PUBLIC CITIZEN NEWS
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Private Equity's Path of Destruction in Health Care Continues to Spread

BY EAGAN KEMP

Private equity firms are companies that buy out other companies and move rapidly to turn around a profit from their investment by any means necessary. They have been around for decades, but the evidence of their influence and power has grown in recent years. Private equity has its tentacles in just about everything, from the food we buy to the health care facilities we depend on, and private equity investment only stands to increase in the coming years.

A new report from Public Citizen details how private equity firms are buying up health care assets and putting profit ahead of communities, patients, and providers. These companies are incentivized to mismanage health care assets because they aim to make an outsize profit very quickly without regard to the long-term implications for patients and communities. Private equity firms generally aim to exit investments in three-to-five years with returns of 20 to 30% per year.

The strategy that the private equity industry uses to acquire health care entities often puts providers' fiscal health in danger

see **Private Equity**, page 8 ▶

Photo courtesy of Pexels.

FERC Rules Against Utility Evergy

BY PATRICK DAVIS

In a case diving deep into the hedge funds, corporate control, and consumer protection, Public Citizen prevailed over Kansas City-based utility Evergy in a unanimous October ruling by the Federal Energy Regulatory Commission (FERC).

"The Commission's decision marks a win for consumers, market integrity, and protection from corporate raiders," said Tyson Slocum, director of Public Citizen's Energy Program. "This decision will make sure that investors that control a public utility cannot engage in anti-competitive practices."

In the order, FERC found that the utility Evergy and a Dallas-based energy investment firm, Bluescape Energy Partners, had been acting in collaboration with one another and were therefore "affiliated companies." Bluescape filled one of Evergy's 12 board seats and chose to fill it with the firm's executive chairman, C. John Wilder. In addition to Wilder, two other board members of the utility, including former U.S. Sen. Mary Landrieu, had been appointed by hedge funds.

"There is substantial evidence that the hedge funds exert controlling influence over Evergy," Public Citizen and The Communications Workers of America argued in their joint protest to FERC.

In the ruling, FERC found that sharing board members triggered an "affiliated status," between the investment fund and the utility. Additionally, the two firms, the utility Evergy, and the hedge fund Bluescape, had drawn up agreements behind closed doors detailing how the board would govern the actions of the utility. These hedge funds were able to make changes to and assert dominance

see **FERC**, page 4 ▶

Supporting the Freedom to Vote Act

BY ELIAS HAKIM

The Freedom to Vote Act – the transformative democracy reform legislation – is expected to be reintroduced in March in both houses of Congress. This comprehensive package would protect our right to vote, ensure fair congressional districts, and weaken the power of big money in our elections, among other necessary reforms to protect American democracy.

During the last Congress,

see **Freedom to Vote**, page 11 ▶

INSIDE

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CONNECT ONLINE WITH PUBLIC CITIZEN

GET TO KNOW PUBLIC CITIZEN
CARLY FABIAN

An ongoing series profiling Public Citizen leaders and staffers

As Policy Advocate with Public Citizen's Climate Program, Carly Fabian advocates for financial institutions and regulators to take action on the climate crisis. A native of northern Delaware, she loved working on local fundraising and advocacy campaigns in high school and knew early on that she wanted to work in the nonprofit field. When she got to Washington, D.C., to study international relations at American University, she started interning with some organizing groups, including STAND, a student-led organizing group focused on genocide prevention, and the Public International Law and Policy Group. One of Fabian's favorite memories was of leaving the office with coworkers when the U.S. Supreme Court upheld same-sex marriage and sharing a euphoric moment with people who had worked for decades to make that possible. She was attracted to Public Citizen for its distinct combination of wonky political advocacy and creative communication approaches, such as coming up with tweets to debunk false frames on budget priorities. A typical day might include drafting materials for regulators or legislators, coordinating work with coalitions and local partners, and figuring out ways to communicate an advocacy issue through grassroots emails or social media.

Can you describe your path to Public Citizen?

Fabian: Classes at American University and volunteer work helped me develop an interest in environmental justice, corporate and government accountability work, and public education campaigns. Before joining Public Citizen, I worked at a legal education nonprofit focused on using financial industry whistleblower laws to protect individuals reporting corporate environmental crimes.

What has been your favorite part about working at Public Citizen?

Fabian: One of the highlights of each week is joining the weekly staff meetings, where we hear inspiring and reassuring presentations from smart colleagues on the issues they're working on and learn about the scrappy, creative tactics they're using to advocate for the public and hold corporations accountable. Communicating the intersections of climate change and financial regulation can be technical and dry, but it's fun to work with a team determined to make these issues not just accessible but also fun for Public Citizen's supporters and the public.

What's the biggest misconception you think people have about climate change?

Fabian: One misconception I find particularly harmful is the idea that climate change is merely a technical puzzle best left to a small group of experts to solve. You don't have to spend much time in the climate policy space to realize that there is rarely a shortage of solutions, but instead, a lack of political will at the top to support them. Advancing climate solutions also requires grassroots support, inclusive movements, and a wide range of expertise, particularly from frontline communities that have been working on the root causes of environmental justice issues for a long time.

How would you describe the work you do at Public Citizen?

Fabian: I'm part of the climate program, a lot of which is focused on how climate-related financial risks to people's savings, their homes, and the economy. I've focused on how climate change will affect insurance costs and coverage. Insurance companies are supposed to be society's risk managers, but despite knowing early on about the relationship between fossil fuels and climate change, insurers have continued to profit by underwriting risky fossil fuel projects and investing consumers' premiums in fossil fuel companies. ■ – *Compiled by Rhoda Feng*

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Public Citizen is a national nonprofit membership organization based in Washington, D.C. Since its founding by Ralph Nader in 1971, Public Citizen has fought for corporate and government accountability to guarantee the individual's right to safe products, a healthy environment and workplace, fair trade, and clean and safe energy sources. Public Citizen is active in Congress, the courts and government agencies.

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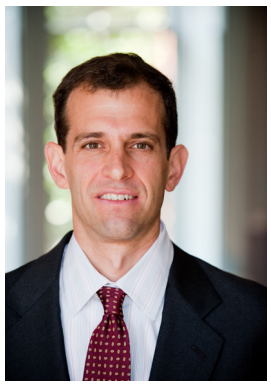
EDITORIAL

Eli Lilly Price Cut A Win for Insulin Access Activists

On March 1, drug maker Eli Lilly announced it would reduce the prices of its most commonly prescribed insulins by 70%, cap out-of-pocket costs for uninsured people at $35 and cut the price of a key insulin product to $25 per vial, down from $126.

This was probably the biggest direct win against a drug company in two decades. It follows the most consequential drug pricing reform in 40 years – the provisions in the Inflation Reduction Act, passed last year, that will authorize some Medicare drug price negotiation.



