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ARTICLE

THE LAW OF GEOGRAPHIC LABOR MARKET INEQUALITY

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How the law contributes to economic inequality is the subject of renewed attention, but the legal dimensions of geographic inequality have received much less

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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 generally declined, workers in rural and distressed communities have suffered most at the expense of capital. 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 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 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, working conditions, and their communities' vibrancy and growth. Nearly 500 coal miners have been on strike in Brookwood, Alabama, for twenty months and counting, a strike they claim is the longest in Alabama's history.¹ Workers in Amazon fulfillment centers in Schodack, New York, and Moreno Valley, California, have petitioned for union elections to secure better working conditions in just-in-time warehousing and packaging work.² Chipotle and Starbucks workers in Augusta, Maine, Buffalo, New York, and Cheektowaga, New York, are seeking union representation to fight for better employment terms from their

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> [<https://perma.cc/2GFM-XFSV>] (reporting that 500 out of 900 Alabama coal miners are still on strike to obtain better pay and benefits).

2 Suhauna Hussain, *Amazon Workers at Moreno Valley Warehouse File for Union Election—a First in California*, L.A. TIMES (Oct. 11, 2022), <https://www.latimes.com/business/story/2022-10-11/amazon-workers-moreno-valley-union-petition> [<https://perma.cc/4P5T-6X6L>]; Rick Karlin, *Union Activists, Supporters Rally and Urge 'Yes' Vote on Amazon Union*, TIMES UNION (Oct. 10, 2022), <https://www.timesunion.com/news/article/Union-activists-supporters-rally-and-a-urge-17499820.php> [<https://perma.cc/NNW2-CRS2>].

blockbuster employers.³ Call center workers that navigate callers through the Medicare and Affordable Care Act bureaucracy in London, Kentucky; Bogalusa, Louisiana; Chester, Virginia; and Hattiesburg, Mississippi, have walked out on strike, protesting restrictive break and attendance policies, and demanding livable wages.⁴ Nurses and doctors in upstate New York, North Carolina, and other states have sued hospitals 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 and the U.S. Department of Justice have brought enforcement actions against 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

3 Amelia Lucas & Kate Rogers, *Chipotle Union Files Complaint with Labor Board*, CNBC (July 20, 2022), <https://www.cnn.com/2022/07/20/chipotle-union-files-complaint-with-labor-board-after-unionizing-restaurant-shut-down.html> [<https://perma.cc/C6V3-NQZH>]; Samantha Christmann, *Starbucks Has Closed Two Stores that Tried to Unionize*, BUFFALO NEWS (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 Press Release, Comm’n Workers of Am., *Federal Contractors Organizing with CWA Strike Against Maximus* (Aug. 11, 2022), <https://cwa-union.org/news/e-newsletter/2022-08-11> [<https://perma.cc/XZA6-GPWM>]; Press Release, Comm’n Workers of Am., *Maximus Workers Organizing With CWA Stage Largest Federal Call Center Strike in History* (Nov. 16, 2023), <https://cwa-union.org/news/maximus-workers-organizing-cwa-stage-largest-federal-call-center-strike-history> [<https://perma.cc/E2YK-F2M5>].

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, 306-07 (2007) (describing lawsuits challenging hospitals wage-fixing in the labor market for nurses in five cities); Emery P. Dalesio, *Lawsuit: Duke, UNC Agreed to Not Hire Each Other’s Doctors*, AP NEWS (Jan. 2, 2018), <https://apnews.com/article/nc-state-wire-duke-university-north-america-lawsuits-us-news-675793130b184364a9d0d8e7764c05cc> [<https://perma.cc/Z4P8-TWE6>] (reporting on an antitrust complaint filed in North Carolina challenging university hospital no-poaching agreements).

6 See, e.g., *Jien v. Perdue Farms, Inc.*, No. 19-cv-2521, 2020 WL 5544183, at *1 (D. Md. Sept. 16, 2020) (granting in part and denying in part wage-fixing complaint by former employees against poultry processors); see also 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/> [<https://perma.cc/YM54-4MNV>] (describing the results of a House select subcommittee investigation into meatpacking plants’ hazardous workplace conditions during the coronavirus pandemic).

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-ag-monopsony-problem-how-market-dominance-harms-u-s-workers-and-consumers/> [<https://perma.cc/9S3M-E8DW>].

These local struggles expose some of many structural limitations on worker power in rural and distressed communities whose labor markets have unique structural characteristics that present complex regulatory challenges.⁸ First, while entirely unregulated as such, employers in these communities can operate much like electric and other public utilities—they have what economists term “natural monopoly” or “natural monopsony” because it is most efficient for one employer (as opposed to two or more competing employers) to supply or purchase services in many rural and distressed areas.⁹

8 Federal agencies adopt a range of definitions of “rural” and “nonmetro” areas, focused on population numbers, population density, and primary economic characteristics. *See, e.g.*, U.S. HEALTH RES. & SERVS. ADMIN., *Defining Rural Population*, <https://www.hrsa.gov/rural-health/about-us/what-is-rural> [<https://perma.cc/QS43-H974>] (defining rural as “[a]ny area that is not urban,” a “[m]icro area (urban core of 10,000-49,999 [sic] people),” and “[c]ounties outside of Metro or Micro Areas”); *Rural Classifications*, U.S. DEP’T OF AGRIC., ECON. RSCH. SERV. <https://www.ers.usda.gov/topics/rural-economy-population/rural-classifications> [<https://perma.cc/L8RL-PECX>] (last updated Sept. 8, 2023) (defining “rural” as nonmetropolitan areas, which “include some combination of: 1. open countryside, 2. rural towns (places with fewer than 2,500 people), and 3. urban areas with populations ranging from 2,500 to 49,999 that are not part of larger labor market areas”). “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/> [<https://perma.cc/4NM2-J2K7>] (last visited Feb. 14, 2024) (explaining that the “Distressed Communities Index” measures the economic well-being of communities). The broader literature defines “rural” and “distressed” communities through socio-economic, cultural, and identarian 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) (describing metrics to define “citywide poverty”); Marc Edelman, *Hollowed Out Heartland*, 82 J. RURAL STUD. 505, 506 (2021) (explaining that “‘rurality’ is in part a cultural and identity category shaped by life circumstances and that influences political subjectivity”). I adopt the more expansive understandings of “rural” and “distressed” here, referring to nonmetro 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, 1129-51 (2014) (discussing cities in “distress,” including those with a certain percentage of households below the federal poverty threshold and certain per capita GDP).

9 By “natural monopsony” or “natural oligopsony,” I mean circumstances “where productive efficiency requires that there be a single buyer” or a small number of buyers “of an input”—in this case, a labor input. ROGER D. BLAIR & JEFFREY L. HARRISON, *MONOPSONY IN LAW AND ECONOMICS* 70 (2010); *see id.* at 70-71 & nn.7, 9. Such circumstances can arise in rural or distressed labor markets due to natural monopoly conditions in a local or regional product or service market, for example, or because minimum efficient scale may only be achieved by one or a small number of firms due to demand conditions in a relevant output market. *See* ROBERT S. PINDYCK & DANIEL L. RUBINFELD, *MICROECONOMICS* 350 (5th ed. 2001) (“A natural monopoly is a firm that can produce the entire output of the market at a cost that is lower than what it would be if there were several firms. If a firm is a natural monopoly, it is more efficient to let it serve the entire market rather than have several firms compete.”). My discussion focuses narrowly on circumstances where an employer (or employers) can profitably exercise monopsony (or oligopsony) power because of the structural conditions of the labor market, not because of any anticompetitive conduct it has engaged in in that market.

Being the sole employer available for workers with relevant skills grants a firm significant bargaining leverage to unilaterally dictate lower wages and working conditions without workers quitting.¹⁰ A regional hospital is a good example. Because demand in sparsely populated and poor counties does not ordinarily exceed the need for one area hospital, and hospital care is costly, that demand is satisfied at the lowest cost by one firm rather than two or more, leaving nurses and doctors with limited options for employment in that area.¹¹

Second, workers in rural and distressed labor markets suffer from additional structural disadvantages because of higher market frictions. Workers in rural and distressed labor markets look for and find jobs in thinner markets compared to workers in denser, high-productivity urban environments, which makes it harder and costlier to discover the best employment match.¹² Fewer employers and employees mean scarcer employment pairings, making employment options less predictable, increasing switching costs, and slowing recovery from hard economic times. In regions with declining industries, both urban centers and employment levels are contracting. Skills mismatches between resident workers in these areas and employers in emerging industries limit workers' opportunities further and reduce such employers' incentive to enter in the first place.¹³ Job loss and higher unemployment in distressed areas has a "reverse multiplier

10 See, e.g., U.S. DEP'T OF THE TREASURY, THE STATE OF LABOR MARKET COMPETITION 6, 23 (2022), <https://home.treasury.gov/system/files/136/State-of-Labor-Market-Competition-2022.pdf> ("The bargaining power of employees largely rests on their alternative ('outside') options and the degree to which they are substitutable with other workers. For example, . . . a nurse living in a rural town with only a single hospital within driving distance may have lower bargaining power because that worker lacks alternative local employment options.").

11 See, e.g., Gary Hart, Edward Salsberg, Debra M. Phillips & Denise M. Lishner, *Rural Health Care Providers*, 18 J. RURAL HEALTH 211, 225-26 (2002) (discussing the amount and presence of registered nurses in rural areas); Monica Giacotti, Annamaria Guglielmo & Marianna Mauro, *Efficiency and Optimal Size of Hospitals: Results of a Systematic Search*, PLOS ONE, Mar. 29, 2017, at 1, 8, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5371367> [<https://perma.cc/RAM7-FTYF>] (explaining that rural hospitals are significantly smaller than urban hospitals).

12 See, e.g., Monica Fisher, *Why Is U.S. Poverty Higher in Nonmetropolitan Areas?*, 38 GROWTH & CHANGE 56, 57 (2007) ("[L]ocal nonmetro labor markets generally offer fewer job options, and work tends to be concentrated in minimum wage and part-time jobs offering limited security and little room for advancement." (citations omitted)); Robert M. Gibbs, *Rural Labor Markets in an Era of Welfare Reform* ("Limited job openings in rural areas . . . may . . . constrain the 'goodness of fit' between worker and employer, and may require the job searcher to look further afield or go without a new job for a longer period of time. Urban labor markets offer a wider variety of jobs . . ."), in RURAL DIMENSIONS OF WELFARE REFORM 51, 54-55 (Bruce A. Weber, Greg L. Duncan & Leslie A. Witener eds., 2002).

13 See, e.g., ENRICO MORETTI, THE NEW GEOGRAPHY OF JOBS 23, 78 (2012) (recognizing that manufacturing is "no longer the engine of prosperity for local communities" and offering Albuquerque as an example of limited growth due to skills mismatches between residents and employers in the innovation sector).

effect”: 1.6 million jobs are ultimately lost *outside* the manufacturing sector for each manufacturing job that disappears.¹⁴ The growth of service sector employment means that workers that remain in rural and distressed communities are more locally tethered to jobs requiring in-person service, at least until their jobs become automated.¹⁵ This reality creates a regulatory Catch-22: public policy can either promote labor mobility at the expense of critical service 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. Sparsely populated rural areas and distressed cities with declining infrastructure have limited public transportation options, which increases commuting and search costs for more or better employment options. With fewer and more distant employers, workers face higher information asymmetries: it is harder for them to compare compensation between employers to play them off each other and choose their best option. Those asymmetries are exacerbated by the importance of social capital in lower population employment transactions, where workers get and maintain jobs in the context of other economic and non-economic relationships. These interconnected bonds burden quitting because moving often means suffering relational, reputational, and networking losses and forfeiting critical financial and care-giving networks in family and friends. Combined, these characteristics can grant employers in rural and distressed communities significant buyer power over workers.

A conventional justification for government regulation is the need to remedy market failures which, absent state intervention, would reduce overall welfare.¹⁶ In the realm of labor regulation, monetary and fiscal policy directed towards full employment, antitrust law, and labor and employment law are all meant to increase high-quality employment options and fix market failures that decrease worker and broader social welfare.

But federal labor market regulation has been indifferent to, and has even actively compounded the effects of, these market failures, to workers’ detriment and employers’ gain. As part of a broader “spatial division of labor,” legal rules have incentivized and deregulated mobile capital accumulation

¹⁴ *Id.* at 24.

¹⁵ See, e.g., JAMES C. DAVIS, ANIL RUPASINGHA, JOHN CROMARTIE & AUSTIN SANDERS, U.S. DEP’T OF AGRIC., *RURAL AMERICA AT A GLANCE: 2022 EDITION 3* (2022), <https://www.ers.usda.gov/publications/pub-details/?pubid=105154> [hereinafter *RURAL AMERICA AT A GLANCE*] (“Rural America has become more economically diverse over time, with increasing employment in health care, hospitality, and other service industries.”); ECON. INNOVATION GRP., *Distressed Communities: Key Findings* (2021), <https://eig.org/distressed-communities/key-findings/> [<https://perma.cc/4NM2-J2K7>] (identifying that “service and production/transportation occupations are relatively overrepresented at lower levels of economic well-being.”).

¹⁶ See, e.g., STEPHEN BREYER, *REGULATION AND ITS REFORMS* 7-9 (1982) (“[T]he justifications for regulation . . . are traditional instances of market failure.”).

while dismantling workplace and economic security protections for increasingly immobile workers that disproportionately reside in rural and distressed communities.¹⁷ The law has thus generated geographic labor market differentiation to enable place-specific capital exploitation of relatively captive workers, and it has done so in at least two ways, one passive and one active.

Passively, the assumptions and design of the regulatory system fundamentally limit its capacity. Much of federal labor market regulation was crafted for general application assuming place-neutral, geographic uniformity with regard to how labor markets function. A core premise underlying that presumed uniformity was that labor markets are generally frictionless: workers choose employers at will and at arms' length in thick, relatively competitive labor markets, characteristics of densely populated and growing urban labor markets. In doing so, labor market regulation has ignored and failed to remedy complications in markets that, like rural and distressed labor markets, function along other characteristics or with more severe market failures.¹⁸ Second, beyond mere indifference to labor market's place-specific realities, this Article also argues that federal regulation has actively contributed to geographic inequality by strengthening employer monopsony and decimating worker strength in rural and distressed communities, limiting their ability to improve their economic fates through work.¹⁹ It specifically explains how what I term "federal employment policy"—monetary, fiscal, and trade policy decisions that shape access to and remuneration from employment—as well as antitrust, labor, and employment law and enforcement have disparately constrained countless Americans' earning potential and bargaining power on the job.

To begin, 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 cannot expand the money

¹⁷ For "spatial division of labor," see Adrian Smith, *Spatial Division of Labor*, in *ENCYCLOPEDIA OF HUMAN GEOGRAPHY* 348-54 (Rob Kitchin ed. 2009). For capital mobility and place-based economic regulation, see, for example, Richard C. Schragger, *Mobile Capital, Local Economic Regulation, and the Democratic City*, 123 *HARV. L. REV.* 482, 483-87 (2009), which argues that "[m]obile capital will flee aggressive efforts to regulate it. Thus, urban policies must invariably be biased in favor of mobile capital—cities must be 'business friendly.'"

¹⁸ For local variation in labor markets, see Enrico Moretti, *Local Labor Markets*, in *4B HANDBOOK OF LABOR ECONOMICS* 1238-91 (David Card & Orley Ashenfelter eds., 2011).

¹⁹ Workers in rural and distressed communities also have fewer employment options due to broader financial, transportation, and communications deregulation. See, e.g., Ann M. Eisenberg, *Economic Regulation in Rural America*, 98 *WASH. U. L. REV.* 737, 778-79 (2021) ("Many of today's challenging rural conditions can be traced back to deregulation . . . Deregulating the transportation and telecommunications industries literally isolated rural communities, cutting them off from the rest of the country and exacerbating regional financial burdens.").

supply to lift demand and real wage growth.²⁰ Federal fiscal investment has been anemic to fill the gap, shifting from viewing un- and underemployment as a structural deficiency requiring significant spending and some form of public option, to viewing it as a human capital problem best delegated to local and private sector control.²¹ Restructuring federal workforce investment forced states to compete for federal aid and private employers, creating a “race to the bottom” with no uniform federal standards.²² Highly localized and variable social insurance provision has made it harder for workers to adjust to economic shocks and exacerbates already high mobility costs in place-based ways.²³ Adjustments are even more difficult where shrinking tax bases and fiscal conservatism have decimated the pool of safety net funds for which workers are eligible.²⁴ Even worse, replacing a public option with state-level employer-controlled workforce development boards and jobs programs privatized human capital investment as an employer subsidy while welfare reforms made any employment—even underpaid and unsafe work—a necessary condition for benefits relief.²⁵ Meanwhile, trade liberalization has eroded jobs in high union-density industries, slowing wage growth and displacing millions of blue-collar workers in these communities.²⁶ Federal and

20 See *infra* Section II.A.

21 *Id.*

22 *Id.*

23 See Alex Raskolnikov, *Distributional Arguments, in Reverse*, 105 MINN. L. REV. 1583, 1591-92 (2021) (“[T]he U.S. social safety net is highly location-specific . . . [E]ven if the implicit assumption that [certain benefits] outweigh the costs of geographic variation has been plausible until recently, it has become much less plausible today. New research reveals that economic shocks resulting from trade liberalization, low-skill immigration, and labor market monopsony are highly local. Moreover, when these shocks occur, labor market adjustments are both difficult and slow.”).

24 *Id.* at 1593 (“[T]he call for . . . a greater uniformity of federal greater uniformity of federal safety net programs runs head-on into fiscal federalism concerns We now know about large costs of geographic immobility. These costs are borne by Americans who are ill-equipped to avoid or absorb them. Whatever the balance between federal and local provision of social insurance and public assistance has been until now, new evidence surely weighs in favor of greater centralization and uniformity.”)

25 See *infra* Section II.A.

26 See, e.g., David H. Autor, David Dorn & Gordon H. Hanson, *The China Syndrome*, 103 AM. ECON. REV. 2121, 2159 (2013) (“[E]xposure to Chinese import competition affects local labor markets Import shocks trigger a decline in wages that is primarily observed outside of the manufacturing sector. Reductions in both employment and wage levels lead to a steep drop in the average earnings of households.”); Daron Acemoglu, David Autor, David Dorn, Gordon H. Hanson & Brendan Price, *Import Competition and the Great US Employment Sag of the 2000s*, 34 J. LAB. ECON. S141, S144 (2015) (finding that 560,000 fewer manufacturing jobs would have been lost if import penetration from China had stalled since 1999); David H. Autor, David Dorn & Gordon H. Hanson, *The China Shock: Learning from Labor-Market Adjustment to Large Changes in Trade*, 8 ANN. REV. ECON. 205, 225 (2016) (“Trade-induced shocks . . . catalyze significant falls in employment rates within trade-impacted local labor markets.”); Shushanik Hakobyan & John McLaren, *Local Labor-Market Effects of NAFTA*, 98 REV. ECON. & STAT. 728, 729-30 (2016) (“NAFTA-vulnerable locations

state policy failed to mitigate or retrain displaced workers, relegating them to primarily low-wage work.²⁷ 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 has even enabled employer conduct that reduces worker power.²⁸ Courts have immunized mere possession of monopoly or monopsony power—“no-fault” monopoly—under antitrust law.²⁹ As such, antitrust law does not reach employers’ monopsonistic wage-setting under conditions of “natural monopsony.”³⁰ In addition, antitrust regulators have ignored the effects of corporate consolidation on workers, even as labor market concentration in rural/nonmetro labor markets has reached high and very high levels associated with lower posted wages across occupations.³¹ The following maps are illustrative, showing counties designated as “nonmetropolitan” and county-by-county labor market concentration levels:

that lost their protection quickly experienced significantly slower wage growth compared to locations that had no protection against Mexico in the first place, particularly for blue-collar workers.”).

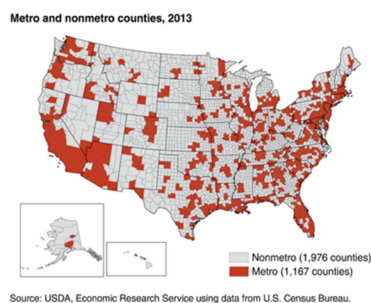
²⁷ These effects have not been offset by tax policy due to pervasive but mistaken assumptions that workers suffered insignificant losses from trade liberalization. *See* Raskolnikov, *supra* note 23, at 1632-37 (explaining how, until recently, policymakers did not have evidence or knowledge of the significant losses that resulted from trade liberalization).

²⁸ *See infra* Section II.B.

²⁹ *See, e.g.*, *United States v. Grinnell*, 384 U.S. 563, 570-71 (1966) (“The offense of monopoly under § 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.”); *United States v. Microsoft*, 253 F.3d 34, 58 (D.C. Cir. 2001) (“[H]aving a monopoly does not by itself violate § 2. A firm violates § 2 only when it acquires or maintains, or attempts to acquire or maintain, a monopoly by engaging in exclusionary conduct ‘as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.’” (quoting *Grinnell*, 384 U.S. at 571)).

³⁰ *See generally* ROGER D. BLAIR & JEFFREY L. HARRISON, *MONOPSONY IN LAW AND ECONOMICS* 70-71 (2010) (“[In a natural monopsony] the only way that the antitrust laws could be used to eliminate the welfare losses would be to require a restructuring of the demand side of the market. . . . This, however, is not economically efficient and, therefore, restructuring would impose welfare losses of uncertain magnitude. Accordingly, based on conventional economic reasoning, one cannot advocate such a solution.”).

³¹ *See* José Azar, Ioana Marinescu & Marshall Steinbaum, *Labor Market Concentration*, 57 J. HUM. RES. S167, S179-80 (Supp. 2022) (finding high labor market concentration in local labor markets and a “negative correlation between market concentration and real wages”).



Lax merger policy has contributed to labor market concentration in core industries in these communities.³² These high concentration levels have increased employers' wage-setting power and decreased workers' wages.³³ Highly concentrated markets also facilitate employer collusion that suppresses worker pay.³⁴ Further, "fly-over" country is at the front lines of workplace restructuring, with firms geographically dispersing components of

32 These industries include rural agriculture, mining, manufacturing, hospital services, and banking. See Robert Mann, *Bank Competition, Local Labor Markets, and the Racial Employment Gap* 2-3 (Aug. 8, 2022) (Ph.D. dissertation, University of Rochester), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4013042 [perma.cc/MTU3-GGYB] (discussing increased concentration in banking due in part to bank mergers); David Arnold, *Mergers and Acquisitions, Local Labor Market Concentration, and Worker Outcomes* 1-2 (Oct. 29, 2021) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3476369 [perma.cc/BG57-LPGB] (discussing the "market-level effects of increased local labor market concentration due to merger activity"); Elena Prager & Matt Schmitt, *Employer Consolidation and Wages: Evidence from Hospitals*, 111 *AM. ECON. REV.* 397, 397-98 (2021) (discussing how hospital mergers have led to labor market concentration); Andrew P. Meyer, *Market Concentration and Its Impact on Community Banks*, *FED. RSRV. BANK ST. LOUIS* (Apr. 12, 2018), <https://www.stlouisfed.org/publications/regional-economist/first-quarter-2018/concentration-community-banks> [https://perma.cc/DE6D-5YE4] (discussing the lack of competition in banking markets due to bank mergers).

33 See, e.g., Yue Qiu & Aaron Sojourner, *Labor-Market Concentration and Labor Compensation*, 76 *ILR REV.* 475, 500-01 (2023) (finding the relationship between increased labor market concentration and lowers wages to be "robust to potential confounders such as product-market concentration, labor productivity, and labor force composition").

34 See Alan Manning, *The Real Thin Theory: Monopsony in Modern Labor Markets*, 10 *LAB. ECON.* 105, 106 (2003) ("Classical monopsony could also occur when there are many employers, but they collude in wage setting so that there are only a few effective employers in the labour market."); Jonathan Masur & Eric A. Posner, *Horizontal Collusion and Parallel Wage Setting in Labor Markets*, 90 *U. CHI. L. REV.* 545, 548-52 (2023) ("The logic of collusion applies when a small number of firms enjoy market power in labor markets . . . Instead of holding prices above the competitive rate, employers pay wages below the competitive rate and maintain those wages by threatening to match or exceed any wage raises by another employer."). For employer collusion in rural and distressed labor markets, see, for example, *supra* text accompanying notes 5-6. Corporate concentration and abusive contracting have been particularly harmful in agricultural markets, a core industry in rural areas. See generally Hafiz & Miller, *supra* note 7 (discussing concentration in the agriculture industry and its effects on contracting).

their supply chains across the country. Permissive antitrust policy towards 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.³⁵ Finally, where antitrust law *does* reach employers' anticompetitive conduct, it lacks appropriate remedies for markets with the unique characteristics that rural and distressed labor markets have.³⁶

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 nationwide.³⁷ But rural and distressed communities have been the hardest hit. 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 in areas where hospitals are scarce.³⁸ Second, statutory amendments and NLRA

35 See DAVID WEIL, *THE FISSURED WORKPLACE: WHY WORK BECAME SO BAD FOR SO MANY AND WHAT CAN BE DONE TO IMPROVE IT* 3-4 (2014) (describing increased vertical disintegration and workplace "fissuring" of labor inputs considered peripheral to a firm's core business purpose); Hiba Hafiz, *The Brand Defense*, 43 *BERKELEY J. EMP. & LAB. L.* 1, 4-5 (2022) (arguing that employers used brand-protecting regulatory schemes to enable vertical disintegration and increase market power over workers); Hiba Hafiz, *Structural Labor Rights*, 119 *MICH. L. REV.* 651, 654-56 (2021) (explaining how a vertical disintegration has reduced the bargaining power of workers); Nathan Wilmers, *Wage Stagnation and Buyer Power: How Buyer-Supplier Relations Affect U.S. Workers' Wages, 1978 to 2014*, 83 *AM. SOCIO. REV.* 213, 213-14 (2018) (describing how large corporate buyers exercise their buyer power to reduce the wages of their suppliers' employees).

36 See *infra* Section II.B. For example, a standard antitrust remedy for monopoly or monopsony power is structural: breaking up the violating firm. 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. See generally ANTITRUST DIV., U.S. DEP'T OF JUST., *MERGER REMEDIES MANUAL* (2020), <https://www.justice.gov/atr/page/file/1312416/download> [<https://perma.cc/HDJ2-96NK>] (providing guidance on divestiture as an antitrust remedy); Hiba Hafiz, *Rethinking Breakups*, 71 *DUKE L.J.* 1491 (2022) (exploring how firm breakups impact worker power and earnings). Further, ordering firms to terminate anticompetitive conduct in markets that cannot easily "thicken" with more participants competing—either because demand is limited or because firms lack incentives to enter—will fail to prevent the persistence of anticompetitive harms.

37 See Hafiz, *Structural Labor Rights*, *supra* note 35, at 664-73 (discussing the NLRA's origins and challenges to its effective implementation); News Release, Bureau Lab. Stat., U.S. Dep't of Lab., Union Members—2022, at 1 (Jan. 19, 2023), <https://www.bls.gov/news.release/pdf/union2.pdf> [<https://perma.cc/5AG4-MTER>] (listing the 2022 unionization rate as 10.1%, the lowest year on record).

38 See PAUL FRYMER, *BLACK AND BLUE: AFRICAN AMERICANS, THE LABOR MOVEMENT, AND THE DECLINE OF THE DEMOCRATIC PARTY* 27-28 (2008) (noting the prevalence of African Americans who worked in agricultural and domestic positions, which were excluded from labor protections); Malkie Wall, *Essential Work, Disposable Workers: Why Home Care Workers Need Labor Protections*, *CTR. AM. PROGRESS ACTION FUND* (Sept. 3, 2020),

doctrine have incentivized the spatial reorganization of production through workplace fissuring in undiversified labor markets with cheaper labor inputs, increasing geographic inequality. The 1947 Taft-Hartley Amendments allowed states to pass “right-to-work” laws prohibiting union security agreements and increasing unions’ organizing costs.³⁹ Twenty-seven states—with the largest rural populations per capita—have passed such legislation,⁴⁰ reducing union density and wage levels in those states.⁴¹ The Supreme Court has since held that public employee unions violate the First Amendment when they compel non-union employees to pay fair share fees through union security agreements, effectively constitutionalizing “right-to-work” prohibitions.⁴² Third, labor law has made collective bargaining beyond a single firm—sector-wide bargaining—nearly impossible while allowing employers to close facilities when workers unionize.⁴³ These developments have generally impacted workers’ bargaining leverage, but these changes disproportionately impact rural and distressed communities. By encouraging firms in low union-density industries to relocate unionized facilities to low

<https://www.americanprogressaction.org/article/essential-work-disposable-workers-home-care-workers-need-labor-protections/> [<https://perma.cc/RXL9-8WY6>] (explaining the lack of protection for home care workers); Juan F. Perea, *The Echoes of Slavery: Recognizing the Racist Origins of the Agricultural and Domestic Worker Exclusion from the National Labor Relations Act*, 72 OHIO ST. L.J. 95, 118-24 (2011) (recounting the debates on the exclusion of agricultural workers from the NLRA). See generally Sean Farhang & Ira Katznelson, *The Southern Imposition: Congress and Labor in the New Deal and Fair Deal*, 19 STUD. AM. POL. DEV. 1 (2005) (discussing the political compromises and motivations that led to the exclusion of agricultural and domestic workers from labor protections). Union density is particularly abysmal in traditionally rural industries—4.7% in farming, fishing, and forestry and 3.1% in agriculture and related industries. See Bureau Lab. Stat., U.S. Dep’t of Lab., *supra* note 37, at 8-9 tbl.3.

