

# About AEP

The Antitrust Education Project uses education and advocacy to alert policymakers, opinion leaders and consumers about how much is at stake, both for consumers’ economic well-being and for democracy. The Project explains and defends the Consumer Welfare Standard and seeks to extend it as the best rule for the 21st century.

This common understanding of antitrust law’s purpose is now in danger of being replaced by theories that are even more vague, subjective and politicized than they were before the widespread adoption of the Consumer Welfare Standard. We are seeing a renewed push to forget what we’ve learned and embrace what we once legitimately rejected:

- Resurrecting old but discredited dogma: Recent lawsuits against technology companies supported by almost every state attorney general and the Department of Justice are rooted in an animus over size, resurrecting the old but discredited dogma of “the curse of bigness.”
- Stifling Innovation with Reversible Decisions: Government attorneys in both parties demonize multi-billion-dollar acquisitions as harmful to innovation, when such buyouts were allowed by regulators and have actually stimulated the desire for innovators to innovate. This contradiction threatens to undermine business confidence by making government actions easily reversible or rescindable. These mixed signals threaten to degrade innovation in the name of spurring innovation.
- Shifting the Burden of Proof to the Defendant: New proposals in Congress would shift the burden of proof, tasking defendant corporations with the near-impossible task of demonstrating in advance that a given merger or acquisition won’t harm competition.
- Vague New Notions: Legislators are advancing new theories of antitrust that would address poorly defined ideas about “equity” and “values” that would uncouple this body of law from its beneficial economic effects.
- Ignoring Consumer Preferences for Network Effects: Proponents of a new antitrust standard ignore the benefits of economies of scale and network effects, which are the result of the decisions of millions of consumers who remain free to make competitive choices with a mere purchase or a click.
- Degrading Democracy: Modern thinkers and practitioners are losing touch with how democracy depends on neutral judges enforcing a neutral standard. We all lose when judges replace the laws enacted by our elected representatives with their personal sensibilities. We also lose when judges no longer accord respect to the “votes” consumers make with their dollars.

## Contents

Vision.....	5
Mission.....	5
Values .....	5
<b>1. Theories.....</b>	<b>6</b>
<b>1.1. Webinars &amp; Panels .....</b>	<b>6</b>
<b>1.2. Articles &amp; Op-Eds .....</b>	<b>6</b>
<b>1.3. Blogs &amp; Tweets .....</b>	<b>6</b>
<b>1.4. Testimony.....</b>	<b>6</b>
<b>1.5. Infographics.....</b>	<b>6</b>
<b>1.6. Videos.....</b>	<b>6</b>
<b>1.7. Comments.....</b>	<b>7</b>
<b>2. State Attorneys General.....</b>	<b>8</b>
<b>2.1. Activities .....</b>	<b>8</b>
<b>2.2. Analyses .....</b>	<b>8</b>
<b>2.3. Advisory Board .....</b>	<b>8</b>
<b>2.4. Lectures, Op-Eds &amp; Interviews .....</b>	<b>8</b>
<b>3. Defense.....</b>	<b>9</b>
<b>3.1. Amicus Briefs.....</b>	<b>9</b>
<b>4. Lectures &amp; Debates .....</b>	<b>10</b>
<b>4.1. Coverage.....</b>	<b>10</b>
<b>4.2. Video .....</b>	<b>10</b>

4.3. Transcription .....10  
4.4. Education & Advocacy .....10  
5. Collaboration .....11  
5.1. Programming .....11  
6. Conference .....12  
6.1. Issues & Cases .....12  
6.2. Awards .....12  
Administrative Information.....12

# Antitrust Education Project (AEP)

## Stakeholder(s):

### Antitrust Education Foundation :

*The Antitrust Education Foundation is a response by legal scholars, thinkers and practitioners to the recent deterioration in American antitrust theory and application... The Foundation teaches a new generation of Americans about the success of the centerpiece antitrust concept, the Consumer Welfare Standard.*

