

**TESTIMONY OF HOWARD A. LEARNER
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**U.S. HOUSE OF REPRESENTATIVES, COMMITTEE ON SMALL BUSINESS
HEARING ON “FLOODED OUT: VANISHING ENVIRONMENTAL REVIEWS
AND THE SBA’S DISASTER LOAN PROGRAM”**

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I am Howard Learner, an experienced attorney and the Executive Director of the Environmental Law & Policy Center. I am also an (adjunct) Professor teaching advanced seminars on environmental and energy law and policy issues at the University of Michigan Law School and Northwestern University Law School. I appreciate the Committee on Small Business’ invitation to testify at the hearing today on the topic of “Vanishing Environmental Reviews” with respect to potential flooding problems exacerbated by the proposed Foxconn development in Wisconsin and the related impacts on the Small Business Administration’s Disaster Loan Program.

Thank you, Chairwoman Velázquez and Ranking Member Chabot, for holding today’s field hearing on this important topic, and thank you Rep. Schneider for your engagement and thoughtful attentiveness to this problem and potential solutions.

The Environmental Law & Policy Center (ELPC) is the Midwest's leading environmental legal advocacy and eco-business innovation organization, and among the nation’s leaders. ELPC’s headquarters is in Chicago, we have offices and staff and work on environmental issues in seven Midwest states, including in Madison, Wisconsin, as well as Washington D.C. Like many, ELPC was very concerned when, under the Governor Walker administration, the State of Wisconsin rolled back necessary environmental protections and undercut essential environmental reviews to entice a single private development by Foxconn in southeast Wisconsin. Thus far, Foxconn doesn’t appear to even be living up to its own job creation pledges and public commitments. Wisconsin and local governments apparently could provide up to \$4 billion in tax breaks and public funds for this corporate venture. The cost to taxpayers and the environmental threats of this project are troubling.

The harmful impacts of the Foxconn development and the effects of vanishing environmental reviews are not limited to Wisconsin. Air pollution crosses many state lines, and the impacts on water also affect Illinois and other Great Lakes states as well. The Foxconn project could potentially increase flooding in the Des Plaines River watershed in Illinois. Foxconn’s need for water has already led to a request to withdraw some of that water outside of the Great Lakes basin.

The purpose of environmental reviews, whether it is the National Environmental Policy Act (NEPA) or the Wisconsin Environmental Policy Act (WEPA), is for policymakers and the public to: (1) more carefully consider adverse environmental impacts, including air, water and toxics issues, before the project is approved to go forward; (2) rigorously explore and objectively evaluate all reasonable alternatives, including a no-action alternative; (3) fully and fairly consider cumulative environmental impacts of multiple project; and (4) engage meaningful public participation in the process, among other factors. Wisconsin’s weakening of its environmental

protection laws and environmental review laws and processes are unfortunate for Wisconsin residents and its environment, and, also, for Illinois and other states' residents.

The harmful impacts play out especially significantly when it comes to the Foxconn development project's potential harmful impacts on water and flooding issues in Lake County, Illinois. That, in turn, implicates the Small Business Administration's (SBA) Disaster Loan Program.

Representative Brad Schneider recently commented: "When corners are cut on environmental reviews, our local communities pay the price..." I agree. Under Wisconsin Governor Walker's administration, in 2017, Wisconsin policymakers cut corners when they eliminated or weakened meaningful environmental rules in many ways for the Foxconn project. I'll highlight three specific problems:

- 1.** Wisconsin's legislation exempted this Foxconn project from the Wisconsin Environmental Policy Act's requirement that an Environmental Impact Statement be prepared for major projects and actions that might have a significant environmental impact. Foxconn clearly is and was such a project. It certainly will have significant environmental impacts.
- 2.** Wisconsin's legislation similarly exempted this Foxconn project from state regulatory requirements restricting the filling of wetlands and waterways. In effect, Foxconn can fill in wetlands without a permit. Wetlands act as natural sponges, which prevent flooding while also providing valuable wildlife habitat. The wetlands in the Foxconn area were determined to be outside of federal jurisdiction, so they are also unprotected under federal law.
- 3.** In 2018, the United States Environmental Protection Agency weakened air quality protections in Racine County in a highly-criticized decision that is now on appeal to the United States Court of Appeals for the D.C. Circuit and has been the focus of newspaper articles about undue political influences overriding the EPA staff's technical and policy reviews under standard Clean Air Act criteria. Due to that rule change, Foxconn would be allowed to escape important pollution reduction requirements. This, too, has an adverse impact on Illinois and Wisconsin residents, especially children, seniors and people with breathing problems who are harmed by degraded air quality.