³⁹ See Labor Management Relations Act of 1947 § 14(b), 61 Stat. 136, 151 (1947) (“Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment . . .”).

⁴⁰ See *Right-to-Work State Laws Chart: Overview*, WESTLAW 4-523-8622 (Practical Law Labor & Employment), <https://us.practicallaw.thomsonreuters.com/4-523-8622> [<https://perma.cc/M6NZ-W5EX>] (last visited Dec. 4, 2023) (listing states with right-to-work laws).

⁴¹ Nicole Fortin, Thomas Lemieux & Neil Lloyd, *Right-to-Work Laws, Unionization, and Wage Setting* 10 (Nat’l Bureau of Econ. Rsch., Working Paper No. 30098, 2022), https://www.nber.org/system/files/working_papers/w30098/w30098.pdf [<https://perma.cc/95ZZ-MWY4>] (finding that right-to-work laws make labor organizing more difficult and correlate with lower wages).

⁴² See *Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2459-60 (2018) (“We conclude that this arrangement violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern.”).

⁴³ See *First Nat’l Maint. Corp. v. NLRB*, 452 U.S. 666, 680, 686 (1981) (holding that plant closings are permissive subjects of bargaining and are thus unprotected); MARK BARENBERG, ROOSEVELT INST., *WIDENING THE SCOPE OF WORKER ORGANIZING* 3, 11 (2015), <https://rooseveltinstitute.org/wp-content/uploads/2015/10/RI-Widening-Scope-Worker-Organizing-201510-2.pdf> [<https://perma.cc/3DUJ-ZZC2>] (summarizing the legal obstacles to sector-wide bargaining).

union-density areas, these developments increase competition on labor costs with firm rivals in a way that would not occur under industry-wide bargaining.⁴⁴ Because workers in those communities are highly dependent on few employers, greenlighting firm closures—and protecting employers’ threats of closure in response to unionization—severely chills union organizing. For supply chain workers in those communities, doctrine narrowing joint-employer liability has made it challenging to compel upstream employers to collectively bargain and more fairly distribute profits.⁴⁵ Finally, 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—resources which Congress has consistently denied enforcement agencies, particularly in rural areas.⁴⁶ Further, the NLR’s remedies are notoriously weak and even more ineffective where workers are highly dependent on relationships with employers and word-of-mouth to maintain employment, making the consequences of retaliation more severe.⁴⁷

Employment law has also contributed to geographic inequality. First, 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.⁴⁸ The resulting patchwork of protections increases geographic divergence, especially with respect to minimum wage laws. Minimum wage laws in states with predominantly rural populations have significantly lagged worker productivity, and most are not pegged to inflation, leaving workers particularly vulnerable to tight, anti-inflationary monetary policy.⁴⁹ 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 traditionally rural and distressed red states. Second, employment law exemptions exclude small employers and categories of workers most prevalent in rural and distressed labor markets. Finally, as with labor law, employment law enforcement is

44 See, e.g., ARCHIBALD COX, DEREK CURTIS BOK & ROBERT A. GORMAN, *CASES AND MATERIALS ON LABOR LAW* 304 (10th ed. 1986) (explaining how multiemployer bargaining allows unions to “secure gains which no one employer can grant for fear of competitive disadvantage”).

45 See WEIL, *supra* note 35 at 192-93 (describing the narrowing of employer liability for safety violations); see, e.g., Hafiz, *Structural Labor Rights*, *supra* note 35 at 657-59 (discussing the NLRB’s failure to treat McDonald’s USA as a joint employer over franchise employees in a labor dispute).

46 See *infra* Section II.C and notes 354-58.

47 See *infra* Section II.C .

48 See generally KAITLYN HENDERSON, OXFAM AM., *BEST AND WORST STATES TO WORK IN AMERICA* 2022 (2022), https://webassets.oxfamamerica.org/media/documents/BSWI_2022_Report_Final.pdf [<https://perma.cc/TYB2-3LGB>] (surveying state level wage laws and worker protections).

49 See generally *id.*

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.⁵⁰

These regulatory failures have contributed to geographic labor market, income, and racial inequality. On average, urban areas tend to be richer than rural areas.⁵¹ In 2019, poverty rates were 15.4% in nonmetro residences as compared to 11.9% in metro residences.⁵² 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.”⁵³ In distressed communities, 35% of prime working age adults are out of work as compared to 15-18% in prosperous and comfortable communities.⁵⁴ 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.⁵⁵ Place-based poverty and limited intergenerational economic mobility is also deeply racial, disproportionately impacting Black and Brown households.⁵⁶ 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—

⁵⁰ See *infra* Section II.C.3 & Section II.D.3 (discussing the structural and practical obstacles to effective enforcement of worker protection laws by federal agencies).

⁵¹ See Ryan Nunn, Jana Parsons & Jay Shambaugh, *Introduction to PLACE-BASED POLICIES FOR SHARED ECONOMIC GROWTH* 5, 7 fig. B (Jay Shambaugh & Ryan Nunn eds., 2018), https://www.hamiltonproject.org/assets/files/ES_THP_PBP_book_20190425.pdf [<https://perma.cc/7GDZ-MJL4>].

⁵² *Rural Poverty & Well-Being*, U.S. DEPT OF AGRIC., <https://www.ers.usda.gov/topics/rural-economy-population/rural-poverty-well-being/#geography> [<https://perma.cc/NQ5K-3JJD>] (last updated Nov. 15, 2023).

⁵³ MORETTI, *supra* note 13, at 128.

⁵⁴ See ECON. INNOVATION GRP., *THE SPACES BETWEEN US: THE EVOLUTION OF AMERICAN COMMUNITIES IN THE NEW CENTURY* 7 fig.1 (4th ed. 2020), <https://eig.org/wp-content/uploads/2020/10/EIG-2020-DCI-Report.pdf> [<https://perma.cc/TAH9-7DN5>] (depicting metrics of economic well-being across communities).

⁵⁵ See Nunn, Parsons & Shambaugh, *supra* note 51, at 14-15 (describing the rural South, Southwest, and lower Midwest as having lower scores on a vitality index, including median household income, poverty rate, life expectancy, prime-age employment-to-population ratio, housing vacancy rate, and unemployment rate).

⁵⁶ See Bradley L. Hardy, Trevon D. Logan & John Parman, *The Historical Role of Race and Policy for Regional Inequality* (discussing how the spatial distribution and concentration of Black Americans and lack of income mobility contribute to racial inequality today), in *PLACE-BASED POLICIES FOR SHARED ECONOMIC GROWTH*, *supra* note 51, at 43, 43-45

has provoked a dangerous level of political polarization and defeatism.⁵⁷ The impacts of place-based economic distress and disempowerment are all the more nationally salient because of the disproportionate electoral strength held by white, disaffected workers living in rural and distressed communities combined with the extent to which Senate representation and the electoral college favors sparsely populated areas.

While legal scholars, economists, and other social scientists have increasingly recognized the challenges rural and distressed labor markets face, they have not focused on the *legal* sources of the relationship between employer power and geographic inequality. An initial reason legal sources have been neglected has been the dominance of the “spatial equilibrium” hypothesis, a view—held primarily by neoliberal economists and scholars—that market forces generally correct for geographic divergence.⁵⁸ The hypothesis posited is that workers are (or ought to be) indifferent across space with respect to their employment options: if workers confront bad employers or adverse employment outcomes in one place, they can move—or threaten to move—to better-paying jobs in growing cities, preserving a “spatial equilibrium” that geographically equalizes welfare.⁵⁹ And, the argument goes, even if natural market corrections fail, any medicine of place-based labor policies would be worse than a market-based cure because favoring one location will only introduce better jobs that draw outside talent at locals’ expense—“favoring one location would impoverish another” and displacing native workers.⁶⁰ 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 the expense of workers, thereby defeating the purpose of place-based investment and reducing overall welfare.⁶¹

⁵⁷ See, e.g., ROBERT WUTHNOW, *THE LEFT BEHIND: DECLINE AND RAGE IN RURAL AMERICA* 1 (2018) (highlighting the polarization between rural and urban voters based in part on rural and small-town populations’ anger towards the federal government); David Autor, David Dorn, Gordon Hanson & Kaveh Majlesi, *Importing Political Polarization? The Electoral Consequences of Rising Trade Exposure*, 110 AM. ECON. REV. 3139, 3143 (2020) (connecting trade exposure to increased support for trade protectionism and identity-based politics).

⁵⁸ For a discussion of “spatial equilibrium” theory, see Edward L. Glaeser & Joshua D. Gottlieb, *The Wealth of Cities: Agglomeration Economies and Spatial Equilibrium in the United States*, 47 J. ECON. LITERATURE 983, 984 (2009).

⁵⁹ *Id.* at 988–90.

⁶⁰ Benjamin Austin, Edward Glaeser & Lawrence Summers, *Jobs for the Heartland: Place-Based Policies in 21st-Century America*, Brookings Papers on Econ. Activity, Spring 2018, at 151, 151–52; see also David Schleicher, *Stuck! The Law and Economics of Residential Stagnation*, 127 YALE L.J. 78, 142–43 & n.284 (2017) [hereinafter Schleicher, *Stuck!*] (summarizing the literature on the downsides of place-based policies).

⁶¹ See Glaeser & Gottlieb, *supra* note 58 (positing that elevated incomes do not imply higher welfare because high incomes are offset by lower amenities or higher prices). See generally David Schleicher, *The City as a Law and Economic Subject*, 2010 U. ILL. L. REV. 1507, 1515–29 (providing a literature review of agglomeration economics).

But mounting empirical evidence of current labor market realities undermines the assumptions of the spatial equilibrium model.⁶² Workers are *not* indifferent across space with respect to their employment options, and they do not move to higher-wage localities and face substantial regulatory barriers in doing so.⁶³ Scholars analyzing these regulatory restrictions have documented both market-based and legal sources that contribute to labor's immobility and compound geographic inequality, but they have yet to concentrate specifically on how labor market regulation, broadly construed, has enabled the concentration of employer power and reduced worker power in place-based ways. A significant literature has studied how globalization and agglomeration economies have dealt economic shocks to rural and distressed areas and enabled megacities to pull away from them, and scholars have highlighted how everything from human capital failures to tax, land use, and housing policies has restricted the ability of workers to move to better, higher-paying jobs.⁶⁴ 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 inequality.⁶⁵ Legal scholars within the Law and Political Economy movement and others outside that movement 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.⁶⁶ And while a group of

62 See *infra* Section II.A (discussing the differing geographic impacts caused by federal employment policy).

63 See Schleicher, *Stuck!*, *supra* note 60, at 111-49 (collecting literature on obstacles to interstate mobility); Raskolnikov, *supra* note 23, at 1602-23 (exploring the negative, unintentional effects of government policies that impose barriers to workers' geographic mobility).

64 See also Raskolnikov, *supra* note 23, at 1592 (identifying localized effects of economic shocks caused by trade liberalization); Schleicher, *Stuck!*, *supra* note 60, at 115 (identifying land-use restrictions as contributors to economic inequality); Austin, Glaeser & Summers, *supra* note 60 at 156-78 (analyzing the place-based effects of deindustrialization on employment between the coasts, the "western heartland," and the "eastern heartland"). For a discussion of how some cities have been able to draw in businesses and workers to achieve economic success while others have not, see generally MORETTI, *supra* note 13.

65 See, e.g., ARLIE RUSSELL HOCHSCHILD, STRANGERS IN THEIR OWN LAND 6 (2016) (describing Americans' increasingly polarized views towards political parties and how those views guide individuals' decisions to relocate); LOKA ASHWOOD, FOR-PROFIT DEMOCRACY ix-xi (2018) (analyzing how for-profit partnerships with the state have exploited rural communities and contributed to anti-government distrust and resentment); KATHERINE J. CRAMER, THE POLITICS OF RESENTMENT 1-3 (2016) (using Wisconsin as a case study to explore the urban-rural divide of political polarization); Paige Kelly & Linda Lobao, *The Social Bases of Rural-Urban Political Divides*, 84 RURAL SOCIO. 669, 673-74 (2019) (explaining rural spatial inequality and its contribution to polarization through differences in "lived experiences, worldviews, and political and economic interests").

66 See, e.g., DOROTHY A. BROWN, THE WHITENESS OF WEALTH 19-21 (2021) (explaining how tax policy in the United States has contributed to racial wealth inequality); KATHARINA

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 policy,⁶⁷ environmental policy,⁶⁸ energy and telecommunications deregulation,⁶⁹ and other economic and social policy areas.⁷⁰

This Article's core contributions are in first identifying and analyzing how labor market regulation contributes to geographic inequality—legally organizing work in spaces to structurally underprivilege rural and distressed communities. Second, this Article proposes novel solutions both within and beyond existing law and labor market institutions to remedy this inequality. Part I provides an overview of rural and distressed labor markets and describes their general characteristics and why they suffer from unique market failures that strengthen employer power at the expense of workers. Part II then describes how federal labor market regulation through federal employment policy, antitrust, labor, and employment law—the regimes specifically designed to regulate employer power—is at best indifferent to, and at worst exacerbates, those market failures. 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 then outlines how their structures, doctrinal evolutions, and scope not only are ill-

PISTOR, THE CODE OF CAPITAL 8-21, 108-31 (2019) (discussing the role that law plays in crafting a “code” of capital which dictates capital's ability to produce wealth); Ganesh Sitaraman, Morgan Ricks & Christopher Serkin, *Regulation and the Geography of Inequality*, 70 DUKE L.J. 1763, 1767-70 (2020) (focusing on how the deregulation of transportation, telecommunication, international trade, and antitrust contributes to geographic inequality).

⁶⁷ See, e.g., Eisenberg, *supra* note 19, at 779-82 (discussing how rural communities have been left behind despite the importance of rural communities to rural land use); Jessica A. Shoemaker, *Fee Simple Failures: Rural Landscapes and Race*, 119 MICH. L. REV. 1695, 1700-02 (2021) (exploring the decline of self-supporting, middle-class farmers and its relation to fee simple ownership of land).

⁶⁸ See, e.g., Shelley Welton & Joel Eisen, *Clean Energy Justice: Charting an Emerging Agenda*, 43 HARV. ENV'T L. REV. 307, 325-28 (2019) (explaining how many low-income individuals are not able to access the financial incentives that come with switching to solar energy).

⁶⁹ Eisenberg, *supra* note 19, at 779-82; Sitaraman, Ricks & Serkin, *supra* note 66, at 1796-97.

⁷⁰ See, e.g., Rick Su, *Democracy in Rural America*, 98 N.C. L. REV. 837, 839 (2020) (definition of local rural governments in American law); Nicole Huberfeld, *Rural Health, Universality, and Legislative Targeting*, 13 HARV. L. & POL'Y REV. 241, 242 (2018) (rural health challenges); Michelle Wilde Anderson, *Losing the War of Attrition*, 127 YALE L.J.F. 522, 524 (2017) (joblessness and mobility); Lisa R. Pruitt & Bradley E. Showman, *Law Stretched Thin*, 59 S.D. L. REV. 466, 468 (2014) (access to legal services in rural communities); Debra Lyn Bassett, *Ruralism*, 88 IOWA L. REV. 273, 279 (2003) (“ruralism” as a form of discrimination).

adapted to rural and distressed labor markets but also helped to create and reinforce those markets as deregulated spaces. Part III 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 in the form of a federal job guarantee and direct wage regulation. 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.

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.⁷¹ 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.”⁷² The most widely used definitions of “rural” are those devised by the Office of Management and

⁷¹ RURAL AMERICA AT A GLANCE, *supra* note 15, at 2.

⁷² Lisa R. Pruitt, *Rural Rhetoric*, 39 CONN. L. REV. 159, 178 n.95 (2006).

Budget (OMB) and the U.S. Census Bureau, which define it in the negative, as encompassing all “nonmetropolitan” counties “not included within an urban area.”⁷³ They thus include everything that is not a “metropolitan area” (MA), defined as “one of a large population nucleus” and “adjacent communities that have a high degree of economic and social integration with that nucleus” having “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).”⁷⁴ This Article adopts an expansive definition of “rural”, incorporating both federal government definitions and understandings of “rurality” in the sociology and geography literatures that include socio-economic and identity-based criteria like land use and lifestyle.⁷⁵

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.⁷⁶ 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). It aggregates information about occupational employment and wage statistics in “nonmetropolitan” areas defined under the Census Bureau’s definition.⁷⁷ However, the BLS’s data collection has no current function in

⁷³ *Urban and Rural*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html> [<https://perma.cc/UDU3-NBPF>] (last revised Sept. 26, 2023); see *supra* note 8 (discussing various definitions of “rural” and “distressed” communities).

⁷⁴ *Subject Definitions*, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/cps/technical-documentation/subject-definitions.html> [<https://perma.cc/WZ8P-HLNA>] (last revised Nov. 3, 2023).

⁷⁵ See, e.g., Matteo B. Marini & Patrick H. Mooney, *Rural Economies*, in THE HANDBOOK OF RURAL STUDIES 91, 92–93 (Paul Cloke, Terry Marsden & Patrick Mooney eds., 2006) (discussing the use of economic characteristics in distinguishing nonmetropolitan counties).

⁷⁶ See *Rural America (2010)*, U.S. CENSUS BUREAU, <https://mtgis-portal.geo.census.gov/arcgis/apps/storymaps/collections/189aaidbd64c4c81b3b42b71124f6c6?item=1> [<https://perma.cc/HL4L-PHXZ>] (last visited Mar. 16, 2024); Search Results for Rural Economy & Population, U.S. DEP’T OF AG. ECON. RSCH. SERV., <https://www.ers.usda.gov/data-products/#!topicid=14838&subtopicid=> [<https://perma.cc/NNE4-J65J>] (last visited Mar. 16, 2024) [hereinafter USDA-ERS, *Rural Economy*] (illustrating examples of rural labor market data).

⁷⁷ See *State and Metro Area Employment, Hours, & Earnings*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/sae/additional-resources/metropolitan-statistical-area-definitions.htm> [<https://perma.cc/P4PF-C63T>] (last modified Nov. 2, 2022); *Occupational Employment and Wage Statistics*, U.S. BUREAU OF LAB. STAT., <https://www.bls.gov/oes/current/oesrcma.htm>

labor or antitrust agency regulation as a matter of substantive law or agency priorities.

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).⁷⁸ 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.⁷⁹ Small businesses with less than 500 employees provide a full 65% of rural jobs, and general purpose service sector employment is the fastest growing sector.⁸⁰ 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.”⁸¹

Rural labor markets have smaller populations with low population density, high commuting costs, and reduced potential for specialization.⁸² Rural populations have decreased from around 60% of the national population in 1900 to 14% today, and they live in over 70% of the Nation’s land area.⁸³ These populations experience diseconomies of scale⁸⁴ and reduced productivity in part due to the deregulation of critical infrastructure that cross-subsidized

[<https://perma.cc/A24H-X6LR>] (last modified Apr. 25, 2023) (demonstrating the U.S. Bureau of Labor Statistics’ data collection and presentation).

⁷⁸ RURAL AMERICA AT A GLANCE, *supra* note 15, at 10.

⁷⁹ See, e.g., USDA-ERS, *Rural Economy*, *supra* note 76.

⁸⁰ Hanna Love & Mike Powe, *Rural Small Businesses Need Local Solutions to Survive*, BROOKINGS (Dec. 1, 2020), <https://www.brookings.edu/research/rural-small-businesses-need-local-solutions-to-survive/> [<https://perma.cc/SYC6-HHKW>]; Jane Atterton, John Bryden & Thomas G. Johnson, *Rural Economic Transformation in the UK and US*, in RURAL TRANSFORMATIONS AND RURAL POLICIES IN THE US AND UK 117, 117, 126 (Mark Shucksmith, David L. Brown, Sally Shortall, Jo Vergunst & Mildred E. Warner eds., 2012).

⁸¹ Marini & Mooney, *supra* note 75, at 92 .

⁸² OECD, *Innovation and Modernising the Rural Economy* 1, 6-9 (2014), <https://www.oecd.org/regional/regional-policy/Innovation-Modernising-Rural-Economy.pdf> [<https://perma.cc/7PQ3-MMLF>] (describing challenges of skills building in rural areas that limits ability to specialize in broad types of business given smaller home markets and minimum efficient scale challenges).

⁸³ See CAROLYN DIMITRI, ANNE EFFLAND & NEILSON CONKLIN, U.S. DEP’T OF AG. ECON. RSCH. SERV., *THE 20TH CENTURY TRANSFORMATION OF U.S. AGRICULTURE AND FARM POLICY* 1, 3 (2005), https://www.ers.usda.gov/webdocs/publications/44197/13566_eib3_1_.pdf [<https://perma.cc/6TEM-L3WF>]; RURAL AMERICA AT A GLANCE, *supra* note 15, at 2.

⁸⁴ 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 19; Paul Stephen Dempsey, *The Dark Side of Deregulation*, 39 ADMIN. L. REV. 445 (1987) (discussing the impacts of deregulation on rural communities); George Stigler, *The Economies of Scale*, 1 J.L. & ECON. 54 (1958) (discussing the theory of the economies of scale).

rural access to utilities and common carriers.⁸⁵ Rural areas face high labor market concentration and oligopsony with small employers, governments, and hospitals being the prominent monopsonists or oligopsonists.⁸⁶ In the private sector, these concentration levels are connected to lower wages.⁸⁷

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 a roughly equivalent number of low-pay elementary occupations.⁸⁸ Employment in agriculture and manufacturing is quadrupled and doubled, respectively, in nonmetropolitan relative to metropolitan labor markets.⁸⁹ But employers in both industries offer scarce and declining employment—high replacement demand—and are too small to shift to and compete in specialized markets.⁹⁰ Employment is increasingly scarce with declining family-owned businesses⁹¹ as well as declining low-wage retail and service jobs,⁹² resulting in lower tax bases with multiplier effects throughout rural communities.⁹³

⁸⁵ See Eisenberg, *supra* note 19, at 771-78 (describing deregulation of infrastructure with adverse impacts on rural areas); Sitaraman, Ricks & Serkin, *supra* note 66, at 1785-1810 (same).

⁸⁶ Elizabeth Weber Handwerker & Matthew Dey, *Some Facts About Concentrated Labor Markets in the United States* 1, 7-11 (Bureau of Lab. Stat., Working Paper 550, 2022), <https://www.bls.gov/osmr/research-papers/2022/pdf/ec220050.pdf> [<https://perma.cc/3DBH-47YF>].

⁸⁷ *Id.* at 10.

⁸⁸ See ANDREW ATHERTON, LIZ PRICE, DAVID GRAY & GARY BOSWORTH, UNIV. OF LINCOLN, RURALITY, PRODUCTIVITY, AND SKILLS IN THE EAST MIDLANDS 3, 33 (2010), <https://core.ac.uk/download/pdf/30624593.pdf> [<https://perma.cc/YVD2-V7Y4>] (describing the distributions of employment opportunities in rural and urban areas).

⁸⁹ RURAL AMERICA AT A GLANCE, *supra* note 15, at 10.

⁹⁰ See OECD, *supra* note 82, at 9 (explaining that the traditional rural economy is highly specialized).

⁹¹ Nearly 600,000 family-owned businesses collapsed between 2007 and 2012. See *Survey of Business Owners (SBO)—Characteristics of Businesses: 2007*, U.S. CENSUS BUREAU (Jan. 1, 2007), <https://www.census.gov/library/publications/2007/econ/2007-sbo-businesses.html> [<https://perma.cc/M7YG-VXM4>] (noting that 28.2% of firms that responded to the U.S. Census Bureau's 2007 Survey of Business Owners were family-owned); *Survey of Business Owners (SBO)—Characteristics of Businesses: 2012*, U.S. CENSUS BUREAU (Feb. 23, 2016), <https://www.census.gov/library/publications/2012/econ/2012-sbo.html> [<https://perma.cc/8VS5-HMTA>].

⁹² See Lauren Thomas, *Store Closures Rocked Retail in 2017*, CNBC (Dec. 26, 2017), <https://www.cnn.com/2017/12/26/store-closures-rocked-retail-in-2017-and-more-should-come-next-year.html> [<https://perma.cc/DG55-KLGA>] (identifying a decline in retail jobs due to store closures as sales migrate online); 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> [<https://perma.cc/HAS8-67D7>] ("About 15% of malls will disappear in the next decade That means hundreds of malls will close down, potentially affecting thousands and thousands of jobs.").

⁹³ ANDERSON, *supra* note 8, at 8 (explaining how cities and counties become more reliant on local tax revenues as the state and federal proportion of local revenues declines).

Declining health and elderly care,⁹⁴ educational opportunities,⁹⁵ and public services further reduce private and public employment.⁹⁶ Where big-box stores enter to fill the gap, they generally pay lower taxes and extract profits to corporate headquarters outside of those communities.⁹⁷ When urban entrepreneurs move to rural areas, they tend to operate in regional markets with limited direct impacts on local employment in rural areas.⁹⁸ Rural labor markets have limited exposure to international markets and local labor market competition to drive up demand for skills development.⁹⁹ And while evidence demonstrates that higher rates of self-employment positively correlate with business creation and innovation in urban areas, the same is not true in rural areas, where self-employment is more of a last resort due to a lack of alternatives.¹⁰⁰

On the supply-side, rural workers are aging and ethnically diversifying due to out-migration of youth and in-migration of older workers and

⁹⁴ See *Rural Hospital Closures*, UNC SHEPS CTR. (2014), <http://www.shepscenter.unc.edu/programs-projects/rural-health/rural-hospital-closures/> [<https://perma.cc/YHT7-A47S>] (reporting that there were 191 rural hospital closures and conversions from 2005 to 2014); 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> [<https://perma.cc/RHU8-88JY>] (“Consolidation has shut down many rural hospitals, which have struggled from a shortage of patients with employer-sponsored insurance.”)

⁹⁵ See CRAMER, *supra* note 65, at 60 (2016) (“Conversations about school funding often echoed the view that the rural areas were not getting their fair share.”); *What’s the Matter with Oklahoma?*, THE ECONOMIST (Jan. 30, 2018), <https://www.economist.com/united-states/2018/01/30/whats-the-matter-with-oklahoma> [<https://perma.cc/HW93-VK7S>] (“Low teacher pay and severe budget cuts are driving schools to the brink.”); BRIAN REAL & R. NORMAN ROSE, AM. LIBR. ASS’N, *RURAL LIBRARIES IN THE UNITED STATES 1* (2017) (“Despite librarians’ best efforts, building capacity, staff time, and discretionary budgets are often stretched thin.”).

⁹⁶ See 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> [<https://perma.cc/SFD7-8MY6>] (reporting that many public sector workers, such as teachers, firefighters, and bus drivers, are no longer part of the middle class).

⁹⁷ See, e.g., Marie Donahue & Stacy Mitchell, *Dollar Stores are Targeting Struggling Urban Neighborhoods and Small Towns, One Community Is Showing How to Fight Back*, INST. FOR LOC. SELF-RELIANCE (2018), <https://ilsr.org/dollar-stores-target-cities-towns-one-fights-back/> [<https://perma.cc/5A5Y-S59Y>] (“Although dollar stores sometimes fill a need in places that lack basic retail services, there’s growing evidence that these stores are not merely a byproduct of economic distress. They’re a cause of it.”); Laura Bliss, *After the Retail Apocalypse, Prepare for the Property Tax Meltdown*, BLOOMBERG (Nov. 14, 2018), <https://www.bloomberg.com/news/articles/2018-11-14/to-cut-taxes-big-box-stores-use-dark-store-theory> [<https://perma.cc/ML4N-MBLM>] (explaining how large retailers take advantage of the tax assessment process in ways that harm local residents).

⁹⁸ See, e.g., Lise Herslund, *The Rural Creative Class: Counterurbanisation and Entrepreneurship in the Danish Countryside*, 52 SOCIOLOGIA RURALIS 235, 246 (2012) (finding that new businesses or outside firms in rural areas need regional networks for success).

⁹⁹ Anne Green, *Changing Dynamics of Rural Labor Markets*, in ROUTLEDGE HANDBOOK OF RURAL STUDIES 145 (Mark Shucksmith & David. L Brown eds., 2016).

¹⁰⁰ See Giulia Faggio & Olmo Silva, *Self-Employment and Entrepreneurship in Urban and Rural Labour Markets*, 84 J. URB. ECON. 67, 68 (2014).

immigrants.¹⁰¹ Rural 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.¹⁰² 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.¹⁰³ Because workers who stay in rural communities generally have lower turnover rates, employers have fewer incentives to invest in in-work progression. Vacancies requiring professional training are also harder to fill, leaving existing staff with higher workloads and decreased availability for training.¹⁰⁴ Access to skills development and broader work experience is constrained due to sparsely distributed populations and limited public transportation.¹⁰⁵ Still, many rural families have a long tradition of adaptability, including pluriactivity, or having one or more members of a household perform work in different locations or sectors due to seasonal work. Organizing traditions have also facilitated broader collective action, even if outside the workplace.¹⁰⁶

¹⁰¹ See Green, *supra* note 99, at 144, 146; Tony Champion & David L. Brown, *Migration and Urban-Rural Population Redistribution in the UK and US*, in RURAL TRANSFORMATIONS AND RURAL POLICIES IN THE US AND UK 48-55 (Mark Shucksmith, David L Brown, Sally Shortall, Jo Vergunst & Mildred E. Warner eds., 2016).

