# 1NC

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### 1NC – LPE K

#### 1] The 1AC’s construct of the firm as the locus of competitive innovation reproduces neoclassical economic orthodoxy. Antitrust is justified as an intervention to correct “market failures.” Market failure relies on the ideal of perfect competition.

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­ “[T]oo often discourse about ‘the market’ conveys the sense of something definite—a space or constitution of exchange...when in fact, sometimes unknown to the term’s user, it is being employed as a metaphor of economic process, or an idealisation or abstraction from that process.” – E.P. Thompson2 Introduction To those who study governance of the labor relationship, it is obvious that the relationship between business and labor must be governed, and that stability in this social relation is something valued by labor, business, and society writ large.3 Strangely, the idea that governance is necessary and price stability is good are both obscure interlopers to the study of competition law. To bridge the gap between these two areas of law--and incidentally give labor a greater role and stature in theorizing competition law--we aim to provide a general “market governance” framework for understanding how markets are governed in the context of the legal rules that allow and disallow certain forms of coordination. This framework draws from multiple heterodox traditions in political economy, but is particularly oriented toward building out the emerging framework of Neochartalist microeconomics.4

[Insert Footnote 4 – Turner]

Neochartalism, or Modern Monetary Theory (MMT), began as a macroeconomic framework for understanding how legal institutions produce and reproduce money and monetary value, particularly the acceptance of monetary objects in payments of taxes and court-ordered obligations. In developing over the last twenty-five years, Neochartalism has become an interdisciplinary perspective for understanding and reinterpreting a variety of social phenomena. Some scholarship, particularly the path-breaking work of the late economist Fred Lee (who we rely on in conceptualizing issues in this chapter) builds up a microeconomic framework that is uniquely consistent with--and reliant on--MMT insights. We hope others choose to follow Lee and ourselves in making contributions to Neochartalist Microeconomics and expanding the reach of Neochartalism in a variety of subfields that remain dominated by mainstream microeconomics.

While it is beyond the scope of the current chapter to identify all the ways in which our current perspective accords with unique insights of Neochartalism, our focus on potential financial and market instability, money prices and money income as a focus of analysis rather than relative prices and “real variables'' reflect our Neochartalist lens. Our focus on the legal construction of markets also adds to Neochartalism’s emphasis on the legal construction of a monetary production economy in general. Our focus on inherent and irreducible mediated social interdependence also accords with the scholarly perspective that Neochartalist humanities scholars bring to Neochartalism e.g. SCOTT FERGUSON, DECLARATIONS OF DEPENDENCE: MONEY, AESTHETICS, AND THE POLITICS OF CARE (2018).

[End footnote 4]

Arriving at a theory of market governance requires rejecting economic common sense. Far too much economics scholarship--both among orthodox scholars and their critics--treats “perfect competition” as the analytical (and often normative) baseline for all markets, including labor markets. Under perfect competition, prices (including wages) are arrived at entirely via the uncoordinated matching of bids and asks, assumed to result in settled equilibriums represented by intersecting supply and demand curves. If all markets are perfectly competitive (and certain other conditions obtain), then each input and output has its proper price which sends “signals” throughout the economy and results in a perfectly “efficient” allocation of resources. From this perspective, coordination, especially coordination over prices (again, including wages), appears as an unnatural intervention, a way for those acting collectively to collect “rents” above the “real” value of their contribution to society. If coordination is to be justified, it is usually to correct for some other deviation from perfect competition: workers might bargain collectively to capture some of a monopsonist's rents, for example. And, indeed, many of those trained in economics who advocate for collective bargaining or other worker-empowerment measures appeal to one or more “market failures”.5 In doing so, they reproduce the idea— intentionally or not—that if competition were finally left to do its work it would reveal the prices that reflect the allocation of goods and services that perfectly matches relative scarcity, that markets would work “better” if they were moved “closer” to (or to “resemble” or “approximate”) the “competitive” ideal.6 Collective bargaining is a distortion, but it is the best we can do in our distorted world.

But here's the rub: collective bargaining is not a distortion of a preexisting “labor market”. More generally, coordination between market participants (over price or other matters) is not in itself a distortion of any market. There is not and has never been a market without coordination, including over prices.

