# 1nc vs georgetown – texas 2

## off

### t – scope

#### Expand means to make greater.

Terry J. Hatter, Jr. 90, Judge, US District Court, California Central, “In re Eastport Assoc.,” 114 B.R. 686, Lexis

[\*\*10] Second, Eastport asserts that the presumption against retroactivity does not apply because the amendment was intended only as a clarification of existing law. HN7 Where an amendment to a statute is remedial in nature and merely serves to clarify existing law, no question of retroactivity is involved and the law will be applied to pending cases. City of Redlands v. Sorensen, 176 Cal. App. 3d 202, 211, 221 Cal. Rptr. 728, 732 (1985). The evidence in this case, however, does not support the conclusion that the amendment to section 66452.6(f) was simply a clarification of preexisting law. The Legislative Counsel's Digest specifically states that "the bill would expand the definition of development moratorium." Senate Bill 186, Stats. 1988, ch. 1330, at 3375 (emphasis added). Since the Legislative Counsel is a state official required by law to analyze pending legislation, it is reasonable to presume that the Legislature amended the statute with the intent and meaning expressed in the Counsel's digest. People v. Martinez, 194 Cal. App. 3d 15, 22, 239 Cal. Rptr. 272, 276 (1987). By its ordinary meaning, the term "expand" indicates a change in the law, rather than a restatement of existing [\*\*11] law. In light of the Counsel's comment, Eastport's argument is unpersuasive.

#### Violation – The “scope” of law refers to quantitative *number of types of conduct* prohibited by antitrust law. The plan shifts the rule of reason standard used to evaluate business conduct that is currently covered by antitrust law, not new categories of conduct.

Keith N. Hylton, Professor of Law, Boston University, and Fei Deng, and Consultant, NERA Economic Consulting, ‘7, “ANTITRUST AROUND THE WORLD: AN EMPIRICAL ANALYSIS OF THE SCOPE OF COMPETITION LAWS AND THEIR EFFECTS” Antitrust Law Journal [Vol. 74 2007] https://www.jstor.org/stable/pdf/27897550.pdf?refreqid=excelsior%3A424f12ccaeba1aa8d4150377ebe7192d

We turn our attention now to dominance law – or, in the language of American antitrust specialists, monopolization law. The Dominance Score is an attempt to measure the number of types of conduct specified in a country's competition law as unlawful abuse of a dominant position. For those familiar with American law, the dominance measure is an attempt to measure the scope of laws equivalent to Section 2 of the Sherman Act. One can think of the Dominance Score as the size of the net specifically designed to capture dominant firms that engage in anticompetitive con duct.3

#### Key to limits and ground – expansive definitions of scope allow any rule of reason aff or limitless tinkerings with the antitrust process

Anu Bradford, Professor of Law @ Columbia, and Adam S. Chilton, Professor of Law @ Uchicago, ’18, “COMPETITION LAW AROUND THE WORLD FROM 1889 TO 2010: THE COMPETITION LAW INDEX” Journal of Competition Law & Economics, 14(3), 393–432

Indicators for Competition Law and Policy (CLP): Finally, the CLP Indicators measure the strength and scope of competition regimes in 49 jurisdictions in 2013.53 Relying on a survey conducted among competition agencies, the CLP captures these agencies perception of whether various features of their domestic competition laws prevent anticompetitive behavior. These features include (1) the scope of action (including competences, investigative powers, sanctions/remedies, and private enforcement); (2) policy on anticompetitive behaviors (including horizontal agreements, vertical agreements, mergers, and exclusionary conducts); (3) probability of investigation (including independence, accountability, and procedural fairness); and (4) competition advocacy. Like CPI, FNI, and Four Indicators, the CLP also attempts to measure whether the competition policy reflects generally recognized “good” practices

### cp – states

#### The fifty states and relevant subnational entities should implement light handed procompetitive regulation increasing prohibitions on anticompetitive conduct by dominant platforms.

#### 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.

### cp – regulate

#### The United States federal government should establish a regulatory framework for pro-competitive regulation of dominant platforms, including at least banning platform self-preferencing and establishing a cybersecurity duty of care for the private sector; and increase research and development into its own blockchain.

#### Non-antitrust enforcement is sufficient

Rill 2 – was an Assistant Attorney General for the Antitrust Division in the Department of Justice (James, "The Evolution of Modern Antitrust among Federal Agencies." George Mason Law Review, vol. 11, no. 1, Fall 2002, p. 135-142. HeinOnline)//gcd

Multiple federal enforcement agencies with competition-related authority, broadly defined, have evolved from several different roots. From the outset, these agencies were not uniformly consumer-welfare impelled or oriented, nor have they altogether evolved in that direction. Their focus has been as much on social and political, non-consumer-welfare concerns-a continuing condition more prevalent before the mid-1970s than today. Federal economic concerns with market power brought about the establishment of regulatory agencies prior to enactment of the Sherman Act.' The patriarch, the Interstate Commerce Act of 1887,2 was a congressional response to concerns with the alleged monopoly and political power of the nation's railroads. Over the ensuing years, numerous other non-antitrust agencies were vested with power to regulate competition. Evolving from concerns with "bigness" as a threat to markets and, indeed, to the political system, legislation was enacted to address particular industries. This legislation afforded specialized agencies authority to regulate competition, to some extent in the same vein as that vested in the traditional antitrust agenciese.g., the Packers and Stockyards Act of 19213 and the Public Utility Holding Company Act of 1935.' Specialized agencies were also created to deal with the competitive functioning of industries in markets which were believed to embrace public assets, for example, air space and airlines and, initially, spectrum and broadcast communications. Part of the concern with "bigness" derived from fear of "excessive" competition, leading to statutory and regulatory restrictions on low-level pricing and limitations on market entry. The antitrust statutes were not immune from infection by this concern, as evidenced by enactment of the Robinson-Patman Act in 1936.' While the jurisdiction of sectoral agencies over competition and the relevant industries was often expressed in the governing statues as antitrust concerns, the overarching mandate was, and is, to protect and advance "the public interest." This ambiguous standard continues to provide sectoral agencies with more latitude to address industry competitive and other attributes beyond consumer welfare. The unfortunate ambiguity of this standard is brilliantly illuminated in an address by Judge Henry Friendly in the 1962 Oliver Wendell Holmes lectures at Harvard Law School and in a subsequent article in the Harvard Law Review.

### da – congress politics

#### Congress is inching towards full year defense funding- will pass now

Politico 1-5-22 https://www.politico.com/news/2022/01/05/defense-spending-stuck-budget-boost-526557

Congress has overwhelmingly backed a $25 billion increase to President Joe Biden's Pentagon budget, but the battle over defense spending is far from over. Biden last week signed annual defense policy legislation that calls for significantly boosting his $715 billion Pentagon blueprint to $740 billion. But the just-enacted National Defense Authorization Act doesn’t actually provide any money, and lawmakers have until mid-February to reach a deal to fund the Pentagon and other federal agencies for the rest of the fiscal year. There are, however, signs that Congress is inching toward a deal, after POLITICO first reported that House Democratic appropriators are preparing to agree to a larger defense budget than either they or Biden wanted. In the meantime, though, the Defense Department — and all other federal agencies — are stuck at even lower budget levels agreed to during the Trump administration because they are funded through a temporary measure. "We can stand here … and declare our unwavering support for our troops and their families. We can claim to support a strong national defense,” Senate Appropriations Chair Patrick Leahy (D-Vt.) said in a floor speech last month. “But until we put our money where our mouth is and provide the funding we say we support, then those words ring hollow. It's only rhetoric." The government is now operating under a continuing resolution that runs out on Feb. 18. Lawmakers need to pass spending legislation before then or risk trapping agencies at last year’s levels, a prospect that’s particularly unpopular in the halls of the Pentagon. House Democrats plan to shine a light on the dire budget situation next week when top Pentagon officials testify on the impact of temporary funding on the military. While Democrats appear ready to accept a defense boost, top Republicans are also insisting on “parity” between spending on the Pentagon and non-defense programs as well as ground rules for handling contentious policy riders — including whether to renew the Hyde Amendment that bars federal funds for abortion. The top Senate Appropriations Republican, Sen. Richard Shelby (Ala.), spoke with Leahy about a spending deal on the floor Wednesday, and said negotiations are headed in the right direction. “We're still talking, and we're not there yet. We also are aware that we've got a Feb. 18 deadline,” Shelby told POLITICO. “Could we meet it? Probably not, but I'd like to see us do it." A full-year spending package is within reach, he added, if Democrats and Republicans can agree on the balance of defense and domestic spending along with policy riders. "If we could cut a deal, and it's something we could live with, that's what this place is about,” Shelby said. “And that's what we have to do sometimes. But it has to be something that would be palatable to our caucus and theirs too — maybe not everything everybody wants.” Senate Minority Leader Mitch McConnell underscored the framework of “basic traditional riders, no poison pills and parity for defense and non-defense” for a spending deal on Tuesday. “To the extent that the Democrats are willing to meet those conditions, then I would think we’d have a chance of getting an omnibus appropriation Feb. 18,” McConnell told reporters. The Pentagon side of the ledger may well be the least contentious part of the deal to clinch. Signs so far point to more defense cash if a full-year spending deal emerges.

#### Antitrust trades off – assumes bipartisanship.

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

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

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

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

#### Passing defense budget crucial to deter Russian invansion of Ukraine -PC is key

Clevenger 2-3-22

(Andrew, https://rollcall.com/2022/02/03/congress-should-pass-defense-budget-to-deter-putin-senators-say/)

One of the most powerful messages Congress could send to deter Russian President Vladimir Putin from invading Ukraine would be to pass a defense appropriations bill, two members of the Senate Armed Services Committee said Thursday. Speaking at an event hosted by the Wilson Center, Mississippi's Roger Wicker, the second most senior Republican on the Armed Services Committee, said funding for the Defense Department could be part of a larger omnibus spending bill. He urged President Joe Biden to get personally involved, and to call House and Senate leadership to a meeting as soon as possible to iron out any lingering differences over spending levels. “Everybody agrees that working off of defense appropriations from a year and a half ago are completely inadequate and sends exactly the wrong signal not only to Vladimir Putin but to our friends and potential adversaries all over the world,” he said. “I hope what is about to happen would build a fire under us. Let’s get our national defense spending up to date.” New Hampshire Democrat Jeanne Shaheen, a senior member of both the Armed Services and Foreign Relations committees, agreed. “You’re absolutely right,” she said. “Putin’s thinking, ‘Boy, they can’t even pass a budget, never going to be able to unite against our actions,’ and China is looking at that as well.” Funding deadline The government is currently funded via a continuing resolution, which locks in spending at the levels established by the previous fiscal year’s spending bills. The current continuing resolution is set to expire on Feb. 18, meaning Congress will either have to enact new spending bills, pass another continuing resolution, or face a government shutdown.

#### Ukraine war escalates - Russia will gamble with direct nuclear threats to force NATO’s exit.

Grover ’18 [John; July 11; M.S. in Conflict Analysis and Resolution from George Mason University, B.A. in Government and Legal Studies from Bowdoin College, fellow at Defense Priorities and assistant editor at the National Interest; The American Conservative, “Admitting Ukraine Into NATO Would Be A Fool’s Errand,” <https://www.theamericanconservative.com/articles/admitting-ukraine-into-nato-would-be-a-fools-errand/>; RP]

This week, President Trump is meeting with allied heads of state at a summit of the North Atlantic Treaty Organization (NATO). Among the many items on the agenda is the question of enlarging NATO to include other countries such as Ukraine. Although Russian aggression in Ukraine has been rightly condemned, those who urge for NATO to accept Ukraine as a full member are making a grave mistake.

If Ukraine joined NATO, it would become an even more unstable hotspot that America would be obligated to defend. Why should the U.S. risk war with a nuclear-armed Russia in Moscow’s backyard? NATO is a military alliance to defend Europe, not a democracy-promotion machine intended to reorder the political equilibrium in every European country. Though Washington may wish it, NATO cannot solve every problem nor can it smooth over all local flash points.

It’s easy to understand why some wish to bring Ukraine under the alliance’s security umbrella. After all, NATO has deterred Soviet and Russian aggression for nearly 70 years, and good Westerners who watched the Maidan protests have had their heart strings pulled. But expanding NATO means that if Ukraine asks for help in its current war, America’s sons and daughters will be called upon to die. If Trump and other administration officials asked American voters whether that’s something they want, the answer would be a firm “no.”

Furthermore, calls for Ukraine to join NATO forget that deterrence works because it relies on mutually assured destruction (MAD) and on some level of respect for each side’s national interests. When one side communicates that it no longer cares about the other’s security concerns, the likelihood of war skyrockets. For instance, in 1962, when Moscow put missiles in Cuba, America reacted very forcefully to get the Soviet Union to remove them—even though doing so brought the world to the brink. Furthermore, in 1983, when NATO staged its largest-ever exercises under Reagan—known as [Able Archer 83](https://nsarchive2.gwu.edu/nukevault/ebb533-The-Able-Archer-War-Scare-Declassified-PFIAB-Report-Released/)—the Soviet Union thought it was a cover for an attack and nearly launched their own nuclear strikes as a result.

These same dynamics apply to Ukraine and the question of NATO accession. Although obviously the United States would never deliberately attack Russia, it doesn’t look that way from Moscow. Whether anyone likes it or not, Putin believes that Russia is reacting defensively and fears the possibility of a NATO-led overthrow of his government. He saw what happened when the Western-backed Maidan toppled Ukrainian President Viktor Yanukovych and thinks America might be tempted to do the same to him. As a result of this—and of Putin’s [general revisionism](https://www.amazon.com/Mr-Putin-Operative-Fiona-Hill/dp/0815723768)—Russia is [the spoiler](https://www.beyondintractability.org/casestudy/grover-minsk-II-accords) for any Ukrainian conflict and would likely escalate the use of force to keep Ukraine out of NATO.

This is why U.S. deterrence wouldn’t apply as easily to Ukraine if it did start the process of joining NATO. If Russia was willing to annex Crimea and invade eastern Ukraine as a de facto veto on Ukraine’s NATO aspirations, it would certainly do far worse if official accession plans were announced. So far, NATO has pledged that Ukraine will one day join, but no such plans have been implemented. Additionally, it would likely take several years of reforms in accordance with a membership action plan before Ukraine could join NATO, which would give Russia time to react.

If Russia believes Ukraine is worth fighting for, then America and NATO need to deeply consider the implications rather than just push ahead for membership. To ignore this reality is to be naïve about how the world works. America cannot be the world’s crusader for democracy in every crisis. Where would that end? The argument that other countries’ interests do not matter and that the U.S. just needs to bring everyone under its protective umbrella collapses on itself. Reduced to its absurd logical conclusion, that would mean America should try to protect literally every state on the planet from aggression and dictatorship while also preparing to fight anyone—even nuclear powers—who gets in the way. The brutal truth is that the U.S. needs to protect its own democracy and prosperity. We cannot always save the day and Washington can no more deliver a perfectly happy ending to Ukraine than it could to Iraq.

As former U.S. ambassador to Ukraine Steven Pifer [wrote](https://www.kyivpost.com/article/opinion/op-ed/steven-pifer-ukraine-nato-course-disappointment.html), “Until the simmering conflict in the Donbas and frozen conflict in Crimea are resolved, Ukraine has little prospect of membership. Bringing Ukraine in with the ongoing disputes would mean that NATO would face an Article 5 contingency against Russia on day one of Kyiv’s membership.” Moreover, [Henry Kissinger](https://www.washingtonpost.com/opinions/henry-kissinger-to-settle-the-ukraine-crisis-start-at-the-end/2014/03/05/46dad868-a496-11e3-8466-d34c451760b9_story.html?noredirect=on) himself has urged that Ukraine ought to be considered a bridge between West and East rather than another potential NATO ally.

Washington needs to realize that NATO’s expansion is not always in America’s interests and that in this case the cost would be far too high. The United States should focus on holding NATO’s interest-based red lines while also recognizing Russia’s interests—challenging them where we must but not in every possible circumstance. The alternative would be for the Second Cold War to drag on longer than is necessary to the risk of all.

### cp – ptd

#### The United States federal government should find anticompetitive conduct by dominant platforms constitute an abdication of core public trust responsibilities.

