### CP – 1NC

#### The United States federal government should

#### determine the scope of its core antitrust laws based on environmental risks,

#### propose and support increased prohibitions on the anticompetitive business practice of domestic, private sector financial institutions amassing liabilities greater than five percent of the Federal Deposit Insurance Corporation’s Deposit Insurance Fund by at least expanding the scope of its core antitrust laws, based on the prior and binding input of stakeholders,

#### incentivize it’s adoption through an incentive based regulatory regime.

#### The CP solves the AFF – the process is necessary to CSR

Miazad 21 – Founding Director and Senior Research Fellow of the Business in Society Institute at Berkeley Law. (Amelia, Prosocial Antitrust (March 11, 2021). Available at SSRN: <https://ssrn.com/abstract=3802194>)//gcd

The DOJ and FTC should convene a public debate on whether competition policy prevents or discourages companies from collaborating to address environmental or social risks. The DOJ and FTC should initiate a public debate on whether and how competition policy supports or undermines the Biden administration’s policy agenda on environmental and climate justice. Similar to the recent public debate on competition policy at the European Commission, US antitrust enforcement agencies should seek submissions from a wide range of stakeholders, including consumer rights advocates, economists, antitrust practitioners, academics, and industry participants.355 These submissions should seek to surface specific examples of whether and how competition policy is currently interfering with or dampening companies’ efforts mitigate environmental and social risks. The outcome of this public debate will delineate the scope of reform to competition policy. While antitrust law in the US and EU diverge in many ways, US antitrust enforcement agencies should attempt to align their efforts with the European Commission. Multinationals represent both the greatest threat and promise for combating climate change and economic injustice. Similar to other areas of antitrust enforcement, having vastly different international regimes will forestall progress. ii. The DOJ and FTC should update the Antitrust Guidelines for Collaboration Among Competitors and issue separate guidance on competitor collaboration to address climate change. Recently, there has been a robust example of the federal government affirmatively adjusting antitrust law to permit corporate collaboration when necessary to achieve a vital policy goal. In 2014, President Obama issued a statement stressing that “Cyber threats pose one the gravest national security dangers that the United States faces.”356 Acknowledging the role of antitrust law in mitigating this national security threat, the DOJ and FTC issued an “Antitrust Policy Statement on Sharing of Cybersecurity Information.”357 This joint statement acknowledged that antitrust could be unwittingly chilling valuable collaboration: “private entities may, however, be hesitant to share cyber threat information with others, especially competitors, because they believe such sharing may raise antitrust issues.”358 To further the policy goal of a “more secure and productive nation,”359 the DOJ and FTC detailed the contours of information that would be permissible under antitrust policy. Relying on United States v. United States Gypsum Co.,360 the agencies also clarified that they would impose a rule of reason analysis to information sharing in the context of cybersecurity in light of the public policy goal.361 On January 27, 2021, President Biden issued an executive order that begins with a commitment to put “the climate crisis at the center of United States Foreign Policy and National Security.”362 Crucially, the administration has also stressed that climate justice and economic justice are mutually dependent.363 The same day, Defense Secretary Lloyd Austin committed to “immediately take appropriate policy actions to prioritize climate change considerations in our activities and risk assessments, to mitigate this driver of insecurity.”364 Treasury Secretary Janet Yellen also responded by creating a new senior treasury post for a “Climate Czar” to mitigate the risks to the financial system posed by climate change.365 US antitrust enforcement agencies must recognize the unique role that competition policy plays to advance the administration’s policy goals by issuing guidelines for competitor collaboration to meet national security and economic priorities. iii. The DOJ & FTC should extend the fast-tracked review process for the COVID-19 pandemic to collaboration to address climate change. In response to the COVID-19 pandemic, the DOJ and FTC sprang into action and issued a fast-tracked review process for collaborations among corporate competitors seeking to advance health and safety.366 The agencies pledged to respond to applications within a week, whereas the standard process takes several months.367 As discussed above, the US was not alone. Competition agencies from Europe to Asia and South America have tried to support—or at least not obstruct— the pandemic response.368 But US agencies have specifically limited their guidance to joint efforts “to address the spread of COVID-19 and its aftermath.”369 Climate change deserves the same level of exigency warranting a fast-tracked review process. The UK, for example, temporarily relaxed competition rules to help the dairy industry avoid waste and sustain productive capacity by allowing dairy producers to share information like surplus milk quantities and stock levels.370 iv. Courts and antitrust enforcement agencies should recognize the procompetitive justifications underlying competitor collaboration to address environmental and social risks. The Sherman Act’s broad wording has left courts with wide latitude to define procompetitive justifications for competitor collaboration. Although they have already largely abandoned the per se analysis,371 courts and enforcement agencies should recognize that addressing systematic risk serves a valid procompetitive purpose. This is true even if the activity involves traditionally “per se” illegal categories, such as price fixing and group boycotts. This will require courts and enforcement agencies to consider the economic benefits of any prosocial collaboration from a “total social welfare perspective.”372 If the prosocial collaboration raises prices for current consumers but decreases negative externalities overall, then it should be permitted to proceed as procompetitive. This will, of course, require more robust externality accounting grounded in natural resource and environmental economics as opposed to the neoclassical economics that discounts scarcity.373 v. Congress should pass legislation that authorizes the DOJ and FTC to oversee temporary collaboration safe harbors. While fast-tracking the review process is a good start, it does not go nearly far enough to ensure that competition enforcement is not preventing or discouraging companies from addressing systematic risks. Toward that end, Congress should pass legislation requiring the DOJ and FTC to provide a safe harbor for competitor collaboration that addresses systematic environmental and social risks. Defining the specific scope of that exemption will emerge out of a consultative process, but global competition authorities offer some recent examples. On July 9, 2020, the Netherlands Authority for Consumers and Markets (ACM) was the first in the EU to publish draft guidelines containing a proposed approach to addressing sustainability agreements. 374 The Draft Guidelines would exempt agreements where sustainability benefits outweigh the anticompetitive effects. The Dutch Guidelines are bold in at least two respects. First, they do not require quantitative evidence of sustainability benefits if the companies involved in the agreement represent less than 30% of combined market share. Second, they take into account the benefits of the agreements for future consumers – a perspective that is far better aligned with universal ownership. Also, the Greek competition authority is currently advocating for a competition law sustainability ‘sandbox’ that would allow “industry to experiment with new business formats that aim to realize more quickly and efficiently sustainability goals, and which involve cooperation between competing undertakings or even more permanent changes in market structure in order to be accomplished.”375 The DOJ and FTC would be tasked with determining the scope and duration of any safe harbor. But those agencies will need to acquire more robust expertise in environmental economics to ensure that the procompetitive justifications for these competitor collaborations can be adequately measured. Moreover, any safe harbor from antitrust scrutiny would have to be closely monitored with appropriate sunset provisions. This activity-specific exception will undoubtedly trigger increased enforcement and monitoring costs as well. Senator Congress appears poised to increase funding for antitrust enforcement—funding for the oversight of prosocial collaboration should also be prioritized.376 CONCLUSION Corporations must mitigate systematic risks, such as climate change, income inequality and racial injustice. This is an economic imperative. Universal owners are now demanding corporate action to reduce the widespread damage that systematic risks are expected to wreak on their economy-wide portfolios. But corporations cannot act in isolation. They recognize the need to collaborate. Antitrust law currently prevents and discourages companies from working together to meet bold environmental and social demands. This Article sheds light on the collision course on which universal owners and the companies in which they invest, on the one hand, and antitrust law, on the other hand, find themselves. The debate about how antitrust law can support prosocial collaboration has begun in Europe. It needs to start in the US too. This Article has detailed the forces that require changes in antitrust law, and it proposes several approaches for initiating the debate and addressing antitrust law’s shortcomings.

#### The incentive structure of the CP solves the AFF without new rules

Fotis 20 – Member of the Board, Hellenic Competition Commission, Greece; Adjunct Professor, Hellenic Open University, Master in Business Administration (MΒΑ) (Panagiotis, Sustainable Development and Competition Policy. Energy RESEARCH LETTERS, 1(4). https://doi.org/10.46557/001c.18578)//gcd

Competition authorities should not provide straightforward competition rules when certain segments of a market need to be guaranteed to promote the development of a desirable new technology. Enhancing further competition in certain markets could also be in favor of green growth. Policies to encourage green growth consumption patterns have an enhanced link with competition policy. For instance, competition laws that prevent misleading advertising could be helpful to ensure greater respect for the rights of consumers, which is a component of sustainable development in many instances. Around the globe one of the first cases encompassing sustainability issues is the Shell/Tepco Case5 . In 2001, the Competition Tribunal of South Africa for the first time expressed its reading of the public policy evaluation in South African competition law. The European Court of Justice (ECJ), regarding Case C-379/98, stated that “[t]he use of renewable energy sources for producing electricity, is useful for protecting the environment in so far as it contributes to the reduction in emissions of greenhouse gases which are amongst the main causes of climate change which the European Community and its Member States have pledged to combat.” The ECJ decided that while the law was violated by the anti-competitive behavior of the dominant firm, it was doing so for protecting the environment. According to the HCC (2020), the Greek Competition Commission, has the power to issue an exemption decision under article 1 par. 3 of Law No 3959/2011. In its Decision No. 457/V/2009 the HCC issued an exemption decision under article 1 par. 3 of Law No 3959/2011 to the Public Company of Electricity (DEH) for an exclusive supply agreement for 15 years with a lignite mine for the generation of electricity, among others, on the grounds that security of energy supply would benefit direct consumers (HCC, 2009). Moreover, in its Decision No. 627/V/2016 the HCC cleared with commitments the acquisition of Piraeus Port Authority SA (PPA) by COSCO (Hong Kong) Group Limited (COSCO), among others, on the grounds that the clearance of the acquisition would benefit the public sector and the “users” of the Greek port, by €368,5 million (HCC, 2016). 6 With regard to Greek and European merger control, public interest considerations do not form part of the substantive test in both regimes. However, past case law indicates that HCC has engaged with green growth arguments, although in all of these cases sustainability has played a secondary role in the decision reached (HCC, 2020). Particularly, in HCC’s Decision No. 682/2019 the notifying party put forward two strategic objectives for the clearance of concentration; on the one hand, the reduction of energy required at all stages of its production process, through the recycling of aluminium products (scrap) by products whose use has been completed and, on the other hand, the achievement of acquired firm’s green attitude in favor of sustainable development (HCC, 2019). 7 All in all, the above mentioned case law indicates that competition policy should and must be the driving force of sustainability. The next step is to internalize green growth externalities into completion law towards sustainable growth. The interconnection between competition policy and sustainable growth is unquestionable. The former may play crucial role by enhancing sustainability through competition rules. National competition authorities must be the mechanism fostering sustainable growth by taking into account various aspects of externalities and comparing discounted gains against environmental costs. The analysis reveals that EU countries should strengthen their efforts towards Sustainable Development, particularly by eliminating their dependency from energy imports. One of the critical requirements for green growth is green investments, as it has been set out by EGGA (EC, 2019). Competition policy should, therefore, offer the incentives to firms to improve technological progress towards greener technologies and to avoid investments funds being channeled to brown technologies for short-term returns (Capasso et al., 2019). 8 For these purposes, it should balance the negatives and positives during the evaluation of firms’ anti-competitive behavior for protecting the environment.

#### Corporate sustainability solves extinction from environmental collapse but antitrust deters it

Folke et al 19 – member of the Royal Swedish Academy of Sciences. He is a specialist in economics, resilience, and social-ecological systems. ([Carl Folke](https://www.nature.com/articles/s41559-019-0978-z#auth-Carl-Folke), [Henrik Österblom](https://www.nature.com/articles/s41559-019-0978-z#auth-Henrik-_sterblom), [Jean-Baptiste Jouffray](https://www.nature.com/articles/s41559-019-0978-z#auth-Jean_Baptiste-Jouffray), [Eric F. Lambin](https://www.nature.com/articles/s41559-019-0978-z#auth-Eric_F_-Lambin), [W. Neil Adger](https://www.nature.com/articles/s41559-019-0978-z#auth-W__Neil-Adger), [Marten Scheffer](https://www.nature.com/articles/s41559-019-0978-z#auth-Marten-Scheffer), [Beatrice I. Crona](https://www.nature.com/articles/s41559-019-0978-z#auth-Beatrice_I_-Crona), [Magnus Nyström](https://www.nature.com/articles/s41559-019-0978-z#auth-Magnus-Nystr_m), [Simon A. Levin](https://www.nature.com/articles/s41559-019-0978-z#auth-Simon_A_-Levin), [Stephen R. Carpenter](https://www.nature.com/articles/s41559-019-0978-z#auth-Stephen_R_-Carpenter), [John M. Anderies](https://www.nature.com/articles/s41559-019-0978-z#auth-John_M_-Anderies), [Stuart Chapin III](https://www.nature.com/articles/s41559-019-0978-z#auth-Stuart-Chapin), [Anne-Sophie Crépin](https://www.nature.com/articles/s41559-019-0978-z#auth-Anne_Sophie-Cr_pin), [Alice Dauriach](https://www.nature.com/articles/s41559-019-0978-z#auth-Alice-Dauriach), [Victor Galaz](https://www.nature.com/articles/s41559-019-0978-z#auth-Victor-Galaz), [Line J. Gordon](https://www.nature.com/articles/s41559-019-0978-z#auth-Line_J_-Gordon), [Nils Kautsky](https://www.nature.com/articles/s41559-019-0978-z#auth-Nils-Kautsky), [Brian H. Walker](https://www.nature.com/articles/s41559-019-0978-z#auth-Brian_H_-Walker), [James R. Watson](https://www.nature.com/articles/s41559-019-0978-z#auth-James_R_-Watson), [James Wilen](https://www.nature.com/articles/s41559-019-0978-z#auth-James-Wilen) & [Aart de Zeeuw](https://www.nature.com/articles/s41559-019-0978-z#auth-Aart-Zeeuw) Transnational corporations and the challenge of biosphere stewardship. Nat Ecol Evol 3, 1396–1403 (2019). <https://doi.org/10.1038/s41559-019-0978-z)//gcd>

* TNC – transnational corporation

A handful of TNCs have a major direct or indirect influence on the world’s ocean, the global atmosphere and terrestrial biomes, system components that serve critical functions in Earth’s dynamics (Fig. 1 and Table 1). TNCs dominate harvesting of the largest and most valuable fish stocks, including species with important functions in ocean ecosystems31. The same is true for the world’s forest capacity to regulate Earth’s climate 32. About 70% of greenhouse gas emissions are attributed to 100 companies, including both TNCs and stateowned monopolies producing coal, oil and gas33. These companies disproportionally influence climate change and ocean acidification. Sectors that generate contaminated effluents, with impact on ecosystems and biodiversity, show similar dominance (Table 1). TNCs have also become central in the development of the global food system, a major driver of environmental change, through simplification of landscapes, loss of biodiversity, release of greenhouse gas emissions, and alteration of biogeochemical and freshwater cycles34,35 (Table 1). Following recent mergers and acquisitions, the fertilizers market, the global agrochemical industry and the commercial crop seed market are dominated by ten, four and three TNCs, respectively. The same is true for ten corporations engaged in animal pharmaceuticals (Fig. 1). The observed levels of consolidation in the food system are also striking for individual commodities such as coffee, banana, cocoa, soy, palm oil or farmed salmon (Fig. 1 and Table 2). Mega-merger trends continue to drive consolidation vertically and horizontally within and across sectors, borders, systems and the land–ocean interface36,37, with dominant companies being often interlinked and interdependent. Clearly, TNCs are central actors in the human-dominated world and possess the ability to influence critical functions of the biosphere. This global keystone actor dimension of TNCs 31, whether producers, suppliers or financial actors, should be recognized, accounted for and governed in efforts towards sustainability within planetary boundaries. TNCs and sustainability Reality presents us with dominance40 and the environmental time window for transforming human actions towards sustainability is shrinking28. In this context, could the power of dominant TNCs help leverage large-scale systemic chang e41, accelerate positive transformations towards sustainability42 and contribute to a safe operating environmental space for humanity 30? In the face of insufficient environmental agreements and regulations, dominance poses a threat to sustainability. For instance, companies able to set barriers to entry in a sector can stifle sustainable practices and technological innovation in general. They can also impose low prices on suppliers, which reduces suppliers’ capacity to diversify and can force them into monocultural practices (particularly in the agricultural sector). Finally, TNCs often lobby regulators to weaken environmental and social standards to the benefit of their own businesses43–45. More generally, there exists scepticism towards businesses as sustainability leaders given two decades of relative ineffectiveness of voluntary corporate social responsibility25,46. Market concentration and corporate power are often regarded as roadblocks to social progress given the business priority of economic profit over nonmarket values24. Concerns have also been raised about viewing business as the solution to the problems they themselves took part in creating24. Also, emerging TNC sustainability initiatives have been questioned as they do not challenge the underlying imperative of business growth47. On the other hand, should dominant TNCs impose effective sustainability standards throughout their supply chain, this could influence both upstream and downstream market actors, including small and medium enterprises. This was the case when the world’s largest retailer committed to certified seafood, which is thought to have catalysed other retailers and triggered a rapid increase in certification48. Hence, as dominant actors impose sustainability measures, behavioural changes may propagate throughout global markets. Over the past two decades, 250 to 300 pioneering companies have actively invested for sustainable development, followed by several thousand other companies integrating sustainability considerations in their business49. Reputational risk management represents an important part of corporate strategy, particularly for large household-facing brands that are vulnerable to naming-and-shaming campaigns16,50. Such exposure helped realize the corporate sector soy moratorium, which contributed to reduced deforestation in the Brazilian Amazon 51. The World Wildlife Fund has consequently worked to influence companies with the greatest impacts on commodity demand, with the aim of shifting entire markets towards corporate stewardship of biodiversity, water and climate, and reducing the impact from commodity production on key areas of importance for global conservation52. However, TNC leadership is unlikely to be sufficient unless governments also provide a regulatory context that safeguards nonmarket ecological and social values. Antitrust law and institutions have a central role to play in regulating dominance and keeping markets competitive, but they are ill suited to address concerns associated with public governance of goals like environmental sustainability or with the political power of large corporations53,54. Importantly, the delineation between public governance and large corporations is increasingly blurred55. Private governance is rapidly emerging in a range of biosphere-related sectors56,57, where TNCs play a big role in shaping their own regulatory space58 including how sustainability is defined and enacted. Concerns have been raised over such increasing influence, particularly with respect to accountability, fair representation and global equity16. In this context, major changes in the strategy and practice of TNCs are needed to help shift power away from being exercised to the detriment of sustainable use of the biosphere24. Towards corporate biosphere stewardship Are we starting to observe the beginnings of such a shift? Action is urgently needed to stabilize the Earth system within conditions favourable for humanity28 and rising awareness of the dependence of the global economy on the biosphere foundation59 is creating incentives for rapid innovation in business strategy and practice60. Although the primary goal of TNCs is not to produce for the common good, different incentives have led some progressive companies to increasingly engage in substantive sustainability efforts.

### DA – 1NC

#### Budget passes now – leadership and base pressure get moderate Dems in line.

Alexander Bolton 9/9/21. Senior reporter. “Democratic leaders betting Manchin will back down in spending fight”. The Hill. Sept 9 2021. https://thehill.com/homenews/senate/571421-democratic-leaders-betting-manchin-will-back-down-in-spending-fight

Democrats are racing ahead with a $3.5 trillion spending package that would boost funding for social programs and raise taxes despite rumblings from Sen. Joe Manchin (D-W.Va.) that he might not support legislation with that price tag.

Democratic leaders are betting they can pressure Manchin to back down on his push for spending that’s closer to $1.5 trillion or $2 trillion.

In doing so, they’re essentially daring Manchin and other moderates like Sen. Kyrsten Sinema (D-Ariz.) to vote against the eventual budget reconciliation package, knowing that the base would erupt in anger over any Democratic lawmakers who buck the party on such a high-profile vote.

Senate and House committees are scrambling to reach consensus on sections of the so-called human infrastructure bill under their jurisdictions by Friday, and Democratic staff working on the legislation haven’t received any indication that it will be pared back to appease Manchin.

Progressive activists warn that if the bill falls well below the $3.5 trillion target set by Senate and House leaders, there will be significant backlash.

Manchin warned in a Wall Street Journal op-ed last week that he won’t vote for a $3.5 trillion reconciliation bill — putting President Biden’s agenda in peril since Democrats can’t afford a single defection in the 50-50 Senate — but his shot across the bow isn’t deterring fellow Democrats.

Axios reported Tuesday evening that Manchin won’t support a package that exceeds $1.5 trillion, a number the West Virginia Democrat floated earlier this year as a potential spending target.

Manchin’s office on Wednesday declined to confirm that $1.5 trillion is a red line for him. But the figure is in line with previous comments.

Manchin told ABC News’s “This Week” in June that he wouldn’t support a large spending package if Congress could only come up with enough revenue and savings to offset the cost of a $1.5 trillion or $2 trillion bill.

In last week’s Wall Street Journal op-ed, Manchin wrote that “ignoring the fiscal consequences of our policy choices will create a disastrous future for the next generation of Americans.”

But those warnings are falling on deaf ears in the Democratic leadership and the broader Democratic caucuses.

Senate Majority Leader Charles Schumer (D-N.Y.) on Wednesday brushed off Manchin’s threat and told reporters that negotiators are still planning to unveil a bold and ambitious proposal.

“In our caucus — there are some in my caucus who believe $3.5 trillion is too much, there are some in my caucus who believe it’s too little,” Schumer said on a press call Wednesday morning. “I can tell you this: In reconciliation we’re all going to come together to get something big done and, second, it’s our intention to have every part of the Biden plan in a big and robust way.”

Asked about Manchin’s call for a “strategic pause,” Schumer insisted “we’re moving full speed ahead.”

“We want to keep going forward. We think getting this done is so important to the American people for all the reasons we have outlined,” he said. “We are moving forward on this bill.”

Speaker Nancy Pelosi (D-Calif.) told reporters Wednesday that colleagues putting together the legislation will stick with the $3.5 trillion goal, though she acknowledged the final number might be different.

“I don’t know what the number will be. We are marking at $3.5 trillion,” she said.