#### 2] Neoclassical paradigm will destroy humanity and the biosphere.

Anne **FREMAUX** PhD Political Ecology & Philosophy @ Grenoble ‘**19** *After the Anthropocene: Green Republicanism in a Post-Capitalist World* p. 1-3

If the main starting point of this book is the severe environmental crisis we are facing and the natural planet-wide collapse toward which we are heading, today’s ecological reality is powerfully connected to other issues such as growing socioeconomic inequalities, the erosion of democratic institutions, the organized apathy of citizens, the loss of power of nation-states in favor of corporations, the progressive disappearance of the notion of common good, and the economic colonization of the social, cultural, and political life by economic objectives. The global ecological crisis reveals these interlinked disasters caused by the core components of capitalism that include: an excessive exploitation of nature, the rise of industrialism, the self-destructive over- confidence in human-technical power, the arrogant anthropocentric mind- set, and denial of ecological limits, as well as the narrow rationalism and materialism that develop within a reductionist predominant form of science.

Neoliberalism as a ‘global system’ threatens societies as a whole and more especially the core values of social communities and democracy, such as justice, ‘common decency,’ civic virtue, or citizenship. In neoliberal patterns, economic efficiency, market values, employability, consumer freedom, and instrumental rationality are favored over democratic participation, civic values, personal autonomy, active citizenship, intellectual development (‘enlightenment’1), and moral rationality (reasonability2). Institutions dedicated to the common good are systematically turned into competitive structures to satisfy the interests of markets and greedy elites. Pluralism is disappearing under the assault of a one-dimensional consumer pattern which treats humans and non-humans as commodities under the hegemony of private interests. Civil society, an essential element of the agonistic and critical democracy defended in this book, is losing out to ‘spectator democracy.’ Indeed, citizens are more and more passive and self-centered in part because existing political and democratic structures leave them with few opportunities to participate and make collective decisions. As a consequence, the link between democratic politics and citizens is being critically weakened. Neoliberal individuals end up being overtaken by lassitude and resignation, indifference, and loss of interest for the shared common world. What defines neoliberal society is, indeed, a widespread disaffection for democracy and social bonds entailed by the loss of political agency and self-determination. In such a system, propaganda is necessary to manufacture consent3 and to shape the fundamental values to ensure that individuals see themselves as consumers, workers, or owners of capital, rather than citizens, spiritual or relational individuals, friends, or members of social and ecological communities. In order to be fully operational, such a system must also rely on high doses of cynicism and the value of relativism cultivated by deconstructive postmodern views.

Neoliberal competitive market-state systems have colonized all aspects of life, but mainly, they have subjugated nature and used it as an ‘unlimited’ spring of profit and resources intended to feed the logic of growth. The globalized neoliberal framework behaves as if nature were only a neutral background for profit-seeking and economic development. In order to push back the ecological limits that are more and more visible, neoliberals argue that those limits can be transcended through decoupling and technological innovations (Chapter 5). Indeed, constructivist neoliberal governments act as if the biosphere were a mere component of the socioeconomic sphere. As an anti-ecological ideology, neoliberalism denies the existence of natural limits and promotes unlimited material wants vs. limited resources, a cult of endless consumption (consumerism), and techno-fixes (techno-optimism) as the solution to social and ecological problems. The appropriation and commodification of nature undertaken by this form of economic ideology and the freedom it enshrines—understood mainly as the legitimate exercise of extractive power—entail that the environment is viewed only as an instrumental source of raw material and sinks of fossil fuels rather than as an ethically valuable physical, biological, and chemical context of life. Inevitably, this type of economy has supported an insatiable extraction that is today overwhelming ecosystemic capacities. Neoclassical economics is certainly the instrumental form of rationality ‘that most actively opposes the ethical valuation of the environment’ (Smith, 2001: 26).

The neoliberal capitalist agenda, associated with an arrogant anthropocentrism and the technological optimism of many political leaders, experts, techno-scientists, academics, and citizens, has transformed nature and people into raw materials (‘natural’ and ‘human resources’). It has replaced democratic and republican institutions—defined by their concern for the common good—by structures aiming at facilitating the activities and profits of corporations and markets. It has deprived Western political structures of substantial democratic energy by turning citizens of wealthy liberal nations into demoralized and nihilist homo oeconomicus (‘neoliberal citizens’), that is, passive consumers as opposed to active citizens. More than that, neoliberalism, through mass media, entertainment, information, and educational systems, has incrementally converted all the spheres, activities, and dimen- sions of life into economic ones (‘economization’ or ‘marketization’ of life). Private and public institutions are used as ways to transmit the values of capitalism.4 As an unethical and unsustainable model of commercialization, ultraliberal capitalism supports crass commodification, intensifies ine-ualities and transforms everything in its way—from non-human nature to human beings—into replaceable, dispensable and disposable products. As a global threat, neoliberalism leads to ‘environmental stresses (water shortages, deforestation, soil erosion or climate change), food and energy insecurity, peak oil, rising poverty and inequalities within and between societies, increasing passivity of citizens within democracies and the inexorable rise of corporate power within and over the democratic state’ (Barry, 2008: 3).