PRESIDENT'S VIEW
ROBERT WEISSMAN

A number of factors drove Eli Lilly's decision but underlying them all was a major public pressure campaign. Public Citizen joined with a group of people with and impacted by type-1 diabetes to highlight the outrage of super-high insulin prices and the impact on real people – and to demand price reductions.

Over the past three decades, Eli Lilly and the other leading insulin manufacturers have spiked the price of their life-saving products, jacking up prices by more than 1,200%. Insulin was discovered as a treatment for diabetes 100 years ago. As a discovery of a naturally occurring substance, it was not patentable. But starting in the 1980s, Big Pharma companies began synthesizing insulin that mimicked human-made insulin, and those products were patentable.

Over time, the companies found ways to extend patent and other monopolies on their insulin products by making some minor improvements, combining insulin with devices (such as injector pens) and other means.

A recent study by Public Citizen and researchers at Harvard Medical School and the City University of New York's Hunter College showed that 1.3 million Americans with diabetes ration their insulin due to cost. Researchers have invented the term "catastrophic spending" to refer to people forced to spend more than 40% of their post-subsistence family income just on insulin. For 2017 and 2018, they found 14% of insulin users – or 1.2 million people – had reached catastrophic spending levels during the course of one year. Since 2017, at least 12 people in the United States have died from rationing insulin.

There is only one reason that Eli Lilly and the other insulin makers have price gouged so dramatically: Because they can. Other countries impose various forms of price controls and don't permit individuals or their health system to be exploited. One recent study found the average price per insulin unit in the United States to be $98.70. In Japan, it was $14.40 – 85% less. It was even cheaper in other rich countries: $12.00 in Canada, $9.08 in France, $6.94 in Australia. The Australian price is just % of the cost in the United States.

Now pressure has forced Eli Lilly to bring its prices down into the realm of reason. Lilly's price reductions will provide some relief to many patients, though not all, and also begin to ease the burden of high insulin prices on healthcare costs, for which everyone pays through taxes and insurance premiums.

There's much more to do. Public Citizen is demanding the other major insulin manufacturers, Novo Nordisk and Sanofi, follow Eli Lilly's example and enact price reductions immediately. Meanwhile, the federal government must ensure that all insulin products are affordable for everyone who needs them, regardless of age, or insurance type or status. Public Citizen has endorsed legislation from U.S. Sen. Bernie Sanders, (I-Vt.), that would cap the price of insulin at $20 a month.

With the insulin victory and the authorization of some Medicare drug price negotiations, there's growing momentum to curtail Big Pharma's scandalous pricing – sky-high prices that prevent people from getting the medicines they need.

These victories are a reminder that pressure works – and can defeat even the biggest corporate lobby in Washington, D.C. They instruct us in the importance of persistence. Big Pharma has prided itself on never losing policy fights and the industry has had a record to back up its bravado. But now Big Pharma is on its heels. And these achievements encourage us to think big – these are partial wins, but we achieved them by aiming high.

We're certainly not satisfied and we are acutely aware of how much work lies ahead to ensure medicines are affordable and available to everyone who needs them. At the same time, every person part of Public Citizen – including every single organizational member – should take pride in these major victories. They will make a difference in the lives of millions of people. ■

Robert Weissman

Graphic courtesy of Pexels.

▶ **FERC**, from page 1

over Evergy's Finance Committee, which was made up of a select group from the board of directors.

"There are five members of the Finance Committee and all four of the hedge fund directors found their way onto the committee," said Slocum. "The committee's charter essentially handed control of the utility, including many of the business operations and review of the utility's financial strategy, over to hedge funds."

Since public utilities supply essential energy services, they are subject to unique oversight from federal and state regulators in order to protect consumers.

Prior to Public Citizen's victory, FERC's standard for affiliation presumed an investor could "control" a public utility only if it owned 10% or more of the voting securities.

"In ruling for Public Citizen, FERC nullified some of the strategies corporate raiders have used to build controlling interests in utilities across the country."

—Tyson Slocum, director of Public Citizen's Energy Program

But activist investors like Bluescape, Carl Icahn, and Elliott Management have used the threat of a hostile "corporate raider" takeover to secure control over utilities' board seats with ownership shares far less than 10%. In some cases, like Bluescape, they owned only 1% of shares.

"Prior to FERC's landmark ruling, a typical tactic of activist hedge funds and private equity firms was to acquire an investment stake of less than 10% in order to evade regulatory oversight, and then bully the target utility into giving up control over its board of directors," said Slocum.

Once these investors gain shadow control over a utility, energy bills begin to shoot up for ratepayers. An analysis by Communication Workers of America showed that ratepayers paid more when hedge funds gain shadow controlling interests in a utility, as the activist funds sought to more aggressively recoup their investment.

"In ruling for Public Citizen, FERC nullified some of the strategies corporate raiders have used to build controlling interests in utilities across the country," said Slocum. "It's a major victory for ratepayers in Kansas and across the country. It makes sure that investors aiming to control a public utility without proper oversight cannot engage in anti-competitive practices."

The order by FERC could have wide-ranging impacts on utilities across the country. The decision will likely affect Ohio-based FirstEnergy, which has given seats on its board to a hedge fund employee from Blackstone and two Icahn Enterprises employees, according to Slocum. Public Citizen in August urged FERC to deem Blackstone and Icahn Enterprises to be FirstEnergy affiliates. ■

Photo courtesy of Evergy.

Big Oil Exploits War to Sign Gas Export Contracts

BY ALAN ZIBEL

Fossil fuel corporations used the war in Ukraine as a pretext to build out permanent fuel export infrastructure and lock in profits for years – all at the expense of frontline communities and the climate.

A recent report by Public Citizen, Friends of the Earth, and BailoutWatch turned a spotlight on the fossil fuel industry's shameless exploitation of the Russian invasion of Ukraine. It found that the industry has secured a surge of new liquefied natural gas (LNG) contracts starting in 2022. Among the report's key findings:

- The industry finalized 45 long-term deals to send U.S.-produced LNG overseas since the start of 2022, up from 14 in 2021 and three in 2020.
- Those contracts promise delivery of 58.1 million metric tons of methane gas per year – more than double the total volume contracted in the previous two years combined and represent 351 million metric tons of CO2 emissions per year – equivalent to the yearly emissions of 94 coal plants or one-third of all U.S. households.
- The LNG industry and even some Biden administration officials tout the misleading claim that LNG exports support European security against Russia. But more than three-quarters of the exports under these contracts would go to the Asia-Pacific region or fossil fuel giants and commodity trading firms that send fuel to where it can fetch the highest price.

Liquefying gas involves an expensive and energy-intensive process. Methane, or natural gas, normally exists in a gaseous state and evaporates quickly. It needs to be frozen to negative 260 degrees Fahrenheit to be condensed and shipped around the world through a process known as liquefaction, then transformed back into a gas for consumption.

Despite the industry's claims that LNG is "clean," the fuel is nearly as dirty as coal when all of the emissions along the supply chain are considered, including the energy-intensive process of freezing methane into liquid and converting it back into gas.

