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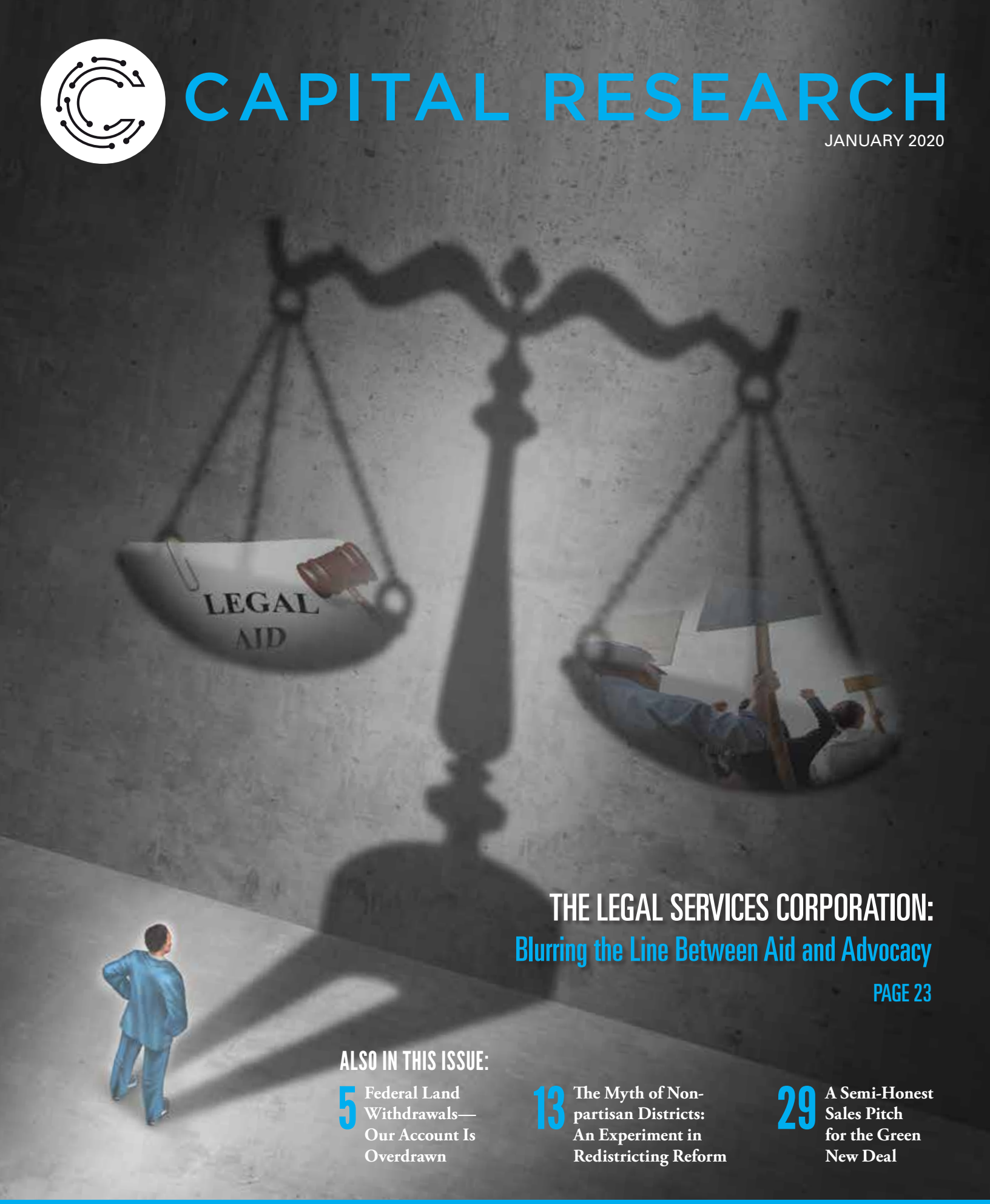
JANUARY 2020



THE LEGAL SERVICES CORPORATION:
Blurring the Line Between Aid and Advocacy

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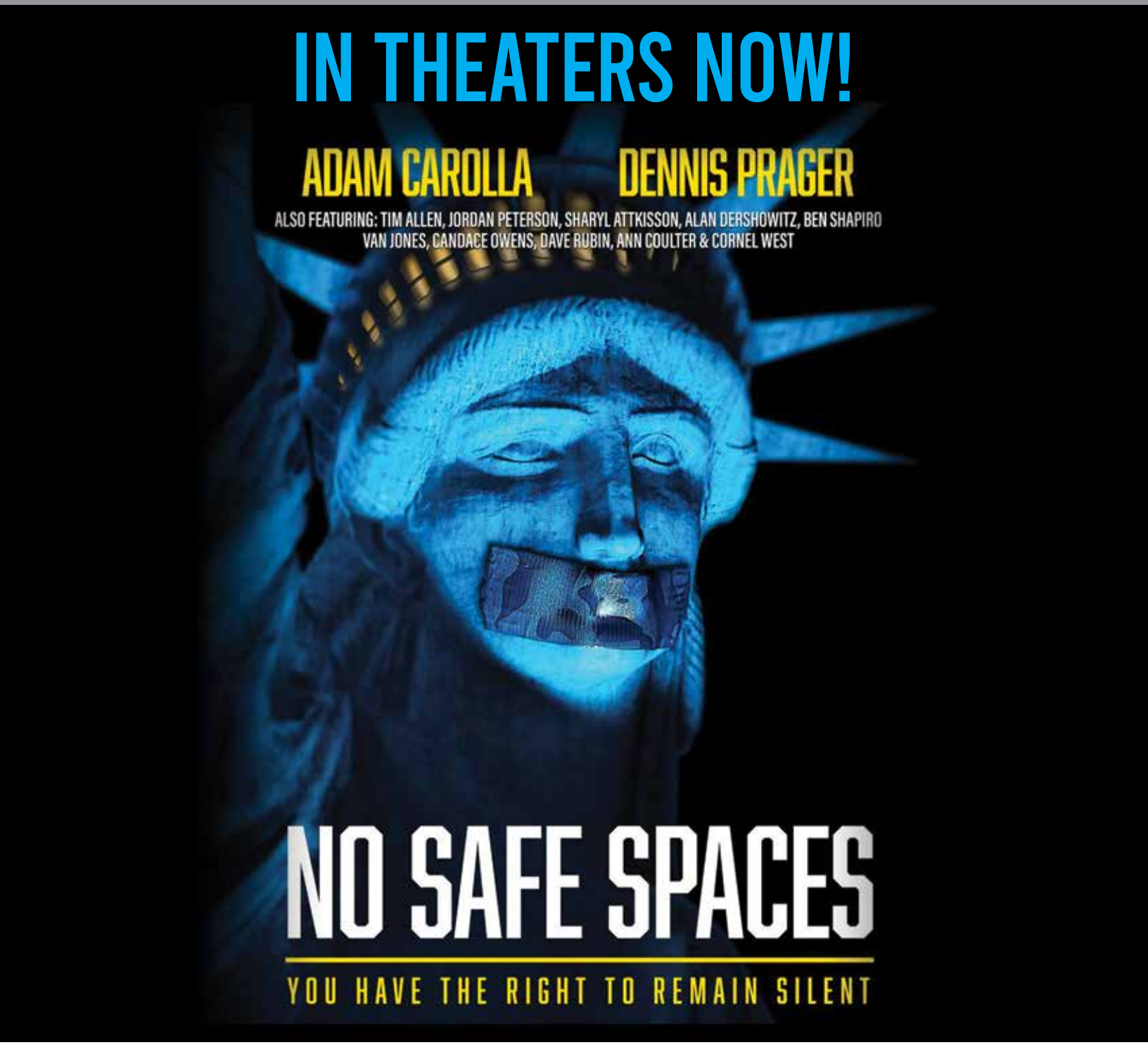

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CONSERVATIVES, EMBRACE BIG LABOR AT YOUR PERIL

By Michael Watson

As the Democratic candidates court union endorsements, Big Labor is gearing up to spend big in 2020. This election cycle, labor union PACs have already made nearly $34 million in contributions—84 percent to Democrats.

Yet, some conservatives are offering olive branches to Big Labor in hopes union officials will abandon their allies on the Left. For example, the R Street Institute's Eli Lehrer recently urged the Trump administration to "help non-traditional labor organizations," also known as "worker centers." In Lehrer's words: "A strategy of supporting groups that perform some functions of unions but not all does not mean cozying up to the AFL-CIO, the United Auto Workers, the Teamsters, or any other part of 'Big Labor'—just the opposite, in fact."

Conservatives, understandably, began looking within unions' ranks for new allies after 2016 exit polls suggested President Trump won 43 percent of the union household vote, but a bold line must be drawn between union leadership and membership. While a substantial minority of union members vote Republican, upward of 9 in 10 political dollars given by union leaders go to back Democrats. And while union leaders' support for Democratic politicians is well-known, union support for left-of-center advocacy groups is even more lopsided—99 percent goes to the Left.

> *Some conservatives are offering olive branches to Big Labor in hopes union officials will abandon their allies on the Left.*

Worker centers may brand themselves as "non-traditional," but they're really more of the same. From the United Farm Workers to the Pioneer Valley Workers Center, Lehrer's own examples reveal wolves in sheep's clothing. Both the Labor Department and the state of California (where UFW is most active) recognize UFW as, well, an old-fashioned labor union. It's even a member of Change to Win—the union federation and strategic organizing center led by the Service Employees International Union and International Brotherhood of Teamsters. Those two unions launched Change to Win because they found traditional unions insufficiently aggressive in their attacks on the business community.

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In Eli Lehrer's words: "A strategy of supporting groups that perform some functions of unions but not all does not mean cozying up to the AFL-CIO, the United Auto Workers, the Teamsters, or any other part of 'Big Labor'—just the opposite, in fact."

As for the Pioneer Valley Workers Center, a quick glance at its senior staff page confirms that, while the center may not formally be part of the (shockingly corrupt) United Auto Workers, it is strongly connected to the UAW alumni

Michael Watson serves as research director for the Capital Research Center and as managing editor of InfluenceWatch.org.
This article appeared in the Washington Examiner *on December 10, 2019.*

> *Today's Teamsters union has embraced numerous policy positions that should give any conservative pause.*

network. Rose Bookbinder, a "co-director and lead organizer," brags that she was previously "a lead organizer for the United Auto Workers."

Another example, the Freelancers Union, has deep ties to Big Labor and the institutional Left. Its founder, Sara Horowitz, co-founded the think tank Demos, worked as a union organizer, and has repeatedly vowed to implement "traditional labor strategies."

Lehrer isn't alone in making overtures to Big Labor. Republican commentator James Pinkerton proposed an "Eisenhower Option"—the hope that strengthening labor unions themselves will earn conservatives the support of Big Labor as an institution. After all, Republicans claimed a "labor statesman" in the Eisenhower years; his name was Dave Beck, and he led one of America's largest unions, the International Brotherhood of Teamsters.

Of course, Beck was profoundly corrupt, concocting schemes to turn member dues into personal luxuries. The criminal activities of Beck and his infamous successor, the mob-tied Jimmy Hoffa, were so egregious they led to the passage of the Labor Management Reporting and Disclosure Act of 1959.

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Dave Beck was profoundly corrupt, concocting schemes to turn member dues into personal luxuries. The criminal activities of Beck and his infamous successor, the mob-tied Jimmy Hoffa, were so egregious they led to the passage of the Labor Management Reporting and Disclosure Act of 1959.

Worse, today's Teamsters union has embraced numerous policy positions that should give any conservative pause. Consider Teamsters Joint Council 16, which has declared itself a "sanctuary union" that would not cooperate with federal immigration authorities. Or take the California Teamsters, which lobbied the state to pass a special incentive package to lure film production from Georgia after the Peach State passed strict limits on abortion.

Where exactly is the mutual interest here? Of course, conservatives are not wrong to reach out to union members and their families. But endorsing the institutions that claim to represent those households is folly. Big Labor is simply too intertwined with the rest of the Left—from ideology to funding and staffing—to be allies of conservatives. Buyer, beware. ■

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FEDERAL LAND WITHDRAWALS—OUR ACCOUNT IS OVERDRAWN

The Consequences of Locking Up American Mineral Wealth

By Ned Mamula

Summary: *Despite a wealth of resources within the boundaries United States, the U.S. economy and national defense rely on imports of critical minerals from China, Russia, and other unsavory or less reliable sources. The mineral resources of the Rocky Mountains, Alaska, and other areas of United States could fill these needs, but most of these resources are located in federal public lands that have been withdrawn from exploration and mining. These withdrawals by Congress and the executive branch have accumulated over time to the point of endangering the nation's economic stability and national defense.*

Introduction

The U.S. economy and national defense rely heavily on imports of critical minerals from China, Russia, and other countries with poor records on environmental conservation, human rights, or both. Why has the U.S. become so dangerously dependent on unsavory foreign sources when the Rocky Mountains, Alaska, and other areas of United States hold vast, untapped mineral resources?