¹⁰² See OECD, INNOVATION AND MODERNISING THE RURAL ECONOMY 8 (2014), <https://www.oecd.org/regional/regional-policy/Innovation-Modernising-Rural-Economy.pdf> [<https://perma.cc/7PQ3-MMLF>] (explaining how workers in rural regions have relatively narrower skillsets compared to urban regions due to fewer industries, higher costs of upskilling or skills diversification, and scarcity of training facilities); Todd Gabe, Kevin Stolarick & Jaison R. Abel, *Rural Areas Lag Behind in Key Workforce Skills*, CHOICES (2012), <https://www.choicesmagazine.org/choices-magazine/theme-articles/public-sector-options-for-creating-jobs/rural-areas-lag-behind-in-key-workforce-skills> [<https://perma.cc/5TJNJ-3TPZ>] (reporting that rural workers tend to specialize in occupations with relatively low skills requirements).

¹⁰³ See Green, *supra* note 99, at 148 (describing “low skills equilibriums” in rural areas, “where employers face few skill shortages in a predominantly low-skilled workforce, and where there is little incentive to participate in education and training and raise qualifications and aspirations”).

¹⁰⁴ Cf. Maria de Hoyos & Anne Green, *Recruitment and Retention Issues in Rural Labour Markets*, 27 J. RURAL STUD. 171, 174, 178 (2011).

¹⁰⁵ See *id.* at 172 (describing how issues such as lack of transport are not unique to rural areas but are exacerbated by limited public services and low population density).

¹⁰⁶ See generally THULANI DAVIS, THE EMANCIPATION CIRCUIT 228 (2022) (describing Union League organizing among Black freedpeople living in the rural south during Reconstruction); ROBIN D.G. KELLEY, HAMMER AND HOE 36-38 (2015) (describing communist organizing among Black women in rural Alabama during the Great Depression); THOMAS ANDREWS, KILLING FOR COAL 172-73 (2008) (describing the solidarity built between men who labored in coal mines in rural Colorado). For “pluriactivity” as rural household participation in diversified agricultural and non-agricultural employment on and off family farms, see generally RUTH GASSON, THE ECONOMICS OF PART-TIME FARMING (1988).

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.¹⁰⁷ Generally, communities in “distress” are associated with low employment rates, place-based poverty, and median incomes below two-thirds of the state level.¹⁰⁸ 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.¹⁰⁹ These communities stretch from the Rust Belt through military-industrial cities of the West.¹¹⁰ Others are older suburbs of metropolitan areas that have declined due to population loss, aging infrastructure, rising crime rates, unemployment, and blight.¹¹¹ Distress is increasingly “ruralized,”¹¹² and over half of Americans living in distress are people of color.¹¹³

While many workers in distressed communities are members of legacy unions, work in declining industries has high replacement demand due to retirement patterns. Pension crises burden and shrink their local governments to the point of bankruptcy.¹¹⁴ The odds of being employed are one-fifth lower than in booming labor markets, and the prime-age employment rate—

¹⁰⁷ See ECON. INNOVATION GRP., *THE SPACES BETWEEN US*, *supra* note 54, at 4-5.

¹⁰⁸ See *supra* note 8.

¹⁰⁹ See generally AM. ASSEMBLY, *REINVENTING AMERICA'S LEGACY CITIES: STRATEGIES FOR CITIES LOSING POPULATION* (2011).

¹¹⁰ See ANDERSON, *supra* note 8, at 1133-35 (“Post-industrial economic restructuring and deindustrialization did not exclusively impact the Rustbelt . . . [but also] the military-industrial cities of the West.”).

¹¹¹ See KATHERYN W. HEXTER, EDWARD W. HILL, BRIAN A. MIKELBANK, BENJAMIN Y. CLARK & CHARLES POST, *REVITALIZING DISTRESSED OLDER SUBURBS 5* (Urb. Inst., 2011), <https://www.urban.org/sites/default/files/publication/26761/412461-Revitalizing-Distressed-Older-Suburbs.pdf> [<https://perma.cc/NG9A-97S3>] (“[D]istressed, predominantly, minority suburbs of older, large industrial cities . . . are now characterized by high rates of poverty, foreclosure, unemployment, and population loss; limited tax bases; underfunded or failing schools; and inadequate public services.”).

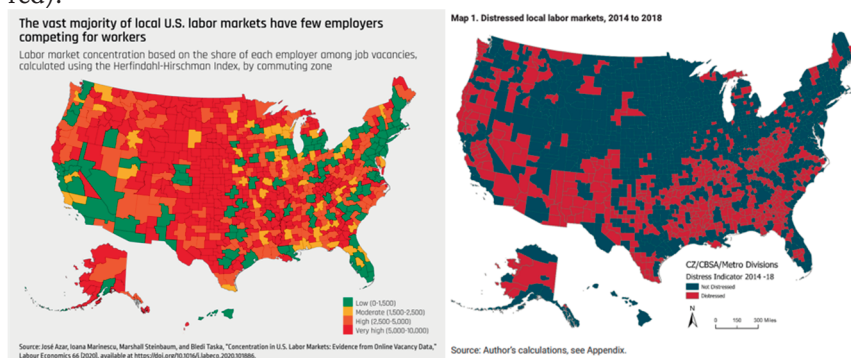
¹¹² See ECON. INNOVATION GRP., *FROM GREAT RECESSION TO GREAT RESHUFFLING 6* (2018), <https://eig.org/wp-content/uploads/2018/10/2018-DCI.pdf> [<https://perma.cc/V54F-E8B6>] (describing the decrease in total population in distressed zip codes as reflecting an intensifying ruralization of distress rather than a substantial out-migration from struggling communities).

¹¹³ See ECON. INNOVATION GRP., *THE SPACES BETWEEN US*, *supra* note 54, at 4.

¹¹⁴ See Anderson, *The New Minimal Cities*, *supra* note 8, at 1148 (describing San Bernardino's bankruptcy filing as an example of the consequences of pension funding challenges).

between 25 and 54—is 68.1%, over 9% below the national average.¹¹⁵ When a dominant industry or company in a city shuts down and middle-class residents leave, low-income and low-skilled workers get left behind. Those remaining workers are then left to carry the more expansive infrastructure—and its higher maintenance needs—built to service larger populations.¹¹⁶

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):¹¹⁷



Thus, while rural labor markets suffer high employer concentration levels, distressed labor markets suffer what sociologists understand as “spatial concentration,” or 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.¹¹⁸ These economic and socio-cultural conditions, compounded by information frictions, increase

¹¹⁵ Bartik, *infra* note 117, at 5.

¹¹⁶ See HEXTER, HILL, MIKELBANK, CLARK & POST, *supra* note 111, at A.10 (“[T]hese cities have an infrastructure and overhead designed to serve a much larger population and industrial base, but their resources and capacity to confront those overhead costs have declined.”)

¹¹⁷ Azar, Marinescu & Steinbaum, *supra* note 31, generated the labor market concentration map, and TIMOTHY BARTIK, HELPING AMERICA’S DISTRESSED COMMUNITIES RECOVER FROM THE COVID-19 RECESSION AND ACHIEVE LONG-TERM PROSPERITY 10 (Brookings 2020), https://www.brookings.edu/wp-content/uploads/2020/09/20200923_BrookingsMetro_Distressed-Communities-COVID19-Recovery_Bartik_Report.pdf [<https://perma.cc/Q3DU-WQAP>], generated the map identifying distressed labor markets.

¹¹⁸ See WILLIAM JULIUS WILSON, THE TRULY DISADVANTAGED 143-44 (1987) (describing spatial concentration effects when an entire neighborhood is socially disadvantaged as limiting access to jobs and social networks); WILLIAM JULIUS WILSON, WHEN WORK DISAPPEARS 70-76 (1996) (explaining community norm-setting that increases the acceptance of a behavior with the frequency of its manifestations in a community).

workers' mobility costs.¹¹⁹ 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.¹²⁰ 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.¹²¹

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.¹²² 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."¹²³ 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."¹²⁴ 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.¹²⁵

119 See Peter Bergman, Raj Chetty, Stefanie DeLuca, Nathaniel Hendren, Lawrence F. Katz & Christopher Palmer, *Creating Moves to Opportunity: Experimental Evidence on Barriers to Neighborhood Choice*, AM. ECON. REV. (forthcoming 2024) (manuscript at 45) (on file at https://scholar.harvard.edu/files/lkatz/files/paper_v68.pdf [<https://perma.cc/6PXW-VHUQ>]) ("The primary barriers families face are not a lack of liquidity or information . . . but rather challenges in the housing search process itself that make it difficult to locate suitable units, negotiate with landlords, and navigate the complexities of leasing up a unit with scarce bandwidth."); Thomas Fujiwara, Eduardo Morales & Charly Porcher, *Measuring Information Frictions in Migration: A Revealed-Preference Approach* 1 (March, 2023) (unpublished manuscript) (on file with author); Peter Bergman, Eric W. Chan & Adam Kapor, *Housing Search Frictions: Evidence from Detailed Search Data and a Field Experiment* 35 (Nat'l Bureau of Econ. Rsch., Working Paper No. 27209, 2020), https://www.nber.org/system/files/working_papers/w27209/w27209.pdf [<https://perma.cc/L8SW-SUTD>] (finding that imperfect information about school quality causes low-income families to live in neighborhoods with lower-performing, more segregated schools and "providing . . . information causes families to live in neighborhoods with higher-performing, less segregated schools").

120 See CONSUMER FIN. PROT. BUREAU, DATA SPOTLIGHT: CHALLENGES IN RURAL BANKING ACCESS 17 (2022), https://files.consumerfinance.gov/f/documents/cfpb_data-spotlight_challenges-in-rural-banking_2022-04.pdf [<https://perma.cc/HJY9-B3EG>].

121 See Leslie, *infra* note 152, at 779.

122 For "natural monopsony" or "natural oligopsony", see *supra* note 9.

123 PHILIP AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW ¶ 658b (2022).

124 Richard A. Posner, *Natural Monopoly and Its Regulation*, 21 STAN. L. REV. 548, 548 (1969).

125 CARL KAYSAN & DONALD TURNER, ANTITRUST POLICY: AN ECONOMIC AND LEGAL ANALYSIS 193-94 (1959); WILLIAM W. SHARKEY, THE THEORY OF NATURAL MONOPOLY 145 (1982); Posner, *supra* note 124, at 559.

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.¹²⁶ Still unexplored, however, is how employers in contemporary “company towns” operate based on similar principles. Early theorizations of monopsony modeled unilateral price-setting on company towns: one employer for a large number of sellers.¹²⁷ 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.¹²⁸

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.¹²⁹ 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.¹³⁰

¹²⁶ See, e.g., Dan Awrey & Joshua C. Macey, *Open Access, Interoperability, and DTCC's Unexpected Path to Monopoly*, 132 YALE L.J. 96, 99-100 (2022) (applying natural monopoly theories to tech platforms and financial institutions); Lina M. Khan, *The Separation of Platforms and Commerce*, 119 COLUM. L. REV. 973, 980, 1077 (2019) (drawing from traditional natural monopoly regulation to propose application of structural separation remedy to dominant digital platforms).

¹²⁷ See, e.g., JOAN ROBINSON, *ECONOMICS OF IMPERFECT COMPETITION* 218-28 (1933); BLAIR & HARRISON, *supra* note 30, at 29 (“[A]ll monopsony cases can be reduced to either a unilateral or collusive use of buying power in order to promote the interests of the buyer.”).

¹²⁸ See *supra* note 9.

¹²⁹ See Dayna B. Matthew, *Doing What Comes Naturally*, 31 HOUS. L. REV. 813, 824-25 (1994).

¹³⁰ See José A. Azar, Steven T. Berry & Ioana Marinescu, *Estimating Labor Market Power* 27, 32 (Nat'l Bureau of Econ. Rsch., Working Paper No. 30365, 2022), <https://www.nber.org/papers/w30365> [<https://perma.cc/T6MG-R6N2>] (discussing how rural commuting zones have lower market level elasticities than urban commuting zones).

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.¹³¹ Natural monopolies occur where demand in a local market is only capable of sustaining one firm, so even a single grocery store in a small town can function as a natural monopoly.¹³² Where natural monopolies occur, workers have limited outside options for employment for their contributed value.¹³³ 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.¹³⁴ 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.¹³⁵

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

131 See, e.g., Alex N. Press, *Amazon Is Creating Company Towns*, JACOBIN (July 24, 2021), <https://jacobin.com/2021/07/amazon-warehouse-communities-towns-geography-warehouse-fulfillment-jfk8-cajon-inland-empire> [<https://perma.cc/A7Y7-76DN>] (discussing towns in which a monopsony employer becomes the source of public goods and services); John Lippert & Stephen Franklin, *The Warehouse Archipelago*, AMERICAN PROSPECT (Aug. 9, 2021), <https://prospect.org/labor/the-warehouse-archipelago> [<https://perma.cc/25NY-42CP>] (describing as many as 4 million workers scattered across the United States in the warehousing industry as facing poor pay and high risk of on-the-job injury); Nina Lakhani, “*They Rake in Profits—Everyone Else Suffers*”: *US Workers Lose out as Big Chicken Gets Bigger*, GUARDIAN (Aug. 11, 2021), <https://www.theguardian.com/environment/2021/aug/11/tyson-chicken-indsutry-arkansas-poultry-monopoly> [<https://perma.cc/B69B-NM27>] (discussing the negative impacts of an Arkansas meat processing company’s near monopoly in its home state).

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

133 See generally Azar, Berry & Marinescu, *supra* note 130.

134 See, e.g., *id.* at 21 fig.1; Jan Rouwendal, *Spatial Job Search and Commuting Distances*, 29 REG’L. SCI. URB. ECON. 491, 492 (1999) (describing spatial job search frictions and focusing on the impacts of commuting distances and heterogeneous preferences on job searches).

135 See Roger G. Noll, “*Buyer Power*” and *Economic Policy*, 72 ANTITRUST L.J. 589, 596-97 (2005).

of the town's interests with regional, state, and federal audiences, including public grants.¹³⁶ 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.¹³⁷ 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.¹³⁸

C. Scarcity and Market Thinness

Rural and distressed labor markets are also characterized by significant market thinness.¹³⁹ 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.¹⁴⁰ 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 in thin markets.¹⁴¹ 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

¹³⁶ See, e.g., HARDY GREEN, *THE COMPANY TOWN: THE INDUSTRIAL EDENS AND SATANIC MILLS THAT SHAPED THE AMERICAN ECONOMY* (2010).

¹³⁷ See, e.g., ALAN MANNING, *MONOPSONY IN MOTION* 361 (2003) (discussing inefficiencies and redistributive monopsony harms); Eric Posner & Cass Sunstein, *Antitrust and Inequality*, 2 AM. J.L. & INEQUALITY 190, 201-3; Patrick Kennedy & Harrison Wheeler, *Neighborhood-Level Investment from the U.S. Opportunity Zone Program: Early Evidence* 2-4 (April 12, 2021) (unpublished manuscript), https://www.olab.berkeley.edu/s/oz_kennedy_wheeler.pdf [<https://perma.cc/WBR9-G78R>] (explaining adverse effects of tax breaks); 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> [<https://perma.cc/UYV2-82JW>] (discussing corporations' shirking of taxes and subsequent negative effects on local economies).

¹³⁸ See ARNOLD R. ALANEN, *MORGAN PARK: DULUTH, U.S. STEEL, AND THE FORGING OF A COMPANY TOWN* 285 (2007); LINDA CARLSON, *COMPANY TOWNS OF THE PACIFIC NORTHWEST* 199 (2003) (describing the death of company towns and their struggle to rebuild); Kelli Roemer & Julia Haggerty, *Energy Transition as Fiscal Rupture*, 91 ENERGY RSCH. & SOC. SCI. 102751, 102751 (2022) (describing risks to public services from deindustrialization).

¹³⁹ See generally Manning, *supra* note 34 (describing labor market thinness).

¹⁴⁰ See, e.g., Marzena Rostek & Marek Weretka, *Thin Markets*, in *THE NEW PALGRAVE DICTIONARY OF ECONOMICS* (Steven N. Durlauf & Lawrence E. Blume eds., 2008).

¹⁴¹ See generally Korie Amberger & Jan Eeckhout, *Labor Market Liquidity* (Feb. 15, 2017) (unpublished manuscript), https://red-files-public.s3.amazonaws.com/meetpapers/2017/paper_839.pdf [<https://perma.cc/VSK8-63AV>].

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.¹⁴²

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.¹⁴³ 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.¹⁴⁴

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.¹⁴⁵ 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.

¹⁴² See, e.g., Marzena Rostek & Marek Weretka, *Dynamic Thin Markets*, 28 REV. FIN. STUD. 2946 (2015) (financial markets); Francis Longstaff, *Valuing Thinly-Traded Assets* 1 (Nat'l Bureau of Econ. Rsch., Working Paper 20589, 2014), https://www.nber.org/system/files/working_papers/w20589/w20589.pdf [<https://perma.cc/8PNJ-N5JK>] (listing types of thin markets); Mark Mitchell, Lasse Heje & Todd Pulvino, *Slow Moving Capital*, 97 AM. ECON. REV. 215, 215 (2007) (discussing slow moving capital in the context of the convertible bond market and mergers); Michael K. Adjemian, Tina L. Saitone & Richard J. Sexton, *A Framework to Analyze Thinly-Traded Agricultural Commodity Markets*, 98 AM. J. AGRIC. ECON. 581 (2016) (describing the thinness of agricultural commodity markets).

¹⁴³ See, e.g., Dwight Billings & Ann Tickamyer, *Uneven Development in Appalachia* (describing the instability of coal industry jobs in Appalachia), in FORGOTTEN PLACES: UNEVEN DEVELOPMENT IN RURAL AMERICA 7, 15 (Thomas Lyson & William W. Falk eds., 1993).

¹⁴⁴ Cf., e.g., Rex R. Campbell, John C. Campbell & Ravindra G. Amonker, *The Reported and Unreported Missouri Ozarks: Adaptive Strategies of the People Left Behind* (detailing strategies of adaptation undertaken by Ozark families in response to unstable income), in FORGOTTEN PLACES, *supra* note 143, at 30, 31-32.

¹⁴⁵ See, e.g., Li Gan & Qi Li, *Efficiency of Thin and Thick Markets* 3 (Nat'l Bureau of Econ. Rsch., Working Paper No. 10815, 2004), https://www.nber.org/system/files/working_papers/w10815/w10815.pdf [<https://perma.cc/AUT2-F9QP>] (noting higher transaction costs in thin markets).

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 health care industries.¹⁴⁶ 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.¹⁴⁷ 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.¹⁴⁸ Second, hospital workers in rural and distressed areas have

¹⁴⁶ See Arnold, *supra* note 32, at 3; Prager & Schmitt, *supra* note 32, at 397-98.

¹⁴⁷ See, e.g., BREWSTER KNEEN, *INVISIBLE GIANT: CARGILL AND ITS TRANSNATIONAL STATUS* 195 (2002) (describing how farmers became captive suppliers to Cargill, Inc. in the 1990s); PETER C. CARSTENSEN, *COMPETITION POLICY AND THE CONTROL OF BUYER POWER* 2 (2017) (describing the prevalence of monopsonies in America and their harmful effects on rural communities); *Introduction to REFORMING AMERICA'S FOOD RETAIL MARKETS* 4 (Thurman Arnold Project et al. eds., 2022), https://law.yale.edu/sites/default/files/area/center/isp/documents/grocery-compendium_may2023.pdf [<https://perma.cc/M48A-A7WV>] (outlining how corporate consolidation has reshaped the way Americans grow, market, sell and consume their food); Hafiz & Miller, *supra* note 7, at 4; Philip H. Howard, *Visualizing Consolidation in the Global Seed Industry: 1996-2008*, 1 *SUSTAINABILITY* 1266, 1266-67 (2009) (listing negative effects of consolidation in the commercial seed and other industries).

¹⁴⁸ See, e.g., U.S. DEP'T OF THE TREASURY, *supra* note 11, at 42-44; *Jien v. Perdue Farms, Inc.*, No. 19-CV-2521, 2022 WL 2818950, at *1 (D. Md. July 19, 2022); Office of Public Affairs, *Justice Department Files Lawsuit and Proposed Consent Decrees to End Long-Running Conspiracy to Suppress Worker Pay at Poultry Processing Plants and Address Deceptive Abuses Against Poultry Growers*, U.S. DEP'T OF JUST. (July 25, 2022), <https://www.justice.gov/opa/pr/justice-department-files-lawsuit-and-proposed-consent-decrees-end-long-running-conspiracy> [<https://perma.cc/LC8B-4P47>].

experienced suppressed pay and slower wage growth as a result of hospital consolidation and collusion on wage-setting, no-poaching, and information-sharing.¹⁴⁹ Private equity has also strengthened employer power in hospitals and nursing homes in rural and distressed areas through leveraged buyouts, closures, and staff reductions.¹⁵⁰

Private equity investments have increased twentyfold from 2003 to 2017, with increased consolidation, closures, and service loss during the COVID-19 pandemic.¹⁵¹

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.¹⁵² The digital divide and limited access to online banking exacerbates reduced access to banking services in these

¹⁴⁹ See e.g., U.S. DEP'T OF THE TREASURY, *supra* note 11, at 41-42; Off. of Pub. Affs., *Health Care Company Indicted for Labor Market Collusion*, U.S. DEP'T OF JUST. (Jan. 7, 2021), <https://www.justice.gov/opa/pr/health-care-company-indicted-labor-market-collusion> [<https://perma.cc/2EN7-26A2>]; *Fleischman v. Albany Med. Ctr.*, 728 F. Supp. 2d 130, 137 (N.D.N.Y. 2010); Prager & Schmitt, *supra* note 32, 397-98; Janet Currie, Mehdi Farsi & W. Bentley Macleod, *Cut to the Bone? Hospital Takeovers and Nurse Employment Contracts*, 58 INDUS. & LAB. REL. REV. 471, 471-72, 487 (2005).

¹⁵⁰ See, e.g., Austin A.B. Ownbey, DOJ, *FTC Scrutiny Tests Private Equity Firms*, BLOOMBERG L. (Sept. 23, 2022), <https://news.bloomberglaw.com/us-law-week/DOJ-FTC-Scrutiny-Tests-Private-Equity-Firms> [<https://perma.cc/3AMJ-2AHG>]; Sarah Jane Tribble, *Buy and Bust: When Private Equity Comes for Rural Hospitals*, KHN HEALTH NEWS (June 15, 2022), <https://khn.org/news/article/private-equity-rural-hospitals-closure-missouri-noble-health/> [<https://perma.cc/GH6Q-HEDA>]; Yasmin Rafiei, *When Private Equity Takes Over a Nursing Home*, THE NEW YORKER (Aug. 25, 2022), <https://www.newyorker.com/news/dispatch/when-private-equity-takes-over-a-nursing-home> [<https://perma.cc/H7LC-BD7C>].

¹⁵¹ 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_Ro2.pdf [<https://perma.cc/44PJ-7PFY>]; Anaëze C. Offodile II, Marcelo Cerullo, Mohini Bindal, Jose Alejandro Rauh-Hain & Vivian Ho, *Private Equity Investments in Health Care: An Overview Of Hospital And Health System Leveraged Buyouts, 2003-17*, 40 HEALTH AFFAIRS 719, 719 (2021); RICHARD M. SCHEFFLER, LAURA M. ALEXANDER & JAMES R. GODWIN, AM. ANTITRUST INST. *SOARING PRIVATE EQUITY INVESTMENT IN THE HEALTHCARE SECTOR: CONSOLIDATION, ACCELERATED, COMPETITION UNDERMINED, AND PATIENTS AT RISK* 2 (2021), <https://www.antitrustinstitute.org/wp-content/uploads/2021/05/Private-Equity-I-Healthcare-Report-FINAL-1.pdf> [<https://perma.cc/CC6B-P23Y>].

¹⁵² CONSUMER FIN. PROT. BUREAU, *DATA SPOTLIGHT: CHALLENGES IN RURAL BANKING ACCESS* 17 (April 2022), https://files.consumerfinance.gov/f/documents/cfpb_data-spotlight_challenges-in-rural-banking_2022-04.pdf [<https://perma.cc/HJY9-B3EG>] [hereinafter CFPB Report]; Christopher Leslie, *Banking Deserts, Structural Racism, and Merger Law*, 108 MINN. L. REV. 695, 747-59 (2023) [hereinafter *Banking Deserts*]; Mann, *supra* note 32; JASON RICHARDSON, BRUCE MITCHELL, JUAN FRANCO & YICHEN XU, NCRC, *BANK BRANCH CLOSURES FROM 2008-2016: UNEQUAL IMPACT IN AMERICA'S HEARTLAND* 1 (2017), https://ncrc.org/wp-content/uploads/2017/05/NCRC_Branch_Deserts_Research_Memo_050517_2.pdf [<https://perma.cc/JEG6-W8UN>].

areas.¹⁵³ Access to credit is critical for boosting entry and competition in imperfectly competitive markets, and empirical research confirms that bank consolidation has reduced new business entry and hiring while increasing racial inequality.¹⁵⁴

Matching Costs and Heterogeneous Preferences. A growing consensus of economists model labor markets as imperfectly competitive because of their unique, two-sided matching characteristics.¹⁵⁵ Unlike product markets, buyers and sellers have to choose each other, and both employers and workers have distinct heterogeneous preferences in employment choices.¹⁵⁶ 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.¹⁵⁷ 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.¹⁵⁸

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.¹⁵⁹ Search

153 See Taylor Witte, Eric A. DeVuyst, Brian Whitacre & Rodney Jones, *Modeling the Impact of Distance Between Offices and Borrowers on Agricultural Loan Volume*, 75 AGRIC. FIN. REV. 484, 484, 497 (2015); CFPB Report, *supra* note 152, at 7-10.

154 See Mann, *supra* note 32, at 1.

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

156 *Id.*; Azar, *supra* note 130, at 17-18.

157 See, e.g., Gizem Kosar, Tyler Ransom & Wilbert van der Klaauw, *Understanding Migration Aversion Using Elicited Counterfactual Choice Probabilities*, 231 J. OF ECONOMETRICS 123, 125-26 (2022) (describing how moving costs impact employment choices and create a preference for staying); Nikhil Agarwhal, *Policy Analysis in Matching Markets*, 107 AM. ECON. REV. 246, 249 (2017) (explaining how increasing the quantity of jobs in rural areas can improve matching outcomes); Robert M. Gibbs, *Rural Labor Markets in an Era of Welfare Reform* (describing how limited job openings in rural markets impact fit between worker and employer), in RURAL DIMENSIONS OF WELFARE REFORM (Bruce Weber, Greg J. Duncan & Leslie A. Whitener eds., 2002) 51, 54-55; Keywon Cheong, Michael B. Toney & William F. Stinner, *Racial Differences Among Young Men in the Selection of Metropolitan and Nonmetropolitan Destinations*, 51 RURAL SOCIO. 222, 224-25 (1986) (describing varied migration patterns between Black and White immigrants).

158 Gibbs, *supra* note 12, at 55 (explaining how rural job seekers rely on informal methods to find jobs).

159 See Ian Hodge, Jessica Dunn, Sarah Monk, & Maureen Fitzgerald, *Barriers to Participation in Residual Rural Labour Markets*, 16 WORK, EMP. & SOC'Y 457, 458-59 (2002) (describing how workers in rural labor markets struggle with lack of choice and low quality information); Colin

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.”¹⁶⁰ Further, labor market concentration reduces the number of employers and employees’ beliefs in the benefits of job search, reducing search effort.¹⁶¹

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.¹⁶² 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.¹⁶³ Without access to information about alternative jobs, workers suffer an anchoring bias, “believ[ing] their outside option is much closer to their current wage than it actually is.”¹⁶⁴ These information costs increase workers’ transaction risks and

Lindsay, Malcolm Greig & Ronald W. McQuaid, *Alternative Job Search Strategies in Remote Rural and Peri-urban Labor Markets: The Role of Social Networks*, 45 *SOCIOLOGICA RURALIS* 53, 55 (2005) (describing the importance of informal networks to rural economic life); Ioana Marinescu & Roland Rathelot, *Mismatch Unemployment and the Geography of Job Search*, 10 *AM. ECON. J.: MACROECONOMICS* 42, 50 (2018) (describing how job seekers are less likely to apply to jobs farther from their homes).

¹⁶⁰ Naidu & Posner, *supra* note 155, at S299; see Manning, *supra* note 34, at 124-25 (arguing that limited employment opportunities gives employers monopsony power over their workers); James W. Albrecht & Bo Axell, *An Equilibrium Model for Search Unemployment*, 92 *J. POL. ECON.* 824, 828 (1984) (describing the cost to a worker of continuing to search for jobs).

¹⁶¹ Prager & Schmitt, *supra* note 32, at 421-23 (noting that an employer who accounts for a large proportion of job vacancies reduces the expected benefits of a job search); U.S. Treasury Dep’t, *supra* note 11, at 6 (describing how workers with fewer alternative options have less bargaining power).

¹⁶² U.S. DEP’T OF THE TREASURY, *supra* note 11, at 7.

