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### 1NC – Adv CP + INB

#### The United States federal government should amend the Federal Arbitration Act to enforce arbitration agreements that operate as a prospective waiver of a party’s right to statutory remedies only when the parties accept them on an opt-in basis.

Meisman 21 [Garrett Meisman, JD Candidate, 8-10-2021 Opt-In Arbitration: A Functional Alternative to the FAIR Act, 46 BYU L. Rev. 1647 <https://digitalcommons.law.byu.edu/lawreview/vol46/iss6/9>]

As an alternative to both the current system and the changes proposed in the FAIR Act, this Note proposes that Congress amend the FAA to enforce predispute arbitration agreements in consumer, employment, civil rights, and antitrust disputes only when the parties accept them on an opt-in basis. In other words, the law would invalidate any adhesive arbitration clause that must be signed as a condition of employment or obtaining a good or service. This requirement would extend not only to the contract itself, but also to the absence of any coercion or unfair manipulation by either party. Some individuals might understandably feel unspoken expectations—especially from employers—that fall short of outright coercion. But due to concerns of administrability, the individual should be able to point to some overt manifestation of pressure to void the agreement.

Ideally, an enforceable agreement under this framework would be clearly distinguished from the rest of the contract to emphasize that the arbitration clause is optional. It would also contain an explanation of what rights—such as the right to a jury, the right to appeal, and the right to join a class action—the individual would waive by signing such a provision. Most importantly, the individual would have to independently sign or click the arbitration provision for it to be enforced as part of the contract.

B. Precedent in Contract Law

Precedent already exists in contract law for provisions which are valid only if independently accepted. For instance, Uniform Commercial Code § 2-209 deals with contracts providing that subsequent modification or rescission can be made only through a signed writing.144 It states that, when a merchant supplies a form containing such a provision to a non-merchant, the non-merchant must separately sign the modification requirement for it to be enforceable.145 The official comment to the UCC clarifies that this subsection exists to protect consumers.146 Another analog exists in the form of contract addenda, which propose additional terms to be incorporated into a contract and are enforceable only if signed by both parties.147 Additionally, in a professional ethics context, a lawyer cannot require a client to prospectively waive malpractice liability unless they are independently represented by counsel in making the agreement.148

C. Legislation Over Rulemaking

George H. Friedman has proposed that such reforms be made to consumer financial contracts through rulemaking by the CFPB.149 However, a broader legislative solution would be superior to this approach for two principal reasons.

First, although the authority of the CFPB is expansive, it is tethered to regulating the provision of consumer financial products and services.150 But the concerns over mandatory arbitration clauses extend to employment agreements, as well as non-financial consumer contracts. Unlike an agency, Congress could cover this broader subject area without running afoul of its institutional limits.

Second, agency rules are subject to greater volatility than legislation. Because the President exerts direct control over agencies,151 rules can be altered by smaller shifts in the political winds.152 Agency rules are also vulnerable to attack under the Congressional Review Act, whereunder Congress can invalidate a new rule using expedited procedures.153 An opt-in arbitration reform could thus have greater scope and permanence if it were

enacted through legislation, not CFPB rulemaking.

D. Opt-Out Clauses Are Not Enough

Some companies have sought to address concerns over mandatory arbitration by incorporating “opt-out” clauses into their contracts. Uber, for instance, uses such a provision in contracts with its drivers.154 The terms guarantee that the rest of the contract will still be valid if the driver exercises the opt-out clause, and that the company will not retaliate against a driver for doing so.155 But the process is cumbersome, requiring the driver to send a separate letter or email stating their name and intent to opt out within thirty days of signing the driver agreement.156 Similar provisions are also present in many credit card contracts.157

The apparently voluntary nature of these provisions makes them appealing to courts.158 But while they might seem to protect voluntary consent, very few individuals read the terms of form agreements they sign, much less understand them.159 For example, the CFPB study found that, of credit card customers who were subject to predispute arbitration agreements, 18.4% were aware of those agreements160 and only 6.8% knew that they could not sue their credit card issuer in court.161 As for Uber’s arbitration agreement, an organized campaign has been necessary to facilitate many drivers’ exercise of their right to opt out and possibly even to inform them of the arbitration provision’s existence in the first place.162 The practical effect is that numerous individuals signing these contracts—perhaps most of them—are likely unaware of the opt-out option until a dispute arises.

Granted, the “duty to read” is a well-established principle of contract law.163 That is, read

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This presumption has obvious practical necessity: it spares courts the odious task of line-drawing on the wide spectrum of understanding which parties may have of the contract terms. It also gives people greater confidence to enter transactions knowing that the other party will generally be held to a consistent standard of performance.

Yet the problem with opt-out contracts does not lie in the duty to read itself, but in how the standard for consent allocates the effects of that duty. By default, an arbitration provision containing an opt-out clause is enforceable unless the opt-out clause is exercised. This standard of consent shields the arbitration provision behind the high probability that the details of the opt-out clause will not be read.165 Thus, opt-out clauses serve little more purpose than to satisfy courts that predispute arbitration agreements are not technically procedurally unconscionable. They do not mitigate the public policy concerns surrounding predispute arbitration agreements as they currently exist.

On the other hand, mandating opt-in clauses would still respect the widely accepted duty to read. Consumer and employment contracts would be enforced, regardless of either party’s failure to read them before signing. But by requiring the opt-in clause to be separately clicked or signed, this higher standard of consent would make it less likely that the arbitration provision be enforced absent an affirmative decision to accept it. Thus, the ignorance of the less sophisticated parties would work in their favor—or at least not to their detriment. These contracts would be voluntary and protect individuals’ interests far more effectively than deceptively similar opt-out clauses.

#### The counterplan solves the case and allows for opt-ins to pre-dispute arbitration when it would defray costs and benefit both parties. The plan would result in an end to arbitration altogether.

Meisman 21 [Garrett Meisman, JD Candidate, 8-10-2021 Opt-In Arbitration: A Functional Alternative to the FAIR Act, 46 BYU L. Rev. 1647 <https://digitalcommons.law.byu.edu/lawreview/vol46/iss6/9>]

An opt-in arrangement is likewise preferable to banning predispute arbitration agreements altogether for two principal reasons. On one hand, it respects the autonomy of contracting parties and ensures free selection of the dispute resolution forum. As arbitration law currently stands, most individuals signing these agreements are not truly autonomous. While they may be theoretically free to abstain from a transaction, they are functionally compelled—whether by the necessity of employment or of certain goods and services—to enter that transaction, and as a result they cannot refuse arbitration for a dispute arising from it.166

The FAIR Act’s blanket prohibition on predispute arbitration agreements, on the other hand, would have an opposite but still undesirable effect. Individuals would never be able to enter arbitration agreements, even when such agreements would have desirable benefits like reduced costs. Of course, the bill does not forbid anyone from arbitrating.167 Rather, it invalidates arbitration agreements that are made at the predispute stage.168 In theory, parties would therefore be free to resort to arbitration once a dispute has arisen. But in practice this would likely never happen. Where a smaller party has a small or weak claim, the larger party would benefit from refusing arbitration and instead forcing their opponent to undergo the substantial costs and hurdles of litigation, thereby discouraging the action from being brought.169 In such instances, arbitration would be foreclosed to the smaller party, despite its potential advantages.

Contrastingly, an opt-in arrangement would maximize personal autonomy where both alternatives fail. Parties would still be free to contract, to negotiate their own terms, and to waive their rights. But they would be permitted to do so without the threat of losing employment opportunities or access to important goods and services. And unlike the FAIR Act’s proposal, such an arrangement would be minimally paternalistic. This is because, although it would alter the default bargaining context, it would not ultimately foreclose any course of action by either party since each can autonomously consent to either an arbitral or classic litigation forum. This flexibility would permit parties to tailor their dispute resolution process to their idiosyncratic needs.

Second, enforcing predispute arbitration agreements on an opt-in basis would incentivize the company to sweeten the deal for the individual. If consumers, employees, and other small parties were on equal ground with larger parties to accept or reject predispute arbitration agreements, the larger parties would be pressed to craft the terms of their agreements to be more mutually palatable. For instance, they might offer to defray some or all of the costs of the arbitration process, to permit freer disclosure of information, to exempt certain types of claims from the arbitration requirements, to allow the smaller party greater input in the selection of the third-party neutral, or to allow class arbitration. Larger parties clearly have substantial benefits to gain from predispute arbitration agreements as they currently exist,170 and they could cede some of the benefits of the agreement without breaking even in their cost-benefit analysis. That said, this balancing phenomenon might be dampened if individuals continue to breeze past the terms without reading them. But nothing would prevent companies from placing their opt-in arbitration clauses prominently to attract attention when it is sufficiently important to them.

Proponents of the FAIR Act might still argue that these ends can be achieved just as well by leaving arbitration-related negotiations for the post-dispute stage. After all, if arbitration is preferable to both parties, won’t they choose to arbitrate anyway?

The answer is: not necessarily. . . . [T]he incentives to support arbitration change when the system becomes voluntary. . . . Once a dispute has arisen, each side will have a view about whether its claim will fare better in court or in arbitration. As a result, the parties are unlikely to agree, post-dispute, on a choice of forum. 171

As another commentator put it, “[t]he comparative advantage

of arbitration is that it enables both parties to enter into an arrangement to manage some of the ex ante uncertainties about disputes before they arise.”

For instance, the individual might exchange the likelihood of a higher recovery 172 for easier access to the dispute forum, while the company might exchange the likelihood of prevailing for lower overall costs. The mutual value of such a tradeoff “is lost once the dispute arises and its terms are better known.”173 Thus, arbitration is likely not a viable option at all174unless the parties agree to it before the dispute occurs.

#### Preserving arbitration is key to control litigation costs, preserve regulatory predictability, and avoid court clog.

Gold 21 [Kate Gold, Partner at Proskauer, JD Berkeley, May 7, 2021. https://www.proskauer.com/pub/employee-choice-is-better-alternative-to-anti-arbitration-bill]

For employers and employees alike, arbitration offers the incomparable advantages of increased speed, finality, cost-efficiency, flexibility and predictability. By invalidating predispute arbitration agreements and class action waivers, the FAIR Act would eliminate these benefits.

First, litigation is costly and slow. If the FAIR Act becomes law, workers will likely experience extended litigation schedules in already overburdened courts — which will only become more clogged once 60 million workers are forced to file any and all claims they may have in court rather than arbitration.[7]

Arbitration, on the other hand, typically results in a hearing and decision within 11.6 months on average.[8] The process to confirm or vacate an arbitration award typically takes a few months, as opposed to a yearslong appellate process that often results from multimillion- dollar jury verdicts that employers have no choice but to appeal.[9] Arbitration also offers employees and employers finality by doing away with appeals unless the parties agree otherwise.[10]

Second, arbitration costs and fees are often — in some states always — borne by the employer and they pale in comparison to the hundreds of thousands of dollars in attorney fees and costs that typically accompany civil litigation.[11]

Arbitration minimizes the most costly and wasteful component of litigation — discovery — by reasonably limiting written discovery requests and depositions. A 2010 survey of Fortune 200 companies' discovery efficiency and costs in court litigation, conducted by Lawyers for Civil Justice, the Civil Justice Reform Group and the U.S. Chamber Institute for Legal Reform, showed "the ratio of pages discovered to pages entered as exhibits is as high as 100/1."[12]

Third, arbitration brings welcome predictability. Arbitrators, experienced at assessing liability and damages, tend to make reasonable awards that generally are confirmed by courts. Jury awards, on the other hand, can be arbitrary and inconsistent, and can result in multimillion-dollar single-plaintiff verdicts that bear no rational relationship to the harm suffered by the employee.[13]

Such "let's win the lottery" results often benefit plaintiffs lawyers who typically have contingency fee arrangements whereby they share in up to 50% of their clients' recovery.[14]

In general, however, arbitrations often result in better monetary outcomes for employee plaintiffs. In fact, a recent study found that employees prevailed more often, recovered more money and resolved their claims more quickly in arbitration than in litigation.[15]

Similarly, in class actions pending in court — which are often settled and rarely litigated through trial — class members often receive very little monetary compensation while millions of dollars are paid to their attorneys.[16]

Opponents of the FAIR Act point out that banning predispute arbitration agreements would likely result in more money going to the big business of the plaintiffs bar as opposed to victims of workplace discrimination. This may be one of the reasons why trial lawyers are in support of the FAIR Act.[17]

Finally, arbitration expands access to justice by providing an opportunity for employees to obtain relief without an attorney.[18]

#### Turns the case – overwhelming the judiciary undermines its effectiveness in other areas

Daniel R. Warren 15, JD from the Boston University School of Law, BS from Ohio State University, “Stress Fractures: The Need to Stop and Repair the Growing Divide in Circuit Court Application of Summary Judgment in Antitrust Litigation”, Review of Banking and Financial Law, 35 Rev. Banking & Fin. L. 380, Lexis

A. Summary Judgment Can Cut Short Extreme Costs

Antitrust litigation can involve enormous discovery costs, particularly when antitrust litigation overlaps with class action litigation. Due to the wide scope of many antitrust claims, discovery can implicate a broad range of documents, records, interrogatories, and depositions. In fact, "[s]trategically minded" plaintiffs can take advantage of antitrust law's "onerous discovery costs" by requiring the defendant "to respond to wide-ranging interrogatories, produce documents, and prepare for and defend depositions" with only a "facially plausible allegation" of an antitrust violation. These costs can take a very large toll on both large and small businesses. The legal hours necessary to answer and address discovery challenges can also impose extreme costs.

Plaintiffs can often use discovery costs as a weapon against defendants in antitrust litigation. The Seventh Circuit Court of Appeals stated that "antitrust trials often encompass a great deal of expensive and time consuming discovery and trial work" in explaining that the "very nature" of antitrust litigation should encourage summary judgment. The court's language here supports [\*389] the idea that in antitrust litigation, summary judgment has a special value, greater even than its normal use in other areas of the law. Summary judgment can be used to cut short lengthy litigation where parties have already accrued extreme costs from discovery and one party still cannot produce a genuine issue of material fact.

In antitrust litigation, the value of summary judgment to mitigate discovery costs through shortening litigation is elevated to a special importance even greater than normal for three reasons. First, antitrust litigation normally involves large organizations, which magnifies the costs of those firms going through the discovery process. Large firms have a great number of involved employees and departments, all of which would likely be subject to the broad discovery that is characteristic of antitrust litigation. Summary judgment, though normally considered after discovery, is a procedural weapon available at nearly any point in this process, as "a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." The existence of a stay for extension of discovery shows that summary judgment need not automatically wait for discovery's completion, and thus can be an invaluable safeguard against otherwise incredibly costly discovery. This safeguard allows summary judgment to be a powerful tool to radically lower discovery time and costs without "railroad[ing]" the other party.

Second, antitrust litigation is normally a slow process that takes a great deal of time. The amount of time necessary to process and review evidence produced by discovery leads to incredible legal costs, often disproportionately placed on the defendant firm. The plaintiff has the advantage over the defendant in deciding the scope of discovery costs, and may often tailor its claim in such a way as to avoid the discovery costs that a defendant's counterclaim may reflect [\*390] back on the plaintiff. These lengthy trials can be effectively truncated by summary judgment, and thus summary judgment's normal value is even greater in the world of antitrust litigation where protracted trials are the norm.

Finally, the vast amount of evidence necessary to prove the elements of an antitrust claim contribute to the large discovery costs tied to antitrust litigation by overwhelming judges' ability to reign in discovery costs. Currently, we rely on judges to limit the range of discovery requested, but in the context of antitrust litigation, judges have difficulty dealing with the broad variety of evidence that may be called for. One analysis of the power of discovery described it as a costly and potentially abusive force, and determined judges' abilities to limit discovery costs on their own as "hollow" at best:

A magistrate supervising discovery does not--cannot--know the expected productivity of a given request, because the nature of the requester's claim and the contents of the files (or head) of the adverse party are unknown. Judicial officers cannot measure the costs and benefits to the requester and so cannot isolate impositional requests. Requesters have no reason to disclose their own estimates because they gain from imposing costs on rivals (and may lose from an improvement in accuracy). The portions of the Rules of Civil Procedure calling on judges to trim back excessive demands, therefore, have been, and are doomed to be, hollow. We cannot prevent what we cannot detect; we cannot detect what we cannot define; we cannot define "abusive" discovery except in theory, because in practice we lack essential information. Even in retrospect it is hard to label requests as abusive. How can a judge distinguish a dry hole (common in litigation as well as in the oil business) from a request that was not justified at the time?

[\*391] Summary judgment can also reduce costs to both parties by reducing time and discovery costs to the parties, and to the judicial system itself, by cutting short lengthy litigation. Both sides often incur costs from employing experts in various areas, researching and producing evidence necessary to prove or disprove elements of antitrust actions, and in the great many legal hours necessary for both plaintiffs and defendants--not to mention costs to the state--during lengthy litigation that is often fruitless due to an "incentive to file potentially equivocal claims." Antitrust law is structured in such a way as to have a "special temptation" for what would otherwise be frivolous litigation. As antitrust law is, by its very nature, between competitors, there is significant motivation to force costs on to other firms, perhaps even through frivolous legal claims or intentionally imposing other large legal costs. Costs can also multiply in antitrust litigation because antitrust actions are often combined with other particularly complex areas of law, such as patent law or class actions. Class actions particularly in the antitrust context can make trials "unmanageable." Combining two already complex areas of law is a recipe for large legal costs and prolonged litigation. The value of cutting costs short cannot be overstated, as antitrust litigation takes place in the arena of business competition. This means that firms are already engaged in close competition for antitrust cases to be relevant, and thus unnecessary costs can further distort the market.

#### Efficient court review underpins patent-led innovation---that stops nuclear war and a range of existential threats

Robert J. Rando 16, Founder and Lead Counsel of The Rando Law Firm P.C., Fellow of the Academy of Court-Appointed Masters, Treasurer for the New York Intellectual Property Law Association, Chair of the Federal Bar Association Intellectual Property Law Section, “America’s Need For Strong, Stable and Sound Intellectual Property Protection and Policies: Why It Really Matters”, IP Insight, June 2016, p. 12-14 [language modified] [abbreviations in brackets]

Robert F. Kennedy’s speech, which includes his reference to the oft-quoted “interesting times” curse, applies throughout history in many contexts and, indeed, with both negative and positive connotation. While he focused on the struggles for freedom and social justice, the requisite ascendancy of the individual over the state, and the institution and integration of those ideals for the greater good, he also promoted the goals of greater global unity, cooperation and communication, which were, and could be, achieved by advances in technology. And, as noted in the excerpt, he championed “the creative energy of men.”

Intellectual Property in “Interesting Times”

It is beyond question that starting with the last decade of the twentieth century and throughout the first two decades of the twenty-first century, when it comes to matters relating to intellectual property, we have been living in “interesting times.” Some may interpret these interesting times as defined by the curse and others may view it by the ordinary meaning of “interesting.” In either case, those of us that toil in the fields of patents, copyrights, trademarks, trade secrets, and privacy rights have experienced an unprecedented sea change in the way those rights are procured, protected and enforced. Likewise, and perhaps more importantly, even those of us that do not practice in these areas of law, as well as the general public, have been, and continue to be, impacted by the consequences of these changes (both positive and negative).

The Changes In Intellectual Property Law

Examples of some of the changes in intellectual property law are: the sweeping 2011 legislative changes to the patent laws under the America Invents Act (AIA), which impact is only beginning to be fully appreciated; the various proposals for patent law reform, on the heels of the AIA, beginning with the 113th and 114th Congress; the copyright laws Digital Millennium Copyright Act (DMCA) and numerous 114th Congressional proposed copyright law changes; the recently enacted federal trade secret law (Defend Trade Secrets Act of 2016 (DTSA))2; the impact of the internet, domain names and globalization on Trademark law; the intellectual property law harmonization requirements included in various global/regional trade agreements; and the proliferation of devices (both invasive and non-invasive) that defy any rational basis for believing we can still adhere to the republic’s libertarian understanding of the right to privacy.

Without engaging in “chicken and egg” analysis, it is sufficient to observe that technological advancement, societal needs, globalization, existential threats, economic realities, and political imperatives (or what James Madison referred to in the Federalist Papers No. 10 as factious governance), have combined to create the “interesting times” for the United States [IP] intellectual property laws.

