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### 1NC – Trade DA

#### Antitrust expansion opens the floodgates of protectionism – that ends free trade

Murray 19 [Allison Murray, Loyola Law, Judicial Law Clerk for U.S. Bankruptcy Courts. Edited by Loyola Law Professor David Kesselman and the ILR team of editors and staff. “Given Today’s New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade’s Coffin?” 2/28/2019. https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1785&context=ilr]

Although a system of truly free world trade has never been perfected, past world leaders have eliminated most of the protectionist trade mechanisms that once ran rampant in the international economy. They did so by implementing multilateral and bilateral trade agreements. These webs of agreements have bolstered decades of support for free trade, or at least some version of it. By and large, tariff policies and other forms of protectionism were either eliminated or dramatically reduced. Now, as we have seen in the media, when a government imposes a tariff, it becomes a rather extreme political statement which sends a shockwave of significant global consequences.

Protectionism did not end when the age of overbearing tariff policies did, despite then-leaders’ best efforts to vilify it. Rather, the end of the tariff era forced nations to achieve protectionist goals through more subtle trade vehicles, like antitrust law.3 So, the recent resurgence of protectionist rhetoric should mean that these subtle trade vehicles, including antitrust law, will be relied on more heavily. It is a fear of many that antitrust law may become overused and inequitably applied to achieve and combat protectionist aims.

Notwithstanding the recent uptick in tariff threats, it is unlikely that all Western leaders will revamp or terminate the trade agreements set forth by their predecessors and bring back the kinds of tariff policies that once existed in their place. Although in the United States (“U.S.”), President Trump recently imposed tariffs on steel imports, it appears that his intent is to limit this behavior to a specific industry rather than institute a widespread policy favoring the use of tariffs generally.4 To remedy bad behavior in a specialized set of industries is not to instigate a global paradigm shift. This purpose is underscored by his use of the national security exemption, which is largely interpreted as being used for individual situations rather than general policy schemes.5 Many still hope that his course of action will be retracted and is merely a strong negotiation tactic. However, there is no doubt that Trump is far more comfortable than past leaders with subverting the status quo on trade relations.

Trump is not the only high-profile leader flirting with staunch protectionism. Western leaders in the E.U. appear to be growing more comfortable than their predecessors with considering similar policies. However, Western lawmakers themselves do not seem as persuaded by the statements of their leadership. The general sentiment among international policymakers is that there has been too much political wherewithal spent on loosening international trade barriers to take actions that could counteract that progress.6 Presidential actions taken because of dissatisfaction with current global trade relations aside, a complete overhaul of trade agreements may be too daunting and difficult a task, especially absent ample political support in legislative bodies.

Given the anticipated continuation of cooperative trade agreements and the proliferation of protectionist rhetoric as the new norm of public opinion, leaders will be forced to rely on existing avenues to meet protectionist aims. Again, we find ourselves relying squarely on antitrust law, the more subtle and widely accepted mechanism of restricting trade, to address perceived inequities. In the words of the World Trade Organization (“WTO”), “once formal trade barriers come down, other issues become more important.”7 Among the important issues lies antitrust law. Antitrust and competition laws can form a subtle trade barrier resulting in the imposition of tariff-like measures.

Antitrust law can be enforced to reach protectionist aims and to combat them. It is a tool that allows nations to achieve individual protectionist aims without undermining the future of trade between countries and the cooperative framework underpinning the relatively delicate global free trade enjoyed today. However, the perception of enforcement of antitrust laws as an abusive and solely protectionist mechanism may cause the death of even the smallest semblance of international free trade that remains in the international marketplace today.

#### Nuke war

Oppenheimer 21 [Dr. Michael F. Oppenheimer, Clinical Professor at the Center for Global Affairs at New York University, Senior Consulting Fellow for Scenario Planning at the International Institute for Strategic Studies, Former Executive Vice President at The Futures Group, Member of the Council on Foreign Relations, The Foreign Policy Roundtable at the Carnegie Council on Ethics and International Affairs, and The American Council on Germany, “The Turbulent Future of International Relations”, in The Future of Global Affairs: Managing Discontinuity, Disruption and Destruction, Ed. Ankersen and Sidhu, p. 23-30]

Four structural forces will shape the future of International Relations: globalization (but without liberal rules, institutions, and leadership)1; multipolarity (the end of American hegemony and wider distribution of power among states and non-states2); the strengthening of distinctive, national and subnational identities, as persistent cultural differences are accentuated by the disruptive effects of Western style globalization (what Samuel Huntington called the “non-westernization of IR”3); and secular economic stagnation, a product of longer term global decline in birth rates combined with aging populations.4 These structural forces do not determine everything. Environmental events, global health challenges, internal political developments, policy mistakes, technology breakthroughs or failures, will intersect with structure to define our future. But these four structural forces will impact the way states behave, in the capacity of great powers to manage their differences, and to act collectively to settle, rather than exploit, the inevitable shocks of the next decade.

Some of these structural forces could be managed to promote prosperity and avoid war. Multipolarity (inherently more prone to conflict than other configurations of power, given coordination problems)5 plus globalization can work in a world of prosperity, convergent values, and effective conflict management. The Congress of Vienna system achieved relative peace in Europe over a hundred-year period through informal cooperation among multiple states sharing a fear of populist revolution. It ended decisively in 1914. Contemporary neoliberal institutionalists, such as John Ikenberry, accept multipolarity as our likely future, but are confident that globalization with liberal characteristics can be sustained without American hegemony, arguing that liberal values and practices have been fully accepted by states, global institutions, and private actors as imperative for growth and political legitimacy.6 Divergent values plus multipolarity can work, though at significantly lower levels of economic growth-in an autarchic world of isolated units, a world envisioned by the advocates of decoupling, including the current American president. 7 Divergent values plus globalization can be managed by hegemonic power, exemplified by the decade of the 1990s, when the Washington Consensus, imposed by American leverage exerted through the IMF and other U.S. dominated institutions, overrode national differences, but with real costs to those states undergoing “structural adjustment programs,”8 and ultimately at the cost of global growth, as states—especially in Asia—increased their savings to self insure against future financial crises.9

But all four forces operating simultaneously will produce a future of increasing internal polarization and cross border conflict, diminished economic growth and poverty alleviation, weakened global institutions and norms of behavior, and reduced collective capacity to confront emerging challenges of global warming, accelerating technology change, nuclear weapons innovation and proliferation. As in any effective scenario, this future is clearly visible to any keen observer. We have only to abolish wishful thinking and believe our own eyes.10

Secular Stagnation

This unbrave new world has been emerging for some time, as US power has declined relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world financial crisis of 2007, which revealed the bankruptcy of unregulated market capitalism, weakened faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The skewed distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became intolerable as growth rates declined. A combination of aging populations, accelerating technology, and global populism/nationalism promises to make this growth decline very difficult to reverse. What Larry Summers and other international political economists have come to call “secular stagnation” increases the likelihood that illiberal globalization, multipolarity, and rising nationalism will define our future. Summers11 has argued that the world is entering a long period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains:

…rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result.

Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth…

This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible.

…in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development.

Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12

The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

Illiberal Globalization

Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically pro- Trump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them.

What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19 Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end.

Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20

The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the pre- World War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present:

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war. We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

…In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports.

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars. In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

…the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry.

### 1NC – New Agency CP

#### The United States federal government should establish a purpose-built competition agency comprised of industry and subject matters experts. The agency should: -        Develop and enforce ex ante behavioral standards that adopt the principle of separating platforms from commerce for platforms in the private sector -        Enforce ex post prohibitions on those activities

#### Only agile regulation solves the aff without undermining innovation

Wheeler 20 [Tom Wheeler, Brookings Visiting Fellow - Governance Studies, Center for Technology Innovation. Phil Verveer, Senior Fellow, Shorenstein Center on Media, Politics and Public Policy - Harvard Kennedy School. Gene Kimmelman, Senior Fellow, Shorenstein Center on Media, Politics and Public Policy - Harvard Kennedy School. “The need for regulation of big tech beyond antitrust.” 9/23/20. https://www.brookings.edu/blog/techtank/2020/09/23/the-need-for-regulation-of-big-tech-beyond-antitrust/]

The nation’s antitrust laws, developed in response to the industrial age, have become the focus of attention in the internet age. Hearings by the House Antitrust Subcommittee revealed substantial evidence of how Big Tech sustained and expanded their market dominance with anticompetitive practices. The Justice Department is reportedly preparing an antitrust action against Google. The Federal Trade Commission (FTC) is similarly reported to be preparing an action against Facebook.

Enforcement of the antitrust statutes is an important tool for the protection of competitive markets. Yet, it is a blunt instrument unable to reach many nuanced competition and consumer protection issues created by the digital economy. It is inherently uncertain in outcome, reliably lengthy in process, and an after-the-fact response rather than a broad-based set of rules.

Without a doubt, Big Tech has delivered wonderous new capabilities. However, the “move fast and break things” mantra of Silicon Valley has meant that digital companies move fast and make their own rules. Antitrust statutes reflect a time when markets were relatively stable because technology was relatively stable. Today, the rapid pace of digital technology means companies can move rapidly to advantage themselves by exploiting consumers and eliminating potential competition.

Regulation, done with agility, can be an important refinement to the blunt force of the antitrust laws while being able to protect competition and consumers alike. It is not enough, however, to re-task industrial era federal agencies to oversee the digital giants. These agencies are full of dedicated professionals, but they operate on precedents and procedures built for another era when technology and innovation moved at a slower pace. In place of such industrial era muscle memory, we need a purpose-built federal agency with digital DNA.

Congress has traditionally created new expert agencies to oversee new technology platforms. Whether the Interstate Commerce Commission (railroads), Federal Communications Commission (broadcasting), Federal Aviation Administration (air transport), Consumer Financial Protection Bureau (finance), or any other of the alphabet agencies, the precedent is clear: new technologies require specialized oversight. In our report, “New Digital Realities; New Oversight Solutions” we conclude such regulation in the digital era warrants creation of a Digital Platform Agency to establish public interest expectations that promote fair market practices while being agile enough to deal with the rapid pace of digital technology.

Such an agency should be governed by a new congressionally established digital policy built on three pillars:

Risk management rather than micromanagement: rigid industrial era utility-style regulation is incompatible with today’s rapid pace of technological change. Regulation should be based on risk-targeted remedies focused on market outcomes.

Restoration of common law principles: for hundreds of years common law has required those providing services to anticipate and mitigate harmful effects (a “duty of care”), as well as providing access to essential services (a “duty to deal”). Oversight of Big Tech need do nothing more than reinstate such expectations.

Agile regulation: in lieu of top-down dictates, the new agency should be the forum to involve the industry in developing enforceable behavioral standards similar to fire and building codes. Such codes introduce innovation-promoting agility to the oversight process while protecting consumers and competition.

The existing agencies of government are based on statutes and structures that reflect the relatively stable markets and relatively stable technology of the late industrial era. These policies and procedures, however, have been ambushed by the digital future.

The solution to the public interest challenges posed by Big Tech is to embrace its differences and enable subject matter experts to substitute the public interest for corporate interests. While antitrust enforcement is important, the companies can no longer be permitted to make their own rules. It is time for purpose-built federal oversight of the dominant force in our lives and our economy.

### 1NC – States CP

#### The 50 state governments and relevant sub-federal territories, in coordination through the National Association of Attorneys General’s, should adopt the principle of separating platforms from commerce for platforms in the private sector and state that, if preempted, the states will withhold cooperation with federal initiatives.

#### State action solves, won’t be preempted, and causes federal follow-on

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Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[2] In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[3] This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[4] Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[5]

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[6] As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[7] This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[8]

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring *parens patriae* suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[9] Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[10] These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[11] The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[12] No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[13] To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[14]

Since the reawakening of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an important role in the enforcement of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices.[15] During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping develop and implement litigation strategies for cases being tried before federal judges presiding in their states.[16]

Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC.[17] State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC.[18]

In once again flexing their enforcement muscle, state attorneys general have shown a willingness to publicly disagree with the DOJ and FTC on both policy and enforcement decisions, and have also sought to pressure their federal counterparts into more aggressively policing certain industries. Recent examples of the increased independence and assertiveness of state antitrust enforcers include:

* The DOJ, FTC and several state attorneys general have been actively investigating and prosecuting ‘no-poach’ agreements (i.e., where competitors for employees agree not to recruit or hire each other’s employees) in recent years. However, the DOJ and state attorneys general have taken directly opposing positions in private litigation challenging the legality of ‘no-poach’ clauses in corporate franchise agreements. The DOJ has argued that courts should review these clauses under the rule of reason whereas various state attorneys general have argued that these clauses should be deemed per se unlawful.[24]
* In their joint investigation into the T-Mobile/Sprint merger, nearly 20 state attorneys general sued to block the transaction in September 2019 even though the DOJ, along with seven state attorneys general, approved the deal after securing certain structural and behavioural remedies.[19] After the DOJ announced its proposed settlement with the companies, the Attorney General for New York, who led the states’ challenge to the merger, issued a press release dismissing the adequacy of the remedies negotiated by the DOJ: ‘The promises made by [the divestiture buyer] and [the merging companies] in this deal are the kinds of promises only robust competition can guarantee. We have serious concerns that cobbling together this new fourth mobile [phone] player, with the government picking winners and losers, will not address the merger’s harm to consumers, workers, and innovation.’[20] Thereafter, the DOJ opposed the states’ enforcement action by, among other things, moving to disqualify the private counsel hired by the states to represent them[21] and filing submissions that argued against the states’ requested injunction.[22] Ultimately, the state attorneys general were unsuccessful in their bid to block the deal.[23]
* None of the more than 20 state attorney general offices that actively investigated the AT&T/Time Warner merger joined the DOJ’s unsuccessful challenge to the transaction despite the DOJ’s concerted effort to secure their support.[25] In fact, nine state attorneys general filed an amicus brief opposing the DOJ’s appeal of the trial court’s decision.[26]
* After the FTC declined to seek any Colorado-related remedies in connection with Optum’s acquisition of DaVita Medical Group, the Attorney General for Colorado required the merging companies to lift the exclusivity provisions in contracts with certain healthcare providers and to extend their existing contracts with certain health insurers. In announcing this settlement, the Colorado Attorney General stated: ‘I recognize that this case marks an important step in state antitrust enforcement . . . . I am committed to protecting all Coloradans from anticompetitive consolidation and practices, and will do so whether or not the federal government acts to protect Coloradans.’[27]

After voicing displeasure with federal antitrust enforcement in the technology sector, numerous state attorneys general launched their independent investigations into ‘Big Tech’ companies even though the DOJ and FTC have ongoing investigations into these companies.[28]

### 1NC – Agency Resources DA

#### FTC is focused on healthcare now but its under the radar

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Lina Khan’s Federal Trade Commission has its eyes on health care. The agency known for efforts to rein in Big Tech companies like Facebook and Amazon is also enmeshed in high-stakes health care and health tech battles that extend well beyond Silicon Valley. Case in point: The FTC trial that kicked off yesterday examining monopoly concerns in the market for cancer screening technology. (More on that below.) That closely watched antitrust case — involving the giant Illumina and startup Grail — predates Khan’s confirmation as FTC chair. But it underscores how health issues are looming over the agenda, particularly heading into the pandemic's second year. The way health care companies and consumer health apps handle sensitive data “is an area that I'm sure [Khan’s] very, very interested in,” said Jessica Rich, former director of the FTC’s consumer protection bureau, adding that the Biden administration's FTC will also be closely scrutinizing hospital mergers. “I expect her and the commission to take a very bold approach to what constitutes harm for both,” Rich said. “I expect her to pay close attention to algorithms and potential discrimination in health care, both denials and pricing issues which the FTC's laws can address.” The FTC’s jurisdiction touches nearly the entire health economy. While its competition bureau looks at health care mergers like the Illumina-Grail deal, its consumer protection side is focused on health privacy and data security issues, as well as fighting bogus medical claims on everything from weight loss to Covid cures. When Congress passed the Covid-19 Consumer Protection Act last year, the agency was granted new authority to police Covid scams. Although Khan hasn't spoken publicly about her health care agenda, she's likely to take issue with health apps and companies whose business models maximize, incentivize and monetize data collection. Of particular concern is how firms disclose what they’re doing with consumers’ data — and whether it may still be deceptive or unfair.

#### Antitrust agencies are strapped now – every dollar counts – the aff triggers new litigation that tanks other efforts and makes enforcing the aff impossible

Nylen 20 [leah, covers antitrust and investigations for POLITICO Pro. Before joining POLITICO, Leah spent eight years covering antitrust at MLex. She has also worked for Bloomberg and Congressional Quarterly and was selected as an Abe Journalist Fellow in 2014 for a reporting project in Japan on price-fixing cartels and cartel deterrence policies. “FTC Suffering a Cash Crunch as it Prepares to Battle Facebook” https://www.politico.com/news/2020/12/10/ftc-cash-facebook-lawsuit-444468]

The agency that just launched a landmark antitrust suit to break up Facebook is so strapped for cash that its leaders have discussed shrinking their staff and warned against taking on more cases.

In a series of emails to all Federal Trade Commission staff, obtained by POLITICO, Executive Director David Robbins said the agency would face a period of “belt tightening” to cut costs — and that filing fewer cases and trimming litigation expenses must be on the table.

“[W]e will either need to bring fewer expert intensive cases or significantly decrease our litigation costs (e.g. experts, transcripts, litigation support contractors, etc.),” Robbins said in an Oct. 29 email.

The emails offer an increasingly dire portrait of the money woes facing the FTC, which has launched a record amount of litigation in the past year even as the pandemic has caused a sharp reduction in the corporate merger filing fees that normally supply about half its budget. The crunch also raises the possibility that the FTC may not have the cash it needs to win its case against Facebook, which is gearing up for an expensive fight, or to take on additional companies like Amazon.

The agency released the emails in response to a Freedom of Information Act request.

In a follow-up email on Nov. 17, Robbins told staff that the agency had frozen all promotions for the foreseeable future, along with hiring and the bonuses or additional time-off awards that the FTC normally gives out at the end of December. The FTC had asked the Office of Personnel Management — the human resources management policy shop for the federal civil service — for permission to offer buy-outs or early retirement options but was denied, he said.

“[I]t should be no secret that the agency will have to make some tough choices in an environment where we simply do not have the funds to do everything we might like to do,” Robbins said in his first email to staff about the budget situation on Sept. 29.

The FTC declined to comment Thursday on Robbins’ emails or its budget situation. But Edith Ramirez, who chaired the agency under President Barack Obama, said Robbins’ emails about the budget picture were “concerning.”

“It does not serve the public interest for the agency not to be able to bring the cases it believes should be brought because of budget limitations,” said Ramirez, now a partner at the law firm Hogan Lovells.