### U.S. Supreme Court :

*Before the acceptance of the Consumer Welfare Standard, antitrust law had become a mélange of conflicting decisions that tended to raise prices and support inefficient firms to the detriment of consumers. In much of the 20th century, the U.S. Supreme Court's antitrust jurisprudence focused on exotic goals that often proved irrelevant or even harmful to the well-being of consumers.*

### Justice Louis Brandeis :

*Antitrust law had fallen under the sway of subjective biases. Justice Louis Brandeis denounced the "curse of bigness" against "small dealers and worthy men" – the idea being that it was the job of the law to protect small, often artisanal firms against the predations of larger, more efficient companies.*

### Small Firms

### Large Companies

### Judge William O. Douglas :

*Judge William O. Douglas took up this cudgel in the 1960s and 70s, hitting businesses for being too big for his taste.*

### University of Chicago :

*Such decisions were not based on any real economic analysis. The Consumer Welfare Standard arose in response to this legal chaos from debates among economists and legal scholars, many at the University of Chicago.*

### Consumers :

*These scholars crafted a corrective standard by which to weigh costs and benefits of antitrust law with the welfare of the consumer as its governing principle. This Consumer Welfare Standard held that the logical goal embedded in antitrust law is "economic efficiency" – delivering lower prices, heightened innovation and more choices for consumers.*

### Courts :

*Courts were quick to see the merit of this new standard.*

### Jurists :

*By 1979, the new scholarship had convinced jurists that because the law was detached from consumer welfare, it was free to pursue aesthetic and political goals at the expense of consumers and innovation.*

### Judges :

*Judges began to eagerly applied the standard's neutral principles, with no slant against or for "bigness," or "small dealers," or a magical ability to identify "worthy men." It had become an accepted principle that when judges use antitrust law to reorder business according to a judge's personal whim or aesthetics, they undermine free markets, democracy, and rule of law.*

### Leftists :

*On the political left – a self-declared new Brandeis movement is underway. The 117th Congress faces sweeping legislation that would transform antitrust law into mechanisms for government to regulate any American business of significant size.*

### Conservatives :

*On the political right – conservatives are suddenly signing up for the dilution of long-standing antitrust principles to exact what they see as political retribution against Big Tech social media platforms.*

## Big Tech Social Media Platforms

### AEP Staff

#### Robert H. Bork, Jr. :

*President and Board Member ~ Robert H. Bork, Jr., is the eldest son of the late Judge Robert H. Bork. He heads the Bork Group, a public affairs agency. He began his career journalism career as a police reporter before moving to business and economics. As a journalist, he covered international economics at U.S. News and World Report, was managing editor of the quarterly journal Regulation, and worked as a reporter at Forbes, The Detroit Free Press, The Fort Worth Star-Telegram and The Miami Herald. He later worked at the Heritage Project, on Capitol Hill as an aide to U.S. Sen. Gordon Humphrey (R-NH), and as special assistant for U.S. Trade Representative Carla Hills. Mr. Bork's range of experience includes antitrust, product liability, intellectual property, securities fraud, economic espionage, white-collar crime, mergers and acquisitions, First Amendment, and employment discrimination. Mr. Bork graduated from Carleton College with a degree in American history. He was a Herbert J. Davenport Fellow in Business and Economic Journalism at the University of Missouri School of Journalism.*

