# 1NC

## Off

### 1NC

#### The United States federal government should:

* implement a regulatory sharing arrangement between antitrust agencies and labor agencies;
* adopt a structuralist approach to labor regulation that prioritizes equitable bargaining power;
* establish a new regulatory agency with authority and oversight over emerging technologies, including artificial intelligence;
* establish a global concert of great powers and increase democratic engagement with allies;
* and, establish a commission to investigate the attack on the Capitol, increase funding for the WHO, and invest in worker training and infrastructure programs.

#### Adopting a structuralist approach to labor law expands protections for bargaining and realigns the labor-capital relationship

Hafiz 21 – Hiba Hafiz, Assistant Professor of Law at Boston College Law School, “Structural Labor Rights,” *Michigan Law Review*, 2021, 119 MICH. L. REV. 651

[ULP = unfair labor practice]

Finally, the Board should tailor both its ULP determinations and its section 8 remedies to ensure equal bargaining power between workers and employers. Under an equal bargaining power analysis, the Board could draw on social scientific theory and research to more accurately align the structural relationship between labor and capital. Specifically, the Board should only find a ULP where conduct tips the scales in favor of one party such that, were the parties to enter a collective bargaining negotiation, they would be on unequal footing. To the extent the Board finds that a ULP places one party in a position to hold out longer than the other, it should tailor its remedies to correct for that imbalance.

As discussed, the Board has interpreted section 8 ULPs and exercised its remedial authority in a formalistic way, without analyzing how those interpretations or remedies impact parties' relative bargaining power. Currently, it is a ULP for employers to interfere with, restrain, or coerce employees in their exercise of section 7 rights; to dominate or interfere with a union to form a "company union"; to discriminate or condition employment terms on union membership; to retaliate against employees for filing charges or testifying before the NLRB; and to refuse to bargain collectively with a union that has achieved section 9(a) majority support. 388 Unions commit ULPs if they restrain or coerce employees in their exercise of section 7 rights or their employer in selecting representatives for collective bargaining; cause an employer to discriminate against employees based on union membership; refuse to bargain collectively with an employer as a certified representative of its employees; engage in secondary activity against those who deal with their employer; impose excessive or discriminatory union fees; exact payment from employers for services not to be performed; or engage in certain kinds of recognitional picketing. 389 The Board is generally empowered to prevent persons from engaging in ULPs, issue complaints, determine that a ULP has been committed after a hearing, and petition federal courts to enforce its orders. 390 It is required to prioritize union ULPs of secondary boycotts and recognitional picketing over others and petition a district court to enjoin them. 391

But adopting a social scientific and data-driven approach to ensuring equal bargaining power could dramatically transform existing doctrine to correct power imbalances in labor markets. Recent doctrine on exempting employers from ULPs due to legal determinations of "disloyalty" is illustrative. In a recent case pertinent to the current social-media environment, MikLin Enterprises v. NLRB,3 92 a Jimmy John's franchisee sought an exception for a ULP finding after it fired employees for engaging in consumer-facing poster campaigns against its sick-leave policy. The Eighth Circuit held that the franchisee did not commit a ULP when it discharged the employees for "disloyal" conduct. 393 The facts are telling. The discharged employees had sought paid sick leave and designed and distributed posters on community bulletin boards in their employer's stores. The posters featured two identical images of a Jimmy John's sandwich with text above the first image reading, "Your sandwich made by a healthy Jimmy John's worker," and text above the second reading, "Your sandwich made by a sick Jimmy John's worker," with text below both reading, "Can't tell the difference? That's too bad because Jimmy John's workers don't get paid sick days. Shoot, we can't even call in sick ... We hope your immune system is ready because you're about to take the sandwich test." 394 The posters implied that, because of the employer's sick-leave policy, customers may be exposed to unsafe food because workers would be unable to stay home when ill. The employer then proposed a new sick-leave policy that required employees to find replacements to receive pay, and the workers publicly distributed the same posters with an additional line of text: "Let [the employer] know you want healthy workers making your sandwich!"395 The employer fired six employees and issued written warnings to three workers, claiming the posters resulted in its "bombard[ ment] by phone calls" for around a month.396

The NLRB found that the employer committed a ULP by interfering with employees' right to engage in public communications about ongoing labor disputes and was not entitled to the ULP "disloyalty" exception. Specifically, it found that the posters were "clearly related to the ongoing labor dispute" in that they targeted the employer's paid sick-leave policy as opposed to disparaging the employer or its product.397 Further, because there was no evidence of a malicious motive or employee knowledge that the posters' statements were false or made with "reckless disregard for their truth or falsity," they were not "so disloyal, reckless, or maliciously untrue as to lose the Act's protection." 398 The Eighth Circuit disagreed. It found that the posters made a "disparaging attack upon the quality of the company's product and its business policies" and were "reasonably calculated to harm the company's reputation and reduce its income." 399 Specifically, it held that section 7 does not protect workers' appeals to third parties to improve their working conditions to such an extent that would derogate from employers' rights to fire employees "for cause" under NLRA section 10(c).400 Because the posters were timed with flu season and would likely "outlive ... the labor dispute," the NLRA did "not protect such calculated, devastating attacks."4 1 The court further found that the "disloyalty" ULP exception is available even where employee appeals have a clear nexus to labor disputes.4 2

This decision has been much criticized for its broad extension of the disloyalty exception. 403 Specifically, it has been attacked as conflicting with the NLRA's equal bargaining power purpose because it grants employers the power to characterize a wide range of concerted activity as "disloyal," thus disarming section 7 and removing "from protection those economic weapons that effectively garner public support and threaten to harm the employer's reputation and income."" 4 And the court appeared to functionally reinstate an at-will default rule by allowing termination solely at the employer's discretion-even during union organizing campaigns-by locating the statutory basis of the disloyalty test in section 10(c), which allows "justified," "for-cause" employee discharge based on employers' unilateral determinations. The court did this without any analysis of the union statements' veracity, the statements' impact on the employer's business, the employer's buyer power as a franchisee, extant labor-market restraints (like noncompete provisions), or the impact of broad-strokes regulation of union speech on union bargaining leverage.40 5 Finally, both the Board and the court ignored a critical fact relevant for bargaining-power analysis: the information employees conveyed was accurate and corrected for an information asymmetry that benefited only the employer. The employees, by publicizing health risks that made consumers vulnerable, made the market more efficient by disclosing materially relevant information that enabled more informed choices about where to work and eat. The labor law should be tasked with correcting for such market failures above any vague categorizations of "disloyalty" that permit employer discretion at significant social cost.

Thus, in MikLin, as in other contexts, the court found no employer ULP even as the Board and the courts have been prohibitive when reviewing union ULPs. For example, as I have written elsewhere, workers' secondary activity against "transactional primary" employers-or firms that transact with a direct employer and have market power in that employer's labor or product market-ought to be protected where workers' concerted activity against their direct employer alone would not exert countervailing power against other wage-determining firms.406 Thus, whether those transactional primaries are firms that agree to wage-fixing, no-poaching, or other horizontal restraints with a direct employer or other entities in that employer's supply chain, workers should have an affirmative defense for picketing them just as they would a direct employer.4"7

Labor law is the most important regulatory tool for ensuring that workers exercise countervailing power against employers, 408 and the Board should use its remedial authority to correct unequal bargaining power in its ULP remedies. For example, if employer conduct results in unequal bargaining power, the Board should consider granting workers a default union, default union bargaining, or to the extent a union is in place, a Board order enjoining collective bargaining under NLRB v. Gissel Packing Co.409 And if workers elect to form a union and their employers refuse to bargain on their first contract-the most common impediment to successful collective bargaining '-workers should also be entitled to a Gissel bargaining order and defenses to concerted activity.4" Analysis for determining whether an employer is acting in good faith could be informed by the employer's buyer power, social scientific data on the industry-specific value of incorporating labor as a dynamic input of production, and the NLRA's macroeconomic goals. Similarly, analysis of and remedial options for employer ULPs could be informed by buyer-power determinations and the extent of worker's outside options.

CONCLUSION

This Article reconfigures labor regulation through a structural approach. Where existing law has decentralized tools available to workers to exert countervailing power against employer wage setting, adopting more aggressive interpretations of the NLRA and utilizing more comprehensive remedies to correct for unequal bargaining power will be necessary to rectify the harms that result from employer control over the employment bargain. Integrating social scientific theory, methods, and empirical analyses into the jurisdictional scope of labor law protections, analysis of workers' concerted activity, and sanctionable ULPs will allow better legal tracking of existing labor- market conditions and determinants of labor's share of national income. And it will provide new lines of contestation concerning the rigor, accuracy, and level of substantiation of Board and court labor-market regulation.

#### It’s comparatively more effective than the aff, solves inequality, and avoids politics

Hafiz 21 – Hiba Hafiz, Assistant Professor of Law at Boston College Law School, “Structural Labor Rights,” *Michigan Law Review*, 2021, 119 MICH. L. REV. 651

[ULP = unfair labor practice]

A second strand of scholarship has sought to tackle employer power and its resulting wage suppression through the antitrust laws. This recent body of antitrust scholarship has been motivated in part by the failure of existing labor law reform efforts.50 But, as I have addressed elsewhere, workers face significant obstacles to success under existing antitrust doctrine, which generally prioritizes consumer welfare over that of other constituencies, like workers.51 And the singular focus of antitrust enforcers on traditional microeconomic analysis provides limited insight into the complicated bargaining dynamics that determine compensation in labor markets.52 As a result, antitrust scholars readily concede that labor law reform is a necessary complement to antitrust enforcement in correcting for employers' monopsony power and anticompetitive conduct in labor markets.53

This Article builds on and responds to current proposals by arguing for a "structural" approach to labor law itself. By "structural" approach, I mean one that takes into account workers' relative bargaining power as compared to their employers in determining the scope of substantive labor rights and in resolving disputes. A key component of such an approach involves the integration of social scientific advances in the study of market power and bargaining power into the NLRA's administration.54 Because employers' current buyer power strengthens their ability to indefinitely hold out on worker demands in the employment bargain, the "structural" approach seeks to resituate workers to a bargaining position from which they could equally hold out. And it proposes accomplishing that by applying social scientific tools to a reinvigorated analysis of the NLRA's core regulatory components: who counts as "employees" and "employers"; the scope of workers' right to organize, form unions, bargain collectively, and engage in concerted activity; and the scope of workers' and employers' ULPs.55

This proposal does not require overcoming stubborn congressional impasses because it is already baked into the purpose of the labor law. The NLRA's legislative history and policy goals support achieving equal bargaining power, as does the Board's early practice of institutionally aligning research and litigation support with its DER. Reviving attention to this purpose is consistent with the Board and the courts' long-adopted purposivist approach to the NLRA. 56 In the face of unprecedented income inequality, ensuring workers' countervailing power to pervasive employer power is a crucial policy goal, now more than ever. As employers continue to devise new mechanisms to evade legal obligations under labor law, including through workplace restructuring and outsourcing to the "gig" economy, a structural analysis would ensure that legal determinations under the labor law are tethered to labor-market realities that limit workers' leverage over their terms and conditions of work. And ensuring equal bargaining power could complement broader legislative reform efforts if and when Congress moves forward on them.

## Off

### 1NC – Pack the Court

#### The United States federal government should add four Associate Justice positions to the Supreme Court of the United States and regularize the presidential nomination of Justices to the Supreme Court of the United States.

#### Democratic erosion is occurring because the Supreme Court is a lawless, partisan institution, not because of antitrust – court reform solves democracy – and if we don’t go for the counterplan these are all alt causes

Keck 20 – Thomas Keck, Michael O. Sawyer Chair of Constitutional Law and Politics and Professor of Political Science at Syracuse University, “Court-Packing and Democratic Erosion,” 12/17/20, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3476889

Scholars of democratic erosion have noticed the GOP’s partisan capture of the federal courts and flagged it as a potential warning sign, but may well have understated the severity of the danger to democratic norms and institutions. For example, remarking on the Supreme Court twenty months into Trump’s presidency, Kaufman and Haggard diagnosed “a serious threat that a constitutionally-created branch of the government—one that is already deeply divided along partisan lines—will become even more politicized and delegitimated.” On their reading, “[t]he most direct threat to American democracy would be judicial acquiescence to restrictions on voting rights” (2019: 426). Ginsburg and Huq have likewise noted that partisan judges, like legislators, “may be willing to allow a president to dismantle democratic governance so long as their own policy preferences are furthered” (2018a: 219). Such judicial acquiescence in the face of legislative restrictions on voting rights is indeed a significant threat, but the bigger danger to American democracy is judicial evisceration of legislative expansions of voting rights. Consider David Landau and Rosalind Dixon’s account of “abusive judicial review,” by which they mean the use of judicial power to undermine the “minimum core of electoral democracy.” Drawing on comparative evidence from a range of states experiencing democratic erosion, Landau and Dixon identify two variants of the phenomenon. In its weak form, abusive judicial review involves courts “stand[ing] by passively as democracy is dismantled”; in its strong form, it involves courts actively undermining key democratic norms and institutions (2020: 1316-17). The Roberts Court has engaged in both versions of the practice.

In this section, I briefly review two instances in which the contemporary Court has declined to check legislative infringements on fair democratic procedures, and two others in which it has reached out to actively thwart legislative enhancements of democratic procedures. In Crawford v. Marion County Election Board (2008), the Court upheld Indiana’s strict voter ID law, despite clear evidence that the photo identification requirement would “impose nontrivial burdens on the voting rights of tens of thousands of the state’s citizens . . . [, with] a significant percentage of those individuals . . . likely to be deterred from voting.”11 The law had been enacted on a party-line vote in Indiana’s Republican-controlled legislature, and Seventh Circuit Judge Terence Evans characterized it as “a not-too-thinly-veiled attempt to discourage electionday turnout by certain folks believed to skew Democratic.”12 In subsequent litigation regarding an even stricter law from Wisconsin, Circuit Judge Richard Posner noted that roughly nine percent of registered voters in the state lacked the required state-issued identification. Posner also reviewed sworn testimony from multiple registered voters who had attempted to obtain such identification, but had been unable to do so. 13 Relying on Crawford, Posner’s colleagues nonetheless upheld the Wisconsin law as well.

A decade after Crawford, the Court held in Rucho v. Common Cause (2019) that claims of intentional and excessive partisan gerrymandering are not subject to judicial resolution under the U.S. Constitution. The case featured uncontroverted evidence that following the 2010 census, the Republican-controlled North Carolina legislature had “instructed their mapmaker to use political data to draw a map that would produce a congressional delegation of ten Republicans and three Democrats.” In all recent election cycles, votes for statewide offices and aggregate votes for House candidates have evinced a state split nearly 50-50, with Democrats winning the aggregate House vote in 2012 and the Governor’s race in 2016. But the Republican gerrymander successfully maintained a 10-3 GOP majority in the House delegation across three consecutive election cycles. Despite this context, Chief Justice Roberts declined to impose any constitutional limits on the drawing of district lines to “subordinate adherents of one political party and entrench a rival party in power,” even where that desire represents the “predominant purpose” of the line-drawing.14

The central premise of Roberts’s argument for allowing such partisan gerrymandering is that the Constitution grants such authority to state legislatures in the first instance (and to Congress secondarily), and hence that the American people should bring their complaints about existing districting practices to their elected representatives, not to the Court. But relying on selfinterested legislators to reform the procedures under which they themselves have been elected has the same shortcomings that it had in Baker v. Carr (1962), which authorized courts to weigh in when district maps featured massive departures from the principle of “one person, one vote.” With the Court declining to serve as democratic guardrail, Crawford and Rucho are paradigmatic examples of weak-form abusive judicial review.

Contrast the Court’s broad posture of judicial restraint in those cases with its aggressive interference with the 2002 McCain-Feingold Act and the 1965 Voting Rights Act. In Citizens United v. FEC (2010), the Court held that for-profit corporations have a First Amendment right to spend unlimited sums advocating the election or defeat of political candidates, thereby invalidating a central provision of the most significant federal campaign finance law since the Watergate era. Citizens United is the most notable in a long string of Roberts Court decisions invalidating campaign finance regulations, with the Court’s most conservative justices repeatedly holding that state and federal legislative institutions lack authority to limit election spending.15 In Shelby County v. Holder (2013), the Court gutted a central provision of the Voting Rights Act, holding that Congress had unconstitutionally required certain state and local jurisdictions to get federal approval for all changes to their election laws. Technically, Roberts’s opinion for the Court only invalidated the formula that determined which state and local jurisdictions were required to seek such federal “pre-clearance,” but both his majority opinion and a concurrence from Justice Thomas suggested that even with a revised coverage formula, the Court’s conservative majority would view such a requirement as an unconstitutional intrusion on state sovereignty. The decision unleashed a wave of new state restrictions on voting rights—with Republican legislatures and executives enacting voter ID laws, purging voter rolls, and closing polling sites—that previously would have required federal pre-clearance (Rocco in this volume).

As these examples make clear, the current Court’s relevance for democratic erosion is twofold. First, it has significantly scaled back its role as an institutional check against partisan attempts to undermine fair democratic procedures. It is not yet clear that it has abandoned this role altogether, but it is fair to say that its performance is not currently reliable. Indeed, early reports from the Bright Lines Project have shown that “Judiciary can limit executive” and “Judicial independence” are among the democratic norms and institutions on which both expert and mass public confidence dropped most sharply during the Trump era (Carey, et al. 2019). Consider the Court’s response to legal disputes regarding vote counting in the 2020 presidential election. Once it was clear that Joe Biden had won a decisive victory, the Court dismissed multiple frivolous lawsuits seeking to reverse the results.16 But in the weeks leading up to the election, four conservative justices had signaled that they were prepared to give a sympathetic ear to Trump campaign arguments that could have reversed an election defeat if the outcome were close.17 Justice Barrett was not yet on the Court when those disputes were heard, and there is good reason to worry that she would have provided a fifth vote in such a scenario.18

Second, the Court has proven willing on key occasions to thwart legislative attempts to enhance fair democratic procedures.19 A variety of signs indicate that this latter effort has not yet run its course. In the campaign finance context, for example, Justices Thomas and Alito have set their sights on disclosure requirements, and Senate Majority Leader McConnell echoed their arguments in a January 2019 op-ed.20 On the gerrymandering front, reform advocates have used the ballot initiative process in several states to transfer redistricting authority from partisan state legislatures to non-partisan commissions. The Supreme Court upheld such an initiative from Arizona in 2015, but it did so by a vote of 5-4, with Roberts, Thomas, and Alito (along with Scalia) in dissent. 21 If any two of Trump’s three nominees agree with them, they now have the votes to hold that neither judges nor voters may take districting authority away from partisan legislators. Roberts’s dissenting opinion in the Arizona case suggests that this same judicial coalition may invalidate any congressional attempt to mandate non-partisan redistricting as well (Keck 2019b).

In sum, even before the Trump era, the Roberts Court was sometimes willing to actively deploy judicial power to undermine core features of electoral democracy. President Trump’s three appointments have shifted the Court’s median justice substantially to the right—both in general and on voting rights in particular. As such, Democratic advocates of democracy reform have reason for concern that when they next recapture Congress and the White House, their Republican opponents will have retired into the judiciary as a stronghold. In this context, any comprehensive program of democratic preservation and renewal in the 2020s will need to grapple with the issue of court reform (Jones 2020).

Conclusion: Reestablishing the Court’s Role as Democratic Guardrail

Calls for Court reform are a recurring feature of U.S. history. They have repeatedly been prompted by controversial actions taken by the justices themselves and by the partisan coalitions with which they are allied. Remarkably, contemporary Republican elites—acting across all three branches of the federal government—seem poised to provoke such calls in nearly every way that they have been provoked in the past. When Biden is sworn in as President in January 2021, he will find himself facing a Court that has been illegitimately packed by the opposition party on its way out of power; that stands opposed to majoritarian, multi-racial democracy; and that is committed to a constitutional vision under which much of the platform on which Biden was elected is constitutionally suspect. If history is any guide, Court reform will remain on the table until President Biden’s political coalition collapses or Chief Justice Roberts steers a non-obstructionist path. If neither of those paths unfold, serious discussion of Court reform is virtually inevitable.

In this concluding section, then, I highlight some key lessons from our constitutional history regarding how to pursue such reforms in ways that are most beneficial for—and least risky to—democratic health. On my reading of the relevant history, some instances of attempted Court-packing contributed to democratic erosion in the United States, while others operated, on balance, to promote democratic preservation and renewal. Indeed, it seems to me incontrovertible that court-packing can be undertaken in ways that both hinder and foster democratic governance. If and when small-d democrats regain control of Hungary, Turkey, or Venezuela, would any decisions on their part to alter the size or structure of their judicial institutions be best understood as undue assaults on democratic norms? Surely we would need to know additional contextual details before reaching that judgment. As Joseph Fishkin and David Pozen have noted, “all acts of constitutional hardball create systemic risks, . . . [but] specific acts may be justified for a variety of contextual normative reasons; sound political judgment might even require that certain types of hardball be played in certain situations” (2018: 925; see also Bateman in this volume; Tushnet 2020).

In the ongoing debates about how best to respond to processes of democratic erosion once they have been diagnosed, Levitsky and Ziblatt have famously called on opposition party elites to exercise forbearance, resisting the urge to respond to the authoritarian leader's normbreaking with more norm-breaking of their own. But such forbearance strategies may not be viable when facing incumbents—including judicial incumbents—who are deliberately tilting the playing field. In such circumstances, some sort of hardball opposition may be more effective at protecting and renewing democracy, particularly if small-d democracy advocates deploy such tactics in pursuit not just of their own narrow partisan interests but also pro-democratic reforms that promise to break the cycle of tit-for-tat escalation (Bateman in this volume; Pozen 2019).

If systemic threats sometimes justify constitutional hardball, then scholars of democratic erosion and resilience are in good position to help policymakers reflect on how such tactics can be deployed in maximally legitimate fashion. One issue here is timing—i.e., how to know when we have reached the point where hardball tactics are merited. With regard to Court expansion, both its normative legitimacy and its political viability are likely to increase if and when the Roberts Court acts as a partisan roadblock to a Democratic administration. If the conservative justices refrain from doing so, they may be able to forestall Court reform. But the historical pattern suggests that emergence of an obstructionist Court is likely, at which point Democratic Court reformers will be emboldened. I have argued that judicial obstruction of legislative expansions of voting rights (and related democracy reforms) would provide particularly weighty justification for Court reform. In theory, the threat of such judicial contributions to democratic erosion might justify preemptive action—e.g., expanding the Court before it eviscerates a new voting rights act—but in practice, such preemptive action would require substantially greater political investment. Convincing the American public that Court packing is called for would be a tall order on any occasion, but it is more likely to succeed once the Court has begun actively obstructing a broadly popular policy agenda.

In addition to the question of when to resort to hardball tactics, reformers should reflect on how to do so in ways that minimize the threat of tit-for-tat escalation. Here, one’s prescription for reform is likely to depend on one’s diagnosis of the systemic democratic defects in which the Court plays a role. If the chief threat to U.S. democracy is partisan polarization, then the cure is likely to involve institutional changes designed to empower centrists of both parties and to weaken their extremist flanks. If the diagnosis is partisan degradation rather than polarization— i.e., if the key defects facing American democracy are rooted not in a bipartisan refusal to compromise, but in one party’s abandonment of the rules of the game—then the prescription would be different. Rather than promoting bipartisanship, the cure would involve institutional changes that weaken the structural pro-GOP biases in our electoral and policy-making systems, thereby disrupting the party’s playbook for maintaining its hold on power without offering a platform that appeals to popular majorities (Bateman in this volume).

To the extent possible, the goal of Court reform should be reestablishing the Court’s role as democratic guardrail, not reestablishing its role as Democratic agent. Given that the reforms would be enacted by partisan legislators, some consideration of partisan payoffs is inevitable, but scholars of democratic erosion and resilience can help call attention to particular reforms that are most beneficial for (or least risky to) democratic health. On this front, Pozen (2019) has called for greater consideration of “anti-hardball” reforms, by which he means institutional changes that reduce the likelihood of constitutional hardball being played by either side moving forward. For example, when a new state legislative majority comes to power, they could respond to a prior pattern of partisan gerrymandering by creating a non-partisan redistricting commission rather than deploying a new partisan gerrymander of their own. The dilemma is that the existing gerrymandered districts may prevent a new state legislative majority from coming to power, or that a captured court might prevent the new majority from altering the redistricting procedures.

With regard to Court reform, anti-hardball measures might include reducing the length of Supreme Court terms and regularizing the occurrence of Supreme Court vacancies, changes that would lower the stakes of any given nomination fight. Scholars were calling for such reforms long before Trump’s election, and good government reformers have continued to advocate them (Cramton and Carrington 2005; Cramton 2007; Galston, et al. 2019). The dilemma is that most such reforms would have to survive judicial review by the existing Court.