POLITICO reported last month that the agency brought in just $102 million in merger filing fees, or $39 million below what it had expected, during the budget year that ended Sept. 30. The FTC also received $179 million from Congress, but some Republicans have rejected Democrats’ suggestions for a sharp increase in funding to cope with the rising needs.

The FTC had an overall budget of $331 million in fiscal 2020. The government is now operating under a continuing resolution set to expire Friday, although the Senate is expected to vote to extend that deadline to Dec. 18. Those bills keep the FTC’s funding at the same level.

House and Senate negotiators are still ironing out details for a $1.4 billion omnibus spending bill to fund the government through the rest of the fiscal year.

The FTC sued Facebook in federal court Wednesday, alongside a coalition of 46 states plus Washington, D.C., and Guam. The twin complaints allege the company engaged in a “buy or bury” strategy, scooping up promising startups before they could grow into competitors and cutting off other potential rivals’ access to Facebook’s data in often successful efforts to stifle their growth.

Facebook denies the allegations and says it intends to vigorously contest the case. The company already has three high-powered D.C. law firms on retainer to aid in litigating the antitrust case: Covington & Burling and Davis Polk, both of which are well-known for their antitrust practices and boast former FTC leaders among their ranks, and the litigation powerhouse Kellogg Hansen.

The FTC would use its in-house lawyers to litigate the Facebook case, but both sides will also need to hire economic experts to help make their arguments. Those experts can charge as much as $1,350 an hour, ProPublica found in a 2016 investigation.

Facebook, which ranks 46th on Fortune’s list of the largest U.S. companies, has much deeper pockets: It brought in nearly $21.5 billion in the three months that ended on Sept. 30.

Worries about the economy or the pandemic haven’t kept the FTC from filing a record number of new cases, Chair Joseph Simons said in a speech last month, noting that the commission “had more merger enforcement actions in fiscal year 2020 than any other year in the past 20 years.” Simons, a Republican, had made bringing the Facebook case a major priority before his expected departure in the next month.

The FTC’s antitrust cases tend to require more money than its consumer protection ones because of the need for economic experts, said Ramirez, the former chair. And conduct cases require even more funds than merger challenges do, she said.

“Litigation can take years, and is typically very expensive, no question about that,” she said.

The budget crunch could hamper Democratic efforts to ramp up antitrust and privacy enforcement in President-elect Joe Biden’s administration. The FTC has spent the past year speaking to retailers that sell products on Amazon as part of an investigation into potential antitrust violations by the online retail giant, though the exact contours of its probe are unknown. The budget crunch could harm the agency’s ability to move forward with that probe if prosecutors decide a case is warranted.

Ramirez, though, said the FTC will probably find a way to press on with its work despite any budget problems.

“The agency will do its utmost to find ways to continue an active agenda despite its resource constraints,” she said.

#### Intervention in healthcare consolidation is key to innovation

Richman et. al 17 (Barak, Professor of Law, Duke University Law School; \* Elena Vidal, Professor of Strategic Management at University of Toronto, Will Mitchell, Rotman School of Business; Assistant Professor of Management, Baruch, and Kevin Schulman, College/CUNY, Zicklin School of Business; Professor of Medicine, Duke University Medical School. “Pharmaceutical M&A Activity: Effects on Prices, Innovation, and Competition” p. 798-799 <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6441&context=faculty_scholarship>]

Perhaps even more important than the potential impact on prices, some observers and theorists suggest that M&A activity in the pharmaceutical sector might reduce innovative activity in the industry. Commentators not only worry that industry consolidation increases prices, but also that it reduces incentives to innovate.34 These commentators express concern that large pharmaceutical firms exhibited diminishing R&D productivity—producing fewer discoveries, generating less valuable discoveries, and creating discoveries that represent more incremental and duplicative innovations.35 In parallel, commentators suggest that the recent merger trend contributed to big pharma’s diminishing innovation, in part because mergers are often followed by layoffs in R&D personnel, changes in management and research priorities, and reductions in total R&D spending.36

#### Key to stop bioterror.

Poupard 11. (James Poupard received a BA in natural science from Temple University, an MS in clinical microbiology from Thomas Jefferson Medical College, and he started his PhD studies in the history of science at Bryn Mawr College and completed his PhD studies at the University of Pennsylvania. He was supervisor of clinical microbiology at the Hospital of the University of Pennsylvania and microbiology director of Bryn Mawr Hospital and later became associate professor of microbiology, pathology, and medicine at the Medical College of Pennsylvania. Pharmaceutical Industry. Encyclopedia of Bioterrorism Defense, 2nd Edition. 2011. Edited by Rebecca Katz and Raymond Zilinskas)

INTRODUCTION The pharmaceutical and biotechnology industries play an important role in providing anti-infective drugs, vaccines, and biologicals (a category of pharmaceutical products consisting not of chemical agents like drugs and not of vaccines but rather of products such as immunomodulators, interferons, and monoclonal antibodies, which are often produced in facilities similar to vaccine production lines since they are usually derived from tissue cultures or, in some cases, from organisms like modified Escherichia coli but are not classic vaccines) **for use in** responding to a bioterrorist attack. **Research, development, and production programs initiated by the pharmaceutical industry will play a key role in providing new therapeutic agents for use against potential bioterrorist threats,** and the industry will be an important element in determining future policies relating to bioterrorism defense.

#### Extinction.

Myhrvold 13 Bynathan Myhrvold, former Chief Technology Officer at Microsoft, MA and PhD from Princeton University, he held a postdoctoral fellowship at the University of Cambridge working under Stephen Hawking¶ Strategic Terrorism a Call to Action, The Lawfare Research Paper Series¶ research paper no. 2 – 2013¶ July 2013¶ <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>

¶ For the first time in human history, the curve of cost ¶ versus lethality has turned rapidly downward, falling ¶ many orders of magnitude in just a generation. Today, ¶ tremendously lethal technology is available on the cheap. ¶Anyone—even a stateless group—can have the deadliest weapons on earth. Several trends led to this inflection ¶ point. one is nuclear proliferation, which in recent years ¶ reached a tipping point at which access to nuclear weapons ¶ became impossible to control or limit in any absolute way. ¶ The collapse of the soviet Union scattered ex-soviet weapons across many poorly governed and policed states, and ¶ from there, the weapons may spread further into the hands ¶ of terrorists. At the same time, the set of ragtag countries ¶ that have developed homegrown nuclear devices is large ¶ and growing. The entrance to the nuclear-weapons club, ¶ once limited to a small number of sophisticated and stable ¶ countries, is now far more open.¶ It is only a matter of time before a nuclear bomb gets ¶ into the hands of a terrorist group, whether by theft or construction. A nuclear weapon smuggled into an American ¶ city could kill between 100,000 and 1,000,000 people, depending on the nature of the device, the location of ground ¶ zero, and the altitude of detonation. an optimist might say ¶ that it will take another decade for such a calamity to take ¶ place; a pessimist would point out that the plot may already ¶ be under way.¶ Chemical weapons, particularly nerve agents, are another new addition to the terrorist arsenal. Sarin, a frighteningly lethal poison discovered in 1938 and stockpiled ¶ (although never used) by the nazis, was produced and released in locations in the tokyo subway system in 1995 by ¶ aum shinrikyo, a Japanese religious cult. The attack injured ¶ nearly 3,800 people and killed 12. A botched distribution ¶ scheme in the tokyo subway spared many of the intended¶ victims; better dispersal technology would have resulted in ¶ a vastly higher death toll. ¶ Cult members had more morbid ambitions than a ¶ subway attack. They had gathered hundreds of tons of raw ¶ materials and had procured a Russian military helicopter ¶ to use in spraying the nerve agent over tokyo. Experts ¶ have estimated that aum shinrikyo had the ingredients to ¶ produce enough sarin to kill millions of people in an all-out ¶ attack. The civil war in syria, whose military is known to ¶ possess stockpiles of sarin and other chemical weapons, ¶ raises the prospect that these munitions could fall into the ¶ hands of extremists.¶ Frightening as such possibilities are, nuclear bombs ¶ and chemical agents pale in lethality when compared with ¶ biological weapons. indeed the term “weapon” is not entirely adequate because biological agents include not only ¶ pathogens that are controllable (in the traditional sense) ¶ but also those that are not.¶ even more so than with nuclear weapons, the cost ¶ and technical difficulty of producing biological arms has ¶ dropped precipitously in recent decades with the boom in ¶ industrial molecular biology. A small team of people with ¶ the necessary technical training and some cheap equipment can create weapons far more terrible than any nuclear ¶ bomb. Indeed, even a single individual might do so.¶ Ether, these trends utterly undermine the ¶ lethality-versus-cost curve that existed throughout all of ¶ human history. Access to extremely lethal agents—even to ¶ those that may exterminate the human race—will be available to nearly anybody. Access to mass death has been democratized; it has spread from a small elite of superpower ¶ leaders to nearly anybody with modest resources. Even the ¶ leader of a ragtag, stateless group hiding in a cave—or in a ¶ Pakistani suburb—can potentially have “the button.”

### 1NC – Politics DA

#### Dems are divided now because progressives blocked infrastructure—but—there’s progress towards a vote next week and building trust between factions

Tully-McManus 10/29 [KATHERINE TULLY-MCMANUS, "Dems head into weekend without agreement", 10/29/21, https://www.politico.com/huddle/]

DEM VIBE CHECK: DIVIDED — House Democrats left the building divided Thursday night, after Speaker Nancy Pelosin (D-Calif.) had to scratch plans for a vote on the Senate-passed infrastructure bill amid progressive opposition for a second time in less than a month. Progressives were triumphant, but the rest of the Democratic caucus was seething.

“I think it’s wholly apparent that today was not a success,” said Virginia Rep. Abigail Spanberger (D-Va.), who has been touting both the infrastructure bill and the Democrats social spending plan on the campaign trail for gubernatorial candidate Terry McCauliffe who faces a tight race Tuesday.

“Because people choose to be obstructionists, we’re not delivering these things to my state or to the rest of the country,” the swing-district Democrat added. “I guess we’ll just wait, because apparently failing roads and bridges can just wait in the minds of some people.”

“It's a nightmare on Capitol Hill for the president's party, as October passes by without a deal,” write Heather, Sarah and Olivia in a story that captures both the mood and state-of-play of Thursday night. Read it here.

It’s not over yet….Despite the simmering frustrations as the House left town, there was still a glimmer of progress (or something like it) that could signal movement next week.

Progressive Caucus Chair Pramila Jayapal (D-Wash) met later Thursday with Sens. Kyrsten Sinema (D-Ariz.), Sen. Brian Schatz (D-Hawaii) and Rep. Joe Neguse (D-Colo.) in what appeared to be a discussion based on building trust across the warring factions within the party.

Rep. Ro Khanna (D-Calif.), a progressive caucus member, said on CNN that they left “pretty assured that this deal goes forward,” referring to the $1.75 trillion social spending package. “It’s the first time I felt like that — and I really trust Joe and Pramila.

Another sign of life for the spending plan is that lawmakers are still working to get their priorities squeezed into the package. STAT News reported last night that Pelosi’s office is working to gather support for a last-ditch proposal to lower prescription drug costs.

Thursday’s scramble: The House voted Thursday night to clear a temporary authorization extension for transportation programs, a move that signaled Democrats' failure to coalesce around the party-line $1.75 trillion social spending bill that would pave the way for progressives to vote for the Senate-passed $550 billion bipartisan infrastructure bill.

The Senate UC’d a deeming measure that will automatically clear the surface transportation authorization extension when the House sends it over to the Senate. Sarah, Nicholas and Heather have the details on how Thursday took a turn.

#### Biden’s PC is key—he’s trusted by everyone in the party

Brodey 10/28 [Sam Brodey, Congressional Reporter, "Dems Leave Biden Empty-Handed Again After Chaotic Day on Capitol Hill", 10/28/21, https://www.thedailybeast.com/democrats-leave-biden-empty-handed-again-after-chaotic-day-on-capitol-hill?ref=scroll]

Rep. Don Beyer (D-VA) said he was “disappointed” that the infrastructure bill didn’t pass on Thursday. But he also indicated that if Democrats don’t trust each other, they should trust Biden.

“I don’t believe we should trust Manchin and Sinema, but I do trust the president,” Beyer said

Indeed, all the president could offer at a meeting with House Democrats on Thursday morning was his promise to get everything done. One lawmaker in the room said that nearly everyone was inclined to take the president at his word, but many were not sold that he could bring Manchin and Sinema along to support the framework his administration outlined on Thursday morning.

And despite efforts from House leaders, the vice president, and other administration officials—Michael Regan, the administrator of the Environmental Protection Agency, addressed members of the Congressional Black Caucus Thursday in support of the legislation—the whip efforts did not break the resolve of progressives.

Still, the fact that the administration and Democratic leaders made the push at all is a departure from their strategy in a near-identical stand-off over the infrastructure bill last month, when moderates tried to force a vote on it before much of the Build Back Better Act was ready.

As Rep. Hank Johnson (D-GA) said, that effort and engagement from Biden was enough. He said he’d have voted against the infrastructure deal on Wednesday. But after the president’s visit, he said he would have supported it.

“When your President comes to your caucus and looks you in the eye and tells you that he can get it done, and when your Speaker of the House—who has demonstrated leadership capabilities as has the president—she tells you, ‘we're going to get it done,” Johnson said, “I'm going to put my money on those two horses.”

#### Antitrust requires PC—that trades off

Carstensen 21 [Peter; February 2021; Fred W. & Vi Miller Chair in Law Emeritus at the University of Wisconsin Law School; Concurrences, “The ‘Ought’ and ‘Is Likely’ of Biden Antitrust,” <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen>]

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities.

15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Quickly secures the vulnerable grid.

Carney 21 [Chris, August 6; Senior Policy Advisor at Nossaman LLC, former US Representative, Former Professor of Political Science at Penn State University; JD Supra, “The US Senate Infrastructure Bill: Securing Our Electrical Grid Through P3s and Grants,” https://www.jdsupra.com/legalnews/the-us-senate-infrastructure-bill-4989100/]

As we begin to better understand the main components of the Infrastructure Investment and Jobs Act that the US Senate is working to pass this week, it is clear that public-private partnerships ("P3s") are a favored funding mechanism of lawmakers to help offset high costs associated with major infrastructure projects in communities. And while past infrastructure bills have used P3s for more conventional projects, the current bill also calls for P3s to help pay for protecting the US electric grid from cyberattacks. Responding to the increasing number of cyberattacks on our nation’s infrastructure, and given the fragile physical condition of our electrical grid, the Senate included provisions to help state, local and tribal entities harden electrical grids for which they are responsible.

Section 40121, Enhancing Grid Security Through Public-Private Partnerships, calls for not only physical protections of electrical grids, but also for enhancing cyber-resilience. This section seeks to encourage the various federal, state and local regulatory authorities, as well as industry participants to engage in a program that audits and assesses the physical security and cybersecurity of utilities, conducts threat assessments to identify and mitigate vulnerabilities, and provides cybersecurity training to utilities. Further, the section calls for strengthening supply chain security, protecting “defense critical” electrical infrastructure and buttressing against a constant barrage of cyberattacks on the grid. In determining the nature of the partnership arrangement, the size of the utility and the area served will be considered, with priority going to utilities with fewer available resources.

Section 40122 compliments the previous section as it seeks to incentivize testing of cybersecurity products meant to be used in the energy sector, including SCADA systems, and to find ways to mitigate any vulnerabilities identified by the testing. Intended as a voluntary program, utilities would be offered technical assistance and databases of vulnerabilities and best practices would be created. Section 40123 incentivizes investment in advanced cybersecurity technology to strengthen the security and resiliency of grid systems through rate adjustments that would be studied and approved by the Secretary of Energy and other relevant Commissions, Councils and Associations.

Lastly, Section 40124, a long sought-after package of cybersecurity grants for state, local and tribal entities is included in the bill. This section adds language that would enable state, local and tribal bodies to apply for funds to upgrade aging computer equipment and software, particularly related to utilities, as they face growing threats of ransomware, denial of service and other cyberattacks. However, under Section 40126, cybersecurity grants may be tied to meeting various security standards established by the Secretary of Homeland Security, and/or submission of a cybersecurity plan by a grant applicant that shows “maturity” in understanding the cyber threat they face and a sophisticated approach to utilizing the grant.

While the final outcome of the Infrastructure Investment and Jobs Act may still be weeks or months away, inclusion of these provisions not only demonstrates a positive step forward for the application of federal P3s and grants generally, they also show that Congress recognizes the seriousness of the cyber threats our electrical grids face. Hopefully, through judicious application of both public-private partnerships and grants, the nation can quickly secure its infrastructure from cyberattacks.

#### Grid vulnerabilities spark nuclear war.

Klare 19 [Michael; November; Professor Emeritus of Peace and World Security Studies at Hampshire College; Arms Control Association, “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation,” https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation]

Yet another pathway to escalation could arise from a cascading series of cyberstrikes and counterstrikes against vital national infrastructure rather than on military targets. All major powers, along with Iran and North Korea, have developed and deployed cyberweapons designed to disrupt and destroy major elements of an adversary’s key economic systems, such as power grids, financial systems, and transportation networks. As noted, Russia has infiltrated the U.S. electrical grid, and it is widely believed that the United States has done the same in Russia.12 The Pentagon has also devised a plan known as “Nitro Zeus,” intended to immobilize the entire Iranian economy and so force it to capitulate to U.S. demands or, if that approach failed, to pave the way for a crippling air and missile attack.13

The danger here is that economic attacks of this sort, if undertaken during a period of tension and crisis, could lead to an escalating series of tit-for-tat attacks against ever more vital elements of an adversary’s critical infrastructure, producing widespread chaos and harm and eventually leading one side to initiate kinetic attacks on critical military targets, risking the slippery slope to nuclear conflict. For example, a Russian cyberattack on the U.S. power grid could trigger U.S. attacks on Russian energy and financial systems, causing widespread disorder in both countries and generating an impulse for even more devastating attacks. At some point, such attacks “could lead to major conflict and possibly nuclear war.”14

### 1NC – T

#### The FTC already has the authority under section 5.

Zeisler 14 [Royce Zeisler, J.D. Candidate 2014, Columbia Law School; B.S., B.A. 2012, University of British Columbia, "CHEVRON DEFERENCE AND THE FTC: HOW AND WHY THE FTC SHOULD USE CHEVRON TO IMPROVE ANTITRUST ENFORCEMENT", Columbia Business Law Review, 2014, HeinOnline]

The FTC and antitrust law began to expand radically in post-war America. The Court grounded this expansion in a wide range of economic and social considerations. In service of these heterogeneous goals, the FTC brought-and the Supreme Court decided-antitrust cases premised purely on section 5 grounds, sometimes with no explicit reference to the Sherman Act.40 Brown Shoe exemplifies the Court's understanding.4' There, the Court found that section 5 was a key tool for stopping "incipient" trade practices and that the "[b]road power of the Commission is particularly well established with regard to trade practices which conflict with the basic policies of the Sherman and Clayton Acts even though such practices may not actually violate these laws. 42 Similarly, in the consumer protection case Sperry & Hutchinson Co., the Court concluded that the powers contained in section 5 were broad, ambiguous, and unique to the FTC.43

\*\*footnote 43 begins\*\*

While Sperry is a consumer protection case, it is also the Court's final extended examination of the scope of the section 5 antitrust mandate. See FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 239-40 (1972) ("First, does [section] 5 empower the Commission to define and proscribe an unfair competitive practice, even though the practice does not infringe either the letter or the spirit of the antitrust laws? Second, does [section] 5 empower the Commission to proscribe practices as unfair or deceptive in their effect upon consumers regardless of their nature or quality as competitive practices or their effect on competition? We think the statute, its legislative history, and prior cases compel an affirmative answer to both questions. When Congress created the Federal Trade Commission in 1914 and charted its power and responsibility under [section] 5, it explicitly considered, and rejected, the notion that it reduce the ambiguity of the phrase 'unfair methods of competition' by tying the concept of unfairness to a common-law or statutory standard or by enumerating the particular practices to which it was intended to apply.")