> *Unbelievable as it may seem, an area larger than that of 25 of the 27 states east of the Mississippi River is no longer accessible for mineral exploration, much less mining.*

In fact, hardrock mining in the U.S. has been declining since the U.S. mining industry's high-water mark in the late 1980s and early 1990s—despite increasing demand. The drawn-out mining permitting processes and burdensome environmental lawsuits are certainly major factors behind this decline, but the increasing withdrawals of public lands from access to exploration and mining have reached very worrisome levels—and the scope of federal land withdrawals are not well understood.

America's resource endowment has provided for its inhabitants for over one-quarter of a millennia, and the vastness of its energy and mineral wealth never ceases to amaze. The West Texas Permian Basin and North Dakota's Bakken Shale and other energy production have freed us from being held hostage to oil and gas imports and are making our country energy dominant. Similarly, the Rocky Mountains, Alaska, and other areas of our land hold vast, untapped mineral resources (see Figure 1). Most of that territory is federal lands owned by the U.S. government (see Figure 2).

Demand for hardrock minerals—including those "critical minerals," needed for economic and national security such as rare earth metals—is soaring. U.S. imports of these minerals make the news almost daily because more and more of them are being imported from China, Russia, and other countries that have poor records on environmental conservation, human rights, or both.

Economic and Military Reliance on Mineral Imports

Why has the U.S. become so dangerously overreliant on imports of critical minerals—which are domestically abundant and can be mined in an environmentally sensitive manner—especially when they are so vital to our economic health and national defense?

The drawn-out mining permitting processes and burdensome environmental lawsuits are two major factors. But probably the more insidious cause (factor), which largely goes unreported or underreported in the media, is public land withdrawals. That is, as a nation we have steadily withdrawn increasing amounts of federal and state lands from access to exploration and mining.

Dr. Ned Mamula is a geologist and formerly a mineral resource specialist with the U.S. Geological Survey. He is the author of Groundbreaking! America's New Quest for Mineral Independence.

The best explanation of what public land withdrawal means to the future safety and security of United States is the classic expose "Is Our Account Overdrawn?" by Gary Benethum and Courtland Lee, which appeared in the *American Mining Congress Journal* more than four decades ago.

In their 1975 article, Benethum and Lee stated that, over the years, withdrawals of public land from operation of the mineral laws have taken many forms and been initiated by many special interests with little regard for their cumulative effect. The key question the authors asked is:

> Have we [the U.S. government] withdrawn so much land from mineral exploration and development as to seriously affect the long-term mineral position of our country?

The answer to that 45-year-old question appears to be obvious today. This article is an update of their landmark expose, needed to remind us that the long history of unchecked federal land withdrawals from minerals mining has consequences that are becoming more severe with each passing year.

How Much Land Is Off Limits?

Gradually over the past 60 years until very recently, vast tracts of U.S. public lands have been continuously withdrawn from entry for mineral exploration. Beginning in 1968, the various federal bureaus and agencies sharply accelerated this withdrawal process, without coordination or regard for the cumulative effect on future domestic production of minerals and metals.

Unbelievable as it may seem, an area larger than that of 25 of the 27 states east of the Mississippi River is no longer accessible for mineral exploration, much less mining. This area includes over 390 million acres of public lands that are closed to exploration under federal mining laws, and over 520 million acres also off limits under federal mineral leasing laws.

The 390 million acres is so vast an area that it does not compute with most people. To add context, mineral exploration and potential mining is forbidden in an area equivalent to the combined area of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Maryland, Delaware, Michigan, Ohio, Illinois, Indiana, Kentucky, West Virginia, Virginia, North Carolina, South Carolina, Tennessee, Mississippi, Alabama, Georgia, and Florida.

Significant additional acreage is effectively withdrawn from access to mining due to the severe restraints on exploration; these are de facto withdrawals. Much of this withdrawn land is in the very regions where we are most likely to find significant mineral deposits: in the western United States (American Cordillera) and Alaska.

How Our Account Was Overdrawn

By the mid-1970s a tipping point had already been reached with more public land withdrawn from mineral development than was accessible for development. With increasing awareness of the importance of mineral resources to the vitality and security of our industrial nation, the availability of these resources on public land has only recently begun to attract considerable attention.

Today, the general feeling, particularly in the mining community, is that piecemeal withdrawal of increasing amounts of public land, through both legislative and administrative actions, has made the mineral disposal laws (the mining and leasing laws) all but meaningless. Piecemeal withdrawal was driven by five decades of overemphasis on environmental preservation, coupled with governmental shortsightedness about the unique problems associated with developing critical mineral resources needed in the modern economy.

For more than 200 years, vast tracts of the U.S. public lands have been withdrawn from entry for mineral exploration and mining—particularly accelerating in the last 60 years. In a country as large as the U.S., withdrawals usually go unnoticed on a national scale but are more keenly fought on the local level.

However, since the late 1960s, various federal agencies and departments have gradually ramped up the number of land withdrawals. This marked the beginning of the popular legacy of the environmental movement, culminating in the passage of the National Environmental Policy Act (NEPA) on January 1, 1970. Since then, the executive branch has asserted—and the Congress has acquiesced—its authority to make withdrawals, too.

The withdrawal process involves complex interrelationships between Congress and the executive branch of government. It is so fundamental that our Founding Fathers specified in Article IV of the Constitution that Congress has the power to dispose and to make rules respecting the territory belonging to the United States.

Basically, withdrawals (and reservations) of public lands from mineral exploration and development are accomplished in one of three ways:

- Withdrawal of specific lands by an act of Congress
- Withdrawal by the executive pursuant to specific congressional delegations, and
- Withdrawal by the executive based on an *asserted* inherent non-statutory power.

The withdrawal process has been abused by every presidential administration in the past 60 years. Sadly, federal departments, agencies, executive decision makers, and Congress allowed the withdrawals to go forward:

- *Without* coordination with previous withdrawals,
- *Without* serious assessment of mineral resource occurrences that might be located within the proposed withdrawal, and
- *Without* sufficient consideration of the cumulative effect of the withdrawals on future domestic production—necessitating replacement with foreign mineral imports.

In other words, the only justification seemed to be to preserve the land forever in its natural state, instead of conserving it under prudent stewardship with a keen regard for the present and future needs of the nation and its citizens.

As a result of going largely unchallenged and remaining mostly irreversible after enactment, executive withdrawals have become one of the most pernicious obstacles to domestic mineral development on public lands. Vast areas of federal and state acreage now forbid mineral exploration, mining, prospecting, leasing, and other activities related to minerals extraction for numerous reasons, including designations as wilderness areas, national monuments, habitat preservation, and military use.

With this much questionable authority resting solely with the president, political favoritism is particularly suspected by members of all parties and special-interest groups, regardless of affiliation.

Figure 1. General Locations of Major Metals Operations in the United States. *Locations include mines producing gold, silver, copper, molybdenum, platinum, lead, zinc, iron, titanium, magnesium, beryllium, and other metals. Source: National Mining Association and U.S. Geological Survey.*

Where Our Account Was Overdrawn

Much of this withdrawn land is in the American Cordillera, the mountain ranges in the western United States and Alaska where mineral deposits of economic significance *are* most likely to occur. In fact, no other belt of metallic deposits on earth is comparable to the American Cordillera.

The Obama administration dramatically accelerated the amount of withdrawals by invoking the Antiquities Act a record 29 times to establish or expand national monuments. The Obama administration was also the first to use the Outer Continental Shelf Lands Act to withdraw coastal and offshore areas from mineral leasing activities. In January 2017, the incoming Trump administration faced several extremely large land withdrawals containing incredible amounts of mineral resources, that were rushed through at the eleventh hour of the outgoing Obama administration.

One proposed withdrawal, later scrapped in October 2017 by the Department of the Interior, was the Bureau of Land Management (BLM) plan to protect the greater sage-grouse and its sagebrush habitat. If enacted, this withdrawal would have placed a whopping ten million acres of federal land off limits to exploration and mining in favor of habitat preservation across Idaho, Montana, Nevada, Oregon, Utah, and Wyoming.

> *The Bureau of Land Management plan to protect the greater sage-grouse and its sagebrush habitat would have placed a whopping ten million acres of federal land off limits to exploration and mining in favor of habitat preservation.*

Putting that into context, ten million acres is equivalent to the total area of Rhode Island, Delaware, and Maryland, and the proposed withdrawal would have been similar to a federal edict compelling those states to halt all business and industry. However, these ten million acres are not contiguous. They are checkerboarded over vast areas, impacting neighboring lands and perhaps effectively tripling or quadrupling the initial withdrawal acreage.

Other examples of possible politically based mineral withdrawals include:

- **The Arizona Strip Uranium Withdrawal.** In January 2012, President Barack Obama's Secretary of the Interior Ken Salazar withdrew more than 1,000,000 acres of land containing valuable uranium deposits and more than 3,200 active mining claims. The withdrawal area includes enough uranium (325–375 million pounds) to power the entire state of California's 40 million people for over 20 years.

  The U.S. Department of Agriculture identified this mineral withdrawal as a potential burden to domestic energy production. A December 2017 lawsuit challenged the withdrawal as illegal, but the Ninth Circuit Court upheld the withdrawal and the Supreme Court in October 2018 declined to review, leaving the withdrawal in effect.

- **The Minnesota Superior National Forest Land Withdrawal.** On January 5, 2017, in the waning days of the Obama administration, the U.S. Forest Service formally proposed a 234,328-acre federal mineral withdrawal of Superior National Forest lands within the Rainy River Watershed for a 20-year term. The proposal immediately placed this vast area off limits to all mining development for up to two years while the withdrawal was considered.

  The total withdrawal application boundary spanned approximately 425,000 acres, including 95,000 acres of state school trust fund lands. Minnesotans across the state have supported general redevelopment of the state's mining industry and specifically the Twin Metals mining project in the withdrawn area. Government officials on both sides of the aisle publicly opposed this withdrawal.

  More than 50 members of the Minnesota Legislature expressed outrage at the Forest Service's decision to publish a notice of intent, triggering an environmental impact statement under NEPA law. In May 2018, the revoked mining leases in that area were to be fully reinstated, and in June 2018, President Donald Trump announced that the withdrawal would be formally canceled. Finally, the BLM in May 2019 renewed the leases that had previously been canceled.

- **The Oregon and California Railroad Lands Withdrawal.** In December 2016, the Obama administration proposed a 101,000-acre withdrawal of Forest Service and BLM land astride the Oregon-California border, which would block mineral entry and exploration for 20 years, to take effect on January 17, 2017.

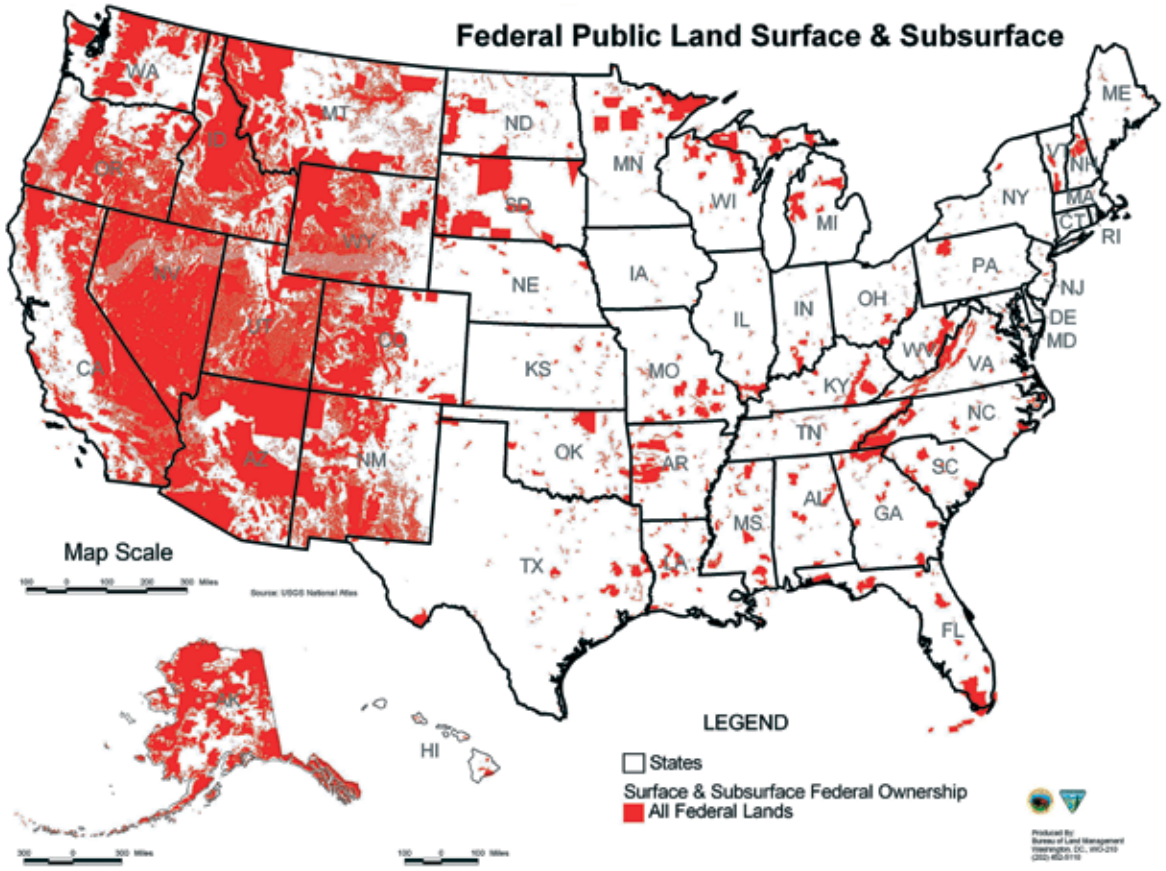

Figure 2. Surface and Subsurface Federal Land Ownership and Management Across the United States.
Source: U.S. Bureau of Land Management.