If the key defect ailing American democracy is partisan degradation rather than polarization, then even anti-hardball reforms that have in the past drawn bipartisan support may require hardball tactics to enact (Pozen 2019). In other words, successful Court reform may require combining good government improvements to judicial selection and tenure rules with hardball efforts to wrest judicial institutions away from the anti-system party’s control. The institutional design choices are complex, and I close with one recent proposal that illustrates the challenges.

In September 2020, less than two weeks after Justice Ginsburg’s death, Representative Ro Khanna introduced legislation that would authorize the president to nominate a Supreme Court justice every two years, during the first and third years of each four-year presidential term. Once confirmed by the Senate, each justice would serve an 18-year, non-renewable term, after which she would rotate off of active duty on the Supreme Court. The bill would eventually produce a stable Court membership of nine, but the justices sitting at the time of enactment would be grandfathered, retaining their life terms, thereby producing the possibility of a Court larger than nine until all of those sitting justices have concluded their service. 22 When the basic structure of Rep. Khanna’s reform bill was first floated by advocates in 2019, conservatives held a five-to-four majority on the Court (Schwartz 2019). In that context, the combination of temporary Court expansion with permanent improvements to judicial selection and tenure rules may have seemed a workable marriage of hardball and anti-hardball reforms. With Justice Barrett having expanded the conservative majority to six justices, the horns of the dilemma have sharpened. The Khanna bill is one of a variety of anti-hardball reforms that would ameliorate the partisan degradation of the federal courts, but if those reforms cannot survive judicial review by the current Court, then it will take some form of hardball tactics to achieve them. That this dilemma faces Court reform advocates should not be surprising, as it is the same dilemma facing democracy reform more broadly. Solving it will be the central challenge of the post-Trump era in U.S. politics.

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### 1NC – States CP

#### The fifty states and relevant subnational entities should, through the Multistate Antitrust Task Force, [prohibit private sector business practices that violate an antitrust worker welfare standard.

#### The attorney generals of the fifty states and relevant subnational entities should enforce the prohibit private sector business practices that violate an antitrust worker welfare standard.

#### 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.

## Off

### 1NC – Econ DA

#### The consumer welfare standard fosters innovation and competition – the plan crushes growth

Wright 21 – Joshua D. Wright, Executive Director of the Global Antitrust Institute at the Antonin Scalia Law School, former commissioner of the U.S. Federal Trade Commission from 2013 to 2015, “A Time for Choosing: The Conservative Case Against Weaponizing Antitrust,” Summer 2021, https://nationalaffairs.com/time-choosing-conservative-case-against-weaponizing-antitrust

It has long been vogue among liberal advocates to champion expansion of government control over firms, their decisions, and internal workings. Perhaps no better present example can be found than in the area of antitrust, where the policy landscape looks eerily similar to the progressive view articulated 60 years ago, littered with a hodgepodge of proposals to “break up” large firms, prohibit all mergers and acquisitions, assign burdens of proof to the accused, and control the design of products. Today’s progressives offer much of the same medicine for what allegedly ails the modern economy. Senator Warren has proposed, for example, to “break up big tech” platforms such as Amazon, Apple, Facebook, and Google, and to make technology companies criminally liable for misinformation presented on their platforms.[ii] While the large and successful American tech firms—the envy of the global economy—make a convenient target for these proposals, do not be fooled. This wolf comes as a wolf. The modern progressive antitrust agenda is part of a broader, more radical program—self-described as Neo-Brandeisian Antitrust—to turn antitrust law upside down so that it may be weaponized to shape and plan all sectors of the economy.

These proposals, while unfortunate and misguided, draw heavily upon standard liberal orthodoxy that has tended to be largely suspect of markets and the agency of individuals. One can hardly be surprised to see a staunch progressive like Senator Warren or Bernie Sanders advocate greater government control over private life. Perhaps one even grows to expect it.

What is more surprising, however, is the company Senator Warren and the Neo-Brandeisian Antitrust movement have attracted with the siren call of using the antitrust laws to centrally plan the tech sector (among others things), and to achieve greater government control of the interactions between individuals and the technology we use in our daily lives. Stalwart conservatives like Senator Hawley, for example, among others, have offered policy proposals to “deal” with “Big Tech” that eerily mimic those of Senator Warren and the command and control left. Senator Hawley has proposed legislation that would rewrite Section 230 of the Communications Decency Act and usher in a quasi-Conservative Fairness Doctrine for the internet.[iii] Indeed, Hawley’s proposal would place the Federal Trade Commission in the Big Brother position of determining when a social media platform’s moderation decision was “designed to” or “motivated by an intent to” negatively impact a political party. Attorney General Barr has offered a similar refrain, announcing that antitrust is an appropriate tool to police political bias.[iv] And President Trump recently signed an executive order that directs the Federal Trade Commission to explore using its consumer protection authority to sue social media platforms for content moderation decisions.[v]

Without question, the emotional appeal undergirding these actions is understandable. Conservative voices and opinions too often face a stacked deck when dealing with technology companies and social media, in particular. And this bias against conservative voices has taken on new life in the Trump era. But the hallmark of conservative values has been to rightfully eschew government control over economic life and to value principle over expediency. What is at stake, however, with the current proposals to upend modern antitrust to address tech markets is more important than whatever fleeting satisfaction is gained from exacting policy revenge on firms perceived to squelch conservative voices and ideas. At stake are conservative commitments to the rule of law and the role of the judiciary—newly stocked with immense talent by the Trump administration—in preventing government expansion and overreach. And if we resign ourselves to transient political wins, and debase the belief that entrepreneurs rather than bureaucrats should shape technology markets, we risk not only undermining these great causes conservatives have championed for decades but also the enormous economic gains to Americans that arise in our highly competitive tech markets.

Readers less familiar with antitrust law may not understand its critical role in the conservative legal movement. Modern antitrust law—and its consumer welfare standard—is a complex product of powerful ideas, extant economic evidence, and jurists like Bork, Thomas, Scalia, Easterbrook, and Doug Ginsburg taking on the wobbly intellectual foundations of 1960s competition law. That their efforts were so successful in persuading their liberal counterparts on the Supreme Court and lesser federal courts to join in the dismantling of the stale and obsolete antitrust that was then the law of the land is powerful evidence of the force of their ideas. It is difficult to find an area of law where the conservative legal movement enjoyed as much success as quickly and with such resounding results.

No doubt it helped that yesteryear’s antitrust was intellectually bankrupt and an insult to the rule of law. It pursued an unfortunate amalgamation of contradictory doctrines, including undefined notions of populism, protection of individual industries, and reducing firm size, that could be used to justify nearly any result. For instance, antitrust law allowed the market-leading frozen pie manufacturer in Utah to successfully sue its three national-brand competitors for eroding its high market share through a series of price cuts—thereby preventing precisely the type of competition the law was intended to protect. Antitrust law was so unprincipled and incoherent at the time that it led Justice Potter Stewart to observe while reviewing a government suit to block a merger between two grocery stores with a combined market share of 7.5% that, “The sole consistency that I can find is that, in litigation under [the merger laws], the Government always wins.”[vi]

The conservative legal movement, powered by the intersection of economic analysis and law, brought the rule of law to the wild and untamed progressive antitrust vision of the 1960s. Grounding antitrust law in a disciplined and tractable framework not only promotes the rule of law while preventing arbitrary and capricious enforcement, it also creates a stable and predictable environment for private actors and firms to invest and innovate. Of course, no doctrine is perfect and today’s antitrust is not without its own flaws. But it is tethered to robust economic evidence and common-law developments that promote competitive outcomes and, like the common law, has built-in mechanisms to improve and evolve in response to empirical evidence. But the coherent and principled makeup of antitrust should not and cannot be taken for granted.

Proposals today that are attracting conservatives and liberals alike aim to unwind these gains in exchange for granting those who happen to have power in the government a dominant hand in controlling tech firms on the fleeting hope that the power will be deployed for the greater social good. We have experience with this approach to antitrust in the United States. It is what we used to do. And we know better. Shifting power from judges to regulators, and then allowing those regulators to pick winners and losers to achieve political and social goals, is a recipe for abandoning conservative commitment to the rule of law while simultaneously sacrificing economic growth and innovation. The price is too high, with little or nothing to offer those who value individual liberty, the rule of law, and economic growth. While progressive ideology is contiguous with increasing government control over economic and social interactions in technology markets for its own sake, conservative principles are not. The proposed bargain is also remarkably short-sighted. It should go without saying that empowering partisan regulators to enforce a Fairness Doctrine for conservatives is not likely to work out so well when the other side is in control.

Conservatives traditionally have been wary of proposals by liberals and other big government proponents seeking to substitute the judgment of regulators and bureaucrats for those of entrepreneurs and innovators. And rightfully so. Such proposals, even when well intentioned, risk making Americans worse off. Progressives and populists now seek to commandeer antitrust to usher in a new era of central planning in order to achieve social policy objectives that they could not accomplish otherwise. But at what cost? The risks are not trivial. Using antitrust to redesign tech companies and their products will undermine the competitive dynamics that have brought Americans countless modern benefits, including smartphones, fast and easy online shopping, on-demand ride hailing, easy-to-access streaming media, and a bevy of free services including email, maps, and video conferencing. It also will threaten the incredible economic growth and job creation that these companies have brought to America’s shores. And while politicians surely will make promises akin to, “if you like the digital platform you have, you’ll get to keep it,” it is all too clear that when you expand government discretion and limit judicial oversight, those in positions of power will increasingly impose their preferences on the broader society. Ask yourself, do you really want the government designing the iPhone?

The reality is that the U.S. digital economy is highly competitive and serves Americans well. Fueled by investment, innovation, and entrepreneurship, the digital economy has contributed substantially to America’s economic growth. According to the Bureau of Economic Analysis, the digital economy accounted for 6.9 percent of gross domestic product in 2017, growing at an annual rate of 9.9 percent since 1998 as compared to 2.3 percent for the economy overall.[vii] That economic growth has been driven by some of the world’s most successful tech companies, such as Amazon, Apple, Facebook, Intel, Google, and Microsoft, each of which calls the United States home. These firms are investing ever-increasing amounts on research and development to innovate new products and stay competitive. In fact, the United States leads the world in research and development spending, and tech companies lead in the United States—representing the nation’s top five spenders with investments totaling more than $75 billion in 2018.[viii] Tech companies rank second (behind the telecom sector) in U.S. capital expenditures, with Alphabet (Google’s parent company), Amazon, Apple, Facebook, Intel, and Microsoft together spending more than $45 billion in 2017.[ix] And these investment figures are only expected to continue to grow. These are hardly the actions of monopolists resting on their laurels, secure in belief that they are untouchable by competition.

And there is more good news. Tech has only touched a portion of the U.S. economy to date, meaning that there still are opportunities for tech companies to foster economic growth by transforming stagnant industries such as housing, transportation, manufacturing, and health care for the better. And where are the next generation of innovators and tech entrepreneurs calling home? The United States. Recognizing an economy that is dynamic and rewards creativity, venture capital investing has soared to record levels in the United States—surpassing $140 billion in 2018—providing startups with the capital necessary to innovate, compete, and grow.[x] Today the United States is home to half of all startups valued at more than $1 billion—so-called “unicorns”—outpacing every other country in the world by a wide margin.[xi]

Now, some conservatives chafe at recitations of facts and claim that technology companies exclusively benefit only the privileged. But this economic growth and investment have led to substantial benefits to ordinary American consumers and workers. You need only look to the numerous free services that tech has brought to consumers. Americans place significant value on these free services. One peer-reviewed study published by the National Academy of Sciences found that consumers would need to receive a yearly payment of $3,600 to give up free internet maps, $8,400 to give up free email, and $17,500 to give up free search engines.[xii]

Tech firms also have spurred change in long stagnant industries by developing new products that spark competition across quality, price, and other dimensions. Take for instance ride-sharing apps. Local cab companies long had a stranglehold on taxi services and saw little need to innovate or evolve. Ride-sharing apps like US-based Uber and Lyft disrupted the livery service industry by offering lower-cost and more convenient services. Cab companies have been forced to respond by offering easier payment methods and other innovative services that enhance the consumer experience. Proponents of using antitrust to restructure or even break up tech companies are unable to explain how their sweeping plans, however carefully scripted, would not undo the business models that made these services and their associated benefits possible. The burden should be on those seeking to use antitrust to remake the digital economy to demonstrate that the risk is justified. It is hard to believe how it could be.

The digital economy also has been an important source of job creation. According to one estimate, nearly 12 million people held tech jobs in the United States in 2018.[xiii] Today the largest U.S. tech companies have replaced the major American employers of the past. In just under two decades, Amazon, Apple, Facebook, Alphabet, and Microsoft have employed more than one million workers.[xiv] In 2016, Amazon became the fastest company to employ 300,000 Americans—surpassing Walmart and General Motors.[xv] Moreover, while the share of economic output going to workers has been declining steadily overall for many years both in the U.S. and globally, in the tech and telecom sectors the labor share has been steady and even has increased, suggesting improved worker welfare.[xvi]

#### Independently, moving away from the consumer welfare standard increases inflation

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

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

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

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

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

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

Let’s start with food prices and Big Ag.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Competing factors

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

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

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

The inflationary forces are pretty powerful in their own right.

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

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

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

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

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

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

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

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

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

“Is it really going to be all temporary?”

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

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

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

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

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

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

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

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

#### Extended COVID economic decline causes multilateral meltdown – causes nuclear war, climate change, Arctic and space war.

McLennan 21 – Strategic Partners Marsh McLennan SK Group Zurich Insurance Group, Academic Advisers National University of Singapore Oxford Martin School, University of Oxford Wharton Risk Management and Decision Processes Center, University of Pennsylvania, “The Global Risks Report 2021 16th Edition” “http://www3.weforum.org/docs/WEF\_The\_Global\_Risks\_Report\_2021.pdf

Forced to choose sides, governments may face economic or diplomatic consequences, as proxy disputes play out in control over economic or geographic resources. The deepening of geopolitical fault lines and the lack of viable middle power alternatives make it harder for countries to cultivate connective tissue with a diverse set of partner countries based on mutual values and maximizing efficiencies. Instead, networks will become thick in some directions and non-existent in others. The COVID-19 crisis has amplified this dynamic, as digital interactions represent a “huge loss in efficiency for diplomacy” compared with face-to-face discussions.23 With some alliances weakening, diplomatic relationships will become more unstable at points where superpower tectonic plates meet or withdraw.

At the same time, without superpower referees or middle power enforcement, global norms may no longer govern state behaviour. Some governments will thus see the solidification of rival blocs as an opportunity to engage in regional posturing, which will have destabilizing effects.24 Across societies, domestic discord and economic crises will increase the risk of autocracy, with corresponding censorship, surveillance, restriction of movement and abrogation of rights.25 Economic crises will also amplify the challenges for middle powers as they navigate geopolitical competition. ASEAN countries, for example, had offered a potential new manufacturing base as the United States and China decouple, but the pandemic has left these countries strapped for cash to invest in the necessary infrastructure and productive capacity.26 Economic fallout is pushing many countries to debt distress (see Chapter 1, Global Risks 2021). While G20 countries are supporting debt restructure for poorer nations,27 larger economies too may be at risk of default in the longer term;28 this would leave them further stranded—and unable to exercise leadership—on the global stage.

Multilateral meltdown Middle power weaknesses will be reinforced in weakened institutions, which may translate to more uncertainty and lagging progress on shared global challenges such as climate change, health, poverty reduction and technology governance. In the absence of strong regulating institutions, the Arctic and space represent new realms for potential conflict as the superpowers and middle powers alike compete to extract resources and secure strategic advantage.29 If the global superpowers continue to accumulate economic, military and technological power in a zero-sum playing field, some middle powers could increasingly fall behind. Without cooperation nor access to important innovations, middle powers will struggle to define solutions to the world’s problems. In the long term, GRPS respondents forecasted “weapons of mass destruction” and “state collapse” as the two top critical threats: in the absence of strong institutions or clear rules, clashes— such as those in Nagorno-Karabakh or the Galwan Valley—may more frequently flare into full-fledged interstate conflicts,30 which is particularly worrisome where unresolved tensions among nuclear powers are concerned. These conflicts may lead to state collapse, with weakened middle powers less willing or less able to step in to find a peaceful solution.

## Off

### 1NC – DA

#### Budget passes now – PC is key.

BBC 10-28-2021

(“Biden announces revamped $1.75 trillion social spending plan,” https://www.bbc.com/news/world-us-canada-59081791)

US President Joe Biden unveiled a revamped $1.75tn (£1.27tn) spending plan on Thursday, calling it a historic investment in the country's future. "No one got everything they wanted, including me," he said, acknowledging the struggle within his party to reach consensus on a pair of landmark bills. Narrow margins in Congress require nearly unanimous support from the Democrats for the bills to pass. They include major investments in infrastructure, climate and childcare. Mr Biden's Democratic party suggested this week that an agreement was on the horizon, ahead of Mr Biden's trip to Europe later on Thursday. President Biden will travel to Rome, the Vatican and later to Glasgow, Scotland for the United Nations climate conference, COP26. But it remains to be seen whether Mr Biden has achieved the level of cooperation needed from within his party to move the spending plan forward. This new proposal is thought to be a stripped-down version of the roughly $3.5tn social spending plan favoured by progressives. Mr Biden was expected to use his Thursday morning meeting with House Democrats to convince progressives in the party that this new version is close enough to the original bill, and to persuade progressives in the House of Representative to pass a separate, $1tn infrastructure bill that has already passed in the Senate. It's a delicate balance for Mr Biden, as he tries to appeal to his party's progressives - who say they need action on the social spending bill before passing infrastructure - and some moderates, for whom the infrastructure bill is priority. Others had concerns over the price tag of the original social spending bill. So what's in the proposed new spending plan? $555bn aimed at fighting climate change, mainly through tax-incentives for renewable and low-emission sources of energy $400bn for free and universal preschool for all 3- and 4-year-olds $165bn to lower health care premiums for the nine million Americans covered through the Affordable Care Act - also known as Obamacare $150bn to build one million affordable housing units A 50-50 seat split in the Senate - and certain Republican resistance - means Mr Biden must bring his entire party on board if he hopes to pass the spending bill. Two moderate Democrats, Senators Kyrsten Sinema of Arizona and Joe Manchin of West Virginia, appeared to signal some support for the bill in separate statements on Thursday. "After months of productive, good-faith negotiations with President Biden and the White House, we have made significant progress," Ms Sinema said. "I look forward to getting this done." Both Ms Sinema and Mr Manchin are widely seen to have tanked the original bill by refusing to vote for it. For Mr Biden personally, a lot is riding on the fate of these two bills: his presidential legacy. "I don't think it's hyperbole to say that the House and Senate majorities and my presidency will be determined by what happens in the next week," he told Democrats on Thursday morning, according to US media.

#### Antitrust action saps finite political capital and imperils the agenda.

Karaim 21

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

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

#### Key to avert climate change.

Chow 10-28-21

(Denise, Denise Chow is a reporter for NBC News Science focused on general science and climate change, https://www.nbcnews.com/science/environment/bidens-scaled-spending-bill-big-upsides-climate-fight-rcna4061)

Many climate activists are applauding the $1.75 trillion spending bill unveiled Thursday by President Joe Biden, a move that experts say will be crucial to staving off the worst effects of global warming and building a more livable future. Biden’s proposed framework includes $555 billion in clean energy investments, incentives and tax credits that would help the country meet its goal of reducing greenhouse gas emissions by at least 50 percent by 2030. If passed, environmental experts said it’s the type of legislation that could create much-needed momentum to slash pollution levels and address the climate crisis in the United States and on the global stage. The proposal also backs up promises that Biden campaigned on, making climate change a sizable focus of his administration’s biggest spending bill. “This would be an absolutely historic investment in clean energy and environmental justice — both of which are essential for climate progress,” said Abigail Dillen, president of Earthjustice, a nonprofit environmental law group based in San Francisco. “A package that makes all those investments at a scale that will be transformative over the next eight years is incredible.” The new framework comes after prolonged negotiations between the White House and two moderate Democratic senators, Joe Manchin of West Virginia and Krysten Sinema of Arizona, who opposed key parts of Biden’s original “Build Back Better” plan. Some environmental advocates had hoped for an even larger climate package. “The Build Back Better Framework announced by the White House today doesn’t go far enough to address the economic and climate crises facing our generation,” Cristina Tzintzún Ramirez, president of NextGen America, a progressive advocacy nonprofit started by billionaire and former Democratic presidential candidate Tom Steyer, said in a news release. “A few moderate Democrats negotiated against the best interest of the American people, forcing the rest of their party to renege on essential promises.” Biden on Thursday urged Congress to pass the proposal, saying that the investments will “truly transform this nation.” Earlier this year, the Senate passed a nearly $1 trillion infrastructure bill with robust bipartisan support, but the House has yet to vote on that measure, citing the need for parallel action on the social safety net portion of Biden’s agenda. The bill’s timing is crucial as Biden is set to meet with other world leaders in Scotland next week for the United Nations Climate Change Conference, where countries are expected to negotiate and set forth targets to reduce emissions in line with the goals of the Paris Agreement. Stalled negotiations had generated concern among environmentalists around the world that Biden could show up to the conference empty-handed, leaving little incentive for other countries to offer their own aggressive plans to cut carbon emissions. Sam Ricketts, co-founder and co-director of the climate advocacy group Evergreen Action, said lawmakers should feel increased urgency to pass the revamped Build Back Better act, but added that the proposal itself should benefit Biden by demonstrating to other nations that the U.S. is actively working to achieve its emissions targets. “This will show the global community that America really is an ally and can be a leader in driving forward global climate efforts,” Ricketts said. “It shows that after four years of President Trump’s outright climate denial, the U.S. government is moving with leadership against this global crisis.” The proposed climate bill will also give the U.S. stronger footing in Scotland during negotiations with other top emitters, including China. “The Biden administration will have more leverage to push other countries to make strong commitments,” said Danielle Arostegui, a senior climate analyst at the Environmental Defense Fund. “We can show that we’re putting our money where our mouth is.” The bill would significantly boost investments in renewable energy, including for solar and wind power, and would provide clean energy tax credits and an electric vehicle tax credit that would lower the cost of an electric vehicle by up to $12,500 per middle-class family, according to the White House. The framework also prioritizes environmental justice by earmarking 40 percent of the overall benefits of investment for disadvantaged communities. The plan would fund the electrification of ports, in addition to electrifying bus and truck fleets, and would provide grants to communities that are disproportionately affected by climate change and economic injustice. “This marks a new beginning in the fight against injustice in this country, and a long-overdue boost to the communities that have struggled with the toxic legacy of environmental pollution and systemic racism,” officials with the Equitable and Just National Climate Platform, a consortium of climate change and environmental justice advocates, said in a statement. Dan Lashof, U.S. director of the World Resources Institute, a Washington-based research nonprofit group, said the legislation could bring the country significantly closer to meeting its emissions goals, but added that there is still ground to make up. The White House said the bill will reduce greenhouse gas emissions by 1 billion tons by 2030, but Lashof said a total of 2 billion tons of emissions need to be cut to reach Biden’s target by the end of the decade. Still, he said these types of investments could spur other developments in the private sector, or at the state and local level, which could make up the difference. “It’s important to recognize that this is a huge amount of progress,” Lashof said. “This bill together with the infrastructure bill really does lay the foundation for meeting the 2030 target. It’s all moving in the right direction.”

#### Warming causes extinction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Inequality

### 1NC – AT: Inequality

#### 1. Antitrust doesn’t solve labor monopsony.

Naidu 21 – Suresh Naidu, professor of economics and international affairs at Columbia University as well as a fellow at Roosevelt Institute, “Labor Monopsony and the Limits of the Law,” 5/4/21, http://jhr.uwpress.org/content/early/2021/06/02/jhr.monopsony.0219-10030R1.abstract

A growing body of empirical literature indicates that labor market monopsony is widespread, and that it is depressing wages. A natural response is to encourage regulators, courts, and legislatures to strengthen antitrust enforcement as applied to labor markets. But there are strong reasons for believing that antitrust enforcement will be insufficient for countering labor market power. Antitrust enforcement can target mergers and anticompetitive behavior like no-poaching agreements, but a great deal of monopsony power is due to factors outside the reach of antitrust.

Imperfect competition regularly appears in product markets but, as a rough approximation, the institutional and social constraints on exchange of products are relatively limited, while the constraints on exchange of labor are significant and inherent in the way labor is traded. As a result of institutional constraints on the exchange of labor, a significant degree of monopsony power is held even without barriers to entry or collusion.

In this paper, we argue that even labor markets unaffected by the traditional markers of anti-competitive markets are rife with monopsony. We begin by surveying economic models of monopsonistic competition and then present some quantitative evidence that monopsony power is present even in putatively thick labor markets. We argue that pervasive monopsony implies policies well beyond the orbit of what is understood as antitrust, and we categorize these into polices that make the labor-supply constraint more elastic (e.g. antitrust or other pro-competitive policies), those that restrain firms wage-setting power via wage or benefit mandates (e.g. the minimum wage, wage boards, mandated benefits, or unions), and those that allow monopsony power to persist and be used by employers, but attempt to rectify the inefficiencies with other instruments (e.g. EITC or wage subsidies).

