Testimony of
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Good afternoon Chairman Cicilline, Ranking Member Sensenbrenner, and Members of the Subcommittee. Thank you for the opportunity to participate in this important hearing and the historic investigation that you are undertaking. My name is Stacy Mitchell. I am the co-director of the Institute for Local Self-Reliance (ILSR), a public interest research and advocacy organization. Since 1974, we've worked to advance policies that disperse economic power and strengthen local communities.

My statement begins with a brief overview of how changes in policy, particularly competition policy, have led to a sharp decline in independent businesses across many economic sectors, fueled growing concentration, and opened the way for a handful of technology giants to assume control over the basic infrastructure of commerce. It then turns to the rise of Amazon and details how its dominance is harming competition, entrepreneurship, innovation, and local economies. For several years, ILSR has been conducting in-depth research on Amazon, drawing on a variety of sources, including interviews with dozens of manufacturers, retailers, and other firms. Some of these executives and business owners are quoted here, a few by name, but most insisted on anonymity because they are fearful of the power that Amazon holds over their companies. Finally, I outline several policy approaches for restoring competition in digital commerce.

Introduction: The State of Independent Business

Across many sectors of the economy — from manufacturing, to retail, to banking, to services — independent businesses have been declining sharply in both numbers and market share.[1] Meanwhile, starting a new business appears to have become harder than ever. The number of new firms launched each year has fallen by nearly two-thirds since 1980.[2] This loss of independent business and entrepreneurship has far-reaching implications. Research shows that it impacts innovation, mobility into the middle class, the well-being of communities, and even democracy.[3]

It's not that independent businesses can't compete. On the contrary, our research has found that independent businesses are nimble competitors. In many sectors, they outperform their larger rivals by key measures, and they deliver distinct consumer and market benefits that large corporations cannot match.[4] Independent pharmacies, for example, offer lower prices and better healthcare than the chains.[5] Small local banks have lower account fees and do more lending to new and growing businesses than big banks do.[6] Independent office supply dealers have lower prices than the big

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[1] "Antitrust and the Decline of America's Independent Businesses," Stacy Mitchell, *The Antitrust Bulletin*, June 2017.
[2] "Dynamism in Retreat: Consequences for Regions, Markets, and Workers," *Economic Innovation Group*, Feb. 2017.
[3] "Antitrust: A Missing Key to Prosperity, Opportunity, and Democracy," Barry C. Lynn, *Demos*, Oct. 2013; "Market Power and Inequality: The Antitrust Counterrevolution and its Discontents," Lina Khan and Sandeep Vaheesan, *Harvard Law and Policy Review*, Apr. 24, 2016; "The Social Costs of Mergers: Restoring Local Control as a Factor in Merger Policy," *North Carolina Law Review*, Richard M. Brunell, Dec. 1, 2006.
[4] "Antitrust and the Decline of America's Independent Businesses," Stacy Mitchell, *The Antitrust Bulletin,* June 2017.
[5] "Shop Around for Lower Drug Prices," Lisa L. Gill, *Consumer Reports,* Apr. 5, 2018; "Consumers Still Prefer Independent Pharmacies, CR's Ratings Show," Lisa L. Gill, *Consumer Reports*, Dec. 7, 2018.
[6] "Antitrust and the Decline of America's Independent Businesses," Stacy Mitchell, *The Antitrust Bulletin*, June 2017.

chains and Amazon, and they pioneered next-day delivery 40 years ago.[7] And, yet, across all of these sectors and others, independents are a rapidly shrinking part of the market.

The evidence suggests that the main driver of this troubling trend can be traced to changes in public policy that began in the 1970s and 1980s. In particular, our federal antitrust agencies radically changed how they interpret and enforce our antitrust laws. As a result of these changes, dominant corporations have been allowed to amass an unprecedented degree of market power, and have been given far more leeway to use that power to undermine, exclude, and crush their smaller rivals.[8] Over time, the ideological shift that drove these changes in antitrust enforcement also infused other areas of public policy with a bias in favor of big business, creating an environment less and less hospitable to independent businesses.

The emergence of dominant digital platforms has added new and alarming dimensions to the problem of concentrated economic power. A growing share of our commerce now flows through a handful of digital platforms. These powerful gatekeepers not only control market access, but also directly compete with the businesses that depend on them. Until policymakers address this fundamental conflict-of-interest, the United States will almost certainly continue to become less dynamic and entrepreneurial, less equal in its distribution of wealth and opportunity, and less a place of freedom and democratic self-determination.

1. Amazon's platform has become essential infrastructure for producers and retailers of consumer goods.

Last year we reported on the story of Gazelle Sports,[9] which is typical of the predicament that many companies producing or retailing consumer goods now find themselves in. Founded in 1985, Gazelle Sports is a popular independent retailer of running shoes and sporting apparel with four locations in Michigan. For many years, Gazelle Sports grew steadily, swelling to a bout 170 employees. As its customers moved online, so too did the company. Gazelle Sports built a robust e-commerce site. With scores of enthusiastic reviews on Google and Yelp, the site came right up in online searches, yielding a brisk stream of customers and sales.