What was said by Bobby Kennedy in 1966 remains true today. We live in dangerous and uncertain times. Many of the existential threats remain the same (nuclear war and proliferation, [genocides] ~~genocidal maniacs~~ and natural disease) and some are new ([hu]manmade disease, greater awareness of environmental changes and possibly human interrelationship factors, and the unintended consequences of genetic manipulation and robotic technologies). The danger and uncertainty that pervades changes in intellectual property laws, though not an existential threat of the same manner and kind, correlates with the threat and remains “more open to the creative energy of man than any other time in history.”

Apropos the creative energy of man, there is a non-coincidental congruence and convergence of activity across and among the three branches of government, occurring almost simultaneously with the congruence and convergence of the rapid developments of technological innovation across various scientific disciplines and the information age, reflected in the transformation of the [IP] intellectual property laws in the United States.

Patents

The passage of the AIA was a culmination of efforts spanning several years of Congressional efforts; and the product of a push by the companies at the forefront of the twenty-first century new technology business titans. The legislation brought about monumental changes in the patent law in the way that patents are procured (first inventor to file instead of first to invent) and how they are enforced (quasi-judicial challenges to patent validity through inter-party reviews at the Patent Trial and Appeals Board (PTAB)).

The 113th and 114th Congress grappled with newly proposed patent law reforms that, if enacted, may present additional tectonic shifts in the patent law. Major provisions of the proposals include: fee-shifting measures (requiring loser pays legal fees - counter to the American rule); strict detailed pleadings requirements, promulgated without the traditional Rules Enabling Act procedure, that exceed those of the Twombly/Iqbal standard applied to all other civil matters in federal courts, and the different standards applicable to patent claim interpretation in PTAB proceedings and district court litigation concerning patent validity.

The Executive and administrative branch has also been active in the patent law arena. President Obama was a strong supporter of the AIA3 and in his 2014 State Of The Union Address, essentially stated that, with respect to the proposed patent law reforms aimed at patent troll issues, we must innovate rather than litigate.4 Additionally, the USPTO has embarked upon an energetic overhaul of its operations in terms of patent quality and PTO performance in granting patents, and the PTAB has expanded to almost 250 Administrative Law Judges in concert with the AIA post-grant proceedings’ strict timetable requirements.

The Supreme Court, not to be outdone by the Articles I and II branches of the U.S. government, has raised the profile of patent cases to historical heights. From 1996 to the 2014-15 term there has been a steady increase in the number of patent cases decided by the SCOTUS5. The 2014-15 term occupied almost ten percent of the Court’s docket. Prior to the last two decades, the Supreme Court would rarely include more than one or two patent cases in a docket that was much larger than those we have become accustomed to from the Roberts’ Court6.

While the SCOTUS activity in patent cases is viewed by some as a counter-balance to the perceived Federal Circuit’s pro-patent and bright line decisions, it can just as assuredly be viewed as decisions rendered by a Court of final resort which does not function in a vacuum devoid of the social, economic and political winds of the times. In recognition of the effect new technologies have on the patent law, the politicization of intellectual property law matters, especially patent law (through factious governing principles of the political branches of the government), and the maturation of the Federal Circuit patent law jurisprudence, the SCOTUS has rendered opinions in cases that impact, and perhaps are/were intended to mitigate the concerns regarding, some of the vexing issues confronting the patent community today (e.g., non-practicing entities or in the politicized parlance “patent trolls,” the intersection of patent and antitrust laws in Hatch-Waxman so called “pay-for-delay” settlements between Branded and Generic pharma companies, and the fundamental tenets that comprise the very heart of what is patent eligible subject matter).

Copyrights

The advent and ubiquity of the internet, social media and digital technologies (MP3s, Napster, Facebook, YouTube, and Twitter) represents the impetus for changes in the Copyright laws. The DMCA addressed the issues presented by these advances or changes in the differing media and forms of artistic impressions. The proliferation of digital photos, graphic designs and publishing alternatives, as well as adherence to globalization harmonization have given rise to changes in the statutory law and jurisprudence in this area of intellectual property law. Additionally, there is an overlap of patent rights and copyrights for software driven by the ebb and flow of the strength of each respective intellectual property protection.

Notably, the Patent and Copyright Clause7, in addition to Author’s writings, has been viewed as discretely applying to two different types of creativity or innovation. When drafted the “sciences” referred not only to fields of modern scienctific inquiry but rather to all knowledge. And the “useful arts” does not refer to artistic endeavors, but rather to the work of artisans or people skilled in a manufacturing craft. Rather than result in ambiguity or confusion, perhaps the Framers were either quite prescient or, just coincidentally, these aspects of the Patent and Copyright Clause have converged.

For example, none other than the famous Crooner, Bing Crosby, benefited from both protections. Well-known as a prolific and popular recording artist he also benefited from his investments in the, then innovative, recording technologies. Similarly, the Beatles, Beach Boys, as well as many other rock and roll artists, experimental efforts in music performance, recording and production, helped to transform the music industry in both copyrightable artistic expression and patentable inventions. Similarly, film, literary and digital arts reap benefits at the crossroads of both copyright and patent protections.

Trademarks

Trademark laws have been impacted by numerous changes in the business landscape. They include the internet, Domain names, international rights in a global economy, different venues and avenues for branding, marketing and merchandising, global knock-offs from nations that have a less than stellar respect for intellectual property rights, and international trade agreements. More recently, politicization (or perhaps political correctness) has creeped into the trademark law arena pitting branding rights and protections against first amendment rights.

Trade Secrets

As with Copyright and Trademark law, trade secrets law includes some of the same issues related to trade agreements. TRIPS required members to have trade secret protection in place. Initially, the United States compliance with this requirement has relied upon the trade secret law of the individual states. That compliance may be supplanted by the recently enacted DTSA. Similarly, the Trans Pacific Partnership (TPP) trade agreement contains intellectual property rights provisions that will trigger required changes to United States statutory Intellectual Property Laws.

The proposed trade secret legislation also gives rise to several concerns. For instance, there is an absence of a specific definition for trade secret, as well as potential issues of federalism, conflict with state law precedent (despite no preemption), remedies, and the impact on employer/employee relations.

There is also a real concern that the strengthening of trade secret protection in conjunction with the perceived weakening of patent protection (e.g., high rate of invalidating patents in post-grant proceedings before the PTAB and strict limitations on what is patent eligible subject matter) may very-well have the unintended consequence of contravening the purpose behind the Patent and Copyright Clause: “to promote the progress of the sciences and the useful arts.” Moreover, the incentive to innovate may very well be usurped by the advantage of withholding patent law disclosure of highly beneficial scientific advancements that directly affect the human condition, alter life expectancies and the evolution of the human species (rather than by mere “natural selection”), and what is the very essence of a human being (for better or worse). Thus, crippling innovation and the progress of the sciences and useful arts.

Privacy Rights

It is increasingly more difficult to function “off the grid.” The invasive and non-invasive attributes of the internet, the reliance upon the multitude of devices, social media, and information age technologies, and access to big data, all contribute to the decrease in and dilution of the right to privacy. Wittingly or otherwise, the strong libertarian roots of the republic have been replaced by dependence upon these modes of an information-age life. Commentary on the benefits and deficits of this reality are beyond the subject and purpose of this writing. Suffice to acknowledge that the right to privacy has been significantly reduced. The laws that protect these rights are in a constant struggle to maintain those rights while yielding to the demands of the lifestyle and security concerns. Laws that relate to cybersecurity in the global and domestic space create interplay with privacy rights. Legislation, trade agreements and jurisprudence all impact this area of intellectual property. Cross-border theft of trade secrets, competitor espionage, and loss of control over personal data are all implicated in the intellectual property law arena.

America’s Need For Strong Intellectual Property Protection

The need for strong protection of intellectual property rights is greater now than it was at the dawn of our republic. Our Forefathers and the Framers of the U.S. Constitution recognized the need to secure those rights in Article 1, Section 8, Clause 8. James Madison provides insight for its significance in the Federalist Papers No. 43 (the only reference to the clause). It is contained in the first Article section dedicated to the enumerated powers of Congress. The clause recognizes the need for: uniformity of the protection of IP rights, securing those rights for the individual rather than the state; and, incentivizing innovation and creative aspirations.

Underlying this particular enumerated power of Congress is the same struggle that the Framers grappled with throughout the document for the new republic: how to promote a unified republic while protecting individual liberty. The fear of tyranny and protection of the “natural law” individual liberty is a driving theme for the Constitution and throughout the Federalist Papers. For example, in Federalist No. 10, James Madison articulated the important recognition of the “faction” impact on a democracy and a republic. In Federalist No. 51, Madison emphasized the importance of the separation of powers among the three branches of the republic. And in Federalist No. 78, Alexander Hamilton, provided his most significant essay, which described the judiciary as the weakest branch of government and sought the protection of its independence providing the underpinnings for judicial review as recognized thereafter in Marbury v. Madison.

All of these related themes are relevant to the Patent and Copyright Clause and at the center of the intellectual property protections then and now. The Federalist Papers No. 10 recognition that a faction may influence the law has been playing itself out in the halls of congress in the period of time leading up to the AIA and in connection with the current patent law reform debate. The large tech companies of the past, new tech, new patent-based financial business model entities, and pharma factions have been the drivers, proponents and opponents of certain of these efforts. To be sure, some change is inevitable, and both beneficial and necessary in an environment of rapidly changing technology where the law needs to evolve or conform to new realities. However, changes not premised upon the founding principles of the Constitution and the Patent and Copyright Clause (i.e., uniformity, secured rights for the individual, incentivizing innovation and protecting individual liberty) run afoul of the intended purpose of the constitutional guarantee.

Although the Sovereign does not benefit directly from the fruits of the innovator, enacting laws that empower the King, and enables the King to remain so, has the same effect as deprivation and diminishment of the individual’s rights and effectively confiscates them from him/her. Specifically, with respect to intellectual property rights, effecting change to the laws that do not adhere to these underlying principles, in favor of the faction that lobbies the most and the best in the quid pro quo of political gain to the governing body threatens to undermine the individual’s intellectual property rights and hinder the greatest economic driver and source of prosperity in the country.

It is also important to recognize that the social, political and economic impact of strong protections for intellectual property cannot be overstated. In the social context, the incentive for disclosure and innovation is critical. Solutions for sustainability and climate change (whether natural, man-made or mutually/marginally intertwined) rely upon this premise. Likewise, as we are on the precipice of the ultimate convergence in technologies from the hi-tech digital world and life sciences space, capturing the ability to cure many diseases and fatal illnesses and providing the true promise of extended longevity in good health and well-being, that is meaningful, productive, and purposeful; this incentive must be preserved.

In similar fashion, advancements in technologies related to the global economy and communications will enhance the possibilities for solutions to political and cultural conflicts that arise around the globe. Likewise, the United States economy has always benefited when it is at the forefront of innovation and achieves prosperity from its leadership role in technological advancements.

Conclusion

As was the case in 1966, how we move forward today, to solve the many problems facing our country and the broader global community in these “interesting times,” both within and without the laws affecting intellectual property rights, depends upon the “creative energy of man” which must prevail. An achievable goal, dependent on the strong, stable and sound protection of intellectual property rights.

### 1NC – Trade DA

#### American corporations bought out judges – they’ll use the aff in protectionist ways

Root 19 [Danielle Root, director of voting rights and access to justice on the Democracy and Government Reform team at the Center for American Progress. Sam Berger, vice president of Democracy and Government Reform at the Center for American Progress. “Structural Reforms to the Federal Judiciary.” 5/8/2019. https://www.americanprogress.org/issues/courts/reports/2019/05/08/469504/structural-reforms-federal-judiciary/]

Discussions of the federal judiciary often focus on the substance of decisions made—which side wins and which side loses—and rightly so. These individual opinions are frequently of incredible importance, not just to the parties involved but in shaping the law more broadly. Yet this focus on substantive decisions has obscured deeper structural factors at play in the nation’s federal judiciary. Structural problems—such as lack of judicial diversity, ideologue judges, and lack of judicial accountability—undercut the courts’ legitimacy and have tangible negative effects on judicial decision-making. Instead of protecting everyday Americans by serving as a check on abuses of power, too often the federal courts have become a tool for carrying out the agendas of special interests and corporations.

Structural problems with the judiciary have always existed to varying degrees. But they have been exacerbated in recent years due to an ongoing campaign by conservatives to take control of the federal courts, often through procedural changes that have significant effects but garner little public attention. The problem has now reached a crisis point. Conservatives have shown a willingness to abandon any and all norms to undermine the judicial nominations process and pack the courts with judges who will help them realize political goals they cannot achieve through the political process. These judges have proven more than willing to carry out the task, supporting the most specious of legal claims in order to skew the system in favor of conservative interests and even prevent many Americans from accessing the courts at all.

#### That means selective enforcement

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]

Antitrust laws rarely plainly favor local firms at the expense of their foreign counterparts. But even facially neutral antitrust laws can lead to discrimination if those unbiased laws are enforced selectively. Antitrust agencies are often vested with substantial discretion. Organized domestic interest groups could exploit that discretion by seeking protection from antitrust enforcement or by urging the domestic authorities to take on cases against their foreign competitors. This could lead to deliberate underenforcement of the anticompetitive conduct of domestic corporations, or to deliberate overenforcement of the anticompetitive conduct of foreign corporations.149

#### **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]

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 – Politics DA

#### Biden will shepherd though social spending just like infrastructure—it solves climate change.

Rosenstein 11—11—(staff writer). Peter Rosenstein. November 11, 2021. Washington Blade. “Biden has won big twice — third win will come soon”. <https://www.washingtonblade.com/2021/11/11/biden-has-won-big-twice-third-win-will-come-soon/>. 11/11/21.

Last week President Biden got a big win when the House passed the hard infrastructure bill. We shouldn’t forget it was his second big win; the first came in March when Democrats passed the Coronavirus Relief Bill. In the weeks ahead he will get his third big win when Democrats pass a version of the Build Back Better bill doing more for children, the elderly, the middle-class, and the poor; giving help to those living in rural communities. Democrats must remind people after four years of failed ‘infrastructure weeks’ under Trump and Republican control, President Biden delivered on his promise to work across the aisle and shepherded through a historic investment in our nation’s infrastructure.

Democrats must stop talking about these bills in terms of cost and what was left out and rather talk about all the great programs in the bills and how they will lift people out of poverty, keep businesses from going under, and are rebuilding our economy.

These bills are about creating jobs, the infrastructure bill alone will create 2 million good-paying new jobs a year for 10 years. It will allow us to rebuild our roads and bridges, and expand broadband so every American has access to high-speed internet. As President Biden said, “This bill is for the kids in rural communities who now have to do their homework in the McDonald’s parking lot because they don’t have WiFi. This bill is for families who have to boil their water to make it safe to drink. This bill is for those who rely on rail to get back and forth to work. This bill is for Americans who care about our climate. And yes, this bill is for the elderly man I met years ago in rural South Carolina, who just wanted his damn dirt road paved.”

Most Americans, whatever their politics, agree it was past time to invest in rebuilding our nation’s infrastructure. They understand it is a major step in growing our economy and will give people in every community, large and small, rural and big cities, the chance to compete and succeed.

Americans can now look forward to the Build Back Better Bill, which will go a long way in fighting climate change, keeping children out of poverty, provide universal early childhood education, help keep the elderly in their homes, reduce the cost of some drugs, and so much more.

Recently Abigail Spanberger (D-Va.), a more moderate Democrat, spoke about President Biden saying to the New York Times, “Nobody elected him to be FDR they elected him to be normal and stop the chaos.” Well that is true for many voters who might just be happy they don’t have to wake up each morning to another nasty tweet, more craziness, and endless lies.

Yet many Democrats, independents and Republicans voted for him to do that, but so much more. They can now celebrate President Biden and Democrats in Congress having done much more. They have passed, and will continue to pass, legislation giving all Americans a chance to succeed. They have lifted children out of poverty and given each parent hope for a better future for themselves and their children.

They’ve given many a chance at a high-paying job and given all of us the chance to move on from the pandemic and return to a more normal life.

Democrats need to move on from fighting each other, join hands, and fight Republicans who opposed doing any of this by opposing any legislation to help all Americans. They need to recognize the American public as a whole is moderate. They want change and to move forward but understand compromise.

Democrats must find the right words to explain in detail what has been accomplished and how it will benefit families. To explain what Democrats have done by keeping their promise and making life a little better for all Americans.

There is still much work to be done — defending a woman’s right to choose, passing voting rights legislation, and protections for all minorities including the LGBTQ community. In the next year Democrats must convince Americans they can only continue to move the country forward if they allow them to keep control of Congress.

#### 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.

#### It causes extinction.

Dunlop 17. (Ian Dunlop chaired the Australian Coal Association in 1987-88, chaired the Australian Greenhouse Office Experts Group on Emissions Trading from 1998-2000 and was CEO of the Australian Institute of Company Directors from 1997-2001. He has a particular interest in the interaction of corporate governance, corporate responsibility and sustainability. An engineer by qualification, he holds an MA (Mechanical Sciences) degree from the University of Cambridge, he is a Fellow of the Australian Institute of Company Directors, the Australasian Institute of Mining and Metallurgy, and the Energy Institute (UK), and a Member of the Society of Petroleum Engineers of AIME (USA). He also chairs the Australian National Wildlife Collection Foundation. David Spratt is a Research Director for Breakthrough and co-author of Climate Code Red: The case for emergency action (Scribe 2008). His recent reports include Recount: It’s time to “Do the math” again; Climate Reality Check and Antarctic Tipping Points for a Multi-metre Sea-level Rise. A Failure of Imagination on Climate Risks. July 26, 2017. www.resilience.org/stories/2017-07-26/a-failure-of-imagination-on-climate-risks/)

Climate change is an existential risk that could abruptly end human civilisation because of a catastrophic “failure of imagination” by global leaders to understand and act on the science and evidence before them. At the London School of Economics in 2008, Queen Elizabeth questioned: “Why did no one foresee the timing, extent and severity of the Global Financial Crisis?” The British Academy answered a year later: “A psychology of denial gripped the financial and corporate world… [it was] the failure of the collective imagination of many bright people… to understand the risks to the system as a whole”. A “failure of imagination” has also been identified as one of the reasons for the breakdown in US intelligence around the 9/11 attacks in 2001. A similar failure is occurring with climate change today. The problem is widespread at the senior levels of government and global corporations. A 2016 report, Thinking the unthinkable, based on interviews with top leaders around the world, found that: “A proliferation of ‘unthinkable’ events… has revealed a new fragility at the highest levels of corporate and public service leaderships. Their ability to spot, identify and handle unexpected, non-normative events is… perilously inadequate at critical moments… Remarkably, there remains a deep reluctance, or what might be called ‘executive myopia’, to see and contemplate even the possibility that ‘unthinkables’ might happen, let alone how to handle them. Such failures are manifested in two ways in climate policy. At the political, bureaucratic and business level in underplaying the high-end risks and in failing to recognise that the existential risk of climate change is totally different from other risk categories. And at the research level in underestimating the rate of climate change impact and costs, along with an under-emphasis on, and poor communication of, those high-end risks. Existential risk An existential risk is an adverse outcome that would either annihilate intelligent life or permanently and drastically curtail its potential. For example, a big meteor impact, large-scale nuclear war, or sea levels 70 metres higher than today. Existential risks are not amenable to the reactive (learn from failure) approach of conventional risk management, and we cannot necessarily rely on the institutions, moral norms, or social attitudes developed from our experience with managing other sorts of risks. Because the consequences are so severe — perhaps the end of human global civilisation as we know it — researchers say that “even for an honest, truth-seeking, and well-intentioned investigator it is difficult to think and act rationally in regard to… existential risks”. Yet the evidence is clear that climate change already poses an existential risk to global economic and societal stability and to human civilisation that requires an emergency response. Temperature rises that are now in prospect could reduce the global human population by 80% or 90%. But this conversation is taboo, and the few who speak out are admonished as being overly alarmist. Prof. Kevin Anderson considers that “a 4°C future [relative to pre-industrial levels] is incompatible with an organized global community, is likely to be beyond ‘adaptation’, is devastating to the majority of ecosystems, and has a high probability of not being stable”. He says: “If you have got a population of nine billion by 2050 and you hit 4°C, 5°C or 6°C, you might have half a billion people surviving”. Asked at a 2011 conference in Melbourne about the difference between a 2°C world and a 4°C world, Prof. Hans Joachim Schellnhuber replied in two words: “Human civilisation”.

