcement is structurally ill-suited to tackle violations in smaller-scale, social capital-based employment that have market frictions at the scale of rural and distressed labor markets. Where workers in rural and distressed communities retain employment law protections, federal agency resources are most scarce because agencies have concentrated their enforcement dollars on population-dense areas.[44]

These regulatory failures are compounded by market forces—primarily globalization and agglomeration economies in megacities—as well as a network of trade, tax, and housing policies that, collectively, have dealt a series of economic shocks to and disproportionately impacted workers in rural and distressed communities.[45] First and foremost, globalization and trade liberalization has slowed wage growth and displaced millions of blue-collar workers in these communities.[46] These effects have not been offset by tax policy due to pervasive but mistaken assumptions that workers suffered insignificant losses from trade liberalization.[47] Land-use laws have inflated the cost of housing in higher-wage localities, restricting workers' access to more employment or higher-quality jobs.[48]

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[41] See First Nat'l Maintenance Corp. v. NLRB, 452 U.S. 666 (1981).

[42] WEIL, *supra* note 33; Hafiz, *Structural Labor Rights*, *supra* note 33.

[43] *See generally* Kaitlyn Henderson, *Best and Worst States to Work in America* (Oxfam, 2022), https://webassets.oxfamamerica.org/media/documents/BSWI_2022_Report_Final.pdf.

[44] *See infra* Part III.C.3 & III.D.3.

[45] *See, e.g.*, Raskolnikov, *supra* note 21, at 1592 (collecting literature).

[46] See, e.g., David Autor et al., *The China Syndrome*, 103 AM. ECON. REV. 2121 (2013); Daron Acemoglu et al., *Import Competition and the Great US Employment Sag of the 2000s*, 34 J. LAB. ECON. S141 (2015); David Autor et al., *The China Shock*, 8 ANN. REV. ECON. 2005 (2016); Shushanik Hakobyan & John McLaren, *Local Labor-Market Effects of NAFTA*, 98 REV. ECON. & STAT. 728 (2016).

[47] *See* Raskolnikov, *supra* note 21, at 1632-37.

[48] *See* Schleicher, *Stuck!*, *supra* note 20, at 114-17.

These regulatory failures have contributed to geographic labor market, income, and racial inequality. Urban regions are on average richer than rural areas.[49] Poverty rates are 15.4 percent in nonmetro residences as compared to 11.9 percent in metro residences.[50] The average wage in labor markets with over a million workers is a third higher than the average wage in markets of 250,000 workers or less, even holding constant worker seniority, occupation, and demographics.[51] In distressed communities, 35 percent of prime working age adults are out of work as compared to 15-18 percent in prosperous and comfortable communities.[52] Large areas of the rural South, Southwest, and Midwest lag behind the rest of the economy in economic performance and living standards across the earnings distribution.[53] Place-based poverty and limited intergenerational economic mobility is also deeply racial, disproportionately impacting Black and Brown households.[54] These outcomes have profound democratic consequences: the economic and geographic inequality that divides the "haves" from the "have nots"—and progressive cities and states from rural and post-industrial working-class communities—has provoked a dangerous level of political polarization and defeatism.[55]

While scholarship in economics and sociology has highlighted the challenges rural and distressed labor markets face, it has not focused on the *legal* sources of the relationship between employer power and geographic inequality, concentrating instead on human capital failures, labor mobility restrictions, and government trade, fiscal, and tax policy failures.[56] Social scientists have also studied the economic causes and consequences of income inequality—particularly on the rise of authoritarian populism and political polarization—but have ignored the role of regulation in spatially organizing labor markets and the impact that has on income ineqaulity.[57] Legal scholars within the Law and Political Economy movement and others have recently focused on how law shapes markets and wealth accumulation, but they have not yet focused on how *labor* market regulation can generate geographic inequality.[58] And while a group of legal scholars have developed a crucial body of work focusing on the relationship between the law, rurality, and distressed communities, they have not yet focused on labor market regulation specifically, concentrating instead on rural land and agricultural

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[49] *See* Ryan Nunn et al., *Introduction*, *in* PLACE-BASED POLICIES 12 (Hamilton Project, 2018), https://www.hamiltonproject.org/assets/files/ES_THP_PBP_book_20190425.pdf.

[50] U.S. Dep't of Ag., Econ. Rsch. Serv., *Rural Poverty & Well-Being*, https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/#geography.

[51] MORETTI, *supra* note 12, at 128.

[52] Econ. Innovation Grp. (EIG), *The Spaces Between Us* (2020), https://eig.org/wp-content/uploads/2020/10/EIG-2020-DCI-Report.pdf.

[53] *See* Nunn et al., *supra* note 49, at 15.

[54] Bradley Hardy et al., *The Historical Role of Race and Policy for Regional Inequality*, *in* PLACE-BASED POLICIES, *supra* note 49, at 43-45.

[55] *See, e.g.*, ROBERT WUTHNOW, THE LEFT BEHIND (2018); David Autor et al., *Importing Political Polarization*, 110 AM. ECON. REV. 3139 (2020).

[56] *See, e.g.*, MORETTI, *supra* note 12; Benjamin Austin et al., *Jobs for the Heartland* 156-78 (Brookings, 2018).

[57] ARLIE HOCHSCHILD, STRANGERS IN THEIR OWN LAND (2016); LOKA ASHWOOD, FOR-PROFIT DEMOCRACY (2018); KATHERINE CRAMER, THE POLITICS OF RESENTMENT (2016); Paige Kelly & Linda Lobao, *The Social Bases of Rural-Urban Political Divides*, 84 RURAL SOC. 669 (2019).

[58] *See, e.g.*, DOROTHY BROWN, THE WHITENESS OF WEALTH (2021); KATHARINA PISTOR, THE CODE OF CAPITAL 8-21, 108-31 (2019); Ganesh Sitaraman et al., *Regulation and the Geography of Inequality*, 70 DUKE L.J. 1763 (2020) (focusing on how deregulation contributes to geographic inequality but not assessing labor regulation).

policy,[59] environmental policy,[60] energy and telecommunications deregulation,[61] and other economic and social policy areas.[62]

The Article's core contributions are in first identifying and analyzing how labor market regulation contributes to geographic inequality—legally organizing work in space to structurally underprivilege rural and distressed communities—and, second, proposing novel solutions within and beyond existing law and labor market institutions to remedy it. It first provides an overview of rural and distressed labor markets—their general characteristics and why they suffer from unique market failures that strengthen employer power at the expense of workers (Part I). It then describes how federal labor market regulation through employment policy, antitrust, labor, and employment law—the regimes specifically designed to regulate employer power—is at best indifferent to and at worst exacerbate those market failures (Part II). It begins by describing the deregulatory evolution of federal employment policy that has abandoned the most vulnerable workers in rural and distressed communities while creating a captive labor pool for business interests. Against this backdrop, it details antitrust's limitations in challenging employer monopsony and anticompetitive conduct as well as remedying their adverse effects in rural and distressed labor markets. Moving to labor and employment law, it outlines how their structure, doctrinal evolution, and scope are not only ill-adapted to rural and distressed labor markets but also helped to create and reinforce those markets as deregulated spaces. The Article concludes with proposals to centralize and strengthen labor market regulation and interagency coordination, calling for broader interregulatory approaches, collaboration with state and local actors, and more aggressive government interventions (Part III). It draws from historical examples of direct interventions in labor markets to lift wages, contemporary public and private regulatory tools to "thicken" markets, and the public and labor economics literature on market creation and governance.

I. RURAL AND DISTRESSED LABOR MARKETS

Rural and distressed labor markets have unique characteristics that current regulatory tools underappreciate or ignore at the expense of strengthening employer power and weakening worker power. This Part outlines these general characteristics, including problems of natural monopsony, market thinness, and deeper market failures that challenge remediation under existing law. It then describes our current understanding of the disparity in labor market outcomes in rural and distressed labor markets relative to urban markets.

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[59] Eisenberg, *supra* note 23; Jessica Shoemaker, *Fee Simple Failures*, 119 MICH. L. REV. 1695 (2021).

[60] *See, e.g.,* Shelley Welton & Joel Eisen, *Clean Energy Justice*, 43 HARV. ENV'T L. REV. 307, 325-28 (2019).

[61] Eisenberg, *supra* note 23; Sitaraman et al., *supra* note 58.

[62] See, e.g., Rick Su, *Democracy in Rural America*, 98 N.C. L. REV. 837 (2020); Nicole Huberfeld, *Rural Health, Universality, and Legislative Targeting*, 13 HARV. L. & POL'Y REV. 241 (2018); Michelle Wilde Anderson, *Losing the War of Attrition*,127 YALE L.J.F. 522 (2017); Lisa Pruitt & Bradley Showman, *Law Stretched Thin*, 59 S.D. L. REV. 466 (2014); Debra Lyn Bassett, *Ruralism*, 88 IOWA L. REV. 273 (2003).

A. General Characteristics of Rural and Distressed Labor Markets

While rural and distressed labor markets may have entirely divergent socio-economic and political characteristics along a range of measures, they converge along economic indicators and present unique regulatory challenges. This Section outlines these core labor market characteristics while subsequent Sections identify and detail their persistent and common market failures.

1. Rural Labor Markets

Under narrow estimates, around 46 million people, or 1 in 7 Americans, live in rural America.[63] But the number is elusive—as legal researchers point out, "no single, standard definition of rural areas is used for policy, research, and planning" or for "how rural areas are defined for purposes of Federal program administration or distribution of funds."[64] The most widely used definitions of "rural" are those devised by the Office of Management and Budget (OMB) and the U.S. Census Bureau, which define it in the negative, as encompassing all "non-metropolitan" counties "not included within an urban area."[65] They thus include everything that is not a "Metropolitan Areas" (MAs), or "one large population nucleus" and "adjacent communities that have a high degree of economic and social integration with the nucleus" having "[a]t least one central county with either a place with a minimum population of 50,000 or a Census Bureau-defined urbanized area and a total M[etropolitan] A[rea] population of at least 100,000 (75,000 in New England)."[66] This Article adopts an expansive definition of "rural", incorporating federal government definitions and understandings of "rurality" in the rural sociology and geography literatures that include socio-economic and identity-based criteria like land use and lifestyle.[67]

The vast majority of rural labor market data is collected by the Census Bureau and the U.S. Department of Agriculture's Economic Research Service.[68] The federal labor agencies—the U.S. Department of Labor (USDOL), National Labor Relations Board (NLRB), and Equal Employment Opportunity Commission (EEOC)—and federal antitrust agencies that regulate labor markets—the U.S. Department of Justice (USDOJ) and Federal Trade Commission (FTC)—have no singular category for assessing rural labor market conditions or the effects of their labor regulation in rural areas. Among these, only one sub-agency collects and processes data on rural communities—USDOL's Bureau of Labor Statistics (BLS)—aggregating information about occupational employment and wage statistics in "nonmetropolitan" areas defined under the Census Bureau's definition.[69] However, the BLS's data collection has no current function in labor and antitrust agency regulation as a matter of substantive law or agency priorities.

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[63] *Rural America at a Glance*, *supra* note 22.

[64] Lisa Pruitt, *Rural Rhetoric*, 39 CONN. L. REV. 159, 178 n.95 (2006).

[65] *See supra* note 8.

[66] U.S. Census Bureau, *Metropolitan-Nonmetropolitan Residence* (last revised Dec. 16, 2021), https://www.census.gov/programs-surveys/cps/technical-documentation/subject-definitions.html.

[67] *See, e.g.*, Matteo Marini & Patrick Toomey, *Rural Economies*, *in* HANDBOOK OF RURAL STUDIES (Paul Cloke et al., eds. 2006).

[68] *See* U.S. Census Bureau, *Rural America*, https://mtgis-portal.geo.census.gov/arcgis/apps/MapSeries/index.html?appid=49cd4bc9c8eb444ab51218c1d5001ef6; U.S. Dep't of Ag. Econ. Rsch. Serv., *Rural Economy & Population*, https://www.ers.usda.gov/data-products/#!topicid=14838&subtopicid=.

[69] *See* U.S. Bureau of Lab. Stats., *Metropolitan Statistical Area Definitions*, https://www.bls.gov/sae/additional-resources/metropolitan-statistical-area-definitions.htm; U.S. Bureau of Lab. Stats., *Occupational Employment and Wage*

There are over 23 million jobs in rural areas, and rural employment is predominantly concentrated in four core industries: government (3.7 million jobs), manufacturing and processing (2.6 million jobs), retail (2.5 million jobs), and health care and social assistance (2.4 million jobs).[70] Resource-based industries are also centered in rural areas (around 1.6 million jobs), but rural communities have much fewer financial, professional, scientific or information services relative to urban economies.[71] A full 65 percent of rural jobs are provided by small businesses with less than 50 employees, and general purpose service sector employment is the fastest growing sector.[72] Work in rural areas has transactional characteristics associated with social capital formation and "'other-than-economic' relationships . . . that bring distinctive but overlapping normative expectations and obligations to bear on the economic transaction."[73]

Rural labor markets have smaller populations with low population density, high commuting costs, and reduced potential for specialization.[74] Rural populations have decreased from around 60 percent of the national population in 1900 to 14 percent today, residing in 72 percent of the Nation's land area.[75] These populations experience diseconomies of scale and reduced productivity in part due to the deregulation of critical infrastructure that cross-subsidized rural access to utilities and common carriers.[76] Rural areas face high labor market concentration and oligopsony with small employers, governments, and hospitals being the prominent monopsonists or oligopsonists.[77] These concentration levels are associated with lower wages in the private sector.[78]

Rural labor markets have unique demand-side characteristics relative to urban labor markets. Compared to urban labor markets, rural labor markets offer limited higher-skilled jobs, an over-representation of intermediate occupations (skilled trades, plant, process, and machine operations), and low-pay elementary occupations.[79] Employment in agriculture and manufacturing is quadrupled and doubled, respectively, in non-metropolitan relative to metropolitan labor markets.[80] But employers in both industries offer scarce and declining employment—high replacement demand—but are too small to shift to and compete in specialized markets.[81] Employment is increasingly scarce with

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Statistics, https://www.bls.gov/oes/current/oessrcma.htm.

[70] *Rural America at a Glance*, *supra* note 22, at 10.

[71] *See, e.g.*, USDA-ERS, *Rural Economy*, *supra* note 68.

[72] Hanna Love & Mike Powe, *Rural Small Businesses Need Local Solutions* (Brookings, 2020), https://www.brookings.edu/research/rural-small-businesses-need-local-solutions-to-survive/; Jane Atterton et al., *Rural Economic Transformation*, *in* RURAL TRANSFORMATIONS (Mark Shucksmith et al., eds. 2012).

[73] Marini & Toomey, *supra* note 67, at 3.

[74] OECD, *Innovation and Modernizing the Rural Economy* (2014), https://www.oecd.org/regional/regional-policy/Innovation-Modernising-Rural-Economy.pdf.

[75] Carolyn Dimitri et al., *The 20th Century Transformation of U.S. Agriculture and Farm Policy* 3 (USDA-ERS, 2005), https://www.ers.usda.gov/webdocs/publications/44197/13566_eib3_1_pdf?v=7007.

[76] Economies of scale occur when production costs decrease per unit at scale whereas diseconomies of scale occur when the average production costs *increase* with increased output. *See generally*, Eisenberg, *supra* note 23; Paul Dempsey, *The Dark Side of Deregulation*, 39 ADMIN. L. REV. 445 (1987); George Stigler, *The Economies of Scale*, 1 J.L. & ECON. 54 (1958).

[77] Elizabeth Handwerker & Matthew Dey, *Facts About Concentrated Labor Markets in the United States* 7-11 (BLS Working Paper 550, 2022), https://www.bls.gov/osmr/research-papers/2022/pdf/ec220050.pdf.

[78] Handwerker & Dey, *supra* note 77.

[79] *See, e.g.*, Andrew Atherton et al., *Rurality, Productivity, and Skills* (Univ. of Lincoln-ERDU, 2010), https://core.ac.uk/download/pdf/30624593.pdf.

[80] *Rural America at a Glance*, *supra* note 22, at 10.

[81] OECD, *supra* note 74.

declining family-owned businesses—nearly 600,000 collapsed between 2007 and 2012[82]—as well as declining low-wage retail and service jobs,[83] resulting in lower tax bases with multiplier effects throughout rural communities.[84] Declining health and elderly care,[85] educational opportunities,[86] training, and public services further reduce private and public employment.[87] Where big-box stores enter to fill the gap, they generally pay lower taxes and extract profits that move outside those communities to corporate headquarters.[88] When urban entrepreneurs move to rural areas, they tend to operate in *regional* markets with limited direct impacts on local employment in rural areas.[89] Rural labor markets have limited exposure to international markets and labor market competition to drive up demand for skills development.[90] And while evidence that higher incidence of self-employment positively correlates with business creation and innovation in urban areas, that is not true in rural areas, where self-employment is more of a last resort due to lack of alternatives.[91]

On the supply-side, rural workers are aging and ethnically diversifying due to youth out-migration and in-migration of older workers and immigrants.[92] Workers' capacity generally skews towards lower and relatively undiversified skill levels compared to urban labor markets, deterring entry of employers needing a full complement of skills.[93] Because there are limited opportunities for upward mobility in *internal* labor markets and external labor markets are thin, workers themselves have limited incentives to pursue skills development.[94] Because workers that stay in rural communities generally have lower turnover rates, employers have fewer incentives to invest in in-work progression. Vacancies are also harder to fill, leaving existing staff with higher workloads and decreased availability

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[82] U.S. Census Bureau, *Statistics for U.S. Firms that Were Family-Owned* (2007), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=SBO_2012_00CSCB04&prodType=table; U.S. Census Bureau, *Statistics for U.S. Firms that Were Family-Owned* (2012).

[83] Lauren Thomas, *Store Closures Rocked Retail in 2017*, CNBC.COM (Dec. 26, 2017), https://www.cnbc.com/2017/12/26/store-closures-rocked-retail-in-2017-and-more-should-come-next-year.html; Ashley Lutz, *There's a Terrifying Mall "Blight"*, BUS. INSIDER (Sept. 3, 2016), https://www.businessinsider.com/what-will-happen-when-malls-shut-down-in-america-2016-9.

[84] ANDERSON, *supra* note 8, at 8.

[85] UNC Sheps Center, *Rural Hospital Closures* (2017), http://www.shepscenter.unc.edu/programs-projects/rural-health/rural-hospital-closures/; Janet Adamy & Paul Overberg, *Rural America is the New "Inner City"*, WALL ST. J. (May 26, 2017), https://www.wsj.com/articles/rural-america-is-the-new-inner-city-1495817008.

[86] KATHERINE CRAMER, THE POLITICS OF RESENTMENT (2016); Economist, *What's the Matter with Oklahoma – Education in America*, THE ECONOMIST (Feb. 3, 2018); Brian Real & Norman Rose, *Rural Libraries in the United States* (Am. Library Ass'n, 2017).

[87] Patricia Cohen & Robert Gebeloff, *Public Servants Losing Foothold in Middle Class*, N.Y. TIMES (Apr. 23, 2018), https://www.nytimes.com/2018/04/22/business/economy/public-employees.html.

[88] *See, e.g.*, Marie Donahue & Stacy Mitchell, *Dollar Stores are Targeting Struggling Urban Neighborhoods and Small Towns* (Inst. Pub. Reliance, 2018), https://ilsr.org/dollar-stores-target-cities-towns-one-fights-back/; Laura Bliss, *After the Retail Apocalypse*, BLOOMBERG.COM (Nov. 14, 2018), https://www.bloomberg.com/news/articles/2018-11-14/to-cut-taxes-big-box-stores-use-dark-store-theory.

[89] *See, e.g.*, Lise Herslund, *The Rural Creative Class*, 52 SOCIOLOGIA RURALIS 235 (2012).

[90] Anne Green, *Changing Dynamics of Rural Labor Markets*, *in* ROUTLEDGE HANDBOOK OF RURAL STUDIES (Mark Shucksmith ed., 2016).

[91] Giulia Faggio & Olmo Silva, *Self-Employment and Entrepreneurship in Urban and Rural Labor Markets*, 84 J. URBAN ECON. 67 (2014).

[92] Green, *supra* note 90, at 143-44, 146-47; Tony Champion & David Brown, *Migration and Urban-Rural Population Redistribution*, *in* RURAL TRANSFORMATIONS, *supra* note 72, at 39-57.

[93] David Freshwater, *Modernising Rural Economies* (OECD, 2013), https://www.oecd.org/regional/regional-policy/Innovation-Modernising-Rural-Economy.pdf.

[94] Green, *supra* note 90, at 148.

for training.[95] Access to skills development and broader work experience is constrained due to sparsely distributed populations and limited public transportation.[96] Still, rural traditions of pluriactivity, or having one or more members of a household perform work on different locations or sectors due to seasonal work, have institutionalized adaptability in many rural families, and organizing traditions have facilitated broader collective action, even if outside the workplace.[97]

2. *Distressed Labor Markets*

Like rural labor markets, distressed labor markets are not categorized, studied, or regulated as distinct communities by labor regulatory agencies. But an estimated 50.5 million Americans live in distressed communities, defined in the social science and public policy literature as communities by zip code or county that fall into the bottom quintile of economic well-being measures based on combined metrics of education, housing vacancy, unemployment, poverty rates, median income ratios, and changes in employment and business establishments.[98] Generally, communities in "distress" are identified with low employment rates, place-based poverty, and median income below two-thirds of the state level.[99] Some communities are in "legacy cities", post-industrial manufacturing cities that declined due to automation, globalization, and reverse agglomeration effects of plant closures and output reductions.[100] These communities stretch from the Rust Belt through military-industrial cities of the West.[101] Others are older suburbs of metropolitan areas that have declined due to population loss, aging infrastructure, rising crime rates, unemployment, and blight.[102] Distress is increasingly "ruralized",[103] and over half of Americans living in distress are people of color.[104]

While many workers in distressed communities are members of legacy unions, work in declining industries has high replacement demand—demand caused by retirements—and pension crises burden and shrink their local governments to the point of bankruptcy.[105] The odds of being employed are one-fifth lower than in booming labor markets, and the prime-age employment rate—between 25 and 54—is 68 percent, over 9 percent below the national average.[106] Cities dominated by a single industry or company that shuttered hollow out when middle-class residents leave and low-income and low-skilled workers stay. But infrastructure built to service large populations has high maintenance needs, so labor demand remains high enough for new immigrants to fill the void, adding new dependent populations to remaining lower-income residents.[107]

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[95] Maria de Hoyos & Anne Green, *Recruitment and Retention Issues in Rural Labor Markets*, 27 J. RURAL STUD. 171 (2011).

[96] *Id.*

[97] *See, e.g.*, THULANI DAVIS, THE EMANCIPATION CIRCUIT (2022); ROBIN KELLEY, HAMMER AND HOE (2015); THOMAS ANDREWS, KILLING FOR COAL (2008).

[98] EIG, *Spaces Between Us*, *supra* note 52, at 4.

[99] *See supra* note 8.

[100] *See generally* AM. ASSEMBLY COLUM. UNIV., REINVENTING AMERICA'S LEGACY CITIES (2011).

[101] *See* ANDERSON, *supra* note 8, at 1133-35.

[102] *See* Katherine Hexter et al., *Revitalizing Distressed Older Suburbs*, WHAT WORKS COLLABORATIVE (2011), https://www.urban.org/research/publication/revitalizing-distressed-older-suburbs.

[103] Econ. Innovation Grp., *From Great Recession to Great Reshuffling* 6 (2018), https://eig.org/wp-content/uploads/2018/10/2018-DCI.pdf.

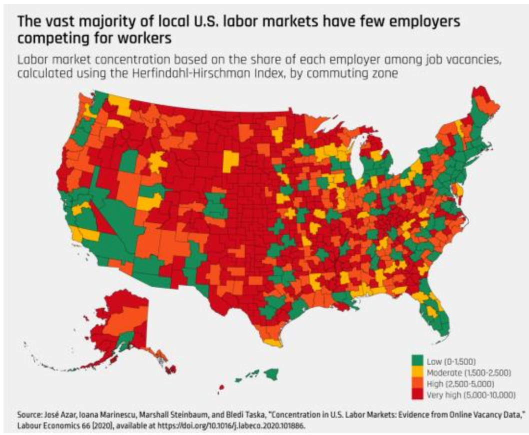
[104] EIG, *Spaces Between Us*, *supra* note 52, at 4.

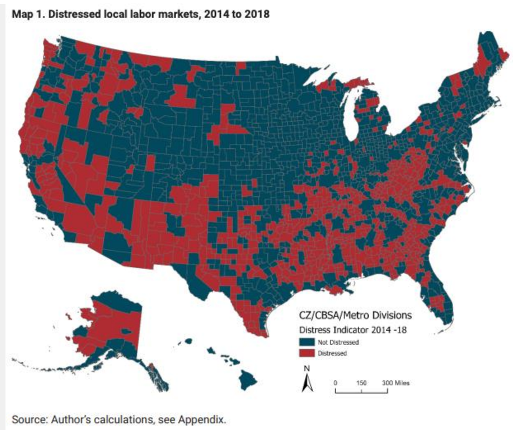
[105] *See* Anderson, *Minimal Cities*, *supra* note 8, at 1148.

[106] Bartik, *supra* note 108, at 5.

[107] Hexter et al., *supra* note 102, at A.9-10.

Distressed labor markets can but often do not overlap with labor markets with high to very high levels of concentration. Economic studies, with accompanying illustrative maps below, reveal that nearly one in five Americans either confront high to very high labor market concentration (highlighted in red) *or* distressed labor market conditions (also highlighted in red):[108]





Thus, while rural labor markets suffer high employer concentration levels, distressed labor markets suffer what sociologists understand as "spatial concentration", higher concentrations of joblessness, lower access to job networks and jobs, lack of access to quality schools, limited exposure to informal mainstream social networks, and social isolation.[109] These economic and socio-cultural conditions, compounded by information frictions, increase workers' mobility costs.[110] Further, the shuttering of businesses and sectors means that workers face scarcer employment, and particularly where community banks have closed, reduced access to credit, increasing new firm entry costs. Fewer employers, up to and including *no* employers in certain sectors and occupations, leave workers with limited outside options to existing jobs or, to use Professor Christopher Leslie's term, "no-opolies" that function as employment deserts.[111]

B. Company Towns: Natural Monopsony and Oligopsony

Rural and distressed labor markets are much more likely than urban labor markets to operate under conditions of "natural" monopoly/monopsony or natural oligopoly/oligopsony. Natural monopoly (or monopsony) describes markets where the entire demand (or supply) is satisfied at lowest cost by one firm because "the cost of producing a product or service declines as output increases."[112]

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[108] Azar et al., *supra* note 29, generated the labor market concentration map, and Timothy Bartik, *Helping America's Distressed Communities Recover* 10 (Brookings, 2020), https://www.brookings.edu/wp-content/uploads/2020/09/20200923_BrookingsMetro_Distressed-Communities-COVID19-Recovery_Bartik_Report.pdf, generated the map identifying distressed labor markets.