But, in 2014, sales began to decline. The problem was that many people in Michigan and across the country were no longer starting their online shopping on a search engine, where they might find Gazelle Sports. Instead, they were going straight to Amazon. By 2016, the share of online shoppers

[7] "Amazon Business Pricing Comparison," OPSoftware, LLC, Jul. 10, 2018; "Amazon's Next Frontier: Your City's Purchasing," Stacy Mitchell and Olivia LaVecchia, *Institute for Local Self-Reliance*, Jul. 10, 2018.
[8] "Monopoly Power and the Decline of Small Business: The Case for Restoring America's Once-Robust Antitrust Policies," Stacy Mitchell, *Institute for Local Self-Reliance*, Aug. 2016; "How the Federal Government Rigs the Game Against Small Businesses," Stacy Mitchell, *Washington Monthly*, Feb. 26, 2019; "Walmart's Monopolization of Local Grocery Markets," Stacy Mitchell, *Institute for Local Self-Reliance*, June 2019.
[9] "Amazon Doesn't Just Want to Dominate the Market—It Wants to Become the Market," Stacy Mitchell, *The Nation*, Feb. 15, 2018.

bypassing search engines and beginning their product search on Amazon had grown to 55 percent.[10] With sales flagging and staff reductions underway, the owner of Gazelle Sports, Chris Lampen-Crowell, made what seemed like a necessary decision: Gazelle Sports would join Amazon Marketplace, becoming a third-party seller on the digital giant's platform. "If the customer is on Amazon, as a small business you have to say, 'That is where I have to go,'" he explained. "Otherwise, we are going to close our doors."

Virtually every manufacturer and retailer of consumer goods in America faces this same predicament. In order to reach more than half of the online market, they have to sell through a platform operated by one of their most aggressive and formidable competitors. This is a bitter pill. It means handing over to Amazon their customer relationships, their product expertise, and a sizeable cut of their revenue.

In 2018, online retail spending in the U.S. surpassed $510 billion.[11] Amazon's platform captured more than half of this spending.[12] While online shopping has been growing rapidly, Amazon's share of this market has been growing even faster. In 2014, online shopping was a $300 billion market and Amazon accounted for about one-third of this spending.[13] In specific product categories — including books, toys, apparel, and electronics — Amazon has a commanding market share of all sales, online and offline.[14]

Arguably the more consequential measure of Amazon's platform power, however, is its share of online shopping search. More than half of all online shopping searches in the U.S. start on Amazon.[15] One of the main drivers of this dominance is Amazon Prime, the company's membership program, which provides two-day shipping and other perks for $119 per year. Already, 100 million Americans, accounting for more than half of the country's households, are Prime members.[16] There's evidence that being a Prime member alters consumer behavior. When people pay for Prime, they naturally want to maximize the value in free shipping they derive from it by doing more of their shopping on Amazon. Studies show that Prime members are significantly less likely to comparison-shop, and they spend nearly three times as much on Amazon, compared to non-Prime customers.[17]

As a result of these dynamics, companies that once drew sufficient consumer traffic from search engines to their own sites are now compelled to become vendors or sellers on Amazon's platform — or

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[10] "55 percent of online shoppers start their product searches on Amazon," Jason Del Rey, *Recode*, Sep. 27, 2016.
[11] "Quarterly Retail E-Commerce Sales, 4th Quarter 2018," *U.S. Census Bureau News*, *U.S. Department of Commerce*, Mar. 13, 2019.
[12] "Amazon Suppliers Panic Amid Purge Aimed at Boosting Profits," Spencer Soper, *Bloomberg*, Mar. 7, 2019.
[13] "Amazon's Stranglehold: How the Company's Tightening Grip Is Stifling Competition, Eroding Jobs, and Threatening Communities," Olivia LaVecchia and Stacy Mitchell, *Institute for Local Self-Reliance*, Nov. 2016.
[14] "Amazon Has Basically No Competition Among Online Booksellers," Polly Mosendz, *The Wire*, May 30, 2014; "Deutsche Bank: Amazon set to eclipse Best Buy as top consumer electronics retailer," Daphne Howland, *Retail Dive*, June 22, 2016; "The Western Toy Market," Lutz Muller, *Toy Directory Online*, Feb. 1, 2015;" "Cowen: It Looks Even More Like Amazon Will Become America's Top Clothing Retailer in 2017," Julie Verhage, *Bloomberg*, May 11, 2016.
[15],"More Than 50% of Shoppers Turn First to Amazon in Product Search," Spencer Soper, *Bloomberg,* Sep. 27, 2016.
[16] "Amazon reveals it has more than 100 million Prime members," Heather Kelly, *CNN Money*, Apr. 19, 2018.
[17] "These new stats about Amazon should make Google very nervous," Jillian D'Onfrio, *Business Insider*, Apr. 20, 2015; "Amazon Prime customers spend way more on Amazon than other customers -- and the difference is growing," Dennis Green, *Business Insider*, Oct. 21, 2018.

forego access to a majority of online shopping traffic. In our recent surveys of independent businesses, we've heard this over and over again. "As a small business that was once (fiercely) independent, I am now — as most of my industry is — dependent upon Amazon to supply access to the retail market base," the owner of 33-year-old business in Minneapolis told us. "If we had the choice, we would rather not be selling on the Marketplace," said another retailer located in a small Midwestern town. "The sad part of our business is we have no choice but to sell there," a business owner in rural Georgia told us.