A senior Democratic staffer said Senate and House committees, which face an end-of-week deadline to finish their elements of the reconciliation package by the end of this week, haven’t received any indication the final version will be pared down from the $3.5 trillion top-line spending goal laid out in the budget resolutions passed last month by each chamber.

“We’re working our asses off,” said the aide. “All we’re doing is working. We have been under orders to get to agreement with our House counterparts by close-of-business Friday.”

Senate Budget Committee Chairman Bernie Sanders (I-Vt.), who has primary jurisdiction over the reconciliation process, says the spending target agreed to by congressional Democrats already represents a significant compromise with moderates.

“The overwhelming majority of members of the budget committee — and I think a good 80 or more percent of Democratic members of the Senate — supported a $6 trillion bill,” Sanders said of the spending number he originally floated ahead of the budget debate.

Sanders argues that $3.5 trillion is what needs to be spent on transforming the nation’s energy economy to address climate change and “dealing with the needs of the working class.”

“To my mind, this bill at $3.5 trillion is already a major, major compromise. And at the very least this bill should be $3.5 trillion,” he said Wednesday.

Democratic strategists warn of a backlash from the party’s base if the legislation — which includes substantial spending on long-term care for the elderly and disabled, an extension of the child tax credit, funding for expanded child care and significant investments in renewable energy sources — falls well below $3.5 trillion.

“The reaction from progressives, which is already being indicated, would be very bad. People would be very disappointed,” said Mike Lux, a Democratic strategist.

But Lux said the threats from moderates should be viewed more as bargaining positions.

“People are doing a lot of posturing right now and throwing out broad numbers and broad statements. The fact is that Joe Manchin and other Democrats in the House and Senate voted for the $3.5 trillion budget outline,” he said. “We’re going to have to work very hard to get everybody on board with the budget plan again.

“There are going to be a lot of changes, a lot of compromises that everybody is going to have to make. The most important thing is to stay calm and keep talking to each other. Sooner or later we’ll get to a package that both Joe Manchin and [Rep. Alexandria Ocasio Cortez] can embrace because we need everybody,” he added. “I think it will work itself out in the end.”

#### Antitrust action saps finite capital, imperils rest of agenda

Karaim 21

(Reed, <http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2021050705>, 5-7)

Stucke, the former U.S. Justice Department antitrust official, says that despite Wu and Khan's credentials and reputation, changing antitrust policy will require a concerted effort. With Biden having an ambitious overall agenda and his Democratic Party holding the slimmest possible majority in the Senate, Stucke says, the question is “to what extent will the Biden administration want to expend political capital on this. They've got some bipartisan support for antitrust reform, but to what extent are they going to mobilize that?”

#### Budget key to solve climate change.

Dino Grandoni and Brady Dennis 8/11/21. Reporter covering energy and environmental policy. Reporter focusing on environmental policy and public health issues. “Biden aims for sweeping climate action as infrastructure, budget bills advance”. Washington Post. Aug 11 2021. https://www.washingtonpost.com/climate-environment/2021/08/10/biden-climate-congress/

After years of dragging their feet, lawmakers in Washington advanced a pair of major bills this week that include significant provisions for tackling climate change as scientists continue to ring alarm bells about the state of the planet.

The Senate approved on Tuesday a sweeping bipartisan $1.2 trillion infrastructure bill with funding for many public works meant to cut climate-warning emissions. A day later, Democrats in the chamber took a major step to adopt an even bigger, $3.5 trillion budget bill supporting yet more programs for cleaning up power plants and cars.

Each, if passed, would invest billions of dollars in the sort of clean energy transition the United States must make to have any chance of hitting the goal set by President Biden to cut the nation’s emissions by at least 50 percent by the end of this decade.

“This was one of the most significant legislative days we’ve had in a long time here,” Senate Majority Leader Charles E. Schumer (D-N.Y.) told reporters Wednesday.

But both bills face a potentially bumpy road ahead. Democrats still need to draft in committees the details of their massive budget reconciliation package over the coming weeks, with not a single vote to spare in the 50-50 split Senate. The bipartisan public-works bill, meanwhile, still needs approval from the House, where progressive Democrats hold significant sway.

The moves on Capitol Hill come as hundreds of scientists detailed this week the intensifying fires, floods and other catastrophes that will continue to worsen until humans dramatically scale back greenhouse gas emissions.

Scientists assembled by the United Nations made clear in a landmark report Monday that time is running out for the world to make immediate and dramatic cuts to emissions produced by the burning of fossil fuels and other human activities. U.N. Secretary General António Guterres called the sobering, sprawling report from the Intergovernmental Panel on Climate Change a “code red for humanity.”

But it remains unclear whether the new findings alone will be enough to spur new action in a Washington as politically divided as ever.

Climate change remains a distinctly fraught issue in the United States compared with many other countries, with the de facto leader of one of the two major parties — former president Donald Trump — dismissing the scientific consensus about human-caused climate change and downplaying its risks throughout his term.

Even if Congress passes bills with big climate provisions, regulations from the Biden administration are vulnerable to being reined in by federal court judges appointed by Trump and the most conservative Supreme Court in a generation. And the fate of many of the administration’s climate initiatives could depend on the Democratic Party retaining control of Congress — and on how Biden himself fares if he runs again in 2024.

If Biden and his Democratic allies in Congress succeed in shifting the nation rapidly toward a greener future, the math of climate change means that the rest of the world would have to follow suit, and quickly. The United States accounts for only about one-seventh of global emissions. The rest of the world — particularly the world’s largest emitter, China — would need to set more aggressive goals for reducing footprints as well.

Other countries have taken steps to do that. The European Union, for instance, agreed earlier this year to cut carbon emissions as a bloc by at least 55 percent by 2030. But how aggressively China, India, Russia and other nations will move in the years ahead remains an open question.

World leaders already faced mounting pressure to arrive at a major U.N. climate conference scheduled this fall in Scotland with more ambitious, concrete plans to slow greenhouse gas pollution. That pressure grew only more intense after Monday’s IPCC assessment, which found that the world is quickly running out of time to meet the goals of the 2015 Paris agreement.

The report found that humans can only unleash less than 500 additional gigatons of carbon dioxide — the equivalent of about 10 years of current global emissions — to have an even chance of limiting warming to 1.5 degrees Celsius (2.7 Fahrenheit) above preindustrial levels.

The hopes of hitting that target, the most aspirational goal outlined in the Paris accord, will soon slip away without rapid action, the report made clear. After all, the world has already warmed more than 1 degree Celsius (1.8 degrees Fahrenheit), with few signs of slowing unless nations begin to cut emissions at a rate unprecedented in history.

For Biden to live up to his promises to reduce U.S. emissions sharply in coming years, transition to electric vehicles and eliminate the carbon footprint of the power sector by 2035, his administration needs a helping hand from Congress.

The infrastructure package, which the Senate approved in a 69-to-30 vote with the support of 19 Senate Republicans, apportions billions of dollars for building new transmission lines, public transit and electric-car charging stations.

Meanwhile, the separate $3.5 trillion budget reconciliation bill, which Democrats plan to pass on their own, includes more far-reaching provisions for tackling climate change.

That measure would impose new import fees on polluters and give tax breaks for wind turbines, solar panels and electric vehicles. It would also seek to electrify vehicles used by the U.S. Postal Service and other federal agencies and create a new Civilian Climate Corps to enlist young people in planting trees and other conservation work.

Perhaps most crucially, the legislation would put new requirements on electricity providers to use cleaner forms of energy — something President Barack Obama’s administration tried but failed to do.

Dan Lashof, U.S. director of the World Resources Institute, called Tuesday’s bipartisan infrastructure package “a down payment” on the fight against climate change but not nearly enough going forward. He said it is essential for the Senate to also pass the budget-reconciliation package that funds a broader array of climate-focused measures to create jobs and shift the nation’s infrastructure toward one no longer reliant on fossil fuels.

“The forthcoming reconciliation package could be our best opportunity for advancing climate action this decade,” he said. “Kicking the can down the road is no longer an option as extreme weather wreaks havoc across our nation and around the world.”

Passing both bills, along with tighter regulations from the Environmental Protection Agency, “puts us within shooting distance” reducing emissions by 50 percent by 2030, according to Collin O’Mara, president of the National Wildlife Federation.

#### Warming causes extinction – global nuclear conflagration.

Michael Klare 20. The Nation’s defense correspondent, professor emeritus of peace and world-security studies at Hampshire College, senior visiting fellow at the Arms Control Association in Washington, DC. “How Rising Temperatures Increase the Likelihood of Nuclear War”. The Nation. Jan 13 2020. https://www.thenation.com/article/archive/nuclear-defense-climate-change/

President Donald Trump may not accept the scientific reality of climate change, but the nation’s senior military leaders recognize that climate disruption is already underway, and they are planning extraordinary measures to prevent it from spiraling into nuclear war. One particularly worrisome scenario is if extreme drought and abnormal monsoon rains devastate agriculture and unleash social chaos in Pakistan, potentially creating an opening for radical Islamists aligned with elements of the armed forces to seize some of the country’s 150 or so nuclear weapons. To avert such a potentially cataclysmic development, the US Joint Special Operations Command has conducted exercises for infiltrating Pakistan and locating the country’s nuclear munitions. Most of the necessary equipment for such raids is already in position at US bases in the region, according to a 2011 report from the nonprofit Nuclear Threat Initiative. “It’s safe to assume that planning for the worst-case scenario regarding Pakistan’s nukes has already taken place inside the US government,” said Roger Cressey, a former deputy director for counterterrorism in Bill Clinton’s and George W. Bush’s administrations in 2011.

Such an attack by the United States would be an act of war and would entail enormous risks of escalation, especially since the Pakistani military—the country’s most powerful institution—views the nation’s nuclear arsenal as its most prized possession and would fiercely resist any US attempt to disable it. “These are assets which are the pride of Pakistan, assets which are…guarded by a corps of 18,000 soldiers,” former Pakistani president Pervez Musharraf told NBC News in 2011. The Pakistani military “is not an army which doesn’t know how to fight. This is an army that has fought three wars. Please understand that.”

A potential US military incursion in nuclear-armed Pakistan is just one example of a crucial but little-​discussed aspect of international politics in the early 21st century: how the acceleration of climate change and nuclear war planning may make those threats to human survival harder to defuse. At present, the intersections between climate change and nuclear war might not seem obvious. But powerful forces are pushing both threats toward their most destructive outcomes.

In the case of climate change, the unbridled emission of carbon dioxide and other greenhouse gases is raising global temperatures to unmistakably dangerous levels. Despite growing worldwide reliance on wind and solar power for energy generation, the global demand for oil and natural gas continues to rise, and carbon emissions are projected to remain on an upward trajectory for the foreseeable future. It is highly unlikely, then, that the increase in average global temperature can be limited to 1.5 degrees Celsius, the aspirational goal adopted by the world’s governments under the Paris Agreement in 2015, or even to 2°C, the actual goal. After that threshold is crossed, scientists agree, it will prove almost impossible to avert catastrophic outcomes, such as the collapse of the Greenland and Antarctic ice sheets and a resulting sea level rise of 6 feet or more.

Climbing world temperatures and rising sea levels will diminish the supply of food and water in many resource-deprived areas, increasing the risk of widespread starvation, social unrest, and human flight. Global corn production, for example, is projected to fall by as much as 14 percent in a 2°C warmer world, according to research cited in a 2018 special report by the UN’s Intergovernmental Panel on Climate Change (IPCC). Food scarcity and crop failures risk pushing hundreds of millions of people into overcrowded cities, where the likelihood of pandemics, ethnic strife, and severe storm damage is bound to increase. All of this will impose an immense burden on human institutions. Some states may collapse or break up into a collection of warring chiefdoms—all fighting over sources of water and other vital resources.

A similar momentum is now evident in the emerging nuclear arms race, with all three major powers—China, Russia, and the United States—rushing to deploy a host of new munitions. This dangerous process commenced a decade ago, when Russian and Chinese leaders sought improvements to their nuclear arsenals and President Barack Obama, in order to secure Senate approval of the New Strategic Arms Reduction Treaty of 2010, agreed to initial funding for the modernization of all three legs of America’s strategic triad, which encompasses submarines, intercontinental ballistic missiles, and bombers. (New START, which mandated significant reductions in US and Russian arsenals, will expire in February 2021 unless renewed by the two countries.) Although Obama initiated the modernization of the nuclear triad, the Trump administration has sought funds to proceed with their full-scale production, at an estimated initial installment of $500 billion over 10 years.

Even during the initial modernization program of the Obama era, Russian and Chinese leaders were sufficiently alarmed to hasten their own nuclear acquisitions. Both countries were already in the process of modernizing their stockpiles—Russia to replace Cold War–era systems that had become unreliable, China to provide its relatively small arsenal with enhanced capabilities. Trump’s decision to acquire a whole new suite of ICBMs, nuclear-armed submarines, and bombers has added momentum to these efforts. And with all three major powers upgrading their arsenals, the other nuclear-weapon states—led by India, Pakistan, and North Korea—have been expanding their stockpiles as well. Moreover, with Trump’s recent decision to abandon the Intermediate-Range Nuclear Forces (INF) Treaty, all major powers are developing missile delivery systems for a regional nuclear war such as might erupt in Europe, South Asia, or the western Pacific.

All things being equal, rising temperatures will increase the likelihood of nuclear war, largely because climate change will heighten the risk of social stress, the decay of nation-states, and armed violence in general, as I argue in my new book, All Hell Breaking Loose. As food and water supplies dwindle and governments come under ever-increasing pressure to meet the vital needs of their populations, disputes over critical resources are likely to become more heated and violent, whether the parties involved have nuclear arms or not. But this danger is compounded by the possibility that several nuclear-armed powers—notably India, Pakistan, and China—will break apart as a result of climate change and accompanying battles over disputed supplies of water.

Together, these three countries are projected by the UN Population Division to number approximately 3.4 billion people in 2050, or 34 percent of the world’s population. Yet they possess a much smaller share of the world’s freshwater supplies, and climate change is destined to reduce what they have even further. Warmer temperatures are also expected to diminish crop yields in these countries, adding to the desperation of farmers and very likely resulting in widespread ethnic strife and population displacement. Under these circumstances, climate-related internal turmoil would increase the risk of nuclear war in two ways: by enabling the capture of nuclear arms by rogue elements of the military and their possible use against perceived enemies and by inciting wars between these states over vital supplies of water and other critical resources.

The risk to Pakistan from climate change is thought to be particularly acute. A large part of the population is still engaged in agriculture, and much of the best land—along with access to water—is controlled by wealthy landowners (who also dominate national politics). Water scarcity and mismanagement is a perennial challenge, and climate change is bound to make the problem worse. Climate and Social Stress: Implications for Security Analysis, a 2013 report by the National Research Council for the US intelligence community, highlights the danger of chaos and conflict in that country as global warming advances. Pakistan, the report notes, is expected to suffer from inadequate water supplies during the dry season and severe flooding during the monsoon—outcomes that will devastate its agriculture and amplify the poverty and unrest already afflicting much of the country. “The Pakistan case,” the report reads, “illustrates how a highly stressed environmental system on which a tense society depends can be a source of political instability and how that source can intensify when climate events put increased stress on the system.” Thus, as global temperatures rise and agriculture declines, Pakistan could shatter along ethnic, class, and religious lines, precisely the scenario that might trigger the sort of intervention anticipated by the US Joint Special Operations Command.

Assuming that Pakistan remains intact, another great danger arising from increasing world temperatures is a conflict between it and India or between China and India over access to shared river systems. Whatever their differences, Pakistan and western India are forced by geography to share a single river system, the Indus, for much of their water requirements. Likewise, western China and eastern India also share a river, the Brahmaputra, for their vital water needs. The Indus and the Brahmaputra obtain much of their flow from periods of heavy precipitation; they also depend on meltwater from Himalayan glaciers, and these are at risk of melting because of rising temperatures. According to the IPCC, the Himalayan glaciers could lose as much as 29 percent of their total mass by 2035 and 78 percent by 2100. This would produce periodic flooding as the ice melts but would eventually result in long periods of negligible flow, with calamitous consequences for downstream agriculture. The widespread starvation and chaos that could result would prove daunting to all the governments involved and make any water-related disputes between them a potential flash point for escalation.

As in Pakistan, water supply has always played a pivotal role in the social and economic life of China and India, with both countries highly dependent on a few major river systems for civic and agricultural purposes. Excessive rainfall can lead to catastrophic flooding, and prolonged drought has often led to widespread famine and mass starvation. In such a setting, water management has always been a prime responsibility of government—and a failure to fulfill this function effectively has often resulted in civil unrest. Climate change is bound to increase this danger by causing prolonged water shortages interspersed with severe flooding. This has prompted leaders of both countries to build ever more dams on all key rivers.

India, as the upstream power on several tributaries of the Indus, and China, as the upstream power on the Brahmaputra, have considered damming these rivers and diverting their waters for exclusive national use, thereby diminishing the flow to downstream users. Three of the Indus’s principal tributaries, the Jhelum, Chenab, and Ravi rivers, flow through Indian-controlled Kashmir (now in total lockdown, with government forces suppressing all public functions). It’s possible that India seeks full control of Kashmir in order to dam the tributaries there and divert their waters from Pakistan—a move that could easily trigger a war if it occurs at a time of severe food and water stress and one that would very likely invite the use of nuclear weapons, given Pakistan’s attitude toward them.

The situation regarding the Brahmaputra could prove equally precarious. China has already installed one dam on the river, the Zangmu Dam in Tibet, and has announced plans for several more. Some Chinese hydrologists have proposed the construction of canals linking the Brahmaputra to more northerly rivers in China, allowing the diversion of its waters to drought-stricken areas of the heavily populated northeast. These plans have yet to come to fruition, but as global warming increases water scarcity across northern China, Beijing might proceed with the idea. “If China was determined to move forward with such a scheme,” the US National Intelligence Council warned in 2009, “it could become a major element in pushing China and India towards an adversarial rather than simply a competitive relationship.”

Severe water scarcity in northern China could prompt yet another move with nuclear implications: an attempted annexation by China of largely uninhabited but water-rich areas of Russian Siberia. Thousands of Chinese farmers and merchants have already taken up residence in eastern Siberia, and some commentators have spoken of a time when climate change prompts a formal Chinese takeover of those areas—which would almost certainly prompt fierce Russian resistance and the possible use of nuclear weapons.

In the Arctic, global warming is producing a wholly different sort of peril: geopolitical competition and conflict made possible by the melting of the polar ice cap. Before long, the Arctic ice cap is expected to disappear in summertime and to shrink noticeably in the winter, making the region more attractive for resource extraction. According to the US Geological Survey, an estimated 30 percent of the world’s remaining undiscovered natural gas is above the Arctic Circle; vast reserves of iron ore, uranium, and rare earth minerals are also thought to be buried there. These resources, along with the appeal of faster commercial shipping routes linking Europe and Asia, have induced all the major powers, including China, to establish or expand operations in the region. Russia has rehabilitated numerous Arctic bases abandoned after the Cold War and built others; the United States has done likewise, modernizing its radar installation at Thule in Greenland, reoccupying an airfield at Keflavík in Iceland, and establishing bases in northern Norway.

Increased economic and military competition in the Arctic has significant nuclear implications, as numerous weapons are deployed there and geography lends it a key role in many nuclear scenarios. Most of Russia’s missile-carrying submarines are based near Murmansk, on the Barents Sea (an offshoot of the Arctic Ocean), and many of its nuclear-armed bombers are also at bases in the region to take advantage of the short polar route to North America. As a counterweight, the Pentagon has deployed additional subs and antisubmarine aircraft near the Barents Sea and interceptor aircraft in Alaska, followed by further measures by Moscow. “I do not want to stoke any fears here,” Russian President Vladimir Putin declared in June 2017, “but experts are aware that US nuclear submarines remain on duty in northern Norway…. We must protect [Russia’s] shore accordingly.”

On the other side of the equation, an intensifying arms race will block progress against climate change by siphoning resources needed for a global energy transition and by poisoning the relations among the great powers, impeding joint efforts to slow the warming.

With the signing of the Paris Agreement, it appeared that the great powers might unite in a global effort to slash greenhouse gas emissions quickly enough to avoid catastrophe, but those hopes have since receded. At the time, Obama emphasized that limiting global warming would require nations to work together in an environment of trust and peaceful cooperation. Instead of leading the global transition to a postcarbon energy system, however, the major powers are spending massively to enhance their military capabilities and engaging in conflict-provoking behaviors.

Since fiscal year 2016, the annual budget of the US Department of Defense has risen from $580 billion to $738 billion in fiscal year 2020. When the budget increases for each fiscal year since 2016 are combined, the United States will have spent an additional $380 billion on military programs by the end of this fiscal year—more than enough to jump-start the transition to a carbon-​free economy. If the Pentagon budget rises as planned to $747 billion in fiscal year 2024, a total of $989 billion in additional spending will have been devoted to military operations and procurement over this period, leaving precious little money for a Green New Deal or any other scheme for systemic decarbonization.

Meanwhile, policy-makers in Washington, Beijing, and Moscow increasingly regard one another as implacable and dangerous adversaries. “As China and Russia seek to expand their global influence,” then–Director of National Intelligence Dan Coats informed Congress in a January 2019 report, “they are eroding once well-established security norms and increasing the risk of regional conflicts.” Chinese and Russian officials have been making similar statements about the United States. Secondary powers like India, Pakistan, and Turkey are also assuming increasingly militaristic postures, facilitating the potential spread of nuclear weapons and exacerbating regional tensions. In this environment, it is almost impossible to imagine future climate negotiations at which the great powers agree on concrete measures for a rapid transition to a clean energy economy.

In a world constantly poised for nuclear war while facing widespread state decay from climate disruption, these twin threats would intermingle and intensify each other. Climate-​related resource stresses and disputes would increase the level of global discord and the risk of nuclear escalation; the nuclear arms race would poison relations between states and make a global energy transition impossible.