#### Elliot S. Berke :

*Board Member, General Counsel ~ Elliot S. Berke serves as Managing Partner of Berke Farah LLP. Prior to founding Berke Farah LLP, Elliot served as a partner and as practice group co-chair at McGuireWoods LLP. He has been named by Chambers USA as a "Nationwide Best Lawyer" and by Washingtonian as one of "Washington's Best Lawyers." His diverse client base consists of federal and state elected and appointed officials, campaign committees, political parties, PACs, corporations, small businesses, trade associations, lobbying firms, public relations firms, nonprofits, and individuals. He represents clients before congressional ethics and oversight committees, the FEC, the DOJ, Inspectors General, and other and federal and state departments and agencies. He has represented presidential appointees on their confirmation over three Administrations. He has represented the top four leadership positions in the U.S. House of Representatives – Speaker, Majority Leader, Majority Whip, and Conference Chair – as either in-house or outside counsel, and currently serves as outside counsel for Republican Leader Kevin McCarthy and Conference Chair Liz Cheney. He currently serves as a Special Assistant Attorney General for the State of Georgia (and served as a Special Assistant Attorney General for the State of Oregon*

— continued next page

*Stakeholders (continued)*

2014-2016). He is a frequent speaker on political law, and regularly conducts the ethics training for the Members of Congress and Chief of Staff retreats sponsored by the Congressional Institute, where he serves as its outside counsel. He serves as General Counsel & Senior Advisor to the Jack Kemp Project. His commentary has appeared in media outlets including Fox's Special Report w/Bret Baier and Tucker Carlson Tonight, NBC Nightly News, the Wall Street Journal, the New York Times, USA Today, Politico, and the Washington Post.

**AEP Advisory Board****Douglas Ginsburg :**

Senior Circuit Judge Douglas Ginsburg was appointed to the United States Court of Appeals for the District of Columbia in 1986; he served as Chief Judge from 2001 to 2008. After receiving his BS from Cornell University in 1970, and his JD from the University of Chicago Law School in 1973, he clerked for Judge Carl McGowan on the D.C. Circuit and Justice Thurgood Marshall on the United States Supreme Court. Thereafter, Judge Ginsburg was a professor at the Harvard Law School, the Deputy Assistant and then Assistant Attorney General for the Antitrust Division of the Department of Justice, as well as the Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget. Concurrent with his service on the federal bench, Judge Ginsburg has taught at the University of Chicago Law School and the New York University School of Law. Judge Ginsburg is currently a Professor of Law at the Antonin Scalia Law School, George Mason University, and a visiting professor at the University College London, Faculty of Laws. Judge Ginsburg is the Chairman of the International Advisory Board of the Global Antitrust Institute at the Antonin Scalia Law School, George Mason University. He also serves on the Advisory Boards of: Competition Policy International; the Harvard Journal of Law and Public Policy; the Journal of Competition Law and Economics; the Journal of Law, Economics and Policy; the Supreme Court Economic Review; the University of Chicago Law Review; The New York University Journal of Law and Liberty; and, at University College London, both the Center for Law, Economics and Society and the Jevons Institute for Competition Law and Economics.

**Joshua D. Wright :**

University Professor of Law, Antonin Scalia Law School; Executive Director, Global Antitrust Institute | [https://www.law.gmu.edu/faculty/directory/fulltime/wright\\_joshua](https://www.law.gmu.edu/faculty/directory/fulltime/wright_joshua) ~ Joshua D. Wright is University Professor and the Executive Director of the Global Antitrust Institute at Scalia Law School at George Mason University. Professor Wright also holds a courtesy appointment in the Department of Economics. In 2013, the Senate unanimously confirmed Professor Wright as a member of the Federal Trade Commission (FTC), following his nomination by President Obama. He rejoined Scalia Law School as a full-time faculty member in Fall 2015. Professor Wright is a leading scholar in antitrust law, economics, intellectual property, and consumer protection, and has published more than 100 articles and book chapters, co-authored a leading antitrust casebook, and edited several book volumes. Professor Wright's teaching interests include Antitrust, Contracts, Administrative Law, Intellectual Property and Antitrust, and Quantitative Methods.