#### Using public interest justifications for anti-monopoly regulations without expanding core antitrust law solves unfair competition

Farah and Otvos 18 – Paolo Davide Farah  is the University Professor at the University of West Virginia. Research Associate at gLAWcal, Master Candidate at College of Europe in Bruges and EU commission  (Competition Law and Trade in Energy vs. Sustainable Development: A Clash of Individualism and Cooperative Partnerships? (June 26, 2018). Competition Law and Trade in Energy vs. Sustainable Development: A Clash of Individualism and Cooperative Partnerships? 2018, Arizona State Law Journal, Vol. 50, No. 2, 2018, pp. 497 – 513, Available at SSRN: <https://ssrn.com/abstract=3227777>) //gcd

For the same reasons, since environmental protection and sustainable development are specific areas of public interest, the approach to antitrust issues should also be adequate to these features as to other social objectives and effects.38 This means that a different balance structure should be applied to assess all the factors in play—including sustainable development, the environmental protection and the fight against climate change—when it comes to determining whether there has been a distortion of competition on a particular product market. This structure should be framed with a higher tolerance for subsidies when their main scope is to effectively support the usage of innovative green technologies during the production and the trading of eco-friendly products. In particular, when it comes to assessing the adverse and damaging effect of environment-focused aid39 generally granted to private companies based on competition law and free market mechanisms, these requirements should step aside, and endure a higher range of limitation for sustainability purposes,40 as for other NTCs.41 As it has been pointed out before, the main goal of the WTO anti-dumping and countervailing regulations is to protect domestic companies from what we can define in general terms as unfair competition, even though competition law is not part of the WTO Agreements. In the framework of the WTO dispute settlement understanding, the decision—whether a subsidy, state aid, or other financial support distorts competition, harms domestic producers, or negatively influences the free market in any other way—should be based not merely on the level of such adverse effect. On the contrary, this decision should be based on the benefits—whether the particular subsidized good provides for sustainable development, and should not be considered in conflict with the WTO case law on extraterritorial effect. In WTO cases like United States—Tuna and Tuna Products from Canada, 43 the Tuna/Dolphin Case I44 and the Tuna/Dolphin Case II of 2011 (“Dolphin-Safe”),45 the principles of extraterritoriality and the extraterritorial effect were examined with a gradual evolution that started in the first two disputes with a very narrow interpretation, stating that a given State’s regulations cannot be enforced in another State’s jurisdiction on the basis of international trade rules under the general exceptions of Article XX of the GATT. According to Article XX of the GATT, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: “necessary to protect human, animal or plant life or health” or “relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.”46 In the last dispute, Dolphin-Safe, 47 which was actually adopted after the creation of the WTO and after the inclusion of the WTO Preamble, the interpretation favored measures that have the sole objective of protecting the environment and promoting sustainable development. It remains to be seen whether this last interpretation of the extraterritoriality principle will be consistently applied in the future to trade measures adopted for promoting sustainable development, for the protection of the environment, human rights or other areas of NTCs. Simply, sustainable development should be constantly maximized, while proportionally maintaining the basic mechanisms of the market without excessive protectionist tendencies. To sum it up, there needs to be a considerate balance when anti-dumping, subsidy and antitrust cases48 are assessed to include as an additional and important criterion the positive or negative impact of these practices on sustainable development.

#### Ruling on PTD over antimonopoly issues reinvigorates the doctrine

Moses and Blumm 17 – Aurora Paulsen Moses is a faculty member of Vermont Law School. Michael C. Blumm. Lewis & Clark Law School. Professor of Law ("The Public Trust as an Antimonopoly Doctrine." Boston College Environmental Affairs Law Review, vol. 44, no. 1, 2017, p. 1-54. HeinOnline.)//gcd

The Supreme Court of Pennsylvania affirmed the lower court's ruling invalidating provisions of Act 13 that preempted local ordinances, but a plurality of the court did so on PTD grounds . The plurality decided that Pennsylvania's constitutional public trust required the state "to prevent degradation, diminution, and depletion of our public natural resources, which it may satisfy by enacting legislation that adequately restrains actions of private parties likely to cause harm to protected aspects of our environment." 315 Con trary to that public trust directive, the statute's goals were not to "effectuate the constitutional goal to protect and preserve Pennsylvania's natural environment," but instead to "provide a maximally favorable environment for 11316 industry operators to exploit Pennsylvania's oil and gas resources .... As the plurality explained: The public natural resources implicated by the "optimal" accommodation of industry here are resources essential to life, health, and liberty: surface and ground water, ambient air, and aspects of the natural environment in which the public has an interest. As the citizens illustrate, development of the natural gas industry in the Commonwealth unquestionably has and will have a lasting, and undeniably detrimental, impact on the quality of these core aspects of Pennsylvania's environment, which are part of the public trust.... By any responsible account, the exploitation of the Marcellus Shale Formation will produce a detrimental effect on the environment, on the people, their children, and future generations, and potentially on the public purse.... Consequently, the court struck down Act 13's preemption of local zoning requirements as unconstitutional, although only a plurality thought that the law had violated the public trust provision in the state constitution. The plurality saw the law's prohibition of new zoning ordinances as inconsistent with the PTD because it prevented local governments from protecting vulnerable trust resources in local neighborhoods.31 9 Chief Justice Castille explained that the effect of Act 13 was to impermissibly harm the properties and communities most affected by the environmental hazards associated with fracking. 3 20 As he declared, "[t]his disparate effect is irreconcilable with the express command that the trustee will manage the corpus of the [public] trust for the benefit of 'all the people.' A trustee must treat all beneficiaries equitably in light of the purposes of the trust., 3 21 Underlying Robinson Township is a strong antimonopoly sentiment affirming local community control over privatization of natural gas resources affecting groundwater. As these decisions illustrate, restraints on government alienation of public resources, first established in Illinois Central, remain alive and vibrant.322 As in Illinois Central, alienation restraints protect public access to trust resources, preventing private monopolies that would interfere with public use.323 They also require public oversight for private uses of trust resources to ensure against unnecessary degradation that harms the public. The American PTD is rooted in long-held antimonopoly sentiment. From its inception in U.S. law in the early nineteenth century, the doctrine has protected the public against state attempts to create private monopolies over natural resources, beginning with oyster harvesting in tidal waters and soon extending inland to navigable waters and wildlife .324 In the United States Supreme Court's seminal decision of Illinois Central Railroad v. Illinois, the Court held that the PTD prevented the state from sanctioning private monopolization of Chicago Harbor, thus preserving the harbor and lakefront for present and future public use.325 Ensuing case law invoked the PTD to combat private threats to other important natural resources, including non-tidal and traditionally non-navigable waters, as well as wildlife and upland resources like beaches and parklands.326 Courts are now being asked to consider antimonopoly protection for additional public resources, including groundwater and the atmosphere .327 The PTD found footing in American jurisprudence nearly two centuries ago.3 28 Although commentators have written extensively about the doctrine's development and significance,329 the antimonopoly roots of the PTD have not been closely examined. Public trust advocates seeking to enforce or expand the scope of the doctrine should ground the PTD in its deep antimonopoly origins, which help to clarify the basis of the widespread sentiment that certain natural resources have public values too significant to be subject to exclusive private control.

#### Flexible PTD resolves ecological existential threats

Harms 16 – J.D. from the University of California, Davis School of Law  (RLG, Preserving the Common Law Public Trust Doctrine: Maintaining Flexibility in an Era of Increasing Statutes, https://law.ucdavis.edu/centers/environmental/files/Doremus%20Writing%20Winners/2015LaGrandeur.pdf)//gcd

Looking to the future, academics, practitioners, and environmental advocates herald the public trust doctrine as one of the greatest tools we possess to help create new protection for natural resources that currently lack sufficient safeguards.64 Applying the public trust doctrine to the atmosphere and to groundwater are examples of contemporary expansions of the public trust doctrine. A team of academic professionals and a handful of trial and appellate courts65 are pushing the boundaries of the public trust doctrine in their attempts to establish an atmospheric trust to help address climate change.66 One of the leaders of this effort is Mary C. Wood, a professor at University of Oregon School of Law. In an essay concerning the atmospheric trust, Professor Wood explains the concept: As a legal doctrine, the public trust compels protection of those ecological assets necessary for public survival and community welfare. Courts have recognized an increasing variety of assets held in public trust on the rationale that such assets are necessary to meet society’s changing needs. The essential doctrinal purpose expressed by courts in these public trust cases compels recognition of the atmosphere as one of the crucial assets of the public trust. The public interests at stake in climate crisis are unfathomable leagues beyond the traditional fishing, navigation and commerce interests . . . . Atmospheric health is essential to all civilization and to human survival across the globe.67 Note how Professor Wood emphasizes the doctrine’s evolutionary nature. She draws on this to argue that the public trust doctrine is capable of expanding to include the atmosphere, and, therefore, to help combat climate change. Many people also hope to expand the public trust doctrine to include groundwater. In fact, in 2000 the Hawaiian Supreme Court held that the state’s public trust doctrine applied to groundwater.68 In California, however, the effort to expand the public trust doctrine to include groundwater has proven more challenging.69 The California Court of Appeal declined to apply the public trust doctrine to groundwater because of groundwater’s lack of connection to navigable waterways.70 This lack of connection is widely recognized as legal fiction (meaning, in reality there is a well-documented hydraulic connection between groundwater and surface water), but one the courts honor nonetheless.71 However, California Governor Jerry Brown signed a package of bills—AB 1739, SB 1168 and SB 1319—that are beginning to help dissolve this legal fiction by linking surface water and groundwater.72 AB 1739 states, “Sustainable groundwater management in California depends upon creating more opportunities for robust conjunctive management of surface water and groundwater resources.” 73 Prior to these bills, the legal fiction that groundwater and surface water were not connected acted as a barrier to efforts to apply the public trust doctrine to groundwater. With the help of these bills, the public trust doctrine now stands at the ready—flexible and capable of expanding to include groundwater, should a court be willing to take that step. Efforts to expand the public trust doctrine to include the atmosphere and groundwater are concrete examples of how people rely on the flexibility and evolutionary nature of the public trust doctrine to assist them in their quest to create additional protections for natural resources. These examples demonstrate the hope many people place in the public trust doctrine’s ability to assist us in a future where pressure placed on our limited natural resources will only increase. But rather than rely on being able to invoke the public trust doctrine in the future, it is critical to pause and evaluate whether the evolution of the doctrine will result in a version that is indeed capable of accomplishing what many hope it will.

## platforms adv

### turn – innovation – 1nc

#### **America's maintaining tech leadership now, but antitrust expansion cedes tech dominance.**

Abbott et al. '21 [Alden; 3/10/21; Senior Research Fellow, formerly served on the Federal Trade Commission’s General Counsel, J.D. from Harvard Law School, M.A. in Economics from Georgetown University; "Aligning Intellectual Property, Antitrust, and National Security Policy," https://regproject.org/wp-content/uploads/Paper-Aligning-Intellectual-Property-Antitrust-and-National-Security-Policy.pdf/]

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

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

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

III. Overly Aggressive Antitrust Enforcement Hinders American Technological Leadership and Threatens National Security

As companies from around the world develop the technology and standards for 5G mobile devices and networks, American companies are under threat by aggressive antitrust enforcement that ultimately redounds to the benefit of these foreign companies, which are economic competitors in countries that are also military competitors of the U.S. Over the past five years, foreign governments, particularly in Asia, have subjected U.S. companies to antitrust investigations that failed to follow basic norms of the rule of law, such as providing basic due process protections.14 These antitrust investigations were a thinly-disguised effort by these countries to force the transfer of U.S. patented technology to their own domestic companies, or to insulate their domestic companies from American competition. In recent years, Chinese, Korean, and Taiwanese antitrust authorities have brought nearly 30 investigations against 60 foreign companies across a range of industries, including manufacturing, life sciences, and technology.15

Antitrust challenges undermine intellectual property rights by forcing companies to license their products on non-market-based terms. One prominent example in U.S. history is when the Department of Justice wrung a concession from AT&T to license royalty-free the entire portfolio of 8,600 patents held by Bell Labs in a 1956 antitrust consent decree with the company.16 Today, the White House Office of Trade and Manufacturing Policy has observed that “China uses the Antimonopoly Law of the People’s Republic of China not just to foster competition but also to force foreign companies to make concessions such as reduced prices and below-market royalty rates for licensed technology.”17 Companies have also complained about poor policy guidance and procedural protections under China’s competition laws.18 Others have complained about China’s use of its competition laws to promote policy objectives rather than protect competition and advance consumer welfare.19 In one example, companies raised concerns with Article 7 of China’s State Administration of Industry Commerce (SAIC) 2015 Rules on the Prohibition of Conduct Eliminating or Restricting Competition by Abusing Intellectual Property Rights.20 Under this provision, intellectual property constitutes an “essential facility,” which could allow parties to raise abuse of intellectual property rights claims against patent owners for a unilateral refusal to license their patents.21

Predatory antitrust enforcement actions threaten the ability of U.S. companies to continue to be leaders in 5G technological development. China and other nations with similarly restrictive regulatory frameworks can weaken the ability of the United States to compete in global markets by exacting high monetary penalties from U.S. intellectual property owners or forcing the transfer of their intellectual property to domestic commercial rivals. As a penalty for violations of its competition laws, China can impose exorbitant fines that range up to 10% of a foreign company’s entire revenue in the prior year.22 This is not a legal rule observed in the breach; it has already resulted in fines just shy of $1 billion.23

Another way in which courts in China and other foreign countries are harming U.S. companies is through the use of anti-suit injunctions. One example of this is in the recent patent infringement lawsuit brought by InterDigital, an American high-tech company that has developed key technologies in wireless telecommunication, against Chinese company Xiaomi. In June 2020, Xiaomi filed a lawsuit in the Wuhan Intermediate Court in China requesting that the court set global licensing rates for InterDigital’s patents on standardized technologies. In July 2020, InterDigital sued Xiaomi in India for infringement of InterDigital’s Indian patents. The Wuhan Intermediate Court then ordered InterDigital to stop its lawsuit with its request for an injunction in India. The Chinese court further prohibited InterDigital from suing Xiaomi and requesting an injunction or damages in the form of reasonable licensing rates, or even to enforce a previously-issued injunction, in any other country. If InterDigital does not comply with this worldwide injunction against pursuing legal relief for the violation of its patents in any other country, the company faces a significant fine in China. The type of judicial order issued by the Wuhan court is known as an anti-suit injunction and its purpose is to force an intellectual property dispute to play out solely in a Chinese court at the behest of the Chinese government. These court orders demonstrate China’s desire to become the source of 5G innovation and to dictate the licensing terms of the technology, and the anti-suit injunctions hamstring U.S. companies like InterDigital from enforcing their intellectual property rights anywhere in the world.

The unfair use of antitrust enforcement and related legal actions like anti-suit injunctions to weaken U.S. intellectual property rights around the world risks diminishing U.S. global competitiveness in critical technologies like 5G, and further empowers China and others to expand their influence over the evolving 5G technological ecosystem. To the extent the U.S. cedes its dominance in 5G standards development, China will continue its focused efforts to fill that void. Huawei, a China-based company, has increased its R&D spending while growing its share of patents on the standardized technologies comprising 5G.24 The President’s Council on Science and Technology issued a report concluding that Chinese actions in the semiconductor industry, which include a range of policies backed by over $100 billion in government funds, threaten U.S. leadership in the industry and present risks to U.S. national security.25 China’s “Made in China 2025” plan called for China to become a leader in 5G technology, including in the development of the standards for the technology, by 2020.26 The plan expressly favors Chinese domestic producers, calling for raising the domestic content of core components in high-tech industries like 5G to 70% by 2025.27

This issue, however, extends far beyond simply the ability and willingness of U.S. companies to engage in the requisite R&D to participate in the 5G race. Reduced U.S. influence on 5G standard-setting would force the U.S. government to rely on untrusted foreign companies for its 5G product supply. The Department of the Treasury has expressed concern about the “well-known” U.S. national security risks posed by Huawei and other Chinese telecommunications companies.28

### AT: iran fintech – 1nc

#### Their fintech uniqueness cards are about AI/5G BUT their internal link cards are about consumer-focused tech start-ups.

#### Iran can use fintech inevitably. US fintech can’t *take down the internet.*

#### Dollar decline inevitable.

Harrell and Rosenberg, 19 – Former Senior Fellows @ CNAS

(Peter E. Harrell and Elizabeth Rosenberg, Peter Harrell is a former adjunct senior fellow at the Center for a New American Security. He is a leading expert on U.S. economic statecraft, including sanctions, export controls, trade policy, and other geoeconomic tools. Elizabeth Rosenberg is a former Senior Fellow and Director of the Energy, Economics, and Security Program at the Center for a New American Security. In this capacity, she published and spoke on the national security and foreign policy implications of the use of sanctions and economic statecraft as well as energy market shifts. “Economic Dominance, Financial Technology, and the Future of U.S. Economic Coercion,” Center for a New American Security, 2019, pp.31-32, <http://files.cnas.org.s3.amazonaws.com/documents/CNAS-Report-Economic_Dominance-final.pdf>)//Neo

That said, there are at least some indications that the dollar will not necessarily maintain its present level of overwhelming dominance. Over the past several years, for example, there has been a modest but noticeable reduction in the share of global reserves denominated in dollars.90 Russia, fearing additional U.S. sanctions, led this shift, cutting the share of its reserves held in dollars by roughly half in 2018. And several countries have seen extremely rapid shifts in the nature of their domestic payment systems: India, for example, launched a new Unified Payments Interface (UPI) in 2016, and after less than three years, the network now processes more than 500 million transactions a month.91 China became the world leader in mobile payments, by a massive margin, in a period of just five years.92 As the number of Chinese mobile payments users increases in Chinese diaspora communities and among global customers of China, including those in the countries receiving China’s Belt and Road Initiative infrastructure investments, China’s global financial footprint will likely expand at the expense of other major financial systems and currencies. Moreover, although transitioning cross-border payment systems is a substantially more challenging task than modernizing domestic payment infrastructures, emerging financial technologies, such as blockchain-based clearing mechanisms, could potentially play a key role in simplifying one of the most challenging parts of developing a cross-border payment network: converting between currencies. As economist Barry Eichengreen has argued, financial technologies will probably reduce the contemporary barriers to a world where there are multiple international currencies, rather than one dominant one, and could enable a return to the type of multicurrency world that existed prior to the 20th century.93 The dollar could remain the largest currency block in such a multicurrency world, but alternatives could nonetheless reach a scale sufficient to enable targets of U.S. sanctions, such as Iran or North Korea, to continue economically significant quantities of trade with Asian countries while avoiding financial institutions that touch the U.S. financial system.