### CP – 1NC

#### The United States federal government should

#### limit, via regulation, the size of private sector financial institutions to liabilities no greater than five percent of the Federal Deposit Insurance Corporation’s Deposit Insurance Fund,

#### substantially increase its regulation of oil companies, including at least refusing to accept donations from oil companies and refusing to hire former employees of the oil industry, and

* **create and implement a plan to install accessible fiber-optic Internet throughout the United States.**

#### Regulation solves without linking to the econ DA

Beaupre ’20 [Jacob; Associate @ Nicolaides Fink Thorpe Michaelides Sullivan LLP, JD @ DePaul University College of Law; “Big Is Not Always Bad: The Misuse of Antitrust Law to Break up Big Tech Companies,” *DePaul Business & Commercial Law Journal* 18(1), p. 25-48; AS]

IV. CONCLUSION

The big four technology companies should not be broken up under antitrust law. Antitrust law has an uneasy fit with internet-based businesses because is difficult to discern how to judge when an internet company has become a monopoly since the internet is so vast, changes so quickly, and has many sectors to it. The internet's nature is disruptive and because of the pace of technological change, it is important that antitrust policy take into account how breaking up an internet company may have negative effects on the American economy and on the development of technology.

Businesses who create the best products and do the most research should not be interfered with so long as the companies are not stifling competition and are not monopolies under the legal definitions. Certainly, antitrust law could be applied if Google hypothetically bought Facebook, Netflix, and Twitter since Google would control an outsized market share and would have an intent to monopolize the internet. But this is not what is occurring at this juncture. The big four technology companies record profits and are indisputably large and powerful corporations. Nevertheless, antitrust law should not be applied because the whims of the populist mob do not like tech companies' size and influence.

It is rational to worry about Big Tech's outsized influence on the American economy. However, simply targeting the big four tech companies because of their record earnings and increasing size is counter to the intent of the antitrust acts. If those feel that these companies have too much unchecked power, policymakers and officials should consider regulatory action. There are good and well-reasoned arguments for regulating these tech giants given the recent string of controversies regarding data privacy, but antitrust law is not the avenue to check tech giants' power. The antitrust laws cannot be used simply to satisfy the populist furor over corporate earnings and power, as the antitrust acts only apply if a company is stifling or intending to stifle competition and innovation. Regulatory actions or new legislation policing data use and privacy, cybersecurity, foreign interference in elections, and other issues are a better fit than simply breaking up an entire large business

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Right now, consumers are receiving great benefits because of the big four tech companies' dominance. Consumers have a near limited array of options on the internet and there is no shortage of innovation. With new issues arising as a result from changing pace of technology and the economy, the American legal system should let the market run its course, albeit with some regulation on the industry, unless these tech giants begin to take drastic steps to monopolize and engage in predatory behavior. The populism behind these arguments to break up the tech giants is not grounded in antitrust law nor the policy behind it.

#### Public investment solves – their evidence

**Young 17** (Peter Young – Masters of Professional Studies in Urban & Regional Planning received in 2017. <KEN> “Broadband Infrastructure to Enable Smart Cities: Emerging Strategies and Partnership Models,” <https://repository.library.georgetown.edu/bitstream/handle/10822/1044668/Peter%20Young%20Capstone%20Thesis%20Final.pdf?sequence=1&isAllowed=y>)

Unfortunately, many network upgrades advertised by large incumbent telecoms tend to rely on DOCSIS 3.1 to provide faster speeds over old copper wires.68 In order to reach gigabit speeds, consumers need to purchase a special router, and because connections are made over aging infrastructure—it isn’t guaranteed that the speeds will even reach those that are advertised.69 “It feels like a ploy for ISPs to squeeze every last bit of business from soon-to-be obsolete networks,” writes one Gizmodo reporter. It is understandable that profit-driven companies in a free market economy would make such a choice as opposed to the much more expensive proposition of laying down fiber. This also isn’t to say that the network upgrades aren’t a welcome development in the broadband space. However, over the long-term, fiber will be a necessary backbone for any city that wants to leverage ubiquitously connected IoT devices and additional advances in ICT.70 Therefore, municipalities should focus on facilitating a transition toward fiber-optic broadband infrastructure, and shouldn’t rely solely on short-term fixes like those exemplified by DOCIS 3.1.

In addition to laying wired fiber-optic cables, broadband infrastructure planning for the smart city must also consider the facilitation of high-speed wireless networks.71 Both wired and wireless broadband will increasingly support each other, as you cannot realistically run fiber cabling to all of the sensor and monitoring devices across a connected city.72 Therefore, fiber serves the dual purpose of connecting homes, businesses, and government buildings directly, while also serving as a backhaul network for wirelessly connected devices.73 The U.S. Networking and Information Technology Research and Development Program get its right when stating how important it is to explore “new wireless devices, communication techniques, networks, systems, and services to enhance high-speed, software-defined connectivity and leverage the emerging Internet of Things (IoT).”74

### DA – 1NC

#### 5G innovation high now because of lack of government red tape

Mahaffee and Kitfield 7/29 (Dan Mahaffee, senior vice president at the Center for the Study of the Presidency & Congress, James Kitfield, a senior fellow at CSPC. 7-29-2021, "Bipartisan policies put America back into the 5G race against China," TheHill, https://thehill.com/opinion/technology/565456-bipartisan-policies-put-america-back-into-the-5g-race-against-china//ES)

Too often hyper-partisanship and political dysfunction in Washington, D.C. act as a drag on our nation’s ability to unite to confront major challenges. Yet in two promising areas a rare bipartisan consensus has recently emerged on Capitol Hill: the imperative of empowering U.S. leadership and innovation in the fierce competition with China over advanced technologies, and the key role infrastructure investments in areas such as high-speed digital connectivity play in that competition. Fortunately, in strengthening our digital infrastructure at home and meeting the technological challenge from abroad, the United States has a successful playbook in the recent race to field fifth generation, or “5G,” mobile networks that are designed to connect virtually everyone and every electronic device, and are poised to change the way the world communicates. Just a few years ago, China was so far ahead in deploying 5G networks that many experts believed the United States had already ceded the race. “China and other countries may be creating a 5G tsunami, making it near impossible [for America] to catch up,” analysts at the accounting firm Deloitte wrote. Analysts at Ernst & Young were equally blunt. “China is already in a leading role in the 5G development,” they wrote a few years ago, and “is poised to win the race to 5G.” The math bore out those grim predictions. Excessive regulatory red tape meant that U.S. carriers were spending nearly three times as much as their counterparts in other countries to generate 5G network capacity. Between 2012 and 2016, the United States constructed on average three new cell sites a day when thousands are needed for 5G. At the time China was building roughly 460 new cell sites per day. As Federal Communications Commission (FCC) Commissioner Brendan Carr pointed out in a recent discussion hosted by the Center for the Study of the Presidency & Congress, “What it was taking us four years to do, China was doing every nine days.” Fast forward to today. While the race for 5G leadership and onwards to 6G is far from over, the United States is now positioned to successfully compete thanks to measures that have empowered innovation, entrepreneurialism, and enterprise. Rather than trying to “be like China to beat China,” Carr noted, the FCC instead took steps to unleash America’s free enterprise mojo. The FCC thus moved to streamline approvals and cut the fees local governments levied on cell site construction. Freeing up spectrum across low-, mid-, and high-band frequencies allowed for U.S. carriers to innovate by using different frequencies and combinations of coverage. Once again the numbers tell the tale. In 2019, with that more streamlined framework in place, U.S. carriers built over 46,000 new cell sites, a 65 fold increase. Meanwhile, internet speeds in the United States have more than tripled over the past four years, and more than 270 million Americans are now covered by 5G networks, helping to cut the digital divide separating the “haves” and “have nots” of this critical technology nearly in half. In recent years both the Trump and Biden administrations have also taken a strong stand against reliance on Chinese companies such as Huawei and ZTE for 5G technology. Under China’s national intelligence law, these companies are legally required to conduct intelligence gathering when asked to by the Chinese Communist Party, which routinely engages in digital spying on dissidents, steals intellectual property, and hacks foreign governments and corporations. With Huawei already having finalized more 5G contracts than any other telecom company, more still needs to be done to convince allies and partners of the serious risks of relying on Chinese firms for critical digital infrastructure. The Biden administration took a positive step in calling out Beijing’s digital transgressions when it recently rallied a broad and unprecedented group of allies — including the European Union and for the first time, the NATO alliance — to publicly condemn Beijing for malign activities in cyberspace that include hacking Microsoft email systems used by many governments and international corporations. The good news is that the 5G race is afoot, and the United States is now in it to win it. That success offers clear lessons for the way forward. First, when it comes to infrastructure, we need to pair investments with streamlined deregulatory measures that ensure we are not, as Carr put it, “hitting the brake and the gas at the same time.” Thus unleashed, the American free enterprise system is more than a match for China’s centralized planning model and insistence on iron-gripped government control of the private sector. The second lesson is that we must be clear-eyed about the geopolitical stakes in this technological competition. Washington, Brussels and Beijing are all jockeying for advantage in a commercial competition, but one informed by different core values and visions of the future. Those different world views should align the United States and its democratic allies closely as they confront Beijing’s authoritarianism and increasingly brazen challenges to the rules-based international order in Hong Kong, the Taiwan Straits and the South China Sea. Put simply the stakes in this “geotech” competition could not be higher, and it is one that free societies cannot afford to lose.

#### Consolidation is key to developing 5G

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There are a number of conceptual reasons why a merger might lead to increased investment, which are set out below, along with commentary from the VHA/TPG and Sprint/T-Mobile judgments: Increased scale and scope improve the business case for investment in common/shared network assets Many investments in telecommunications networks are lumpy and fixed costs are high. Combining two mobile networks or a fixed and a mobile network (as was the case with VHA/TPG) improves the business case for investment in shared infrastructure, since the same costs are spread over more customers. The VHA/TPG decision states that ‘MergeCo will benefit financially from achieving scale. Scale is important for MNOs, as it enables the fixed costs of providing coverage to be recovered across a larger number of customers’.[33] Related to these cost savings, the decision states, ‘Further, I do not consider that MergeCo would use its net profit after tax to pay dividends to its shareholders or to pay down debt, at the expense of using its financial firepower to invest in its network or compete for market share’.[34] Relieving capital constraints In both VHA/TPG and Sprint/T-Mobile, a key issue was the ability of one of the players to finance investment absent the merger. In VHA/TPG, the evidence suggested that VHA was facing financial difficulties that wouldn’t be resolved absent the merger, which impacted its ability to invest. The judge stated, ‘it seems Vodafone faces financial difficulties that are unlikely to materially change absent the merger, and those financial difficulties will limit the extent to which Vodafone can invest in, and grow its business, in the counterfactual.’[35] However, the merged entity would have an improved ability to fund network investment due to an improved balance sheet, improved access to debt and equity funding, cost synergies and financial benefits from economies of scale.[36] In relation to an improved balance sheet, the judge stated ‘MergeCo would have a stronger balance sheet than either TPG or Vodafone separately. This would provide MergeCo with the capacity to invest strongly in its mobile assets, including by raising equity capital if necessary, and to roll-out 5G services and reduce network congestion more quickly.’[37] The VHA/TPG decision also asserted that the increased ability to invest would allow a faster rollout of 5G, stating ‘MergeCo’s ability to invest additional capex in its network will enable it to offer high-quality 5G services to customers far sooner than Vodafone or TPG would be able to alone. In doing so, MergeCo will have the opportunity to become a more effective competitive constraint on Telstra and Optus.’[38] Similarly, in Sprint/T-Mobile, the District Court was concerned with the viability of Sprint as a competitor given its financing issues, stating: ‘The weight of the evidence at trial establishes that Sprint is caught in a vicious cycle caused by its inability to finance meaningful network investment, which perpetuates a low-quality network that drives away customers and limits Sprint’s ability to generate the cash necessary to reduce its financial constraints.’[39] Noting the narrow applicability of this ‘weakened competitor’ defence,[40] the District Court explored whether there were any competitive means other than the merger to resolve Sprint’s competitiveness issues, ultimately concluding that there was not.[41] Combining scarce spectrum holdings increases network capacity and lowers network build cost As noted above, network capacity can be increased by increasing the number of sites, investing in more efficient equipmen

t (eg, upgrading to 5G) or increasing spectrum holdings. Increasing spectrum holdings increases the capacity of the existing network, but also means the capacity provided by any new investments also increasesx. In this sense, increased spectrum holdings reduce the incremental cost of expanding capacity. This was the case in Sprint/T-Mobile, with the judge stating: ‘The undisputed evidence at trial reflects that combining Sprint and T-Mobile’s low-band and mid-band spectrum on one network will not merely result in the sum of Sprint and T-Mobile’s standalone capacities, but will instead multiply the combined network’s capacity because a technological innovation referred to as “carrier aggregation” and certain physical properties governing the interaction of radios.’[42] There is a further benefit if the spectrum holdings are contiguous, since this would also eliminate the need for ‘guard bands’ and thus increase the total amount of usable spectrum.[43] VHA and TPG had complementary spectrum holdings in a number of different bands. The decision noted that combining spectrum could lead to benefits, including the reduced need for ‘overhead control’[44] and reduced congestion on the merged network.[45] The VHA/TPG decision explicitly recognised that the increased network capacity resulting from the merger would release funds which could then be redirected to accelerating the 5G rollout: ‘The increase in the capacity of MergeCo’s network will reduce the need to build additional sites or conduct “tactical” 4G upgrades to relieve immediate congestion issues, a substantial proportion of which is inefficient as it would need to be also replaced in the near future. That will release additional capex which can be directed towards accelerating MergeCo’s 5G roll-out.’[46] Combining spectrum in different bands allows an appropriate balance of coverage and capacity, reducing network build costs As described above, different spectrum bands have different uses, with low-frequency spectrum providing superior coverage but low capacity and high-frequency spectrum providing poor coverage but high capacity. In Sprint/T-Mobile, T-Mobile had substantial low-band spectrum that Sprint lacked, while Sprint had substantial mid-band spectrum that complemented T-Mobile’s holdings. The parties argued that having a broader spectrum portfolio would allow more efficient spectrum use (ie, using low-band in areas where mid-band could not reach), leading to cost efficiencies, since low-band spectrum can provide greater coverage with fewer sites: ‘Apart from capacity and cost benefits, Defendants claim that New T-Mobile will provide better coverage than Sprint customers currently receive because T-Mobile’s low-band spectrum covers a broader range and penetrates through buildings more effectively than Sprint’s mid-band holdings can. Having a broad range of spectrum would allow New T-Mobile to dedicate each band of spectrum to its best use; it could prioritize the use of low-band in areas that mid-band and mmWave could not reach, while instead prioritizing the other two bands in areas correspondingly closer to the cell sites.’[47]

#### Winning the 5G race is key to US hegemony—geoeconomics, cyberthreats, and spheres of influence

Tham 18 (Jansen Tham, Masters in Public Policy graduate of the Lee Kuan Yew School of Public Policy, National University of Singapore, specializing in Politics and International Affairs, December 13, 2018, "Why 5G Is the Next Front of US-China Competition," No Publication, <https://thediplomat.com/2018/12/why-5g-is-the-next-front-of-us-china-competition//ES>).

Geoeconomics of 5G First, 5G technology will support next-gen digital applications that permit ultra-fast, low latency (or lag), and high-throughput communications. These new apps are likely to fuel the future smart cities and digital economies, predicted to be the next key driver of economic growth in the much-touted Fourth Industrial Revolution. As a result, the superpower that gains a first-mover advantage in resolving the many technological, political, and policy challenges and successfully deploys the 5G network is likely to gain a significant economic edge over the other. This makes 5G implementation a zero-sum economic game – as viewed from an Chinese or American lens – rather than a win-win situation where technological advancements and solutions are shared for mutual gain. From the geoeconomic perspective, 5G networks could become such a game-changer that the technology tilts the balance between the world’s first and second most advanced economy. The geoeconomics also applies to other states at the periphery of the two superpowers. Whichever superpower that successfully deploys 5G can claim to replicate its model in other countries and exert geopolitical, economic, and technological influence over these states. Therefore, 5G has the potential to be the next leverage tool that the United States and China can wield in the great power competition to redraw the lines between the U.S. and Chinese camps – especially in Northeast, Southeast, and South Asia. 5G Cyberthreat Second, the prevailing global sentiment of possible Chinese cyberespionage through the technology it exports has its roots in the United States, with its national security agencies labeling Huawei and ZTE – heavyweights in the tech industry and front-runners of 5G technology – as potential national security threats. Despite the perceived security assessment that the use of Chinese equipment and software could damage U.S. security interests (which is certainly possible), there remains no concrete evidence to date supporting the cyber threat that Washington has hypothesized. Fundamentally, there is deep distrust on the part of the American national security establishment toward Beijing more than any concrete Chinese practices. This has precipitated the concern that the United States is susceptible to Chinese cyberespionage, or even subject to the disruption of critical cyber-infrastructure that may paralyze the nation. This suspicion is manifested in the decisions of the U.S. government regarding the use of Chinese equipment in 5G, and more broadly, the use of Chinese equipment by the government. The 5G issue is thus a conduit through which U.S. fears of Chinese hegemony is materializing, and the outcome of 5G could become an important proxy to assess the state of the U.S.-China bilateral relationship – or the depth of how icy it could get. 5G “Sphere of Influence” Third, the concern over their cybersecurity has driven states to coalesce around American leadership – and policy – on the future 5G network. Indeed, the countries that have publicly adopted the U.S. position are either its allies or close partners. It is notable that the other three members of the Quadrilateral (or Quad) grouping of countries – Australia, Japan, and India – appear to be joining the U.S. camp, along with some of its European allies. It is a matter of time before the United States and China separately gather allies to take a position on the issue of incorporating Huawei or ZTE’s technology in 5G networks. Thi

s is already happening. It would create de facto “spheres of influence” in Asia and beyond – reminiscent of the “spheres of influence” created during the Cold War by the United States and the Soviet Union. States that have heretofore been sitting on the fence and unwilling to commit to either Chinese or American policy on the matter could be forced to take a stand under intense diplomatic pressure. This would specifically apply to states like South Korea, the Philippines, Thailand, and Vietnam – countries that are ostensibly strong U.S. military allies or close partners, but which also fall within Beijing’s political influences due to their proximity to the middle kingdom. 5G as Proxy: What’s the End Game? Through the 5G issue, it is likely that both superpowers will take stock of and develop a clearer picture of where each country – Asian or otherwise – stands on the broader U.S.-China geopolitical chessboard. This will have repercussions beyond 5G, into the more strategic positioning of the two superpowers on the international stage. There is no clear end-game for the 5G issue, as both Beijing and Washington posture for the “hearts and minds” – or telecoms networks – of states. What is obvious is that the 5G issue is no mere technical or security problem, but one that has vast implications for the U.S.-China modus vivendi from the economic and political perspectives. After all, the stage is set for 5G to become a proxy battlefield for global technological, economic and (eventually) military supremacy – and one that peripheral countries must carefully manage to avoid becoming collateral damage in the great power rivalry that is heating up.

#### Heg deters all conflict – acceding to rival spheres of influence sparks great power war.

Brands ’20 [Hal; Henry A. Kissinger Distinguished Professor of Global Affairs at the Johns Hopkins University School of Advanced International Studies, Resident Scholar at the American Enterprise Institute, PhD from Yale University; 4/20/20; “Don’t Let Great Powers Carve Up the World: Spheres of Influence Are Unnecessary and Dangerous”; <https://www.foreignaffairs.com/articles/china/2020-04-20/dont-let-great-powers-carve-world>; Foreign Affairs; accessed 8/30/20; TV]

