

**PHOENIX** FOR ADVANCED  
LEGAL & ECONOMIC  
C E N T E R PUBLIC POLICY STUDIES  
[www.phoenix-center.org](http://www.phoenix-center.org)

## 2022 ANNUAL REPORT

**PHOENIX CENTER FOR ADVANCED LEGAL & ECONOMIC PUBLIC POLICY STUDIES**

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# PRESIDENT'S MESSAGE

2022 proved to be another prodigious year for the Phoenix Center. While we detail our many substantive accomplishments in the pages that follow, here is a quick “by the numbers” overview of our activities in 2022.

First, the Phoenix Center continued to author rigorous legal and economic research to help inform the policy debate. In 2022, the Phoenix Center released two (2) POLICY PAPERS, nine (9) POLICY BULLETINS, and five (5) POLICY PERSPECTIVES. As always, our research may be downloaded free from our webpage and from the Social Science Research Network.

Second, given the rigor of our work, we are pleased to report our paper *Bridging the Digital Divide: An Empirical Analysis of Public Programs to Increase Broadband Adoption* (originally released as PHOENIX CENTER POLICY PAPER NO. 56: *Bridging the Digital Divide: What Has Not Worked But What Just Might*) was published in the peer-reviewed journal *TELEMATICS AND INFORMATICS*.

Third, we continued with our timely commentary of current events. In 2022, we published seven (7) op-eds and essays in an assortment of outlets, including the *YALE JOURNAL ON REGULATION* and the *FEDERALIST SOCIETY BLOG*.

Fourth, we are proud to report that our Chief Economist Dr. George S. Ford's paper entitled *Race and Broadband Adoption: A Decomposition Analysis* was selected as the winning entry for the 2022 Meheroo Jussawalla Research Award at the 44th Annual Pacific Telecommunications Council Conference in Hawaii.

Fifth, 2022 again proved to be a very busy year for the Phoenix Center's amicus brief

practice. This year, the Phoenix Center filed an amicus brief before the Supreme Court of the United States in support of Respondents in *The Andy Warhol Foundation for The Visual Arts, Inc. v. Lynn Goldsmith and Lynn Goldsmith, Ltd.* Warhol is probably the most significant case regarding the bounds of the “fair use” doctrine of Copyright law over the last twenty-five years. The Court is expected to issue a decision in this case sometime in the first half of 2023. While it is always an honor and privilege to practice before the Supreme Court of the United States, as a musician myself it is also always an honor and privilege to advocate for the protection of creative artists' intellectual property rights.

We very much appreciate that folks again found our work informative. For example, our research continued to be cited in the academic literature in 2022. We were also frequently cited by the press. And both Phoenix Center Chief Economist Dr. George Ford and I continue to remain in the top 1% of authors downloaded on the Social Science Research Network.

Finally, we at the Phoenix Center continued our efforts to contribute to the larger policy community in the hope of raising the level of the debate. Among other activities, I continued to serve as a co-chair of *FEDERAL COMMUNICATIONS LAW JOURNAL* Committee and administer its peer review process for the Federal Communications Bar Association. I also continued to serve as a member of the Executive Committee for the Federalist Society's Telecom Practice Group.

All things considered, not a bad year...

— Lawrence J. Spiwak, President

# PHOENIX CENTER PUBLICATIONS

The Phoenix Center continued to publish a prodigious amount of scholarly research in 2022. As always, the Phoenix Center's research is available free on the Phoenix Center's web page and on the Social Science Research Network.

## PHOENIX CENTER POLICY PAPER SERIES

The Phoenix Center's POLICY PAPER SERIES seeks to provide an in-depth analysis of the current regulatory and political paradigms, as well as to provide constructive and well-reasoned solutions to the problems of the day. In 2022, the Phoenix Center issued the following POLICY PAPERS:

- PHOENIX CENTER POLICY PAPER NO. 57, *What is the Effect of Rock Quarries on Home Prices? An Empirical Analysis of Three Cities* (May 2022).
- PHOENIX CENTER POLICY PAPER NO. 58, *Fiber Availability and Speeds by Race and Income* (September 2022).

## PHOENIX CENTER POLICY BULLETIN SERIES

The Phoenix Center's POLICY BULLETIN SERIES is designed to provide a forum for responding to discrete policy issues in a shorter format than our PHOENIX CENTER POLICY PAPER SERIES. The Phoenix Center published the following POLICY BULLETINS in 2022:

- PHOENIX CENTER POLICY BULLETIN NO. 54, *A Comparative Analysis of Fixed Broadband Speeds in Cities Across the World* (February 2022).
- PHOENIX CENTER POLICY BULLETIN NO. 55, *Policy Failures for Public Safety: New Rules for the 4.9 GHz Band* (March 2022).
- PHOENIX CENTER POLICY BULLETIN NO. 56, *A Comparative Analysis of Mobile*

*Wireless Broadband Speeds in Cities Across the World* (March 2022).