Over the past 12 months, European countries have shown that they can navigate their short-term energy needs by conserving fuel and promoting renewables. As such, the report argued that the crisis in Europe is fundamentally short-term, and that long-term infrastructure investments are the wrong response. An analysis by the Institute for Energy Economics and Financial Analysis found that the U.S. has enough capacity to boost LNG exports to Europe through 2030 without building new infrastructure apart from that already under construction.

While oil and gas giants are reaping their largest-ever profits, the report noted that marginalized communities in Texas and Louisiana are asked to shoulder continued risk from LNG export infrastructure buildout, all in the name of purported European energy security.

Communities of color and those with low household incomes will bear the brunt of the export terminal frenzy as they make up about 38% of the people living within three miles of proposed gas export facilities.

Public health in these hotspot communities is threatened by air pollution from gas processing, including carcinogenic particulates, poisons like benzene and mercury, volatile organic compounds, ammonia, sulfuric acid, sulfur oxides, and nitrogen oxides. One gas export terminal in Corpus Christi routinely exceeds its permitted limits for air pollutants such as soot and volatile organic compounds and it was a contributing factor to the region's air pollution jumping 83% in recent years.

These record exports have come with a cost to U.S. households, power producers, and industrial consumers of gas, who are now forced to compete with consumers in Asia and Europe. U.S. benchmark methane gas prices, while still generally lower than those in Europe or Asia, are more influenced by global energy markets, exposing Americans to higher prices and increased volatility.

"A truly balanced view of Americans' energy security would require the Biden administration to evaluate the environmental justice and climate change impacts of U.S. LNG exports," said Tyson Slocum, energy program director at Public Citizen. "America's record natural gas exports have come with a tragic cost. American households, power producers, and other consumers are now forced to directly compete with their counterparts in Berlin and Beijing, exposing Americans to higher prices and increased volatility."

High energy prices are creating significant economic hardship for tens of millions of American families. In the summer of 2022, 26% of respondents to a U.S. Census Bureau survey said they had forgone necessities like food or medicine to pay their energy bills sometime during the preceding year.

Rising energy costs – to which record LNG exports are a key contributor – are driving domestic inflation. When polled anonymously, industry executives candidly acknowledge this fact. A September 2022 survey by the Federal Reserve Bank of Dallas revealed that nearly 70% of oil and gas executives say the increase in exports to Europe will end "the age of inexpensive U.S. natural gas."

Meanwhile, U.S. House Republicans have been advancing bills to eliminate or undermine regulatory oversight of fossil fuel exports. Public Citizen and its allies have been pushing the Biden administration to overhaul the U.S. Department of Energy's procedures for granting LNG export permits to better consider climate, consumer, and community harm. The group has been warning that State Department efforts under the Biden administration to help U.S. producers secure long-term LNG contracts are flatly incompatible with global climate leadership.

"There is no disaster that Big Oil won't stoop to exploiting," said Lukas Ross, a program manager at Friends of the Earth and an author of the report. "LNG exports are a ploy to prolong the era of fossil fuels. If Big Oil's export agenda remains a blindspot for the Biden administration, then the president's climate legacy is at risk." ■

Graphic courtesy of Shutterstock.

Working to Secure Federal Funding for Houston

BY JOSÉ MEDINA

The passage of the Inflation Reduction Act (IRA) by Congress in 2022 was monumental. Touted as one of the most significant pieces of legislation in years, the new law addressed prescription drug affordability and our changing climate, among other things.

"This is a very good day for America," Public Citizen President Robert Weissman said on the day of the act's passage. It could also be a good day for Houston. And Public Citizen is working to make sure that happens.

The IRA provides an opportunity to work with partners to benefit communities in Houston. In the months after the act was signed into law, the Texas office of Public Citizen secured funding for a two-year project that would allow it to help Houston – and more specifically, Port Houston - obtain IRA benefits.

"Getting this law through Congress and to the president's desk was a win, but it was only a start," said Erandi Treviño, an organizer for Public Citizen in Houston. "Now, we must take full advantage of all the benefits the act offers for improving our air, land, and water. That will be a part of our focus in the next couple of years."

In partnership with the Port of Houston Authority (POHA) and the Texas Climate Jobs Project, Public Citizen will work to identify grant opportunities for POHA and other entities operating in and around the Houston Ship Channel and offer guidance on the application process.

The grant opportunities available through the IRA, and the Infrastructure Investment and Jobs Act, can help the port authority achieve its pollution reduction and climate goals.

The IRA includes investments in clean energy by easing the transition to cleaner transportation. It means that the Port of Houston could use the federal funding to switch to electric vehicles – such as trucks, cranes, and marine vessels. Vehicle electrification is just one strategy to reduce emissions, which is vital if the port is to achieve the goals of its 2050 Zero Carbon Roadmap, the Sustainability Action Plan, and the Clean Air Strategy Plan.

"It is important for Public Citizen to undertake these efforts on behalf of port communities," added Maxine Gomez, an organizer for Public Citizen in Houston. "Frontline communities, like those next to the port and along the ship channel, are often the first and most affected by pollution. And Houston, unfortunately, has a long history of the extreme weather events that are made worse and more likely by the climate-harming emissions we aim to reduce through this project."

This two-year project includes community outreach.

Working with the Healthy Port Communities Coalition (HPCC), a coalition which we founded more than ten years ago, Public Citizen will survey communities to gauge which federal opportunities are a priority for residents. The project includes planned town hall events to present community members with available options and as a venue for residents to provide feedback. Community feedback collected at the town halls would be recorded, transcribed, and supplied to the port authority.

As part of Public Citizen's language justice efforts, these town halls will be translated into Spanish to bring in residents who may feel reluctant to become involved due to language barriers.

A Milestone for HPCC

The Texas office of Public Citizen does much of its Houston work through the Healthy Port Communities Coalition, in which Public Citizen plays a leading role.

This past November, the coalition reached a milestone: Its 10th anniversary. HPCC's mission is to empower and advocate for the residents who live near the Port of Houston and its ship channel. These environmental justice communities are often the most impacted by the regular operations of the many industrial facilities in the area, and whenever these facilities experience a disaster like an explosion or chemical spill.

Since its founding, HPCC has notched some significant victories. In 2015, HPCC was part of a successful campaign to pass a local ordinance to restrict the wasteful and polluting practice of truck idling. More recently, HPCC helped convince the Port of Houston Authority to use cleaner dredging equipment for its multi-year project of expanding the ship channel.

"HPCC has become invaluable to our Houston work," said Adrian Shelley, Public Citizen's Texas director. "Aside from being instrumental in pushing for cleaner air and healthier communities, perhaps its best accomplishment has been helping the community secure something that it hasn't always had: a voice." ■

Oil refineries along the Houston Ship Channel courtesy of the Houston Chronicle.