[109] *See* WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED (1987); WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS (1996).

[110] Peter Bergman et al., *Creating Moves to Opportunity* (2023), https://scholar.harvard.edu/files/lkatz/files/paper_v68.pdf; Thomas Fujiwara et al., *A Revealed-Preference Approach to Measuring Information Frictions in Migration* (2022), https://charlyporcher.github.io/publication/fmp/; Peter Bergman et al., *Housing Search Frictions* (NBER Working Paper 27209, 2020), https://www.nber.org/system/files/working_papers/w27209/w27209.pdf.

[111] *See infra* notes 140, 324-325 & accompanying text.

[112] PHILIP AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW ¶ 658b (2022).

When such markets have more than one firm, "either the firms will quickly shake down to one through mergers or failures, or production will continue to consume more resources than necessary."[113] Natural oligopolies (or oligopsonies) may exist where total market-wide costs are minimized when the number of sellers (or buyers) is more than one but fewer than the number of firms in a competitive market.[114]

Public utilities and railroads are classic examples of natural monopoly: tap water, electricity grids, and rail transport have immense start-up costs in infrastructure investment, and they function with strong economies of scale that produce high entry barriers and inefficiencies from competitor entry. But even though goods or service provision is most efficient when done by a single firm regionally, natural monopolists, without regulation, have every incentive to charge harmful and inefficient monopoly prices or monopsony wages that, if done by private actors, also effectuate wealth transfers. Natural monopolies have traditionally been either nationalized or subject to hefty government regulation to avoid inefficient and inequitable pricing.

While traditional natural monopoly discussions have focused on public utilities, a more recent literature has applied natural monopoly theory to digital platforms, online retail, and search engines.[115] Still unexplored, however, is how employers in contemporary "company towns" operate based on the same principles. Early theorizations of monopsony modeled unilateral price-setting on company towns: one employer for a large number of sellers.[116] But company towns are neither theoretical nor rare: in a number of sectors in smaller labor markets with low or declining demand, one or a small number of firms most efficiently provide goods and services at scale, and so function as "natural" monopsonies or oligopsonies. Take a hospital town like North Platte, Nebraska. Hospitals have high start-up costs—securing facilities, expensive equipment and technology, permitting requirements, scarce medical staff—and operate on scale economies: high fixed relative to variable costs while needing to offer instantaneous services in close proximity to patients with widely fluctuating demand.[117] Towns with low population density—and, thus, lower demand—are more likely to generate these conditions. Regional hospitals are also likely to operate as natural *monopsonies* over labor inputs—medical staff—because productive efficiencies in hospital care provision in a reasonable commuting area favor a single employer for their services.[118]

There are countless examples of natural monopoly and/or monopsony in "company towns" across rural and distressed spaces, from traditional mining and manufacturing towns like Gillette, Wyoming, to poultry-processing facilities in Green Forest, Arkansas, and more contemporary Amazon warehousing and logistics centers in towns like Campbellsville, Kentucky, or towns along upstate New York's 50-mile drone corridor.[119] Natural monopolies occur where demand in a local market is only

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[113] Richard Posner, *Natural Monopoly and Its Regulation*, 21 STAN. L. REV. 548, 548 (1969).

[114] CARL KAYSEN & DONALD TURNER, ANTITRUST POLICY 193-94 (1959); WILLIAM SHARKEY, THE THEORY OF NATURAL MONOPOLY 145 (1982); Posner, *supra* note 113, at 559.

[115] *See, e.g.*, Dan Awrey & Joshua Macey, *Open Access, Interoperability, and DTCC's Path to Monopoly*, 132 YALE L.J. 1 (2022); Lina Khan, *The Separation of Platforms and Commerce*, 119 COLUM. L. REV. 973 (2019).

[116] *See, e.g.*, JOAN ROBINSON, ECONOMICS OF IMPERFECT COMPETITION 102-03 (1933); BLAIR & HARRISON, *supra* note 28, at 70-71.

[117] *See* Dayna Matthew, *Doing What Comes Naturally*, 31 HOUS. L. REV. 813, 824-25 (1994).

[118] *See* José Azar et al., *Estimating Labor Market Power* 27, 32 (NBER Working Paper 30365, 2022), https://www.nber.org/papers/w30365.

[119] *See, e.g.*, Alex Press, *Amazon is Creating Company Towns*, JACOBIN.COM (July 24, 2021), https://jacobin.com/2021/07/amazon-warehouse-communities-towns-geography-warehouse-fulfillment-jfk8-cajon-inland-empire; John Lippert & Stephen Franklin, *The Warehouse Archipelago*, AMERICAN PROSPECT (Aug. 9, 2021),

capable of sustaining one firm, so even a single grocery store in a small town can function as a natural monopoly.[120] Where natural monopolies occur, workers have limited outside options for employment for their contributed value.[121] So even where natural monopolies in product or service markets do not result in natural monopsonies in labor markets—a grocery store cashier might work as a retail cashier—empirical work has shown that low elasticities and high job differentiation exists even in low-skilled work, in part due to workers' heterogeneous preferences and lock-in effects.[122] Thus, natural monopolies can have considerable monopsony power in local labor markets. Likewise, firms that are not natural monopolies regionally *may* be natural *monopsonies* locally. A food processing facility is a good example: it sells food products in competitive regional or national wholesale markets, but may have scale economies employing processing workers in a town near a poultry or hog farm.[123]

Still, company town employers provide employment opportunities, critical services, and sponsorship for everything from critical infrastructure and investments in education and recreation to political influence on behalf of the town's interests with regional, state, and federal audiences, including public grants.[124] But these benefits can come at a cost. As employers with monopsony power, they can unilaterally reduce hiring, compensation, and wage growth while transferring wealth from labor to capital, especially when their political influence grants them benefits like tax breaks that are regressive.[125] And large employers are not bound to align their interests with local populations. They can make unilateral decisions about plant closures or function as veto points in collective decisions about transitioning or diversifying economic development at the public's expense.[126]

C. Scarcity and Market Thinness

Rural and distressed labor markets are also characterized by significant market thinness.[127] Generally speaking, "thin" markets are markets with few active participants on the buy- or sell-side—in the case of labor markets, few employers and/or workers—which reduces liquidity and the volume of transactions.[128] In other words, as compared to liquid markets, converting an asset or service into cash or compensation at a fair approximation of its value is much more difficult and time-consuming

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https://prospect.org/labor/the-warehouse-archipelago/; Nina Lakhani, *"They Rake in Profits – Everyone Else Suffers"*, GUARDIAN.COM (Aug. 11, 2021), https://www.theguardian.com/environment/2021/aug/11/tyson-chicken-indsutry-arkansas-poultry-monopoly.

[120] *See* RICHARD SCHMALENSEE, CONTROL OF NATURAL MONOPOLIES 5 (1979); John Cirace, *Economic Analysis of Antitrust Law's Natural Monopoly Cases*, 88 W. VA. L. REV. 677, 685 (1986).

[121] *See* Azar et al., *Estimating*, *supra* note 118.

[122] *See, e.g.*, *id.* at 17 & Fig. 1; Jan Rouwendal, *Spatial Job Search and Commuting Distances*, 29 REG. SCI. URBAN ECON. 491 (1999).

[123] *See* Roger Noll, *"Buyer Power" and Economic Policy*, 72 ANTITRUST L.J. 589, 596-97 (2005).

[124] *See, e.g.*, Eric Posner & Cass Sunstein, *Antitrust and Inequality*, 2 AM. J. L. & INEQUALITY 190, 201-3 (2022).

[125] On inefficiencies and redistributive monopsony harms, *see, e.g.*, ALAN MANNING, MONOPSONY IN MOTION (2003); Posner & Sunstein, *supra* note 124, at 201-3. On adverse effects of tax breaks, *see, e.g.*, Patrick Kennedy & Harrison Wheeler, *Neighborhood-Level Investment from the U.S. Opportunity Zone Program* (unpublished manuscript, 2021), https://www.olab.berkeley.edu/s/oz_kennedy_wheeler.pdf; Patricia Cohen, *As Big Retailers Seek to Cut their Tax Bills, Towns Bear the Brunt*, N.Y. TIMES (Jan. 6, 2019), https://www.nytimes.com/2019/01/06/business/economy/retailers-property-tax-dark-stores.html.

[126] *See* ARNOLD ALANEN, MORGAN PARK (2007); LINDA CARLSON, COMPANY TOWNS OF THE PACIFIC NORTHWEST (2003); Kelli Roemer & Julia Haggerty, *Energy Transition as Fiscal Rupture*, 91 ENERGY RSCH. & SOC. SCI. 102751 (2022).

[127] For labor market thinness, *see* Manning, *Thin Theory*, *supra* note 32.

[128] *See, e.g.*, Marzena Rostek, *Thin Markets*, *in* PALGRAVE DICTIONARY OF ECONOMICS (Matias Vernengo ed., 2008).

in thin markets.[129] And thin markets are inelastic, so a small shift in supply or demand can result in significant price or wage movements. Overall, thin markets have a lower volume of transactions—there are few bids or offers—so price (or wage) transparency is low and less predictive of actual value, particularly where products or services are heterogeneous or highly differentiated. Classic examples of thin markets include certain residential housing or rental markets, financial markets with low trading volume like private equity or infrastructure finance instruments, agricultural commodities markets, and collectible items, like art.[130]

The lived experience of thin labor markets is unstable and unpredictable demand—work comes and goes seasonally or with the booms and busts of volatile industries like coal mining or logging.[131] The spillover effects from uncertain employment extend beyond income earners to their families and communities, adapting to economic shocks that destabilize and persistently require adjustments to new incomes, jobs, work schedules, and commutes. Uncertain employment also contributes to increased effort and risk-taking in often dangerous jobs to maximize income when it is available at the expense of potential disability and longer-term dependencies on others.[132]

Thus, thin labor markets generate allocative efficiency losses (labor services are not being put to their most welfare-enhancing uses), unpredictable wage and employment volatility, and higher transaction costs and risks in seeking, obtaining, and maintaining employment.[133] But thin market harms can run deeper. When workers lack access to thicker labor markets, lower than optimal market penetration—or, successful sale of their services—can occur, with reverse multiplier effects. Thin markets can also result in wealth transfers, inequality, and even socio-political or democracy-based harms where they consolidate economic power in ways that strengthen political power.

D. Deeper Market Failures

Rural and distressed labor markets experience deeper market failures as a result of their natural monopolistic and thin market characteristics. These include imperfect competition and anticompetitive conduct, high matching and search costs, mobility costs, and information asymmetries between workers and employers. In part because of limited labor market institutions to aid workers in asserting countervailing power against employers, these market failures tend to strengthen employer buyer power over the terms and conditions of work prior to and during employment.

Imperfect Competition and Anticompetitive Conduct. In addition to documented compensation effects from labor market concentration in rural and distressed communities, workers also suffer from employers' unlawful monopsony power and anticompetitive conduct, especially in the agriculture and

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129 *See* Jan Eeckhout & Korie Amberger, *Labor Market Liquidity* (2017).

130 *See, e.g.*, Marzena Rostek, *Dynamic Thin Markets*, 28 REV. FIN. STUD. 2946 (2015); Francis Longstaff, *Valuing Thinly-Traded Assets* (NBER Working Paper 20589, 2014), https://www.nber.org/system/files/working_papers/w20589/w20589.pdf; Mark Mitchell et al., *Slow-Moving Capital*, 97 AM. ECON. REV. 215 (2007); Michael Adjemian et al., *A Framework to Analyze Thinly-Traded Agricultural Commodity Markets*, 98 AM. J. AG. ECON. 581 (2016).

131 *See, e.g.*, Dwight Billings & Ann Tickamyer, *Uneven Development in Appalachia*, *in* FORGOTTEN PLACES 15-16 (Thomas Lyson ed., 1993).

132 *See, e.g.*, Rex Campbell et al., *The Reported and Unreported Missouri Ozarks*, *in* FORGOTTEN PLACES, *supra* note 131, at 31-32.

133 *See, e.g.*, Li Gan & Qi Li, *Efficiency of Thin and Thick Markets* (NBER Working Paper 10815, 2004), https://www.nber.org/system/files/working_papers/w10815/w10815.pdf.

health care industries.[134] First, firms in the agricultural industry engage in a range of anticompetitive practices that squeeze farmers in production and processing. Corporate consolidation and abusive contracting in the markets for poultry, beef, pork, grain, fertilizer, seed, equipment and repair, processing and farm cooperatives, storage, brokering, and exporting have resulted in well-documented monopoly and monopsony power, anticompetitive contracting practices, and reduced wages and workplace health and safety.[135] Poultry, beef, and pork processors—geographically concentrated in low-density rural areas—are alleged to, and have plead guilty to, information-sharing and wage-fixing that suppresses pay, and employers have used farmworker visa certification programs to coordinate hiring and wage decisions.[136] Second, hospital workers in rural and distressed areas have experienced suppressed pay and slower wage growth as a result of hospital consolidation and collusion on wage-setting, no-poaching, and information-sharing.[137] Private equity has also strengthened employer power in hospitals and nursing homes in rural and distressed areas through leveraged buyouts, closures, and staff reductions.[138] Private equity investments have increased twentyfold from 2003 to 2017, with increased consolidation, closures, and service loss during the COVID-19 pandemic.[139]

Finally, corporate consolidation in the banking sector has contributed to bank closures in rural and distressed areas, creating banking deserts and reducing access to lending and credit.[140] The digital divide and limited access to online banking exacerbates reduced access to banking services in these areas.[141] Access to credit is critical for boosting entry and competition in imperfectly competitive

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[134] *See* Arnold, *supra* note 31; Prager & Schmitt, *supra* note 31.

[135] BREWSTER KNEEN, INVISIBLE GIANT (2002); PETER CARSTENSEN, COMPETITION POLICY AND BUYER POWER 1-9 (2017); Yale Conf. Compendium, *Reforming America's Food Markets* (2022), https://som.yale.edu/sites/default/files/2022-06/Grocery-Compendium_1.pdf; Hafiz & Miller, *supra* note 7; Philip Howard, *Consolidation in the Global Seed Industry*, 1 SUSTAINABILITY 1266 (2009).

[136] *See, e.g.*, Treasury Dep't, *supra* note 10, at 42-44; *Jien v. Perdue Farms*, No. 19-cv-2521 (D. Md. filed Mar. 11, 2021); *Brown et al. v. JBS USA Food et al.*, No. 1:22-cv-02946 (D. Co. filed Nov. 11, 2022); Office of Public Affairs, U.S. Dep't of Justice, *Justice Department Files Lawsuit to End Conspiracy to Suppress Worker Pay* (July 25, 2022), https://www.justice.gov/opa/pr/justice-department-files-lawsuit-and-proposed-consent-decrees-end-long-running-conspiracy.

[137] *See e.g.*, Treasury Dep't, *supra* note 10, at 41-42; U.S. Dep't of Justice, *Health Care Company Indicted for Labor Market Collusion* (2021), https://www.justice.gov/opa/pr/health-care-company-indicted-labor-market-collusion; *Fleischman v. Albany Med. Ctr.*, 728 F. Supp. 2d 130 (N.D.N.Y. 2010); Prager & Schmitt, *supra* note 31; Janet Currie et al., *Cut to the Bone? Hospital Takeovers and Nurse Employment Contracts*, 58 INDUS. & LAB. REL. REV. 471 (2005).

[138] *See*, *e.g.*, Austin Ownbey, *DOJ, FTC Scrutiny Tests Private Equity Firms*, BLOOMBERGLAW.COM (Sept. 23, 2022), https://news.bloomberglaw.com/us-law-week/DOJ-FTC-Scrutiny-Tests-Private-Equity-Firms; Sarah Tribble, *When Private Equity Comes for Rural Hospitals*, KHN (2022), https://khn.org/news/article/private-equity-rural-hospitals-closure-missouri-noble-health/; Yasmin Rafiei, *When Private Equity Takes Over a Nursing Home*, NEW YORKER (Aug. 25, 2022), https://www.newyorker.com/news/dispatch/when-private-equity-takes-over-a-nursing-home.

[139] Bipartisan Pol'y Ctr., *The Impact of COVID-19 on the Rural Health Care Landscape* 21, 26 (2022), https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2022/05/BPC-Medicare-Rural-EmerHsp_R02.pdf; Anaeze Offodile et al., *Private Equity Investments in Health Care*, 40 HEALTH AFFAIRS 719 (2021); Richard Sheffler et al., *Soaring Private Equity Investment in the Healthcare Sector* (Am. Antitrust Inst., 2021), https://www.antitrustinstitute.org/wp-content/uploads/2021/05/Private-Equity-I-Healthcare-Report-FINAL-1.pdf.

[140] CFPB, *Challenges in Rural Banking Access* (2022), https://files.consumerfinance.gov/f/documents/cfpb_data-spotlight_challenges-in-rural-banking_2022-04.pdf [hereinafter, CFPB Report]; Christopher Leslie, *Banking Deserts* (forthcoming); Mann, *supra* note 30; Jason Richardson et al., *Bank Branch Closures* (NCRC, 2017), https://ncrc.org/wp-content/uploads/2017/05/NCRC_Branch_Deserts_Research_Memo_050517_2.pdf.

[141] *See* Taylor Witte et al., *The Impact of Distance Between Offices and Borrowers on Agricultural Loan Volume*, 75 AGR. FIN. REV. 484 (2015); CFPB Report, *supra* note 140, at 7-10.

markets, and empirical research confirms that bank consolidation has reduced new business entry and hiring while increasing racial inequality.[142]

Matching Costs and Heterogeneous Preferences. A growing consensus of economists model labor markets as imperfectly competitive because of their unique, two-sided matching characteristics.[143] Unlike product markets, buyers *and* sellers have to choose each other, and both employers and workers have distinct heterogeneous preferences in employment choices.[144] But economists and sociologists highlight how matching costs are heightened in rural and distressed communities due to smaller population size, low employment densities, place-based attachments, resistance to in-migration, and fears of discrimination.[145] Additionally, compared to thick urban labor markets, workers in rural and distressed areas are especially likely to match with employers—and employers, workers—through informal methods like word of mouth and social connections, requiring personal knowledge to assess match quality, a process that is more challenging with a more limited variety of available jobs.[146]

Search Costs and Information Asymmetries. Relatedly, workers in rural and distressed communities confront high search frictions and information costs when looking for jobs due in part, again, to lower employment densities, resistance to long commutes, and reliance on informal networks.[147] Search frictions are costs workers bear in the time and money it takes to secure or switch jobs, and they "give employers bargaining power over their workers to a far greater extent than exists in product markets."[148] Further, labor market concentration reduces the number of employers and employees' beliefs in the benefits of job search, reducing search effort.[149]

Search frictions are exacerbated when obtaining information about outside options is constrained, and, because of economies of scale, it is more costly for individual workers to obtain information about jobs and employers than for firms.[150] Jobs that superficially seem to be adequate substitutes to current employment often involve significant variation with respect to compensation, amenities, clientele and interpersonal relationships, workplace policies like scheduling flexibility and overtime, and even skills and tasks. Without access to a robust informal network, workers in rural and distressed communities experience information barriers along all these dimensions—learning of job vacancies, opportunities, and offers; transparency about compensation and working conditions; and transparency about amenities—due to more limited internet access, "news deserts" resulting from lower ad revenue for local media, and fewer information spillovers.[151] Without access to information

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[142] *See* Mann, *supra* note 30.

[143] *See, e.g.*, Suresh Naidu & Eric Posner, *Labor Monopsony and the Limits of Law*, 57 J. HUM. RES. S284, S299 (2022); Eduardo Azevedo, *Imperfect Competition in Two-Sided Matching Markets*, 83 GAMES & ECON. BEHAVIOR 207 (2014).

[144] *Id.*; Azar et al., *Estimating*, *supra* note 118, at 17-18.

[145] See, e.g., Gizem Kosar et al., *Understanding Migration Aversion*, 231 J. ECONOMETRICS 123 (2022); Nikhil Agarwhal, *Policy Analysis in Matching Markets*, 107 AM. ECON. REV. 246 (2017); Robert Gibbs, *Rural Labor Markets and Welfare Reform*, *in* RURAL DIMENSIONS OF WELFARE REFORM 54-55 (Bruce Weber ed., 2002); Keywon Cheong et al., *Racial Differences Among Young Men in Selection of Metropolitan and Nonmetropolitan Destinations*, 51 RURAL SOC. 222 (1986).

[146] Gibbs, *supra* note 145, at 55.

[147] *See* Ian Hodge et al., *Barriers to Participation in Rural Labor Markets*, 16 WORK, EMPL. & SOC. 457 (2002); Colin Lindsay et al., *Alternative Job Search Strategies in Rural Labor Markets*, 45 SOCIOLOGICA RURALIS 53 (2005); Ioana Marinescu & Roland Rathelot, *Mismatch Unemployment and the Geography of Job Search*, 10 AM. ECON. J.: MACROECON. 42 (2018).

[148] Naidu & Posner, *Labor Monopsony*, *supra* note 143, at S299; Manning, *Thin Theory*, *supra* note 32, at 3; James Albrecht & Bo Axell, *An Equilibrium Model for Search Unemployment*, 92 J. POL. ECON. 824 (1984).

[149] Prager & Schmitt, *supra* note 31; Treasury Dep't, *supra* note 10, at 23.

[150] Treasury Dep't, *supra* note 10, at 7.

[151] OECD, *supra* note 74; Hilal Atasoy, *The Effects of Broadband Internet Expansion on Labor Market Outcomes*, 66 ILR REV.

about alternative jobs, workers suffer an anchoring bias, "believ[ing] their outside option is much closer to their current wage than it actually is."[152] These information costs increase workers' transaction risks and reduce liquidity in labor markets, but they can also increase employer power by concealing adverse employment information. Because employment is harder to leave once entered, and workers without collective representation have limited bargaining leverage, new information does not tend to result in renegotiated employment agreements to workers' benefit.

Mobility Costs. Finally, worker mobility costs are generally high.[153] But workers in rural and distressed communities face particularly high mobility costs due to higher financial constraints, fewer relocation resources, and higher costs transitioning from old, state- or locality-specific social safety net programs into new ones.[154] Many workers in these communities can neither afford to nor seek to leave employers because of family and social bonds as well as child care and other care relationships, strengthening employers' bargaining leverage over them.[155] And because workers do not receive full compensation for longer commutes, they have limited incentive to search for more distant work options.[156] Workers who want to move face high housing costs and occupational licensing restrictions limiting their mobility.[157] In distressed communities, workers in public employment or in legacy unions may be reluctant to leave jobs that provide health care and defined-benefit pensions for alternative employment.[158] Thus, particularly with non-college-educated workers, moving costs are substantial, reducing outside options and increasing incumbent employers' monopsony power.[159]

E. Worker Outcomes

Economic predictions that rich and poor places converge with the free movement of labor to higher-wage areas and capital to low-wage areas has not materialized.[160] Both income and geographic inequality has increased since the late 1970s, and relative to urban areas, rural and distressed communities have lower average earnings, higher poverty rates, and worse health outcomes.[161] The

315 (2013).

[152] Simon Jäger et al., *Worker Beliefs About Outside Options* (NBER Working Paper 29623, 2022), https://www.nber.org/papers/w29623.

[153] Kathryn Edwards, *Worker Mobility in Practice* (Econ. Pol'y Inst., 2022), https://files.epi.org/uploads/215905.pdf (collecting studies).

[154] *Id.* at 14-20; Schleicher, *Stuck!*, *supra* note 20, at 104-07; Jane Gravelle, *Wage Inequality and the Stagnation of Earnings of Low-Wage Workers* 15-17 (CRS Report R46212, 2022), https://crsreports.congress.gov/product/pdf/R/R46212/3 (collecting studies).

[155] *See, e.g.*, Alexander Bartik, *Moving Costs and Worker Adjustment to Changes in Labor Demand* (2018), https://static1.squarespace.com/static/5a0928c18dd0412bcedaea63/t/5bb291f69140b7394f34e16c/1538429444828/Bartik_2018_movingcosts.pdf; Mike Zabek, *Local Ties in Spatial Equilibrium* (2020), https://mikezabek.com/pdf/LocalTies_Manuscript.pdf.

[156] Manning, *Thin Theory*, *supra* note 32, at 5.

[157] Schleicher, *Stuck!*, *supra* note 20, at 114-22; Peter Ganong & Daniel Shoag, *Why Has Regional Income Convergence in the U.S. Declined?* (NBER Working Paper 23609, 2017), https://www.nber.org/papers/w23609; Janna Johnson & Morris Kleiner, *Is Occupational Licensing a Barrier to Interstate Migration?* (NBER Working Paper 24107, 2017).

[158] *See* Zachary Parolin & Tom VanHeuvelen, *The Cumulative Advantage of a Unionized Career for Lifetime Earnings*, ILR REV. (2022); Kathryn Doherty et al., *No One Benefits* 33 (2012), http://www.nctq.org/p/publications/docs/nctq_pension_paper.pdf; Leora Friedberg, *Labor Market Aspects of State and Local Retirement Plans*, 10 J. PENSION ECON. & FIN. 337, 337 (2011).

[159] Tyler Ransom, *Labor Market Frictions and Moving Costs*, 57 J. HUM. RESOURCES S137 (2022).

[160] *See, e.g.*, TIMOTHY NOAH, THE GREAT DIVERGENCE (2012).