¹⁶³ OECD, *supra* note 82, at 7-9; Nick Mathews & Christopher Ali, *Desert Work: Life and Labor in a News and Broadband Desert*, 26 *MASS COMM’N & SOC’Y* 727, 727-28 (2022); George W. Zuo, *Wired and Hired: Employment Effects of Subsidized Broadband Internet for Low-Income Americans*, 13 *AM. ECON. J. ECON. POL’Y* 447, 447 (2021) (estimating that “[j]ob seekers without broadband are 21 percent less likely to use online resources for job search and face other obstacles to employment . . .”); Hilal Atasoy, *The Effects of Broadband Internet Expansion on Labor Market Outcomes*, 66 *ILR REV.* 315, 317-18 (2013) (describing how broadband boosts employment and job matching by spreading information).

¹⁶⁴ Simon Jäger, Christopher Roth, Nina Roussille & Benjamin Schoefer, *Worker Beliefs About Outside Options* 2 (Nat’l Bureau of Econ. Rsch., Working Paper No. 29623, 2022), <https://www.nber.org/papers/w29623> [<https://perma.cc/R62D-KLPC>].

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.¹⁶⁵

Mobility Costs. Finally, worker mobility costs are generally high.¹⁶⁶ 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.¹⁶⁷ 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.¹⁶⁸ And because workers do not receive full compensation for longer commutes, they have limited incentive to search for more distant work options.¹⁶⁹ Workers who want to move face high housing costs and occupational licensing restrictions limiting their mobility.¹⁷⁰ 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.¹⁷¹ Thus, particularly with non-college-

165 U.S. Treasury Dep't, *supra* note 11, at 7.

166 KATHRYN ANNE EDWARDS, ECON. POL'Y INST., *WORKER MOBILITY IN PRACTICE: IS QUITTING A RIGHT, OR A LUXURY?* 1, 20 (2022), <https://files.epi.org/uploads/215905.pdf> [<https://perma.cc/BB4B-5JJT>] (collecting studies of worker mobility costs).

167 *Id.* at 14-20 (describing the financial costs of job-to-job transitions for workers); Schleicher, *supra* note 60, at 104-07 (describing mobility barriers like the availability of local safety nets); JANE GRAVELLE, CONG. RSCH. SERV., R46212, *WAGE INEQUALITY AND THE STAGNATION OF EARNINGS OF LOW-WAGE WORKERS: CONTRIBUTING FACTORS AND POLICY OPTIONS* 15-17 (2022), <https://crsreports.congress.gov/product/pdf/R/R46212/3> (collecting studies on mobility impediments for low-wage workers).

168 See, e.g., Alexander W. Bartik, *Moving Costs and Worker Adjustment to Changes in Labor Demand: Evidence from Longitudinal Census Data* 6 (Oct. 1, 2018) (unpublished manuscript), https://static1.squarespace.com/static/5a0928c18dd0412bcdadea63/t/5bb291f69140b7394f34e16c/1538429444828/Bartik_2018_movingcosts.pdf [<https://perma.cc/HY3B-TXM9>] (describing the non-monetary costs associated with moving); Mike Zabek, *Local Ties in Spatial Equilibrium*, *Am. Econ. J.:* Macroeconomics (manuscript at 13) (forthcoming), https://mikezabek.com/pdf/LocalTies_Manuscript.pdf [<https://perma.cc/8FB5-MM2X>] (describing lower migration elasticities where workers have strong local ties).

169 Manning, *supra* note 34, at 124-25.

170 Schleicher, *supra* note 60, at 114-22 (explaining that local land use and licensing requirements make job market entry difficult); Peter Ganong & Daniel W. Shoag, *Why Has Regional Income Convergence in the U.S. Declined?* 5 (Nat'l Bureau of Econ. Rsch., Working Paper No. 23609, 2017), <https://www.nber.org/papers/w23609> [<https://perma.cc/3TTL-HFFW>] (showing that low-income workers no longer migrate to high-income areas due to housing costs); Janna E. Johnson & Morris M. Kleiner, *Is Occupational Licensing a Barrier to Interstate Migration?* 5 (Nat'l Bureau of Econ. Rsch., Working Paper No. 24107, 2017) (describing the costs of occupation licensing).

171 See Zachary Parolin & Tom VanHeuvelen, *The Cumulative Advantage of a Unionized Career for Lifetime Earnings*, 76 *ILR REV.* 452, 452 (2022) (finding that the union wage premium increases

educated workers, moving costs are substantial, reducing outside options and increasing incumbent employers' monopsony power.¹⁷²

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.¹⁷³ 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.¹⁷⁴ The causes of what economists call the "Great Divergence" are multiple and complex.¹⁷⁵ 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."¹⁷⁶

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.¹⁷⁷ Rural areas have lower labor force participation, and prime-age workers in distressed areas are one-fifth less likely to have a job when compared to workers in booming areas.¹⁷⁸ Poverty rates are also higher in

with more years of union membership); KATHRYN M. DOHERTY, SANDI JACOBS & TRISHA M. MADDEN, NAT'L COUNCIL ON TCHR. QUALITY, NO ONE BENEFITS: HOW TEACHER PENSION SYSTEMS ARE FAILING BOTH TEACHERS AND TAXPAYERS '1, 27 (2012), https://www.nctq.org/dmsView/No_One_Benefits_Teacher_Pension_Systems_NCTQ_Report [<https://perma.cc/8Z7R-A9QC>] (describing how teachers' pension benefits increase by staying at one job over time); Leora Friedberg, *Labor Market Aspects of State and Local Retirement Plans: A Review of Evidence and a Blueprint for Future Research*, 10 J. PENSION ECON. & FIN. 337, 338 (2011).

¹⁷² Tyler Ransom, *Labor Market Frictions and Moving Costs of the Unemployed and Employed*, 57 J. HUM. RES. S137, S144 (2022) (describing the incentive to stay at one job long-term).

¹⁷³ See, e.g., TIMOTHY NOAH, THE GREAT DIVERGENCE 28-43 (1st ed. 2012) (describing the history of a "great divergence" between the richest one percent and the middle class).

¹⁷⁴ MORETTI, *supra* note 13, at 88-111.

¹⁷⁵ See generally PAUL KRUGMAN, THE CONSCIENCE OF A LIBERAL 124-52 (2007) (summarizing debates about the cause of increasing income inequality); MORETTI, *supra* note 13, at 73-120 (same).

¹⁷⁶ Robert A. Manduca, *The Contribution of National Income Inequality to Regional Economic Divergence*, 98 SOC. FORCES 622, 622 (2019).

¹⁷⁷ Gloria Guzman, Kirby G. Posey, Alemayehu Bishaw & Craig Benson, *Poverty Rates Higher, Median Household Income Lower in Rural Counties than in Urban Areas*, U.S. CENSUS BUREAU (Dec. 6, 2018), <https://www.census.gov/library/stories/2018/12/differences-in-income-growth-across-united-states-counties.html> [<https://perma.cc/YZ7D-CVHE>] (describing lower median household income in rural areas); MORETTI, *supra* note 13, at 90 (noting that work experience, level of education, and IQ do not explain salary differences in rural areas compared to urban areas).

¹⁷⁸ See generally Jennifer Cheeseman Day, Donald Hays & Adam Smith, *A Glance at the Age Structure and Labor Force Participation of Rural America*, U.S. CENSUS BUREAU (Dec. 8, 2016), https://www.census.gov/newsroom/blogs/random-samplings/2016/12/a_glance_at_the_age.html [<https://perma.cc/N6AA-46Z2>]; TIMOTHY J. BARTIK, THE ASPEN INST. BRINGING JOBS TO

rural and distressed areas: 14.3% in mostly urban counties, 16.3% in mostly rural counties, 17.2% in completely rural counties, and 25% in distressed counties.¹⁷⁹ Additionally, rural and distressed communities suffer lower well-being along broader, non-economic metrics as well, including life expectancy, family stability, and suicide rates.¹⁸⁰ While some of the divergence relates to relative cost of living, local economies surrounding workers matter: 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.¹⁸¹

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.¹⁸² 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.¹⁸³ Economists have also modeled how labor market concentration

PEOPLE: IMPROVING LOCAL ECONOMIC DEVELOPMENT POLICIES (2020), https://www.economicstrategygroup.org/wp-content/uploads/2020/09/Bringing-Jobs-to-People_Bartik.pdf.

¹⁷⁹ Guzman, Posey, Bishaw & Benson, *supra* note 177; ECON. INNOVATION GRP., *supra* note 8, at 7.

¹⁸⁰ MORETTI, *supra* note 13, at 107-14 (discussing lower life expectancy and family stability); Judith Casant & Marco Helbich, *Inequalities of Suicide Mortality Across Urban and Rural Areas: A Literature Review*, INT'L J. ENVIRON. RSCH. & PUB. HEALTH, 2022, at 1, 9 (describing high rates of suicide mortality among urban workers).

¹⁸¹ MORETTI, *supra* note 13, at 99.

¹⁸² Azar, Marinescu & Steinbaum, *supra* note 31, at S169, S197 (showing that increasing labor market concentration is associated with lower wages); Prager & Schmitt, *supra* note 32, at 423-24 (showing reduced wage growth following increased labor market concentration post-merger); Arnold, *supra* note 32, at 3-4; Chen Yeh, Claudia Macaluso & Brad Hershbein, *Monopsony in the US Labor Market*, 112 AM. ECON. REV. 2099, 2103 (2022) (discussing monopsony power and stagnant wage growth for low-income workers); Arindrajit Dube, Suresh Naidu & Adam D. Reich, *Power and Dignity in the Low-Wage Labor Market: Theory and Evidence from Wal-Mart Workers* 30-31 (Nat'l Bureau of Econ. Rsch., Working Paper No. 30441, 2022), <https://www.nber.org/papers/w30441> [<https://perma.cc/VA3V-E3AV>] (measuring monopsony effects in wages and non-wage amenities, like dignity at work).

¹⁸³ See Claudio Luccioletti, *Labor Market Power Across Cities* 13 (2022) (finding wage premium and employment gap effects between small and large cities attributable to differences in labor market power across locations), https://ideas.repec.org/p/cmfi/wpaper/wp2022_2214.html; Boris Hirsch, Elke J. Jahn, Alan Manning & Michael Oberfichtner, *The Urban Wage Premium in Imperfect Labor Markets*, 57 J. HUM. RES. S111, S121 (2022) (finding observed urban wage premia attributable to denser labor markets).

and monopsony result in deadweight loss, or how underutilized workers resulting in higher unemployment.¹⁸⁴

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.¹⁸⁵

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, substantive and design features of that infrastructure, combined with deregulatory shifts, have weakened the bargaining leverage of workers 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.”¹⁸⁶ It conceptually draws from legal realism, institutional and labor economics, and law and political economy to identify the rights and liability regimes that determine the relative bargaining power of employers and workers that, in turn, shape the terms and distributional gains from the employment bargain.¹⁸⁷

A. Federal Employment Policy and Workforce Investment

“Place-based employment policies” are the set of monetary, fiscal, and trade policies the federal government deploys to shape employment in geographically specific ways. These policies create background conditions

184 See, e.g., Suresh Naidu, Eric A. Posner & Glen Weyl, *Antitrust Remedies for Labor Market Power*, 132 HARV. L. REV. 536, 564-68 (2018) (explaining economic modeling to discern effects of labor market power on aggregate disemployment and deadweight loss).

185 See, e.g., *id.* at 537, 565 (arguing wage suppression “enhances income inequality”).

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

187 For more detailed discussions, see Hafiz, *The Brand Defense*, *supra* note 35, at 4-7, 9-11; Hafiz, *Structural Labor Rights*, *supra* note 35, at 661-64; Hiba Hafiz & Ioana Marinescu, *Labor Market Regulation and Worker Power*, 90 U. CHI. L. REV. 469, 469 (2023).

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.¹⁸⁸ 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 rural and distressed communities suffering persistent recessions 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.¹⁸⁹ 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 neoliberalism 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.¹⁹⁰ This Section describes how, combined, place-based employment policies have ignored and even exacerbated market failures that rural and distressed labor markets confront, all 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

¹⁸⁸ See Austin, Glaeser & Summers, *supra* note 60, 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.

¹⁸⁹ “Place-based industrial policy” is economic policy that intervenes in specific industries and locations to effectuate growth. For a general description of industrial policy, see generally Anshu Siripurapu & Noah Berman, *Is Industrial Policy Making a Comeback?*, COUNCIL ON FOREIGN RELS., <https://www.cfr.org/backgrounder/industrial-policy-making-comeback?> [https://perma.cc/6R8Y-3GMX] (last updated Sept. 18, 2023); Amy Kapczynski & Joel Michaels, *Administering a Democratic Industrial Policy*, 18 HARV. L. & POL’Y REV. 3-18 (forthcoming 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4711216.

¹⁹⁰ See STEVEN ATTEWELL, *PEOPLE MUST LIVE BY WORK: DIRECT JOB CREATION IN AMERICA, FROM FDR TO REAGAN* 38-40 (2018) (discussing historically positive effects of government spending on the American economy); KIM PHILLIPS-FEIN, *INVISIBLE HANDS: THE MAKING OF A CONSERVATIVE MOVEMENT FROM THE NEW DEAL TO REGAN 167-84* (2009) (discussing deregulation of industry in the 1970s); Michael Dennis, *The Idea of Full Employment: A challenge to Capitalism in the New Deal Era*, 14 LAB.: STUD. WORKING-CLASS HIST. AMS. 69, 71-90 (2017) (detailing the concept of full employment in the New Deal era).

currency by increasing the money supply to increase local demand.¹⁹¹ 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.¹⁹² 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.¹⁹³ Economists in Roosevelt’s “brain trust” believed attaining full employment through monetary expansion would not increase inflation.¹⁹⁴ Postwar 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.¹⁹⁵

¹⁹¹ See YAIR LISTOKIN, *LAW AND MACROECONOMICS* 17-18, 97, 170-74 (2019); HIBA HAFIZ, ROOSEVELT INST., *A WHOLE-OF-GOVERNMENT APPROACH TO INCREASING WORKER POWER* 22-24 (2022).

¹⁹² See Anastasia Burya, Rui C. Mano, Yannick Timmer & Anke Weber, *Monetary Policy Under Labor Market Power* (Int’l Monetary Fund, Working Paper No. 128, 2022), <https://www.imf.org/en/Publications/WP/Issues/2022/07/01/Monetary-Policy-Under-Labor-Market-Power-520239> [<https://perma.cc/Z3H8-EQHG>] (finding “striking evidence that labor market power strengthens the effect of monetary policy on labor demand.”).

¹⁹³ See BARRY EICHENGREEN, *GOLDEN FETTERS* 4, 21 (1992) (discussing the effects of abandoning the gold standard); J. Bradford De Long & Lawrence H. Summers, *How Does Macroeconomic Policy Affect Output?*, 1988 *BROOKINGS PAPERS ON ECON. ACTIVITY* 434, 470-71, https://www.brookings.edu/wp-content/uploads/1988/06/1988b_bpea_delong_summers_mankiw_romer.pdf [<https://perma.cc/B8XL-VES7>] (finding evidence that demand management policies after the Depression brought “considerable improvement in U.S. macroeconomic performance . . .”).

¹⁹⁴ See, e.g., WARREN J. SAMUELS, *ESSAYS IN THE HISTORY OF HETERODOX POLITICAL ECONOMY* 326-27 (1992) (discussing various approaches to managing inflation and employment); ATTEWELL, *supra* note 190, at 147-48 (describing arguments for “full employment without inflation”).

¹⁹⁵ For a description of the Keynesian approach, see RICHARD PARKER, JOHN KENNETH GALBRAITH: *HIS LIFE, HIS POLITICS, HIS ECONOMICS* 344-45 (2005).

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 postwar 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 1946.¹⁹⁶ The Act granted the Federal Reserve its “dual mandate” to flexibly weigh full employment goals with its obligation to maintain price stability.¹⁹⁷ But the Act “reflected the business community’s hostility to an expanded role for government in markets” by “strip[ping] out the connection between labor market policy and macro-economic stability,” substituting indirect regulation of labor market tightness through monetary policy for more aggressive fiscal spending on direct job creation.¹⁹⁸

Since the Eisenhower administration, and starting more aggressively in 1973, the Fed has tightly controlled the money supply, using interest rate hikes to combat perceived inflation risks emerging out of the 1970-1971 recession.¹⁹⁹ 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 *increase* rather than lower inflation, as Keynesians had argued.²⁰⁰ 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.²⁰¹

196 ELISABETH JACOBS, BROOKINGS, PRINCIPLES FOR REFORMING WORKFORCE DEVELOPMENT AND HUMAN CAPITAL POLICIES IN THE UNITED STATES 3 (2013), <https://www.brookings.edu/wp-content/uploads/2016/06/FedRoleWorkforceDev.pdf> [<https://perma.cc/7LFZ-XC92>].

197 Under a 1977 amendment to the Federal Reserve Act, Congress assigned the Federal Reserve monetary policy responsibility to promote “the goals of maximum employment, stable prices, and moderate long-term interest rates,” commonly understood as the “dual mandate.” 12 U.S.C. § 225a. *But see* Aaron Steelman, *The Federal Reserve’s “Dual Mandate”* 1-2 (Fed. Rsrv. Bank of Richmond, Economic Brief 11-12, 2011), https://www.richmondfed.org/publications/research/economic_brief/2011/eb_11-12 [<https://perma.cc/X9TE-7ELC>] (discussing the implications of the bill’s lack of language regarding a “right” to employment or the importance of maintaining purchasing power).

198 Jacobs, *supra* note 196, at 4.

199 *Cf. Memorandum of Discussion, Federal Open Market Committee Meeting*, FED. RSRV., Feb. 10, 1970, at 44-46, <https://www.federalreserve.gov/monetarypolicy/files/fomcmo19700210.pdf> [<https://perma.cc/NZX3-W5DC>] (discussing continued inflation and the “uncertain outlook for effective fiscal restraint”).

200 Milton Friedman, *The Role of Monetary Policy*, 58 AM. ECON. REV. 1, 8 (1968).

201 Humphrey-Hawkins Act, Pub. L. No. 95-523, 92 Stat. 1887, 1887-90 (1978); *see* ATTEWELL, *supra* note 190, at 212 (“[T]he prestige of Keynesian economics was used to delegitimize the goals

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 perceived hold on wage strength. First, as persistent unemployment and inflation—"stagflation"—extended through the 1970s, Carter responded with draconian monetary policy measures, appointing Paul Volcker as Chair of the Federal Reserve to oversee a dramatic increase in interest rates from around 10% in 1979 to 19.1% by 1981.²⁰² 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% in December 1982.²⁰³ Reagan paired anti-inflationary policy with dismantling unions.²⁰⁴ 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.²⁰⁵

and methods of the [Humphrey-Hawkins Act] . . ."); Tim Barker, *Preferred Shares*, PHENOMENAL WORLD (June 24, 2021), <https://www.phenomenalworld.org/analysis/preferred-shares/> [<https://perma.cc/WW2E-N8D9>] (discussing Fed Chair Volker's policies in the late 1970s); Jeff Bloodworth, "The Program for Better Jobs and Income": *Welfare Reform, Liberalism and the Failed Presidency of Jimmy Carter*, 81 INT'L SOC. SCI. REV. 135, 136-38 (2006) (explaining the motivations for the Humphreys-Hawkins Act); Daniel J. B. Mitchell & Christopher L. Erickson, *Not Yet Dead at the Fed: Unions, Worker Bargaining, and Economy-Wide Wage Determination*, 44 INDUS. RELS. 565, 565-66 (2005) (discussing trends in the academic literature that motivated legislative reform).

202 FRED Graph, ST. LOUIS FED, <https://fred.stlouisfed.org/graph/?g=mbK> [<https://perma.cc/UWP9-QQXV>] (last visited Mar. 22, 2024) (capturing the federal funds effective rate and the employment rate from 1968 to 1985).

203 See *Unemployment Rate*, ST. LOUIS FED, <https://fred.stlouisfed.org/series/UNRATE> [<https://perma.cc/7R36-ENVM>] (last visited Mar. 22, 2024) (capturing the unemployment rate from 1948 to 2024); Marvin Goodfriend & Robert G. King, *The Incredible Volcker Disinflation*, 52 J. MONETARY ECON. 981, 982 (2005) ("During [the early 1980s], the U.S. experienced two recessions generally attributed to disinflationary monetary policy, the 1981-1982 recession exhibiting the largest cumulative business cycle decline of employment and output in the post-World War II period.").

204 See Michael J. Piore, *A Critique of Reagan's Labor Policy*, 29 CHALLENGE 48, 48 (1986) (discussing the Reagan administration's focus on eliminating unions as wage-setters); Daniel Tope & David Jacobs, *The Politics of Union Decline: The Contingent Determinants of Union Recognition Elections and Victories*, 74 AM. SOC. REV. 842, 858 (2009) ("Reagan's victory over the PATCO strikers, as well as conservative shifts in NLRB appointments, led to reductions in elections and union victories."); see also Tim Barker, *From Keynes to Keynesians*, VERSO BLOG (2020), <https://www.versobooks.com/blogs/news/4936-from-keynes-to-the-keynesians-socialised-investment-and-the-spectre-of-full-employment> [<http://perma.cc/UHQ9-3WNR>] (arguing that the Volcker Shock destroyed high-cost low-profit firms and restored average aggregate profitability).

205 See KATE BRONFENBRENNER, *ECON. POL'Y INST., NO HOLDS BARRED: THE INTENSIFICATION OF EMPLOYER OPPOSITION TO ORGANIZING 4* (2009) (arguing that employer opposition since the 1980s has kept union density in the workforce much lower than non-managerial workers desire); Richard B. Freeman, *Contraction and Expansion: The Divergence of Private Sector and*

Since the Volcker Shock, workers' wages have lagged behind productivity, and labor's share of national income has declined.²⁰⁶ Income inequality has also sharply increased due to "massive changes in the pre-tax distribution of national income" since 1980: the top 1% of adults earned an average of 27 times more than the bottom 50% of adults in 1980, increasing to nearly 81 times today.²⁰⁷ Monetary policy shocks increased geographic divergence by disproportionately decreasing income and employment levels in poorer areas.²⁰⁸

After the 2008 financial crisis, the Fed's expansionary monetary policy compressed wages and reduced inequality between low-wage and median-wage workers.²⁰⁹ 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 the decline of labor's share of income.²¹⁰ Further, while the causes of inflation during the COVID-19 pandemic recovery are still debated, the pandemic itself likely increased wage inequality, and the Fed's return to

Public Sector Unionism in the United States, 2 J. ECON. PERSPS. 63, 75-78 (1988) (analyzing potential causes of the decline of union density in the workforce, including the policies of the Reagan NLRB); Tope & Jacobs, *supra* note 204, at 846 (arguing that Reagan's breaking of the PATCO strike sent a message about his animosity towards unions).

²⁰⁶ From 1979 to 2020, the productivity-wage gap increased, with productivity growing 3.5 times as much as pay today. See 'The Productivity-Pay Gap', ECON. POL'Y INST. (Oct. 2022), <https://www.epi.org/productivity-pay-gap/> [<https://perma.cc/D8MZ-PQ76>]; Michael D. Giandrea & Shawn Sprague, *Estimating the U.S. Labor Share*, MONTHLY LAB. REV. (Feb. 2017), <https://doi.org/10.21916/mlr.2017.7> ("[C]hanges in labor share help explain the extent of the 'wage gap' between growth in labor productivity and growth in real hourly compensation .").

²⁰⁷ Thomas Piketty, Emmanuel Saez & Gabriel Zucman, *Distributional National Accounts: Methods and Estimates for the United States* 3 (Nat'l Bureau of Econ. Rsch., Working Paper No. 22945, 2016), https://www.nber.org/system/files/working_papers/w22945/w22945.pdf [<https://perma.cc/C5GB-VGW6>].

²⁰⁸ For discussion of the impact of "aggregate shock" on local labor markets, see Juan Herreño & Mathieu Pedemonte, *The Geographic Effects of Monetary Policy* 1-5 (Fed. Rsrv. Bank of Cleveland, Working Paper No. 22-15, 2022), <https://www.clevelandfed.org/en/publications/working-paper/2022/wp-2215-the-geographic-effects-of-monetary-policy> [<https://perma.cc/4ZXW-RBEV>].

²⁰⁹ See, e.g., Clem Aeppli & Nathan Wilmers, *Rapid Wage Growth at the Bottom Has Offset Rising US Inequality*, 119 'PNAS 1, 1 (2022), <https://doi.org/10.1073/pnas.2204305119> ("[F]ollowing recovery from the Great Recession, low-wage workers have experienced rapid earnings growth . . ."); David Autor, Arindrajit Dube & Annie McGrew, *The Unexpected Compression: Competition at Work in the Low Wage Economy* 13-14 (Nat'l Bureau of Econ. Rsch., Working Paper No. 31010, 2023) https://www.nber.org/system/files/working_papers/w31010/w31010.pdf [<https://perma.cc/H6QT-NGKD>] (showing substantial wage growth in the bottom of the wage distribution from 2020 to 2023, even as inflation consumed nominal gains above the median).

²¹⁰ See, e.g., LEV MENAND, THE FED UNBOUND: CENTRAL BANKING IN A TIME OF CRISIS 19 (2022) (arguing that Federal Reserve purchases of assets to combat economic stagnation following the Great Recession disproportionately benefitted asset holders); cf. *Share of Labour Compensation in GDP at Current National Prices for United States*, ST. LOUIS FED (2022) <https://fred.stlouisfed.org/series/LABSHPUA156NRUG> [<https://perma.cc/64AP-299L>] (showing an increase in the share of labor compensation in GDP in the United States since 2010).

interest rates hikes has already squeezed worker earnings, particularly in rural and distressed communities.²¹¹

2. Fiscal Policy, Trade Policy, and Geographic Inequality

Where monetary policy indirectly regulated the value of worker earnings with geographically divergent effects, centralized fiscal policy 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.²¹² But beginning in the Nixon administration, and then more fully in the Reagan administration, New Federalism and neoliberal employment policies dismantled federal job guarantees as well as place-based anti-poverty and place-based 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, as well as by 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*

A suite of federal employment policies drove the Roosevelt administration's response to the Depression. These included unprecedented programs of direct job creation, primarily through the Works Progress Administration (WPA) and Public Works Administration (PWA). But they

²¹¹ Compare Joe Piacentini, Harley Frazis, Peter B. Meyer, Michael Schultz & Leo Sveikauskas, *The Impact of COVID-19 on Labor Markets and Inequality* 8 (U.S. Bureau Lab. Stat., Working Paper No. 551, 2022), <https://www.bls.gov/osmr/research-papers/2022/pdf/ec220060.pdf> ("Overall, while the pandemic itself eroded incomes and widened inequality, policy responses more than offset these effects, rendering 2020 incomes more equal than those of 2019."), with Dean Baker, *The Fed's Interest Rate Hikes Are Going 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> [<https://perma.cc/7j96-H8KG>] ("[T]he Fed's rate hikes [are] throwing people out of work to put downward pressure on wages . . .").

²¹² See Nunn, Parsons & Shambaugh, *supra* note 51, at 17 ("Robust convergence in regional income is also apparent throughout much of the 20th century. States were converging economically from the late 1800s to the 1980s, in terms of both per capita income and gross state product."); cf. Robert J. Barro & Xavier Sala-i-Martin, *Convergence*, 100 J. POL. ECON. 223, 234-35 (1992).

also included infrastructure investment and direct industry and wage regulation. Combined, these programs fundamentally reshaped the federal government's relationship with American workers. They generated long-term benefits for regional development and agglomeration economies around the country.²¹³ The federal government's labor market investment, particularly in low-skilled workers, compressed wages and narrowed the income gap, both in general and between places, more than any period in American history.²¹⁴

Roosevelt's brain trust viewed the government's direct job creation as generating an "auxiliary industry" capable of increasing demand and effectuating countercyclical planning.²¹⁵ 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.²¹⁶ The WPA employed between 8.5 and 13 million workers and provided jobs for as many as 40% of unemployed Americans, while the PWA employed more than one million Americans per year between 1934 and 1938.²¹⁷ The Board for Public Works distributed "work

²¹³ See ATTEWELL, *supra* note 190, at 90-128 (discussing the effects and successes of the direct job creation of the Works Progress Administration (WPA); see also Andrew Garin & Jonathan Rothbaum, *The Long-Run Impacts of Public Industrial Investment on Regional Development and Economic Mobility: Evidence from World War II* 9 n.9 (July 22, 2022) (unpublished manuscript) (on file with author), <https://drive.google.com/file/d/1RD48bbTv66oiIftWRggWppgMPPVck-65/view> [<https://perma.cc/9MLF-ZMGD>] (noting that infrastructure spending on New Deal-era direct employment programs almost tripled spending authorized for 2009 American Recovery and Reinvestment Act infrastructure spending); Daniel P. Gross & Bhaven N. Sampat, *America, Jump-Started* 1-2 (Nat'l Bureau of Econ. Rsch., Working Paper No. 27375, 2023), <https://www.nber.org/papers/w27375> [<https://perma.cc/4B7C-6GJH>] (arguing that the wartime surge in research and development activity caused growth in local industrial employment); Patrick Kline & Enrico Moretti, *Local Economic Development, Agglomeration Economies, and the Big Push*, 129 Q.J. ECON. 275, 276-78 (2014) (discussing local employment increases caused by federal funding of the Tennessee Valley Authority).