This area contains two mining projects believed to hold significant quantities of several critical minerals including nickel, cobalt, and scandium, which the United States is import-reliant 60, 70, and 100 percent, respectively. The Obama administration argued that this mineral withdrawal was valid under the Federal Land Policy and Management Act (FLPMA), but it was not because the withdrawal order greatly exceeded 5,000-acre maximum under FLPMA and therefore required congressional legislation under FLPMA. However, no such legislation has ever been introduced.

Accordingly, the chairman of the House Natural Resources Committee requested the secretaries of Interior and Agriculture on September 28, 2017, to review the legality of the withdrawal.

- **The California Desert Area Withdrawal.** On December 28, 2016, the Obama administration proposed to withdraw 1,337,904 acres of public lands in the California desert and threatened a Phase 2 that could trigger the withdrawal of an additional 1,600,000 acres from minerals entry for 20 years. On February 6, 2018, BLM formally canceled the proposed withdrawal and the Phase 2 extension and opened the entire acreage to mining.

Surprising to most, half of the nation's federal hardrock minerals are *already* off limits for development. This disproportionately restricts access to critical minerals because the western states account for 75 percent of all U.S. metals mining—mostly on public lands—according to the National Mining Association, which has long held that excessive and poorly chosen land withdrawals hurt the mining sector.

> *The mineral potential of an area is of no value if the area has been put off limits to mineral exploration and development.*

However, the October 2017 decision to scrap the sage-grouse withdrawal was a major positive step forward regarding exploration and mining in those now unrestricted areas covering parts of six western states.

Instead of further withdrawing lands, the U.S. could better compete with the world's other mining economies by opening public lands to even more domestic exploration and mining, which would translate into finding and producing additional minerals, a stronger manufacturing base, and a more secure national defense.

Thoughtless land withdrawal creates an ongoing risk of artificial shortages, setting up the need to import those same resources instead—exactly the situation the nation finds itself in today regarding critical mineral imports.

Bennethum and Lee made clear:

> [T]he power to withdraw lands from the operation of the public land laws, including lands that are subject to the Mining Law of 1872 and the 1920 Mineral Leasing Act, is one of the most important governmental powers affecting the mining industry. The mineral potential of an area is of no value if the area has been put off limits to mineral exploration and development. Yet, withdrawals are one of the least appreciated and understood government powers.

The federal government owns and manages roughly 664 million acres of surface land and subsurface mineral rights, roughly 28 percent of U.S. land area. The location and total area of those lands are shown in Figure 2. More than 90 percent of those lands are in 12 western states: Washington, Oregon, California, Montana, Idaho, Wyoming, Nevada, Utah, Colorado, Arizona, New Mexico, and Alaska. And they contain the world-class mineral deposits of massive economic significance shown in Figure 1, mostly on federal lands.

Benethum and Lee demonstrated that by 1975 nearly 400 million acres have been withdrawn through governmental actions from the operation of the Mining Law of 1872. More than another 100 million acres are "encumbered" or are being managed in such a way as to constitute a de facto withdrawal from mineral development previously discussed. That is a total of nearly 500 million acres withdrawn from the lands that fall under the jurisdiction of the Mining Law of 1872.

One major reason this situation has occurred is the lack of any mechanism to assess the cumulative impact of thousands of discrete withdrawal actions. Each interest group working to withdraw more land does not consider the cumulative impact of its and other groups' successful efforts. This kind of a land-use strategy, if it even deserves that label, is economically unsound and simply very detrimental public policy.

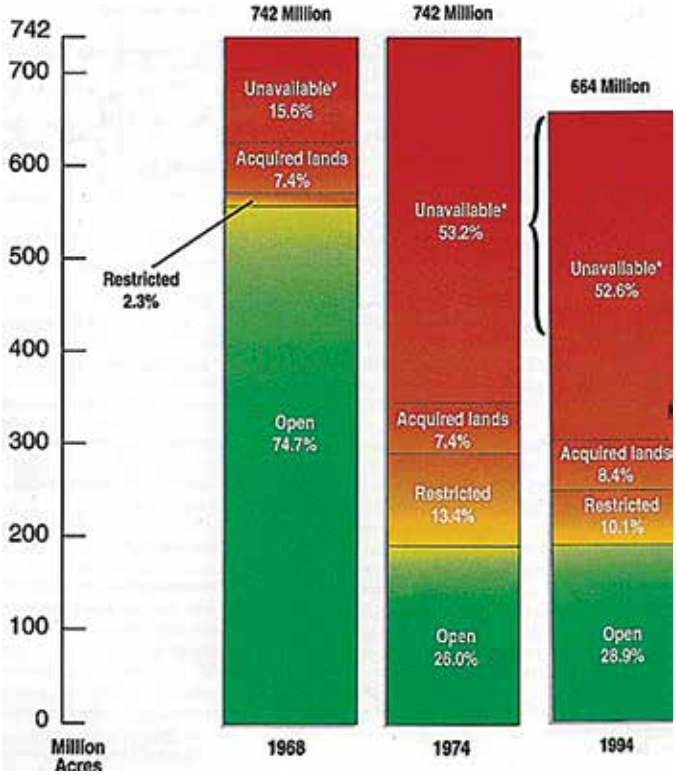

Figure 3. Public Lands Excluded from Mineral Exploration and Mining over the Last 50 Years. Lands "unavailable" for exploration and development increased dramatically after passage of NEPA in 1970. *Source: American Mining Congress and Paul K. Driessen.*

By the mid-1990s, 71 percent of the total federal acreage was off limits to mineral exploration and mining. Those acreage figures continued to creep higher until 2017, when the Trump administration stemmed the increase and started to reverse the process. For now, no more federal lands will likely be withdrawn, unless and until order can be brought to the existing chaotic process.

As shown in Figure 3, roughly 29 percent of the 664 million acres under federal management were open to mineral access under the Mining Law as of 1995—and that might seem like an enormous chunk of land. However, most withdrawals neglect the simple fact that *mineral deposits and mines are located where geology, not mankind, dictates*. Some of these withdrawals may have been driven by the geology with the intent to check any future mining—if so, that would be most unfortunate and a betrayal of the mining laws on the books.

Can We Ever Correct the Record?

We need a groundbreaking compromise so mining can begin again without disrupting areas that should never be disturbed because of their unique national identity and cultural importance. The mineral industry will need to and has already accepted reasonable conditions on its activities. Likewise, preservationists and others must accept the fact that somewhere in that million-acre wilderness area, there is going to be a mine. The mining industry is being squeezed more so than its opponents because the location of ore bodies is immovable. Boundaries of withdrawn land can be adjusted, *not* the location of mineral deposits. When the right choices are made—both sides win.

However, given the present situation of the nation's mineral account, it may be already too late.

> *The consequences of withdrawing federal lands from mineral exploration and mining have not been fully appreciated by policymakers because the results of their decisions may take decades to be felt.*

The consequences of withdrawing federal lands from mineral exploration and mining have not been fully appreciated by policymakers because the results of their decisions—and those of their predecessors—may take decades to be felt. No one can predict the future, especially regarding the ever-increasing speed of the development and needs of technology and its associated minerals, manufacturing improvements, and global energy requirements.

Yet previous withdrawals were done cavalierly and without due regard to a comprehensive approach to resource management. Today, the nation is finally feeling the cumulative effect of all previous withdrawal actions as mineral imports hit record highs year over year.

How to Withdraw Unwise Withdrawals

When federal lands are withdrawn from potential commercial use that would create wealth for both the miners and the country's citizens, the existing mining and mineral leasing laws are circumvented: no federal land access, no exploration or claims, no leases, and eventually no mining or mineral production.

In the mineral-rich western states, the federal government is by far the largest landowner or land manager. A long-term withdrawal for any reason, especially one that is irreversible and where the state government, public, or private sector cannot gain access, is essentially a federal government monopoly on the land and all its potential resources. The geologic formation of ore bodies cannot be moved; they must be mined where they are found. They cannot necessarily be discovered in a more convenient or remote area, as timber or water resources can be—thus the need for the Mining Law of 1872 for "locatable" (critical) minerals.

From 2009 to 2018, mining access to 5.2 million acres was blocked, and another 16 million acres were being considered for withdrawal. However, the Trump administration is reconsidering many of those land withdrawals by the previous administration. The administration has announced plans to separate previous withdrawals of merit from those done solely to block development.

The Interior Department may be reluctant to support many previously proposed or existing withdrawals, especially ones that do not hold up under legal scrutiny. Some will likely wind up as legal disputes in front of the Supreme Court as an overreach of executive authority at the time the withdrawals were proposed or enacted. The Court could strike down some or all withdrawals or reduce their size to the 5,000 acres permitted without congressional action under FLPMA. This is an important point because 24 Obama-era proposed or finalized withdrawals are larger than 5,000 acres.

Where to from Here?

As we contemplate how America will be able to sustain itself with critical minerals needed for the economy and national defense, a restatement of Bennethum and Lee's greatest concern about our nation's mineral wealth from 45 years ago is instructive:

> They feared that over the past century, withdrawals of public lands from operation of the mining and mineral leasing laws have taken many forms and been initiated by many interests with no overall accounting of the withdrawals. Withdrawals have been encouraged, and accelerated over the past 60 years, with little regard for their *cumulative effect*.

And they asked specifically:

> Have we withdrawn so much land from *mineral* exploration and development as to seriously affect the *long-term* mineral position of our country?

Restated in 2019 terms:

- Their "cumulative effect" has morphed into America's overreliance on imports from China,
- Their "minerals" are today's critical minerals including rare earths, and
- Their "long-term" in the 1975 article is now.

Today, we are running out of time to secure our mineral future, and we need to know whether the previous executive branch and congressional withdrawals and mismanagement of our mineral resource endowment is threatening the nation's economic stability, trade balance with China and others, infrastructure rebuilding, and national defense. *Have we invited China, Russia, and third-world dictatorships to control our economic growth and military readiness via our wild overreliance on imported critical minerals that are available domestically beneath our feet?* ■

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THE MYTH OF NONPARTISAN DISTRICTS: AN EXPERIMENT IN REDISTRICTING REFORM

By Michael Watson

Summary: *Over the past few years, the process of redrawing congressional boundaries based on the ten-year census has come increasingly under attack—largely by the Democratic Party. To test their objections, CRC's research director Michael Watson conducted a thought experiment to determine just how much current congressional district maps "unduly favor" one party over another. He also considered whether "independent" redistricting commissions produce districts that reflect their statewide electorates. What he found has surprised many—particularly those who argue for independent commissions to replace an inherently political process.*

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Michael Watson of Capital Research Center testifies before the Pennsylvania State House on Redistricting, September 18, 2019.

Introduction

Democrats and interest groups aligned with their political interests are demanding major revisions to the way elections are held for the U.S. House of Representatives. A bill known as H.R. 1 contains the House Democrats' desired changes. The proposed law would require all states to set the boundaries of their congressional districts by using purportedly independent redistricting commissions. The Democrats and their allies claim this provision would ensure that congressional redistricting would not "unduly favor or disfavor any political party" when "considered on a Statewide basis."

That raises two questions: First, how much do current congressional district maps "unduly favor" one party or another? Second, do the "independent" redistricting commissions already operating in California, Washington, Idaho, and Arizona in fact draw district maps that produce state-level proportionality among the parties—or at least more state-level proportionality than in states that do not use purportedly independent commissions to draw the districts?