### 1NC – EU CP

#### The European Union should

#### expand the Representative Actions Directive to cover abusive anticompetitive business practices

#### expand the definition of “Qualified Entities” to include non-member state parties.

#### EU Representative Actions Directive solves the aff but avoids abusive lawsuits

EP 20 [European Parliament Press Release, “Parliament today endorsed a new law that will allow groups of consumers to join forces and launch collective action in the EU.” 11/24/20. <https://www.europarl.europa.eu/news/en/press-room/20201120IPR92116/eu-consumers-will-soon-be-able-to-defend-their-rights-collectively>]

The new rules introduce a harmonised model for representative action in all member states that guarantees consumers are well protected against mass harm, while ensuring appropriate safeguards to avoid abusive lawsuits.

All member states must put in place at least one effective procedural mechanism that allows qualified entities (e.g. consumer organisations or public bodies) to bring lawsuits to court for the purpose of injunction (ceasing or prohibiting) or redress (compensation). This legislation aims to improve the functioning of the internal market by stopping illegal practices and facilitating access to justice for consumers.

More rights for consumers and safeguards for traders

The European class action model will allow only qualified entities, such as consumer organisations, to represent groups of consumers and bring lawsuits to court, instead of law firms.

In order to bring cross-border actions to court, qualified entities will have to comply with the same criteria across the EU. They will have to prove that they have a certain degree of stability and be able to demonstrate their public activity, and that they are a non-profit organisation. For domestic actions, entities will have to fulfil the criteria set out in national laws.

The rules also introduce strong safeguards against abusive lawsuits by using the “loser pays principle”, which ensures that the defeated party pays the costs of the proceedings of the successful party.

To further prevent representative actions from being misused, punitive damages should be avoided. Qualified entities should also establish procedures to avoid conflict of interest and external influence, namely if they are funded by a third party.

Collective actions can be brought against traders if they have allegedly violated EU law in a broad range of areas such as data protection, travel and tourism, financial services, energy and telecommunication.

Finally, the directive also covers infringements that have stopped before the representative action is brought or concluded, since the practice might still need to be banned to prevent it from recurring.

Quote

The rapporteur Geoffroy Didier (EPP, FR) said: “With this new directive, we found a balance between more consumer protection and giving businesses the legal certainty that they need. At a time when Europe is being severely tested, the EU has demonstrated that it can deliver and adapt to new realities, better protect its citizens and offer them new concrete rights in response to globalisation and its excesses”.

Next steps

The directive will enter into force 20 days following its publication in the Official Journal of the EU. Member states will then have 24 months to transpose the directive into their national laws, and an additional six months to apply it. The new rules will apply to representative actions brought on or after its date of application.

Background

The Representative Action Directive, presented in April 2018 by the European Commission, was agreed by EP negotiators and EU ministers in June 2020. The bill, which is part of the New Deal for Consumers, comes as a response to a recent series of scandals related to breaches of consumers’ rights by multinational companies. In some member states, consumers can already launch collective action in courts, but now this option will be available in all EU countries.

#### Turns EU advantage—leadership’s key to soft power

Goldthau 15 [Andreas Goldthau, Belfer Center for Science and International Affairs, Harvard Kennedy School of Government, Harvard University, Cambridge, MA, USA; Department of Public Policy, Central European University, Budapest, Hungary. Nick Sitter, Department of Public Policy, Central European University, Budapest, Hungary; Department of Accounting, Auditing and Law, BI Norwegian Business School, Oslo, Norway. “Soft power with a hard edge: EU policy tools and energy security.” 2/26/15. <https://www.tandfonline.com/doi/full/10.1080/09692290.2015.1008547>]

The European Union (EU) is usually described as a civilian – or soft – power: an economic giant but a military dwarf. The reason for this lies in the EU's lack of ‘hard power’ policy tools: it does not have sizeable armed forces under joint command, a substantial federal budget or direct control of firms. Its ability to use ‘hard power’, by means of coercion and payment (Nye 2004), is limited. Indeed, very little power is centralized at the EU level. However, the present article argues that the EU's soft power comes with a hard edge. The EU's ability to exert more than mere soft power is a consequence of its attractiveness as a USD 17.3 trillion economy and the world's largest single market, and it is brought to bear by a policy entrepreneur with a well-stocked regulatory toolbox: the European Commission. Indeed, although its international military and economic power may be limited, the EU features a formidable regulatory state. Its Single European Market (SEM) operates on a liberal, rule-based model. In EU competition policy, the European Commission has a powerful tool to enforce this model, albeit directed as much at firms as at governments. The central point here is that this tool reaches well beyond the borders of the EU.

The SEM exerts soft power inasmuch as it attracts non-EU companies to ‘come and play’ on the EU's turf and accept its rules as the price for access, or when neighbouring states voluntarily choose to adopt EU rules and regulations as their own. However, to the extent that the European Commission – the EU's SEM watchdog – uses these rules purposefully to target external firms, this soft power acquires a hard edge. By these means, the EU can and does use its regulatory toolbox to foster strategic goals in the near abroad and at the global level.

### 1NC – Adv CP

#### The United States federal government should

* establish an independent antitrust court designed for the review of cases brought by the FTC and DOJ
* substantially enhance FTC and DOJ review and enforcement of its core antitrust laws
* promote the benefits of private enforcement in speeches, testimony, and international for a
* establish a national innovation policy, to oversee procurement reform, incentives for research and development, and workforce training;
* substantially increase its funding of R&D and establish financial incentives for innovative tech startups

#### First and second plank solve the whole aff and avoid court clog

Holleran 20 [Keith Holleran, associate in the antitrust group in Axinn's Washington, DC office, George Mason Law, Antonin Scalia School of Law. Concurrence Antitrust Writing Award 2020. “Establishing an Independent Antitrust Court.” 2020. <https://awards.concurrences.com/IMG/pdf/4._establishing_an_independent_antitrust_court.pdf?56466/614536766da09a9216d1e0809972eb9aa909eb4d>]

Benefits of an Independent Antitrust Court

Specialized courts can be of great benefit to society at large. While judicial specialization also leads to some negative consequences, the benefits of an independent antitrust court would greatly outweigh them. The main benefits from an independent antitrust court are that the Antitrust Court would be more efficient than generalist courts, their decisions would be higher quality, and there would be a greater uniformity of decisions. These benefits in theory also apply to the FTC hearing antitrust cases, but the Antitrust Court provides the added benefits of objectiveness in making decisions and an expediated adjudication process.

Efficiency in the Antitrust Court

The Antitrust Court would be more efficient than generalist courts simply because the Antitrust Court is made up of experts in antitrust law. “Judges who regularly handle a single class of cases are expected to dispose of their work in less time than their counterparts on generalist courts who see that class of cases less frequently.”5 Antitrust Court judges are made up of experts in the field, and so they would require much less preliminary research to get brought up to speed on a given case. Generalist judges may not see many antitrust cases each year, and so they would have to research antitrust law and gain an understanding of what needs to be resolved and proven in every case. As antitrust cases often involve highly complex economic models and arguments, more and more is required of generalist judges to make an accurate decision.

An ancillary gain in efficiency is realized from generalist courts no longer having to work through complicated antitrust cases, as they are now brought before a specialized court.6 Antitrust cases can take years to resolve, and these cases can clog up a generalist court’s docket. “It is now generally accepted that the regular federal courts, and especially the courts of appeals, are critically overloaded.”7 Removing all of these cases to a specialized court frees up generalist judges to resolve other cases quicker.8

#### Last plank solves EU modeling – we’re yellow

Davis ’17 [Joshua and Robert Lande; 2017; Professor and Director of Center for Law and Ethics at the University of San Francisco; Venerable Professor of Law at the University of Baltimore, M.P.P. and J.D. from Harvard University; Scholar Works, “Restoring the Legitimacy of Private Antitrust Enforcement,” Ch. 6]

D. Foreign Jurisdictions

The importance of private enforcement is increasingly recognized outside the United States. A number of leading jurisdictions in recent years have adopted, or are considering, private rights of action for antitrust (often called “competition law” outside the United States) violations to supplement their traditions of public enforcement. The leading jurisdiction to do so is the European Union (EU). Following the European Court of Justice’s landmark Crehan decision,23 which held that each member state must provide a meaningful cause of action for persons injured by reason of a violation of EU competition law, in 2014 the European Commission (Commission) enacted a Directive that authorizes private parties to bring damages actions for violations of EU Competition law.24 Although the Directive’s provisions are not likely to be sufficient to compensate most European victims of anticompetitive behavior fully,25 it nevertheless is an important and positive step forward.26 The EU should be commended and encouraged to make changes that are likely to lead to even more optimal compensation of victims, such as permitting opt-out victim class action suits.27

In Canada, section 36 of the Competition Act provides a right of recovery of damages for conduct that contravenes certain substantive provisions of the Act, including price-fixing. Prior governmental decisions that the conduct was illegal create a presumption of illegality in any subsequent private suits for damages. There is also a limited right of access to complain to the Competition Tribunal in refusal to supply, exclusive dealing, and tying and territorial restrictions, but no right to seek damages. Class actions have been used a number of times for settlement purposes but none has been litigated to judgment as of the date of this report. Other common law countries such as Australia have also implemented limited private rights of action with most recoveries coming by way of settlement rather than a litigated judgment.28

In sum, jurisdictions all around the world are increasingly recognizing the importance of creating a private-public partnership to enforce competition law by creating private suits for damages and other private actions. However, very few jurisdictions outside the United States have vigorous systems of private enforcement. In part this is due to a well-organized campaign by defendants and potential defendants to thwart private actions by misleadingly pointing to alleged flaws with the U.S. system of private enforcement.29 Despite the lack of a sound underlying empirical foundation, they warn foreign jurisdictions against expanding private rights of action for victims in almost apocalyptic terms.30 The next administration should forcefully point out the benefits of private enforcement in speeches, testimony, and at international fora, and correct any disinformation about the U.S. system that is promulgated by potential lawbreakers.

#### National policy restarts innovation and solves slow growth without market disruption.

Sadat ’20 [Mir; November 22; former Policy Director leading interagency coordination on defense and space policy issues, including at the Department of Defense and National Security Council, Ph.D. from Claremont Graduate University; The Hill, “Why innovation is so important to America's global leadership,” <https://thehill.com/opinion/technology/526535-why-innovation-is-so-important-to-americas-global-leadership>]

The U.S. government must mitigate the harm to America’s innovation base. So far, the government has yet to craft a national innovation policy and stand up a true national innovation council to modernize government; coordinate between the government, industry and academia; transform monopolistic or oligopolistic markets into competitive sectors; and ensure that America regains global economic leadership through foreign partnerships. Reform of American innovation is necessary for several reasons.

First, to harness the untapped potential of exponential technologies, the government must democratize its requirements processes that have advantaged legacy systems and traditional technology providers. The government must evolve its industrial age procurement policies, practices and beneficiaries to the digital age by placing innovation at the core of its activities. The innovation base needs public and private investment capital, scaled to the risk and importance of the invention, to level the playing field for startups and scale-ups, and to increase competitiveness. In short, the government must increase funding and incentives for Apollo-scale research and development (R&D) programs.

Second, to create exponential technologies in an era of unprecedented disruption, America’s workforce requires continuous training and education. The “lone innovator” is a myth because every American invention is a mix of persistence, genius, teamwork, business model and resource management. The government must establish whole-of-nation policies that stimulate world-class innovators in the areas of science, technology, engineering and mathematics (STEM); support nationwide STEM access and diversity; promote R&D and economic growth in technologically underserved areas using economic opportunity zones; and improve mentorship programs for underrepresented persons.

Third, individual innovators and their teams are challenged to achieve successful outcomes because of the high costs and risks, the uncertainty and gaps in funding, and the vicissitudes of the market’s readiness. America’s innovators are strewn across the federal enterprise, the national security establishment, state and local governments, startups and established corporations, universities and research institutions, and other consortiums. Innovators must collaborate by leveraging innovation multipliers such as diversity of effort, thought and demographics.

Fourth, if rules-based, free-market innovation is to compete economically and demonstrate American leadership, then the government must create and enhance opportunities for innovators to compete in international markets and garner global funding. Innovation is the global competition that transcends borders. We must be the first to disrupt our markets, rather than others who could render particular industries potentially obsolete.

## Adv 1 – Class Action

### 1NC – Turn

#### Existing law deters cartelization BUT expansion decks the economy

Muris 21 [Prepared for the U.S. Chamber Institute for Legal Reform by Timothy J. Muris, Sidley Austin LLP, American lawyer and academic who served as Chairman of the Federal Trade Commission from 2001 to 2004, Jonathon E. Nuechterlein, partner and co-leader of Sidley's Telecom and Internet Competition practice, Sidley Austin LLP. “Private Antitrust Remedies: An Argument Against Further Stacking the Deck.” March 2021. https://instituteforlegalreform.com/wp-content/uploads/2021/03/March-2021-Antitrust-Paper-FINAL.pdf]

The Value of Private Arbitration

The Report further calls for abolition of pre-dispute arbitration clauses, which are generally applicable only to plaintiffs in contractual privity with the defendants they wish to sue. According to the Report, such clauses “allow [defendants] to evade the public justice system—where plaintiffs have far greater legal protections—and hide behind a one-sided process that is tilted in their favor.”42 That claim is wrong in several respects.

FIRST Nearly one hundred years after passage of the Federal Arbitration Act of 1925,43 private arbitration has proven itself as a fair, less expensive, and speedier alternative to the court system for adjudicating business disputes of all kinds, including antitrust claims. Indeed, recent research suggests that consumers tend to fare better, and receive compensation far sooner, when they proceed via arbitration rather than in court.44 In all events, the process is hardly “tilted in … favor” of antitrust defendants.45

SECOND The supposedly “greater legal protections” the Report attributes to court-based antitrust litigation operate mainly to the benefit of plaintiffs’ attorneys, not their clients. It is true that arbitration commonly lacks key features endemic to antitrust litigation, such as massive discovery burdens for defendants and one-way feeshifting for plaintiffs’ lawyers. But those features do not make traditional multi-year court litigation fairer than arbitration; they make it more costly for defendants, more conducive to forced settlements, and thus more likely to bestow a contingency fee windfall on plaintiffs’ attorneys. Restricting the availability of arbitration would enable plaintiffs’ lawyers to bring more meritless suits and, by forcing companies to settle them for substantial sums, would increase their costs of doing business and ultimately raise the price of goods and services economy-wide.

THIRD Contractual arbitration provisions do not enable anyone “to evade the public justice system”46 even where they apply. No matter what provisions private parties agree to, defendants remain fully accountable, in court, to two federal antitrust agencies and 50-plus state AGs, all of which appear eager to build on the new wave of antitrust cases they have recently brought against some of America’s largest companies.

The Report suggests, without citation, that eliminating arbitration clauses is necessary anyway because even though antitrust authorities can hold wrongdoers accountable in federal court, they are “susceptible to capture by the very monopolists that they [are] supposed to investigate.”47 No one familiar with the theory of “capture” or with America’s antitrust enforcers would make such a claim. “Capture” is a phenomenon associated with industry-specific regulators, not the generalist antitrust litigators who lead and staff the U.S. Department of Justice’s Antitrust Division, the Federal Trade Commission, and state AGs’ offices. Those litigators have strong incentives to bring aggressive cases against prominent defendants, both to gain professional experience and to make a name for themselves. Such experience and reputation are especially valuable for antitrust enforcers who wish someday to transition to private law firms. If anything, antitrust enforcers are more likely to be prodded into marginal litigation by a target’s rivals than to be argued into submission by the target itself.

Conclusion

Private litigation will continue playing a central role in the enforcement of U.S. antitrust law. But antitrust plaintiffs already enjoy advantages in private litigation that are unparalleled in other areas of U.S. civil liability.

Those advantages have spawned litigation abuses even against the backdrop of today’s substantive antitrust doctrine, and the economy-wide costs of those abuses will only increase if, as the populists propose, Congress expands the scope of substantive antitrust liability. As America begins to rebuild its post-pandemic economy, now is not the time to stack the litigation decks even more lopsidedly against private enterprise.

#### Uncertainty causes 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.”

### 1NC – Class Actions Fail

#### Antitrust class actions don’t deter

Zygimantas Juska, Leiden University, 2017 The Antitrust Bulletin 62(3), The Effectiveness of Private Enforcement and Class Actions to Secure Antitrust Enforcement, https://journals.sagepub.com/doi/pdf/10.1177/0003603X17719764

The primary goal of this chapter has been to determine whether antitrust private enforcement, and more specifically class actions, accomplish the stated goals of compensation and deterrence. In order to assess the compensatory effectiveness, this chapter has presented the success and failure presump- tions. By applying the actual compensation rate of 40% in automatic distribution settlements and a 25% claiming rate in claims-made settlements, it was found that antitrust class actions fail to pass the defined threshold in small-stakes class actions. More importantly, the class action device is determined to provide very low proportional compensation to an insignificant number of antitrust victims. This is notable due to the unique nature of antitrust litigation: widespread overcharge, significant adminis- trative fees, expensive counterfactual assessments and low settlement awards. Another criticism of attorneys’ overpayment has also been confirmed. Despite of class members remaining largely under- compensated, the class counsel usually reaps significant rewards without any connection to the (lack of) success of the distribution. It was argued that amounts higher than three times that of the expen- diture costs can be already considered as overpayment. Consequently, the empirical data proved that the class counsel typically receives higher proportional compensation, which sometimes can even be a tens of times higher compensation than the expenditure. In order to appreciate the cy pres controversy, the 20% failure presumption has been set; that is, if more than two out of ten cy pres settlements are frivolous. Because of the limited data available, there was no attempt to draw definite conclusions. However, it was found that dubious cy pres distributions often occur in antitrust cases, suggesting that a majority of antitrust distributions attract dubious actions.

A crucial point in this respect is that the failure of the compensation goal accelerates the expansion of deterrence through private attorney general actions. Given that the aggregation of a large group of victims is allowed without a particular objective to provide effective compensation, and while the disproportionately high payment is reserved for the antitrust plaintiff bar, private attorneys have sufficient incentives to enforce antitrust rules aggressively. In order to arrive at this conclusion, the chapter assessed the elements of controversy through the optimal deterrence theory. It was found that the DOJ enforcement has more effect on the probability of detection, but the class action litigation scores higher points in maximizing the monetary penalty. However, the full effect of deterrence is diminished due to the following factors. First, the courts are reluctant to certify antitrust class actions. Second, cases are settled for amounts closer to the actual damages rather than treble damages. Third, class members receive much less than actual damages, meaning that the infringers internalize only low costs from the harm caused. Due to these obstacles, class action litigation does not deter rational actors during or before the antitrust violation; it has an effect only when the investigation is started. While the optimal deterrence should be a function of three equal components acting together—corporate fines, personal sanction and damages actions—the current scheme only allows for private litigation to serve a secondary function. However, even if private remedies were enhanced by additional support from public enforcers, by relaxing rules on certification and by capping settlements for higher than actual awards, optimal deterrence would not be achieved. It is highly questionable whether attorneys would bring more cases under the proposed model, as capping settlements may bring dissuasive effective for attorneys’ incentives to sue. Therefore, the multiplier of 1/3 in detecting and convicting cartels would remain similar. Another viewpoint is that capped settlements would potentially ensure full award for class member, but this value is much lower than the optimal penalty, which necessitates awarding the damages as high as three times of the ‘net harm to others’.

### 1NC---Growth High

#### Growth strong now. Predictive.

Winck 10-26-2021 (Ben, “3 signs the US economy roared in October and started to leave the Delta wave behind,” *Business Insider*, [https://www.businessinsider.com/economy-boomed-october-supply-chain-recovery-hiring-spending-ubs-forecast-2021-10](about:blank))

Several signs suggest the US recovery is accelerating again as the Delta wave fades, UBS economists said.