[161] MORETTI, *supra* note 12, at 88-120.

causes of what economists call the "Great Divergence" are multiple and complex.[162] But labor market and human capital factors are central because regional disparities are primarily income-based, with the richest people and places "pulling away from the rest of the country."[163]

First, workers in rural and distressed labor markets have lower average earnings as represented through median household income than workers in urban labor markets, even accounting for work experience, level of education, and IQ.[164] Rural areas have lower labor force participation, and prime-age workers in distressed areas are one-fifth less likely to have a job compared to booming areas.[165] Poverty rates are also higher in rural and distressed areas: 14.3 percent in mostly urban counties, 16.3 percent in mostly rural counties, 17.2 percent in completely rural counties, and 25 percent in distressed counties.[166] Rural and distressed communities suffer lower well-being along broader, non-economic metrics as well, including life expectancy, family stability, and suicide rates.[167] While some of the divergence relates to relative cost of living, local economies surrounding workers matters: the number of skilled workers and overall educational level can increase overall productivity through complementarities, technology advances by local employers, and human capital externalities like knowledge spillovers within and among industries.[168]

Core labor market failures identified here as characteristic of rural and distressed labor markets are linked to lower wages and wage growth, wage dispersion and pay gaps, lower workplace quality, and even lower measures of subjective well-being.[169] While city-size wage premia are driven in part by productivity or agglomeration effects, an increasing body of research has found that the city-size wage premium and employment gaps between small and large cities are attributable to employer labor market power across locations.[170] Economists have also modeled how labor market concentration and monopsony result in deadweight loss, or underutilized workers resulting in higher unemployment.[171] Finally, the accrual of monopsony power due to market failures has distributional effects in terms of labor's reduced share of national income and income inequality.[172]

[162] *See, e.g.*, PAUL KRUGMAN, THE CONSCIENCE OF A LIBERAL 124-52 (2007) (summarizing debates); MORETTI, *supra* note 12, at 73-120 (same).

[163] Robert Manduca, *The Contribution of National Income Inequality to Regional Economic Divergence*, 98 SOC. FORCES 622, 622 (2019).

[164] Gloria Guzman et al., *Poverty Rates Higher, Median Household Income Lower in Rural Counties Than Urban Areas* (U.S. Census Bur., 2018), https://www.census.gov/library/stories/2018/12/differences-in-income-growth-across-united-states-counties.html; MORETTI, *supra* note 12, at 90.

[165] Jennifer Day et al., *Age Structure and Labor Force Participation of Rural America* (U.S. Census Bur., 2016), https://www.census.gov/newsroom/blogs/random-samplings/2016/12/a_glance_at_the_age.html; Timothy Bartik, *Bringing Jobs to People* 6 (Aspen Inst. Econ. Strategy Grp., 2020), https://www.economicstrategygroup.org/wp-content/uploads/2020/09/Bringing-Jobs-to-People_Bartik.pdf.

[166] Guzman et al., *supra* note 164; EIG, *supra* note 8.

[167] MORETTI, *supra* note 12, at 107-14; Judith Casant & Marco Helbich, *Inequalities of Suicide Mortality*, 19 INT'L J. ENVIRON. RES. PUB. HEALTH 2669 (2022).

[168] Moretti, *supra* note 12, at 90-108.

[169] Azar et al., *Labor Market Concentration*, *supra* note 29; Prager & Schmitt, *supra* note 31; Arnold, *supra* note 31; Chen Yeh et al., *Monopsony in the U.S. Labor Market*, 112 AM. ECON. REV. 2099 (2022); Arindrajit Dube et al., *Power and Dignity in the Low-Wage Labor Market* (NBER Working Paper 30441, 2022), https://www.nber.org/papers/w30441.

[170] *See* Claudio Luccioletti, *Labor Market Power Across Cities* (2022), https://ideas.repec.org/p/cmf/wpaper/wp2022_2214.html; Boris Hirsch et al., *The Urban Wage Premium in Imperfect Labor Markets*, 57 J. HUM. RES. S111 (2022).

[171] *See, e.g.*, Suresh Naidu et al., *Antitrust Remedies for Labor Market Power*, 132 HARV. L. REV. 256, 564-68 (2018).

[172] *See, e.g.*, Naidu et al., *supra* note 171, at 537, 565.

II. LABOR REGULATION IN RURAL AND DISTRESSED LABOR MARKETS

Rural and distressed labor markets experience significant market failures that justify government intervention, but our modern labor regulatory infrastructure is mismatched to remedy them. Even worse, structural features of that infrastructure combined with labor market deregulatory shifts have solidified workers' weaker bargaining leverage in these communities relative to local—and, more importantly, national and international—employers, exacerbating geographic inequality. This Part provides an overview of how federal employment policy as well as antitrust, labor, and employment law have failed to tackle the sources of employer power and even facilitated and generated employer monopsony at workers' expense.

In seeking to understand the legal infrastructure that contributes to geographic inequality as a form of spatial "wage making," this Part participates in a broader literature that takes "the building and maintenance of markets—and the tools, techniques, and knowledge practices that make this possible—as key objects of inquiry."[173] It conceptually draws from legal realism, institutional and labor economics, and law and political economy to view the law and legal institutions as shaping the parameters of and practices around wage-setting, most specifically by establishing and enforcing rights and liability regimes that determine the relative bargaining power of employers and workers.[174]

A. Federal Employment Policy and Workforce Investment

"Place-based employment policies" can be understood as the set of monetary, fiscal, and trade policies the federal government deploys to shape employment in geographically-specific ways. These policies create background conditions that determine public and private investment in workers and the spatial organization of supply and demand factors that govern entry into and earning potential from the labor market.[175] Monetary policy, dominated by inflationary fears, has consistently moved to tighten the money supply, disciplining wage growth at the federal level. But tight money has disproportionately impacted recessionary rural and distressed communities because, trapped in a single currency union, they have no local authority to boost demand by expanding the money supply. These communities thus depend all the more on fiscal and trade policy for economic development, from job creation and workforce development programs to place-based industrial and trade policy.[176] Between the New Deal and the 1970s, policymakers used direct federal job creation and aggressive labor market governance to generate regional income convergence across the United States. But since the 1970s, policymakers decentralized and deregulated economic development under New Federalism and neoliberal principles, increasing geographic divergence and placing more power in the hands of local officials and employers at the expense of increasingly captive working populations in rural and distressed communities.[177] This Section describes how, combined, place-based employment policies

[173] William Boyd, *Ways of Price-Making and the Challenge of Market Governance in U.S. Energy Law*, 105 MINN. L. REV. 739, 742 (2020).

[174] For more detailed discussions, *see* Hafiz, *Brand Defense*, *supra* note 33, at 4-7, 9-11; Hafiz, *Structural Labor Rights*, *supra* note 33, at 661-64; Hiba Hafiz & Ioana Marinescu, *Labor Market Regulation and Worker Power*, 90 U. CHI. L. REV. 1 (2023).

[175] *See* Austin et al., *supra* note 56, at 209 (identifying a taxonomy of place-based policies including direct public investment, tax benefits or subsidies to businesses and individuals, and regulatory relief). Due to space limitations, I only briefly discuss tax and trade policy.

[176] "Place-based industrial policy" is economic policy that intervenes in specific industries and locations to effectuate growth. *See, e.g.*, Anshu Siripurapu & Noah Berman, *Is Industrial Policy Making a Comeback?*, COUNCIL ON FOREIGN REL. (2022), https://www.cfr.org/backgrounder/industrial-policy-making-comeback?.

[177] *See, e.g.*, STEVEN ATTEWELL, PEOPLE MUST LIVE BY WORK (2018); KIM PHILLIPS-FEIN, INVISIBLE HANDS (2010);

have ignored and even exacerbated market failures rural and distressed labor markets confront at workers' expense.

1. Monetary Policy and Geographic Inequality

Just like Greece could not increase supply of the Euro during its devastating 2010 recession, rural and distressed communities locked into a single currency union—the United States dollar—cannot devalue their currency by increasing the money supply to increase local demand.[178] Monetary policy is a blunt instrument for setting the price of money with inevitably geographically-divergent effects depending on local economic conditions. Employers in rural and distressed communities with already high levels of market power get a windfall from tight money: as wage-setters, they can lay off workers or refuse to lift wages when interest rates are high and then rehire them (or not) when interest rates are cut again.[179] Monetary policy has limited sustained wage growth due to a shift from Keynesian "full employment" policies (1930s-1970s) to monetarist, neoclassical economic approaches that view some level of unemployment as a "natural" buffer against inflation (1970s-present).

a. From "Full Employment" to "Natural Unemployment"

New Deal monetary policy focused on supporting full employment measures to boost macroeconomic growth. Roosevelt's 1933 abandonment of the gold standard to expand the money supply provided tremendous liquidity to the banking system and enabled deficit spending to power the economy through the Depression.[180] Economists in Roosevelt's "brain trust" believed attaining full employment through monetary expansion would not increase inflation.[181] Post-war views followed suit. Fiscal Keynesians associated high unemployment with low inflation and low unemployment with high inflation on a Phillips curve: high demand for goods would drive prices up, encouraging firms to hire more, and increased employment would increase demand.[182]

As I will discuss more fully below, fiscal policy—and particularly federal spending for direct job creation to establish the federal government as an "employer of last resort" (ELR)—worked in tandem with monetary policy to stabilize economic growth. But despite significant post-war momentum to coordinate monetary and fiscal policy to prioritize full employment, Congress "segregated" monetary policy from "active labor market policies" in the Full Employment Act of 1946.[183] The Act granted the Federal Reserve its "dual mandate" to flexibly weight full employment goals with its obligations to maintain price stability.[184] But the Act "reflected the business community's

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Michael Dennis, *The Idea of Full Employment*, 14 LAB. STUD. IN WORKING-CLASS HIST. 69, 71-90 (2017).

[178] YAIR LISTOKIN, LAW AND MACROECONOMICS 17-18, 97, 170-75 (2019); Hiba Hafiz, *A Whole-of-Government Approach to Increasing Worker Power* 22-24 (Roosevelt Inst. 2022).

[179] *See* Anastasia Burya et al., *Monetary Policy Under Labor Market Power* (IMF Working Paper 128, 2022), https://www.imf.org/en/Publications/WP/Issues/2022/07/01/Monetary-Policy-Under-Labor-Market-Power-520239.

[180] *See* BARRY EICHENGREEN, GOLDEN FETTERS 1 (1992); Brad DeLong & Larry Summers, *How Does Macroeconomic Policy Affect Output?* 467 (Brookings, 1998), https://www.brookings.edu/wp-content/uploads/1988/06/1988b_bpea_delong_summers_mankiw_romer.pdf.

[181] *See, e.g.*, WARREN SAMUELS, ESSAYS IN HETERODOX POLITICAL ECONOMY 326-27 (1992); ATTEWELL, *supra* note 177, at 147-48.

[182] *See* RICHARD PARKER, JOHN KENNETH GALBRAITH 344-45 (2005).

[183] Elisabeth Jacobs, *Principles for Reforming Workforce Development* 3 (Brookings, 2013), https://www.brookings.edu/wp-content/uploads/2016/06/FedRoleWorkforceDev.pdf.

[184] *See* Aaron Steelman, *The Federal Reserve's "Dual Mandate"* 1-2 (Fed. Res. Br. 11-12, 2011), https://www.richmondfed.org/publications/research/economic_brief/2011/eb_11-12.

hostility to an expanded role for government in markets" by "strip[ping] out the connection between labor market policy and macroeconomic stability", substituting indirect regulation of labor market tightness through monetary policy for more aggressive fiscal spending on direct job creation.[185]

Since the Eisenhower administration, and starting more aggressively in 1973, the Fed has tightly controlled the money supply, using increasingly aggressive interest rate hikes to combat perceived inflation risks resulting from major collective bargaining negotiations emerging out of the 1970-1971 recession.[186] The 1973-1975 recession and stagflation through the late 1970s pressured the White House and Congress to tackle high inflation and unemployment. Ascendant monetarists like Milton Friedman postulated a "natural rate equilibrium" of unemployment, arguing that reducing unemployment below a certain level would only *increase* rather than lower inflation, as Keynesians had argued.[187] Even as unemployment was increasing, policymakers viewed organized labor, *not* employers, as wage-setters, solidifying anti-inflationary wage policy that eventually gutted any right to a federal job guarantee in the 1978 Humphrey-Hawkins Act.[188]

b. The Volcker Shock and Monetary Policy as Indirect Wage Control

From the end of the Carter administration and most aggressively during the Reagan administration, tight monetary policy and presidential anti-union tactics sought to break organized labor's hold on perceived wage strength. First, as persistent unemployment and inflation—stagflation—extended through the 1970s, Carter responded with draconian monetary policy measures, appointing Paul Volcker Chair of the Federal Reserve to oversee a dramatic increase in interest rates—from around 10 percent in 1979 to 19.1 percent by 1981.[189] While the "Volcker Shock" reduced inflation through the Reagan administration, it triggered the largest recession since the Depression, leading to massive unemployment, peaking at 10.8 percent in December 1982.[190] More than any prior President, Reagan paired anti-inflationary policy with dismantling unions.[191] His unprecedented breaking of the Professional Air Traffic Controllers Organization (PATCO) strike gave a strong signal to employers and triggered long-term, intensified union-busting that sharply reduced union victories, increased unfair labor practices, and decimated union density and worker power.[192]

Since the Volcker Shock, workers' wages have lagged productivity, and labor's share of national income has declined.[193] Income inequality has also sharply increased due to "massive changes

[185] Jacobs, *supra* note 183, at 4.

[186] *See* Memorandum of Discussion, Federal Reserve's Open Market Committee Meeting 44-46 (1970), https://www.federalreserve.gov/monetarypolicy/files/fomcmod19700210.pdf.

[187] *See, e.g.*, Milton Friedman, *The Role of Monetary Policy*, 58 AM. ECON. REV. 1 (1968).

[188] *See* ATTEWELL, *supra* note 177, at 212; Tim Barker, *Preferred Shares*, PHENOMENAL WORLD (2021), https://www.phenomenalworld.org/analysis/preferred-shares/; Jeff Bloodworth, *The Program for Better Jobs and Income*, 81 INT'L SOC. SCI. REV. 135, 135-50 (2006); Daniel Mitchell & Christopher Erickson, *Not Yet Dead at the Fed*, 44 INDUS. REL. 565 (2005).

[189] U.S. Bur. Lab. Stat., FRED Econ. Data, *Federal Funds Effective Rate* (2022), https://fred.stlouisfed.org/graph/?g=mbK.

[190] *See* U.S. Bur. Lab. Stat., *Unemployment Rate*, https://fred.stlouisfed.org/series/UNRATE.

[191] *See* Michael Piore, *A Critique of Reagan's Labor Policy*, 29 CHALLENGE 48 (1986); Daniel Tope & David Jacobs, *The Politics of Union Decline*, 74 AM. SOC. REV. 842 (2009); Barker, *supra* note 232.

[192] KATE BRONFENBRENNER, NO HOLDS BARRED (Econ. Pol'y Inst. 2009); Richard Freeman, *Contraction and Expansion*, 2 J. ECON. PERSPS. 63, 75-78 (1988); Tope & Jacobs, *supra* note 191, at 846.

[193] Since 1979, the productivity-wage gap has increased, with productivity growing 3.7 times as much as pay today. *See* Econ. Pol'y Inst., *The Productivity-Pay Gap* (2022), https://www.epi.org/productivity-pay-gap/; Michael Giandrea &

in the pre-tax distribution of income" since 1980: the top 1 percent of adults earned an average of 27 times more than the bottom 50 percent of adults in 1980, increasing to nearly 44 times more by the end of Bush's presidency.[194] Monetary policy shocks increased geographic divergence by impacting income and employment levels in poorer areas most.[195]

After the 2008 financial crisis, the Fed's expansionary monetary policy compressed wages and reduced inequality at the lower wage distribution between low-wage and median-wage workers.[196] But uncoupling monetary policy from more aggressive labor market interventions to strengthen worker power disproportionately enriched asset owners and failed to decrease the productivity-wage gap or reverse labor's declining share of income.[197] Further, while the causes of inflation during the COVID-19 pandemic recovery are still under debate, the pandemic itself likely increased wage inequality, and the Fed's return to interest rates hikes has already squeezed worker earnings, particularly in rural and distressed communities.[198]

2. Fiscal Policy, Trade Policy, and Geographic Inequality

Where monetary policy has indirectly regulated the value of worker earnings with geographically divergent effects, centralized fiscal policy had traditionally worked to fill gaps and generate national economic convergence. From the New Deal through the Johnson administration, direct federal job creation paired with centralized economic development planning and place-based industrial policy leveled out poorer and richer regions and reduced income inequality nationally.[199] But beginning in the Nixon administration, and then more fully in the Reagan administration, New Federalism and neoliberal employment policies dismantled federal job guarantees and place-based anti-poverty and industrial policy programs in favor of a decentralized patchwork of block grants for anemically-funded training and welfare programs directed through states. Workforce development has since been governed by local officials and private employers with scarce oversight, minimal federal standards, and limited to no institutionalized worker representation. The resulting fiscal policy initiatives neither track nor attend to divergent increases in employer monopsony that disproportionately impact employment and earning outcomes in rural and distressed communities.

a. Direct Job Creation, Place-Based Industrial Policy, and Uniform Labor Standards

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Shawn Sprague, *Estimating the U.S. Labor Share*, MONTHLY LAB. REV. (2017), https://doi.org/10.21916/mlr.2017.7.

194 *See* Thomas Piketty et al., *Distributional National Accounts* 22 (NBER Working Paper 22945, 2016), https://www.nber.org/system/files/working_papers/w22945/w22945.pdf.

195 *See* Juan Herreño & Mathieu Pedemonte, *The Geographic Effects of Monetary Policy* 1-5 (Fed. Res. No. 22-15, 2022), https://www.clevelandfed.org/-/media/project/clevelandfedtenant/clevelandfedsite/publications/working-papers/2022/wp-2215-the-geographic-effects-of-monetary-policy-pdf.pdf.

196 *See, e.g.*, Clem Aeppli & Nathan Wilmers, *Rapid Wage Growth at the Bottom*, 119 PNAS 1 (2022), https://doi.org/10.1073/pnas.2204305119; David Autor et al., *The Unexpected Compression* (Markus Academy 2022), https://bcf.princeton.edu/wp-content/uploads/2022/10/Combined-Slides.pdf.

197 *See, e.g.*, LEV MENAND, THE FED UNBOUND 12-13, 27, 36-37 (2022); FRED, *Share of Labor Compensation in GDP*, https://fred.stlouisfed.org/series/LABSHPUSA156NRUG.

198 *See* Joe Piacentini et al., *The Impact of COVID-19 on Labor Markets and Inequality* (BLS Working Paper 551, 2022), https://www.bls.gov/osmr/research-papers/2022/pdf/ec220060.pdf; Dean Baker, *The Fed's Interest Rate Hikes to Hit the Most Vulnerable*, GUARDIAN (Sept. 23, 2022), https://www.theguardian.com/commentisfree/2022/sep/23/federal-reserve-interest-rate-hikes-are-going-to-hit-the-most-vulnerable.

199 *See* Robert Barro & Xavier Sala-i-Martin, *Convergence*, 100 J. POL. ECON. 223, 234 (1992); Ryan Nunn et al., *The Geography of Prosperity*, *in* PLACE-BASED POLICIES, *supra* note 49, at 11.

The suite of federal employment policies that drove the Roosevelt administration's response to the Depression included unprecedented programs of direct job creation—primarily through the Works Progress Administration (WPA) and Public Works Administration (PWA)—infrastructure investment, and direct industry and wage regulation that fundamentally reshaped the federal government's relationship with American workers. Combined, these programs generated long-term benefits for regional development and agglomeration economies around the country.[200] The federal government's labor market investment, particularly in low-skilled workers, compressed wages and narrowed the income gap in general and between places more than any period in American history.[201]

Roosevelt's brain trust viewed the government's direct job creation as demanding a "science" of increasing demand as a backstop for countercyclical planning.[202] The WPA promoted direct government hiring of the unemployed based on a "jobs-first" agenda while the PWA sought to boost demand through public works that funneled stimulus through federal contractors.[203] The WPA employed 8.5 million workers and is estimated to have reduced unemployment from its 1932 peak of 24 percent by 25 to 40 percent while the PWA employed about two million Americans between 1933 and 1943.[204] The Board for Public Works distributed "work opportunities . . . geographically, as widely and as equitably as . . . practicable."[205]

Federal place-based industrial policy from the New Deal through World War II invested in increasing production and demand, including for the war effort. For example, the 1933 establishment of the Tennessee Valley Authority (TVA) was an ambitious effort to modernize the Tennessee Valley, generating employment and shifting agricultural to better-paying manufacturing jobs that increased median family income.[206] In 1934, when Tennessee coal companies defeated the United Mine Workers' union drive and blacklisted striking miners, the TVA hired more than 200 *en masse*.[207] In 1935, the TVA adopted a policy of collective bargaining with all its employees, boosting unionization rates in a traditionally non-union area.[208] The TVA created over 250,000 jobs with a multiplier effect of at least two, increasing total area jobs by over 500,000.[209] World War II also generated significant

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200 *See generally* ATTEWELL, *supra* note 177, at 90-128; Andrew Garin & Jonathan Rothbaum, *The Long-Run Impacts of Public Industrial Investment* (revisions requested, Q.J. ECON., 2022), https://drive.google.com/file/d/1RD48bbTv66oiItfWRggWppgMPPVCk-65/view; Daniel Gross & Bhaven Sampat, *America, Jump-Started* (NBER Working Paper 27375, 2022), https://www.nber.org/papers/w27375; Patrick Kline & Enrico Moretti, *Local Economic Development, Agglomeration Economies, and the Big Push*, 129 Q.J. ECON. 275 (2013).

201 *See* Claudia Goldin & Robert Margo, *The Great Compression*, 107 Q. J. ECON. 1, 2-4 (1992). For a more in-depth history of federal employment policy, *see* Hiba Hafiz, *The Law of Workforce Development and Geographic Inequality* (unpublished manuscript).

202 ATTEWELL, *supra* note 177, at 38-40, 53, 64 (quoting Lewis Baxter, "National Balance Sheet," Records of Committee on Econ. Security).

203 ATTEWELL, *supra* note 177, at 59.

204 See ERIC ARNESEN, 1 ENCYCLOPEDIA OF LABOR HISTORY 1540 (2007); JOHN KENNETH GALBRAITH, THE ECONOMIC EFFECTS OF FEDERAL PUBLIC WORKS EXPENDITURES 69-70 (1940); *WPA Pays Up and Quits*, N.Y. TIMES (July 1, 1943); Michael Darby, *Three-and-a-Half Million Employees Have Been Mislaid*, 84 J. POL. ECON. 1 (1976).

205 *Employment Conditions and Unemployment Relief*, 37 MONTHLY LAB. REV. 797, 797 (1933).

206 Kline & Moretti, *supra* note 200, at 276-300; WILLIAM LEUCHTENBURG, THE FDR YEARS 159-195 (1997). The TVA Act required all TVA contractors pay prevailing wages with due regard to rates established through blue-collar employees' collective bargaining. 48 Stat. 59, § 3(b) (1933); 16 U.S.C. § 831b(b).

207 James Branscome, *The Federal Government in Appalachia*, *in* COLONIALISM IN MODERN AMERICA 284 (Helen Lewis ed. 1978).

208 U.S. GAO, *TVA Needs to Improve* 12-15 (GAO-91-129, 1991), https://www.gao.gov/assets/ggd-91-129.pdf.

209 Bartik, *Helping America's Distressed Communities*, *supra* note 108, at 12.

geographically-dispersed place-based workforce investment with strategically sited government-funded plants outside urban centers to maximize capacity and security.[210] War production was regulated by the War Production (WPB) and War Labor Boards (WLB), which oversaw price-setting, wage-setting, and collective bargaining disputes. The WLB required collective bargaining agreements include "maintenance-of-membership", or union security, clauses, effectively conditioning government contracts on union jobs; by the war's end, union membership had grown from under three million in 1933 to over 12 million workers.[211] Government-financed plants for war-related production expanded higher-wage manufacturing work and permanently increased regional employment.[212] Federal funding for war-related R&D also created agglomeration economies in technology clusters, increasing local industrial employment and firm creation in related industries.[213]

After the war, Roosevelt's National Resources Planning Board recommended robust measures to protect against the economic shocks from declining production and post-war unemployment of soldiers and federal contractor employees.[214] It recommended direct job creation to ensure countercyclical labor demand and a minimum level of "yardstick competition" for wage and hour floors.[215] It also recommended industry development in "depressed and underdeveloped areas" along the TVA model.[216] Establishing the federal government as a centralizing authority in a permanent direct job creation program was thus critical macroeconomically—to coordinate local planning to overcome unemployment's national impacts on demand—but also to achieve geographic redistribution.[217] But, as discussed, despite overwhelming support for direct job creation, Congress's Full Employment Act failed to legislate this program.[218] The final Act replaced a federal job guarantee with an intention "to promote maximum employment" alongside "production, and purchasing power."[219] Failure to institutionalize direct job creation eroded the federal government's institutional capacity to adopt a structural approach to labor market policy.[220]

The Kennedy and Johnson administrations' personnel changes brought new economic approaches, grounded in a less interventionist "New Economics" model of poverty reduction through tax cuts and smaller, targeted programs for distressed communities.[221] Instead of viewing unemployment as a demand deficiency problem or as a core aspect of the business cycle, Kennedy's economic advisors blamed "inadequate education and training."[222]

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[210] Garin & Rothbaum, *supra* note 200, at 7.

[211] *See* Marcus Manoff, *The WLB and the Maintenance-of-Membership Clause*, 57 HARV. L. REV. 183 (1943); Leo Troy, *Trade Union Membership*, 47 REV. ECON. & STAT. 93, 93 (1965).

[212] Garin & Rothbaum, *supra* note 200, at 4; Henry Farber et al., *Unions and Inequality*, 136 Q. J. ECON. 1325 (2021); Andreas Ferrara, *World War II and African-American Socioeconomic Progress* (CAGE Working Paper 387, 2018)

[213] Gross & Sampat, *supra* note 200, at 1-2.

[214] *See* NAT'L RES. PLANNING BD., SECURITY, WORK, AND RELIEF POLICIES 503 (1942) (hereinafter NRPB REPORT); *Reconversion Lag Seen by Industry*, N.Y. TIMES (Aug. 11, 1945); Felix Belair, *Homefront Problems Press for Solutions*, N.Y. TIMES (Aug. 12, 1945).

[215] NRPB REPORT, *supra* note 214, at 250-52, 344-53, 491, 505-13.

[216] *Id.* at 362, 504.

[217] *Id.* at 503-04.

[218] *See supra* note 183; RUTH WASEM, TACKLING UNEMPLOYMENT 44, 52-57 (2013).

[219] Employment Act of 1946, § 2.

[220] *See* WEIR, *supra* note 239, at 64-72, 82.

[221] *See* ALICE O'CONNOR, POVERTY KNOWLEDGE 142 (2001).

[222] *See* ATTEWELL, *supra* note 177, at 180.