In other words, Amazon doesn't just dominate the online market; it controls access to it. Amazon has become essential infrastructure for the buying and selling of goods. This position gives it an unprecedented degree of structural power in the economy.

Moreover, Amazon's online shopping platform is only one piece of its digital infrastructure. It also controls other platforms that function as key intermediaries for competing companies. Amazon Web Services (AWS) has more than one-third of the world's cloud computing market share, bigger than the next three providers, Microsoft, Google, and Alibaba, combined.[18] AWS provides the web and data infrastructure for a vast number of companies, including Netflix, Comcast, and Condé Nast. AWS also controls market access for a new and growing sector of developers building cloud-based applications and services for companies.[19] In addition, Amazon operates a vast shipping and logistics infrastructure, scaled to handle both its own packages and those of other firms.[20] Its voice assistant, Alexa, dominates the voice market, powering 68 percent of smart home speakers and providing the interface for more than 100 million Alexa-enabled devices and appliances that have been sold.[21] With Alexa as the platform for the burgeoning world of internet-connected devices, in both consumer and industrial settings, Amazon has yet again positioned itself as a powerful intermediary for other companies and developers. Meanwhile, Amazon is making investments in healthcare, finance, and more.

2. Amazon exploits its platform dominance to undermine competition and extort value from rival businesses.

Amazon's power as a gatekeeper for the online market allows it to:

- privilege its own products on the platform, or privilege outcomes that maximize its own interests, at the expense of competition, rival sellers, and consumers;
- maintain a God-like view of the transactions of rival businesses and customers, and use this data to move into new markets with a built-in advantage;

[18] "Canalys: Cloud spend to surpass US$143 billion in 2020, driven by IT channel," *Canalys Newsroom*, Apr. 2, 2019.
[19] "Open Source Battle Over AWS Intensifies," Kevin McLaughlin, *The Information*, Jul. 3, 2019.
[20] In March and April of this year, Amazon carried 45 percent of its own packages. "Amazon in-sourcing nearly half of its parcel transportation needs," *Freight Waves*, June 2019; "Amazon to Launch Delivery Service That Would Vie With FedEx, UPS," Laura Stevens, *Wall Street Journal*, Feb. 9, 2018;"Amazon Shipping Now Delivering Nationally from NYC, LA, and Chicago," Justin Smith, *TJI Research*, Apr. 2, 2019.
[21] "Amazon Says 100 Million Alexa Devices Have Been Sold – What's Next?," Dieter Bohn, *The Verge*, Jan. 4, 2019; "Letter to Shareholders," 2018 Annual Report, Jeff Bezos, *Amazon*, 2018.

- dictate (and arbitrarily change) the rules by which its competitors have access to this essential infrastructure, including suspending their accounts without cause or process;
- levy a sizable tax on its competitors' trade through the fees it charges them; and
- leverage the interplay between its different business lines to amplify its power to extort value from competing retailers and suppliers.

Exploiting Competitors' Data

When businesses join Amazon's Marketplace, they hand over to Amazon their customer relationships, their product expertise, and a trove of data about how shoppers interact with their product offerings.[22] Market studies, media reporting, and our own interviews with business owners and executives have documented how Amazon exploits its platform power and view into the activities of rival firms to either advantage its own direct retail sales and products, or to fortify its market dominance in other ways.

Studies have found that when third-party sellers post new products, Amazon starts selling many of their most popular items itself. The market research firm Upstream Commerce tracked 857 apparel items first offered for sale by Marketplace sellers and found that, within 12 weeks, Amazon began directly selling 25 percent of their top-selling items itself.[23] "The likelihood of Amazon's entry is positively correlated with the popularity and customer ratings of third-party sellers' products," according to another study, by researchers at Harvard Business School.[24] The researchers, who describe their findings as a "gloomy picture" for sellers, found: "Results also show that third-party sellers affected by Amazon's entry appear to be discouraged from growing their businesses."

We've heard this echoed in numerous interviews we've conducted with retailers. "Everything that I sold well [on Marketplace], Amazon would start to sell directly," the owner of baby and children's products store in Wisconsin told us.