Americans' spending is rebounding, factories are solving backlogs, and businesses are hiring faster. The recovery through October is "far outpacing" the progress seen in September, UBS said. Temperatures are dropping across the US, but in one crucial way, it's feeling a lot more like summer. The US economy is booming once more after the Delta wave slowed the recovery through August and September. The comeback through October is "far outpacing" the progress seen the month before, UBS economists said in a Monday note. The degree of the rebound is also extraordinary. Such month-over-month improvements have only happened about 20% of the time historically, the team led by Ajit Agrawal said. The pickup comes from gains across the board. The Delta wave continued to fade, and daily case counts are now the lowest they've been since late July. The plunge in virus cases led to Americans spending more, with UBS forecasting that sales "picked up substantially" in October. Filings for unemployment benefits have steadily declined through the month. And while the country remains mired in a supply-chain mess, companies are working around the clock to solve massive backlogs. The signs all point to a stronger recovery heading into the end of the year. Here are the three trends revealing just how much the recovery picked up in October, according to UBS.

1. Spending is rebounding everywhere

Among the most encouraging signs is a healthy bounce in spending. Personal consumption expenditures — a popular measure of Americans' spending — likely improved "substantially" in October, UBS said. With consumer spending accounting for 70% of US economic activity, a pickup would broadly aid the recovery. Credit-card data suggests strong growth in sales of goods, particularly in the electronics, merchandise, and home renovation sectors. The bank expects retail sales to climb 0.2% in October. That would place sales just above record highs and mark a third straight monthly gain. The stronger spending isn't just on goods. Service spending, which is more affected by the virus, likely grew in September and probably grew even faster through October, the team said. Spending rebounded most at arts and entertainment, healthcare, and air travel businesses. While spending at restaurants and hotels was mixed, the bank still expects sales to shift further toward services as virus cases decline further.

2. Factories are sorting out their backlogs

Stronger spending is a good sign for the recovery. Yet Americans' massive spending has ran into global supply shortages in recent months. That mismatch helped keep inflation at decade-highs. October likely marked a turnaround for the problem, UBS said. Industrial production broadly bounced back in October after slowing the month prior, the team said. The largest improvements showed up in auto production, goods manufacturing, utilities, and gasoline production. Exports are also trending higher and could break from a months-long trend of flat output, the team added. The rosier outlook suggests the worst of the global supply-chain crisis could be behind the US. Port logjams, materials bottlenecks, and factory blackouts in China all slammed supply in the US through early fall. UBS's latest projections suggest the shortages will ease into the holiday season. The team isn't alone. Economists at Jefferies made a similar forecast earlier in October, saying in a note that "we may already be witnessing the worst" of the supply-chain mess.

3. The labor market is rebounding again

Job fair US hiring employers Employers manned booths with banners promoting their companies benefits, free logo branded swag and salary pay scales and in some cases recruitment bonuses in order to entice job applicants to approach their booths during the Lee County Area Job Fair in Tupelo, Miss., Tuesday, Oct. 12, 2021. Rogelio V. Solis/AP Photo The labor market remains far from healed, but October should mark a turning point for US hiring, UBS said. The pickups in consumer spending and industrial production should power much stronger job creation, according to the team. The bank estimates 631,000 payrolls were added in October, well above the consensus forecast of 390,000 added jobs. Such a reading would also mark a major improvement from the disappointing job creation seen over the last two months. The Delta wave limited August growth to 366,000 payrolls, more than halving the gain seen in July. September showed the recovery slipping further with an addition of just 194,000 jobs. The UBS forecast suggests the Delta wave's negative impact ended in October, and that the labor market's recovery will strengthen into 2022.

### 1NC---!D---Econ

#### No correlation between economic decline and war.

Walt 20, Robert and Renée Belfer professor of international relations at Harvard University. (Stephen M., 5/13/20, “Will a Global Depression Trigger Another World War?”, *Foreign Policy*, https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/)

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”   
Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

### 1NC---!D---Biodiversity

#### Chemicals impact is biodiversity loss---that won’t cause extinction

Kareiva & Carranza 18, \*Director of the Institute of the Environment and Sustainability at UCLA, Pritzker Distinguished Professor in Environment & Sustainability and Chair, Doctorate, in the Environmental Science and Engineering program, \*\*PhD Student at University of California, Riverside. (Peter, Valerie, “Existential risk due to ecosystem collapse: Nature strikes back”, *Futures*, 102, pg. 39-50, doi: 10.1016/j.futures.2018.01.001)

While there are data that relate local reductions in species richness to altered ecosystem function, these results do not point to substantial existential risks. The data are small-scale experiments in which plant productivity, or nutrient retention is reduced as species number declines locally (Vellend, 2017), or are local observations of increased variability in fisheries yield when stock diversity is lost (Schindler et al., 2010). Those are not existential risks. To make the link even more tenuous, there is little evidence that biodiversity is even declining at local scales (Vellend et al 2017; Vellend et al., 2013). Total planetary biodiversity may be in decline, but local and regional biodiversity is often staying the same because species from elsewhere replace local losses, albeit homogenizing the world in the process. Although the majority of conservation scientists are likely to flinch at this conclusion, there is growing skepticism regarding the strength of evidence linking trends in biodiversity loss to an existential risk for humans (Maier, 2012; Vellend, 2014). Obviously if all biodiversity disappeared civilization would end—but no one is forecasting the loss of all species. It seems plausible that the loss of 90% of the world’s species could also be apocalyptic, but not one is predicting that degree of biodiversity loss either. Tragic, but plausible is the possibility our planet suffering a loss of as many as half of its species. If global biodiversity were halved, but at the same time locally the number of species stayed relatively stable, what would be the mechanism for an end-of-civilization or even end of human prosperity scenario? Extinctions and biodiversity loss are ethical and spiritual losses, but perhaps not an existential risk.

What about the remaining eight planetary boundaries? Stratospheric ozone depletion is one—but thanks to the Montreal Protocol ozone depletion is being reversed (Hand, 2016). Disruptions of the nitrogen cycle and of the phosphorous cycle have also been proposed as representing potential planetary boundaries (one boundary for nitrogen and one boundary for phosphorous). There are compelling data linking excesses in these nutrients to environmental damage. For example, over-application of fertilizer in Midwestern USA has led to dead zones in the Gulf of Mexico. Similarly, excessive nitrogen has polluted groundwater in California to such an extent that it is unsuitable for drinking and some rural communities are forced to drink bottled water. However, these impacts are local. At the same time that there is too much N loading in the US, there is a need for more N in Africa as a way of increasing agricultural yields (Mueller et al., 2012). While the disruption of nitrogen and phosphorous cycles clearly perturb local ecosystems, end-of-the-world scenarios seem a bit far-fetched.

Another hypothesized planetary boundary entails the conversion of natural habitats to agricultural land. The mechanism by which too much agricultural land could cause a crisis is unclear—unless it is because land conversion causes so much biodiversity loss that is species extinctions that are the proximate cause of an eco-catastrophe. Excessive chemical pollution and excessive atmospheric aerosol loading have each been suggested as planetary boundaries as well. In the case of these pollution boundaries, there are well-documented mechanisms by which surpassing some concentration of a pollutant inflicts severe human health hazards. There is abundant evidence linking chemical and aerosol pollution to higher mortality and lower reproductive success in humans, which in turn could cause a major die-off. It is perhaps appropriate then that when Hollywood envisions an unlivable world, it often invokes a story of humans poisoning themselves. That said, it is doubtful that we will poison ourselves towards extinction. Data show that as nations develop and increase their wealth, they tend to clean up their air and water and reduce environmental pollution (Flörke et al., 2013; Hao & Wang, 2005). In addition, as economies become more circular (see Mathews & Tan, 2016), environmental damage due to waste products is likely to decline. The key point is that the pollutants associated with the planetary boundaries are so widely recognized, and the consequences of local toxic events are so immediate, that it is reasonable to expect national governments to act before we suffer a planetary ecocatastrophe.

## Adv 2 – EU

### 1NC – Turn

#### Declining U.S. private action causes E.U. fill in – solves the aff but the plan reverses it

Fiebig 16 [Andre Fiebig, partner in the Chicago office of Quarles & Brady LLP. author of EU Business Law (2015), published by the Business Law Section of the American Bar Association. He is also coauthor of Antitrust and American Business Abroad (4th ed. 2016). “The Increasing Importance of EU Competition Law for U.S. Companies.” 1/20/16. https://www.americanbar.org/groups/business\_law/publications/blt/2016/01/06\_fiebig/]

U.S. courts are increasingly refusing to hear cases based on foreign conduct which several decades ago they would have entertained. Motorola Mobility v. AU Optronics is a recent example of this contraction. In that case, a foreign subsidiary of Motorola Mobility acquired LCD screens which it assembled into Motorola mobile phones sold into the United States. The Seventh Circuit held that the U.S. Sherman Act was not applicable to foreign LCD screen manufacturers who had conspired to fix the prices of those LCD screens. According to Judge Posner, author of the opinion: “No longer is the United States the world’s competition policeman.” Motorola Mobility v. AU Optronics, 775 F.3d 816, 826 (7th Cir. 2014).

Implications of Expanded EU Extraterritorial Jurisdiction

The expansive extraterritorial application of EU competition law together with contracting U.S. extraterritorial jurisdiction will facilitate increased private litigation in Europe commensurate with the objectives of the European Commission. As of December 27, 2016, the new EU Damages Directive requires all EU member states to “ensure that any natural or legal person who has suffered harm caused by an infringement of competition law is able to claim and to obtain full compensation for that harm.” Directive 2014/104/EU, 2014 O.J. (L 349) 1.

This legislative development is not as insignificant as it may first appear to a U.S. observer. Consumers and companies injured by violations of EU competition law have generally not been able to bring a private claim in Europe for the injuries they suffered as a result of the anticompetitive conduct. In those member states where such private claims were theoretically possible, plaintiffs experienced significant hurdles. Consequently, private competition law claims were virtually nonexistent. The dominant view was that competition law is a public law which should be enforced by the public enforcement agencies. The Damages Directive is designed to promote more private cases to supplement the enforcement efforts of the European Commission and the national competition authorities.

In addition, the European Commission has issued a recommendation to the EU member states encouraging them to do more to facilitate collective actions. Although collective actions as envisaged by the recommendation can be roughly compared to U.S. class actions, they differ in several critical aspects. Out of fear of facilitating the perceived abuses associated with U.S.-style class actions, the Commission recommendation requires that each class member affirmatively opt-into the class in order to be bound by the result. Moreover, the recommendation prohibits contingency fees and the injured parties are limited to compensatory damages. Unfortunately these attributes of U.S.-style class actions which facilitate their abuse are the preconditions for the achievement of the public objectives which class actions were designed to achieve. Consequently, collective actions in the EU are moving toward a system in which third parties (claim aggregators) acquire the rights of several parties to bring a lawsuit. Although these claim aggregation agents are encountering resistance in Europe, once they break through, the European cases that the U.S. courts are increasingly reluctant to hear will be brought in the EU.

#### But, the E.U. needs to lead, not model to wield influence

Majcher 20 [Klaudia Majcher, Vienna University of Economics and Business. “‘Open strategic autonomy’: towards the geopoliticisation of EU competition law?” November 20, 2020. <http://competitionlawblog.kluwercompetitionlaw.com/2020/11/20/open-strategic-autonomy-towards-the-geopoliticisation-of-eu-competition-law/>]

Based on the current discourse around open strategic autonomy and the role of competition, it seems reasonable to infer that pursuing autonomy is unlikely to bring about any imminent ideological or policy shift under EU competition law in the near future. On the contrary, the concept of autonomy seems to be expressly invoked to justify the current competition policy and enforcement strategy on the EU level: as the argument goes, more vigilant competition enforcement creates better conditions for market players, including for domestic companies.

When understood in this way, open strategic autonomy could also be equated with Europe’s ambitions to independently set and subsequently export its values and norms, inspiring regulatory and enforcement actions in other jurisdictions. Europe has demonstrated its aspirations to be a first-mover on a number of occasions, ranging from vigorous law enforcement against tech platforms to the regulatory proposals put forward in the forthcoming Digital Services Act package (DSA). In fact, creating and exporting such rules can be presented as a form of ‘soft geopolitics’ that bolsters the EU’s autonomy – its ability to act independently and according to its own values – without compromising its openness.

### 1NC – Circumvention – Courts

#### Courts refuse to enforce

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: Russia War - 2020

#### Russian economic coercion fails - depend on energy exports for growth

* Not a coercive tool because Russia needs European consumers
* No substitute if cut off
* Failing econ lowers risk of economic hostilities

Cohen and Radin 19 [Raphael S. Cohen, associate director of the Strategy and Doctrine Program in Project AIR FORCE, Andrew Radin, RAND, "Russia's Hostile Measures in Europe", 1/11/19, https://apps.dtic.mil/sti/pdfs/AD1085532.pdf]

Despite these measures, Europe will remain partially dependent on Russian gas—at least in the short term. Although Europe can import more from Norway and other producers, this will likely be a more expensive option.82 Moreover, Europe will need to contend with other buyers (such as China) for natural gas, and turmoil in the Middle East could threaten energy supplies. Indeed, even as Europe has urged energy independence from Russia, a Gazprom-led consortium with European oil companies pushed for building Nord Stream 2, designed to increase Russian natural gas exports to Western Europe (while bypassing Central Europe)—despite U.S. opposition.83

Even if Europe does remain dependent on Russian gas for the short term, it is not clear that Russia will be able to leverage such dependence effectively as a coercive tool. As much as Europe needs Russian energy, Russia needs European consumers to survive economically. According to Sergei Aleksashenko, a former deputy chairman of the Russian central bank in the late 1990s who is now a Brookings Institution economist, upward of 80 percent of Russia’s economy comes from exporting raw materials and commodities, and Russia simply cannot find a substitute for European markets.84 Although Russia tried exporting more natural gas to China, the European and Chinese markets traditionally have been serviced by different oil fields—and as China’s economy slowed, its demand for raw materials slackened. Moreover, Russia’s other industries, such as arms (5 percent of GDP), agriculture (3 percent), and cars (2 percent), simply do not encompass enough of Russian economic output to compensate for a decline in natural resource exports.85

Finally, the poor state of Russia’s economic health—at least in the short run—decreases the likelihood that Russia will opt for economic hostile measures in the short term. After a series of down years, Russia experienced modest growth in 2017 and the World Bank projects that Russian GDP will grow 1.4 percent through 2019.86 If Russia were to use energy as a coercive tool however, this might upset these projections. Moreover, after declining oil prices, Russia’s sovereign wealth funds have been depleted.87 As these funds decrease, Russia’s cushion to withstand the loss of revenues from energy sales to Europe will also erode.

In sum, Russia’s ability to employ economic hostile measures against Central and Western Europe might be declining both because Europe now is moderately more energy independent and because Russia might need to sell to the European market as much as Europe needs to buy Russian energy. Although Russia still might try to use economic coercion on a smaller scale against individual countries, large-scale economic coercion against Europe will become progressively less likely and less effective.

#### No Russia war – they won’t risk it

Amy F. Woolf 20, Specialist in Nuclear Weapons Policy in the Foreign Affairs, Defense, and Trade Division of the Congressional Research Service at the Library of Congress, received a Master’s in Public Policy from the Kennedy School of Government at Harvard University in 1983, “Russia’s Nuclear Weapons: Doctrine, Forces, and Modernization”, https://fas.org/sgp/crs/nuke/R45861.pdf

One analyst has postulated that Russia may actually raise its nuclear threshold as it bolsters its conventional forces. According to this analyst, “It is difficult to understand why Russia would want to pursue military adventurism that would risk all-out confrontation with a technologically advanced and nuclear-armed adversary like NATO. While opportunistic, and possibly even reckless, the Putin regime does not appear to be suicidal.” 144 As a study from the RAND Corporation noted, Russia has “invested considerable sums in developing and fielding long-range conventional strike weapons since the mid-2000s to provide Russian leadership with a buffer against reaching the nuclear threshold—a set of conventional escalatory options that can achieve strategic effects without resorting to nuclear weapons.”145 Others note, however, that Russia has integrated these “conventional precision weapons and nuclear weapons into a single strategic weapon set,” lending credence to the view that Russia may be prepared to employ, or threaten to employ, nuclear weapons during a regional conflict.

# 2NC

# 2NC 4

### EU CP

#### Protectionism – EU alone isn’t – have no incentive to apply extraterritorially

Majcher 20 [Klaudia Majcher, Vienna University of Economics and Business. “‘Open strategic autonomy’: towards the geopoliticisation of EU competition law?” November 20, 2020. <http://competitionlawblog.kluwercompetitionlaw.com/2020/11/20/open-strategic-autonomy-towards-the-geopoliticisation-of-eu-competition-law/>]

Similarly to trade or investment, EU competition policy might be seen as a field that is not insulated from the Union’s geopolitical concerns and that could play a more active role in addressing them. As suggested by scholars, ‘competition law is inherently political’ and forms ‘part and parcel of other public policies’.[7] Hence, as further argued, it would be short-sighted to ‘believe that the independence of competition authorities from the broader governmental marketplace of ideas – or that the independence of competition from political choices – is a precondition for the effective functioning of the competitive process’, particularly in unstable and unpredictable political and economic contexts.[8]

Executive Vice-President Margrethe Vestager has expressed readiness to embrace the objective of a strategic autonomy – more precisely, as she frames it, an ‘open strategic autonomy’ – as a principle that could inform competition policy going forward.[9] Offering no details on the exact meaning of this principle, she has pointed towards heavily subsidised Chinese firms as well as competitive distortions in digital markets as sources of concern when it comes to Europe’s autonomy and the ability of domestic companies to succeed. The Executive Vice-President’s references to the concept of autonomy have come, however, with a warning label that there are ‘strict limits on how competition policy as such can be a tool when it comes to geopolitics’.[10] In particular, she has invoked Europe’s rule of law, equal treatment, and non-discrimination as principles that might put a hold on attempts to use competition policy in pursuing geopolitical ambitions and selectively enforce it to the benefit of European stakeholders and detriment of their foreign counterparts.

How should one understand this pledge to contribute to Europe’s open autonomy? Towards which direction, if any, could the pressures to strengthen its strategic autonomy steer competition enforcement?

Thus far, there are some known (or at least partially known) knowns. The most relevant one is that autonomy is unlikely to find its manifestations in traditional economic protectionism – at least not in the field of competition law. As regards merger control, for example, the EU competition enforcers have shown no appetite to adopt the flawed industrial policy logic that assumes relaxing merger rules in order to create ‘European champions’, with the prohibition of the Alstom-Siemens merger serving as a poster child for their approach.[11] This is consistent with the EU’s past enforcement strategy: a study by Bradford et al. that looked at all mergers decided by the Commission between 1990 and 2014 showed that the EU did not deploy its merger control powers to systematically advance protectionist industrial policy and protect European businesses.[12] A radical change of heart seems unlikely in the near future.

Similarly, the Commission has always forcefully rebutted accusations of geographically-targeted interventions in the tech sector, in particular in its cases against the U.S.-based internet giants such as Google, Apple or Amazon.[13] Given these rebuttals, it would be illogical to associate the openly stated aim of ensuring Europe’s strategic autonomy with traditional forms of protectionism and bias against foreign tech companies.

#### The EU Representative Actions Directive avoids the frivolous litigation case turn – no one-way fee shifting, mandatory trebling, or overdeterrence

Martin 21 [Linda Martin, Partner at Freshfields Bruckhaus Deringer. Henry Hutten, Senior Associate at Freshfields Bruckhaus Deringer. “Comparing the EU’s Representative Actions Directive to US class action procedures.” 4/14/21. https://riskandcompliance.freshfields.com/post/102gvmh/comparing-the-eus-representative-actions-directive-to-us-class-action-procedures]

Background

The rules governing class action lawsuits in US federal courts are designed to provide an efficient mechanism for addressing common injuries that, if litigated by each plaintiff separately, might not justify the cost of a lawsuit. Some scholars and practitioners, however, have criticized these rules as being too “effective” (at least from the perspective of defendants). Defendants in US class actions often face momentous exposure and substantial litigation costs. By contrast, US class action plaintiffs generally do not face material economic risk. Critics—including the US Congress when enacting reform in the area of securities class actions—have claimed that this dynamic incentivizes US plaintiffs to commence class action lawsuits of questionable validity simply because of their substantial nuisance value.