The rise in urban poverty, limited infrastructure to support migrating populations fleeing racial persecution, and persistent race riots drove the Johnson administration to focus on community-based investment in his War on Poverty programs.[223] Johnson's 1964 Economic Opportunity Act (EOA)—restructured and coordinated federal anti-poverty initiatives through local, labor market-focused training and community action programs (CAPs) to boost employment and private-sector development in rural and distressed communities.[224] The EOA apportioned funding across states, but its Office of Economic Opportunity (OEO)—which coordinated federal anti-poverty initiatives—could bypass state and local governments to spend in "any . . . geographical area."[225] Federal control enabled the Johnson administration to concentrate spending in areas that suffered racial exclusion from state and local government programs.[226] The majority of OEO's funding went to rural and small-town communities and allowed Black southerners to "assert[] their right to 'stay in place'" by granting financial support for farm cooperatives and access to medical services.[227] Johnson also used place-based industrial policy to advance regional development and Cold War research, establishing federal-state partnerships in the Appalachian Regional Commission (ARC) and six other regional commissions to further economic development.[228] And it invested in technological development that fueled Space Race R&D while increasing place-based manufacturing and employment.[229]

Still, none of these programs focused on employer power or employers' role in the spatial division of labor. ARC is a good example. Its workforce investment in Appalachia was never conditioned on nor challenged private-sector employers on mine safety or anti-union tactics that decimated union organizing for decades.[230] Nor did it seek to effectuate redistribution by addressing land monopolies and state and local under-taxation of corporations.[231] The programs primarily concentrated on private-sector investment, including through tax credits Paul Samuelson—Kennedy's chief economic advisor—described as "a bribe to capital formation."[232] Thus, while War on Poverty programs sought to empower new poor and racially minoritized constituencies, they were in tension with broader economic policy that strengthened private employers' role in workforce development.

The Nixon, Ford, and Carter administrations doubled down on fiscal policy that prioritized private investment in workforce development and deregulation. With rising unemployment in the early 1970s, the Nixon administration worked with Congress to pass a federal jobs program: the 1973 Comprehensive Employment and Training Act (CETA).[233] CETA replaced War on Poverty programs to provide jobs in distressed communities with high unemployment rates.[234] While administered by

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[223] *See, e.g.*, GALBRAITH, *supra* note 204; MICHAEL HARRINGTON, THE OTHER AMERICA (1962).

[224] Pub. L. 88-452, 78 Stat. 2642; *see also* ROBERT HALPERN, REBUILDING THE INNER CITY (1995); Martha Bailey & Nicolas Duquette, *How Johnson Fought the War on Poverty*, 74 J. ECON. HIST. 351, 358 (2014); Ryan Larochelle, *Reassessing the History of the CAP*, 31 J. POL'Y HIST. 126 (2019).

[225] EOA, § 202.

[226] *See* Price Fishback & John Wallis, *What Was New About the New Deal?*, *in* THE GREAT DEPRESSION 291-327 (Nicolas Crafts, ed. 2012); Bailey & Duquette, *supra* note 224, at 352-54, 359.

[227] Greta deJong, *Staying in Place*, 90 J. AFR. AM. HIST. 387, 388-404 (2005); David Torstensson, *Beyond the City*, 25 J. POL'Y HIST. 587, 591-92 (2013);

[228] *See* ARDA, Pub. L. 89-4 (1965); MICHAEL BRADSHAW, THE APPALACHIAN REGIONAL COMMISSION (1992).

[229] Shawn Kantor & Alexander Whalley, *Moonshot* (revise & resubmit, AM. ECON. REV., 2022).

[230] *See* JAMES BRANSCOME, THE FEDERAL GOVERNMENT IN APPALACHIA 28 (1977).

[231] *Id.*

[232] *See* PAUL SAMUELSON, ECONOMICS 769 (1967); Tim Barker, *From Keynes to Keynesians*, VERSO BLOG (2020), https://www.versobooks.com/blogs/4936-from-keynes-to-the-keynesians.

[233] Pub. L. 93-203 (1973).

[234] *See* JILL QUADAGNO, COLOR OF WELFARE 78, 153 (1994); MICHAEL KATZ, THE UNDESERVING POOR 136-37

the Department of Labor, "prime sponsors"—local and state governments—selected local service delivery agents.[235] CETA was a shadow of the WPA: it never covered more than 10 percent of the unemployed, and its security wages functioned as a form of "workfare".[236] The Ford and Carter administrations scaled CETA back, primarily on fiscal conservatism grounds and was persistently threatened by spending cuts.[237]

b. New Federalism, Neoliberal Economic Development, and Workfare

Dismantling and restructuring the New Deal's social welfare state was a key focus of Republican administrations throughout the 1970s and 1980s. Reagan replaced CETA with the 1982 Job Training Partnership Act (JTPA), a New Federalism-based, block-grant funded short-term job training program for welfare recipients and the long-term poor.[238] The JTPA reoriented employment policy from targeting structural labor market deficiencies through job creation to alleviating perceived worker deficiencies through private human capital investment.[239] It removed the federal government from labor market planning, relegating all decisions about which occupations to train for, performance standards, and recruitment, training, and placement in local hands.[240] The JTPA replaced community-based organizations' planning role with Private Industry Councils (PICs)—private-sector, employer-led business councils—that contractors could approach to obtain program funds.[241] JTPA contractors were required only to *strive* to meet federal targets for placement in private-sector jobs with no metrics for evaluating skills attainment or worker earnings above the poverty line.[242] Allowing states to establish varying eligibility standards generated geographic divergence and increased worker mobility costs in navigating disparate relief requirements across states.[243]

Reagan's restructuring of workforce development had dramatic labor market effects. Replacing CETA with the JTPA cut spending and eliminated a public employment option, a windfall to private employers that reduced labor costs by reducing workers' outside options.[244] It also severed financial support for progressive cities and organizations that disproportionately benefited from OEO and CETA programs, requiring poor workers to ally with private-sector employers for opportunities over organizations that empowered them.[245] By transforming employment policy into a competition between states to attract industry, it placed workforce development on business organizations' political agenda as a source of subsidies.[246]

(1989); ADVISORY COMM'N ON INTERGOV. RELS., COUNTERCYCLICAL AID AND ECONOMIC STABILIZATION 29 (1978).

[235] *Id.*

[236] CLIFFORD JOHNSON, DIRECT FEDERAL JOB CREATION 12 (1985).

[237] *See, e.g.*, GORDON LAFER, THE JOB TRAINING CHARADE 108-09 (2002); JIMMY CARTER, SMALL COMMUNITY AND RURAL DEVELOPMENT POLICY 23-26 (1979); *Ford Vetoes Bill to Produce Jobs*, N.Y. TIMES (May 30, 1975), https://www.nytimes.com/1975/05/30/archives/ford-vetoes-bill-to-produce-jobs.html.

[238] Pub. L. 97-300, 29 U.S.C. § 1501 et seq. (1982) [hereinafter JTPA]. For New Federalism, *see* MICHAEL RICH, FEDERAL POLICYMAKING AND THE POOR 18 (1993); MICHAEL REAGAN, THE NEW FEDERALISM 27-28, 100-101 (1972); QUADAGNO, *supra* note 234, at 122-23; LAFER, *supra* note 237, at 88-209.

[239] MARGARET WEIR, POLITICS AND JOBS 8-12 (1993); KATZ, *supra* note 234, at 102-55; LAFER, *supra* note 237, at 20.

[240] LAFER, *supra* note 237, at 92.

[241] *See* JTPA, *supra* note 238, at §§ 102-03.

[242] LAFER, *supra* note 237, at 89.

[243] *See* Schleicher, *Stuck!*, *supra* note 20, at 125-27.

[244] *See* LAFER, *supra* note 237, at 166-67; RICH, *supra* note 238, at 13.

[245] LAFER, *supra* note 237, at 8-9, 165-66; Bailey & Duquette, *supra* note 224, at 352-53.

[246] *See* JOYCE ROBBINS, FROM MANPOWER POLICY TO WORKFORCE DEVELOPMENT (unpub. diss. 2002), https://www.proquest.com/docview/304798617?pq-origsite=gscholar&fromopenview=true.

While Clinton eliminated and restructured the JTPA, he established an even more aggressive, neoliberal overhaul of anti-poverty and "welfare-to-work" policy than even Reagan. Two landmark bills—the 1996 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the 1998 Workforce Investment Act (WIA)—dismantled any remaining core components of New Deal and War on Poverty social programs. PRWORA superseded Roosevelt's Aid to Families with Dependent Children (AFDC) with Temporary Assistance for Needy Families (TANF), replacing guaranteed cash assistance with assistance for a smaller pool of recipients conditioned on work requirements, inflexible hours-worked standards, and maximum time limits for aid receipt.[247] TANF substituted the AFDC's open-ended federal funding structure for block grants to states not adjusted for inflation.[248] TANF reduced cash assistance from AFDC's coverage of over 68 percent to 21 percent of poor families.[249]

Clinton's welfare reform was in tension with his overhaul of the JTPA: WIA. PRWORA's "work-first" welfare-to-work requirement—focused on quickly placing participants into jobs at any wage—led workers to abandon education and training programs that removed them from TANF eligibility.[250] "Work-first" also conflicted with "job-readiness" and skills gap rationales for anti-poverty training programs. WIA granted eligible participants training vouchers to choose providers, regardless of their placement record, and allowed providers to offer skills training over mere job search assistance only after participants first failed to secure jobs.[251] Combined, PRWORA and WIA made "the choice to resist the worst jobs . . . increasingly untenable", enabling the "worst . . . employers . . . . to impose extreme conditions on employees, knowing that [they lacked] the fallback of welfare."[252]

Clinton's trade and community development policies eroded worker power further. Entering NAFTA and liberalizing trade with China hit blue-collar workers hardest and resulted in significant job loss and wage inequality.[253] Wage growth among workers in NAFTA-impacted industries was seventeen percentage points lower than workers in unimpacted industries.[254] Those losses had negative spillover effects in local communities, including job loss and highly-localized reductions in wage growth.[255] More desperate workers were cast as private investment opportunities in Clinton's 1993 Empowerment Zone and Enterprise Communities initiative, which granted employers tax benefits to locate in low-income neighborhoods recast as underutilized growth areas.[256] These programs publicly financed "low-wage, dead-end jobs" and failed to significantly alleviate poverty.[257]

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[247] 110 Stat. 2105 (1996).

[248] *See id.* § 103.

[249] *See* Aditi Shrivastava & Gina Thompson, *TANF Cash Assistance Should Reach Millions More Families* 1, 20 (CBPP, 2022), https://www.cbpp.org/sites/default/files/atoms/files/6-16-15tanf.pdf.

[250] LAFER, *supra* note 237, at 190-98.

[251] Workforce Investment Act, § 134 (1998); U.S. GAO, *Proprietary Schools*, GAO/HEHS-97-104 (1997).

[252] *See* LAFER, *supra* note 237, at 200-01.

[253] *See supra* note 46; Gregory Shaffer & Henry Gao, *China's Rise*, 2018 U. ILL. L. REV. 115, 131-32 (2018); Lorenzo Caliendo & Fernando Parro, *Estimates of NAFTA's Effects*, 82 REV. ECON. STUD. 1 (2015).

[254] Hakobyan & McLaren, *supra* note 46, at 729-35.

[255] *See id.* at 729; Autor et al., *China Syndrome*, *supra* note 46, at 2121; Autor et al., *China Shock*, *supra* note 46, at 213-14; Daron Acemoglu et al., *Import Competition and the Great US Employment Sag*, 34 J. LAB. ECON. S141 (2015); Justin Pierce & Peter Schott, *The Surprisingly Swift Decline of US Manufacturing Employment*, 106 AM. ECON. REV. 1632 (2016)

[256] Pub. L. 103-66; *see* Scott Cummings, *Community Economic Development as Progressive Politics*, 54 STAN. L. REV. 399, 438-41 (2001).

[257] Cummings, *supra* note 256, at 447-51, 455.

Clinton's economic policy formula—decentralization, economic development focused on employer aid for private industry growth, and workfare—laid the foundation for subsequent administrations. While the Obama administration overhauled WIA in its Workforce Innovation and Opportunity Act (WIOA), and committed to more aggressive community development, the New Federalist and neoliberal workforce development architecture remained intact.[258] WIOA provides job training administered through workforce development boards dominated by a majority of "representatives of business in the local area," with the board chair selected from those representatives.[259] Only 20 percent of board members must be "workforce representatives": two union representatives (or, where no unions exist, "other employee representatives") and three or more representatives of registered apprenticeship programs or community-based organizations.[260] Like prior programs, WIOA subsumes "labor market policy into the poverty program" through "remedial functions," preserving workforce development boards as sites of local brokering for funds rather than a coordinated program to target full employment.[261]

Obama's place-based investment programs generated more comprehensive interagency coordination but focused less on worker-led job and income growth and more on education, housing, transportation, and environmental policy.[262] Obama's rural development policy was more robust than prior administrations, creating the White House Rural Council to coordinate Federal programs, promoting increased rural job investment, and expanding broadband access.[263] Still, the programs were criticized for funding areas least in need and failing to establish viable investments that attracted business and jobs.[264] Additionally, like prior job creation initiatives, federal funding was not conditioned on worker representation or metrics for ensuring worker voice or increased earnings.

Donald Trump's overall economic policy made only cosmetic changes to the existing formula. His tax plan—the Tax Cuts and Jobs Act (TCJA)—granted a capital-gains tax break for investing in "poor neighborhoods" as "Opportunity Zones," but the vast majority of investment went to real estate in Brooklyn, Austin, and other booming metro areas.[265] Trump's trade policy did little to improve employment outcomes, reducing net employment by over 430,000 jobs.[266] Continued operation of workforce development programs concentrated on employer-led and administered

258 *See* Pub. L. 113-128 (2014); White House, *Neighborhood Revitalization Initiative*, https://obamawhitehouse.archives.gov/administration/eop/oua/initiatives/neighborhood-revitalization; White House, *Promise Zones Initiative* (2014), https://obamawhitehouse.archives.gov/the-press-office/2014/01/08/fact-sheet-president-obama-s-promise-zones-initiative.

259 WIOA, *supra* note 258, § 107(b); 20 CFR § 679.320.

260 *Id.*

261 *See* WEIR, *supra* note 239, at 62; THEDA SKOCPOL, SOCIAL POLICY IN THE UNITED STATES 241 (1995).

262 *See* Derek Douglas, *Place-Based Investments*, WHITE HOUSE BLOG (2010), https://obamawhitehouse.archives.gov/blog/2010/06/30/place-based-investments.

263 Exec. Order 13,575, *Establishment of the White House Rural Council*, 3 CFR 13575 (2011); White House, *President Announces New Jobs Initiatives for Rural America* (2011), https://obamawhitehouse.archives.gov/the-press-office/2011/08/16/president-announces-new-jobs-initiatives-rural-america; White House, *President Obama Announces ConnectALL Initiative* (2016), https://obamawhitehouse.archives.gov/the-press-office/2016/03/09/fact-sheet-president-obama-announces-connectall-initiative.

264 *See* Ron Nixon, *U.S. Spending Billions on Rural Jobs, But Impact is Uncertain*, N.Y. TIMES (Sept. 13, 2011).

265 David Wessel, *The Rich Have Found Another Way to Pay Less Tax* (Oct. 10, 2021), https://www.nytimes.com/2021/10/10/opinion/opportunity-zones-tax-loopholes.html.

266 *See* Bur. Lab. Stat., *Employment, Hours, and Earnings from Employment Statistics* (2020); U.S. Census Bur., *Business Dynamics Statistics* (2020); U.S. Census Bur., *County Business Patterns* (2020); Sandra Polaski et al., *How Trade Policy Failed U.S. Workers* (BU Pol'y Ctr. 2020), https://www.bu.edu/gdp/files/2020/09/How-Trade-Policy-Failed-US-Workers-and-How-to-Fix-it-FIN.pdf.

programs—more than 90% of state and local resources was directed at tax incentives or cash grants to businesses to generate job growth.[267] Workforce development was chronically underfunded, reaching at best five percent of eligible workers in need.[268] Over the past two decades, WIOA funding declined by 40 percent, so while nearly two million workers are laid off in a normal month, less than 100,000 received training.[269]

Responding to the COVID-19 pandemic, China's competitive threat, and widening geographic inequality, the Biden administration, more than any administration since the New Deal, has mobilized significant spending for infrastructure development and place-based industrial policy, promoting creative solutions to establish uniform federal labor standards on prevailing wage rates and union jobs, at least in the construction industry.[270] These investments are grounded in empirical research that has shifted the economic consensus in favor of place-based policy.[271]

Specifically, the administration has dedicated $3.8 trillion dollars in stimulus funding under the American Rescue Plan Act (ARP), Infrastructure Investment and Jobs Act (IIJA), CHIPS and Science Act, and Inflation Reduction Act (IRA).[272] These giant spending programs target infrastructure development, clean energy investments, and high-skilled manufacturing, requiring contractors in certain programs to pay prevailing wage rates and, for large construction projects, to sign project labor agreements with construction unions.[273] In an innovative move, the ARP allocates training funds outside the WIOA system that, while administered by private employers, prioritize worker placement in jobs "that exceed local prevailing wages," include "basic benefits, . . . and/or [are] unionized."[274] The administration also announced a WIOA "reset," preferring applicants that invest in sector-based

[267] *Id.*

[268] *See* LAFER, *supra* note 237.

[269] Bur. Lab. Stat., *Job Openings and Labor Turnover Summary* (2022), https://www.bls.gov/news.release/jolts.nr0.htm; U.S. Dep't of Labor, *Quarterly Report—Dislocated Worker Program* (2018), https://www.doleta.gov/performance/results/Quarterly_Report/2018/Q3/WIOA_Dislocated_Worker3_31_2019Rolling_4_QuartersNQR.pdf; U.S. Dep't of Labor, *Unemployment Insurance Weekly Claims* (Jan. 2023), https://www.dol.gov/ui/data.pdf; Campaign to Invest in America's Workforce, *Investing in America's Workforce* 3 (2019), https://nationalskillscoalition.org/wp-content/uploads/2020/12/CIAW-Invest-in-AW.pdf.

[270] *See* Mark Muro et al., *Breaking Down an $80 Billion Surge in Place-Based Industrial Policy* (Brookings, 2022), https://www.brookings.edu/blog/the-avenue/2022/12/15/breaking-down-an-80-billion-surge-in-place-based-industrial-policy/; Joseph Parilla & Mark Muro, *The Build Back Better Regional Challenge* (Brookings, 2022), https://www.brookings.edu/blog/the-avenue/2022/09/02/the-build-back-better-regional-challenge-marks-a-new-era-of-place-based-industrial-strategy/.

[271] *Compare* Glaeser & Gottlieb, *supra* note 17, *with* Garin & Rothbaum, *supra* note 200; Joseph Parilla et al., *The Future of Place-Based Policy* (Brookings, 2022); Cecile Gaubert et al., *Place-Based Redistribution* (NBER Working Paper 28337, 2021); Austin et al., *supra* note 56; Ryan Donahue, *Rethinking Cluster Initiatives* (Brookings, 2018).

[272] Mark Muro et al., *supra* note 271.

[273] Jeanna Smialek, *Biden's $1.9 Trillion Stimulus Plan*, N.Y. TIMES (Jan. 14, 2021), https://www.nytimes.com/2021/01/14/business/economy/biden-stimulus-plan.html; White House, *Fact Sheet: The Bipartisan IIJA* (2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/03/fact-sheet-the-bipartisan-infrastructure-investment-and-jobs-act-creates-good-paying-jobs-and-supports-workers/; Mark Muro et al., *supra* note 271; White House, *Bipartisan Infrastructure Law Rural Playbook* (2022), https://www.whitehouse.gov/wp-content/uploads/2022/04/BIL-Rural-Playbook.pdf; Exec. Order 14,063 on Project Labor Agreements §§ 2(c), 4 (2022), https://www.whitehouse.gov/briefing-room/presidential-actions/2022/02/04/executive-order-on-use-of-project-labor-agreements-for-federal-construction-projects/.

[274] White House, *President Biden to Announce Winners of ARP Regional Challenge* (2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/02/president-biden-to-announce-21-winners-of-1-billion-american-rescue-plan-regional-challenge/; U.S. Econ. Dev't Admin., *ARP Good Jobs Challenge* (2022), https://www.eda.gov/archives/2022/arpa/good-jobs-challenge/faq/.

labor-management partnerships, provide supportive services like child care and transportation, and measure success not by mere job placement but placement in decently-paying jobs.[275]

While Biden's policies are a momentous turn, they do not approach the scale of federal job assurances implemented under the New Deal. Assuming stimulus spending achieves his two million job mark, that still leave nearly 3.7 million people currently seeking work unemployed and an estimated 8.6 million longer-term un- and underemployed.[276] Further, while supporting union and high-paying jobs in the construction and innovation sectors, the programs fail to take uniform and economy-wide approaches to ensuring decently-paying jobs, institutionalized worker involvement in workforce development, or countervailing worker power against strong employers. Federal workforce development remains highly fragmented, with 43 funding streams overseen by nine agencies and no centralized authority to coordinate workforce investment and employment planning.[277] Fragmentation makes it challenging to track at all—let alone geographically—programmatic impacts on unemployment, earnings, and shared productivity gains with workers to reduce income inequality and increase labor's share of income. Decentralization also means no observation of where workers are over- or undersupplied in relation to employer or industry demand, hindering coherent macroeconomic policy on job creation. It also limits federal evaluation of the *sources* of unemployment, including where deficient private-sector demand might require direct job creation solutions as a countercyclical matter and to combat monopsony as a source of declining private demand.[278]

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Federal employment policy initiatives have created background conditions that strengthen employer power in rural and distressed labor markets and contribute to geographic inequality in at least three critical ways. First, tight federal monetary policy and inflationary politics has suppressed wage growth, and with no monetary policy levers of their own, localities in recession lack expansionary options for boosting demand or alleviating the adverse effects of employer monopsony, with geographically divergent effects. Second, shifting from direct employment to limited, anemically-funded, and largely ineffective training programs, welfare-to-work requirements, and employer-led private sector growth—without uniform federal standards on wage rates or countervailing labor market institutions like unions—has created a captive pool of low-skill, low-paid workers in rural and distressed communities with limited outside options, needing to work for public assistance but lacking leverage to lift wages in the face of pervasive employer monopsony. Finally, economic aid structured along New Federalism principles places state and local governments in a position of having to discipline local populations to accept the terms of private firm-led economic development, primarily through tax incentives and regulatory waivers. Where wealthier outside employers receive these incentives, the gains from trade are collected as out-of-state profits and not necessarily redistributed to local populations, contributing to geographic inequality. Thus, while federal employment policy has at best increased some workers' earnings and outside options, it has deregulated labor standards and countercyclical planning while contributing to the spatial organization of supply and demand factors that exacerbate structural deficiencies in rural and distressed labor markets to employers' advantage.

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[275] Julie Su, *Can DOL Strengthen Workforce Development Infrastructure?*, U.S. DEP'T OF LAB. BLOG (2022), https://blog.dol.gov/2022/10/11/can-the-department-of-labor-strengthen-the-nations-workforce-development-infrastructure-yes-wioa-can.

[276] *See* Bur. Lab. Stat., *The Unemployment Situation – December 2022*, Tables A-1, A-15 (2023), https://www.bls.gov/news.release/pdf/empsit.pdf.

[277] *See* U.S. GAO, *Employment and Training Programs* (GAO-19-200, 2019), http://www.gao.gov/products/gao-19-200.

[278] *See, e.g.*, LAFER, *supra* note 237, at 41-42.

B. Antitrust Law, Natural Monopsony, and Anticompetitive Employer Conduct

In addition to federal economy policy, antitrust regulation has failed to sufficiently challenge employers' natural monopsony, labor market concentration, and anticompetitive conduct in rural and distressed labor markets. Even worse, antitrust law has affirmatively enabled and incentivized labor market conditions that have contributed to geographic inequality. This Section focuses on five areas of antitrust regulation and deregulation that have contributed to geographic inequality. First, antitrust law does not categorically prohibit *natural monopsony* where it is not unlawfully acquired or maintained through anticompetitive conduct.[279] If acquired through merger, natural monopsonies can survive legal challenge by satisfying the entire demand of a rural or distressed community at lowest cost.[280] Where markets have natural monopsony characteristics, competition regulation will either be ineffective—one firm will inevitably outcompete others—or inefficient—regulation will maintain production by more than one firm with higher costs to overall welfare.[281] Relatedly, second, antitrust law is ill-equipped to regulate competition in *thin markets* under what I identify as the "thin market paradox": achieving efficiencies in thin markets often requires market power anathema to antitrust, so regulation beyond competition law is necessary to resolve trade-offs. Third, antitrust *merger policy* has been highly permissive of corporate consolidation that has contributed to labor market concentration. And in reviewing mergers, agencies and courts have ignored labor market effects until recently, leaving decades of unregulated labor market consolidation. Fourth, antitrust doctrine has evolved stringent evidentiary standards to prove collusion, making it harder to establish anticompetitive agreements even in rural and distressed labor markets with the highest concentration levels. Finally, by adopting a permissive stance towards *vertical conduct*—including vertical restraints in supply-chain agreements—antitrust doctrine reduced liability risks for firms' vertical disintegration, enabling workplace fissuring into rural and distressed areas where labor costs were lower (in part due to natural monopsony, thin markets, and labor market concentration). While vertical disintegration may offer employment opportunities in some rural and distressed communities, empirical evidence shows that it increases income inequality and contributes to geographic inequality.[282]

1. Antitrust Law, Natural Monopsony, and Geographic Inequality

First, antitrust law—and specifically, Sherman Act Section 2, which prohibits unlawful monopolization—has not been interpreted to condemn the mere possession of monopoly or monopsony power, only unlawful acquisition or maintenance of that power through anticompetitive conduct.[283] Natural monopolies that "grow[] or develop[] as a consequence of a superior product, business acumen, or historic accident" do not violate Section 2.[284] When courts have reviewed Section 2 challenges to rural hospitals, small town newspapers, movie theaters, grocery stores, and service providers, they have immunized them as "natural monopolies."[285] For example, in *Blue Cross & Blue*

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[279] *See* 15 U.S.C. § 2; *Verizon v. Law Offices of Curtis Trinko*, 540 U.S. 398, 407 (2004).

[280] *See, e.g.*, *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 351 (1974); Posner, *supra* note 113, at 548.

[281] Posner, *supra* note 113, at 548.