What a difference two decades make. In the early years of this century, the world appeared to be moving toward a single, seamless order under U.S. leadership. Today the world is fragmenting, and authoritarian challengers, led by China and Russia, are chipping away at American influence in East Asia, eastern Europe, and the Middle East. In its 2002 National Security Strategy, the George W. Bush administration envisioned the end of great-power rivalries. In 2020, the question is how great powers can navigate their rivalries without stumbling into war. Writing in Foreign Affairs (“The New Spheres of Influence,” March/April 2020), Graham Allison offers a road map for this new environment: the United States should accept the return of “spheres of influence” and effectively let China and Russia dominate swaths of their respective geopolitical neighborhoods. Doing so, Allison contends, is actually in keeping with the United States’ best diplomatic traditions, considering that Washington tolerated a Soviet sphere of influence in eastern Europe during the Cold War. Reviving that tradition is necessary, simply because the United States no longer has the military and economic dominance to deny China and Russia their geopolitical due. And it is desirable, because mutually accepted spheres of influence can promote stability and peace in a more rivalrous world. Allison’s argument is alluring but wrong. In truth, the United States has resisted the creation of rival spheres of influence for most of its history, even as it has worked assiduously to build its own. Ceding ground to China and Russia today would be not a recipe for stability but a blueprint for coercion and conflict, and it would weaken the United States’ geopolitical hand vis-à-vis its rivals. Nor is a return to spheres of influence foreordained—Washington still has the power to prevent Beijing and Moscow from dominating their regions, so long as it rejects Allison’s advice to cut loose its vulnerable frontline allies. A tougher, more competitive world is unavoidable. A far more dangerous world, divided into competing superpower fiefdoms, is not. AN AMERICAN TRADITION Spheres of influence have been common throughout history, but Americans have never been quite comfortable with them. In fact, much of U.S. foreign policy dating back to independence has consisted of efforts to prevent rival powers from establishing such domains. In the nineteenth century, U.S. leaders rejected the idea that any European power should have a sphere of influence in North America or the Western Hemisphere at large. They maneuvered—often quite ruthlessly—to evict European powers from these areas. At the turn of the twentieth century, the United States took this regional policy global. The so-called Open Door policy aimed to dissuade foreign powers from carving up China, and later all of East Asia, into exclusive spheres. Washington joined World War I in part to prevent Germany from becoming the dominant European power. A generation later, the United States fought to deny Japan a sphere of influence in the Pacific and prevent Hitler from establishing primacy over the entire Old World. During and after World War II, Washington also engaged in quieter diplomatic and economic efforts to accelerate the dissolution of the British Empire. Even during the Cold War, Americans never fully accepted Soviet control over eastern Europe. The Truman and Eisenhower administrations sought to roll back the Iron Curtain through ideological warfare and covert action; later administrations expanded trade and diplomatic ties with Warsaw Pact states as a subtler way of undermining Kremlin control. The Reagan administration overtly and covertly supported political movements that were challenging the Kremlin’s authority from within. And when Washington had a chance to peacefully destroy the Soviet sphere of influence after the fall of the Berlin Wall, it did, supporting German unification and the expansion of NATO. Opposition to spheres of influence, in other words, is a part of U.S. diplomatic DNA. The reason for this, Charles Edel and I argued in 2018, is that spheres of influence clash with fundamental tenets of U.S. foreign policy. Among them is the United States’ approach to security, which holds that safeguarding the country’s vital interests and physical well-being requires preventing rival powers from establishing a foothold in the Western Hemisphere or dominating strategically important regions overseas. Likewise, the United States’ emphasis on promoting liberty and free trade translates to a concern that spheres of influence—particularly those dominated by authoritarian powers—would impede the spread of U.S. values and allow hostile powers to block American trade and investment. Finally, spheres of influence do not mesh well with American exceptionalism—the notion that the United States should transcend the old, corrupt ways of balance-of-power diplomacy and establish a more humane, democratic system of international relations. Of course, that intellectual tradition did not stop the United States from building its own sphere of influence in Latin America from the early nineteenth century onward, nor did it prevent it from drawing large chunks of Europe, East Asia, and the Middle East into a global sphere of influence after World War II. Yet the same tradition has led the United States to run its sphere of influence far more progressively than past great powers, which is why far more countries have sought to join that sphere than to leave it. And since hypocrisy is another venerable tradition in global affairs, it is not surprising that Americans would establish their own, relatively enlightened sphere of influence while denying the legitimacy of everyone else’s. That endeavor reached its zenith in the post–Cold War era, when the collapse of the Soviet bloc made it possible to envision a world in which Washington’s sphere of influence—also known as the liberal international order—was the only game in town. The United States maintained a world-beating military that could intervene around the globe; preserved and expanded a global alliance structure as a check on aggression; and sought to integrate potential challengers, namely Beijing and Moscow, into a U.S.-led system. It was a remarkably ambitious project, as Allison rightly notes, but it was the culmination of, rather than a departure from, a diplomatic tradition reaching back two centuries. GIVE THEM AN INCH… The post–Cold War moment is over, and the prospect of a divided world has returned. Russia is projecting power in the Middle East and staking a claim to dominance in its “near abroad.” China is seeking primacy in the western Pacific and Southeast Asia and using its diplomatic and economic influence to draw countries around the world more tightly into its orbit. Both have developed the tools needed to coerce their neighbors and keep U.S. forces at bay. Allison is one of several analysts who have recently advanced the argument that the United States should make a virtue of necessity—that it should accept Russian and Chinese spheres of influence, encompassing some portion of eastern Europe and the western Pacific, as the price of stability and peace. The logic is twofold: first, to create a cleaner separation between contending parties by clearly marking where one’s influence ends and the other’s begins; and second, to reduce the chances of conflict by giving rising or resurgent powers a safe zone along their borders. In theory, this seems like a reasonable way of preventing competition from turning into outright conflict, especially given that countries such as Taiwan and the Baltic states lie thousands of miles from the United States but on the doorsteps of its rivals. Yet in reality, a spheres-of-influence world would bring more peril than safety. Russia’s and China’s spheres of influence would in

evitably be domains of coercion and authoritarianism. Both countries are run by illiberal, autocratic regimes; their leaders see democratic values as profoundly threatening to their political survival. If Moscow and Beijing dominated their respective neighborhoods, they would naturally seek to undermine democratic governments that resist their control—as China is already doing in Taiwan and as Russia is doing in Ukraine—or that challenge, through their very existence, the legitimacy of authoritarian rule. The practical consequence of acceding to authoritarian spheres of influence would be to intensify the crisis of democracy that afflicts the world today. The United States would suffer economically, too. China, in particular, is a mercantilist power already working to turn Asian economies toward Beijing and could one day put the United States at a severe disadvantage on the world’s most economically dynamic continent. Washington should not concede a Chinese sphere of influence unless it is also willing to compromise the “Open Door” principles that have animated its statecraft for over a century. Such costs might be acceptable in exchange for peace and security. But spheres of influence during the Cold War did not prevent the Soviets from repeatedly testing American redlines in Berlin, causing high-stakes crises in which nuclear war was a real possibility. Nor did those spheres prevent the two sides from competing sharply, and sometimes violently, throughout the “Third World.” Throughout history, spheres-of-influence settlements, from the Thirty Years’ Peace between Athens and Sparta to the Peace of Amiens between the United Kingdom and Napoleonic France have often ended, sooner or later, in war. The idea that spheres of influence are a formula for peace rests on assumptions that often go unexamined: that revisionist powers are driven primarily by insecurity, that their grievances are limited and can be easily satisfied, that the truly vital interests of competing powers do not conflict, and that creative statecraft can therefore fashion an enduring, mutually acceptable equilibrium. The trouble is that these premises don’t always hold. Ideology and the quest for greatness—not simply insecurity—often drive great powers. Rising states are continually tempted to renegotiate previous bargains once they have the power to do so. Offering concessions to a revisionist state may simply convince it that the existing order is fragile and can be tested further. Conceding a sphere of influence to a great-power challenger might not produce stability but simply give that challenger a better position from which to realize its ambitions. Consider the situation in the western Pacific. The most minimal Chinese sphere of influence would surely include Taiwan. Yet if Taiwan became a platform for Chinese military capabilities, the defense of other U.S. allies in the region, such as Japan and the Philippines, would become vastly more difficult. Nor would such a concession likely satisfy Chinese ambitions. A growing body of literature by scholars such as Toshi Yoshihara, James Holmes, Liza Tobin, and Elizabeth Economy suggests that China desires at the very least to push the United States beyond the chain of islands running from Japan to Taiwan to the Philippines. Even a limited Chinese sphere in the western Pacific would serve as a springboard to this larger objective. Meanwhile, the United States will have sacrificed a number of critical advantages by pulling out. A free Taiwan offers proof that Chinese culture and democracy are not incompatible; subjugating Taiwan would also allow Beijing to remove this ideological threat. Worse still, the United States would lose the edge that comes from being the only great power without significant security hazards near its borders. It was only after the United States achieved dominance in the Western Hemisphere that it could project power globally. Russia and China, by contrast, still have to deal with U.S. allies, partners, and military presences in their own backyards—a circumstance that diverts resources they might otherwise use to pursue more distant ambitions and compete with the United States at a truly global scale. MEASURES OF POWER Fortunately, new spheres of influence are avoidable. Russia is a formidable player because of its willingness to take risks and pursue asymmetric strategies; but Moscow will not rebuild a meaningful sphere of influence so long as the United States opposes that ambition. In Europe, Russia is still dramatically outmatched. Admittedly, on NATO’s eastern flank, geography and the local balance of power favor Moscow; but even there, the alliance has been strengthening its capabilities for several years. Studies by the RAND Corporation show that with the right troop deployments, NATO could establish a credible—and affordable—deterrent to Russian aggression without posing any offensive threat. Russia, meanwhile, has struggled even to pull Ukraine back into its orbit: although Russian-backed separatists are waging a bloody war in the eastern part of the country, and Moscow has annexed Crimea, western Ukraine has gravitated toward Europe and the United States since 2014. And although Russia can wield some influence in the Middle East, it can emerge as the region’s primary outside power only if the United States abandons its role there. The extent of China’s power makes the situation in the western Pacific more difficult. Yet Beijing will have trouble dominating the region in the same way that the United States came to dominate the Caribbean. China’s neighbors are not pushovers. Many have the diplomatic and military support of the United States, and some, such as Japan, are major powers in their own right. What is more, China must project military power across large bodies of water if it is to establish authority in the region, and to do so is inherently difficult. It will be all the more difficult if U.S. regional allies invest in the capabilities needed to inflict high costs on any assault and if Washington refines its capabilities and concepts for countering Chinese aggression. The regional military balance will not ever revert to what it was in 1996, when Washington could face down Beijing’s attempts to intimidate Taiwan by sailing two carrier strike groups into the waters off China’s coast; but with the right investments and strategies, the United States and its allies can lengthen the odds of Chinese regional dominance. Perhaps in recognition of this fact, China is also using information operations, economic blandishments, and other forms of political meddling to weaken the region’s resistance to its power. Yet some countries are already working to reduce their vulnerability to economic and political coercion. Australia has undertaken a major campaign to highlight malign Chinese influence; Japan is actively seeking to limit its dependence on supply chains that run through China. Washington may have done more by itself than China has done to undermine U.S. economic power in the region, through its withdrawal from the Trans-Pacific Partnership trade agreement and its tardiness in developing alternatives, together with its allies, to Chinese technology, investment, and lending. These policy errors are damaging, but they are still within the United States’ power to correct. DON'T GIVE UP YET The prospects for maintaining favorable regional balances of power are far better than the skeptics assume. What is essential, however, is that Washington not erode those balances by severing ties with vulnerable allies and partners on the frontlines. Allison suggests that doing so might be necessary to bring U.S. capabilities in line with commitments and reduce friction with rising powers. Yet the effect of abandoning the Baltic allies or breaking the ambiguous commitment to Taiwan would be to make it impossible for those countries to ward off Chinese or Russian influence and to demoralize other U.S. allies around them. Washington would be paving the way for just the authoritarian spheres of influence it should—and can—avoid. The United States has a distinguished record of breaking down authoritarian spheres of influence, first in its own hemisphere and then beyond. It should not now make the historic blunder of throwing that achievement away for an illusory promise of stability or as a premature concession to a darker future that need not come to pass.

### DA – 1NC

#### The fifty states and relevant subnational entities should substantially increase prohibitions on the anticompetitive business practice of domestic, private sector financial institutions amassing liabilities greater than five percent of the Federal Deposit Insurance Corporation’s Deposit Insurance Fund by at least expanding the scope of its core antitrust laws.

#### States solve.

Arteaga & Ludwig ’21 [Juan; 1/28/21; Partner @ Crowell & Moring LLP, JD @ Columbia; and Jordan; Partner @ Crowell & Moring LLP, JD @ Loyola Law School, Los Angeles; “The Role of US State Antitrust Enforcement,” *Global Competition Review*; https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement; AS]

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

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

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

### ADV 1

#### Anticompetitive conduct in securities is rare – there’s little benefit or opportunity for market power.

Jacob **KLING** JD Yale **’11** “Securities Regulation in the Shadow of the Antitrust Laws: The Case for a Broad Implied Immunity Doctrine” 120 YALE L. J. 910 (2011) p. 936

Harmful anticompetitive activity in the securities industry is likely to be relatively uncommon. The reason, as Professor Hovenkamp has explained, is that there are thousands of sellers of any given security, and securities are close substitutes for one another. As a result, the securities markets are close to perfectly competitive.12 6 The critical distinction to recognize is between the market for a firm's products or services and the market for ownership of that firm. Even if two companies produce entirely different products, the securities that they issue are close substitutes for one another. The value of those securities is a function of the cash flows that they can be expected to generate, whether in the form of regular dividends or a liquidating payment in the event that the company is sold, and the risk properties of those expected cash flows. As a result, assuming that the efficient capital market hypothesis holds and stock prices reflect all publicly available information, 127 any two stocks are essentially substitutes: they differ only in the extent to which their expected returns co-vary with the market (that is, their market betas).12' Moreover, because investors can adjust the contents of the securities in their portfolios and the relative weights of those securities in any number of ways to achieve their desired levels of risk, there is no reason to believe that any one security does not compete with thousands of others. In short, "all stocks are in the same relevant market insofar as antitrust is concerned."1 3

Because the economic concerns that animate the antitrust laws depend on an assumption that particular firms possess market power,' the competitive nature of the securities markets makes it unlikely that conduct that might be considered anticompetitive in other settings is in fact harmful in the securities context.13 2 As an example, consider the tying scheme at issue in Billing, in which underwriters allegedly insisted that IPO investors purchase additional less attractive non-IPO shares. The theoretical economic concern with tying is that a firm with market power in the tying product market may use that power to suppress competition in the tied product market. 3 In the IPO context, the concern would be that some purchasers might prefer to purchase the tied security from a different seller but may end up purchasing it from the underwriter in order to obtain the IPO share. 3 4 A compelling argument can be made that tying arrangements generally will not impose any incremental harm on competition even when the defendant possesses market power in the tying product market because the defendant can only exercise that market power once, and any profits generated through sales of the tied product will be offset by a decline in profits from the tying product."' But even accepting the premise that in certain scenarios tying arrangements may enable a firm to expand the scope of its market power into the tied product market, the IPO context is pretty clearly not such a scenario. The reason is that any supposed anticompetitive effects of tying in this context are unlikely to be significant since sellers presumably do not have market power in the tying product, at least to the extent that IPO shares are not considered an independent market distinct from the equity market generally.'3

#### Independently, expanded antitrust regulation increases inflation

Bork 9/8 – Robert H. Bork, president of the Washington-based Antitrust Education Project, “Biden's antitrust demagoguery will drive inflation, not cure it,” 9/8/21, https://thehill.com/opinion/finance/571009-bidens-antitrust-demagoguery-will-drive-inflation-not-cure-it

The Biden administration, finally beginning to worry about the political impact of the rising cost of food, fuel and other basic consumer necessities, is neatly dovetailing its push for aggressive antitrust enforcement by blaming inflation on big business and market concentration.

Politically speaking, it is a neat fix. It drives one of the central policies of the Biden administration — to shift antitrust enforcement from the consumer welfare standard of the past 45 years back to an earlier era’s more nebulous standard against “bigness.” And it deflects blame for inflation.

President Biden lacks the theatrical flourish of a Huey Long, but he is nevertheless trying out his best version of the Kingfisher routine. “I’ve directed my administration to crack down on what some major players are doing in the economy that are keeping prices higher than they need be,” Biden said in August. The cause of higher prices, he argued, is greedy big business and its stranglehold on the American consumer.

It is clear what drives White House anxiety. Food prices have risen about 3.4 percent from last year. After years of low gasoline prices, Americans now pay above $3 a gallon in most parts of the country. Biden is tasking Federal Trade Commission Chair Lina Khan with targeting Big Ag and Big Oil for antitrust action to drive down prices for consumers.

If left unchallenged, the Biden administration may succeed in diverting some heat over rising inflation. Large corporations are not in good order with voters on both the left and right. The president cannot be allowed, however, to use a political diversionary tactic that would perversely do the opposite of what he claims to do: Biden’s antitrust policies would raise the prices of basic needs for consumers.

Let’s start with food prices and Big Ag.

Two University of Idaho economics professors, Philip Watson and Jason Winfree, wrote in The Idaho Statesman that larger farms and agricultural companies, which have the capital to invest in expensive technology and economies of scale, actually have been making food steadily more affordable. It is precisely because of these economies of scale that the cost of food, until the disruption of the pandemic, was taking less out of household budgets. The professors conclude that “breaking up Big Ag could have the disastrous effect of raising food prices, which would likely have a disproportionate impact on poorer households.”

If the Biden approach to agriculture and food is demagogic, its approach to oil and gas is risible. The current increase in gasoline prices results from the supply chain disruption caused by the pandemic, exacerbated by recent hurricanes and storms. It also may be partly because of the unrelenting hostility of the Biden administration to American energy, putting public lands off limits, killing the Keystone XL pipeline and using regulation to harass the fracking industry, despite the fact that cleaner-burning natural gas has helped reduce America’s greenhouse gas emissions. Technological advances led the United States to surpass Saudi Arabia and Russia in 2018 to become the world’s leading producer of oil. Biden’s antitrust policy also may be contributing to the sudden reversal of this energy glut. It was out of antitrust concerns that Berkshire Hathaway pulled out of a major natural gas pipeline deal earlier this year.

What has been the Biden administration’s response to recent shortages? It has not been to stimulate production at home or to help clear pipeline bottlenecks. Instead, national security adviser Jake Sullivan issued a statement pleading with OPEC and Russia to come to our rescue. OPEC demurred and Russian President Vladimir Putin used Sullivan’s entreaty to issue a humiliating “nyet.”

The real cause of inflation, of course, is recovery from a pandemic and the temporary economic depression it caused. It also might be driven by the reckless spending by presidents and Congresses of both parties. Our national debt is now 125 percent of our gross domestic product — higher than the previous high in 1946, when we won a victory over Germany and Japan rather than losing a war to the Taliban.

Blaming Big Ag and Big Oil for high prices will be popular. It also will be perverse. The abandonment of the consumer welfare standard will, if anything, lead to higher prices in both food and fuel for those least able to pay for it.

#### Inflation is contained now, but rising prices cause the Federal Reserve to hike interest rates – that quickly destroys the economy

Cox 21 – Jeff Cox, finance editor for CNBC.com where he manages coverage of the financial markets and Wall Street, “The Fed can fight inflation, but it may come at the cost of future growth,” 3/20/21, https://www.cnbc.com/2021/03/20/the-fed-can-fight-inflation-but-it-may-come-at-a-cost.html

One of the main reasons Federal Reserve officials don’t fear inflation these days is the belief that they have tools to deploy should it become a problem.

Those tools, however, come with a cost, and can be deadly to the kinds of economic growth periods the U.S. is experiencing.

Hiking interest rates is the most common way the Fed controls inflation. It’s not the only weapon in the central bank’s arsenal, with adjustments to asset purchases and strong policy guidance also at its disposal, but it is the most potent.

It’s also a very effective way of stopping a growing economy in its tracks.

The late Rudi Dornbusch, a noted MIT economist, once said that none of the expansions in the second half of the 20th century “died in bed of old age. Every one was murdered by the Federal Reserve.”

In the first part of the 21st century, worries are growing that the central bank might become the culprit again, particularly if the Fed’s easy policy approach spurs the kind of inflation that might force it to step on the brake abruptly in the future.

“The Fed made clear this week that it still has no plans to raise interest rates within the next three years. But that apparently rests on the belief that the strongest economic growth in nearly 40 years will generate almost no lasting inflationary pressure, which we suspect is a view that will eventually be proven wrong,” Andrew Hunter, senior U.S. economist at Capital Economics, said in a note Friday.

As it pledged to keep short-term borrowing rates anchored near zero and its monthly bond purchases humming at a minimum $120 billion a month, the Fed also raised its gross domestic product outlook for 2021 to 6.5%, which would be the highest yearly growth rate since 1984.

The Fed also ratcheted up its inflation projection to a still rather mundane 2.2%, but higher than the economy has seen since the central bank started targeting a specific rate a decade ago.

Competing factors

Most economists and market experts think the Fed’s low-inflation bet is a safe one – for now.

A litany of factors is keeping inflation in check. Among them are the inherently disinflationary pressures of a technology-led economy, a jobs market that continues to see nearly 10 million fewer employed Americans than a decade ago, and demographic trends that suggest a longer-term limit to productivity and price pressures.

“Those are pretty powerful forces, and I’d bet they win,” said Jim Paulsen, chief investment strategist at the Leuthold Group. “It may work out, but it’s a risk, because if it doesn’t work and inflation does get going, the bigger question is, what are you going to do to shut it down. You say you’ve got policy. What exactly is that going to be?”

The inflationary forces are pretty powerful in their own right.

An economy that the Atlanta Fed is tracking to grow 5.7% in the first quarter has just gotten a $1.9 trillion stimulus jolt from Congress.

Another package could be coming later this year in the form of an infrastructure bill that Goldman Sachs estimates could run to $4 trillion. Combine that with everything the Fed is doing plus substantial global supply chain issues causing a shortage of some goods and it becomes a recipe for inflation that, while delayed, could still pack a punch in 2022 and beyond.

The most daunting example of what happens when the Fed has to step in to stop inflation comes from the 1980s.

Runaway inflation began in the U.S. in the mid ’70s, with the pace of consumer price increases topping out at 13.5% in 1980. Then-Fed Chairman Paul Volcker was tasked with taming the inflation beast, and did so through a series of interest rate hikes that dragged the economy into a recession and made him one of the most unpopular public figures in America.

Of course, the U.S. came out pretty good on the other side, with a powerful growth spurt that lasted from late -1982 through the decade.

But the dynamics of the current landscape, in which the economic damage from the Covid-19 pandemic has been felt most acutely by lower earners and minorities, make this dance with inflation an especially dangerous one.

“If you have to prematurely abort this recovery because we’re going to have a kneejerk stop, we’re going to end up hurting most of the people that these policies were enacted to help the most,” Paulsen said. “It will be those same disenfranchised lower-comp less-skilled areas that get hit hardest in the next recession.”

The bond market has been flashing warning signs about possible inflation for much of 2021. Treasury yields, particularly at the longer maturities, have surged to pre-pandemic levels.

That action in turn has raised the question of whether the Fed again could become a victim of its own forecasting errors. The Jerome Powell-led Fed already has had to backtrack twice on sweeping proclamations about long-term policy intentions.

“Is it really going to be all temporary?”

In late-2018, Powell’s statements that the Fed would continue raising rates and shrinking its balance sheet with no end in sight was met with a history-making Christmas Eve stock market selloff. In late 2019, Powell said the Fed was done cutting rates for the foreseeable future, only to have to backtrack a few months later when the Covid crisis hit.

“What happens if the healing of the economy is more robust than even the revised projections from the Fed?” said Quincy Krosby, chief market strategist at Prudential Financial. “The question for the market is always, is it really going to be all temporary?’”

Krosby compared the Powell Fed to the Alan Greenspan version. Greenspan steered the U.S. through the “Great Moderation” of the 1990s and became known as “The Maestro.” However, that reputation became tarnished the following decade when the excesses of the subprime mortgage boom triggered wild risk-taking on Wall Street that led to the Great Recession.

Powell is staking his reputation on a staunch position that the Fed will not raise rates until inflation rises at least above 2% and the economy achieves full, inclusive employment, and will not use a timeline for when it will tighten.

“They called Alan Greenspan ‘The Maestro’ until he wasn’t,” Krosby said. Powell “is telling you there’s no timeline. The market is telling you it does not believe it.”

To be sure, the market has been through what Krosby described as “squalls” before. Bond investors can be fickle, and if they sense rates rising, they’ll sell first and ask questions later.

Michael Hartnett, the chief market strategist at Bank of America, pointed to multiple other bond market jolts through the decades, with only the 1987 episode in the weeks before the Oct. 19 Black Monday stock market crash having “major negative spillover effects.”