The price we, humans, are socially, politically and ecologically paying and will continue to pay in the future for the triumph of the neoliberal ideology is disproportionate with anything humankind has experienced so far (see Fig. 1.2). However, human relatively recent history already shows that the popular passivity and political apathy (mentioned above) fostered by cynical and disempowering systems of ideas have the potential to favour the rise of dictatorial regimes in which a father figure or ‘strong man’ could take upon the conduct of public affairs. At a time when chauvinistic, racist, anti-elitist, and macho-ist parties are dangerously rising in all Western countries, this fear is taking a serious turn, which includes the risk of an authoritarian ecology.

#### 3] We should use the framework of challenge-driven political economy instead of a competitiveness framework. Using the power of the state to make and shape markets is key to direct policy to solve inequality and climate change.

Mariana **MAZZUCATO** Inst. for Innovation & Public Purpose @ University College (London) **AND** Rainer **KATTEL** Inst. for Innovation & Public Purpose @ University College (London) **’20** “Grand Challenges, Industrial Policy, and Public Value” Non-paginated

Twenty-first-century policymaking is increasingly defined by the need to respond to major social, environmental, and economic challenges. Sometimes referred to as ‘grand challenges’, these include threats like climate change, demographic, health, and well-being concerns, as well as the difficulties of generating sustainable and inclusive growth. Against this background, policymakers are increasingly embracing the idea of using industrial and innovation policy to tackle these ‘grand challenges’. Examples of challenge-led policy frameworks include the United Nation’s Sustainable Development Goals (SDGs; Borras,­­ 2019), the European Union’s Horizon Europe research and development programme (Mazzucato, 2018a), and the UK’s 2017 Industrial Strategy White Paper (HM Government, 2018).

Challenge-driven policy frameworks are emerging in parallel to well-established modernization and competitiveness frameworks**.** While 1 2 modernization, and in particular competitiveness frameworks, rely on the idea that government should first and foremost fix market failures,3 a challenge-driven agenda does not have such clearly defined theoretical origins and analytical lenses. As Richard Nelson argued in 1977 in his seminal book The Moon and the Ghetto, getting man to the moon and back is not the same as solving the problem of ghettos in American cities. Put differently, the nature of our knowledge about socio-economic challenges differs from our perception of strictly technical challenges. We can discover answers to technical puzzles; socio-economic issues do not have a single correct discoverable solution. Such issues require continuous discussion, experimentation, and learning.

We believe challenge-led growth requires a new conceptual and analytical framework that has at its core the idea of confronting the direction of growth with growth that is, for example, more inclusive and sustainable. Such a framework should focus on market shaping and market co-creating (Mazzucato, 2016). This is a question of both theory and policy practice. In theory, challenge-driven innovation policy questions both established neoclassical and evolutionary concepts (Schot and Steinmueller, 2018). In policy practice, directed policies require rethinking what is meant by ‘vertical policies’.

Industrial policies have always been composed of both a horizontal and a vertical element. Horizontal policies have historically been focused on skills, infrastructure, and education, while vertical policies have focused on sectors like transport, health, energy, or technologies. These two traditional approaches roughly embody differing schools of economics: neoclassical economics-inspired horizontal policies focusing on supply-side factors and inputs; and evolutionary economics-inspired policies putting emphasis on demand-side factors and systemic interactions (Nelson and Winter, 1974; Hausmann and Rodrik, 2006 for a synthesis). Although certain sectors might be more suited to sectorspecific vertical strategies, the ‘grand challenges’ expressed in SDGs are cross-sectoral by nature and hence we cannot simply apply a vertical approach to them. Both neoclassical and evolutionary approaches to industrial policy have relied on the idea that the best policy outcome is economy-wide development, without specifying its nature. In policy this has led to managing economies according to GDP growth rates, competitiveness indices and rankings, or other macro indicators (e.g. exports, patents) (Drechsler, 2019). Yet, many SDGs are only indirectly related to the economy and hence many of the key issues around SDGs have not been theorized in the context of innovation and industrial policy (see, e.g., Zehavi and Brenzitz, 2017).