[282] *See, e.g.*, WEIL, *supra* note 33, at 209-31; Nathan Wilmers, *Wage Stagnation and Buyer Power*, 83 AM. SOC. REV. 213, 213 (2018); Nathan Wilmers & Clem Aeppli, *Consolidated Advantage*, 86 AM. SOC. REV. 1100, 1100 (2021).

[283] *See, e.g.*, *Trinko*, 540 U.S. at 407; *United States v. Aluminum Co. of America*, 148 F.2d 416, 430 (2d Cir. 1945).

[284] *See, e.g.*, *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966).

[285] *See* AREEDA & HOVENKAMP, *supra* note 112, at ¶ 658b & nn. 9-31 (collecting cases); Neil Hamilton & Anne Caulfield, *The Defense of Natural Monopoly in Monopolization Cases*, 33 DEPAUL L. REV. 465 (1984) (same); Cirace, *supra* note 120; *but see* Matthew, *supra* note 117, at 837-68 (arguing that courts should and have viewed regional hospitals as natural

Shield United v. Marshfield Clinic, the Seventh Circuit held that a rural clinic and its health maintenance organization (HMO) in Marshfield, Wisconsin, could not violate Section 2 as a "natural monopoly" when they excluded a competitor HMO and its insurance company parent from servicing the north central Wisconsin counties in which it operated.[286] Marshfield was a town "of only 20,000 people in a largely rural region," and while the clinic was the "fifth largest physician-owned clinic in North America", it was the sole employer of all of only twelve physicians in the serviced counties.[287] Writing for the court, Judge Richard Posner concluded that the clinic had no competitors

> simply because the market is too small to support more than a single firm. . . . Physicians practice in . . . networks, utilizing expensive equipment and support. Twelve physicians competing in a county would be competing to provide horse-and-buggy medicine. Only as part of a large and sophisticated medical enterprise such as the Marshfield Clinic can they practice modern medicine in rural Wisconsin.[288]

The court generalized that "[a] natural monopolist . . . is not guilty of 'monopolizing' . . . and can therefore charge any price that it wants, for the antitrust laws are not a price-control statute or a public utility or common-carrier rate-regulation statute."[289] In any case, the court reasoned, antitrust regulation could do nothing to force competition to bring prices down in such a context because, "if the practice of medicine in some sparsely populated county of north central Wisconsin is a natural monopoly, consumers will not be helped by our forcing the handful of physicians there to affiliate with multiple HMOs. Those physicians will still charge fees reflecting their monopoly."[290]

While for different reasons, distressed labor markets may also have natural monopsony characteristics as shrinking cities with costlier infrastructure and limited resources to service declining populations. Service provision in legacy cities is a good example. As Professor Michelle Wilde Anderson explains, "Spatially, such cities' service territories are as large as they ever were, but the density of service consumers is down, resulting in costly inefficiencies."[291] In such contexts, the cost of producing goods or services may very well decline as output increases within that local market, making it most efficient for a single provider to carry the production, whether that be for hospital, educational, or other services, but even for grocery stores or other retail businesses where transportation costs across a larger than economically serviceable area are high.

Because many employers in rural and distressed labor markets are prone to have natural monopsony characteristics, they have significant market power to unilaterally set compensation and working conditions with limited, if any, antitrust exposure, at least where they can colorably assert natural monopsony defenses. Competition law thus leaves rural and distressed areas with dominant employers unregulated despite the inefficiencies such power can create in the form of artificially low wages, slower wage growth, reduced hiring, and higher termination rates in downturns.[292] Employer monopsony also has adverse distributive impacts in the form of wealth transfers from workers to

monopolies, but not consistently).

[286] 65 F.3d 1406, 1412 (9th Cir. 1995).

[287] *Id.* at 1409.

[288] *Id.* at 1412.

[289] *Id.*

[290] *Id.* at 1413.

[291] Anderson, *Minimal Cities*, *supra* note 8, at 1125.

[292] *See infra* notes 25-26 & accompanying text.

employers, increasing income inequality, and when employers are externally headquartered, increasing geographic inequality as well.

2. *Antitrust Law, Thin Markets, and Geographic Inequality*

Antitrust regulation of employer market power in thin rural and distressed labor markets is also challenging because it can do little to remedy harms where low exchange volume or liquidity offer employers limited incentives to enter and compete. Antitrust regulation faces a "thin market paradox" hinging on the fact that, to overcome thin market harms and instability, natural monopoly or monopsony may be the most efficient way to match limited buyers and sellers. But where the only way to overcome market failures creates market power, using antitrust to regulate that monopoly away generates tradeoffs between reducing market efficiencies and allowing market power in ways that are difficult to resolve absent external regulation. In other words, when regulating thin markets through antitrust, the problem becomes how one profound market failure—thin markets—may only be fixed by another market failure—monopoly or monopsony power—and imposing competition would either not be profitable enough to entice entry, making antitrust tools moot, or would reduce the monopolist's alleviation of market thinness, making the medicine worse than the cure. Because rural and distressed labor markets are disproportionately thinner than high-productivity urban labor markets, failure to adequately remedy the anticompetitive effects of market thinness increases both income and geographic inequality.

In tackling thin markets, antitrust courts have either chosen to allow monopoly with its adverse effects or sanctioned it at the expense of market thickening. A middle path—designating natural monopolists as "essential facilities" with duties to deal with all-comers—has been virtually foreclosed by the Supreme Court. Antitrust is thus handicapped in resolving the thin market paradox.

First, in one set of cases, antitrust courts have condemned as anticompetitive unlawful dominance and collusion in thin markets without acknowledging their thin-market characteristics, even as the targeted conduct arguably reduced thin market-specific market failures. By treating the challenged conduct as an *antitrust* rather than a *market regulation* problem, courts viewed conduct from only one side of the paradox—as *only* about market power harms—rather than from the other side—as producing the benefits of more aggressive market regulation (even if those benefits may ideally be achieved by public or highly regulated actors).

One example is the Supreme Court's famous 1940 decision, *United States v. Socony-Vacuum Oil*.[293] The Court held that agreements pairing major oil companies with independent refiners to purchase those refiners' "bootleg" gasoline oversupply during the Depression were *per se* violations of Section 1 of the Sherman Act.[294] The agreements were voluntary extensions of defendants' formal participation in a federally-run petroleum stabilization program initiated after consumer demand for oil plummeted, resulting in overproduction and price volatility that rippled through the economy.[295] The program sought to steady retail pricing by controlling wholesale pricing, and stabilizing wholesale pricing required matching the major oil companies with numerous, evasive independent refiners.[296]

[293] 310 U.S. 150 (1940).

[294] *Id.* at 219-21.

[295] *See* Daniel Crane, *The Story of* United States v. Socony-Vacuum, *in* ANTITRUST STORIES 92-101 (Eleanor Fox & Daniel Crane, eds. 2007).

[296] *Id.* at 94.

One explanation for the defendants' conduct was that, because the oversupply market was a spot market requiring quick matches of buyers and sellers in a thin market, defendants' coordinated agreements were necessary to improve matching, reduce transaction risks, and so reduce price volatility, even though the result was likely supracompetitive prices. The Court condemned the defendants' matching agreements as categorically unlawful, rejecting consideration of any procompetitive defenses.[297] In doing so, the Court never examined the arrangements' benefits as thickening an otherwise thin market—benefits the government had recognized when it originated the arrangement under the National Industrial Recovery Act.[298]

Similarly, in *United States v. Terminal Railroad*, a canonical 1912 Supreme Court case, the Court condemned as unlawful an association of railroad companies' exclusionary rule requiring unanimous consent by all members to admit new railroad companies.[299] The railroad companies formed the association to combine members' terminals into a unitary system controlling the only bridge over the Missouri River in St. Louis.[300] *Terminal Railroad* is the first foundational "essential facilities" antitrust case, and its reasoning focused on how the association's control of the bridge created a "bottleneck" it could dominate.[301] But neither the Court nor antitrust scholars have examined the association's conduct in light of the history of debt financing at the end of the nineteenth century. When viewed in context, the association was likely formed to overcome thin market failures when state and municipal governments were persistently defaulting on bonds issued to finance economic development projects, including railroads.[302] Widespread defaults slashed confidence in and thinned municipal debt markets, reducing debt financing sources.[303] In the decade preceding the Supreme Court case, the railroads had lobbied the City of St. Louis to allow its bridge construction.[304] In 1891, the city passed an ordinance enabling the association to build the bridge on condition that the association issue a significant bond to the city.[305] The association—and its exclusionary rule—could thus be seen as one of few practicable means of financing and ensuring sufficient returns on construction of the bridge in thin and unstable debt markets. The association was in the crosshairs of the thin market paradox: it was (properly) condemned for generating one market failure—monopolizing the market—in order to overcome another market failure—thin municipal bond markets.

In a contrasting, second set of cases, antitrust courts have viewed conduct that worked to thicken markets as procompetitive at the expense of persistent monopoly power. In doing so, courts broadened legal protection for private "market making" previously reserved for public actors, like public goods regulation of grain or telephone access. A few canonical examples are illustrative. First, the Supreme Court has recognized that dominant joint ventures purporting to improve matching and reduce transaction costs and risks do not violate the antitrust laws. It thus allowed defendants to assert procompetitive justifications for otherwise anticompetitive conduct in cases like *Chicago Board of*

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297 310 U.S. at 218.

298 A coda to *Socony Vacuum* is telling: after it was decided, the Texas Railroad Commission became the production regulator for oil and succeeded in stabilizing oversupply while not prioritizing major oil companies' interests over all other oil producers. *See* Peter Carstensen, *Lost in (Doctrinal) Translation*, 62 SMU L. REV. 525 (2009). I thank Peter Carstensen for alerting me to this history.

299 224 U.S. 383, 399 (1912).

300 *Id.* at 391.

301 *Id.* at 397.

302 *See* Felipe Ford Cole, *Unshackling Cities* 11-29 (manuscript on file with author).

303 Joel Thompson, *Railroad Investing in 1880s America*, 40 ACCOUNTING HIST. J. 55, 57 (2013).

304 *St. Louis v. Terminal Rd. Ass'n*, 211 Mo. 364, 377 (1908).

305 *Id.*

Trade—which concerned a "call" rule that fixed grain prices and restricted trading periods in grain—and *Broadcast Music*, where defendants used blanket licensing to set fixed prices to overcome transaction risks, monitoring costs, and holdup costs from failed matching between buyers and sellers.[306] Courts have also found firm conduct to coordinate output in failing industries—anti-knock lead compounds in *Ethyl v. FTC* and bowling equipment in *Brunswick v. Pueblo Bowl-o-Mat*—as justified consumer demand management, even if they anticompetitive conduct.[307]

The Supreme Court has taken its strongest stance yet protecting firm dominance when it held that an incumbent local exchange carrier, Verizon, did not breach its duty to share its network with competitors when it discriminated between rivals in filling their orders under interconnection agreements.[308] Like the Court's later decision in *Ohio v. American Express*, *Trinko* made clear that when a firm takes advantage of network effects it generates as a market intermediary by steering consumers away from its rivals, antitrust courts can deem that conduct reasonable even when it fortifies a firm's monopoly power.[309] *Trinko* is widely recognized as dramatically narrowing "essential facilities" doctrine—the doctrine allowing judicial imposition of duties to deal on dominant firms—to circumstances where the facility the monopolist owns is truly essential for rivals to compete.[310]

Even if antitrust doctrine were coherent in thin market contexts, traditional antitrust models and analysis lack robust methods for ascertaining market thinness and remedies to *thicken* markets in labor markets. Antitrust's dominant economic analytical tool—simple industrial organizations (IO) Cournot or Bertrand modeling—is based on a default comparator of market competitiveness in perfectly elastic markets where no individual trader can affect market prices through their buying or selling; heterogeneous preferences, search and matching costs, and other market failures are assumed to be zero.[311] But in thin markets, price or wage formation turns less on competition and market elasticity and more on differential valuations *based* on heterogeneous preferences, information asymmetries, search and matching costs, and other market failures. Take the example of a rare work of art that only a few unknown buyers want to purchase. Competition *between* auction houses will have little impact on the art's *valuation*—that will turn on ease of finding appropriate buyers, credibility about the work's uniqueness, the relative negotiating prowess of sellers and buyers, the emotional and aesthetic appeal of the work to individual buyers, those buyers' idiosyncratic estimates of how much the work will appreciate over time. Because antitrust analyses do not properly incorporate these market dynamics that can generate market power, they are prone to improperly assess—and discount—employer market power in rural and distressed labor markets that have thin market characteristics. Relatedly, traditional antitrust remedies that try to restructure markets by creating more market actors through divestiture or conduct remedies to encourage market entry and competition are unlikely to succeed in thin markets because of the nature of the markets themselves.[312] So some non-competition-

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306 *Chicago Board of Trade v. United States*, 246 U.S. 231 (1919); *Broadcast Music, Inc. v. CBS*, 441 U.S. 1 (1979).

307 *Du Pont de Nemours & Co. v. Federal Trade Comm'n*, 729 F.2d 128 (2d Cir. 1984); *Brunswick v. Pueblo Bowl-o-Mat*, 429 U.S. 477 (1977).

308 *Trinko*, 540 U.S. at 416.

309 *Id.*; *Ohio v. Am. Express*, 138 S. Ct. 2274, 2277 (2018).

310 *See Trinko*, 540 U.S. at 410-11; Brett Frischmann & Spencer Waller, *Revitalizing Essential Facilities*, 75 ANTITRUST L.J. 1, 9-10 (2008).

311 *See, e.g.,* U.S. Dep't of Justice & Fed. Trade Comm'n, *Commentary on the Horizontal Merger Guidelines* 25 (2006), https://www.justice.gov/atr/file/801216/download.

312 *See, e.g.*, U.S. Dep't of Justice, *Merger Remedies Manual* (2020), https://www.justice.gov/atr/page/file/1312416/download; Fed. Trade Comm'n, *Negotiating Merger Remedies* (2012), https://www.ftc.gov/system/files/attachments/negotiating-merger-remedies/merger-remediesstmt.pdf; Hafiz,

based regulation is necessary above and beyond competition policy solutions to regulate its adverse monopsony effects in the rural labor market.

3. *Antitrust Law, Mergers, and Geographic Inequality*

A combination of lax merger policy and decades of failure to review the labor market effects of mergers has also contributed to significant labor market concentration levels in rural and distressed labor markets.[313] Economists have demonstrated that smaller cities and rural areas have the highest levels of labor market concentration with negative effects on labor compensation.[314] While economists have found that labor market concentration in the average market is high, rural labor markets bottom out at highly concentrated and range to very highly concentrated, above levels of presumptive illegality.[315] Rural commuting zones have lower market and firm-level elasticities than urban commuting zones for low- and high-skilled occupations,[316] so rural workers are less likely to quit in response to wage decreases or stagnation than urban workers.[317]

The labor market effects of mergers are particularly devastating in health care, agriculture, mining, manufacturing, and banking markets. Hospital mergers—including private equity acquisitions—have increased concentration in the market for health care workers, particularly when they result in hospital closures that reduce employment options.[318] Big Ag consolidation in beef, pork, poultry, grain, seeds, pesticides, biotechnology, farm equipment, and even agricultural data markets has squeezed farmer earnings and reduced worker pay and workplace quality.[319] Farmers' share of every food dollar has declined since the 1980s, from 37 percent of each dollar consumers spend to less than 15 percent today.[320] While corporate consolidation in mining and manufacturing primarily occurred before the 1970s,[321] consolidation continues in sectors like fracking and resource-based manufacturing, with impacts primarily hitting rural communities.[322] In banking, economists estimate

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Rethinking Breakups, *supra* note 34, at 1520-27.

313 For a fuller discussion of failure to enforce the Clayton Act in labor markets, *see* Naidu et al., *supra* note 171, at 539-42; Ioana Marinescu & Herbert Hovenkamp, *Anticompetitive Mergers in Labor Markets*, 94 INDIANA L.J. 1031, 1033-40 (2019); Hiba Hafiz, *Labor Antitrust's Paradox*, 86 U. CHI. L. REV. 381, 383-85 (2018).

314 Azar et al., *Labor Market Concentration*, *supra* note 29, at S179 & Fig. 2; Arnold, *supra* note 31, at 1-5; Kevin Rinz, *Labor Market Concentration, Earnings, and Inequality*, 57 J. HUM. RES. S251, S264 (2022).

315 Azar et al., *Labor Market Concentration*, *supra* note 29, at S179 & Fig. 2; DEP'T OF JUSTICE & FEDERAL TRADE COMM'N, HORIZONTAL MERGER GUIDELINES § 5.3 (2010).

316 Azar et al., *Estimating*, *supra* note 118, at 27-30.

317 Suresh Naidu & Michael Carr, *If You Don't Like Your Job, Can You Quit?* 11-14 (Econ. Pol'y Inst. 2022), https://files.epi.org/uploads/246574.pdf.

318 *See infra* note 137 & accompanying text.

319 *See* Hafiz & Miller, *supra* note 7 (collecting studies).

320 Claire Kelloway, *How to Close the Democrats' Rural Gap*, WASH. MONTHLY (Jan. 13, 2019), hly.com/2019/01/13/how-to-close-the-democrats-rural-gap/.

321 Spencer Kwon et al., *100 Years of Rising Corporate Concentration* (2022), https://www.dropbox.com/s/04vi33osojfpeb0/Concentration100Years.pdf?dl=0..

322 *See, e.g.*, Tom Mueller et al., *Market Concentration and Natural Resource Development in Rural America*, 87 RURAL SOC. 68 (2022); Collin Eaton, *Fracking Companies Continue Consolidation*, WALL ST. J. (May 24, 2021), https://www.wsj.com/articles/fracking-companies-continue-consolidation-as-cabot-cimarex-form-14-billion-firm-11621866404; Sarah Low, *Manufacturing is More Important to Rural than Urban Economies* (USDA-ERS, 2021), https://www.usda.gov/media/blog/2017/09/12/manufacturing-relatively-more-important-rural-economy-urban-economy.

that, due to bank consolidation, 89 percent of rural markets are highly concentrated, resulting in reduced small business lending, employment, and wages.[323]

There is insufficient empirical data on mergers' labor market effects in distressed labor markets, but distressed communities suffer higher rates of unemployment and firm closures following merger activity—grocery store, bank, pharmacy, and hospital closures result in food, banking, pharmaceutical, and health care deserts.[324] In other words, distressed communities may be characterized as labor market "no-opolies",[325] or geographic markets that lack employers altogether.

4. *Antitrust Law, Collusion, and Geographic Inequality*

Antitrust law has long dealt with the "oligopoly problem"—that in concentrated industries, industry-wide price changes may be consistent with either price-fixing or independent price-setting, and enforcers often have limited evidence to exclude either possibility.[326] Antitrust law requires proof of an anticompetitive agreement between firms in concentrated industries but "rewards the concealment of price fixing" by placing high standards of proof unlikely to be in enforcers' possession.[327] Professor Louis Kaplow identified these high evidentiary standards as the "paradox of proof": current rules make it so that the very markets where it is *easiest* for rivals to set parallel prices—oligopolistic markets—end up being *less*, rather than *more*, likely to give rise to liability.[328]

Proving oligopolistic collusion between employers presents an equivalent "oligopsony problem."[329] Even worse, workers—especially in rural and distressed labor markets—face frictions in switching jobs, and both pay equity norms and downward nominal wage rigidity, or wage stickiness, can stabilize compensation, making collusion in labor markets easier to sustain because it is harder for employers to cheat to attract workers from rivals.[330] Further, rural and distressed communities have a smaller number of employers with economic and non-economic ties, solidifying trust-facilitating devices to support collusion.[331] So the adverse impacts of the oligopsony problem and the paradox of proof disproportionately fall on rural and distressed communities, where labor markets have the highest labor market concentration levels, workers face the highest labor market frictions, and employers are most able to stabilize collusive arrangements. Current antitrust rules thus immunize employers' anticompetitive conduct from antitrust liability in markets where it is needed most.

Antitrust enforcement has only recently applied against employer collusion. While still in its earliest days, it has unsurprisingly revealed wage-fixing and collusion among employers in rural and

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323 Mann, *supra* note 30, at 5-6; Meyer, *supra* note 31, at Fig. 4.

324 Christopher Leslie, *Food Deserts, Racism, and Antitrust Law*, 110 CAL. L. REV. 1717 (2020); Leslie, *Banking Deserts*, *supra* note 140; Jennifer Kingson, *The Growth of "Pharmacy Deserts"*, AXIOS (Jan. 7, 2021), https://www.axios.com/2021/01/07/pharmacy-deserts-cities-prescriptions (collecting studies); [hospital closures].

325 *See* Leslie, *Banking Deserts*, *supra* note 140, at 35-36.

326 *See* Jonathan Baker, *Two Sherman Act Section 1 Dilemmas*, 38 ANTITRUST BULL. 143 (1993); Richard Posner, *Oligopoly and the Antitrust Laws*, 21 STAN. L. REV. 1562, 1575 (1969); Donald Turner, *The Definition of Agreement Under the Sherman Act*, 75 HARV. L. REV. 655 (1962).

327 *See* Christopher Leslie, *How to Hide a Price-Fixing Conspiracy*, 2021 U. ILL. L. REV. 1199, 1235-57 (2021); Louis Kaplow, *Direct Versus Communications-Based Prohibitions on Price Fixing*, 3 J. LEGAL STUD. 449, 449-50 (2011).

328 Louis Kaplow, *On the Meaning of Horizontal Agreements*, 99 CALIF. L. REV. 683, 758 (2011).

329 *See* Posner & Masur, *supra* note 32, at 3-6.

330 *Id.* at 10.

331 *See* Christopher Leslie, *Trust, Distrust, and Antitrust*, 82 TEX. L. REV. 517, 546-622 (2004).

distressed communities, including between chicken processors, hospitals, nursing homes, and physical therapy staffing companies.[332]

5. *Antitrust Law, Vertical Conduct, and Geographic Inequality*

Finally, rural and distressed labor markets have been disproportionately transformed by courts' permissive treatment of anticompetitive vertical agreements, enabling vertical disintegration and workplace fissuring with limited antitrust liability.[333] Agreements between firms at different levels in the supply chain that restrain upstream or downstream pricing and non-pricing decisions—like exclusive dealing arrangements, territorial or customer restrictions, and other restraints—were condemned as *per se* unlawful because restrict competitive pricing strategies, trading partner choices, relocation and expansion decisions, and other procompetitive conduct. But since the late 1970s, the Supreme Court, influenced by the Chicago School's efficiency claims regarding vertical agreements, overturned prior precedent to apply permissive "rule of reason" treatment that removed presumptive illegality and requires consideration of vertical restraints' procompetitive efficiencies, applying a burden-shifting framework and threshold market definition obstacles that have rendered vertical restraints de facto legal.[334]

The de facto legality of "vertical integration by contract"—corporate restructuring through contractual arrangements—enabled geographic dispersal of supply chains from firm disintegration. From warehouses to logistics management, food processing and input manufacturing to call centers and customer service provision, lead firms have outsourced their supply chains to "inshored" firms in the rural heartland and distressed areas.[335] But the jobs generated in those areas were significantly lower-paying, even controlling for individual worker characteristics like education and occupation, than jobs at the core, primarily because of lead firm buyer power.[336] Essentially, antitrust-enabled restructuring resulted in "economic segmentation" and wage inequality resulting from "unequal bargaining relations between corporate buyers and their suppliers . . . [that] slowed wage growth."[337] And with lower wages, increasing regional economic divergence—sociologist Robert Manduca has found that the national rise in income inequality is alone sufficient to account for more than half the observed divergence across regions, and the "major driver" of that divergence is "national-level income dispersion that has exacerbated preexisting spatial inequalities."[338]

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[332] *See, e.g.*, Indictment, *United States v. Faysal Manahe et al.*, Case No. 2:22-cr-00013-JAW (D. Me. 2022); Complaint, *United States v. Cargill Meat et al.*, Case No. 1:22-cv-01821-ELH (D. Md. 2022); *United States v. Geisinger Comm. Hosp.* (M.D. Pa. 2020); *supra* note 137.

[333] *See generally* WEIL, *supra* note 33; Brian Callaci, *Control Without Responsibility* (Ctr. for Equitable Growth, 2018), https://equitablegrowth.org/working-papers/control-without-responsibility-the-legal-creation-of-franchising-1960-1980/; Hafiz, *Brand Defense*, *supra* note 33, at 33-34; Douglas Ginsburg, *Vertical Restraints*, 60 ANTITRUST L.J. 67 (1991).

[334] *Leegin Creative Leather Prods. v. PSKS*, 551 U.S. 877, 898-99 (2007); *State Oil Co. v. Khan*, 522 U.S. 3, 22 (1997); *Cont'l T.V. v. GTE Sylvania*, 433 U.S. 36, 59 (1977); Ginsburg, *supra* note 333, at 76; Daniel Sokol, *The Transformation of Vertical Restraints*, 79 ANTITRUST L.J. 1003, 1005 (2014).

[335] *See, e.g.*, ALEC MACGILLIS, FULFILLMENT 6-12 (2021); WEIL, *supra* note 33, at 159-77; FREDERICK ABERNATHY ET AL., A STITCH IN TIME (1999); Dave Jamieson, *The New Blue Collar*, HUFF. POST BUS. (Dec. 20, 2011), https://www.huffingtonpost.com/2011/12/20/new-blue-collar-temp-warehouses_n_1158490.html; Rosemary Batt & Hiroatsu Nohara, *How Institutions and Business Strategies Affect Wages*, 62 INDUS. & LAB. REL. REV. 533, 533-34 (2009); Mark Jelavich, *Manufacturing and Rural Economies in the United States*, 60 AM. J. ECON. & SOC. 185, 185-7 (2001); Thomas Holmes, *Localization of Industry and Vertical Disintegration*, 81 REV. ECON. & STAT. 314, 314-15 (1999).

[336] Wilmers, *Wage Stagnation*, *supra* note 282.

[337] *Id.* at 213, 232.

[338] Manduca, *supra* note 163, at 622.

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In sum, antitrust regulation cannot, and has not, uniformly or consistently regulated employer monopsony in rural and distressed labor markets, and in some cases, has affirmatively incentivized and exacerbated it. When employers have natural monopsony characteristics, antitrust law does not reach them. Nor should it: natural monopsonies are similar to public utilities or common carriers requiring command-and-control or rate regulation rather than competition regulation because public actors are better able to manage the tradeoffs between market power, efficiency at scale, and fair pricing than private actors. Antitrust regulation has also failed to consistently regulate and remedy market power resulting from thin markets, another core characteristic of rural and distressed labor markets, and by ignoring the labor market effects of corporate consolidation, exacerbated already-existing market failures that have accrued to employer power. Finally, by adopting high standards for proving collusion in oligopsonistic markets and permissive approaches to vertical restraints, antitrust courts have deregulated anticompetitive conduct most likely to adversely impact rural and distressed communities. For these reasons, antitrust law has contributed to geographic inequality. Where reliance on antitrust is a regulatory mistake—as in the case of naturally monopsonistic or thin labor markets—more radical and interventionist solutions are necessary. And where antitrust doctrine has ill-served rural and distressed communities, we need a regulatory overhaul.