He doesn’t expect the 2021 selling to have a major impact either, though he cautions that things could change when the Fed finally does pivot.

#### COVID thumps econ collapse, obviously

#### Downturn won’t cause war – prefer post-COVID evidence.

Walt ’20 [Stephen; Robert and Renée Belfer professor of international relations @ Harvard University; 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/]

One familiar argument is the so-called diversionary (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to divert attention from their failures by provoking a crisis with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald Trump will decide to attack a country like Iran or Venezuela in the run-up to the presidential election and especially if he thinks he’s likely to lose. This outcome strikes me as unlikely, even if one ignores the logical and empirical flaws in the theory itself. War is always a gamble, and should things go badly—even a little bit—it would hammer the last nail in the coffin of Trump’s declining fortunes. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his staunchest supporters may wonder why he is wasting time and money going after Iran or Venezuela at a moment when thousands of Americans are dying preventable deaths at home. Even a successful military action won’t put Americans back to work, create the sort of testing-and-tracing regime that competent governments around the world have been able to implement already, or hasten the development of a vaccine. The same logic is likely to guide the decisions of other world leaders too. Another familiar folk theory is “military Keynesianism.” War generates a lot of economic demand, and it can sometimes lift depressed economies out of the doldrums and back toward prosperity and full employment. The obvious case in point here is World War II, which did help the U.S economy finally escape the quicksand of the Great Depression. Those who are convinced that great powers go to war primarily to keep Big Business (or the arms industry) happy are naturally drawn to this sort of argument, and they might worry that governments looking at bleak economic forecasts will try to restart their economies through some sort of military adventure. I doubt it. It takes a really big war to generate a significant stimulus, and it is hard to imagine any country launching a large-scale war—with all its attendant risks—at a moment when debt levels are already soaring. More importantly, there are lots of easier and more direct ways to stimulate the economy—infrastructure spending, unemployment insurance, even “helicopter payments”—and launching a war has to be one of the least efficient methods available. The threat of war usually spooks investors too, which any politician with their eye on the stock market would be loath to do. Economic downturns can encourage war in some special circumstances, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value. Saddam Hussein’s decision to seize Kuwait in 1990 fits this model perfectly: The Iraqi economy was in terrible shape after its long war with Iran; unemployment was threatening Saddam’s domestic position; Kuwait’s vast oil riches were a considerable prize; and seizing the lightly armed emirate was exceedingly easy to do. Iraq also owed Kuwait a lot of money, and a hostile takeover by Baghdad would wipe those debts off the books overnight. In this case, Iraq’s parlous economic condition clearly made war more likely. Yet I cannot think of any country in similar circumstances today. Now is hardly the time for Russia to try to grab more of Ukraine—if it even wanted to—or for China to make a play for Taiwan, because the costs of doing so would clearly outweigh the economic benefits. Even conquering an oil-rich country—the sort of greedy acquisitiveness that Trump occasionally hints at—doesn’t look attractive when there’s a vast glut on the market. I might be worried if some weak and defenseless country somehow came to possess the entire global stock of a successful coronavirus vaccine, but that scenario is not even remotely possible. If one takes a longer-term perspective, however, a sustained economic depression could make war more likely by strengthening fascist or xenophobic political movements, fueling protectionism and hypernationalism, and making it more difficult for countries to reach mutually acceptable bargains with each other. The history of the 1930s shows where such trends can lead, although the economic effects of the Depression are hardly the only reason world politics took such a deadly turn in the 1930s. Nationalism, xenophobia, and authoritarian rule were making a comeback well before COVID-19 struck, but the economic misery now occurring in every corner of the world could intensify these trends and leave us in a more war-prone condition when fear of the virus has diminished. 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.

#### EU internal is silly – Europe will not literally collapse or cede its position in the UN if it has an economic crisis – 08 disproves AND other countries will fill in – AND their card doesn’t say how the EU solves nor extinction

### ADV 2

#### Implied immunity provides clarity to regulated industries. Duplicative antitrust places industry at risk of courts applying unanticipated economic theory.

Justin **HURWITZ** Law @ Nebraska **’14** “Administrative Antitrust” 21 GEO. Mason L. REV. 1191 (2014) p. 1238-1239

Moreover, if the goal is to champion predictable, stable, and administrable legal regimes, in many cases regulated parties would likely prefer to work with a regulator rather than roll the dice in an antitrust suit.368 Notwithstanding a few discrete areas (notably hardcore price-fixing cartels), antitrust is a notoriously complicated and uncertain area of the law.369 Antitrust precedent evolves "on a sea of doubt,"37 with changes in economic theory leading the way for changes in precedent.37 Indeed, this was one of the animating concerns behind the Court's ruling in Trinko-that the courts are ill suited to engage in the regulatory enterprise.372 Rather, regulation is, by definition, an area in which agencies are intended to excel over courts. The existence of regulatory agencies thus weighs strongly in favor of a finding of implied immunity-

or displacement-in the name of predictability, stability, and an administrable legal regime.373 This may be true regardless of the relative competence of courts and agencies. There is evidence that courts may make substantively better antitrust decisions than agencies, but the regulatory setting may nonetheless offer a preferable forum for antitrust plaintiffs or defendants.374

#### Regulators will enforce appropriate competition. Any gaps in competition enforcement would be wide enough to trigger antitrust liability.

Justin **HURWITZ** Law @ Nebraska **’14** “Administrative Antitrust” 21 GEO. Mason L. REV. 1191 (2014) p. 1239-1240

Professor Shelanski's other concern is that reducing the role of antitrust in regulated industries removes antitrust as a tool for regulators.379 This concern is most important in industries that are becoming increasingly competitive and for regulators who face a deregulatory mandate from Congress. 3 8 The problem with, and response to, these concerns is that they as-sume an Article III venue for antitrust claims. There is no reason that an agency could not adopt the general antitrust laws by rule, assuming that its statutory mandate is broad enough to allow for rulemaking. Indeed, it has long been recognized that issues related to competition should necessarily be considered as part of many agencies' decisionmaking processes.3" t If an agency's statutory mandate is too narrow to allow it to consider these issues as part of its administrative function, then Congress's delegation of authority to that agency is insufficient to displace the common law, and aggrieved parties would still have recourse in the courts.382

#### Turn - Higher standard for implied immunity causes regulators to issue blanket rules and reduce competition.

Jacob **KLING** JD Yale **’11** “Securities Regulation in the Shadow of the Antitrust Laws: The Case for a Broad Implied Immunity Doctrine” 120 YALE L. J. 910 (2011) p. 913-914

Part III draws on the inferences from Part II to argue for the efficiency of a broad implied immunity doctrine under which antitrust suits are precluded whenever the SEC has jurisdiction over a particular activity and is actively engaged in reviewing its merits. But whereas the Court's opinion in Billing focused primarily on the possibility that antitrust courts might reach the wrong result ex post, Part III shifts the focus to the SEC's regulatory decisions ex ante. In particular, it argues that under a narrower implied immunity standard, the SEC might forgo a superior and more nuanced regulatory approach in favor of a blanket authorization of a particular practice in order to preempt errors by antitrust courts. The principal benefit of the Court's broad grant of immunity in Billing is that it frees the SEC from having to regulate in the shadow of the antitrust laws in this manner. Paradoxically, this analysis also suggests that a broad implied immunity standard may actually lead to more antitrust enforcement than would a narrower rule.

#### No implied immunity spillover – court tailors decisions for each regulated industry appropriately.

Jacob **KLING** JD Yale **’11** “Securities Regulation in the Shadow of the Antitrust Laws: The Case for a Broad Implied Immunity Doctrine” 120 YALE L. J. 910 (2011) p. 921-923

Nevertheless, Billing has been criticized for unduly broadening the implied immunity doctrine by failing to reconcile the securities laws and the antitrust laws despite the absence of a clear substantive conflict with respect to the two regimes' treatment of the conduct at issue in the case. 4 These criticisms founder on several points.

To begin with, Billing's critics rely to a great extent on the canon of construction, acknowledged in Silver and in each of the three cases thereafter, that implied repeals of the antitrust laws are disfavored and should be found "'only if necessary to make the Securities Exchange Act work, and even then only to the minimum extent necessary."'"5 While rhetorically powerful, this canon is not a formula for deciding concrete cases and mere recitation of the canon does not illuminate the factors that the Court has used to determine whether a particular securities activity is impliedly immune from antitrust liability. Critics of Billing have attempted to demonstrate the supposedly insuperable effect of the canon by pointing out the infrequency with which the Court has interpreted statutes to impliedly immunize an activity in a regulated industry from antitrust suit. 6 This mode of analysis is problematic for several reasons.

First, although the Court has often declined to read regulatory statutes impliedly to repeal the antitrust laws, it has also found immunity outside of the securities context even when the challenged conduct was unlawful under the applicable regulatory statute. In Pan American World Airways v. United States, the Court held that an antitrust complaint alleging a conspiracy among multiple air carriers to divide territories and limit routes should be dismissed even though the Civil Aeronautics Board disapproved of the defendants' conduct and had in fact requested that the Attorney General bring suit.57 The Court reasoned that whether a transaction meets the "standards of competition and monopoly" set forth in the Federal Aviation Act is "peculiarly a question for the Board"5" and expressed concern that "[i]f the courts were to intrude independently with their construction of the antitrust laws, two regimes might collide."" Pan American thus confirms the principle illustrated by both Gordon and NASD that regulatory approval of a challenged activity is not a prerequisite for finding implied antitrust immunity.

More importantly, the inference that critics of Billing draw from the fact that findings of implied immunity are relatively rare is misleading insofar as it ignores the industry-specific nature of the Supreme Court's implied immunity jurisprudence. The issue as to whether the securities laws effect an implied repeal of the antitrust laws with respect to certain activities is a question of statutory interpretation, one that focuses narrowly on the meaning of the securities laws; the Court's interpretation of other regulatory statutes is largely inapposite. As then-Judge Anthony Kennedy explained:

[T]here is no simplistic and mechanically universal doctrine of implied antitrust immunity; each of the Supreme Court's cases is decisively shaped by considerations of the special aspects of the regulated industry involved. . . . [T]he uncritical transfer of abstract characterizations about the implied immunity of one industry to the different circumstances of another industry is not a reliable method of analysis.60 Thus, the precedential value of cases in which the Court has declined to imply immunity outside of the securities context is minimal. In each of those cases, the Court concluded, often on the basis of legislative history, that Congress had not intended to create a pervasive regulatory scheme to displace the antitrust laws.6 As the preceding Sections make clear, the Court has generally reached the opposite conclusion in interpreting the securities laws.

Indeed, in illustrating the differences in the Court's implied immunity cases across various industries, then-Judge Kennedy singled out the securities industry as one that has enjoyed broad antitrust immunity. The Court's "reluctan[ce] to allow via the antitrust laws any tampering with the regulatory framework" established by the securities laws was justified, in Kennedy's view, by the particular circumstances surrounding their adoption, "the grave historical crises caused by the absence of regulation in those industries.",6 , In addition, he noted that the Court's implied immunity jurisprudence in the securities area was influenced by the securities laws' reliance on self-regulation, which would be frustrated by "subjecting to antitrust liability the rulemaking and enforcement functions Congress charged the industry with performing." 6 Thus, notwithstanding the presumption against implied repeals and the Court's frequent refusal to interpret other regulatory statutes to preempt antitrust litigation, the Court has been decidedly receptive to claims of implied immunity under the securities laws.

#### Smart cities internal is wrong—it’s about cities in China and Africa, U.S. obviously doesn’t solve globally or get modelled

#### No smart cities impact—doesn’t say it escalates AND only warrant is resource shortages which is fake

Atkins, 16—PhD Candidate in Energy, Environment & Resilience at the University of Bristol (Ed, “Environmental Conflict: A Misnomer?,” <http://www.e-ir.info/2016/05/12/environmental-conflict-a-misnomer/>, dml)

The economic and strategic importance of oil and other non-renewable resource is indisputable. Yet the globalised character of international commerce has resulted in many nations ceasing to perceive resource dependency as a threat to autonomy or survival (Deudney, 1990). This interdependence has resulted in the decreased likelihood of inter-state conflict over control of resources, due to the price shocks these actions could propel across the system and the increasingly technological developments (Lipschutz and Holdren, 1990). Such dynamics are well illustrated by the 1973 oil crisis (Dabelko and Dabelko, 1993). Although the move by the Organisation of Arab Petroleum Exporting Countries (OAPEC) to restrict exports resulted in record price rises and the transformation of the international sphere, thus illustrating the economic relevance of resources, it did not result in international violent conflict. Furthermore, Le Billon (2001) has stated that the spectre of resource scarcity has resulted in the escalation of socioeconomic innovation and economic diversification – with the market mechanisms of contemporary capitalism creating an important impediment to conflict. In Botswana and Norway, minerals and oil, respectively, have been mobilised to ensure peaceful development rather than violent confrontation (Le Billon, 2001). Furthermore, in many cases potential scarcity has resulted in increased inter-state cooperation due to the shared interest in continued supply. The continued sanctity of the 1960 Indus Waters Treaty, between Pakistan and India, is an important example, with the spirit of cooperation over water resources enduring despite increased political tensions between the two nations (Wolf, 1998).

#### Oil makes no sense—small companies can still do oil spills

#### Every other spill thumps—their ev is from 2012, doesnt assume BP spills or thousands since

# 2NC

### 2NC – L2NB

#### Targeted regulations don’t use the hammer of antitrust – solves bizcon

Bakst and Beaumont-Smith 20 – Daren Bakst is a senior research fellow in Regulatory Policy Studies at the Heritage Foundation. Gabriella Beaumont-Smith is a senior policy analyst for Trade and Macroeconomics in the Center for Data Analysis (CDA). (“A Conservative Guide to the Antitrust and Big Tech Debate,” BACKGROUNDER No. 3563 | December 1, 2020 https://www.heritage.org/sites/default/files/2020-11/BG3563\_0.pdf)//gcd

Antitrust Should Be Used Judiciously and Not Used for Unrelated Issues. Unlike targeted regulations that address specific problems, antitrust law can be used to completely reshape an industry and potentially the entire economy by reshaping numerous industries. Therefore, antitrust is not a policy tool to be used lightly. Yet, many proposed reforms, such as in the recent House Subcommittee report, would use concerns about Big Tech as a way to make broad-based changes to antitrust law. Just because a concern is raised about the power of Big Tech, this does not mean that antitrust is the tool to address that concern. For example, policymakers may want to address Big Tech’s censorship of speech or address data and privacy issues. These issues, though, are distinct from the competition issues addressed by antitrust law. Trying to use antitrust to address these unrelated issues will undermine antitrust and gives the impression that the goal is simply to punish Big Tech.

### Oil Spills

#### Regs solve it

Glicksman 10 – (Robert, "Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence" (2010). GW Law Faculty Publications & Other Works. 608. <https://scholarship.law.gwu.edu/faculty_publications/608>)//gcd

Proposed Reform: Mandate Systematic Review of the Experience of Other Countries and Incorporate into Routine Congressional Oversight Numerous criticisms can and have been made of the British and Norwegian regulatory approaches, and aspects of their approaches may not be compatible with the American regulatory framework.152 But investigations of accidents that occur abroad and analyses of the weaknesses in other countries’ regulatory systems can highlight similar weaknesses in the U.S. system, prompting needed reforms. In the wake of the BP spill, the idea of the safety case, a prominent feature of the British system, is now being debated in congressional hearings and proposed legislation. Whether or not this concept or any particular technique or requirement is ultimately adopted, an evaluation of other approaches that have proven effective elsewhere should not occur simply in reaction to a disaster. Instead, Congress should ensure that BOEMRE undertakes an ongoing, systematic evaluation of the lessons learned elsewhere in the wake of serious accidents, and of alternative regulatory measures and techniques that have proven effective. With greater attention to the regulatory approaches of other countries, BOEMRE and legislative oversight committees could ensure not only that U.S. safety and environmental regulation is the best it can be, but also that royalty rates, bonding requirements, and other aspects of the oil leasing system are adequate. These additional sources of experience and information can also help to enhance U.S. regulators’ knowledge about industry practices and technology, an area that has been identified as a pervasive weakness in the MMS during the years leading up to the BP oil spill.

### 2NC – PDCP

#### The CP is a PIC out of antitrust law – they said Sherman and Clayton in the 1AC – CP uses SEC and Comptroller regulatory mechanisms which are disctinct

#### Sherman, Clayton, and FTC are the core laws.

Gibbs ‘ND [Gibbs Law Group; “The Sherman Antitrust Act”; https://www.classlawgroup.com/antitrust/federal-laws/sherman-act/; AS]

The Sherman Antitrust Act is one of three core federal antitrust laws, along with the Clayton Antitrust Act and the Federal Trade Commission Act.

### 2NC – Finance

#### They have big banks bad not small banks competition good – the CP still breaks up the banks by using the SEC and Comptroller power

#### solves systemic risk- extends deposit insurance, insulation of core money functions from firm failure

K. Sabeel Rahman 2018 (Assistant Professor of Law, Brooklyn Law School. Fellow, Roosevelt Institute.,” The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept,” 39 CARDOZO L. REV. 1621)

This narrow banking framework not only applies public utility principles, it also offers another way to address persisting concerns about systemic risk and future financial crises. As former Treasury official and now Vanderbilt Law professor Morgan Ricks argues, the 2008-2009 financial crisis was largely a product of a run on short-term financial securities that function like money-for example, money market funds-but are not protected or regulated the way cash deposits are. For example, these money-like instruments are treated by businesses and consumers as liquid and stable in value, but purveyors of

these instruments are not subject to depository regulations, nor are they covered by FDIC insurance. By regulating money-like instruments as a public utility and as part of the narrow banking sector, the state could oversee these firms and extend deposit insurance to cover these money-

like instruments, thereby preventing the risk of future runs and financial firm failures. In this approach, the public utility in question is not only the function of taking deposits and extending basic loans, but is also the act of money creation itself. All money-like instruments-instruments that can be demanded at any time and are expected to retain value-are then lent out by financial firms, effectively creating money. By providing a backstop and preventing risky investments or financial activities, the government can thus insulate the core money creation function-and basic depository, savings, and investment functions-from the repercussions of risk-taking or firm failure in other domains of the financial sector.126

### Broadband

#### Public investment creates universal accsess and allows flexibility

Wessel et al 21 – (Sophia Campbell, Jimena Ruiz Castro, and David Wessel 21, 8-18-2021, "The benefits and costs of broadband expansion," Brookings, <https://www.brookings.edu/blog/up-front/2021/08/18/the-benefits-and-costs-of-broadband-expansion/>)//gcd

Of the bill’s $65 billion, about $42 billion would be for block grants to state and tribal governments, offering states more flexibility to tailor broadband investments (although they will need to meet the minimum speed standards for new networks set by ARPA). The bill will require providers that receive the funding to offer a low-cost option to users and a standardized broadband “nutrition label” with information on their service, creates an Affordable Connectivity Benefit to help low-income households purchase Internet services, and establishes several grant programs specifically to promote digital equity. The bill also includes a $14 billion extension to emergency broadband subsidies which began during the pandemic and were set to expire in a few months; however, the extension will reduce the $50 per month assistance low-income families received to cover internet costs at the start of the pandemic to $30 per month. The $65 billion is the largest single investment in broadband expansion in decades—but will it be enough? Given the FCC’s progress since its 2018 estimate of an $80 billion price tag, the infrastructure bill combined with funding from pandemic legislation may achieve nearly universal access, although likely not enough to cover long-term operating costs in hard-to-reach areas. The bill puts nearly equal focus on addressing affordability, which will likely bring internet to significantly more Americans than could building out networks to rural areas alone. However, as noted earlier, the FCC’s estimate of the number of Americans still lacking access is likely too low, so $80 billion may itself be an underestimate. The amount needed to fully close the digital divide remains uncertain.

### 2NC – AT Regulatory Capture

#### Obviously Biden solves this

#### Public input on regulations solves this

K. Sabeel Rahman 2018 (Assistant Professor of Law, Brooklyn Law School. Fellow, Roosevelt Institute.,” The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept,” 39 CARDOZO L. REV. 1621)

The legacy of the public utility era was decidedly mixed. In practice, the idea of a special category of publicly critical and therefore more stringently regulated corporations came to seem unworkable. Many of the difficulties of public utility law arose as courts became involved in state and federal efforts to regulate railroads as public utilities. Thus, from the 1874 case of Munn v. Illinois where the Court formulated the "public interest test," arguing that businesses "affected with the public interest" may be subjected to regulation, courts struggled to identify which businesses were sufficiently affected by the public interest to warrant regulatory oversight.43 Ultimately, the Court dropped this public interest test in the 1934 case Nebbia v. New York, conceding that any business may be regulated by legislatures acting on a rational basis.44 Later judicial intervention in the establishing of just rates for utilities in Smyth v. Ames set in motion another struggle over defining a clear doctrine that eventually collapsed.45 Even Robert Hale, one of the main proponents of the public utility model, was skeptical about involving courts in these substantive determinations of rates and value.46 In the later twentieth century, public utility regulation in industries like electricity not only raised concerns about regulatory capture, but also risked creating higher economic costs and incentives among firms to over-invest.

Yet these failures of the public utility movement in practice seem to have been rooted not in the underlying concept of the public utility, but rather in its specific manifestation, first through judicialized enforcement as courts struggled and failed to formulate doctrinal standards for permissible regulation and just rates; and, second, through

the overly narrow focus on regulatory rate setting. Indeed, as Novak argues, the public utility concept should be understood not as one of failure, but rather one as complete success, for it was public utility concepts and innovations that enabled and ultimately gave way towards the rise of the modern regulatory state. Instead of making regulatory oversight apply only towards those businesses "affected by the public interest," our legal regime shifted towards a default permissiveness for all kinds of economic regulation.47

While the rise of general regulation is indeed a powerful legacy of the public utility concept, there remains something vital about the

public utility ethos worth recovering. Above and beyond its more general furthering of the idea of economic regulation tout court-and independent of the more problematic manifestations of judicialized conflicts over rate setting in the nineteenth century-the public utility idea is valuable for the way in which it highlights the problem of private power, emphasizing innovation and experimentation with regulatory strategies to ensure private power nevertheless meets public values especially when it comes to infrastructural necessities.