Besides paying a wage, jobs are bundles of idiosyncratic costs and amenities, for example, relationships with coworkers/managers or commute times, that are valued differently by different workers. Most workers do not obtain much experience shopping for jobs, and so mental representations of job values (“decision utility”) may be particularly noisy (Woodford 2019). Further, the next best alternative of a worker often depends on the possibility of an outside offer, which in turn depends on social networks interacting with idiosyncratic labor requirements of other firms (Granovetter 1974; Caldwell and Harmon 2019). This creates monopsony power when these tastes and outside options are private information of the worker, as firms must post a single wage, and will rationally be willing to lose some workers in order to pay lower wages to others. Further, perhaps due to custom, firms tend not to actively poach already employed workers, outside of extremely high skill industries. In contrast to ubiquitous advertisements and sales experienced in the product market, there is comparatively little in the way of active competition for workers.

The closest analogy to the issues in the labor market comes not from product markets, but from housing markets, where there are potentially many sellers and yet each property faces a downward sloping demand curve due to search frictions and idiosyncratic consumer tastes over each property. Arnott and Igarashi (2000) and Arnott (1989) makes this analogy formal in a number of papers, building on search models and differentiated tastes in order to incorporate market power into rental and housing markets (and explicitly drawing the analogy to labor markets!). Little empirical work has followed up on this, but a recent paper by Watson and Ziv (2019) applies more traditional IO tools to estimate the degree of housing market power in Manhattan, finding markups that are 20% of rent. They further find that little of this markup can be explained by concentration, and conclude that horizontal differentiation generates the bulk of the observed market power, similarly to our conclusions. A difference between housing and employment is that houses are durable goods that can be resold and as such are intertemporally competing with themselves, which could curb the exercise of market power as in Coase (1972).

It is commonly claimed that “labor is not a commodity.” Indeed this language is explicit in the text of the Clayton Act: “the labor of a human being is not a commodity or article of commerce,” exempting unions from antitrust enforcement.ii This claim is also prima facie false, in that most people sell their labor on a market in exchange for a wage. But the claim expresses an intuition that the buying and selling of labor is different from exchange of other commodities. It is unclear if labor is different from all other commodities, but it is certainly the case that various contracting frictions (for example, the impossibility of committing to staying with an employer, which is reflected in the law) make the market for labor different from the standard price-taking, homogenous commodity case.

As a result of the complexity of labor markets, the problem of labor monopsony was overlooked in labor economics until about 20 years ago despite the development of a vast parallel literature in industrial organization, and the earlier focus on power imbalances in the labor market by Adam Smith, John Stuart Mill, and Karl Marx. It is unclear why economists stopped giving attention to market power in labor markets, but a possible reason is the rise of unions which seemed to offer a solution to the problem of labor market power while also raising other questions for economic study. But the steady decline of unions, which dates back to the 1950s, did not revive interest in labor market power, possibly as a consequence of the widespread belief among economists that all markets (including labor markets) were basically competitive in the long run (Stigler 1942).

On the legal front, we see a similar story. The Sherman Act of 1890 did not distinguish labor and product markets and was understood at the time to apply to both types of market. Yet from the start most antitrust enforcement was targeted at producers rather than employers. In the 130 years since the Sherman Act, the case reports have overflowed with product market cases but only a handful of labor market cases, and these involve only the most explicit forms of anticompetitive behavior, like no-poaching agreements.

What can be done? We explore the possibilities and limitations of greater antitrust enforcement against labor monopsonists, and conclude that, while greater enforcement is advisable, it would be inadequate for addressing the problem. We then explore other legal approaches to problems of market power in labor markets, including wage regulation, “amenity regulation,” legal support for unions, and mandates and subsidies for desirable employment features. Our takeaway is that antitrust regulation, while required to combat egregious anti-competitive practices in the labor market, is a poor substitute for traditional labor and employment law, and more extensive labor market intervention is required to combat the natural monopsonies in the labor market.

#### 2. No inequality crisis and antitrust expansion makes it worse.

Wright et al 19 [Joshua D. Wright is University Professor and the Executive Director of the Global Antitrust Institute at Scalia Law School at George Mason University. Professor Wright also holds a courtesy appointment in the Department of Economics. In 2013, the Senate unanimously confirmed Professor Wright as a member of the Federal Trade Commission (FTC), following his nomination by President Obama. He rejoined Scalia Law School as a full-time faculty member in Fall 2015. "Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement." https://regproject.org/paper/consumer-welfare-the-rule-of-law-the-case-against-the-new-populist-antitrust-movement/]

Another assertion populist antitrust supporters regularly make is that prices have increased and output has decreased. Again, the evidence here is mixed at best.

The movement’s proponents claim increased monopoly power economy-wide has led to increased prices for consumers. One study by De Loecker and Eeckhout, for instance, purports to demonstrate an increase in markups since 1980, which they argue indicates market power has increased over this period.68 This study utilizes Compustat-compiled input and output data for firms across the U.S. economy to calculate firm-level markups, examining measures of sales, input expenditure, capital stock information, industry activity classifications, and accounting data measuring profitability and stock market performance.

While this study purports to demonstrate an increase in markups and, therefore, an increase in market power, there are several problems with this methodology and reasoning. Fundamentally, industrial organization economics literature has clearly established that profit margins, alone, are not reliable evidence of market power.69 Additionally, it is clear that increased markups, alone, are not reliable evidence of price increases. To understand whether higher markups translated to higher prices, we would need to understand additional factors, such as whether marginal costs have changed.70 If, for example, marginal costs decreased, markups could increase even if prices remained the same; indeed, depending upon how much marginal costs decreased, margins could increase even while prices decreased. Moreover, a trend toward higher markups does not necessarily indicate firm profits are likewise trending higher, as De Loecker and Eeckhout acknowledge. As they explain, a technological change that reduces variable, but increases, fixed costs might result in increased markups but not increased profits.

In addition, higher markups might simply reflect a shift in the composition of firms within the economy. Today, high-tech (and other) firms with low marginal costs but substantial R&D costs comprise a more significant percentage of the economy than they have historically. Consider, for instance, a software company that spends a tremendous amount developing an innovative new software that consumers download on their personal devices. While the marginal cost of selling each new unit of software would be miniscule, the company—to stay in business—would need to charge a price that helped it recoup the costs incurred to create its innovative product. The more firms within the economy employing this business model, the more we would expect to see higher markups, and so the less we could assume, based upon the existence of higher markups, alone, that those markups derive from increased market power.

Aside from the methodological issues with these studies, there is the added complication that other work finds conflicting results. Robert E. Hall, for instance, finds “no evidence that mega-firm-intensive sectors have higher price/marginal cost markups.”71 Notably, while he finds no real evidence of increasing markups in less regulated sectors like Manufacturing or Transportation and Warehousing, he does find a fairly strong trend of increasing markups in heavily regulated sectors like Finance and Insurance, and Health Care and Social Assistance—which is consistent with something other than concentration driving increased markups.72

Others examining the effect of concentration upon prices likewise find results that conflict with the populist antitrust movement’s claims. James Traina, for example, analyzes this same question, attempting to correct for another flaw in De Loecker and Eeckhout’s methodology: namely, De Loecker and Eeckhout focus only on the “cost of goods sold” (COGS) facet of firms’ operating expenses, omitting the “selling, general, and administrative expenses” (SGA) facet. Traina argues that SGA is an increasingly significant share of variable costs for firms in the U.S. economy, and demonstrates that once SGA is incorporated into De Loecker and Eeckhout’s measure of cost, markups actually remain flat (or decline).73

Similarly, Ganapati examines data from 1972-2012, and finds concentration issues do not lead to higher prices, but in fact correspond with increased output.74 He concludes that the concentrated industries he analyzes are concentrated not due to anticompetitive behavior, but “likely due to technical innovation or scale economies.”75 His findings are consistent with other work that finds that the trends in concentration populists condemn may, in fact, be related to changes in economies of scale and to their corresponding productivity improvements.76

Other studies upon which populist antitrust proponents rely purport to identify higher prices using different metrics. One such regularly-cited study is John Kwoka’s meta-analysis of retrospective studies of mergers, joint ventures, and other horizontal arrangements.77 Here, Kowka compiles data covering more than 3,000 mergers and concludes the average price effect for the studied mergers is a 7.22% increase.78 His findings have, however, been called into serious question. Experienced economists in the FTC’s Bureau of Economics, Michael Vita and David Osinski, identify several objections to Kwoka’s methodology and, accordingly, his findings. They explain why various methodological failings—including not using standard meta-analytic techniques to compute average price effects and standard errors, not weighting observations by their estimated variances (meaning all price estimates are treated the same regardless of their certainty), and omitting standard errors from his report—undermine Kwoka’s fundamental findings regarding price effects.79

The evidence upon which populist antitrust supporters rely in asserting that prices have increased is, accordingly, mixed at best. The studies they cite often attempt to examine very important—but also difficult to measure—questions. The limits of these studies must be acknowledged in any serious debate regarding the state of antitrust enforcement today. While many of these studies offer good initial insights, they mostly identify areas for further research. And in no case do they clearly identify systemic shortcomings in current antitrust enforcement efforts.

In addition to questionable empirical premises, the argument that we must abandon the consumer welfare standard because prices are higher and output is lower under this standard is in serious tension with remedies the populist antitrust movement proposes. Each of the proposed remedies would, as described above, diminish consumer welfare. If, for instance, we adopted a public interest standard, prices and output might be one concern—but employment, democracy, the environment, and inequality might be competing concerns. And lower prices, higher output, and product improvements would not have the trump card in the analysis they do today. Similarly, if we decided to ban vertical mergers or prohibit any transactions over a certain size, we would be preventing at least some transactions that would lower prices and increase output. This would appear to be particularly likely in the case of banning vertical mergers, a move which empirical evidence indicates has anticompetitive outcomes—i.e., higher prices or lower output—result only rarely.80 And it would lead to the perverse result of antitrust law deliberately fostering higher prices or lower output, meaning consumers would be less able to purchase products or services they desire.

Accordingly, even if prices and output have, in fact, trended in directions harmful to consumers, the better question to be asking is whether this is because enforcement under the consumer welfare standard is not at the optimal level. The consumer welfare standard focuses on just such factors—along with innovation, quality, and other consumer concerns. If the goal is to lower prices and increase output, it is difficult to see what better standard could be adopted than one that makes these consumer concerns its sole focus.

C. Increasing Antitrust Enforcement Would Reduce Inequality

Populist antitrust supporters further note that income inequality in the United States has increased dramatically in recent decades, and proffer that lax antitrust enforcement is (to varying degrees) to blame.81 The general intuition here is fairly easily stated: lenient antitrust enforcement allows firms to obtain market power, which allows them to reduce output, raise prices, and generate monopoly profits—all of which enriches shareholders. Shareholders are, by and large, in the top percentage of wealth and income distribution, so these increasing returns increase the wealth of the wealthiest and, thus, inequality.82

Imbedded in this theory are a couple key assumptions, both of which can be empirically tested. First, that inequality is increasing. The evidence here suggests inequality is likely increasing, though the magnitude of this increase is probably overstated. Second, that increasing antitrust enforcement would reverse this trend. On the proffered causal link between antitrust enforcement and inequality, there is, so far, a notable dearth of empirical support or development.

First, consider the evidence on inequality trends. Populist claims regarding increasing inequality largely rely upon analysis of the Gini coefficient for US incomes over the last 50 years, which appears to show a steep increase in inequality. Examining the ratio of the share of US income among the 5th quintile of income-earning households to the share among the 1st quintile of households likewise seems to show increasing inequality.83

While these data points offer interesting insights, it is again important to understand their limitations. As Robert Kaestner and Darren Lubotsky emphasize, for example, failing to account for government transfers and employee benefits—that presumably substitute, in part, for cash income—can meaningfully affect these kinds of inequality measures.84 One important example they explore is that of healthcare benefits. As healthcare costs have rapidly increased in recent years, omitting a measure of health insurance benefits (provided by employers or by the government) could significantly affect ultimate inequality findings. Kaestner and Lubotsky, in fact, analyze inequality measures accounting for this omission, and find that including health insurance benefits substantially lessens the difference between high-end and low-end incomes.85 They find the ratio of income between households at the 90th percentile and the 10th percentile to be approximately 5 in 1995, 5.2 in 2004, and 5.6 in 2012.86 So while their findings support the notion that inequality is increasing, they also suggest that the trend is significantly smaller than reported.

Examining household consumption trends tells a similar story. Scholars have argued that consumption might be a superior measure of welfare, given a “closer link between consumption and well-being.”87 Consumption trends would also seem to be relevant when considering antitrust enforcement efforts, as they offer more information regarding economic effects than isolated income or wealth measurements. Examining household consumption over the last couple decades indicates that inequality is increasing but at a muted rate.

Accordingly, the evidence does seem to indicate inequality is increasing by some amount. Potentially more-accurate measures of income and welfare, however, suggest this trend is not as significant as populists claim. So, the first assumption in this particular populist theory appears to be valid, if often overstated. That leads us to the second—and for this discussion, the critical—assumption that antitrust enforcement is driving the apparent inequality trend.

Second, consider the empirical evidence supporting a causal link between antitrust enforcement and inequality. This proffered link remains, thus far, largely theoretical and undeveloped empirically. Populist papers advocating for increased antitrust as a salve for increasing inequality do not offer empirical support for their preferred course of treatment. But other authors have begun to explore empirically the proposed tie between antitrust enforcement and inequality. Wright et al., for instance, present time series regressions relating measures of inequality to antitrust enforcement measures.88 While the authors acknowledge the standard reasons that these analyses cannot isolate, with confidence, causation, their work provides a useful foray into the empirical basis for the notion that antitrust enforcement and inequality are causally linked. The authors examine data from DOJ investigations between 1984 and 2016, focusing first on merger investigations, given the populist emphasis on merger activity, and then broadly examine all DOJ investigations for a more general enforcement measure. Their results do not offer “much empirical evidence to substantiate the proposed correlation between antitrust enforcement activity and inequality.”89

Populist claims that increased antitrust enforcement is necessary to combat a severe trend of increasing inequality thus appear to be overstated. While inequality appears to be increasing, the rate is likely more modest than the populist movement implies. And there is, as of yet, no empirical support for the underlying proposition that increasing antitrust enforcement levels would slow, stop, or reverse this trend.

#### 3. The plan gets circumvented.

Crane 21 – Frederick Paul Furth Sr. Professor of Law at UMich (Daniel, Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205 (2021). Available at: <https://scholarship.law.nd.edu/ndlr/vol96/iss3/7>

As first the antitrust agencies through their merger guidelines and then the courts through endorsement of the agencies’ approach systematically shifted merger policy away from the incipiency standard and began requiring formal market definition and probability of adverse price effects, Congress acquiesced through inaction. Whatever else it said in 1950, Congress has thus far shown itself willing to let the courts and antitrust agencies reshape merger law in a form far more favorable to business consolidation. \* \* \* In sum, from the courts’ earliest forays into interpreting the Sherman Act up through contemporary antitrust jurisprudence, the courts have manifested a systematic tendency to interpret the substantive antitrust statutes contrary to their texts, legislative histories, and often their spirit.236 Sometimes, as with the rule of reason and labor exemption, the judicial disregard of text and purpose has occurred fairly immediately. In other cases, as with the Robinson-Patman and Celler-Kefauver Acts, an initial period of statutory fidelity has slipped gradually into a period of statutory infidelity. In some cases, as with respect to section 5 of the FTC Act and section 3 of the Clayton ct, the courts continue to proclaim their fidelity after they functionally move to infidelity. In many cases, the courts stop pretending after a while and admit quite candidly that they are taking liberties with the statute. If this antitrust antitextualism is merely the product of common-law methodology, one would expect to see movement away from the statute’s text in both permissive and restrictive directions, or, to put it more crassly, both in favor of big capital and against it. But the movement has all been in one direction: loosening a congressional check on big capital. Thus, the rule of reason allowed courts to bless large combinations of capital that the courts deemed reasonable; narrowing the labor exemption frustrated labor’s ability to countervail capital’s power; restricting the private right of action for treble damages significantly curtailed the private-litigation check on business; judicial narrowing of the Clayton Act’s exclusive dealing and tying restrictions allowed (mostly big) firms to exploit market power; reading “unfair” out of the FTC Act eliminated section 5 as a check on business morality; eviscerating the Robinson-Patman Act protections for small and independent businesses favored large and powerful businesses; and requiring proof of likely price increases and technical relevant market definition in merger cases immunized many large-scale mergers from legal challenge. Throughout the history of American antitrust law, the courts have shown a systematic tendency to read down the antitrust statutes in favor of big capital. But the story of antitrust antitextualism is not simply one of conservative/progressive ideological struggle between Congress and the courts. Much of the action away from statutory text and purpose was accomplished by, or with the support of, judges of the political left. Unlike in other fields, Congress has not responded with statutory overrides. And far from buttressing its atextual statutory readings of the antitrust laws through veiled constitutional warnings about congressional overreaching, the Court has repeatedly pulled in the opposite direction, asserting quasi-constitutional reverence for antitrust law.237 Despite ample opportunity to do so, the Court has not removed antitrust law from the reach of congressional reconsideration by constitutionalizing its atextual readings. Antitrust antitextualism does not follow a conventional left/right ideological pattern. Its actual pattern is more subtle III. THE IDEALISTIC CONGRESS, PRAGMATIC COURTS THESIS AND ITS IMPLICATIONS Thus far, this Article has made an empirical observation—that, from the beginning of antitrust history, the courts have atextually read down the antitrust statutes in favor of big business and considered and rejected a potential explanation: that this phenomenon primarily represents an ideological tugof-war between a progressive Congress and more conservative courts. This final Part searches for an alternative understanding, one that is perhaps less obvious but more fitting, and then considers its systemic implications for the antitrust enterprise. A. The Idealistic/Pragmatic Thesis Congress writes expansive statutes reining in business power, the courts (either immediately or over time) disregard the plain text of the statutes and trim them down in favor of capital, and Congress acquiesces through inaction. Why? The best-fitting explanation is this: the antitrust laws reside in perennial tension between two fundamental impulses of the American political psyche—the romantic and idealistic attachment to smallness over bigness, and the pragmatic and often grudging realization that large-scale organization may be necessary to achieve material advantages. The romanticism and idealism of the anti-bigness impulse pushes it to the fore in the popular political arena. Congress legislates on the popular aspiration for an egalitarian economy organized around small proprietors and independent local businesses and freedom from economic dominance. When the statutes come to the courts or antitrust agencies, judges and antitrust enforcers play the pragmatic role of balancing those popular aspirations against the contending impulse for efficiency and material benefit. This balancing act induces them to give less effect to the statutes than the broad statutory texts suggest. So long as the judicial decisions achieve results that strike a politically acceptable outcome between the aspirational and pragmatic impulses, Congress is content to leave the judicial and enforcement decisions alone.

#### 4. Inequality doesn’t affect growth.

Chris Giles 15, Economics Editor for FT, “Inequality is unjust, not bad for growth,” Aug 18 2015, <https://www.ft.com/content/94a7b252-45a1-11e5-b3b2-1672f710807b>

Disparity of income is both a virtue and a vice. The virtue of providing rewards for effort and generating economic growth must be balanced against the vice of inequality’s manifest injustice. Riches derived through good fortune, good parents or being born at a good time are far from easy to defend. The problem for society and governments is to determine an acceptable degree of redistribution, balancing the remaining inequality with the blunted incentives from higher taxes and benefits. Or so we thought.¶ The past two years have witnessed huge growth in the industry of academic research rejecting this trade-off. Lower inequality boosts growth, its advocates claim, so countries really can have more redistribution, a narrower gap between rich and poor, alongside more sustained economic expansion.¶ Leading the charge towards the new consensus are two somewhat surprising institutions — the International Monetary Fund and the Organisation for Economic Cooperation and Development. Are these traditional bastions of orthodoxy infusing their policy prescriptions with the most up-to-date empirical evidence or merely following fashion?¶ There is no doubt that the new ideas are strongly held. Angel Gurría, head of the OECD, is convinced of the new reality. “Addressing high and growing inequality is critical to promote strong and sustained growth,” he says only to be outbid in rhetorical certainty by Christine Lagarde, the fund’s managing director. She reckons the rich should thank the poor. “Contrary to conventional wisdom, the benefits of higher income are trickling up, not down,” she says.¶ For all the excitement among this rarefied global elite, the research results are mundane. Economic performance varies wildly over time and across countries, yet the evidence suggests inequality explains only a tiny fraction of these differences. Whatever effect the gap between rich and poor might have on growth, other forces dominate, so we should not look to redistribution as the new engine of growth.¶ With the results almost entirely based on cross-country correlations, they also have troubling inconsistencies. Ms Lagarde and the IMF research think that a higher income share for the rich harms economic performance while the OECD says only inequality between the poorest and the middle matters. The Paris-based international organisation concludes that a lack of access to skills among the poor is the mechanism by which higher inequality hits growth at the same time as finding no role for skills in its equations on growth.¶ If the global results are weak, they also have close to zero policy prescriptions for rich countries where the results have caused most excitement — the US and the UK in particular. Far from being examples of the worst excesses of capitalism, these Anglo-Saxon nations emerge from the IMF data set as countries with relatively strong growth, low inequality and high redistribution.

#### 5. Alt causes to soft power and internationalism – polarization in Washington, recovery from Trump, and foreign policy is dictated president-to-president. No reason antitrust is correlated with foreign policy.

#### 6. Soft power fails -- realism and immeasurability.

Yukaruç 17 -- Umut Yukaruç, International Relations PhD from the University of East Anglia. [A Critical Approach to Soft Power, Journal of Bitlis Eren University, 6(2), https://www.researchgate.net/publication/332843308\_A\_Critical\_Approach\_to\_Soft\_Power]

Can it be measured?

One of the problems of soft power is its inability to measure. It is not possible to prove that one country changes its behaviours because of other country’s soft power. When IR theories are examined, it can be seen that Realists, whether classical or structural, focus on power and the international system as the only variables for explaining state behaviour. As Kenneth Waltz (1979: 126) observed “In anarchy, security is the highest end” and “power is a means and not an end”. Power is mostly defined as military and economic capabilities of the states. Neoliberals focus on institutions, practices and interdependency, used a systemic approach as neorealists, and focus mostly on economic capabilities to overcome insecurity created by the anarchical nature of the international system. Then, both theories claim international system and material capabilities are the causes of changing behaviours of the states and overlook soft power sources. With these approaches it is easier to show a state behaviour. For instance, international agreements could be a proof or nuclear capabilities of one country could be a cause of a change in state behaviour.

In Nye’s approach on the other hand, “soft power is fundamentally about improving the USA’s image among populations in other countries. Its premise is that the better America’s image in the world, the more allies it will have, the more support its policies will receive from other states, and the more secure it will be” (Layne, 2010: 53). Yet, it is not possible to prove that one country changes its actions according to other country’s image. More specifically, it can be better explained with an example. When we look at the relations between Turkey and the Middle Eastern countries we see that Turkish culture such as television series are very popular and President Erdogan is respected and loved in the region. It attracts many people from this region to popular destinations in Turkey therefore we can say Turkey has an influence over the ‘hearts and minds’ of the individuals in the Middle East. Yet, it is not possible to claim that a Middle Eastern country changed its behaviour and support Turkey, in the UN for instance, because of Turkey’s popularity in the region. Layne also states that soft power resource operates is fuzzy, whether shared values or multilateralism affect the minds and hearts cannot be understood, the outcome might be the consequence of democracy or institutions (Layne, 2010: 54).

Here it should also be mentioned that as it is stated in the beginning of this article there are some attempts to measure soft power of countries. One of these attempts, The Global Soft Power Index constructs its research on polling. This index ranks countries in terms of soft power and its research is based on questions asked to people from 25 countries (the sample for Turkey is 500 people). It evaluates the results according to eight factors including favourability towards foreign countries, perceptions of foreign cuisines, desire to visit foreign countries or perceptions of luxury goods. Yet, this research does not solve the problem mentioned above. For instance, it says about Turkey:

“The country’s strengths lie in the Engagement subindex where it performs particularly well in development assistance, its willingness to resettle millions of refugees, and permanent missions to multilateral organisations. Moreover, Turkey commands a critical geopolitical position as the Europe-Asia bridge. It has also made intelligent use of some soft power assets, like the way Turkish Airlines serves as a strong brand ambassador. But Turkey would benefit from working on its international perceptions -- it ranks at the bottom of our polling data this year. Negative perceptions have likely not been helped by the failed military coup; a referendum to secure greater powers for President Erdogan; and country-wide restrictions on media, civil society, and academia” (McClory, 2017: 50).

Although it says many things about Turkey’s soft power assets and what creates positive and negative perceptions about Turkey, we cannot claim that since Turkey has a global brand it has more power among other states or since it has problems in its democracy, it has less power in the region. Thus, this attempt to measure soft power cannot say anything about the ambiguity of soft power.