In this chapter we argue that through well-defined goals, or more specifically ‘missions’, that are focused on solving important societal challenges, policymakers have the opportunity to determine the direction of growth by making strategic investments, coordinating actions across many different sectors, and nurturing new industrial landscapes that the private sector can develop further (Mazzucato, 2017; Mazzucato and Penna, 2016). The result would be an increase in cross-sectoral learning and macroeconomic stability. This ‘mission-oriented’ approach to industrial policy is not about top-down planning by an overbearing state; it is about providing a direction for growth, increasing business expectations about future growth areas, and catalysing activity—self-discovery by firms (Hausmann and Rodrik, 2003)—that otherwise would not happen (Mazzucato and Perez, 2015). It is not about de-risking and levelling the playing field, nor about supporting more competitive sectors over less (Aghion et al., 2015), since the market does not always know best, but about tilting the playing field in the direction of the desired societal goals, such as the SDGs. However, we argue, to achieve this requires a new analytical framework based on the idea of public value and a policymaking framework aimed at shaping markets in addition to fixing various existing failures. Indeed, we argue that if we want to take grand challenges such as the SDGs seriously as policy goals, market shaping should become the overarching approach followed in various policy fields.

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### 1NC – Regulate CP

#### The USFG should:

#### -apply the doctrines of contract and patent law rather than antitrust law in evaluating whether SEP conduct is more restrictive than reasonably necessary to enable the creation of information technology standards and whether SEPs violate the FRAND commitments made to become standard-essential.

#### -adequately provide competition specific expertise to the relevant subdivision of the appropriate enforcement agencies.

#### The counterplan alone solves patent holdup and avoids chilling innovation or business confidence.

Randi Brown, 2L @ NYU Law, ’18, “Always a Monopoly, Never a Monopolist: Why Antitrust is the Wrong Regulatory Scheme for Protecting Competition in Technical Standards” *NYU Law Proceedings, https://proceedings.nyumootcourt.org/2018/04/always-a-monopoly-never-a-monopolist-why-antitrust-is-the-wrong-regulatory-scheme-for-protecting-competition-in-technical-standards/*

The best approach for looking at these SEP monopolies, is to look at them through the framework of the values behind patent law, rather than antitrust law or unfair trade practice law. Patent law is intended to reward innovation, to compensate for the research and development that leads to such innovation, and to allow such innovation to benefit the public at large.12 These values are reflected in our systems for awarding patents, and in the fact that we recognize intellectual property at all. Private industry derives significant value in intellectual property, and that value comes about as a result of the competitive advantage gained from the right to exclude others from using the fruits of their intellectual labors.13 Standardization, however, largely diminishes these rights.

The right to exclude others still exists for SEP holders, but is lessened by the commitments they make to license their patents on Fair, Reasonable, and Non-Discriminatory (“FRAND”) terms. This commitment is akin to a contractual obligation between the SEP holders and the SSOs, under which implementers of SEP technology are third-party beneficiaries. Because this is a contractual obligation, contract law, which does not police based on market power, is an adequate remedy when SEP holders engage in anticompetitive conduct.14 The Court in Verizon Commc’ns Inc. v. Law Offices of Curtis V. Trinko, LLP noted that “when there exists a regulatory structure designed to deter and remedy anticompetitive harm, the additional benefit to competition provided by antitrust enforcement will tend to be small, and it will be less plausible that the antitrust laws contemplate such additional scrutiny.”15 Here, contract obligations strike the right balance between protecting competition and avoiding overdeterrence.16 In particular, modification of FRAND commitments is workable under contract law as a matter of efficiency, unlike in antitrust where such efficient actions may be deemed patent holdup, a competition violation. Further, even a breach of FRAND commitments may be efficient and benefit competition, and such efficient breaches are deterred under added antitrust scrutiny.

Further, patent law rightly governs the actions of a SEP holder which fall outside of the FRAND commitments. Where there is no applicable FRAND commitment, a SEP holder has the right to refuse to license or deal, which protects intellectual property rights.17 This right of exclusion is the very right conferred through patent, and it is what gives patent holders the ability to extract profits from their innovations, encouraging such innovation in the first place. Patent law can protect SEP holders from abuses by would-be-licensees who infringe on their rights, and can protect SEP implementers by creating a discrete and coherent property right they can license at the value of the technology.

The use of contract and patent law to correctly balance competitive aims and our value of innovation is perfectly acceptable within antitrust law due to the net procompetitive effect of standardization. Looking to anticompetitive conduct alone fails to account for the economic benefits passed on to consumers.18 There will be remedies for breaches of FRAND under contract law which contemplate these economic efficiencies and sanction conduct to the degree which most benefits consumers.19 Even if there is some anticompetitive conduct which would not be addressed by contract law, it is best to err on the side of protecting patent rights, which promote innovation and participation in standards.