\*\*footnote 43 ends\*\*

#### That doesn’t expand the scope

**Federal Register: Rules and Regulations - ‘9**

Federal Trade Commission - *16 Code of Federal Regulations*- 255 Guides Concerning the Use of Endorsements and Testimonials in Advertising Federal Acquisition Regulation; *Final Rule* - “Rules and Regulations” - Federal Register - Vol. 74, No. 198 - Thursday, October 15, 2009 - #E&F - https://www.ftc.gov/sites/default/files/documents/federal\_register\_notices/guides-concerning-use-endorsements-and-testimonials-advertising-16-cfr-part-255/091015guidesconcerningtestimonials.pdf

The Commission’s inclusion of examples using these new media is not inconsistent with the staff’s 2006 statement that it would determine on a case-by-case basis whether law enforcement investigations of ‘‘buzz marketing’’ were appropriate.95 All Commission law enforcement decisions are, and will continue to be, made on a case-by-case basis, evaluating the specific facts at hand. Moreover, as noted above, the Guides **do not expand the scope** of liability **under Section 5**; they simply provide guidance as to how the Commission intends **to apply** governing **law** **to** various **facts**. **In other words**, the Commission ***could*** challenge the dissemination **of deceptive representations made via these media** **regardless of whether the Guides contain these examples**; thus, not including the new examples would simply deprive advertisers of guidance they otherwise could use in planning their marketing activities.96

#### Vote neg for limits and ground – allowing affs to enforce existing statutes in greater or different capacity allows thousands of tiny affs based on any law review or court case and short circuits core neg ground AND link uniqueness which makes it impossible to be neg

## Dependency Trap

### 1NC – Innovation Turn

#### U.S. innovation preserves global leadership over China

Erbas 6/25 [Yunus Erbas, Research Assistant at Beyond the Horizon ISSG, GSI Consulting Newswatch Manager, Masters in Political Science – Comparative Politics, University of Bordeaux, Masters in Political Science – Diplomatic Negotiations Strategy. “China-U.S. Tech war: New Hegemony.” 6/25/21. https://behorizon.org/china-u-s-tech-war-new-hegemony/]

On 14 May 2021, China became the second country to have successfully landed a rover on Mars after its Zhurong spacecraft touched down on the surface of the red planet. Zhurong (祝融), carrying the name of the “god of fire” in ancient Chinese mythology, was the sixth rover to land on Mars, the first five managed by the American NASA Jet Propulsion Laboratory. Although registering as a great success for China, Zhurong received lesser global attention when compared to its American competitor, Perseverance. Yet, it heralds once again that China constantly gains more ground against competing with the U.S. even in cutting-edge technology alongside other sectors.

China is undisputedly becoming a technological superpower and is currently undergoing the fastest expansion in world history despite the recent pandemic crisis. One of the reasons behind the phenomenon is that innovation is at the top of the country’s priority list.

In the year 2017, Chinese President Xi Jinping set out clearly his vision at the 19th CPC National Congress for China to achieve global leadership in science and innovation by 2050. The government has been leading the way for years, and the country’s high-tech sectors are developing at a rapid pace. At the congress, President Xi envisioned China to become one of the world’s most innovative countries by 2020 and a leading global science and technology power by 2049. Surely, how much of those goals China can be achieved in prescribed time is a matter of debate. But in accordance with these objectives, it is evident that China prioritizes innovation in key generic technologies, cutting-edge frontier technologies, modern engineering technologies, and disruptive technologies.

In the terms of Sino-American relationship, the rigorous competition between two major powers has already expanded to numerous fields, from trade to the protection of cutting-edge technologies and the formation of regional strategies. Their development models are supported by different values and norms. The increased intertwining of geopolitics and technology reflects the underlying intensification of competition between China and the United States and exacerbates the direct competition between the two powers for control over the rules, norms, and institutions which will govern international relations of the new world order in the coming decades, including high-technological developments like artificial intelligence and 5G.

The political leaders of both countries are well aware that technological innovation is a strong source of national power. As a result, technology is now largely politicized and has become a more prominent element of great power rivalry.

There is no doubt that the U.S. is the technological superpower in the world. But China is trying hard to seize this title from it. It has grown very rapidly over the development and application of the critical high tech areas such as artificial intelligence, big data, robotics and 5G and likes and there are concerns about whether China would evolve into a new hegemonic superpower based on superiority in high-tech.

#### Tech antitrust cedes US leadership

Atkinson 7/5 [Robert D. Atkinson, president of the Information Technology and Innovation Foundation. "Antitrust Can Hurt U.S. Competitiveness." 7/5/21/. https://www.wsj.com/articles/antitrust-can-hurt-u-s-competitiveness-11625520340]

When it comes to technology and the economy, the U.S. is grappling with two contradictory goals: competing with China in advanced technology industries and ramping up antitrust enforcement against leading U.S. tech companies.

Antimonopoly advocates argue that we can have our cake and eat it too. Go ahead and break up big tech, they say; we can still compete with China. But there is a long history of U.S. antitrust actions against technology companies, and the results suggest regulators should exercise caution.

Consider the case of Western Electric, AT&T’s equipment subsidiary. By the early 1920s, it had factories in Austria, Belgium, Canada, China, Germany, France, Italy, Japan, the Netherlands, Russia and the U.K. But because AT&T relied on it exclusively for equipment, in 1925 the Justice Department threatened AT&T with breakup unless it divested Western Electric’s foreign assets, creating International Telephone & Telegraph and ultimately giving birth to robust foreign-owned competitors.

Antitrust regulators also pressured AT&T’s Bell Labs in the early 1950s to license its newly invented transistor technology. That spurred innovation because it helped emerging companies such as Texas Instruments and Fairchild. But because of government pressure, AT&T also licensed its technology, almost for free, to foreign companies. This eventually enabled Sony to take global leadership from the U.S. in consumer electronics, and it gave a major leg up to Europe’s Ericsson and Siemens.

The U.S. also used to be the global leader in television technology thanks to the Radio Corp. of America, the pathbreaker in color television. But in the 1950s the Justice Department required RCA to let other U.S. companies use its patents at no charge. RCA had long relied on licensing revenue, so it started making money where it could—in Japan. “RCA licenses made Japanese color television possible,” technology historian James Abegglen has written.

In 1972, the Federal Trade Commission brought a similar antitrust suit against Xerox, the world’s then-leading producer of copier technology thanks in part to its Silicon Valley-based innovation incubator Xerox PARC. Evidently unimpressed, the head of the FTC’s Bureau of Competition F.M. Scherer said he would be “dissatisfied if Xerox’s market share isn’t significantly diminished in several years.” To that end, the FTC forced Xerox to give up its blueprints and other discoveries, allowing an estimated 1,700 patents to make their way to Xerox competitors. Sure enough, Xerox lost half its market share—mostly to Japanese firms such as Canon, Toshiba and Sharp. Xerox’s only viable path to survival was to strengthen its alliance with Fuji, creating a new giant, Fuji Xerox.

Two years later in 1974, the Justice Department targeted AT&T again, forcing it to break up over the objections of Commerce Secretary Malcolm Baldridge that the suit jeopardized America’s leadership position. This was the death knell for Bell Labs, arguably the most innovative organization that has ever existed.

None of this is to say that antitrust authorities should be passive or turn a blind eye to anticompetitive behavior. But they should recognize that firms’ size can be an important factor in their ability to innovate. Rather than rely on market share as the alarm bell that signals the need for antitrust enforcement, regulators should focus more on firms’ conduct, and they should look first to behavioral remedies, not structural ones. Antitrust analysis should also consider that tech companies compete globally, not nationally, so cutting them down to size usually has significant economic consequences.

The Federal Communications Commission has provided a model for the behavioral approach by conducting a series of inquiries starting in 1970 to investigate the convergence of telephone and computing services and establish rules enabling competition among established and upstart players across sectors that are increasingly intertwined. U.S. courts also provided a model in judgments against Microsoft, which compelled it to let other companies more easily integrate their software into Windows.

As policy makers now consider competition issues related to today’s large technology firms, they would be well advised to learn from this history. With Chinese internet and tech companies waiting in the wings, aggressive antitrust actions against U.S. leaders run the risk of giving a new generation of foreign rivals the boost they need to dominate global markets, just as Japanese and European firms have benefited in the past.

#### Perceived shifts in balance of power escalate – miscalculation from both sides

Nye 21 [Joseph S. Nye, professor at Harvard University and author, most recently, of Do morals matter? Presidents and foreign policy from FDR to Trump. "The factors that could lead to war between the US and China." 3/3/21. https://www.aspistrategist.org.au/the-factors-that-could-lead-to-war-between-the-us-and-china/]

When China’s foreign minister, Wang Yi, recently called for a reset of bilateral relations with the United States, a White House spokesperson replied that the US saw the relationship as one of strong competition that required a position of strength. It’s clear that President Joe Biden’s administration is not simply reversing Donald Trump’s policies.

Some analysts, citing Thucydides’ attribution of the Peloponnesian War to Sparta’s fear of a rising Athens, believe the US–China relationship is entering a period of conflict pitting an established hegemon against an increasingly powerful challenger.

I am not that pessimistic. In my view, economic and ecological interdependence reduces the probability of a real cold war, much less a hot one, because both countries have an incentive to cooperate in a number of areas. At the same time, miscalculation is always possible and some see the danger of ‘sleepwalking’ into catastrophe, as happened with World War I.

History is replete with cases of misperception about changing power balances. For example, when US President Richard Nixon visited China in 1972, he wanted to balance what he saw as a growing Soviet threat to a declining America. But what Nixon interpreted as decline was really the return to normal of America’s artificially high share of global output after World War II.

Nixon proclaimed multipolarity, but what followed was the end of the Soviet Union and America’s unipolar moment two decades later. Today, some Chinese analysts underestimate America’s resilience and predict Chinese dominance but this, too, could turn out to be a dangerous miscalculation.

It is equally dangerous for Americans to over- or underestimate Chinese power, and the US contains groups with economic and political incentives to do both. Measured in dollars, China’s economy is about two-thirds the size of that of the US, but many economists expect China to surpass the US sometime in the 2030s, depending on what one assumes about Chinese and American growth rates.

Will American leaders acknowledge this change in a way that permits a constructive relationship, or will they succumb to fear? Will Chinese leaders take more risks, or will Chinese and Americans learn to cooperate in producing global public goods under a changing distribution of power?

Recall that Thucydides attributed the war that ripped apart the ancient Greek world to two causes: the rise of a new power and the fear that this created in the established power. The second cause is as important as the first. The US and China must avoid exaggerated fears that could create a new cold or hot war.

Even if China surpasses the US to become the world’s largest economy, national income is not the only measure of geopolitical power. China ranks well behind the US in soft power and US military expenditure is nearly four times that of China. While Chinese military capabilities have been increasing in recent years, analysts who look carefully at the military balance conclude that China will not, say, be able to exclude the US from the Western Pacific.

On the other hand, the US was once the world’s largest trading economy and its largest bilateral lender. Today, nearly 100 countries count China as their largest trading partner, compared to 57 for the US. China plans to lend more than US$1 trillion for infrastructure projects with its Belt and Road Initiative over the next decade, while the US has cut back aid. China will gain economic power from the sheer size of its market as well as its overseas investments and development assistance. China’s overall power relative to the US is likely to increase.

Nonetheless, balances of power are hard to judge. The US will retain some long-term power advantages that contrast with areas of Chinese vulnerability.

One is geography. The US is surrounded by oceans and neighbours that are likely to remain friendly. China has borders with 14 countries, and territorial disputes with India, Japan and Vietnam set limits on its hard and soft power.

Energy is another area where America has an advantage. A decade ago, the US was dependent on imported energy, but the shale revolution transformed North America from energy importer to exporter. At the same time, China became more dependent on energy imports from the Middle East, which it must transport along sea routes that highlight its problematic relations with India and other countries.

The US also has demographic advantages. It is the only major developed country that is projected to hold its global ranking (third) in terms of population. While the rate of US population growth has slowed in recent years, it will not turn negative, as in Russia, Europe, and Japan. China, meanwhile, rightly fears ‘growing old before it grows rich.’ China’s labour force peaked in 2015 and India will soon overtake it as the world’s most populous country.

America also remains at the forefront in key technologies (bio, nano and information) that are central to 21st-century economic growth. China is investing heavily in research and development, and competes well in some fields. But 15 of the world’s top 20 research universities are in the US; none is in China.

Those who proclaim Pax Sinica and American decline fail to take account of the full range of power resources. American hubris is always a danger but so is exaggerated fear, which can lead to overreaction. Equally dangerous is rising Chinese nationalism, which, combined with a belief in American decline, leads China to take greater risks. Both sides must beware of miscalculation. After all, more often than not, the greatest risk we face is our own capacity for error.

### 1NC – D

#### No liberal order or SOI impact---states won’t risk war, err towards isolation, AND mediate ties economically.

Mueller ’21 [John; February 17; Adjunct Professor of Political Science and Senior Research Scientist at the Mershon Center for International Security Studies; The Stupidity of War: American Foreign Policy and the Case for Complacency, “The Rise of China, the Assertiveness of Russia, and the Antics of Iran,” Ch. 6]

Complacency, Appeasement, Self-destruction, and the New Cold War

It could be argued that the policies proposed here to deal with the international problems, whether real or imagined, presented by China, Russia, and Iran constitute exercises not only in complacency, but also in appeasement. That argument would be correct. As discussed in the Prologue to this book, appeasement can work to avoid military conflict as can be seen in the case of the Cuban missile crisis of 1962. As also discussed there, appeasement has been given a bad name by the experience with Hitler in 1938.

Hitlers are very rare, but there are some resonances today in Russia’s Vladimir Putin and China’s Xi Jinping. Both are shrewd, determined, authoritarian, and seem to be quite intelligent, and both are fully in charge, are surrounded by sychophants, and appear to have essentially unlimited tenure in office. Moreover, both, like Hitler in the 1930s, are appreciated domestically for maintaining a stable political and economic environment. However, unlike Hitler, both run trading states and need a stable and essentially congenial international environment to flourish.128 Most importantly, except for China’s claim to Taiwan, neither seems to harbor Hitler-like dreams of extensive expansion by military means. Both are leading their countries in an illiberal direction which will hamper economic growth while maintaining a kleptocratic system. But this may be acceptable to populations enjoying historically high living standards and fearful of less stable alternatives. Both do seem to want to overcome what they view as past humiliations – ones going back to the opium war of 1839 in the case of China and to the collapse of the Soviet empire and then of the Soviet Union in 1989–91 in the case of Russia. Primarily, both seem to want to be treated with respect and deference. Unlike Hitler’s Germany, however, both seem to be entirely appeasable. That scarcely seems to present or represent a threat. The United States, after all, continually declares itself to be the indispensable nation. If the United States is allowed to wallow in such self-important, childish, essentially meaningless, and decidedly fatuous proclamations, why should other nations be denied the opportunity to emit similar inconsequential rattlings? If that constitutes appeasement, so be it. If the two countries want to be able to say they now preside over a “sphere of influence,” it scarcely seems worth risking world war to somehow keep them from doing so – and if the United States were substantially disarmed, it would not have the capacity to even try.

If China and Russia get off on self-absorbed pretensions about being big players, that should be of little concern – and their success rate is unlikely to be any better than that of the United States. Charap and Colton observe that “The Kremlin’s idee fixe that Russia needs to be the leader of a pack of post-Soviet states in order to be taken seriously as a global power broker is more of a feel-good mantra than a fact-based strategy, and it irks even the closest of allies.” And they further suggest that

The towel should also be thrown in on the geo-ideational shadow-boxing over the Russian assertion of a sphere of influence in post-Soviet Eurasia and the Western opposition to it. Would either side be able to specify what precisely they mean by a regional sphere of influence? How would it differ from, say, US relations with the western-hemisphere states or from Germany’s with its EU neighbors?129

Applying the Gingrich gospel, then, it certainly seems that, although China, Russia, and Iran may present some “challenges” to US policy, there is little or nothing to suggest a need to maintain a large US military force-in-being to keep these countries in line. Indeed, all three monsters seem to be in some stage of self-destruction or descent into stagnation – not, perhaps, unlike the Communist “threat” during the Cold War. Complacency thus seems to be a viable policy.

However, it may be useful to look specifically at a couple of worst-case scenarios: an invasion of Taiwan by China (after it builds up its navy more) and an invasion of the Baltic states of Estonia, Lithuania, and Latvia by Russia. It is wildly unlikely that China or Russia would carry out such economically self-destructive acts: the economic lessons from Putin’s comparatively minor Ukraine gambit are clear, and these are unlikely to be lost on the Chinese. Moreover, the analyses of Michael Beckley certainly suggest that Taiwan has the conventional military capacity to concentrate the mind of, if not necessarily fully to deter, any Chinese attackers. It has “spent decades preparing for this exact contingency,” has an advanced early warning system, can call into action massed forces to defend “fortified positions on home soil with precision-guided munitions,” and has supply dumps, booby traps, an wide array of mobile missile launchers, artillery, and minelayers. In addition, there are only 14 locations that can support amphibious landing and these are, not surprisingly, well-fortified by the defenders.130

The United States may not necessarily be able to deter or stop military attacks on Taiwan or on the Baltics under its current force levels.131 And if it cannot credibly do so with military forces currently in being, it would not be able to do so, obviously, if its forces were much reduced. However, the most likely response in either eventuality would be for the United States to wage a campaign of economic and military (including naval) harassment and to support local – or partisan – resistance as it did in Afghanistan after the Soviet invasion there in 1979. 132 Such a response does not require the United States to have, and perpetually to maintain, huge forces in place and at the ready to deal with such improbable eventualities.