#### Iran can’t use bitcoin effectively.

Sexton and Sudetic, 21 – Director of Cyber Security Initiative @ Middle Easter Institute, Foreign Affairs Consultant @ Gulf State Analytics

(Michael Sexton and Brett Sudetic, Michael Sexton is a Fellow and Director of the Cybersecurity Initiative at the Middle East Institute. Brett Sudetic is a foreign affairs consultant and advisor to Gulf State Analytics, a Washington DC-based geopolitical risk consulting firm.1-22-2021, "Bitcoin: A dirty solution to Iran’s economic troubles?," Middle East Institute, https://www.mei.edu/publications/bitcoin-dirty-solution-irans-economic-troubles, 10-29-2021)//Neo

Bitcoin, despite its recent popularity, may not be as promising as some Iranians would hope. The cryptocurrency is seldom used or usable in everyday transactions, and its value is notoriously unstable. Volatility of the currency and uncertainty around government regulations have led many Investors and financial analysts - including legendary investor Warren Buffet - to assert that the cryptocurrency possesses no value and is likely to collapse at some point. Others fear that while cryptocurrencies are inherently designed to give people more freedom and privacy in conducting financial transactions, potential government regulations could hamper adoption of the cryptocurrency in the near future.

Iran’s embrace of bitcoin is also likely to attract greater scrutiny from anti-money laundering and counter-terrorism finance investigators. All bitcoin transactions are public, although the identities behind the transactions are hidden behind random (but static) numerical addresses. This means that, while the currency is attractive for terrorists, criminals, and other users who cannot rely on traditional banking, it can also be a treasure trove of intelligence for governments and even open-source researchers. The United States government has previously exposed the bitcoin addresses of sanctioned Iranians to clamp down on illicit transactions.

Bitcoin mining is not a solution to Iran’s economic troubles, but a symptom of them. To arrest the harm that this emerging industry is causing to Iran’s energy infrastructure and environment, Iran and the P5+1 will need to prepare Iran to gainfully participate in the global economy without relying on quixotic and problematic enterprises like cryptocurrency mining.

#### No Iran prolif----multiple checks

Mark Fitzpatrick 20. Associate Fellow at the International Institute for Strategic Studies. 1-17-2020. "Is Iran building the bomb?" The Article. https://www.thearticle.com/is-iran-building-the-bomb.

No, Iran has not restarted its nuclear weapons programme. Commentators such as the New York Times columnist Thomas Friedman blithely assume so, based on Iran’s decision on 5 January to retreat from the enrichment limits in the 2015 nuclear deal, known as the Joint Comprehensive Plan of Action (JCPOA). Others wrongly conclude that Tehran has abandoned the deal. Yet Iran is still keeping a foot in the accord, abiding by the crucial inspection requirements, while insisting it will resume full compliance if the US resumes its JCPOA obligations to loosen sanctions. What Iran has done is advance the timeline toward a nuclear weapons capability in line with its nuclear hedging strategy. How much so is a matter of conjecture among experts. Some say that if Iran decided to make an all-out dash for a bomb, and experienced no hiccups along the way — what its adversaries call a worst-case scenario — Iran could produce a bomb’s worth of highly enriched uranium (HEU) in as little as 4-5 months. But such assessments of the so-called break-out period are based on uncertain data and questionable assumptions. The Israeli Defense Force (IDF), which presumably has a clearer window into Iran’s program, assesses that Iran will be able to produce enough HEU by the end of the year and to assemble a weapon in less than two years. Alarming as this might sound, it is not significantly different than when the JCPOA went into effect in 2016. And it is a much better situation than when negotiations began in 2013, at which point the break-out period was judged to be only a couple of months. The IDF also assesses that Iran is currently not interested in developing an atomic bomb as quickly as possible. A key goal of Iran’s negotiating partners was to extend the break-out period to at least a year. The deal succeeded in doing so by eliminating 98 per cent of Iran’s stockpile of low-enriched uranium, all of its stockpile of 20 per cent enriched uranium, which is just below the threshold of being weapons-usable, and two-thirds of the centrifuges that do the enriching. Before those cuts, Iran’s stockpile was enough for up to ten weapons, if further enriched. Afterwards, it had less than a quarter of the feed stock for one bomb Now that Iran has removed restrictions, the stockpile of low-enriched uranium is growing, centrifuges are being reinstalled and more efficient centrifuges are being developed at a faster pace. We will know by how much each of these steps has advanced when the International Atomic Energy Agency (IAEA) releases its next quarterly report in the latter half of February. The enriched uranium feedstock will still be less than a bomb’s worth, but the pace of acceleration will be concerning. One question is whether Iran will resume 20 per cent enrichment, a level it first reached ten years ago, in an escalating stand-off with western states which were imposing ever-more biting sanctions. Today, Iran can again use the 20 per cent step as a bargaining chip in efforts to forestall the re-imposition of UN sanctions. Do not be spooked by the alarmist assessments that will surely follow when the next IAEA report comes out. Remember that worst-case assumptions assume that Iran would be able to get everything right the first time it attempts the tricky task of producing weapons-grade uranium without it exploding prematurely, and that assembling a warhead small enough to fit in the nosecone of Iran’s missiles would go like clockwork. Remember, too, that Iran would be [foolish] ~~suicidal~~ to try to rush to produce HEU at sites that are intrusively monitored.

### AT: china – 1nc

#### No China war – certainly not over economic competition.

Henry Bienen and Jeremiah Ostriker 21. Former James S McDonnell Distinguished University Professor and Dean of Woodrow Wilson School at Princeton University, former President of NU. Astrophysicist whose academic positions have been divided among Princeton University, Cambridge University and Columbia University. “How the United States can chart a new path that avoids war with China”. Bureau of Atomic Scientists. Feb 3 2021. <https://thebulletin.org/2021/02/how-the-united-states-can-chart-a-new-path-that-avoids-war-with-china/>

Relations between China and the United States have degenerated so far that some foreign policy experts now believe that war between the countries is possible. While this is a minority view, it is a dangerous one. In the past, a US-China war was often considered unlikely for reasons of mutual economic interdependence and nuclear deterrence, not to mention the huge costs of war. Moreover, it has been said, ideological conflict and regional and international striving for advantage are not reasons enough for war. But now more pessimistic voices are also being heard. Citing pre-World War I analogies, in which it was (quite inaccurately) said that economic interdependence among European powers made war impossible, and noting what Harvard University’s Graham Allison has called the “Thucydides Trap,” in which there is a drift towards war when an emerging power threatens to displace an existing leading power, some believe war between China and the United States is becoming more conceivable and even probable.

We are concerned with the current direction of US-China’s policies, but we believe that the pessimists both overstate the possibility of a US-China war and understate the consequences of possible armed conflict. The production of so-called “small” nuclear weapons is given as a reason for the possibility of war without massive destruction. Nuclear war among nuclear powers has not occurred since the spread of nuclear weapons precisely because destruction would be huge and ghastly. But even lower-yield nuclear weapons nonetheless are quite deadly; each has the destructive potential of thousands of WWII airplane bombs. We cannot tell how limited the use of such weapons would be in advance of armed conflict, and, since Chinese missiles can reach our shores, we do not know if such a conflict could be contained.

There are other reasons for thinking war between China and the United States not only should be but will be avoided. We have past experience to warn us. The United States and China fought in the Korean War when US forces pushed to the Yalu River on China’s border. We know how that turned out. We also note that the United States did not send a land army to North Vietnam after China warned that the first US troops in North Vietnam would be met by Chinese “volunteers.” Lesson learned.

What points of conflict does the United States have with China that could actually lead to war? We can find only one, and it has nothing to do with trade, economic competition, ideology, human rights violations by China, or struggle for relative power in Asia or elsewhere. Taiwan is the critical point of conflict. China asserts its historical right to Taiwan as an integral part of China. The United States is committed to the principle that Taiwan’s relationship with China cannot be changed by force. Thus, how much military assistance to give to Taiwan, if China uses blockades or applies military force, is a critical issue for US policy. How and in what way to defend Taiwan loom as large questions. To do nothing in the face of Chinese military threats would not only call into question US commitments everywhere but might well lead to nuclear proliferation in Asia. What lessons would Japan, the Republic of Korea, Australia, perhaps Vietnam and Indonesia take? Taiwan itself has the capacity to build nuclear weapons and could do so, if the United States made clear that it would not respond to threats against Taiwan.

We do not minimize the difficulty of the Taiwan issue. There needs to be both clarity and ambiguity in how the United States deals with Taiwan. The United States needs to make clear that if China uses force against Taiwan there will be severe consequences. But we cannot in advance specify the consequences. We do not think war with China is probable over Taiwan. But we admit to the difficulties of finding the right policies in this area. We propose the following: As Joseph Nye noted recently in the Wall Street Journal, in consultation with China, the Biden administration should review policies for accident avoidance, crisis management, and high-level communications. Military-to-military relations already exist, and we do not know the details of them. But we suspect that the Trump administration let lapse, or weakened, constant communications and accident-avoidance protocols. These must be maintained and strengthened.

Arms sales to Taiwan are sensitive. Our aim is to avoid an invasion of Taiwan, and thus sales of missiles and technologies for defensive purposes seem right. We must make clear that we would work to circumvent a blockade of Taiwan. But obviously, Taiwan is not Berlin during the Cold War, and airlifts would have limited utility. Thus, it is the avoidance of a blockade that must be worked toward. And here, we need allies and friends in Asia and beyond to support the position that such a blockade would be disastrous for China’s economy and trade worldwide.

We can find no other issues where war could plausibly arise between China and the United States. And we reassert that any armed conflict could lead to a global catastrophe. In a more positive vein, the United States should be finding new paths to both cooperate and compete with China. The demonization of China—as per Donald Trump’s “China virus” and Secretary of State Pompeo’s bellicose language—are misguided and counterproductive. The two countries need to cooperate on climate and environmental issues and on the pandemic and other health matters.

Decoupling the economies of the United States and China would be very difficult, very expensive, and very foolish, as the Trump administration found out. It continued to want to export agricultural goods to China, and where it imposed tariffs, they raised costs to US consumers and manufacturers. We need to challenge China over its trade policies, but the best way to do that is to strengthen the US domestic economy and invest in education and technology innovation and research. So much of our vaunted technological progress has come from government investment. We should renew our government support for advanced research and technology, rather than faulting the Chinese for imitating our past actions. For but one example, consider how the internet was developed in the 1970s.

## conduct adv

### AT: cyber internal – 1nc

#### Big Tech companies are driving increased cybersecurity now

Page 21 – Carly Page, writer at TechCrunch, “Big Tech pledges billions to bolster US cybersecurity defenses,” 8/26/21, https://techcrunch.com/2021/08/26/big-tech-pledges-billions-to-bolster-u-s-cybersecurity-defenses/

Tech giants Apple, Google and Microsoft have pledged billions to bolster U.S. cybersecurity following a meeting with President Joe Biden at the White House on Wednesday.

The meeting, which also included attendees from the financial and education sectors, was held following months of high-profile cyberattacks against critical infrastructure and several U.S. government agencies, along with a glaring cybersecurity skills gap; according to data from CyberSeek, there are currently almost 500,000 cybersecurity jobs across the U.S that remain unfilled.

“Most of our critical infrastructure is owned and operated by the private sector, and the federal government can’t meet this challenge alone,” Biden said at the start of the meeting. “I’ve invited you all here today because you have the power, the capacity and the responsibility, I believe, to raise the bar on cybersecurity.”

In order to help the U.S. in its fight against a growing number of cyberattacks, Big Tech pledged to invest billions of dollars to strengthen cybersecurity defenses and to train skilled cybersecurity workers.

Apple has vowed to work with its 9,000-plus suppliers in the U.S. to drive “mass adoption” of multi-factor authentication and security training, according to the White House, as well as to establish a new program to drive continuous security improvements throughout the technology supply chain.

Google said it will invest more than $10 billion over the next five years to expand zero-trust programs, help secure the software supply chain and enhance open-source security. The search and ads giant has also pledged to train 100,000 Americans in fields like IT support and data analytics, learning in-demand skills including data privacy and security.

“Robust cybersecurity ultimately depends on having the people to implement it,” said Kent Walker, Google’s global affairs chief. “That includes people with digital skills capable of designing and executing cybersecurity solutions, as well as promoting awareness of cybersecurity risks and protocols among the broader population.”

And, Microsoft said it’s committing $20 billion to integrate cybersecurity by design and deliver “advanced security solutions.” It also announced that it will immediately make available $150 million in technical services to help federal, state and local governments with upgrading security protection, and will expand partnerships with community colleges and nonprofits for cybersecurity training.

Other attendees included Amazon Web Services (AWS), Amazon’s cloud computing arm, and IBM. The former has said it will make its security awareness training available to the public and equip all AWS customers with hardware multi-factor authentication devices, while IBM said it will help to train more than 150,000 people in cybersecurity skills over the next five years.

#### The plan destroys cybersecurity – only digital monocultures have the money to invest in advanced cybersecurity tech

Longe 20 – Edward Longe, policy manager at the American Consumer Institute, “A Serious Casualty of Antitrust Legislation: Cybersecurity,” 9/24/20, https://www.theamericanconsumer.org/2020/09/a-serious-casualty-of-antitrust-legislation-cybersecurity/

When advocates of antitrust legislation discuss reigning in large technology companies such as Apple, Facebook, or Google, they often do not fully consider the implications more stringent antitrust legislation will have on cybersecurity and the protection of consumer data.

Proposals to break up large technology companies would be profoundly damaging to consumer privacy and cybersecurity as smaller technology companies and startups lack the resource capabilities of making substantial capital investments required to ensure consumer data is protected or deal with the newly emerging cyberthreats associated with new technology devices such as the Internet of Things (IoT).

Every year, Microsoft faces about 7 trillion cyberthreats, many of which are becoming increasingly sophisticated. To combat these cyberattacks, Microsoft invests “over $1 billion to cybersecurity” and recently created a dedicated Cyber Defense Operations Center that is staffed around the clock to ensure its consumer data is protected.

Microsoft is not the only major tech corporation to invest significant amounts into protecting its consumer data. In 2018, Apple reported it would invest $10 billion dollars over the next few years on new U.S. Data Centers that are responsible for ensuring the protection of consumer data. These data centers do not just hold the companies’ sophisticated cybersecurity technology, but also employ those who are responsible for monitoring emerging threats and ensure that the company can provide superior cybersecurity to its consumers.

Outside of this direct investment in cybersecurity and cybersecurity facilities, big tech companies like Facebook, Amazon, Google, Apple, invested approximately $2.5 billion dollars into supporting cybersecurity companies that develop products which protect everything from login credentials, credit card information and social security numbers.

Without the significant investment large technology companies make in protecting consumer data and deterring cybercrime, consumers would have significantly fewer protections. Some smaller technology companies simply do not have the sources to invest in sophisticated cybersecurity technology, leaving their data vulnerable to cyberattacks and crime. Breaking up the large technology companies would therefore weaken cybersecurity and increase the vulnerability of consumer data.

As communication technology becomes more advanced, significant investment in cybersecurity will also be needed to ensure it is protected. While IoT technology allows the interconnection various internet of computing devices (cameras, smart appliances, and smart home gadgets) and enables them to receive and send to your home computer and smartphone, they could be vulnerable to a number of threats. Mobile Network Mapping is one threat that home networks could face and is where “attackers can create maps of devices connected to a network, identify each device and link it to a specific person.”

To meet these and other cyberthreats, networks and network devices will require significant investment in security that will undoubtedly run into the billions of dollars and require collaboration between industry and government. Given the billions that will be required to protect against online threats, it is clear that currently larger tech companies will have the means to invest and meet the demands for cybersecurity.

The protection of consumer data and cybersecurity is undoubtedly one of the biggest challenges the technology industry faces and one that should be of paramount concern to every consumer. Within the realm of cybersecurity and protecting consumer data, it is apparent that limiting the size of technology companies on the false “Big is Bad” assumption could have significant repercussions that would leave consumers worse off and their important information more vulnerable.

### AT: cyber impact – 1nc

#### No catastrophic cyberattacks---25 years of empirics prove they stay low-level and non-escalatory.

Lewis 20---senior vice president and director of the Technology Policy Program at the Center for Strategic and International Studies). Lewis, James. 2020. “Dismissing Cyber Catastrophe.” Center for Strategic & International Studies. August 17, 2020. https://www.csis.org/analysis/dismissing-cyber-catastrophe.

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack. To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With man-made actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge. It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted. More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are: Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals. There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.) No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare. State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war. This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation. The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability. One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies. These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and experience shows that people compensate for damage and quickly repair or rebuild. This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1 This is a short overview of why catastrophe is unlikely. Several longer CSIS reports go into the reasons in some detail. Past performance may not necessarily predict the future, but after 25 years without a single catastrophic cyberattack, we should invoke the concept cautiously, if at all. Why then, it is raised so often? Some of the explanation for the emphasis on cyber catastrophe is hortatory. When the author of one of the first reports (in the 1990s) to sound the alarm over cyber catastrophe was asked later why he had warned of a cyber Pearl Harbor when it was clear this was not going to happen, his reply was that he hoped to scare people into action. "Catastrophe is nigh; we must act" was possibly a reasonable strategy 22 years ago, but no longer. The resilience of historical events to remain culturally significant must be taken into account for an objective assessment of cyber warfare, and this will require the United States to discard some hypothetical scenarios. The long experience of living under the shadow of nuclear annihilation still shapes American thinking and conditions the United States to expect extreme outcomes. American thinking is also shaped by the experience of 9/11, a wrenching attack that caught the United States by surprise. Fears of another 9/11 reinforce the memory of nuclear war in driving the catastrophe trope, but when applied to cyberattack, these scenarios do not track with operational requirements or the nature of opponent strategy and planning. The contours of cyber warfare are emerging, but they are not always what we discuss. Better policy will require greater objectivity.