Electoral Count Reform Act Helps Trump-Proof Future Presidential Elections

BY DAVID ROSEN

When the annual omnibus spending package was signed into law in late December 2022, it included a remarkable and vital piece of legislation designed to protect future elections against attempts to steal them. The Electoral Count Reform Act (ECRA) amends a 19th century law that former President Donald Trump and members of his administration, family, and legal team exploited in their failed attempt to steal the 2020 presidential election.

The day after the 2020 election, then-President Donald Trump's Energy Secretary Rick Perry contacted White House Chief of Staff Mark Meadows with a shocking proposal for a coup: Republican-controlled state legislatures in battleground states would override the voters and send their own Trump electors to Congress.

By the end of November, one of Trump's lawyers, John Eastman, had sketched out the scheme in a memo he titled "The Constitutional Authority of State Legislatures to Choose Electors." The key to the plot's success was a loophole in the 19th-century Electoral Count Act. This provision, which no one had ever seriously thought to abuse as Eastman suggested, opened the door for state legislatures to override their voters and choose their own presidential electors.

If voters have chosen presidential electors on Election Day, state legislatures are prohibited by federal law from overriding voters' choice after the election. But the Electoral Count Act has an exception. If voters "fail" to make a choice on Election Day, state legislatures are allowed to submit their own set of electors.

This "failed choice" exception was intended to deal with the difficulties 19th-century voters might face in getting to the polls on Election Day, such as natural disasters. But the exception arguably left room for a state legislature to claim, without any evidence, that voter fraud had occurred. The state legislature could then claim the voters failed to make a choice on Election Day and send their own hand-picked presidential electors to Congress.

The pivotal moment in this attempted coup came in early January 2021. Jeffrey Clark, acting assistant attorney general for the Civil Division, drafted a letter that would come from the U.S. Justice Department (DOJ) and be sent to Republican battleground state legislatures. The letter falsely stated that the DOJ had "identified significant concerns that may have impacted the outcome of the election in multiple states." The letter then suggested that state legislatures should call special sessions and prepare to substitute their own electors for the choice made by the voters – using the "failed choice" exception to justify this action.

When Acting Attorney General Jeffrey Rosen and Acting Deputy Attorney Richard Donoghue refused to sign the letter, Trump tried to make Clark the acting attorney general so he could send the letters instead. Trump ultimately backed off when Rosen and Donoghue told him the entire DOJ leadership would resign if he did. If not for Rosen and Donoghue, Trump and Eastman might have pulled this off.

While Trump's effort to steal the 2020 election ultimately failed, it was a stark warning of what could happen in future presidential elections.

Public Citizen was one of the groups leading the fight to close this dangerous loophole. "The ECRA is an essential reform for preserving the integrity of elections in 2024 and beyond," said Lisa Gilbert, executive vice president of Public Citizen. "Congress helped ensure that a Trump-like effort to steal a presidential election will not be successful in the future."

The ECRA, included in December's omnibus spending bill, eliminated the "failed choice" loophole. It narrowly defines "failed choice" to be limited to extreme cases such as major earthquakes, floods, or other natural disasters. But even in those circumstances, the ECRA eliminates the ability of a state legislature to choose the electors. Instead, the law would reschedule the presidential election in that state for a later date.

The ECRA has other important provisions to strengthen the rules for counting electors in Congress. It identifies each state's governor as the sole individual responsible for submitting a certified slate of electors to federal officials. And it clarifies that the vice president's role in overseeing the counting of electoral votes before a joint session of Congress is purely ceremonial.

The new law also raises the threshold for members of Congress to object to the electoral vote counting to one-fifth of each chamber. It ensures that there is one conclusive slate of electors from each state, and it outlines a process for expedited court review of election results.

"In short, the ECRA Trump-proofs future presidential elections, and it passed with bipartisan support," Gilbert added. "It's a victory for democracy and lawful elections that we all can celebrate." ■

▶ **Private Equity**, from page 1

from the outset. Private equity firms typically acquire health care providers by borrowing money. This new debt is immediately transferred to the balance sheet of the provider that they acquire. As a result, private equity-acquired hospitals are often instantly forced to dedicate part of their budget to servicing debt rather than serving patients.

One of the main ways that private equity firms profit through the acquisition of health care providers is simply by raising prices. A big reason that private equity firms get away with raising prices is because they often seek to establish dominant provider groups within a given region through their purchases, stamping out competition.

The risks posed by private equity investments in health care are particularly acute. After all, the services health care providers offer can spell the difference between life and death. Private equity has targeted segments of the health care industry since at least the 1990s, with many predictable outcomes. Among them, shocking lapses in safety have occurred, prices have risen faster than at non-private equity acquired entities and patients have been subjected to price gouging schemes.

Recent private equity acquisitions include:

- **End-of-life care**: Given the vulnerable nature of patients at the end of their lives – especially with the track record of private equity firms in health care generally – there is legitimate concern being raised by doctors, patients, and advocates about private equity companies buying up hospice and palliative care facilities. Researchers found that for-profit hospice firms targeted patients differently than nonprofit ones, amplifying concerns as more hospice facilities become backed by for-profit private equity firms. There has been similar interest in other services for our graying population, including gastroenterology and ophthalmology.
- **Home health care**: The private equity firms investing in home health appear to be using similar tactics as in other medical sectors, such as seeking significant market share. Several PE-backed home health care companies have come under increased scrutiny on issues of patient safety, inadequate staffing, and failures that required investigation by state regulators.
- **Traveling nurses**: Private equity firms have been investing in nurse staffing companies that contract with facilities to ensure sufficient nurses at a given facility. Nursing shortages, both current and projected, are likely to increase the demand for traveling nurse services and that the traveling nursing industry has already been accused of price gouging, particularly during the COVID-19 pandemic, by members of both parties in Congress.
- **Reproductive care**: In even more evidence that private equity investors are trying to

Graphic courtesy of Unsplash.

find ways to squeeze profit out of every possible moment of a person's life – from cradle to grave – private equity is busy acquiring multiple sectors of reproductive health care, including obstetrics and fertility services. Allegations against private-equity backed firms include classifying standard births as emergencies in order to bill higher and targeting fertility services at wealthier families and recommending different and, often more expensive, fertility procedures than non-private equity-backed facilities.

- **Privatizing Medicare**: The Trump administration made an effort to further privatize Medicare and put for-profit corporations between many patients and their providers. Hundreds of groups came together to fight this backdoor privatization of Medicare. While the Biden administration didn't end the program, they chose to end some parts and rebrand others as accountable care organization (ACO) Reach. One major concern about ACO Reach comes from stakeholders who identified the potential for private equity and other profit-driven investors to profit at the expense of patients. Providers are incentivized to limit the care provided to patients in order to ensure maximum return on investment.

What can we do?

Positive legislative efforts including U.S. Rep. Pramila Jayapal's Healthcare Ownership Transparency Act, which would require private equity firms and other investors to better disclose ownership of health facilities, including nursing homes. Under this legislation, corporations would have to disclose a number of specific things, including assets, debts, and prior financial transactions.