The current wariness about, and hostility toward, Russia and China is sometimes said to constitute “a new Cold War.”133 There are, of course, considerable differences. In particular, during the Cold War, the Soviet Union – indeed the whole international Communist movement – was under the sway of a Marxist theory that explicitly and determinedly advocated the destruction of capitalism and probably of democracy, and by violence to the degree required. Neither Russia nor China today sports such cosmic goals or is enamored of such destructive methods. However, as discussed in Chapters 1 and 2, the United States was strongly inclined during the Cold War massively to inflate the threat that it imagined the Communist adversary to present. The current “new Cold War” is thus in an important respect quite a bit like the old one: it is an expensive, substantially militarized, and often hysterical campaign to deal with threats that do not exist or are likely to selfdestruct.134

It may also be useful to evaluate terms that are often bandied about in considerations within foreign policy circles about the rise of China, the assertiveness of Russia, and the antics of Iran. High among these is “hegemony.” Sorting through various definitions, Simon Reich and Richard Ned Lebow array several that seem to capture the essence of the concept: domination, controlling leadership, or the ability to shape international rules according to the hegemon’s own interests. Hegemony, then, is an extreme word suggesting supremacy, mastery, preponderant influence, and full control. Hegemons force others to bend to their will whether they like it or not. Reich and Lebow also include a mellower designation applied by John Ikenberry and Charles Kupchan in which a hegemon is defined as an entity that has the ability to establish a set of norms that others willingly embrace.135 But this really seems to constitute an extreme watering-down of the word and suggests opinion leadership or entrepreneurship and success at persuasion, not hegemony.

Moreover, insofar as they carry meaning, the militarized application of American primacy and hegemony to order the world has often been a fiasco.136 Indeed, it is impressive that the hegemon, endowed by definition by what Reich and Lebow aptly call a grossly disproportionate military capacity, has had such a miserable record of military achievement since 1945 – an issue discussed frequently in this book.137 Reich and Lebow argue that it is incumbent on IR scholars to cut themselves loose from the concept of hegemony.138 It seems even more important for the foreign policy establishment to do so.

There is also absurdity in getting up tight over something as vacuous as the venerable “sphere of influence” concept (or conceit). The notion that world affairs are a process in which countries scamper around the world seeking to establish spheres of influence is at best decidedly unhelpful and at worst utterly misguided. But the concept continues to be embraced in some quarters as if it had some palpable meaning. For example, in early 2017, the august National Intelligence Council opined that “Geopolitical competition is on the rise as China and Russia seek to exert more sway over their neighboring regions and promote an order in which US influence does not dominate.”139 Setting aside the issue of the degree to which American “influence” could be said to “dominate” anywhere (we still wait, for example, for dominated Mexico supinely to pay for a wall to seal off its self-infatuated neighbor’s southern border), it doesn’t bloody well matter whether China or Russia has, or seems to have, a “sphere of influence” someplace or other.

More importantly, the whole notion is vapid and essentially meaningless. Except perhaps in Gilbert and Sullivan’s Iolanthe. When members of the House of Lords fail to pay sufficient respect to a group of women they take to be members of a ladies’ seminary who are actually fairies, their queen, outraged at the Lords’ collected effrontery, steps forward, proclaims that she happens to be an “influential fairy,” and then, with a few passes of her wand, brushes past the Lords’ pleas (“no!” “mercy!” “spare us!” and “horror!”), and summarily issues several edicts: a young man of her acquaintance shall be inducted into their House, every bill that gratifies his pleasure shall be passed, members shall be required to sit through the grouse and salmon season, and high office shall be obtainable by competitive examination. Now, that’s influence. In contrast, on December 21, 2017, when the United States sought to alter the status of Jerusalem, the United Nations General Assembly voted to repudiate the US stand in a nearly unanimous vote that included many US allies. Now, that’s not influence.

In fact, to push this point perhaps to an extreme, if we are entering an era in which economic motivations became paramount and in which military force is not deemed a sensible method for pursuing wealth, the idea of “influence” would become obsolete because, in principle, pure economic actors do not care much about influence. They care about getting rich. (As Japan and Germany have found, however, influence, status, and prestige tend to accompany the accumulation of wealth, but this is just an ancillary effect.) Suppose the president of a company could choose between two stories to tell the stockholders. One message would be, “We enjoy great influence in the industry. When we talk everybody listens. Our profits are nil.” The other would be, “No one in the industry pays the slightest attention to us or ever asks our advice. We are, in fact, the butt of jokes in the trade. We are making money hand over fist.” There is no doubt about which story would most thoroughly warm the stockholders’ hearts.

## Dynamism

### 1NC – Circumvention

#### Antitrust fails – history, resources, and political opposition

Jones 20 [Alison Jones, Professor of Law at King's and a solicitor at Freshfields Bruckhaus Deringer LLP. William E. Kovacic, George Mason University Foundation Professor at the George Mason University School of Law. “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” 2020. https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884]

The proponents of change have set out a breathtaking agenda for reform. The various papers and reports are powerfully reasoned and argued but devote relatively little attention to the question of how their proposals can be achieved successfully. Rather many of them seem to be predicated on the assumption that any legislative changes required can be introduced rapidly and that the new, more aspiring, program can be driven home straightforwardly by agencies led by courageous leaders and supported by a larger staff that shares the vision for fundamental change.

The discussion below, and history, seems to indicate, however, that more courage and more people will not necessarily overcome the implementation obstacles that stand in the way of a program that requires the rapid prosecution of a large number of complex cases against well-resourced and powerful companies. Indeed, the criticisms levied at the current system, the proposals for more effective enforcement and reform, and the scale of the action being demanded bear some resemblance to those that led to a more re-invigorated and aggressive antitrust enforcement policy in the 1960s and early 1970s. For example, at that time complaints that the FTC was in decay, was obsessed with trivial cases and failing to address matters of economic importance, anticompetitive conduct, and rising concentration,77 led the FTC to embark on a new, bold, and astoundingly broad enforcement program.78 In an effort to meet criticisms of it as a shambolic and failing institution, the FTC sought to upgrade its processes for policy planning, made concerted efforts to improve its human capital in management and case handling, and sought to improve substantive processes and the quality of its competition and consumer protection analysis.

In the end, FTC’s efforts to improve capability proved insufficient to support the expanded enforcement agenda, partly because the Commission failed to formulate an adequate plan to overcome the full range of implementation obstacles. The FTC seriously overreached because it did not grasp, or devise strategies to deal with, the scale and intricacies of its expanded program of cases and trade regulation rules, the ferocious opposition that big cases with huge remedial stakes would provoke from large defendants seeking to avoid divestitures, compulsory licensing, or other measures striking at the heart of their business, and the resources required to deliver good results. The Commission lacked the capacity to run novel shared monopoly cases that sought the break-up of the country’s eight leading petroleum refiners and four leading breakfast cereal manufacturers79 and simultaneously pursue an abundance of other high stake, difficult matters involving monopolization, distribution practices, and horizontal collaboration. The FTC also overlooked swelling political opposition, stoked by the vigorous lobbying of Congress, that its aggressive litigation program provoked.80

New legislation envisaged by reform advocates could ease the path for current government agencies seeking to reduce excessive levels of industrial concentration by arresting anticompetitive behavior of dominant enterprises (through interim and permanent relief) and by blocking mergers that pose incipient threats to competition. It seems clear, however, that such dramatic legislative proposals are likely to be fiercely contested through the legislative process and so will take time, and be difficult, to enact. Further, even if armed with a more powerful mandate, the DOJ and the FTC will still have to bring what are likely to be challenging cases applying the new laws (see Section F). The adoption, setting up, and bedding in of new legislation or regulatory structures and bodies is therefore unlikely to happen very quickly and is, consequently, unlikely to meet the demands of those seeking urgent and immediate action now.

These difficulties suggest that for the near future, at least, the agencies will have to achieve successful extensions of policy mainly through launching themselves into a number of lengthy, complex investigations and litigation based on the current regime. This means establishing violations under existing judicial interpretations of the antitrust laws and making a convincing case for the imposition of effective remedies, including structural relief.

### 1NC – Circumvention – Courts

#### Even new laws fail—courts refuse to enforce, including SCOTUS

Newman 19 [John Newman is a University of Miami School of Law professor and a former attorney with the U.S. Department of Justice Antitrust Division, "What Democratic Contenders Are Missing in the Race to Revive Antitrust", 4/1/19, https://www.theatlantic.com/ideas/archive/2019/04/what-2020-democratic-candidates-miss-about-antitrust/586135/]

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions.

But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well.

No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area.

Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades.

But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up.

Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it.

If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench.

Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power.

Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing.

And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017.

Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench.

Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system.

There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.

### 1NC – AT: Slow Growth

#### ‘Slow growth’ is inevitable AND has no impact.

Dietrich Vollrath 20, Professor of economics at the University of Houston, "Slow economic growth is a sign of success," USAPP, 02/22/2020, https://blogs.lse.ac.uk/usappblog/2020/02/22/slow-economic-growth-is-a-sign-of-success/.

We’re accustomed to looking at the growth rate of GDP to evaluate the health of our economy. Which is why the recent slowdown in growth appears so troubling. In the US, GDP growth for 2019 was 2.3%, meaning it has been nineteen years since growth hit 4%, and nearly as long since it touched 3%. For the UK the story is similar, as it has been fifteen years since growth hit 3%. In the Eurozone as a whole, growth last came close to 4% in 2000. These slowdowns across developed economies predates the financial crisis, and leads to natural questions: what went wrong with the economy, and how do we fix it?

But the slowdown we’re observing isn’t something we can fix – or that we would want to fix – because the slowdown was never a consequence of things that went wrong. Instead, as I show my new book, the slowdown is a consequence of things that went right.

From a simple accounting perspective, there are two main factors behind slower growth: the fall in fertility during the 20th century, and the shift of our expenditures away from goods and towards services. And both of those explanations can be traced back to economic success.

The fall in fertility had a significant impact on economic growth for decades, particularly in the US. The baby boom generated a one-time wave of human capital that hit the economy during the middle of the 20th century. As those new workers hit the workforce, the proportion of workers to population rose substantially, as evidenced by the fall in the youth dependency ratio between 1960 and 1980 (see Figure 1). Combined with the relatively high educational attainment of the baby boomers compared to prior generations, this provided a substantial boost to the growth rate, increasing it around 1.25 percentage points in 1990 compared to immediately after World War II.

As that wave of human capital receded, so did the growth rate. Starting in the early 2000s, the old age dependency ratio started to rise (see Figure 1) the inevitable consequence of the drop in youth dependency back in the 1960s and 1970s. As workers aged out of the workforce – and continue to do so – this dragged down the growth rate of the aggregate economy. That 1.25 percentage point boost during the 20th century disappeared in the 21st, explaining most of the slowdown in the US.

But why should we see these demographic shifts as a success? The drop in fertility after the baby boom which explains the shifts was driven by several successes. Expanded access to college education pushed back the age at which people were willing to marry. The opening up of many professions to women, along with growth in overall wages, meant that it made sense for many women to delay marriage. Finally, advances in contraceptive technology meant it was possible for women to take advantage of the new educational and professional opportunities that arose. The growth slowdown today is a consequence of family decisions made decades ago in response to rising living standards and the expansion of women’s rights.

The second source of the slowdown, the shift from goods towards services, was also driven by success. In the past one hundred years we became incredibly efficient at producing goods like clothes, food, furniture, and computers. The consequence was a steady reduction in the price of those goods relative to services. We could have used that reduction to buy even more goods than we did, but instead we took advantage of the savings to purchase more services like education, healthcare, and travel. Therefore the composition of our expenditures shifted away from goods and towards services (see Figure 2). We still consume more goods than before; it is just that they got so cheap that their share of our total expenditure fell relative to services.

This had a consequence for overall economic growth, however. Productivity growth in services is lower than for goods. That wasn’t a failure of services in the last few years. It appears to be an inherent quality noted by economist William Baumol in the 1960s. If a restaurant — a service — tried to operate with half their normal staff, you’d complain about the slow service and lack of attention. In comparison, if a manufacturer produced a laptop – a good – with half as much labour, you’d never know. This makes productivity growth harder for services than for goods. As we shifted expenditures towards services, aggregate productivity growth was thus bound to fall. Between the middle of the 20th century and today, that probably shaved another 0.2 to 0.25 percentage points off of the growth rate. But note that this only happened because of the productivity growth we experienced in the first place, a success.

Relative to the successes in the demographic shifts and spending shifts, the usual suspects are not capable of explaining the growth slowdown. Tax rates fell right as the slowdown started, and evidence from across states and industries shows that, if anything, more regulation was associated with faster growth, not slower. Trade with China exploded in the last twenty years, but evidence suggests that this had little effect on growth for the economy as a whole, even though individual regions and industries saw booms or busts. Economy-wide measures of the mark-up of price over cost rose, but it turns out that this didn’t lower growth. The shift of activity to high mark-up industries kept economic growth rates from falling even further than they did, as it meant we produced more valuable products.

If you’re still uncertain that the growth slowdown is a consequence of success, ask yourself what you’d give up to bring growth back to 4%. We could destroy half of all our goods: cars, couches, TVs, laptops, houses, trampolines, and so on. That would lead to a massive shift of spending towards goods as we scrambled to replace everything, and we’d see a jump in productivity growth. Alternatively, we could roll back contraceptive rights and women’s participation in the workforce in the hopes of starting a new baby boom. Wait twenty years and we’d have another surge of human capital into the economy. Would either of those be worth it just to see growth hit 4% again, perhaps not until 2040? Assuming the answer is “no”, that tells us the growth slowdown happened because of things that went right, things we would not sacrifice.

### 1NC – UQ

#### American tech dominance is high. Only antitrust threatens it.

Abbott ’21 [Alden Abbott, Paul Redmond Michel, Adam Mossoff, Kristen Jakobsen Osenga, and Brian O’Shaughnessy; March 10; the Federal Trade Commission’s General Counsel (2018-2021), adjunct professor at George Mason University, J.D. from Harvard Law School, M.A. in economics from Georgetown University; Retired Chief Judge and United States Circuit Judge of the United States Court of Appeals for the Federal Circuit; Law Professor at George Mason University; Law Professor at the University of Richmond; chair of Dinsmore’s IP Transactions and Licensing Group; the Regulatory Transparency Project, “Aligning Intellectual Property, Antitrust, and National Security Policy,” https://regproject.org/wp-content/uploads/Paper-Aligning-Intellectual-Property-Antitrust-and-National-Security-Policy.pdf]

The U.S. government has recognized that “5G is a critical strategic technology [such that] nations that master advanced communications technologies and ubiquitous connectivity will have a long-term economic and military advantage.”8 The U.S. has had a substantial technological edge over our military and intelligence rivals in foundational R&D for 5G and other next-generation technologies. U.S. companies have long been leaders in the development of previous generations of core mobile standards (2G, 3G, 4G, and LTE). This technological leadership has made it possible for U.S. companies to ensure the security and integrity of the hardware and software products that make up the backbone of the U.S. telecommunication systems. This leadership must continue for the U.S. government to more effectively anticipate potential security risks and take the necessary steps to protect national security.9

Despite this history of clear technological leadership, there are causes for concern. First, a very small number of U.S. companies have made the investments in the overwhelming majority of the R&D necessary to develop 5G.10 Historically, U.S. companies have heavily invested in R&D, which has propelled the U.S. into leadership positions in critical standard development organizations working on foundational next-generation technologies like 5G.11 U.S. companies like Qualcomm play a significant and important role in this process through innovation, patenting, and standard setting, but they are not alone in the global community of high-tech companies.12 Backed by their nations’ leadership, Chinese and Korean companies have also invested heavily in developing the core technologies for 5G.13

The willingness of U.S. companies to invest in R&D is threatened, however. The development of 5G is a bit like a race, with the companies who develop the best technology coming out ahead. While U.S. companies are savvy and talented competitors in this race, aggressive and unwarranted use of antitrust law by U.S. regulators, as well as by foreign antitrust authorities, threatens to put obstacles in these companies’ paths and hinder their ability to lead.

# 2NC

### States CP

#### SAG decisions are uniform and perceived

Greve 5 [Michael S. Greve, John G. Searle Scholar, American Enterprise Institute; Ph.D. 1987, Cornell University. “Cartel Federalism? Antitrust Enforcement by State Attorneys General.” 2005. https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5317&context=uclrev]

Largely in connection with the Microsoft litigation, the antitrust enforcement authority of state attorneys general, in their parens patriae capacity, has generated acrimonious debate.' Perhaps the only point of genuine agreement is the complaint over the lack of reliable empirical evidence on state antitrust enforcement. This Essay attempts to make a modest contribution to the data front and a more ambitious and provocative contribution to the theoretical debate. I present and examine two sets of data:

\* A list of state parens patriae antitrust actions, compiled and kindly made available to me by Judge Richard Posner.4 I combined and cross-checked these cases with parens patriae cases extracted from a similar list of state antitrust cases for the 1993-2002 period, compiled by different means by Michael DeBow.5 So amended, the list (hereinafter, "the PosnerDeBow list") comprises 103 parens patriae actions.

\* Sixty-eight antitrust cases, dating back to 1977, in which states submitted eighty-four briefs amici curiae. (In four cases, different states submitted briefs on either side; in the remaining cases, states submitted briefs at different stages of the litigation.) Robert Hubbard kindly supplied this list;' I have added some briefs from a website and a few obviously "missed" Supreme Court cases.

While these sets of data are still incomplete and, perhaps, unrepresentative, they are at least somewhat more comprehensive than the preceding efforts on which they build. They confirm earlier findings about state antitrust enforcement in two respects: the extraordinary extent of state consensus and cooperation on antitrust matters (coordinated, since 1983, through the National Association of Attorneys General (NAAG) Antitrust Task Force);9 and a pattern of limited, somewhat parochial, state enforcement," interspersed by dramatic and increasingly frequent multistate interventions in high-stakes national antitrust proceedings."