Too much focus on agent?

Last criticism of Nye’s concept in this article is that Nye focuses on either agency of actors such as the US or structure which determines what it means to be attractive, he does not conflate agent and structure; because he sought to develop a power concept for the US (Lock, 2010: 36). Since Nye focuses on agents more than structure and it draws our attention from subject to agent soft power turns into almost tangible resource like hard power materials which can be enhanced or produced (Lock, 2010: 36). Bilgin and Elis (2008: 12) also states that this agentfocused approach makes the soft power concept ‘not so soft’ because Nye focuses on the stockpile of soft power of the US and is not worried how US soft power affects the rest of the world. This makes the concept inconsistent, because its definition is changing, for instance whilst the first definition of soft power was based on only attraction, Nye included economic and military power when he defined smart power, and he claimed that everything can be soft power nowadays (Layne, 2010: 55). In his article in Foreign Policy, Nye (2006) even asserts that “A well-run military can be a source of admiration”.

Nye focuses on agents more than on subjects of power; he did not consider relational or structural forms of power and those forms of power conflate with each other (Lock, 2010: 34). For instance, on the one hand, Nye stated that the US can use its cultural products such as films and television shows to promote democracy and the rule of law in China. On the other hand, universal values and ideologies such as democracy can be used as attractions when those values and principles are being shared by others (Lock, 2010: 34-35). Lock explains this problem as that while in the former there is a relational form of power in the latter there is a structural form of power and this creates ambiguity in the nature of soft power.

Moreover, In Nye’s concept, the distinction between agencies is not clear as well. Which agents, state or society, in terms of wielding soft power is not clear (Zahran and Ramos, 2010: 20). Soft power cannot explain the linkage between civil society sources of soft power and different states. According to Nye, states are not the only agents who have soft power; there are other actors such as corporations, popular idols and civil society groups, and states do not have control over them (Zahran and Ramos, 2010: 20). When we think of Turkish television series for instance, they are very popular in many countries and it is believed that they create soft power for Turkey. Yet, they are not controlled by the Turkish state, thus, they should not be accepted as if they are tools of Turkey. This also creates ambiguity when we think about agents that create soft power.

CONCLUSION

This article first explained what soft power is and second brought three criticisms about it. Soft power has a changing definition and its sources expand since it was first used by Nye. Other concepts such as public diplomacy, nation branding and smart power are also articulated with soft power and accepted as its instruments. Soft power concept is widely used by politicians and academics. Although it is tempting for them, it has limitations.

This limitations were investigated under three sections. First, soft power’s originality was examined and other approaches in IR were addressed for this purpose. Intangible sources of soft power can also be found in Classical Realism in IR. Three-dimensional power approach of Lukes is also similar to Nye’s concept and there are common points between Gramscian hegemony concept and soft power. Thus, it can be said that soft power is not so original. Second, immeasurable nature of soft power was examined and as a result, it was demonstrated that it could not be possible to prove which soft power sources had influence on state behaviours. Intangibility of soft power makes harder to prove the influence over hearts and minds. Third, Nye focused on agent and was not interested in structure and subject. It examined soft power as if something tangible and this made soft power as if it was hard power. Moreover, agents in Nye’s concept were not clear as well and it made soft power ambiguous.

## Democracy Advantage

### Court Legitimacy Alt Causes – 1NC

#### Court legitimacy is inevitably low:

#### Abortion decision

Sarat 9/6 – Austin Sarat, William Nelson Cromwell Professor of Jurisprudence and Political Science at Amherst College in Amherst, Massachusetts, “Supreme Court trashed its own authority in a rush to gut Roe v Wade,” 9/6/21, https://thehill.com/opinion/judiciary/570958-supreme-court-trashed-its-own-authority-in-a-rush-to-gut-roe-v-wade

Much has rightly been made of the Texas anti-abortion law’s granting bounties to anti-choice vigilantes and of the Supreme Court's abuse of its “shadow docket” to green-light the law in defiance of Roe v. Wade.

But in addition to the harms to women’s rights in this law, the court’s Sept. 1 decision in Whole Women’s Health v. Jackson reveals something dangerous to lawful society writ large: the 5-4 ultra-partisan, conservative majority has, in its haste to gut Roe, eviscerated the rule of law it is supposed to stand for and diminished the court’s own authority.

The decision adds fuel to the already strong arguments for reforming the Supreme Court and urgency to the work of President Biden’s Commission on the Supreme Court.

It concedes, perhaps even celebrates, the fact that states, and individuals, can engage in legally questionable action and evade judicial scrutiny. By allowing Texas to flout Roe’s clear meaning, the court undermines an ordered society and may be paving the way for authoritarian rule.

The decision is a radical departure from the institutional history of the Supreme Court, which previously has been marked by efforts to assert and preserve the court’s exclusive prerogative to “say what the law is.” That was the crux of Chief Justice John Marshall’s famous 1803 opinion in Marbury vs. Madison, the case that established the Supreme Court as the ultimate arbiter of the Constitution’s meaning.

Over time, the court has jealously guarded its authority against those who have challenged it. It is the court’s right to have the last word on constitutional questions that has secured for it a central place in our system of government. As Supreme Court Justice Robert Jackson once explained, “We are not final because we are infallible. We are infallible only because we are final.”

And the court has time and again insisted that everyone abide by its rulings no matter how much they might disagree with them.

This was vividly demonstrated in the civil rights era during the middle of the last century when southern states refused to respect the court’s constitutional decisions and when demonstrators took to the streets to promote racial integration in defiance of court orders. The court responded by insisting to both sides: obey the laws first, and only then can you challenge our views of what the Constitution means.

When Dr. Martin Luther King and other civil rights activists ignored an Alabama state court injunction in the belief that the order to desist from a planned protest was unconstitutional, the Supreme Court upheld their arrest and conviction.

In his majority opinion in the 1967 case of Walker v. Birmingham, Supreme Court Justice Potter Stewart recognized the “substantial constitutional questions” that a challenge to that injunction would have raised. But he firmly rejected the marchers’ contention that they were free to ignore a law they believed to be unconstitutional and condemned their decision to take the law into their own hands:

“This Court cannot hold that the petitioners were constitutionally free to ignore all the procedures of the law…. [I]n the fair administration of justice, no man can be [the] judge in his own case, however exalted his station, however righteous his motives, and irrespective of his race, color, politics, or religion.”

And the U.S. Supreme Court has not been alone in that view nor has it been alone in striking down attempts by citizens or governments to disobey existing law.

In 2004, the California Supreme Court invalidated then-San Francisco Mayor Gavin Newsom’s declaration that the city would marry same sex couples in defiance of an existing voter-approved law that declared “Marriage shall be restricted to a man and a woman.”

Justice Sotomayor’s dissent in Whole Women’s Health makes precisely the same point about courts’ exclusive role in deciding on the law’s meaning. Calling the Texas anti-abortion law a “breathtaking act of defiance,” she labelled the court’s failure to act “stunning.” In her view, it “rewards tactics designed to avoid judicial review and inflicts significant harm on the applicants and on women seeking abortions in Texas.”

Until last week, defense of the judiciary’s role in saying what the law is and insisting that others defer to its judgments has united conservative and liberal justices.

But, in Whole Women’s Health, only one conservative, Chief Justice Roberts, joined with the court’s three liberal justices in standing up for such nonpartisan jurisprudential principles. His five conservative colleagues seem so eager to gut Roe that they are willing to disembowel the judiciary’s own authority.

#### General increase in partisanship

Beauchamp 18 – Zack Beauchamp, politics and international affairs writer for Vox, “The Supreme Court’s legitimacy crisis is here,” 10/6/18, https://www.vox.com/policy-and-politics/2018/10/6/17915854/brett-kavanaugh-senate-confirmed-supreme-court-legitimacy

The increased polarization of American politics will make the hit to the Court’s legitimacy worse than even past events, like the Clarence Thomas-Anita Hill hearings or Bush v. Gore. Over the past several decades, the political parties have sorted into more unified liberal and conservative blocs. The decline of conservative Democrats and liberal Republicans, and the linking of partisan identity with social identities like race and religion, has made partisanship the most powerful force in American democracy.

The result has been an across-the-board decline in faith in neutral institutions. Everything is being seen through a polarized lens — not just the political branches but executive agencies and even federal law enforcement as well. There’s a growing trend in Americans identifying the quality of institutions with how well those institutions serve their partisan ends — a trend the Court has been (relatively) insulated from, but one that it’s likely to get looped into now.

Experimental evidence suggests this is a fairly plausible outcome. Boston University’s Dino Christenson and David Glick conducted an experiment that showed some people evidence that the Court’s ruling upholding Obamacare was politically motivated while withholding the same material from another group. The result: Conservatives who were given material showing that the ruling was political viewed the Court as significantly less legitimate compared to even other conservatives in the control group.

The more the Court becomes the center of partisan conflict, in short, the more people are likely to see it through a partisan lens. And that process is already happening, albeit in a somewhat unequal fashion: Democrats seem to be more likely to be skeptical of the Court than Republicans.

This stems from what legal scholars Joseph Fishkin and David Pozen call “asymmetric constitutional hardball”: the fact that Republicans have broken the informal rules of politics and constitutional practice far more than Democrats have in the past several decades.

The Merrick Garland saga is the most prominent example of this. It’s not the only one, but from my conversations with liberals, it appears to have been something of a breaking point. Republican senators blocking an Obama appointee, for obviously partisan reasons, convinced many Democrats that there are no impartial norms surrounding the Court.

### Democracy Alt Causes – 1NC

#### Aff doesn’t solve democracy – campaign finance, the Electoral College, January 6, gerrymandering – this advantage starts at zero

Norris 21 – Pippa Norris, McGuire Lecturer in Comparative Politics at the Kennedy School of Government, Harvard University, “American democracy is at risk from Trump and the Republicans. What can be done?” 6/6/21, https://www.theguardian.com/commentisfree/2021/jun/06/republican-party-donald-trump-american-democracy-elections

Academics rarely agree about the big issues, and generally hesitate to enter the political fray by signing collective public statements. Yet a few days ago, more than 100 leading scholars of democracy endorsed a remarkable Statement of Concern, which I also signed, warning about grave threats to American democracy and the deterioration of US elections.

“We urge members of Congress to do whatever is necessary – including suspending the filibuster – in order to pass national voting and election administration standards that both guarantee the vote to all Americans equally, and prevent state legislatures from manipulating the rules in order to manufacture the result they want. Our democracy is fundamentally at stake. History will judge what we do at this moment.”

Why the alarm? Is this warranted?

On 14 December 2020, after courts litigated challenges and all 50 states certified the count, the electoral college formally declared the defeat of Donald Trump. Most assumed that the peaceful and orderly transition in power would follow, following historical traditions for over 200 years. Instead, the world was shocked to witness the violent Capitol insurrection on 6 January, triggering five deaths, 140 people injured and more than 400 arrests.

But even this unprecedented attack on Congress was not the end of the assault on the unwritten norms and practices of American democracy and the legitimacy of Joe Biden’s win.

For months, the big lie claiming a “stolen election” has continued to be spread relentlessly by the former president, his close advisers, Republican lawmakers and rightwing sympathizers on cable news and social media. According to many polls, two-thirds of Republicans continue to believe that Biden’s victory was fraudulent. In Arizona, the Republican party hired a private firm to conduct an audit of the certified vote count.

It is reported that Trump is obsessed about the use of audits to overturn results in other close states like Pennsylvania, Wisconsin and Michigan, believing that he will be returned to office in August. In state houses, Republicans have long expressed concern about the risks of electoral fraud and the need to tighten registration procedures and balloting facilities. The Brennan Center reports that since January this year, 22 new laws restricting voting rights have been enacted in 14 states. For the 2021 legislative session, almost 400 bills restricting voting rights have been tabled in 48 states.

Challenges to democracy are increasing worldwide. The long spread of “third-wave” democracies across the globe from the mid-1970s stalled around 2005 – since when scholars have noted accumulating indicators of democratic backsliding and rising authoritarianism in many countries.

Contrary to popular commentary, signs of democratic deterioration in America were on the wall well before Trump became president – such as persistent gridlock in US Congress, deepening cultural polarization and the corrupting role of dark money in politics. The backsliding has accelerated during the last four years, with attacks on the news media, risks to the impartiality of the courts, and the weakening role of Congress as an effective check and balance on executive power.

The US electoral system has also long been problematic, notably extreme partisan gerrymandering, the composition of the electoral college, rural over-representation in the Senate, lack of electoral standards as the supreme court rolled back federal oversight of state elections established by the 1965 Voting Rights Act, low turnout and the expansion of misinformation in the media. Since Bush v Gore in 2000, serious challenges to electoral legitimacy, and growing party polarization over the rules of the game, have gradually deepened. The Electoral Integrity Project has used expert surveys to evaluate the quality of national elections around the world since 2012 and found that US elections have persistently been graded poorly by EIP experts, scoring next to last among the world’s liberal democracies, and ranking about 45th out of 166 nations worldwide.

Unfortunately, Republican federal and state lawmakers have no rational incentives to abandon Trump and the big lie about electoral fraud, even if they recognize the falsehood. Most incumbents are nominated through party primaries and hold safe districts due to partisan gerrymandering, so Republican chances of re-election depend on throwing red meat to the Maga base, not building a broader coalition among moderate independents.

## FTC

### 1NC – AT: FTC

#### 1. All 1AC ev is about the FTC “winning” by breaking up big tech – that’s not the plan.

#### 2. Scams don’t cause extinction, as proven by every scam… ever. The FTC going after telephone scammers isn’t going to stop a hacker from taking over Biden’s Twitter account.

#### 3. Khan and the FTC will continue to lose cases.

David McLaughlin 21, reporter for Bloomberg News, “Antitrust Crusader Lina Khan Faces a Big Obstacle: The Courts,” Bloomberg, 6-23-2021, https://www.bloomberg.com/news/articles/2021-06-23/tech-antitrust-lina-khan-faces-courts-as-challenge-to-ftc-s-progressive-agenda

Instead, hours after the Senate confirmed her, Biden put the 32-year-old Khan—one of the most prominent antagonists of big business—in charge of the agency, where she’ll be responsible for challenging mergers and taking on companies when they use their market muscle to snuff out competition.

Now comes the hard part: putting her agenda into action. The biggest hurdle, say antitrust experts, is a judiciary that has made it very difficult for competition watchdogs to win ambitious cases. And to make any change of consequence, whether breaking up a monopoly or stopping a takeover, enforcers must prevail in court.

“None of that is easy, and it’s particularly not easy when courts are very conservative, as they are today,” says Stephen Calkins, a law professor at Wayne State University and a former general counsel at the FTC. “She’s certainly talked about breaking up companies but, my golly, that’s incredibly hard to do.”

Khan made her mark in 2017, with a law review article she wrote while still a student at Yale Law School. Titled “Amazon’s Antitrust Paradox,” it traced how the online retailer came to control key infrastructure of the digital economy and how traditional antitrust analysis fails to consider the danger to competition the company poses. The paper was widely talked about in antitrust circles and was read by senior enforcement officials.

U.S. tech titans are at the center of the antitrust debate in Washington. They are ever more powerful, with Apple Inc., Amazon.com Inc., Alphabet Inc., and Facebook Inc. among the top 10 largest companies in the world, by market value. A House of Representatives investigation last year accused the companies of abusing their dominance to thwart competition, and lawmakers are considering a raft of bills to impose new rules on how the companies operate. Federal antitrust enforcers and state attorneys general have sued Google and Facebook for what authorities say are monopoly abuses.

Khan, who was counsel to the House antitrust committee during its probe, was one of the main authors of the House report. It recommended a series of reforms to antitrust laws that she and anti-monopoly activists have long championed, like restricting which markets the companies can operate in and requiring them to treat other businesses on their platforms fairly and without favoritism.

Khan’s work helped revolutionize competition-policy debates and shift support for a more forceful approach that abandoned the playbook inspired decades ago by Robert Bork, the conservative legal scholar and judge. That framework came to be known as the consumer welfare standard and relies on price effects as the measure of competitive harm. Khan argued in her paper for a new approach, focused on the competitive process and the structure of markets, that she said would more fully capture harms that the consumer welfare standard misses.

Once considered on the fringes of antitrust thinking, Khan and her acolytes—often dubbed the New Brandeis School, after Supreme Court Justice Louis Brandeis—are now firmly mainstream with Khan’s appointment as FTC chairwoman.

The FTC has suffered some stinging defeats recently. Last year, the agency lost a major monopoly case filed against chipmaker Qualcomm. In April, a unanimous Supreme Court eliminated a tool used by the FTC to recover money for defrauded consumers. Later this month, a federal judge in Washington is expected to rule on whether the agency’s monopoly lawsuit against Facebook can proceed.

Still, there’s widespread agreement that the status quo is no longer tenable. Over the last two decades, concentration has risen in industries across the economy. Some economists say dominant companies can use their market power to suppress wages, for example, exacerbating inequality. The worries are bipartisan. Republicans and Democrats alike are pushing for antitrust reforms to rein in the biggest tech platforms, and Khan was confirmed by the Senate with significant Republican support.

Big losses in the courts would eventually hurt Khan’s authority and demoralize her staff, says William Kovacic, a former FTC chairman who now teaches at George Washington University Law School. “You become like a sports team that is known to its opponents as unable to win,” he says. But defeats also could provide the foundation for the kind of sweeping antitrust legislation that Khan and her supporters want.

#### Overload now.

Henry Burke 21, and Andrea; May 28; B.A. in Political Science and Labor Studies from the University of California at Los Angeles; Research Assistant, B.A. in Economics from the University of Maryland; Revolving Door Project, “Hobbled FTC Lacks Budget to Combat Corporate Buying Spree,” https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/

Even if the will to stop it exists, the FTC doesn’t have the funding to stop this boom. In fact, it hasn’t had the funding to keep up with a steady uptick in mergers in years. Aside from the recent spike, the total number of premerger filings increased by 80 percent over the last 10 years. In 2010, corporations filed 1166 premerger notifications. By 2019, yearly filings almost doubled to 2089.

While the number of transactions the FTC is charged with regulating has increased steadily, the number of enforcement actions — challenges to anticompetitive mergers or conduct — has stagnated.  A 2020 paper from Equitable Growth showed that while the number of enforcement actions from both the FTC and DOJ hovered at about 40 challenges per year from 2010 to 2019, even as the number of corporations seeking merger approval grew. The FTC’s enforcement actions over the past ten years show the agency hasn’t kept up with increased HSR filings: while FY 2010 saw 22 enforcement actions for 1166 reported mergers, a ratio of approximately one enforcement action for every 53 mergers, FY 2019 saw a mere 21 enforcement actions for 2089 mergers, meaning there was only one FTC enforcement action for every 99 mergers.

Overall funding and staffing levels at the FTC have similarly stagnated. Then-FTC commissioner Rebecca Slaughter said in 2020 that it is an “indisputable” fact that FTC funding has not kept up with market demands; according to Slaughter, the FTC budget has only increased by 13% since 2010 and the employee headcount decreased. This budget increase has not come from increased discretionary appropriations from Congress however, but from a massive increase in merger filings and their accompanying fees. Startlingly, Slaughter notes that “the FTC had roughly 50% more full-time employees at the beginning of the Reagan Administration than it does today.” The situation has become so dire that increased budgets for the enforcement agencies has become a rare bipartisan issue in the Senate.

#### Legitimacy is low now and the plan further consumes resources.

Kades 7/28 – Michael Kades, Director for Markets and Competition Policy at the Center for Equitable Growth, “Competitive Edge: Congress needs to restore the Federal Trade Commission’s authority to seek monetary remedies when companies break the law,” 7/28/21, https://equitablegrowth.org/competitive-edge-congress-needs-to-restore-the-federal-trade-commissions-authority-to-seek-monetary-remedies-when-companies-break-the-law/

Market power and its abuse are far too prevalent in the U.S. economy, increasing the prices consumers pay, suppressing wage growth, limiting entrepreneurship, and exacerbating inequality. Equitable Growth’s 2020 antitrust transition report identifies a lack of deterrence as a key problem: “Antitrust enforcement faces a serious deterrence problem, if not a crisis.”

As the report explains, “Rather than deter anticompetitive behavior, current legal standards do the opposite: They encourage it because such conduct is likely to escape condemnation, and the benefits of violating the law far exceed the potential penalties.” In the face of such warnings, it is a particularly bad time for the Supreme Court to unanimously reject 40 years of lower court rulings and conclude that the Federal Trade Commission can neither force companies to give up the profits they earned by violating the law nor compensate the victims of those violations. (The first remedy is called disgorgement, and the second remedy is called restitution.)

Whether the Supreme Court in April correctly interpreted the statute at issue in the case, AMG Capital Management LLC v. Federal Trade Commission, is less important than its implications. Professor Andy Gavil discusses a potential silver lining in the Supreme Court’s decision—the glass-half-full approach. He argues that if the Supreme Court faithfully applies its approach to statutory interpretation, then it could open the door to broader application of the antitrust laws.

I look at the direct impact of the decision—the glass-half-empty approach. I argue that the decision deprives the antitrust agency of a critical, albeit imperfect, weapon that has deterred anticompetitive conduct particularly in the pharmaceutical industry. Although it has used disgorgement in competition cases sparingly, those awards have deterred the entire industry from engaging in the challenged conduct.

Before the recent Supreme Court decision, the disgorgement awards in competition cases went far beyond the impact in a single case. The savings include benefits from the conduct that did not occur. If the commission cannot seek monetary remedies, then companies will keep the rewards of their illegal conduct. Perversely, the companies causing the greatest harm will benefit the most from April’s decision.

The impact reaches even further. Without the threat of a disgorgement award, companies are more likely to drag out litigation and tax the FTC’s limited resources. Because the commission will spend more resources on egregious cases to reach weaker results, it will have fewer resources to challenge anticompetitive conduct in other areas and, for example, could affect enforcement in merger cases or in the high-tech industry.

#### 4. So many alt causes to terrorist funding – drug smuggling, fraud and crime in other countries, theft and state support – the FTC isn’t bringing down al-Qaeda.

#### 5. No nuclear terror.

Mueller ’20 [John; Professor of Political Science and Senior Research Scientist with the Mershon Center for International Security Studies @ Ohio State University, Senior Fellow @ Cato Institute, PhD @ University of California, Los Angeles; “Nuclear Alarmism: Proliferation and Terrorism”; June 24th, 2020; https://www.cato.org/publications/publications/nuclear-alarmism-proliferation-terrorism]

Building a Bomb of One’s Own

Because they are unlikely to be able to buy or steal a usable bomb and because they are further unlikely to have one handed off to them by an established nuclear state, the most plausible route for terrorists would be to manufacture the device themselves from purloined materials. That is the course identified by a majority of leading experts as the one most likely to lead to nuclear terrorism.44

The simplest design is a “gun” type of device in which masses of highly enriched uranium are hurled at each other within a tube. Such a device would be, as Allison acknowledges, “large, cumbersome, unsafe, unreliable, unpredictable, and inefficient.“45

The process of making such a weapon is daunting even in this minimal case. In particular, the task requires that a considerable series of difficult hurdles be conquered and in sequence.

To begin with, now and likely for the foreseeable future, stateless groups are incapable of manufacturing the requisite weapons‐​grade uranium themselves because the process requires an effort on an industrial scale. Moreover, they are unlikely to be supplied with the material by a state for the same reasons a state is unlikely to give them a workable bomb.46 Thus, they would need to steal or illicitly purchase the crucial material.