### turn – beezcon – 1nc

#### The plan creates a chilling effect that crushes business confidence and investment

Hathout 21 – Ahmad Hathout, reporter focusing on the tech and telecommunications industries, citing a panel event hosted by the Institute for Policy Innovation, “Washington’s Antitrust Push Could Create ‘Chilling Effect’ on Startups, Observers Say,” 9/23/21, https://broadbandbreakfast.com/2021/09/washingtons-antitrust-push-could-create-chilling-effect-on-startups-observers-say/

WASHINGTON, September 23, 2021 – Advocates for less government encroachment on big technology companies are warning that antitrust is being weaponized for political ends that may end up placing a “chilling effect” on innovative businesses.

The Institute for Policy Innovation held a web event Wednesday to discuss antitrust and the modern economy. Panelists noted their concern that antitrust law may be welded with political aims that will ultimately create a precedent whereby the federal government will stifle innovators who get too big.

Jessica Melugin, the director of the Center for Technology and Innovation, said technology companies could see what’s happening in Washington – with lots of talk of breaking up companies deemed too big – and be uncertain of the future.

She noted that growing companies largely seek one of two things to make it big: grow to file an initial public offering, where the company’s shares are publicly traded, or wait until a large company buys you out. She said talk emanating from the White House and Washington generally about regulating the industry could deter larger companies from acquiring them, and onerous financial regulations could put a damper on IPO dreams.

“If you start robbing companies of other smaller companies they purchased, it’s going to give a lot of entrepreneurs and a lot of funders in Silicon Valley pause,” Melugin said. “If another path to success gets blocked – the IPO is now harder, and now acquisitions are a little bit questionable…that’s a chilling effect.”

President Joe Biden has made a number of appointments to key positions that is bringing more attention on Big Tech, including known Amazon critic Lina Khan to chair the Federal Trade Commission, which recently filed an amended case against Facebook for alleged anticompetitive practices. He also appointed antitrust expert and Google critic Jonathan Kanter as assistant attorney general in the Justice Department’s antitrust division.

FTC could set a bad precedent if focus is ‘big is bad’

Christopher Koopman, the executive director at the Center for Growth and Opportunity at Utah State University, said he’s concerned about the precedent Khan could set for big companies.

He said the odds are that once Khan starts, she will continue down “this path of ‘big is bad’ because that’s a prior that she has and she’s continued to operate on her entire professional career. It just so happens that the focus of this is on tech companies.

“We may be building a regulatory apparatus that will continue to burrow a hole right down the middle of the American economy before we even have a chance to ask if that’s really what we want,” Koopman added. “We just have to recognize that it doesn’t matter, really, who is running the FTC – once we tell the FTC to go break up big companies, they’re going to go break up big companies.”

#### Unpredictable shifts ruin biz con and overall growth

Cambon 21 – Sarah Chaney Cambon, reporter on The Wall Street Journal's Economics Team, “Capital-Spending Surge Further Lifts Economic Recovery”, 6/27/2021, https://www.wsj.com/articles/capital-spending-surge-further-lifts-economic-recovery-11624798800

Business investment is emerging as a powerful source of U.S. economic growth that will likely help sustain the recovery.

Companies are ramping up orders for computers, machinery and software as they grow more confident in the outlook.

Nonresidential fixed investment, a proxy for business spending, rose at a seasonally adjusted annual rate of 11.7% in the first quarter, led by growth in software and tech-equipment spending, according to the Commerce Department. Business investment also logged double-digit gains in the third and fourth quarters last year after falling during pandemic-related shutdowns. It is now higher than its pre-pandemic peak.

Orders for nondefense capital goods excluding aircraft, another measure for business investment, are near the highest levels for records tracing back to the 1990s, separate Commerce Department figures show.

“Business investment has really been an important engine powering the U.S. economic recovery,” said Robert Rosener, senior U.S. economist at Morgan Stanley. “In our outlook for the economy, it’s certainly one of the bright spots.”

Consumer spending, which accounts for about two-thirds of economic output, is driving the early stages of the recovery. Americans, flush with savings and government stimulus checks, are spending more on goods and services, which they shunned for much of the pandemic.

Robust capital investment will be key to ensuring that the recovery maintains strength after the spending boost from fiscal stimulus and business reopenings eventually fades, according to some economists.

Rising business investment helps fuel economic output. It also lifts worker productivity, or output per hour. That metric grew at a sluggish pace throughout the last economic expansion but is now showing signs of resurgence.

The recovery in business investment is shaping up to be much stronger than in the years following the 2007-09 recession. “The events especially in late ’08, early ’09 put a lot of businesses really close to the edge,” said Phil Suttle, founder of Suttle Economics. “I think a lot of them said, ‘We’ve just got to be really cautious for a long while.’”

Businesses appear to be less risk-averse now, he said.

After the financial crisis, businesses grew by adding workers, rather than investing in capital. Hiring was more attractive than capital spending because labor was abundant and relatively cheap. Now the supply of workers is tight. Companies are raising pay to lure employees. As a result, many firms have more incentive to grow by investing in capital.

Economists at Morgan Stanley predict that U.S. capital spending will rise to 116% of prerecession levels after three years. By comparison, investment took 10 years to reach those levels once the 2007-09 recession hit.

Company executives are increasingly confident in the economy’s trajectory. The Business Roundtable’s economic-outlook index—a composite of large companies’ plans for hiring and spending, as well as sales projections—increased by nine points in the second quarter to 116, just below 2018’s record high, according to a survey conducted between May 25 and June 9. In the second quarter, the share of companies planning to boost capital investment increased to 59% from 57% in the first.

“We’re seeing really strong reopening demand, and a lot of times capital investment follows that,” said Joe Song, senior U.S. economist at BofA Securities.

Mr. Song added that less uncertainty regarding trade tensions between the U.S. and China should further underpin business confidence and investment. “At the very least, businesses will understand the strategy that the Biden administration is trying to follow and will be able to plan around that,” he said.

### AT: growth impact – 1nc

#### SMEs are fine – have fully recovered from COVID.

Dane Stangler 10/13/21. Contributor. “State Of Small Business: What Recent Surveys Say At End Of 2021”. Forbes. Dec 13 2021. https://www.forbes.com/sites/danestangler/2021/12/13/state-of-small-business-what-recent-surveys-say-at-end-of-2021/?sh=7f60f7806c0b

Overall Sentiment: On One Hand, On the Other

First, the good news. In its Q3 report, released in October, Yelp found that “the vast majority [85%] of businesses that experienced a temporary closure during the pandemic have reopened.” In the most recent Small Business Pulse Survey data from the Census Bureau (now in Phase 7, through the first week of December), 36% of respondents expect recovery to take longer than six months. That is the best reading since July and far better than a year ago, when nearly half of small businesses saw prolonged recovery.

This improvement in small business outlook may reflect the banner day that many experienced two days after Thanksgiving, on what’s become known as Small Business Saturday. An American Express survey said consumer spending at small businesses hit an all-time high of $23.3 billion this year. That was an 18% increase from 2020. Over half (58%) of respondent shoppers said they bought something from a small business online. That was just 43% in 2019.

Fortified optimism among small businesses is also reflected in new business openings, the total number of which is higher through the first three quarters of 2021 than during the same time period in 2019, according to Yelp. Increases have been seen especially among hotels, nightlife (dance clubs, comedy clubs, lounges), and beauty services.

#### COVID and 08 disprove the impact.

#### Countries will exercise restraint.

Christina L. Davis & Krzysztof J. Pelc 17. \*Professor of Politics and International Affairs at Princeton. \*\*Associate Professor of Political Science at McGill University. “Cooperation in Hard Times: Self-restraint of Trade Protection.” *Journal of Conflict Resolution* 61(2): 398-429. Emory Libraries.

Conclusion Political economy theory would lead us to expect rising trade protection during hard times. Yet empirical evidence on this count has been mixed. Some studies find a correlation between poor macroeconomic conditions and protection, but the worst recession since the Great Depression has generated surprisingly moderate levels of protection. We explain this apparent contradiction. Our statistical findings show that under conditions of pervasive economic crisis at the international level, states exercise more restraint than they would when facing crisis alone. These results throw light on behavior not only during the crisis, but throughout the WTO period, from 1995 to the present. One concern may be that the restraint we observe during widespread crises is actually the result of a decrease in aggregate demand and that domestic pressure for import relief is lessened by the decline of world trade. By controlling for product-level imports, we show that the restraint on remedy use is not a byproduct of declining imports. We also take into account the ability of some countries to manipulate their currency and demonstrate that the relationship between crisis and trade protection holds independent of exchange rate policies. Government decisions to impose costs on their trade partners by taking advantage of their legal right to use flexibility measures are driven not only by the domestic situation but also by circumstances abroad. This can give rise to an individual incentive for strategic self-restraint toward trade partners in similar economic trouble. Under conditions of widespread crisis, government leaders fear the repercussions that their own use of trade protection may have on the behavior of trade partners at a time when they cannot afford the economic cost of a trade war. Institutions provide monitoring and a venue for leader interaction that facilitates coordination among states. Here the key function is to reinforce expectations that any move to protect industries will trigger similar moves in other countries. Such coordination often draws on shared historical analogies, such as the Smoot–Hawley lesson, which form a focal point to shape beliefs about appropriate state behavior. Much of the literature has focused on the more visible action of legal enforcement through dispute settlement, but this only captures part of the story. Our research suggests that tools of informal governance such as leader pledges, guidance from the Director General, trade policy reviews, and plenary meetings play a real role within the trade regime. In the absence of sufficiently stringent rules over flexibility measures, compliance alone is insufficient during a global economic crisis. These circumstances trigger informal mechanisms that complement legal rules to support cooperation. During widespread crisis, legal enforcement would be inadequate, and informal governance helps to bolster the system. Informal coordination is by nature difficult to observe, and we are unable to directly measure this process. Instead, we examine the variation in responses across crises of varying severity, within the context of the same formal setting of the WTO. Yet by focusing on discretionary tools of protection—trade remedies and tariff hikes within the bound rate—we can offer conclusions about how systemic crises shape country restraint independent of formal institutional constraints. Insofar as institutions are generating such restraint, we offer that it is by facilitating informal coordination, since all these instruments of trade protection fall within the letter of the law. Future research should explore trade policy at the micro level to identify which pathway is the most important for coordination. Research at a more macro-historical scope could compare how countries respond to crises under fundamentally different institutional contexts. In sum, the determinants of protection include economic downturns not only at home but also abroad. Rather than reinforcing pressure for protection, pervasive crisis in the global economy is shown to generate countervailing pressure for restraint in response to domestic crisis. In some cases, hard times bring more, not less, international cooperation.

# 2NC

#### No deficits – states cause federal follow-on, but the aff fails because it causes state backlash.

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]

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

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

#### All deficits to the counterplan are deficits to the plan – they require state AGs for enforcement.

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]

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

#### State backlash wrecks aff solvency. Amex proves differences are possible.

Grosso ’21 [Jacob; JD Candidate @ University of Richmond School of Law; “The Preemption of Collective State Antitrust Enforcement in Telecommunications,” *University of Richmond Law Review* 55(2), p. 615-656; AS]

While states may differ with respect to their enforcement policies, previous collective state action has led to several disagreements with federal enforcement decisions. In 1994, the DOJ and several states filed suit against Microsoft in the United States District Court for the District of Columbia, alleging violations of Sections 1 and 2 of the Sherman Act. 159 In the end, multiple states disagreed with the settlement forged by the federal enforcement agency.160 Nine states joined the DOJ settlement, while nine other states proposed substantially different remedies. 161 The dissenting states demanded concessions beyond the scope of the federal settlement, including forcing Microsoft to license significant intellectual property cheaply and to change the company's product offerings.16 2 Here, the states undercut a federally engineered settlement, resulting in delays to the suit and continued argument over the appropriate remedy.1 63 The undercutting of the Microsoft settlement is comparable to the T-Mobile-Sprint merger, where the DOJ and FCC negotiated for divestitures to ensure the national goals of both agencies were satisfied, but still faced pushback from a group of states. If the states and federal enforcers do not agree on the terms of a settlement, the states become a complication to the adjudication process. 164 The inability to rely upon a negotiated settlement agreement also creates uncertainty for merger parties.

In 2015, during the AT&T-Time Warner merger, twenty states investigated; none joined DOJ's action. 165 The DOJ had filed suit to block the vertical merger, alleging violations of Section 7 of the Clayton Act.166 Nine states filed amicus briefs opposing the DOJ's suit.167 The DOJ eventually lost the appeal, and the merger proceeded. 168 Instead of a national industry facing a unified enforcement front, the enforcement efforts became fragmented and contradictory. The divergence in enforcement policies showed the competing interests at issue for each enforcer. This split is also apparent in the divergence between the states opposing the T-MobileSprint merger and the DOJ, FCC, and states supporting it.

In an action against American Express in the Second Circuit, the DOJ-the original lead plaintiff-resorted to opposing an appeal by its co-plaintiff states. 169 The DOJ and a group of states had filed suit in 2010 in the Eastern District of New York alleging violations of Section 1 of the Sherman Act. 170 Following a Second Circuit decision against the DOJ and plaintiff states, the DOJ maintained the Second Circuit opinion was incorrect but filed a brief in opposition to the states' petition for a writ of certiorari. 171 The DOJ advocated for further "percolation in the lower courts," arguing that conflict between the lower courts on the issue was necessary before the Supreme Court should resolve the issue. 172 The plaintiff states maintained their writ for certiorari, and eventually lost in the Supreme Court. 173 The three aforementioned splits in enforcement choices show that the divergence between state and federal enforcement leads to uncertain outcomes, decreases the effectiveness of settlements, and prevents nonenforcement policies that may serve a broader goal.

#### No preemption or dormant Commerce Clause challenges.

Brinkerhoff ’17 [John; JD Candidate @ Yale Law School; “Ropes of Sand: State Antitrust Statutes Bound by Their Original Scope,” *Yale Journal on Regulation* 34(1), p. 353-390; AS]

Federal law is of little assistance in this debate, as national antitrust laws do not preempt the antitrust efforts of states in any substantive way.2 ' Modem dormant Commerce Clause jurisprudence is equally unavailing. It will only invalidate nondiscriminatory state statutes if their burden on interstate commerce is "clearly excessive" in relation to their intrastate benefits. 2 2 Consequently, court holdings that curtail state antitrust enforcement via the dormant Commerce Clause are extremely rare.23 When this highly deferential standard is compared to the diverse interstate constraints contemplated by state courts, the potentially massive effect of the current debate over these statutes' original scope is clear: a court's interpretation of the issue can effectively determine if a statute has no application in modem commerce or a very robust operation.24 Indeed, this debate is decisive as to where a state statute will fall between these two points.

The lack of uniformity among modern courts is not surprising. Legislative histories for these statutes are largely nonexistent; 25 the Supreme Court's dormant Commerce Clause jurisprudence around the turn of the twentieth century was convoluted; 26 and litigants rarely challenged these statutes on dormant Commerce Clause grounds before the 1980s, limiting the early judicial record.27 While general analyses of the historical boundaries of state antitrust statutes exist,28 scholars typically do not employ historical examination as a lens for understanding the modern scope of these laws. Instead, most scholarship is content to note that turn-of-the-twentieth-century dormant Commerce Clause jurisprudence was so different from the constitutional constraints of today that an examination of original scope is unhelpful for determining modern jurisdiction.29 While such conclusions may be useful in pressing the case for broader state enforcement, they are irrelevant for states that must divine original scope.

#### No impact to overdeterrence.

HLR ’20 [Harvard Law Review; “Antitrust Federalism, Preemption, and Judge-Made Law,” *Harvard Law Review* 133(8), p. 2557-2578; AS]

Like the patchwork regime critique, the overdeterrence critique is weakened if the federal regime has failed to achieve proper balancing. Many antitrust regimes around the globe adopt different balances than the United States does. The European Union, for example, differs from the United States on remedial structure, the standard for illegal unilateral conduct, and market definition, among other issues. 68 Moreover, many scholars argue that the U.S. antitrust balance is off and that more enforcement is needed.6 9 Even if U.S. antitrust policies are getting the balance generally right, it is unlikely that the federal regime is so finely tuned that any added deterrence will destroy the balance.

#### No uniformity deficits – multistate task forces 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]

Coordination among state antitrust enforcers

State attorneys general often coordinate their investigation and prosecution of antitrust matters with their counterparts in other states. To help ensure that these coordinated efforts are conducted in an efficient and effective manner, the NAAG has created an Antitrust Committee, which ‘is responsible for all matters relating to antitrust policy’. This committee is comprised of five state attorneys general and is responsible for promoting effective state antitrust enforcement by developing the NAAG’s antitrust policy positions and by facilitating communications among state enforcers regarding investigations, litigation, legislative matters and competition advocacy initiatives, among other things.