#### Overdeterrence is good – weak federal enforcement emboldens companies now

HLR 20 [Harvard Law Review, "Antitrust Federalism, Preemption, and Judge-Made Law", 6/10/20, https://harvardlawreview.org/2020/06/antitrust-federalism-preemption-and-judge-made-law/]

Third, critics argue that a multilevel antitrust regime threatens to overdeter procompetitive conduct. The policy behind much of preemption is to prevent state law from interfering with detailed, well-balanced federal regulation: obstacle preemption exists to prevent states from “stand[ing] as . . . obstacle[s] to the accomplishment and execution of the full purposes and objectives of Congress,” and field preemption exists to prevent state interference where Congress “left no room for lower-level regulation.” Although it is not field or obstacle preempted, antitrust law exhibits the type of detailed regulatory balance that the preemption doctrines attempt to prevent states from damaging. Much of antitrust law is built on finding the perfect balance of standards and remedies: the law must properly deter anticompetitive acts without deterring healthy competition. A state law that shifts remedies or standards can upset this careful balancing, thus overdeterring desirable private action.

Critics can point directly to ARC America as evidence of this overdeterrence threat. The Court’s decision in Illinois Brick, which limited suits by indirect purchasers, relied in large part on a belief that concentrating suits in direct purchasers would avoid overdeterrence. By allowing for additional suits, ARC America created extra deterrence not envisioned by the federal antitrust scheme.

Like the patchwork regime critique, the overdeterrence critique is weakened if the federal regime has failed to achieve proper balancing. Many antitrust regimes around the globe adopt different balances than the United States does. The European Union, for example, differs from the United States on remedial structure, the standard for illegal unilateral conduct, and market definition, among other issues. Moreover, many scholars argue that the U.S. antitrust balance is off and that more enforcement is needed. Even if U.S. antitrust policies are getting the balance generally right, it is unlikely that the federal regime is so finely tuned that any added deterrence will destroy the balance.

#### Brussels effect means platforms change globally

Bradford 12 [Anu Bradford, Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School, expert in international trade law, the author of The Brussels Effect: How the European Union Rules the World. “Antitrust Law in Global Markets.” 2012. https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty\_scholarship]

The final problem relating to decentralized antitrust enforcement is that the strictest antitrust jurisdiction always prevails when a real jurisdictional conflict arises. This leads to global overregulation. To illustrate this, assume that both state A and state B choose suboptimal antitrust laws: state A underregulates and state B overregulates. State A may choose to underregulate for protectionist or nonprotectionist reasons. It may be a net- exporter wishing to extract welfare gains at the expense of the importing jurisdiction or it may simply not believe in the benefits of strong antitrust intervention. In contrast, state B may choose to overregulate, similarly for a variety of protectionist and legitimate reasons. Assuming that state A (underregulator) and state B (overregulator) investigate the same transaction, state B prevails. This example exposes the key international antitrust paradox: the strictest regime wins.

#### Congress won’t get credit for policy originating from the states, but the perm doesn’t shield because state action must be independent and prior

Ferraiolo 8 – Dr. Kathleen Ferraiolo, Professor of Political Science at James Madison University, “State Policy Innovation and the Federalism Implications of Direct Democracy”, Publius: The Journal of Federalism, Volume 38, Number 3, January, p. 496-498

Ballot Initiatives that Respond to Federal Inaction

There were a number of policy issues that appeared on multiple state ballots during the past several election cycles. Voters have cast their ballots on topics ranging from same-sex marriage and gambling to education, energy, election reform, and taxes. Eminent domain, the minimum wage, abortion, government finances, and animal rights were other subjects that occupied voters’ attention. This study focuses on four issue areas, most of which were considered in multiple states and targeted federal policy either by responding to perceived inaction or by challenging federal law.

The Minimum Wage

Until the newly elected Democratic Congress tackled the issue in early 2007, the federal government had not enacted a minimum wage increase since 1997, when it was raised to five dollars and fifteen cents an hour. Not content to wait for the federal government to act on what they perceived to be an important issue, in 2006 voters in six states (Nevada, Arizona, Ohio, Colorado, Missouri, and Montana) ratified initiatives to increase the minimum wage and index it to inflation, in some cases overwhelmingly. Eleven state legislatures approved raises in 2006 as well. The average ‘‘yes’’ vote for the 2006 ballot measures was 66 percent, and the average margin of victory was thirty-one points. In 2004, voters in Florida and Nevada overwhelmingly supported minimum wage ballot measures. In total, the National Conference of State Legislatures (2007b) reports that thirty states and the District of Columbia have adopted state minimum wages that are higher than the federal minimum wage. Clearly, despite inaction at the federal level there is much support for raising the minimum wage among both state voters and elected officials, including Democratic and some Republican governors and legislators.

The ballot presence of hot-button issues such as same-sex marriage and the minimum wage has led scholars to investigate the mobilizing effects of these issues (Abramowitz 2004; Smith 2006; Nicholson 2005) and to uncover evidence of initiatives’ educative and electoral spillover effects. Smith and Tolbert, among the first to study the educative effects of direct democracy, found that initiative use is associated with increases in voter turnout, civic engagement, political interest, and political knowledge (Tolbert and Smith 2006; Smith and Tolbert 2004). Smith and Tolbert (2001), Kousser and McCubbins (2005), and others document the spillover effects of ballot initiatives on broader electoral and political processes such as citizens’ voting behavior in candidate elections and political party and interest group strategies. Smith (2006) notes that political officials (such as Arnold Schwarzenegger) and party operatives have skillfully used the initiative process to advance their policy agendas, threaten the legislature into action, and frame candidate elections. Smith, DeSantis, and Kassel (2006) find a positive correlation between support for anti-same-sex marriage measures and the vote for George W. Bush in Ohio and Michigan in 2004. Kousser and McCubbins (2005) describe how Democratic party activists in Colorado helped sponsor a successful 2004 initiative to increase mass transit funding that contributed to high voter turnout and Democratic victories in an election when Republican candidates dominated in many other states. In a wide-ranging study, Nicholson (2005) finds that ballot measures have agenda-setting, priming, and electoral spillover effects, altering the weight voters assign to various issues, the standards by which they evaluate candidates for congressional and gubernatorial offices, and the strategies of political candidates and parties.

No longer the exclusive domain of citizens or interest groups, political party organizations, candidates, and elected officials now use initiative elections for many purposes: To increase voter registration and turnout, advance their political agendas and ideologies, circumvent contribution and expenditure limits in candidate races, selectively mobilize support for their own candidates, prime vote choice for issues on which they believe they have an advantage, or drive a wedge in opponent coalitions (Smith 2005, 2006; Kousser and McCubbins 2005; Smith and Tolbert 2001). As candidates and parties seek initiative success for policy or ideological reasons, they also force their opponents to drain their resources in attempting to defeat initiatives that run counter to their own policy and political goals.

The minimum wage ballot measures that experienced overwhelming success in 2004 and 2006 were part of a concerted effort by progressive activists to mobilize sympathetic voters and sway candidate elections. Support for Florida’s 2004 minimum wage initiative by the Association of Community Organization for Reform Now (ACORN) led to the adoption of the measure as well as a successful voter registration drive. The group appeared to achieve its goals of ‘‘‘driving heightened Democratic turnout, passing the initiative, and building permanent political capacity for future gains’’’ (quoted in Kousser and McCubbins 2005, 973). In 2004 progressive activists in Nevada and Florida, with the approval of the Democratic National Committee, used focus groups and pre-election surveys to pretest the language of a variety of minimum wage proposals. They selected those they believed would mobilize low-income voters who would also support Democratic candidates, including presidential nominee John Kerry (Smith 2006). In 2006, the belief that minimum wage ballot initiatives could mobilize Democratic-leaning voters was an attractive possibility for labor unions (particularly the AFL-CIO, which launched its ‘‘America Needs a Raise’’ campaign that year) and other progressive groups such as ACORN interested in unseating the Republican congressional leadership (Broder 2006; Andrews 2006). The objectives of minimum wage sponsors, then, were manifold, including bringing about both state and federal policy change, boosting voter registration and turnout, and influencing candidate elections.

Even before they appeared on state ballots and in Congress, proposals to increase the minimum wage received high levels of support in public opinion polls (Roper Center 2007, 55). Democrats in Congress are certainly more sympathetic to a minimum wage increase than are most Republicans, and it is not surprising that they would choose to address the issue as one of their signature initiatives in the 110th Congress in early 2007. Still, the evidence presented here suggests that supporters of raising the minimum wage were able to simultaneously achieve three objectives: Advocates took independent state-level action to address a policy issue of public concern; they had a hand in helping to bring about an electoral majority in Congress more favorable to increasing the minimum wage; and their efforts led to increased turnout (if not Democratic victories) in at least some of the states where the measures appeared.

As predicted, the success of minimum wage initiatives in multiple states during the 2004–2006 election cycle ultimately resulted in intergovernmental policy consensus. Impatient with the pace of federal efforts to raise the minimum wage, state lawmakers and voters used the legislative process and direct democracy institutions to address the issue, ultimately producing a divergence in policy not only between states and the federal government but across states as well. The newly elected Democratic Congress resolved this federal–state policy diversity (if not state-to-state diversity; many states set their minimum wage rates higher than the federal level) by acting to raise the minimum wage for the first time in ten years. However, some evidence suggests that state voters and policymakers, and not federal lawmakers, receive most of the credit for policy innovations that originate at the state level. The House of Representatives passed a bill to raise the minimum wage during the second week of the congressional session, but in an early February 2007 poll fewer than one in five respondents gave the House credit for this accomplishment (Roper Center 2007, 131); 84 percent of survey respondents favored a minimum wage increase in 2006, but in March 2007 a mere 2 percent of respondents cited the issue when asked what was the most important thing Congress had done in its first few months (Roper Center 2007, 090). While Congress received little credit for its support for a minimum wage increase, the initiatives’ overwhelming success and the Democratic takeover of Congress in 2007 brought state and federal policy more in line with public opinion, enhancing the opinion-policy connection particularly at the state level and fostering vertical policy consensus and diffusion.

#### No preemption

ABA 18 [American Bar Association, voluntary bar association of lawyers and law students, which is not specific to any jurisdiction in the United States. “State Antitrust Enforcement Handbook.” Chapter 1: Context of State Antitrust Enforcement. https://www.americanbar.org/content/dam/aba-cms-dotorg/products/inv/book/309647692/5030649\_sample.pdf]

States have significant rights under federal and state antitrust law. These rights are exercised by state attorneys general, who fulfill their enforcement responsibilities within a federal system in which each state is sovereign.6 Each state has the right to make enforcement decisions that differ from those of other state and federal enforcers.7 Moreover, state enforcers can rely on state antitrust law, which generally is not preempted by federal antitrust law even when federal antitrust law differs from state antitrust law. State enforcers can also assert state law claims as supplemental claims in federal court.8

### New Agency CP

#### Aff enforcement is too slow – investigation, litigation, and appeals

Jones 20 [Alison Jones, Professor of Law at King's and a solicitor at Freshfields Bruckhaus Deringer LLP. William E. Kovacic, George Mason University Foundation Professor at the George Mason University School of Law. “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” 2020. <https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884>]

In the discussion above, we have been addressing the types of remedies that are imposed at the conclusion of a lawsuit. A problem in highly dynamic markets, however, is that the lag between the initiation of a case and a final order on relief may be so great that market circumstances have changed dramatically or the victim of allegedly improper exclusion may have left the market or otherwise lost its opportunity to expand and contest the position of the incumbent dominant firm. In this context, the antitrust cure arrives far too late to protect competition. The relatively slow pace of antitrust investigations and litigation (with appeals that follow an initial decision) has led some observers to doubt the efficacy of antitrust cases as effective policy-making tools in dynamic commercial sectors.

#### Especially in tech – IBM took 13 years

Chakravorti 20 [Bhaskar Chakravorti, Dean of Global Business at The Fletcher School at Tufts University and founding Executive Director of Fletcher’s Institute for Business in the Global Context. He is the author of The Slow Pace of Fast Change. "Antitrust Isn’t the Solution to America’s Biggest Tech Problem." 10/2/20. https://hbr.org/2020/10/antitrust-isnt-the-solution-to-americas-biggest-tech-problem]

There is clear legal, regulatory, and political momentum behind taking action, and soon there will be no turning back. The question is: Is anti-tech antitrust the right tool to address America’s biggest technology problem?

Historic as this push to challenge the power of these companies may be, the long history of antitrust action against Big Tech is not encouraging — particularly if you are hoping for a big company to be broken up outright. In 1956, the Bell System monopoly was left intact after a seven-year legal saga. The antitrust action against IBM lasted 13 years. Outcome? You guessed it: The behemoth remained unbroken. The 1998 action against Microsoft, in which the government argued that bundling of applications programs into Microsoft’s dominant operating system constituted monopolistic actions, ended three years later with a settlement and the company intact.

Today’s technology industry is more complex than it was in the time of the Bell System, IBM, or Microsoft cases. Moreover, while public sentiment had swung against Big Tech after the 2016 presidential elections, revelations of social media manipulation, and breaches of privacy, it has also improved during Covid-19, as Americans rely on tech products more than ever.

Any antitrust action against these companies will be long and drawn-out — no matter its conclusion — for a number of reasons. First, the complaints against the industry are varied, ranging from anti-competitiveness to privacy issues, data protection, and vulnerability to misinformation. Second, there are multiple large companies in the crosshairs, with different products and different suggested remedies. Third, multiple agencies are pursuing action, from the DOJ and the Federal Trade Commission to the House initiative led by Democrats to the Senate initiative led by Republicans, and each has a different approach, motivation, and timeline. Fourth, the technology itself keeps evolving. Finally, there is a precedent for settling with the tech industry: Previous antitrust actions have resulted in settlements or consent decrees where lawmakers got something from each of the companies in exchange for leaving them intact, which might well encourage companies to drag the fight out as long as possible. Putting these considerations together, it reasonable to expect a lengthy process that risks frittering away the current momentum, and which ends with a settlement that resolves issues on the margins.

### A1

#### They don’t understand markets – static view

Keating 21 [Raymond J. Keating, chief economist for the Small Business & Entrepreneurship Council and an adjunct professor in the MBA program at the Townsend School of Business at Dowling College. “The Treacherous Turn on Antitrust Regulation of U.S. Tech Companies.” https://sbecouncil.org/2021/02/24/the-treacherous-turn-on-antitrust-regulation-of-u-s-tech-companies/]

Insurmountable Challenges. From the perspectives of economics and market realities, antitrust law and regulation suffer from two challenges that are insurmountable. First, a static picture of the market currently is just that, i.e., static, and therefore, stands ignorant of the realities of market dynamism. Second, if elected officials, antitrust regulators and the courts were to recognize market dynamism, and also somehow guide antitrust enforcement by such dynamism, this would amount to nothing more than wild speculation about the future of existing and future industries. Each case would be dangerously disconnected from economic reality.

#### Congress shreds it and it links to politics

Speegle 12 [Adam Speegle, Antitrust Division Attorney, U.S. Department of Justice 2012-2019, J.D. Candidate, Michigan Law Review, 2012. “Antitrust Rulemaking as a Solution to Abuse of the Standard-Setting Process.” March 2012. <https://www-jstor-org.libproxy.berkeley.edu/stable/pdf/23216802.pdf?refreqid=excelsior%3Ac4717284c56854c5b5e9d43c6e0f6f7c>]

Another concern regards the political implications of the FTC invoking its antitrust rulemaking authority. One of the benefits often cited by proponents of rulemaking is that the rulemaking process, through notice and comment procedures, often brings important topics to Congress's attention.159 There is, however, a corresponding risk that Congress may grow concerned about the FTC's increasing intervention in the technology sector. In the 1970s and 1980s, the FTC experienced backlash from Congress due to its activism in the consumer protection arena.160 As a result, the FTC's authority and resources were curtailed, and procedures for promulgating rules under the consumer protection prong of Section 5 became so burdensome that they rendered FTC-initiated consumer protection rulemaking an impractical and rarely used tool.161 With an approach based on the "unfair methods of competition" prong, there may be a concern that FTC intervention in the technology sector could trigger a similar response from Congress.

FTC rulemaking has never won a section 5 case and legislative backlash nullifies the CP.

Jones & Kovacic 20 [Alison Jones\* and William E. Kovacic. Alison Jones, Professor of Law, King’s College London. William Kovacic. George Washington University, Washington DC, USA \*\*\* United Kingdom Competition and Markets Authority, United Kingdom. "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy." https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884]

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97 The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded some successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

#### Even if suits prevail, the Courts don’t rule with structural remedies – weak enforcement means markets don’t change

Jones 20 [Alison Jones, Professor of Law at King's and a solicitor at Freshfields Bruckhaus Deringer LLP. William E. Kovacic, George Mason University Foundation Professor at the George Mason University School of Law. “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” 2020. <https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884>]

Modern antitrust has, however, had less appetite for the use of antitrust to break up companies. Although the District Court in United States v Microsoft Corp 113 ordered, at the request of the DOJ, that Microsoft be broken into two parts, the Court of Appeals, despite affirming the violation of section 2, reversed and remanded the finding that Microsoft should be split into two. Setting out a high bar for structural relief, the Court stressed that the lower court had not (1) held a remedies-specific hearing114 or (2) provided adequate reasons for the decreed remedies.115

A number of factors seem responsible for the trend away from structural remedies. First, the change in antitrust thinking that has evolved since the early 1970s, from a belief that antitrust intervention and structural remedies can improve performance116 to the current more laissez-faire one.117 Second, concerns about the effectiveness of previous attempts to deconcentrate industries,118 especially given the length of time that antitrust proceedings take.119 Third, the difficulty involved in constructing and overseeing a structural remedy effectively. Although in cases involving a merger or acquisition it may be relatively easy to structure such a remedy through disentangling assets that were once owned separately,120 outside of this situation, the question of how and what to divest might be much more speculative, seem much more risky and may in fact be complex and difficult to administer (involving significant restructuring, separation of physical facilities, and allocation of staff from integrated teams).121 These types of concern make it a challenge to persuade a court that a structural remedy is warranted and will be successful in achieving its objective.122

#### Digital platform economies are fine now---studies.

Baye ’20 [Michael Baye, James Cooper, Kenneth Elzinga, Deborah Garza, Thomas Hazlett, Benjamin Klein, Tad Lipsky, Scott Masten, Maureen Ohlhausen, James Rill, Vernon Smith, Robert Willig, Joshua Wright, and John Yun, with some professors omitted for convenience; May 20; Former Director of the FTC’s Bureau of Economics, Bert Elwert Professor of Business at Indiana University; Former Acting and Deputy Director of the FTC’s Office of Policy Planning; Economics Professor at the University of Virginia; Chair of the Antitrust Modernization Commission, Former Acting and Deputy Assistant Attorney General of the DOJ’s Antitrust Division; Former Chief Economist of the FCC, Economics Professor at Clemson University; Economics Professor at UCLA; Former Acting Director of the FTC’s Bureau of Competition, Former Deputy Assistant Attorney General of the DOJ’s Antitrust Division; Business Economics and Public Policy at the University of Michigan; Former Acting Chairman & Commissioner of the FTC; Former Assistant Attorney General of DOJ’s Antitrust Division; Nobel Laureate in Economics and Professor at Chapman University; Former Deputy Assistant Attorney General for Economics at the DOJ’s Antitrust Division, Economics and Public Affairs Professor at Princeton University; Former Commissioner of the FTC, Law Professor at George Mason University; Former Acting Deputy Assistant Director of the FTC’s Bureau of Economics, Law Professor at George Mason University; “Joint Submission Of Antitrust Economists, Legal Scholars, And Practitioners To The House Judiciary Committee On The State Of Antitrust Law And Implications For Protecting Competition In Digital Markets,” <https://laweconcenter.org/wp-content/uploads/2020/05/house_joint_antitrust_letter_20200514.pdf>]

I. The Digital Economy is Healthy, Competitive, and Benefits Consumers

We do not recount here the extensive literature calling into question claims that market power and concentration have been systematically increasing, resulting in serious consequences for consumers, workers, innovation, economic inequality, and more. 9 At best, we have an incomplete and imperfect understanding of recent market trends; there is undoubtedly more research to do. But the weight of the literature today—much of which is no more than a couple of years old and some of which is still in working paper form—does not support the conclusion that the economy has been trending inexorably toward increased market power and greater consumer harm, especially for the purpose of justifying dramatic legislative changes to the antitrust framework. It is certainly not the case that “any conclusion to the contrary reflects either an incomplete or incorrect understanding of economics and the economic literature from the last several decades.”10

The most recent studies suggest that the observed changes in national-level concentration are brought about by the expansion of more productive large firms into local markets leading to, in these economists’ own words, “more, rather than less, competitive markets.”11 Further, despite occasional claims to the contrary, the literature has not uncovered systematic competition problems in digital markets. The best interpretation of existing evidence is that the deployment of new technology by traditional industries has increased economies of scale and scope and enhanced local competition.12 None of the economic evidence supports claims about generally enhanced market power in markets inhabited by the companies that develop such technological tools.