**Daniel A. Crane :**

Frederick Paul Furth Sr. Professor of Law, University of Michigan Law School | <https://www.law.umich.edu/FacultyBio/Pages/FacultyBio.aspx?FacID=dancrane> ~ Daniel Crane is the Frederick Paul Furth Sr. Professor of Law at the University of Michigan Law School. He served as the associate dean for faculty and research from 2013 to 2016. He teaches Contracts, Antitrust, Antitrust and Intellectual Property, and Legislation and Regulation. He previously was a professor of law at Yeshiva University's Benjamin N. Cardozo School of Law and a visiting professor at New York University School of Law and the University of Chicago Law School. In spring 2009, he taught antitrust law on a Fulbright Scholarship at the Universidade Católica Portuguesa in Lisbon. Professor Crane's work has appeared in the University of Chicago Law Review, the California Law Review, the Michigan Law Review, the Georgetown Law Journal, and the Cornell Law Review, among other journals. He is the author of several books on antitrust law, including Antitrust (Aspen, 2014), The Making of Competition Policy: Legal and Economic Sources (Oxford University Press, 2013), and The Institutional Structure of Antitrust Enforcement (Oxford University Press, 2011).

**Thom Lambert :**

Wall Chair in Corporate Law and Governance and Professor of Law University of Missouri School of Law | <https://law.missouri.edu/person/thom-lambert/> ~ He is co-author of a leading antitrust casebook and has published more than two dozen law review articles on antitrust, corporate, and regulatory matters. His most recent book, How to Regulate: A Guide for Policymakers was published by Cambridge University Press in 2017. He is a regular contributor to the law and economics blog, Truth on the Market ([www.truthonthemarket.com](http://www.truthonthemarket.com)).

**Geoffrey A. Manne :**

President and Founder, International Center for Law & Economics | <https://laweconcenter.org/author/geoffrey-manne/> ~ Geoffrey A. Manne is the president and founder of the International Center for Law and Economics (ICLE), a nonprofit, nonpartisan research center based in Portland, Oregon. He is also a distinguished fellow at Northwestern University Center on Law, Business, and Economics. In April 2017 he was appointed by FCC Chairman Ajit Pai to the FCC's Broadband Deployment Advisory Committee, and he recently served for two years on the FCC's Consumer Advisory Committee. Mr. Manne earned his JD and AB degrees from the University of Chicago and is an expert in the economic analysis of law, specializing in competition, telecommunications, consumer protection, intellectual property, and technology policy.

**Alan J. Meese :**

Ball Professor of Law and Co-Director, Center for the Study of Law and Markets William & Mary School of Law | <https://law2.wm.edu/faculty/bios/fulltime/ajmees.php> ~ Professor Meese graduated first in his class with high honors in Ancient Greek from the College of William and Mary, where he also earned a secondary concentration in Economics. He then attended the University of Chicago Law School from which he graduated with honors, served as a Comment Editor on the Law Review and was elected to Order of the Coif. After law school he clerked for Judge Frank H. Easterbrook of the U.S. Court of Appeals for the Seventh Circuit and Justice Antonin Scalia of

— continued next page

*Stakeholders (continued)*

the U.S. Supreme Court. He is a frequent lecturer on antitrust issues and has served as a referee for the *Journal of Legal Studies*, *Journal of the History of Economic Thought*, *Journal of Competition Law and Economics*, *Harvard Law Review*, *Stanford Law Review*, *Yale Law Journal* and *William & Mary Policy Review*.

**Donald Kochan :**

Professor of Law, Antonin Scalia School of Law; Deputy Executive Director, Law and Economics Center (LEC) | [https://www.law.gmu.edu/faculty/directory/fulltime/kochan\\_donald](https://www.law.gmu.edu/faculty/directory/fulltime/kochan_donald) ~ Donald Kochan is Professor of Law and Deputy Executive Director of the Law & Economics Center (LEC). Before joining the Antonin Scalia Law School faculty, he was the Parker S. Kennedy Professor in Law at Chapman University's Dale E. Fowler School of Law from 2004 to 2020. From 2003 to 2004, Professor Kochan was an Olin Fellow at the University of Virginia School of Law. During 2002-2003, he was a Visiting Assistant Professor of Law at George Mason's Scalia Law School.