Protecting SEP holders from increased scrutiny leads to benefits felt downstream by consumers. This is true because standards facilitate interoperability by establishing a uniform set of building blocks for a given technology. Customers feel the benefits of lowered costs, increased consumer choice, efficiency, and highly valued technology.20 By protecting SEP holders from unneeded antitrust scrutiny, we recognize the value of the patent deemed standard-essential, and reward participation in the standard by patent holders who have innovated. Given the benefits conferred by standards, it is crucial that courts make participation in these standards profitable and elevate the values of patent protection, rather than imposing antitrust remedies. Patents are the right to exclude others from your technology.21 With FRAND commitments, we remove significant benefits to that right. Trying to protect competition through a conventional antitrust scheme has the potential to eliminate the remaining benefits, without adequately recognizing the importance of innovation.

In addition, looking to the market power held by SEP holders in the SEP fails to recognize the downstream competition benefiting consumers. For example, one standard in the tech world is JPEG. JPEG is a method of compressing digital images without losing picture quality. The JPEG standard defines how an image is compressed and decompressed, but not the file format itself.22 Despite standardization, multiple downstream file formats exist and can compete with one another. JPEG itself stands for Joint Photographic Experts Group, which is made up of a cross-section of members of two standard-setting organizations, ISO and ITU.23 JPEG is a great example of both consumer benefits and encouraged innovation. Because of the uniformity of JPEG as a format, photos compressed in this way are able to be opened by hundreds if not thousands of types of software. Consumers can take and save JPEG images and open them with Photoshop, Windows Picture Viewer, Snapseed, and so forth. Further, innovation has not been stymied in the standard itself. One fear with standardization is that a lack of competition in the SEP will result in stagnation in that space. Instead, because technology progresses and innovation downstream can encourage or even require standards to innovate, JPEG has innovated on a number of occasions and is in the process of doing so today.24

Notably, the United States recently moved to an approach that focuses on imposing antitrust liability on implementers and SSOs, rather than SEP holders. Current United States Assistant Attorney General for the Antitrust Division, Makan Delrahim, expressed the view in a speech this past November, that the risk of anticompetitive conduct is greater from implementers than from SEP holders.25 This is because, as a result of the FRAND commitments, buyers are able to hold out for lower prices. Moreover, he noted that the SSOs would also be scrutinized more closely, as these organizations are made up of competitors who have the power to collude and devalue the intellectual property rights.26 Perhaps most importantly, he noted that “patent holders can’t violate the antitrust laws by properly exercising the rights that patents confer.”27 In this, he included the right to refuse to license, calling the FRAND commitments contractual in nature rather than an aspect of competition law.28

Viewing the monopoly that exists in all SEPs as posing antitrust problems results in three negative consequences. First, it discourages standard participation, as antitrust scrutiny can be incredibly costly to innovators. This is especially true for startups and young companies who are able to get a foothold through standardization but may not be able to afford a fight against the weight of the FTC. In addition, standard participants will risk doubly losing value in their patents, as FRAND commitments represent a significant decrease in bargaining power on their own and potential for antitrust liability increases the costs for SEP holders meaningfully.29 Second, antitrust scrutiny above and beyond a contract remedy is inefficient as it doesn’t recognize what may be an efficient denial of a license. Contract law recognizes what is known as “efficient breach,” whereby a participant may breach a contractual obligation so long as they pay for it because the overall net costs are less than the costs of the breach.30 A breach of FRAND may be efficient, and thus should be allowed so long as a contract remedy exists. Third, by adding scrutiny for SEP holders, the value of the underlying technology and patent rights decreases. IP rights are founded on the basic view that creation should result in an ability to exclude.31 Calling the SEP holder a monopolist would diminish if not eliminate this right, as exclusion would be deemed anticompetitive.32 A system which rewards patent holders rather than sanctioning their basic rights reflects the value of innovation in society. Patents reward innovators by allowing them to profit from their inventions. Without profitability, companies will not invest the huge amounts of capital necessary to the research and development process.

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Standard-Essential Patents may be monopolies by default, but those who hold them should not be deemed monopolists without added anticompetitive effect downstream. Because standards result in more competition downstream, contract and patent law effectively prevent harm to competition without deterring innovation or failing to remunerate research and development. In order to protect the IP rights of innovators and encourage their participation in technical standards, courts should apply the doctrines of contract and patent law rather than antitrust law in evaluating SEPs and the FRAND commitments made to become standard-essential.

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### 1NC – Adv. CP

#### The United States federal government should:

* substantially increase its funding for research and development in AI, 5G, quantum computing, and conventional military hardware,
* fund the creation of new competition regimes in developing countries,
* apply existing antitrust law extraterritorially, and
* encourage regional collaboration between public, private, and civic actors.