²¹⁴ See Claudia Goldin & Robert A. Margo, *The Great Compression: The Wage Structure in the United States at Mid-Century*, 107 Q.J. ECON. 1, 2-4 (1992) ("When the United States emerged from war and depression, it had not only a considerably lower rate of unemployment, it also had a wage structure more egalitarian than at any time since."). For a more in-depth history of federal employment policy, see generally Hiba Hafiz, *The Law of Workforce Development and Geographic Inequality* (unpublished manuscript) (on file with author).

²¹⁵ ATTEWELL, *supra* note 190, at 38-40, 53, 64 (quoting Lewis Baxter, "National Balance Sheet," Records of Committee on Econ. Security).

²¹⁶ ATTEWELL, *supra* note 190, at 59, 70.

²¹⁷ There are various statistical accounts of the WPA's and PWA's effects on unemployment. See, e.g., ENCYCLOPEDIA OF U.S. LABOR AND WORKING CLASS HISTORY 1540 (Eric Arneson ed., 2007) (estimating that the WPA employed approximately thirteen million people total and more than three million annually); J.K. GALBRAITH, G.G. JOHNSON, JR., PUB. WORKS COMM., THE ECONOMIC EFFECTS OF FEDERAL PUBLIC WORKS EXPENDITURES 1933-1938, at 48 tbl.11 (1940) (listing the number of yearly employees of the PWA and other federal works program projects between 1933 and 1938, and establishing a five year average of more than one million employees); *WPA Pays Up and Quits*, N.Y. TIMES (July 1, 1943) (reporting that the WPA employed eight and half million people before it was dissolved); Michael R. Darby, *Three-and-a-Half Million Employees Have*

opportunities . . . geographically, as widely and as equitably as . . . practicable.”²¹⁸

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 agriculture jobs to better-paying manufacturing jobs that increased median family income.²¹⁹ 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*.”²²⁰ In 1935, the TVA adopted a policy of collective bargaining with all its employees, boosting unionization rates in a traditionally non-union area.²²¹ The TVA created over 250,000 jobs with a multiplier effect of at least two, increasing total area jobs by over 500,000.²²²

World War II also generated significant geographically dispersed, place-based workforce investment with strategically sited government-funded plants outside urban centers to maximize capacity and security.²²³ War production was regulated by the War Production and War Labor Boards (WPB and WLB, respectively), which oversaw price-setting, wage-setting, and collective bargaining disputes. The WLB required that 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 twelve million workers.²²⁴ Government-financed

Been Mislead: Or, an Explanation of Unemployment, 1934-1941, 84 J. POL. ECON. 1, 4, 8 (1976) (arguing federal emergency workers were improperly classified as unemployed, leading to inflated unemployment numbers in the 1930s and early 1940s).

²¹⁸ *Employment Conditions and Unemployment Relief*, 37 MONTHLY LAB. REV. 797, 797 (1933).

²¹⁹ See Kline & Moretti, *supra* note 213, at 276-78 (concluding the TVA increased wages by shifting employment to manufacturing and expanding the number of manufacturing jobs in the region). For political background on the program, see 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. Tennessee Valley Authority Act of 1933, 48 Stat. 59, § 3 (1933); 16 U.S.C. § 831b(b).

²²⁰ James Branscome, *The Federal Government in Appalachia: TVA*, in COLONIALISM IN MODERN AMERICA: THE APPALACHIAN CASE at 284 (Helen Lewis, Linda Johnson & Donald Askins eds., 1978).

²²¹ U.S. GOV’T ACCOUNTABILITY OFF., GAO-91-129, *TVA NEEDS TO IMPROVE 12-13* (1991), <https://www.gao.gov/assets/ggd-91-129.pdf> [<https://perma.cc/P95G-KBNL>].

²²² Bartik, *Helping America’s Distressed Communities*, *supra* note 117, at 12 n.10 .

²²³ Garin & Rothbaum, *supra* note 213, at 7-8 (explaining that military objectives drove manufacturing siting outside of urban areas).

²²⁴ See Marcus Manoff, *The National War Labor Board and the Maintenance-of-Membership Clause*, 57 HARV. L. REV. 183, 183 n.2 (1943) (reproducing the WLB’s “standard maintenance-of-

plants for war-related production expanded higher-wage manufacturing work and permanently increased regional employment.²²⁵ Federal funding for war-related research and development (R&D) also created agglomeration economies in technology clusters, increasing local industrial employment and firm creation in related industries.²²⁶

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.²²⁷ It recommended direct job creation to ensure countercyclical labor demand and a minimum level of yardstick competition for wage and hour floors.²²⁸ It also recommended industry development in "depressed or underdeveloped areas" along the TVA model.²²⁹ 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.²³⁰ But, as discussed, despite overwhelming support for direct job creation, Congress's Full Employment Act failed to legislate this program.²³¹ The final Act replaced a federal job guarantee with an intention "to promote full employment, production, and purchasing power."²³² Failure to preserve a direct job creation program eroded the federal government's institutional capacity to adopt a structural approach to labor market policy.²³³

membership clause"); Leo Troy, *Trade Union Membership, 1897-1962*, 47 REV. ECON. & STAT. 93, 93 (1965) (showing the increase in trade union membership from 1933 to 1945).

²²⁵ Garin & Rothbaum, *supra* note 213, at 4; *see also* Henry S. Farber, Daniel Herbst, Ilyana Kuziemko & Suresh Naidu, *Unions and Inequality over the Twentieth Century: New Evidence from Survey Data*, 136 Q.J. ECON. 1325, 1372 (2021) (arguing that union density during this period had a causal effect on the reduction in inequality); Andreas Ferrara, *World War II and Black Economic Progress* 40 J. LAB. ECON. 1053, 1059 (2022) (explaining the positive employment effects for Black workers).

²²⁶ Gross & Sampat, *supra* note 213, at 1-2 .

²²⁷ For those recommendations, see NAT'L RES. PLANNING BD., SECURITY, WORK, AND RELIEF POLICIES 502-03 (1942) [hereinafter NRPB REPORT]. *See also Reconversion Lag Seen by Industry*, N.Y. TIMES, Aug. 11, 1945 (describing national efforts to convert the post-War economy); Felix Belair Jr., *Homefront Problems Press for Solutions*, N.Y. TIMES (Aug. 12, 1945).

²²⁸ NRPB REPORT, *supra* note 227, at 250-52, 344-53, 491, 505-13.

²²⁹ *Id.* at 504.

²³⁰ *Id.* at 503.

²³¹ *See supra* note 196; RUTH ELLEN WASEM, TACKLING UNEMPLOYMENT: THE LEGISLATIVE DYNAMICS OF THE EMPLOYMENT ACT OF 1946, at 44, 52-57 (2013) (showing broad support for federal full-employment programs in 1943).

²³² Employment Act of 1946, §§ 2(a), 10(a) (3).

²³³ *See* MARGARET WEIR, POLITICS AND JOBS: THE BOUNDARIES OF EMPLOYMENT POLICY IN THE UNITED STATES 10, 64-72 (1993) (describing congressional and Department of Labor efforts to enact labor policy after the declaration of the War on Poverty); ATTEWELL, *supra* note 190, at 172-74.

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.²³⁴ 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."²³⁵

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 its War on Poverty programs.²³⁶ 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.²³⁷ 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."²³⁸ Federal control enabled the Johnson administration to concentrate spending in areas that suffered racial exclusion from state and local government programs.²³⁹ 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

234 See ALICE O'CONNOR, *POVERTY KNOWLEDGE: SOCIAL SCIENCE, SOCIAL POLICY, AND THE POOR IN TWENTIETH-CENTURY U.S. HISTORY* 143-45 (2001) (describing CEA's efforts to alleviate poverty despite President Kennedy's spending conservatism).

235 See ATTEWELL, *supra* note 190, at 180 (quoting Walter Heller).

236 See, e.g., PARKER, *supra* note 195, at 481-83 (discussing mainstream American economists early study of domestic poverty). See generally MICHAEL HARRINGTON, *THE OTHER AMERICA* (1962) (discussing the racialized nature of poverty in the U.S. and the failure of the Johnson administration to fully address the problem); ATTEWELL, *supra* note 190, at 172-209 (discussing the relationship between the Johnson administration's War on Poverty and the civil rights movement in the context of jobs policy).

237 Economic Opportunity Act of 1964, Pub. L. No. 88-452 §§ 112, 201-21, 78 Stat. 508, 512, 516-24; see also ROBERT HALPERN, *REBUILDING THE INNER CITY: A HISTORY OF NEIGHBORHOOD INITIATIVES TO ADDRESS POVERTY IN THE UNITED STATES* 171-92 (1995) (summarizing the rise of neighborhood-based public-assistance programs in the Kennedy and Johnson administrations); Martha J. Bailey & Nicolas J. Duquette, *How Johnson Fought the War on Poverty: The Economics and Politics of Funding at the Office of Economic Opportunity*, 74 J. ECON. HIST. 351, 358 (2014); Ryan Laroche, *Reassessing the History of the Community Action Program, 1963-1967*, 31 J. POL'Y HIST. 126, 127 (2019).

238 Economic Opportunity Act §§ 202, 205(a). The OEO Director's discretion to spend directly required a consideration of statutory eligibility "factors." See Economic Opportunity Act § 205(c§).

239 See Bailey & Duquette, *supra* note 237, at 352-54, 359 .

and access to medical services.²⁴⁰ 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.²⁴¹ And it invested in technological development that fueled Space Race R&D while increasing place-based manufacturing and employment.²⁴²

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.²⁴³ Nor did it seek to effectuate redistribution by addressing land monopolies and state and local under-taxation of corporations.²⁴⁴ The programs primarily concentrated on private-sector investment, including through tax credits that Paul Samuelson, Kennedy's chief economic advisor, described as "a bribe to capital formation."²⁴⁵ 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).²⁴⁶ CETA replaced War on Poverty programs to provide jobs in distressed communities with high unemployment rates.²⁴⁷ While administered by the Department of

240 Greta DeJong, *Staying in Place*, 90 J. AFR. AM. HIST. 387, 388, 392-95, 399 (2005). *But see* David Torstensson, *Beyond the City*, 25 J. POL'Y HIST. 587, 591-92 (2013) (discussing the history of racial discrimination in the provision of federal funding).

241 *See* Appalachian Regional Development Act of 1965, Pub. L. No. 89-4, 79 Stat. 5 (establishing ARC); MICHAEL BRADSHAW, *THE APPALACHIAN REGIONAL COMMISSION: TWENTY-FIVE YEARS OF GOVERNMENT POLICY* 31-46 (1992) (describing the origins and early operation of ARC).

242 Shawn Kantor & Alexander T. Whalley, *Moonshot: Public R&D and Growth* 23-27 (Nat'l Bureau of Econ. Rsch., Working Paper No. 31471, 2023) (describing the predominantly local-economy effects of NASA contractor spending).

243 *See* JAMES BRANSCOME, *THE FEDERAL GOVERNMENT IN APPALACHIA* 28 (1977).

244 *Id.*

245 *See* PAUL SAMUELSON, *ECONOMICS* 769 (Paul A. Samuelson & William D. Nordhaus eds., 14th ed. 1967); Barker, *supra* note 201.

246 Comprehensive Employment and Training Act of 1973, Pub. L. 93-203, 87 Stat. 839.

247 *See* JILL QUADAGNO, *THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY* 85 (1994) ("[U]nlike the training programs of the 1960s, CETA no longer directed funds to the most disadvantaged."); ADVISORY COMM'N ON INTERGOVERNMENTAL RELS., *COUNTERCYCLICAL AID AND ECONOMIC STABILIZATION* 30 (1978) ("The goal of 725,000

Labor, “prime sponsors”—local and state governments—selected local service delivery agents.²⁴⁸ CETA was a shadow of the WPA: it never covered more than 10% of the unemployed, and its “security wages” functioned as a form of workfare.²⁴⁹ The Ford and Carter administrations scaled CETA back, primarily on fiscal conservatism grounds, and the program was persistently threatened by spending cuts.²⁵⁰

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.²⁵¹ The JTPA reoriented employment policy from targeting structural labor market deficiencies through job creation to alleviating perceived worker deficiencies through private human capital investment.²⁵² 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.²⁵³ The JTPA replaced community-based organizations’ planning role with Private Industry Councils (PICs), which were private-sector, employer-led business councils that contractors could

jobs to be funded by the CETA program was reached six months after the final allocations were determined.”).

²⁴⁸ QUADAGNO, *supra* note 247, at 150-51 .

²⁴⁹ ATTEWELL, *supra* note 190, at 217-18 .

²⁵⁰ *See, e.g., id.* at 210-19 (discussing the Carter administration’s withdrawal of support for CETA); Remarks Announcing the Policy, Small Community and Rural Development Policy, 15 WEEKLY COMP. PRES. DOC. 2273 (Dec. 20, 1979) (announcing the Carter Administration’s new federal policy to support job growth in rural areas); *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> [<https://perma.cc/RDV8-3BQ3>] (detailing President Ford’s veto of the bill that included funding for CETA on the grounds that it would grow the federal deficit).

²⁵¹ Job Training Partnership Act, Pub. L. No. 97-300, 96 Stat. 1322 (1982) [hereinafter JTPA]; *see* MICHAEL J. RICH, FEDERAL POLICYMAKING AND THE POOR: NATIONAL GOALS, LOCAL CHOICES, AND DISTRIBUTIONAL OUTCOMES 18 (1993) (discussing changes to the Community Development Block Grant program as part of Reagan’s New Federalism initiatives); MICHAEL D. REAGAN, THE NEW FEDERALISM 27-28, 100-101 (1972) (discussing balance of power between federal and state governments in relation to block grants and other related programs). *See generally* GORDON LAFER, THE JOB TRAINING CHARADE 88-209 (2002) (discussing lessons from the JTPA).

²⁵² *See* LAFER, *supra* note 251, at 20-21 (“The [Reagan] administration insisted that . . . there were enough jobs in the economy for everyone who needed them. If some people experienced long-term unemployment, it was . . . because they lacked the skills or motivation to make themselves employable.”); MARGARET WEIR, POLITICS AND JOBS 10 (1993) (describing the Reagan administration’s abandonment of CETA).

²⁵³ LAFER, *supra* note 251, at 92.

approach to obtain program funds.²⁵⁴ 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.²⁵⁵ Allowing states to establish varying eligibility standards generated geographic divergence and increased worker mobility costs in navigating disparate relief requirements across states.²⁵⁶

Reagan's restructuring of workforce development had dramatic labor market effects. Replacing CETA with the JTPA cut spending and eliminated a public employment option, providing a windfall to private employers that reduced labor costs by reducing workers' outside options.²⁵⁷ 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.²⁵⁸ 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.²⁵⁹

While Clinton eliminated and restructured the JTPA, he established an even more aggressive, neoliberal overhaul of anti-poverty and "welfare-to-work" policy than 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.²⁶⁰ TANF substituted the AFDC's open-

254 See JTPA §§ 102–03 (describing the composition and function of the PICs).

255 LAFER, *supra* note 251, at 89.

256 For background on the geographic divergence caused by varying state eligibility standards, see Schleicher, *Stuck!*, *supra* note 60, at 125–27.

257 See LAFER, *supra* note 251, at 166–67; RICH, *supra* note 251, at 13 (describing generally the Reagan administration's reduction of public job training and grants).

258 LAFER, *supra* note 251, at 8–9, 165–66; Bailey & Duquette, *supra* note 237, at 352–53 (describing the benefits of OEO grants).

259 See Joyce Trina Robbins, From Manpower Policy to Workforce Development: The States, National Business Agendas, and U.S. Employment Policy, 1960–2000, at 3 (2002) (Ph.D. dissertation, Columbia University), <https://www.proquest.com/docview/304798617?pq-origsite=gscholar&fromopenview=true> [<https://perma.cc/N29T-9U7C>] (“The present study provides a political explanation for the new priority in business agenda leading to a shift in public employment policy.”); see also *id.* at 3–17.

260 Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104–193, 110 Stat. 2105.

ended federal funding structure for block grants to states not adjusted for inflation.²⁶¹ TANF reduced cash assistance from AFDC's coverage of over 68% to 21% of poor families between 1996 and 2020.²⁶²

Clinton's welfare reform was in tension with his overhaul of the JTPA, the 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.²⁶³ "Work-first" also conflicted with "job-readiness" and skills-gap rationales for anti-poverty training programs. The WIA granted eligible participants training vouchers to choose providers, regardless of the provider's placement record, and allowed providers to offer skills training over mere job search assistance only after participants first failed to secure jobs.²⁶⁴ 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."²⁶⁵

Clinton's trade and community development policies further eroded worker power. Entering NAFTA and liberalizing trade with China hit blue-collar workers hardest and resulted in significant job loss and wage inequality.²⁶⁶ Wage growth among workers in NAFTA-impacted industries was seventeen percentage points lower than workers in unimpacted industries.²⁶⁷ Those losses had negative spillover effects in local communities, including job loss and highly-localized reductions in wage growth.²⁶⁸ More desperate workers were cast as private investment opportunities in Clinton's 1993 Empowerment Zone and Enterprise Communities initiative, which

261 *See id.* § 103 (amending section regarding block grants to states for TANF).

262 ADITI SHRIVASTAVA & GINA AZITO THOMPSON, CTR. ON BUDGET AND POL'Y PRIORITIES, TANF CASH ASSISTANCE SHOULD REACH MILLIONS MORE FAMILIES TO LESSEN HARDSHIP 20 (2022), <https://www.cbpp.org/sites/default/files/atoms/files/6-16-15tanf.pdf> [<https://perma.cc/92NM-UYC9>].

263 LAFER, *supra* note 251, at 190-98.

264 Workforce Investment Act of 1998, Pub. L. No. 105-220, § 134, 112 Stat. 936, 990.

265 LAFER, *supra* note 251, at 200-01.

266 *See supra* note 26 (collecting sources on the effects of trade liberalization on the labor market); Gregory Shaffer & Henry Gao, *China's Rise: How It Took on the U.S. at the WTO*, 2018 U. ILL. L. REV. 115, 131-32 (noting the effects of China's entry into the WTO); Hakobyan & McLaren, *supra* note 26, at 729-35 ("[T]he effect of NAFTA on most workers . . . is likely modest, but for [blue-collar workers,] the effects are very negative.").

267 *See* Hakobyan & McLaren, *supra* note 26, at 729-35.

268 *See id.* at 729; Autor, Dorn & Hanson, *China Syndrome*, *supra* note 26, at 2159; Autor, Dorn & Hanson, *China Shock*, *supra* note 26, at 227-28; Daron Acemoglu, David Autor, David Dorn, Gordon H. Hanson & Brendan Price, *Import Competition and the Great US Employment Sag of the 2000s*, 34 J. LAB. ECON. S141, S144 (2015); Justin R. Pierce & Peter K. Schott, *The Surprisingly Swift Decline of US Manufacturing Employment*, 106 AM. ECON. REV. 1632, 1634-35 (2016).

granted employers tax benefits to locate in low-income neighborhoods.²⁶⁹ These programs publicly financed “low-wage, dead-end jobs” and failed to significantly alleviate poverty.²⁷⁰

Clinton’s economic policy formula—decentralization, economic development focused on employer aid for private industry growth, and workfare²⁷¹—laid the foundation for subsequent administrations. Although 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.²⁷² The 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.²⁷³ Only 20% 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.²⁷⁴ Like prior programs that subsumed “labor market policy into the poverty program” through “remedial functions,” the WIOA preserved workforce development boards as sites of local brokering for funds rather than a coordinated program to target full employment.²⁷⁵

269 Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 1394, 107 Stat. 312, 548 (1993); see Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 428, 438-41 (2001) (discussing the role of market incentives for private investment in community economic development).

270 Cummings, *supra* note 269, at 407-08, 447-51, 455.

271 “Workfare” is the conditioning of public benefits on work requirements. See generally EVA BERTRAM, *THE WORKFARE STATE: PUBLIC ASSISTANCE POLITICS FROM THE NEW DEAL TO THE NEW DEMOCRATS* (2015).

272 Cf. Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, 128 Stat. 1425 (2014) (amending the Workforce Investment Act of 1998); Off. of Urb. Affs., *Neighborhood Revitalization Initiative*, WHITE HOUSE, <https://obamawhitehouse.archives.gov/administration/eop/oua/initiatives/neighborhood-revitalization> [https://perma.cc/9XUQ-BG6G] (last visited Mar. 22, 2024) (announcing a grant-based community investment program); Off. of the Press Sec’y, *Fact Sheet: President Obama’s Promise Zones Initiative*, WHITE HOUSE (Jan. 8, 2014), <https://obamawhitehouse.archives.gov/the-press-office/2014/01/08/fact-sheet-president-obama-s-promise-zones-initiative> [https://perma.cc/V2YP-LWKR] (announcing an economics policy focused on job creation, educational opportunities, and housing affordability).

273 Workforce Innovation and Opportunity Act, Pub. L. No. 113-128, § 107(b), 128 Stat. 1425, 1456 (2014); 20 C.F.R. § 679.320 (2023) (implementing regulation).²⁵²

274 § 107(b), 128 Stat. at 1456.

275 See WEIR, *supra* note , at 62; see also THEDA SKOCPOL, *SOCIAL POLICY IN THE UNITED STATES: FUTURE POSSIBILITIES IN HISTORICAL PERSPECTIVE* 241 (1995) (describing the history of representatives funneling the benefits of national policies towards their constituents for political gain rather than to maximize overall benefits).

Obama's place-based investment programs generated more comprehensive interagency coordination but focused on education, housing, transportation, and environmental policy rather than worker-led job and income growth.²⁷⁶ Obama's rural development policy was more robust than those of prior administrations, creating the White House Rural Council to coordinate federal programs, promoting increased rural job investment, and expanding broadband access.²⁷⁷ Still, the programs were criticized for funding areas least in need and failing to establish viable investments that attracted business and jobs.²⁷⁸ And 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.²⁷⁹ Trump's trade policy did little to improve employment outcomes.²⁸⁰ Continued operation of workforce development programs concentrated on employer-led-and-administered programs, as more than 90% of state and local resources were directed at tax incentives or cash grants to businesses to generate job growth.²⁸¹ Workforce development was chronically underfunded, reaching at

276 For the administration's stated policy goals, see Derek Douglas, *Place-Based Investments*, WHITE HOUSE BLOG (June 30, 2010, 2:56 PM), <https://obamawhitehouse.archives.gov/blog/2010/06/30/place-based-investments> [<https://perma.cc/5TQV-H43W>].

277 Exec. Order No. 13,575, Establishment of the White House Rural Council, 3 C.F.R. § 247 (2011); Off. of the Press Sec'y, *President Announces New Jobs Initiatives for Rural America*, WHITE HOUSE (Aug. 16, 2011), <https://obamawhitehouse.archives.gov/the-press-office/2011/08/16/president-announces-new-jobs-initiatives-rural-america> [<https://perma.cc/6WJE-P4N9>] (announcing a rural jobs initiative); Off. of the Press Sec'y, *FACT SHEET: President Obama Announces ConnectALL Initiative*, WHITE HOUSE (Mar. 9, 2016), <https://obamawhitehouse.archives.gov/the-press-office/2016/03/09/fact-sheet-president-obama-announces-connectall-initiative> [<https://perma.cc/9QNV-G593>] (announcing a rural broadband initiative).

278 For reporting on some of the criticism, see Ron Nixon, *U.S. Spending Billions on Rural Jobs, But Impact Is Uncertain*, N.Y. TIMES (Sept. 12, 2011), <https://www.nytimes.com/2011/09/13/us/13rural.html> [<https://perma.cc/CXV4-TFMS>].

279 David Wessel, *The Rich Have Found Another Way to Pay Less Tax*, N.Y. TIMES (Oct. 10, 2021), <https://www.nytimes.com/2021/10/10/opinion/opportunity-zones-tax-loopholes.html> [<https://perma.cc/FE69-Q8LN>].

280 For criticism of the Trump administration's trade policy's effects on domestic workers, see SANDRA POLASKI, SARAH ANDERSON, JOHN CAVANAGH, KEVIN GALLAGHER, MANUEL PÉREZ-ROCHA & REBECCA RAY, *HOW TRADE POLICY FAILED U.S. WORKERS—AND HOW TO FIX IT* 23–26 (2020), <https://www.bu.edu/gdp/files/2020/09/How-Trade-Policy-Failed-US-Workers-and-How-to-Fix-it-FIN.pdf> [<https://perma.cc/67NR-3H6Q>].

281 *Id.*

best 5% of eligible workers in need.²⁸² Over the past two decades, WIOA funding declined by 40%, so while nearly 1.6 million workers were laid off or discharged in 2023, only over 43,000 received training.²⁸³

The Biden administration responded to the COVID-19 pandemic, China's competitive threat, and widening geographic inequality, by mobilizing significant spending for infrastructure development and place-based industrial policy. Unprecedented since the New Deal, the administration's policies are promoting creative solutions to establish uniform federal labor standards on prevailing wage rates and union jobs, at least in the construction industry.²⁸⁴ These investments are grounded in empirical research that has shifted the economic consensus in favor of place-based policy.²⁸⁵

Specifically, the administration dedicated \$3.8 trillion in stimulus funding under the American Rescue Plan Act (ARP), Infrastructure Investment and Jobs Act (IIJA), CHIPS and Science Act, and Inflation Reduction Act

²⁸² See LAFER, *supra* note 251, at 43.

²⁸³ See *Job Openings and Labor Turnover Summary*, U.S. BUREAU OF LAB. STAT. (Dec. 5, 2023), <https://www.bls.gov/news.release/jolts.nro.htm> [<https://perma.cc/J5JS-DJSC>]; U.S. DEP'T OF LABOR, WIOA ADULT PERFORMANCE REPORT 3 (2022), <https://www.dol.gov/sites/dolgov/files/ETA/Performance/pdfs/PY2022/PY%202022%20WIOA%20National%20Performance%20Summary.pdf> [<https://perma.cc/3THX-WC8T>]; News Release, U.S. Dep't of Lab., Unemployment Insurance Weekly Claims (Mar. 21, 2024), <https://www.dol.gov/ui/data.pdf> [<https://perma.cc/GX57-DZ2S>]; *Investing in America's Workforce*, CAMPAIGN TO INV. IN AM.'S WORKFORCE 3 (2019), <https://nationalskillscoalition.org/wp-content/uploads/2020/12/CIAW-Invest-in-AW.pdf> [<https://perma.cc/8S6G-FVDQ>].

²⁸⁴ For descriptions of these efforts, see Mark Muro, Robert Maxim, Joseph Parilla & Xavier de Souza Briggs, *Breaking Down an \$80 Billion Surge in Place-Based Industrial Policy*, BROOKINGS (Dec. 15, 2022), <https://www.brookings.edu/blog/the-avenue/2022/12/15/breaking-down-an-80-billion-surge-in-place-based-industrial-policy/> [<https://perma.cc/YB9D-YHC8>]; Joseph Parilla & Mark Muro, *The Build Back Better Regional Challenge Marks a New Era of Place-Based Industrial Strategy*, BROOKINGS (Sept. 2, 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/> [<https://perma.cc/QQ9A-2H3Z>].

²⁸⁵ Compare Edward Glaeser & Joshua Gottlieb, *The Economics of Place-Making Policies*, BROOKINGS PAPERS ECON. ACTIVITY, Spring 2008, at 155, 206-08 (describing conventional skepticism among economists concerning place-based investment programs), with Garin & Rothbaum, *supra* note 213, at 2 (describing recent interest among economists in place-based policies), Joseph Parilla, Glencora Haskins & Mark Muro, *The Future of Place-Based Economic Policy: Early Insights from the Build Back Better Regional Challenge*, BROOKINGS (Nov. 17, 2022) <https://www.brookings.edu/articles/the-future-of-place-based-economic-policy-early-insights-from-the-build-back-better-regional-challenge/> [<https://perma.cc/9QA6-HQBH>] (similar), Cecile Gaubert, Patrick M. Kline & Danny Yagan, *Place-Based Redistribution 2-6* (Nat'l Bureau of Econ. Rsch., Working Paper No. 28337, 2021) ("The urban economist's mantra warrants revision: there is good reason to consider helping poor people *and* poor places."), Austin, Glaeser & Summers, *supra* note 60, at 152 (urging economists and policymakers to reconsider traditional wisdom against place-based investing), and Ryan Donahue, Joseph Parilla & Brad McDearman, *Rethinking Cluster Initiatives*, BROOKINGS (July 25, 2018), <https://www.brookings.edu/articles/rethinking-cluster-initiatives/> [<https://perma.cc/VCN6-PTHB>] (advocating for industry clustering policies).

(IRA).²⁸⁶ 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.²⁸⁷ 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[] the local prevailing wages,” include “basic benefits, . . . and/or [are] unionized.”²⁸⁸ The administration also announced a WIOA “reset,” preferring applicants that invest in sector-based labor-management partnerships, provide supportive services like child care and transportation, and measure success not merely by job placement but by placement in decently paying jobs.²⁸⁹

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 the two-million-job goal, that still leaves roughly 3.7 million jobseekers unemployed and an estimated 8.6 million longer-term un- and underemployed.²⁹⁰ 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

²⁸⁶ See Muro, Maxim, Parilla & Briggs, *supra* note 284.