The Directive, once implemented, will undoubtedly facilitate the ability of European consumers to litigate collectively. However, with some exceptions, the Directive appears to provide substantially more protections for defendants than the US rules against what critics have often viewed as abusive litigation tactics. Below, we discuss the aspects of the Directive that differ materially from US class actions and that may have the most impact in determining the contours of pan-European representative-action risk.

The scope of claims covered by the Directive may be narrower

Under US rules, class actions can proceed with respect to any type of legal claim, so long as the requirements for proceeding as a class action are satisfied. Therefore, US class actions are not necessarily limited to consumer-oriented litigation. The Directive, by contrast, governs actions concerning certain consumer-related claims, including those related to product liability, data protection, financial services, travel and tourism, energy, and telecommunications. The Directive also appears to authorize shareholder litigation in certain, limited circumstances, with member states being free to expand the scope of shareholder (and other) litigations for which representative actions are authorized. Notably, the Directive does not govern lawsuits concerning competition (i.e. antitrust) laws, although many member states have their own domestic procedures for representative actions in this area of law.

The Directive prioritizes QEs over individual plaintiffs

Under US rules, individual plaintiffs lead class actions and serve as representatives for absent class members. In certain cases, investors who purchase litigation claims from others and then commence lawsuits seeking to make a profit may also serve as a lead plaintiff if the person from which they purchased the claim would satisfy the prerequisites for doing so.

Under the Directive, only QEs, and not individual consumers, can bring representative actions. Moreover, a QE can bring a cross-border [FN3] representative action in the EU only if it shows, inter alia, that it is a non-profit entity with a legitimate interest in, and demonstrated history of, protecting consumer interests. Although member states are not required to apply these same criteria to domestic claims, many member states are expected to do so.

The Directive generally has stronger structural protections against abusive lawsuits

Pleading standards and scope of discovery

Under US court rules, plaintiffs must include in their complaint enough allegations to put the defendant on notice of the specifics of a claim and must have a good faith basis for bringing the claim. However, US plaintiffs are not required to substantiate their claims with evidence when they first file a lawsuit—and after a lawsuit is filed, they often take broad US discovery for months (or sometimes years) before they are required to substantiate their claims with evidence. A putative US class plaintiff also may take discovery before it is required to demonstrate that it is appropriate for the lawsuit to proceed as a class action. By contrast, and as we previously discussed, the Directive requires a QE to provide “reasonably available evidence sufficient to support a representative action” before it can request discovery. [FN4] Moreover, discovery in representative actions in the EU will proceed in accordance with the procedural rules of the EU member state where the lawsuit is pending. And the member states’ various rules generally do not permit the same type of broad discovery allowed in the the US.[FN5]

Fee-shifting provisions

There is little economic risk to plaintiffs from class action litigation in the US, where litigants generally bear their own litigation costs. Certain statutes, common in consumer protection laws, allow a prevailing plaintiff to recover attorneys’ fees from the defendant, but do not provide the same treatment for a prevailing defendant. Even if there is no such fee-shifting statute that applies, plaintiffs’ attorneys will often work on a contingency basis, charging fees only if there is a settlement or a judgment in favor of class members. The attorneys then typically are paid from such settlement or judgment (sometimes as much as 33 percent). Thus, while class action plaintiffs’ attorneys may take risk in bringing a US class action, the same generally is not true of the actual class action plaintiffs.

By contrast, the Directive requires EU member states to permit the winning litigant in a representative action to recover its expenses—including attorneys’ fees—or some portion thereof, from the losing party. This rule may dissuade QEs from bringing “nuisance suits” with dubious merit. However, the Directive’s “loser pays” principle is expressly subject to the “conditions and exceptions” in the laws of each member state, some of which currently allow a successful litigant to recovery only a portion of its costs. Thus, the extent to which QEs are disincentivized from bringing nuisance lawsuits in each member state will depend on the portion of the winning party’s expenses that each such state requires the loser to pay.

Third-party funding

Third-party funding is permitted for US class actions, including to provide interim funding to plaintiffs’ attorneys that work on a contingency basis. With some limited exceptions (such as the need to disclose the funding of class actions in certain federal courts in California), no fixed limits on funding exist, and a court need not approve—nor even be informed of—a funding arrangement. Although US rules of professional conduct require attorneys to ensure that third parties will not interfere with a litigation, critics of litigation funding in the US argue that the prevalence of third-party funding has deterred settlements, since plaintiffs must share a portion of their recovery with funders.

Like US law, the Directive prohibits funders from unduly influencing representative proceedings, including settlement discussions. Beyond that, the Directive does not require member states to permit third-party funding, but where such funding is permitted, the Directive requires QEs to disclose their sources of funding to the courts or other “administrative authorities” who are tasked with ensuring that funders do not exercise undue influence. It is possible that certain member states may decline to allow funding at all, while others may limit the amount that any funder can invest in a QE or one of its representative actions. [FN6]

Limitations on damages

Defendants’ exposure to substantial claims for damages is ubiquitous in US class actions. Large class sizes and a system that permits punitive damages, as well as joint and several liability, have all contributed to this phenomenon.

One primary purpose of the Directive is to ensure that “redress measures” are available to consumers in representative actions. This is a change from European Commission’s previous directive of 2009, which required only that injunctive relief be available in representative actions. In particular, the Directive requires member states to make some form of economic relief available to consumers in a representative action, including monetary compensation, repair, replacement, price reduction, contract termination or reimbursement. Nevertheless, the Directive does not require that the economic relief come in the form of cash, and the Directive prohibits an award of punitive damages.

#### American inaction is key – the perm dilutes the signal

Bradford 20 [Anu, Finnish-American author, law professor, and expert in international trade law. In 2014, she was named the Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. “Hey, US Tech: Here Comes the Brussels Effect” https://www8.gsb.columbia.edu/articles/chazen-global-insights/hey-us-tech-here-comes-brussels-effect]

The United States’ own inaction has paved the way for the EU’s rise as a regulatory superpower. Embracing deregulation and techno-libertarianism as its approach to governing the digital economy, the US has long watched from the sidelines as the EU sets regulations for the global marketplace. By abandoning international engagement and regulatory cooperation, the Trump administration reinforced this regulatory isolationism – effectively, albeit inadvertently, trading globalization for Europeanization.

#### The Brussels effect solves certainty and ensures spillover, but unilateralism is key to maintain influence

Bradford 12 [Anu, International Trade Law Professor @ Columbia Law School, Adam S. Chilton, Professor @ University of Chicago Law School, Katerina Linos, Professor @ University of California, Berkeley. Alex Weaver, Linklaters Law Prof. “The Brussels Effect” p. 44-45 https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1275&context=faculty\_scholarship]

The strictest antitrust laws prevail in situations where conflict exists among different regulators. If lenient antitrust jurisdiction A and stringent antitrust jurisdiction B investigate the same transaction, B's standard will prevail. A company seeking to merge that would be rejected by State B has two options: abandon the merger or abandon State B. If State B's market is relatively insignificant, the company might choose the latter. However, if State B's market is large, abandoning it is not often a realistic option.74 At the international level, the EU antitrust laws are, indeed, often the most stringent." The EU also consists of a consumer market that is too large and important to abandon. For this reason, the EU antitrust laws have often become the de facto global antitrust standards, to which the more permissive U.S. antitrust laws must yield.76 The reasons for the U.S.-EU difference in antitrust enforcement are manifold. At the most basic level, the EU antitrust authorities remain suspicious of the market's ability to deliver efficient outcomes and are therefore more inclined to intervene through a regulatory process." While the EU is more fearful of the harmful effects of nonintervention (so called "false negatives," anti-competitive practices that the EU fails to regulate), the U.S. authorities are often more mindful of the detrimental effects of inefficient intervention (so called "false positives," pro-competitive practices that the United States erroneously restricts)." Yet given the logic of unilateral regulatory globalization, it is the EU approach that determines the outcome. One of the most famous examples of the EU's global regulatory clout was its decision to prohibit the $42 billion proposed acquisition of Honeywell International by General Electric." When the EU blocked this transaction involving two U.S. companies, it was irrelevant that the U.S. antitrust authorities had previously cleared the transaction: the acquisition was banned worldwide because it was legally impossible to let the merger proceed in one market and prohibit it in another. In this sense, merger decisions are legally nondivisible.so The GE/Honeywell case is emblematic 20 107:1 (2012) The Brussels Effect of a difference in the antitrust regulatory approaches of the EU and the United States. The U.S. authorities considered the merger to be efficient and hence welfare enhancing. In contrast, the EU was concerned that any efficiencies that resulted from the transaction, including a short-term decrease in price, would later drive out competitors and result in a longterm increase in price." While GE/Honeywell is the most famous international antitrust enforcement conflict, it does not stand alone.82 The EU similarly threatened to block a merger between two U.S. companies, Boeing and McDonnell Douglas, even though the deal was already cleared by the U.S. authorities without conditions." In the end, the EU let the merger proceed subject to extensive commitments.84 These included abandoning Boeing's exclusive dealing contracts with various U.S. carriers." Similarly, the EU often gets to dictate the code of conduct for dominant companies worldwide. For example, the EU has imposed record-high fines and behavioral remedies against dominant U.S. companies, including Microsoft and Intel. 6 The global nature of antitrust remedies is not unusual. The EU has frequently extracted commitments that require parties to modify their behavior globally or restructure assets in foreign countries." However, the United States has similarly restructured deals where parties' productive assets are located offshore. Both the U.S. and EU agencies are vested with 21 NORTHWESTERN UNIVERSITY LAW REVIEW extraterritorial regulatory capacity." Both recognize their authority to apply laws to foreign companies as long as anticompetitive "effects" are felt on their markets. It is thus not the regulatory capacity as such but the EU's sustained preference to impose more frequent and more invasive remedies that has made it the world's de facto antitrust enforcer. In some respect, however, the EU Commission has an even greater regulatory capacity than its U.S. counterparts: the Commission is empowered to prohibit mergers and impose behavioral and structural remedies without first obtaining a court judgment." Administrative delegation does not reach this far in the United States, where the agencies need federal court endorsement to enjoin a merger.90

### Adv CP

#### Chemical industry is resilient

Outlook ‘12; Economic world economic review, “Economic Outlook — Economic Outlook No.2-2012” <http://www.mydigitalpublication.com/display_article.php?id=1058343>

Rebound in the US **Benefiting from the impact of the last two massive public budget support plans for industry**, **the American chemical industry was also helped in 2011 by favourable dollar/**euro **exchange rate and by the restored health of the Auto sector**, one of **its leading user industries**.While **construction**, the chemical industry’s second major customer, has not yet genuinely recovered, its **decline has** at least **halted, stabilising demand** at levels which are manageable in the end for its chemical suppliers. **The willingness of American politicians to support a forced march to US economic growth offers a reassuring outlook for activity in the sector in 2012**. **Additional factors include relatively stable oil prices,** the **good health of the inorganic chemical sector** – notably fertilisers – **and the improved financial structure of actors in the industry after their restructuring efforts implemented during the** 2008- 2009 **crisis**. On top of this, **there are the prospects of the juicy but more distant benefits of innovations in green chemistry**.

### Adv 1

#### Failed recovery snowballs into depression---causes cyber, China, and Russia war.

Engelke ’20 [Peter and Matthew Burrows; July 2020; Deputy Director and Senior Fellow within the Atlantic Council’s Scowcroft Center for Strategy and Security, Ph.D. in History from Georgetown University, M.A. from the Walsh School of Foreign Service; Director of the Atlantic Council’s Strategic Foresight Initiative, Ph.D. in European History from the University of Cambridge; Atlantic Council, “What World Post-COVID-19?” <https://www.atlanticcouncil.org/wp-content/uploads/2020/07/What-World-Post-COVID-19.pdf>]

The developing world is even more hard hit economically despite the fact that the worst forecasts of large-scale deaths in Africa and Latin America never come true. Death tolls resemble those in the West. The virus weakened as its moved south and the youthful populations—many of whom suffered minor symptoms— diminished the contagion. With the major economic powers hard hit, recovery is extremely difficult. Commodity prices remain low, hurting those developing countries that are dependent on the export of minerals, oil, etc. Chinese investments help, but CPC leaders are wary of providing much assistance largesse for fear the Chinese public is angered while conditions remain hard at home. Popular discontent against the CPC rises with China’s faltering domestic economy.

As during the Great Depression, there are many false starts, giving the illusion that the corner is about to be turned, justifying governments’ stubbornness in persevering with failing policies. Unlike in the 1930s, there is enough of a social safety net that discontent is contained despite slowly sinking standards of living in much of the world. The other is always to blame. Sino-American tensions escalate to an all-time high. The United States takes strong protectionist measures against China and Russia for their “disinformation,” deciding finally to erect a firewall against the two. Observers think the United States is preparing for a cyber war against China and Russia.

By the mid-2020s, deglobalization is speeding up, yielding slow economic growth everywhere. Poverty levels are rising in the developing world and there is the potential for open conflict between the United States and a China-Russia alliance.

#### Migration waves cause extinction.

Klare ’20 [Michael; 2020; Professor Emeritus of Peace and World Security Studies Hampshire College, Senior Visiting Fellow at the Arms Control Association, Ph.D. from the Graduate School of the Union Institute; All Hell Breaking Loose: The Pentagon's Perspective on Climate Change, “A World Besieged,” Ch. 1]

Mass Migration Events

Whenever U.S. security analysts have considered the risks of climate change, a perpetual concern has been that extreme events and prolonged droughts could trigger a massive flight of desperate people seeking refuge in other locales, provoking chaos and hostility wherever they travel. This anxiety was evident in some of the analysts’ earliest public statements on the national security implications of warming, and it has remained a major theme to the present day. In its initial 2007 report on climate change, for example, the CNA Corporation warned that severe climate effects “can fuel migrations in less developed countries, and these migrations can lead to international political conflict.”59 Defense Secretary Hagel sounded a similar note in his 2014 address to the Conference of the Defense Ministers of the Americas. “Drought and crop failures can leave millions of people without any lifeline, and trigger waves of mass migration,” he declared.60

In talking about the risk of mass migrations, U.S. security analysts are typically discussing long-term pressures—such as prolonged drought and coastal erosion—that deprive people of their livelihoods and force them to move elsewhere in search of jobs and income. “When water or food supplies shift or when conditions otherwise deteriorate (as from sea level rise, for example), people will likely move to find more favorable conditions,” the CNA explained.61 The ongoing relocation of impoverished farmers from scorched inland areas to urban centers, for instance, fits this pattern. But American analysts also worry about sudden-onset climate events that would spark rapid, large-scale movements of people from one country to another, setting off a political firestorm. Such destabilizing events, which could become more frequent as global warming advances, are akin to the other types of climate shock waves discussed in this chapter.

A migratory shock wave of this type could be ignited by various kinds of climate events, such as a cluster of severe hurricanes or crop failures. If, under these circumstances, local governments prove unable to provide adequate emergency assistance or collapse entirely, vast numbers of people may simultaneously choose to move to adjacent (or even distant) countries in search of refuge and a new start in life. Some environmentalists are predicting that the numbers of such “climate refugees,” as they have sometimes been termed, could reach into the hundreds of millions as global warming advances; others have cautioned against such predictions, saying the evidence for them is still inconclusive. Whatever the exact numbers, the arrival of large groups of outsiders—many, if not most, in need of substantial assistance—is bound to generate unease and, in all likelihood, hostility in the destination countries. The fact that the newcomers often differ in their race and religion from the natives only adds to the risk of antagonism.62

A foretaste of what this might look like was provided by the migratory surges from North Africa and the Middle East into southern Europe following the Arab Spring of 2011, as desperate residents of battleground countries such as Libya and Syria sought to escape the fighting and accompanying decline in economic conditions. The situation in Libya was particularly fraught for migrant workers from the Sahel region and sub-Saharan Africa, who made up as much as 10 percent of Libya’s population prior to the revolt against Gadhafi. Those workers (mostly young men) had already fled their own countries because of drought, desertification, and joblessness, seeking low-level positions in various state-backed enterprises in Libya under the old regime. After Gadhafi’s removal, they lost their jobs and faced intense hostility from native Libyans, who viewed them as interlopers and Gadhafi loyalists. Reluctant to return to their own impoverished countries, huge numbers of these migrant workers sought to move farther north, fleeing in rickety ships across the Mediterranean to Europe—where, if they survived the journey, they usually encountered fresh animosity.63

An even greater number of people sought to flee the fighting and abysmal living conditions in Syria. Beginning in 2012, and reaching a flood tide in 2015, vast multitudes of desperate Syrians sought to reach the relative security of Europe, mostly by traveling by raft from southwestern Turkey to Lesbos and other Greek islands in the Aegean Sea; from there they sought passage to wealthier European countries farther north, especially Germany, Austria, and Norway. Although welcomed at first by sympathetic Europeans (most notably German chancellor Angela Merkel), the Syrian refugees started arriving in such massive numbers that many residents of the receiving nations turned hostile, embracing measures such as fencing off their borders and using armed police to repel the migrants—steps taken by Hungary in 2015 as hundreds of thousands of refugees moved north from Greece.64 With anti-refugee sentiment growing throughout the region, European officials were forced to adopt ever more stringent means to stem the flow, including mobilizing NATO’s naval fleets to patrol waters of the Aegean Sea and assist the Greek coast guard in blocking migrant vessels from Turkey.65

When examining the causes of the massive migrant flood that overwhelmed Europe in 2015, most analysts have concluded that the principal driving forces were the ongoing violence in Syria and the lack of meaningful economic opportunities both there and in transit countries such as Jordan, Lebanon, and Turkey. Nevertheless, some analysts believe that climate change had a contributing role in sparking the migratory shock wave, largely by causing a severe drought in 2007–10 that decimated Syrian agriculture and drove impoverished farmers into overcrowded urban centers, where they helped launch the anti-Assad rebellion.66 “Syria’s drought has destroyed crops, killed livestock and displaced as many as 1.5 million Syrian farmers,” observed John Wendle in Scientific American. “In the process, it touched off the social turmoil that burst into civil war,” impelling millions of people to flee.67 Other analysts discount the role of climate change in provoking the Syrian civil war and resulting migratory impulse, insisting on the primarily political nature of the conflict.68 But even if warming’s role was relatively modest in this case, the events of 2012–15 provide an indication of what we might expect from future migratory shock waves as temperatures rise, farming becomes untenable in vast areas of the planet, and masses of people move about in search of new ways to survive.

While Europe—given its proximity to climate-sensitive areas of Africa and the Middle East—is expected to prove the principal objective of many of these migratory surges, North America is also considered a likely destination for future mass migrations. The CNA Corporation, for example, has suggested that the greatest climate-related threat to American security—other than its direct impacts on the U.S. homeland itself—would arise from the migratory implications of climate disasters occurring in nearby countries, especially in Central America and the Caribbean. As warming advances, it noted, severe climate events will afflict many of these areas, destroying entire habitats and impelling millions of people to head north in search of refuge and employment opportunities.69

General John F. Kelly, while serving as commander of the U.S. Southern Command, spoke of such occurrences as “mass migration events,” and emphasized the importance of taking steps to prevent future climate refugees from entering the United States. With that goal in mind, he told the Senate Armed Services Committee in 2014, “We regularly exercise our rapid response capabilities in a variety of scenarios, including responding to a natural disaster [and a] mass migration event.”70 In one such exercise, Southcom revealed, Kelly’s staff established a Joint Task Force-Migrant Operations (JTF-MIGOPS) at Naval Station Guantánamo Bay to oversee a mock crisis-response mission. According to Rear Admiral Jon G. Matheson, deputy Joint Task Force commander of JTF-MIGOPS in 2013, this allowed Southcom to “flesh-out some of the processes and resources we would need if a mass migration were to occur.”71

Southcom conducted another iteration of these exercises two years later, with Fort Sam Houston, Texas, serving as the host of a reconstituted JTF-MIGOPS. The 2015 exercise, a Pentagon reporter noted, “anticipated the mass migration of people from multiple Caribbean islands after a series of hurricanes devastate the area.” With this in mind, “the goal of the exercise scenario was to effectively interdict and repatriate the migrants at sea who were attempting to enter the United States.” In other words, the military services are practicing to do whatever might be needed to prevent large numbers of disaster-driven refugees from gaining access to U.S. territory.72 As participants in the exercise explained, this means stopping migrant-laden ships at sea and transporting the migrants to the U.S. Navy base at Guantánamo, where they would be detained in giant tent camps until they can be ferried back to their home country.73

Whether originating in Africa, the Middle East, Latin America, or the Caribbean, mass migration events are destined to become more common in the years ahead as global warming takes an ever greater toll on the livelihoods and living conditions of people in highly exposed areas. As the European migrant crisis of 2015 demonstrates, moreover, such events are likely to prove highly disruptive and to trigger military-type responses. The construction of fortified border walls and fences is one expression of this, as are the preparations being undertaken by Southcom to house vast numbers of detained migrants at Guantánamo Bay. Wherever and whenever such events occur, the outcome is almost certain to prove wrenching and violent.