**Alden Abbott :**

Senior Research Fellow, Mercatus Center at George Mason University | <https://www.mercatus.org/scholars/alden-abbott> ~ Alden Abbott is a Senior Research Fellow focusing on anti-trust issues. Before joining Mercatus, Mr. Abbott served as the Federal Trade Commission's General Counsel from 2018 to early 2021, where he represented the Commission in court and

provided legal advice to its representatives. Prior to working at the FTC, Mr. Abbott worked at the Heritage Foundation and BlackBerry Ltd. He also served as an adjunct professor at Mason's Antonin Scalia Law School from 1991 to 2018. Mr. Abbott has a J.D. from Harvard Law School and an M.A. in economics from Georgetown University.

**Kenneth G. Elzinga :**

Robert C. Taylor Professor of Economics, University of Virginia | <https://kenelzinga.com/> ~ Kenneth G. Elzinga was the first recipient of the Cavaliers' Distinguished Teaching Professorship at the University, a recipient of the Alumni Association's Distinguished Professor Award, the Commonwealth of Virginia's Outstanding Faculty Award, as well as awards in education from the Kenan and Templeton foundations. In 1992, he was given the Thomas Jefferson Award, the highest honor the University of Virginia accords its faculty. Each fall, Mr. Elzinga's introductory economics course attracts over one thousand students and is the largest class offered at the University of Virginia. His Antitrust Policy seminar, which is taught using the Socratic method, often has a waiting list of two years. Mr. Elzinga's major research interest is antitrust economics, especially pricing strategy and market definition. He has testified in several precedent-setting antitrust cases, and was the economic expert for the prevailing parties in three Supreme Court cases: Matsushita, Brooke Group, and Leegin.

## Vision

Lower prices, heightened innovation and more choices for consumers

## Mission

To teach a new generation of Americans about the success of the centerpiece antitrust concept, the Consumer Welfare Standard

## Values

**Antitrust**

**Education**

**Consumer Welfare:** [The] Consumer Welfare Standard held that the logical goal embedded in antitrust law is "economic efficiency" – delivering lower prices, heightened innovation and more choices for consumers.

**Economic Efficiency**

**Cost Effectiveness**

**Innovation**

**Choice**

**Free Markets**

**Democracy**

**Rule of Law**

## 1. Theories

*Challenge legal thinkers and practitioners to respond to the weaknesses and dangers lurking in their theories*

### Stakeholder(s)

**Legal Thinkers**

**Legal Forums**

**Legal Practitioners**

**Judicial Organizations**

**Law Schools**

We use debate to challenge legal thinkers and practitioners to respond to the prevailing standard's diagnosis of the weaknesses and dangers lurking in their theories. To advance this mission, we produce videos, blogs, infographics, and opinion-editorials, and sponsor discussions and debates on a standard that, up until now, has governed antitrust law. We engage law schools, legal forums and judicial organizations. We welcome debate and aggressively seek out opposing views.

### 1.1. Webinars & Panels

*Sponsor and participate in regular webinars and think tank panels*

### 1.2. Articles & Op-Eds

*Write and disseminate op-eds and articles*

### 1.3. Blogs & Tweets

*Blog and tweet on antitrust issues and cases*

### 1.4. Testimony

*Testify before Congress and regulatory panels*

### Stakeholder(s):

**Congress**

**Regulatory Agencies**

### 1.5. Infographics

*Create lively infographics that explain the consumer welfare standard in everyday language for millennials and Generation Z*

### Stakeholder(s):

**Millennials**

**Generation Z**

### 1.6. Videos

*Create short explanatory videos*

## 1.7. Comments

*Comment about new developments in antitrust policy*

## 2. State Attorneys General

*Engage the state attorneys general*

### Stakeholder(s)

#### State Attorneys General :

*State Attorneys General throughout the country have become major players acting independently and in concert*

*with the federal government. The Project scrutinizes their activity and offer legal and economic analysis both in papers and in public commentary.*

STATE ATTORNEYS GENERAL PROJECT ~ Antitrust litigation is not just the province of the federal government.