Amazon has also leveraged the insights it gains from rival firms to expand into new markets with a built-in advantage. Data derived from competing brands and retailers on its platform, for example, has enabled Amazon to produce and sell a growing number of its own private-label products. In recent years, Amazon has launched more than 100 of its own private-label brands, spanning many product categories, including electronics, apparel, groceries, and toys. Research has found that Amazon gives its own clothing items better access to promotional placement (in the carousels at the bottom of product pages) than those produced by rivals — restricting access and suppressing sales of competing brands at no cost.[25] Reporting has also shown that Amazon often features its own products in the

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[22] "Amazon's Antitrust Paradox," Lina Khan, *Yale Law Journal*, Jan. 3, 2017.
[23] "Upstream Commerce Retail Intelligence Research Finds Amazon Muscles In On Its Own Vendors' Best Sellers," *Upstream Commerce*, Oct. 28, 2014.
[24] "Competing with Complementors: An Empirical Look at Amazon.com," Feng Zhu and Qihong Liu, *Harvard Business School*, Apr. 28, 2015.
[25] "Amazon: Prioritizing its Own Fashion Label Brands in Product Placement on its Increasingly Dominant Platform," *The Capitol Forum*, Dec. 13, 2016.

sponsored product ads that now account for a sizable part of the available real estate in product search results.[26] At times, Amazon has even manufactured close knock-offs of products that are bestsellers on its site and then given its own versions top-billing in its search results.[27]

These issues are not limited to Amazon's retail platform. Similar dynamics appear to be playing out on Amazon's cloud and Alexa platforms. Some have alleged that Amazon has copied cloud software developed by small companies that depend on AWS to reach their clients.[28] There's evidence too that Amazon has appropriated the ideas of startups financed by its Alexa Fund to produce smart devices that copy their innovations and compete directly with them. "Some venture capitalists said they would advise companies to be wary of accepting Amazon's investment, because of the risk of Amazon copying ideas," reported the Wall Street Journal.[29] Firms that develop "skills" or functionality for Alexa risk Amazon creating its own native versions and sidelining their applications.[30] In February, Bloomberg reported that Amazon is demanding a "continuous stream of customer information" from makers of smart appliances, which rely on Alexa as their interface.[31] This data — about when someone turns on a lamp or runs the rinse cycle on a dishwasher — gives Amazon a powerful advantage as it designs its own smart devices and looks to fortify its position as the dominant voice platform.

Taxing Competitors' Sales

While Amazon may steer shoppers to its own private-label products in some cases, these house brands serve an additional, and likely more lucrative, purpose: they enhance Amazon's margins on other products sold on its platform. This is because being able to offer shoppers its own version of a particular product gives Amazon more leverage to extract deeper discounts from vendors, who risk losing sales to Amazon's brand, or to compel third-party sellers offering similar products to alter their pricing in ways that benefit Amazon, or both. Indeed, even as Amazon has introduced more private-label product lines, its revenue from third-party sellers has soared.[32]

Between 2015 and 2018, Amazon's revenue from third-party seller fees grew from $16 billion to $43 billion.[33] Revenue from seller fees outpaced the overall growth of Amazon's retail sales, and it outpaced the growth of sales made by third-party sellers on the site.[34]

Companies that sell on Amazon's platform must give Amazon a cut of every sale they make. For most products, the cut is 15 percent. This fee comes off the top and it represents a sizeable expense for

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[26] "Amazon, With Little Fanfare, Emerges as an Advertising Giant," Lara O'Reilly & Laura Stevens, *Wall Street Journal*, Nov. 27, 2018.
[27] "Got a Hot Seller on Amazon? Prepare for E-Tailer to Make One Too," Spencer Soper, *Bloomberg*, Apr. 20, 2016.
[28] "Open Source Battle Over AWS Intensifies," Kevin McLaughlin, *The Information*, Jul. 3, 2019.
[29] "Startups Weigh Pros, Cons of Alexa Fund," Patience Haggin, *Wall Street Journal*, Aug. 28, 2017.
[30] " Voicelabs ditches analytics service to launch Alpine.ai for ecommerce voice apps," *VenureBeat*, Jan. 29, 2018.
[31] "Your Smart Light Can Tell Amazon and Google When You Go to Bed," Matt Day, *Bloomberg*, Feb. 12, 2019.
[32] "Letter to Shareholders," 2018 Annual Report, Jeff Bezos, *Amazon*, 2018; 2018 Annual Report, *Amazon*.
[33] 2016 Annual Report, *Amazon*; 2018 Annual Report, *Amazon*.
[34] According to Amazon's 10-K filings, sales by third-party sellers grew by 113 percent over this period, while the fees they paid to Amazon grew by 166 percent.

retailers. In the absence of viable competing platforms, there's no market pressure on Amazon to lower these fees.

On top of this fee, Amazon also charges fees for using its warehousing and shipping services, known as "Fulfillment By Amazon," or "FBA." Amazon strongly incentivizes third-party sellers to buy these services by giving FBA sellers a much better shot than non-FBA sellers of being chosen by Amazon's algorithms as the default seller on a product page ("winning the buy box"), which greatly increases their chances of making a sale.[35] Amazon has repeatedly raised the cost of FBA. In 2018, these fees rose by as much as 14 percent for standard-sized items (and more for oversized goods), on top of similar increases in 2017.[36] (Measured on a per-cubic-foot basis, these increases were even larger.)

Given Amazon's power as a gatekeeper for online commerce, these fees could be characterized as a form of rent-seeking, or a kind of toll or tax, which companies, large and small, have little choice but to pay in order to reach the online market.