As Novak has argued, even the Progressive Era reformers themselves saw their work as provisional: "progressives viewed the law of public utilities as a vibrant and expansive arena for experimenting with unprecedented governmental control over business, industry, and market."48 The public utility experiment thus established a broader normative framework for conceptualizing the problem of private power and the ways in which law could be tailored to protect public purposes. William Boyd notes that the idea of the

public utility is first and foremost a normative effort directed at ensuring that the governance of essential network industries ... proceeds in a manner that protects the public from the abuses of market power by providing stable, reliable, and universal service at just and reasonable rates. Public utility, in this broader sense, is not a thing or type of entity but an undertaking-a collective project aimed at harnessing the power of private enterprise and directing it toward public ends.49

The common thread in the public utility discourse of the early twentieth century is the need to ensure collective, social control over vital industries that provided foundational goods and services on which the rest of society depended. There are some firms whose control over basic necessities and infrastructure create a greater moral danger of unaccountable power than ordinary firms or businesses. For reformers like Brandeis, public utility suggested a distinct set of regulatory strategies that were needed as a complement to parallel efforts to defuse private power through antitrust or corporate governance. Public utility

regulations were seen as vital for regulating those private actors operating in goods and services whose provision seemed to require some degree of market concentration and consolidation-and whose set of users and constituencies were too vast to be empowered and protected through more conventional methods of market competition, corporate governance, or ordinary economic regulation.

Public utility thus did not address all forms of corporate and

private power, but it did focus on some of the most troubling forms of private power. A modern-day application of the Progressive Era public utility ideas thus suggests that there are in fact some kinds of private power that are especially troubling, that are unique, distinctive, and thus demand a heightened level of public oversight and regulation than that applied to other more ordinary market participants. As we will see below, the values and relevance of public utility regulation resonate strongly with the challenges posed today by private control over vital necessities-goods and services like finance, telecom, and the internet. Realizing these values need not take the forms proposed by reformers of a century ago. But it will require a reinvention of public utility principles for a modern economy.

### 2NC – AT: Modelling

#### Europeans have more power than the US to apply structural remedies on bank size now.

Donald **BAKER** Lecturer in Law @ GW **’15** From Philadelphia National Bank to Too Big to Fail: How Modern Financial Markets Have Outrun Antitrust Law as a Source of Useful Structural Remedies, 80 Antitrust L.J. 353 (2015) p. 370-371

The Supreme Court has not heard a Clayton Act Section 7 case since 1975. Everyone expects that today's much more conservative Court would be more restrictive in applying Section 7 of the Clayton Act than "the new antitrust majority" was when Justice White criticized them in 1974. Moreover, it has often been hard to find a predictable level of specific competitive harm necessary to satisfy an evidence-seeking federal judge to enjoin a privately profita- ble capital market transaction because its "effect ...may be substantially to lessen competition."44 This was even true back in the late 1960s and early 1970s, when the DOJ was regularly winning bank and other merger cases in the Supreme Court.45 Today, looking back at the merger transactions that have created the largest financial institutions in the United States during the last two decades, I find it quite improbable that the DOJ could have mounted an antitrust enforcement program that could have had any serious impact on the major expansions in size of the largest bank holding companies.

It is possible that the European type of administrative system for antitrust merger review would have been able to do slightly more than the DOJ has done in dealing with some of the mergers that created TBTF institutions be- cause the EU merger prohibition decisions are made by a pro-active administrative body (i.e., the European Commission), rather than a court. The Commission makes rulings based on its interpretation of facts and law, and it has sometimes been willing to make decisions based on more subjective concerns in evaluating competitive risks, although some of these decisions have been overturned by the EU Court of First Instance (now the General Court), for lack of sufficient economic evidence to support the result.47 In addition, the Competition Directorate at the European Commission also has the unique power to regulate "state aids"-i.e., subsidies by Member State governments to favored national enterprises; and the Commission has used this authority to force after-the-fact divestitures of branches and assets by some of the TBTF banks that were saved by national governments during the 2008-2009 crisis.

#### EU is already applying remedies – modelling direction is backwards.

Donald **BAKER** Lecturer in Law @ GW **’15** From Philadelphia National Bank to Too Big to Fail: How Modern Financial Markets Have Outrun Antitrust Law as a Source of Useful Structural Remedies, 80 Antitrust L.J. 353 (2015) p. 375-376

After-the-Event Structura lRegulation. What the European Commission has done in dealing with consequences of the 2008-2010 financial crisis is inter- esting and might well be a useful model for the United States to consider in the context of some major political wave generated by the next financial cri- sis. The Commission enjoys a unique power under the Treaty Establishing the European Community56 to regulate so-called state aids given by EU national governments to enterprises based in their jurisdiction. 57 The purpose of this system of regulation is to prevent subsidy-driven distortions of competition and preserve a level playing field for all enterprises in the European Union. The state aid regulatory system is administered primarily by the antitrust arm of the Commission (the Directorate General for Competition), where about a third of its resources are used in enforcing state aid rules.

When the national governments in the European Union member states had to bail out depository institutions after 2008, the Commission treated these payments and guarantees as state aids under the EC Treaty and compelled the national governments to make major changes in how the recipient institutions operated .58

A particularly interesting example occurred in the United Kingdom after the British government provided Lloyds Banking Group (LBG) with £17 bil- lion in recapitalization and became a 43 percent shareholder.59 LBG was ap- parently the largest retail bank in the United Kingdom. It was described as having 30 million customers, 2,968 branches and market shares in the 20-40 percent range for different product lines. The Commission's plan contained a lot of detailed requirements designed to ensure that the bank would face less risk going forward and thus not require continuing or future state aid. The Commission also required divestiture of at least 600 branches, dispersed around the country by geography and income areas, accounting for at least 4.6 percent of personal accounts. As the Commission explained in its accompany- ing press release, "This proposed divestment package will facilitate the entry of a new competitor or reinforcement of a smaller existing competitor on the U.K. retail banking market and will therefore remove the distortions of com- petition created by the aid."60 The ultimate result was that a new bank was set up, using a secondary brand called "TSB" that LBG was also forced to divest.

This kind of structural approach would have some potential political appeal because it would show the politicians and the public that the TBTF bank had to pay some price for being rescued, while perhaps reducing the incentives of some managers to take on additional risks. Finally, if used in a concentrated market, then such divestitures, if done carefully and well, would serve the antitrust goal of creating additional competition in the market. However, the banking industry would be opposed, and nothing so major is likely to be seriously considered in the United States, absent another crisis.

#### TTIP solves modeling planks

Bickel 15 –(Brett, Harmonizing Regulations in the Financial Services Industry Through the Transatlantic Trade and Investment Partnership, 29 Emory Int'l L. Rev. 557 (2015). Available at: https://scholarlycommons.law.emory.edu/eilr/vol29/iss3/2)//gcd

V. HOW TO ACHIEVE REGULATORY HARMONIZATION THROUGH TTIP The real challenge that TTIP faces in harmonizing financial regulations is how to implement a process that will yield meaningful cooperation between the U.S. and the EU without infringing on the sovereignty of either party. Part V will discuss potential solutions that the TTIP negotiators should consider when drafting the final agreement. The Institute of International Finance (IIF) developed a sixteen-point plan that would facilitate greater international regulatory consistency.162 This Part draws on this plan and applies many of the concepts in the specific context of TTIP instead of a general global manner. First, it will discuss ways in which TTIP can facilitate the synchronization of existing regulatory policies. Second, it will establish guidelines for regulatory policy initiation and development. Third, it will provide a method for regulatory implementation. Fourth, it will discuss possible avenues for crossborder supervision. Fifth, it will discuss the need for transparency standards. Last, it will discuss the enforcement mechanism. A. Synchronization of Existing Regulatory Policies TTIP should create a bilateral independent commission (BIC)163 charged with evaluating each party’s existing financial regulations and the disparities between the two. This commission should consist of top regulators from both sides and should have an aggressive schedule of deadlines to ensure progress in major areas of divergence. Additionally, this committee should identify key loopholes in their regulations that firms exploit and come up with a joint solution to close them. This commission should also serve as the starting point for new regulations and standards. BIC should also identify appropriate standard setters for the various areas of financial regulations such as the IASB for the accounting system. TTIP should get a binding commitment from the U.S. to convert to the IFSR on a strict timeline that will provide adequate time for the conversion. Negotiating this directly within the TTIP agreement will provide the EU with more negotiating power and will not allow such a large and important divergence to continue. The U.S. is on the IASB and thus can lobby for changes in the rules through the appropriate forum during its implementation phase.164 If the U.S. agrees to do this then it may bargain for a more favorable stance elsewhere in the agreement that might be able to subsidize the transition. B. Guidelines for Regulatory Policy Initiation and Development “Consistency is easiest to deliver if right from the start there is a common analyses of the risks and how to address them rather than after national regulators have developed their own approaches.”165 BIC should establish best practices guidelines for national regulators to use in identifying and addressing emerging risks and concerns.166 Not only will this foster and encourage cooperation between the U.S. and EU regulators, but it will also enhance communication through a common regulatory language and approach to problems. When these concerns arise, BIC should answer the following questions to determine the appropriate remedy: is a common or national approach needed; what is the regulation’s priority; and what are the impacts of the proposed regulation.167 If it is determined that a national approach is needed instead of a common approach, BIC should serve as an intermediary between the two national systems to mitigate possible divergences and assess any external impacts of the regulation.168 BIC and national regulators should work towards regulations that effectively balance international consistency and local flexibility.169 This balance should be considered when determining whether a minimum or maximum harmonization approach is taken with respect to the proposed regulation.170 All proposed regulations or standards should have comprehensive impact assessments completed to determine the effects on both the micro- and macro-economic levels.171 BIC should set appropriate deadlines for agreement based on the urgency and priority of proposed regulations.172 C. Regulatory Implementation BIC should provide national agencies with detailed interpretations that facilitate mutual understanding and recognition between jurisdictions.173 This will help to prevent inconsistent outcomes across jurisdictions and eliminate uncertainty within international firms. National regulators must buy into the system. They must communicate and coordinate with BIC throughout the implementation process in order to prevent unilateral divergence.174 If national regulators identify fundamental problems in international standards, they should notify BIC of the issue and work together to find appropriate solutions that preserve cross-border consistency as much as possible.175 If it is determined that exceptions or extensions need to be unilaterally applied then they should be approached with a collaborative effort to limit the divergence. BIC should create a system to catalog all financial services regulations, interpretations, and standards of all parties.176 This system must be easily accessible by national regulators and will help to identify and prevent conflicting regulations. National regulators and BIC should work together to identify and report any material inconsistencies between national and international standards.177 BIC should have a forward looking approach that focuses on long-term regulatory consistency that will safeguard and promote sustainable financial prosperity.178 D. Cross-border Supervision In order to effectively detect risks and coordinate swift and appropriate responses to these risks, regulators must have access to data about both a firms local and international operations.179 Without this information, a firm might be able to hide significant risks from one or any number of regulators. Because of this potential to mask risk, it is imperative that BIC identify any unnecessary barriers to cross-border sharing of data and information between regulators.180 However, BIC should place an emphasis on protecting proprietary information and high data protection standards, while eliminating excessive barriers to data sharing between regulators.181 Regulators must communicate with each other and BIC to ensure decisions in any jurisdiction are understood by all, so as to promote coordination and consistency.182 BIC should be able to appoint crisis management groups that consist of top regulators in the various areas of financial services.183 These groups should meet regularly to identify potential crisis areas and develop preventative and reactionary plans to promptly correct financial crises. BIC should periodically examine the effectiveness of interagency communication and address any problem areas if they arise.184 E. Transparency Standards Because TTIP would be the first agreement of its kind to achieve such a high level of regulatory harmonization, transparency in rule-making, implementation, and enforcement is absolutely necessary.185 In order to preserve an appropriate level of transparency, most actions of both national regulators and BIC should be within the public purview and subject to scrutiny. Throughout the regulatory and supervisory process, BIC should be open to input from industry leaders, consumers, and other stakeholders.186 Indeed, BIC should have regular meetings with industry advisory committees, consumer protection groups, and national lawmakers to discuss economic and regulatory issues.187 Additionally, BIC should have continuous interaction with other global standard setters such as the G-20, BASEL, and others.188 This will not only help it stay on top of other global trends but also help to exert its influence on those trends. F. Enforcement Enforcement of these regulations should follow the procedure of each party’s established court system. A collaborative effort to harmonize mutually beneficial regulations will not infringe on nations’ abilities to enforce their own laws, because the harmonization is not all-encompassing. A collaborative effort to harmonize mutually beneficial regulations and will not infringe on the ability of nations to enforce their own laws. Therefore, all enforcement actions must be solely up to the party whose regulation was violated. If a firm violates regulations in multiple jurisdictions, then it can be held liable in every jurisdiction. If followed, the six suggestions could provide an adequate base for regulators to effectively harmonize U.S. and EU financial regulations in a timely manner so that gains discussed in the next section can be realized. These are mere suggestions, however, and are by no means the only way to go pursue harmonization. The negotiation process will surely foster other innovative and effective options for successfully harmonizing regulations. This Part shows a potential path towards realizing significant gains through the reduction of non-tariff barriers.

# 1NR

### spills – 2nc

#### BPP and literally every other spill thumps.

#### Bio-d loss isn’t existential

Kareiva and Carranza, 18—Institute of the Environment and Sustainability, University of California, Los Angeles (Peter and Valerie, “Existential risk due to ecosystem collapse: Nature strikes back,” Futures, available online January 5, 2018, ScienceDirect, dml)

The interesting question is whether any of the planetary thresholds other than CO2 could also portend existential risks. Here the answer is not clear. One boundary often mentioned as a concern for the fate of global civilization is biodiversity (Ehrlich & Ehrlich, 2012), with the proposed safety threshold being a loss of greater than 0.001% per year (Rockström et al., 2009). There is little evidence that this particular 0.001% annual loss is a threshold—and it is hard to imagine any data that would allow one to identify where the threshold was (Brook, Ellis, Perring, Mackay, & Blomqvist, 2013; Lenton & Williams, 2013). A better question is whether one can imagine any scenario by which the loss of too many species leads to the collapse of societies and environmental disasters, even though one cannot know the absolute number of extinctions that would be required to create this dystopia. 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 numbers decline 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., 2013, 2017). 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 of 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.

### AT: !D – 1nr

#### Transition war. A Chinese authoritarian system will never receive acceptance and the US will fight to preserve its order.

Hass, PhD, 19

(Richard, President@CFR, <https://www.foreignaffairs.com/articles/2018-12-11/how-world-order-ends>, Jan/Feb)

Given these changes, resurrecting the old order will be impossible. It would also be insufficient, thanks to the emergence of new challenges. Once this is acknowledged, the long deterioration of the Concert of Europe should serve as a lesson and a warning. For the United States to heed that warning would mean strengthening certain aspects of the old order and supplementing them with measures that account for changing power dynamics and new global problems. The United States would have to shore up arms control and nonproliferation agreements; strengthen its alliances in Europe and Asia; bolster weak states that cannot contend with terrorists, cartels, and gangs; and counter authoritarian powers’ interference in the democratic process. Yet it should not give up trying to integrate China and Russia into regional and global aspects of the order. Such efforts will necessarily involve a mix of compromise, incentives, and pushback. The judgment that attempts to integrate China and Russia have mostly failed should not be grounds for rejecting future efforts, as the course of the twenty-first century will in no small part reflect how those efforts fare. The United States also needs to reach out to others to address problems of globalization, especially climate change, trade, and cyber-operations. These will require not resurrecting the old order but building a new one. Efforts to limit, and adapt to, climate change need to be more ambitious. The WTO must be amended to address the sorts of issues raised by China’s appropriation of technology, provision of subsidies to domestic firms, and use of nontariff barriers to trade. Rules of the road are needed to regulate cyberspace. Together, this is tantamount to a call for a modern-day concert. Such a call is ambitious but necessary. The United States must show restraint and recapture a degree of respect in order to regain its reputation as a benign actor. This will require some sharp departures from the way U.S. foreign policy has been practiced in recent years: to start, no longer carelessly invading other countries and no longer weaponizing U.S. economic policy through the overuse of sanctions and tariffs. But more than anything else, the current reflexive opposition to multilateralism needs to be rethought. It is one thing for a world order to unravel slowly; it is quite another for the country that had a large hand in building it to take the lead in dismantling it. All of this also requires that the United States get its own house in order—reducing government debt, rebuilding infrastructure, improving public education, investing more in the social safety net, adopting a smart immigration system that allows talented foreigners to come and stay, tackling political dysfunction by making it less difficult to vote, and undoing gerrymandering. The United States cannot effectively promote order abroad if it is divided at home, distracted by domestic problems, and lacking in resources. The major alternatives to a modernized world order supported by the United States appear unlikely, unappealing, or both. A Chinese-led order, for example, would be an illiberal one, characterized by authoritarian domestic political systems and statist economies that place a premium on maintaining domestic stability. There would be a return to spheres of influence, with China attempting to dominate its region, likely resulting in clashes with other regional powers, such as India, Japan, and Vietnam, which would probably build up their conventional or even nuclear forces. A new democratic, rules-based order fashioned and led by medium powers in Europe and Asia, as well as Canada, however attractive a concept, would simply lack the military capacity and domestic political will to get very far. A more likely alternative is a world with little order—a world of deeper disarray. Protectionism, nationalism, and populism would gain, and democracy would lose. Conflict within and across borders would become more common, and rivalry between great powers would increase. Cooperation on global challenges would be all but precluded. If this picture sounds familiar, that is because it increasingly corresponds to the world of today. The deterioration of a world order can set in motion trends that spell catastrophe. World War I broke out some 60 years after the Concert of Europe had for all intents and purposes broken down in Crimea. What we are seeing today resembles the mid-nineteenth century in important ways: the post–World War II, post–Cold War order cannot be restored, but the world is not yet on the edge of a systemic crisis. Now is the time to make sure one never materializes, be it from a breakdown in U.S.-Chinese relations, a clash with Russia, a conflagration in the Middle East, or the cumulative effects of climate change. The good news is that it is far from inevitable that the world will eventually arrive at a catastrophe; the bad news is that it

#### U.S. heg under Biden is effective – creates a global front to address pandemics, climate change, revisionist powers, & more

Karen DeYoung 20 - Associate editor and senior national security correspondent (“Biden foreign policy begins with telling the world: ‘America’s back’”, The Washington Post, https://www.washingtonpost.com/national-security/biden-foreign-policy-begins-with-telling-the-world-americas-back/2020/10/21/2fc0e528-1348-11eb-bc10-40b25382f1be\_story.html)