A successful armed theft is exceedingly unlikely, not only because of the resistance of guards but also because chase would be immediate. A more plausible route would be to corrupt insiders to smuggle out the necessary fissile material. However, that approach requires the terrorists to pay off a host of greedy confederates, including brokers and money transmitters, any one of whom could turn on them or — either out of guile or incompetence — furnish them with stuff that is useless.47 Moreover, because of improved safeguards and accounting practices, it is decreasingly likely that the theft would remain undetected.48 That development is important because if any missing uranium is noticed, the authorities would investigate the few people who might have been able to assist the thieves, and one who seems suddenly to have become prosperous is likely to arrest their attention right from the start. Even one initially tempted by, seduced by, or sympathetic to, the blandishments of the smooth‐​talking foreign terrorists might soon develop sobering second thoughts and go to the authorities. Insiders tempted to assist terrorists might also come to ruminate over the fact that, once the heist was accomplished, the terrorists would, as analyst Brian Jenkins puts it none too delicately, “have every incentive to cover their trail, beginning with eliminating their confederates.“49

It is also relevant to note that over the years, known thefts of highly enriched uranium have totaled fewer than 16 pounds. That amount is far less than that required for an atomic explosion: for a crude bomb, more than 100 pounds are necessary to produce a likely yield of one kiloton. Moreover, none of those thieves was connected to al Qaeda, and, most arrestingly, none had buyers lined up — nearly all were caught while trying to peddle their wares. Indeed, concludes analyst Robin Frost, “There appears to be no true demand, except where the buyers were government agents running a sting.” Because there appears to be no commercial market for fissile material, each sale would be a one‐​time affair, not a continuing source of profit such as drugs, and there is no evidence of established underworld commercial trade in this illicit commodity.50

If terrorists were somehow successful in obtaining a sufficient mass of relevant material, they would then have to transport it out of the country over unfamiliar terrain, probably while being pursued by security forces. Then, they would need to set up a large and well‐​equipped machine shop to manufacture a bomb and populate it with a select team of highly skilled scientists, technicians, and machinists. The process would also require good managers and organizers. The group would have to be assembled and retained for the monumental task without generating consequential suspicions among friends, family, and police about their curious and sudden absence from normal pursuits back home. Pakistan, for example, maintains a strict watch on many of its nuclear scientists even after retirement.51

Some observers have insisted that it would be “easy” for terrorists to assemble a crude bomb if they could get enough fissile material.52 However, Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland’s Spiez Laboratory, conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint, the terrorist group “would most certainly be forced to redesign.” They also stress that the work, far from being “easy,” is difficult, dangerous, and extremely exacting and that the technical requirements “in several fields verge on the unfeasible.“53

Los Alamos research director Younger makes a similar argument, expressing his amazement at “self‐​declared ‘nuclear weapons experts,’ many of whom have never seen a real nuclear weapon,” who “hold forth on how easy it is to make a functioning nuclear explosive.” Information is available for getting the general idea behind a rudimentary nuclear explosive, but none is detailed enough for “the confident assembly of a real nuclear explosive.” Younger concludes, “To think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is far‐​fetched at best.“54

Under the best of circumstances, the process could take months or even a year or more, and it would all, of course, have to be carried out in utter secret even while local and international security police are likely to be on the intense prowl. In addition, people, or criminal gangs, in the area may observe with increasing curiosity and puzzlement the constant comings and goings of technicians unlikely to be locals.

The process of fabricating a nuclear device requires, then, the effective recruitment of people who at once have great technical skills and will remain completely devoted to the cause. In addition, a host of corrupted coconspirators, many of them foreign, must remain utterly reliable; international and local security services must be kept perpetually in the dark; and no curious outsider must get wind of the project over the months, or even years, it takes to pull off.

The finished product could weigh a ton or more. Encased in lead shielding to mask radioactive emissions, it would then have to be transported to, as well as smuggled into, the relevant target country. Then, the enormous package would have to be received within the target country by a group of collaborators who are at once totally dedicated and technically proficient at handling, maintaining, and perhaps assembling the weapon. Then, they would have to detonate it somewhere under the fervent hope that the machine shop work has been proficient, that no significant shakeups occurred in the treacherous process of transportation, and that the thing — after all that effort — doesn’t prove to be a dud.

The financial costs of the extended operation in its cumulating entirety could become monumental. There would be expensive equipment to buy, smuggle, and set up, as well as people to pay — or pay off. Some operatives might work for free out of dedication, but the vast conspiracy also requires the subversion of an array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals who are competent and capable enough to be an effective ally in the project are likely to be both smart enough to see opportunities for extortion and psychologically equipped by their profession to be willing to exploit them.

# 2NC

## Court Reform CP

#### The court will eviscerate any moves towards democracy – packing the court is the only option – it’s do or die- this answeres fraser.

Klarman 21 – Michael Klarman, Kirkland & Ellis Professor at Harvard Law School, “The Democrats’ Last Chance to Save Democracy,” 2/22/21, https://www.theatlantic.com/ideas/archive/2021/02/expanding-court-now-or-never/618063/

For Democrats to expand the Court in 2021 would, as with McConnell’s machinations, violate no constitutional rule, and McConnell almost certainly would do the same thing were he in their shoes. One of the most difficult tactical questions in contemporary politics is how to respond when members of the other party play hardball. In general, Democrats should not play the game simply because Republicans played it first. It is morally reprehensible that Republicans suppress the votes of Democratic-leaning constituencies, ignore the results of popular referenda they disfavor, eviscerate the powers of Democratic governors, and seek to overturn the results of presidential elections on the basis of unsubstantiated allegations of fraud and wild conspiracy theories. Democrats should do none of these things. And yet, it cannot be a persuasive argument against Democrats’ expanding the Court that Republicans will simply retaliate in kind one day: Republicans have amply demonstrated that they will break the norm against Court expansion when they see the advantage in doing so, regardless of what Democrats do now.

The third response to the “retaliatory cycle” concern is that Democratic expansion of the Court could facilitate a new political epoch by defeating the Republicans’ antidemocratic tactics, and thus forcing the GOP to compete on a more even playing field. In this altered political environment, the unpopularity of the Republican Party’s agenda—appeals to racial and religious resentment and xenophobia, combined with neo–Ayn Randian economic policies such as tax cuts for the wealthy, economic deregulation, and environmental degradation—will cause the party to lose elections consistently. That has not happened to date because of the democratic deficits in American political institutions and widespread Republican voter suppression and other electoral machinations. A series of electoral defeats might lead the Republican Party to enact a platform more appealing to today’s median voter, abandon practices of voter suppression, and perhaps even acknowledge its malfeasance in stealing a Court seat in 2016. This scenario may seem Panglossian, but the United States has periodically experienced such tectonic shifts in politics— most notably, beginning in 1896, 1932, and 1968—in which one party’s political dominance for decades eventually led the other to reform itself in order to expand its appeal. We should want this new epoch, not because it benefits Democrats, but because it benefits democracy.

However, creating a new political epoch requires entrenching democracy. One of the first reform measures now that Democrats have taken control of Congress must involve protecting and expanding access to the ballot. Voter registration should be automatic when citizens turn 18, and easy for older citizens. Same-day registration enhances turnout without increasing fraud, despite what Republicans baselessly charge. Felony disenfranchisement, which has enormous, racially disparate effects and in many cases was instituted long ago to that exact end, should be terminated. Election Day should be made a national holiday. The number of early-voting days, polling places, and voting machines should be increased, to stop the national disgrace of forcing working-class Black Americans in Atlanta and elsewhere to wait in lines for as long as five to 10 hours to vote. Absentee ballots should be available without excuse. Onerous identification requirements for voting should be eliminated because they reduce turnout on the pretext of reducing fraud. Partisan gerrymandering has no plausible justification and should be ended.

Yet a Republican-controlled Court could easily invalidate such democracy-entrenching legislation, at least insofar as it applied to state and presidential elections, on the basis of contrived federalism rationales already developed and implemented by Republican justices. Those same justices could conceivably do the same to most other Biden-administration reform measures. All of this is to say that Court reform is a prerequisite to entrenching democracy. The Democrats must do it, or forgo any hope of implementing much of their reform agenda.

The real question confronting Democrats is not whether to expand the Court but when to do so. Some commentators have suggested that Court reform be held in abeyance as a sword of Damocles hanging over the Court, to be implemented only if Republican justices overplay their hand. Two arguments counsel against Democrats’ waiting.

First, Democrats may lose control of either or both houses of Congress in 2022 or even earlier, should a Democratic senator from a state with a Republican governor become seriously ill or die. Voter turnout can decline as much as 50 percent in midterm contests, when the electorate is far less demographically representative of the country as a whole. For example, after Democrats won landslide victories across the board in 2008, Republicans seized control of the House in 2010—less because of the unpopularity of Obama’s agenda than because of the radically different composition of the off-year electorate and the decision of Republican congressional leaders to sabotage economic recovery and hope voters blamed the president.

Although 2022 presents a relatively favorable slate of Senate contests for Democrats, the party’s long-term chances of Senate control are very likely to deteriorate over time. Consider that in 2016, when Hillary Clinton won the national popular vote by two percentage points, Trump won the popular vote in 30 states. In addition, for the first time since the direct election of U.S. senators began in 1914, every Senate contest in 2016 was won by the candidate of the party that also won that state’s Electoral College votes; the same was true in 2020, with the sole exception of the Maine Senate race. Similarly, in 2012, when Obama won the national popular vote by four percentage points, his Republican opponent, Mitt Romney, won the popular vote in the 25 least populous states by six percentage points—suggesting that the ideological preferences of voters in the median Senate seat are significantly more conservative than those of the median American voter. Given a combination of Senate malapportionment, current partisan geography, and the nationalization of Senate contests, Republicans enjoy a large presumptive advantage in the battle for future control of the Senate.

The Senate scenario is on track to worsen for Democrats in the years ahead. Demographers predict that by 2040, 70 percent of the U.S. population will live in just 15 states. In other words, the remaining 30 percent of the population will choose 70 percent of the Senate. Assuming that current partisan geography persists—i.e., low population density translates into disproportionately Republican vote shares—then Democrats may not have a realistic chance of ever winning Senate control after the next couple of electoral cycles.

The other reason not to wait to expand the Court until Republican justices overplay their hand is that they can and will act strategically to avoid the appearance of excessive partisanship. Chief Justice John Roberts has already demonstrated an inclination and capacity to cast the occasional strategic vote against ideological and partisan interest to enable liberal victories in highly salient cases and thus protect the Court from political retaliation. Such instances include Roberts’s crucial last-minute vote switch to uphold the Affordable Care Act in 2012, his vote in 2019 to exclude the citizenship question from the 2020 census form, and his votes in 2020 to invalidate the administration’s rescission of Deferred Action for Childhood Arrivals and to invalidate a restrictive Louisiana abortion statute. Roberts would need only one ally among the other five Republican justices to ensure that the Court refrains from rendering decisions likely to incite Democrats to expand the Court—until Democrats no longer fully control the federal government, at which point it will be too late.

So don’t walk; run. Reforming the Court should not be the No. 1 priority of the Biden administration and the new Democratic Congress—they need to pass COVID-19 relief and voting-rights reform measures first—but it should be high on their list. Court reform is imperative to the preservation of American democracy. If Democrats fail to enact such reform now, they may not get another chance.

#### Regularizing nominations reduces the stakes of individual nomination fights – that restores court legitimacy and ratchets down partisan perceptions of justices

Epps 19 – Daniel Epps, Associate Professor of Law, Washington University in St. Louis, with Ganesh Sitaraman, “How to Save the Supreme Court,” *Yale Law Journal*, 2019, https://www.yalelawjournal.org/feature/how-to-save-the-supreme-court

Ultimately, however, the implications for judicial review are secondary concerns when it comes to the Supreme Court’s legitimacy. The larger problem is this: the Supreme Court plays a significant role in the public imagination as a citadel of justice. For many Americans, given the Supreme Court’s salience, faith in the Court may be deeply intertwined with feelings about the very idea of law.82 In a world where the Supreme Court is widely seen as just another political institution, how will people think about law itself? Our fear is that in such a world, the very idea of law as an enterprise separate from politics will evaporate.

The rule of law is a critical element of a healthy democracy. If it erodes, our fears for democracy become more concrete. Can a democratic society long survive if the citizenry loses faith in law? Will the notion of the rule of law survive if people stop believing that judges are doing something other than exercising political will when deciding cases? Will political actors cease to give credence to the results of any legal proceeding that does not validate their preexisting beliefs? We do not know the answers to these questions. But we are not eager to run the experiment required to answer them. Instead, we think it is imperative to save the Supreme Court as an institution above the political fray.

Saving the Court, however, will require changing the Court. Our current system is deeply flawed, and events since 2016 have only exposed problems that were long lurking below the surface. The consequences of individual Supreme Court appointments are so significant that political actors will naturally fight for them tooth and nail. These flaws were less apparent in an age when the leading political parties were less polarized. But now, given extreme ideological sorting, politicians of both parties realize the stakes of Supreme Court appointments and are firmly committed to staffing the Court with ideological comrades.83

A number of observers will no doubt argue that the solution to this legitimacy crisis is to simply reject the challenge and treat the Court as legitimate. Yet things are not so simple. The new Supreme Court majority is arguably the most reliably conservative in history, and there is reason to believe it will strike down laws that progressives favor using doctrinal theories that are at least open to serious question—as the Court has already done in cases like Shelby County84 and Janus.85 And given that Democrats have a reasonable argument that the conservative majority was earned using underhanded tactics,86 it is not clear why they should feel compelled to let the Court block their favored policies for a generation or more in deference to the Court’s institutional legitimacy. Instead, given these high stakes, it seems to us inevitable that the Court’s legitimacy will be challenged head-on. To avoid that collision, we need to change course—radically.

The next two Parts explain what we think that course change should—and should not—look like. Before doing so, though, we must stress one point. At this moment, Supreme Court reform unquestionably feels most pressing to those on the ideological left, given conservative control of the Court. By the same token, conservatives might feel no urgency, given the major victories they anticipate the Court handing down. We think, however, that whoever benefits immediately, the right kind of Supreme Court reform is ultimately in both sides’ long-term interests. Preserving a Supreme Court that is not merely a partisan institution is more important than winning on policy issues in the short term.

III. how (not) to save the court

Saving what is good about the Court will require significant reform to how the Court operates and how the Justices are selected. But not just any reform will do. In this Part, we first develop a framework for successful Supreme Court reform. We then discuss how previous reform proposals fall short and could even exacerbate the problems reform should seek to resolve.

A. Desiderata for Reform

The reform that we envision would have multiple, overlapping goals. At the outset, however, we should clearly define the problem. As we see it, a key problem with how the Supreme Court works today is that its design makes it possible for political parties to capture control over the institution using bare-knuckle tactics, leading to the apocalyptic confirmation battles we have seen in recent years. Such conflicts were not foreseen at the Founding—perhaps because no one envisioned just how powerful the Court would become, but certainly because the Founders did not anticipate how political parties would shape appointments to the Court.87 Even well after the rise of political parties, the problems with the Court’s structure were not fully apparent because judicial ideology did not consistently track party affiliation. Today, however, with the rise of polarized schools of legal interpretation, polarized elite communities of lawyers, and a polarized political culture, party domination of the Court has become an attainable goal— and thus one that politicians will fight hard to achieve. And that, in turn, increasingly distorts our politics, as voters make decisions in presidential elections in order to shape the composition of the Supreme Court.

Reform that would change this dynamic has several components. First, it would be designed to preserve the Court as an institution that is not partisan— or, at the very least, as an institution that is less partisan than other branches. That means structuring the system so that partisan politicians are less able to capture the Court by stacking it with ideological fellow travelers. It is precisely because the Court is able to be captured that battles for control have become so damaging and toxic as our politics have become more polarized.

Second (and related to that goal), reform would significantly reduce the political stakes of nominating individual Justices, to avoid spectacles like those of recent years. That also means significantly lessening the importance of individual Justices. In our current system, far too much turns on essentially random events. Any one Justice’s death or retirement can have massive consequences for the law and thus for American society, depending on when the vacancy occurs and which party controls the Senate. This is not a sensible way to run a constitutional democracy. Whatever one’s views on abortion, free speech, gay marriage, or the powers of Congress, important governmental decisions on these matters should not depend on the health of individual octogenarians. No one would design such a system from scratch, and any good set of reforms would endeavor to make the Court less sensitive to the choices and health of individual Justices. A positive byproduct of this reform is that it would reduce the cult of personality around the Justices, which may currently be pushing them to become even more partisan.89

## Labor Structure CP

### 2nc—Solvency

#### Solvency deficits don’t assume regulatory sharing – it solves by utilizing the expertise of labor agencies to reduce inequality and promote collective bargaining – the aff is WORSE because it overstretches the antitrust agencies into an area beyond their expertise

Hafiz 20 – Assistant Professor of Law, Boston College Law School, “Labor Antitrust’s Paradox,” *University of Chicago Law Review*, 87 U. CHI. L. REV. 381

Regulatory sharing between antitrust and labor law is necessary to ensure against employer arbitrage enabled by antitrust law's ambiguous welfare standards and the judiciary's historical favoring of consumer welfare over worker welfare. Establishing a network of labor antitrust triggers for labor rights enforcement, shared merger enforcement between the antitrust and labor agencies, and substantive law presumptions and affirmative defenses under labor law generated by labor-antitrust findings avoids the pitfalls of underenforcement in labor-market regulation.

1. Labor antitrust triggers and shared merger enforcement.

Labor-antitrust actions should apply a consumer welfare standard to determine antitrust liability. Yet when a court finds employers' conduct beneficial to consumers but harmful to workers in either Section 1 or Section 2 cases, that would trigger a "red flag" establishing substantive legal presumptions and affirmative defenses to workers under labor law.114 If plaintiff-enforcers make a prima facie showing of employers' unlawful agreements or monopsony power, or power to set wages, this would also trigger a "red flag." The red flag would issue before defendants have an opportunity to rebut "by showing . .. no control over wages," as others propose,1 15 because labor markets are naturally monopsonistic and such a rebuttal should not be relevant for labor-law inquiries. It will likely be difficult and costly for plaintiffs to disaggregate employers' market power from search frictions, information asymmetries, job differentiation, heterogeneous tastes, job-lock, and other market failures that favor employers' leverage over workers.116 Thus, while an employer may avoid antitrust liability by rebutting evidence of its monopsony power, the source of that power is less relevant in the labor and employment context; if it exists, workers should be entitled to substantive labor-law presumptions and affirmative defenses.

If employers' monopsony power is sufficiently alleged in a Section 2 antitrust case, plaintiff antitrust enforcers would then need to show anticompetitive conduct: unlawful acquisition or maintenance of monopsony power (through mergers-to-monopsony, wage-fixing agreements, no-poaching agreements, or other forms of exclusionary conduct and foreclosure), attempted monopsonization, or conspiracy to monopsonize. Other scholars suggest that liability-triggering conduct under antitrust law should extend beyond those traditionally associated with reducing competition to also include work law violations: the use of broad noncompete clauses or class-action waivers in employment contracts, unfair labor practices under the NLRA, independent-contractor misclassification, and restrictive wage transparency policies.m1 However, there are a number of reasons to relegate consideration of this kind of activity to labor agencies when worker and consumer welfare conflict. First, not all such conduct is harmful to labor-market competition per se, but is instead more indicative of employers' monopsony power (and, concomitantly, workers' relative bargaining leverage) and should be analyzed as such, contributing to the issuance of that first-stage monopsony power "red flag." Second, labor agencies have more expertise, data, and remedial mechanisms to assess impacts of employment terms and deploy shop-floor solutions, most certainly in tandem with antitrust enforcement; inviting antitrust agencies and courts to determine "reasonable terms of employment" without labor agencies' expertise may not be smart labor policy. Thus, any work-law violations should be evidence workers can use to justify the applicability of substantive presumptions and defenses in relevant adjudications under labor law discussed below.

Antitrust and labor agencies could also conduct joint merger review. Under the 2010 Merger Guidelines, antitrust agencies must review the impacts of a proposed merger on labor-market concentration.11s Under a structural approach to labor-market regulation, if the antitrust agencies identify and categorize post-merger labor-market concentration levels as "moderately" or "highly concentrated," 19 that data ought to be shared with the NLRB and the Department of Labor, and their sign-off would be required.120 Concurrent jurisdiction over merger review is not uncommon. In fact, interagency jurisdiction and/or cooperation on merger review in the telecommunications, energy, railroad, banking, shipping, airline, and agricultural industries spans the spectrum of more and less aggressive intervention authority by agencies outside the DOJ and FTC.121

Labor agencies could provide critical data on and analysis of exacerbating factors that affect the significance of given concentration levels when evaluating a merger's labor-market effects. The agencies could provide data and analysis of: industry-wide wage rates in the relevant market, including any changes resulting from prior mergers; the use of noncompete or nonsolicitation clauses in the industry; union density; the existence of salary transparency provisions in collective bargaining agreements in the industry; contractual restrictions on wage transparency; records of enforcement actions in the industry for labor and employment violations (including unfair labor practices, wage-and-hour violations, violations of health and safety standards, violations of antidiscrimination law); internal and external labor-market statistics (how much firms rely on employees or contracted-for labor inputs through subcontracting, temporary agencies, and independent contractors, and assessment of any wage discrimination); history of misclassification actions for misclassifying employees as independent contractors; and the use of class-action waivers in employment contracts. This information is critical for revealing merged employers' ability to profitably reduce workers' wages and would more accurately assess the impacts of post-merger concentration.

Efficiency defenses would also be independently reviewed: the antitrust agencies would focus on consumer welfare effects while the labor agencies would focus on worker welfare effects. Worker welfare effects would be assessed based on a broader set of criteria incorporating the expertise of labor economists, behavioral economists, sociologists of work, and human resources and psychological experts within the labor agencies to better evaluate how estimated post-merger compensation would match their assessment of productivity-maximizing wages. These experts could compare how post-merger compensation accords with: (1) internal labor-market wages and life-cycle earnings within a firm; (2) union premiums within the industry; (3) fairness expectation effects; and (4) merger-specific workplace realities and productivity effects.122 This analysis would be integrated into evaluating post-merger effects on workers' bargaining leverage against their merged employer.123 Finally, labor agency macroeconomic experts could estimate the impact of post-merger concentration on labor's share of income within the relevant sector.

## Politics

### Uniqueness

#### New budget deal will pass with Biden push. That’s key to climate change and restoring US leadership.

Mascaro 10-28-21

(Lisa, https://www.wusa9.com/article/news/nation-world/paid-leave-billionaire-tax-biden-plan-manchin-sinema/507-0cac52b0-0a31-4eae-bb21-7d7d2d5f4194)

WASHINGTON — President Joe Biden declared Thursday he had reached a “historic economic framework” with Democrats in Congress on his sweeping domestic policy package, a hard-fought yet dramatically scaled-back deal announced just before he departed for overseas summits. Biden's remarks at the White House came after he traveled to Capitol Hill to make the case to House Democrats for the still-robust domestic package — $1.75 trillion of social services and climate change programs — that the White House believes can pass the 50-50 Senate. “It will fundamentally change the lives of millions of people for the better,” Biden said of the agreement, which he badly wanted before the summits to show the world American democracy still works. “Let's get this done.” Together with a nearly $1 trillion bipartisan infrastructure bill heading for final votes possibly as soon as Thursday, Biden claimed it would be a domestic achievement modeled on those of Franklin Roosevelt and Lyndon Johnson. “I need your votes,” Biden told the lawmakers earlier, according to a person who requested anonymity to discuss the private remarks. Biden was eager to have a deal in hand before departing for the global summits. But final votes are still a ways off. At best, he left with a revised package that has lost some top priorities, frustrating many Democrats still pressing to include them as the president’s ambitions make way for the political realities of the narrowly divided Congress. Paid family leave and efforts to lower prescription drug pricing are now gone entirely from the package, drawing outrage from some lawmakers and advocates. Still in the mix, a long list of other priorities: Free prekindergarten for all youngsters, expanded health care programs — including the launch of a new $35 billion hearing aid benefit for people with Medicare — and $555 billion to tackle climate change. There's also a one-year extension of a child care tax credit that was put in place during the COVID-19 rescue and new child care subsidies. An additional $100 billion to bolster the immigration and border processing system could boost the overall package to $1.85 trillion if it clears Senate rules. One pivotal Democratic holdout, Sen. Kyrsten Sinema of Arizona, said, “I look forward to getting this done.” However, another, Joe Manchin of West Virginia, was less committal: “This is all in the hands of the House right now." The two Democrats have almost single-handedly reduced the size and scope of their party’s big vision. Republicans remain overwhelmingly opposed. Taking form after months of negotiations, Biden's emerging bill would still be among the most sweeping of its kind in a generation, modeled on New Deal and Great Society programs. The White House calls it the largest-ever investment in climate change and the biggest improvement to the nation’s healthcare system in more than a decade. In his meeting with lawmakers at the Capitol, Biden made clear how important it was to show progress as he headed to the summits. “We are at an inflection point,” he said. “The rest of the world wonders whether we can function.”

#### The newest reconciliation proposal overcomes Dem holdouts and passes now.

McPherson ‘10/28 [Lindsey; 10/28/21; “Biden makes $1.75T sales pitch to House Democrats”; <https://www.rollcall.com/2021/10/28/white-house-releases-1-75t-framework-for-budget-package/>; Roll Call; accessed 10/29/21; TV]

President Joe Biden presented House Democrats with a $1.75 trillion reconciliation framework Thursday morning, which senior administration officials said he'll ask them to support when it’s written and ready for a vote, along with a separate Senate-passed bipartisan infrastructure bill.

The reconciliation bill would be fully paid for and potentially reduce the deficit, based on $2 trillion worth of offsets the president has identified. The revenue total is the administration’s estimate and has not yet been scored.

Biden’s framework, which provides proposals for scaling back climate change and social spending proposals in the original $3.5 trillion-plus House reconciliation package, will need the support of virtually every Democrat to pass the House and Senate.

It’s based on the president’s weekslong negotiations with key Democratic lawmakers, including centrist Sens. Joe Manchin III of West Virginia and Kyrsten Sinema of Arizona. They opposed the original $3.5 trillion price tag and many policies in the bill that have been cut in Biden’s framework, including paid leave and prescription drug price negotiation.