Setting the Terms by Which Competitors Can Access the Market

Amazon often abruptly changes terms for sellers, disrupting their businesses overnight. Its dominance means that sellers have little recourse or alternative. Earlier this year, for example, Amazon reportedly engaged in a "purge" of selected vendors, inducing these firms to suddenly have to shift from supplying Amazon as wholesalers to operating as third-party sellers on its platform.[37] A few months before it had pushed some third-party sellers in the opposite direction, telling them that they could no longer sell on the platform; instead, they would need to become vendors to Amazon's own retail division.[38] In both cases, Amazon abruptly and radically altered the terms by which businesses could access its platform, and in ways that presumably benefitted its own bottom line or market position.

Another recent example is Amazon's deal with Apple, which restricted third-party re-sellers of Apple products to a few large companies. This deal effectively removed all small Apple re-sellers from selling on Amazon, upending hundreds of small businesses.[39] Or consider another policy change last year, when Amazon introduced a policy called "Pay by Invoice," which effectively lengthened the payment cycles of third-party sellers, putting many in a precarious position.[40]

"If they don't want an item on there, they can decide that. If they only want one seller to sell something, they can set that rule. They control everything," explained a baby products retailer, who tried to sell on Amazon's platform after customer traffic to his company's store and web site began to decline in 2013.

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[35]"Amazon Says It Puts Customers First. But Its Pricing Algorithm Doesn't," Julia Angwin & Surya Mattu, *ProPublica*, Sept. 20, 2016 .
[36] "Amazon Fees are Increasing A LOT in 2018 -How Will it Impact You?" Dave Bryant, *EcomCrew*, Dec. 24, 2016; "Amazon FBA's Largest Ever Fee Increase Coming in 2018 – How Will it Affect You?" Dave Bryant, *EcomCrew*, Dec. 19, 2018.
[37] "Amazon Is Poised to Unleash a Long-Feared Purge of Small Suppliers," Spencer Soper, *Bloomberg*, May 28, 2019.
[38] "An Amazon revolt could be brewing as the tech giant exerts more control over brands," Jason Del Ray, *Recode* Nov. 18. 2018.
[39] "Apple and Amazon Cut A Deal That Upended The Mac Resale Market," Nick Statt, *The Verge*, May 21, 2019.
[40] "Some Amazon sellers are outraged over a new payment policy designed to attract more corporate buyers," Eugene Kim, *CNBC*, Aug. 21, 2018.

But he found that Amazon's shifting policies and terms, often opaque and arbitrarily imposed, made it impossible to succeed. The company folded in 2015. "I hear Amazon talk about it as an open marketplace, but it's not."

Among the most egregious examples of Amazon's arbitrary treatment of sellers are its abrupt suspensions of their accounts, frequently made without explanation.[41] Third-party seller discussion boards on Reddit and Facebook are filled with frantic business owners trying to figure out how to get their accounts reinstated as they struggle to navigate Amazon's often confusing and email-only system of communicating with merchants.[42]

"After we'd been on Amazon for about four years, Amazon closed our Marketplace account. Out of the blue, no warning. We just woke up to an email that said our account had been closed for 'violations.' There was no one at Amazon who would answer emails, pleas, questions, phone calls, or requests for more info. At the time Amazon closed our account, we had… over 98 percent positive feedback from our customers," a retailer in central Pennsylvania told us. "We never made up for that sudden loss. Nearly seven years later, for no real reason, Amazon announced that we could return as Marketplace sellers."

In effect, Amazon is supplanting an open public market, in which commerce is governed by democratic rules aimed a facilitating competition, with a privately controlled "marketplace," in which buyers and sellers have to abide by Amazon's rules and pay tribute to it.[43] It would be as if Walmart owned our malls and Main Streets, decided which firms could operate in these spaces and on what terms, and surveilled every move they made.

Amazon's Multifaceted Market Power

Amazon is many things at once: it's a dominant e-commerce platform, major retailer, producer of consumer goods, digital advertising giant, leading shipper, and more. It derives much of its market muscle from the integration of these various business lines. By leveraging the interplay between its different roles, Amazon can amplify its power over suppliers and third-party sellers, extorting more value from their businesses while entrenching its own monopoly position.

One illustration of this can be found in the ways Amazon has exploited its position as a platform operator to enhance its retail division's power over direct suppliers.

"As long as you sell to Amazon on its terms, they work with you to go after that," an executive at one of the world's largest makers of performance footwear told me, referring to third-party sellers who peddle counterfeits or otherwise misrepresent a brand's products. But, he said, the moment a vendor

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[41] "Amazon Angers Mom-and-Pop Sellers With 'Arbitrary' Suspensions," *Bloomberg*, Aug. 26, 2016.
[42] "Prime and Punishment: Dirty Dealing in the $175 Billion Amazon Marketplace," Josh Dzieza, *The Verge*, Dec. 19, 2018.
[43] "Amazon's Antitrust Paradox," Lina Khan, *Yale Law Journal*, Jan. 3, 2017.

declines any of Amazon's escalating demands for additional discounts or more favorable terms, "they stop cooperating."

Amazon's Marketplace has become a "wild west" of counterfeit goods and unauthorized, fly-by-night sellers.[44] According to several manufacturers we've spoken with, Amazon uses its ability to selectively police counterfeiters and other nefarious sellers as leverage to extract concessions from suppliers.