This report analyzes those questions by looking at real-world election results for the House of Representatives from 2010 through 2018 and then applying a simplified version of the procedure used by many countries to allocate their representatives to the European Parliament. That European procedure is known as the "D'Hondt method." It allocates seats proportionally to competing parties, based on the total votes cast in the jurisdiction.

This kind of proportionality is advocated by left-of-center groups such as FairVote, pundits such as Matthew Yglesias of Vox, and politicians such as Rep. Don Beyer (D-VA).

If one takes the view of the Democrats and their allies, a state with multiple congressional seats "should" elect a delegation of representatives with a Democratic-Republican ratio that matches the proportion of the total votes cast in the state for Democrats and Republicans. Otherwise, the state's district maps provide "undue favor" to one party.

Interestingly, given the Democrats' insistence on passing H.R. 1 to remedy gravely "unfair" districts maps, we find that the present Congress already has essentially the same partisan breakdown that it would have if the 2018 vote totals had been run through a D'Hondt allocation calculator

Michael Watson is CRC's research director and the managing editor of InfluenceWatch.org.

to allocate state congressional delegations: The Democratic caucus would have won an identical 235 seats.

Using a D'Hondt allocation for the elections from 2010 through 2016, we find those Congresses would have had smaller Republican majorities than they did in real life. Yet the partisan control of the House in each year would not have changed—not even in 2012, when Republican candidates received fewer aggregate votes than Democrats.

Another major finding repudiates the idea that states that use purportedly independent commissions to draw congressional districts end up more "fair"—that is, produce state delegations that are closer to the state's proportion of the Democratic and Republican votes—than do states that draw their districts under a legislative, judicial, or politician-commission system. From 2010 through 2018, states with "independent" commissions deviated no less, and in the current Congress deviate far more, from the D'Hondt proportional allocation than states that did not use such commissions.

California—long a model for left-of-center electoral "reforms," including independent redistricting commissions, top-two primaries, and extended voting periods—has been especially "unfair" for election after election, when judged by the proportional-representation standard. In all the election cycles studied, California deviated by at least 9 percentage points in favor of excess Democrats (5 of its 53 seats) in each election. In the 2018 election, California produced a dramatically disproportionate result, returning the Democrats an "extra" ten seats relative to the statewide vote proportion.

> *America should leave the question of representation to the political branches and to legislation, not to faux-scientific legal baby-splitting.*

A caveat: If the proportional-representation system that we used to calculate the present study's experimental "results" were actually used in real-world elections, that change in election rules would likely cause voters to change their behavior. That means real-world results would likely not precisely match our experimental findings.

But that helps indicate that the proposals demanded in H.R. 1 are not in the interest of increasing the representativeness of the Congress. Instead, they are in the interest of the political power of the Democratic Party and its very effective redistricting-related legal machine.

Apportionment of seats in the legislature is a fundamentally political act; there is no "scientific" way to determine how communities and political ideals should be contested. Therefore, America should leave the question of representation to the political branches and to legislation, not to faux-scientific legal baby-splitting.

Background

The results of the 2010 elections gave the Republican Party more than just a number of governorships and control of the U.S. House of Representatives. As the party took majorities in several state legislatures—including some, such as North Carolina, that they had not controlled since the nineteenth century—this gave Republicans the ability to influence congressional redistricting to a degree that the GOP had not experienced in decades.

Surprising no one and in keeping with American political traditions of all parties dating back at least to the reapportionment following the second U.S. Census in 1810, the newly Republican-led state legislatures drew redistricting maps that favored themselves. The United States, like the U.K., Canada, and India, elects its lower house of the legislature by first-past-the-post voting (except Maine since 2018, which follows Australia in using preferential voting) in single-member constituencies. One consequence of such a system is that defining the constituency grants an advantage or disadvantage to one or another party based on its demographic and political-economic characteristics.

The Republican-drawn maps outraged Democrats, who had enjoyed an uninterrupted majority in the House from 1955 until 1995, in part thanks to congressional district maps drawn by Democrat-controlled legislatures. Since the decennial reapportionment, Democratic interest groups—most prominently former Attorney General Eric Holder's National Democratic Redistricting Committee—have filed numerous lawsuits attacking the Republican-drawn maps and legislative-led redistricting in general.

H.R. 1, the House Democrats' omnibus election-rules proposal, purports to address concerns about partisan redistricting with a provision requiring all states to adopt an "independent redistricting commission" similar to those used to draw congressional districts in Washington, Idaho, Arizona, and California. H.R. 1 claims to seek districts that "shall not, when considered on a Statewide basis, unduly favor or disfavor any political party."

But before one can assess the likely outcome of either judicially mandated changes to the House election system

or legislative revisions to the system, one should assess the current situation completely, rather than on the selective basis chosen by most partisan commentators. To determine the effect of districting on partisan strength in the U.S. House, this analysis considers a "control" condition; namely, the state-level allocation of seats by proportional representation using the D'Hondt allocation rule employed by most countries sending representatives to the European Parliament. This control creates a baseline from which one can assess the potential impact of district lines on the outcomes of recent House elections. Additionally, some left-of-center groups such as FairVote, pundits such as Matthew Yglesias of Vox, and politicians such as Rep. Don Beyer (D-VA) have advocated the adoption of a proportional system to replace single-member districts.

Methodology

This analysis relies on a handful of general rules and special rules for unusual cases created by certain state-level policies and situations. It attempts to simulate the results of U.S. House elections based on two principles: proportional representation under D'Hondt's allocation formula by state and the real-world vote tallies from the general elections of 2010 through 2018.

D'Hondt's method of proportional representation is a commonly used method of assigning parliamentary seats in elections that use proportional representation. It is most prominently used by most European Union countries to allocate their representatives to the European Parliament. The D'Hondt rule assigns seats proportionally based on the concept of "votes per seat." Taken simply, seat assignment functions as a sort of "auction," with "bids" for each individual seat based

D'Hondt Allocation

The following chart shows the D'Hondt "bidding process" for seats among four parties (the Democrats, Republicans, Libertarians, and Independents considered together as a party) using the real-world results of the House elections in Colorado in 2018.

Party	Votes	Bid 1	Bid 2	Bid 3	Bid 4	Bid 5	Bid 6	Bid 7
DEM	1,343,211	1,343,211	671,605.5	447,737.00	335,802.8	268,642.2	223,868.5	191887.3
GOP	1,079,772	1,079,772	539,886.0	359,924.00	269,943.0	215,954.4	179,962.0	154,253.1
LIB	58,769	58,769	29,384.5	19,589.67				
IND	32,155	32,155	16,077.5	10,718.33				

Each party makes an initial bid. Since the Democrats received the most votes for their first seat, the first seat is allocated to the Democrats. The second seat goes to the Republicans: Since they seek their first seat (bid 1) while the Democrats seek their second seat (bid 2), the GOP can bid its full vote total while the Democrats must divide theirs by two. The third seat is allocated to the Democrats, since their bid two is larger than the GOP's bid two or any of the minor parties' bid one; the fourth to the Republicans since their bid two is larger than the Democrats' bid 3, and so on until all seven seats are allocated four-three to the Democrats and Republicans as shown below.

Allocation Order		
Seat	Party	Bid
1	DEM	1,343,211.0
2	GOP	1,079,772.0
3	DEM	671,605.5
4	GOP	539,886.0
5	DEM	447,737.0
6	GOP	359,924.0
7	DEM	335,802.8

The D'Hondt method's preference for assigning seats based on a proportional equivalence of votes cast per seat won is clearly visible in the marginal "bids" for the Republicans and Democrats; the Democrats "pay" only 24,000 votes fewer for their marginal seat than the Republicans do—7 percent of the 336,000 votes per seat. In fact, referring back to the main table, if Colorado had nine seats to award, the difference in votes per seat would be only about 1,300 votes on 269,000 votes per seat (the difference between the Democrats' Bid 5 and the Republicans' Bid 4)—a variance of approximately 0.5 percent.

In the interests of securing the most proportional control, no "threshold," or minimum percentage of votes to start "bidding" for seats, was employed in the analysis.

on total votes cast for a party divided by the number of seats the party has already claimed plus one, until all seats are assigned. D'Hondt's formula seeks to equalize (to the extent possible given the size of the legislature) the number of votes cast per seat a party wins.

This experiment simulates a "closed-list" election, in which all votes for a party yield seats to candidates in the order selected by the party, to avoid the complication of personal votes in an "open-list" election. It also assigns each state as a single constituency to prevent complications from sub-districting; this approach is used by some but not all countries sending representatives to the European Parliament.

The general rules are as follows and apply to each election analyzed:

1. Votes cast by party in each state are recorded as tabulated by the clerk of the U.S. House of Representatives' official report of the elections, with exceptions as noted in the special rules for states where some seats reported no vote totals and in states with unusual voting systems.
2. For states with a single congressional district, consistent with the European Parliament's rule for its single single-member constituency (representing the German-speaking Community in Belgium), the real-world first-past-the-post outcome is assumed to carry through. In only one case, the race for South Dakota's At-Large district in 2010, did the real-world winner receive less than an outright (50 percent plus one) majority that would ensure the result would hold under any plausible electoral system.
3. Calculation of the seat allocation by D'Hondt's rule with no minimum percentage "threshold" (see sidebar) to receive seats was conducted using the publicly available Election Calculator created by Yavuz Oruc, a electrical and computer engineering professor at the University of Maryland.
4. For simplicity, Independents, write-ins, and No Party Affiliation candidates were treated as if they were a party.
5. Votes in uncontested races or runoff races involving two members of the same party under "California rules top-two" for which vote totals were reported are treated as valid votes for the party.
6. Reported blank votes, over-votes, "scattering" votes, and other null ballots were excluded from the totals.

Special rules are necessary for some situations created by state electoral rules and special circumstances.

1. During the period analyzed, Louisiana, Oklahoma, and most importantly Florida had races with an unopposed candidate for which vote totals were not reported. For Florida 2018, Oklahoma 2016, Oklahoma 2014, and Louisiana and Oklahoma 2010, vote totals for a Senate race representative of the state's general House outlook were used to calculate the seat distribution. For Florida in 2010 through 2016, due to the unrepresentativeness of proxy races to the House results, the seats not reported were treated as if they did not exist, with the seats removed from the party that won them in real life for purposes of comparison.
2. New York uses multiple-ballot-line elections, in which voters may cast votes for the same candidate on any of many "party lines." While some parties (like the Democrats and the Working Families Party or the Republicans and the Conservative Party) tend to endorse the same candidates they do not always, and other parties (such as the Independence Party) endorse candidates of both major parties or run their own candidates. For simplicity, each party was treated as its own party for purposes of seat allocation.
3. Where states reported votes for a ballot line easily identified as associated with a party (e.g., Republican Tax Revolt for Republicans in New York and Democratic-Farmer-Labor for Democrats in Minnesota), those votes were combined with the vote for the identifiable major party. This is the same practice used by Germany to assign national seats to its permanent union between the two longstanding center-right parties, the Christian Democratic Union (which runs in 15 of the country's 16 federal states) and the Christian Social Union (which runs in the state of Bavaria).
4. The 2018 voided race in North Carolina's 9th Congressional District was treated as if the seat did not exist.

It is important to understand that the findings are a hypothetical experiment, not a prediction of how an EU Parliament–style election in the United States would go. Voters, political parties, and candidates follow the rules set by the electoral system, leading American voters to cast an overwhelming portion of their votes for a major-party candidate. Were a proportional system ever adopted, one can confidently predict that the two-party system would not survive. Brazil uses an open-list-proportional-by-state method (with a different allocation formula) to elect its lower house (the Chamber of Deputies). As of the most recent election, members of 30 parties were elected.

Results

Using the real-world votes cast by party and the Election Calculator to make seat assignments, notional outcomes for the 2010, 2012, 2014, 2016, and 2018 House of Representatives elections under a proportional-by-state approach were calculated. These were then compared to the real-world, single-member district results (with certain uncontested races without reported vote totals excluded, as described in the methodology) to assess the extent to which each state might have district lines that "unduly favored" a political party.