Prominent economists across the political spectrum have offered similar analyses, all of which serve to call into question the certitude of the assertions underlying the calls for radical antitrust reform.13

The digital economy is rife with competition and innovation, and consumers are benefitting in meaningful and remarkable ways from dynamic rivalry among companies big and small. That does not mean the digital economy is, or should be, immune from antitrust scrutiny. But recent scholarship strongly suggests that competition in that sector of the economy has thrived under the existing antitrust laws, which can and should be applied when those laws are violated.

#### Market is growing fast now.

Menton ’10-1 [Jessica; 2021; reporter, citing Liz Young, head of investment strategy at SoFi, an online personal finance company; USA Today, “Is the stock market primed for an October swoon? Why investors shouldn't fear the frightful month.” https://www.usatoday.com/story/money/personalfinance/2021/10/01/stock-market-primed-october-swoon-investors-shouldnt-fearful/5931769001/]

While October is often considered a spooky month for investors, earning a bad reputation following the crashes of 1929, 1987 and the global financial crisis in 2008, investors shouldn’t be so fearful.

Since 1950, October ranks as the seventh-best month, while in the past 10 and 20 years, it ranks as the fourth-best, according to LPL Financial.

So while the 31-day stretch isn’t one of the best months of the year, it’s not the worst, either.

Still, some investors are jittery after September proved to be the worst month for the Dow Jones Industrial Average in nearly a year, while the S&P 500 recorded its biggest monthly loss since the start of the coronavirus pandemic.

More proof of October’s historic volatility came Friday when the Dow surged more than 480 points after drugmaker Merck announced progress in the development of an oral COVID-19 drug, which boosted investor optimism. Despite the gains, stocks still closed lower for the week, with the S&P 500 posting its worst weekly drop since February.

“October is known for some spectacular crashes and many expect bad things to happen again this year,” Ryan Detrick, chief market strategist at LPL Financial, said in a note to clients. “But the truth is this month is simply misunderstood, as historically it is about an average month.”

In fact, September has actually been the worst month for the stock market, averaging a 0.4% decline, according to the Stock Trader’s Almanac. And it lived up to its reputation again this year.

Why investors are spooked this month

Although Congress averted a government shutdown Thursday just hours before a midnight deadline, investors continue to wait for lawmakers to reach a deal on the national debt ceiling before the U.S. government runs out of money to pay its bills.

The debt ceiling is viewed as a greater economic threat if Congress fails to suspend or raise the U.S. borrowing limit before Oct. 18, which would result in a historic default and damage the financial system. While risk remains, analysts widely believe a deal will likely get done before then.

In addition to the debt ceiling debate in Washington, investors have already been weighing a string of concerns, including higher interest rates, the spread of the COVID-19 delta variant and indebted real estate developers in China.

This came as a shift had already taken place beneath the stock market's surface in recent months, with fewer stocks participating in the market rally, a trend that is often viewed as a warning sign for investors that a potential pullback is coming.

That weakness also signaled a pessimistic shift in investor attitudes after they remained largely euphoric in the market boom at the start of the year. There has been a wave of fear of missing out to cash in big on everything from GameStop to cryptocurrencies during the rebound.

In September, the blue-chip Dow slumped 4.3%, its biggest loss since October 2020.

The S&P 500, meanwhile, slid 4.8% in September, its first monthly drop since January and its largest since March 2020, when the COVID-19 pandemic first battered financial markets and the global economy. Its decline in September left it only 0.2% higher in the third quarter, its smallest quarterly gain since the COVID outbreak began.

To be sure, stocks have posted double-digit gains for the year. The Dow and the S&P 500 have rallied 12.2% and 16%, respectively, so far in 2021.

Why investors shouldn't be fearful

The economy is recovering following last year's recession and corporate profits are growing once again. Despite the challenges with COVID-19, investors are feeling more hopeful about the long-term.

The U.S. economy could benefit from a further spending boom as businesses reopen, fueled by reduced coronavirus fears, steady household incomes and bigger savings accounts. As the economy recovers and more Americans are vaccinated, the current bull market has more room to run and could further add to the value of Americans' 401(k) plans, experts say.

Since World War II, economic expansions, on average, have lasted more than five years. That suggests the stock market could be poised to keep climbing in the final months of 2021 and beyond as the economy recovers.

“I don’t see a recession coming,” says Liz Young, head of investment strategy at SoFi, an online personal finance company. “This volatility could last during the fall, but I still expect that the stock market will end higher this year, and things may feel more optimistic by December than they do now.”

After a historic crash in March 2020, stocks staged a rally of nearly 100%, reaching record highs following unprecedented aid from the Federal Reserve and Congress to shore up the economy during the global pandemic.

On Thursday, the S&P 500 slid more than 5% from its all-time high set on Sept. 2, the first time that has happened since September 2020. That's a long stretch of stability. Typically, the broad index falls 5% or more two to three times a year.

That means stocks were likely overdue for a pullback following a strong run, analysts say, which would benefit people who avoid the market during the market turbulence last year and lost out on hefty gains. It would also help people who want to continue piling money into their retirement and investing accounts, according to Young.

“The market was due for some volatility," Young added. "Pullbacks and drawdowns in the stock market without a recession are typically buying opportunities."

Following Friday’s rally, the S&P 500 is 4% away from its record high. Both the Dow and the Nasdaq are off 3.7% and 5.3% from their respective peaks.

#### Economy is surging---particularly small business---BUT they expect no intervention in the market.

TW ’9-29 [WRAL Tech Wire; 2021; citing a survey by Gus Faucher, chief economist for PNC Bank; “Survey: Small business optimism at all-time high but consumer confidence drops,” https://www.wraltechwire.com/2021/09/29/survey-small-business-optimism-at-all-time-high-but-consumer-confidence-drops/]

RALEIGH – Small business owners are feeling more optimistic than at any point in the prior 19 years, a new survey from PNC found. But consumers aren’t nearly as excited about the future.

Owners with a higher share of employees reporting they’ve been fully vaccinated against COVID-19 are even more optimistic.

The survey, which was conducted throughout the month of August 2021, asked small business owners about the actions taken to encourage or require employee vaccination against COVID-19.

Eight in 10 business owners reported that they’d taken at least one step to encourage–or require–their employees to become fully vaccinated against COVID-19, according to the study, and 48% reported they’ve required vaccinations against COVID-19.

The survey results indicated 53% of business leaders with fewer than 100 full-time employees have required their employees to receive the vaccine. But for those businesses with 100 or more full-time employees, only 26% had required vaccination against COVID-19.

“And this was before the Biden Administration mandate,” said Gus Faucher, chief economist for PNC Bank, which commissioned the study. “So that number may increase.”

CONSUMER CONTRAST

The positive news contrasts with that of consumers. U.S. consumer confidence declined for the third straight month in September, according to The Associated Press.

The Conference Board said Tuesday consumer confidence index fell to a reading of 109.3 in September, down from 115.2 in August. September’s reading is lowest level for the index since it sank to 95.2 in February.

Lynn Franco, senior director of economic indicators for the Conference Board, said that consumer confidence is still high by historical standards but noted that the index has fallen by nearly 20 months since reaching 128.9 in June. “These back-to-back declines suggest consumers have grown more cautious and are likely to curtail spending going forward,” Franco said, according to The AP.

The view of consumers on both the present situation and future expectations continued to degrade as intentions for spending on big items likes homes, autos and major appliances all retreated again, the board said.

Concerns about inflation are also dampening consumer sentiment.

BUSINESS OWNERS OPTIMISTIC, DESPITE CONCERNS

Despite increasing concerns about the Delta variant, labor shortages, and inflation, small business owners are optimistic about the future of their business and about the future of the economy, the study found.

And small business owners who reported higher vaccination rates among their employees were more optimistic than their peers, Faucher noted.

“Those businesses that have the highest number of share of employees vaccinated feel more optimistic about their prospects,” said Faucher.

“There are different reasons,” Faucher noted. “Presumably, areas with higher rates among employees will also have higher vaccination rates among customers.”

Businesses may also believe there will be fewer disruptions to their business with a higher share of their employees vaccinated, said Faucher, and may also feel more optimistic, generally.

“Businesses have a better sense of how to respond now, they’ve been going through this for more than a year,” said Faucher. “They know what they can do to keep their businesses open, they know what they can do to have employees work remotely, they have procedures in place.”

“They believe that as long as things don’t get worse, they can handle the Delta variant,” said Faucher.

And that’s leading businesses to be optimistic, Faucher noted the survey results indicate. In fact, according to the study, business owners profit expectations doubled in this survey compared to the prior PNC survey that was conducted in the spring, and sales and demand have reached the highest levels in the survey’s 19-year history, PNC said in a statement.

“I think the key thing is that businesses generally are feeling optimistic,” said Faucher. “They view vaccinations as key to the economy over the next couple of years.”

### A2

#### Liberal order resilient---decline is peaceful.

Jake Sullivan 18, Senior Fellow at the Carnegie Endowment for International Peace, Former National Security Adviser to Vice President Joe Biden and Director of Policy Planning at the U.S. Department of State, J.D. from Yale Law School, March/April 2018, “The World After Trump: How the System Can Endure,” https://www.foreignaffairs.com/articles/2018-03-05/world-after-trump

But the existing order is more resilient than this assessment suggests. There is no doubt that Trump represents a meaningful threat to the health of both American democracy and the international system. And there is a nonnegligible risk that he could drag the country into a constitutional crisis, or the world into a crippling trade war or even an all-out nuclear war. Yet despite these risks, rumors of the international order’s demise have been greatly exaggerated. The system is built to last through significant shifts in global politics and economics and strong enough to survive a term of President Trump.

This more optimistic view is offered not as comfort but as a call to action. The present moment demands resolve and affirmative thinking from the foreign policy community about how to sustain and reinforce the international order, not just lamentations about Trump’s destructiveness or resignation about the order’s fate. No one knows for certain how things will turn out. But fatalism will become a self-fulfilling prophecy.

The order can endure only if its defenders step up. It may be durable, but it also needs an update to account for new realities and new challenges. Between fatalism and complacency lies urgency. Champions of the order must start working now to protect its key elements, to build a new consensus at home and abroad about needed adjustments, and to set the stage for a better approach, before it’s too late.

A RESILIENT ORDER

In a world where the major trends seem to spell chaos, it is fair to place the burden of proof on those who claim that the current order can continue. Yet well before Trump, it had already demonstrated its capacity to adapt to changes in the nature and distribution of power. Three basic factors account for such resilience—and demonstrate why the emphasis now should be on protecting and improving the order rather than planning for the aftermath of its demise.

First, most of the world remains invested in major aspects of the order and still counts on the United States to operate at its center. The passing of U.S. dominance need not mean the end of U.S. leadership. That is, the United States may not be able to direct outcomes from a position of preeminent economic, political, and military influence, but it can still mobilize cooperation on shared challenges and shape consensus on key rules. In the years ahead, although Washington will not be the only destination for countries seeking capital, resources, or influence, it will remain the most important agenda-setter.

Some context is important. The U.S.-led order was built at a unique moment, at the end of World War II. Europe’s and Asia’s erstwhile great powers were reduced to rubble, and a combination of dominance abroad and shared economic prosperity at home allowed the United States to serve as the architect and guarantor of a new order fashioned in its own image. It had not just the material power to shape rules and drive outcomes but also a model many other countries wanted to emulate. It used the opportunity to build an order that benefited itself as well as others, with clear advantages for populations at home and abroad. As the international relations scholar G. John Ikenberry has put it in this magazine, the resulting system was “hard to overturn and easy to join.” The end of the Cold War and the fall of the Soviet Union served to reinforce and extend American preeminence.

This precise state of affairs was never going to last forever. Other powers would eventually rise, and the basic bargain would one day need to be revisited. That day has arrived, and the question now is, do other countries want a fundamentally different bargain or simply some adjustments? A comprehensive 2016 rand analysis found that few powers display an appetite for dismantling the international order or transforming it into something unrecognizable. And while Trump’s election has forced countries to contemplate a world without a central role for the United States, many still view the president as an aberration and not a new American normal, especially given that the United States has bounced back before.

#### Uncertainty alone risks extinction – miscalculation

Reuters 20 [Reuters citing Nick Carter, Britain’s Chief of the Defence Staff. “Global uncertainty could risk World War Three - UK military chief.” 11/7/20. <https://www.reuters.com/article/us-britain-remembrance-war/global-uncertainty-could-risk-world-war-three-uk-military-chief-idUSKBN27O066>

Current global uncertainty and anxiety amid the economic crisis caused by the coronavirus pandemic could risk another world war, the head of Britain’s armed forces has warned.

In an interview aired to coincide with Remembrance Sunday, the annual commemorations for those who have been killed and wounded in conflict, Nick Carter, Britain’s Chief of the Defence Staff, said an escalation in regional tensions and errors of judgement could ultimately lead to widespread conflict.

“I think we are living at a moment in time where the world is a very uncertain and anxious place and of course, the dynamic of global competition is a feature of our lives as well, and I think the real risk we have with quite a lot of the regional conflicts that are going on at the moment, is you could see escalation lead to miscalculation,” Carter told Sky News.

Asked if that meant there was a genuine threat of another world war, Carter replied: “I’m saying it’s a risk and we need to be conscious of those risks.”

Carter, who became the British military chief in 2018, said it was important to remember those who had died in previous wars as a warning to those who might repeat past mistakes.

“If you forget about the horror of war, then the great risk I think is that people might think that going to war is a reasonable thing to do,” he said.

“We have to remember that history might not repeat itself but it has a rhythm, and if you look back at the last century, before both world wars, I think it was unarguable that there was escalation which led to the miscalculation which ultimately led to war at a scale we would hopefully never see again.”

#### Shifts in antitrust law upend economic certainty – perception alone crushes innovation

Young 19 [Ryan Young, Senior Fellow at the Competitive Enterprise Institute (CEI). Clyde Wayne Crews, Jr. vice president for policy and a senior fellow at the Competitive Enterprise Institute. “The Case against Antitrust Law.” April 2019. https://cei.org/sites/default/files/Wayne\_Crews\_and\_Ryan\_Young\_-\_The\_Case\_against\_Antitrust\_Law.pdf]

Uncertainty. Antitrust regulation creates an enormous amount of economic uncertainty. Nobody knows how it will be used at a given time. If antitrust statutes are interpreted literally, potentially any firm, no matter how small, can be charged with an antitrust violation—or for dominating its relevant market, however defined. If a business sells goods at a lower price than its competitors, it can be charged with predatory pricing. If it sells goods at the same price as its competitors, it can be charged with collusion. And if it sells goods at a higher price than its competitors, it can be charged with abusing market power.

A century of case law has evolved some guidelines, but judicial precedents can be overturned any time a new case is brought. There are few bright-line legislative or judicial standards for antitrust enforcement. It is mostly guided by a mix of inconsistently enforced judicial precedents, regulators’ personal discretion, and political factors unrelated to market competition. Even the mere threat of antitrust enforcement can have a preemptive chilling effect on innovation, business strategies, and potential efficiency-enhancing arrangements.

#### Suits alone stifle innovation but don’t solve competition – take years of resources

Young 19 [Ryan Young, Senior Fellow at the Competitive Enterprise Institute (CEI). Clyde Wayne Crews, Jr. vice president for policy and a senior fellow at the Competitive Enterprise Institute. “The Case against Antitrust Law.” April 2019. https://cei.org/sites/default/files/Wayne\_Crews\_and\_Ryan\_Young\_-\_The\_Case\_against\_Antitrust\_Law.pdf]

Bork’s statement is problematic for several reasons. How do regulators and judges know which cases are causing consumer harm and which are not? How do they decide which cases to pursue? Cases also often take years to resolve. Assuming regulators identify a valid case, how would they, and the judges who hear the case, know if market activity could address the problem by the time the case is decided? Do the benefits of regulatory action exceed the court and enforcement costs? Are the affected companies in a position to capture the regulators?

More to the point, does the short-term benefit come at a greater long-term cost? An enforcement action now could have a deterrent effect on future mergers, contracts, and innovations, including in unrelated industries. The consumer harm from these could well exceed the short-term benefits of a short-term improvement on market outcomes—assuming that regulators are consistently capable of such a feat.

For example, the IBM v. United States antitrust case filed in 1969 lasted for 13 years until the Justice Department decided to drop the case in 1982. By then, the computer market had changed so completely that IBM’s competitors had long since surpassed it. In this case, regulators eventually gave up, however belatedly, but this is not guaranteed to happen in every case. And who knows what consumer- benefiting innovations IBM could have developed with the time and resources it ended up devoting to defending itself in this case? Neo-Brandeisians could argue that it was the antitrust process itself that empowered IBM’s competitors to overtake it, but there is no way of knowing that.