In 1983, the NAAG established a Multistate Antitrust Task Force that is ‘comprised of state staff attorneys responsible for antitrust enforcement in their states’. This task force ‘recommends policy and other matters for consideration by the Antitrust Committee, organizes training seminars and conferences, and coordinates multistate investigations and litigation’. The task force is chaired by a person appointed by the head of the NAAG’s Antitrust Committee and has a representative from each NAAG member state. The chair of the task force serves as ‘the principal spokesperson for the states on antitrust enforcement’.

The NAAG’s Multistate Antitrust Task Force does not handle actual investigations or litigation. Instead, such coordination usually occurs through working groups established by the states involved in an investigation or litigation. In most multistate investigations, the working group will designate a state responsible for leading the investigation. The lead state is often a state that has the most relevant experience and can dedicate the appropriate level of resources to the investigation, and has a sufficient interest in ensuring that the investigation is handled in an effective and efficient manner (i.e., the transaction or business practice in question could potentially impact a significant number of consumers or commerce within its state). (If an investigation is sufficiently large or complex, such as a mega-merger involving numerous markets, the states may create an executive committee that oversees the working group as well as designate multiple lead states.)

#### Collective action solves uniformity issues.

Grosso ’21 [Jacob; JD Candidate @ University of Richmond School of Law; “The Preemption of Collective State Antitrust Enforcement in Telecommunications,” *University of Richmond Law Review* 55(2), p. 615-656; AS]

II. PRIOR DIVERGENCES BETWEEN STATE AND FEDERAL ENFORCERS

Despite the recent significant overlap between state and federal enforcement actions, the two levels of government generally have different areas of expertise for antitrust. The current antitrust system is multilayered with different domains, enforcement abilities, and motives. The degree of federal enforcement has risen and fallen based upon different executive administrative goals. 144 Recent state action reflects the established trend of state involvement increasing in times of more lax federal enforcement.145

State and federal enforcers vary in organization and purpose. The primary federal antitrust enforcers, the DOJ and FTC, generally divide sectors of the economy based on their enforcement history. The DOJ is a federal law enforcement agency with a greater range of remedies than is enjoyed by the FTC, including criminal prosecution. 146 The FTC is a bipartisan group with the dual missions of promoting competition and protecting consumers, and may target more extensive ranges of behavior by enforcing the Federal Trade Commission Act against "unfair competition." 14 7 The states' domain is consumer protection of their citizens. States are not limited to suing under federal law and may bring actions available to them under their respective state's law. 148 Even with application of the same law, there are many different logistical considerations, such as limited staff and resources devoted to antitrust. These logistical difficulties cause most multistate actions to be led by larger states, with smaller states only contributing their limited sized antitrust sections as support.149 Another significant difference between the enforcers is that state enforcers are generally elected officials while federal enforcers are appointed officials. 150 As elected officials, States' Attorneys General are representing their constituents and will enforce antitrust in a manner that best benefits those constituents.

State action is continuing to rise, with collective action becoming a cemented enforcement strategy. 151 The National Association of Attorneys General ("NAAG") serves to help organize disparate state enforcers and gives them a forum to discuss enforcement policies and cooperation. 15 2 The NAAG emulates a federal agency in geographic breadth of enforcement but is comprised of individual states and their elected officials (the States' Attorneys General).1 53 It achieves its influence through standing committees and task forces, including its Multistate Antitrust Task Force. 154

#### No preemption.

Rauch ’20 [Daniel; JD @ Yale Law School; “Sherman's Missing Supplement: Prosecutorial Capacity, Agency Incentives, and the False Dawn of Antitrust Federalism”; *Cleveland State Law Review* 68(2), p. 172-216; AS]

C. Federal Government "Displacement"?

A third argument, sometimes suggested but rarely precisely elaborated, is that federal antitrust law somehow "displaced" state enforcement. On this account, once state officials saw that the federal government had enacted the Sherman Act, they decided to stop enforcing their own statutes in response. Describing this approach, Werner Troesken writes:

The work of Gabriel Kolko suggests another way the trusts might have perceived a federal antitrust law as beneficial. According to Kolko, businesses of all kinds - railroads, banks, insurance companies, and so on - lobbied for increased federal regulation and control because they believed it would forestall more hostile forms of regulation taking place at the state and local level.1 10

On this reading, as one commenter asserted, the Sherman Act's passage, in and of itself, "sounded the death knell for state enforcement efforts.""

Such appeals to an ill-defined federal "displacement" of state law leave much to be filled in. It is possible the "displacement" they refer to is the formal displacement of federal preemption. If so, then the doctrinal arguments outlined earlier would seem to conclusively dispose of this. Yet in any case, once again, the data do not support such an interpretation, since if the federal government had broadly "displaced" state prosecutions, one would not expect to find so much of it in the "high enforcement" states. And, if the Sherman Act really was supposed to "displace" state antitrust laws, it proved an unambiguous failure, as a host of states adopted new antitrust laws or strengthening old ones in the decade following the Act's passage. 1 12

#### No preemption in antitrust.

HLR ’20 [Harvard Law Review; “Antitrust Federalism, Preemption, and Judge-Made Law,” *Harvard Law Review* 133(8), p. 2557-2578; AS]

Even when it is not a constitutional hurdle, federalism is still a relevant constitutional value. The Framers embraced federalism for its policy virtues,11 and contemporary judges and scholars laud federalism for its modern-day policy perks. 1 2 The Supreme Court often invokes federalism in the form of a presumption that Congress does not lightly intrude on state sovereignty.13 One example is the Court's presumption against preemption: a party alleging federal preemption of state law faces a judicial presumption that Congress did not intend to make that choice.14 That presumption is validated by Congress's choice to refrain from preempting state law in the antitrust arena: state and federal antitrust laws have coexisted since the federal government's first steps into the arena in 1890.15

#### Literature – states vs. the fed is the core controversy.

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]

Given that companies will increasingly have to engage with state attorneys general in a meaningful manner with respect to antitrust matters, this chapter discusses key issues related to state antitrust enforcement in the United States. Specifically, this chapter discusses:

* the federal and state antitrust laws under which state enforcers operate;
* the processes through which state enforcers coordinate with each other and their federal counterparts;
* the opportunity for coordination and conflict between state enforcers and private counsel during litigation;
* strategic and practical considerations when engaging with state attorneys general; and
* certain noteworthy enforcement actions that state enforcers have recently prosecuted.

## ADV 1

#### FTC rulemaking leads to overbroad, inflexible rules that create a general chilling effect

Abbott 21 – Alden Abbott, Senior Research Fellow focusing on anti-trust issues at the Mercatus Center, “FTC Competition Rulemaking Flunks a Cost-Benefit Test,” 6/29/21, https://truthonthemarket.com/2021/06/29/ftc-competition-rulemaking-flunks-a-cost-benefit-test/

In addition to legal risks, any cost-benefit appraisal of FTC competition rulemaking should consider the economic policy concerns raised by competition rulemaking. These fall into two broad categories.

First, competition rules would generate higher error costs than adjudications. Adjudications cabin error costs by allowing for case-specific analysis of likely competitive harms and procompetitive benefits. In contrast, competition rules inherently would be overbroad and would suffer from a very high rate of false positives. By characterizing certain practices as inherently anticompetitive without allowing for consideration of case-specific facts bearing on actual competitive effects, findings of rule violations inevitably would condemn some (perhaps many) efficient arrangements.

Second, competition rules would undermine the rule of law and thereby reduce economic welfare. FTC-only competition rules could lead to disparate legal treatment of a firm’s business practices, depending upon whether the FTC or the U.S. Justice Department was the investigating agency. Also, economic efficiency gains could be lost due to the chilling of aggressive efficiency-seeking business arrangements in those sectors subject to rules.

Conclusion

A combination of legal risks and economic policy harms strongly counsels against the FTC’s promulgation of substantive competition rules.

First, litigation issues would consume FTC resources and add to the costly delays inherent in developing competition rules in the first place. The compounding of separate serious litigation risks suggests a significant probability that costs would be incurred in support of rules that ultimately would fail to be applied.

Second, even assuming competition rules were to be upheld, their application would raise serious economic policy questions. The inherent inflexibility of rule-based norms is ill-suited to deal with dynamic evolving market conditions, compared with matter-specific antitrust litigation that flexibly applies the latest economic thinking to particular circumstances. New competition rules would also exacerbate costly policy inconsistencies stemming from the existence of dual federal antitrust enforcement agencies, the FTC and the Justice Department.

#### The plan creates an abrupt shift and doctrinal instability in platform regulation that wrecks the tech sector

Dr. William Rogerson 20, Charles E. and Emma H. Morrison Professor of Economics at Northwestern University, Ph.D. in Social Sciences from the California Institute of Technology, and Dr. Howard Shelanski, Ph.D. in Economics from University of California, Berkeley, Professor of Law at Georgetown University and Partner at Davis Polk & Wardwell LLP, JD from the UC Berkeley School of Law, BA from Haverford College, Former Clerk for Judge Stephen F. Williams of the U.S. Court of Appeals for the D.C. Circuit and Justice Antonin Scalia of the United States Supreme Court, Former Administrator of the White House Office of Information and Regulatory Affairs and Director of the Bureau of Economics at the Federal Trade Commission, Former Chief Economist of the Federal Communications Commission and Senior Economist for the President’s Council of Economic Advisers at the White House, “Antitrust Enforcement, Regulation, and Digital Platforms”, University of Pennsylvania Law Review, 168 U. Pa. L. Rev. 1911, June 2020, Lexis

I. GOING BEYOND ADJUDICATION FOR ANTITRUST ENFORCEMENT

Antitrust statutes are primarily enforced in court, usually through the adjudication of specific cases or settlement against the backdrop of court-made antitrust doctrine. Indeed, despite statutory authority for the FTC to issue competition rules, and despite the technical complexity of many antitrust cases, antitrust enforcement and policy in the United States has evolved primarily through precedent developed by generalist courts, not specialized agencies. 18To be sure, the Department of Justice and the FTC influence policy through the investigations they pursue and the consent decrees they reach with parties. The FTC itself adjudicates some cases, although it does so largely according to law developed in the federal courts, to which parties can appeal any FTC decision. 19Academics and other commentators have also affected the evolution of antitrust in the United States, from supporting an economic, notably price-focused framework for U.S. competition policy to sparking a rethinking of that framework in contemporary debates. As the courts have absorbed such learning, antitrust doctrine has evolved over the decades through the push and pull of precedent across the United States judicial circuits, with the Supreme Court periodically stepping in to correct, clarify, or resolve differences among the lower federal courts. Commentators often cite antitrust as a rare example of "federal common law" in the U.S. system. 20

The adjudicatory model for implementing antitrust enforcement has several key attributes, which in turn have both advantages and disadvantages. We put aside for now the question of who is adjudicating--whether it be an expert tribunal or a court of general jurisdiction, for example--and focus on three characteristics of antitrust adjudication itself.

A. Case-by-Case, Fact-Specific Approach

Complexity of underlying issues aside, adjudication is well suited to settings in which applicability of the law is contingent on case-specific facts. With the exception of the limited conduct that the antitrust laws prohibit per se, courts review most business activities through a rule of reason, under which some conduct that is illegal in one set of circumstances is allowable in [\*1918] another. 21The inquiry into liability goes beyond whether particular conduct in fact occurred (which is the extent of the inquiry into conduct that is illegal per se) and extends into a balancing of the conduct's likely effects on competition. 22The more that liability is contingent on such case-specific facts, the more difficult it is to determine liability in advance of the conduct's having taken place. Adjudication typically occurs when conduct either is imminent or has already occurred, at which point the relevant facts as to the effects of the conduct are, in principle, more readily measured. 23Such "ex post" mechanisms of enforcement can reduce the risk of over-enforcement when compared to alternative approaches, like some forms of regulation, that spell out more comprehensively in advance what conduct is illegal. 24Reducing false positives, however, may or may not be a virtue--that calculation depends on the extent to which particular adjudicative institutions and processes under-enforce by allowing harmful conduct or transactions to slip through the liability screen.

B. Slow, Usually Predictable Doctrinal Development

A second attribute of the American adjudicatory process for antitrust is stability. While antitrust doctrine has occasionally swerved abruptly over the past century, the common-law process through which antitrust law has developed usually provides clear notice that a change is coming. As a recent example, the Supreme Court's shift in *Leegin Creative Leather Products, Inc. v. PSKS. Inc*. 25from per se liability to a rule of reason for resale price maintenance likely caught few observers by surprise. 26

Antitrust adjudication's stability, like its suitability for fact-dependent situations, is potentially double-edged. Antitrust jurisprudence can be slow to adjust to changes in economic learning or changes in the underlying economy that alter the effects of a particular kind of business conduct. For [\*1919] example, nearly thirty years ago the Supreme Court in Brooke Group v. Brown & Williamson Tobacco Corp. 27required that plaintiffs claiming predatory pricing show not only prices below some measure of incremental cost, but also that the defendant could recoup its losses. 28No plaintiff has prevailed in a predatory pricing case in a U.S. federal court since. 29That outcome might not be of concern were it the case that the Supreme Court's test accurately captures the incidence of predatory pricing. 30Economic research demonstrates, however, that predatory conduct does occur and does not depend on either below-cost pricing or recoupment. 31Predation is just one area in which court-made doctrine appears out of step with relevant economic facts and knowledge. To be sure, other forces could accelerate the common-law process of doctrinal development. For example, Congress could legislate changes to the scope, presumptions, and other parameters of antitrust law in ways that would immediately alter precedent and bind the courts going forward. 32 In practice, however, such intervention is rare and unlikely, making significant lags in doctrine a reality of antitrust adjudication in the courts.

C. Market-Driven Case Selection

In the United States, most adjudicative bodies do not select the cases that come before them. To be sure, courts have jurisdictional limitations that prevent them from hearing certain kinds of cases, and doctrines exist that allow courts to reject weak or poorly conceived complaints. Beyond those mechanisms, however, independent parties decide when and whether to pursue litigation as method of relief. One potential virtue of this separation between decisionmaking and case selection is that the market can drive the focus of judicial attention. Assuming the most widespread and most troublesome anticompetitive conduct will receive the greatest investment of litigation resources, that conduct will in turn receive the most adjudication and doctrinal development.

[\*1920] Unfortunately, the separation between adjudication and case selection will not necessarily lead to an efficient match between judicial attention and the most pressing antitrust violations. In practice, even conduct that is clearly prohibited can persist when offenders think detection is difficult; one only has to look at the consistently high number of civil and criminal price fixing cases that wind up in court, even though that conduct has clearly been illegal per se for nearly a century. 33The most widespread anticompetitive conduct might not therefore be the conduct most in need of doctrinal development--it can be just the opposite, as the persistence of cartels demonstrates. 34Moreover, if the courts develop doctrine that needs revisiting, but that deters the government or private plaintiffs from filing cases, 35then the market for judicial attention to antitrust conduct will not work well dynamically; once doctrine is settled, there may be no mechanism outside of legislation or regulatory intervention to drive doctrinal change. We return to this issue below.

D. Generalists versus Industry Experts

Returning to an issue we put aside earlier, who is doing the adjudication can matter for substantive outcomes. In U.S. antitrust law, that adjudication has occurred, at least ultimately, in generalist federal courts. That institutional locus might well make sense given the wide variety of conduct, industries, and factual circumstances that antitrust cases present. However, as specific industries come to pose particular challenges for antitrust enforcement, the case for more specialized enforcement decisionmakers becomes stronger. Traditionally, where detailed, industry-specific knowledge is required to make sound competition policy decisions, Congress has assigned authority over those decisions, at least in part, to industry-specific regulatory agencies. Thus, the Securities and Exchange Commission has authority over competitive conduct in key financial sectors. 36The FCC has parallel authority with the Department of Justice (DOJ) over telecommunications mergers and sole authority to establish terms for competitive entry into various telecommunications markets. 37State [\*1921] regulators govern entry into hospital markets through Certifications of Public Need. 38The federal courts have increasingly safeguarded the domain of industry specific regulators over competition issues even when agency decisions might be in tension with antitrust law. 39

As antitrust enforcement focuses on distinct challenges posed by a particular industry, whether digital platforms, pharmaceuticals, or something else, expert and specialized knowledge becomes even more essential to making good enforcement decisions. Under current law and enforcement frameworks, there is no systematic way to bring such specialization into the ultimate adjudication of antitrust cases in industries not already covered by specific, competition-related, regulatory statutes. To be sure, the FTC and DOJ have divisions that specialize in various industrial sectors in which they have considerable expertise. Those divisions bring that expertise into their review of conduct and transactions, but neither the FTC nor DOJ has ultimate adjudicative authority over the cases they choose to litigate. The DOJ must go to federal court to seek enforcement. The FTC can opt for an administrative enforcement mechanism with the Commission itself sitting in appellate review of initial adjudication by an administrative law judge. The Commission's decision is, however, subject to review by federal appellate courts, which have not hesitated to reverse the agency's decisions. 40 The result is that, even when agencies have brought specific industry expertise into antitrust enforcement, doctrinal application and resolution still proceeds through the common-law process of adjudication by generalist judges.

E. Tradeoffs Inherent in the Adjudicatory Approach to Antitrust

As the foregoing discussion suggests, the ex post case-by-case approach, slow doctrinal evolution, and case selection mechanism of antitrust adjudication have potential advantages and disadvantages. The tradeoffs become particularly clear through the interaction of those three characteristics.