When Systems Collapse

For American military and intelligence analysts, the implications of all this are hard to escape: as global warming advances, one climate shock after another will ricochet across the planet, leaving chaos and misery in their wake. Try to picture a food-price crisis occurring at more or less the same time as a major pandemic and a mass migration event: the resulting chaos, distress, and contention are almost unimaginable. The most likely consequence of such a multi-shock calamity would be the failure of fragile states and resulting anarchy—with the failures occurring not one at a time, as in some less fearsome scenarios, but one right after another, as during the Arab Spring. But it will not be just fragile states in the developing world that will suffer from the impacts of these shocks, but all nations, as the global networks on which we all rely for essential goods and services begin to break down.

The potential for systemic collapse of this sort was given close attention by the Fourth National Climate Assessment, released in November 2018. Like the NRC study before it, the Fourth Assessment highlights the world’s growing reliance on global networks and the ways these systems have become inextricably linked—and so have become vulnerable to unexpected shocks. “A long history of research on complex systems,” it noted, “has shown that systems that depend on one another are subject to new and often complex behaviors.… These behaviors, in turn, raise the prospect of unanticipated, and potentially catastrophic risks. For example, failures can cascade from one system to another.” Climate change, it observed, is likely to provide exactly the sort of external jolt that could trigger such a cascade of failures, sowing havoc across the planet.74

#### Recent Job reports support broader trend of the economy rebounding

Cassidy 11/5 Cassidy, John. (John Cassidy has been a staff writer at The New Yorker since 1995) “A Strong Jobs Report Gives Biden and the Democrats a Reason to Hope.” The New Yorker, Nov. 2021. www.newyorker.com, <https://www.newyorker.com/news/our-columnists/a-strong-jobs-report-gives-biden-and-the-democrats-a-reason-to-hope>.

After a nightmarish political week for Joe Biden and the Democrats, Friday’s jobs report provided a much-needed bit of relief. The Labor Department said that the economy created more than half a million jobs in October, and that the unemployment rate dropped two tenths of a point, to 4.6 per cent. Employment gains were particularly strong in restaurants and bars, which added nearly a hundred and twenty thousand jobs. This is just one strong month, but, taken together with other recent statistics, the report suggests that the U.S. economy is rebounding from a sharp slowdown in the third quarter, which coincided with a surge of the Delta variant.

Between the second and third quarter, the rate of G.D.P. growth fell from 6.7 per cent to two per cent, and in August and September hiring dipped sharply. It’s hard to know how much this dip contributed to the electoral setbacks that Democrats suffered in Virginia, New Jersey, and other states on Tuesday. In addition to local issues, Biden’s low approval ratings, the Democrats’ failure to enact his agenda in Congress, covid fatigue, and the culture war were also factors. But the strength of the economy often plays a big role in elections, and this week was no exception. In an exit poll of Virginia voters, a third of respondents said that the economy was the biggest issue in the race, making it the highest-ranked policy concern. Education came in second, at twenty-four per cent. The coronavirus and taxes tied for third, at fifteen per cent.

Glenn Youngkin, the victorious Republican candidate in Virginia, used education as a culture-war wedge issue, but he also emphasized the economy, claiming that Virginia was lagging other states in recovering from the pandemic and contending that Democratic rule is throttling job growth. (Surprise, surprise: many of his claims were exaggerated.) In New Jersey, the G.O.P. gubernatorial candidate Jack Ciattarelli, who almost pulled off a shock victory, made the economy and taxes the central issue of his campaign, depicting his opponent, Phil Murphy, as an out-of-touch liberal whose big-spending policies were driving businesses from the state.

At the national level, too, there is evidence that concerns about the economy are hurting Biden and the Democrats. In an NBC News survey released last weekend, the President’s approval rating on handling the economy was at forty per cent, down from fifty-two per cent in April. Asked which party would do a better job handling the economy, the respondents to the poll gave the G.O.P. an eighteen-point advantage over the Democrats. This was the Republicans’ biggest lead in thirty years on this question from this pollster.

Those are alarming findings for the White House, and they suggest that concerns about rising inflation, higher gas prices, and a slower-than-expected economic rebound from the pandemic are having a political impact. But it’s also important to interpret the public-opinion survey carefully, because it reveals an interesting paradox. A couple weeks ago, pollsters from the Associated Press/norc asked voters how the national economy was doing. Roughly two-thirds of them said it was “poor,” and roughly one-third said it was “good.” But, when the same pollsters asked people about the financial situation in their own households, the results flipped. Roughly two-thirds of the respondents to the latter question said their financial situation was “good,” and one-third said it was “poor.”

The answers to the question on household finances were consistent with government figures showing that personal disposable income—roughly speaking, the sum of the income that American households have available to spend—has held up surprisingly well during the pandemic. In February, 2020, it stood at $15.1 trillion; in September of this year, it was $15.3 trillion. To be sure, these figures (which are adjusted for inflation) apply to the entire economy, and they disguise a great deal of financial hardship among some groups. But the figures also show that the two mammoth pandemic-relief bills which Congress passed in March of 2020 and March of 2021 worked as designed. By distributing cash payments to individual households, paying businesses to keep workers on their payrolls, and expanding unemployment benefits, the legislation prevented a disastrous collapse in spending power, which would have plunged the economy into a depression.

Evidently, voters have selective memories. Rather than crediting elected officials for averting an economic catastrophe, they are apparently punishing Biden and the Democrats for a recent surge in the prices of food, fuel, and other goods that may prove temporary. When Biden took office, in January, the Consumer Price Index was rising at an annual rate of 1.4 per cent. By September, the inflation rate had risen to 5.4 per cent. For some items, prices have risen even more dramatically. On Inauguration Day, a gallon of gasoline cost about $2.50; today, the cost is about $3.50, an increase of forty per cent. Even though Jerome Powell, the chairman of the Federal Reserve, has repeatedly described the upturn in inflation as a “transitory” product of virus-related disruptions, Americans don’t seem to believe him. In a recent Reuters/Ipsos poll, two-thirds of the respondents—including majorities of Republicans and Democrats—agreed with the statement “Inflation is a very big concern for me.”

After welcoming Friday’s encouraging job figures, the White House will likely focus on which parts of the political and economic environment it can influence between now and next November. The first task, clearly, is completing the passage of Biden’s domestic agenda, so that Democratic candidates in 2022 can point to things like universal preschool, new child-care subsidies, and monthly child allowances as concrete gains for American families. If you look at the broad popularity of these policies in opinion polls, you might be driven to wonder what peculiar type of genius it would take to turn them into a political burden—or, at least, a nonfactor. In squabbling over two big spending bills for the past few months, the Democrats have demonstrated that they possess this genius in abundance.

On Friday, Nancy Pelosi and other Democratic leaders were trying, yet again, to secure a majority in the House for the two bills. Finally getting them enacted would change the political narrative in Washington, and it could also give the economy a timely boost going into 2022 and beyond. As the financial-support programs in the 2020 and 2021 pandemic-relief bills expire, government fiscal policy is slated to turn into a drag on the economy. Indeed, analysts from the Hutchins Center, at the Brookings Institution, reckon this has already happened. “Fiscal policy reduced U.S. GDP growth by 2.4 percentage points at an annual rate in the third quarter of 2021,” they wrote recently. With the Fed also preparing to reduce the amount of stimulus that it is pumping into the economy, this is an apt moment to launch a series of federal infrastructure projects as well as tax incentives for private-sector investments in green energy and energy conservation.

What about inflation? Biden admitted a couple weeks ago that there isn’t much he can do in the short term about gasoline prices, which market forces set based on production decisions by the opec oil cartel. Earlier this week, a Bank of America analysis suggested that the price of crude oil could rise from its current level—about eighty dollars a barrel—to a hundred and twenty dollars a barrel in 2022. That was just a guess, though. The White House’s best hope may be for a breakdown in opec’s internal discipline, with member states seeking to take advantage of high prices by pumping more oil. If that happens, or if the global economy falters, oil prices could plummet.

The broader inflation picture is also clouded. Here the villain is “supply-chain disruptions,” which is a posh way of describing shortages of components and truck drivers, backlogged ports, and Christmas presents that might arrive in time for Easter. The Biden Administration has sought to address this problem, pressing the ports of Long Beach and Los Angeles to stay open around the clock, but it’s hard to know if this intervention will have much effect on a complex problem that spans the globe. It is “very difficult to predict the persistence of supply constraints or their effects on inflation,” Powell said at a press conference this week. “Global supply chains are complex. They will return to normal function, but the timing of that is highly uncertain.”

If covid rates keep dropping, last month’s upturn in hiring is sustained, and the problems in the supply chain are gradually resolved, the economic environment—and the political environment—could conceivably turn much brighter for Democrats next summer. Then they could campaign for the midterms on restoring normalcy and taking unprecedented steps to help America’s families. There is also a darker scenario, in which the economic effects of the pandemic linger, inflation continues to rise, and the Fed accelerates its policy tightening, which could sink the stock market, curb job growth, and bring the recovery to a halt. But, on a day when the economic news turned positive, Democrats finally have a reason to be upbeat. They need to follow up with some immediate self-help in Congress. Surely, that’s not too much to ask.

**No supply chain shocks.**

**Barnes 9/29** – Mitchell Barnes, research analyst for the Hamilton Project, part of the Brookings Institution, “11 facts on the economic recovery from the COVID-19 pandemic,” 9/29/21, https://www.brookings.edu/research/11-facts-on-the-economic-recovery-from-the-covid-19-pandemic/

Overall, the pandemic continues to weigh on aggregate demand for goods and services. In addition, bottlenecks and supply shortages have created challenges for businesses to meet consumer demand for some products, particularly as consumer demand has shifted wildly. Also, the pace of hiring has not kept up with the pace of labor demand, as job matching has been held back by a number of factors described below.

Those developments have led to a notable increase in inflation. Because prices fell in 2020, one-year changes from August 2020 to August 2021 **overstate the increase in inflation** since the pandemic began. Instead, focusing on the annualized rate of inflation since February 2020 shows that inflation through August 2021 (as measured by the core consumer price index) was 3.1 percent, substantially lower than the one-year trend but still higher than any annual increase since the early 1990s.

There are two primary reasons why the rise in inflation is **unlikely to persist**. First, the significant shifts in demand and bottlenecks are a function of the recent, temporary pace of economic activity. For example, demand for automobiles recovered quickly during the pandemic to high levels even as production was curtailed, in part due to disruptions in the supply chain for critical semiconductors. The result has been a sharp increase in prices for new and used vehicles. Second, as production is increased (with **normalization of global supply chains**) and growth in demand abates, **inflation should slow overall**.

#### Cartels solve themselves quickly

DePaola 14 (Joe DePaola, Managing Partner & President at BizShifts, former VP Worldwide Sales & Business Development, CIC Inc., former PhD student Business/Engineering, Stanford University, MS Engineering, New York University, “Sinister-Side of Cartels, Collusions… For Dominating Markets: Sleeping with the Competition is a Dubious Business Strategy,” BizShifts-Trends, 4-10-2014, https://bizshifts-trends.com/sinister-side-cartels-collusions-dominating-markets-sleeping-competition-dubious-business-strategy/)

Generally cartels contain seeds of their own destruction... cartel members are reducing their output below their existing potential production capacity, and once the market price increases, each member of the cartel has the capacity to raise output relatively easily. The tendency is for cartel members to ‘cheat’ on their quota, increasing supply to meet market demand and lowering their price.

Most cartels agreements are unstable at the slightest incentive they will quickly disband, and returning the market to competitive conditions… Cartels appeared most strongly in those industries defined by scale and scope economies and with high fixed costs… Therefore, they are more common in wealthy countries with big businesses. Cartels also tended to appear among domestic firms first, before going international (except, for example; early– zinc, rail, shipping… cartels)…

#### Prices take years on average to stabilize – time distinction between disbandment and successful enforcement is negligible

DePaola 14 (Joe DePaola, Managing Partner & President at BizShifts, former VP Worldwide Sales & Business Development, CIC Inc., former PhD student Business/Engineering, Stanford University, MS Engineering, New York University; **internally citing John Connor, Professor of industrial-organization economics at Purdue University, specializes in empirical research in antitrust policy, PhD University of Wisconsin**; “Sinister-Side of Cartels, Collusions… For Dominating Markets: Sleeping with the Competition is a Dubious Business Strategy,” BizShifts-Trends, 4-10-2014, https://bizshifts-trends.com/sinister-side-cartels-collusions-dominating-markets-sleeping-competition-dubious-business-strategy/)

In the study ‘Cartels and Antitrust Portrayed: Private International Cartels’ by John Connor; calculates the range of cartel price overcharge to be between 17% and 21%… it’s important to note that the research may under-estimate the true extent of the higher price from cartels… Also, the study shows that prices don’t fall very quickly to market levels after a demise of a cartel. Rather, prices fall gradually over a period of time– few months, even few years, e.g., after the ‘construction concrete products industry’ cartel was dissolved, prices were still falling three years later…

#### Mandatory trebling

Muris 21 [Prepared for the U.S. Chamber Institute for Legal Reform by Timothy J. Muris, Sidley Austin LLP, American lawyer and academic who served as Chairman of the Federal Trade Commission from 2001 to 2004, Jonathon E. Nuechterlein, partner and co-leader of Sidley's Telecom and Internet Competition practice, Sidley Austin LLP. “Private Antitrust Remedies: An Argument Against Further Stacking the Deck.” March 2021. https://instituteforlegalreform.com/wp-content/uploads/2021/03/March-2021-Antitrust-Paper-FINAL.pdf]

But private antitrust remedies in the United States extend far beyond the relief available in ordinary civil litigation. For example, if plaintiffs succeed in proving negligence or breach of contract, they generally collect compensatory damages equal to their harm. In unusual circumstances, tort plaintiffs can collect punitive damages as well, but only if they can successfully argue that the defendant behaved egregiously. Attorneys’ fees in ordinary civil litigation are also subject to the “American Rule”—with rare exceptions, each side is expected to pay its own lawyers no matter who wins.

The U.S. system of antitrust remedies departs from that baseline litigation regime in two significant respects, both of which greatly advantage plaintiffs.

Automatic Punitive Damages

With narrow exceptions, any plaintiff that prevails on any theory of liability under federal antitrust law is automatically entitled to “threefold the damages by him sustained.”10 In other words, two-thirds of every private antitrust award takes the form of punitive damages, over and above what is needed to make the plaintiff whole. Of course, sometimes punitive damages are appropriate for their deterrent value—for example, where a given category of conduct (1) often escapes detection or (2) never has redeeming social value. And sometimes antitrust cases involve such conduct: for example, naked price-fixing cartels often elude detection and have no redeeming social value. Such cartels exemplify conduct that is “per se” unlawful and, indeed, is subject to criminal as well as civil penalties.

The problem is that prevailing antitrust plaintiffs always recover treble damages, even when the defendant’s conduct was open rather than covert, and even when it was not clearly unlawful when it was undertaken. As antitrust law has evolved since the Sherman Act of 1890, it has come to address a broad range of competitive conduct that is not categorically anticompetitive and is thus properly subject to the full “rule of reason” rather than any “per se” prohibition.11 Such cases require a judge or jury to scrutinize the context and economic effects of the defendant’s conduct and consider not only the extent of any competitive harm, but also any countervailing benefits. This appropriately nuanced approach applies today to an extraordinary array of conduct, including joint ventures,12 trade association activities,13 vertical restraints,14 and virtually any claim of monopolization under Section 2 of the Sherman Act, such as exclusive dealing.15

A defendant’s conduct in such cases generally lacks the features that could possibly justify punitive damages. In most, there was nothing surreptitious about the defendant’s conduct; indeed, it may have been common knowledge to everyone in the relevant business community. Like defendants in many negligence cases, defendants in rule-of-reason antitrust cases could not have predicted with any reasonable degree of certainty that their conduct would later be deemed unlawful. “The line between winning and losing may be exceedingly fine in such cases,”16 but “no matter how close the case, the winner gets a bounty and the loser gets a penalty” in the form of treble damages.17

The leading antitrust treatise describes that outcome as “an embarrassment to antitrust policy,” given “the law’s usual discomfort with imposing unforeseen liability.”18 Moreover, “[t]he practical effect of mandatory trebling is to tilt the settlement process in the plaintiff’s favor because mandatory trebling so inflates the defendant’s cost of losing and the plaintiff’s value of a victory in a rule of reason case.”19

#### One way fee shifting

Muris 21 [Prepared for the U.S. Chamber Institute for Legal Reform by Timothy J. Muris, Sidley Austin LLP, American lawyer and academic who served as Chairman of the Federal Trade Commission from 2001 to 2004, Jonathon E. Nuechterlein, partner and co-leader of Sidley's Telecom and Internet Competition practice, Sidley Austin LLP. “Private Antitrust Remedies: An Argument Against Further Stacking the Deck.” March 2021. https://instituteforlegalreform.com/wp-content/uploads/2021/03/March-2021-Antitrust-Paper-FINAL.pdf]

One-Way Fee-Shifting

In contrast to the American Rule that governs most U.S. civil litigation, any prevailing antitrust plaintiff is also entitled to recover attorneys’ fees from the defendant.20 In complex antitrust cases that go to trial, each party can incur tens of millions of dollars in attorneys’ fees. If the ultimate verdict is for the plaintiffs, the defendant is saddled not only with its own multi-million-dollar legal bill, but also with the plaintiffs’. And this fee-shifting mechanism is an entirely one-way ratchet: “[t]he successful defendant gets nothing” even if it prevails.21 This arrangement “simply echoes and enhances the effect of mandatory trebling” and “further tilts the risk evaluation and settlement process in favor of the plaintiff.”

#### Overdeterrence encourages anticompetitive conduct – turns competition internals

Muris 21 [Prepared for the U.S. Chamber Institute for Legal Reform by Timothy J. Muris, Sidley Austin LLP, American lawyer and academic who served as Chairman of the Federal Trade Commission from 2001 to 2004, Jonathon E. Nuechterlein, partner and co-leader of Sidley's Telecom and Internet Competition practice, Sidley Austin LLP. “Private Antitrust Remedies: An Argument Against Further Stacking the Deck.” March 2021. https://instituteforlegalreform.com/wp-content/uploads/2021/03/March-2021-Antitrust-Paper-FINAL.pdf]

There is no basis for suggestions that private antitrust remedies are not strong enough and need to be turbocharged by new pro-plaintiff legislation.23 The regime for U.S. private antitrust remedies is already aggressively pro-plaintiff when compared to remedies available in comparable non-antitrust cases.

Pursuing Deterrence, Not Overdeterrence

Advocates of expanding private antitrust remedies begin with the premise that “private enforcement deters anticompetitive conduct” and conclude, in the words of the Report, that legal “obstacles” to recovery by “private antitrust plaintiffs” should be eliminated to maximize deterrence.24 But even if the premise is true,25 the conclusion would not follow. The Report appears to assume that the more deterrence the law provides, the better, and that any “obstacles” to private recovery should thus be removed.26 But that position ignores the consequences of overdeterrence, including the prospect that firms will respond to the threat of draconian penalties in ways that reduce the threat of liability but that ultimately harm consumers.

Overdeterrence is a particular concern in antitrust doctrine because the line separating lawful from unlawful conduct can be blurred and much of the conduct falling on the lawful side of the line is socially beneficial. As economists William Baumol and Alan Blinder explain:

One problem that haunts most antitrust litigation is that vigorous competition may look very similar to acts that undermine competition …. The resulting danger is that courts will prohibit, or the antitrust authorities will prosecute, acts that appear to be anticompetitive but that really are the opposite. The difficulty occurs because effective competition by a firm is always tough on its rivals.