One of the first things he will do if elected president, Joe Biden has said, is “get on the phone with the heads of state and say, ‘America’s back, you can count on us.’ ” To prove his point, Biden plans a few quick hits, reversing some of the centerpieces of President Trump’s foreign policy, just as Trump quickly moved to overturn much of the Obama agenda in January 2017. Biden has pledged to immediately rejoin the Paris Climate Accord, the World Health Organization and other U.N. bodies. He plans to return to the Iran nuclear deal, if Tehran also returns to compliance He has said that on Day 1, he will remove the “gag order” prohibiting any health organization that performs or provides advice on abortions from receiving U.S. foreign aid. He will lift Trump’s “Muslim ban,” reverse his “cruel and senseless” immigration policies, increase refugee admissions to 125,000 a year (Trump’s target is 15,000) and “restore greater transparency for military operations.” During his first year in office, Biden plans to host a “Summit for Democracy” with all ideologically like-minded nations to reaffirm U.S. leadership, alliances and commitments, and to convene a new global climate gathering. “If [Biden] is elected and if Trump is defeated, that in and of itself sends an incredible, powerful message around the world” that “the last four years were an aberration and not representative of what America is and aspires to be,” predicted Antony Blinken, the Biden campaign’s senior foreign policy adviser. But while the immediate initiatives “will give us a moment,” Blinken said, “it won’t last long.” Much of Biden’s initial vision sounds like reverse Trump — a return to the liberal multilateralism of the Obama administration. He has surrounded himself with national security veterans of the Obama White House and State Department who are likely to have prominent roles in a Biden administration. But he and his team insist that they are well aware that the world and the United States have changed radically in the past four years. Some of the Obama-Biden policies didn’t wear well. By the time Trump took over, wars had not ended, the Russia relationship was not reset for the better, and China had not become the hoped-for “responsible stakeholder” in the world order. At the same time, much of what Trump has wrought is not so easily undone. The internal process for formulating policy at home has been all but obliterated. Social divisions, the speed of technology and social media have made truth a relative concept and foreign policy is just another partisan issue. The allure of nationalism and transactionalism has blurred the lines abroad between autocrats and democrats, making the collective action Biden says he seeks harder than ever to achieve. Relationships with both friends and adversaries have changed, in some cases unalterably for the foreseeable future. Even as they scarcely hide their strong preference for Biden after what they see as years of erratic Trumpian abuse and abdication of U.S. leadership, allies in Western Europe say they are under no illusions. “As Europeans, we should not think that if there is a new American president, the situation is as it was before President Trump was elected,” said Clément Beaune, French minister of state for European affairs, speaking to a group of U.S. reporters this week. “Some of the trends of Trump — pressure on the European Union, on defense financing, tough on trade . . . the hard game played with China — the main elements of this will continue somehow.” Many in France, Germany and others have moved away from a U.S.-centric world order to a place where, according to numerous polls, they see their relationship with China as equal in importance to that with the United States. They have learned that “if you are just waiting for the big partners . . . to make political choices . . . just waiting and seeing what happens, I think you are not defending your own interests,” Beaune said. For the short term, countries of all political stripes are in a holding pattern awaiting the Nov. 3 results. The stakes are high for Japan and South Korea, where Trump has demanded major increases in payments for U.S. troop deployments; to Iran and Afghanistan, where longtime adversaries are waiting to see which way the winds of war will blow; to Saudi Arabia, where Biden says he will end support for the Yemen war; and to Poland and Hungary, where nationalist governments consider Trump their patron. In Germany, where devotion to multilateralism runs deep, hopes for a Biden presidency are tempered with realism, according to Peter Wittig, who served as Berlin’s ambassador to Washington through much of the Trump administration. “Faith in the United States as the standard-bearer of democracy has eroded all over Europe,” Wittig wrote in the current edition of Foreign Affairs. “Style and tonality matters,” he said in an interview. “It would be a great relief to even have a president who respects allies.” But “I think people don’t really expect U-turns. They know that Europe has become less important to the Americans, that attention will be absorbed by China and Russia. Nobody expects to go back to the status quo ante.” Foreign policy has been Biden’s calling card for most of his career in government. But it is far down the list of concerns of American voters fighting a pandemic, social unrest and a struggling economy. To accommodate this reality, Biden has outlined policies that overlap with his plan for curing domestic ills. Regaining the U.S. role in the world and defending it, he has said, will require that the United States first get its own house in order. A nation floundering and divided against itself is a dim beacon for attracting followers. “Foreign policy is domestic policy, and domestic policy is foreign policy,” Biden said in his first major foreign policy speech as a candidate for the Democratic nomination in July 2019. “They are a deeply connected set of choices we make about how to advance the American way of life and our vision for the future.” As America gets back on its feet, Biden’s prescription for returning to the international forefront rests on two pillars. The first is physically reclaiming a prominent place on issues such as climate change, nonproliferation and global health. The second is reactivating and enhancing the system of alliances, primarily in Europe and East Asia, that have been the bedrock of U.S. foreign policy for decades but have been disdained by Trump. “Climate change, nuclear proliferation, great power aggression, transnational terrorism, cyberwarfare, disruptive new technologies, mass migration — none of them can be resolved by the United States, or any nation, acting alone,” Biden said in the 2019 speech. Those broad goals have remained unchanged and often repeated since the beginning of Biden’s campaign. Applied to China, which Trump has called the primary threat to American security, they point to little immediate action. Like Trump, Biden has defined the problem as China’s seeking “global hegemony” as an “authoritarian dictatorship.” But the clean energy, infrastructure-building, jobs-first America he promises, along with ingrained Democratic protectionism, may leave Biden little wiggle-room in ending Trump’s restrictive trade policies. He has not committed to reentering Obama’s Trans-Pacific Partnership, which Trump quickly discarded. Rather than immediately revoking Trumpian tariffs on China and lifting sanctions, he has promised a review of Chinese trade and industrial practices. “The United States does need to get tough with China,” Biden wrote last spring. “The most effective way to meet that challenge is to build a united front of U.S. allies and partners to confront China’s abusive behaviors and human rights violations,” while enlisting China’s participation in solving problems such as climate change and North Korea. Biden has pledged a $4 billion regional strategy for Central America “to take on the corruption, violence and endemic poverty driving people to leave their homes.” He has said he will pursue an extension of the New START nuclear treaty with Russia, “and use that as a foundation for new arms control arrangements.” Little thought is being given to reducing the current heavy sanctions burden on Russia, and President Vladimir Putin earlier this month criticized what he described as Biden’s “sharp anti-Russian rhetoric.” Biden has spoken of his “unshakable” commitment to Israel’s defense and does not intend to reverse Trump’s move of the U.S. Embassy from Tel Aviv to Jerusalem. He has said he would restore U.S. aid to the Palestinians, canceled by Trump, and allow the reopening of the Palestinian Consulate in Washington but has given few hints of where he might plan to take the peace process. Biden has indicated he would take a second look at Trump’s planned withdrawal and redeployment elsewhere of 9,500 troops from Germany. As President Barack Obama’s vice president, he opposed adding troops to Afghanistan and has said that, as president, he would withdraw “combat troops” in favor of Special Operations forces. But he has said he cannot promise full withdrawals from Afghanistan, Iraq or Syria in the near future. Rather than pledging major cuts in a Defense Department budget Trump has boasted of expanding, Biden has indicated spending could increase. “I don’t think [budget cuts] are inevitable,” he has said, “but we need priorities.” He has called for moving away from “legacy systems that won’t be relevant for tomorrow’s wars” in favor of “smart investments” in “cyber, space, unmanned systems” and artificial intelligence. But many definitive policy decisions will have to wait. “One of the first things, even as we’re confronting a whole series of new challenges and the need to deal with them as they are, not as we were,” is the importance of “getting back to a process and regular order in the creation of policy,” Blinken said. “I think you would see that some of this would be worked on, teed up during transition, and hit the ground running.” he said. “But some things would have to wait for an actual administration and a clear deliberative process to make sure that we are fleshing out any reasonable option, and fully anticipating second and third order consequences. “This is not at all about going back to 2009, or pick your date. This is about dealing with the world as it will be in January next year.”

### AT: not k2 heg – 1nr

#### K2 heg—military comms, next gen tech, and overseas operations

Borghard and Lonergan 18 (Erica D. Borghard is an Assistant Professor at the Army Cyber Institute at West Point. Shawn W. Lonergan is a U.S. Army Reserve officer assigned to 75th Innovation Command and a Research Scholar at the Army Cyber Institute, 9-28-2018, "The Overlooked Military Implications of the 5G Debate," Council on Foreign Relations, <https://www.cfr.org/blog/overlooked-military-implications-5g-debate//ES>).

Last week, the U.S. Defense Innovation Board released a report outlining the risks and opportunities for the United States in the global race to develop 5G. This followed a damning report published by the United Kingdom’s Huawei Cyber Security Centre Oversight Board detailing how the Chinese telecom giant’s 5G products, particularly its software, contained significant vulnerabilities and that the company had failed to remedy persistent poor security practices. 5G network architecture uses high frequency spectrum to enable significantly faster speeds to process larger amounts of data with lower latency and greater device connectivity. While much attention has been paid to economic and espionage implications of a potential Chinese lead in developing and operating 5G infrastructure, there are important military implications that remain largely overlooked. There are economic implications for which entities can secure the greatest global market share of 5G technology. Technological innovation drives economic growth, job creation, and global economic influence. Huawei may have a long-term market advantage over U.S and Western telecoms because the former has been able to offer 5G products at far cheaper rates than the latter. Furthermore, there are also concerns that Chinese-built 5G technology is likely to contain backdoors that could be used to enable Chinese economic or national security espionage. It is unlikely that Beijing would actively monitor all of the content of the data that comes across Huawei owned or operated infrastructure (although it may collect and analyze metadata). However, it is conceivable that Huawei would get a proverbial “tap on the shoulder” from Beijing to share pertinent information in specific instances. This may include individually targeting senior corporate executives, which is enabled by the millimeter wave frequency that 5G networks employ. The military applications of 5G technology have vital strategic and battlefield implications for the U.S. Historically, the U.S. military has reaped enormous advantages from employing cutting edge technology on the battlefield. 5G technology holds similar innovative potential. Perhaps most obviously, the next generation of telecommunications infrastructure will have a direct impact on improving military communications. However, it will also produce cascading effects on the development of other kinds of military technologies, such as robotics and artificial intelligence. For instance, artificial intelligence and machine learning capabilities, such as those used in the Department of Defense’s Project Maven, could be greatly enhanced when leveraging the data processing speeds made possible through 5G infrastructure. As an era of great power competition emerges between the United States and China, the United States has a compelling strategic interest in being at the forefront of these new technologies. The United States and its allies must also consider the tactical and operational implications on the battlefield of conducting conventional or counterinsurgency operations in an area with Chinese owned or operated 5G infrastructure. This concern stems from the nature of the relationship between Huawei, an ostensibly private company, and the Chinese Communist Party (CCP). While Huawei’s founder and CEO, Ren Zhengfei proclaimed in a February 2019 interview on CBS This Morning that the company never has and never would provide information to the Chinese government, many experts are skeptical. Under China’s 2017 National Intelligence Law, the CCP has the authority to monitor and investigate domestic and international companies as well as direct organizations to assist with government espionage efforts. As such, it is conceivable that Huawei will be required to hand over its data to the Chinese government for collection and analysis. Due to this reality, the United States must consider and be prepared to conduct overseas contingency or counterterrorism operations in areas where Chinese telecommunications infrastructure is widely proliferated, thus restricting the United States’ ability to rely on indigenous telecoms. As noted by US AFRICOM Commander General Thomas Waldhauser, this has already become an issue in Africa where Chinese telecommunications companies are poised to dominate. The integrity of U.S. military communications systems that rely on 5G networks could be undermined at key phases of an operation. For example, if the United States is conducting a military operation in an area of interest to China, it is plausible that the Chinese government could leverage Huawei to intercept or even deny military communications. Furthermore, Chinese telecom infrastructure dominance in a theater of operations may limit the U.S. military’s ability to conduct precision targeting that leverages signals intelligence collection on 5G telecommunications networks. The strategic and battlefield implications of who owns and operates 5G infrastructure around the world underscores the national security importance of 5G. The U.S. government and its allies should more systematically assess both the opportunities and risks associated with conducting future military operations in environments that rely on Chinese technology. To date, the U.S. government has devoted significant energy to persuading its allies and partners to follow the United States in prohibiting Chinese telecoms, particularly Huawei, from building and/or operating 5G infrastructure. However, its diplomatic approach has been met with varying degrees of success. While some countries such as Australia and Japan have fallen in line with the U.S. stance on Huawei, many others have not. The European Commission’s recent 5G recommendations for member states dismissed a ban on Chinese telecoms. British intelligence has reportedly maintained that the security risks associated with Huawei can be sufficiently managed, and New Zealand, after initially bandwagoning with the United States in December 2018, abruptly reversed course in February 2019. This is concerning for the United States because New Zealand and the UK are members of the Five Eyes intelligence-sharing alliance. Many allies have refused an outright ban of Huawei because of the company’s ability to offer 5G products at far cheaper rates than Western telecoms. It is clear that U.S. diplomatic efforts are not working. The reality is that the bottom line is largely driving decision-making. Therefore, rather than take a purely negative approach, the United States should consider using positive inducements to make its 5G products more appealing. While the United States should not strive to mirror China’s top-down approach to innovation, it should work with allies to use market incentives to make U.S.- and Western-developed 5G infrastructure and products more competitive. Furthermore, the U.S. military needs to anticipate that its use of native telecommunications infrastructure in a future operating environment may be compromised, limited, or denied. The U.S. military will inevitably need greater bandwidth on the tactical edge and this should be an imperative that drives investment in research and development to address this challenge. Technological innovation was at the crux of the United States’ comparative military and economic advantage in the twentieth century. In this contemporary great power competition, U.S. failure to innovate at the scientific and technological frontier will have direct (and deleterious) effects for the United States on the distribution of power in the international system over the long term.

### AT: regs bad – 1nr

#### No regs now. You are willfully misreading Srago – his arg is “IF regs, they would be worse, BUT there aren’t regs” – it’s a deficit to the regs counterplan, NOT an argument about the status quo. They need post-2017 cards on this because that is when the most salient net neutrality update happened. Means Shelanski’s irrelevant.

Josh Srago 21. JD from Santa Clara Law. EFF Legal Fellow. "Why You Can't Sue Your Broadband Monopoly". Apr 5 2021. EFF. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3805914

Telecommunications and Modern Regulation – The 1996 Act and Classification

The 1996 Act has not only been the key law in ensuring that the telecommunications market is competitive, it has also been at the center of a great deal of debate when it comes to regulating the networks. In particular, the classification of broadband services as either a Title I or a Title II service is the underlying issue regarding the amount of authority available to the FCC to regulate broadband services. These designations stemmed from the Computer II Order that established the concept of basic or enhanced services. “[B]asic service [was] limited to the common carrier offering of transmission capacity for the movement of information, whereas enhanced service combine[d] basic service with computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber’s transmitted information, or provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information.”6 Basic services, or the parallel term telecommunications services,7 were those subject to common carrier, or Title II regulations,8 while enhanced services were services subject to Title I.

The crucial determination as to whether broadband services are subject to Title I or Title II regulations establishes the ability of the FCC to promulgate rules over those services If the FCC determines that broadband is a Title I service, such services are exempted from the FCC’s Title II authority under the 1996 Act to pass rules and regulations.9 If the FCC determines that broadband is better classified as a Title II service, then it has greater rulemaking and oversight authority to ensure that the providers of broadband services are providing equal access to the networks for both content providers and consumers of the service, and could even go so far as to enact control over pricing of the services. Under Title II, the FCC can also forbear from enforcing its rules.10

When Congress passed the 1996 Act, regardless of whether a consumer accessed the internet via a telecommunications service or a cable internet service, the services were treated as Title II services. That changed under the Supreme Court’s Brand X decision when the Court deferred to the FCC’s determination that cable internet services should be designated as a Title I service while maintaining DSL (Digital Subscriber Line) services as Title II due to the changing market conditions.11 In 2015, the FCC passed the Open Internet Order (2015 OIO)12 which reclassified all broadband services under Title II of the 1996 Act along with the net neutrality rules. The FCC’s basis for passing the rules was to “enact strong, sustainable rules grounded in multiple sources of legal authority to protect the Open Internet and ensure that Americans reap the economic, social, and civic benefits of an Open Internet today and into the future.”13 The authority to enact those rules stemmed from Title II of the 1996 Act:

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.14

The FCC’s premise for the reclassification was “prevent[ing] specific practices we know are harmful to Internet openness – blocking, throttling, or paid prioritization – as well as a strong standard of conduct designed to prevent the deployment of new practices that would harm Internet openness.”15 The FCC had attempted to enforce more stringent rules without reclassification, but the United States Court of Appeals found that it lacked the authority to do so under Title I.16

The FCC recognized that as the infrastructure became faster and more advanced, the providers of services utilizing that infrastructure would also innovate. Even the broadband providers suing to prevent the FCC from enacting such regulation agreed that the end goal was to promote the “virtuous cycle of innovation and growth between that ecosystem and the underlying infrastructure—the infrastructure enabling the development and dissemination of Internet-based services and applications, with the demand and use of those services...driving improvements in the infrastructure which, in turn, support further innovations in services and applications.”17

The Title II reclassification would be short-lived, as just two years later the FCC returned to a deregulated services model by retracting the 2015 OIO and returning broadband to a Title I classification. This light-touch oversight of broadband services has been generally favored by FCC Chairman Ajit Pai. When the FCC promulgated the Restoring Internet Freedom Order (RIFO)18 in 2017 he touted that, “by returning to the light-touch Title I framework, we are helping consumers and promoting competition. Broadband providers will have stronger incentives to build networks, especially in unserved areas, and to upgrade networks to gigabit speeds and 5G. This means there will be more competition among broadband providers.” 19 The key argument Chairman Pai made is that if broadband services are not heavily regulated, there will be increased competition and therefore avoiding regulation is in the public interest.

#### Here is another card.

Howard Shelanski 18. Professor of Law, Georgetown University; Partner, Davis Polk & Wardwell LLP. “Antitrust and Deregulation”. 127 Yale L.J. 1922. May 2018. Lexis, accessed thru Dartmouth.

To impose a radical deregulatory agenda in these circumstances is to ensure, either through the repeal process or through nonenforcement, that competition-oriented rules will be retracted or fall into disuse. Either outcome would cause potential gaps in effective competition policy. In fact, the Trump Administration has already slated for reconsideration or repealed several regulatory programs specifically addressing competition and market structure. The FCC, under the leadership of a Trump-appointed chair, repealed the agency's 2015 Open Internet Order within the first year of the Administration. 52

[INSERT FOOTNOTE 52]

Restoring Internet Freedom, 33 FCC Rcd. No. 17-108 (Jan. 4, 2018) (declaratory ruling, report and order, and order).

[END FOOTNOTE 52]

The Open Internet Order aimed to prevent anticompetitive discrimination and collusion in the delivery of [\*1936] digital content to subscribers. 53 The FCC had already used that set of regulations to investigate large carriers for not counting their proprietary content toward subscribers' data caps (so called "zero rating"), thereby potentially disadvantaging content from rival content producers. 54 The repeal of the rules serves as an example not only of a reduction in competition-focused regulation, but also of the Trump Administration's commitment to deregulation--it is willing to repeal rules with substantial public and political support. The FCC received a record 21 million comments on its potential repeal of the Open Internet Order. A study commissioned by a lobbying organization for large telecommunications companies seeking repeal of the order found that many of those comments were repetitive form letters, but acknowledged that the result of its deeper analysis of the body of comments was that "general sentiment [was] against" repeal. 55 Numerous polls found that most voters favored retaining the Open Internet Order's regulations, and moreover, that the support for the Order was bipartisan. 56

#### Only impact is “regulatory capture makes regs less effective” – that is our argument because companies capturing the FCC just means no regulations happen. We are saying regs are bad.

#### ALSO – none of their “antitrust good” evidence assumes Khan and Wu – Biden has appointed a slew of aggressive antitrust enforcers who are worse for industry.

Osenga 6/4 (Kristen Osenga is the Austin E. Owen Research Scholar & Professor of Law at the University of Richmond School of Law, 6-4-2021, "We Must Win the Race to 5G – InsideSources," InsideSources, <https://insidesources.com/we-must-win-the-race-to-5g//ES>).

Most Americans associate 5G technology with self-driving cars, virtual reality headsets, or super-fast internet. While all of these applications are exciting, they aren’t as critical to America as the national security implications of 5G. Winning the race to 5G will help ensure that our military communications are secure and that bad actors can’t hack or manipulate these communications. The Chinese Communist Party understands very well the importance of 5G and is working hard to develop 5G technology before us to gain control of the market. A recent report by the White House Office of Trade and Manufacturing Policy bluntly summarizes the threat the CCP poses. “Given the size of China’s economy, the demonstrable extent of its market-distorting policies, and China’s stated intent to dominate the industries of the future, China’s acts, policies, and practices of economic aggression now targeting the technologies and IP of the world threaten not only the U.S. economy but also the global innovation system as a whole.” America must swiftly act to ensure we win the race to 5G. One of the biggest barriers to American development of 5G is antitrust law and enforcement, both domestically and internationally. A combination of domestic rulings and efforts by foreign governments have left many of our most innovative companies dangerously exposed. We need to respond to these anti-competitive measures to ensure American companies are competing on a level playing field. Aggressive antitrust enforcement by both foreign and domestic forces threatens innovation by forcing American companies to engage in expensive litigation. The lawsuits often result in these companies being unable to exercise their legally granted intellectual property rights. Qualcomm – one of the most active companies in the 5G space – is embroiled in a years-long legal battle that jeopardizes its business model and could force it to sell its groundbreaking wireless chips at a steep discount. The problems American technology companies face overseas are even more extensive, as foreign governments like China prioritize technological supremacy over the rule of law. China’s government and courts regularly disregard due process guidelines. American companies often face pressure to settle out of court because they know the process is rigged. In some instances, American companies weren’t allowed to view all the evidence against them or retain appropriate legal counsel. Without legal baselines, American companies are powerless to resist theft and wrongdoing by the CCP. Another example of these manipulative legal maneuvers against U.S. companies by China occurred when the American company InterDigitial filed a suit in India alleging that Xiaomi, a Chinese tech giant, was infringing its patents. The Chinese Wuhan Intermediate Court stepped in and demanded InterDigital drop its case and not sue Xiaomi in any jurisdiction or face a hefty fine. Clearly, the CCP was putting its hand on the scales of justice to protect a domestic company. Research by the Office of the United States Representative has found the laws that China chooses to enforce are often overly broad and essentially allow Chinese companies to seize intellectual property if American companies won’t hand it over at a steep discount. These actions, in the U.S. and especially in China, can have devastating impacts on America’s role in 5G development. Historically, American companies have been the forerunners of innovation, and America has reaped the benefits. This process may not occur with 5G because only a handful of American companies, like Qualcomm, are heavily investing in 5G. These companies may be forced out of the market by expensive litigation costs or the outright theft of their products. The American government must utilize existing mechanisms and diplomatic solutions to thwart rogue actors, including China and nations like South Korea, who abuse antitrust laws. The CCP and other countries are taking advantage of America’s support of free trade and innovation to steal our technology. One promising model is the proposed legislation, The Protecting American Innovation, and Development Act of 2020 (PAID). PAID authorizes the Secretary of Commerce to create and curate a list of foreign “bad actors” who are engaging in patent infringement of a standard-essential patent in wireless communication technologies like 5G. If an American company can show a foreign company is illegally using its patent, that foreign company will be moved to the list for one year and will have to negotiate with the U.S. patent owner. The race to 5G is too vital for America to be caught sleeping. We need to protect our domestic innovators from overseas antitrust harassment and ensure that innovation triumphs over theft and abusive legal practices.

#### Upcoming mergers are key to alleviate 5G capital expenditures

Sherman 19 (Alex Sherman, covers technology, media and telecommunications for CNBC, 3-12-2019, “Why T-Mobile’s deal with Sprint could be the warmup to a wild decade of mergers,” CNBC, <https://www.cnbc.com/2020/02/12/t-mobile-sprint-merger-is-a-warmup-to-more-wireless-cable-mergers.html//ES>).