[\*1922] Adjudication may mitigate the rate of false positives or false negatives obtained through enforcement, as proceeding case-by-case is less likely to bring about those results than are general rules that impose limits on business conduct in advance, regardless of specific circumstances. Broad ex ante specifications could prohibit beneficial or harmless conduct, and narrow ex ante specifications could fail to prevent anticompetitive practices. As a decisionmaking process moves from strict ex ante prescription to pure case-by-case adjudication, particular facts and circumstances increasingly predominate over generic categorization of conduct. 41In principle, the movement along that spectrum enables the decisionmaker to avoid under-inclusiveness or over-inclusiveness of categorical rules. 42

The extent to which an adjudicator actually succeeds in reducing enforcement errors in either direction depends on the doctrine and precedent through which it evaluates the case-specific evidence. Doctrine and precedent will determine how a court allocates burdens, prioritizes facts, and weighs presumptions in evaluating the legality of conduct. If precedent provides mistaken guidance on those factors, case-specific adjudication might do no better a job than ex ante prohibitions in avoiding errors or bias toward either under or over-enforcement. For this reason, the evolutionary pace of doctrinal development through antitrust adjudication is very important. Where that evolution has been toward convergence with state-of-the-art analysis and evidence as to the effects of conduct, doctrinal stability is a virtue. Reasonable people disagree over the Supreme Court's movement from per se illegality to rule of reason treatment of vertical price restraints, as Justice Breyer's dissent in Leegin demonstrates. 43 The decision in that case nonetheless drew on a body of legal and economic analysis that, over decades, had continually narrowed the application of per se rules to vertical conduct and led logically (even if some might argue incorrectly) to the majority's conclusion. 44Many commentators might therefore say Leegin is a good example of where the evolution of doctrine through adjudication worked well: stakeholders had notice and the doctrine moved in an internally consistent direction. While it is debatable whether the per se rule against restraints on [\*1923] intra-brand competition has in recent years led to over-enforcement, there is a good case that it had done so in the past, 45so that the doctrine plausibly moved in an error-reducing direction.

However, where doctrine gets on the wrong track, the application of precedent will perpetuate rather than reduce enforcement errors. In the case of predation, for example, there is a good argument that, in the light of current economic knowledge, the Brooke Group decision has led to underenforcement. 46The potential case-by-case advantages of adjudication are lost where judicial precedent renders important facts and circumstances irrelevant. In such cases, the relatively slow process of doctrinal correction through common law evolution is harmful to sound antitrust enforcement.

The discussion above shows that the error-reducing potential of a case-by-case, adjudicatory approach to antitrust enforcement depends heavily on the actual doctrine courts apply and on the process by which that doctrine evolves. Similarly, whether case selection in an adjudicatory approach in fact directs judicial attention to the conduct that most warrants oversight depends on existing doctrine and precedent. It may well be that the conduct doing the most harm is also the conduct for which the courts impose the highest burdens of proof on plaintiffs. The deterrent effect of those burdens likely leads to fewer cases than the conduct's actual effects warrant. 47Similarly, doctrine that too readily imposes liability could have the opposite effect: lower barriers for plaintiffs would lead to too many cases and more devotion of judicial resources than the conduct deserves. 48Like error-reduction, the distribution of antitrust cases brought for adjudication depends heavily on the state of the doctrine and on the ability of the common law process to correct course where necessary.

The potential disadvantages of antitrust adjudication by generalist courts raise the question of whether a different approach might be preferable, specifically with regard to digital platforms. Digital platforms present relatively novel challenges. Considering the tenuous fit between some [\*1924] potential theories of harm and current antitrust doctrine, the complexity of the underlying technical issues in antitrust cases, and the interrelatedness of those issues and adjacent policy goals, a more informed, comprehensive approach coordinated by an expert regulatory agency might foster more advantages than does the exclusive resort to traditional antitrust adjudication. However, before we turn to the form such regulation might take, we briefly identify some general principles for such regulation.

#### Innovation is frothy, monopolies don’t prevent startups, AND startups are irrelevant.

Atkinson ’18 [Robert and Michael Lind; March 30; PhD from the University of North Carolina; professor of practice at the Lyndon B. Johnson School of Public Affairs at the University of Texas, JD from the University of Texas Law School, International Relations MA from Yale University; Big is Beautiful: Debunking the Myth of Small Business, “Understanding US Firm Size and Dynamics,” Ch. 3]

Why Did Startups Decline?

So why have the Justin and Ashley startups declined? The “business startup sky is falling” narrative implies that if we get more new businesses, the economy will grow faster. But what if the economy’s performance has affected the rate of new business formation, rather than the other way around? A Federal Reserve Bank of Cleveland study finds that the rate of aggregate demand, largely after the Great Recession, influences firm startup rates. The authors write: “We find that cyclical factors have contributed to recent low levels of self-employment. … Decreasing demand leads to an increase in exit from entrepreneurship but has countervailing effects on entry.”38

In other words, slower economic growth has reduced the opportunities for new firms. We see this in the fact that the twenty metro areas with the highest rates of new firm formation were all in faster-growing “Sunbelt” states while the twenty with the lowest rates were all in slower-growing “rust belt” states.39 As the US economy over the last three decades has come to more resemble the rust belt than the Sunbelt, it shouldn’t come as a surprise that there are fewer new firms.

But slower US growth is not the only factor. To understand the decline, it’s important to look at startups by industry. When you do that it becomes evident that not all industries have seen declines. While almost 100,000 fewer new firms formed in 2011 than in 2003, in about 40 percent of 290 industries more firms formed in 2011 than in 2003. For example, mining startups increased 30 percent, largely because of the oil and gas shale boom. Educational services startups increased 11 percent as new technology offered new market opportunities. Startup rates in professional, scientific, and technical services; information (e.g., software, telecom, broadcasting); and health care and social assistance industries remained unchanged.

Moreover, some industries that saw declines were ones that felt the impacts of the global recession particularly acutely. The collapse of the construction industry after the housing bust meant that construction startups fell 26 percent and real estate and rental and leasing fell 13 percent. Why start a new construction firm when home building is in tank? Similarly, with the financial crises and the bankruptcy of multiple financial services firms, why start a new firm in the financial services industry, where startups fell 29 percent?

And in some industries where the rate of startups did fall, concentration ratios actually fell or were stable, suggesting that excessive market power favored by antimonopolist narratives was not the cause. For example, in “other services,” startups fell by 24 percent, but the C4 and C8 ratios (the share of sales in industry by the top four and top eight firms, respectively) fell 1 percent. In the wholesale trade and arts, entertainment, and recreation industries, startups declined 16 percent and 14 percent, respectively, but C4 and C8 concentration ratios were unchanged.

In manufacturing, where new firm formation was down 20 percent from 2003 to 2011, the decline was not due to big manufacturers taking market share and crushing the new guy, as evidenced by the average C4 and C8 concentration ratios in manufacturing increasing by less than one percentage point. The most likely reason manufacturing startups fell is because stiff international competition from nations such as China, much of it unfair and based on mercantilist policies such as currency manipulation, intellectual property theft, and government subsidies, made it hard for budding US entrepreneurs to break in.40 Why start a manufacturing firm if you are likely to face predatory competition not from big US firms but from Chinese competitors backed by their state? Unfair foreign competition, coupled with the absence of a national US competitiveness policy, is a major reason why inflation-adjusted US manufacturing output fell more than 10 percent in the 2000s, with over 65,000 manufacturing establishments closing their doors.41 And when output is falling, that is hardly a good time to start a new manufacturing firm.

Between 2000 and 2014 (China joined the World Trade Organization in 2000), the number of small manufacturing establishments (one to four workers) in the United States fell by 14 percent, while the number of large establishments (1,000+ workers) fell by 42 percent. One reason for the difference was the slow movement of smaller firms into the large size class. In 1980, 110 establishments with more than 1,000 workers were three years old or less. That figure fell every decade, to just eighteen establishments by 2014, a decline of 84 percent. In contrast, the growth of younger small establishments fell between 52 and 62 percent. At the firm level, the share of manufacturing workers employed by firms employing 5,000 or more workers fell from 46 percent in 1977 to just 15 percent in 2005.42

Notwithstanding the stiff headwind from competition, a few manufacturing sectors saw an increase in new firm formation, but these sectors were mostly ones that produced products less subject to import competition. For example, bakery and tortilla manufacturing startups expanded by 17 percent, “other food manufacturing” by 14 percent, and beverage manufacturing by 74 percent (in part because of the expansion of craft beer and healthy drink products such as Honest Tea).43 But if the antimonopoly story is right and decreased competition was the cause of fewer startups, we should have seen declining new firm formation in the beverage industry since the C4 and C8 concentration levels increased by ten percentage points over the last decade.

To be sure, the assertion that larger firms are crowding out startups is valid in some sectors. The fact that technology has enabled larger and more efficient firms in many nonmanufacturing sectors means there are fewer opportunities for small and new firms. This is why David Audretsch has argued, “The likelihood of new-firm survival should be lower in industries exhibiting greater scale economies.”44 This is not about predation but about space for new firms in any particular industry.

We see this trend in some industries, especially retail trade. Retail industry startups fell 16 percent from 2003 to 2011, but not because large firms abused their market power to kill startups. Rather, technologies such as software-enabled logistics systems and web-based e-commerce enabled the average retail firm to get larger, meaning there was less market space for startups unless they had something truly unique to offer or local convenience.

For example, it was once not too hard to open a book or music store. When one of us was younger, he used to take a trip after school to the local record store, Pauls (owned by Paul), to sample the latest 45s. Now we get our music from iTunes and Pandora. This is why book and music store startups fell 58 percent from 2003 to 2011, while the total number of establishments shrank by one-third.45 At the same time, the market share of the largest four firms increased from 48 percent to 66 percent. But these changes came about because of technology and efficiency, not predation. Large specialty bookstores such as Barnes & Noble, and then later in the decade online retailers such as Amazon.com, and the rise of e-book sellers such as Apple’s iTunes store and Amazon’s Kindle, meant that more people bought books and music at large brick-and-mortar stores and at online stores because they could save money and have a wider choice of products.

We have seen the same dynamic with hardware stores. Forty years ago someone who was good with tools might think of opening a hardware store. Today they would likely think twice about doing so since big box stores such as Home Depot and Lowes serve this market very well, having gained market share from small, independently owned hardware stores. But they didn’t gain it by predation and unfair practices that crushed the little guy. They gained it by providing a much wider selection of products at a significantly lower price. The typical Home Depot store is around 105,000 square feet (almost the size of two football fields), more than ten times larger than the typical neighborhood hardware store.46 And the big box stores stock upward of 25,000 different products, significantly more than the neighborhood stores do.47 This volume lets them be much more efficient, with sales per square feet of store two-thirds higher than at neighborhood stores and 25 percent more per employee.48

This story has played out in many retail sectors where large retailers have gained market share by providing goods or services that consumers want at prices they can afford. Owner-operator barbershops have been superseded by Supercuts, coffee shops by Starbucks, donut shops by Dunkin’ Donuts, stationery stores by Staples and Office Depot, local pharmacies by CVS and Walgreens. Among the many retail industries that saw increasing average employment size per firm were food and beverage stores (7 percent), furniture stores (10 percent), sporting goods (15 percent), banks (29 percent), electronics and appliance stores (33 percent), and general merchandise stores (35 percent).49

These retail giants have tapped into the substantial benefits of scale, which are passed on to customers. Moreover, large retailers compete directly against each other, spurring innovation, technology investment and adoption, and efficiency. Indeed, technological innovation (particularly computer-based supply chain ordering) has enabled size increases. The effects have nowhere been more dramatic than in those sectors that have always been most congenial to individual proprietorships, such as retail, services, farming, and small manufacturing. These were the sectors and the activities most affected, for instance, by the type of “roll-up” strategies pioneered by financiers like Mitt Romney’s Bain Capital. In the case of the office-supply retailer Staples, Bain’s investment helped propel the company from a one-store operation to a 2,000-store international behemoth. Similar plays resulted in Home Depot capturing a vast proportion of the nation’s hardware business, in Best Buy capturing a vast proportion of America’s electronics business, and in Macy’s capturing a vast proportion of all department store sales. Just one company, Wal-Mart, now has upward of 50 percent of some lines of grocery and general merchandise business—commerce that a generation ago was divided among tens of thousands of family businesses—with shoppers the big beneficiary. And, of course, emerging web-based businesses such as Amazon promise even more competition, efficiency, convenience, and scale.

This transition from local Justin and Ashley stores to chain stores has been going on for more than a century, starting with stores like A&P and Sears, and has occurred largely independently of government policy. If anything, government policy has leaned into this wind, providing big subsidies to the mom-and-pop businesses, and in some communities actively restricting the large stores.

Yet for the antimonopolists, this is a decidedly bad thing. As Thompson writes, “Today, in a lot where several mom-and-pop shops might once have opened, Walmart spawns another superstore.”50 This is supposedly a bad thing because it is stifling “entrepreneurship.” But this fetishization of small business misses the point. New business formation is not an end; it is a means. The end is more and better goods at lower prices for consumers, not maximizing the number of owners of small, inefficient businesses.

What Kinds of Firms Are Starting?

To assess whether the overall slowdown in new firm formation is a problem, we also need to look carefully at the types of firms that are being started. As Antoinette Schoar writes,

It is crucially important to differentiate between two very distinct sets of entrepreneurs: subsistence and transformational entrepreneurs. Recent evidence suggests that people engaging in these two types of entrepreneurship are not only very distinct in nature but that only a negligible fraction of them transition from subsistence to transformational entrepreneurship. These individuals vary in their economic objectives, their skills, and their role in the economy.51

Justin and Ashley, the owners of the new local pizza parlor, are not likely to be very much like Sergey Brin and Larry Page or Jeff Bezos. Schoar also found that

[The] founders of venture-backed startups in the majority were previously employed at larger technology firms such as Microsoft, Intel, or similar firms. An alternative group of founders of transformational entrepreneurs were serial entrepreneurs who had previously started a high-growth firm. In contrast, almost none of them were running small subsistence businesses before they started a high-growth business.52

Nor does there appear to be any correlation between startup numbers and economic growth. A study of entrepreneurship data by Catherine Fazio and coworkers notes that “quantity-based measures of entrepreneurship have little relationship to GDP growth. Yearly fluctuations in counts of firm births appear to hold little relationship to medium-term measures of economic performance.”53

To be clear: starting yet another small bookstore or pizza parlor is not entrepreneurship; it’s small business. In other words, Justin and Ashley are not likely to be Sergey and Larry and Jeff. And what Justin and Ashley do or do not do has little effect on economic growth. If Justin and Ashley don’t start that pizza parlor, then Brianna and Jalen or someone else will.

Indeed, using the term “entrepreneur” for someone who opens a conventional small business such as a pizza parlor uses the term in a sense completely different from that of Joseph Schumpeter, the economist who pioneered modern innovation theory. Schumpeter famously wrote,

The function of entrepreneurs is to reform or revolutionize the pattern of production by exploiting an invention or, more generally, an untried technological possibility for producing a new commodity or producing an old one in a new way, by opening up a new source of supply of materials or a new outlet for products, by reorganizing an industry and so on.54

He did not say the function of an entrepreneur is to start a business. Only certain kinds of business founders are entrepreneurial. In other words, the startups that really matter are those that are able to exploit market opportunities through technological and/or organizational innovation.55 As one study of firm formation trends stated, “Poorly performing economies seem to have too many subsistence entrepreneurs and too few high-growth transformational entrepreneurs.”56

This difference in the kind of new firm startups is why dire claims that the sky is falling on new business formation can exist parallel to claims that we are living in a time of robust innovation and entrepreneurship, with Silicon Valley and other tech hubs throughout the nation enjoying frothy and dynamic innovation. As Silicon Valley venture capitalist Marc Andreessen tweeted, “There’s too much entrepreneurship: Disruption running wild!” “There’s too little entrepreneurship: Economy stalling out!”57 A big reason for this contradiction is that the above studies (which are endlessly quoted) don’t differentiate between Justin and Ashley, on the one hand, and Serge and Larry and Jeff on the other. The real question is what has happened to the entrepreneurship exemplified by Sergey and Larry and Jeff, and why.