#### Solves the aff.

Joseph Parilla 15, Research Analyst, Metropolitan Policy Program at Brookings, Jesus Leal Trujillo, Research Assistant, Metropolitan Policy Program at Brookings, "Skills and Innovation Strategies to Strengthen U.S. Manufacturing: Lessons from Germany", The Brookings Institution, Metropolitan Policy Program, <https://www.brookings.edu/wp-content/uploads/2016/06/LessonsFromGermany.pdf>

\*\*SME = Small and Medium-sized Enterprises

In both skills training and technological innovation, U.S. policies to support manufacturing have not matched the sector’s evolution from one dominated by massive, vertically-integrated companies to a more distributed mix of small, medium, and large firms. Research and development, particularly applied research, and training are underprovided in the market as individual firms are fearful they will not recoup their full investment. Each suffers from a market failure which business, civic, and policy leaders must together address to curb the country’s long-term decline in manufacturing. Meanwhile, Germany’s public-private collaborations around technology and its dual model for vocational education are widely considered global best practices. But can they be transferred to the United States? Notwithstanding the two countries’ similarly devolved federalist systems, there are important differences that may impede full adoption. First, government plays a more significant role in shaping the economy in Germany than in the United States. Government spending as a share of GDP in Germany (45.3 percent) exceeds that of the United States (41.7 percent) and the federal government has historically intervened more in businesses and labor markets.102 Second, the relationship between business and labor differs markedly across the two countries. Firm membership in industrial chambers of commerce is mandatory in Germany. German law requires workers to have a seat on a company-level works council to bargain with management on changes to company practices.103 Union coverage rates are also dramatically higher: Approximately 61 percent of eligible German workers were covered by a collective bargaining agreement in 2011 versus 13 percent of American workers.104 Third, both the vocational education system and collaborations on technology development have a long history in Germany, with the former rooted in the country’s medieval guilds, raising questions about whether they can be quickly adopted by other countries.105 These political and cultural differences suggest that the German model cannot and should not be imported whole cloth. Rather its most successful elements can be drawn out, documented, and then tailored to our unique political economy and federalist system. Three key takeaways—regional collaboration between public, private, and civic actors; targeted institutional intermediaries that address market and coordination failures; and incentive-based investments to support SMEs—should guide U.S. practitioners and policymakers seeking to adapt German skills and innovation best practices to support manufacturing. As with most policy advancements in the United States, especially given continued paralysis in Washington, early adoption will occur in the country’s cities, regions, and states. Indeed, several U.S. regions and states have already adopted at least one of these three “elements of success” to guide their workforce and innovation strategies. Germany’s regions display distinct levels of collaboration between government, educational institutions, employer associations, and firms to support the skills and technology innovation demands of key manufacturing industries. Similarly impressive levels of coordination are occurring across leading U.S. regions: ➤ In San Diego, CA a dense network of universities, research institutions, economic development organizations, talented workers, and innovative firms have collaborated for decades to build and nurture its worldbeating clusters in life sciences and information technology (IT). ➤ Led by Toyota, manufacturers in the Louisville-Lexington region have created an industry-led consortium in partnership with a local community college to strengthen the region’s supply of young technical workers. A second German element of success is its institutions, which in turn support regional collaboration. German manufacturers receive support from tailored intermediaries designed to correct for the market’s underprovision of pre-competitive research (Fraunhofer Institutes) and job training (regional chambers of commerce). Similar institutions, albeit at a smaller scale, provide similar benefits in U.S. regions: ➤ In Detroit, MI a reinvigorated manufacturing base draws on the institutional knowledge, capabilities, and space from one of Fraunhofer USA’s seven American locations to help cultivate a new specialization in battery technology. ➤ A sector-based workforce intermediary in Southeast Michigan has effectively overcome significant coordination challenges to create an advanced technician training program in conjunction with area manufacturers and community colleges. Finally, manufacturers in Germany receive a diversity of public investments to incentivize companies, particularly SMEs, to invest in technology and train workers. Several forward-looking U.S. states are making these types of strategic investments: ➤ While most funding for basic and applied research occurs at the federal level, states are also supporting companies with targeted investments. In Pennsylvania, Ben Franklin Technology Partners spurs economic growth by investing in technology commercialization. ➤ States are taking the lead in making investments to connect young people with employment opportunities. South Carolina has utilized an employer tax credit to create one of the country’s largest and fastest growing apprenticeship programs. Germany’s leading manufacturing regions can serve as exemplars for U.S. leaders seeking to build and sustain their own manufacturing sectors. As the Global Cities Initiative investigated in Munich and Nuremberg, three elements of success—regional collaboration between public, private, and civic actors; targeted institutional intermediaries that address market and coordination failures; and incentive-based investments to support SMEs—should guide U.S. practitioners and policymakers seeking to adapt German skills and innovation best practices to support manufacturing here at home. U.S. jurisdictions as diverse as Detroit, San Diego, Pennsylvania, and South Carolina are adopting these methods because they recognize manufacturing remains an important contributor to growth, job creation, trade, and innovation. And while Germany maintains a different culture and political economy than the United States, the country’s best practices represent powerful tools for American efforts to strengthen manufacturing through skills and innovation.