The Stop Wall Street Looting Act would significantly increase accountability for private equity companies across industries and would reduce their ability to profiteer without consequences. Among other things, the legislation would require private equity firms to share responsibility for the liabilities of the companies under their control.

The Medicare Advantage Consumer Protection and Transparency Act, put forward by U.S. Rep. Katie Porter (D-Calif.), would significantly increase the information available on Medicare Advantage plans, including providing information on claims, denials of care, and coverage policies to both federal oversight agencies as well as the public.

Finally, the best way to address private equity along with so many of the other health care ill in our country would be to pass Medicare for All, which would end the profit motive in U.S. health care by banning the use of Medicare dollars in service of profit.

"The dangerous role of profit in health care isn't going away anytime soon, given the grinding pace of health reform in this country, but that doesn't mean substantial steps can't be taken to protect patients," said Robert Weissman, president of Public Citizen. "It is incumbent upon all of us to push for reforms that help remove the profit motive from health care, especially Medicare for All. We have seen what happens when profit is put ahead of patient needs and it will only get worse unless we fight back." ■

Graphic courtesy of Unsplash.

Public Citizen Challenges Discrimination in the Settlement of Roundup Claims

BY RHODA FENG

More than 100,000 people have filed lawsuits against chemical giant Monsanto alleging that exposure to Roundup, the mostly widely used herbicide in the world, caused their non-Hodgkin-lymphoma (NHL). Many of those lawsuits have been resolved through mass tort settlements, in which large numbers of cases are aggregated and settled for a lump sum that is subsequently apportioned between the claimants based on a set of factors such as years of exposure and treatment history. Bayer, the German company that now owns Monsanto, has reportedly set aside about $9 billion to resolve Roundup litigation.

Roundup is most heavily applied in agriculture and professional landscaping, where most workers are not U.S. citizens. Nearly all of the Roundup settlements, however, have resolved claims by residential users. The story behind a new lawsuit filed by Public Citizen may explain this discrepancy.

On Jan. 19, 2023, lawyers at Public Citizen and other organizations filed a lawsuit in the U.S. District Court for the Western District of Virginia against Monsanto on behalf of a farmworker who contracted NHL after applying Roundup while working on tree farms in Virginia. The farmworker had retained a lawyer, filed a lawsuit, and agreed to participate in a mass settlement of her Roundup claim in exchange for dropping her suit. Monsanto then refused to finalize the agreement because the plaintiff is not a U.S. citizen.

Public Citizen's lawsuit alleges that Monsanto's refusal to allow our client to participate in its settlement program violated a civil rights statute that prohibits discrimination on the basis of citizenship with regard to making and enforcing contracts. The lawsuit also names as defendants our client's former attorneys, who dropped her case when it did not settle, telling her that U.S. citizenship was required for settlement and that they were unwilling to further pursue her claim.

"Those harmed by unlawful conduct are entitled to compensation no matter their citizenship," said Michael Kirkpatrick, an attorney with Public Citizen Litigation Group. "This lawsuit calls out discrimination by both Monsanto and some trial lawyers, and it will help put an end to such practices."

The lawsuit asks the court to order the defendants to identify all individuals who have been excluded from settlements due to their citizenship status, order the defendants to provide monetary damages to the plaintiff in the amount she would have received had she not been excluded from the settlement, and enter an injunction prohibiting the defendants from continuing to discriminate on the basis of citizenship. ■

Photo courtesy of Mike Mozart / Flickr.

FDA Should Curtail Antibiotic Crisis by Ending Misuse in Livestock Animals

BY RHODA FENG

To protect the safety of consumers, meat processing workers and farming communities, a coalition of public health advocacy groups, including Public Citizen, filed a lawsuit against the U.S. Food and Drug Administration (FDA) and its Center for Veterinary Medicine (CVM) in February, challenging their refusal to phase out unnecessary uses of antibiotics in animal agriculture.

Approximately two-thirds of medically important antibiotics sold in the U.S. are for use in food-producing animals, and they are often administered to healthy animals en masse in light of the higher risk of infections caused by cramped, unsanitary or stressful conditions. The misuse of these medicines has contributed to the rise and spread of antibiotic-resistant bacteria – a growing public health crisis responsible for 35,000 deaths and over 2.8 million cases of illness each year in the United States.

In 2016, Public Citizen, Natural Resources Defense Council (NRDC), Earthjustice, Food Animal Concerns Trust (FACT), and several other public health and consumer groups petitioned the FDA to ban the use of medically important antibiotics for disease prevention in livestock and poultry in the absence of illness. Five years later, the FDA denied the petition, despite generally agreeing that the use of antibiotics can contribute to the development and proliferation of antimicrobial resistant bacteria. The FDA's denial failed to address the petition's core concern that use of medically important antibiotics for so-called disease prevention purposes in livestock and poultry poses a significant threat to human health.

The lawsuit, filed in late January, explains that FDA failed to adequately consider the evidence and ignored the central problem presented in the 2016 petition. In addition to Public Citizen, the plaintiffs in the case include Alliance of Nurses for Healthy Environments, FACT, and NRDC.

"Antibiotics are crucial treatments for a wide range of bacterial infections – including pneumonia, strep throat, and urinary tract infections," said Dr. Michael Carome, director of Public Citizen's Health Research Group. "Effective antibiotics are life-saving for immunosuppressed patients, including those who have received organ transplants or chemotherapy for cancer. The FDA must do more to combat increased antibiotic resistance." The FDA's response to the lawsuit is due in late March. ■

▶ **Freedom to Vote**, from page 1

thousands of activists across the country showed up to rallies, called their members of Congress, wrote letters to the editors of their local newspapers, and made their voices heard to demand passage of the legislation. Despite their efforts, the Freedom to Vote Act was blocked by a Republican filibuster in the U.S. Senate. Public Citizen is leading the charge to keep the legislation front and center and to build the movement that will ensure the bill's ultimate passage.

The 2022 midterm election demonstrates that the bold and transformative reforms in the Freedom to Vote Act are still desperately needed to make the promise of democracy real for all of us. The election was the most expensive midterm ever recorded, with $8.9 billion spent on advertising alone. A very small number of billionaires and corporations are responsible for a major chunk of that spending, giving them outsized influence over elections and elected officials.

"Congress must live up to our current moment by passing the Freedom to Vote Act, to protect our right to vote and help fully realize the promise of American democracy."

—Allison Pulliam, co-director of the Declaration for American Democracy

The recent midterm was also the first congressional election since redistricting after the 2020 census, and the new maps illustrate the need to ensure fair districts free of partisan and racial gerrymandering. In Ohio, voters had to cast ballots in districts that had been ruled unconstitutional by the state Supreme Court. In Alabama, politicians strategically divided Black voters to dilute their power. Partisan gerrymandering also led to fewer competitive districts in states including Texas, Oregon, and Illinois. In a democracy, voters should get to pick our politicians, not the other way around.