### 2.1. Activities

*Scrutinizes the activities of state attorneys general*

### 2.2. Analyses

*Offer legal and economic analysis*

### 2.3. Advisory Board

*Assemble an Advisory Board of former state attorneys general*

With this mind, the Project is assembling an Advisory Board of former state attorneys general and are planning a series of lectures, op-eds, and multimedia interviews.

#### Stakeholder(s):

**Former State Attorneys General**

### 2.4. Lectures, Op-Eds & Interviews

*Plan a series of lectures, op-eds, and multimedia interviews*

### 3. Defense

*Defend the consumer welfare standard and the First Amendment*

AMICUS BRIEFS ~ The Project files amicus briefs in important antitrust and constitutional cases, defending the consumer welfare standard and the First Amendment.

#### 3.1. Amicus Briefs

*File amicus briefs in important antitrust and constitutional cases*

## 4. Lectures & Debates

*Sponsor lectures and debates*

**Stakeholder(s)**

**Federalist Society**

**Colleges**

**Law Schools**

LECTURES AT LAW SCHOOLS AND COLLEGES ~ Working with the Federalist Society, the Project sponsors lectures and debates at law schools and colleges on antitrust. We work to organize media coverage, video recording and transcription.

### 4.1. Coverage

*Organize media coverage*

**Stakeholder(s):**

**Media**

### 4.2. Video

*Capture video recordings*

### 4.3. Transcription

*Transcribe events*

### 4.4. Education & Advocacy

*Use those records for education and advocacy outreach*

The record of these events will be used in our education and advocacy outreach.

## 5. Collaboration

*Collaborate with like-minded organizations*

### Stakeholder(s)

#### **Alliance on Antitrust :**

*For example, we joined the Alliance on Antitrust.*

COLLABORATION WITH OTHER ORGANIZATIONS ~ The Project eagerly collaborates with like-minded organizations.

### 5.1. Programming

*Produce original programming*

We are engaging with NetChoice, the Heritage Project's Meese Center, the Washington Legal Foundation, the Scalia Law School Center for Law and Economics, and others to produce original programming.

#### Stakeholder(s):

**NetChoice**

**Heritage Project Meese Center**

**Washington Legal Foundation**

**Scalia Law School Center for Law and Economics**

## 6. Conference

*Bring policy leaders and legal scholars and jurists together*

### Stakeholder(s)

**Policy Leaders**

**Jurists**

**Legal Scholars**

**National Press Club**

ANNUAL AWARDS PROGRAM ~ The Project holds an annual day-long program bringing policy leaders and legal scholars and jurists together at the National Press Club.

### 6.1. Issues & Cases

*Discuss current issues and cases in antitrust and constitutional law*

Panels will discuss current issues and cases in antitrust and constitutional law.

### 6.2. Awards

*Present awards for breakthrough work in antitrust and originalism*

A luncheon is planned at which awards will be presented to lawyers and scholars for breakthrough work in antitrust and originalism.

### Stakeholder(s):

**Lawyers**

**Scholars**

## Administrative Information

**Start Date:**

**End Date:**

**Publication Date:** 2021-09-19

**Source:** <https://www.antitrusteducationproject.org/about-aep.html>

### Submitter:

**Given Name:** Owen

**Surname:** Ambur

**Email:** [Owen.Ambur@verizon.net](mailto:Owen.Ambur@verizon.net)

**Phone:**

PDF formatted using TopLeaf XML publisher

[www.turnkey.com.au](http://www.turnkey.com.au)