Researchers who have tried to differentiate between the two types are MIT professors Jorge Guzman and Scott Stern. They looked at trends in high growth entrepreneurship for fifteen large states from 1988 to 2014 and found that “in contrast [to] the secular decline in the aggregate quantity of entrepreneurship … the growth potential of startup companies has followed a cyclical pattern that seems sensitive to the capital market environment and overall economic conditions.”58 In other words, while the Justins and Ashleys are starting fewer firms than before, the Sergeys, Larrys, and Jeffs are starting almost the same number. Moreover, Fazio and her colleagues found that when they compared the original “birth dates” of firms that achieved successful exits (defined as an IPO or acquisition at a multiple of the firm’s valuation within six years) relative to overall firm births, again, they could find no apparent relationship.59

Indeed, in another study Guzman and Stern found that even after controlling for the size of the US economy, the second highest rate of high-growth entrepreneurship occurred in 2014.60 This research indicates that the entrepreneurial potential (successful startups as a share of GDP) by founding year hit its low point in 1990, peaked in 2000 at almost twice as high, fell after the dot-com bust, and then rose to 2007, fell again with the global recession of 2008–2009, but then bounced back to almost record highs by 2014. As Fazio and colleagues note, “Quantity-based measures document a troubling, three-decade-long decline in the U.S. rate of entrepreneurship. … Conversely, outcome-based measures indicate that the rate of entrepreneurship is rising. Early-stage angel and venture capital financing of new ventures has been on a significant upswing over the past several years.”61

The contradiction that Marc Andreessen tweeted about becomes clearer when one digs into the startup data. The studies that warn of a decline in startups rely on Census data that ask people if they started a business, regardless of whether it is “subsistence” or a “transformational” business. This explains why Kauffman’s “2015 Index on Startup Activity, State Trends” finds that the two most entrepreneurial states are Montana and Wyoming.62 Real high-tech powerhouses such as California and Massachusetts rank just fourteenth and thirty-fourth respectively. As Fazio, et al. write, this “mismatch between index rankings and top hotspots of entrepreneurial activity (like Silicon Valley and Kendall Square) signals strongly that, to the extent that trends in entrepreneurial growth potential are being captured, they have been swamped by the effects of more local or regional businesses.”63

# 1NR

### Link – FTC – 1NR/Presumption

#### Congress backlashes to expanded FTC rulemaking.

Kiran Stacey 8/10/21. Washington correspondent. “Washington vs Big Tech: Lina Khan’s battle to transform US antitrust”. Financial Times. Aug 10 2021. https://www.ft.com/content/eba8d3d7-dba7-4389-858c-5406c31b413d

Republican concerns

But if the reforms have pleased Khan’s supporters, they have worried conservatives who say the commission lacks both the legal authority and the institutional capacity to do what is being asked of it.

For example, Khan says she wants to renew the commission’s appetite for bringing cases against companies for “unfair methods of competition” — a vague category of corporate behaviour which allows the FTC to act even when there is no merger in question or when a company is not large enough to be a monopoly. She and fellow progressives argue that by not pursuing such cases the FTC has taken away one of its most powerful weapons.

Such behaviour is often very hard to prove, however. When the FTC charged Abbott Labs in 1994 with trying to rig a bid to supply the Puerto Rico government with infant formula, for example, it alleged the company’s choice not to bid in one of the rounds provided evidence of collusion with rivals. Abbott Labs’ lawyers, however, successfully used game theory to explain why a “no bid” could in fact have made rational economic sense.

More controversial is the idea that the commission is going to start writing wide-ranging new rules of its own, as envisioned in Biden’s competition order. This would test the limits of the FTC’s powers in both court and on Capitol Hill, critics say, and could end in Congress clipping its wings as it did in 1980 when the FTC was forced to subject its rules to Congressional review.

#### FTC authority expansion is partisan.

Nihal Krishan 21. Tech reporter. “EXCLUSIVE: Top Republicans torch FTC for 'partisan changes' that will harm consumers”. Washington Examiner. Jul 29 2021. https://www.washingtonexaminer.com/news/exclusive-top-republicans-torch-ftc-ill-advised-power-grab-jordan-rodgers-comer

Top House Republicans blasted the Democratic-led Federal Trade Commission Thursday, criticizing them for unfairly consolidating agency power, expanding regulatory authority in a partisan manner, and abandoning bipartisan transparency processes.

The Washington Examiner obtained a letter that was sent to the five FTC commissioners, which includes three Democrats and two Republicans, that showed the top Republicans on relevant committees attacking the agency's recent actions and asking for relevant documents that might hold the trade commission better accountable.

House Energy and Commerce Committee Republican Leader Cathy McMorris Rodgers of Washington, House Judiciary Committee ranking member Jim Jordan of Ohio, and House Oversight and Reform Committee ranking member James Comer of Kentucky said the three Democratic commissioners at the trade commission, led by Chairwoman Lina Khan, a recent Biden nominee who is a vocal anti-monopolist, are using the agency to advance partisan goals.

"These partisan changes will position the Biden FTC to reshape radically the American economy and, ultimately, harm American consumers, workers, small businesses, and traditions of free enterprise," they wrote.

The letter highlighted that during the first FTC meeting under Khan's leadership earlier this month, the trade commission's Democrats voted to approve four action items, each of them on a partisan basis, with no support from Republican commissioners appointed by former President Donald Trump.

One of those items was a controversial vote to expand the limits and powers of the agency, particularly when it comes to policing corporate conduct, by rescinding a 2015 policy statement regarding regulating "unfair methods of competition" under Section 5 of the FTC Act.

The three Democratic commissioners say the agency was previously restricted from living up to its statutory obligations from Congress, making it more difficult to challenge anti-competitive conduct by large corporations in particular.

For the past few decades, antitrust laws, which the FTC has responsibility for enforcing, have focused on protecting consumers from anti-competitive mergers and business practices, and the two Republican commissioners at the agency say the repeal of the policy could take the commission away from this consumer-focused tradition and lead it to overstep its bounds.

The trade commission's Democratic majority wants to reduce "red tape" and bureaucracy within the agency, but it is increasing red tape on business, Republican FTC commissioner Noah Phillips said during a House Energy and Commerce hearing on Wednesday.

House Republicans say that the trade commission's larger Democratic anti-monopoly agenda could distract it from focusing on protecting people from fraud, which the GOP sees as a key function of the agency.

### Impact – 1NC/1NR

#### Ukraine war escalates - Russia will gamble with direct nuclear threats to force NATO’s exit.

Grover ’18 [John; July 11; M.S. in Conflict Analysis and Resolution from George Mason University, B.A. in Government and Legal Studies from Bowdoin College, fellow at Defense Priorities and assistant editor at the National Interest; The American Conservative, “Admitting Ukraine Into NATO Would Be A Fool’s Errand,” <https://www.theamericanconservative.com/articles/admitting-ukraine-into-nato-would-be-a-fools-errand/>; RP]

This week, President Trump is meeting with allied heads of state at a summit of the North Atlantic Treaty Organization (NATO). Among the many items on the agenda is the question of enlarging NATO to include other countries such as Ukraine. Although Russian aggression in Ukraine has been rightly condemned, those who urge for NATO to accept Ukraine as a full member are making a grave mistake.

If Ukraine joined NATO, it would become an even more unstable hotspot that America would be obligated to defend. Why should the U.S. risk war with a nuclear-armed Russia in Moscow’s backyard? NATO is a military alliance to defend Europe, not a democracy-promotion machine intended to reorder the political equilibrium in every European country. Though Washington may wish it, NATO cannot solve every problem nor can it smooth over all local flash points.

It’s easy to understand why some wish to bring Ukraine under the alliance’s security umbrella. After all, NATO has deterred Soviet and Russian aggression for nearly 70 years, and good Westerners who watched the Maidan protests have had their heart strings pulled. But expanding NATO means that if Ukraine asks for help in its current war, America’s sons and daughters will be called upon to die. If Trump and other administration officials asked American voters whether that’s something they want, the answer would be a firm “no.”

Furthermore, calls for Ukraine to join NATO forget that deterrence works because it relies on mutually assured destruction (MAD) and on some level of respect for each side’s national interests. When one side communicates that it no longer cares about the other’s security concerns, the likelihood of war skyrockets. For instance, in 1962, when Moscow put missiles in Cuba, America reacted very forcefully to get the Soviet Union to remove them—even though doing so brought the world to the brink. Furthermore, in 1983, when NATO staged its largest-ever exercises under Reagan—known as [Able Archer 83](https://nsarchive2.gwu.edu/nukevault/ebb533-The-Able-Archer-War-Scare-Declassified-PFIAB-Report-Released/)—the Soviet Union thought it was a cover for an attack and nearly launched their own nuclear strikes as a result.

These same dynamics apply to Ukraine and the question of NATO accession. Although obviously the United States would never deliberately attack Russia, it doesn’t look that way from Moscow. Whether anyone likes it or not, Putin believes that Russia is reacting defensively and fears the possibility of a NATO-led overthrow of his government. He saw what happened when the Western-backed Maidan toppled Ukrainian President Viktor Yanukovych and thinks America might be tempted to do the same to him. As a result of this—and of Putin’s [general revisionism](https://www.amazon.com/Mr-Putin-Operative-Fiona-Hill/dp/0815723768)—Russia is [the spoiler](https://www.beyondintractability.org/casestudy/grover-minsk-II-accords) for any Ukrainian conflict and would likely escalate the use of force to keep Ukraine out of NATO.

This is why U.S. deterrence wouldn’t apply as easily to Ukraine if it did start the process of joining NATO. If Russia was willing to annex Crimea and invade eastern Ukraine as a de facto veto on Ukraine’s NATO aspirations, it would certainly do far worse if official accession plans were announced. So far, NATO has pledged that Ukraine will one day join, but no such plans have been implemented. Additionally, it would likely take several years of reforms in accordance with a membership action plan before Ukraine could join NATO, which would give Russia time to react.

If Russia believes Ukraine is worth fighting for, then America and NATO need to deeply consider the implications rather than just push ahead for membership. To ignore this reality is to be naïve about how the world works. America cannot be the world’s crusader for democracy in every crisis. Where would that end? The argument that other countries’ interests do not matter and that the U.S. just needs to bring everyone under its protective umbrella collapses on itself. Reduced to its absurd logical conclusion, that would mean America should try to protect literally every state on the planet from aggression and dictatorship while also preparing to fight anyone—even nuclear powers—who gets in the way. The brutal truth is that the U.S. needs to protect its own democracy and prosperity. We cannot always save the day and Washington can no more deliver a perfectly happy ending to Ukraine than it could to Iraq.

As former U.S. ambassador to Ukraine Steven Pifer [wrote](https://www.kyivpost.com/article/opinion/op-ed/steven-pifer-ukraine-nato-course-disappointment.html), “Until the simmering conflict in the Donbas and frozen conflict in Crimea are resolved, Ukraine has little prospect of membership. Bringing Ukraine in with the ongoing disputes would mean that NATO would face an Article 5 contingency against Russia on day one of Kyiv’s membership.” Moreover, [Henry Kissinger](https://www.washingtonpost.com/opinions/henry-kissinger-to-settle-the-ukraine-crisis-start-at-the-end/2014/03/05/46dad868-a496-11e3-8466-d34c451760b9_story.html?noredirect=on) himself has urged that Ukraine ought to be considered a bridge between West and East rather than another potential NATO ally.

Washington needs to realize that NATO’s expansion is not always in America’s interests and that in this case the cost would be far too high. The United States should focus on holding NATO’s interest-based red lines while also recognizing Russia’s interests—challenging them where we must but not in every possible circumstance. The alternative would be for the Second Cold War to drag on longer than is necessary to the risk of all.

#### Gray zone provocations incent uncontrollable divergences in escalation ladders -- culminates in use-it-or-lose-it AND electronic warfare.

Beebe ’19 [George; October 7; Vice President and Director of Studies at the Center for the National Interest, M.A. in Foreign Affairs from the University of Virginia; Politico, “We’re More at Risk of Nuclear War With Russia Than We Think,” <https://www.politico.com/magazine/story/2019/10/07/were-more-at-risk-of-nuclear-war-with-russia-than-we-think-229436>; RP]

Today, that old dread of disaster has all but disappeared, as have the systems that helped preclude it. But the actual threat of nuclear catastrophe is much greater than we realize. Diplomacy and a desire for global peace have given way to complacency and a false sense of security that nuclear escalation is outside the realm of possibility. That leaves us unprepared for—and highly vulnerable to—a nuclear attack from Russia.

The most recent sign of American complacency was the death, a few weeks ago, of the Intermediate-Range Nuclear Forces Treaty—a pivotal 1987 agreement that introduced intrusive on-site inspection provisions, destroyed an entire class of dangerous weaponry, and convinced both Washington and Moscow that the other wanted strategic stability more than strategic advantage. The New START treaty, put in place during the Obama administration, appears headed for a similar fate in 2021. In fact, nearly all the key U.S.-Russian arms control and confidence-building provisions of the Cold War era are dead or on life support, with little effort underway to update or replace them.

Meanwhile, U.S. officials from both parties are focused not on how we might avoid nuclear catastrophe but on showing how tough they can look against a revanchist Russia and its leader, Vladimir Putin. Summit meetings between White House and Kremlin leaders, once viewed as opportunities for peace, are now seen as dangerous temptations to indulge in Munich-style appeasement, the cardinal sin of statecraft. American policymakers worry more about “going wobbly,” as Margaret Thatcher once put it, than about a march of folly into inadvertent war. President Donald Trump’s suggestion that the United States and Russia might explore ways to manage their differences diplomatically has produced mostly head-scratching and condemnation.

In my more than 25 years of government experience working on Russia matters, I’ve seen that three misguided assumptions underlie how the United States got to this point.

The first is that American policymakers think that because neither side wants nuclear war, then such a war is very unlikely to occur. Russia would be foolish, we reason, to cross swords with the powerful U.S. military and risk its own self-destruction, and many Americans find it hard to imagine that modern cyber duels, proxy battles, information operations and economic warfare might somehow erupt into direct nuclear attacks. If the Cold War ended peacefully, the thinking goes, why should America worry that a new shadow war with a much less formidable Russia will end any differently?

But wars do not always begin by design. Just as they did in 1914, a vicious circle of clashing geopolitical ambitions, distorted perceptions of each other’s intent, new and poorly understood technologies, and disappearing rules of the game could combine to produce a disaster that neither side wants nor expects.

In fact, cyber technologies, artificial intelligence, advanced hypersonic weapons delivery systems and antisatellite weaponry are making the U.S.-Russian shadow war much more complex and dangerous than the old Cold War competition. They are blurring traditional lines between espionage and warfare, entangling nuclear and conventional weaponry, and erasing old distinctions between offensive and defensive operations. Whereas the development of nuclear weaponry in the Cold War produced the concept of mutually assured destruction and had a restraining effect, in the cyber arena, playing offense is increasingly seen as the best defense. And in a highly connected world in which financial networks, commercial operations, media platforms, and nuclear command and control systems are all linked in some way, escalation from the cyber world into the physical domain is a serious danger.

Cyber technology is also magnifying fears of our adversaries’ strategic intentions while prompting questions about whether warning systems can detect incoming attacks and whether weapons will fire when buttons are pushed. This makes containing a crisis that might arise between U.S. and Russian forces over Ukraine, Iran or anything else much more difficult. It is not hard to imagine a crisis scenario in which Russia cyber operators gain access to a satellite system that controls both U.S. conventional and nuclear weapons systems, leaving the American side uncertain about whether the intrusion is meant to gather information about U.S. war preparations or to disable our ability to conduct nuclear strikes. This could cause the U.S. president to wonder whether he faces an urgent “use it or lose it” nuclear launch decision. It doesn’t help that the lines of communication between the United States and Russia necessary for managing such situations are all but severed.

### AT: Passage Inev – 1NC/1NR

#### CR process combined with inflation devastates readiness – now key

Impact News Service 1-29-22 lexis

Ahead of a potential large-scale troop deployment countering Russian threats to Ukraine, the National Defense Industrial Association has called for immediate action from Congress to pass full-year funding for fiscal year 2022 while warning against extending continuing resolutions through the rest of the fiscal year, which would hold spending to last year ’ s budget, prevent new starts and misalign funding. In a new white paper, “Risks to National Security, a Full-Year Continuing Resolution for 2022,” NDIA says such action significantly reduces defense purchasing power and risks signaling a lack of seriousness and competence to counter Russian aggression in the Ukraine and Chinese actions in East Asia and the South China Sea. The paper notes that a full-year CR would cut $36 billion in congressionally intended growth from the Defense Department. When coupled with the effects of increased inflation, it estimates a full-year CR would result in an overall loss in purchasing power of $75 billion or more and a $20 billion reduction in outlays in FY22 alone. If this becomes a new baseline for defense spending, NDIA says the top-line numbers would reduce by $180 billion and outlays would fall by approximately $155 billion from fiscal years 2022 through 2026. This would harm servicemembers, their families, the defense workforce and national security.

#### Passing defense budget crucial to deter Russian invansion of Ukraine -PC is key

Clevenger 2-3-22

(Andrew, https://rollcall.com/2022/02/03/congress-should-pass-defense-budget-to-deter-putin-senators-say/)

One of the most powerful messages Congress could send to deter Russian President Vladimir Putin from invading Ukraine would be to pass a defense appropriations bill, two members of the Senate Armed Services Committee said Thursday. Speaking at an event hosted by the Wilson Center, Mississippi's Roger Wicker, the second most senior Republican on the Armed Services Committee, said funding for the Defense Department could be part of a larger omnibus spending bill. He urged President Joe Biden to get personally involved, and to call House and Senate leadership to a meeting as soon as possible to iron out any lingering differences over spending levels. “Everybody agrees that working off of defense appropriations from a year and a half ago are completely inadequate and sends exactly the wrong signal not only to Vladimir Putin but to our friends and potential adversaries all over the world,” he said. “I hope what is about to happen would build a fire under us. Let’s get our national defense spending up to date.” New Hampshire Democrat Jeanne Shaheen, a senior member of both the Armed Services and Foreign Relations committees, agreed. “You’re absolutely right,” she said. “Putin’s thinking, ‘Boy, they can’t even pass a budget, never going to be able to unite against our actions,’ and China is looking at that as well.” Funding deadline The government is currently funded via a continuing resolution, which locks in spending at the levels established by the previous fiscal year’s spending bills. The current continuing resolution is set to expire on Feb. 18, meaning Congress will either have to enact new spending bills, pass another continuing resolution, or face a government shutdown.