"They use this as a punitive measure," the executive explained. In his company's case, the punishment came when it balked at Amazon's demands for more fees and other terms that shifted costs onto the brand. "Either you play ball or you are forced by Amazon into spending your resources and time trying to manage the activity on their platform."

In 2016, an executive with the shoemaker Birkenstock complained about this publicly. Amazon refused to go after sellers of counterfeit Birkenstocks on its site unless the shoe company agreed to sell its full line to Amazon.[45] Like many brands, Birkenstock reserves part of its line, typically new and niche designs, to reward brick-and-mortar stores that provide additional support for Birkenstock's customers, such as fittings and returns. In effect, Amazon sought to use its power as a platform operator to force concessions from a supplier and neutralize a natural competitive advantage of rival brick-and-mortar shoe stores (their ability to provide in-person service). News accounts suggest that Nike, faced with a similar ultimatum, gave in to Amazon's demands.[46]

More recently Amazon has been leveraging its platform power to rapidly scale its digital advertising division by promoting sponsored ads to sellers already anxiously jockeying to win favorable search placement from Amazon.[47]

Still another example can be found in the way that producing its own product lines enables Amazon to extract more from vendors and third-party sellers. This is because, as I noted above, being able to offer shoppers its own version of a particular product gives Amazon more leverage to extract deeper discounts from vendors, and to compel third-party sellers offering similar products to alter their pricing in ways that benefit Amazon. In other words, Amazon's goal with its private-label lines is not to make everything itself, but rather to amplify its leverage and thus have the power to appropriate a bigger piece of the pie, at the expense of competing brands and retailers.[48]

One striking aspect of Amazon's tactics is that vendors and sellers quickly learn that the best way to solve their problems on the platform typically entails further enhancing Amazon's dominance over

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[44] "Prime and Punishment: Dirty Dealing in the $175 Billion Amazon Marketplace," Josh Dzieza, *The Verge*, Dec. 19, 2018; "What Happens After Amazon's Domination Is Complete? Its Bookstore Offers Clues," David Streitfeld, *New York Times*, Jun. 23, 2019.
[45] "Birkenstock quits Amazon in US after counterfeit surge," Ari Levy, *CNBC*, Jul. 20 2016
[46] "Nike Thought It Didn't Need Amazon, Then the Ground Shifted," Laura Stevens & Sarah Germano, *Wall Street Journal*, Jun. 28, 2017.
[47] "Report: Amazon takes more digital advertising market share from Google-Facebbok duopoly," Taylor Soper, *GeekWire*, Feb. 20, 2019.
[48] Even as Amazon has introduced more private-label product lines, Marketplace sales have grown as a share of its retail sales. "Letter to Shareholders," 2018 Annual Report, Jeff Bezos, *Amazon*, 2018.

them. As one journalist put it, "The solution is often to more fully meld with Amazon — to enroll in its fulfillment program, to purchase Amazon's labels to make sure product isn't being diverted, or even make their brand exclusive to Amazon, which brings special protections."[49]

3. Amazon's platform dominance is harming entrepreneurship and innovation, and threatening our economic liberty.

In 1971, David Guernsey started an office products company in Fairfax County, Virginia. Today Guernsey Inc. has 247 employees and about $97 million in annual revenue. [50] When people think of office supplies, they might think of a big-box chain. Out of sight of many consumers, though, are hundreds of independent office products dealers like Guernsey. They're primarily business-to-business operations. Instead of storefronts, they have sales representatives, e-commerce sites, and delivery trucks. These independent dealers are an important economic force, both within their communities and nationally. They account for about 20 to 25 percent of the market for office supplies, according to the National Office Products Alliance.

Studies show these dealers are highly competitive, with prices that beat those of both the big chains and Amazon Business (the company's platform for corporate and government buyers).[51] Guernsey is a good example of how well these dealers serve the market. Along with competitive prices, Guernsey has offered online ordering for nearly 20 years and free next-day delivery for more than 40 years. There are other service perks, too: When Guernsey delivers an order of printer paper and toner cartridges, it drops off the supplies in every copy room on every floor.

But like hundreds of other independent office supply dealers, Guernsey's ability to compete is increasingly threatened by Amazon's dominance. As more corporate and government buyers default to using Amazon's platform, dealers like Guernsey face losing market access. Some of his customers have suggested that he join Amazon's platform as a third-party seller. But doing so, David Guernsey says, would be a "death knell."

"If you are fortunate enough to get some orders, as soon as Amazon gets information on the order flow and where the value is, they will do it themselves," he says. Amazon's fees also make success impossible, he adds. On government and corporate contracts, Guernsey's margins are very slim. If the company had to add 15 percent to pay Amazon's fee, it would no longer be price competitive. "You can't pay that to Amazon and be profitable," Guernsey says.

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[49] "Prime and Punishment: Dirty Dealing in the $175 Billion Amazon Marketplace," Josh Dzieza, *The Verge*, Dec. 19, 2018
[50] For more on the office supply sector generally and Guernsey in particular, see "Amazon's Next Frontier: Your City's Purchasing," Stacy Mitchell and Olivia LaVecchia, *Institute for Local Self-Reliance*, Jul. 10, 2018.
[51] "Amazon Business Pricing Comparison," OPSoftware, LLC, Jul. 10, 2018; "Amazon's Next Frontier: Your City's Purchasing," Stacy Mitchell and Olivia LaVecchia, *Institute for Local Self-Reliance*, Jul. 10, 2018.