- PHOENIX CENTER POLICY BULLETIN NO. 57, *Product Guidance by Digital Platforms: A Welfare Analysis* (May 2022).
- PHOENIX CENTER POLICY BULLETIN NO. 58, *You Can't Sell That: Understanding the Economic Consequences of Pending California Assembly Bill No. 437* (May 2022).
- PHOENIX CENTER POLICY BULLETIN NO. 59, *Biting Off More Than It Can Chew? Some Thoughts on the FTC's Advance Notice of Proposed Rulemaking on "Commercial Surveillance and Data Security"* (September 2022).
- PHOENIX CENTER POLICY BULLETIN NO. 60, *Employee Dissatisfaction at the Federal Trade Commission: An Empirical Analysis of Size and Source* (October 2022).
- PHOENIX CENTER POLICY BULLETIN NO. 61, *Middle-Class Affordability of Broadband: An Empirical Look at the Threshold Question* (October 2022).
- PHOENIX CENTER POLICY BULLETIN NO. 62, *The Broadband Tribal Gap: An Empirical Evaluation* (November 2022).

## PHOENIX CENTER POLICY PERSPECTIVES

The Phoenix Center's POLICY PERSPECTIVES SERIES is designed to provide a forum for its individual staff members to express their views on current policy developments. The Phoenix Center published the following POLICY PERSPECTIVES in 2022:

- PHOENIX CENTER POLICY PERSPECTIVE NO. 22-01: *EBB, Lifeline, and ACP: Some Guidance* (January 13, 2022).

# PHOENIX CENTER PUBLICATIONS

- PHOENIX CENTER POLICY PERSPECTIVE NO. 22-02: *Retail Platform Bias?* (February 10, 2022).
- PHOENIX CENTER POLICY PERSPECTIVE NO. 22-03: *Challenges to Universal Adoption: A Look at NTIA's New Data* (June 9, 2022).
- PHOENIX CENTER POLICY PERSPECTIVE NO. 22-04: *Overstating Broadband Availability: An Assessment of the "All-In" Assumption for FCC 477 Data* (September 14, 2022).
- PHOENIX CENTER POLICY PERSPECTIVE NO. 22-05: *Speed-Tests: Substitute for, or Complement to, Broadband Maps?* (September 20, 2022).

## ACADEMIC PUBLICATIONS

In 2022, the Phoenix Center's staff had the following paper published in a peer-reviewed academic journal:

- *Bridging the Digital Divide: An Empirical Analysis of Public Programs to Increase Broadband Adoption*, 67 *TELEMATICS AND INFORMATICS* (February 2022) (originally published as PHOENIX CENTER POLICY PAPER NO. 56: *Bridging the Digital Divide: What Has Not Worked but What Just Might*).

## OP-EDS AND ESSAYS:

The Phoenix Center had the following op-eds and essays published in 2022:

- *The Unintended Consequences of Restricting Small Firm Acquisitions in the Tech Sector*, *FEDERALIST SOCIETY BLOG* (January 6, 2022).
- *Antitrust Reform and the Law of Unintended Consequences*, *NOTICE & COMMENT -*

*YALE JOURNAL ON REGULATION* (January 7, 2022).

- *Why Does Congress Want to Break Amazon Prime?* *NOTICE & COMMENT - YALE JOURNAL ON REGULATION* (February 18, 2022).
- *A Change in Direction for the Federal Trade Commission?* *TRUTH ON THE MARKET* (April 26, 2022).
- *The Third Time is Not the Charm: Significant Problems Remain with Senator Klobuchar's Antitrust Reform Bill*, *FEDERALIST SOCIETY BLOG* (June 7, 2022).
- *The American Innovation and Choice Online Act is an "Economics-Free Zone"*, *NOTICE & COMMENT - YALE JOURNAL ON REGULATION* (June 10, 2022).
- *Book Review: "Saving Nine" by Senator Mike Lee*, *FEDERALIST SOCIETY BLOG* (October 19, 2022).

## AMICUS BRIEFS

On August 15, 2022, the Phoenix Center filed an amicus brief before the Supreme Court of the United States in support of Respondents in *The Andy Warhol Foundation for The Visual Arts, Inc. v. Lynn Goldsmith and Lynn Goldsmith, Ltd.* Warhol is probably the most significant case regarding the bounds of the "fair use" doctrine of Copyright law over the last twenty-five years. The Court is expected to issue a decision in this case sometime in the first half of 2023. For those interested, our amicus brief may be downloaded from the Phoenix Center's webpage.