Voters agree that democracy is at risk. A *New York Times* and Siena College poll found that more than seven in 10 Americans believe that democracy and the rule of law are threatened. In 2023 alone, extremist state lawmakers have introduced 150 anti-voter bills to put up deliberate barriers to accessing the ballot in at least 32 states. Restrictive legislation that makes it harder to vote disproportionately impacts people of color and further weakens the power of marginalized communities in our democracy.

Fortunately, many states are not waiting for Congress to act to protect the freedom to vote. Voters in Michigan, Connecticut, and Nevada in 2022 passed ballot initiatives to ensure access to the ballot, allow in-person early voting, and allow ranked choice voting for general elections, respectively. In February, the Minnesota state legislature passed Restore the Vote, which restores the freedom to vote to formerly incarcerated individuals, impacting over 53,000 Minnesotans who are currently denied access to the ballot.

The Freedom to Vote Act would ban partisan gerrymandering and require states to adopt transparent and fair processes for redistricting. It would limit the power of big money and secret money in our elections by requiring transparency around donors and ads. It would prevent Super PACs, which are supposed to operate independently, from coordinating with candidates. This legislation would combat also election subversion, preventing the tactics former President Trump sought to employ to overturn the 2020 election results.

"Our democracy is at an inflection point," said Allison Pulliam, co-director of the Public Citizen-spearheaded Declaration for American Democracy. "Congress must live up to our current moment by passing the Freedom to Vote Act, to protect our right to vote and help fully realize the promise of American democracy." ■

Graphic courtesy of Shutterstock.

Tech Giants Seek to Cement Their Power Via "Digital Trade" Rules

BY SARAH GRACE SPURGIN

Lax domestic and global regulation have allowed Big Tech to enjoy unfettered freedoms to design, implement, and exploit e-commerce and digital systems and technologies. While new digital technologies, products, and systems have brought important benefits to people everywhere, the lack of oversight and regulation has enabled Big Tech to invade our privacy; design and deploy a system of mass corporate surveillance; leverage its economic might to diminish competitors; discriminate against vulnerable populations; and concentrate enormous political and economic power. The rise of Big Tech has inarguably contributed to a surge in wealth and income inequality within and between countries.

The Biden administration and Congress are grappling with how best to regulate Big Tech to protect consumer privacy, to ensure adequate competition, and hold companies accountable for discriminatory practices. Yet, behind closed doors in international trade negotiations, such as the U.S.-Mexico-Canada Agreement (USMCA) and the Japan-U.S. digital trade agreement, Big Tech sneakily inserted digital trade terms that limit governments' ability to regulate their business practices. Big Tech continues to insert its deregulatory agenda in a patchwork of new Biden administration trade initiatives including the Indo-Pacific Economic Framework (IPEF), talks with the European Union, Kenya, and in the Americas, as well as ongoing discussions in the World Trade Organization's (WTO) E-commerce "Joint Statement Initiative." They seek binding rules to:

- Limit the ability of governments to regulate where Big Tech firms send and store our data;
- Undermine investigation of discriminatory source code and algorithms, intrusive surveillance practices, and violent incitement online via prohibitions on technology transfer requirements and "trade secrets" protections;
- Shield online platforms from corporate accountability via overly broad liability waivers;
- Manipulate "trade" tools of "market access," "trade discrimination" and "conditions for business" to exploit workers in the gig economy; and
- Protect monopolies and promote further consolidation by banning certain pro-competition policies.

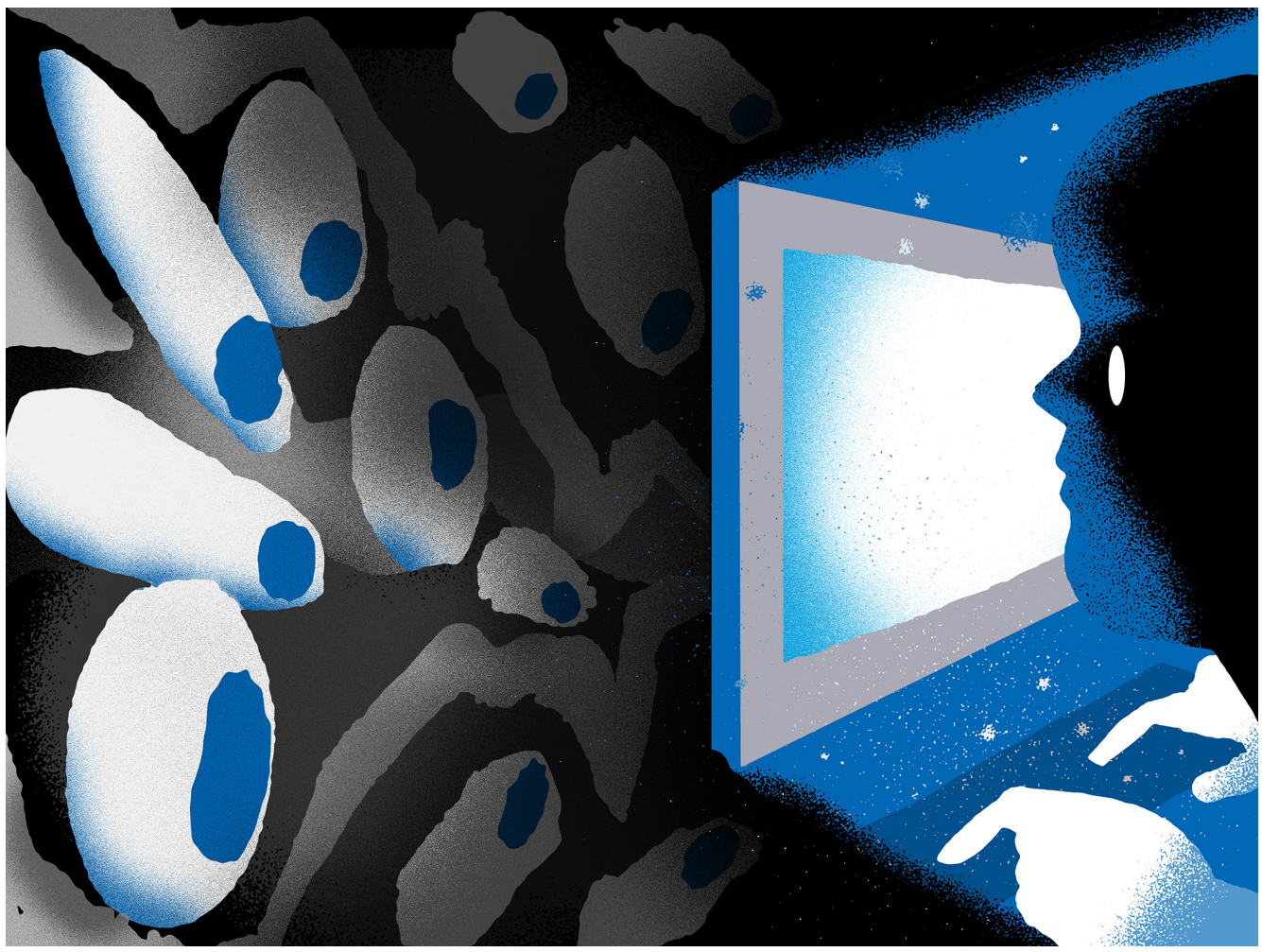
These "digital trade" terms are not focused on remedying actual problems related to the online sale of imported goods, such as tariff evasion and product safety. Instead, they aim to undermine the stronger Big Tech accountability rules of many U.S. trading partners and to tie U.S. policymakers' hands for future regulatory efforts. More than 50 national organizations representing labor, civil rights, consumer, and other constituencies have written to the Biden administration, urging it to drop harmful "digital trade" provision proposals.