Today, David Guernsey is shifting gears into retirement, but he continues to worry about what Amazon's dominance will mean — both for the future of the company he built and the families that depend on it, and for the future of free enterprise itself. "I'm profoundly grateful for the opportunity to start a business and work to grow it. It was hard work, but so rewarding," he says. "It's frightening to think of that opportunity not being there. I think it profoundly impacts American society. I look at the younger people in this industry and I fear for them."

In May, we surveyed more than 550 independent retailers, ranging in size from small stores to firms employing hundreds of people. By a wide margin, they ranked Amazon as the top threat to their businesses, more worrisome than rising health care costs, access to financing, and government red tape.[52] Among those selling on Amazon's platform, only 7 percent reported that it's having a positive impact on their bottom line.

Nationally, the number of independent retailers has fallen by about 85,000 over the last decade, according to Census data. As we document in detail in our 2016 report, Amazon's Stranglehold (attached),[53] the decline of independent retailers is harming innovation, because "these businesses play an outsized role in enabling new products to find an audience."

Producers, creators, and manufacturers are alarmed at the prospect of a future in which this diversity of retail outlets gives way to a single online platform. Already, as more browsing and shopping migrates to Amazon, the tech giant is gaining unprecedented power to direct consumers attention and decide which products they encounter, and to pick which companies, brands, and creators will be winners, and which will be losers. Increasingly it's not the market that is determining the fate of a company or a product; it's Amazon. As the executive at the performance footwear brand explained: "They can sink companies without anyone to answer to."

At the same time, as Amazon leverages its position to extract larger discounts and fees from producers, these companies are left with less revenue to invest in research and development. "If you can't make any money, it takes away invention and innovation," an executive at a sporting goods company told us. The trouble is, as much as this loss impacts consumer choices, stunts innovation, and harms the economy, it's virtually impossible to measure. "As a consumer, how would you even know that something was missing?" a manager at a game and puzzle company pointed out.

4. Amazon's dominance is eroding the economic capacity of many communities and regions, and further concentrating wealth.

Until the 1970s, a core tenet of competition policy was to disperse economic power widely, ensuring a measure of opportunity and local self-determination in every region of the country.

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[52] "2019 Independent Business Survey," *Institute for Local Self-Reliance*, forthcoming.
[53] "Amazon's Stranglehold: How the Company's Tightening Grip Is Stifling Competition, Eroding Jobs, and Threatening Communities," Olivia LaVecchia and Stacy Mitchell, *Institute for Local Self-Reliance*, Nov. 2016.

Today, growing economic concentration, and Amazon's dominance especially, is leading to a starkly unequal geographic distribution of opportunity and income. Only a handful of metro areas are gaining significant numbers of high-paying jobs from Amazon and other tech giants.[54] Indeed, the top 25 metro areas now account for 52 percent of the entire U.S. GDP.[55] Meanwhile, across the rest of the country, local and regional businesses are shuttering. Consumer products companies are being squeezed, affecting their ability to invest and create jobs. New business creation — which historically has been an engine not only of new jobs, but of entirely new occupations — has fallen precipitously.[56]

All of these trends are making it harder for Americans to earn a decent living. Starting a business, a long-standing pathway to a middle-class life, has become less viable. Recent scholarship has found that growing concentration is exerting downward pressure on wages in many industries. Harvard University sociologist Nathan Wilmers, for example, has found evidence that, when companies that produce consumer goods are more dependent on a small number of very large corporate buyers (like Amazon or Walmart), they pay lower wages.[57]

Amazon has little or no physical presence in most communities. Its growing dominance operates much like an invisible undertow in these places, as they lose local businesses, retail jobs, and tax base. Meanwhile, where Amazon does create employment, many of these jobs are precarious temporary or high-turnover positions.[58] People who work inside the company's warehouses describe the pace as grueling, with 'unit-per-hour' rates set so high that failure and exhaustion are routine. Robots dominate these facilities, while their human workers are monitored, supervised, and, in some cases, fired by an automated system.[59] Amazon's ability to drive a hard-bargain with warehouse workers is, at least in part, an outgrowth of its market dominance. In the absence of better opportunities, working people, much like independent retailers and suppliers, have little choice but to accept Amazon's terms.

5. Policy Solutions

As we begin to imagine what a different, more competitive, future for e-commerce might look like, it can be easy to assume that Amazon's vision is the only way things could turn out. After all, it's been at the center of the online economy from the start. And Amazon would very much like us to believe that to challenge its dominance is to challenge the digital revolution itself.