When the history books are written, T-Mobile’s merger with Sprint may be the final chapter of the 4G-LTE era. What comes next could completely shuffle the U.S. telecommunications landscape yet again. The 5G era will initially feature massive capital expenditure by wireless companies. Verizon and AT&T will have to spend tens of billions of dollars laying fiber across the U.S. to provide the 1 gigabit speeds promised by both companies. T-Mobile and Sprint’s 5G plan won’t be as costly, but the combined company will be dependent on cable providers to connect their lowband and midband spectrum with small-cell technology to generate high speeds. The necessity of having a huge balance sheet to afford 5G infrastructure combined with the reliance on cable for small-cell technology may prompt U.S. wireless companies to merge assets or acquire cable assets, a phenomenon that’s already happened in Europe. If it happens, the result could test U.S. regulators and possibly lead to some of the largest mergers ever attempted. “Things are changing so fast in this industry that it’s hard to know the market boundaries,” said Scott Wagner, a partner at Bilzin Sumberg who specializes in antitrust regulation. “This was one of the reasons the T-Mobile/Sprint deal was approved. It’s so hard to predict where the market is headed [and] whether cable and cell service will one day be the same. Are we going to end up in a place where people are using 5G service for home broadband? That’s the question.” Stage three: Wireless + cable The last six years have brought waves of media and telecom M&A. First there was cable and satellite TV consolidation, with Charter buying Time Warner Cable (after Comcast’s attempt was denied by regulators), Altice acquiring Cablevision and Suddenlink, and AT&T buying DirecTV. The next phase was media rollups, led by AT&T acquiring Time Warner, Disney buying the bulk of 21st Century Fox, Comcast purchasing Sky, and CBS merging with Viacom. Stage three could logically be tie-ups between cable and wireless — one potentially foreshadowed by Verizon and SoftBank’s interest in acquiring Charter in 2017. It’s possible the cost of 5G infrastructure will push together wireless providers Verizon, AT&T, T-Mobile and Dish with regional cable companies, said Walt Piecyk, a telecommunications analyst at LightShed Partners. “The cable industry has fiber assets that are close to the end users and therefore can be the critical backbone for a dense 5G network build,” Piecyk said. Charter, the second-largest U.S. cable company with an enterprise value of about $200 billion, could be the catalyst for consolidation. The cable company is partially owned by billionaire dealmaker John Malone’s Liberty Broadband (a subset of GCI Liberty) and is run by CEO Tom Rutledge. When Charter briefly toyed with the idea of selling in 2017, it drew interest not only from Verizon and SoftBank, which owns a majority stake in Sprint, but also fellow cable company Altice USA. The European Altice, based in the Netherlands and also controlled by billionaire Patrick Drahi, owns cable and wireless assets. While Altice USA’s enterprise value is just $42 billion, a combination of Charter and Altice USA could be the first step to an eventual run at combining wireless and cable in the U.S. Other European telecommunications companies, including Malone’s Liberty Global and Vodafone, also already own wireless and cable assets and could be the model for where the U.S. is headed.

### AT: TBTJ flips investment – 1nr

#### not specific – all our uniqueness cards on investment and mergers now prove that we are in the race for 5G – here’s another one xx

Sbeglia 21 (Catherine is a Technology Editor for RCR Wireless News, 3-29-2021, "Comparing 5G progress in the US and China," RCR Wireless News, https://www.rcrwireless.com/20210329/5g/comparing-5g-progress-in-the-us-and-china//ES).

China and the U.S. continue to top the 5G charts, with VIAVI’s The State of 5G Deployments report showing that the countries have 341 and 279 5G-connected cities, respectively. In China, the number of cities with 5G grew six-fold in one year, while coverage in the U.S. increased by a factor of five. Further, in Ericsson’s November Mobility Report, 220 million 5G subscriptions were expected by the end of 2020, an estimation that the company increased as a result of China’s faster-than-expected uptake, which was “driven by a national strategic focus, intense competition between service providers and more affordable 5G smartphones from several vendors.” Chinese telecom carriers are expected to build over 1 million new 5G base stations in 2021, as the cost of 5G base stations is expected to decrease. China Mobile, specifically, is the world’s largest operator in terms of subscribers, and it reportedly added 4.19 million 5G subscribers in February, bringing its total number of 5G subscribers to 173.16 million, compared to 15.4 million 5G customers in February 2020. Rival operator China Telecom added a total of 6.2 million 5G subscribers in February to take its total 5G subscribers base to 103.37 million, while China Unicom ended February with 84.5 million 5G subscribers, up from 77.95 million the previous month. While North America’s 5G subscription forecast remained unchanged, Ericsson does believe that by 2026, North America will have the highest share of 5G subscriptions, accounting for 80% of all mobile subscriptions. 5G leaderboard Country Number of cities in which 5G is available China 341 USA 279 South Korea 85 UK 54 Spain 53 Canada 49 Australia 37 Saudi Arabia 37 Italy 35 France 24 Thailand 24 Sweden 23 (Source: VIVAI) Verizon was the first to turn on its 5G network in the U.S., but, according to Opensignal, T-Mobile actually has the best 5G availability of the major providers, with users able to connect to next-gen services more than 30% of the time, while for AT&T customers that number was 18% and just 9.5% for Verizon customers. Undoubtedly related, T-Mobile currently covers 280 million people across 1.6 million miles throughout the U.S. compared to around 230 million people for AT&T and Verizon. LitePoint’s Director of Marketing Adam Smith weighed in on the comparison of China and North America’s 5G progress, telling RCR Wireless News that if you’re measuring by the percentage of the population that “has 5G devices in hand,” China is leading “hands down.” “They have a national policy to move rapidly over to a 5G network and they’re incentivizing devices with a consumer-friendly price point,” he elaborated, “while in the U.S., there is no such thing as a low-end 5G phone today.”

### AT: TBTM A/O – 1nr

#### Other countries thump.

**Kassenova 20** (Togzhan Kassenova – nonresident fellow in the Nuclear Policy Program at the Carnegie Endowment. <KEN> "The Exploitation of the Global Financial Systems for Weapons of Mass Destruction (WMD) Proliferation," *Carnegie Endowment for International Peace*. March 2020. <https://carnegieendowment.org/2020/03/04/exploitation-of-global-financial-systems-for-weapons-of-mass-destruction-wmd-proliferation-pub-81221>)

Proliferators prefer to buy good quality goods – mostly from the U.S., European, and Asian suppliers. This means that in most cases, they have to pay for those goods through the formal financial system, making financial institutions part of their proliferation schemes.

#### 4 – No risk of nuke terror.

John Mueller 17. Professor of Political Science at The Ohio State University & Senior Fellow at the Cato Institute & Senior Research Scientist with the Mershon Center for International Security Studies at Ohio State University. “76. Nuclear Weapons: Proliferation and Terrorism.” Cato Institute. https://object.cato.org/sites/cato.org/files/serials/files/cato-handbook-policymakers/2017/2/cato-handbook-for-policymakers-8th-edition-76\_0.pdf

The possibility that small groups could set off nuclear weapons is an alarm that has been raised repeatedly over the decades. However, terrorist groups thus far seem to have exhibited only limited desire and even less progress in going atomic. Perhaps, after a brief exploration of the possible routes, they have discovered that the tremendous effort required is scarcely likely to succeed. One route a would-be atomic terrorist might take would be to receive or buy a bomb from a generous, like-minded nuclear state for delivery abroad. That route, however, is highly improbable. The risk would be too great—even for a country led by extremists—that the source of the weapon would ultimately be discovered. Here, the rapidly developing science (and art) of “nuclear forensics”—connecting nuclear materials to their sources even after a bomb has been detonated—provides an important deterrent. Moreover, the weapon could explode in a manner or on a target the donor would not approve—including, potentially, the donor itself. Almost no one, for example, is likely to trust al Qaeda: its explicit enemies list includes all Middle Eastern regimes, as well as the governments of Afghanistan, India, Pakistan, and Russia. And the Islamic State, or ISIS, which burst onto the international scene in 2014, has alienated just about every state on the planet. Nuclear-armed states are unlikely to give or sell their precious weapons to nonstate actors. Some observers, though, worry about “loose nukes,” especially in post-Communist Russia—meaning weapons, “suitcase bombs” in particular, that can be stolen or bought illicitly. However, as a former director at the Los Alamos National Laboratory notes, “Regardless of what is reported in the news, all nuclear nations take the security of their weapons very seriously.” Careful assessments have concluded that it is unlikely that any nuclear devices have been lost and that, regardless, their effectiveness would be very low or even nonexistent because nuclear weapons require continual maintenance. Moreover, finished bombs are outfitted with devices designed to trigger a nonnuclear explosion that will destroy the bomb if it is tampered with. Bombs can also be kept disassembled with the component parts stored in separate high-security vaults (a common practice in Pakistan). Two or more people and multiple codes may be required not only to use the bomb, but also to store, maintain, and deploy it. There could be dangers in the chaos that would emerge if a nuclear state were to fail, collapsing in full disarray. However, even under those conditions, nuclear weapons would still have locks or be disassembled and would likely remain under heavy guard by people who know that a purloined bomb would most likely end up going off in their own territory. Most analysts believe that a terrorist group’s most promising route would be to attempt to make a bomb using purloined fissile material— plutonium or highly enriched uranium. However, as the Gilmore Commission—the advisory panel on terrorism and weapons of mass destruction—stressed, building and deploying a nuclear device presents “Herculean challenges.” The process requires a lengthy sequence of steps; if each is not fully met, the result is not simply a less powerful weapon, but one that can’t produce any significant nuclear yield at all or can’t be delivered. First, the terrorists would need to steal or illicitly purchase the crucial plutonium or highly enriched uranium. This would most likely require the corruption of a host of greedy confederates, including brokers and money transmitters, any one of whom could turn on the terrorists or, out of either guile or incompetence, furnish them with material that is useless. Any theft would also likely trigger an intense international policing effort. Second, to manufacture a bomb, the terrorists would need to set up a large and well-equipped machine shop and populate it with a team of highly skilled and extremely devoted scientists, technicians, machinists, and managers. These people would have to be assembled and retained for the monumental task while generating no consequential suspicions among friends, family, or police about their sudden and lengthy absence from normal pursuits back home. Throughout, the process of fabricating a nuclear weapon would require that international and local security services be kept perpetually in the dark, and that no curious locals, including criminal gangs, get wind of the project as they observe the constant coming and going of outside technicians over the months or even years it would take to pull off. Physicists who have studied the issue conclude that fabricating a nuclear weapon “could hardly be accomplished by a subnational group” because of “the difficulty of acquiring the necessary expertise, the technical requirements (which in several fields verge on the unfeasible), the lack of available materials and the lack of experience in working with these.” Others stress the “daunting problems associated with material purity, machining, and a host of other issues,” and conclude that the notion that a terrorist group could fabricate an atomic bomb or device “is far-fetched at best.” Finally, the resulting weapon, likely weighing a ton or more, would have to be moved to a target site in a manner that did not arouse suspicion. Then a skilled crew would have to set off the improvised and untested nuclear device, hoping that the machine shop work has been perfect, that there were no significant shakeups in the treacherous process of transportation, and that the device, after all the effort, isn’t a dud. The financial costs of such an extensive operation could easily become monumental: expensive equipment to buy, smuggle, and set up and people to pay—or pay off. Any criminals competent and capable enough to be effective allies in the project would likely discover boundless opportunities for extortion and be psychologically equipped by their profession to exploit them. Khalid Sheikh Mohammed, the designated “mastermind” behind the 9/11 attacks, reportedly said that al Qaeda’s atom bomb efforts never went beyond searching the Internet. Even so, that raises the popular notion that the Internet can be effective in providing operational information. However, that belief seems to be severely flawed. Researcher Anne Stenersen finds that the Internet is filled with misinformation and error and with materials hastily assembled and “randomly put together,” containing information that is often “far-fetched” or “utter nonsense.” Some members of al Qaeda may have dreamed about getting nuclear weapons. The only terrorist group to actually indulge in such dreams has been the Japanese millennial group Aum Shinrikyo. However, its experience can scarcely be much of an inspiration to other terrorist groups. Aum Shinrikyo was not under siege or even under close watch, and it had some 300 scientists in its employ, an estimated budget of $1 billion, and a remote and secluded haven in which to set up shop. After making dozens of mistakes in judgment, planning, and execution in a quest for nuclear weapons, it abandoned its efforts. The rise of ISIS in 2014 does not alter these conclusions. The vicious group is certainly a danger to the people under its control and to fellow Muslims and neighboring Christians. It is actually more visible—that is, easier to find—than al Qaeda in that it seeks to hold and govern physical territory, a task that is increasingly difficult in a hostile world. In the process, it is unlikely to be able to amass the finances, the skills, and the serenity to go atomic. The notion that terrorists could come up with a nuclear weapon seems remote. As with nuclear proliferation to countries, there may be reason for concern, or at least for interest and watchfulness. But alarm and hysteria are hardly called for.

#### No nuke terror NOR retal

---Technical barriers, op costs, organizational schisms, deterrence

Christopher **McIntosh &** Ian **Storey 18**. McIntosh is visiting assistant professor of political studies at Bard College; Storey is a fellow at the Hannah Arendt Center for Politics and Humanities at Bard College. 06/01/2018. “Between Acquisition and Use: Assessing the Likelihood of Nuclear Terrorism.” International Studies Quarterly, vol. 62, no. 2, pp. 289–300.

When looked at in isolation, each of the three areas of potential loss presents significant disincentives for immediate attack. In combination—as they would be considered in practice—the higher strategic value of available alternatives appears decisive. In other words, even if one reads our analysis as affirming the importance of nuclear acquisition, when considering competing options and the dangers that attach to any detonation attempt, nuclear attack is highly unlikely. Strategic Opportunity Costs Future opportunities available for “using” a nuclear weapon are effectively foreclosed depending on the aggressiveness of the option a group chooses. The two-by-two matrix of nuclear strategies in Figure 1 is only a rough guide encompassing many possible permutations in the nuclear sphere. The organization always retains non-nuclear options, even once they acquire nuclear weapons. As evidenced by the Cold War and in Kargil, the stability-instability paradox holds empirical weight. Nuclear acquisition by two opposing actors does not necessarily foreclose conventional and/or asymmetric attacks (Cohen 2013; Kapur 2005). Given the unique relationship between a state and terrorist organization, we can expect similar and even exacerbated levels of instability. This can expand even beyond aggression. Remaining options range all the way from the pacific—pursuing negotiations, cooption, entrance into the legitimate political arena (for example, Sinn Fein)—to heightened conventional attacks and the usage of non-nuclear forms of WMDs. This last point is worth emphasizing. Even in the remote case where an actor successfully acquires a nuclear weapon and primarily seeks raw numbers of casualties—whether due to outbidding or audience costs—other forms of WMDs are likely to be more appealing. As Aum Shinrikyo indicates, this is particularly the case for the group that overcomes the inevitable political and technological hurdles (Nehorayoff et al. 2016, 36–37). For these groups, chemical, biological, and radiological weapons (CBRW) are considerably easier to acquire, use, and stockpile. This is especially true when considered over time, rather than a single operation.18 While there are certainly downsides to CBRWs vis-à-vis nuclear weapons (delivery may paradoxically be easier and the maintenance risks comparatively smaller), they are undoubtedly easier to procure and produce (Zanders 1999). More importantly, CBRWs are perceived as easier to produce and thus likely to be viewed by targets as iterable. Unlike a nuclear attack, CBRW threats are more credible because a single CBRW attack can likely precipitate an indefinite number of follow-ups. In addition to the problem of iterability, a terrorist organization must always worry about the possible ratchet effect of an attack—a problem Neumann and Smith (2005, 588– 90) refer to as the “escalation trap.” A terrorist organization is different than a state at war because it manipulates other actors primarily through punishment. Campaigns are a communicative activity designed to convince the public and the leaders that the status quo is unsustainable. The message is that the costs of continuing the target state’s policy (such as the United States in Lebanon, France in Algeria, or the United Kingdom in Northern Ireland) will eventually outweigh the benefits. Once an organization conducts a nuclear attack, it lacks options for an encore. Not even the most nightmarish scenarios involve an indefinite supply of weapons. If a single attack plus the threat of one or two others does not induce capitulation, the organization might unwittingly harden the target state’s resolve. The attack could raise the bar such that any future non-nuclear attack constitutes a lessening of costs vis-à-vis the status quo. There are also heavy opportunity costs involved in pursuing, developing, and maintaining a nuclear capacity, let alone actually deploying and delivering it. As Weiss puts it, “even if a terror group were to achieve technical nuclear proficiency, the time, money, and infrastructure needed to build nuclear weapons creates significant risks of discovery that would put the group at risk of attack. Given the ease of obtaining conventional explosives and the ability to deploy them, a terrorist group is unlikely to exchange a big part of its operational program to engage in a risky nuclear development effort with such doubtful prospects” (Weiss 2015, 82). Organizational Survival Terrorist organizations are not monolithic entities, nor are they wholly self-sufficient actors. Historically speaking, these groups consider the public reception of their attacks in a complex manner. As Al Qaeda, the Palestine Liberation Organization (PLO) of the 1970s, the IRA, and anarchist groups of the nineteenth and twentieth centuries all demonstrate, these groups’ thinking about public reception is nuanced and complex, regardless of time or place. We focus on two types of audiences that would be affected by decisions to attack: those internal to the group itself, and their own broader public. While many claim that terrorists are undeterrable, the argument misconstrues the relational dynamics between a terrorist organization, target state, international community, and the internal dynamics of the organization itself (Talmadge 2007). It is undoubtedly the case that deterring a terrorist organization in the traditional sense is difficult (Whiteneck 2005; Mearsheimer and Walt 2003). Many lack a recognized territorial base, work on the fringes of the global economy, and are internally structured to be difficult to combat directly. Nearly all possess some permutation of these factors. Combined with the symbolic importance of even relatively small terror attacks—especially given the role of international media—physically denying a group the ability to conduct attacks is uniquely challenging. It is minimally a vastly different proposition than precluding a state’s ability to successfully invade its neighbor or conduct ongoing missile strikes.19 Despite these concerns, there are important reasons deterrence can and empirically does work in the case of terrorist organizations. This is especially possible when the state-terrorist relationship is not zero-sum and the target retains some influence over the realization of the group’s eventual goals (e.g., by denying the group access to territory or withholding international recognition) (Trager and Zagorcheva 2006, 88–89). Nuclear attack presents two significant threats to the organization’s continued existence: internal threats of disintegration and external threats to their continued operations and survival. Terrorist organizations are not unitary, homogenous organizations. This is especially true for groups possessing the size and competence likely necessary for operational nuclear capacity. As many have noted, the terrorist organizations of the present are vastly different from those Marxist- Leninist groups that terrorized Europe and the United States in the 1970s and early 1980s. There is a well theorized psychological value of the organization to individual terrorists themselves (Post 1998), but there is more to the organizational valuation of survival than captured in this atomistic picture. Modern, large-scale terrorist organizations are typically heavily intertwined with the social fabric of the groups from which they originate (Cronin 2006; Hoffman 2013). Beyond significant networks of financial connections, accounts, and moguls (Hamas, for example, draws funding from a massive international system of mosque-centered charities, while the IRA’s extensive connections to the Irish diaspora in the United States were well documented), many terrorist organizations build extensive networks of sub-organizations that tie them to the communities in which they are based. Hezbollah, like the IRA, is internally divided between a military arm and a political arm and has run an extensive network of community schools, medical care centers, and religious outreach groups. Together they are designed to embed the organization in the social life of (predominantly southern) Lebanon’s Muslim population and provide Hezbollah with fresh recruits (Parkinson 2013). The group’s persistence as a dominant political force in southern Lebanon nearly two decades after the initial Israeli decision to withdraw demonstrates terrorist organizations grow to exceed their initial military objectives. The spread of Al Qaeda and its affiliates has followed a similar path. Maintaining the continued support of these multiple audiences is therefore a crucial consideration for these organizations. While these audiences could conceivably be more casualty-acceptant than the individuals deciding the group’s operations, the broader public will usually moderate extreme behavior. The literature assessing so-called “radical- ization” and violence by individual actors emphasizes that there isn’t a one-to-one relationship between ideological extremism and acceptance of extraordinary violence in pursuit of those goals (McCauley and Moskalenko 2014; Jurecic and Wittes 2016). It is important to resist the assumption that a politically extreme ideology automatically corresponds to shared assumptions regarding casualty-acceptance. Some argue that the move toward “mass-casualty” terrorism obviates these concerns. Aside from the fact that the trend line is either flat or receding in terms of the death toll of individual attacks (even if campaigns themselves might be becoming deadlier), there is an orders of magnitude distinction in casualties between a nuclear attack and even the 2001 attack in the United States. While the psychological restraints on nuclear use among states do not translate precisely to this context, there is good reason to believe that transgressing the longstanding nuclear taboo would have dramatic and negative effects on broader public support. In an urban environment, the media would inevitably capture the attack and its gruesome after-effects in photography or video. This imagery would be inconceivable, ubiquitous, and inescapable. Even if supporters accept a highly retributive mentality, or as Hamid (2015) argues about the Islamic State, actively accept the potential of death, this would pose a severe problem for all but the most extreme supporters.20 Beyond these supporters, a nuclear attack affects the internal dynamics of the terrorist organization in multiple ways. There could be divisiveness regarding the most effective use of the weapon. This would be magnified by the scale of the opportunities and perceived opportunity costs. Such debates have the potential to splinter the organization as a whole (Cronin 2009, 100–02). Factional conflict in terrorist organizations appears frequently over questions of goals and tactics (Crenshaw 1981; Chai 1993). A decision to attack with a nuclear weapon risks considerable internal alienation over a variety of issues—targeting decisions, method of attack, campaign goals, potential deaths of supporters, and the domestic and international response (Mathew and Shambaugh 2005, 621–22). Finally, a nuclear attack would exponentially raise the threat to each individual who composes the extended organization. Post-nuclear attack, the greatest strengths of a terrorist organization—its lack of material territory, economy, or overt institutions and reliance on individuals—could turn into its greatest weaknesses (Eilstrup-Sangiovanni and Jones 2008). Currently, a wealthy financier found to have ties to a terrorist group would be monitored for intelligence, arrested, and brought up on criminal charges. Post-nuclear attack, the consequences would be immediate and rather worse. Externally, in a world post-nuclear attack, international cooperation would be instant and deep. One of the only international treaties to even define a terrorist in international law post-2001 has been the Nuclear Terrorism Convention (Edwards 2005). A nuclear attack would be far outside the norm of international politics. It would disrupt the dominance of state-actors and likely stimulate unparalleled cooperation to apprehend the responsible parties to prevent future attacks. Moreover, many large terrorist organizations require (some) tacit acquiescence by a host state. Even those with hostile host states have territory where they remain relatively unaffected by local governments (Korteweg 2008). Post-nuclear attack, these host states face an enormous incentive to find the actors responsible before the target state does. After an attack, regimes would find it difficult to claim that they “didn’t know” or “couldn’t stop them.” Claims of corruption or ineffective institutions would be unlikely to find much sympathy. Faced with potential organizational extinction itself, a host state/government will likely be much less committed to the survival of the terrorist group. This is likely to vary significantly from how they might otherwise behave after a more conventional attack. For these states, there would be a real fear of “Talibanization” and ruthless attempts at regime change post-attack. From the perspective of the group, it would know that it could be facing a unified international community and the removal of tacit state support. It would take a particularly confident leadership to presume it could continue to function post-attack without massive disruptions. Most strategic actors are risk-averse when facing the potential of complete elimination. There is little reason to believe terrorist groups would act any differently.