The senior administration officials wouldn’t speak to whether specific lawmakers had signed off on the framework, but said: “We are confident that this will earn the support of every Democratic senator and that it will pass the House.”

House Democratic leaders have been hoping to get a bicameral “framework” deal on reconciliation this week in hopes of getting the votes of progressives who’ve been holding up passage of the bipartisan infrastructure bill until the reconciliation bill is done.

Progressives have said they wouldn’t feel comfortable voting for the infrastructure bill based solely on a framework, however, and want a vote on both bills at the same time. Democratic leaders are preparing for potentially quick passage of the reconciliation package by beginning the House Rules Committee process Thursday in order to amend the House bill with the text of the scaled-back package before it comes to the floor.

#### Passes now and revitalizes momentum against climate change.

AFP ‘10/28 [Agence France-Presse; 10/28/21; “Joe Biden Announces $1.7 Trillion US Spending Deal Ahead Of Europe Trip”; <https://www.ndtv.com/world-news/us-president-joe-biden-announces-1-7-trillion-dollars-us-spending-deal-ahead-of-europe-trip-2591285>; NDTV; accessed 10/29/21; TV]

Washington: US President Joe Biden announced Thursday a revised $1.75 trillion social spending plan that he is confident Democrats will support, ending weeks of wrangling and delivering a political victory hours before he departs for twin summits in Europe.

Biden failed in his original goal of securing a vote in Congress, where Democrats hold a razor-thin majority, before going to Rome for meetings with Pope Francis and G20 leaders, then a UN climate summit in Glasgow.

Instead, his dramatic last-minute intervention will present Democrats with a deal too good to refuse, senior aides believe.

Putting the full prestige of his presidency on the line, Biden will unveil the framework agreement to Democratic leaders, then address the American people from the White House, before heading to the airport to board Air Force One.

The White House said Biden will lay out a compromise outline of legislation pouring $1.75 trillion into education, childcare, clean energy and other social services.

This is much less than the original $3.5 trillion price tag Biden and left-leaning Democrats wanted. However, this would still represent a major win a year after Biden, 78, defeated Donald Trump with a promise to heal America's "soul."

Weeks of Democratic feuding over both the details and costs have threatened to sink the bill, along with a second initiative meant to invest an additional $1.2 trillion in America's crumbling infrastructure.

Biden is now sure he has Congress ready to accept his deal, although the timing of a vote remains up to the Democratic speaker, Nancy Pelosi.

"The president believes this framework will earn the support of all 50 Democratic senators and pass the House," a senior White House official said, speaking on condition of anonymity.

Seeking to make history

An official said the two bills Biden wants will "make historic investments" and that the White House is "confident" in getting Democrats to unite.

Biden was set to meet with Democratic leaders in the House of Representatives in private, before returning to the White House for a speech at 11:30 am (1530 GMT). He will depart for Rome shortly after.

Biden will "speak to the American people about the path forward for his economic agenda and the next steps to getting it done," another White House official said.

The Democrats enjoy a rare period of controlling both houses of Congress and the presidency. However, the margins are so tight -- with only a one vote advantage in the Senate and a handful in the House -- that enacting major legislation has proved far harder than supporters hoped.

Biden has been repeatedly frustrated as just two moderate Democrats in the Senate held up his social spending ambitions, while left-leaning Democrats in the House blocked the infrastructure bill.

Responding to criticism that the pending deal has been watered down too far, a White House official said Biden's framework will still "make historic investments in the United States."

This will be "the most transformative investment in children and caregiving in generations, the largest effort to combat climate change in history, and historic tax cut for tens of millions of middle class families, and the biggest expansion of affordable health care in a decade," an official said.

#### Progressives will back the compromise bill – AND, it’s still transformative.

AP 10-28-21 https://apnews.com/article/climate-joe-biden-business-environment-congress-bcab5c04ef1319b6dcc3e6adcac8c190

WASHINGTON (AP) — Many progressives have started lining up behind an emerging social and environment bill that’s neither as big nor bold as they wanted, constrained by an outnumbered but potent band of party moderates who’ve commanded disproportionate clout and curbed the measure’s ambition. Democrats rolled past unanimous Republican opposition in August and pushed a 10-year, $3.5 trillion fiscal blueprint of the plan through Congress. With talks continuing, the final package — reflecting President Joe Biden’s hopes for bolstering health care, family services and climate change efforts — seems likely to be around half that size. Prized initiatives like free community college and fines against utilities using carbon-spewing fuels are being jettisoned, and others are being curtailed. Even in more modest form, the measure is on track to deliver victories for progressives and the party, whose leaders repeatedly describe it as “transformative” and “historic.” Its expected price tag of perhaps $1.75 trillion is serious money, and it’s heading toward bolstering federal health care coverage, environmental programs, tax breaks for children, preschools, child care, home health care and housing. Moderates have enjoyed leverage from the fraught arithmetic of a tightly divided Congress in which Democrats need all their votes in the 50-50 Senate and near unanimity in the House. That’s made centrist Sens. Joe Manchin of West Virginia and Krysten Sinema of Arizona power brokers who colleagues fear would vote no if they’re dissatisfied, blowing up Biden’s agenda and wounding the party’s prospects in next year’s midterm elections. With party leaders eager to cut a deal and start moving the legislation in days, progressives are grudgingly assessing whether it’s time to be pragmatic, back a compromise and declare victory. An agreement would bring another bonus — freeing for final House approval a bipartisan, Senate-approved $1 trillion package of road, water and broadband projects that progressives have sidetracked to pressure moderates to back the larger economic bill. “Of course I don’t like it,” said progressive Sen. Mazie Hirono, D-Hawaii, of the outsize influence moderates have had in compressing the package and erasing some of its provisions. “These are all things that we’ve been fighting for. For decades.” But she said with Democratic unity needed, the party should use the bill to “open the door” to its priorities and then try extending and expanding them later. “At the end of the day we have to accomplish something, we have to deal with the reality in which we’re living,” liberal Rep. Jim McGovern, D-Mass., chairman of the House Rules Committee and an ally of House leaders, said of his party’s slender congressional margins. “So the question is would we prefer not getting anything, or would we prefer something that can at least be a down payment on some of the transformational programs that we want.”

#### Biden can seize the moment to pass landmark legislation.

White '21 [John Kenneth; 4/12/21; professor of politics at The Catholic University, PhD from the University of Connecticut; "Joe Biden’s surprising presidency," https://www.post-gazette.com/news/insight/2021/04/12/Joe-Biden-surprising-presidency-John-Kenneth-White/stories/202104110053/]

As Joe Biden approaches the 100-day mark, his presidency has been full of surprises. A $1.9 trillion American Rescue Plan replete with life-changing provisions, including a monthly child tax credit, renovations to long-neglected school buildings, help for small businesses and extended unemployment insurance, is on the law books.

And Mr. Biden is just getting started. A $2.5 trillion, eight-year American Jobs Plan to repair roads, bridges, rail and water lines; enhance solar and wind development; create highway electrical charging stations; provide high-speed broadband; help manufacturing; promote elderly home care; and develop agricultural plans to capture carbon from the atmosphere is up next. These plans have broad public support. According to a March poll, 75% of voters approve of the American Rescue Plan, including 59% of Republicans. And 54% support infrastructure improvements, even if it means tax increases on those earning more than $400,000 per year. This gives Mr. Biden significant political capital, something George W. Bush claimed to have after his 2004 re-election but could never manage to deposit.

In 2020, Mr. Biden promised to restore “the soul of America,” a slogan that drew upon Franklin D. Roosevelt’s description of the presidency as a place of “moral leadership.” Mr. Biden’s call for restoring traditional values and norms appealed to an exhausted nation, much in the same way that Warren G. Harding won support from a weary nation following World War I. Campaigning in 1920, Harding declared: “America’s present need is not heroics, but healing; not nostrums, but normalcy; not revolution, but restoration; not agitation, but adjustment; not surgery, but serenity; not the dramatic, but the dispassionate; not experiment, but equipoise.”

Like Harding, Mr. Biden’s critics saw him as someone who lacked intellectual heft and bent with the shifting political winds. His 1988 presidential campaign ended when Mr. Biden plagiarized a speech by British Labour Party leader Neil Kinnock. His opposition to school busing, sponsorship of the 1994 crime bill and handling of Anita Hill’s testimony about Clarence Thomas constructed a case that a Biden presidency would bend to the storms of the moment. Pundits saw Mr. Biden as a good retail politician whose cheery persona and story of triumph over tragedy appealed to voters. Democrats saw him as the best candidate to beat Donald Trump.

Thus, at the start of Biden’s 2020 campaign, restoration, not revolution, was its byword. But the coronavirus pandemic created opportunities for President Biden to do big things that Candidate Biden never quite envisioned. In this, Biden’s presidency bears striking similarities to the surprising presidencies of Franklin D. Roosevelt, Lyndon B. Johnson and Ronald Reagan, who eviscerated preexisting conceptions of how they would behave upon entering the Oval Office.

Seeking the presidency in 1932, Franklin D. Roosevelt was viewed as a political lightweight. New York Herald Tribune columnist Walter Lippmann derisively greeted Roosevelt’s candidacy: “Franklin D. Roosevelt is no crusader. He is no tribune of the people. He is no enemy of entrenched privilege. He is a pleasant man, who, without any important qualifications for the office, would very much like to be President.”

Liberals saw Roosevelt as a privileged dilettante and likened him to a cheerful Boy Scout, a man of “slightly unnatural sunniness” as Edmund Wilson described him. Taking note of these criticisms, H.L. Mencken reported that the Democratic Party nominated “the weakest candidate before it.” These expectations were decidedly off-the-mark, and Roosevelt’s New Deal cemented his legacy in the annals of the all-time great presidents.

Lyndon B. Johnson likewise defied expectations. In a 1949 maiden speech before the U.S. Senate, Johnson led a filibuster to Harry Truman’s civil rights proposals that outlawed lynching, prohibited employment discrimination and eliminated obstacles preventing African Americans from voting. Rising from his desk Johnson declared that “We of the South” saw the filibuster as “the last defense of reason, the sole defense of minorities [i.e., Southerners] who might be victimized by prejudice.”

But as president, this sensitive Southern Democrat spearheaded passage of the 1964 Civil Rights Bill, saying: “I always vowed that if I ever had the power, I’d make sure every Negro had the same chance as every white man. Now I have it. And I’m going to use it.” Johnson’s Great Society and his civil rights program forever changed America.

Ronald Reagan also defied expectations. Pundits saw Reagan as a washed-up, ex-Hollywood actor who was intellectually lazy and spoke only from cue cards. Reagan’s blatant disregard for facts led his critics, in the words of his pollster Richard Wirthlin, to view him as “dumb, dangerous, and a distorter of facts.” Gerald Ford decried Reagan’s “simplistic solutions to hideously complex problems”; “his conviction that he was always right in every argument”; and his penchant to “conserve his energy.” But as Barack Obama later acknowledged, President Reagan “changed the trajectory of America.” From 1980 to 2020, Reagan’s vision of “a smaller government; a greater America” stood as a touchstone.

The surprising presidencies of Roosevelt, Johnson and Reagan have much in common. Historian Robert Caro writes that “power reveals.” In each case, those presidents who changed America harbored deep convictions. Perhaps the most revealing moment of what was to come was Mr. Biden’s whisper in Barack Obama’s ear that the Affordable Care Act was “a big f-----g deal.” As president, Mr. Biden wants more BFDs, and the American Rescue Plan and American Jobs Plan are just the start. Like Roosevelt, Johnson and Reagan, Mr. Biden is an adroit politician who knows how to seize the moment.

The Great Depression set the stage for Franklin Roosevelt’s New Deal. Civil rights marches and police armed with dogs and billy clubs provided the backdrop for Lyndon Johnson to pass landmark civil rights legislation. Double-digit inflation and unemployment created opportunities for Ronald Reagan to cut taxes and curb government spending. At his press conference, Mr. Biden noted that successful presidents “know how to time what they’re doing — order it, decide, and prioritize what needs to be done.”

As it turned out, Franklin Roosevelt, Lyndon Johnson and Ronald Reagan sought the presidency not merely for the honor it bestowed but to change the country. Defending the new office, Alexander Hamilton famously declared, “Energy in the executive is a leading character in the definition of good government.” Like his predecessors, time and chance have made “Sleepy Joe” both energetic and surprising. Once more, the pundits have been proven wrong. And, like his predecessors, Joe Biden is out to change the country.

### I/L

#### Biden’s climate plan lets us meet targets and lead internationally.

Sheffey 10-28-21

(Ayelet, https://www.businessinsider.com/biden-climate-plan-biggest-investment-reconciliation-glasgow-summit-2021-10)

When President Joe Biden heads to Scotland for a United Nations' climate summit this week, he'll have a plan to address the climate crisis to unveil in front of other world leaders. Just under the wire on Thursday he unveiled a $1.75 trillion framework for Democrats' social-spending bill — half the cost of the original $3.5 trillion proposal. While many progressive priorities like paid leave and tuition-free community college were dropped from the plan, one major priority received the biggest investment: the climate. The plan came just in time as Biden previously expressed concern that the "prestige" of the US was at stake on the world stage after negotiations with centrist Democrats forced him to cut a major clean-energy program from the bill. According to a White House press release, Biden wants to invest $555 billion to combat climate change and meet the goals of the US, and globally, to reduce global warming. The announcement of this investment comes just as Biden is set to head to the United Nations climate summit in Glasgow this week, where he can present his plans to world leaders as they discuss how countries can come together to tackle the urgent threat of the climate crisis. This investment comes even after West Virginia Sen. Joe Manchin opposed the inclusion of the Clean Electricity Performance Program (CEPP), which would have allowed for Biden to reach his goal to cut carbon emissions in half by 2030. The $555 billion investment is not far off from what Democrats initially wanted — $600 billion — and the White House referred to the investment as the "largest effort to combat climate change in American history." "The framework will set the United States on course to meet its climate targets, achieving a 50-52% reduction in greenhouse gas emissions below 2005 levels in 2030 in a way that grows domestic industries and good, union jobs — and advances environmental justice," the White House said. Specifically, the $555 billion investment will: Deliver consumer rebates and ensure middle class families save money as they shift to clean-energy infrastructure, like solar rooftops; Ensure clean-energy technology is built from American-made materials, creating thousands of jobs in the country; Invest in clean energy projects around the country built by a new Civilian Climate Corps that would provide over 300,000 union jobs for Americans; And invest in coastal restoration, forest management, and soil conservation to help farmers and forestland owners meet climate emission reduction goals. These investments come after a Paris agreement of world leaders set a goal to keep global warming from exceeding 1.5 degrees Celsius by the end of the century. A recent UN report found that unless action is taken quickly, temperatures could rise to about 2.7 degrees Celsius by then. This prompted UN Secretary-General António Guterres to call out countries for "utterly failing" to meet climate goals, saying world leaders needed to work to avoid a "climate catastrophe." To be sure, the investment is just a framework, and it is unclear whether all Democrats will sign on to it, especially since progressive priorities like free community college and paid family and medical leave were left out. But when it comes to climate, most Democrats, and Biden, agree it needs to be passed. "This is by far the most significant piece of legislation passed in the world to deal with the climate," Vermont Sen. Bernie Sanders told reporters on Thursday.

#### Climate provisions send a massive signal, ensuring we meet emission targets.

Freedland 10-29-21

(Jonathan, https://www.theguardian.com/commentisfree/2021/oct/29/joe-biden-climate-plan-emissions-cop26)

Besides, $555bn is not to be sneezed at. I spoke on Thursday with Ben Rhodes, former adviser to Barack Obama. In 2009, Obama set aside a mere $90bn for climate-related action. But even that sum worked wonders. Despite Trump’s “ranting and raving”, and despite his withdrawal from the Paris accords, Rhodes notes that the US actually met its Paris targets in the Trump period. That’s because Obama’s move had signalled where the economy was going, setting in train a shift that Trump could not reverse: “Companies were adjusting, the markets were adjusting, money was moving.” Now, a decade later, “people are not building new coal plants in the United States; they’re building windfarms and solar panels.” Biden is sending a much bigger signal now. Combined with various executive actions he can take as president – moves he can make without the blessing of the senate or Manchin or anyone else – the legislation should help US greenhouse emissions fall to half their 2005 levels by 2030. That can serve as a useful corrective to the view that the US, and democracy itself, has become dysfunctional and ineffective in the face of an existential threat. Yes, a dictatorship such as China can move more quickly: there is no senator from West Shanxi for Xi Jinping to worry about. But it is Europe and, if Biden’s deal holds, the US that is setting the pace. That, Rhodes adds, is partly down to the pressure to act on the climate that comes with an open civil society and a free press.

### Warming !

#### Nuclear war and ecological breakdown---no adaptation

Spratt ‘18 (\*David Spratt; Research Director, Breakthrough National Centre for Climate Restoration; \*\*Ian T. Dunlop; Chairman of Safe Climate Australia, Director of Australia 21, Deputy Convener of the Australian Association for the Study of Peak Oil and Gas, a Fellow of the Centre for Policy Development, and a member of Mikhail Gorbachev’s Climate Change Task Force; 2018; “What Lies Beneath: The Understatement of Existential Climate Risk”; Accessible at: https://docs.wixstatic.com/ugd/148cb0\_a0d7c18a1bf64e698a9c8c8f18a42889.pdf)

In 2016, the World Economic Forum survey of the most impactful risks for the years ahead elevated the failure of climate change mitigation and adaptation to the top of the list, ahead of weapons of mass destruction, ranking second, and water crises, ranking third. By 2018, following a year characterised by high-impact hurricanes and extreme temperatures, extreme-weather events were seen as the single most prominent risk. As the survey noted: “We have been pushing our planet to the brink and the damage is becoming increasingly clear.”29 Climate change is an existential risk to human civilisation: that is, an adverse outcome that would either annihilate intelligent life or permanently and drastically curtail its potential. Temperature rises that are now in prospect, after the Paris Agreement, are in the range of 3–5°C. At present, the Paris Agreement voluntary emission reduction commitments, if implemented, would result in planetary warming of 3.4°C by 2100,30 without taking into account “long-term” carbon cycle feedbacks. With a higher climate sensitivity figure of 4.5°C, for example, which would account for such feedbacks, the Paris path would result in around 5°C of warming, according to a MIT study.31 A study by Schroder Investment Management published in June 2017 found – after taking into account indicators across a wide range of the political, financial, energy and regulatory sectors – the average temperature increase implied for the Paris Agreement across all sectors was 4.1°C.32 Yet 3°C of warming already constitutes an existential risk. A 2007 study by two US national security think-tanks concluded that 3°C of warming and a 0.5 metre sea-level rise would likely lead to “outright chaos” and “nuclear war is possible”, emphasising how “massive non-linear events in the global environment give rise to massive nonlinear societal events”.33 The Global Challenges Foundation (GCF) explains what could happen: “If climate change was to reach 3°C, most of Bangladesh and Florida would drown, while major coastal cities – Shanghai, Lagos, Mumbai – would be swamped, likely creating large flows of climate refugees. Most regions in the world would see a significant drop in food production and increasing numbers of extreme weather events, whether heat waves, floods or storms. This likely scenario for a 3°C rise does not take into account the considerable risk that self-reinforcing feedback loops set in when a certain threshold is reached, leading to an ever increasing rise in temperature. Potential thresholds include the melting of the Arctic permafrost releasing methane into the atmosphere, forest dieback releasing the carbon currently stored in the Amazon and boreal forests, or the melting of polar ice caps that would no longer reflect away light and heat from the sun.”34 Warming of 4°C or more could reduce the global human population by 80% or 90%,35 and the World Bank reports “there is no certainty that adaptation to a 4°C world is possible”.36 Prof. Kevin Anderson says a 4°C future “is incompatible with an organized global community, is likely to be beyond ‘adaptation’, is devastating to the majority of ecosystems, and has a high probability of not being stable”.37 This is a commonly-held sentiment amongst climate scientists. A recent study by the European Commission’s Joint Research Centre found that if the global temperature rose 4°C, then extreme heatwaves with “apparent temperatures” peaking at over 55°C will begin to regularly affect many densely populated parts of the world, forcing much activity in the modern industrial world to stop.38 (“Apparent temperatures” refers to the Heat Index, which quantifies the combined effect of heat and humidity to provide people with a means of avoiding dangerous conditions.) In 2017, one of the first research papers to focus explicitly on existential climate risks proposed that “mitigation goals be set in terms of climate risk category instead of a temperature threshold”, and established a “dangerous” risk category of warming greater than 1.5°C, and a “catastrophic” category for warming of 3°C or more. The authors focussed on the impacts on the world’s poorest three billion people, on health and heat stress, and the impacts of climate extremes on such people with limited adaptation resources. They found that a 2°C warming “would double the land area subject to deadly heat and expose 48% of the population (to deadly heat). A 4°C warming by 2100 would subject 47% of the land area and almost 74% of the world population to deadly heat, which could pose existential risks to humans and mammals alike unless massive adaptation measures are implemented.”39 A 2017 survey of global catastrophic risks by the Global Challenges Foundation found that: “In high-end [climate] scenarios, the scale of destruction is beyond our capacity to model, with a high likelihood of human civilization coming to an end. ”40 84% of 8000 people in eight countries surveyed for the Foundation considered climate change a “global catastrophic risk”.41 Existential risk may arise from a fast rate of system change, since the capacity to adapt, in both the natural and human worlds, is inversely proportional to the pace of change, amongst other factors. In 2004, researchers reported on the rate of warming as a driver of extinction.42 Given we are now on a 3–5°C warming path this century, their findings are instructive: If the rate of change is 0.3°C per decade (3°C per century), 15% of ecosystems will not be able to adapt. If the rate should exceed 0.4°C per decade, all ecosystems will be quickly destroyed, opportunistic species will dominate, and the breakdown of biological material will lead to even greater emissions of CO2 At 4°C of warming “the limits for adaptation for natural systems would largely be exceeded throughout the world”.43 Ecological breakdown of this scale would ensure an existential human crisis. By slow degrees, these existential risks are being recognised. In May 2018, an inquiry by the Australian Senate into national security and global warming recognised “climate change as a current and existential national security risk… defined as ‘one that threatens the premature extinction of Earth-originating intelligent life or the permanent and drastic destruction of its potential for desirable future development’”.44 In April 2018, the Intelligence on European Pensions and Institutional Investment think-tank warned business leaders that “climate change is an existential risk whose elimination must become a corporate objective”.45 However the most recent IPCC Assessment Report did not consider the issue. Whilst the term “risk management” appears in the 2014 IPCC Synthesis Report fourteen times, the terms “existential” and “catastrophic” do not appear.

#### Warming turns China war---specifically maritime disputes

VornDick 15 (Wilson, Lt. Commander in the U.S. Navy, where he is assigned to the Pentagon. Previously, he was assigned to the Chinese Maritime Studies Institute at the U.S. Naval War College, “Why Climate Change Could be China’s Biggest Security Threat” http://thediplomat.com/2015/08/why-climate-change-could-be-chinas-biggest-security-threat/)

Zheng Haibin, a professor at Peking University and a leading researcher on climate change securitization in China, believes China should do more because its security is at stake. His research indicates that climate change-induced impacts will endanger China’s national defense, strategic projects, and critical, defense-related infrastructure. Zheng’s identified several security vulnerabilities in each of China’s biomes and varied environments:

Desertification in the dry north and west will stretch already thin water supplies and wilt the ambitious and decades-old Three-North Shelter Forest Program (三北防护林) or “Green Great Wall.” As temperatures increase in the west, thawing permafrost will buckle hundreds of miles of the newly constructed, multi-billion dollar Qinghai-Tibet Railway jeopardizing the safety and the continuity of this strategic link to Tibet.

The increasing frequency of extreme weather conditions, such as flooding, drought, and cyclones, will degrade or compromise a variety of critical and security-related infrastructure across China. Heavy rainfall in the mountainous areas could trigger mudslides and landslides that would render useless numerous fixed missile launch sites utilized by the Second Artillery Corps (第二炮兵部队), China’s strategic missile force. Large swings in water levels and river runoff could substantially reduce the effectiveness of Three Gorges Dam, while farming capacity could fall 5 to 10% by 2030. The uptick in cyclone activity over the last decade along the Chinese coastline has caused extensive damage, restricted PLA training, and degraded combat effectiveness. Even the new Chinese-Russian oil pipelines stretching across China’s vast interior could be in jeopardy from extreme weather patterns.

With more than 11,185 miles of coastline, 6,700 islands, and China’s largest economic and population centers in littoral and maritime areas, climate change-induced sea-level rise may be China’s principal threat. Specifically, sea-level rise will cause significant coastline retreat, large-scale ecological damage, salinization of freshwater sources, and reset maritime boundaries. This will directly impact strategic energy corridors, maritime rights, and fisheries.

In response, Zheng proposed a holistic approach for climate change securitization in 2009 to include forming a national leading group to address climate change and strengthening coordination between the army, national security agencies, and local decision-making bodies.