The Wisconsin Environmental Policy Act requires an Environmental Impact Statement for large developments as part of a state process that allows the public to comment on plans. For Foxconn, that state Environmental Impact Statement was avoided, and there was no process to allow the public to comment on this private company's development plans. The consequences are not confined to Wisconsin's state boundaries when it comes to air pollution and water impacts.

Foxconn was exempted from state laws that require a permitting process for wetlands disturbances. Foxconn instead pays into a wetlands fund; however, according to the Chris Burke Engineering report commissioned by Lake County, the replacement wetlands are largely outside the Des Plaines River Watershed. When wetlands are filled in, the absorption capacity of the area is decreased causing water to flow to areas that might otherwise have stayed dry. This is basic geographic and hydrological reasoning and it explains why homeowners and businesses in Lake County communities are concerned about Foxconn's freedom to do as it pleases - without

oversight, without environmental analysis and without the benefit of public review. While the best choice is to not disturb wetlands, if the state allows the project to fill wetlands, those wetlands should be replaced in the affected area – here, the Des Plaines River Watershed – in order to properly mitigate the harmful impacts of Foxconn’s development.

The Des Plaines River Watershed in Illinois thus faces a greater chance of flooding. This likelihood is exacerbated by climate change. In March 2019, ELPC policy staff and a team of 18 leading scientists and experts from Midwest universities and institutions issued the state-of-the-science report assessing the impacts of climate change on the Great Lakes region.

This sound science report explains that a warmer atmosphere due to global climate change is increasing the frequency and intensity of heavy rain and snow events. This increased precipitation will likely lead to more flooding across the Great Lakes region. In areas with abundant concrete and other impermeable surfaces, this will likely damage homes, businesses, roadways, and other infrastructure. When this flooding occurs, more people will look to federal programs like the Small Business Administration’s Disaster Loan Program.

In addition to the Foxconn project’s unfettered ability to fill in wetlands, the Foxconn development also uses an extreme amount of water and that, too, results in harmful environmental impacts. The City of Racine requested approval to divert 7 million gallons of Lake Michigan water each day to the Foxconn site.

There will also be little environmental oversight regarding the air pollution effects of the Foxconn development. In 2018, the U.S. Environmental Protection Agency decided that Racine County, Wisconsin, where Foxconn will locate, is somehow now not an ozone non-attainment area. That will likely result in more pollutants causing smog and other harm. The decision was made despite an EPA staff analysis of Wisconsin’s ozone levels that found the county’s air exceeded federal ozone limits. The Trump Administration’s decision to designate Racine County as an attainment area combined with the extensive development and pollution from Foxconn threaten air quality both in Wisconsin and, also, in Lake County, Illinois.

The Foxconn experience underscores several critical points:

First, environmental impact statements and proper review serve essential purposes and should not be casually tossed aside simply because a private company and political official extol the promise of jobs and investment. As we now know with Foxconn, the job promises and investments don’t really match the rhetoric. Moreover, at the Environmental Law & Policy Center, we deeply believe that job creation, economic growth and environmental protections can be achieved together, and that win-win-win success has been demonstrated to work time-and-again here in the Midwest.

Second, choosing to exempt development projects from important regulations and oversight has consequences. Other people and jurisdictions can be harmed and recourse is difficult. That’s the Foxconn situation here as it creates threats to flooding in Illinois.

Third, our environment is fragile. Changing air quality and clean water protections can affect the health and safety of thousands of people downwind and downstream. In the present Foxconn case,

potentially thousands of downstream homes and businesses could be flooded. That, in turn, impairs the already stretched SBA disaster loan program.

Thank you for convening this field hearing and for your consideration of my and other witnesses' testimony today. I would be pleased to address any questions or suggestions that you may have.