# CONTRIBUTING TO THE PUBLIC DIALECTIC

2022 provided fertile soil for those interested in policy research. In this section, we highlight some (but not all) of our assorted activities and where we believe we added constructively to the debate.

## CITATIONS IN THE ACADEMIC LITERATURE

The Phoenix Center very much appreciates that our work was cited by other scholars in the academic literature. In 2022, citations to Phoenix Center research could be found in journals such as the MARYLAND LAW REVIEW, the LOYOLA OF LOS ANGELES LAW REVIEW, the JOURNAL OF INTELLECTUAL PROPERTY LAW, THE JOURNAL OF RURAL STUDIES, SUSTAINABILITY, THE CANADIAN JOURNAL OF REGIONAL SCIENCE, DIGITAL TRANSFORMATION MANAGEMENT, THE INTERNATIONAL JOURNAL OF ECONOMICS AND FINANCIAL RESEARCH, and FRONTIERS IN PUBLIC HEALTH. In addition, Phoenix Center President Lawrence Spiwak's essay, "A Change in Direction for the Federal Trade Commission?" was the lead article in a symposium sponsored by Truth on the Market to discuss "unfair methods of competition" rulemaking at the Federal Trade Commission.

## Conferences and Events

As America started to emerge from the COVID pandemic in 2022, opportunities for speaking events slowly started to open up. As such, Phoenix Center staff were able to participate in a variety of virtual conferences and teleforums to present our research. For example:

- Phoenix Center Chief Economist Dr. George S. Ford's paper entitled *Race and Broadband Adoption: A Decomposition Analysis* was selected as the winning entry for the 2022 Meheroo Jussawalla Research Award at the 44th Annual

Pacific Telecommunications Council Conference in Hawaii.

- Phoenix Center President Lawrence Spiwak moderated a teleforum hosted by the Federalist Society entitled *The Future of Universal Service After the Infrastructure Act* (May 18, 2022). Phoenix Center Chief Economist Dr. George Ford also participated in this teleforum as a panelist.

## Other Activities

- Phoenix Center President Lawrence Spiwak continued to serve as co-chair of Federal Communications Bar Association's committee to oversee the FEDERAL COMMUNICATIONS LAW JOURNAL.
- Phoenix Center President Lawrence Spiwak continued to serve on the Executive Committee of Federalist Society's Telecom Practice Committee.
- Finally, both Phoenix Center Chief Economist Dr. George Ford and Phoenix Center President Lawrence Spiwak continue to remain in the top 1% of authors downloaded on the Social Science Research Network.

## Conclusion

As policy debates have become increasingly politicized over the years, we still believe (perhaps over-optimistically) that, in the end, substance matters. The policy choices we face are hard, and they should be treated with the respect and analytical rigor they deserve. Hopefully, the Phoenix Center has contributed positively towards restoring some of this analytical rigor to the dialectic.

# MISSION STATEMENT

The Phoenix Center for Advanced Legal & Economic Public Policy Studies is a non-profit 501(c)(3) educational and research organization that studies broad public-policy issues related to governance, social and economic conditions, with a particular emphasis on the law and economics of the digital age.

Founded in 1998, the Phoenix Center's mission is to provide independent assessments of the economic and material implications of regulatory and economic policy in the U.S. and abroad.

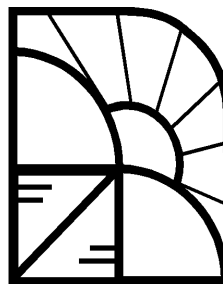
The Phoenix Center achieves this goal by providing an honest and credible voice in the public dialectic by supporting objective, solutions-based academic research to the forefront that is unencumbered by political hyperbole or agendas and is instead well grounded in fact, law and economic theory.

## Long-Term Goals:

- (1) The Phoenix Center's seeks to remind stakeholders that it is crucial to avoid political hyperbole and instead approach public policy with the analytical rigor and solemnity it deserves.
- (2) The Phoenix Center seeks to promote public confidence in the democratic process, government's institutions and in the free enterprise system.
- (3) The Phoenix Center seeks to foster an environment where citizens can openly and vigorously debate today about what kind of a world they want to live in tomorrow.

*The "ideal of democracy rests on the belief that the view which will direct government emerges from an independent and spontaneous process. It requires, therefore, the existence of a large sphere independent of majority control in which the opinions of the individuals are formed."*

— Friedrich von Hayek



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