A few Chinese military analysts share Zheng’s concerns and sounded the alarm on climate change in a 2011 study. Internally, the study determined that climate change will exacerbate current Chinese socioeconomic issues by lowering China’s quality of life, stretching limited resources, and increasing internal migrations. Externally, the study found climate change will increase geopolitical pressure and regional instability with China’s neighbors. It concluded that the cumulative effects from climate change will threaten the Chinese Communist Party (CCP) and impair Chinese sovereignty.

### Link

#### Consumer welfare overhaul fractures Dem unity.

Nihal Krishan 21. Tech reporter. “Why some centrist Democrats oppose the bipartisan anti-Big Tech bills”. Washington Examiner. Jul 6 2021. https://www.washingtonexaminer.com/news/why-centrist-democrats-against-anti-big-tech-bills-ro-khanna-zoe-lofgren-lou-carrea

A bipartisan package of anti-Big Tech antitrust bills faces significant opposition from centrist Democrats, one of the largest caucuses in Congress, who find themselves on the same side as the tech companies in a major legislative fight.

Many of them say some of the bills are too broad and could harm innovation, resulting in unintended consequences to consumers. They oppose a coalition of mostly Democrats and some Republicans who support the "hipster antitrust" movement, which aims to broaden the current definition of antitrust law.

Thanks to Republicans such as Robert Bork and Ronald Reagan, antitrust law has focused on consumer welfare measured by the price of goods and services for the past few decades.

Now, leaders of the "hipster" movement, most prominently the Federal Trade Commission’s new chairwoman, Lina Khan, want to broaden the standard. They seek to “promote a host of political economic ends — including our interests as workers, producers, entrepreneurs, and citizens,” Khan stated in a famous paper she wrote while studying at Yale Law School.

The six sweeping anti-monopoly bills introduced by Khan’s former boss, Democratic House antitrust panel chairman David Cicilline of Rhode Island, aim to rein tech giants such as Apple, Amazon, Google, and Facebook by expanding the capabilities of antitrust law.

The bills passed by the House Judiciary Committee last week by narrow bipartisan margins after over 24 hours of debate are expected to be brought to the House floor later this year by Speaker Nancy Pelosi, who has endorsed the bills.

“I think the bills go way, way beyond what antitrust laws have ever been,” said Rep. Ro Khanna of California, one of the most vocal Democrats on antitrust policy and the founder of the House Antitrust Caucus.

“But I think they’re not fully thought out because I do think consumer welfare should matter. I don't think it should be the only thing that matters, but it should matter, and the bills are just so inconsistent with a hundred years of antitrust jurisprudence,” said Khanna, who is also the author of an upcoming book, titled Dignity in a Digital Age, focused on improvements to tech policy.

Other Democrats say the bills improperly favor the demands of large companies and small businesses trying to compete with the Big Tech companies over the welfare of consumers.

“The bills focus on third-party competitors on tech platforms, who are emphasized over consumers,” a staffer for Democratic Rep. Zoe Lofgren told the Washington Examiner.

“You don’t have to look past the consumer welfare standard to solve the anti-competitive tech issues. You can understand consumer welfare in a broader context, look at it in a longer-term sense to fix these problems,” the staffer said.

Many centrist Democrats favor the existing antitrust laws, such as the Sherman Act and the Clayton Act, to solve monopolistic behavior by the tech giants.

#### Consumer welfare reform splits Dems.

Kiran Stacey 21. Washington Correspondent. “Big Tech lobby looks to moderate Democrats to defeat new regulation”. Financial Times. Jul 1 2021. https://www.ft.com/content/44baae26-564b-4314-a622-637a54282520

Senior Democrats are pushing back against attempts by members of their own party to regulate large technology companies, in a sign of how difficult progressives are likely to find it to rewrite US competition laws.

Democratic members of the House of Representatives have attacked a package of measures being promoted by members of the House antitrust subcommittee, as opposition builds to radical proposals that some hope could lead to the break-up of Big Tech.

The rift shows how difficult it will be to enact a big shake-up of US antitrust laws,

(MARKED)

even as President Joe Biden considers signing his own executive order to strengthen regulators’ powers to promote competition in their sectors.

Zoe Lofgren, a Democratic representative from California, told the Financial Times: “I don’t think they spent a lot of time drafting these bills, some of the measures in them are embarrassing . . . I am in favour of making adjustments to antitrust laws, but some of these are radical.”

Lou Correa, another Democratic representative from California, said: “I’m not sure we should try to break up some of these companies. And why are we singling out American companies, and especially those from California?”

The House judiciary committee last week passed six bills aimed at breaking the corporate power enjoyed by the likes of Google, Facebook, Amazon and Apple.

The move is part of a broader push to enact the most significant change to US competition law in a generation. But industry lobbyists are targeting centrist Democrats and those from California in particular as they try to block the most radical measures.

One of the bills would ban large technology companies from giving preferential treatment to their own products and could stop practices such as Amazon using its online store to promote products it has made. Another would prevent them from buying up rivals or nascent competitors, as Facebook did with both WhatsApp and Instagram.

Biden has signalled his support for taking on Big Tech by appointing Lina Khan, a law professor who has called for the break-up of Amazon, to chair the Federal Trade Commission and Tim Wu, another prominent critic, as a White House adviser. Amazon on Wednesday filed a petition with the FTC, calling on Khan to recuse herself from investigations involving the company.

Wu is one of those working on an executive order which would give greater power to industry regulators to encourage competition in their sectors. As part of that order, officials are considering ordering regulators to ban “non-compete” clauses, which have been used by companies including Amazon to stop their employees moving to work for their rivals.

A White House spokesperson said: “The president made clear during his campaign that he is committed to increasing competition in the American economy . . . but there is no final decision on any actions at this time.”

Critics of Big Tech are keen to push for legislative changes after antitrust lawsuits filed against Facebook by the FTC and dozens of state attorneys-general using existing competition law were thrown out of court this week.

But the comments by Lofgren and Correa show how hard it will be to pass such legislation, even though it has attracted the support of a handful of Republican critics of Big Tech. They come days after Steny Hoyer, the Democratic leader in the House, warned that the bills had triggered opposition from senior members of his party and were not ready for a vote by the full chamber.

# 1NR

## Inequality

### XT – Antitrust Ineffective

#### Monopsony comes from trade and technology change, not anticompetitive practices

Naidu 21 – Suresh Naidu, professor of economics and international affairs at Columbia University as well as a fellow at Roosevelt Institute, “Labor Monopsony and the Limits of the Law,” 5/4/21, http://jhr.uwpress.org/content/early/2021/06/02/jhr.monopsony.0219-10030R1.abstract

Like in the product market case, some increased labor market monopsony has probably been caused by trade and technological factors unrelated to mergers and other types of anticompetitive behavior that can be straightforwardly targeted by antitrust law. Benmelech et al. (2018) show that exposure to Chinese trade shocks resulted in increased labor-market concentration in manufacturing, lowering wages in exposed labor markets (particularly non-unionized ones). Many tech firms, for example, owe their market dominance to network effects. It would have been quite difficult for antitrust authorities to stop Google and Facebook from achieving product market dominance because they gained most of their early market share by offering products and services that customers wanted. Similarly, on the labor market side, firms like Uber have exploited advances in technology that have enabled them to isolate and monitor workers, and circumvent legal protections like minimum wage laws; they have not needed to merge with other firms in order to obtain this labor market power.

#### Labor markets are too fragmented for antitrust to be viable

Naidu 21 – Suresh Naidu, professor of economics and international affairs at Columbia University as well as a fellow at Roosevelt Institute, “Labor Monopsony and the Limits of the Law,” 5/4/21, http://jhr.uwpress.org/content/early/2021/06/02/jhr.monopsony.0219-10030R1.abstract

But there is a further problem for labor markets that they do not share with product markets, which is that labor markets are highly fragmented—far more so than most product markets. The reason is that people are less mobile than goods, with the result that labor market areas are typically (though not always) smaller than product market areas. To understand this point, consider, for example, the merger of two big farm equipment manufacturers. The market for farm equipment is national in scope, and hence an agency or court that evaluates the merger can focus on that single national market. To evaluate labor market effects, by contrast, one must identify the location of the factories of the two firms, which may be scattered throughout the country (or world). In some labor market areas, the merger may result in factory shutdowns, in others not. One then must evaluate all aspects of the local labor market—such as whether other employers, including employers in different industries, offer comparable jobs. And one must take into account the different types of workers in each factory—for example, line workers and IT workers belong in different labor markets. While some product markets are fragmented in this way, the problem for labor market antitrust is that fragmentation is pervasive if not universal. Indeed, applying existing market definition tests to labor markets may conclude that the relevant market is just the firm itself!

#### They don’t solve search costs and job differentiation

Naidu 21 – Suresh Naidu, professor of economics and international affairs at Columbia University as well as a fellow at Roosevelt Institute, “Labor Monopsony and the Limits of the Law,” 5/4/21, http://jhr.uwpress.org/content/early/2021/06/02/jhr.monopsony.0219-10030R1.abstract

In contrast, search costs in labor markets are potentially large. Similar-seeming jobs often involve enormous variation. For example, the job description of a lawyer at a law firm might be “complex litigation” or “complex commercial litigation.” But lawyers with this job description do very different things at different firms because different firms have different cases, divide tasks among litigators differently, and—of course—have different lawyers, which will affect the various interpersonal relationships that are involved in any litigation. Like in the product market case, intermediaries—headhunters—have arisen to help reduce search frictions. But these markets are themselves quite opaque. The search frictions give employers bargaining power over their workers to a far greater extent than exists in product markets. New companies like Glassdoor, which aggregate employee ratings of a variety of jobs and employers, may help reduce these search frictions.

Conventional antitrust enforcement would not address wage suppression caused by search costs or job differentiation except in unusual cases where it can be shown that firms took deliberate steps to increase search costs and job differentiation for anticompetitive purposes. No-poaching agreements fall into this category. A no-poaching agreement does not increase labor market concentration, since the employees remain independent, but it results in wage suppression because search costs are increased: a worker fired by firm X will not be able to find a job with rival firm Y if the two firms entered a no-poaching agreement. But high search costs may simply be a feature of a labor market, for example, because jobs involve complex and hard-to-compare tasks.

Similar points can be made about job differentiation. This source of labor market power is, like search costs, related to the complexity of the work relationship. But search costs are the result of information asymmetries over the wages available, while job differentiation refers to variation in the preferences of workers over different types of jobs. Some law firms have highly intense and competitive cultures; others don’t. These differences appeal to different types of lawyers. Thus, an apparently large labor market—litigators—turns out to be smaller—intense and non-intense litigators. And then there are further types of differentiation as well, like case types—some people prefer antitrust cases, and others prefer employment cases, and many law firms specialize accordingly. Here again, we can think of product-market analogies, but they are rare rather than pervasive. Some airlines differentiate themselves by offering better service and others by offering low prices. Insurance companies also offer complicated different features in insurance contracts. But there seems to be natural limits on this type of differentiation—perhaps because more complex differentiation confuses consumers. Moreover, because work is such an important part of people’s life, people are naturally concerned even about minor aspects of it, whereas most products—housing is probably the only exception—add relatively little value to one’s life.

Like search costs, job differentiation poses significant challenges to antitrust law. When employers differentiate jobs, they can nearly always claim, with considerable plausibility, that they are merely giving their workers what those workers want, or providing attractive positions to people who may be unsatisfied with their jobs at rival firms. Thus, job differentiation can easily be seen as pro-competitive.

And job differentiation may also arise naturally as firms compete for workers with different workplace tastes. It would be difficult for courts to distinguish this type of natural job differentiation from job differentiation that occurs as a conscious strategy to suppress wages.

#### Heterogeneous private preferences lead to labor monopsony – antitrust is irrelevant (at their arg)

Naidu 21 – Suresh Naidu, professor of economics and international affairs at Columbia University as well as a fellow at Roosevelt Institute, “Labor Monopsony and the Limits of the Law,” 5/4/21, http://jhr.uwpress.org/content/early/2021/06/02/jhr.monopsony.0219-10030R1.abstract

These legal constraints apply in theory to labor markets as well, although litigation is far less frequent. Agreements to fix wages, not to poach employees, exchange salary information so as to reduce the risk of poaching, and related agreements, are illegal. Monopsonists may be also be liable if they use their labor market power to prevent rival employers from entering the market (for example, by tying up employees with noncompetes) or extend their monopsony power to the employment market—though cases that address these behaviors are virtually nonexistent. The U.S. government has acknowledged recently that mergers should be reviewed for their labor market effects as well as their product market effects.

As a rough approximation (with exceptions discussed later), antitrust law addresses the problem of market concentration. And while concentration in labor markets is significant, the models surveyed earlier suggest that considerable monopsony power can persist even in large, non-concentrated labor markets with many employers. This makes antitrust law an unwieldy device to handle labor market monopsony. While concentration can exacerbate the monopsony originating in either search or differentiation, it is by itself not a sufficient metric for market power. Antitrust is set up to police anticompetitive behavior, including excessive concentration and egregious price-fixing behaviors. But if market power is generated by search frictions or heterogeneous, privately known costs and preferences, then antitrust law can do little.

### XT – Circumvention

#### 4. Courts will always read regulatory statutes down – regulatory capture

Crane 21 – Frederick Paul Furth Sr. Professor of Law at UMich (Daniel, Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205 (2021). Available at: <https://scholarship.law.nd.edu/ndlr/vol96/iss3/7>

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital. Unlike in many debates over statutory interpretation, the issue in antitrust is not a contest between strict textualism and purposivism, including resort to legislative history.6 This Article uses “antitextualism” as a shorthand for the phenomenon of ignoring any bona fide construction of what a statute means, whether in the plain meaning of its words, linguistic or substantive interpretive canons, legislative history, or other ordinary markers of legislative meaning. Uninterested in these methods, the courts have treated the antitrust laws as a virtually unbounded delegation of common-law powers when, in important ways, the statutes quite clearly say something other than that. Inquiring into the nature and implications of antitrust antitextualism is particularly salient at the present when, for the first time in a generation, there is widespread dissatisfaction with antitrust enforcement and impetus for potential reform legislation.7 As was true at each of the prior moments of reformist sentiment, the call is for statutory reforms to curb the power of big business.8 We have seen this play before, and also its sequel. In the play, Congress announces that the antitrust laws are too weak and that reforms are necessary to protect the nation from the power of big capital. In the sequel, the courts (often abetted by the antitrust agencies and other antitrust elites) read down the statutes to accomplish less than their texts suggest or Congress meant. Will anything be different this time around, or are the legislative reforms currently on the table predestined to a similar fate?

#### 5. Vagueness greenlights circumvention.

Hanley 4-6 – policy analyst at Open Markets Institute (Daniel, "How Antitrust Lost Its Bite," Slate Magazine, <https://slate.com/technology/2021/04/antitrust-hearings-congress-legislation-bright-line-rules.html> APRIL 06, 2021)//gcd

As Congress considers enacting new legislation, it must start by reclaiming control over antitrust by enacting laws with clear rules that could deter exclusionary conduct and greatly simplify the litigation process for plaintiffs. Moreover, instead of just restoring many of the historical bright-line rules that the judiciary has eroded over the last 60 years, new laws should go further to ensure that markets remain deconcentrated and to promote economic fairness. For example, Congress could enact strict prohibitions on firms entering certain lines of business, such as AT&T being prohibited from entering the computer industry [in 1956](https://www.cybertelecom.org/notes/att1949.htm), or ban the use of specific competitive practices outright, such as noncompetes that restrict the mobility of workers. Rules like these ensure the markets are structured by publicly accountable institutions to incentivize socially beneficial corporate conduct, such as investments in research and development and product quality. Importantly, rules-based laws would also ensure the judiciary is adhering to Congress’ directive to keep markets deconcentrated and acknowledge that the judiciary is not a reliable safeguard for smaller independent firms and workers who often do not have access to significant amounts of capital to litigate an antitrust lawsuit. In fact, in commonly applied rules for [how judges interpret Congress’ laws](https://www.jstor.org/stable/1070047?seq=1), the judiciary views ambiguity as an opportunity to fill any legal gaps with its interpretation and ideology. History has consistently shown that only bright-line rules will lead to an effective and vigorous enforcement environment, as they do in other areas of law, and prevent the judiciary from favoring dominant economic enterprises and distorting the antitrust laws to preference increased concentration. The Supreme Court’s original development of the rule of reason and its subsequent gutting of the enforcement of the Clayton Act in the 1930s is particularly illustrative of why bright-line rules are necessary. A critical weakness of the Sherman Act when it was passed in 1890 was that it did not incorporate bright-line rules and left the interpretation of the act almost entirely to the judiciary. Despite its broad moral intentions, the first 15 years of its enforcement were anemic against concentrated private power and even [hostile to organized labor](https://escholarship.org/uc/item/8cj0z1tq). Eventually the federal government would obtain its first significant victory [in 1904](https://en.wikipedia.org/wiki/Northern_Securities_Co._v._United_States), but the legal standard that the court would use to determine the legality of antitrust violations was not fully decided until the 1911 Standard Oil case, in which the Supreme Court codified the rule of reason. [Standard Oil v. United States](https://en.wikipedia.org/wiki/Standard_Oil_Co._of_New_Jersey_v._United_States) is widely known for breaking up the company. However, the case was actually a pyrrhic victory for antitrust enforcers. In the case, the court created the foundation for the rule of reason by declaring that only “unreasonable” trade practices (known as restraints of trade) were illegal under the Sherman Act. In other words, the judiciary in Standard Oil anointed itself with unilateral discretionary power to manage and organize the economy and neutered the Sherman Act’s application. Outrage from Congress and the public over the judiciary’s seizure of power resulted in swift action. Less than three years later, Congress would try to reassert its position to ensure a deconcentrated marketplace with the Clayton Act. When Congress enacted the Clayton Act in 1914, its primary goal was to supplement the Sherman Act by bolstering a plaintiff’s ability to arrest certain enumerated conduct in its incipiency—to nip monopolistic behavior in the bud. The Clayton Act explicitly lessened the litigation burden on plaintiffs for certain exclusionary practices, including certain forms of tying (conditioning the purchase of a product on the purchase of another product), price discrimination, and exclusive dealing (contracts or coercive behavior that prevents suppliers or distributors from engaging with a firm’s rivals). Most importantly, Congress included in the Clayton Act a highly deferential and plaintiff-friendly legal standard meant to prohibit mergers (although only limited to acquisitions of assets and not for stock) that only “may be to substantially lessen competition” or “tend to create a monopoly.” The Clayton Act made clear that Congress was trying to arrest certain antitrust violations such as mergers as a means to grow corporate operations, and to reverse the Supreme Court’s declaration in [Standard Oil](https://en.wikipedia.org/wiki/Standard_Oil_Co._of_New_Jersey_v._United_States). However, the Supreme Court would instead successfully hijack this antitrust law too, in order to favor its own prescription for managing the economy. In a 1930 case known as [International Shoe](https://supreme.justia.com/cases/federal/us/280/291/), the Supreme Court decided to interpret the Clayton Act’s directive on mergers, despite its explicit purpose and statutory language, in an equivalent way to the Sherman Act. The court said the Clayton Act also deemed the indicator of an illegal merger to be whether it “injuriously affect[ed] the public”—yet again, a gutting of Congress’ intentions for a robust antitrust law. After the court’s holding in International Shoe, [almost no merger cases](https://heinonline.org/HOL/LandingPage?handle=hein.journals/antlervi3&div=6&id=&page=) were brought either by the Federal Trade Commission or the Department of Justice between 1930 and 1950. Even though the New Deal during the 1930s invigorated antitrust enforcement for violations of the Sherman Act targeting cartels and monopolies, it still took decades of advocacy for the Clayton Act to be significantly amended in 1950 to undo the Supreme Court’s damage. Even then, however, Congress did not impose a bright-line rule for mergers. And although the 1950 amendments to the Clayton Act did lead to vigorous enforcement, it would last only for another decade until the Supreme Court would, in a series of decisions, invent two doctrines, known as [antitrust injury](https://supreme.justia.com/cases/federal/us/479/104/) and [antitrust standing](https://supreme.justia.com/cases/federal/us/429/477/). These doctrines would again erode significant aspects of antitrust enforcement of both the Sherman Act and Clayton Act to the present day. The implementation of the consumer welfare framework since the 1970s is additional evidence from more than a century of consistent judicial mismanagement and hostility toward Congress’ desire to stop corporate concentration. Simply put, the courts cannot be trusted to adequately enforce antitrust laws without bright-line rules. If Congress is going to amend the antitrust laws to ensure they are effectively administered, rules that ban big mergers and the monopolization of markets, prohibit coercive contracts against small suppliers and distributors, and protect workers from dominant corporations must be imposed. Anything less leaves the door open for the judiciary to continue subverting Congress’ economic agenda, as dictated by the voting public, and instead substitute its own. Without bright-line rules, the current reform efforts will be in vain.

#### 6. Courts will systematically reverse their own precedent.

Sipe 18 – JD Yale Law, 2017-2018 Supreme Court Fellow, Current Professor of Law at the University of Baltimore (Matthew, "The Sherman Act and Avoiding Void-for-Vagueness." Florida State University Law Review, vol. 45, no. 3, Spring 2018, p. 709-762. HeinOnline)//gcd

Far from an isolated example, Leegin is the apotheosis of a "major turning point in antitrust law." 7 3 The Court has consistently and "systematically [gone] about the task of dismantling many of the per se rules it [has] created." 7 4 Another vertical restraint, territorial division, has gone from being considered "so obviously destructive of competition that [its] mere existence"75 is intolerable to a welcome method of "stimulati[ng] . . . interbrand competition" and "achiev[ing] certain efficiencies in . . . distribution."7 6 Maximum resale price maintenance underwent a similarly stark reversal-from a practice that "cripple[s] the freedom of traders" and is intrinsically "injurious to the public"7 7 to a practice with "procompetitive effects" that "benefit[s] consumers regardless of how those prices are set."7 8 The result is that lower courts-and hence, market participants seeking to comply with antitrust law-are increasingly asked ex ante to measure and balance factors including market structure, price changes over time, output quantity and quality, and consumer behavior.7 9 And, to be clear, this trend has operated exclusively in one direction; once the rule of reason has conquered a given category of economic behavior, per se analysis does not recover that lost ground Today, "[t]he vast majority of trade-restraint categories receive rule of reason treatment."8 ' But even where per se categories have not been replaced by the rule of reason explicitly, the divide between per se and rule-of-reason analysis has broken down considerably. That is, case law increasingly demands that courts apply the same holistic, case-by-case analysis embodied by the rule of reason in order to apply the "per se" label in the first place. Put differently, the detail and vagueness of the rule of reason have been transformed into a threshold inquiry for per se cases. This per se step zero undermines any precision or clarity in the Sherman Act that the use of per se rules might have otherwise maintained.

## Democracy

#### Aff doesn’t solve democracy – campaign finance, the Electoral College, January 6, gerrymandering – this advantage starts at zero

Norris 21 – Pippa Norris, McGuire Lecturer in Comparative Politics at the Kennedy School of Government, Harvard University, “American democracy is at risk from Trump and the Republicans. What can be done?” 6/6/21, https://www.theguardian.com/commentisfree/2021/jun/06/republican-party-donald-trump-american-democracy-elections

Academics rarely agree about the big issues, and generally hesitate to enter the political fray by signing collective public statements. Yet a few days ago, more than 100 leading scholars of democracy endorsed a remarkable Statement of Concern, which I also signed, warning about grave threats to American democracy and the deterioration of US elections.

“We urge members of Congress to do whatever is necessary – including suspending the filibuster – in order to pass national voting and election administration standards that both guarantee the vote to all Americans equally, and prevent state legislatures from manipulating the rules in order to manufacture the result they want. Our democracy is fundamentally at stake. History will judge what we do at this moment.”

Why the alarm? Is this warranted?

On 14 December 2020, after courts litigated challenges and all 50 states certified the count, the electoral college formally declared the defeat of Donald Trump. Most assumed that the peaceful and orderly transition in power would follow, following historical traditions for over 200 years. Instead, the world was shocked to witness the violent Capitol insurrection on 6 January, triggering five deaths, 140 people injured and more than 400 arrests.

But even this unprecedented attack on Congress was not the end of the assault on the unwritten norms and practices of American democracy and the legitimacy of Joe Biden’s win.

For months, the big lie claiming a “stolen election” has continued to be spread relentlessly by the former president, his close advisers, Republican lawmakers and rightwing sympathizers on cable news and social media. According to many polls, two-thirds of Republicans continue to believe that Biden’s victory was fraudulent. In Arizona, the Republican party hired a private firm to conduct an audit of the certified vote count.

It is reported that Trump is obsessed about the use of audits to overturn results in other close states like Pennsylvania, Wisconsin and Michigan, believing that he will be returned to office in August. In state houses, Republicans have long expressed concern about the risks of electoral fraud and the need to tighten registration procedures and balloting facilities. The Brennan Center reports that since January this year, 22 new laws restricting voting rights have been enacted in 14 states. For the 2021 legislative session, almost 400 bills restricting voting rights have been tabled in 48 states.