### Link – AT: Bipart – 1NC-1NR

#### Antitrust trades off – assumes bipartisanship.

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

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

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

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

#### “Bipart!” *irrelevant* – detail-sorting causes partisan divides.

Steve Kovach 20. Technology Editor. “Democrats and Republicans disagree on how to curb Big Tech’s power — here’s where they differ”. CNBC. Oct 7 2020. https://www.cnbc.com/2020/10/07/democrats-and-republicans-disagree-on-how-to-regulate-big-tech.html

Congressional Democrats sent a clear message to Apple, Amazon, Facebook and Google: You have monopoly power, and you’re now at risk of being broken up.

Following a 16-month investigation into the four Big Tech companies, the House Judiciary subcommittee on antitrust released a blockbuster 449-page report laying out the case for why each company holds monopoly power. It also gave a slew of recommendations for how Congress can tamp that down through a rewriting of the rules.

But the report, which was originally intended to be a bipartisan effort to rein in Big Tech’s power, turned into a partisan battle as the two sides bickered over the next steps.

The result leaves little confidence that any major regulation could come soon. It’s been about four years since lawmakers began scrutinizing the tech industry for its disruptive role in industries ranging from the media to retail, yet no legislation regulating the industry has been passed.

Here are the key things both sides disagree on.

The Republican side

Republican members of the subcommittee won’t let go of the idea that social media platforms like Facebook and Google’s YouTube discriminate against conservative viewpoints.

There’s no evidence that the social platforms intentionally censor conservative voices -- in fact, Facebook’s own data shows posts from conservative personalities and news outlets are almost always the most popular content on Facebook. The issue has little to do with antitrust law.

Nonetheless, the Republican side hammered the Democratic majority for not taking it into account in the report.

The Republicans also disagree with the Democrats’ recommendation for sweeping changes to antitrust law that could ultimately lead to a breakup of some of the companies. According to a draft of a report by subcommittee member Republican Rep. Ken Buck of Colorado that was viewed by CNBC, the GOP side disagrees with the Democrats’ proposal for a “Glass-Steagall for the internet” law that would force tech firms to distinguish different lines of business.

In his report, Buck called the Democrats’ proposal “a thinly veiled call to break up Big Tech firms,” making it clear that congressional Republicans won’t vote for the sweeping, groundbreaking changes Democrats are hoping for.

The Democratic side

There’s a lot of optimism on the Democratic side that legislation based on their recommendations in the report will go through. On Tuesday night, subcommittee member Rep. Pramila Jayapal, D-Wash. told CNBC she thinks there will be “significant legislation” on the matter within the first three to six months of the next Congress.

The Democrats also built a strong case against the four companies, based on reviews of over 1 million internal documents and interviews with experts and competing companies. The report found that Apple has monopoly power over software distribution on the iPhone, Amazon bullies its third-party sellers, Facebook uses its power to acquire or kill potential competitors and Google has complete dominance over online search. (Each company strongly denied the report’s allegations.)

Even if Democrats fail to pass the sweeping antitrust reforms they want, at the very least they created a lengthy, written record of the questionable tactics these companies used to become dominant forces in the industry and global economy. That’s going to be stapled to each company’s reputation for decades.

Common ground

Even as both sides quibble over the details, they’re in broad agreement that Big Tech wields too much power in the market and that government needs to put more restrictions in place.

One likely starting point: providing more funding for agencies like the Department of Justice and the Federal Trade Commission to scrutinize tech mergers and police potential anticompetitive practices. Each of the companies has virtually unlimited money to fight lawsuits and investigations from the government, and Republicans and Democrats agree that more funding for these agencies will give them a better chance to push back.

Those also happen to be the agencies that are conducting their own investigations into Big Tech. The DOJ is expected to file an antitrust lawsuit against Google any day now. The FTC has its own antitrust investigation into Facebook. And practically every state attorney general in the country is investigating at least one of the four companies in some capacity.

If we see see any real action taken against Big Tech, it’s most likely to come from regulatory agencies than from a divided Congress.

#### Bipartisanship is irrelevant – minor disagreements still zap PC.

Joseph Folio et. al 21. Of Counsel at Morrison Foerster. Also Lisa Phelan, Jeff Jaeckel, and Alexander Okuliar, co-chairs of Global Antitrust Law Practice Group. “Antitrust Update: Up and Down the Avenue”. Morrison Foerster. Mar 22 2021. https://www.mofo.com/resources/insights/210322-atr-update.html

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

Two to go

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

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

Meanwhile, on Capitol Hill …

Down the avenue, Congress is debating whether to provide the agencies with additional tools and resources. But how realistic are the prospects for legislative reform?

In short, although the prospects for sweeping legislative reform of the antitrust laws are dim, targeted reforms appear increasingly likely, especially increased funding for the agencies. In October 2020, the House antitrust subcommittee concluded a year-long bipartisan investigation into these issues, and the House Democrats published a lengthy report detailing their findings and making recommendations for reform. Notably, the House Republican response identified several areas of agreement, including “providing antitrust enforcement agencies with the necessary resources.” [3] House Republicans also made it clear that they too are concerned about tech companies “using ‘killer acquisitions’ to remove up-and-coming competitors from the marketplace,” and that the burdens of proof for mergers and predatory pricing cases need to be reevaluated.[4] On March 18, 2021, however, the Republican ranking member on the committee reiterated a shared interest in reforming the evidentiary burden of proof in merger cases, which he described as having become “essentially insurmountable” and “a grant of near total immunity to big tech companies.” Although a path to agreement on more substantive issues typically has many obstacles, reforming the burden of proof in certain instances may be emerging as the most likely candidate for significant legislative action.

In the Senate, on February 4, 2021, newly installed antitrust subcommittee chair Senator Amy Klobuchar (D-MN) introduced a bill that would overhaul existing antitrust laws. Among other reforms, it would lower the government’s burden of proof to block a merger, shift the burden of proof in certain cases and require the merging parties to justify the deal, and increase funding for both the DOJ Antitrust Division and the FTC. At the subcommittee’s March 11, 2021 hearing related to the bill, subcommittee ranking member Senator Mike Lee (R-UT) (who promptly released a statement noting his opposition to Ms. Khan’s nomination) made it clear that he firmly opposes “a sweeping transformation of the antitrust laws.” Throughout the hearing, however, there appeared to be bipartisan support for taking some sort of action to address these issues, and at the very least to provide increased funding to the DOJ and FTC. Even Senator Lee, who recently introduced a bill that would combine the DOJ and FTC to avoid inefficiencies in antitrust enforcement, acknowledged that agency leaders need the resources that are necessary to vigorously enforce antitrust laws.

So, what does it all mean?

In these circumstances, the most likely outcome appears to be antitrust officials creatively using their existing tools to enhance enforcement while not so quietly pressing Congress for additional assistance. On March 16, 2020, acting FTC Chair Rebecca Slaughter advocated for increased scrutiny of mergers between pharmaceutical companies. She also told the House antitrust subcommittee that the agencies “should consider withdrawing” the guidance for “vertical” mergers issued during the last administration to allow for more aggressive enforcement.[5] But at the same time, FTC Commissioner Noah Phillips explained that the agency would not be able to challenge certain deals without more funding. The Biden administration and the agencies will need to determine how to square those positions. Also, even assuming Congress could provide the agencies with additional funding quickly (on top of the additional $20 million Congress provided to the FTC in December 2020), using that funding to hire additional attorneys will take time.

The path for meaningful legislative reform remains extremely complicated. The prospect for reform depends significantly on whether members of Congress, congressional leadership, and the Biden administration are willing to expend the time and political capital necessary to pass a reform bill (which also assumes the relevant parties can agree on what should be included—or, perhaps more importantly, excluded—from that bill). In light of competing priorities, the absence of key personnel, and the already narrowing congressional calendar (major non-appropriations legislation typically will not move after July in an election year (2022)), those prospects appear to be slim. In the meantime, we expect that Congress will continue to focus attention on these issues with more hearings and new legislative proposals, but it remains to be seen when attention will become action.

### AT: PC not key – 1NR

#### PC key to Biden budget control

Economist Intelligence Unit 21

(4-12, Biden administration outlines budget priorities, lexis)

Major changes in the composition of budget spending reflect the shift in priorities of the Biden administration relative to its predecessor. Most notably, proposed non-defence spending jumps significantly, by 15.9% year on year, to US$769bn. Meanwhile, the defence budget would rise only modestly, by 1.7%, to US$753bn. Among the administration's priorities is education; spending is projected to rise by 40%, with much of the increase to be directed towards schools in high-poverty areas. The Centres for Disease Control and Prevention would see its largest budget increase in two decades in an effort to bolster its work to improve resilience to future public health crises. Spending on climate change would also rise, with money set aside for energy efficiency upgrades to homes, schools and government buildings. The Environmental Protection Agency, whose funding was repeatedly targeted by the previous president, Donald Trump, would be in line for a budget increase of more than 20%. With interest rates low and borrowing costs modest, Democrats see little economic cause to rein in public spending. The Biden administration's political capital remains high following the passage of its landmark American Rescue Plan earlier this year. This is also the first federal budget that is not constrained by rules to reduce the size of the fiscal deficit that were imposed in 2011 following the global financial crisis. That said, the US federal budget process is long, and this initial proposal is only a request to Congress. It is entirely separate from the US$2trn infrastructure plan that Democrats hope to pass through Congress in the coming months. The budget proposal will require the support of at least ten Republicans in the Senate (the upper house), which means that it is highly likely that some of the new domestic spending will be cut. Failure to agree on a federal budget would result in a government shutdown, which would be politically costly for both parties amid a fragile economic recovery.

#### Presidential capital crucial to the budget

Targeted News Service 5-27-21 lexis

In reaction to today's hearing by the U.S. House Appropriations Committee on "Department of Homeland Security Resource Management and Operational Priorities" and testimony from Secretary Mayorkas, NDLON Campaign Director Salvador G Sarmiento issued the following statement: "Today's hearing further clarified what we all already know: The Biden Administration and Democrats in Congress must work together making use of budgetary tools to advance immigrant rights, and this will require far greater leadership from President Biden himself. Reconciliation must be used as a down payment to deliver the legalization immigrants deserve, and rogue agencies within DHS must be restrained by massive reduction in their budget and far greater oversight from the House Appropriations Committee. The decades-long bipartisan war on immigrants must end, and this will require honest, direct leadership-- and not posturing-- from President Biden. "There can be no bipartisanship agreement with a Republican Party that brought the country to the brink of fascism and is currently disintegrating, held together only through the single common thread of immigrant-scapegoating. Democrats have the obligation and responsibility to end this shameful chapter of US history, and that will require that President Biden himself use more political capital. "President Biden once quoted his father saying: 'Don't tell me what you value. Show me your budget, and I'll tell you what you value.' The honeymoon is over. It is time for President Biden to demonstrate where he stands."

### Uniqueness – 1NC/1NR

#### Congress is inching towards full year defense funding- will pass now

Politico 1-5-22 https://www.politico.com/news/2022/01/05/defense-spending-stuck-budget-boost-526557

Congress has overwhelmingly backed a $25 billion increase to President Joe Biden's Pentagon budget, but the battle over defense spending is far from over. Biden last week signed annual defense policy legislation that calls for significantly boosting his $715 billion Pentagon blueprint to $740 billion. But the just-enacted National Defense Authorization Act doesn’t actually provide any money, and lawmakers have until mid-February to reach a deal to fund the Pentagon and other federal agencies for the rest of the fiscal year. There are, however, signs that Congress is inching toward a deal, after POLITICO first reported that House Democratic appropriators are preparing to agree to a larger defense budget than either they or Biden wanted. In the meantime, though, the Defense Department — and all other federal agencies — are stuck at even lower budget levels agreed to during the Trump administration because they are funded through a temporary measure. "We can stand here … and declare our unwavering support for our troops and their families. We can claim to support a strong national defense,” Senate Appropriations Chair Patrick Leahy (D-Vt.) said in a floor speech last month. “But until we put our money where our mouth is and provide the funding we say we support, then those words ring hollow. It's only rhetoric." The government is now operating under a continuing resolution that runs out on Feb. 18. Lawmakers need to pass spending legislation before then or risk trapping agencies at last year’s levels, a prospect that’s particularly unpopular in the halls of the Pentagon. House Democrats plan to shine a light on the dire budget situation next week when top Pentagon officials testify on the impact of temporary funding on the military. While Democrats appear ready to accept a defense boost, top Republicans are also insisting on “parity” between spending on the Pentagon and non-defense programs as well as ground rules for handling contentious policy riders — including whether to renew the Hyde Amendment that bars federal funds for abortion. The top Senate Appropriations Republican, Sen. Richard Shelby (Ala.), spoke with Leahy about a spending deal on the floor Wednesday, and said negotiations are headed in the right direction. “We're still talking, and we're not there yet. We also are aware that we've got a Feb. 18 deadline,” Shelby told POLITICO. “Could we meet it? Probably not, but I'd like to see us do it." A full-year spending package is within reach, he added, if Democrats and Republicans can agree on the balance of defense and domestic spending along with policy riders. "If we could cut a deal, and it's something we could live with, that's what this place is about,” Shelby said. “And that's what we have to do sometimes. But it has to be something that would be palatable to our caucus and theirs too — maybe not everything everybody wants.” Senate Minority Leader Mitch McConnell underscored the framework of “basic traditional riders, no poison pills and parity for defense and non-defense” for a spending deal on Tuesday. “To the extent that the Democrats are willing to meet those conditions, then I would think we’d have a chance of getting an omnibus appropriation Feb. 18,” McConnell told reporters. The Pentagon side of the ledger may well be the least contentious part of the deal to clinch. Signs so far point to more defense cash if a full-year spending deal emerges.

#### Democrats prioritizing budget now- floor time/focus are key, the plan will force a tradeoff

Independent View 1-31-22 lexis

A Shutdown is unlikely, but Members of the Senate Appropriations Committee from both Parties, Warn that if Negotiators blow through the Mid-February Deadline, it increases the likelihood that Biden will have to settle for a Yearlong Stopgap Funding Measure to keep the Government Open. That would Prevent him from putting his own stamp on Department and Agency Budgets while Democrats Control Congress. As a result, Senate Democrats, right now are Prioritizing passage of the Omnibus Spending Bill ahead of the Build Back Better (BBB) Act, which the House Passed in November, 2021, but then stalled last month because of Opposition from Sen. Joe Manchin (D-WV). 'I think the budget has to be next, to be honest. I want BBB to be done, but we have a narrow window to pass a budget, and I want to make sure we get a budget deal,' said Sen. Chris Murphy (D-CT), the Chairman of the Senate Appropriations Homeland Security Subcommittee, referring to the Omnibus Package. 'You have a limited window on a budget, and you never know what's going to happen in 2022. If we don't get a budget now, there's a chance President Biden will never do a budget with the Democratic Congress,' Murphy warned. 'If we miss this deadline, it becomes really hard to avoid a yearlong CR [Continuing Resolution],' he said.

#### Signs of progress point towards budget passage

Romm 2-2-22

(Tony, https://www.washingtonpost.com/us-policy/2022/02/02/democrats-republicans-spending-shutdown-covid/)

Top Democrats and Republicans inched forward Wednesday in pursuit of a deal that could fund the federal government for the remainder of the fiscal year, hoping to stave off a shutdown while potentially pumping new spending into health care, education, science and defense. The continued negotiations marked the second consecutive day of developments on Capitol Hill, as lawmakers who oversee the federal purse increasingly have come to express a measure of confidence that they can act before an upcoming Feb. 18 deadline — and overcome months of prior political disputes and delays. Since President Biden took office, the U.S. government has operated under short-term measures that sustain key federal agencies and programs largely at their existing spending levels. The stopgaps have kept the government running, but they have also delayed Democrats from delivering on some of the White House’s top priorities, from expanding affordable housing to confronting climate change. Republicans appeared content to continue in that vein, essentially dealing a political blow to Biden’s agenda in the process. But the two sides have come to see mutual benefit in striking a longer-term resolution, putting aside their differences at a moment when the United States continues to confront the pandemic at home and faces new diplomatic challenges abroad. The omicron variant of the coronavirus has sparked fresh discussions about the need for another round of federal aid, while the intensifying standoff between Russia and Ukraine has emboldened a Republican-led push to spend more on defense. Both spending priorities could be appended to any new government funding measure, provided the two sides can reach a deal in the first place. In a sign of progress, Republicans on Wednesday presented a counter-offer for federal spending over the rest of the 2022 fiscal year, which Democrats are reviewing. The GOP move had the effect of temporarily delaying a planned afternoon meeting of the House and Senate’s top appropriators, but it still reflected a new seriousness among negotiators who until now hadn’t traded such proposals.

#### Budget deal will pass- insiders

Lerman 2-1-22

(David, https://rollcall.com/2022/02/01/omb-nominee-says-new-biden-budget-coming-in-march/)

Young said most of the unobligated money from last year’s package is state and local funding. And she declined to rule out additional relief, telling the Budget panel: “We have to be careful about pulling money back before we know what the future twists and turns of this virus might bring.” Young also suggested she did not anticipate the need for another stopgap funding measure to avoid a partial government shutdown. “Maybe I’ll have egg on my face, but I’m optimistic that appropriators and the rest of Congress can reach a deal,” she told the Budget Committee. A former Democratic staff director for the House Appropriations Committee, Young has served as acting director of the Office of Management and Budget since the Senate confirmed her as deputy director in March on a 63-37 vote with bipartisan support.