C. Labor Law, Collective Rights, and Worker Voice

Labor law grants workers protections for the right to organize, strike, and collectively bargain, enabling worker voice in the workplace.[339] When workers take advantage of its protections and unionize, they receive higher compensation, a "union premium," with the strongest effects for lower-wage earners.[340] Union premiums decrease income inequality, but they also have beneficial spillovers in lifting nonunion workers wages as well.[341] Unionization offers a potential corrective to pervasive monopsony in rural and distressed communities given antitrust's limitations. But American labor law—the NLRA and the agency and court decisions that have interpreted it—structurally underserves workers in these communities and is ill-designed to remedy their unique market failures to ensure equal bargaining power with employers.[342] First, the NLRA has categorically exempted workers critical to production and service provision in rural and distressed communities: public sector employees, farmworkers, home care workers, and family child care providers.[343] Second, through a combination of statutory amendments, National Labor Relations Board (NLRB) decisions, and judicial doctrine, American labor law has incentivized the spatial reorganization of production, resulting in workplace fissuring in undiversified labor markets with cheaper labor inputs. Third, American labor and employment regulation was designed to be most effective in regulating large, industrial workplaces

[339] 29 U.S.C. § 157.

[340] *See, e.g.*, U.S. Dep't of Lab., *The Union Advantage* (2022), https://www.dol.gov/general/workcenter/union-advantage; U.S. Bur. Lab. Stats., *Union Workers More Likely than Nonunion Workers to Have Healthcare Benefits*, ECON. DAILY (Oct. 28, 2019), https://www.bls.gov/opub/ted/2019/union-workers-more-likely-than-nonunion-workers-to-have-healthcare-benefits-in-2019.htm; Luke Petach & David Wyant, *The Union Advantage*, INT'L J. HEALTH ECON. & MGMT. (2022), https://doi.org/10.1007/s10754-022-09336-7; David Card, *The Effect of Unions on the Structure of Wages*, 34 ECONOMETRICA 957 (1996).

[341] *See* Nicole Fortin et al., *Labor Market Institutions and the Distribution of Wages*, 39 J. LAB. ECON. S369, S371-72 (2021); Farber et al., *supra* note 212, at 1326-27.

[342] *See* Hafiz, *Structural Labor Rights*, *supra* note 33, at 664-73.

[343] 29 U.S.C. § 152(2)-(3).

with massive workforces, and it is structurally deficient in regulating smaller, dispersed employers without significant resources, which Congress has consistently denied, resulting in considerable underenforcement in rural and distressed communities. And finally, because most labor law violations involve retaliation for the lawful exercise of protected labor rights, strong remedies are critical for ensuring workers' continued organizing and unionizing efforts. But the NLRA's remedies are notoriously weak and even more ineffective in social-capital based workplaces and thinner markets. In all, our labor law regime virtually eliminates the effective exercise of workers' collective rights in rural and distressed communities.

1. *Labor Law's Exemptions*

NLRA exemptions leave a vast number of workers in rural and distressed communities vulnerable to employer power without collective recourse, particularly in the rural South and in home care provision where medical and other care are more scarce. The carve-outs were giveaways to Southern Democrats to ensure their support for the NLRA's passage, excluding primarily Black agricultural and domestic workers from labor rights protections.[344] Farmworkers remain particularly vulnerable to employer monopsony in rural areas due to mobility restrictions and limited labor market competition.[345] With no federal protections to organize and collectively assert countervailing power, over a million rural workers critical for our food system have limited options for achieving higher compensation or basic workplace protections.[346] Additionally, demand for health care services has increased with broader access to health care coverage and higher care needs of older manufacturing workers with secured health care benefits.[347] Demand for child care has also skyrocketed.[348] But in rural and distressed communities, where populations are disproportionately older (rural communities) and younger (distressed communities), access to care is scarce, and demand for home care and family child care providers is particularly high.[349] A higher percentage of workers in rural areas are employed by the government (16 percent) compared to urban workers (12 percent), so the public employees exemption has a higher impact in those areas.[350]

Thus, while the NLRA's exemptions appear place-neutral, their impact is not. Communities with higher percentages of NLRA-protected workers disproportionately benefit from union premiums with positive spillovers while communities with larger numbers of exempted workers lose out, increasing the geographic disparity in earnings. The NLRA's exemptions leave room for local governments to extend labor protections to exempted workers,[351] but that only exacerbates geographic

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[344] *See* FRYMER, *supra* note 36, at 27-28; Perea, *supra* note 36, at 118-24.

[345] *See* Eric Gibbons et al., *Monopsony Power and Guest Worker Programs* (IZA No. 12096, 2019), https://docs.iza.org/dp12096.pdf.

[346] Daniel Costa et al., *Federal Labor Standards Enforcement in Agriculture* (Econ. Pol'y Inst. 2020), https://www.epi.org/publication/federal-labor-standards-enforcement-in-agriculture-data-reveal-the-biggest-violators-and-raise-new-questions-about-how-to-improve-and-target-efforts-to-protect-farmworkers/.

[347] *See* GABRIEL WINANT, THE NEXT SHIFT (2021).

[348] *See, e.g.*, Elliot Haspel, *America's Child-Care Equilibrium Has Shattered*, ATLANTIC (July 23, 2022), https://www.theatlantic.com/family/archive/2022/07/us-childcare-programs-expensive-underfunded/670927/.

[349] *See, e.g.*, Rural Health Info., *Healthcare Access in Rural Communities*, https://www.ruralhealthinfo.org/topics/healthcare-access.

[350] *Rural America at a Glance*, *supra* note 22, at 10.

[351] *See, e.g.*, Benjamin Sachs, *Despite Preemption*, 124 HARV. L. REV. 1153, 1162-71 (2011).

divergence: blue states like Massachusetts grant stronger labor protections for farmworkers, home care workers, and public employees, but red states lack them entirely.[352]

2. Labor Law and Incentivizing the Spatial Reorganization of Work

Statutory amendments and NLRA doctrine have incentivized firms to spatially reorganize production. Four key developments have been critical in rendering the Act an expedient for geographic inequality: (1) the Board's presumption of "enterprise" bargaining; (2) Congress's addition of "right-to-work" protections in the 1947 Taft-Hartley Amendments to the NLRA; (3) permissive doctrine on managerial decisions to close plants, restructure, and outsource work following successful unionization; and (4) persistently narrow interpretations of "joint employer" doctrine since the 1980s.

First, current law has established a presumption that the proper "employer unit" for collective bargaining is a single facility of a single employer.[353] The presumption reduces workers' bargaining leverage and limits the growth of union density, particularly in fissured workplaces.[354] But the presumption also impacts geographic inequality. Because single facility or single employer bargaining generates a union premium, increasing labor costs, it places unionized firms in non-unionized industries at a cost disadvantage relative to their competitors, incentivizing unionized firms to either crush the union or move production to non-unionized work sites. In other words, it incentivizes firms to compete on low compensation rather than increased productivity the way broader-based sectoral bargaining would.[355] Thus, particularly in industries with lower union density, and where employers estimate the costs of union-busting to be higher than relocation, the default incentivizes firms to relocate to areas with fewer labor rights protections and low union density.

Which leads to the second development: the Taft-Hartley "right-to-work" amendments to the NLRA.[356] Taft-Hartley enabled states (and localities) to enact laws granting workers in unionized workplaces the right to refuse to pay union dues for services the union is legally obligated to provide them, including the costs of representing their interests in collective bargaining negotiations, individual representation in grievance procedures, and other services.[357] Right-to-work laws increase union costs and generate free-rider problems: workers can receive the benefits of unionization "without contributing resources necessary to secure" them.[358] Twenty-seven states have passed right-to-work laws, and those states have lower union density, decreased chances of union success in representation

[352] *See* Mass. Gen. L. 118E §§ 70-75; 149 §§ 190, 191 et seq.; 150A, § 5A; Richard Fischl, *Serving in the Master's House*, *in* EMPLOYMENT RELATIONS AND TRANSFORMATION OF THE ENTERPRISE 21-57 & App. I (Edoardo Ales et al. eds. 2016).

[353] *See* 29 U.S.C. § 9(b); *J&L Plate*, 310 NLRB 1085 (1993).

[354] *See, e.g.*, Hafiz, *Structural Labor Rights*, *supra* note 33, at 656; Mark Barenberg, *Widening the Scope of Worker Organizing* 1, 3 (Roosevelt Inst. 2015), https://rooseveltinstitute.org/wp-content/uploads/2015/10/RI-Widening-Scope-Worker-Organizing-201510-2.pdf; Kate Andrias, *The New Labor Law*, 126 YALE L.J. 2, 30-31 (2016).

[355] *See* RICHARD MEDOFF & JAMES FREEMAN, WHAT DO UNIONS DO? (1984); Karl Moene & Michael Wallerstein, *Pay Inequality*, 15 J. LAB. ECON. 403, 403-30 (1997); Alan Krueger & Lawrence Summers, *Efficiency Wages and the Inter-Industry Wage Structure*, 56 ECONOMETRICA 259, 259-93 (1988).

[356] 29 U.S.C. § 164(b).

[357] *See* Catherine Fisk & Ben Sachs, *Restoring Equity in Right-to-Work Laws*, 4 U.C. IRVINE L. REV. 859, 862-68 (2014).

[358] *Id.* at 862.

elections, and decreased worker earnings.[359] Right-to-work laws thus effectuate geographic labor market segmentation and inequality, lowering levels of upward mobility, particularly in the South.[360]

A third development facilitated firm movement or expansion to low union-density areas: Supreme Court doctrine protecting employer discretion to shutter plants, restructure or outsource work when their employees unionize and/or seek to collectively bargain. In *First National Maintenance v. NLRB*, the Court held that it did not violate the NLRA for an employer to refuse to collectively bargain about its decision to shut down portions of its business following a successful unionization campaign.[361] Courts and the Board have also held that employers are not obligated to collectively bargain about certain subcontracting, changes in basic business operations, or liquidating firm assets.[362] Thus, doctrine interpreting the Act has helped facilitate and entrench employers' geographically-motivated arbitrage by enabling relocation and outsourcing to non-unionized locations.

Finally, since the 1980s, the Board and the courts have primarily adopted a narrow definition of "joint employer" for triggering NLRA union recognition and collective bargaining duties.[363] Specifically, until recently, the Board required a firm to exercise direct, immediate, and actual control over employment terms and conditions to be considered a "joint employer", making it very difficult for workers downstream of vertically-disintegrated lead firms to collectively bargain with them or hold them jointly liable for their direct employers' labor law violations.[364] Narrow interpretations of joint-employer status enabled lead firms to shed their labor law obligations—and all accompanying compliance costs as well as negotiated profit-sharing—if they vertically disintegrated and operated at some remove from day-to-day labor-management decisions.[365] This process of shedding labor law liability—the "fissuring" of the workplace—has not only incentivized firm restructuring to relocate components of their supply chains in areas with lower labor costs, but it has also severed downstream workers' ability to legally obligate upstream firms to negotiate about the overall gains from trade, enabling the owners of those upstream firms, located in the wealthiest communities, to insulate their share of profits from negotiated worker earnings.[366]

3. Regulatory Design and Underenforcement

The regulatory design of the NLRA, and the NLRB's limited enforcement resources, impose structural limitations on enforcers' ability to challenge small- and medium-sized employers' non-compliance. First, the NLRA's structure was devised to work best in large, mass-production enterprises and worst in thinner markets with smaller employers. As sociologist Andrew Schrank and

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[359] Noah Wexler, *Wage and Employment Effects of Right-to-Work Laws* 1-5 (2022), https://www.aeaweb.org/conference/2023/program/paper/E8DnB4hT; Kevin Murphy, *Consequences of Right-to-Work for Union Membership*, ILR REV. (2022), https://journals.sagepub.com/doi/full/10.1177/00197939221128753.

[360] *See* JAMES COBB, SELLING OF THE SOUTH 101-02 (1993); Andrew Herod et al., *Geography and Industrial Relations*, *in* UNDERSTANDING WORK AND EMPLOYMENT 181-82 (Peter Ackers ed. 1994).

[361] 452 U.S. 666, 686 (1981).

[362] *Fibreboard Paper Products v. NLRB*, 379 U.S. 203, 213 (1964); *NLRB v. Int'l Harvester*, 618 F.2d 85, 87 (9th Cir. 1980); *NLRB v. Adams Dairy*, 350 F.2d 108, 111 (8th Cir. 1965); *Ozark Trailers*, 161 N.L.R.B. 561 (1966); *Royal Plating*, 152 N.L.R.B. 619 (1965).

[363] The Board has recently flip-flopped between narrower and broader "joint employer" definitions. *See* Nat'l Lab. Rltns. Bd., *Standard for Determining Joint-Employer Status*, 87 CFR 54641 (Sept. 7, 2022).

[364] *See TLI*, 271 NLRB 798 (1984); *Laerco Transp.*, 269 NLRB 324 (1984).

[365] *See* WEIL, *supra* note 33, at 7-20.

[366] *Id.* at 19-20.

economist Michael Piore explain, the division of work law enforcement across multiple agencies—the NLRB, the Department of Labor, and the Equal Employment Opportunity Commission—multiplied the enforcement costs, of "getting the inspector to the front door."[367] With this fragmentation, the government maximizes its return on enforcement costs through economies of *scale*, investigating a relatively smaller number of offenses to a larger number of workers in large factories with each trip inti the field.[368] In the French model of labor enforcement, government investigations are centralized and each inspector is familiar with all violations of a broader labor code—in labor markets with smaller, more dispersed employers, inspectors can achieve economies of *scope* by investigating a relatively large number of offenses to a relatively small number of workers with each trip into the field.[369] The French model, they argue, is "particularly well suited to post-Fordist economies . . . populated by small firms and prone to large shocks," while the American model is at its most disadvantaged in that context, resulting in either inefficient resource drain or significant underenforcement.[370] Regulating rural and distressed labor markets based on an economies-of-scale rather than an economies-of-scope model is particularly costly given their market thinness, decentralization, and predominance of small and dispersed employers.

Thus, our regulatory infrastructure is designed to underregulate rural and distressed labor markets absent significant resources. And the resources are not there. The NLRB is one of the most underresourced federal agencies despite the dramatic growth of private-sector workers under its jurisdiction over the past decade. Until 2022, the Board's funding stagnated for over a decade, and between 2006 and 2019, the number of full-time employees dropped by nearly 31 percent to 1,320 even as the number of workers covered grew by 50 percent, leaving one full-time employee per 112,201 workers.[371] Staffing at regional offices is even lower, dwindling from 1,238 to 824 between 2010 and 2019.[372] Loss of regional staff is devastating for enforcement in rural and distressed communities because they primarily handle investigations and resolving worker complaints of employer violations.[373] NLRB employees consistently report insufficient resources, and nearly half of regional staff believe they have an unreasonable workload.[374] Overall, the NLRB's budgetary resources are just over $68 million per year, less than 0.01 percent of all budgetary resources allocated to federal agencies, and below those allocated to the Peace Corps ($117 million) and the America Battle Monuments Commission ($75.7 million).[375]

And it gets worse in rural and distressed communities: Board agents cannot initiate investigations but instead may only pursue enforcement actions *after* workers file complaints about their employer's violations.[376] Workers in rural and distressed communities are highly unlikely to

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367 ANDREW SCHRANK & MICHAEL PIORE, ROOT-CAUSE REGULATION (2018).

368 *Id.* at 31.

369 *Id.* at 31, 50.

370 *Id.* at 50.

371 Ihna Mangundayao & Celine McNicholas, *Congress Should Boost NLRB Funding*, ECON. POL'Y INST. BLOG (Feb. 28, 2022); https://www.epi.org/blog/congress-should-boost-nlrb-funding-to-protect-workers-well-being/; Daniel Wiessner, *U.S. Budget Bill Includes First Increase for NLRB Since 2014*, REUTERS.COM (Dec. 20, 2022), https://www.reuters.com/legal/government/us-budget-bill-includes-first-increase-labor-board-since-2014-2022-12-20/.

372 Mangundayao & McNicholas, *supra* note 371; U.S. GAO, *NLRB: Meaningful Performance Measures Could Improve Quality* 14 (GAO-21-242, 2021), https://www.gao.gov/assets/gao-21-242.pdf [hereinafter *GAO NLRB Report*].

373 Mangundayao & McNicholas, *supra* note 371; *GAO NLRB Report*, *supra* note 373, at 6.

374 *GAO NLRB Report*, *supra* note 373, at 28.

375 *See* USA Spending, *Agency Profiles*, USASPENDING.GOV, https://www.usaspending.gov/agency.

376 29 U.S.C. § 160(b).

trigger labor enforcement or fill regulatory gaps through initiating such charges. Without unions or other labor market institutions, workers often lack knowledge about their legal rights and the legal process for filing charges.[377] But labor market institutions also provide psychological and social supports workers need when they accuse their employer—their primary source of income and financial stability—of violating the law, risking termination and other forms of retaliation.[378] Thus, absent such institutions, the overburdened regional NLRB agent is all most workers in rural and distressed communities have, and they only have that protection if they reach out first.

4. *Labor Law's Ineffective Remedies*

Finally, the NLRA's remedies for employer violations are very limited: cease and desist orders, posting notice on their premises, reinstatement and back pay (net of employee earnings received in the interim, and through a process that takes months or years), and on rare occasions, a bargaining order.[379] The Board does have authority to seek to enjoin NLRA violations in federal court, but these proceedings are rare, just 11 in 2020.[380] In analyzing the NLRA's penalty regime, economist Anna Stansbury calculated that, "[f]or a typical firm, firing a worker for union activities may be profit-maximizing if it reduces the probability of unionization by as little as 0.15 percent."[381] Widespread evidence of employers' termination of workers for unionizing is thus unsurprising.[382]

The NLRA's weak remedies are even more deficient in rural and distressed communities where workers have fewer outside options and are more likely to have gotten jobs through word-of-mouth and social networks—family and friends vouching for their reliability—and to be working in smaller, social capital-based workplaces.[383] Defying employers resistant to unionization efforts in these contexts is even more challenging because the consequences of retaliation, job loss, and social disruption are more severe.

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In all, the infrastructure of labor law enforcement has failed and continues to fail workers in rural and distressed areas. This failure has not only reduced worker earnings and access to health care in these communities, but has also exacerbated geographic inequality by incentivizing the spatial reorganization of capital and work. These limitations of labor law have broader impacts, not only as negative spillovers within local labor markets, but also in terms of national growth and productivity. Without state- or local-level monetary tools and with limited fiscal resources dedicated to increasing

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[377] *See, e.g.,* WEIL, *supra* note 33, at 245-46, 291 n.2; Aaron Sojourner & Jooyoung Yang, *Effects of Union Certification on Workplace-Safety Enforcement*, 75 ILR REV. 373 (2022); Cynthia Estlund, *Just the Facts,* 63 STAN. L. REV. 351, 363 (2011); Jack Fiorito & Paul Jarley, *Union Organizing and Membership Growth,* 33 J. LAB. RES. 461, 482 (2012); Pauline Kim, *Norms, Learning, and Law,* 1999 U. ILL L. REV. 447 (1999).

[378] *See, e.g.*, Paul Leigh & Bozhidar Chakalov, *Labor Unions and Health*, 24 PREVENTIVE MED. REP. 101502 (2021); Gordon Lafer & Lola Loustaunau, *Fear at Work* (Econ. Pol'y Inst. 2020), https://www.epi.org/publication/fear-at-work-how-employers-scare-workers-out-of-unionizing/; Waleed Sami, *Labor Union Affiliation and Psychological Well-Being* (unpub. diss., 2022), https://scholarscompass.vcu.edu/cgi/viewcontent.cgi?article=8270&context=etd

[379] *See* Anna Stansbury, *Do US Firms Have an Incentive to Comply with the FLSA and the NLRA?* (PIIE Paper. No. 21-9, 2021); Paul Weiler, *Promises to Keep*, 96 HARV. L. REV. 1769, 1787-95 (1983).

[380] 29 U.S.C. § 130(j); Lynn Rhinehart & Celine McNicholas, *Shortchanged* 3 & n.10 (Econ. Pol'y Inst. 2021).

[381] Stansbury, *supra* not 379, at 24-28.

[382] *Id.* at 28-30.

[383] *See infra* Parts I, II.A; Ralph Mathews et al., *Social Capital, Labor Markets, and Job-Finding in Urban and Rural Regions*, 57 SOC. REV. 306 (2009); Lindsay et al., *supra* note 147.

worker power, expansionary legal policy is the primary remaining option to boost earnings and productivity in rural and distressed communities. [384] But the labor regulatory system unable to achieve *either* economies of scale or economies of scope is not geared towards "target[ing] different types of violation in different macroeconomic environments."[385]

D. Employment Law, Local Scale, and Exit Options

Employment laws—and, specifically, the Fair Labor Standards Act (FLSA), the Occupational Safety and Health Act (OSH Act), Title VII, workers' compensation, and unemployment insurance—offer crucial wage floors and basic protections against hazardous and discriminatory workplaces. They also strengthen worker power and function as checks against employer monopsony by increasing workers' exit options, lifting depressed wages at the bottom of the wage distribution, improving workplace conditions, and increasing employment outcomes for women and minority workers.[386] But they are an imperfect regulatory fit for rural and distressed labor markets. First, while all workers covered under federal employment law receive the same baseline protections, states and localities can lift and expand federal floors and have in Democratic states and localities. Work law relegated to state regulation also leaves workers geographically divided between blue states (receiving more benefits and having more exit options) and red states (receiving and having less). The result is geographically divergent protections. Second, employment law exemptions exclude important categories of workers and employers prevalent in rural and distressed labor markets. Finally, like labor law enforcement, employment law enforcement is structurally limited and underresourced, leaving it ill-suited to tackle violations in smaller-scale employment violations.

1. *Geographically Divergent Protections*

While federal employment protections exist nationwide as compensation and workplace safety floors, because state and local regulation can increase those floors and also provide more or less expansive programs for workers' compensation and unemployment insurance, there is significant geographic divergence in the types of protections and entitlements workers' receive. Because these protections and entitlements can increase or reduce workers' exit options by impacting their next best alternative to existing employment (or unemployment), the patchwork of protections differentially impact worker power and thus worker earnings and benefits, contributing to geographic inequality.

First, the federal minimum wage floor of $7.25 per hour and has not increased since 2009.[387] This minimum has not kept up with the cost of living since the 1960s and places a minimum wage earner with a family of four well below the poverty line.[388] But while some states like California and Hawaii have lifted that minimum to as high as $18, twenty states, primarily in the South, kept theirs at

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[384] *See* LISTOKIN*, supra* note 178, at 16.

[385] SCHRANK & PIORE, *supra* note 367, at 70.

[386] Ioana Marinescu & Jake Rosenfeld, *Worker Power and Economic Mobility* 16-23 (WorkRise, 2022), https://www.workrisenetwork.org/sites/default/files/2022-08/correctedworker-power-economic-mobility-landscape-report.pdf; Hafiz & Marinescu, *supra* note 174.

[387] *See* U.S. Dep't of Lab., Wage & Hour Dvsn., *History of Minimum Wage Law Changes* (2007), https://www.dol.gov/agencies/whd/minimum-wage/history

[388] *See, e.g.*, David Cooper, *Raising Federal Minimum Wage Would Lift Pay for 40 Million Workers* (Econ. Pol'y Inst. 2019), https://www.epi.org/publication/raising-the-federal-minimum-wage-to-15-by-2024-would-lift-pay-for-nearly-40-million-workers/.

the federal floor.[389] Thus, worker earnings for the same full-time minimum-wage job in Pennsylvania and California are $15,080 and $31,200 per year, respectively, over double the amount.[390]

Second, while federal antidiscrimination law protects workers in protected classifications as a baseline,[391] states and municipalities have expanded protections based on gender identity and expression, marital or familial status, hairstyle and texture, conviction record, cannabis use, genetic information, and broader pregnancy-related conditions.[392] The states and municipalities with more expanded protections coincide with nearly all the states that have lifted their minimum wages, leaving workers comparatively less protected in primarily red states.

Finally, because workers' compensation and unemployment insurance are collected and administered at the state level with no federal minimums, workers' benefits differ radically by state. For workers' compensation, each state sets maximum awards based on a "schedule of benefits" for each body part injured.[393] Employers are paying the lowest rates for workers' comp since the 1970s, but employers in primarily red states have lobbied legislatures to lower them even more and cut workers off earlier to compete with neighboring states and lure business, offloading costs of injury and disability to working families and taxpayers.[394] The unemployment system operates as a federal-state partnership, but states have autonomy to establish eligibility, payout formulas, and benefit caps. State-level rules result in radically different worker benefits by state, but have most severely impacted Black workers, who suffer an 8.4 percent gap in replacement rates relative to white workers.[395] This is because states with the highest shares of Black workers—disproportionately in the South—offer significantly lower benefits than states with high shares of white workers, increasing inequality.[396]

2. *Employment Law's Exemptions*

Federal employment law also excludes many workers and a large number of employers from their protections and entitlements, with disproportionate impacts on rural and distressed communities. Agricultural workers are not covered under the overtime provisions of the FLSA, and many rural farmworkers are not protected under either its minimum wage and overtime provisions, including workers who are their employer's immediate family members, those who work on the range producing livestock, seasonal local hand harvest workers paid on a piece-rate basis, and non-local minors working on the same farm as their parent on a piece-rate basis.[397] Live-in domestic workers are also exempt, including those who provide companionship services for the elderly, critical functions that family and

[389] *See* Brendan Smialowski, *Blue State Minimum Wages Inch Upward, Widening Gap With South*, BLOOMBERG LAW (May 24, 2022), https://news.bloomberglaw.com/blue-state-minimum-wages-inch-upward-widening-gap-with-south.

[390] *Id.*

[391] Title VII, 42 U.S.C. § 2000e-2 (1964); ADEA, Pub. L. 90-202 (1967); ADA, 42 U.S.C. § 12101 et seq.; PDA, Pub. L. 95-555 (1978); *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

[392] *See* Workplace Fairness, *Discrimination*, https://www.workplacefairness.org/employment-discrimination.