#### U.S. innovation is high and globally dominant---big business is key.

Wolf ’21 [Martin; April 27; Chief Economics Commentator, M.A. in Economics from Oxford University; Financial Times, “China is wrong to think the US faces inevitable decline,” <https://www.ft.com/content/8336169e-d1a8-4be8-b143-308e5b52e355>]

The Chinese elite are convinced that the US is in irreversible decline. So reports Jude Blanchette of the Center for Strategic and International Studies, a respected Washington-based think-tank. What has been happening in the US in recent years, particularly in politics, supports this perspective. A stable liberal democracy would not elect Donald Trump — a man lacking all necessary qualities and abilities — to national leadership. Nevertheless, the notion of US decline is exaggerated. The US retains big assets, notably in economics.

For one and half centuries, the US has been the world’s most innovative economy. That has been the basis of its global power and influence. So how does its innovative power look today? The answer is: rather good, despite competition from China.

Stock markets are imperfect. But the value investors put on companies is at least a relatively impartial assessment of their prospects. At the end of last week, 7 of the 10 most valuable companies in the world and 14 of the top 20, were headquartered in the US.

If it were not for Saudi Arabian oil, the five most valuable companies in the world would be US technology giants: Apple, Microsoft, Amazon, Alphabet and Facebook. China has two valuable technology companies: Tencent (at seventh position) and Alibaba (at ninth). But those are China’s only companies in the top 20. The most valuable European company is LVMH at 17th. Yet LVMH is just a collection of established luxury brands. That ought to worry Europeans.

When we look only at technology companies, the US has 12 of the top 20; China (with Hong Kong but excluding Taiwan) has three; and there are two Dutch companies, one of which, ASML, is the largest manufacturer of machines that make integrated circuits. Taiwan has the Taiwan Semiconductor Manufacturing Company, the world’s biggest contract computer chipmaker, and South Korea has Samsung Electronics.

Life sciences are another crucial sector for future prosperity. Here there are seven European companies (with Switzerland and the UK included) in the top 20. But the US has seven of the top 10, and 11 of the top 20. There is also one Australian and one Japanese company, but no Chinese businesses.

In sum, US companies are globally dominant and nearly all the most valuable non-US firms are headquartered in allied countries.

#### A new wave of innovation is imminent, reaching all sectors---large firms are key.

Gourevitch ’21 [Antoine and Massimo Portincaso; March 11; Managing Director and Senior Partner at the Boston Consulting Group, M.B.A. from INSEAD, M.A. from Ecole Centrale in Paris; Boston Consulting Group, “Deep Tech and the Great Wave of Innovation,” <https://www.bcg.com/publications/2021/deep-tech-innovation>]

Despite the inherent risks of failure, businesses and investors have shown increasing interest in deep tech. According to our preliminary estimates, investment in deep tech (including private investments, minority stakes, mergers and acquisitions, and IPOs) more than quadrupled over a five-year period, from $15 billion in 2016 to more than $60 billion in 2020. The average disclosed amount per private investment event for startups and scale-ups rose from $13 million in 2016 to $44 million in 2020. For early-stage startups, the most recent survey by Hello Tomorrow found that the amount per investment event increased from $36,000 to $2 million between 2016 and 2019.

And funding sources are expanding. While information and communications technology (ICT) and biopharma companies continue to invest substantially in deep tech, more traditional large enterprises are becoming increasingly active. For example, Sumitomo Chemical has signed a multiyear partnership with Zymergen to bring new specialty materials to the electronics products market, and Eni has invested $50 million in Commonwealth Fusion Systems and joined its board of directors. Bayer has joined forces with Ginkgo Bioworks to reduce agriculture’s reliance on carbon-intensive nitrogen fertilizers. The resulting venture, Joyn Bio uses synthetic biology to engineer nitrogen-fixing microbes that enable cereal crops to extract nitrogen from the air in a usable form. Sovereign wealth funds are playing too. Singapore’s Temasek Holdings invested in JUST (plant-based egg alternatives), Commonwealth Fusion Systems (commercial fusion energy), and Memphis Meats (animal-cell-based meat).

More and more mainstream companies and institutions are recognizing that solutions to big problems—and the future of innovation—lie in deep tech.

The Fourth Wave of Innovation

The first wave of modern business innovation started in the nineteenth and early twentieth centuries with breakthroughs such as the Bessemer process for manufacturing steel and the Haber-Bosch process for making ammonia.

Following World War II, the second wave of modern business innovation—the information revolution—gave birth to large-company R&D, particularly in the ICT and pharma sectors. Bell Labs, IBM, and Xerox PARC became household names and Nobel Prize workshops. Merck alone launched seven major new drugs during the 1980s.

In the third wave, the digital revolution, two guys in a garage (or a Harvard dorm room) led the innovation charge, which resulted in the rise of Silicon Valley and, later, China’s Gold Coast as global centers of computing and communications technology and economic growth. At the same time, the new field of biotech, also driven by entrepreneurs, fueled much of the innovation in pharmaceuticals.

The wave now taking shape as older barriers to innovation crumble embraces a new model and promises to radically broaden and deepen innovation in every business sector. The increasing power and falling cost of computing and the rise of technology platforms are the most important contributors. Cloud computing is steadily improving performance and expanding breadth of use. Biofoundries are becoming for synthetic biology what cloud computing already is for computation. Similar platforms are emerging in advanced materials (Kebotix and VSPARTICLE are two examples).

Meanwhile, costs continue to fall, including those related to equipment, technology, and access to infrastructure. Increasing use of standards, toolkits, and an open approach to innovation, paired with the ever-increasing availability of information and data, plays an important role as well.

# 1NR

### Trade DA

#### Trade turns and solves the case---foreign competition is better than antitrust

Anu Bradford 19, Henry L. Moses Professor of Law and International Organization at Columbia Law School, LLM from Harvard Law School, Master of Laws from University of Helsinki, JD from Harvard Law School, and Dr. Adam S. Chilton, University of Chicago, Professor of Law and the Walter Mander Research Scholar at the University of Chicago Law School, MA in Political Science from Yale University, JD and PhD in Political Science from Harvard University, “Trade Openness and Antitrust Law”, Journal of Law & Economics, Volume 62, Number 1, 62 J. Law & Econ. 29, February 2019, Lexis

2.1. Trade and Antitrust Law as Substitutes

Many scholars suggest that trade liberalization may make adopting an anti trust regime unnecessary (Bhagwati 1968; Helpman and Krugman 1989; Blackhurst 1991; Neven and Seabright 1997; Melitz and Ottaviano 2008). According to this view, free trade is an effective way to ensure that markets remain competitive because facilitating entry checks market power (Baumol, Panzar, and Willig 1982). For example, when an economy is open to trade, monopolists refrain from abusing their market power because low external barriers ensure that competitors can enter the market and contest any such abusive practices. In this way, trade liberalization renders an anti trust intervention into monopolistic practices superfluous. Exports fueled by trade liberalization should also enhance market competition. New opportunities in export markets ensure that more firms can reach an efficient scale of production, which further spurs competition and reduces the need for an anti trust regime (Bartók and Miroudot 2008).

Relying on trade liberalization to safeguard market competition could have several advantages. First, foreign producers must incur certain fixed costs and variable trade costs to enter a new market that domestic producers do not incur. If foreign firms are able to enter and effectively compete even after incurring those costs, they are presumably more efficient and hence may act as an even more effective discipline on the market than domestic firms (Bartók and Miroudot 2008). Second, choosing free trade over anti trust regulation eliminates the need to rely on government bureaucracies. Many who remain skeptical of governmental intervention favor free trade and thus prefer to have imports discipline [\*33] anticompetitive behavior. This argument may gain all the more force today considering the complexities associated with antitrust regulators from over 130 countries all applying different rules in an effort to regulate the global marketplace. Finally, although trade openness may "act as an effective antitrust policy" (Pomfret 1992, p. 11), an effective antitrust policy does not act as an effective trade policy. For example, if the United States were to impose a 30 percent tariff on foreign producers today, foreign firms would likely not enter no matter how competitive the markets are behind the border. Domestic antitrust laws thus may do little to facilitate market entry in the presence of highly protectionist trade policy.

### Politics DA

#### Infrastructure boosts econ growth and leadership

Humpton 21 [Barbara Humpton is president and CEO of Siemens USA. Mark A. Weinberger is former global chairman and CEO of EY. "The infrastructure bill is vital to America’s economic future", 8/25/21, https://fortune.com/2021/08/25/infrastructure-bill-us-economy-jobs-inclusion-green-energy/]

Our history is full of such infrastructure stories, each one woven into America’s can-do spirit. And thanks to bipartisanship in the Senate, it can soon be our turn to write a new chapter. The infrastructure bill now moving ahead in the House provides us with an opportunity to create high-paying jobs today and to build for the next century of American growth and leadership.

As a current and a former CEO of large global businesses, we know how modern infrastructure makes it easier for businesses like ours to strengthen our operations, benefiting employees, future hires, and the supply chain. This is a generational opportunity to make investments in infrastructure that can help keep the U.S. economy competitive globally, make our economic system more inclusive, and rebuild the resiliency our society needs to face future crises.

Our responsibility when it comes to infrastructure is twofold. Yes, we need to boldly invest in our future. But, more than previous generations, we also need to develop the fortitude not to be overwhelmed by the job of just maintaining what we’ve been given. Our charge is to build what is necessary to meet future challenges while also reinventing our inherited physical infrastructure so that future generations benefit from it as much as we have.

These efforts must start by addressing a major gap in infrastructure spending. In its most recent evaluation, the American Society of Civil Engineers gave the United States a C-grade and identified a $2.59 trillion shortfall in government spending on infrastructure projects, the impact extending well beyond crumbling roads and bridges.

We need to act now to make U.S. infrastructure resilient enough to be an asset to us in addressing the existential threat posed by climate change, a threat seen in severe storms and raging wildfires. A federal analysis found that the U.S. electric grid lost power 285% more often in 2013 than it did in 1984, costing American businesses as much as $150 billion per year. Around the world countries and businesses are taking climate change seriously, and we risk falling further behind.

The investment levels established in the bill would deliver the largest long-term investment in U.S. infrastructure in nearly a century, with four times the infrastructure investment unlocked by the 2009 Recovery Act. Critically, the bill’s priorities go well beyond roads and bridges. If the House passes this bill, we’ll not only make historic investments in repairing America’s road network, but in areas that are vital to our future.

Making the largest investments in public transit and in passenger rail in our nation’s history would have an outsize impact on job creation, economic growth, and greening the transportation sector, the biggest source of emissions. Rail investment will improve equity and connect cities more efficiently than highway expansions.

Let’s also not miss out on the opportunity proposed in the framework to modernize our electric grid and start building a nationwide network of electric vehicle chargers. The nation that built the interstate highway system and ushered in the automobile industry must lead the way forward. This is the step we need to catch up to other countries.

There’s still another reason we should roll up our sleeves and get to work, though. Studies show that every dollar invested in infrastructure generates nearly $4 in economic growth. Economists also agree that infrastructure investment will create jobs and increase participation in the labor force. One study looking at the impact of infrastructure investment found that, of the millions of jobs created, 85% of positions will not require a four-year college degree.

In 1935, by the time the final block was put down 726 feet above the canyon floor, more than 21,000 workers had been a part of making the Hoover Dam a reality. They stood up not only the then-tallest dam in the world, but, with its hydroelectric generation, a first-of-its-kind clean power project that reminds us of what’s possible today: workers nationwide building the infrastructure we need for a changing tomorrow, activating a nationwide supply chain.

This decade started in darkness and disruption, but it can ultimately be known for transformation and bold action as we work together to shape the future we want. The choice is ours.

We hope that bipartisanship will again prevail and that an infrastructure bill will become a reality. Let’s act now to reverse decades of underinvestment in America’s infrastructure and add to our remarkable legacy of construction, engineering, and innovation.

#### Solves climate—largest ever investment

Mufson 10/28 [Steven Mufson and Sarah Kaplan, "New budget deal marks the biggest climate investment in U.S. history", 10/28/21, https://www.washingtonpost.com/climate-environment/2021/10/28/climate-biden-build-back-better/]

The climate package comes at a time when President Biden is hoping to demonstrate at a high-profile United Nations summit next week that the United States can meet its international climate commitments. The legislation, coupled with executive actions, could help Biden halve U.S. greenhouse gas emissions in less than nine years compared with 2005 levels.

“This is game-changing,” said Carol Browner, who served as President Barack Obama’s top climate adviser during the start of his administration and headed the Environmental Protection Agency under President Bill Clinton.

Comparing it to the 2009 stimulus bill that funneled billions of dollars to clean energy, Browner said, “This is six times the amount of Obama’s investment, and we thought that was big.”

Republican lawmakers, however, said it would make it harder for the United States to take advantage of its abundant supply of fossil fuels. During a House Committee on Oversight and Reform hearing Thursday, where Democrats grilled oil executives over their past efforts to play down the effect of climate change, Rep. Andy Biggs (R-Ariz.) specifically targeted the new tax-and-spending bill.

“The president and his allies in Congress have consistently advocated for policies that have led to higher energy prices and increased inflation,” Biggs said.

The new Democratic plan, however, underscores how much has shifted since Obama chose to prioritize economic and health-care legislation over a climate bill a decade ago. This year, as wildfires and floods have hammered the country amid scientific warnings that the world must slash its carbon emissions by the end of the decade, Biden and his fellow Democrats have made clean energy central to their economic agenda.

“Climate in 2020 became an electoral powerhouse,” said Sen. Edward J. Markey (D-Mass.), who co-sponsored a cap-and-trade bill that passed the House in 2009 but stalled in the Senate. “That army of the Sunrise Movement, the youth climate strikers, they have proven that if you organize around clean energy, around climate issues, you can change the inside dynamic of the back rooms of Washington.”

Documents from the White House and analyses by independent experts suggest the legislation will reduce U.S. annual carbon dioxide emissions by about a gigaton, nearly a sixth of its current annual emissions.

Markey said he now believes that tax credits would “supercharge the renewable revolution” and work in concert with new regulations the administration plans to adopt.

“Standards are more permanent, more popular, and provide more certainty that going forward we will get dangerous emissions down to where they need to be to protect every community, especially environmental justice communities,” he said, referring to areas with a higher share of low-income Americans and people of color.

#### Biden’s using his leverage—they’re close to a deal and Sinema’s on board

Mascaro 10/29 [LISA MASCARO, AAMER MADHANI and FARNOUSH AMIRI, "Biden announces ‘historic’ deal — but still must win votes", 10/29/21, https://apnews.com/article/joe-biden-congress-democrats-budget-framework-60a1bc276d0ab8eb3e0347fc54ee8c2c]

The fast-moving developments put Democrats closer to a hard-fought deal, but battles remain as they press to finish the final draft in the days and weeks ahead

“Let’s get this done,” Biden exhorted.

“It will fundamentally change the lives of millions of people for the better,” he said about the package, which he badly wanted before the summits to show the world American democracy still works.

Together with a nearly $1 trillion bipartisan infrastructure bill, Biden claimed the infusion of federal investments would be a domestic achievement modeled on those of Franklin Roosevelt and Lyndon Johnson.

“I need your votes,” Biden told the lawmakers at the Capitol, according to a person who requested anonymity to discuss the private remarks

But final votes will not be called for some time. The revised package has lost some top priorities, frustrating many lawmakers as the president’s ambitions make way for the political realities of the narrowly divided Congress.

Paid family leave and efforts to lower prescription drug pricing are now gone entirely from the package, drawing outrage from some lawmakers and advocates.

Still in the mix, a long list of other priorities: free prekindergarten for all youngsters, expanded health care programs — including the launch of a new $35 billion hearing aid benefit for people with Medicare — and $555 billion to tackle climate change.

There’s also a one-year extension of a child care tax credit that was put in place during the COVID-19 rescue and new child care subsidies. An additional $100 billion to bolster the immigration and border processing system could boost the overall package to $1.85 trillion if it clears Senate rules.

One pivotal Democratic holdout, Sen. Kyrsten Sinema of Arizona, said, “I look forward to getting this done.

However, another, Joe Manchin of West Virginia, was less committal: “This is all in the hands of the House right now.”

The two Democrats have almost single-handedly reduced the size and scope of their party’s big vision, and are crucial to sealing the deal.

Republicans remain overwhelmingly opposed, forcing Biden to rely on the Democrats’ narrow majority in Congress with no votes to spare in the Senate and few in the House.

Taking form after months of negotiations, Biden’s emerging bill would still be among the most sweeping of its kind in a generation, modeled on New Deal and Great Society programs. The White House calls it the largest-ever investment in climate change and the biggest improvement to the nation’s healthcare system in more than a decade

In his meeting with lawmakers at the Capitol, Biden made clear how important it was to show progress as he headed to the summits.

“We are at an inflection point,” he said. “The rest of the world wonders whether we can function.”

With U.S. elections on the horizon, he said it’s not “hyperbole to say that the House and Senate majorities and my presidency will be determined by what happens in the next week.”

At one point, Biden “asked for a spirited, enthusiastic vote on his plan,” said Rep. Richard Neal, D-Mass.

Twice over the course of the hour-long meeting Democratic lawmakers rose to their feet and started yelling: “Vote, vote, vote,” said Rep. Gerald Connolly of Virginia.

Biden’s proposal would be paid for by imposing a new 5% surtax on income over $10 million a year, and instituting a new 15% corporate minimum tax, keeping with his plans to have no new taxes on those earning less than $400,000 a year, officials said. A special “billionaires tax” was not included.

Revenue to help pay for the package would also come from rolling back some of the Trump administration’s 2017 tax cuts, along with stepped-up enforcement of tax-dodgers by the IRS. Biden has vowed to cover the entire cost of the plan, ensuring it does not pile onto the debt load.

With the framework being converted to a 1,600-page legislative text for review, lawmakers and aides cautioned it had not yet been agreed to.

Rep. Pramila Jayapal, D-Wash., the progressive leader, said her caucus endorsed the framework, even as progressive lawmakers worked to delay further action. “We want to see the actual text because we don’t want any confusion and misunderstandings,” she said.

#### Biden’s betting the presidency on the deal—he’s confident it’ll get done

Viser 10/28 [Matt Viser and Sean Sullivan, "Biden raises the stakes with the biggest gamble of his presidency for his agenda", 10/28/21, https://www.washingtonpost.com/politics/biden-deal-presidency/2021/10/28/52a273cc-37ff-11ec-91dc-551d44733e2d\_story.html]

President Biden entered a caucus meeting of Democrats early Thursday, told them he wanted to speak from the heart, and then made one of the biggest gambles of a career that spans nearly a half century.