Figure 1. Results of D'Hondt Allocation

Election Year	Real-World Majority Party	Real-World Majority Seats	Proportional by State Majority Party	Proportional by State Majority Seats	Change in Majority Party Size
2010	Republican	241	Republican	234	-7
2012	Republican	233	Republican	217	-16
2014	Republican	244	Republican	231	-13
2016	Republican	241	Republican	220	-21
2018	Democratic	235	Democratic	235	0

Seats Excluded for each year: 2010, one Republican-held seat with unreported results; 2012, one Republican-won and one Democratic-won seat with unreported results; 2014, three Republican seats and one Democratic seat with unreported results; 2016, one Democratic seat with unreported results; 2018, one seat given to no party because the election was voided

The results show that using the proportional-by-state allocation method would not have changed the majority party in any given election, though the Republican majorities elected in 2010 through 2016 would have been reduced in size in the alternate scenario. In all years, members of minor parties would have been elected:

Figure 2: Minor Parties

Year	Minor Party Qualifying for Proportional Seat	Seats	State
2010	Conservative	1	New York
2010	Libertarian	1	Texas
2010	No Party Affiliation	1	Florida
2012	No Party Affiliation	2	California, Florida
2012	Conservative	1	New York
2012	Working Families	1	New York
2012	Libertarian	1	Texas
2014	Conservative	2	New York
2014	Working Families	1	New York
2014	Libertarian	1	Texas
2016	Libertarian	2	Arkansas, Texas
2016	Conservative	1	New York
2018	Conservative	1	New York

Over the full period, eight states had aggregate net deviations from proportionality of ten seats or greater, with three favoring Democrats and five favoring Republicans.

Figure 3: States with Deviations from Proportional of Ten Seats or Greater

State	2010	2012	2014	2016	2018	Aggregate Deviation
Calif.	5	5	8	5	10	33
Conn.	2	2	2	2	2	10
Mass.	4	2	1	1	2	10
Florida	(4)	(3)	(1)	(2)	0	(10)
N.C.	1	(3)	(3)	(3)	(3)	(11)
Penn.	(2)	(4)	(3)	(3)	(1)	(13)
Texas	(2)	(3)	(2)	(4)	(4)	(15)
Ohio	(3)	(4)	(2)	(3)	(4)	(16)

Note: Positive numbers are Democratic seats above proportion, negative numbers are Republican seats above proportion.

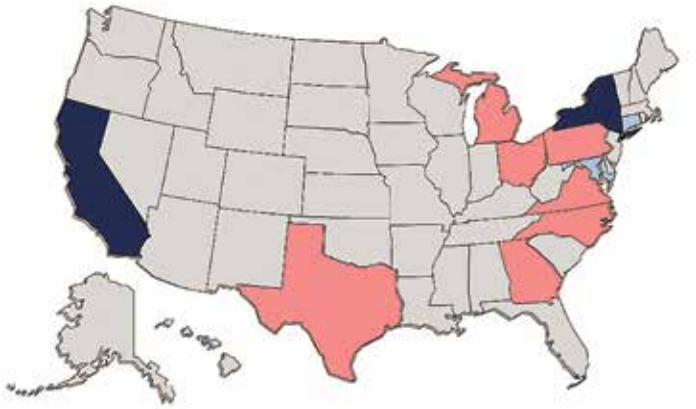
Figure 4: States with High Percentage of Deviation as a Proportion of Seats

Year	State	Seats Available	Deviation	Favored Party	Percentage Deviation
2010	Mass.	10	4	Democratic	40%
2012	Ohio	16	4	Republican	25%
2014	N.C.	13	3	Republican	23%
2016	N.C.	13	3	Republican	23%
2018	N.J.	12	4	Democratic	33%

Figure 5: 2010 States with Representational Deviation Greater Than Two Seats

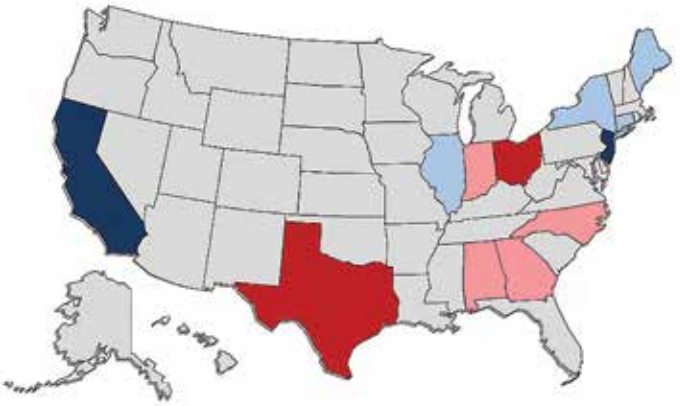
Notation: *New York's excess Democratic seats would be replaced by three Republicans and one member of the right-of-center Conservative Party of New York. Florida's excess Republican seats would be replaced by three Democrats and one No Party Affiliation. Texas's excess Republican seats would be replaced by one Democrat and one Libertarian.*

Figure 6: 2014 States with Representational Deviation Greater Than Two Seats



Notation*: New York's excess Democratic seats would be replaced by one Republican, two members of the right-of-center Conservative Party of New York, and one member of the left-wing Working Families Party. Texas's excess Republican seats would be replaced by one Democrat and one Libertarian.*

Figure 7: 2018 States with Representational Deviation Greater Than Two Seats



Notation: *New York's excess Democratic seats would be replaced by two Republicans and one member of the right-of-center Conservative Party of New York.*

Key for all Maps:

- > -4 or more GOP
- 2 or 3 more GOP
- 2 or 3 more DEM
- > -4 or more DEM

California was the most deviant large state on aggregate in each election. The most deviant large state as a proportion of the seats available for each election are shown in Figure 4.

Analysis

Takeaway 1: Assessed nationwide, the effect of redistricting is overstated. Additionally, "edge cases" with apparently incongruous results occur in many validly democratic-republican electoral systems.

Looking at the national seat allocations, one fact stands out: Over the entire period, control of the House of Representatives would not have changed in the proportional-representation experimental condition from the party controlling the House in real life. (While the Republicans hold 217 seats in 2012's experimental condition, that is in a notional House of 433 members, because one GOP-won and one Democratic-won uncontested race in Florida without reported vote totals were excluded from consideration.)

The Republican majorities all shrink, which would be expected even if there were no intentional partisan-advantage gerrymandering. A dispersed rural and suburban party has a natural advantage in converting votes into seats relative to a concentrated, urban party in a single-member-district system. The median voting precinct in the 2016 presidential election was at least somewhat Republican, despite Democratic candidate Hillary Clinton receiving more raw votes; the effect of Democrats living in overwhelmingly rather than moderately Democratic areas effectively self-packs Democrats into "safe" districts. Additionally, the prevailing view of the Voting Rights Act requires that ethnic minorities receive "majority-minority districts." In practice, the creation of such districts may further inadvertently pack Democratic voters into fewer districts.

While Republicans received boosts of at least three seats relative to proportional allocations from Pennsylvania, Ohio, Texas, North Carolina, and Florida (among 21 states that returned "too many" Republican representatives in 2012, when the districts were "freshest"), there were countervailing states that returned "too many" Democrats: California's Democratic delegation exceeded the proportional allocation by six seats (despite the district lines being drawn by an ostensibly cross-party panel), New York's by four (though one "lost" seat would go to the allied Working Families Party), and four other blue states returned two more Democrats than proportional representation would assign.

> *"Dummymander"—a districting map drawn to advantage one party that over the course of a census cycle ends up favoring the other.*

And the 2012 elections, in which the Republicans won a majority without receiving the most votes, would remain an "inverted" result with a Republican majority. While left-progressives rage at this apparent "anti-democratic" outcome, numerous democratic electoral systems have yielded similar incongruous results in real-world elections, not just America's first-past-the-post system. In 1998, Australia's center-right Liberal-National Coalition won reelection under a full-preferential compulsory voting single-member district system despite receiving 200,000 fewer "two-party preferred" votes than the defeated Labor Party.

Proportional systems, especially those with thresholds for representation or state-by-state representation systems, can still yield incongruous results. In the 2013 German federal election, the country's 5 percent threshold to win seats eliminated the market-capitalist Free Democratic Party and the nationalist Alternative for Germany, forcing the center-right Christian Democratic Union to form a coalition with the center-left Social Democrats. In its 2018 legislative elections, Brazil returned more deputies from the left-wing Workers Party than from the right-wing Social Liberal Party (PSL) despite the PSL receiving 1.3 million more votes. (This is likely due to malapportionment to reduce the power of Sao Paulo state, which voted a plurality for the PSL.)

Takeaway 2: Redistricting "matters," but it manifests principally in the short run and can be obviated by population movements and political dynamics in the long run.

The results showing the smallest deviations from proportionality on aggregate in 2010 (the final general election of the post-2000 Census redistricting cycle) and in 2018 (the fourth of five in the post-2010 cycle) should not surprise. While in both cases (especially the post-2010 cycle) proportionality has been assisted by redrawing maps after partisan litigation, a principal contributor to increased national proportionality is shifting political allegiances over time. Such shifts in allegiances can turn a partisan-advantaging "gerrymander" into a self-sabotaging "dummymander"—a districting map drawn to advantage one party that over the course of a census cycle ends up favoring the other.

Over the 2012–2018 period, two states stand out as potential "dummymanders": Virginia and New Jersey. Both states had maps drawn by Republican-aligned panels, though Virginia's was modified before the 2016 elections as a result of Voting Rights Act–related litigation, making it slightly less favorable to Republicans.

After the 2012 elections, both states' maps awarded the Republicans more seats than the proportional vote would have. By the 2018 elections, both states' partisan favoritism had flipped: Virginia returned one more Democrat than it "should" have, and New Jersey returned a full third of its delegation as "excess" Democrats.

Figure 8: Possible Republican "Dummymanders"

State	2012	2014	2016	2018
N.J.	(1)	0	0	4
Virginia	(2)	(2)	(2)	1

Note: Positive numbers are Democratic seats above proportional representation, negative numbers are Republican seats above proportional representation.

The reasons for these shifts are easily understandable. Between 2014 and 2018 the Republican Party fundamentally reconsidered who its base voters were; instead of the party's historical reliance on upper-middle-class suburbanites, Republican officeholders shifted their allegiance to (white) rural laboring classes. The result was defeat for Republican lawmakers such as Barbara Comstock (R-VA), Tom MacArthur (R-NJ), Leonard Lance (R-NJ), and David Brat (R-VA) in the 2018 elections. The New Jersey Republicans were especially hard hit, as provisions of the Tax Cuts and Jobs Act of 2017 that limit deductions for state and local taxes paid were exceptionally hard on upper-middle-class taxpayers in very high-tax states such as New Jersey.

> *It is important to understand that the findings are a hypothetical experiment, not a prediction of how an EU Parliament–style election in the United States would go.*

These sorts of swings illustrate the peril of drawing districts to maximize the number of members of a party elected to Congress: If the political dynamics underlying the district boundaries change, a number of "protected" incumbents could lose their seats all at once.

Takeaway 3: Neither major political party is innocent of creating congressional maps designed to advantage their representation.

Much of the conversation about redistricting is driven by groups such as the openly partisan National Democratic Redistricting Committee and ostensibly nonpartisan but ideologically liberal groups such as FairVote, Common Cause, and the Funders' Committee for Civic Participation. And the discussion tends to focus on Republican efforts to shore up their positions through "gerrymandering" as in North Carolina and Ohio. Yet Democratic-led legislatures likewise violate proportionality to shore up their positions.

While California—the most-divergent Democratic state on aggregate—draws district lines using a "citizens' redistricting commission" (which will be addressed in Takeaway Four), Connecticut and Massachusetts use legislative redistricting and draw districts that ruled out representation for those states' minority Republicans through the entire decade—regardless of shifting political winds.

A proportional allocation of Connecticut's five seats would have returned three Democrats and two Republicans in each election. Instead, in each election it returned a unanimous five Democrats. Massachusetts' effectiveness in suppressing the election of a Republican in any of its nine districts (Massachusetts lost a seat in the 2010 Census) led the party of the state's sitting governor (Republican Charlie Baker) not to contest half (18 of the 36) of the congressional district elections from 2012 through 2018.

While these results are notable, the divergence from proportionality does not necessarily indicate "partisan gerrymandering." Democratic voters in Connecticut and Massachusetts may simply be exceptionally efficiently distributed. Another, clearer illustration of the Democratic Party's willingness to gerrymander comes from North Carolina, better known for its post-2010 Republican-drawn district lines of recent controversy. Prior to 2010, the Republican Party had not controlled both houses of the North Carolina General Assembly since the nineteenth century, and the General Assembly's control of redistricting is not subject to the governor's veto.

Unsurprisingly, in the 2010 U.S. House elections, the Republican Party received one fewer seat than the Democratic Party in North Carolina, despite the GOP

> *Despite several voting law "reforms" designed to juice turnout and votes cast for Democratic candidates, Democrats won "only" 65.7 (8.01 million of 12.1 million) percent of the votes.*

receiving 240,000 more votes. Only after losing control of the General Assembly and redistricting did the Democrats and liberals in the state demand the adoption of the (Republican-proposed) independent redistricting commission. Republicans instead decided to repay Democrats for their century of gerrymandering by advancing a legislative-drawn map that advantaged the GOP.