For example, excessive antitrust remedies for predatory pricing may not only deter firms from engaging in conduct that would ultimately be deemed unlawful, but also induce them to keep prices well above their costs and, in effect, hold a price umbrella over smaller, potentially litigious rivals. Such a regime would result in less competition and higher prices for consumers—the very outcomes the antitrust laws are designed to prevent.

#### That kills innovation and decks patenting

Kempf 20, \*Associate Professor of Finance University of Chicago, Booth School of Business, \*\*Chair of Financial Markets and Institutions University of Mannheim, Business School (Elisabeth and Oliver Spalt, “Attracting the Sharks: Corporate Innovation and Securities Class Action Lawsuits,” Finance Working Paper N° 614/2019

A vast body of academic work, from Adam Smith’s pin factory to Schumpeter’s creative destruction, emphasizes the importance of corporate innovation for economic growth. Consistent with this favorable view of innovation, fostering and promoting corporate innovation has become a core policy objective in governments around the world. If promoting innovative activity is a desirable societal goal, identifying potential obstacles to the creation and implementation of valuable new ideas is crucially important. This paper presents novel evidence suggesting that certain features of a central pillar of the U.S. litigation and corporate governance system, securities class action lawsuits, constitute such an obstacle. In particular, we show that the class action litigation system imposes disproportionate costs on firms with valuable innovation output, by making these successful innovators particularly vulnerable to low-quality class action litigation.1 We also show that class action litigation risk affects corporate innovation activity: firms patent less and the economic value of the innovations firms produce decreases after an exogenous increase in class action litigation risk.

#### Spillover – The plan sets a precedent that chills innovation in every sector.

Turner 21, journalist @ The Well News. (Victoria, 2-23-2021, "Antitrust Reforms Could Kill Competition", *The Well News*, <https://www.thewellnews.com/law/antitrust/antitrust-reforms-could-kill-competition/>)

Four panelists warned today that proposed legislative reforms for more aggressive antitrust enforcement in Big Tech would likely spill over across all industries, hindering innovation and harming consumers. Strengthening the antitrust laws – federal and state statutes that restrict the formation of monopolies and prohibit dominant companies from abusing their market power – would deprive the public of the benefits of aggressive competition by putting business decisions further under the microscope of regulators, they said. Their remarks came during a NetChoice event, “The Bad Side of Breaking Up Big Tech,” the first of a monthly series the online businesses trade association will host to discuss different policy developments concerning the “Big Tech” firms – Alphabet’s Google, Amazon, Facebook and Apple. One of the most prominent critics of current antitrust policy is Sen. Amy Klobuchar, D-Minn., who earlier this month introduced the antitrust reform bill that was a central focus of the panelists’ discussion. Her proposed bill, the Competition and Antitrust Law Enforcement Reform Act, would seek a sweeping reform of antitrust laws. The legislation would shift the burden of proof in antitrust litigation to the companies charged by regulators with violating the competition laws. Klobuchar’s bill would also increase funding of the antitrust agencies and ease restrictions around their ability to seek monetary penalties in court. But the current legal framework did have its defenders. Asheesh Argawal, deputy general counsel at think tank TechFreedom said Congress should wait to see how current legal cases regulators have filed against Big Tech companies play out before making any dramatic changes to the law. He also took aim at Klobuchar’s bill, which he said would diminish competition by increasing civil fines to a point that would deter investments in the tech industry. Jennifer Huddleston, director of Tech and Innovation Policy at American Action Forum, an independent, center-right policy institute, was also critical of Klobuchar’s proposed reforms, saying they could cause companies to rethink planned mergers and acquisitions and prevent smaller, innovative companies from getting the lifelines they sometimes need to survive. Huddleston also warned that while the current proposed antitrust reforms target the tech industry almost exclusively, their sweeping nature means they will have serious ramifications for all kinds of businesses, including those in the pharmaceutical, agriculture, and energy sectors, among others.

#### Nothing can happen without congressional change, which is DOA.

Bradley Guichard 8/16/21, finance blogger, “Amazon: Worried About Antitrust? 3 Scenarios To Ease Your Mind,” Seeking Alpha, https://seekingalpha.com/article/4449605-amazon-bigtech-antitrust-ease-your-mind

Scenario 1: Congress stalemates, the FTC is outmuscled and the status quo continues.

Antitrust laws are enforced by the Federal Trade Commission (FTC) and the laws date back to the Sherman Act of 1890. The Sherman Act outlaws unreasonable combinations and conspiracies that restrain trade and actual or attempted monopolization. Next, the Federal Trade Commission Act and Clayton Act were passed in 1914. The FTC Act bans unfair methods of competition, and the Clayton Act prohibits mergers and acquisitions (M&A) which "lessen competition...and tend to create a monopoly." The laws have been updated since, however these same acts are the basis of applicable law today. The case with which most are familiar was Standard Oil, which was split into more than 30 companies in 1911. After decades of M&A activity and name changes the results of this are mainly Chevron (CVX), Exxon Mobil (XOM), and BP p.l.c. (BP) all of which, along with their predecessor parts, have provided substantial returns to shareholders for decades.

From these baseline descriptions of the laws it is clear why Big Tech is on the hot seat, however this does not spell doom for shareholders. First, while the house judiciary has moved 6 bills forward aimed at Big Tech, they face an uncertain future in the house and an uphill battle in the senate where the bills would need a filibuster-proof majority. Often these lofty promises by politicians get bogged down in Washington as lobbyists get involved and political realities, like fundraising, come into play. For example, as these house bills were being praised by many in a bipartisan manner, politicians from both parties in California, home of Silicon Valley, were expressing concerns with certain language in the packages. Still others were expressed that they are in favor of limiting the reach of Big Tech just "not in this manner." The collective muscle of Amazon, Apple, Facebook, and Google is substantial. The senate is headed towards a budget reconciliation showdown this fall and next year is another election year. Time is short. There is one bill that has been introduced in the Senate; however, it does not have republican backing. Given congress's polarization, ineptness, the effect of lobbying, and other factors I consider it a reasonable chance that no meaningful legislation ever reaches the President's desk.

You may be asking, as I was, why does the FTC need new legislation in the first place? Aren't the existing laws in place for this purpose? The issue appears to be that the existing laws were mainly written to target Big Oil and thus are difficult to apply to Big Tech in court. Judges are known to view the laws through a narrow lens. Recently, in a major victory for Facebook that has ramification across the industry, a federal judge tossed two cases which the FTC, and 48 attorneys general, had launched against Facebook. In June 2021, the judge said the government failed to prove their main theme: that Facebook holds a monopoly on social networking. To the claim that Facebook prevents interoperability of competition the judge said the government's case "fails to state a claim under current antitrust law, as there is nothing unlawful about having such a policy." The judge also noted that the government had waited too long to challenge the purchases of Instagram and WhatsApp. This may cramp future M&A activities, however without new laws it seems the prior acquisitions are safe across Big Tech. Without congressional action the FTC seems massively outgunned by Big Tech and will likely not win meaningful changes. If congress fails to act, the status quo likely continues. And the status quo has been lucrative for shareholders

#### Antitrust class actions fail – plaintiffs win just 2 percent of cases

Pedro Caro de Sousa, Antitrust Digest, Oct 5, 2018

http://antitrustdigest.net/joshua-p-davis-and-robert-h-lande-on-restoring-the-legitimacy-of-private-antitrust-enforcement-in-a-report-to-the-45th-president-of-the-united-states-american-antitrust-institute/

Somewhat surprisingly, the authors do not address one important reason why private enforcement has faced strong headwinds in the US: criticisms of (excessive) private enforcement have led to the adoption of substantive competition doctrines that make it extremely hard to establish antitrust infringements other than hard-core cartels. These substantive doctrines, which impose high standards of proof of anticompetitive effects, often combine with the procedural obstacles the authors identify, and with the inherent ambiguity of post-Chicago economic theories of harm, to create a context where bringing successful claims is difficult. The result is that private (and public) claims of antitrust infringements become harder to bring. For example, plaintiffs won a favourable judicial ruling on section 2 (i.e. unilateral conduct) claims in just two percent of all cases between 2000 and 2008 (see this paper by the FTC).

### Adv 2

#### Arrives too late to solve competition

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.

#### Signal is lagged by several years – market changes are slow

Petersen 11 (Niels, PhD in Law from Goethe University, Frankfurt and Masters in Quantitative Methods, joined the Max Planck Institute for Research on Collective Goods in Bonn as a Postdoctoral Research Fellow in 2007. During the academic year 2012/13, he returned to the NYU School of Law as a Hauser Research Scholar and Emile Noel Fellow. In 2014, he finished his Habilitation at the University of Bonn. Since February 2015, Niels is a Professor of Public Law, International Law, and EU Law at the University of Münster. “Antitrust Law and the Promotion of Democracy and Economic Growth” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1750144#:~:text=The%20paper%20finds%20that%20antitrust,per%20capita%20and%20economic%20growth.&text=It%20is%20suggested%20that%20these,than%20to%20prevent%20economic%20concentration> p. 11)

However, I will contrast these results with the results of a second model that will use the score of Nicholson’s antitrust law index as main explanatory variable in order to see whether such an index based on formal characteristics is a better measure of the effectiveness of an antitrust institution than the mere binary coding. Furthermore, it is assumed that it takes some time after the introduction of an antitrust law until this institutional change has some visible effect either on the political order or on economic development. The antitrust institution has to be established, it has to perform investigations and take decisions. This is a process that will not happen over night. Therefore, the basic model will be run in three different versions – with the antitrust variable as three-, five- and ten-year lag

#### Their impact starts at 0.38%

Luisa Rodriguez 19, research fellow at the Forethought Foundation for Global Priorities Research, she also researched nuclear war at Rethink Priorities and as a visiting researcher at the Future of Humanity Institute, holds an M.A. from The Heller School for Social Policy and Management at Brandeis University, “How likely is a nuclear exchange between the US and Russia?”, https://forum.effectivealtruism.org/posts/PAYa6on5gJKwAywrF/how-likely-is-a-nuclear-exchange-between-the-us-and-russia

My previous posts address how bad a nuclear war is likely to be, conditional on there being a nuclear war (see [this post on the deaths caused directly by a US-Russia nuclear exchange](https://forum.effectivealtruism.org/posts/pMsnCieusmYqGW26W/how-bad-would-nuclear-winter-caused-by-a-us-russia-nuclear), and [this post on the deaths caused by a nuclear famine](https://forum.effectivealtruism.org/posts/dtQ5hpYjniYKWhmhx/would-us-and-russian-nuclear-forces-survive-a-first-strike)), but they don’t consider the likelihood that we actually see a US-Russia nuclear exchange unfold in the first place. In this post, I get a rough sense of how probable a nuclear war might be by looking at historical evidence, the views of experts, and predictions made by forecasters. I find that, if we aggregate those perspectives, there’s about a 1.1% chance of nuclear war each year, and that the chances of a nuclear war between the US and Russia, in particular, are around 0.38% per year.

Table

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#### Paris commitments.

McSweeney 21 – Eoin McSweeney, on the CNN Business and Africa News Desk, citing UN Secretary-General António Guterres, “New climate pledges 'far short' of meeting Paris Agreement goals, UN warns,” 3/16/21, https://www.cnn.com/2021/02/27/world/un-climate-report-red-alert-intl/index.html

The planet is on "red alert" because governments are failing to meet their climate change goals, the United Nations Secretary-General António Guterres said Friday.

He described 2021 as a "make or break year" following the release of a UN Framework Convention on Climate Change (UNFCCC) report analyzing the updated climate action plans submitted by 75 nations ahead of November's COP26 climate summit which found that current policies won't come close to meeting the goals of the Paris Agreement.

"Today's interim report from the UNFCCC is a red alert for our planet. It shows governments are nowhere close to the level of ambition needed to limit climate change to 1.5 degrees and meet the goals of the Paris Agreement," said Guterres in a statement.

Under the 2015 Paris climate accord, countries committed to reduce their carbon output and halt global warming below 2 degrees Celsius -- and if possible, below 1.5 degrees Celsius -- by the end of the century to avoid the worst impacts of climate change.

Experts have repeatedly warned that exceeding the threshold will contribute to more heatwaves and hot summers, greater sea level rise, worse droughts and rainfall extremes, wildfires, floods and food shortages for millions of people.

According to the UN Intergovernmental Panel on Climate Change, the population must reduce its 2030 CO2 emissions by about 45% from 2010 levels and reach net zero by 2050 to ensure this temperature limit goal is reached.

Despite increased efforts, the carbon reduction plans submitted to the UNFCCC fall "far short" of what is needed and show countries need to "strengthen their mitigation commitments under the Paris Agreement," according to the report.

It shows that the revised climate action plans -- which cover 40% of countries party to the 2015 Paris Agreement that account for 30% of global emissions -- would only deliver a combined emissions reduction of 0.5% from 2010 levels by 2030.

#### Alt causes to EU leadership.

Tony Barber 19, Europe editor at the Financial Times, 11-4-2019, "New EU leadership team must up its game on foreign policy," https://www.ft.com/content/e08b101e-fa48-11e9-a354-36acbbb0d9b6  
  
The new EU leadership team taking office in Brussels knows that, if the bloc’s common foreign policy is to command respect, the first place where it must achieve success is in Europe’s neighbourhood. It needs to be well-planned, as united as possible, efficiently executed and imbued with a larger sense of long-term strategy. In all these regards, two recent episodes — one concerning the Balkans, and the other Syria — have been little short of a debacle.

Each incident points to the EU’s inability to translate its undoubted weight as a commercial and regulatory bloc into hard power on the world stage. It is not just a matter of lack of military muscle, important though that is. The real problem is that, whenever two or more of the EU’s biggest countries are in disagreement, a common European foreign policy is either ~~paralysed~~ [stagnated] or becomes a question of finding the lowest common denominator among 28 states. An often overlooked point is that these disagreements tend to arise out of domestic political tensions in individual countries — over, for example, irregular migration or attitudes to Islam or Russia. Such tensions hobble the attempts of governments to find common ground with their EU partners.

In any case, France, Germany and other EU countries usually prefer to keep their freedom of manoeuvre when it suits them. The Syrian episode centres on Annegret Kramp-Karrenbauer, who is Angela Merkel’s preferred candidate to succeed her as German chancellor. Ms Kramp-Karrenbauer was named defence minister in July in an apparent attempt to raise her profile with German voters. But the proposal for a multinational security zone in northern Syria that she came up with this month was startling for its naivety and lack of preparation. Before unveiling her plan, Ms Kramp-Karrenbauer, who replaced Ms Merkel as the Christian Democratic party’s leader in December ahead of elections due in 2021, consulted neither her Social Democratic coalition partners nor Germany’s Nato and EU allies. Her proposal skipped over crucial questions such as whether the UN Security Council would endorse it, whether the US would take part and whether Germany’s under-resourced armed forces would send soldiers to Syria. To each question it rapidly became clear that the answer was almost certain to be no. Indeed, it was hard to tell who was more dismissive of the initiative — Russia and Turkey, which control events on the ground in Syria, or Heiko Maas, Germany’s foreign minister, who is of course a colleague of Ms Kramp-Karrenbauer. In this way, the plan served no purpose other than to illustrate the incoherence of the German coalition’s foreign policy, not to mention the EU’s near-irrelevance in Syria.

This is a sobering thought in view of the fact that the 2015 arrival of large numbers of war refugees from Syria and other conflict zones, plus other migrants, precipitated one of the EU’s worst crises since the 1957 Treaty of Rome that set up the bloc.

The EU’s mis-steps in the Balkans are no less painful to watch, but in this case the main culprit is France, not Germany. By blocking Albania and North Macedonia from opening EU membership talks, President Emmanuel Macron shocked and undermined a region whose stability is integral to the stability of the European continent. In North Macedonia’s case, Mr Macron’s move made the EU reek of hypocrisy. For the EU had long promised to start entry talks, provided that the Macedonians compromise with Greece over their country’s disputed name — a condition fulfilled in the Prespa agreement, which came into force last February.

In fairness to Mr Macron, he is not alone in having doubts about enlarging the EU into south-eastern Europe. Denmark and the Netherlands joined France in opposing Albania’s entry talks. Moreover, when the European parliament adopted a resolution last week in favour of starting accession talks with the two Balkan states, some 136 MEPs — or almost a quarter of those who voted — backed Mr Macron’s position. Furthermore, Mr Macron has a point when he suggests that the EU should focus on internal reforms before absorbing new members. The EU’s most important project, the 19-nation eurozone, remains a half-built house. Effective EU-wide action is woefully lacking in areas such as migration and asylum policy. However, Mr Macron would sound more persuasive, but for the persistent rumours that France’s true objective is to close the EU door forever to western Balkan countries. Instead they would be fobbed off with membership of the European Economic Area, which would keep them out of the EU’s political institutions and make them permanent second-class Europeans. The Syrian and Balkan embarrassments are symptoms of an EU unsure of its place in the world and suffering from ineffective Franco-German co-operation. But if the EU cannot get things right on its own doorstep, where can it?

# 1NR

## Trade DA

### 1NR – TC

#### 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.

#### Trade escalation wrecks the global chemicals industry and innovation

Kristen Hays 18, Senior Petrochemicals Editor at Platts, “US Chemical Industry Caught in US-China Trade War”, Platts Petrochemicals Special Report, October 2018, https://www.spglobal.com/platts/plattscontent/\_assets/\_files/en/specialreports/petrochemicals/us-china-trade-war.pdf

INTRODUCTION

The US chemical industry is in the crosshairs of escalating trade tensions between the US and China that have spawned tariffs on hundreds of products from both countries. From steel and parts needed to build multibillion-dollar plants to numerous raw-material chemicals and plastics produced, tariffs have affected hundreds of billions of dollars in commerce between the world’s two largest economies, and markets are responding accordingly.

US petrochemical market participants say Chinese customers increasingly seek other sources for resins and chemicals that once flowed freely from the US, wary of current tariffs and threatened ones that could come into play while shipments are in transit. The American Chemistry Council has vehemently opposed tariffs, arguing that fallout from the additional costs and shifting trade flows will create unintentional, long-term consequences that could threaten the growth of the US as a global supplier.

“There is no acceptable tariff rate for global chemicals trade with China or any US trading partner. Only zero tariffs will maximize our industry’s potential to deliver innovative products to new regions and increase social, environmental and economic sustainability around the world,” ACC President Cal Dooley said in September when President Donald Trump’s administration imposed a third round of tariffs on Chinese products valued at $200 billion.

### 1NR – AT: Trade D

#### The impact is true

#### Recent, robust studies

Julian Adorney 20, Contributing Writer at the Hinrich Foundation, Young Voices Advocate, Senior SEO Analyst for Colorado SEO Pros, Writing Appeared at The Federalist, Fox Nation, The Hill, and the Mises Institute, BA from the University of Colorado, Boulder, “Want Peace? Promote Free Trade”, Hinrich Foundation for Advancing Sustainable Free Trade, 9/10/2020, https://www.hinrichfoundation.com/research/tradevistas/sustainable/trade-and-peace/

Why does protectionism lead to conflict and why does free trade help prevent it? Learn about the connection between peace and free trade.

Frédéric Bastiat famously claimed that “if goods don’t cross borders, soldiers will.”

Bastiat argued that free trade between countries could reduce international conflict because trade forges connections between nations and gives each country an incentive to avoid war with its trading partners. If every nation were an economic island, the lack of positive interaction created by trade could leave more room for conflict. Two hundred years after Bastiat, libertarians take this idea as gospel. Unfortunately, not everyone does. But as recent research shows, the historical evidence confirms Bastiat’s famous claim.

To trade or to raid

In “Peace through Trade or Free Trade?” professor Patrick J. McDonald, from the University of Texas at Austin, empirically tested whether greater levels of protectionism in a country (tariffs, quotas, etc.) would increase the probability of international conflict in that nation. He used a tool called dyads to analyze every country’s international relations from 1960 until 2000. A dyad is the interaction between one country and another country: German and French relations would be one dyad, German and Russian relations would be a second, French and Australian relations would be a third. He further broke this down into dyad-years; the relations between Germany and France in 1965 would be one dyad-year, the relations between France and Australia in 1973 would be a second, and so on.