He put the future of his presidency, and the state of his party, on the line with a major bet that he could persuade a fractious group of Democrats in Congress to rally behind him and support his compromise $1.75 trillion social spending plan at the heart of his national agenda.

“I don’t think it’s hyperbole to say that the House and Senate majorities and my presidency will be determined by what happens in the next week,” Biden said, according to a participant in the meeting.

His lofty wager — the result of weeks of haggling and what has become a legislative Groundhog Day morass — was in some ways out of character for a president who has been relatively risk averse and has often kept a safe distance from the most explosive legislative debates.

On a day of high drama with numerous deadlines looming — including the governor’s race in Virginia on Tuesday — Biden had a few hours before boarding Air Force One to depart on a foreign trip that includes meeting with Pope Francis, attempting to make progress on climate change and renewing efforts to show that democracy can work.

Senior White House officials and top congressional aides spent the early hours Thursday morning scrambling to complete the text of a 1,684 page-piece of the social spending bill. They hoped that $1.75 trillion legislation might unlock the opposition to quickly voting on a separate $1.2 trillion infrastructure plan, but the fate of both signature bills remained uncertain. The House abandoned plans to move ahead on the infrastructure package Thursday, punting that legislation to next week.

“We badly need a vote on both of these measures,” Biden pleaded in the caucus meeting earlier in the day, adding, “I need you to help me. I need your votes.” He reached for history, saying that what would be achieved with both plans would be more significant than the combined efforts of Franklin D. Roosevelt and Lyndon B. Johnson.

Biden’s agenda — and in many ways his presidency — has teetered on the verge of catastrophe in recent weeks, before he and top Democrats slowly started to resolve intraparty conflicts that have been a stain on their tenure helming the federal government. How and whether Biden can navigate a Congress that Democrats have only nominal control over, with razor-thin majorities in both chambers, has been one of the enduring questions over his first nine months in office throughout this year.

For Biden, the revised plan held potential to show strength after months when even his allies felt he was projecting weakness. Amid all this, his tenure at times has felt rudderless to some backers.

Just as important, Democrats said, if they can reach a deal to pass the social spending plan and the infrastructure measure, it would demonstrate that the party can govern in Washington, meeting Biden’s key campaign promise to successfully work with Republicans and unite a party in which old fractures had resurfaced after Trump left office.

“The rest of the world wonders whether we can function,” he said at least twice during the caucus meeting. “Not a joke.”

Part of Biden’s political biography is rooted in coming from behind and succeeding despite being underestimated. In his 2020 Democratic primary campaign, he lost the first two contests by large margins and was all but counted out before making his comeback.

But it was done through a belief that he had a candidacy that voters would come around to support, rather than any sudden shifts in a strategy built on a message of stability and normalcy.

Biden and his closest aides have long steered clear of polarizing issues and tiptoed around topics on which they faced pressure to act but recognized that their political leverage was limited.

He has delayed hard decisions, including whether to get into a presidential campaign, which running mate to pick or even how to fill administration positions. And his career has been one in which he’s been most comfortable finding the center of his party, as he often placed small, incremental bets rather than significant sweeping ones.

Liberal activists and civil rights leaders have pressured Biden to wage a campaign to end the Senate filibuster to clear the way for legislation to broaden voting rights and raise the federal minimum wage, while judicial activists pressed him to expand the Supreme Court. While nodding to their concerns, Biden has avoided such political fights.

In much of the social spending plan talks, Biden was determined not to speak publicly on behalf of lawmakers whose votes he was trying to win, and his aides often avoided doing so publicly. Biden held a long series of meetings, with lawmakers saying he was doing more listening at first and then gradually became more assertive in the talks.

On Thursday, Biden used his most definitive tone yet to describe the current progress he had made. “I am back here to tell you that we have a framework that will get 50 votes in the United States Senate,” he said to House Democrats in their closed-door meeting, according to a Democrat with knowledge of his remarks, who spoke on the condition of anonymity to discuss the private discussions within the party.

#### Deal is mostly done—Progressives are waiting for final text to make sure they don’t get screwed

Lillis 10/29 [MIKE LILLIS AND SCOTT WONG, "Progressives see infrastructure vote next week", 10/29/21, https://thehill.com/homenews/house/579179-progressives-see-infrastructure-vote-next-week?rl=1]

House liberals are playing the long game.

The progressives who bucked their president to block an infrastructure vote this week also lowered the bar for moving an even larger social benefits package at the heart of Joe Biden's domestic policy agenda.

It's a two-step dance that's rankled party leaders in the near-term, but simultaneously paved the way for quicker action on both proposals — perhaps as early as next week.

“I don't think it'll take that long,” Rep. Pramila Jayapal (D-Wash.), chair of the Congressional Progressive Caucus, said as lawmakers headed home this week without a deal.

The timeline will hinge on the resolution of a series of outstanding issues still under negotiation within the “family” benefits package, as well as the drafting of the legislative language reflecting those lingering decisions. But with much of the text already released — and with the Progressive Caucus already endorsing that legislative framework — the liberals say both bills could be on the floor in a matter of days.

“We have the text; that's what we needed,” said Jayapal

“I am renewedly optimistic,” said Rep. Don Beyer (D-Va.), a fellow progressive who leads the Joint Economic Committee, which makes recommendations on how to improve the U.S. economy. Beyer told The Hill on Friday that he expects the House to vote on one package, likely the infrastructure bill, on Tuesday, then take up the $1.75 trillion social and climate spending package later in the week.

“I feel really good about next week,” added a third House progressive, who like Jayapal, had been holding the line in opposing the infrastructure bill.

The burst of optimism follows shortly on the heels of an embarrassing setback for Biden and Democratic leaders, who were racing to stage a Thursday vote on a popular $1.2 trillion infrastructure bill, which was passed by the Senate in August.

Biden had visited the Capitol on Thursday morning to rally House Democrats behind both parts of his two-prong economic agenda, touting a newly released “framework” governing the $1.75 trillion social spending piece. And Speaker Nancy Pelosi (D-Calif.) urged lawmakers to support the infrastructure bill in a vote she’d hoped to bring later in the day.

Jayapal had led the successful opposition to that plan, speaking for a host of liberals who want deeper assurances that the larger “family” benefits bill not only passes their muster, in terms of policy specifics, but also has enough Senate support to reach Biden’s desk. Only then will they back the bipartisan infrastructure bill, known informally as the BIF.

"If we vote for the BIF, I think that that's it. I think we lose the other bill,” said Rep. Juan Vargas (D-Calif.). “I don't trust what the senators are going to do.”

At the same time, the progressives rolled back their policy demands and lowered the tactical threshold for winning their votes on infrastructure. While leading liberals had initially insisted that their votes would hinge on Senate passage of the larger benefits package, now some are saying that a spoken commitment from the Senate centrist holdouts — Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) — would be enough to win their backing.

“I trust Biden,” said Rep. Juan Vargas (D-Calif.). “But the other two senators haven't said they'd vote for it.”

Rep. Veronica Escobar (D-Texas), a deputy whip of the Progressive Caucus who had vocally opposed an infrastructure vote publicly and privately in meetings, agreed with Vargas. She said she had been prepared to change her mind and vote “yes” on infrastructure Thursday if she had received stronger assurances from Manchin and Sinema that they are on board with the framework.

“We need a commitment on the framework,” Escobar told The Hill. “If I had heard or received word of a firm commitment directly from the two senators who’ve been at the center of these negotiations, sending out a statement saying I support it, it would have been a different ballgame.”

Biden “has full support from the Progressive Caucus for his framework; we voted to [endorse] the framework,” she added. “You don’t see us wrangling about the framework; you only see us [debating] the strategy for getting it done.”

For others, the threshold is even lower. Jayapal said she’d accept Biden’s word that the benefits package can win 50 votes in the Senate, even without a public statement of support from Manchin and Sinema.

“We'll go along with the two bills in the House— passage — and we will back off of the original ... request that we had for the Senate to pass it. We're gonna trust the president on the Senate vote. And we're going to trust our Senate colleagues — all of them, all 50 of them — on the Senate vote,” she said.

“But we do need the text and we do need the vote on both bills in the House at the same time.”

The liberals' stonewalling tactics forced Biden to board a plane to Europe on Thursday without the big legislative win he’d hoped to notch. And they were hammered by many other Democrats, including a number of veteran lawmakers, who accused the progressives of misunderstanding the political importance of lending the unpopular president an immediate victory. Some of the critics chalked it up to simply inexperience.

“They've never been in the minority,” grumbled one veteran lawmaker as the House recessed Thursday night.

Yet the liberals say that their counterintuitive strategy — expedition by delay — will actually pay dividends for Biden and the Democrats in the long run, by ensuring that some of the party's longest-held policy priorities make it into the final version of the social spending package. If they lost a battle on infrastructure on Thursday, they argue, it was only to win the larger war with centrists over what will make it into the larger benefits bill.

“There is too much at stake for working families and our communities to settle for something that can be later misunderstood, amended, or abandoned altogether,” said Jayapal.

As part of their vetting, the progressives are also in discussions with the White House to clarify the specifics of certain parts of Biden’s framework, particularly on the issue of climate. That includes detailed information surrounding carbon emissions modeling — “just to make sure the carbon emissions reductions are real,” Jayapal said.

Progressive lawmakers said they didn’t begin learning details of what was in or out of the Build Back Better package until they deployed hardball tactics and blocked the infrastructure package. With that knowledge, they could devise a better game plan to fight for specific policies that were dealbreakers for the left.

When progressives demanded legislative text this week, Pelosi and her leadership team on Thursday produced 1,684 pages of the Build Back Better bill.

“We now have text. We now know what’s in it. We have a dollar figure,” said Rep. Gerry Connolly (D-Va.). “We have pretty much an agreed framework for how to proceed.”

“I think the deal’s done,” added Rep. Alan Lowenthal (D-Calif.). “We’re waiting to see the final language to make sure no one gets screwed.”

#### Industry backlash will persuade Congress to fight the aff – legislators have multiple mechanisms at their disposal to do so

Darren Bush Fall, 2016 [Leonard B. Rosenberg College Professor of Law, University of Houston Law Center “Out Of The DOJ Ashes Rises The FTC Phoenix: How To Enhance Antitrust Enforcement By Eliminating An Antitrust Enforcement Agency” Willamette Law Review, 53, 33. <https://advance-lexis-com.libproxy.berkeley.edu/api/document?collection=analytical-materials&id=urn:contentItem:5NSX-DKH0-00CV-B14S-00000-00&context=1516831>]

The largest threats to the FTC come from outside its walls. While courts have not significantly limited the authority of the FTC, particularly with respect to investigations, they do serve as a limitation on the ultimate ability of the FTC to successfully adjudicate matters that result from an investigation. To successfully swing the pendulum back in favor of court deference to FTC outcomes, the agency must be fully unchained. The following subsections describe both appropriate and inappropriate chaining of the FTC.

Constitutionally, Congress is an appropriate constraint upon agency power. It was an act of Congress that gave the agency life, and certainly that power could be used to terminate an agency acting beyond the will of Congress. Within that delegation of authority from Congress is the ability of the agency to use the twin weapons of rulemaking and adjudication, backed with its expertise. However, such appropriate Congressional oversight can be misused to constrain an agency, particularly when a large and power corporation or industry perceives itself as being unfairly under FTC scrutiny.

First, aggrieved industries or corporations could seek express immunity for the antitrust laws. Numerous industries already enjoy immunity from section 5 of the FTC Act, including "banks, savings and loan institutions … federal credit unions … common carriers subject to the Acts to regulate commerce, air carriers and foreign air carriers subject to the Federal Aviation Act of 1958, and persons, partnerships, or corporations insofar as they are subject to the Packers and Stockyards Act … ." 70 More broadly, statutory immunity from the antitrust laws is all too common. Congress has enacted at least twenty-nine statutory immunities that completely immunize industries or conduct from the antitrust laws, or at least limit the scope of antitrust within those realms. 71

[\*54] The FTC itself has been the impetus of several of these statutory immunities. For example, Congress passed the Soft Drink Interbrand Competition Act in reaction to the FTC's strong position against non-price vertical restraints. 72 The FTC had challenged the industry's distribution system following a controversial Supreme Court decision in United States v. Arnold, Schwinn & Co. 73 Soft drink bottlers lobbied for and won immunity designed to protect local bottlers from the vertical integration of syrup manufacturers. 74

Alternatively, Congress may create a modified standard with respect to a particular type of conduct, as it did with the Standards Development Organization Advancement Act. 75 The SDOAA requires that the rule of reason analysis to standard setting bodies and limits the ability of private plaintiffs to obtain attorneys' fees. Registered standard development organizations are also protected from treble damages. This legislation too is a response to FTC antitrust enforcement. The FTC had investigated Dell's, 76 Rambus's, 77 and Unocal's 78 participation and conduct within particular standard-setting organizations. While members of the standard-setting body still face liability, there is somewhat of a shield effect arising from the standard development organization's immunity. This threat is particularly poignant when a single party controls both Houses of Congress, or when there is a veto-proof majority. On the bright side, this type of immunity applies equally to both the FTC and the DOJ, so in theory it is immaterial whether or not there is a single antitrust enforcement agency or two. The result would be the same: the antitrust laws would be limited in those instances.

Beyond outright barring investigation and enforcement of the antitrust laws in a particular industry, Congress can severely hamstring the agency. For example, rather than passage of an unpopular statutory immunity, it might be easier for Congress to curtail directly the FTC's authority to enforce or even investigate anticompetitive conduct within an industry by directly barring FTC authority within its organic statute. Congress has done so numerous times. For example, Congress limited the FTC's power to engage in rulemaking for the purpose of consumer protection when it passed the Federal Trade Commission Improvements Act of 1980. 79 This limitation arose from industry backlash after the FTC engaged in rulemaking concerning children's advertising. 80 The amendments also make the FTC an adversary in its own rulemaking proceedings by importing adjudicatory norms. For example, the provisions call for a presiding officer with independence from staff influence, protected by ex parte communications. 81 The 1980 amendments thus severely impede the agency to engage in any effective rulemaking.

Another method Congress has employed to curtail the FTC's authority is to evaluate the anticompetitive effects of particular conduct. In 1994, Congress sought to confine the Agency's interpretation of unfair methods of competition by requiring what is essentially a rule of reason plus criteria. In particular, the amendment bars the FTC from declaring unlawful any act or practice the FTC determines to be unfair, unless the "the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition." 82 It is equally plausible for Congress to deploy other requirements into the Agency's calculus of unfair methods of competition.

Even if an industry or company is unable to convince Congress that it should receive a coveted immunity, Congress still has other means at its disposal to "check" the FTC. In particularly, public posturing by companies and Congressional allies might be sufficient to heel the FTC.

Nor is Congress immune from attempting to influence agency decisions. Often times Congress holds hearings regarding particular agency investigations and actions. As a recent example, take the [\*56] DOJ's one hundred eighty degree reversal in U.S. v. American Airlines. The DOJ had originally challenged the merger of American Airlines. The complaint alleged in sweeping terms harm to nonstop competition, competition in connect markets, and competition across networks. Then, just as quickly, the bold complaint was no more, as the DOJ and the parties settled. According to a ProPublica piece, 83 a full-on blitz was in play to convince the DOJ to change its mind. While internal deliberations within the DOJ are barred from sunlight, there was a stark "before and after" picture of the effects of such a lobby.

It could be argued that the FTC would be more immune from such a lobbying campaign due to its independence from the Executive Branch, but that does not preclude intervention by Congress. As a former Chair of the FTC has pointed out, "Congress intended the FTC to be largely independent from the Executive Branch in its day-to-day operations, despite the provision authorizing the President to direct the agency to undertake specific investigations. But Congress intended far less independence from itself." 84

As an example, when the DOJ and the FTC agreed to a different clearance process between the agencies in 2002, Congress balked. One of the first threats Congress made was reducing agency funding, 85 apart from calling for the hide of Chairman Tim Muris. It was not the first time Congress (or a member of Congress) had threatened an antitrust enforcement agency via the budget. The DOJ received backlash as a result of its antitrust challenge against Microsoft. Because of this antitrust challenge, Microsoft started to engage in political activity, making campaign contributions to both parties and targeting state Attorneys General who had joined the suit. When the DOJ brought its antitrust challenge against Microsoft in a series of cases, 86 it received backlash once Microsoft awoke from its [\*57] slumber and started to engage in political activity, 87 making campaign contributions to both parties 88 as well as targeting state Attorneys General who had joined the suit. 89

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#### Adverse enforcement is inevitable and will be perceived as protectionist – perception shields the link answers about US use of protectionism

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IV. COSTS OF NONCOOPERATION

As the above theoretical explanation shows, attempts to regulate international trade creates costs and benefits that are not fully accounted for in the domestic policy decisions of states. Transaction costs and **bias** stand out as two prominent costs of the de facto regime.

Since regulatory bodies exist in many different countries, and since some of those bodies apply their laws extraterritorially, firms that conduct business on a global scale must contend with increased and duplicative costs. In order to operate in accord with regulatory policies in many different countries, firms must retain legal counsel in multiple states in order to satisfy jurisdictional differences in reporting and disclosure requirements. This is slow, burdensome, and expensive for the fi rms, while it also increases costs carried by the various regulatory agencies. Because regulatory bodies in different states all act independently, from the perspective of global efficiency, the regulatory bodies are expending duplicative energy in reviewing the same activities.

In the context of international trade under the de facto international competition policy regime, firms operating in multiple states are subject to multiple regulatory reviews. As already noted, this overregulation is costly in terms of duplicative work on the part of both fi rms and regulatory states, but it also introduces yet another cost of noncooperation in the form of bias. A regulatory agency has the **temptation** to be **more lenient** when reviewing activities by **local** firms and potentially **more restrictive** when reviewing activities by **foreign** firms.

From the point of view of the firms, **even if** regulatory activities by states are **unbiased**, it might **appear** that unfavorable rulings stem from bias. **Perception, in this case, is important** because the way firms perceive regulatory actions or regulatory policies by states has **implications** for the way firms **conduct their business activities**. Furthermore, **states** might **perceive** the regulatory activities of other states on their firms as **biased** or even as **punitive** regulatory activity, which potentially **drives a wedge** between **any** possibility of **interstate regulatory cooperation**. Bias is more apparent in the choice of which cases to pursue, rather than in statutory language, but nevertheless, the presence of export cartel exemptions is the most ready example of substantial evidence that points to state bias in regulatory activity. Again, as mentioned above, the United States reveals its bias in exemptions for firms operating in the international markets in aviation, energy, ocean shipping, and communications.