²⁸⁷ Exec. Order No. 14,036, 86 Fed. Reg. 36987 (July 14, 2021); Exec. Order No. 14,063, 87 Fed. Reg. 7363-64 §§ 2I, 4 (Feb. 9, 2022). For coverage of the executive order, see Jeanna Smialek, *A Look at What’s in Biden’s \$1.9 Trillion Stimulus Plan*, N.Y. TIMES (Mar. 1, 2021), <https://www.nytimes.com/2021/01/14/business/economy/biden-stimulus-plan.html> [<http://perma.cc/NQM6-J2EH>]; *Fact Sheet: The Bipartisan Infrastructure Investment and Jobs Act Creates Good-Paying Jobs and Supports Workers*, WHITE HOUSE (Aug. 3, 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/> [<http://perma.cc/QEQ4-93W2>]; Muro, Maxim, Parilla & Briggs, *supra* note 284; *Bipartisan Infrastructure Law Rural Playbook*, WHITE HOUSE (Apr. 2022), <https://www.whitehouse.gov/build/resources/rural/> [<http://perma.cc/8U67-HX8U>].

²⁸⁸ *American Rescue Plan Good Jobs Challenge*—Frequently Asked Questions, U.S. ECON. DEV’T ADMIN. (Aug. 15, 2022), <https://www.eda.gov/archives/2022/arpa/good-jobs-challenge/faq/> [<http://perma.cc/PGC5-86B6>]; *President Biden to Announce 21 Winners of \$1 Billion American Rescue Plan Regional Challenge*, WHITE HOUSE (Sept. 2, 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/> [<http://perma.cc/9AK8-TENS>];

²⁸⁹ Julie Su, *Can the Department of Labor Strengthen the Nation’s Workforce Development Infrastructure? Yes, WIOA Can!*, U.S. DEP’T OF LAB. BLOG (Oct. 11, 2022), <https://blog.dol.gov/2022/10/11/can-the-department-of-labor-strengthen-the-nations-workforce-development-infrastructure-yes-wioa-can/> [<https://perma.cc/7BHE-GT5F>].

²⁹⁰ E.g., Bureau of Lab. Stat., U.S. Dep’t of Lab., *The Employment Situation—December 2022*, tbls. A-1, A-15 (Jan. 6, 2023), <https://www.bls.gov/news.release/pdf/empst.pdf> [perma.cc/W3RF-Q5RU].

development remains highly fragmented, with 43 funding streams overseen by nine agencies and no centralized authority to coordinate workforce investment and employment planning.²⁹¹ 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 prevents observation of where workers are over- or under-supplied 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.²⁹²

* * *

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 have suppressed wage growth. 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, federal jobs and training programs have replaced direct employment with limited, anemically-funded, and largely ineffective training programs, welfare-to-work requirements, and employer-led private sector growth, without establishing uniform federal standards on wage rates or countervailing labor market institutions like unions. In doing so, they 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 positions 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

²⁹¹ E.g., *Employment and Training Programs: Department of Labor Should Assess Efforts to Coordinate Services Across Programs*, U.S. GOV’T ACCOUNTABILITY OFF. (Mar. 28, 2019), <http://www.gao.gov/products/gao-19-200> [<http://perma.cc/G6GK-K4XZ>].

²⁹² See, e.g., LAFER, *supra* note 251, at 41-42.

employment policy has at best increased some workers' earnings and outside options, it has deregulated and decentralized labor standards and countercyclical planning. This decentralization has contributed to the spatial organization of supply and demand factors that exacerbate already persistent structural deficiencies in rural and distressed labor markets to employers' advantage.

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.²⁹³ If acquired through merger, natural monopsonies can survive legal challenge by satisfying the entire demand of a rural or distressed community at lowest cost.²⁹⁴ 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.²⁹⁵ 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 more difficult 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

²⁹³ *Verizon Commc'ns Inc. v. Law Offs. Of Curtis V. Trinko, LLP*, 540 U.S. 398, 407 (2004) (interpreting 15 U.S.C. § 2).

²⁹⁴ Posner, *supra* note 124, at 548.

²⁹⁵ *Id.*

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.²⁹⁶

1. Antitrust Law, Natural Monopsony, and Geographic Inequality

First, antitrust law—and specifically, Section 2 of the Sherman Act, 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.²⁹⁷ Natural monopolies that “grow[] or develop[] as a consequence of a superior product, business acumen, or historic accident” do not violate Section 2.²⁹⁸ 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.”²⁹⁹ For example, in *Blue Cross & Blue Shield United of Wisconsin v. Marshfield Clinic*, the Seventh Circuit held that a rural clinic and its health maintenance organization (HMO) could not violate Section 2 as a “natural monopol[y]” when it excluded a competitor HMO and its parent insurance company from servicing the north central Wisconsin counties in which it operated.³⁰⁰ Marshfield, where the clinic was located, 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 one serviced county.³⁰¹ Writing for the court, Chief Judge Richard Posner concluded that the clinic had no competitors in that particular county:

[T]he 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

²⁹⁶ Wilmers, *supra* note 35, at 213; Nathan Wilmers & Clem Aeppli, *Consolidated Advantage: New Organizational Dynamics of Wage Inequality*, 86 AM. SOC. REV. 1100, 1101 (2021).

²⁹⁷ *Trinko*, 540 U.S. at 407.

²⁹⁸ *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966).

²⁹⁹ See AREEDA & HOVENKAMP, *supra* note 123, at 1 & 10-11 nn.9-31 (collecting cases); Neil W. Hamilton & Anne M. Caulfield, *The Defense of Natural Monopoly in Sherman Act Monopolization Cases*, 33 DEPAUL L. REV. 465, 467-68 n.10 (1984) (collecting cases dealing with Section 2 challenges); Cirace, *supra* note 132, at 684-85 (summarizing the natural monopoly defense in context of a small town grocery store). *But see* Matthew, *supra* note 129, at 866-68 (arguing that courts should and have viewed regional hospitals as natural monopolies, but not consistently).

³⁰⁰ 65 F.3d 1406, 1412 (7th Cir. 1995).

³⁰¹ *Id.* at 1409.

such as the Marshfield Clinic can they practice modern medicine in rural Wisconsin.³⁰²

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.”³⁰³ 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.”³⁰⁴

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. Consider service provision in legacy cities. As Professor Michelle Wilde Anderson explains, “[s]patially, such cities’ service territories are as large as they ever were, but the density of service consumers is down, resulting in costly inefficiencies.”³⁰⁵ 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. That remains the case 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. 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.³⁰⁶ Employer monopsony also has adverse distributive impacts in the form of wealth transfers from workers to employers, increasing income inequality, and when employers are externally headquartered, increasing geographic inequality as well.

³⁰² *Id.* at 1412.

³⁰³ *Id.* at 1413.

³⁰⁴ *Id.*

³⁰⁵ Anderson, *supra* note 8, at 1125.

³⁰⁶ See *supra* notes 25–26 and accompanying text.

2. Antitrust Law, Thin Markets, and Geographic Inequality

Antitrust regulation of employer market power in thin rural and distressed labor markets does 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, limiting antitrust law’s ability to resolve 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 about *only* 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 prominent example is the Supreme Court’s decision in *United States v. Socony-Vacuum Oil Co.*³⁰⁷ The Court held that agreements pairing major oil companies with independent refiners to purchase and remove those refiners’ distressed gasoline from the market during the Depression were per se

³⁰⁷ 310 U.S. 150 (1940).

violations of Section 1 of the Sherman Act.³⁰⁸ 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.³⁰⁹ 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.³¹⁰ 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 to 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 of those procompetitive defenses.³¹¹ 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.³¹²

Similarly, in the canonical 1912 case *Terminal Railroad*, the Supreme Court condemned as unlawful an association of railroad companies' exclusionary rule requiring unanimous consent by all members to admit new railroad companies.³¹³ The railroad companies formed the association to combine members' terminals into a unitary system controlling the only bridge over the Mississippi River in St. Louis.³¹⁴ *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" that it could dominate.³¹⁵ 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

³⁰⁸ *Id.* at 218-21.

³⁰⁹ For background on the arrangement, see generally Daniel Crane, *The Story of United States v. Socony-Vacuum: Hot Oil and Antitrust in the Two New Deals*, in ANTITRUST STORIES 91 (Eleanor M. Fox & Daniel A. Crane eds. 2007).

³¹⁰ *Id.* at 97-98.

³¹¹ *Socony-Vacuum*, 310 U.S. at 218.

³¹² 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. For that background, see Peter C. Carstensen, *Lost in (Doctrinal) Translation: The Misleading Retelling of the Supreme Court's Antitrust Decisions on Restraints of Trade*, 62 SMU L. REV. 525, 554 n.244 (2009). I thank Peter Carstensen for alerting me to this history.

³¹³ 224 U.S. 383, 399 (1912).

³¹⁴ *Id.* at 391.

³¹⁵ *Id.* at 397-98.

governments were persistently defaulting on bonds issued to finance economic development projects, including railroads.³¹⁶ Widespread defaults slashed confidence in and thinned municipal debt markets, reducing debt financing sources.³¹⁷ In the decade preceding the Supreme Court case, the railroads had lobbied the City of St. Louis to allow their bridge construction.³¹⁸ In 1897, the city passed an ordinance enabling the association to build the bridge on condition that the association issue a significant bond to the city.³¹⁹ The association—and its exclusionary rule—were arguably 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 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 cases 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 *Board of 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.³²⁰ Courts have also found firm conduct to coordinate output in failing industries as justified consumer demand management, even if it facilitates anticompetitive conduct.³²¹

In *Trinko*, the Supreme Court took 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

³¹⁶ See Felipe Ford Cole, *Unshackling Cities*, 90 U. CHI. L. REV. 1365, 1384 (2023) (describing the debt defaults of state debt-financed economic development in the early 1840s).

³¹⁷ See *id.* at 1388; Joel E. Thompson, *Railroad Investing and the Importance of Financial Accounting Information in 1880s America*, 40 ACCOUNTING HIST. J. 55, 57 (2013).

³¹⁸ *St. Louis v. Terminal R.R. Ass'n*, 109 S.W. 641, 642-43 (Mo. 1908).

³¹⁹ *Id.*

³²⁰ *Bd. Of Trade of Chi. V. United States*, 246 U.S. 231, 237-39 (1918); *Broad. Music, Inc. v. Columbia Broad. Sys., Inc.*, 441 U.S. 1, 20-21 (1979).

³²¹ See, e.g., *E.I. Du Pont De Nemours & Co. v. Fed. Trade Comm'n*, 729 F.2d 128, 130, 141-42 (2d Cir. 1984) (lead antiknock compound manufacturing industry); *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 479-80, 487-88 (1977) (bowling equipment industry).

discriminated between rivals in filling their orders under interconnection agreements.³²² Like the Court's later decision in *Ohio v. American Express*, *Trinko* made clear that when a firm takes advantage of network effects that 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.³²³ *Trinko* is widely recognized as dramatically narrowing "essential facilities" doctrine (which permits judicial imposition of duties to deal on dominant firms) to circumstances where the facility the monopolist owns is truly essential for rivals to compete.³²⁴

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, including those for labor. 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.³²⁵ 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*, which will turn instead 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 thus, discount) employer market power in rural and distressed labor markets that have thin market characteristics. Relatedly, traditional antitrust remedies that try to restructure markets and encourage market entry and competition by creating more market actors

322 *Verizon Commc'ns Inc. v. Law Offs. Of Curtis V. Trinko, LLP*, 540 U.S. 398, 416 (2004).

323 *Cf. id.* at 407-08; *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2289-90 (2018).

324 *See Trinko*, 540 U.S. at 410-11 ("[T]he indispensable requirement for invoking the [essential facilities] doctrine is the unavailability of access to the 'essential facilities' . . ."); *see also* Brett Frischmann & Spencer Weber Waller, *Revitalizing Essential Facilities*, 75 ANTITRUST L.J. 1, 9-10 (2008) (discussing *Trinko's* narrowing of the doctrine).

325 For explanation of the models in context, see U.S. DEP'T OF JUST. & FED. TRADE COMM'N, COMMENTARY ON THE HORIZONTAL MERGER GUIDELINES 25 (2006), <https://www.justice.gov/atr/file/801216/download> [<https://perma.cc/876W-3XX5>].

through divestiture or conduct remedies are unlikely to succeed in thin markets because of the nature of the markets themselves.³²⁶ So some non-competition-based regulation is necessary above and beyond competition policy solutions to regulate its adverse monopsony effects in such labor markets.

3. Antitrust Law, Mergers, and Geographic Inequality

A combination of lax merger policy and decades of agency failure to review mergers' labor market effects has also contributed to significant labor market concentration levels in rural and distressed labor markets.³²⁷ Economists have demonstrated that smaller cities and rural areas have the highest levels of labor market concentration with negative effects on compensation.³²⁸ While economists have found that labor market concentration in the average market is high, rural labor markets are even more highly concentrated—ranging from high to very high market concentration levels.³²⁹ In the merger context, such high levels would be above levels of presumptive illegality.³³⁰ Rural commuting zones have lower market and firm-level elasticities than urban commuting zones for low- and high-skilled occupations,³³¹ so rural workers are less likely to quit in response to wage decreases or stagnation than urban workers.³³²

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.³³³ Big Ag

326 See, e.g., U.S. DEP'T OF JUST., MERGER REMEDIES MANUAL, 3-4 (2020), <https://www.justice.gov/atr/page/file/1312416/download> [https://perma.cc/HDJ2-96NK]; FED. TRADE COMM'N, NEGOTIATING MERGER REMEDIES, 4 (2012), <https://www.ftc.gov/system/files/attachments/negotiating-merger-remedies/merger-remediesstmt.pdf> [https://perma.cc/TU4L-D4Y9]; Hafiz, *supra* note 36, at 1520-27.

327 See, e.g., Ioana Marinescu & Herbert Hovenkamp, *Anticompetitive Mergers in Labor Markets*, 94 IND. L.J. 1031, 1033-40 (2019); Hiba Hafiz, *Labor Antitrust's Paradox*, 87 U. CHI. L. REV. 381, 383-85 (2018). For a fuller discussion of failure to enforce the Clayton Act in labor markets, see Naidu, Posner & Weyl, *supra* note 184, at 539-42.

328 See, e.g., Azar, Marinescu & Steinbaum, *supra* note 31, at S176 fig.2; Arnold, *supra* note 32, at 1-5; Kevin Rinz, *Labor Market Concentration, Earnings, and Inequality*, 57 J. HUM. RES. S251, S264 (2022).

329 Azar, Marinescu & Steinbaum, *supra* note 31, at S176 fig.2; DEP'T OF JUST. & FED. TRADE COMM'N, HORIZONTAL MERGER GUIDELINES § 5.3, at 19 (2010).

330 DEP'T OF JUST. & FED. TRADE COMM'N, *supra* note 329, at 19.

331 Azar, Berry & Marinescu, *supra* note 130, at 27-30.

332 Suresh Naidu & Michael Carr, *If You Don't Like Your Job, Can You Always Quit?*, ECON. POL'Y INST., 11-14 (2022), <https://files.epi.org/uploads/246574.pdf> [https://perma.cc/R36E-QCT2].

333 See *supra* note 149 and accompanying text.

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.³³⁴ Farmers' share of every food dollar has declined since the 1980s, from 37% of each dollar consumers spend to less than 15% today.³³⁵ While corporate consolidation in mining and manufacturing primarily occurred before the 1970s,³³⁶ consolidation continues in sectors like fracking and resource-based manufacturing, with impacts primarily hitting rural communities.³³⁷ In banking, economists estimate that, due to bank consolidation, 89% of rural markets are highly concentrated, resulting in reduced small business lending, employment, and wages.³³⁸

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.³³⁹ In other words, distressed communities may be characterized as labor market “no-opolies”,³⁴⁰ or geographic markets that lack employers altogether.

³³⁴ See Hafiz & Miller, *supra* note 7 (collecting studies).

³³⁵ Claire Kelloway, *How to Close the Democrats' Rural Gap*, WASH. MONTHLY (Jan. 13, 2019), <https://washingtonmonthly.com/2019/01/13/how-to-close-the-democrats-rural-gap/> [<https://perma.cc/4QAP-FKUT>].

³³⁶ Spencer Y. Kwon, Yueran Ma & Kaspar Zimmerman, *100 Years of Rising Corporate Concentration* 1 (SAFE, Working Paper No. 359, 2022) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3936799 [<https://perma.cc/EXF4-9R3K>].

³³⁷ See, e.g., J. Tom Mueller, Jesse E. Shircliff & Marshall Steinbaum, *Market Concentration and Natural Resource Development in Rural America*, 87 RURAL SOCIO. 68, 90 (2022) (echoing previous research and arguing that market concentration is a significant factor in natural resource dependence); Collin Eaton, *Fracking Companies Continue Consolidation as Cabot, Cimarex Form \$14 Billion Firm*, WALL ST. J. (May 24, 2021), <https://www.wsj.com/articles/fracking-companies-continue-consolidation-as-cabot-cimarex-form-14-billion-firm-11621866404> [<https://perma.cc/V3FD-NBWQ>] (reporting on a planned merger between an operator focused primarily on oil and a natural gas producer); Sarah Low, *Manufacturing is Relatively More Important to the Rural Economy than the Urban Economy*, U.S. DEPT. OF AGRIC.: RESEARCH & SCIENCE (Sept. 12, 2017), <https://www.usda.gov/media/blog/2017/09/12/manufacturing-relatively-more-important-rural-economy-urban-economy> [<https://perma.cc/55MT-9VJJ>] (explaining that in rural areas, the share of employment and earnings held by the manufacturing sector began to exceed that of urban areas in the 1980s).

³³⁸ Mann, *supra* note 32, at 5; Meyer, *supra* note 32, at fig.4.

³³⁹ See, e.g., Christopher R. Leslie, *Food Deserts, Racism, and Antitrust Law*, 110 CALIF. L. REV. 1717, 1742 (2020) (describing how anticompetitive agreements and weak merger enforcement contributed to food deserts); Leslie, *Banking Deserts*, *supra* note 152, at 699-701; Jennifer Kingson, *The Growth of “Pharmacy Deserts”*, AXIOS (Jan. 7, 2021), <https://www.axios.com/2021/01/07/pharmacy-deserts-cities-prescriptions> [<https://perma.cc/GB56-N2YL>] (collecting studies).

³⁴⁰ See Leslie, *Banking Deserts*, *supra* note 152, at 779.

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.³⁴¹ 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.³⁴² 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.³⁴³

Proving oligopolistic collusion between employers presents an equivalent “oligopsony problem.”³⁴⁴ 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. These factors make collusion in labor markets easier to sustain because it is harder for employers to cheat to attract workers from rivals.³⁴⁵ Further, rural and distressed communities have a smaller number of employers with economic and non-economic ties, solidifying trust-facilitating devices to support collusion.³⁴⁶ 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 concentration levels. In those communities 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 been applied against employer collusion. While still in its earliest days, it has unsurprisingly revealed wage-

³⁴¹ See, e.g., Jonathan Baker, *Two Sherman Act Section 1 Dilemmas*, 38 ANTITRUST BULL. 143, 144-45 (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: Conscious Parallelism and Refusals to Deal*, 75 HARV. L. REV. 655, 656 (1962).

³⁴² Christopher R. Leslie, *How to Hide a Price-Fixing Conspiracy: Denial, Deception, and Destruction of Evidence*, 2021 U. ILL. L. REV. 1199, 1235-57 (2021); see, e.g., Louis Kaplow, *Direct Versus Communications-Based Prohibitions on Price Fixing*, 3 J. LEGAL ANALYSIS 449, 449-50 (2011).

³⁴³ Louis Kaplow, *On the Meaning of Horizontal Agreements in Competition Law*, 99 CALIF. L. REV. 683, 758 (2011).

³⁴⁴ See Posner & Masur, *supra* note 34, at 548 (defining oligopsony in labor market collusion).

³⁴⁵ *Id.* at 551-52.

³⁴⁶ See Christopher R. Leslie, *Trust, Distrust, and Antitrust*, 82 TEX. L. REV. 517, 546-622 (2004) (describing the role that trust plays in cartel collusion, particularly in concentrated and local industries).

fixing and collusion among employers in rural and distressed communities, including between chicken processors, hospitals, nursing homes, and physical therapy staffing companies.³⁴⁷

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.³⁴⁸ Courts had condemned as *per se* unlawful agreements between firms at different levels in the supply chain that restrained upstream or downstream pricing and non-pricing decisions—like exclusive dealing arrangements, territorial or customer restrictions, and other restraints—because such agreements were understood to 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 on their presumptive illegality to apply permissive “rule of reason” treatment that 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.³⁴⁹

The *de facto* legality of “vertical integration by contract”—corporate restructuring through contractual arrangements—enabled geographic dispersal of supply chains through 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

³⁴⁷ See, e.g., Indictment at 1, *United States v. Faysal Kalayaf Manahe*, No. 22-00013 (D. Me. Jan. 27, 2022) (nursing home); Complaint at 15, *United States v. Cargill Meat Sols. Co.*, No. 22-01821 (D. Md. July 25, 2022) (chicken processing); Final Judgment, *United States v. Geisinger Health*, No. 20-01383 (M.D. Pa. Sept. 16, 2021) (hospitals); see also *supra* note 149.

³⁴⁸ See generally WEIL, *supra* note 35; Brian Callaci, *Control Without Responsibility: The Legal Creation of Franchising 1960-1980*, at 3-5 (Wash. Ctr. For Equitable Growth, Working Paper, 2018), <https://equitablegrowth.org/working-papers/control-without-responsibility-the-legal-creation-of-franchising-1960-1980/> [<https://perma.cc/R2U8-MJGR>] (explaining the use of franchising to achieve vertical integration); Hafiz, *The Brand Defense*, *supra* note 35, at 33-34 (highlighting courts' lenient approach to vertical restraints in franchising and other arrangements); Douglas Ginsburg, *Vertical Restraints: De Facto Legality Under the Rule of Reason*, 60 ANTITRUST L.J. 67, 73-76 (1991) (showing the lack of vertical restraint enforcement).

³⁴⁹ See, e.g., *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 348, at 76; D. Daniel Sokol, *The Transformation of Vertical Restraints: Per Se Illegality, the Rule of Reason, and Per Se Legality*, 79 ANTITRUST L.J. 1003, 1005, 1007-08 (2014).

areas.³⁵⁰ 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.³⁵¹ 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.”³⁵² And with those lower wages came increased regional economic divergence—sociologist Robert Manduca 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.”³⁵³

* * *

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

³⁵⁰ See, e.g., ALEC MACGILLIS, FULFILLMENT 6-12 (2021); WEIL, *supra* note 35, at 159-77 (highlighting examples of companies outsourcing their supply chains); FREDERICK ABERNATHY, JOHN T. DUNLOP, JANICE H. HAMMOND & DAVID WEIL, A STITCH IN TIME: LEAN RETAILING AND THE TRANSFORMATION OF MANUFACTURING—LESSONS FROM THE APPAREL AND TEXTILE INDUSTRIES 15-17 (1999); Dave Jamieson, *The New Blue Collar: Temporary Work, Lasting Poverty and the American Warehouse*, HUFFPOST BUS. (Dec. 20, 2011), https://www.huffingtonpost.com/2011/12/20/new-blue-collar-temp-warehouses_n_1158490.html [<https://perma.cc/2MEG-4LB7>] (reporting the increase in outsourcing labor in warehouses); Rosemary Batt & Hiroatsu Nohara, *How Institutions and Business Strategies Affect Wages: A Cross-National Study of Call Centers*, 62 INDUS. & LAB. REL. REV. 533, 533-34 (2009) (investigating how the degree of centralization in industrial relations systems shape the level of wage dispersion in call centers); Mark Jelavich, *Manufacturing and Rural Economies in the United States*, 60 AM. J. ECON. & SOC. 185, 185-7 (2001) (noting that manufacturing has increased concentration in rural areas); Thomas Holmes, *Localization of Industry and Vertical Disintegration*, 81 REV. ECON. & STAT. 314, 314-15 (1999) (finding a positive correlation between vertical disintegration and localization).

³⁵¹ Wilmers, *supra* note 35 at 215-226.

³⁵² *Id.* at 213, 232.

³⁵³ Manduca, *supra* note 176, at 622.

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.³⁵⁴ When workers take advantage of its protections and unionize, they receive higher compensation, a “union premium,” with the strongest effects for lower-wage earners.³⁵⁵ Union premiums not only decrease income inequality, but also have beneficial spillovers in lifting nonunion workers wages as well.³⁵⁶ 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.³⁵⁷ 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.³⁵⁸ Second, through a combination of statutory amendments, National Labor Relations Board (NLRB) decisions, and judicial doctrine,

³⁵⁴ 29 U.S.C. § 157.

³⁵⁵ See, e.g., *The Union Advantage*, U.S. DEPT OF LAB. (2022), <https://www.dol.gov/general/workcenter/union-advantage> [<https://perma.cc/2794-R2LU>]; *Union Workers More Likely than Nonunion Workers to Have Healthcare Benefits*, U.S. BUREAU OF LAB. STAT. (Oct. 28, 2019), <https://www.bls.gov/opub/ted/2019/union-workers-more-likely-than-nonunion-workers-to-have-healthcare-benefits-in-2019.htm> [<https://perma.cc/9B2G-MKNU>]; Luke Petach & David Wyant, *The Union Advantage: Union Membership, Access to Care, and the Affordable Care Act*, 23 INT’L J. HEALTH ECON. & MGMT. 11 (2022), <https://doi.org/10.1007/s10754-022-09336-7> [<https://perma.cc/MG4Q-GEXS>]; David Card, *The Effect of Unions on the Structure of Wages: A Longitudinal Analysis*, 64 ECONOMETRICA 957, 958 (1996).

³⁵⁶ See Nicole Fortin, Thomas Lemieux & Neil Lloyd, *Labor Market Institutions and the Distribution of Wages: The Role of Spillover Effects*, 39 J. LAB. ECON. S369, S371-72 (2021) (finding positive spillover effects of unionization and non-union wages); Farber, Herbst, Kuziemko & Naidu, *supra* note 225, at 1326-27 (noting that measures of inequality have moved inversely with union density).

³⁵⁷ See Hafiz, *Structural Labor Rights*, *supra* note 35, at 664-73.

³⁵⁸ 29 U.S.C. §§ 152(2)–(3).

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 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, the current 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.³⁵⁹ Farmworkers remain particularly vulnerable to employer monopsony in rural areas due to mobility restrictions and limited labor market competition.³⁶⁰ With no federal protections to organize and collectively assert countervailing power, over a million rural workers critical to the food system have limited options for achieving higher compensation or basic workplace protections.³⁶¹ 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

³⁵⁹ See Frymer, *supra* note 38, at 27-28; Perea, *supra* note 38, at 118-24; Farhang & Katznelson, *supra* note 38, at 12-15.

³⁶⁰ Cf. Eric Gibbons, Allie Greenman, Peter Norlander & Todd Sørensen, *Monopsony Power and Guest Worker Programs* 4-5 (IZA, Discussion Paper No. 12096, 2019), <https://docs.iza.org/dp12096.pdf> [<https://perma.cc/FC6B-TYAW>] (explaining foreign-born nationals' and guest workers' vulnerability to monopsony power).

³⁶¹ DANIEL COSTA, PHILIP MARTIN & ZACHARIA RUTLEDGE, ECON. POL'Y INST., FEDERAL LABOR STANDARDS ENFORCEMENT IN AGRICULTURE, 2-3 (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/> [<https://perma.cc/7K9G-ZZPW>] (explaining that federal labor law exempts an estimated 1.7 million farmworkers from basic labor protections, including the right to unionize and receive overtime pay).

benefits.³⁶² Demand for child care has also skyrocketed.³⁶³ 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.³⁶⁴ A higher percentage of workers in rural areas are employed by the government (16%) compared to urban workers (12%), so the public employees exemption has a higher impact in those areas.³⁶⁵

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,³⁶⁶ but that only exacerbates geographic divergence: blue states like Massachusetts grant stronger labor protections for farmworkers, home care workers, and public employees, but red states lack them entirely.³⁶⁷

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

³⁶² See Gabriel Winant, *THE NEXT SHIFT: THE FALL OF INDUSTRY AND THE RISE OF HEALTH CARE IN RUST BELT AMERICA* 4 (2021) ("It was not a coincidence that care labor grew as industrial employment declined. The processes were interwoven.").

³⁶³ See, e.g., Elliot Haspel, *America's Child-Care Equilibrium Has Shattered*, *THE ATLANTIC* (July 23, 2022), <https://www.theatlantic.com/family/archive/2022/07/us-childcare-programs-expensive-underfunded/670927/> [<https://perma.cc/B9V5-DPFD>].

³⁶⁴ See, e.g., *Healthcare Access in Rural Communities*, *RURAL HEALTH INFO* <https://www.ruralhealthinfo.org/topics/healthcare-access> [<https://perma.cc/J8MT-QQEW>] (last updated Jan. 31, 2024); *RURAL AMERICA AT A GLANCE*, *supra* note 15, at 3; Econ. Innovation Grp., *Distressed Communities Index (DCI)*, *supra* note 8, at 10.

³⁶⁵ *RURAL AMERICA AT A GLANCE*, *supra* note 15, at 10.

³⁶⁶ See, e.g., Benjamin I. Sachs, *Despite Preemption: Making Labor Law in Cities and States*, 124 *HARV. L. REV.* 1153, 1155 n.5 (2011).