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### 1NC – Business Confidence DA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 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 – FTC Trade Off DA

#### The aff unduly burdens federal agencies – high costs, delays, and complex litigation sap resources.

Chopra & Khan ’20 [Rohit; Commissioner @ Federal Trade Commission; and Lina; Chairperson @ Federal Trade Commission, JD @ Yale Law School; “The Case for “Unfair Methods of Competition” Rulemaking,” *The University of Chicago Law Review* *87*(2), p. 357-380; AS]

The current approach to antitrust also makes enforcement highly costly and protracted. In 2012, the American Bar Association (ABA) published the report of a task force that sought to “study ways to control the costs of antitrust litigation and enforcement.”9 The task force, the authors explained, was “a response to concerns” about both “the costs imposed on businesses by the American system of antitrust enforcement” and “the length of time required to resolve antitrust issues both in litigation and in enforcement proceedings.”10 Out-of-control costs undermine effective antitrust enforcement by agencies and private litigants, but may advantage actors who profit from anticompetitive practices and can treat litigation as a routine cost of business. Professor Michael Baye and Former Commissioner Joshua Wright have noted that generalist judges may be ill-equipped to independently analyze and assess evidence presented by economic experts.11 Because determining the legality of most conduct now involves complex economic analysis, courts have effectively “delegate[d] both factfinding and rulemaking to courtroom economists,” making courtroom economics “not just inevitable but often dispositive.”12 In fact, paid expert testimony now is often “the ‘whole game’ in an antitrust dispute.”13

Paid experts are a major expense. Some experts charge over $1,300 an hour, earning more than senior partners at major law firms.14 Over the last decade, expenditures on expert costs by public enforcers have ballooned.15 In a system that incentivizes firms to spend top dollar on economists who can use ever-increasing complexity to spin a favorable tale, the eye-popping costs for economic experts can put the government and new market entrants at a significant disadvantage.16 Another component of the burden is that antitrust trials are extremely slow and prolonged.17 The Supreme Court has criticized antitrust cases for involving “interminable litigation”18 and the “inevitably costly and protracted discovery phase,”19 yielding an antitrust system that is “hopelessly beyond effective judicial supervision.”20 That it can easily take a decade to bring an antitrust case to full judgment means that by the time a judge orders a remedy, market circumstances are likely to have outpaced it.21 The same 2012 ABA report suggested that lengthy, costly litigation may be contributing to reduced government-enforcement efforts over time relative to the expansion of the US economy.22

#### Resources are key to FTC privacy leadership.

Hoofnagle et al. ’19 [Chris; 8/8/19; Adjunct Professor of Information and Law @ Cal; Woodrow Hartzog; Professor of Law and Computer Science @ Northeastern University; and Daniel Solove; John Marshall Harlan Research Professor of Law @ George Washington; “The FTC can rise to the privacy challenge, but not without help from Congress”; https://www.brookings.edu/blog/techtank/2019/08/08/the-ftc-can-rise-to-the-privacy-challenge-but-not-without-help-from-congress/; AS]

We think the FTC is still the right agency to lead the US privacy regulatory effort. In this essay, we explain the FTC’s structural and cultural strengths for this task, and then turn to reforms that could help the FTC rise to modern information privacy challenges. Fundamentally, the FTC has the structure and the legal powers necessary to enforce reasonable privacy rules. But it does need to evolve to meet the challenge of regulating modern information platforms.

THE FTC WIELDS GREAT POWERS TEMPERED WITH EXPERIENCE

The FTC has remarkable powers. At its creation a century ago, Congress gave it unprecedented investigatory and enforcement tools. These have been broadened over time as the FTC has faced new wrongs. Today, the FTC can examine business practices even where there is no investigatory predicate, and as a general-purpose consumer protection agency, it can sue almost any business.

As a result, the FTC is nimble and can adapt to new technologies without an act of Congress. Founded in the days of misleading newspaper advertising, the FTC was quick to pivot to radio, television, and internet fraud. The breadth and generality of its powers are also a source of strength. Much more than just data protection, modern consumer problems involve platforms, power, information asymmetries, and market competition. In theory, the FTC has a broad enough jurisdiction and charge to handle diverse issues often labeled as “privacy,” such as algorithmic manipulation and accountability.