The Biden administration appears divided on the topic. Top officials in the U.S. Department of Commerce have a very cozy relationship with Big Tech companies, and U.S. Sen. Elizabeth Warren (D-Mass.) has raised concerns about the revolving door between Commerce employees and Big Tech companies keen to use trade negotiations to push their deregulatory agenda. On the other hand, U.S. Trade Representative Katherine Tai has articulated a more forward-thinking vision than the approach advocated by Big Tech and its allies.

"Our approach to digital trade policy must be grounded in how it affects our people and our workers. We must remember that people and workers are wage earners, as well as consumers. They are more than page views, clicks, and subjects of surveillance. They are content creators, gig workers, innovators and inventors, and small business entrepreneurs. This means they have rights that must be protected – both by government policy and through arrangements with other governments."

In testimony submitted to the U.S. Senate Finance Subcommittee, Public Citizen's Global Trade Watch Director Melinda St. Louis urged Congress to monitor ongoing trade negotiations to ensure that any "digital trade" talks advance Tai's vision and do not replicate problematic provisions pushed by Big Tech that were included in the USMCA. To achieve President Biden's worker-centered approach to trade, its "digital trade" agenda must not interfere with the U.S. or other countries' ability to adopt e gig economy worker protections, prevent discrimination, hold corporations accountable and protect consumer privacy. Instead, St. Louis argued, global digital trade rules nstead should ensure that human and civil rights are protected at home and around the globe.

The Biden administration will soon present its "digital trade" proposal to the 13 Asia-Pacific countries participating in the IPEF. Unfortunately, due to the secrecy of the talks, the public will not be able to see whether the worker-centered or Big Tech-friendly approach will be put forward. Public Citizen and our allies will continue to push for more transparency in the process and to build the political power necessary to hold Big Tech accountable at home and globally. ■



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IN THE SPOTLIGHT

The following are highlights from our recent media coverage.

Robert Weissman, Public Citizen president

On the Biden administration hesitating at curbing the excessive rise in prescription drug prices: *CNN*. **On corporate criminal prosecutions being at historically low levels:** *Common Dreams, The Raw Story*. **On President Joe Biden's decision of Jeff Zients for White House Chief of Staff:** *Common Dreams, Salon*. **On Big Oil price gouging us for profit:** *Truthout*. **On why Citizens United needs to be overturned:** *Daily Kos*.

Lisa Gilbert, vice president of legislative affairs

On U.S. Representative David Cicilline (D-R.I.)'s announcement about leaving Congress to join the Rhode Island Foundation: *The New York Times*. **On the Office of Congressional Ethics:** *Salon*.

Peter Maybarduk, director of Public Citizen's Access to Medicines Program

On Moderna's COVID vaccine price hike: *The American Prospect*.

Melinda St. Louis, Director of Public Citizen's Global Trade Watch

On how climate change may usher in a new era of trade wars: *The New York Times*. **On what makes investor-state dispute settlements so outrageous:** *The New Republic, The American Prospect*. **On protecting climate investments from trade rules written with influence from large corporations:** *Roll Call*.

Adrian Shelley, Director of Public Citizen's Texas office

On Texas Attorney General Ken Paxton settling with four whistleblowers for $3.3 million: *Austin American-Statesman*. **On the Texas Legislature:** *Texas Observer, Houstonian News*.

Tyson Slocum, Director of Public Citizen's Energy Program

On Americans' winter home-heating bills: *The New York Times, The Boston Globe, Bloomberg, CNN, Houston Chronicle, Yahoo! Finance, The Baltimore Sun, Chicago Tribune, South Florida Sun Sentinel*. **On the Federal Energy Regulatory Commission:** *Roll Call*. **On President Joe Biden's energy agenda:** *E&E News*. **On U.S. natural gas exports:** *Yahoo! News*. **On the GOP's plan to enact Big Oil's "Wish List":** *Common Dreams*. **On electricity prices surging 14.3% in 2022:** *Utility Dive*.

Craig Holman, government affairs lobbyist with Public Citizen's Congress Watch division

On House Speaker Kevin McCarthy's plan to gut the Office of Congressional Ethics: *New York Times, Mother Jones, The Washington Post, CNN, SFGate, Daily Kos*. **On how dark money transcends pure partisanship in the telecom industry:** *Salon*. **On the Senate's Health, Education, Labor and Pensions Committee:** *Politico*. **On the independent Office of Congressional Ethics:** *Daily Kos, Common Dreams*. **On free tickets to Kansas City Chiefs games being given by businesses and Kansas City utility companies to public officials:** *Kansas City Star, San Antonio Express-News*. **On a complaint filed over U.S. Sen. Kyrsten Sinema (I-Ariz.) requiring her Senate staff to run personal errands:** *MSN, The Hill, Daily Beast, Yahoo News*.

Public Citizen Litigation Group

On the Biden administration helping Norfolk Southern block workers' lawsuits: *Jacobin, The Lever, Common Dreams*.

Preterm Birth Drug Withdrawal a Win

BY RHODA FENG

WIN!

In a win for consumers and health safety advocates, Covis Pharma announced in March that it plans to voluntarily withdraw Makena (hydroxyprogesterone caproate) for prevention of preterm birth from the market. This action follows the nearly unanimous recommendation of the U.S. Food and Drug Administration's (FDA) Obstetrics, Reproductive, and Urologic Drugs Advisory Committee in October 2022 that the drug be withdrawn from the market. Public Citizen petitioned the FDA in 2019 to ban the drug after a large post-approval clinical trial found that it is not effective for preventing preterm birth or major complications in newborn infants related to preterm birth.

"Makena should have been removed from the market soon after the results of the postmarket PROLONG trial demonstrating that the drug provided no clinical benefits were released in early 2019," said Dr. Michael Carome, director of Public Citizen's Health Research Group.

"In the absence of evidence showing that Makena was effective for reducing the risk of preterm labor, Covis Pharma's failure to voluntarily withdraw the drug from the market until now unacceptably allowed women and their fetuses to be exposed to the known and potential serious risks of an ineffective drug."