³⁶⁷ See *MASS. GEN. LAWS ANN.* ch. 118E, §§ 70–75 (West 2023); *id.* ch. 149, §§ 190, 191; *id.* ch. 150A, § 5A; see also Richard Michael Fischl, *Serving in the Master's House: Legal Protection for In-Home Care Workers in the United States* (describing the decline in collective bargaining rights due to action by Republican governors and legislatures in Wisconsin, Ohio, Kansas, Maine, and Michigan), in *EMPLOYMENT RELATIONS AND TRANSFORMATION OF THE ENTERPRISE IN THE GLOBAL ECONOMY* 21, 52–53, app. I (Edoardo Ales, Francesco Basenghi, William Bromwich & Iacopo Senatori eds. 2016).

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.³⁶⁸ The presumption reduces workers’ bargaining leverage and limits the growth of union density, particularly in fissured workplaces.³⁶⁹ 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.³⁷⁰ 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.³⁷¹ 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.³⁷² 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.³⁷³ Twenty-seven states have passed right-to-work laws, and those states have lower union density, decreased chances of union success in representation elections, and decreased worker earnings.³⁷⁴ Right-to-work laws thus effectuate geographic labor

³⁶⁸ See 29 U.S.C. § 159(b); *J&L Plate*, 310 NLRB No. 56, 429-30 (1993).

³⁶⁹ See, e.g., Hafiz, *Structural Labor Rights*, *supra* note 35, at 656; Barenberg, *supra* note 43, at 1, 3; Kate Andrias, *The New Labor Law*, 126 *YALE L.J.* 2, 30-31 (2016).

³⁷⁰ See Richard Medoff & James Freeman, WHAT DO UNIONS DO? 180, 186 (1984) (“[U]nions . . . reduce the exceedingly high levels of profitability in highly concentrated industries . . . [in] the form of a reduction of monopoly profits.”); Karl Moene & Michael Wallerstein, *Pay Inequality*, 15 *J. LAB. ECON.* 403, 427 (1997); Alan Krueger & Lawrence Summers, *Efficiency Wages and the Inter-Industry Wage Structure*, 56 *ECONOMETRICA* 259, 275-76 (1988).

³⁷¹ 29 U.S.C. § 164(b).

³⁷² See Catherine Fisk & Ben Sachs, *Restoring Equity in Right-to-Work Laws*, 4 *U.C. IRVINE L. REV.* 859, 864-67 (2014).

³⁷³ *Id.* at 860.

³⁷⁴ Noah Wexler, *Wage and Employment Effects of Right-to-Work Laws in the 2010s* 2-3 (Dec. 29, 2022), <https://www.aeaweb.org/conference/2023/program/paper/E8DnB4hT>

market segmentation and inequality, lowering levels of upward mobility, particularly in the South.³⁷⁵

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.³⁷⁶ 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.³⁷⁷ 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.³⁷⁸ 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.³⁷⁹ Narrow interpretations of

[<https://perma.cc/S9T2-3BND>]; Kevin Murphy, *Consequences of Right-to-Work for Union Membership*, ILR REV. 412-3, 427 (2023).

³⁷⁵ See James C. Cobb, THE SELLING OF THE SOUTH: THE SOUTHERN CRUSADE FOR INDUSTRIAL DEVELOPMENT, 1936-1990, at 100-03 (2d ed. 1993); Andrew Herod, Jamie Peck & Jane Wills, *Geography and Industrial Relations*, in UNDERSTANDING WORK AND EMPLOYMENT: INDUSTRIAL RELATIONS IN TRANSITION 176, 180-81 (Peter Ackers & Adrian Wilkinson eds., 1994).

³⁷⁶ 452 U.S. 666, 686 (1981).

³⁷⁷ See *NLRB v. Int'l Harvester*, 618 F.2d 85, 87-88 (9th Cir. 1980) (finding that certain management decisions, such as the decision to transfer positions and reorganize marketing, are not a mandatory subject of bargaining); *NLRB v. Adams Dairy*, 350 F.2d 108, 111 (8th Cir. 1965) (distinguishing from *Fibreboard*, finding on the facts presented that bargaining is not required for the employer's decision to close out its distribution business); *NLRB v. Royal Plating & Polishing Co.*, 350 F.2d 191, 196 (3d Cir. 1965) (holding that the employer's decision to close a plant and reinvest elsewhere in the business does not trigger mandatory collective bargaining). *But see* *Fibreboard Paper Products v. NLRB*, 379 U.S. 203, 213 (1964) (holding that requiring an employer to bargain about a subcontract would not "significantly abridge his freedom to manage the business."); *Ozark Trailers*, 161 N.L.R.B. 561, 566 (1966) (distinguishing from *Adams Dairy*, finding that an employer's decision to make a change to the business may be of significance to employees regardless of whether the decision involves investment capital).

³⁷⁸ 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, 54663 (Sept. 7, 2022).

³⁷⁹ See *TLLI*, 271 N.L.R.B. 798, 799 (1984); *Laerco Transp.*, 269 NLRB 324, 325-26 (1984).

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.³⁸⁰ 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.³⁸¹

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 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.”³⁸² 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 into the field.³⁸³ 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.³⁸⁴ The French model, they argue, is “particularly well suited to post-Fordist economies that are 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.³⁸⁵ Regulating rural and distressed labor markets based on an economies-of-scale rather than

380 See WEIL, *supra* note 35, at 7-20.

381 *Id.* at 19-20.

382 Andrew Schrank & Michael Piore, Root-Cause Regulation 31 (2018).

383 *Id.*

384 *Id.* at 31, 50.

385 *Id.* at 50.

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 under resourced federal agencies despite the dramatic growth of private-sector workers under its jurisdiction over the past decade. The Board's funding stagnated for over a decade: between 2006 and 2019, the number of full-time employees dropped by nearly 31%, even as the number of covered workers grew by 50%, leaving one full-time employee per 112,201 workers.³⁸⁶ Staffing at regional offices is even lower, dwindling from 1,238 to 824 between 2010 and 2019.³⁸⁷ Loss of regional staff is devastating for enforcement in rural and distressed communities because regional NLRB offices primarily handle investigations and worker complaints of employer violations.³⁸⁸ In 2019, only 35% of NLRB regional employees reported that they have a reasonable workload.³⁸⁹ Overall, the NLRB's current budgetary resources are just over \$307 million per year, less than 0.01% of all budgetary resources allocated to federal agencies, and below those allocated to the Peace Corps (\$531 million) and the Institute of Museum and Library Services (\$313 million).³⁹⁰

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.³⁹¹ Workers in rural

³⁸⁶ Ihna Mangundayao & Celine McNicholas, *Congress Should Boost NLRB Funding to Protect Workers' Well-Being*, ECON. POL'Y INST. (Feb. 28, 2022), <https://www.epi.org/blog/congress-should-boost-nlr-b-funding-to-protect-workers-well-being/> [<https://perma.cc/QM5J-957H>]; see also Off. of Pub. Affs., *Statement on NLRB Funding in the 2023 Omnibus Bill*, NAT'L LAB. RELS. BD. (Dec. 29, 2022), <https://www.nlr.gov/news-outreach/news-story/statement-on-nlr-b-funding-in-the-2023-omnibus-bill> [<https://perma.cc/3DA9-MJ3R>] ("After receiving the same appropriation since 2014, Congress funded the NLRB at \$229.224 million for 2023—an increase of \$25 million.")

³⁸⁷ U.S. GOV'T ACCOUNTABILITY OFF., NATIONAL LABOR RELATIONS BOARD: MEANINGFUL PERFORMANCE MEASURES COULD IMPROVE QUALITY, ORGANIZATIONAL EXCELLENCE, AND RESOURCE MANAGEMENT 14 (2021), <https://www.gao.gov/assets/gao-21-242.pdf> [<https://perma.cc/R8DJ-HTN6>] [hereinafter GAO NLRB REPORT].

³⁸⁸ See Mangundayao & McNicholas, *supra* note 386 (noting that regional offices "typically handle the intake of complaints filed by workers"); GAO NLRB REPORT, *supra* note 387, at 6 ("NLRB's responsibility for investigating and resolving reported allegations of unfair labor practices (about 90 percent of NLRB's workload) is primarily carried out in the regional offices by attorneys and examiners, collectively called board agents.")

³⁸⁹ GAO NLRB REPORT, *supra* note 387, at 28-29.

³⁹⁰ USA SPENDING, AGENCY PROFILES (2024), <https://www.usaspending.gov/agency> [<https://perma.cc/H5N9-CVUB>].

³⁹¹ See 29 U.S.C. § 160(b) (providing that the Board "shall have power to" initiate an enforcement action "[w]henever it is charged that any person has engaged in or is engaging in any such unfair labor practice").

and distressed communities are highly unlikely to 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.³⁹² 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.³⁹³ 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.³⁹⁴ The Board does have authority to seek to enjoin NLRA violations in federal court, but these proceedings are rare, just 11 in 2020.³⁹⁵ In analyzing the NLRA's penalty regime, economist Anna Stansbury calculated that, “[f]or

³⁹² See, e.g., WEIL, *supra* note 35, at 245-46 (“[M]any workers do not know what workplace rights they have, and . . . assume the existence of other rights (particularly regarding protection from dismissal) they do not have.”); Aaron Sojourner & Jooyoung Yang, *Effects of Union Certification on Workplace-Safety Enforcement: Regression-Discontinuity Evidence*, 75 ILR REV. 373, 399 (2022) (“Union certification appears to increase OSHA activity . . . [which is] partly attributable to an increase in the rate of complaint-initiated inspections . . .”). See generally Pauline T. Kim, *Norms, Learning, and Law: Exploring the Influences on Workers' Legal Knowledge*, 1999 UNIV. ILL. L. REV. 447 (demonstrating that workers across the U.S. and across different industries consistently show a lack of understanding of their legal rights); *c.f. generally* Cynthia Estlund, *Just the Facts: The Case for Workplace Transparency*, 63 STAN. L. REV. 351, 363 (2011) (suggesting employees' ability to make use of additional information may be limited).

³⁹³ See, e.g., J. Paul Leigh & Bozhidar Chakalov, *Labor Unions and Health: A Literature Review of Pathways and Outcomes in the Workplace*, 24 PREVENTIVE MED. REP. 101502, 6 (2021) (“[I]t is likely that unions promote this pathway given unions encourage members to attend meetings, voice grievances with one another, and solidarity.”) (2021); Gordon Lafer & Lola Loustaunau, *Fear at Work*, ECON. POL'Y INST. 5 (2020), <https://www.epi.org/publication/fear-at-work-how-employers-scare-workers-out-of-unionizing/> [<https://perma.cc/8UJY-M5SG>] (reporting that in 2016-2017, in “nearly a third (29.2%) of all elections, employers were charged with illegally coercing, threatening, or retaliating against workers for union support”).

³⁹⁴ See generally Anna Stansbury, *Do US Firms Have an Incentive to Comply with the FLSA and the NLRA?* 23 (Peterson Inst. for Int'l Econ., Working Paper. No. 21-9, 2021) (summarizing remedies for prohibited employer behavior); Paul Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1769, 1787-95 (1983) (same).

³⁹⁵ 29 U.S.C. § 160(j); see LYNN RHINEHART & CELINE MCNICHOLAS, *ECON. POL'Y INST., SHORTCHANGED—WEAK ANTI-RETALIATION PROVISIONS IN THE NATIONAL LABOR RELATIONS ACT COST WORKERS BILLIONS* '3 n.10 (2021) (“[I]n 2020, the NLRB brought only eleven 10(j) cases in federal court”).

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.”³⁹⁶ Widespread evidence of employers’ termination of workers for unionizing is thus unsurprising.³⁹⁷

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.³⁹⁸ 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.

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 worker power, expansionary legal policy is the primary remaining option to boost earnings and productivity in rural and distressed communities.³⁹⁹ 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.”⁴⁰⁰

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.

³⁹⁶ Stansbury, *supra* note 394, at 24.

³⁹⁷ *See id.* at 28 (reporting that between 1999-2003, “34 percent of employers [were] alleged to have discharged union activists”).

³⁹⁸ *See infra* Part I, Section II.A; Ralph Mathews, Ravi Pendakur & Nathan Young, *Social Capital, Labor Markets, and Job-Finding in Urban and Rural Regions: Comparing Paths to Employment in Prosperous Cities and Stressed Rural Communities in Canada*, 57 SOCIO. REV. 306, 307, 315 (2009) (finding that “strong and weak [personal] ties are used more frequently by rural residents to find employment” in comparison with urban residents); Lindsay, Greig & McQuaid, *supra* note 159, at 55 (“Certainly, it would appear that informal networks continue to play a particularly important role in rural economic life, especially in very remote areas.”).

³⁹⁹ *See* LISTOKIN, *supra* note 191, at 16 (arguing that “expansionary legal policy offers options to depressed jurisdictions that lack control over monetary policy in a currency union”).

⁴⁰⁰ SCHRANK & PIORE, *supra* note 382, at 70 .

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.⁴⁰¹ But these laws 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 under resourced, 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 2009.⁴⁰² 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.⁴⁰³ But while some states like California and Hawaii

401 IOANA MARINESCU & JAKE ROSENFELD, WORKRISE, WORKER POWER AND ECONOMIC MOBILITY 16-22 (2022), <https://www.workrisenetwork.org/sites/default/files/2022-08/correctedworker-power-economic-mobility-landscape-report.pdf> [<https://perma.cc/BRP9-AJSQ>]. See generally Hafiz & Marinescu, *supra* note 187.

402 See Wage & Hour Div., *History of Changes to the Minimum Wage Law*, U.S. DEP'T OF LAB., <https://www.dol.gov/agencies/whd/minimum-wage/history> [<https://perma.cc/3XRZ-NVNC>] (noting that 2007 amendments increased the minimum wage to "\$7.25 per hour effective July 24, 2009").

403 See, e.g., David Cooper, *Raising Federal Minimum Wage Would Lift Pay for 40 Million Workers*, ECON. POL'Y INST. 7 (2019), <https://www.epi.org/publication/raising-the-federal-minimum-wage->

have attempted to lift that minimum to as high as \$18, many states, primarily in the South, have kept theirs at the federal floor.⁴⁰⁴ Thus, worker earnings for the same full-time minimum-wage job in Pennsylvania and California are \$15,080 and \$33,280 per year, respectively, over double the amount in the latter.⁴⁰⁵

Second, while federal antidiscrimination law protects workers in protected classifications as a baseline,⁴⁰⁶ states and municipalities have expanded protections based on gender identity and expression, marital or familial status, hairstyle and texture, immigration status, genetic information, and broader pregnancy-related conditions.⁴⁰⁷ 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 permanent partial disabilities according to each body part injured.⁴⁰⁸ Employers are paying the lowest rates for workers' compensation since the 1970s, but employers in primarily red states have lobbied legislatures to lower them even

to-15-by-2024-would-lift-pay-for-nearly-40-million-workers/ [<https://perma.cc/D9K4-L7C8>] (noting that "a parent working full time while earning the minimum wage today earns too little to bring his family—even if it is just a family of two—above the federal poverty line").

⁴⁰⁴ See Chris Marr, *Blue State Minimum Wages Inch Upward, Widening Gap With South*, BLOOMBERG LAW (May 24, 2022), <https://news.bloomberglaw.com/daily-labor-report/blue-state-minimum-wages-inch-upward-widening-gap-with-south> [<https://perma.cc/WB32-R2PL>] (describing efforts in democratic states to raise the minimum wage, and contrasting those with Southern lawmakers' refusal to do so).

⁴⁰⁵ Compare *Pennsylvania Minimum Wage for 2023, 2024*, MINIMUM-WAGE.ORG, <https://www.minimum-wage.org/pennsylvania> [<https://perma.cc/6GD3-WCJ7>] (last visited Mar. 24, 2024), with *California Minimum Wage for 2023, 2024*, MINIMUM-WAGE.ORG, <https://www.minimum-wage.org/california> [<https://perma.cc/C694-ZD42>] (last visited Mar. 24, 2024).

⁴⁰⁶ See, e.g., Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (protecting employees and job applicants from employment discrimination based on race, color, religion, sex, or national origin); The Age Discrimination in Employment Act of 1967, 29 U.S.C §§ 621-634 (prohibiting age discrimination in employment); The Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 (protecting individuals with disabilities from employment discrimination); The Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k) (adding pregnancy discrimination to the definition of sex discrimination under Title VII of the Civil Rights Act of 1964); *Bostock v. Clayton County*, 140 S. Ct. 1731, 1737 (2020) (holding that Title VII of the Civil Rights Act of 1964 protects employees against discrimination because of sexuality or gender identity).

⁴⁰⁷ See WORKPLACE FAIRNESS, *Discrimination* (2024), <https://www.workplacefairness.org/employment-discrimination> [<https://perma.cc/84DN-3H7C>] (listing topics relating to workplace discrimination).

⁴⁰⁸ Scott Szymendera, *Workers' Compensation: Overview and Issues*, CONG. RSCH. SERV. 14 (2020), <https://crsreports.congress.gov/product/details?prodcode=R44580>.

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.⁴⁰⁹ The unemployment system operates as a federal-state partnership, but states have the autonomy to establish eligibility, payout formulas, and benefit caps. State-level rules result in radically different worker benefits by state, a disparity that has most severely impacted Black claimants, who suffer an “8.4% lower replacement rate than white claimants.”⁴¹⁰ 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.⁴¹¹

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.⁴¹² Live-in domestic workers are also exempt, including those who provide companionship services for the elderly, critical functions that family and friends in rural and distressed communities perform on an informal basis due to less-robust access to health care and nursing home services.⁴¹³

409 See Michael Grabbell & Howard Berkes, *The Demolition of Workers’ Comp*, PROPUBLICA 2-3 (Mar. 4, 2015), <https://www.propublica.org/article/the-demolition-of-workers-compensation> [<https://perma.cc/75FQ-SWR3>] (describing states slashing workers’ compensation benefits and shifting costs of workplace accidents to taxpayers).

410 Daphné Skandalis, Ioana Marinescu & Maxim N. Massenkoff, *Racial Inequality in the Unemployment Insurance System* 4 (Nat’l Bureau of Econ. Rsch., Working Paper No. 30252, 2022), <https://www.nber.org/papers/w30252> [<https://perma.cc/R7YY-T5J9>].

411 For figures demonstrating this relationship between Southern states, race, and benefit generosity, see *id.* at 37-38.

412 See 29 U.S.C. § 213; *Fact Sheet #12: Agricultural Employers under the Fair Labor Standards Act (FLSA)*, U.S. DEP’T OF LABOR (Jan. 2020), <https://www.dol.gov/agencies/whd/fact-sheets/12-flsa-agriculture> [<https://perma.cc/8B7L-WWH7>].

413 See 29 U.S.C. § 213(a)(15); Steven A. Cohen, Neelam Ahmed, Monique J. Brown, Marissa R. Meucci & Mary L. Greaney, *Rural-Urban Differences in Informal Caregiving and Health-Related Quality of Life*, 38 J. RURAL HEALTH 442, 442-43 (2021) (noting that older adults in rural communities often receive care from informal caregivers and that most informal caregivers reside in rural, remote areas without professional eldercare); Jyoti Savla, L. Rebecca Bivens, Karen A. Roberto & Rosemary Blieszner, *Where You Age Matters: Individual- and County-Level Predictors of Formal and Informal Care in Rural Appalachia*, 31 J. AGING & HEALTH 837, 838-39 (2019) (discussing

In addition, 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, and the Americans with Disabilities Act only apply to firms with fifteen or more employees, and the ADEA applies to firms with twenty or more employees.⁴¹⁴ The vast majority of rural employers—over 78%—have fewer than ten workers and 89% have fewer than twenty, excluding most private employers from antidiscrimination duties.⁴¹⁵ While more progressive states have lowered these thresholds under state law, that just increases geographic disparities in worker protections.⁴¹⁶

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.⁴¹⁷ 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.⁴¹⁸ The U.S. Department of Labor is vast, with nineteen sub-agencies and hundreds of state and local offices around the country, creating immense coordination costs, and with a traditionally low budget.⁴¹⁹

the dearth of healthcare options for older adults in rural Appalachia and noting their “reliance on kinship networks” for care).

⁴¹⁴ 42 U.S.C. §§ 2000e(b); 42 U.S.C. § 12111(5)(A); 29 U.S.C. § 630(b).

⁴¹⁵ FED. RSRV. BANK OF RICHMOND & FED. RSRV. BANK OF ATLANTA, SMALL BUSINESS CREDIT SURVEY: REPORT ON RURAL EMPLOYER FIRMS 5 & tbl.4 (2017), https://www.richmondfed.org/-/media/RichmondFedOrg/community_development/resource_centers/small_business/pdf/credit_survey/sbcs_report_rural_employer_firms_2016.pdf [<https://perma.cc/K84Z-G9XT>].

⁴¹⁶ See, e.g., California Fair Employment and Housing Act, CAL. GOV'T CODE § 12926(d) (2023) (applying antidiscrimination obligations to employers of five or more workers).

⁴¹⁷ See *infra* Section II.C.3.

⁴¹⁸ See, e.g., Jeounghee Kim & Skye Allmang, *Wage Theft in the United States: A Critical Review* (Ctr. for Women & Work, Working Paper No. 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 [<https://perma.cc/UBC3-E8MG>]; DAVID COOPER & TERESA KROEGER, EMPLOYERS STEAL BILLIONS FROM WORKERS' PAYCHECKS EACH YEAR 1, 3, 25-26 (2017), <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/> [<https://perma.cc/H3U7-NAAX>] (reporting that low-wage workers generally, and minimum-wage eligible workers in particular, experience wage theft at high rates).

⁴¹⁹ For a list of Labor Department sub-agencies, see *Agencies*, U.S. DEP'T OF LABOR, <https://www.dol.gov/general/jobs/dol-sub-agencies> (last visited Feb. 21, 2024). For a discussion of intra-agency coordination costs, see Hiba Hafiz, *Interagency Coordination on Labor Regulation*, 6

The EEOC is slightly better resourced, but its fifty-three field offices have inconsistent and long intakes due to limited resources and difficulty reaching local populations.⁴²⁰ Employment law enforcement is simply not structured to 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.⁴²¹

Employment law also confronts obstacles in rural and distressed communities related to thin markets and local scale, such as 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 when they report noncompliance and suffer an adverse employment action. And since the majority of filed employment law violations involve retaliation, on-the-ground enforcement in rural and distressed communities requires nothing short of heroism.⁴²²

III. REGULATORY SOLUTIONS TO IMPROVING RURAL AND DISTRESSED LABOR MARKETS

Tailoring labor market regulation to work better for rural and distressed communities is critical to 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

ADMIN. L. REV. 199, 200-08 (2021). For a discussion of the effects of agency resource constraints, see, for example, Ihna Mangundayao, Celine McNicholas & Margaret Pydock, *Worker Protection Agencies Need More Funding to Enforce Labor Laws and Protect Workers*, ECON. POL'Y INST. (July 29, 2021), <https://www.epi.org/blog/worker-protection-agencies-need-more-funding-to-enforce-labor-laws-and-protect-workers/> [<https://perma.cc/6YKC-N4DV>]. For a discussion of agency coordination challenges and the need to prioritize coordination for “strategic enforcement,” see DAVID WEIL, *IMPROVING WORKPLACE CONDITIONS THROUGH STRATEGIC ENFORCEMENT* 5-17 (2010), <https://www.dol.gov/sites/dolgov/files/WHDLegacy/files/strategicEnforcement.pdf> [<https://perma.cc/5ER9-8BWP>].

⁴²⁰ U.S. GOV'T ACCOUNTABILITY OFF., GAO-23-106245, *EEOC OVERSIGHT NEEDED* 3, 10, 27 (2022), <https://www.gao.gov/assets/gao-23-106245.pdf> [<https://perma.cc/RUS6-D47N>].

⁴²¹ SCHRANK & PIORE, *supra* note 382, at 50 & tbl. 3.1 (discussing the narrow, highly specialized approach to workplace inspections in the United States as compared with France's generalist and integrated system).

⁴²² See, e.g., *Charge Statistics (Charges Filed with EEOC) FY 1997 Through FY 2021*, U.S. EQUAL EMP. OPPORTUNITY COMM'N (2022), <https://www.eeoc.gov/data/charge-statistics-charges-filed-eeoc-fy-1997-through-fy-2021> [<https://perma.cc/K29E-C2R4>]; SUJA THOMAS & SANDRA SPERINO, *UNEQUAL: HOW AMERICA'S COURTS UNDERMINE DISCRIMINATION LAW* 44-46 (2017).

creation mechanisms, to help policymakers imagine alternative ways of structuring rural and distressed labor markets altogether. It then focuses on solutions to specific market failures, beginning with natural monopsony, before discussing market thinness and deeper market failures.

A. Reconfiguring Market Governance and Wage-Making Conditions

In rural and distressed markets, the federal government has a critical role in wage-making 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.⁴²³ This Section first provides an overview of reasons why the federal government must take an aggressive role in regulating rural and distressed labor markets. Second, it draws 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 rural and distressed labor markets in dominant positions as regulators of worker outcomes and workplace regulation, 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.⁴²⁴ Regardless of their geography, monetary policy impacts all

⁴²³ See, e.g., LISTOKIN, *supra* note 191, at 16 (“[E]xpansionary legal policy offers options to depressed jurisdictions that lack control over monetary policy in a currency union.”); *id.* at 96 (“In the United States, a large proportion of state governments were forced to pursue contractionary policy, making it even harder for the federal government to appreciably stimulate the economy as a whole.”); ANDERSON, *supra* note 8, 13 (explaining that state “constitutions and state laws lock [small local governments in rural areas] in even tighter revenue and tax controls than other states, which means they lack the legal authority to do much beyond rudimentary services . . . and business development”); Sachs, *supra* note 366, at 1164-69 (discussing the NLRA’s preemption and judge-made preemption doctrine of state and local government regulation of labor relations).

⁴²⁴ See *supra* notes 189-90, 398, and accompanying text.

employers' decisions to invest and hire at the margins and functions as an indirect "price control for wages" based on targeting and capping wage growth.⁴²⁵ When asked about wages and inflation, Federal Reserve Chairman Jerome Powell stated that "it's not that we don't want wage increases . . . We just want them to be at a level that's consistent with 2 percent inflation."⁴²⁶ When asked whether he would "reevaluate" the two-percent inflation target, Powell responded that "[w]e're not going to consider that under any circumstances."⁴²⁷ 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.⁴²⁸ 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 or distressed labor markets. Further, state and local inactivity becomes a federal macroeconomic problem by contributing to slower growth rates and increasing income and wealth inequality.⁴²⁹ The incentives for states to compete for business investments and employer entry established by New Federalism 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.

Section 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

⁴²⁵ See Daniel Denvir, *Inflation Is About Class Struggle: An Interview with Tim Barker*, JACOBIN (Jan. 11, 2023), <https://jacobin.com/2023/01/inflation-class-struggle-economic-policy-federal-reserve-the-dig> [<https://perma.cc/ED89-EGN4>].

⁴²⁶ Jerome Powell, Chair, Fed. Rsrv., Press Conference 13 (Dec. 14, 2022), <https://www.federalreserve.gov/mediacenter/files/FOMCpresconf20221214.pdf> [<https://perma.cc/QXD4-Y7Z8>].

⁴²⁷ *Id.* at 19.

⁴²⁸ ANDERSON, *supra* note 8, at 13.

⁴²⁹ See Schleicher, *supra* note 60, at 85.

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 of state and local governments, state and local government capture by industry, 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.⁴³⁰

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.⁴³¹

Establishing a centralized federal system that could coordinate labor policy to address geographic inequality would be 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 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.

⁴³⁰ See, e.g., Richard C. Schragger, *Localism All the Way Up*, 2021 WISC. L. REV. 1283, 1286-91 (2021) (describing a trend of state governments preempting and penalizing city governments in red states); Richard C. Schragger, *Federalism, Metropolitanism, and the Problem of States*, 105 VA. L. REV. 1537, 1543-45 (2019) (observing that many states restrict cities’ access to funds and preclude cities from creating regulatory and redistributive policies).

⁴³¹ Cf. U.S. GOV’T ACCOUNTABILITY OFFICE, GAO 24-105651, WORK ARRANGEMENTS: IMPROVED COLLABORATION COULD ENHANCE LABOR FORCE DATA 15 (2023), <https://www.gao.gov/products/gao-24-105651> [<https://perma.cc/H252-56QJ>].

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 to 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 to 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.⁴³²

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 her advisory function and assembly of 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 Chief Technology Officer team, OLP could create a Chief Labor Officer team to coordinate policies across the U.S. government and establish coherent 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.⁴³³ 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.⁴³⁴ The Office could also develop best practices for fiscal policy vehicles and public funding that increases worker earnings by studying current and former place-based investments and evaluating how best to condition federal dollars to create high-quality jobs with decent pay and robust union protections.

⁴³² For more information about the OSTP, see *Office of Science and Technology Policy*, WHITE HOUSE, <https://www.whitehouse.gov/ostp/> [<https://perma.cc/5SU2-CAT9>] (last visited Feb. 23, 2024).

⁴³³ For a template, see Hafiz & Marinescu, *supra* note 187, at 496-508.

⁴³⁴ See SURESH NAIDU & AARON SOJOURNER, EMPLOYER POWER AND EMPLOYEE SKILLS 58-64 (2020), https://rooseveltinstitute.org/wp-content/uploads/2020/12/RI_EmployerPowerEmployeeSkills_Report_202012.pdf [<https://perma.cc/36SV-KLM8>] (providing policy recommendations for strengthening workers' leverage).