[393] *See generally* Scott Szymendera, *Workers' Compensation* 15 (CRS Report R44580, 2017).

[394] *See* Michael Grabell & Howard Berkes, *The Demolition of Workers' Comp*, PROPUBLICA (Mar. 4, 2015), https://www.propublica.org/article/the-demolition-of-workers-compensation.

[395] *See* Daphné Skandalis, *Racial Inequality in the Unemployment Insurance System* (NBER Paper 30252, 2022), https://www.nber.org/papers/w30252.

[396] *Id.*

[397] 29 U.S.C. § 213; U.S. Dep't of Labor, Wage & Hour Dvsn., *Fact Sheet: Agricultural Employers under the FLSA*, https://www.dol.gov/agencies/whd/fact-sheets/12-flsa-agriculture.

friends in rural and distressed communities perform on an informal basis due to less robust access to health care and nursing home services.[398]

Additionally, most employment protection statutes have firm-size thresholds that the majority of employers in rural and distressed communities do not meet, removing their workers from core antidiscrimination protections. Specifically, Title VII, the Pregnancy Discrimination Act, the Americans with Disabilities Act, and the Equal Pay Act only apply to firms with 15 or more employees, and the ADEA applies to firms with 20 or more employees.[399] The vast majority of rural employers—over 78 percent—have fewer than 10 workers and 89 percent have fewer than 20, excluding most private employers from antidiscrimination duties.[400] While more progressive states have lowered that threshold under state law, that just increases the geographic disparity between worker protections.[401]

3. *Regulatory Design, Local Scale, and Underenforcement*

While we know that employer noncompliance with employment law protections is widespread, decentralized employment law enforcement and limited agency resources prevent achievement of either economies of scale or scope, failing rural and distressed workers in much the same way that labor law does.[402] Wage theft is rampant in low-wage workplaces in rural and distressed communities, and noncompliance with workplace health and safety requirements, particularly in rural manufacturing and agricultural processing jobs, is pervasive.[403] The U.S. Department of Labor is vast, has 28 sub-agencies, and hundreds of state and local offices around the country, creating immense coordination costs, and with a budget just slightly above the NLRB's at $79 million.[404] The EEOC is slightly better resourced, but its 53 field offices have inconsistent and long intakes due to limited resources and difficulty reaching local populations.[405] Employment law enforcement is simply not structured to either reach the large number of smaller and dispersed employers in rural and distressed labor markets nor are single agents trained to address multiple violations in any field visit.[406]

Employment law also confronts obstacles in rural and distressed communities related to thin markets and local scale: limited outside options due to labor market concentration and mobility costs, information asymmetries, and the importance of social networks and social capital in smaller communities. Workers subject to wage theft, discrimination, and/or unsafe working conditions have fewer alternatives should they report noncompliance and suffer an adverse employment action, and

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[398] *See* 29 U.S.C. §213(a)(15); Steven Cohen et al., *Rural-Urban Differences in Informal Caregiving*, 38 J. RURAL HEALTH 311 (2022); Jyoti Savla et al., *Where You Age Matters*, 31 J. AGING & HEALTH 837 (2019); Geoffrey Hoffman et al., *The Cost of Caring*, 40 RSCH. ON AGING 791 (2018).

[399] 42 U.S.C. §§ 2000e(b), 2000e-4; 29 U.S.C. 206(d); 29 U.S.C. § 630(b).

[400] Small Bus. Credit Survey, Fed. Reserve Banks, *Report on Rural Employer Firms* 5 & Table 4 (2017), https://www.fedsmallbusiness.org/survey/2017/report-on-rural-employer-firms.

[401] *See, e.g.*, California Fair Employment and Housing Act.

[402] *See infra* Part II.C.3.

[403] *See, e.g.*, Jeounghee Kim & Skye Allmang, *Wage Theft in the United States* (Rutgers Working Paper 2020-1, 2020), https://smlr.rutgers.edu/sites/default/files/Documents/Centers/CWW/Publications/wage_theft_in_the_united_states_a_critical_review_june_2020.pdf; Leah Douglas, *Mapping COVID-19 Outbreaks* (Food & Envt. Reporting Network, 2020), https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/; David Cooper & Teresa Kroeger, *Employers Steal Billions from Workers' Paychecks Each Year* (Econ. Pol'y Inst. 2017), https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/.

[404] *See* Hiba Hafiz, *Interagency Coordination on Labor Regulation*, 6 ADMIN. L. REV. ACCORD 199 (2021).

[405] GAO, *EEOC Oversight Needed* 3, 27 (GAO-23-106245, 2022), https://www.gao.gov/assets/gao-23-106245.pdf.

[406] SCHRANK & PIORE, *supra* note 367, at 106, 144.

since the majority of filed employment law violations involve retaliation, on-the-ground enforceability in rural and distressed communities requires nothing short of heroism.[407]

III. REGULATORY SOLUTIONS TO IMPROVING RURAL AND DISTRESSED LABOR MARKETS

Tailoring labor market regulation to work better for rural and distressed communities is critical for strengthening worker power where workers are most harmed by employer monopsony. But it is also necessary for our collective economic growth and to overcome the adverse economic, social, and political effects of geographic inequality. This Part focuses on ways forward, beginning with a broad discussion of economic governance and market creation mechanisms to help imagine alternative ways of structuring rural and distressed labor markets altogether. It then focuses on solutions to specific market failures, beginning with natural monopsony, market thinness, and deeper market failures.

A. Reconfiguring Market Governance and Wage-Making Conditions

The federal government has a critical role in wage-making in rural and distressed markets and establishing market governance mechanisms that reduce employer monopsony's effects on worker compensation, working conditions, and employment options. This is true not only because the federal government is the only actor capable of reducing geographic inequality at the national level, but also because of legal limitations on more localized labor market creation and governance, primarily due to federalism principles, restrictions on monetary policymaking, and state and local government law restraints.[408] This Section provides an overview of reasons why the federal government must take an aggressive role in regulating rural and distressed labor markets, drawing from the legal, historical, and economic literature to propose an Office of Labor Policy, akin to the Office of Science and Technology Policy, to gather labor market information, coordinate with and oversee federal agencies, and propose evidence-based solutions to combat geographic inequality.

1. *Why the Federal Government? Limitations on Local Labor Market Governance*

While New Federalism and limited federal enforcement resources have placed state and local governments in dominant positions as regulators of worker outcomes and workplace regulation in rural and distressed labor markets, the resulting decentralized system has been at best ineffective and at worst deeply harmful to workers in those markets, exacerbating geographic inequality.

First, as discussed, control of the money supply is exclusively in federal hands.[409] Monetary policy impacts all employers' decisions, regardless of place, to invest and hire at the margins, and functions as an indirect "price control for wages" based on targeting and capping wage growth.[410] When asked about wages and inflation, Federal Reserve Chairman Jerome Powell stated, "[I]t's not we don't want wage increases. . . . We just want them to be at a level that's consistent with 2 percent inflation."[411] When asked whether he would "reevaluate" the 2 percent inflation target, Powell

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[407] *See, e.g.*, U.S. Equal Empl. Opportunity Comm'n, *Charge Statistics 1997-2021* (2022), https://www.eeoc.gov/data/charge-statistics-charges-filed-eeoc-fy-1997-through-fy-2021; SUJA THOMAS & SANDRA SPERINO, UNEQUAL (2017).

[408] *See, e.g.*, LISTOKIN, *supra* note 178; Anderson, *supra* note 8; Sachs, *supra* note 351.

[409] *See supra* notes 178-179, 384 & accompanying text.

[410] *See* Interview with Tim Barker, *Inflation Is About Class Struggle*, JACOBIN (Jan. 11, 2023), https://jacobin.com/2023/01/inflation-class-struggle-economic-policy-federal-reserve-the-dig.

[411] Fed. Reserve, *Trans. Of Chair Powell's Press Conference* 13 (Dec. 14, 2022),

responded, "We're not going to consider that under any circumstances."[412] Thus, when states and localities experience local economic shocks, recession-like conditions, or stronger employer monopsony effects, they must cede an important amount of control to federal actors in shaping local labor market outcomes.

Where state and local governments are constrained by federal monetary policy, fiscal policy can fill the breach. But balanced-budget requirements in state constitutions and statutes lock governments into tight revenue and tax controls, limiting their legal authority to provide anything more than basic services and incentivize business development.[413] When limitations on local government action are built into state law, local solutions are more challenging, making state and local governments highly dependent on federal fiscal policy to improve worker outcomes in their rural and distressed labor markets. Further, state and local failures to act become a federal macroeconomic problem because they contribute to slower growth rates and increased income and wealth inequality.[414] New Federalism incentives for states to compete for business investments and employer entry create agency costs between the states and the federal government on macroeconomic policy as well as on policies focused on worker-led rather than business-led growth.

Part II.A discussed the limitations of *federal* fiscal policy in generating state and local economic and community development but also broader employment policy. But in part because those policies rely so heavily on decentralized approaches to local and private sector-focused economic policy, they result in dispersed and differentiated funding for, data-collection and monitoring of, and interventions in local rural and distressed labor markets. While block grants, challenge grants, and other fiscal spending to aid state and local actors come with strings attached, including some of the most worker-protective strings we have seen since the New Deal in Biden's place-based industrial policy and infrastructure grants, the conditioning leaves significant state and local discretion to continue policies that have failed to regulate employer monopsony in rural and distressed communities. And given political realities, state and local government capture, and even state conflicts with more progressive city governments, particularly when it comes to economic development programs, worker power-focused initiatives are unlikely without significant restructuring of fiscal delivery mechanisms.[415]

Regulation through decentralized states and localities would also confront regulatory conflicts and veto points. A coherent employment policy would require access to resources, data collection, centralized review and analysis, and the development of national-level expertise and decision-making requiring broader macroeconomic evaluations and difficult tradeoffs between rich and poor communities to combat geographic inequality. State and local agencies administering and overseeing grants lack robust labor market data outside their jurisdictions, uniform data collection practices, and incentives to consolidate and analyze labor market outcomes outside their jurisdictions.

Establishing a centralized federal system that could coordinate labor policy to address geographic inequality is a critical intervention. Federal regulation is best positioned to design and direct employment policy based on a holistic assessment of the existence and sources of geographic

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https://www.federalreserve.gov/mediacenter/files/FOMCpresconf20221214.pdf.

412 *Id.* at 19.

413 ANDERSON, *supra* note 8, at 13.

414 *See* Schleicher, *Stuck!*, *supra* note 20, at 85.

415 *See, e.g.*, Richard Schragger, *Localism All the Way Up*, 2021 WISC. L. REV. 1283, 1286-91 (2021); Richard Schragger, *Federalism, Metropolitanism, and the Problem of States*, 105 VA. L. REV. 1537 (2019).

inequality by region. This will require evaluation of sources of employer monopsony and conditions of labor demand and supply, social insurance protections, and geographically divergent labor market regulation and enforcement. The federal government can best coordinate between and provide oversight to state and local officials, agencies, and interest groups. And it can best ensure policies that increase productivity and worker power through auditing and evaluating labor market institutions and developing more aggressive interventions to tackle labor market failures where it finds them.

2. *Towards Better Federal Wage-Making in Rural and Distressed Labor Markets*

Establishing an anchoring institution in the White House is a key first step in better effectuating place-based federal employment policy. Similar to the Office of Science and Technology Policy (OSTP), Congress (through legislation) or the President (through Executive Order) could establish an Office of Labor Policy (OLP) within the Executive Office of the President to advise on workforce development and labor policy but also serve as a centralized research hub and regulatory design engineer for developing and executing a coherent, whole-of-government approach to equitable labor market regulation.[416]

Developing expertise and a uniform federal policy to combat geographic inequality through improved labor market regulation is also an issue of decisive national significance for economic stability and self-determination, economic growth, and national harmony. In addition to its advisory function assembling a policy portfolio concentrated on improving labor market outcomes nationwide, an OLP Director would lead and direct economic policy on labor market governance ranging from labor market competition concerns to equitable access and workforce development planning. Like OSTP's U.S. Chief Technology Officer team, OLP could create a Chief Labor Officer team to coordinate across the U.S. government to establish coherent policies for labor market regulation. This might include coordinating federal agency enforcement to target high labor market concentration and challenging labor market failures that reduce worker power.[417] On workforce development, the Office could devise best practices across the Departments of Education, Labor, and Commerce to integrate education, labor, place-based industrial policy, and community investment and ensure that workforce training provides general, portable skills that increase productivity and reduce employer monopsony.[418] The Office could also develop best practices for fiscal policy vehicles and public funding that increases worker earnings, studying current and former place-based investments and evaluating how best to condition federal dollars on creating high-quality jobs with decent pay supported by robust unionization protections and public labor market institutions.

The OLP could also function as a research hub for evaluating more interventionist approaches where real structural labor market fixes are required. For example, it could draw lessons from direct job creation programs—from the WPA and PWA to CETA—to design pilot programs for a public employment option or develop place-based economic development grants generating union-protected jobs beyond the construction sector. Similar to the New Deal,[419] these jobs could include work in light construction projects, as employment surveyors collecting data on labor market conditions, or in other

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[416] For the OSTP, *see* The White House, *Office of Science and Technology Policy*, https://www.whitehouse.gov/ostp/.

[417] For a template, *see* Hafiz & Marinescu, *supra* note 174.

[418] *See* Suresh Naidu & Aaron Sojourner, *Employer Power and Employee Skills* 58-64 (Roosevelt Inst. 2020), https://rooseveltinstitute.org/wp-content/uploads/2020/12/RI_EmployerPowerEmployeeSkills_Report_202012.pdf.

[419] ATTEWELL, *supra* note , at 142, 268.

growth-sustaining areas in rural and distressed communities, including public health, counseling, and wellness, and public arts and culture projects.

Other high-level policy initiatives an OLP could initiate concern macroeconomic policy, redistribution, work-to-welfare requirements, and dual-track pricing. First, OLP could better integrate employment and macroeconomic policy to understand how expansionary legal policy—and specific labor market regulation priorities and strategies in antitrust, labor, and employment law—could boost demand when the short-term nominal interest rate is at or near zero (the "zero lower bound"), or when monetary policy has been ineffective at lifting local economies out of recessions.[420] And it could study and propose tax policy recommendations to combat geographic inequality in coordination with the Treasury Department and Department of Labor. Third, OLP could evaluate the impact of work-to-welfare requirements on workforce participation rates and productivity as well as on geographic inequality. Large-scale evaluation of disparate state- and local-level impacts would need a centralized office with employment policy expertise. Finally, OLP could devise more aggressive solutions to natural monopsony in rural and distressed labor markets through various command-and-control, or rate regulatory strategies. For example, economist Isabella Weber has studied China's dual-track price system that protected against the devastations of shock therapy. Planning core elements of the economy and setting prices for essential goods while liberalizing pricing of surplus output and nonessential goods through market forces, the Chinese government devised "not simply a price policy, but rather a process of market creation and regulation through state participation."[421] Exploring wage controls, at least for certain essential services in rural and distressed communities, could actually increase output and productivity where the provision of services are undercompensated due to private monopsonistic wage-setting.

OLP's collection, analysis, and public dissemination of data would be a tremendous contribution to research and policy at every level of government and in the non-profit and private sectors. This data could include information about local and regional labor markets over time, the geographically differentiated impacts of labor market concentration and employer monopsony on hiring, productivity, and wages. And it could be a central clearinghouse for studying place-based compensation levels by occupation, industry, and sector with demographic characteristics.

The OLP's policy planning and data analysis will be a fundamental resource for labor regulatory agencies across the federal government. The Office oversee and coordinate with those agencies to improve their enforcement priorities and targeted investigations through a whole-of-government approach.[422] OLP could also identify and resolve interagency policy that exacerbate geographic inequality. For example, challenge grants administered by the Commerce Department to generate innovation hubs may increase employer monopsony and geographic inequality if not paired with antitrust regulation and policies that strengthen workers' countervailing power. OLP could also coordinate with the Treasury Department and OMB on increasing labor market competition, workforce development, and worker power through fiscal policy and budget allocation.

Finally, OLP could liaise with state, local, and tribal governments, wage boards, and sectoral councils as well as unions and other worker-led organizations on their regulatory needs with regard to employment policy. Essentially, the OLP could function as a direct line between working people and

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[420] *See, e.g.*, LISTOKIN, *supra* note 178, at 157-58; Treasury Dep't, *supra* note 10, at 48.
[421] ISABELLA WEBER, HOW CHINA ESCAPED SHOCK THERAPY 7 (2021).
[422] *See* Hafiz & Marinescu, *supra* note 174; Hafiz, *Whole-of-Government*, *supra* note 178.

the president's economic policy "brain trust", devising solutions for workforce development, increased employment options, and economic mobility through work.

Institutions like an OLP are not unique in our history. In 1933, President Roosevelt charged the National Resources Planning Board with "providing long-term planning capacity" for his administration.[423] The Board inherited the "wealth of experience and data on direct job creation collected by the WPA", which informed its reports and recommendations to the president to establish a permanent system of direct job creation and a postwar bill of "human and economic rights", which included a right to work.[424] An even more aggressive Cabinet-level department was envisioned by Corrington Gill, a member of Roosevelt's brain trust who proposed a more permanent WPA—a Federal Works Authority Board—that would "report directly to the president and . . . engage in economic planning" that would coordinate public works.[425] Drawing from these traditions, a new and expansive approach to labor market creation and wage-making can direct novel interventions and energize agency enforcement towards economic outcomes that benefit workers.

B. Taking on Company Towns

While firms with natural monopoly have been the subject of intense regulatory and scholarly scrutiny since at least the 1880s, employers with natural monopsony have not. This Section explores regulatory options for limiting the adverse effects of employer monopsony through two avenues. First, it considers the costs and benefits of applying regulatory theory and practice in regulating sellers' natural monopoly to employers' natural monopsony in rural and distressed communities. And second, it explores regulatory options for strengthening workers' countervailing power to minimize monopsonistic wage-setting.

1. *Regulating Natural Monopsonies*

Where true natural monopolies exist, legal scholars, policymakers, and economists agree that regulation is appropriate to avoid the harms of monopoly power and pricing.[426] Regulatory interventions have included public ownership, public utility, and rate or entry regulation, and have been more aggressive when the natural monopoly involves public or essential goods or services.[427] The reasons are simple: in circumstances of natural monopoly, where firms can achieve monopoly rents by inefficiently raising prices, introducing competition will not work because the natural monopolist always has a cost advantage over smaller rivals. So the question becomes whether those rents should be conferred to private or public actors. Public ownership of firms with both natural monopoly and monopsony power has the benefit of setting prices at marginal cost and "practicing only enough price discrimination" or price elevation "to avert a deficit" or for countercyclical planning.[428] Segments of electric power, water, natural gas distribution, and telecommunications industries are publicly owned and/or rate regulated as natural monopolies because introducing competition would produce economic waste. Rate regulation allows a single entity to achieve

[423] ATTEWELL, *supra* note 177, at 140.
[424] *Id.*
[425] ATTEWELL, *supra* note 177, at 71.
[426] *See, e.g.*, Paul Joskow, *Regulation of Natural Monopoly*, *in* 2 HANDBOOK OF LAW AND ECONOMICS 1227-1348 (2007); Posner, *Natural Monopoly*, *supra* note 113, at 615-16.
[427] *See, e.g.*, BREYER, *supra* note 14, at 4, 197-260, 285-314; Posner & Sunstein, *supra* note 124, at 201-3; John Kwoka, *The Role of Competition in Natural Monopoly*, 29 REV. INDUS. ORG. 127, 136-46 (2006).
[428] *See* Posner, *Natural Monopoly*, *supra* note 113, at 636; *see also* WEBER, *supra* note 421, at 26.

economies of scale and service unification to consumers' benefit while regulating away accompanying barriers to entry and harmful monopoly effects through specialized regulatory bodies.[429] Public utility and rate regulation has justified on economic and moral grounds, from better achieving "competitive" prices to ensuring "just prices" in the public interest.[430]

Following the Sherman Act's passage, Progressive economist Richard Ely advocated for a clearer social reform program on natural monopolies to benefit the working man:

> [N]on-competitive businesses should be owned and managed by the government . . . and competitive businesses are the domain of private industry. As it is not a question, with respect to the business mentioned, whether we will have competition or not, but only a question whether we shall have private or public monopoly, public monopoly is preferred to irresponsible private monopoly. . . [which] is a menace to the public.[431]

Post-war thinkers, reckoning with structural factors that resulted in the failure of capitalist systems to produce full employment, also recommended sectoral boards that would sanction binding agreements on wages, prices, and production in markets where one company held 30 percent or more of the market or was valued above a certain threshold.[432]

Where employers with true natural monopsony characteristics exist in rural and distressed labor markets, it is critical to explore a range of regulatory tools to avoid harms that may result from monopsonistic wage-setting, slower wage growth, reduced hiring, and even infracompetitive output, particularly in the provision of essential services like health care, training, and educational services.[433] These harms have reverse multiplier effects in local communities and macroeconomic effects. Drawing from traditional regulatory tools like public ownership and wage regulation is a natural start.

Public Ownership. Public ownership of naturally monopsonistic employers can lift wages and wage growth as well as increase hiring, and any wealth transfer from workers to the public employer could be redistributed through public spending or the tax system. Further, federal ownership could grant stronger labor rights protections than state, local, or private ownership, including neutrality agreements and stronger protections for unionization activity. Public ownership could be particularly beneficial for ensuring higher-quality essential services—or service provision at all—to rural and distressed communities. Public ownership of hospitals or educational institutions would also allow for cross-subsidization from wealthier communities to lower-income communities to reduce geographic inequality. Empirical studies have shown that wages are generally higher for full-time workers in government and non-profit hospitals as compared to private hospitals while nurses in government hospitals earned about the same as those in private for-profit hospitals.[434] Doctors and nurses in rural areas make between 5 percent and 33 percent less than their urban counterparts, despite higher demand for health care professionals, so increasing salaries could have the additional benefit of

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[429] *See, e.g.*, Dempsey, *supra* note 76, at 536-37; Eisenberg, *supra* note 23, at 769-70.

[430] *See generally* Boyd, *Just Price*, *supra* note 173, at 761-67.

[431] Richard Ely, *Natural Monopolies and the Workingman*, 158 N. AM. REV. 294, 296-300 (1894).

[432] *See, e.g.*, GARDINER MEANS, A PROGRAM FOR FULL EMPLOYMENT IN 1973 (1973).

[433] *See, e.g.*, Matthew, *supra* note 117; Robert Tholkes, *Economies of Scale in Rural School Districts*, 16 J. ED. FIN. 497 (1991).

[434] *See* Karen Shahpooori & James Smith, *Wages in Profit and Nonprofit Hospitals and Universities* 2-3 (BLS, 2005), https://www.bls.gov/opub/mlr/cwc/wages-in-profit-and-nonprofit-hospitals-and-universities.pdf.

recruiting more health care providers in communities of need.[435] More empirical studies on the wage effects of public ownership in geographic markets where firms have natural monopsony would offer regulators a clearer picture of whether the benefits of public ownership outweigh any costs.[436]

Public ownership could occur through fiscal spending, including place-based industrial policy, where public funds are used to build hospitals and educational institutions but also to establish first-movers to spur private-sector growth in innovation industries. Additionally, state and local governments could facilitate public ownership through community trusts to fund publicly-owned facilities or purchase failing private rural hospitals or educational institutions. Various states like Massachusetts and countries with large rural populations like New Zealand have effectively used community trusts to deliver critical health care services to rural communities.[437]

Specialized Regulatory Bodies and Wage Regulation. The imposition of wage controls is not unprecedented in American regulatory history and dates back to the early colonial period.[438] The National Industrial Recovery Act (NIRA) instituted government regulation of price and wage rates industry-by-industry to boost production and demand.[439] After the Supreme Court struck down NIRA,[440] government regulation of labor disputes and wage rates continued through competition policy and production controls under the National War Labor Board and the Office of Price Administration in the 1940s, the Price Stabilization and Wage Stabilization Boards in the 1950s, President Kennedy's Council of Economic Advisors' wage-price "guideposts" in the 1960s, the Pay Board and Price Commission in the 1970s, and the Council on Wage and Price Stability and Pay Advisory Committee in the 1970s.[441] These bodies regulated prices and competition in dominant American industries while also monitoring and recommending industry-wide wage rates, mediating labor disputes that threatened production, and even set wage increase pass-through rates to consumer prices based on equity and efficiency considerations.[442]

Currently, state and city wage boards and one sector-specific labor standards council operate as tripartite commissions to set labor standards, primarily securing wage floors above the federal minimum for low-skilled workers, but also establishing benefit minimums and workplace standards across occupations, sectors, and industries.[443] However, broader proposals have imagined wage boards

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435 *See* William Weeks & Amy Wallace, *Rural-Urban Differences in Primary Care Physicians' Practice*, 24 J. RURAL HEALTH 161, 161 (2008); Susan Skillman et al., *Changes in the Rural Registered Nurse Workforce* 12 (Univ. of Wash. Report 115, 2007).

436 *See, e.g.*, Kwoka, *supra* note 427, at 136-46.

437 For state use of community trusts, *see, e.g.*, Massachusetts Community Hospital Reinvestment Trust Fund, M.G.L. c. 29, § 2TTTT (2016); 101 CMR 701.00 (2017). For New Zealand, *see, e.g.*, Rachel Eyre & Robin Gauld, *Community Participation in a Rural Community Health Trust*, 18 HEALTH PROMOTION INT'L 189 (2003); Pauline Barnett & J. Ross Barnett, *Community Ventures in Rural Health*, 9 AUST. J. RURAL HEALTH 229 (2001).

438 *See generally* HUGH ROCKOFF, DRASTIC MEASURES (1984).

439 *See* LEWIS LORWIN & ARTHUR WUBNIG, LABOR RELATIONS BOARDS (1935).

440 *A.L.A. Schechter Poultry v. United States*, 295 U.S. 495, 550 (1935).

441 *See* ROCKOFF, *supra* note 438; Robert ZIEGER, THE CIO 165-179, 295-303 (1995); Andrew Workman, *Creating the National War Labor Board*, 12 J. POL'Y HIST. 233 (2000); Reuben Selsinger, *Price-Wage Guideposts Revisited*, 53 AM. BAR ASS'N J. 525 (1967).