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[54] "The Best $100,000+ Tech Jobs Are Increasingly Concentrated in Just 8 Cities," Josh Zumbrun, *Wall Street Journal*, Jul. 26, 2017; "In Superstar Cities, the Rich Get Richer, and They Get Amazon," Emily Badger, *New York Times*, Nov. 7, 2018.
[55] "The age of winner-take-all cities," Kim Hart, *Axios*, Jul. 10, 2019.
[56] "Dynamism in Retreat: Consequences for Regions, Markets, and Workers," *Economic Innovation Group*, Feb. 2017.
[57] "Wage Stagnation and Buyer Power: How Buyer-Supplier Relations Affect U.S. Workers' Wages, 1978 to 2014," Nathan Wilmers, *American Sociological Review*, Mar. 27, 2018.
[58] "What Amazon Does to Poor Cities," Alana Semuels, *The Atlantic*, Feb. 1, 2018; "Amazon is replacing some fulfillment center jobs with robots that pack orders," Jeffrey Dastin, *Reuters*, May 13, 2019.
[59] "How Amazon automatically tracks and fires warehouse workers for 'productivity'," Colin Lecher, *The Verge*, Apr. 25, 2019.

But if you look beyond Amazon's modern veneer, the company looks remarkably like the Robber Barons of another age, who also took advantage of that period's new technologies and weak antitrust polices to assert control and impede competition. That era had an air of inevitability too, but Americans rose up to defend their liberty and passed a series of laws that instituted fair and open markets.

As we consider policy solutions, it's critical that we recognize that nature of Amazon's power. Amazon doesn't just dominate markets. Through its control of essential infrastructure, it has assumed governing authority over a growing share of our commerce. As I've documented here, Amazon has the power to regulate, tax, and punish Americans engaged in trade. Thus the threat that it poses to our liberty and democracy is fundamental.

At the Institute for Local Self-Reliance, we believe that, to restore competition and safeguard our liberty, we need to both restructure and regulate Amazon. We believe the following policy approaches are essential:

Structural separation – Structural separation was once "a standard regulatory tool and key antitrust remedy in network industries," applied in sectors including railroads, bank holding companies, television networks, and telecommunication carriers.[60] Today, the inherently anti-competitive dynamics of dominant digital platforms, including their ability to appropriate data and manipulate platform outcomes to entrench their market power and advantage their other lines of business, call for picking up this tool once again. An entity like Amazon that controls an e-commerce platform should not be allowed to also operate as a retailer, and thus a competitor, on that platform.

Non-discrimination — Dominant e-commerce platforms should be subject to standards of neutrality, non-discrimination, and fair and open access, similar to regulations governing common carriers. (It's our view that, in the case of Amazon, such standards will not be sufficiently effective unless paired with structural remedies.)

Stronger merger policy — Amazon has made a number of acquisitions that have helped to fortify its market power.[61] These mergers, including its 2017 acquisition of Whole Foods, all won quick approval from federal antitrust enforcers and offer striking examples of how the enforcement agencies have failed to recognize the distinct nature and consequences of platform business models. Furthermore, many of Amazon's recent acquisitions fall below the threshold for notification and review. Yet these deals have allowed Amazon to buy key innovations — including the core functionality behind Alexa[62] and chip technology that has fueled the growth of AWS[63] — bolstering its position and taking competing technologies off the market. This calls into question whether dominant tech companies

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[60] "The Separation of Platforms and Commerce," Lina M. Khan, *Columbia Law Review*, Vol. 119, No. 4.
[61] For a complete list of Amazon's acquisitions *see, List of mergers and acquisitions by Amazon*, *Wikipedia*, https://en.wikipedia.org/wiki/List_of_mergers_and_acquisitions_by_Amazon
[62] "Amazon Has Acquired or Invested in More Companies Than You Think--at Least 128 of Them," Zoë Henry, *Inc*., May 2017.
[63] "How An Acquisition Made By Amazon In 2016 Became Company's Secret Sauce," *Forbes*, Mar 10, 2019.

should be allowed to acquire even small firms without notice and review, and perhaps whether they should be barred from mergers of any kind.

Stronger enforcement against anticompetitive conduct — Amazon has a long and well-documented history of engaging in below-cost selling in order to take market share from competitors that lack the financial resources to sustain losses at the scale Amazon can afford. Recent legal scholarship has shown how such a predatory pricing strategy could be rational and profitable, and harm competition, and yet still not draw antitrust scrutiny under the current enforcement approach.[64] This suggests one area where current enforcement theories have been out-of-step with market realties, failing to protect competition.

6. Conclusion

I'd like to once again commend the Committee for undertaking this critically important investigation. The comprehensive factual record you are building is essential to documenting, understanding, and devising solutions to the unprecedented power that digital platforms now wield in our country. We believe this is an urgent mission and central to the future of American democracy and liberty. So too do many of the business owners and executives we've spoken with. I'd like to close with the words of an executive at a mid-sized consumer products company: "Who can challenge Amazon in the courts? It's going to take someone at the federal level to say that this isn't working. A lower price is one thing, but devouring entire industries whole is not healthy and it's not something you can do in the United States."

[64] "Amazon's Antitrust Paradox," Lina M. Khan, *Yale Law Review*, Jan. 2017; "Prime Predator: Amazon and the Rationale of Below Average Variable Cost Pricing Strategies Among Negative-Cash Flow Firms," Shaoul Sussman, *Journal of Antitrust Enforcement*, Feb. 15, 2019.