Figure 9: Disproportion in Texas and California

Election Year	California		Texas	
	Seats	Percentage	Seats	Percentage
2012	5	9.4%	-3	-8.3%
2014	8	15.1%	-2	-5.6%
2016	5	9.4%	-4	-11.1%
2018	10	18.9%	-4	-11.1%
Average	7	13.2%	-3.25	-9.0%

Note: Negative values indicate more Republicans were returned in real life than would be proportional; positive values show more Democrats than proportional.

Takeaway 4: Commission-drawn maps can result in a de facto gerrymander.

Everyone knows that the Golden State is Democratic. But it is not 86.8 percent Democratic, as its post-2018 congressional delegation (46 Democrats, 7 Republicans) is. Indeed, despite several voting law "reforms" designed to juice turnout and votes cast for Democratic candidates, Democrats won "only" 65.7 percent (8.01 million of 12.1 million) of the votes. Analyzed using the proportional-by-state method, California returns an "excess" of ten Democratic members.

This deviation from proportionality occurs despite California drawing its district lines using the supposedly "fairer" method of the Citizens Redistricting Commission. Indeed, the Democrats' H.R. 1 would grandfather California's commission while creating similar commissions in the states that do not currently employ one. Meanwhile, Texas uses conventional partisan redistricting (which after 2010 was controlled by Republicans). Despite this, Texas's state-level results for the elections conducted after the 2010 redistricting (when California's Citizens Redistricting Commission came into force for congressional districts) deviated from proportionality by less than California's "bipartisan" map did—both in aggregate seats and in percentage of seats.

Conclusion

The results of this experiment show a few things. First, the impact of congressional redistricting is usually slight and fleeting. The Republicans' post-2010 advantage evaporated by the conclusion of the 2018 elections, which returned a Congress that has a partisan composition very much like the one that D'Hondt's method applied at the state level would. (D'Hondt's method would probably be more ideologically diverse, with more Southern Democrats and New England and California Republicans, but that is a discussion for another time.)

Second, it shows that both parties in a state-level majority (as one prefers) prosper from the natural dispersion of the other party's voters or engage in partisan gerrymandering. For every Ohio there is a Connecticut or a Maryland.

Third, it shows that the Democrats' proposed solution to the "problem" of legislative redistricting, the so-called "independent redistricting commission," fails to ensure a "fairer" allocation of seats, leading one to wonder what the real motivation behind such a proposal might be.

All told, it is important to note that the question of who shall determine the allocation of representatives in the legislature is a fundamentally political question that cannot be resolved without political considerations. There is no non-political way to apportion a legislative body. Indeed, that act may be the most political act a polity can undertake. This is therefore good cause to leave the question of representation to the political branches—to legislation, not to faux-scientific legal baby-splitting. ■

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A project of Capital Research Center

CLIMATE DOLLARS

HOW ONE FLAWED STUDY FOOLED THE MEDIA AND POISONED THE DEBATE ON CLIMATE CHANGE

In a widely cited 2014 study, sociologist Robert Brulle purportedly exposed a "climate change counter-movement" of center-right groups "distort[ing] the public's understanding of climate change." He calculated that from 2003 to 2010, these nonprofits recorded revenues averaging"just over $900 million" annually—a number that led to media claims that "Conservative groups spend $1bn a year to fight action on climate change."

A Capital Research Center study cuts Mr. Brulle's calculations down to size: Not only is Brulle's assessment off by 93 percent, the resources of environmentalist groups and government agencies overwhelmingly dwarf those of skeptics. To learn more about the climate debate, visit www.ClimateDollars.org.

THE LEGAL SERVICES CORPORATION: BLURRING THE LINE BETWEEN AID AND ADVOCACY

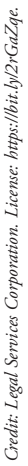
By Robert Stilson

Summary: *Civil legal aid can provide vital assistance to the poorest members of American society, but many nonprofits that receive federal funding for legal aid blur the line between providing legal aid and engaging in political advocacy. Almost all federal funding for legal aid assistance is funneled through the Legal Services Corporation (LSC), which congress created for that purpose with clear instructions to gear the LSC and its grantees toward legal aid, not advocacy. Yet from the beginning, LSC grantees have routinely engaged in political advocacy for progressive causes. This misuse of federal funding makes the entire program vulnerable to calls to eliminate all federal funding for legal aid.*

LSC
America's Partner for Equal Justice
LEGAL SERVICES CORPORATION

Congress, recognizing the need for the right to effective assistance of counsel in civil law proceedings, created the Legal Services Corporation (LSC) in 1974 as a 501(c)(3) nonprofit organization to provide funding for civil legal aid nationwide.

The Need for Civil Legal Aid and the Legal Services Corporation



Credit: Legal Services Corporation. License: https://bit.ly/2rGaZqe.

The Sixth Amendment to the Constitution guarantees defendants accused of serious crimes the right to effective assistance of counsel, even if they cannot afford it. No such guarantee exists in most civil law proceedings: family law, housing matters, collections, bankruptcy, employment issues, or any of the other myriad disputes that unfortunately arise in day-to-day societal interactions. Congress, recognizing this need, created the Legal Services Corporation (LSC) in 1974 as a 501(c)(3) nonprofit organization to provide funding for civil legal aid nationwide.

Civil legal aid can provide competent legal advice and representation to those who otherwise could never afford it, helping to address a genuine problem faced by the poorest members of society. However, when legal aid is funded with public money rather than through private sources, a firm line must be drawn between helping a client with a legal issue and engaging in politically motivated advocacy. A number of legal aid nonprofits that receive substantial federal grant money from the federally funded Legal Services Corporation demonstrate how easily this line is blurred.

> *The public and compulsory funding received by Legal Services Corporation grantees can only be justified if the grantees are limited to providing apolitical civil legal assistance to those in need.*

Despite its independent status, the LSC functions essentially as a vehicle for federal grantmaking and in many ways resembles a federal agency. Its board of directors is appointed by the president and confirmed by the Senate. It is almost entirely funded by congressional appropriations, ranging from $385 million in FY2017 to $415 million in FY2019. Approximately 94 percent of this money is distributed to a network of 133 state and regional nonprofits, who in turn provide pro bono legal aid to clients whose income is at or below 125 percent of the federal poverty level. Some states such as Indiana and North Carolina are served by a single LSC grantee, while other states such as California are served by as many as 11. Nationwide, family and housing matters together make up about 60 percent of legal services provided.

Robert Stilson is Capital Research Center's research specialist. He has been producing an occasional series that explores the funding of nonprofit organizations by the federal government.

The amount paid to each LSC grantee is based on U.S. Census Bureau poverty data. Nationwide, LSC grants provide on average a little over one-third of the grantees' total funding, with state and local governments and other federal programs accounting for the largest share of the remainder, but funding proportions vary considerably by location. In 2018, for example, the LSC accounted for 17.3 percent of the aggregated budgets of its seven New York-based grantees while in neighboring Connecticut that figure was 88.1 percent.

The largest source of private funding to LSC grantees comes from Interest on Lawyers Trust Accounts (IOLTAs), which are an interesting creation. Often, a client will deposit a sum of money with his or her attorney that is too small to generate sufficient interest to offset the overhead costs associated with opening an account. Instead, the attorney will frequently place the client funds into an IOLTA where the money is pooled together with many other small deposits. The resulting interest is then paid to legal aid organizations rather than back to the respective clients. The Supreme Court held in a 5-4 decision that this is not an unconstitutional Fifth Amendment taking of the client's funds by the government. Participation in IOLTAs is mandatory in all but four states, and in 2018, LSC grantees took in $64.5 million from IOLTA grants.

All this means that federal taxpayer dollars, state and local taxpayer dollars, and IOLTAs are the three largest sources of funding for the 133 legal aid nonprofits in the LSC's network of grantees. Combined, these three sources accounted for 82 percent of the groups' collective $1 billion funding in 2018, and none of that money came from voluntary donations. Private individuals, corporations, foundations, and other non-legal sources provided only about 8 percent of the average LSC grantee budget in that year.

A History of Political Advocacy

The overwhelming public and compulsory funding received by LSC grantees isn't *necessarily* a bad thing, but it can only be justified if the grantees are limited to providing apolitical civil legal assistance to those in need. That's exactly the purpose for which the LSC was created. Grantees that drift into advocacy, especially on politically contentious issues, can undermine support for what is otherwise a broadly bipartisan position. Sadly, the temptation to drift into advocacy has long proved too much for many grantees.

Congress foresaw this problem and did its best to head it off. Statutory and regulatory restrictions place various limitations on what LSC grant recipients can do. Restricted practice areas include most criminal cases, organized labor, abortion, and representing prisoners and many non-U.S. citizens. Some prohibitions apply only to the use of public money, while others also encompass private funding. These limitations and others, are designed to gear the LSC and its grantees toward legal aid, not advocacy, and especially to keep them politically neutral.

Credit: Presidential file. License: https://bit.ly/2ZC2Xub.

One early champion of such taxpayer-funded advocacy was none other than Hillary Clinton, who was a Carter administration appointee to the LSC's board of directors from 1978 to 1982 and served as its chair for a portion of her term.

Despite congressional efforts, LSC grantees took on controversial cases almost from the beginning. The 1985 book *Destroying Democracy: How Government Funds Partisan Politics* provides a litany of early examples. Bay Area Legal Services, a Tampa-based grantee, sued the state of Florida in 1979 to prevent implementation of a functional literacy test as a requirement for high school graduation. California Rural Legal Assistance, which today receives close to $9 million annually from the LSC, once sued the University of California to stop research on improving agricultural productivity because better farm machinery would displace farm laborers. A Michigan-based LSC grantee sued to have "black English" recognized as a separate language, which would qualify black students for mandatory remedial language training. Welfare reform was a common target of LSC grantee litigation during the 1990s, a trend Congress attempted to curb with new restrictions in 1996, but these were invalidated by the Supreme Court's 2001 decision in *Legal Services Corporation v. Velazquez*.

One early champion of such taxpayer-funded advocacy was none other than Hillary Clinton, who was a Carter administration appointee to the LSC's board of directors from 1978 to 1982 and served as its chair for a portion of her term. David Brock's 1996 book *The Seduction of Hillary Rodham* characterizes her tenure as one that openly viewed political activism as part and parcel to legal aid. Indeed, in her Senate

confirmation testimony, Clinton "endorsed the use of legal services lawyers to 'reform' laws and regulations the LSC deemed 'unresponsive to the needs of the poor.'" Brock also cites training manuals distributed to LSC grantees during Clinton's tenure that identified the goal of LSC-funded attorneys as attaining "power over the distribution of wealth, power over the means of production and distribution" through both the courts and the legislature.

A worldview that justifies the means through the ends is a hallmark of the progressive Left and one that, regrettably, infects some segments of the legal profession.

Clinton's view, as characterized by Brock, was that achieving social change might not be possible through the courts alone and that "her fight to preserve legal services exemplified her growing acceptance of an ends-justifies-the-means political philosophy." A worldview that justifies the means through the ends is a hallmark of the progressive Left and one that, regrettably, infects some segments of the legal profession. When the two are brought together in such a politically adept person as Hillary Clinton, the results can be dramatic: By the time Clinton left the LSC she had not only fought off the Reagan Administration's attempts to eliminate or reform the organization but also had succeeded in more than tripling its original budget.

Controversial Grantee Activity

The tradition of agenda-driven advocacy among LSC-funded legal aid nonprofits, while perhaps not as brazen as during Hillary Clinton's leadership, continues to this day and manifests itself across a number of hot-button issues.

Tenants' interests form a major part of many LSC grantee services, and the attendant litigation often places them in direct opposition to the interests of property owners seeking new construction, investment, and revitalization. Legal Services NYC, a grantee based in New York City that has averaged over $12 million in annual LSC funding in recent years, intervened against a 2019 challenge to New York's extensive (and recently expanded) system of rent controls. (Rent controls are widely understood to exacerbate problems they are supposed to address by driving up market-based rents and disincentivizing new construction and investment.) The Legal Aid Foundation of Los Angeles, recipient of over $32 million in LSC funding from 2014 to 2018, worked for a Long Beach City ordinance that would require landlords to pay tenants up to $4,500 if the tenant moves out because the landlord increased rent by more than 10 percent or decided to renovate the property.

Homelessness is also an issue that has pitted LSC grantees against local governments and city residents. The Legal Aid Foundation of Los Angeles has filed a number of suits on behalf of that city's exploding homeless population—suits that many see as frustrating efforts to deal with the crisis. A recent case settlement prevents local government from limiting the belongings that a homeless person can have on public streets, making it much harder for the city to clean up the mountains of debris that have turned parts of Los Angeles into a rat-infested "typhus zone." The Legal Aid Foundation filed an expanded lawsuit on the same issue just months after the settlement. Critics contend that such suits only entrench "the status quo of people living on the street" and keep "the City's hands tied from properly managing our sidewalks." LSC grantees in other cities in California as well as in Washington and Florida have brought similar litigation.