442 *Id.*

443 *See* Kate Andrias et al., *Workers' Boards* (Ctr. for Am. Progress, 2019), https://www.americanprogress.org/wp-content/uploads/2019/12/Wage-Board-OnePager.pdf; Karis Stephen, *New California Law Forces Fast Food Restaurants to Think Fast*, REG. REV. (Oct. 25, 2022), https://www.theregreview.org/2022/10/25/stephen-new-california-law-forces-fast-food-restaurants-to-think-fast/; April Girnus, *Nevada to Create Labor Board for Home Care Industry*, NEVADA CURRENT (Oct. 6, 2021), https://www.nevadacurrent.com/2021/10/06/nevada-to-create-labor-board-to-address-issues-within-

that set multiple minimum pay standards by sector and occupation, establishing minimum pay standards by sector and occupation.[444]

While wage boards and sectoral bargaining are useful in developing occupation- or sector-wide wage-making solutions for low-wage workers, they are not designed to regulate natural monopsony and only indirectly tackle monopsony effects in specific geographic markets. Focusing on wage floors and sectors identified by product markets rather than place-based labor market conditions, they are not designed for place-based wage regulation. Further, they are not tailored to address uniquely thin rural and distressed labor markets more susceptible to economic shocks and wage volatility or monopsonistic employers outside the jurisdiction of a state or city wage board.

Place-based wage boards specialized in wage-setting in rural and distressed labor markets may be a more effective and tailored intervention to target natural monopsony in those communities (Place-Based Wage Boards, or PBWBs). Similar to existing wage boards or sectoral boards, a state—or conditioned on place-based industry policy funding, the federal government—could grant a state-level Board authority to improve wages and working conditions for all workers in rural and distressed communities based on occupation and industry. PBWB could be selected through a democratic process with representatives from government, employers, and workers, and would have authority to collect data and testimony as well as hold hearings and investigations to issue comprehensive recommendations on wage schedules. Worker-led monitoring could be implemented to ensure compliance.[445]

In deciding whether such an aggressive intervention is warranted, "the question is not whether [wages] are set by the state or determined by the free market, but whether they are fixed by government [wage] controls or by market-dominating private producers."[446] The answer will turn on an analysis of whether the costs of regulation exceed the costs of unregulated natural monopsony or significantly reduce the net social benefits of regulation.[447] In the case of labor market regulation, again, the costs are not limited to lower wages, wage growth, and employment, but extend to firm productivity, mass purchasing power, and negative multiplier effects in rural and distressed communities.

2. *Strengthening Workers' Countervailing Power*

Whether as an unregulated private employer, a regulated private employer, or a public employer, a natural monopsonist's wage-setting and compliance with any regulatory regime will depend on workers' ability to keep that employer to any established wage based on countervailing

home-care-industry/; Peter Holley, *New Rules Guarantee Minimum Wage for Uber, Lyft Drivers*, WASH. POST (Dec. 4, 2018), https://www.washingtonpost.com/technology/2018/12/04/new-rules-guarantee-minimum-wage-nyc-uber-lyft-drivers/.

[444] *See* Kate Andrias, *Union Rights for All*, *in* CAMBRIDGE HANDBOOK OF LABOR LAW 56-63 (Richard Bales & Charlotte Garden, eds. 2020); Arindrajit Dube, *Using Wage Boards to Raise Pay* (EFIP Pol'y Brief No. 4, 2019), https://econfip.org/policy-briefs/using-wage-boards-to-raise-pay/; David Madland, *Wage Boards for American Workers* (Ctr. for Am. Progress, 2018), https://www.americanprogress.org/issues/economy/reports/2018/04/09/448515/wage-boards-american-workers/.

[445] *See, e.g.*, Antonella Angelini & Shauna Curphey, *The Advantages of Independent Monitoring in Agriculture*, 7 BUS. & HUM. RIGHTS 494 (2022); Opi Outhwaite & Olga Martin-Ortega, *Worker-Driven Monitoring*, 23 COMP. & CHANGE 378 (2019).

[446] WEBER, *supra* note 421, at 55.

[447] *See* Joskow, *supra* note 427.

power.[448] Labor market institutions like unions and government enforcers strengthen workers' bargaining leverage and ability to increase wages.[449] Federal economic policy in extending grants, funding, and contracts in rural and distressed communities could uniformly impose prevailing wage rate and project labor agreement requirements to facilitate union organizing and protect worker choice through mandatory card-check neutrality agreements requiring employers remain neutral in unionization drives and recognize a union when a majority of union cards are signed within any bargaining unit of employees. Where union density is low, support for upscaling local institutions is critical, from worker centers and other alt-labor institutions to local civil society institutions and other forms of collective organizing.[450]

One critical worker empowerment tool might be the "cooperative" model where workers and either a private or public employer collectively own a facility.[451] Professors Peter Carstensen and Darren Bush have studied the use of cooperatives, particularly in rural monopoly settings, to "change the incentives governing the operation and potential expansion of the bottleneck."[452] In the early twentieth century, farmers joined together with grain trading firms to form cooperatives that established cooperative elevators, increasing farmer revenue and eliminating monopoly bottlenecks.[453] Federal and state legislators and policymakers can facilitate cooperatives and employee ownership through reducing tax rates and access to credit, enabling workers to own businesses in rural and distressed areas. Cooperatives could build worker power into the very structure of naturally monopsonistic firms, resolving monopsonistic wage-setting at its source while entrenching workplace democracy values.[454]

C. Market Thickening

There are two avenues for remedying market thinness in rural and distressed labor markets that are not true natural monopsonies: government interventions and private, market-based solutions. Existing government interventions in thin markets have focused on block grants, subsidies to businesses, and mostly ineffective workforce development and training programs.[455] The economic literature has highlighted fundamental limitations of these approaches as ill-tailored to effectively thicken markets or encourage buy- and sell-side entry in ways that reduce geographic inequality.[456] This Section suggests alternatives and additions to existing policy, calling for more substantial public interventions and innovative market-based solutions to address rural and distressed thin labor markets.

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[448] *See generally* Hafiz, *Structural Labor Rights*, *supra* note 33; Kate Andrias & Ben Sachs, *Constructing Countervailing Power*, 130 YALE L.J. 546 (2021).

[449] *See, e.g.*, Dube, *supra* note 444; Farber et al., *supra* note 212; David Autor et al., *The Contribution of the Minimum Wage to US Wage Inequality*, 8 AM. ECON. J.: APPLIED 58 (2016).

[450] *See, e.g.*, Debra Jeter et al., *Democracy and Dysfunction*, 70 ALA. L. REV. 361 (2018).

[451] *See* PETER CARSTENSEN & DARREN BUSH, CONDOIZATION (work-in-progress); Peter Carstensen & Darren Bush, *Condo and Coop*, THE SLING (Nov. 11, 2022), https://www.thesling.org/condo-and-coop-two-solutions-to-monopoly-bottlenecks-and-self-preferencing-in-big-tech/.

[452] Carstensen & Bush, *supra* note 451.

[453] *Id.*

[454] *See, e.g.*, NATHAN SCHNEIDER, EVERYTHING FOR EVERYONE (2018); Renuka Rayasam, *How a "Radical" Southern Mayor Ran Up Against Reality*, POLITICO (Mar. 31, 2021).

[455] *See supra* Part II.A.

[456] *See* Emily Parker et al., *Do Federal Place-Based Policies Improve Economic Opportunity in Rural Communities?*, 8 RSF: J. OF SOC. SCI. 125, 125 (2022); Rebecca Diamond, *Determinants and Welfare Implications of Workers' Diverging Location Choices*, 106 AM. ECON. REV. 479, 479 (2016).

1. *Public Interventions to Thicken Markets*

To increase employment options as well as employer and worker entry into rural and distressed labor markets, three areas of public interventions should be considered: (1) direct job creation, or a public option; (2) place-based fiscal policy tailored to the needs of rural and distressed communities; and (3) antitrust reforms.

First: a public option establishing the federal government as an "employer of last resort" (ELR).[457] Direct job creation is a necessary intervention in rural and distressed labor markets as a backstop protecting communities from economic shocks they are less able to respond to due to thin markets and the lack of monetary policy tools to combat recessions. A public option could provide countercyclical insurance to sustain these communities through hard times, while other forms of economic policy could allow them to flourish in better times. Unlike current public investment which focuses on output—infrastructure development, innovation goals, essential service provision—a public option would focus on the job as an end in itself. In boom years, the ELR job can disappear and workers can move on to more permanent growing private- or public-sector jobs.[458] Positioning the federal government as an ELR would enable better tracking of where jobs in rural and distressed areas are needed most across states, enabling more flexible adjustments to programs and funding based on economic conditions as they evolve nationally. The federal government could work closely with local actors to allocate and administer ELR jobs. The Swedish labor market system provides a useful template. In the 1950s, the Social Democratic government designed a full employment program administered by a National Labor Market Board made up of union and employer representatives at both the national and local levels.[459] The Board administers the largest and most extensive labor market training system in the world, financed through a countercyclical reserve fund keyed to Sweden's unemployment rate or growth rate of nominal GNP.[460] The Swedish Public Employment Service oversees services for the unemployed, provides guaranteed general-skills training in a range of trades with a "development allowance," and administers a youth job guarantee for workers under 25 through local Labor Market Boards that pool jobs for placement.[461] The program has saved thousands of jobs during recessions and grants Sweden the highest reemployment rate of displaced workers in the world: 85 percent.[462] Similarly, a nationalized U.S. Employment Service (USES) could house a Job Program Guarantee Office tasked with placing those able and willing to work in training or locally-administered activity work programs.

Second, fiscal policy that centralizes place-based employment policy could better align place-based investment with national growth and worker power objectives. Economists, geographers, legal scholars, and now the Biden administration have put their collective weight behind the benefits of place-based policy. In addition to empirical evidence showing its long-term benefits, spatially-targeted

[457] GANESH SITARAMAN & ANNE ALSTOTT, THE PUBLIC OPTION (2019); Garin & Rothbaum, *supra* note 200; Sabeel Rahman, *Infrastructural Regulation and the New Utilities*, 35 YALE J. ON REG. 911, 928-32 (2018).

[458] *See* Josh Bivens, *Recommendations for Creating Jobs and Economic Security* 17 (Econ. Pol'y Inst. 2018), https://files.epi.org/pdf/142207.pdf.

[459] *See, e.g.*, HELEN GINSBURG, FULL EMPLOYMENT AND PUBLIC POLICY (1983).

[460] *Id.*; John Taylor, *The Swedish Investment Funds System* (Brookings, 1982), https://www.brookings.edu/wp-content/uploads/1982/01/1982a_bpea_taylor_baily_fischer.pdf.

[461] *See* Swedish Public Employment Service website, https://arbetsformedlingen.se/; Anders Forslund et al., *The Swedish Activity Guarantee* (OECD, 2004), https://doi.org/10.1787/631026763167.

[462] *See* OECD, *Back to Work: Sweden* (2015), https://doi.org/10.1787/9789264246812-en.

fiscal projects can be expansionary in regional or local markets to incentivize employment.[463] The current, unprecedented outlay of fiscal spending has not been tailored to address the specific labor market failures rural and distressed communities confront.[464] Instead, existing policy and grant design benchmark project-based wages at best at the "prevailing wage," assuming that wages are set under spatial equilibrium conditions with competitive labor markets. In failing to recognize the wealth of new research on local labor market realities, they fail to tackle the full sources of employer monopsony in rural and distressed labor markets nor do they adequately remedy them. Retooling funding and delivery mechanisms for place-based investments can increase labor demand and be tailored to overcome those market failures.[465]

A new OLP could devise a national Labor and Development Board (LDB) with both employer *and* leading union and worker representatives to review, approve, and monitor all place-based industrial policy, infrastructure, and workforce development grants to ensure a uniform set of labor standards are met, including robust labor and employment rights protections, access to union representation, interest arbitration for first collective bargaining agreements, access to generals-skills training programs for local populations relevant for project execution but not tied to specific employer grant recipients, and prohibiting worker mobility restrictions.[466] Worker representation in federal funding and grant administration can ensure that federal projects are informed and executed by workers' interests and the long-term objectives they and their families have for their communities.

The federal government's direct control and oversight is critical for ensuring that innovation and productivity benefits have broader spillover effects through setting up partnerships to secure crucial technology transfer of innovation from new technologies.[467] Federal place-based investment tailored to strengthen local infrastructure but also to generate agglomeration efficiencies encourages nascent competitors for richer employment options and enables beneficial information spillovers to increase intergenerational long-term earnings.[468] Additionally, evidence that costs per job created of government growth-promotion policies is much stronger when government dollars go directly into employment options for workers via job-creating public projects, customized training, manufacturing extension and brownfield redevelopment as compared to granting tax incentives to employers.[469]

Additional fiscal mechanisms to thicken rural and distressed markets include aiding more distant employment options and facilitating remote work through broadband services. Broadband expansion can improve employment rates by 1.8 percent, with larger effects on rural and isolated

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[463] *See* Hafiz, *Whole-of-Government*, *supra* note 178; Austin et al., *supra* note 56, at 154-55; *see also* LISTOKIN, *supra* note 178, at 16.

[464] See, e.g., Ed Glaeser & Joshua Gottlieb, *The Economics of Place-Making Policies* 196-203 (Brookings, 2008); Leslie Papke, *Tax Policy and Urban Development*, 54 J. PUB. ECON. 37 (1994); Garin & Rothbaum, *supra* note 200; Parilla et al., *supra* note 271; Gaubert et al., *supra* note 271; Austin et al., *supra* note 56; Donahue, *supra* note *supra* note 271; Busso et al., *supra* note 271.

[465] *See, e.g.*, Austin et al., *supra* note 56, at 151-52; Raj Chetty, *A General Formula for the Optimal Level of Social Insurance*, 90 J. PUB. ECON. 1879 (2006).

[466] For a similar proposal but without worker representation, *see* Robert Hockett, *Labor's Capital*, 30 NEW LAB. FORUM 20, 22-23 (2021).

[467] DAVID FRESHWATER ET AL., LOCAL LABOR MARKETS AS A NEW WAY OF ORGANIZING POLICIES (2014); Green, *supra* note 90, at 151-52.

[468] *See, e.g.*, Garin & Rothbaum, *supra* note 200; Andrew Garin, *Putting America To Work, Where?*, 111 J. URBAN ECON. 108 (2019).

[469] Bartik, *supra* note 106, at 6; Garin & Rothbaum, *supra* note 200.

areas.[470] More aggressive policies could subsidize employment and entrepreneurship through Universal Basic Income and Earned Income Tax Credit options that simultaneously encourage competition through self-employed entry but also increase personal wealth to strengthen workers' outside options and bargaining leverage.[471] Creating a public banking system—or restoring regional Federal Reserve Banks to their original status as regional development banks—could increase access to credit, including through a public "venture capital" fund for small businesses.[472] The government can also introduce or encourage more market participants through increasing funding for public services, education, and housing, increasing employment in those sectors and expanding provision of health care, mental health services, and housing.[473]

2. *Market-Based Interventions to Thicken Markets*

A range of market-based and regulatory solutions have been used to remedy thin markets by improving matching and easing transaction risks. Most importantly, auction theory has developed novel design theories that have been crucial for government regulation *and* matching in private labor markets. Public auction design can wholly restructure thin markets or markets with high matching costs to improve information asymmetries and price discovery as well as internalize any externalities of matching failures, and could be used in the labor markets to reduce frictions. The development of simultaneous multi-round actions, which theorized and constructed algorithms to derive stable outcomes for environments in which bidder's private information was correlated but difficult to discover, was first used by the Federal Communications Commission in 1994 to allocate wireless spectrum rights.[474] Algorithms and market "thickening" design solutions have also been deployed in the context of financial products and real estate markets.[475] Finally, algorithms have been famously used in labor market matching in the National Resident Matching Program that provides a clearinghouse to pair entry-level residents with hospitals in a national system.[476]

Modeled on similar programs, the federal government could develop a public platform and auction-like system—a National Job Bank—to thicken rural and distressed labor markets, drawing on existing labor market matching models. For example, the Swedish Labor Market Board oversees Sweden's national employment database collecting job vacancies employers are obligated by law to report into an online, searchable "location bank." The service allows those seeking employment to search for jobs by location and occupation, obtain relocation services, and apply for mobility grants.[477] The federal government could similarly mandate employer disclosure of job vacancies and integrate that data with federal, state, and local public training and employment options as well as publicly

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[470] Hilal Atasoy, *Effects of Broadband Expansion on Labor Markets*, 66 INDUS. & LAB. RELATIONS REV. 315 (2013).

[471] Austin et al., *supra* note 56; Marinescu & Rosenfeld, *supra* note 386.

[472] *See, e.g.*, MEHRSA BARADARAN, HOW THE OTHER HALF BANKS 183–209 (2015); Hockett, *supra* note 466, at 22; Mehrsa Baradaran, *Postal Banking's Public Benefits*, 3 AM. AFFAIRS 18 (2018); Jordan Weissman, *Kirsten Gillibrand Unveils Her Plan to Turn the Post Office into a Bank*, SLATE (Apr. 25, 2018), https://slate.com/business/2018/04/kirsten-gillibrands-ambitious-postal-banking-bill.html.

[473] *See, e.g.*, Samantha Shapiro, *Young and Homeless in Rural America*, N.Y. TIMES (Sept. 29, 2022), https://www.nytimes.com/2022/09/29/magazine/rural-homeless-students.html.

[474] *See* Alexander Teytelboym et al., *Discovering Auctions*, 123 SCAND. J. ECON. 709, 711 (2021); Alvin Roth, *The Economist as Engineer*, 70 ECONOMETRICA 1341, 1364-72 (2002); Muriel Niederle & Alvin Roth, *The Effects of a Centralized Clearinghouse on Job Placement, Wages, and Hiring Practices*, *in* STUDIES OF LABOR MARKET INTERMEDIATION 235-72 (David Autor, ed. 2009).

[475] *See supra* note 130 & accompanying text.

[476] *See* Roth, *supra* note 474, at 1345-64.

[477] *See* Swedish Public Employment Service, *The Location Bank*, https://arbetsformedlingen.se/platsbanken/.

available information about employer compliance with labor, employment, and antitrust law. To avoid First Amendment challenges, the government could grant private platforms access to public data they can supplement with employee and ex-employee disclosures about salaries, amenities, and other job-specific information beneficial to job-seekers in evaluating their employment options. Where state or local governments mandate salary range disclosures, the database could incorporate that information. A national database and competing private databases could benefit worker organizing and worker choice by publicizing union premiums and tracking areas of growth and identify where to prioritize building union density.

D. Addressing Broader Market Failure Remedies

In addition to confronting the more challenging problems of natural monopsony and market thinness—with their accompanying market failures—an additional set of regulatory tools can target broader labor market failures pervasive in rural and distressed labor markets, including imperfect competition and anticompetitive conduct, high matching and search costs, mobility costs, and information asymmetries between workers and employers. This Section discusses antitrust, labor, and employment law reforms that could improve their ability to address these market failures.

First, where employers lack natural monopsony characteristics but nevertheless have some level of monopsony in rural and distressed communities, antitrust enforcement can be better tailored to address it. The Biden administration has recently directed enforcement at rural markets, especially agricultural markets and health care services,[478] but a more comprehensive approach is needed. Reforming employer-friendly legal doctrine on collusion and vertical restraints, as well as price- and wage-discrimination, to match rural and distressed labor market realities would ease enforcement against anticompetitive employer conduct like wage-fixing, market allocation, no-poaching agreements, and extractive vertical conduct that harms workers downstream. For example, enforcers and courts may consider shifting legal presumptions and burdens of proof in the presence of highly concentrated labor markets and direct evidence of wage effects. Targeting more antitrust enforcement resources to rural and distressed communities and explicitly analyzing mergers' labor market effects on communities already suffering high levels of labor market concentration is a necessary step towards reversing the disproportionate impact of corporate consolidation in these communities. Enforcers and courts can clarify legal uncertainties under antitrust law, like market power thresholds necessary to establish monopsony power, the kinds of employer conduct that are unlawful when engaged in by monopsonists, and how to define markets in the context of general skills or low-wage work. Antitrust enforcers and courts could also improve metrics for identifying thin markets. This will require moving beyond IO modelling to capture changes in bargaining leverage, search costs, information asymmetries, heterogeneous preferences, and using tools from labor economics, information economics, game theory, and other social scientific approaches to assess transaction costs, transactions risks, and potential for hold-ups in matching buyers and sellers.

The challenges of regulating rural and distressed labor markets might also require enforcers to develop new criteria for analyzing the harms from antitrust liability and remedial design on exacerbating their market thinness. In administering antitrust remedies, enforcers might consider a broader set of conduct remedies like broadening "essential facilities" doctrine, establishing duties to

[478] *See, e.g.*, Exec. Order 14,036, 86 FR 36,987, § 1 (July 9, 2021).

deal with rivals and competitors, and integrating defendant firms' counterparties in remedial design and administration to bolster their countervailing power, like workers in affected labor markets.[479]

Additionally, encouraging federal interagency coordination and coordination with state and local governments will be critical for taking the "whole-of-government approach" that Biden's Executive Order imagines. Antitrust agency collaboration with labor agencies is key for sharing information as well as investigating and enforcing against powerful employers.[480] But it will also be crucial to develop broader economic policy and regulatory regimes that can shape incentives and market realities in rural and distressed labor markets, including fiscal and monetary policy, labor and employment policy, agricultural policy, place-based industrial policy, workforce and community development, and anti-poverty initiatives. Labor and other regulatory agencies have a range of market-specific data and regulatory tools that can improve matching and reduce search costs and information asymmetries in labor markets, including market structuring mechanisms, transparency and disclosure tools, rate and transaction regulatory authority, and other means of incentivizing market transactions and trade. State and local governments have more detailed knowledge of local market operations and have a wealth of state and municipal tools and incentive structures to "thicken" markets, including state and local tax incentives, use of police powers, prohibiting occupational licensing restrictions, mobilizing economic development authorities, sharing employer compliance data and salary data collected from employers under state and local laws, and other mechanisms.

Labor law could also be reformed to better overcome market frictions in rural and distressed communities. In addition to reducing monopsony effects, unions can facilitate matching and reduce search costs through union hiring halls.[481] Unions can also reduce information asymmetries through requiring employer disclosure of financial information and publicizing wage scales in collective bargaining agreements. Reforms that ease unionization and collective bargaining can also help. While Protecting the Right to Organize (PRO) Act reforms are an excellent start, even more aggressive measures are needed to preempt state carveouts of federal labor law protections.[482] The PRO Act facilitates unionization by, among other things, broadening who counts as an "employee" and "joint employer" under the NLRA, requiring states to allow employer-union "fair-share" agreements in right-to-work states, prohibiting employers from permanently replacing striking workers and engaging in offensive lockouts, allowing secondary activity, imposing interest arbitration to ease achieving a first collective bargaining agreement, prohibiting employer captive audience meetings, strengthening remedies for employer retaliation, increasing penalties for violations, and granting workers a private right of action.[483] An enhanced PRO Act could repeal Taft-Hartley's right-to-work provision and clarify the NLRA's preemptive scope while allowing states to raise its floors. Additionally, it could strengthen NLRB resources and repeal the NLRA's ban on hiring economists to develop an internal Division of Economic Research that serves as a research hub assessing how Board enforcement, or lack thereof, contributes to income and geographic inequality.[484] A new Division could also help tailor

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[479] Hafiz, *Rethinking Breakups*, *supra* note 34.

[480] Hiba Hafiz, *Interagency Merger Review in Labor Markets*, 95 CHI.-KENT L. REV. 37 (2020); Hiba Hafiz, *Interagency Coordination*, *supra* note 404.

[481] See, e.g., David Rolf, *Hiring Halls*, *in* REBALANCING ECONOMIC AND POLITICAL POWER 9 (2019), https://lwp.law.harvard.edu/files/lwp/files/hls-lwp-cs-initial-reform-ideas-wgiia.pdf

[482] *See, e.g.*, Celine McNicholas et al., *How the PRO Act Restores Workers' Rights* (Econ. Pol'y Inst. 2021), https://www.epi.org/publication/pro-act-problem-solution-chart/.

[483] *Id.*

[484] *See* Hiba Hafiz, *Economic Analysis of Labor Market Regulation*, 2017 WIS. L. REV. 1115, 1158-61 (2017).

the Board's interpretation of its jurisdiction and the scope of workers' and employers' substantive rights and obligations to ensure the NLRA's equal bargaining power purpose.[485]

Finally, employment law reforms could reduce market failures in rural and distressed labor markets in order to reduce geographic inequality. A robust literature has identified a range of mobility restraints that states, localities, and private enforcers can prohibit and challenge through legislation and litigation. Mandatory disclosure laws requiring employers disclose salary ranges in job postings could also reduce information asymmetries and improve matching. To reduce discriminatory hiring in rural and distressed communities with smaller employers, existing employment discrimination statutes thresholds could be lowered or eliminated, as many progressive state and localities have done.

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A radical rethinking of our labor regulatory system is required to address the large-scale regulatory contributors to geographic inequality. The legal structuring of employer dominance in rural and distressed communities is not merely the product of specific labor law rules or antitrust enforcement, but instead of the broader legal infrastructure that has coalesced around economic policy goals that have primarily benefited geographically-isolated capital owners at the expense of workers and communities with limited levers to readjust the balance. So while lower-level reforms to existing work laws are critical, creative reconfigurations of market governance and wage-making conditions are ultimately the only means of beginning to dismantle existing inequities. New government institutions with stronger mandates to plan and coordinate place-based labor market outcomes through expansive employment policy and establishing more democratic and participatory labor market regulatory bodies can better restructure local labor market conditions to alleviate the harms of natural monopsony, market thinness, and deeper labor market failures.

CONCLUSION

Federal employment policy and labor market regulation have shaped earnings outcomes and economic mobility in place-specific ways. By failing to recognize the unique characteristics of rural and distressed labor markets that make them highly vulnerable to employer power, our existing legal infrastructure is inapt to challenge it. Even worse, the evolution of American economic policy on jobs—combined with the regulatory tools antitrust, labor, and employment law have generated—has incentivized and supported employer conduct that strengthens their bargaining leverage against workers in rural and distressed communities while eroding worker protections to assert countervailing leverage. Identifying the ways in which law and policy generate geographically divergent outcomes and exacerbate geographic inequality is a critical first step towards ensuring equal access to economic opportunity. Real solutions will require creativity about restructuring government institutions that direct policy and shape outcomes in rural and distressed labor markets, incorporating place-based policy into substantive regulations, and enacting new regulatory mechanisms to benefit these communities. But it will also require a broader rethinking of what we want labor market regulation to accomplish, and when.

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[485] Hafiz, *Structural Labor Rights*, *supra* note 33.