Challenges to democracy are increasing worldwide. The long spread of “third-wave” democracies across the globe from the mid-1970s stalled around 2005 – since when scholars have noted accumulating indicators of democratic backsliding and rising authoritarianism in many countries.

Contrary to popular commentary, signs of democratic deterioration in America were on the wall well before Trump became president – such as persistent gridlock in US Congress, deepening cultural polarization and the corrupting role of dark money in politics. The backsliding has accelerated during the last four years, with attacks on the news media, risks to the impartiality of the courts, and the weakening role of Congress as an effective check and balance on executive power.

The US electoral system has also long been problematic, notably extreme partisan gerrymandering, the composition of the electoral college, rural over-representation in the Senate, lack of electoral standards as the supreme court rolled back federal oversight of state elections established by the 1965 Voting Rights Act, low turnout and the expansion of misinformation in the media. Since Bush v Gore in 2000, serious challenges to electoral legitimacy, and growing party polarization over the rules of the game, have gradually deepened. The Electoral Integrity Project has used expert surveys to evaluate the quality of national elections around the world since 2012 and found that US elections have persistently been graded poorly by EIP experts, scoring next to last among the world’s liberal democracies, and ranking about 45th out of 166 nations worldwide.

Unfortunately, Republican federal and state lawmakers have no rational incentives to abandon Trump and the big lie about electoral fraud, even if they recognize the falsehood. Most incumbents are nominated through party primaries and hold safe districts due to partisan gerrymandering, so Republican chances of re-election depend on throwing red meat to the Maga base, not building a broader coalition among moderate independents.

### Court Legitimacy Alt Causes – 2NC

#### Kavanaugh confirmation already destroyed court legitimacy

Beauchamp 18 – Zack Beauchamp, politics and international affairs writer for Vox, “The Supreme Court’s legitimacy crisis is here,” 10/6/18, https://www.vox.com/policy-and-politics/2018/10/6/17915854/brett-kavanaugh-senate-confirmed-supreme-court-legitimacy

The Supreme Court’s legitimacy depends on most Americans viewing it as above the partisan fray, an institution whose decisions are driven by legal reasoning, not by the justices’ partisan leanings.

In confirming Kavanaugh, with a razor-thin partisan majority no less, the Republican Senate may well end up eroding that public faith. Kavanaugh’s fiery and nakedly partisan testimony in front of the Senate Judiciary Committee during the September 27 hearing revealed a justice who was less an “impartial arbiter” of the law and more a partisan creature who would take his political grudges to the Supreme Court.

In that hearing, he blamed the sexual assault allegations against him on a left-wing conspiracy: a “calculated and orchestrated political hit, fueled with apparent pent-up anger about President Trump and the 2016 election.” He claimed, without evidence, that Democrats were going after him to get “revenge on behalf of the Clintons,” with the support of “millions of dollars in money from outside, left-wing opposition groups.” He was defiant, even downright rude, toward the Democratic senators who asked him questions — interrupting Sen. Amy Klobuchar, whose father is in recovery from alcohol addiction, to ask if she had ever blacked out from overconsumption.

His performance was so alarming that the American Bar Association, which had given him its stamp of approval, on Friday announced that it was reopening its evaluation of Kavanaugh in light of his “temperament.” Retired Justice John Paul Stevens was also taken aback, saying Kavanaugh’s performance revealed a “potential bias” that could be a problem. And more than 2,400 law professors signed a letter expressing their view that Kavanaugh “did not display the impartiality and judicial temperament” to sit on the Court.

Kavanaugh seems to have sensed that his performance may have been damaging: He wrote an op-ed that appeared Thursday in the Wall Street Journal acknowledging that he was “too emotional at times” during the hearing, and asserting that he “will keep an open mind in every case.”

But his partisan testimony was consistent with a career spent in the Republican trenches against Democrats: He worked for Ken Starr’s investigation into the Monica Lewinsky scandal, and then for President George W. Bush after that. Now he becomes the conservative majority’s fifth vote after a bitter confirmation battle and an FBI investigation that Democrats believe was a whitewash. He joins the Supreme Court trailed by allegations of sexual assault (which he has denied) and accusations from some liberals that he lied under oath.

The system depends on everyone having faith in the Supreme Court adjudicating partisan disputes; confirming Kavanaugh, who is the most unpopular Supreme Court nominee ever to be approved by the Senate, could theoretically collapse this consensus.

The Kavanaugh confirmation fight “directly links the Court to the direct political process,” says Michael Nelson, a professor at Penn State. “That’s the sort of thing that’s kryptonite for the Court.”

#### Abortion decision makes partisan court perception inevitable

Bernstein 9/2 – Jonathan Bernstein, Bloomberg Opinion columnist covering politics and policy, “Supreme Court Abets Lawlessness in Texas Abortion Ruling,” 9/2/21, https://www.bloomberg.com/opinion/articles/2021-09-02/texas-abortion-law-supreme-court-chooses-lawlessness-kt2ujvc9

Those of us who believe that Roe v. Wade was correct when it gave women a constitutional right to abortion in 1973 are obviously unhappy with the Supreme Court’s “shadow docket” decision to de facto overturn it — or, as Dahlia Lithwick put it in Slate Wednesday evening, Roe was “overruled this week, or nullified, or merely paused for a few million people.”

But well beyond that: Procedure matters, and the ad hoc, unjustified procedure in this case — procedure that produced a sharp and compelling dissent from Chief Justice John Roberts, who may eventually join a majority to destroy or overturn Roe — may have done as much to undermine the rule of law as anything we’ve seen in these last years of threats to constitutional government.

It simply can’t be the case that state governments can eliminate established constitutional rights by structuring laws so that they must go into effect, thus robbing people of those rights, without the courts having any option of stopping them. That’s what Texas and a handful of judges have done in this case, and it’s wrong and it’s lawless even if Roe was incorrectly decided and the Texas law — which effectively puts abortions off limits after six weeks of pregnancy by giving citizens the power to sue anyone who “aids or abets” them — would eventually be upheld (for more detail, see Rick Hasen’s reaction).

The courts are a political branch. They always have been. They’re supposed to be. That’s not a problem.

But there are implicit but important rules about how they are political. Precedents can be overturned. They can be evaded so many times and so many ways that they no longer exist. They cannot simply be ignored. Justices can be partisan — there’s nothing new in that — but they need to cloak it in proper form, and proper procedure. They can’t simply say that they are ruling such-and-such a way because they are Republicans, or because that’s the outcome they want. Nor can they veil it so thinly that they might as well say so explicitly.

Or, that is, they can — but in doing so, they behave improperly, and threaten not only the legitimacy of the judiciary but of the entire system. A five-Justice majority that essentially says they’ll do whatever they want because they have five votes and tough luck to anyone else — and yes, that’s basically what the Court did in this case and has done or come close to doing in others — is acting lawlessly, full stop. In doing so, these five Justices are inviting everyone else in the political system to simply do whatever they have the power to do, whether it’s overturning elections, packing or stripping jurisdiction from the courts, or whatever else they can get away with.

## Econ DA

#### Replacing the consumer welfare standard creates a crisis in antitrust – creates a chilling effect for business confidence, raises prices, and discourages innovation

Wright 19 – Joshua D. Wright, University Professor and Executive Director of the Global Antitrust Institute at George Mason University, “Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” *Arizona State Law Journal*, 2019, 51 Ariz. St. L.J. 293

Opponents of the modern approach to antitrust law and policy have called for nothing less than the complete dismantling of the consumer welfare standard and the consensus that has been built over the last nearly fifty years through vigorous debate among antitrust practitioners, enforcers, and academics from across the political spectrum about how best to promote competition. It is no exaggeration to say that what these critics desire is an anti-economics revolution that untethers the antitrust laws from a coherent and consistent framework and replaces consumer welfare with vague social and political standards that ultimately would once again plunge antitrust into crisis. 268

In the current debate about the appropriate framework for antitrust analysis, the most often cited replacement for the consumer welfare model is either the "public interest" or "citizen interest" standard.269 The "public" and "citizen" interest standards would purportedly capture a much broader range of potential effects emanating from a challenged transaction or business practice, including: the availability of services, the openness of markets, the stability of global supply chains and financial systems, and the ability of rivals to compete.2 0 Of course, there is reason to believe that any new antitrust standard might also be broad enough to capture other noncompetition factors touted by proponents of consumer welfare reform, such as income inequality,21 undue political influence, and perceived conflicts of interest between firms in a vertical relationship.

Abandoning the consumer welfare standard and embracing the "public" or "citizen" interest standard (or a similar approach) would have significant adverse costs on competition policy. It would again force antitrust to serve multiple masters, many of which have inconsistent interests. The inevitable confusion and lack of unified approach also would create uncertainty in the business community that ultimately would have a chilling effect on procompetitive conduct and encourage new efforts by firms to influence antitrust outcomes through political pressure and agency rent-seeking. This is not mere speculation. Indeed, the history of the Federal Communication Commission (FCC), which employs a similar public interest standard, serves as a prime example of the deleterious effects of vague enforcement standards that are not rooted in economic evidence.2 2

A. Replacing Consumer Welfare with an Incoherent and Inconsistent Approach

Replacing the well-established consumer welfare standard would necessarily require courts to trade off some amount of consumer welfare for some other set of values, thereby throwing open the door to uncertainty and to exploitative behavior. As has been discussed above, decades of debate and case law has worked to refine the precise contours of the consumer welfare standard and to bring consensus about the types of evidence that are indicative of harm to competition and consumers.2"3 The consumer welfare standard employs a variety of economic tools to evaluate the effect transactions and business practices may have on consumers in the form of increased prices, reduced output, reduced innovation. By using current economic theory and empirical evidence as the starting point for creating liability rules and subsequently conducting an evidence-based inquiry into the welfare effects of a particular practice, the consumer welfare model offers a tractable method for weighing procompetitive and anticompetitive effects.

If consumer welfare were to be replaced by some other set of values, the result explicitly would be for courts and enforcers to elevate other factors above consumer welfare and to reach different conclusions about liability. Under a "public interest" or "citizen interest" approach, a transaction that would reduce prices to consumer, increase output, or spur innovation may be prohibited under the antitrust laws for failing to satisfy any number of other vague factors, including failing to leave some arbitrary number of competing firms in the market despite the clear presence of competition or create a more efficient albeit consolidated supply chain. Even more dramatically, a new standard also may result in a transaction that increases prices, reduces output, or stifles innovation to not necessarily run afoul of the antitrust laws if a court concludes that such consumer harm can be tolerated to satisfy other aspects of the multidimensional standard, such as income equality. In light of these very real concerns, a subjective, multiprong antitrust standard untethered from economics offers nothing beyond speculative benefits. Accordingly, it would be imprudent to abandon the consumer welfare standard.

#### Any alternative to consumer welfare causes a laundry list of problems for the economy – specifically causes special interest rent-seeking and cronyism

Keating 21 – Raymond J. Keating, chief economist for the Small Business & Entrepreneurship Council, “The Treacherous Turn on Antitrust Regulation of U.S. Tech Companies,” 2/24/21, <https://sbecouncil.org/2021/02/24/the-treacherous-turn-on-antitrust-regulation-of-u-s-tech-companies/>

[Modified for objectionable language]

Nonetheless, in the end, the consumer welfare standard is, by far, the best we have in terms of some consistency and reasonableness in applying vague antitrust laws.

Antitrust and Congress: A Bad System May Become Far Worse

Given the formidable shortcomings of antitrust law and regulation, one would hope that if Congress was going to consider reform or updating, the effort would be focused on at least trying to somehow better connect the law and enforcement with economic realities and how markets actually function.

That is not the case with the reports presented by Democrats and Republicans in the House Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary. In fact, each report, and largely the Democrats’ analysis, serves up recommendations that would create far greater distance between how markets work and antitrust regulation.

Let’s be perfectly clear: Neither report offers recommendations that will improve antitrust law and enforcement. Most of the proposals labor under mistaken assumptions; and would actually inject more politics and uncertainty into the antitrust equation, while moving antitrust law, regulation and enforcement further away from sound economics.

The Democrats’ majority report is intent on a vast expansion of antitrust regulation and enforcement, including tossing out the consumer welfare standard in favor of, effectively, more politics over economics; while the Republican report also argues for expanded regulation and enforcement, but more tentatively so at least in terms of the language used.

The overwhelming tendency in the Democrats’ report is to make sweeping declarations about increased and inevitable monopolization (such as: “Over the past decade, the digital economy has become highly concentrated and prone to monopolization.”), along with “weakened innovation and entrepreneurship,” that ignore the dynamism of the tech economy, the enormous benefits derived by consumers, actual consumer decisions, and the definition of a monopoly.

As for the Republican report, it is willing to go along with the Democrats on a number of proposals, raises questions about others, and rejects some. As stated, “We prefer a targeted approach, the scalpel of antitrust, rather than the chainsaw of regulation.”

As it turns out, though, the Republican “scalpel” is far from targeted. The report expresses political disagreements with the firms involved (for example: “Most notably, the report does not address how Big Tech has used its monopolistic position in the marketplace to censor speech. This censorship is experienced by groups and ideologies on all wings of the political spectrum but is most notably realized through tech platforms exerting overt bias against conservative outlets and personalities.”)

Consider some key proposals from the Democrats’ report and our responses.

• Proposal: “Reasserting the anti-monopoly goals of the antitrust laws and their centrality to ensuring a healthy and vibrant democracy.” – “[T]he Subcommittee recommends that Congress consider reasserting the original intent and broad goals of the antitrust laws by clarifying that they are designed to protect not just consumers, but also workers, entrepreneurs, independent businesses, open markets, a fair economy, and democratic ideals.”

Response: This proposal would toss out the consumer welfare standard, and replace it with a broad basis for undermining businesses that have earned considerable market share. Antitrust actions would return to a period in which politics, special interest influences, rent-seekers, and uncertainty held even greater sway over the realm of antitrust – even more so than it does today. By effectively giving more control over business decisions and models to a political class that often fails to understand current business and market conditions, never mind where industries and markets are headed in the future, there inevitably will be losses in terms of innovation, investment, efficiency, and growth.

• Proposal: “Structural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” – “Structural separations prohibit a dominant intermediary from operating in markets that place the intermediary in competition with the firms dependent on its infrastructure. Line of business restrictions, meanwhile, generally limit the markets in which a dominant firm can engage.”

Response: Again, having government determine and dictate business decisions, rather than having decisions made by businesses and entrepreneurs subject to market competition and consumer sovereignty would mean lost innovation, productivity and consumer benefits.

• Proposal: “Interoperability and data portability, requiring dominant platforms to make their services compatible with various networks and to make content and information easily portable between them.”

Response: Investments in engineering and information often are the lifeblood of businesses in the digital economy. It’s how they provide added value to customers. To have government impose assorted mandates on the use and availability of such investments inevitably will reduce and/or redirect such investments, with consumers, again, suffering.

• Proposal: “Presumptive prohibition against future mergers and acquisitions by the dominant platforms.” – “Under this change, any acquisition by a dominant platform would be presumed anticompetitive unless the merging parties could show that the transaction was necessary for serving the public interest and that similar benefits could not be achieved through internal growth and expansion.” – “[T]he Subcommittee recommends that Members consider codifying bright-line rules for merger enforcement, including structural presumptions. Under a structural presumption, mergers resulting in a single firm controlling an outsized market share, or resulting in a significant increase in concentration, would be presumptively prohibited…”

Response: The basis for justifying such random impositions on mergers certainly does not rest with sound economics, nor with how the market works, including that any mergers ultimately will be put to the test of competition and consumer decision-making in the marketplace. Instead, this is simply about a political preference or bias against mergers and “bigness” per se.

• Proposal: “To strengthen the law relating to potential rivals and nascent competitors, Subcommittee staff recommends strengthening the Clayton Act to prohibit acquisitions of potential rivals and nascent competitors.” – “Since startups can be an important source of potential and nascent competition, the antitrust laws should also look unfavorably upon incumbents purchasing innovative startups. One way that Congress could do so is by codifying a presumption against acquisitions of startups by dominant firms, particularly those that serve as direct competitors, as well as those operating in adjacent or related markets.”

Response: A surefire way to ~~cripple~~ [destroy] startups is to reduce or disincentivize investment in such ventures. This proposal seems designed specifically to undermine entrepreneurship. It is rather commonplace in an assortment of industries for a certain portion of startups to eventually be purchased and merged into larger businesses. Indeed, that possibility or option provides incentives for investing in such enterprises.

• Proposal: “Clarifying that market definition is not required for proving an antitrust violation, especially in the presence of direct evidence of market power” and “Clarifying that ‘false positives’—or erroneous enforcement—are not more costly than ‘false negatives’—or erroneous non-enforcement—and that, in relation to conduct or mergers involving dominant firms, ‘false negatives’ are costlier.”

Response: These measures are simply meant to make it easier to impose politically-driven antitrust regulation or actions against businesses. After all, why bother with defining the market or even considering “false positives” when one is so sure that large businesses and mergers are inherently evil – again, despite the fact that large businesses gained their notable market share by serving consumers well?

• Proposal: “Restoring the federal antitrust agencies to full strength, by triggering civil penalties and other relief for ‘unfair methods of competition’ rules, requiring the Federal Trade Commission to engage in regular data collection on concentration, enhancing public transparency and accountability of the agencies, requiring regular merger retrospectives, codifying stricter prohibitions on the revolving door, and increasing the budgets of the FTC and the Antitrust Division.”

Response: The assumption with these proposals is that antitrust agencies are not doing everything that this Democratic report seeks to do at least in part due to a lack of power, dollars and/or staff. The fact that some administrations might see matters differently, and have a dissimilar antitrust philosophy, seems to be ignored. Also, the number of rather absurd antitrust cases brought by such agencies belies the lack-of-power and/or lack-of-funding assumptions. Consider for example, the FTC suing to stop Edgewell Personal Care Co., maker of Schick razors, from buying razor rival Harry’s Inc., or the FTC challenging Post Holdings, Inc.’s proposed acquisition of TreeHouse Foods, Inc.’s “private label ready-to-eat cereal business.” Private label products are made by one company and offered for sale by a different firm under its brand, and the FTC argued for government action to stop a merger in a small portion of the breakfast foods market. Also, there don’t seem to be high barriers to entry in the razor market. In each case, government antitrust action led to the mergers being called off – after all, challenging a federal agency’s antitrust intrusion gets quite pricey. So much for federal antitrust agencies lacking power and resources.

• Proposal: “Strengthening private enforcement through elimination of obstacles such as forced arbitration clauses, limits on class action formation, judicially created standards constraining what constitutes an antitrust injury, and unduly high pleading standards.”

Response: The objectives here not only include an expansion of antitrust actions and special interest interference, but clearly, serving the interests of trial lawyers.

And, the list goes on. As noted already, the two reports do not make recommendations that would improve antitrust law and regulation.

As for the Republican report, while the language is more tentative in expanding antitrust regulation, and does not go as far as the Democrats, the effort in effect would ramp up antitrust regulation, which would lay the groundwork for political allies and opponents to use this as a stepping stone to greater antitrust interference. Most striking from the Republican report was where they clearly went beyond the idea of using a “scalpel” to improve antitrust enforcement. Consider the following for example:

• “The Clayton, Sherman, and Federal Trade Commission Acts were all written with broad interpretations to ensure antitrust regulators would not be hamstrung by future market developments. However, antitrust enforcers have boxed themselves in by relying on judicial interpretations instead of statutory language and Congressional intent. The report accurately describes how these changes have hamstrung true oversight efforts, granting Big Tech a de facto immunity from antitrust scrutiny…

• “By reinforcing presumptions that certain behaviors are likely to reduce competition, lowering evidentiary burdens in litigated cases, and emphasizing that anticompetitive effects are not limited to price effects and include innovation competition, quality, output, and consumer choice, Congress can make a meaningful difference.”

• “We also agree with a number of the majority’s other legislative recommendations, including proposals to shift the burden of proof for companies pursuing mergers and acquisitions and empowering consumers to take control of their user data through data portability and interoperability standards.”

• “The report makes a good case for the need to strengthen our nation’s antitrust agencies with regard to resources. We agree wholeheartedly with this recommendation. We need to give our nation’s antitrust enforcers the resources needed to succeed in litigation against Big Tech.”

Response: Recommendations to expand the powers and discretion of regulators; to increase unnecessary and burdensome regulatory requirements; to reduce checks and balances on regulatory undertakings; and to increase the budget for regulators, all in order to increase regulation of U.S. technology firms seems otherworldly. Missing is a healthy skepticism of governmental power and regulation.

And then there is the willingness to use antitrust action to engage in political disagreements with private companies, as noted earlier. For example:

• “Google used its dominant advertising technology product to demonetize conservative media outlets, including The Federalist. YouTube, a Google subsidiary, blocked videos from Republican politicians and media groups. Amazon censored conservative organizations, including the Family Research Council and the Alliance Defending Freedom by blocking Americans’ ability to donate to these groups through the AmazonSmile tool. Facebook’s algorithms, advertising policies, and content moderation rules have all combined to discriminate against conservative viewpoints, shadow ban conservative organizations and individuals, and suppress political speech… Unfortunately, the majority missed an opportunity to fully scrutinize Big Tech’s use of monopoly power to silence Americans’ First Amendment right to free speech. It is difficult to consider the subcommittee’s investigation into platform behaviors and anticompetitive behavior complete without a robust discussion about platforms using their monopoly power to engage in editorial decisions that silence free speech.”

Response: While one can agree or disagree with particular decisions being made by private companies, they are private companies. And bringing governmental power down upon such decision-making should always be deeply troubling. For good measure, this certainly is not an area for antitrust regulation.

On the more positive aspects of their recommendations, Republicans were unwilling to go along with their Democratic colleagues in other areas. For example:

• “However, the majority also offers policy prescriptions that are non-starters for conservatives. These proposals include eliminating arbitration clauses and further opening companies up to class action lawsuits. Similarly, the majority’s desire to institute Glass-Steagall for America’s tech sector and modeling the majority’s equal terms for equal services recommendation on President Obama’s net neutrality rule will not garner support from Republicans.”

• “The majority report also includes a recommended presumption that any vertical merger by a dominant platform is unlawful. We are concerned that the presumption against vertical mergers, in particular, will chill venture capital investment in a way that will further harm innovative startups and reduce their ability to get their product to market.”

As far as these criticisms of the majority report go, they generally are on target. However, the overall friendliness of the minority report, or response to the Democrats’ majority report, is troubling, and would help to lay the groundwork for a potential vast expansion in antitrust regulation that, in the end, will undermine investment, innovation, dynamism and entrepreneurship in the economy, which, of course, would harm consumers.

### 1nr- I/L

#### There’s an internal debate within the Fed about when to raise rates – doves are winning that debate now, but the plan gives ammunition to the hawks

Patterson 9/6 – Rebecca Patterson, director of investment research at Bridgewater Associates, “Markets seem to be missing the risks on US inflation,” 9/6/21, https://www.ft.com/content/e2226cb2-20f7-4ae3-ab28-597397a7f38e

Not surprisingly, the reflationary trends we have seen in recent quarters has led to an increase in expected monetary tightening, with two 0.25 percentage point rises now discounted over the coming two years and asset purchases expected to be wound down by the start of 2023.

But the shift in expected tightening is modest relative to any previous cycle and remains extraordinarily easy compared with the strength of the US economy. At the same time, the inflation break-even curve is charting a path back to normality within just a few years, and both nominal and real rates are near secular lows.

Ultimately, the Fed will react to economic conditions, which gets us to the second part of this market vision of the future. Will the policy-setting Federal Open Market Committee “barely need to budge”?

There’s no question that central bankers are unusually challenged to read the economic tea leaves amid a pandemic. This difficulty at the Fed is evident in the increasingly vocal debate around how to interpret labour-market and inflation conditions.

Minutes from the July FOMC meeting highlighted, for instance, that employment remained well below its pre-pandemic level, reflecting elevated unemployment and people dropping out of the labour force. At the same time, though, it noted firms reportedly struggling to hire workers, and thus raising wages or providing additional incentives to attract or retain workers.

With both labour and inflation, the Fed is wrestling with the degree to which supply shortages reflect pandemic-related disruptions that can be easily resolved, and where conditions will settle when pandemic influences fade.

In recent weeks, several Fed officials have suggested that they may need to start the tightening cycle sooner and potentially at a faster pace than is currently discounted. For now, this is a minority view.

More dovish members, including the majority of today’s FOMC voters and chair Jay Powell, would prefer to wait for pandemic-related distortions to subside before judging whether inflationary pressures are persistent and whether labour markets are consistent with the Fed’s goal of eliminating “shortfalls”

These conversations are happening in the context of lessons learnt from the last few decades. Keeping monetary policy too tight and not being able to ease enough is seen as a bigger risk than allowing inflation to rise and needing to tighten and catch up later. With the Fed’s newfound commitment to allow inflation to overshoot 2 per cent, the more dovish perspectives are carrying the day for now.