Other examples abound. Legal Services NYC publishes an immigration guide that urges only minimum cooperation with authorities and explicitly advises immigrants not to "carry any documents about your country of origin." It also came out in support of a lawsuit challenging the Trump Administration's new regulatory guidance on the Public Charge Rule, a rule designed to ensure that certain immigrants are unlikely to become dependent upon public aid programs after they are admitted to the United States. Indiana Legal Services, which was 74 percent funded by the LSC in 2018, recently filed suit challenging that state's new 80 hour a month work, education, or volunteer requirement for Medicaid recipients, with a similar lawsuit supported (though not filed) by a LSC grantee in Arkansas. Bay Area Legal Aid, which serves the San Francisco region and was 25 percent LSC-funded in 2018, helped represent the plaintiffs in a case that ended Solano County's practice of suspending drivers' licenses over unpaid traffic fines.

Some LSC grantees even become "grantee-plaintiffs" through their litigation. A grantee-plaintiff is an organization that receives federal grant money and then sues the federal government, placing the taxpayer in the position of subsidizing both parties to a lawsuit. A recent example is a lawsuit filed by Texas RioGrande Legal Aid (40 percent LSC funded in 2018) against the U.S. Department of Housing and Urban Development (HUD) alleging racial discrimination in how Hurricane Harvey aid was being distributed because the aid programs treat property owners and renters differently, and renters are disproportionately minorities.

Credit: VOCAL-NY. License: https://bit.ly/2MJLdZt.

According to tax filings from 2016, Legal Services NYC provided nearly $140,000 to New York Communities for Change, a left-wing activist group whose mission is to "RESIST fascist and racist policies."

Grantees can also formally oppose federal priorities without litigation; Legal Services NYC recently filed public comments opposing HUD's proposed revisions to the Fair Housing Act's Disparate Impact Rule, a rule that addresses liability for housing practices that have no discriminatory intent but nevertheless disproportionately affect a particular group of people.

Controversial Grantee Funding

In addition to their own activities, some LSC grantees work with and even fund organizations that stake out dramatically partisan positions. According to tax filings from 2016, for example, Legal Services NYC provided nearly $140,000 to New York Communities for Change, a left-wing activist group whose mission is to "RESIST fascist and racist policies. . . . Our aim is to eliminate the ways capital has starved our communities of wealth for centuries." Founded by former ACORN staffers, New York Communities for Change contends that "Corporate America has waged a war to destroy working people's power" and that its role is to "fight against capitalism and centuries of oppression." It's hard to fathom why federal tax dollars should flow to a legal aid nonprofit that makes common cause with such a radical group.

Another deeply politicized nonprofit that has received tens of thousands from Legal Services NYC in recent years is Make the Road New York, the advocacy group that orchestrated "most of the post-election mobilizations in New York City to drive the broader immigrant rights resistance." Make the Road New York also publishes a Deportation Defense Manual detailing ways "to protect targeted communities against the ongoing anti-immigrant attacks of the Trump administration," deploys "rapid response" teams on rumors of U.S. Immigration and Customs Enforcement raids in the New York City area, and has supported bills allowing illegal immigrants to vote in state and local elections, serve on juries, and receive public benefits. It was also one of the signatories to a letter urging America's CEOs to blacklist a slew of current and former Trump Administration officials from any future relationship with their companies.

California Rural Legal Assistance, which receives about 60 percent of its funding from the LSC, has in recent years given over $100,000 to ACT for Women and Girls, a "reproductive justice" nonprofit currently co-sponsoring

legislation that would require all public universities in California to provide medication abortion as part of on-campus student health services. Other left-leaning recipients of California Rural Legal Assistance grants include Social and Environmental Entrepreneurs, a prolific fiscal sponsor whose mission is to "facilitate progressive change in areas of social and environmental justice"; Pesticide Action Network North America, a group that opposes many agricultural pesticides; and the United Farm Workers labor union. From 2013 to 2014, California Rural Legal Assistance gave over $400,000 to projects housed at the Tides Center, a major provider of left-of-center fiscal sponsorships.

These examples also illustrate ways that LSC grantees can serve purposes restricted by Congress without actually violating those restrictions. Grantees are prohibited from representing illegal immigrants (with some exceptions), advocating for abortion, organizing labor, and engaging in most political activities. Yet examination of the last few years of tax filings for just two LSC grantees reveals direct funding to nonprofits that explicitly and openly operate in all four of those areas. This is not to suggest any legal wrongdoing on the part of the grantees, but that some LSC grantees are far more than simple and apolitical sources of legal aid.

Elimination or Reform?

In its FY2020 budget proposal, the Trump administration proposed completely eliminating the Legal Services Corporation. In addition to identifying instances of waste and abuse by grantees, the administration argued that doing so would place more control of legal aid into the hands of state and local governments and stimulate new investment from the private sector. The same conclusion was reached for similar reasons by the Heritage Foundation in its *Blueprint for Balance*.

These arguments and the ongoing saga of progressive agenda-driven advocacy by LSC grantees certainly make a tempting target for conservatives looking to cut the budgets of unworthy federal programs. Asking the American taxpayer to fork over hundreds of millions of dollars a year to fund groups that push policies that may be far out of step with their own views is a tall order. It's easy to see why the taxpayer should be released from the obligation of subsidizing groups that are so persistently unable or unwilling to separate legal aid from political advocacy.

However, simply killing off the LSC has a couple of problems. First, civil legal aid to the indigent—something that addresses a genuine and unmet need—isn't the worst place

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Another deeply politicized nonprofit that has received tens of thousands from Legal Services NYC in recent years is Make the Road New York, the advocacy group that orchestrated "most of the post-election mobilizations in New York City to drive the broader immigrant rights resistance."

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for grant money, especially when compared to some of the exasperatingly stupid purposes for federal spending. By its own calculations, over 10,000 full-time staff employed by LSC grantees closed over 740,000 cases in 2018—an impressive figure that, even allowing for some inflationary padding, undoubtedly represents a considerable number of people whose lives were positively impacted. A second and related issue is that eliminating the LSC would create a budgetary shortfall for legal aid in the United States. State and local governments and the private sector would likely increase their contributions but not enough to make up the difference, at least not initially.

Fortunately, a largely untapped resource could alleviate the taxpayer's burden of supporting controversial LSC grantee advocacy and go a long way toward easing the country's civil legal aid shortfall: third-year law students.

The typical law school education lasts three years, and by the time students reach their final year many are tired of reading hundreds of pages of decades-old case law for classroom discussion. Looking ahead to their future careers, they seek real-world experience. Accordingly, law schools offer "clinics" where students work on actual cases under the guidance of a supervising attorney. These clinics often serve the local population and can be quite rewarding for the students both professionally and personally. Despite this, the American Bar Association requires only six credit hours of this sort of "experiential learning" for graduation, and most students still spend much of their third year in the classroom.

Expanding and formalizing these clinical programs into a full-time standard requirement for third-year students—like a residency program for attorneys—could realize several positive outcomes. Legal aid organizations (and by extension the clients they serve) would benefit from a reliable pool of enthusiastic budding lawyers who require only a staff attorney to supervise their work. Over 77 percent of LSC grantee expenditures are for employee salaries and benefits, meaning an influx of essentially free labor from the more than 200 ABA-approved law schools, which enroll 38,000 new first-year students each year, would have a tremendous impact on operations. The students would also benefit from practical and ethical lessons on the practice of law that are impossible to fully convey in a classroom setting. Ultimately, the nationwide implementation of such a program could dramatically reduce the need for taxpayer-subsidized legal aid at the federal level.

Whatever the solution, the bottom line is that the Legal Services Corporation, while not an inherently undeserving federal program, continues to fund grantees that consistently operate in ways that do not deserve federal funding. At the very least, taxpayers may justifiably expect that their tax money that is compulsorily taken by the government to pay for civil legal aid should help the poorest in society with their personal legal problems. It absolutely should *not* be used to fund advocacy for or litigation on issues of broader political concern.

Regrettably, activist attorneys have blurred this line throughout the Legal Services Corporation's existence to the point that such a distinction may not be realistic. If that is the case, the federal government should not be involved at all. ■

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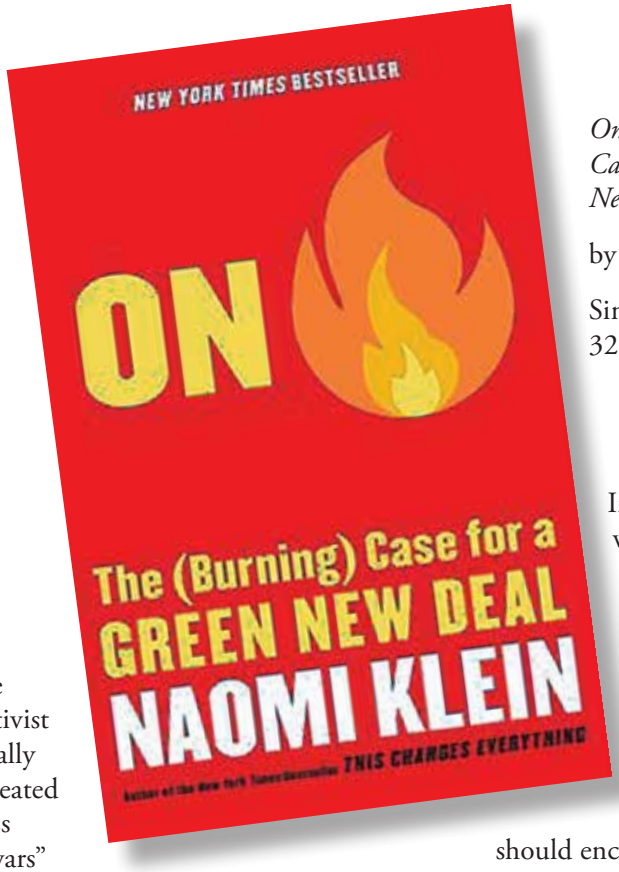
A SEMI-HONEST SALES PITCH FOR THE GREEN NEW DEAL

By Ken Braun

The rollout of the Green New Deal was rough. It began when U.S. Rep. Alexandria Ocasio-Cortez (D-NY) shipped out an explanatory FAQ loaded with seemingly outlandish speculations, such as one regarding how fast her proposal would "fully get rid of farting cows and airplanes." Many Democratic co-sponsors weren't ready to jet home and tell voters to stop eating cheeseburgers, so the ensuing PR guano storm caused Ocasio-Cortez's office to beat a somewhat orderly retreat. Predictably, she received protective covering fire from the mainstream media: "The resolution doesn't do any of those things," huffed the *New York Times*.

It wasn't easy being Green. But then a couple of weeks later—from supposedly decades into our future—came back a message from an older and triumphant Ocasio-Cortez. In an animated video co-written with filmmaker Avi Lewis and executive produced by his wife, writer, and noted climate activist Naomi Klein, Ocasio-Cortez assured us we eventually implemented her proposal and that the future it created was a prosperous techno-marvel filled with limitless union jobs (imagine *Star Wars*, except there's no "wars" and Princess Leia is a Teamster boss).



On Fire: The (Burning) Case for a Green New Deal

by Naomi Klein

Simon & Schuster, 320 pp.

A Halfway Honest Examination

How did we get from here to there? Ms. Klein has literally written the book: *On Fire*: *The (Burning) Case for a Green New Deal*.

It is a halfway honest examination of the goals of the Green New Deal. And by "halfway honest," I mean to say that despite evasions it is immensely more sincere than almost everything else you'll read from other proponents (or the media attempting to explain same, such as the *New York Times*). For example, *On Fire* straight out says we cannot "sustain the impossible dream of luxury for all" and that "air travel, meat consumption, and profligate energy use" must go on our chopping block.

In forthrightly saying we'll cut way back on the cows, this "burning case" for the Green New Deal is just getting warmed up. Fans of economic growth (and reasonably priced steaks) should encourage every moderate Democrat they know to read it. What Klein is unabashedly arguing for will scare them the hell away from the Green New Deal.

In one chapter, Klein visits the free-market Heartland Institute's 2011 International Conference on Climate Change and reports on several attendees who declare her brand of climate alarmism "an attack on middle-class American capitalism" and a "Trojan horse whose belly is full with red Marxist socioeconomic doctrine." From Heartland's then-president Joe Bast, she hears that climate alarmism is "the perfect thing" for leftists because it allows them to do everything they wanted to get away with anyway.

Ken Braun is a senior investigative researcher at the Capital Research Center.

> *In forthrightly saying we'll cut way back on the cows, this "burning case" for the Green New Deal is just getting warmed up.*

And then she drops this: "Here's my inconvenient truth: they aren't wrong."