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 to generate union-protected jobs beyond the construction sector. Similar to the New Deal,⁴³⁵ these jobs could include work in light construction projects, as employment surveyors collecting data on labor market conditions, or in other 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.⁴³⁶ 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. Exploring rate regulatory strategies, at least for certain essential services in rural and distressed communities, could actually increase output and productivity where 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 nonprofit 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. The data could make OLP a

435 ATTEWELL, *supra* note 190, at 140-45, 268.

436 See, e.g., LISTOKIN, *supra* note 191, at 157-58 (arguing for the use of expansionary legal policy to combat economic contractions); TREASURY DEP’T, *supra* note 11, at 48 (discussing drivers of low interest rates and the resulting ineffectiveness of monetary policy).

central clearinghouse for studying place-based compensation levels by occupation, industry, and sector with demographic characteristics.

The OLP's policy planning and data analysis would be a fundamental resource for labor regulatory agencies across the federal government. The Office would oversee and coordinate with those agencies to improve their enforcement priorities and targeted investigations through a whole-of-government approach.⁴³⁷ OLP could also identify and resolve interagency policy that exacerbates 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 to increase 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, OLP could function as a direct line between working people and 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.⁴³⁸ 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," including a right to work.⁴³⁹ 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.⁴⁴⁰ 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.

⁴³⁷ See Hafiz & Marinescu, *supra* note 187, at 496-508; Hafiz, *supra* note 191, at 22-24.

⁴³⁸ ATTEWELL, *supra* note 190, at 140.

⁴³⁹ *Id.*

⁴⁴⁰ *Id.* at 71.

B. *Taking on Company Towns*

While firms with natural monopolies have been the subject of intense regulatory and scholarly scrutiny since at least the 1880s,⁴⁴¹ 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 monopolies to employers' natural monopsonies in rural and distressed communities. Second, it explores regulatory options for strengthening workers' countervailing power to minimize monopsonistic wage-setting.

1. Regulating Natural Monopsonies

Where true natural monopolies exist, most legal scholars, policymakers, and economists agree that regulation is appropriate to avoid the harms of monopoly power and pricing.⁴⁴² 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.⁴⁴³ 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.⁴⁴⁴ 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 economies

⁴⁴¹ See generally NETWORKS, PLATFORMS, AND UTILITIES: LAW AND POLICY 41-129 (Morgan Ricks, Ganesh Sitaraman & Shelley Welton eds., 2022).

⁴⁴² See, e.g., Paul L. Joskow, *Regulation of Natural Monopoly*, in 1 HANDBOOK OF LAW AND ECONOMICS 1229-31 (2007). But see Posner, *supra* note 124, at 615-16 (arguing that natural monopolists have incentives to operate efficiently, without causing substantial social injustice, making regulation of natural monopolies unnecessary and potentially counterproductive).

⁴⁴³ See, e.g., BREYER, *supra* note 16, at 4, 199-200, 224-26, 250, 293-314 (describing rate and entry regulation in the airline, natural gas, and longline communications industries); John E. Kwoka, *The Role of Competition in Natural Monopoly: Costs, Public Ownership, and Regulation*, 29 REV. INDUS. ORG. 127, 136-46 (2006) (analyzing the effect of public versus private ownership).

⁴⁴⁴ Posner, *supra* note 124, at 636; see also ISABELLA WEBER, HOW CHINA ESCAPED SHOCK THERAPY: THE MARKET REFORM DEBATE 26 (2021) (describing price regulation strategies as an alternative to direct tax imposition in countercyclical planning).

of scale and service unification to consumers' benefit while regulating away accompanying barriers to entry and harmful monopoly effects through specialized regulatory bodies.⁴⁴⁵ Public utility and rate regulation has a range of economic and moral justifications, from better achieving "competitive" prices to ensuring "just prices" in the public interest.⁴⁴⁶

In conceptualizing regulatory frameworks for natural monopolies following the Sherman Act's passage, Progressive economist Richard Ely advocated for a social reform program that could 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.⁴⁴⁷

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% or more of the market or was valued above a certain threshold.⁴⁴⁸

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 infracompétitive output, particularly in the provision of essential services like health care, training, and education.⁴⁴⁹ These harms have reverse multiplier effects in local communities with macroeconomic effects. Drawing from traditional regulatory tools like public ownership and wage regulation is a natural start.

⁴⁴⁵ See, e.g., Dempsey, *supra* note 84, at 459-461 (explaining how the deregulation of the U.S. bus industry negatively impacted rural consumers); Eisenberg, *supra* note 19, at 768-70 (reporting that the regulation of telephone companies contributed to widespread access in US households).

⁴⁴⁶ See generally Boyd, *supra* note 186, at 761-67.

⁴⁴⁷ Richard T. Ely, *Natural Monopolies and the Workingman*, 158 N. AM. REV. 294, 296-300 (1894).

⁴⁴⁸ See, e.g., ATTEWELL, *supra* note 190, at 147 n.58 (citing GARDINER MEANS, A PROGRAM FOR FULL EMPLOYMENT IN 1973 (1973)).

⁴⁴⁹ See, e.g., Matthew, *supra* note 129 at 818-819 (arguing that pure competition will not result in ideal pricing or output levels in the hospital industry); Robert Tholkes, *Economies of Scale in Rural School Districts*, 16 J. ED. FIN. 497, 507 (1991) (suggesting that the manufacturing model of economies of scale theory does not neatly map onto educational services, particularly in rural areas).

a. *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 nonprofit hospitals as compared to private hospitals while nurses in government hospitals earned about the same as those in private for-profit hospitals.⁴⁵⁰ Doctors and nurses in rural areas make between 5% and 33% less than their urban counterparts, despite higher demand for health care professionals, so increasing salaries could have the additional benefit of recruiting more health care providers in communities of need.⁴⁵¹ 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.⁴⁵²

Public ownership could occur through government 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.⁴⁵³

⁴⁵⁰ See Karen P. Shahpoori & James Smith, *Wages in Profit and Nonprofit Hospitals and Universities*, U.S. BUREAU OF LAB. STAT. (June 29, 2005), <https://www.bls.gov/opub/mlr/cwc/wages-in-profit-and-nonprofit-hospitals-and-universities.pdf>.

⁴⁵¹ See William B. Weeks & Amy E. Wallace, *Rural-Urban Differences in Primary Care Physicians' Practice*, 24 J. RURAL HEALTH 161, 165 (2008); SUSAN M. SKILLMAN, LORELLA PALAZZO, L. GARY HART & PATRICIA BUTTERFIELD, UNIV. OF WASH. RURAL HEALTH RSCH. CTR., CHANGES IN THE RURAL REGISTERED NURSE WORKFORCE FROM 1980 TO 2004 FINAL REPORT #115, at 12 (2007).

⁴⁵² See, e.g., Kwoka, *supra* note 443, at 136-46 (reporting empirical findings that suggest costs under public ownership are not reduced by competition).

⁴⁵³ For state use of community trusts, see, for example, Massachusetts Community Hospital Reinvestment Trust Fund, Mass. Gen. Laws ch. 29, § 2TTTT (2016); 101 Mass. Code Regs. 701.00

b. *Place-Based Wage Boards*

The imposition of wage controls is not unprecedented in American regulatory history and dates back to the early colonial period.⁴⁵⁴ The National Industrial Recovery Act (NIRA) instituted government regulation of price and wage rates industry-by-industry to boost production and demand.⁴⁵⁵ After the Supreme Court struck down NIRA,⁴⁵⁶ 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.⁴⁵⁷ 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.⁴⁵⁸

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.⁴⁵⁹ However, broader proposals

(2017); Dave A. Chokshi, Prabhjot Singh & Nicholas Stine, *Using Community Health Trusts to Address Social Determinants of Health*, JAMA FORUM (April 16, 2014), <https://jamanetwork.com/channels/health-forum/fullarticle/2760685> [<https://perma.cc/H4GQ-Z3D7>]. For New Zealand, see, for example, Rachel Eyre & Robin Gauld, *Community Participation in a Rural Community Health Trust*, 18 HEALTH PROMOTION INT'L 189, 190 (2003); Pauline Barnett & J. Ross Barnett, *Community Ventures in Rural Health*, 9 AUST. J. RURAL HEALTH 229, 229-30 (2001).

⁴⁵⁴ See generally HUGH ROCKOFF, DRASTIC MEASURES: A HISTORY OF WAGE AND PRICE CONTROLS IN THE UNITED STATES vii-12 (Louis Galambos & Robert Gallman, eds., 1984) (anchoring the origin of American price controls to the colonial period).

⁴⁵⁵ See LEWIS L. LORWIN & ARTHUR WUBNIG, LABOR RELATIONS BOARDS: THE REGULATION OF COLLECTIVE BARGAINING UNDER THE NATIONAL INDUSTRIAL RECOVERY ACT 26-27 (Brookings Inst. 1935) (providing an overview of the NIRA labor boards' regulation of wages and labor standards).

⁴⁵⁶ A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495, 550 (1935).

⁴⁵⁷ See ROCKOFF, *supra* note 454, at vii, 12, 86-87, 178-79; ROBERT ZIEGER, THE CIO 1935-1955, at 165-179, 295-303 (1995); Andrew Workman, *Creating the National War Labor Board*, 12 J. POL'Y HIST. 233, 233 (2000); Reuben Slesinger, *Price-Wage Guideposts Revisited*, 53 AM. BAR ASS'N J. 525, 525 (1967).

⁴⁵⁸ Selsinger, *supra* note 457, at 252.

⁴⁵⁹ See Kate Andrias, David Madland & Malkie Wall, *Workers' Boards: Frequently Asked Questions*, CTR. FOR AM. PROGRESS (Dec. 11 2019), <https://www.americanprogress.org/wp-content/uploads/2019/12/Wage-Board-OnePager.pdf> [<https://perma.cc/85FB-LCHY>]; Karis Stephen, *New California Law Forces Fast Food Restaurants to Think Fast*, REGUL. REV. (Oct. 25, 2022),

have imagined wage boards that establish multiple minimum pay standards based on sector and occupation.⁴⁶⁰

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 (PBWBs) 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. 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 members 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.⁴⁶¹

<https://www.thereview.org/2022/10/25/stephen-new-california-law-forces-fast-food-restaurants-to-think-fast> [<https://perma.cc/SB9D-NT7S>]; April Girnus, *Nevada to Create Labor Board for Home Care Industry*, NEV. CURRENT (Oct. 6, 2021), <https://www.nevadacurrent.com/2021/10/06/nevada-to-create-labor-board-to-address-issues-within-home-care-industry> [<https://perma.cc/UJD7-UYH2>]; 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/n> [<https://perma.cc/JZP3-2V79>].

⁴⁶⁰ See Kate Andrias, *Union Rights for All*, in CAMBRIDGE HANDBOOK OF LABOR LAW FOR THE TWENTY-FIRST CENTURY 56-63 (Richard Bales & Charlotte Garden eds., 2020); Arindrajit Dube, *Using Wage Boards to Raise Pay*, ECONFIP (Feb. 2019), <https://econfip.org/policy-briefs/using-wage-boards-to-raise-pay> [<https://perma.cc/4E7K-QXWL>]; David Madland, *Wage Boards for American Workers*, CTR. FOR AM. PROGRESS (Apr. 9, 2018), <https://www.americanprogress.org/issues/economy/reports/2018/04/09/448515/wage-boards-american-workers> [<https://perma.cc/3P69-FFUF>].

⁴⁶¹ See, e.g., Antonella Angelini & Shauna Curphey, *The Overlooked Advantages of the Independent Monitoring and Complaint Investigation System in the Worker-Driven Social Responsibility Model in US Agriculture*, 7 BUS. & HUM. RIGHTS 494, 496 (2022) (“The WRS’s creation of a dedicated, independent monitoring and complaint mechanism forms the critical infrastructure for program enforcement.”); Opi Outhwaite & Olga Martin-Ortega, *Worker-Driven Monitoring—Redefining Supply Chain Monitoring to Improve Labour Rights in Global Supply Chains*, 23 COMP. & CHANGE 378, 381 (2019) (discussing different models of monitoring supply chains).

In deciding whether such an aggressive intervention is warranted, “the question is not whether [wages] are set by the state or determined in the free market, but whether they are fixed by government [wage] controls or by market-dominating private producers.”⁴⁶² 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.⁴⁶³ In the case of labor market regulation, again, the costs are not limited to wage or employment rate fluctuations, but extend to firm productivity, mass purchasing power, and negative multiplier effects in rural and distressed communities.

2. Strengthening Workers’ Countervailing Power

Whether the business is 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 the strength of the workers’ organization and the power of government enforcers.⁴⁶⁴ Labor market institutions like unions and government enforcement strengthen workers’ bargaining leverage and ability to increase wages.⁴⁶⁵ 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. The government should 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 alternative labor institutions to local civil society institutions and other forms of collective organizing.⁴⁶⁶

⁴⁶² WEBER, *supra* note 444, at 55.

⁴⁶³ See JOSKOW, *supra* note 442 (discussing applicability of antitrust law in markets with natural monopoly characteristics).

⁴⁶⁴ See generally Hafiz, *supra* note 35; Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546, 551-52 (2021) (discussing capacity of mass membership organizations to pool resources and generate countervailing power against dominant counterparties).

⁴⁶⁵ See, e.g., Dube, *supra* note 460, at 3; Farber, Herbst, Kuziemko & Naidu, *supra* note 225, at 1326-27; David H. Autor, Alan Manning & Christopher L. Smith, *The Contribution of the Minimum Wage to US Wage Inequality over Three Decades: A Reassessment*, 8 AM. ECON. J.: APPLIED ECON. 58, 88-89 (2016) (discussing the role of declining minimum wages on exacerbating gender inequality).

⁴⁶⁶ See, e.g., Debra C. Jeter, Randall S. Thomas & Harwell Wells, *Democracy and Dysfunction: Rural Electric Cooperatives and the Surprising Persistence of the Separation of Ownership and Control*, 70 ALA. L. REV. 361, 373 (2018) (detailing the rise of cooperatives in the agricultural sector).

One critical worker empowerment tool might be forms of worker “cooperative” ownership or a “condominium” model where workers leave management of facilities to either a private or public employer but retain entitlements to fixed parts of the facility’s capacity, including the right to sell or lease such rights.⁴⁶⁷ 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.”⁴⁶⁸ In the early twentieth century, farmers joined together with grain trading firms to form cooperatives that established cooperative grain elevators, increasing farmer revenue and eliminating the monopoly bottleneck of the exploitative grain elevator owners.⁴⁶⁹ Federal and state legislators and policymakers can facilitate cooperatives and employee ownership through reducing tax rates and increasing access to credit, enabling workers in rural and distressed areas to own businesses. 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.⁴⁷⁰

C. Market Thickening

There are two avenues for remedying market thinness in rural and distressed labor markets that are not the result of 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.⁴⁷¹ 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

⁴⁶⁷ See Peter Carstensen & Darren Bush, *Breaking Up Bottlenecks in Big Tech and Everywhere Else: Two Remedies That You’re your Packages Arriving in Two Days 3* (unpublished manuscript) (on file with author); Peter Carstensen & Darren Bush, *Condo and Coop: Two Solutions to Monopoly Bottlenecks and Self-Preferencing in Big Tech*, SLING (Nov. 11, 2022), <https://www.thesling.org/condo-and-coop-two-solutions-to-monopoly-bottlenecks-and-self-preferencing-in-big-tech> [<https://perma.cc/377D-EAPQ>].

⁴⁶⁸ Carstensen & Bush, *supra* note 467.

⁴⁶⁹ *Id.*

⁴⁷⁰ See, e.g., NATHAN SCHNEIDER, *EVERYTHING FOR EVERYONE 1-17* (2018); Renuka Rayasam, *How a ‘Radical’ Southern Mayor Ran up Against Reality*, POLITICO (Mar. 31, 2021), <https://www.politico.com/news/magazine/2021/03/31/chokwe-antar-lumumba-jackson-progressives-478380> [<https://perma.cc/NR5Y-Z4B5>] (discussing the vision of the Mayor of Jackson, Mississippi to transform the City through initiatives like co-operative business).

⁴⁷¹ See *supra* Section II.A.

inequality.⁴⁷² 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.

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).⁴⁷³ Direct job creation is a necessary intervention in rural and distressed labor markets as a backstop protecting communities from economic shocks that 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, provision of essential services—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, expanding private- or public-sector jobs.⁴⁷⁴ Positioning the federal government as an ELR would enable better tracking of where jobs in rural and distressed areas are needed most, 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

⁴⁷² See Emily Parker, Laura Tach & Cassandra Robertson, *Do Federal Place-Based Policies Improve Economic Opportunity in Rural Communities?*, 8 RUSSELL SAGE FOUND. J. SOC. SCI. 125, 146 (2022) (“Despite this sizable growth in federal place-based investment in rural communities, we find mixed evidence that this investment has produced better socioeconomic outcomes for rural residents.”); Rebecca Diamond, *The Determinants and Welfare Implications of US Workers’ Diverging Location Choices by Skill: 1980–2000*, 106 AM. ECON. REV. 479, 522 (2016).

⁴⁷³ GANESH SITARAMAN & ANNE L. ALSTOTT, THE PUBLIC OPTION 230 (2019) (“[T]he federal government would guarantee that any adult who wants to work could do so, and it would get that person a job.”); Garin & Rothbaum, *supra* note 213, at 33–34; K. Sabeel Rahman, *Infrastructural Regulation and the New Utilities*, 35 YALE J. ON REGUL. 911, 928–32 (2018) (“[W]e might pursue a range of options through which public actors themselves directly provide the good or service in question.”).

⁴⁷⁴ See JOSH BIVENS, ECON. POL’Y INST. RECOMMENDATIONS FOR CREATING JOBS AND ECONOMIC SECURITY IN THE U.S. 11, 17 (2018), [<https://perma.cc/7K9U-Q36Y>].

Market Board made up of union and employer representatives at both the national and local levels.⁴⁷⁵ 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.⁴⁷⁶ 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.⁴⁷⁷ The program has saved thousands of jobs during recessions and grants Sweden the highest reemployment rate of displaced workers in the world: 85%.⁴⁷⁸ 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 industrial policy. In addition to empirical evidence showing its long-term benefits, spatially-targeted fiscal projects can incentivize employment in regional or local markets.⁴⁷⁹ The current, unprecedented outlay of fiscal spending has not been tailored to address the specific labor market failures rural and distressed communities confront.⁴⁸⁰ Instead, existing policy and

⁴⁷⁵ See, e.g., HELEN GINSBURG, FULL EMPLOYMENT AND PUBLIC POLICY: THE UNITED STATES AND SWEDEN 114 (1983).

⁴⁷⁶ *Id.*; John B. Taylor, *The Swedish Investment Funds System as a Stabilization Policy Rule* 1 1982 Brookings Papers on Econ. Activity 57, 59-60, https://www.brookings.edu/wp-content/uploads/1982/01/1982a_bpea_taylor_baily_fischer.pdf [<https://perma.cc/V7RC-BQZW>].

⁴⁷⁷ See ARBETSFÖRMLINGEN SWEDISH PUBLIC EMPLOYMENT SERVICE, [<https://perma.cc/C4LD-48VB>] (last visited Dec. 15, 2023); Anders Forslund, Daniela Froberg & Linus Lindqvist, *The Swedish Activity Guarantee* 7 (OECD Soc., Emp. & Migration, Working Paper No. 16, 2004), <https://doi.org/10.1787/631026763167> [<https://perma.cc/3BRT-T678>].

⁴⁷⁸ See OECD, BACK TO WORK: SWEDEN: IMPROVING THE RE-EMPLOYMENT PROSPECTS OF DISPLACED WORKERS 13 (2015), <https://doi.org/10.1787/9789264246812-en>. [<https://perma.cc/WJF7-7CWH>].

⁴⁷⁹ See HAFIZ, A WHOLE-OF-GOVERNMENT APPROACH, *supra* note 191, at 24 ("[W]here local institutions . . . are unable or unwilling to increase hiring and production . . . expansionary fiscal policy can boost hiring and production without contributing to inflation."); Austin, Glaeser & Summers, *supra* note 60, at 154-55 n.3 ("The impact of spatially heterogeneous policies on migration is a long-standing question in antipoverty policy."); see also LISTOKIN, *supra* note 191, at 16 (exploring expansionary legal policy as a remedy).

⁴⁸⁰ See, e.g., Edward L. Glaeser & Joshua D. Gottlieb, *The Economics of Place-Making Policies*, 2008 BROOKINGS PAPERS ON ECON. ACTIVITY, Spring 2008, at 196-203 (describing arguments for and against place-based policies with respect to the Appalachian Regional Commission and enterprise zones); Leslie E. Papke, *Tax Policy and Urban Development: Evidence from the Indiana Enterprise Zone Program*, 54 J. PUB. ECON. 37, 48 (1994) ("As in other state [enterprise zone]

grant designs 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 or adequately remedy them. Retooling funding and delivery mechanisms for place-based investments can increase labor demand and prepare to overcome those market failures.⁴⁸¹

A new OLP could devise a national Labor and Development Board (LDB) with both employer *and* leading union and worker representatives. It could review, approve, and monitor all place-based industrial policy, infrastructure, and workforce development grants to ensure a uniform set of labor standards are met. This would include robust labor and employment rights protections, access to union representation, interest arbitration for first collective bargaining agreements, access to general-skills training programs for local populations relevant for project execution but not tied to specific employer grant recipients, and prohibiting worker mobility restrictions.⁴⁸² 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.⁴⁸³ Federal place-based investment

programs, the Indiana tax incentives target both capital and labor, but capital is heavily favored."); Garin & Rothbaum, *supra* note 213, at 4 (examining the effects of plant sitings on economic geography of employment); Parilla, Haskins & Muro, *supra* note 285 (asserting that federal policymakers are increasingly recognizing the importance of bottom-up solutions); Gaubert, Kline & Yagan, *supra* note 285, at 2 (studying conditions under which place-based redistribution improves equity-efficiency tradeoffs); Austin, Glaeser & Summers, *supra* note 60, at 152-53 ("America's social problems . . . are concentrated in America's eastern heartland The income and employment gaps between the three regions are not converging, but instead seem to be hardening into semipermanent examples of economic hysteresis."); Donahue, Parilla & McDearman *supra* note 285 (providing a framework for analyzing and supporting local and state economies).

⁴⁸¹ See, e.g., Austin, Glaeser & Summers, *supra* note 60, at 217, 221; Raj Chetty, *A General Formula for the Optimal Level of Social Insurance*, 90 J. PUB. ECON. 1879, 1882-89 (2006).

⁴⁸² For a similar proposal but without worker representation, see Robert C. Hockett, *Labor's Capital: Why and How to Put Public Capital at the Service of Labor*, 30 NEW LAB. F. February 2021, at 22-23.

⁴⁸³ DAVID FRESHWATER, ALVIN SIMMS & JAMIE WARD, LOCAL LABOUR MARKETS AS A NEW WAY OF ORGANIZING POLICIES FOR STRONGER REGIONAL ECONOMIC DEVELOPMENT IN ATLANTIC CANADA 7-9 (2014) ("This approach does not negate the important role of federal and provincial policies The task for public policy makers is to understand what distinguishes these high performing smaller regions from those with low productivity, and to develop policies that

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.⁴⁸⁴ Additionally, evidence that costs per job created by 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.⁴⁸⁵

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%, with larger effects on rural and isolated areas.⁴⁸⁶ 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.⁴⁸⁷ 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.⁴⁸⁸ The government can also introduce or encourage more market participants through increasing funding for public services, education, and housing, increasing employment in those

help to raise economic performance in all regions.”); GREEN, *supra* note 99[], at 151 (defining the need for place-informed local policies in rural labor markets).

⁴⁸⁴ See, e.g., Garin & Rothbaum, *supra* note 213, at 2; Andrew Garin, *Putting America To Work, Where? Evidence on the Effectiveness of Infrastructure Construction as a Locally Targeted Employment Policy*, 111 J. URBAN ECON. 108, 109 (2019).

⁴⁸⁵ Bartik, *supra* note 117, at 6; Garin & Rothbaum, *supra* note 213, at 2 n.2 (discussing state and local governments' tax incentives designed to attract employers).

⁴⁸⁶ Hilal Atasoy, *The Effects of Broadband Internet Expansion on Labor Market Outcomes*, 66 INDUS. & LAB. RELATIONS REV. 315, 316-17 (2013).

⁴⁸⁷ Austin, Glaeser & Summers, *supra* note 60, at 217, 221; Marinescu & Rosenfeld, *supra* note 401, at 19-20 (examining how universal basic income and the earned income tax credit increase worker power).

⁴⁸⁸ See, e.g., MEHRSA BARADARAN, HOW THE OTHER HALF BANKS: EXCLUSION, EXPLOITATION, AND THE THREAT TO DEMOCRACY 183, 191 (2015) (proposing postal banking as a regional solution); Hockett, *supra* note 482, at 22 (proposing the establishment of a national council with jurisdiction over infrastructure and industry); Mehrsa Baradaran, *Postal Banking's Public Benefits*, 2 AM. AFFS. (Fall 2018) (“The basic idea of postal banking is to have a public bank that would offer a wide range of transaction services, including deposit-taking and small lending.”); Jordan Weissmann, *Kirsten Gillibrand Unveils Her Ambitious 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> [<https://perma.cc/LCB3-5CQN>].

sectors, and expanding provision of health care, mental health services, and housing.⁴⁸⁹

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 market design solutions 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.⁴⁹⁰ Algorithms and market "thickening" design solutions have also been deployed in the context of financial products and real estate markets.⁴⁹¹ 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.⁴⁹²

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

⁴⁸⁹ 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> [<https://perma.cc/R597-QQAR>].

⁴⁹⁰ See Alexander Teytelboym, Shengwu Li, Scott Duke Kominers, Mohammad Akbarpour & Piotr Dworczak, *Discovering Auctions*, 123 SCANDINAVIAN J. ECON. 709, 711 (2021); Alvin E. Roth, *The Economist as Engineer: Game Theory, Experimentation, and Computation as Tools for Design Economics*, 70 ECONOMETRICA 1341, 1364-72 (2002); Muriel Niederle & Alvin E. Roth, *The Effects of a Centralized Clearinghouse on Job Placement, Wages, and Hiring Practices*, in STUDIES OF LABOR MARKET INTERMEDIATION 235, 254-55 (David H. Autor ed., 2009).

⁴⁹¹ See *supra* text accompanying note 142.

⁴⁹² See Roth, *supra* note 490, at 1345-64.

occupation, obtain relocation services, and apply for mobility grants.⁴⁹³ 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 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 jobseekers 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 to 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,⁴⁹⁴ 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

⁴⁹³ See *The Location Bank*, SWEDISH PUBLIC EMPLOYMENT SERVICE, <https://arbetsformedlingen.se/platsbanken/> [<https://perma.cc/U62S-ERS6>] (last visited Feb. 21, 2024).

⁴⁹⁴ See, e.g., Exec. Order No. 14,036, 86 Fed. Reg. 36987-89 (July 9, 2021) (establishing policy to enforce antitrust laws to combat reduced competition in highly concentrated industries).

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,⁴⁹⁵ establishing duties to 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.⁴⁹⁶

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.⁴⁹⁷ Antitrust agency collaboration with labor agencies is key for sharing information as well as investigating and enforcing against powerful employers.⁴⁹⁸ 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

⁴⁹⁵ For "essential facilities" doctrine and proposals to revive it, see generally, Sandeep Vaheesan, *Reviving an Epithet: A New Way Forward for the Essential Facilities Doctrine*, 2010 UTAH L. REV. 911.

⁴⁹⁶ Hafiz, *Rethinking Breakups*, *supra* note 36, at 1503-04.

⁴⁹⁷ See, Exec. Order No. 14,036, 86 Fed. Reg. 36989 (July 9, 2021).

⁴⁹⁸ Hiba Hafiz, *Interagency Merger Review in Labor Markets*, 95 CHI.-KENT L. REV. 37, 39-40 (2020); Hiba Hafiz, *Interagency Coordination*, *supra* note 419, at 232-39 (arguing for interagency coordination on labor regulation between antitrust and labor agencies).

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.⁴⁹⁹ 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.⁵⁰⁰ 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.⁵⁰¹ 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

⁴⁹⁹ See, e.g., Initial Reform Ideas Memo from Working Group IIA: Building Organizations for Worker Power to the Harvard Law School Clean Late Project 9 (Apr. 26, 2019), <https://lwp.law.harvard.edu/files/lwp/files/hls-lwp-cs-initial-reform-ideas-wgiia.pdf> [<https://perma.cc/4HMZ-2C6P>].

⁵⁰⁰ See, Celine McNicholas, Margaret Poydock & Lynn Rhinehart, *How the PRO Act Restores Workers’ Rights*, ECON. POL’Y INST. (Feb. 4, 2021), <https://www.epi.org/publication/pro-act-problem-solution-chart/> [<https://perma.cc/T29E-KXUH>] (providing examples of how the PRO Act closes loopholes in current labor law).

⁵⁰¹ *Id.*

internal Division of Economic Research that serves as a research hub assessing how Board enforcement, or lack thereof, contributes to income and geographic inequality.⁵⁰² A new Division could also help tailor 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.⁵⁰³

Finally, employment law reforms could reduce market failures in rural and distressed labor markets 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 to 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 states and localities have done.

* * *

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.

⁵⁰² See Hiba Hafiz, *Economic Analysis of Labor Market Regulation*, 2017 WIS. L. REV. 1115, 1158-61 (2017).

⁵⁰³ See Hafiz, *Structural Labor Rights*, *supra* note 3735 at 656.

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.