Using these dyad-years, McDonald analyzed the behavior of every country in the world for the past 40 years. His analysis showed a negative correlation between free trade and conflict: The more freely a country trades, the fewer wars it engages in. Countries that engage in free trade are less likely to invade and less likely to be invaded.

Trading partners

The causal arrow

Of course, this finding might be a matter of confusing correlation for causation. Maybe countries engaging in free trade fight less often for some other reason, like the fact that they tend also to be more democratic. Democratic countries make war less often than empires do. But McDonald controls for these variables. Controlling for a state’s political structure is important, because democracies and republics tend to fight less than authoritarian regimes.

McDonald also controlled for a country’s economic growth, because countries in a recession are more likely to go to war than those in a boom, often in order to distract their people from their economic woes. McDonald even controlled for factors like geographic proximity: It’s easier for Germany and France to fight each other than it is for the United States and China, because troops in the former group only have to cross a shared border.

The takeaway from McDonald’s analysis is that protectionism can actually lead to conflict. McDonald found that a country in the bottom 10 percent for protectionism (meaning it is less protectionist than 90 percent of other countries) is 70 percent less likely to engage in a new conflict (either as invader or as target) than one in the top 10 percent for protectionism.



#### b) Empirics

Cary Huang 18, Senior Writer and Veteran Columnist at the South China Morning Post, Former China Editor for The Standard, “Trade Wars Cause World Wars, History Shows. Will This Time Be Different?”, South China Morning Post, 7/17/2018, https://www.scmp.com/comment/insight-opinion/united-states/article/2155565/trade-wars-cause-world-wars-history-shows-will

History provides ample evidence that trade problems have heightened tensions among nations. Such fights lead to economic crises, and trigger political and social crises and, finally, trigger wars.

A full-blown trade war often features the combination of a tariff war and currency war. In practice, exporting countries will, in response to imposed tariffs, resort to currency manipulation, moving to cheapen their money to offset the impact of the tariffs.

But a competitive devaluation among trade partners makes a currency war meaningless. Once countries realise that currency wars do not work, they resort to all the tools available to set up barriers to block trade. This seems evident amid the escalating US-China trade feud. The slump in the renminbi in past few months is stoking fears in markets that China’s policymakers are deliberately pushing the currency’s depreciation in an effort to offset the US tariff hikes.

Trump staring down barrel of yuan devaluation in trade war

Before the first world war, most countries accepted the classical gold standard of pegging their currencies to gold as an effort to anchor smooth trade. However, from 1913, countries began to suspend or abandon the system as they devalued their currencies to compete for export markets in the ongoing tariff war.

The end of the first world war sparked the first worldwide currency war, starting in Weimar Germany in 1921, followed by France in 1925. In the end, all the major economies scrambled to devalue their currencies – sterling, the franc and the US dollar – throughout the 1930s.

In 1930, US president Herbert Hoover signed into law the Smoot-Hawley Tariff Act, which intensified the currency war and deepened the Great Depression. The protectionist law raised tariffs on more than 20,000 imported products and triggered retaliation from many US trade partners.

Trade wars stoke nationalism and hatred among people and finally trigger wars, as evidenced by the breakout of the second world war: the Japanese invaded Manchuria in 1931, and the whole of China in 1937; the Germans invaded Poland in 1939, then the rest of Europe; and the Japanese attacked Pearl Harbour in 1941.

Could Trump’s trade war turn into a third world war?

A quote often attributed to the 19th-century French economist, Frédéric Bastiat, goes: “When goods do not cross frontiers, armies will.” It is obvious that the current US-China trade war is stoking geopolitical tensions between the world’s two largest economies and chief political adversaries, as they become more confrontational over their discord on maritime issues in the South and East China seas and over Taiwan.

History often repeats itself if we do not learn from it. The two full-blown trade wars some 80 and 100 years ago helped to ignite the two world wars. Could such a catastrophe happen again?

### 1NR – AT: Antitrust now

1 – first card is ab xo all talk

#### The XO is empty talk that’s years from being implemented

Jeff Jaeckel 21, Co-Chair Global Antitrust Law Practice Group at Morrison & Foerster, Alexander Paul Okuliar, Co-Chair Global Antitrust Law Practice Group at Morrison & Foerster, and Lisa M. Phelan, Co-Chair Global Antitrust Law Practice Group at Morrison & Foerster, and Megan E. Gerking, Partner at Morrison & Foerster, “Charting a New Course for Antitrust: President Biden’s Executive Order Promoting Competition in the American Economy”, Client Alert, 7/14/2021, https://www.mofo.com/resources/insights/210714-president-biden-executive-order-antitrust.html

Despite its breadth, the immediate effect of the EO on law or regulation is less clear. The EO itself does not enact any new law or regulation. Rather, the EO often uses vague language in instructing or guiding the actions of agencies. This is likely purposeful in many instances, including when the EO refers to independent agencies, like the FTC, Federal Communications Commission, Maritime Commission, Consumer Financial Protection Bureau, and the Surface Transportation Board. Nonetheless, for almost every initiative, there is likely to be a significant gap between the action directed or encouraged by the EO and the time it will take for the relevant agency to investigate, evaluate, and potentially implement a new rule or policy. Even where the direction to an agency is explicit, issuing a new rule or regulation takes time. An agency must first draft a rule, allow for a notice-and-comment period, make any necessary revisions, and then issue and start to enforce a final rule. And this does not account for likely legal challenges. In some instances, the EO directs the agencies to submit a report on the issue first rather than make any immediate changes, pushing any resulting regulatory activity out at least until the period following completion of the report.

#### It's non-binding AND will be blocked by the court and Congress

Lewis Brisbois 21, JD, Lewis Brisbois Bisgaard & Smith LLP, “President Biden Signs Executive Order on Promoting Competition in the American Economy”, 7/12/2021, https://lewisbrisbois.com/newsroom/legal-alerts/president-biden-signs-executive-order-on-promoting-competition-in-the-american-economy

On July 9, 2021, President Biden signed an “Executive Order on Promoting Competition in the American Economy.” According to a Fact Sheet released in advance of the signing, the Executive Order takes “decisive action to reduce the trend of corporate consolidation, increase competition, and deliver concrete benefits to America’s consumers, workers, farmers, and small businesses.”

Among other things, the Executive Order encourages the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) to focus enforcement efforts on problems in key markets and coordinate other federal agencies’ responses to corporate consolidation. Further, the Executive Order calls on the FTC and DOJ to “enforce the antitrust laws vigorously.” The Executive Order would also make it easier for high tech workers to change jobs by banning or limiting non-compete agreements, lower prescription drug prices by supporting programs to import cheaper prescription drugs from Canada, make it less expensive to repair products by limiting manufacturers from barring self-repairs or third-party repairs of their products, and increase opportunities for small businesses by directing all federal agencies to promote greater competition through procurement and spending decisions. In all, the Executive Order outlines 72 initiatives that attempt to rein in corporate powerhouses that control markets.

In the Fact Sheet, the Biden Administration compared its Executive Order to the responses of previous Administrations to “growing corporate power,” expressly citing the trust-busting efforts of the Theodore Roosevelt and FDR Administrations’ “supercharged antitrust enforcement” agendas.

Although Democratic lawmakers and union leaders have cheered the Executive Order, some business advocacy groups have reportedly warned that such measures as those in the Executive Order could slow the economy.

Executive Orders are expressions of policy intent that have no actual binding legal force. Their ability to change the law lies in follow-up implementation by federal agencies that act to implement presidential initiatives. Those changes are limited by the extent of underlying statutory authority, and the courts in recent years have appeared reluctant to expand the scope of what is considered anticompetitive activity under the antitrust laws. Business interests should keep a close eye on the regulatory proposals that result from this Executive Order and consider engaging on those that affect their business operations.

2 – card is really bad and just says ftc will focus on data

3 – private antitrust blocked now

### 1NR - U---AT: Antitrust Now---2NC

#### There’s no significant antitrust enforcement

Joseph Charles Folio 21 III, Lawyer at Morrison Forrester, and Lisa M. Phelan Co-chair Global Antitrust Law Practice Group at Morrison Forrester, Jeff Jaeckel, Co-chair Global Antitrust Law Practice Group at Morrison Forrester, and Alexander Paul Okuliar, Co-chair Global Antitrust Law Practice Group at Morrison Forrester, “Antitrust Update: Up and Down the Avenue”, 3/22/2021, https://www.mofo.com/resources/insights/210322-atr-update.html

Are the stars aligning for antitrust reform? President Biden is filling key positions in the White House (Timothy Wu, National Economic Council) and at the FTC (Lina Khan, nominee for commissioner) with lawyers who have advocated for increased antitrust enforcement, especially against “big tech.” In Congress, the House antitrust subcommittee concluded a year-long investigation in October 2020 and found bipartisan agreement on discrete areas for reform. With Democrats now in control of both houses of Congress, antitrust legislation seems close. But not so fast.

The House and Senate antitrust subcommittees have held four hearings since February 25, 2021, but it is crucial to view these recent developments in their proper context. Even when politicians and enforcers appear to agree on a goal, it can still be a long and winding road to actual policy reform.

Two to go

Although antitrust reform advocates cheered President Biden’s initial appointments, two of the most consequential antitrust positions—the assistant attorney general (AAG) for antitrust and the FTC chair—remain open. Both the AAG and FTC chair wield tremendous authority; they approve cases, guide investigations, and will decide how to proceed with ongoing litigation. It is unlikely that the Biden administration will make any significant decisions, or support any particular legislation, before its key personnel are firmly in place. And that can take time. Former AAG Makan Delrahim was nominated in March 2017 but not confirmed until September 2017.

Interestingly, the pressure to nominate like-minded antitrust reformers for these two positions is coming from multiple angles. One public interest group recently sent a letter to White House chief of staff Ron Klain and, after “highly commend[ing]” the nomination of Ms. Khan to be an FTC commissioner, warned against the influence of certain White House and DOJ officials over the AAG and FTC chair nominations because of their links to “big tech” companies.[1] Additionally, many in the press have been critical of the level of tech enforcement activity during the Obama administration and want to avoid a replay of those years.[2]

#### Enforcement’s declining

Douglas H. Ginsburg 20, U.S. Court of Appeals for the D.C. Circuit and Professor at the Antonin Scalia Law School at George Mason University, and Cecilia (Yixi) Cheng, Law Clerk for the U.S. Court of Appeals for the D.C. Circuit, “The Decline in U.S. Criminal Antitrust CaseS: ACPERA and Leniency in an International Context”, George Mason University Law & Economics Research Paper Series, 19-31, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3460091

II. Downward Trend in Cartel Cases

The number of criminal cases filed annually by the Division decreased from 90 in 2011 to 18 in 2018, the lowest it has been since 1972.7 Similarly, whereas 27 corporations were charged with criminal antitrust violations in 2011, only 5 were charged in 2018. The total criminal fines obtained by the Division have also fallen, from an average of more than $1 billion per year in 2012 through 2015 to $172 million in 2018.

Criminal enforcement at the Division has always ebbed and flowed, of course, but this recent downward trend marks the greatest reduction in criminal enforcement activity since the leniency program was reformed in 1993:

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### 1NR – Link - Lobbying

#### They’re successful because it offsets increased antitrust enforcement against them

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Thirdly, and closely related to the two previous concerns, domestic corporations will have strong incentives to lobby for softer enforcement of competition law and might request additional protectionist measures as compensation for corporate generosity and flexibility during the pandemic. If some protectionist measures are arguably acceptable for some time, they should not be at the expense of strict enforcement of competition law in domestic markets.

In such a context, my concern is that competition policy might become excessively lenient. This would be a questionable policy choice. If protectionism was winning supporters before the pandemic, a post-COVID-19 world will tolerate more protectionism in order to back domestic industries and businesses.

### 1NR – Link – Murray Big

#### 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.

### 1NR – Link – Private Claims

#### Private claims – Increasing prohibitions skyrockets them

LW 21 [Latham & Watkins Antitrust and Competition Practice. "US Senate Bill Would Reshape Antitrust Enforcement and Litigation." 2/18/21. https://www.lw.com/thoughtLeadership/US-Senate-Bill-Would-Reshape-Antitrust-Enforcement-and-Litigation]

CALERA would increase antitrust enforcement and private actions

Widen scope of anticompetitive conduct

In addition to broadening the definition of market power and lowering the standard for prohibited mergers, CALERA would add a new prohibition on “exclusionary conduct that presents an appreciable risk of harming competition.” “Exclusionary conduct” is defined by CALERA as conduct that “materially disadvantages one or more actual or potential competitors,” or “tends to foreclose or limit the ability or incentive of one or more actual or potential competitors to compete.” This prohibition would lead to an increase in claims, and novel allegations of anticompetitive conduct, as litigants would likely try to take advantage of these broad and undefined terms and shape the precedent.

### 1NR – Link – Perception

#### Perception – Adverse enforcement is inevitable and will be perceived as protectionist

Dr. Andrew Guzman 11, Professor of Law, Director of the Advanced Law Degree Programs, and Associate Dean for International and Executive Education at Berkeley Law School, University of California, Berkeley, JD Magna Cum Laude from Harvard Law School, PhD in Economics from Harvard University, BSc from the University of Toronto, Cooperation, Comity, and Competition Policy, Ed. Guzman, p. 354-355

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.

### 1NR – Link – Nail in the Coffin

#### It’s the nail in trade’s coffin

Allison Murray 19, JD from the Loyola Law School, Los Angeles Law School, BS in Business Administration from the University of Redlands, Judicial Law Clerk at the U.S. Bankruptcy Courts, Former Corporate Paralegal at Boeing, Degree in Economics and Management from the University of Oxford, “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?”, Loyola of Los Angeles International and Comparative Law Review, Volume 42, Number 1, 42 Loy. L.A. Int'l & Comp. L. Rev. 117, Winter 2019, Lexis

VI. CONCLUSION

There is a clear "conflict between the evolving economic and technical interdependence of the globe and the continuing compartmentalization of the world political system composed of sovereign states . . . ." 196 This conflict can breed protectionist political views. Unless and until there is a complete paradigm shift away from protectionism, which is impossible, the global economy will not meet the "rational" assumptions necessary to preserve free market efficiency.

Some amount of protectionism is inevitable. Although "inefficient" in economic and academic circles, protectionism preserves the sovereign powers enjoyed by certain countries. In this way, it is a necessity of free [\*146] trade. This paper is not intended to be a commentary on whether protectionism is right or wrong, but rather a demonstration and prediction that antitrust law, a tool of political and economic power, can and will be wielded by individual countries to promote protectionist policies that will affect the international trade landscape in the near term.

While attempting to act on this protectionism is difficult because of the web of international trade agreements currently in existence, individual countries may still use domestic antitrust law to meet protectionist aims, especially given that an international authoritative body governing the use of antitrust does not exist. Countries serious about preserving free trade may cooperate with one another to adopt realistic economic policies that serve to dull the blade of antitrust law through regional agreements, but ought not to attempt to eliminate it altogether.

Antitrust law, like medicine, must be used appropriately to be effective. While antitrust laws generally should encourage free trade, as promoting competition is the aim of their enforcement, they are also at risk of being used to thwart free trade. That risk is further exacerbated by perceptions of unfair enforcement and the divisive rhetoric of world leaders. In this way, antitrust law has the potential to weaken the already delicate international cooperative framework that exists to foster free trade. Absent a change in perceptions and the protectionist rhetoric fueling the current political landscape, antitrust law is likely to be manipulated to serve protectionist viewpoints, making it increasingly likely to become a nail in free trade's coffin, instead of the key to its preservation. It may be a nail that nations are able to ignore for the sake of its benefit, or it may be the one that finally puts an end to the pursuit of truly international free trade. Only time will tell, but one thing is clear: anti-trust law is a field that will impact the international economic community significantly for years to come.

### 1NR – Courts Link

#### Historically, not a single law has been interpreted faithfully

Crane 21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

In sum, from the courts’ earliest forays into interpreting the Sherman Act up through contemporary antitrust jurisprudence, the courts have manifested a systematic tendency to interpret the substantive antitrust statutes contrary to their texts, legislative histories, and often their spirit.236 Sometimes, as with the rule of reason and labor exemption, the judicial disregard of text and purpose has occurred fairly immediately. In other cases, as with the Robinson-Patman and Celler-Kefauver Acts, an initial period of statutory fidelity has slipped gradually into a period of statutory infidelity. In some cases, as with respect to section 5 of the FTC Act and section 3 of the Clayton Act, the courts continue to proclaim their fidelity after they functionally move to infidelity. In many cases, the courts stop pretending after a while and admit quite candidly that they are taking liberties with the statute.

If this antitrust antitextualism is merely the product of common-law methodology, one would expect to see movement away from the statute’s text in both permissive and restrictive directions, or, to put it more crassly, both in favor of big capital and against it. But the movement has all been in one direction: loosening a congressional check on big capital. Thus, the rule of reason allowed courts to bless large combinations of capital that the courts deemed reasonable; narrowing the labor exemption frustrated labor’s ability to countervail capital’s power; restricting the private right of action for treble damages significantly curtailed the private-litigation check on business; judicial narrowing of the Clayton Act’s exclusive dealing and tying restrictions allowed (mostly big) firms to exploit market power; reading “unfair” out of the FTC Act eliminated section 5 as a check on business morality; eviscerating the Robinson-Patman Act protections for small and independent businesses favored large and powerful businesses; and requiring proof of likely price increases and technical relevant market definition in merger cases immunized many large-scale mergers from legal challenge. Throughout the history of American antitrust law, the courts have shown a systematic tendency to read down the antitrust statutes in favor of big capital.

But the story of antitrust antitextualism is not simply one of conservative/progressive ideological struggle between Congress and the courts. Much of the action away from statutory text and purpose was accomplished by, or with the support of, judges of the political left

. Unlike in other fields, Congress has not responded with statutory overrides. And far from buttressing its atextual statutory readings of the antitrust laws through veiled constitutional warnings about congressional overreaching, the Court has repeatedly pulled in the opposite direction, asserting quasi-constitutional reverence for antitrust law.237 Despite ample opportunity to do so, the Court has not removed antitrust law from the reach of congressional reconsideration by constitutionalizing its atextual readings. Antitrust antitextualism does not follow a conventional left/right ideological pattern. Its actual pattern is more subtle.

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### Trade DA

#### Their thumpers all say they wont pass – cal is yellow

Scarborough ’11-2 [National Law Review; 2021; Partner in the firm's San Francisco office at National Law Review and the U.S. Chair of the firm’s Antitrust and Competition Group; National Law Review, “Senate Zeros in on Big Tech with Latest Antitrust Reform Bill,” <https://www.natlawreview.com/article/senate-zeros-big-tech-latest-antitrust-reform-bill>]

On the Senate side, Senator Klobuchar has also introduced the Competition and Antitrust Law Enforcement Reform Act of 2021, which increases antitrust enforcement budgets, strengthens prohibitions against anticompetitive mergers, and updates the Clayton Act to prohibit “exclusionary conduct that presents an appreciable risk of harming competition.”  Further, Senator Mike Lee (R-UT), has introduced the [Tougher Enforcement Against Monopolists Act](https://www.lee.senate.gov/services/files/23028e91-a982-43d0-9324-f6849c7522fc) (creating market-share presumptions for merger review and codifying the consumer welfare standard), [State Antitrust Enforcement Venue Act](https://www.lee.senate.gov/services/files/3e0224a6-7b0f-49cf-9288-175d35095415) (allowing state attorneys general to keep antitrust defendants in their desired fora), and the [One Agency Act](https://www.lee.senate.gov/services/files/c025c934-96a6-4bb9-8c3a-794a712e7955) (consolidating merger review in the Department of Justice).  Senator Josh Hawley (R-MO) has also introduced the [Trust-Busting for the Twenty-First Century Act](https://www.hawley.senate.gov/sites/default/files/2021-04/The%20Trust-Busting%20for%20the%20Twenty-First%20Century%20Act.pdf), which would explicitly ban companies with market capitalizations exceeding $100 billion from any mergers or acquisitions.

While it is highly unlikely that all these competing bills will become law, some amount of legislated antitrust reform targeting Big Tech seems almost inevitable.