"The deniers did not decide that climate change is a left-wing conspiracy by uncovering some covert socialist plot," writes Klein. "They arrived at this analysis by taking a hard look at what it would take to lower global emissions as drastically and as rapidly as the climate science demands." Their assumption that "capitalism itself" is "coming under threat" is not happening "because they are paranoid," she concludes, but instead "because they are paying attention."

Klein doesn't refer to her own position as "climate alarmism," but she should. She believes that the climate is getting hotter very quickly, humans are causing it all, catastrophic consequences for humanity are the inevitable result, and nothing less than a war against capitalism will save us. It's an "emergency," she says repeatedly, and nothing short of drastic emergency measures will suffice. This book is a deliberate, loud, and ceaseless climate alarm.

She frequently criticizes environmentalists and left-leaning politicians unwilling to honestly ring that alarm. Klein says the Heartland audience is "considerably less in denial than a lot of professional environmentalists, the ones who paint a picture of global Armageddon and then assure us that we can avert catastrophe by buying 'green' products and creating clever markets in pollution."

Unlike Klein, many Green New Deal politicians don't let on that avoiding the metaphorical climate hell fires means giving up worldly possessions and getting up early for church. She is resolutely in the fire and brimstone branch of sermonizing. As a board member of 350.org, an instructor at Rutgers University, and a senior correspondent for *The Intercept*, she is a highly respected climate activist. *On Fire* fails to consider the severe economic calamity baked into its anti-capitalist recommendations, engages in arrogant wishful thinking in its assumptions that Americans will go along with them, and is flat-out dishonest in dismissing alternative solutions (such as nuclear energy). But when Klein writes about what the Green New Deal crowd has really signed up for and what it will take to get us there, she pulls no punches and tells no lies.

Reduced Energy Use

What she derides as "profligate energy use" is at the core of our economic growth and material prosperity. If energy use declines, as she says it must if we're going to switch over to windmills and solar panels, then prosperity must decline with it. She is being brutally honest. The history of industrial civilization reveals a strong link between economic growth and energy consumption. Reduce overall energy consumption and there will be an almost certain sharp decline in the amount of "stuff" we're used to buying. When Ocasio-Cortez's office sent out that controversial explanatory document, it wasn't an exaggeration, but instead a truth-telling trial balloon.

On Fire frankly explores this truth. The proposed energy budget Klein arrives at with the help of two climate scientists is a 10 percent reduction in energy output *per year for a couple of decades.* She concedes this is "virtually unprecedented since we started powering our economies with coal" and that drops of more than a single percentage point have generally been associated with major economic disruptions. She writes that only during the Great Depression did American energy use decline annually by more than double digit percentages.

The scientific prescription rendered by Klein's experts is thus "radical and immediate de-growth strategies in the US, EU and other wealthy nations." All well and good, she says, but "we happen to have an economic system that fetishizes GDP growth." So, evading "catastrophic warming" cannot happen "within the rules of capitalism." We need to "break every rule in the free-market playbook."

And it won't be pretty. She says this is not a "problem that can be solved simply by changing what we buy—a hybrid instead of an SUV, some carbon offsets when we get on a plane." Nope, the Green New Deal means "the world's most manic consumers are going to have to consume less."

Think on all the assumptions baked into this. Hybrids are a small fraction of the vehicles on our roads and SUVs are so popular that (except for the Mustang and a single subcompact) Ford will soon cease production of cars. Americans are demanding more and more seats on airplanes every year and probably not one in 100 can even explain a carbon offset.

It is a laughably distant myth, this fantasy world where the American consumer masses drive around in tiny hybrid golf carts and reliably pay someone to plant some trees before they jet the family off to Disney World.

Yet Klein informs us even this would be a piddly effort, and we'll need to give up much more to get the Green New Deal done. It's probably fair to guess she thinks a lot fewer of us would be flying the kids to Disney or even driving to Disney and that there probably shouldn't even *be* a Disney. Imagine the uproar if Ocasio-Cortez's infamous memo had put its green crosshairs on America's favorite mouse.

She scolds us for our "cult of shopping" and says in more than one spot that "there will be changes to the way the wealthiest 10–20 percent of humanity has come to live." Read that line carefully: She isn't talking about the richest 10–20 percent of *Americans*, but of everyone on the planet. The GDP per capita of Earth is a little more than $11,000, while the number for the USA is just less than $63,000. Just waking up in the United States puts almost all of us in the world's "richest 10–20 percent" targeted by these big lifestyle changes.

Global Transfer Payments

And that gets to another big and ugly, yet inescapable, truth about the Green New Deal: global transfer payments.

The rich nations of the world cannot unilaterally cool the planet. The math is ludicrously lopsided. The United States, the largest economy and second largest carbon emitter, produced 5.3 billion metric tons of carbon in 2017, up just 1.8 percent from 1992, according to a July 2019 report from *USA Today.* China, the second largest economy and largest carbon emitter, racked up 9.8 billion metric tons of carbon in 2017, *up 270.3 percent* from 1992. The latest International Monetary Fund estimate places China's GDP per capita at about $10,000, while Americans produce almost $63,000 per person.

> *Just waking up in the United States puts almost all of us in the world's "richest 10–20 percent" targeted by these big lifestyle changes.*

China has 1 billion more people than the United States, and they all want to catch up to our standard of living. Already the world's top carbon emitter, China is not going to freeze its economic status at one-sixth the average output per person of the Americans, and neither will the large populations of India, Indonesia, or Brazil.

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The rollout of the Green New Deal began when U.S. Rep. Alexandria Ocasio-Cortez (D-NY) shipped out an explanatory FAQ loaded with seemingly outlandish speculations, such as one regarding how fast her proposal would "fully get rid of farting cows and airplanes.

The only peaceful path to hitting the Green New Deal's goals is to give developing nations a reason to play along. As Klein explains in *On Fire*, this will require a "managed transition to another economic paradigm," where "increases in consumption should be reserved for those around the world still pulling themselves out of poverty."

So the Green New Deal prescription isn't just one of Americans slowing our relentless quest for each generation to live richer than the next (which we are showing zero signs of agreeing with) or of Americans deliberately falling backward economically (which would obviously be much less popular), but of Americans doing all of this because we need to let the Chinese better themselves at our expense. Imagine the uproar if the Ocasio-Cortez talking points had been sincere enough to spell out that agenda.

Again, to Klein's credit and unlike the politicians pushing her agenda, she doesn't finesse away what is desired. She repeatedly declares that capitalism and the "fetish" of economic growth is causing an impending ecological doomsday and that ending it all is the only way out. "We must stop competing with each other," she warns.

But Klein's honesty comes undone when she must choose between socialism and the climate. Even giving her a too generous benefit of doubt that the radical climate doom forecast is 100 percent accurate *and* that this would make

her radical carbon targets necessary, there are serious proposals aimed at hitting those targets. She goes out of her way to denounce them.

Rejecting Nuclear Energy

A main offender is nuclear energy. Zero-carbon nuclear energy provides about 72 percent of France's electricity. For decades the French have operated one of the world's wealthiest economies by emitting just 5.3 metric tons of fossil fuel carbon per person. That's less than one-third the United States, but more importantly it's also significantly less than China (7.1 metric tons per person). While nuclear is usually a more expensive option than fossil fuels, France is proof that a low-carbon nuclear electricity grid can coexist with economic growth.

Nuclear power is just a small portion of the electricity mix for the planet's top four carbon-emitting countries: China (4.2 percent nuclear-generated electricity), the United States (19.3 percent), India (3.1 percent) and Russia (17.9 percent). If the planet is truly *On Fire*, then the politically quickest route to carbon cooling would be a crash program to convert those nations to nuclear power.

To all this Klein says nuclear energy can never be "clean" and is "expensive and slow to roll out compared with renewables."

Though Germany is a nation Klein singles out as a noteworthy success in rolling out renewables, she fails to note Germany's carbon output per person is *83 percent higher* than neighboring France and its nukes.

> *Since economic efficiency is literally output per worker, Naomi Klein is really saying the American "green economy" has been a stupendously inefficient waste.*

She also unintentionally demolishes the economic case for renewables in several spots, arguing, for example, that the American "green economy is already creating more jobs than oil and gas." Even if that were true, the oil and gas economy is obviously much larger. So, since economic efficiency is literally output per worker, she is really saying the American "green economy" has been a stupendously inefficient waste.

The World Nuclear Association reports 140 ships currently sailing the oceans under nuclear propulsion, most of them

Credit: Truthout.org. License: https://bit.ly/2gNzbq.

Naomi Klein doesn't refer to her own position as "climate alarmism," but she should. She believes that the climate is getting hotter very quickly, humans are causing it all, catastrophic consequences for humanity are the inevitable result, and nothing less than a war against capitalism will save us.

owned by the navies of the world's biggest carbon-emitting nations (USA, Russia, China, and India). The U.S. Navy alone has operated 526 nuclear reactors through almost 150 *million* miles of ocean over half a century "without a single radiological incident."

While more expensive than what we're doing, rolling out *stationary* nuclear plants across the USA is quite feasible and would keep most of the modern American economy running prosperously. Two centuries ago the world's great navies ran ships on a different form of zero-carbon power: wind. Switching the modern economy over to a heavy reliance on the wind makes almost as little economic sense as turning an aircraft carrier into a sailboat.

There are many reasons to doubt the sincerity of Klein and her allies when they sell predictions of environmental doomsday. At the top of the list is her dishonest refusal to consider options that might leave us all with something of our prosperous lives still in place. If the planet was really Klein's urgent priority, then she'd be willing to set the socialism aside and talk up the nukes.

An Absurd Green Future

Finally, much as with the Ocasio-Cortez "message from the future," the book presents absurd scenarios about what the Green New Deal future would look like. "Capitalism is a

tiny blip in the collective story of our species," Klein writes. It's something we've been able to do without for the "vast majority of our history," and we can do so again in a world, she says, which will be "a little less ornate."

Anything "governed by the drive for increased yearly profit" or heavily reliant on energy would be on the outs, replaced by more of "the public sector, co-ops, local businesses, nonprofits" and "sectors with minimal ecological impacts but outsized benefits for well-being (such as teaching, the caregiving professions and leisure activities." She assures us a "great many jobs could be created this way."

In one of "just a few examples" she celebrates the bright future for the Green New Deal's displaced autoworkers and coal miners who will be given "equally secure jobs" building subways or assembling wind turbines. *Equally* secure? Klein clearly hasn't spoken to the current employees of famously and recently bankrupt auto and coal companies to ask them about their supposed job security.

The Green New Deal also promises guaranteed jobs, green housing, health care, and other goodies. The American Action Forum pegged the cost of the whole ten-year shopping list at $51 *trillion* to $93 *trillion*—a high side that equals the entire planet's annual GDP.

> *High paying jobs, nonprofits and "leisure activities" have been the luxurious offspring of profit-seeking capitalism, so how would a non-market economy pay for all this?*

High paying jobs, nonprofits and "leisure activities" have been the luxurious offspring of profit-seeking capitalism, so how would a *non-market* economy pay for all this? Here the ideas presented in *On Fire* become stereotypically ludicrous, such as the Ocasio-Cortez suggestion of "Congress simply authorizing the funds, backstopped by the Treasury."

Perhaps these folks metaphorically hug the trees because they literally believe we can grow money on them?

The most wishful thinking in *On Fire* is its analysis of the obstacles blocking the Green New Deal. Klein sees "big" conspiratorial villains, such as the "nexus of Big Government and Big Carbon." American coal company executives, well into the process of being bankrupted by the nation's booming natural gas sector, might reasonably question why they weren't invited to the secret meetings of the supposedly unified carbon cabal. Similarly, the ruthless and much-maligned "tiny blip of capitalism" will put all the fossil fuel sectors out of business whenever (and if ever) solar, wind and whatever else become commercially competitive.

Nuking American Prosperity

Klein doesn't confront the real threat to the Green New Deal. Imagine the college educated liberals living within the millions of acres of ginormous power-hogging suburban America homes. Maybe in one case dad is a university professor and mom's a trial lawyer. They still don't understand how Trump beat Clinton, because everyone they know voted for her! They cart their kids to soccer tournaments in one of two SUVs. On one of their long vacation breaks each year they fly to Europe, Yellowstone, Florida (to visit the grandparents), or somewhere else nifty.

That family is at ground zero of the bomb Klein's Green New Deal proposes to drop on American prosperity. They have an outsized level of comfort, even by American standards, and the big stuff in that life would all be blown up: the nice house, the "fetish" of economic growth that underpins their retirement savings, the expectation of the children growing up to live just as well, and more.

The only way the mom and dad vote for this agenda is if they're lied to about what it means for them. They should read *On Fire*. Naomi Klein has given them fair warning. ■

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