The FDA approved Makena under the accelerated approval pathway in 2011, solely to reduce the risk of preterm birth in certain high-risk women. However, Makena's approval was based largely on evidence from a single clinical trial that was seriously flawed and did not provide any evidence that the medication reduced the rate of fetal and neonatal health problems and death.

The FDA mandated that Makena's manufacturer conduct a large, randomized post-approval clinical trial to confirm that the drug provides meaningful clinical benefits. That trial, which was completed in 2019, found that the drug is not effective for preventing preterm birth or major complications related to preterm birth. Public Citizen subsequently petitioned the FDA in 2019 to ban the drug.

"The yearslong delay in the FDA taking action to withdraw approval of the new drug application for Makena also demonstrates fundamental deficiencies in the current regulatory oversight for drugs approved under the accelerated approval pathway," said Carome. ■

Graphic courtesy of Shutterstock.

Public Citizen Recommends ...

'The Fed Unbound: Central Banking in a Time of Crisis'
By Lev Menand; 176 pp.; Columbia Global Reports

"The U.S. Constitution provides for three branches of government. In Columbia Law Professor Lev Menand's "The Fed Unbound," there's effectively a fourth branch, namely, the Federal Reserve System. Created in 1913 as a banker's bank to replace reliance on JP Morgan to bail out the economy, the "Fed" has rescued the nation on a routine basis.

In 2008, the rescue conspicuously involved a bailout of insurance behemoth AIG; megabanks Bank of America, Citigroup, and Wells Fargo; and countless smaller banks. We suffered a recession, but it might have been much bleaker. As it was, the Fed ignored the plight of homebuyers and focused instead on the solvency of lenders who had caused the problem. At the outset of the pandemic, the Fed again bailed out the system, somewhat below the radar of a nation otherwise worrying about a rampaging virus. Congress consciously allocated to the Fed and the Treasury Department the authority to funnel trillions of loans into many sectors, from hotels and airlines to any faltering business it deemed worthy. Billions went to the oil and gas sector, as a Public Citizen report by Alan Zibel found.

The Fed also can tank the economy, as it seems bent on doing now with rising interest rates to tame inflation and as it did in the 1980s under Fed Chair Paul Volcker.

Why it exists, what and how it works, and why it should be restricted from being a fourth branch of government are questions addressed by Menand, a former Treasury official. Neither a magisterial tome like William Grieder's "Secrets of the Temple" nor a deep dive into legislative history a la Roger Lowenstein's "America's Bank," "The Fed Unbound" is a slim volume. Menand's series of definitions and historical vignettes are approachable to any alert reader. We learn about repurchase agreements (he puts them in the bucket of deposits, a novel perspective) and Eurodollars (which aren't actually pieces of paper with George Washington's picture). He then builds a case that the Fed has sprawled outside its mandate to govern the price of money and promote full employment. He persuasively concludes that the Fed has escaped its statutory shackles. Reining in the Fed, however, isn't likely, short of substantial legislation, and that isn't probable given structural political gridlock in Washington, D.C.

Menand glances at some critical issues the Fed might pursue, such as prodding the nations' financial sector to confront climate change. The Fed must assiduously adhere to its mandates, including assuring bank safety and soundness and ensuring the stability of the U.S. financial system, which means taking climate change seriously, an argument advanced extensively by Public Citizen's Climate Program.

The planet's existential threat requires the Fed to participate in President Biden's all-of-government approach and deploy all the regulatory tools and authorities necessary to address the risks to the system posed by the devastating impacts of climate change and the dislocations caused by the zero-carbon energy transition. That includes considering how encouraging or directing credible transition plans from banks and the financial sector might help mitigate the risks that those banks and the broader financial system face. For that, Menand's considerable talent for analysis would be most welcome. ■

— Bartlett Naylor

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Activists Call on AIG to Disavow Insurance Coverage of East African Crude Oil Pipeline

BY PATRICK DAVIS

Calling on insurance giant AIG not to back a dangerous oil pipeline in East Africa, in February, activists from Public Citizen, Climate Families NYC, Sunrise Movement NYC, and other groups converged on American International Group Inc.'s (AIG) headquarters in New York City. The activists demanded the company publicly commit to not provide insurance for the East African Crude Oil Pipeline (EACOP).

If completed, EACOP would be the world's biggest heated oil pipeline, stretching nearly 900 miles through the heart of East Africa from Uganda to Tanzania. The project, developed by the French oil company Total Energies and the Chinese state company CNOOC, has already caused large-scale displacement of local communities and poses grave risks to protected environments, water sources, and wetlands in both Uganda and Tanzania. Those include the Lake Victoria basin, on which 40 million people rely for drinking water and food production. The pipeline would also enable the extraction and transport of enough oil to generate over 34 million tons of CO2 emissions per year at peak production, exacerbating the ongoing climate emergency.

Given the high stakes, a sense of urgency was palpable in the action in New York, which comprised part of a Global Week of Action for the #StopEACOP Campaign. Additional actions targeting banks and insurers took place in 19 cities across North America, Europe, Africa, and Asia. In London, activists called out Lloyd's of London insurer Talbot, a subsidiary of AIG, for its potential involvement in this "toxic" pipeline.

As part of the action in New York, Public Citizen and allied groups delivered more than 50,000 petitions to AIG's CEO Peter Zaffino, asking the insurance company to join the 24 banks and 22 insurers that have already committed not to insure the project.

"Nearly a third of the pipeline would run through the basin of Africa's largest lake, Lake Victoria," the petition reads. "Just one spill or leak could poison the water that 40 million people depend on for food, farming and their livelihoods."

Intended to transport crude oil from Uganda's oil fields to the Tanzanian coast, EACOP would be the longest heated crude oil pipeline in the world. The project would cross an active earthquake zone and numerous lakes, rivers, and wetlands. Should a spill occur, the disaster could threaten vital freshwater resources.

Photo of AIG event in New York courtesy of Adrian Childress for Public Citizen.

As part of the action outside of AIG's headquarters in New York, speakers from around the world called on insurance companies to end their support for EACOP and other oil and gas projects. Further, in the child-friendly event, activists and their children participated in an "oil" slime activity, intended to depict the impact the project could have on the communities and natural resources the pipeline passes through. Afterwards, activists walked to Chubb's New York office to send a similar message to CEO Evan Greenberg, who has so far failed to rule out support for EACOP.

Despite the growing controversy around the project, including human rights violations, the French oil company Total Energies and the Chinese state company CNOOC are moving ahead with the oilfields and pipeline projects.

"Human rights and climate activists in East Africa and around the world are urging AIG to not underwrite EACOP," said Hannah Saggau, insurance campaigner with Public Citizen's Climate Team. "As a massive oil and gas insurer, the onus is on AIG to publicly rule out involvement with EACOP. AIG should listen to communities and stop backing oil and gas expansion projects." ■

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