In the information economy, privacy is among the most important values that law and norms should protect. Yet at the same time, privacy must also accommodate other important values, including the risks inherent in economic development. In our view, privacy is a means to the ends of freedom and autonomy in our personal lives and in our polity. It is a key component for human flourishing.

THE FTC HAS ACHIEVED MUCH WITH LIMITED RESOURCES AND WITHOUT CONSISTENT CONGRESSIONAL SUPPORT

Many privacy issues are thought to be new. But the FTC has decades of experience handling privacy problems, particularly in credit reporting and debt collection. The FTC’s earliest information privacy matters, in 1951 and then a series of cases in the 1970s, recognized the general consumer preference against commercialization of personal data. Using its enforcement powers, the FTC sued companies for deceptive data collection, and for the sale of data collected in preparing tax returns. The agency brought its first internet-related fraud case in 1994, long before most consumers shopped online. Since then, the FTC has pursued the biggest names in internet commerce. It has steadily broadened the duties for fair information handling, particularly in the information security domain.

The FTC’s broadest jurisdiction is its enforcement against unfair and deceptive practices under Section 5 of the FTC Act. Despite a wide reach, however, Section 5 has some significant limits in power. The FTC generally cannot issue a fine for Section 5 violations initially—fines can only be issued for violations of consent decrees, as happened in the Facebook case.

Resources are the FTC’s greatest constraint. It is a small agency charged with a broad mission in competition and consumer protection. It carries out this mission with a budget of just over $300 million and a total staff of about 1,100, of whom no more than 50 are tasked with privacy. In comparison, the U.K.’s Information Commissioner’s Office (ICO) has over 700 employees and a £38 million budget for a mission focused entirely on privacy and data protection. In addition, for much of modern history, Congress has kept the FTC on a short leash. In 1980, Congress punished the agency for being too aggressive, causing it to shut down twice. Congress has held authorization over the agency’s head and used oversight power to scrutinize what members of Congress perceive as the expansive use of FTC legal authority, including its interpretation of privacy harm.

Given these constraints, FTC attorneys make pragmatic choices in their case selection. At any given time, line attorneys are investigating many companies and weighing decisions on where to target limited enforcement resources. The FTC can only bring actions against a small fraction of infringers, and it has chosen cases wisely to make loud statements to industry about how to protect privacy.

Even with these severe limitations, it has managed to bolster important norms and send strong signals to industry that have influenced the practices of many companies. It has become a significant enforcement agency that industry pays attention to. It has an enforcement record that compares quite well to other agencies in the US as well as around the world.

Some critics of the Facebook settlement have focused only on its shortcomings. Despite flaws and limits in the consent order, the five-billion-dollar fine was the biggest privacy settlement worldwide by far. It is an order of magnitude greater than the highest fine under the EU’s General Data Protection Regulation so far (the UK ICO’s €183 million fine against British Airways) and roughly double the record fine under EU competition law, which privacy advocates have urged as the reference for privacy fines.

The settlement also contains significant and noteworthy measures, such as forcing Facebook to make privacy a board-level concern and requiring Mark Zuckerberg to verify compliance. As dissenting Commissioners Chopra and Slaughter note, the FTC’s settlement doesn’t solve every problem; Facebook’s structure and business model remain the same. But no existing enforcement agency has come close to matching the FTC’s impact in this case, and foreign data protection agencies similar to proposed in the U.S. as FTC alternatives have not demonstrated the power or political capital to do so. As privacy enforcers go, the FTC stacks up well to others in many regards.

#### Privacy regulation is key to the liberal order – US leadership resolves the current patchwork of rules.

Slaughter & McCormick ’21 [Matthew; Paul Danos Dean and Earl C. Daum 1924 Professor of International Business in the Tuck School of Business @ Dartmouth College, Former Member @ White House Council of Economic Advisers; and David; CEO @ Bridgewater Associates Former Senior Positions @ U.S. Commerce Department, the National Security Council, and U.S. Treasury Department; “Data Is Power: Washington Needs to Craft New Rules for the Digital Age,” *Foreign Affairs* 100(3), p. 54-63; AS]

A PATCHWORK OF RULES

Current international institutions are not equipped to handle the proliferation of data. Nor are they prepared to address the emerging fault lines in how to approach it. The institutional framework for international trade-that of the World Trade Organization and its predecessor, the General Agreement on Tariffs and Trade-was built at a time when mainly agricultural and manufactured goods crossed borders and data flows were in the realm of fiction. The wTO's framework depends on two key classifications: whether something is a good or a service and where it originated. Goods are governed by different trade rules than are services, and a product's origin defines what duties or trade restrictions apply.

Data defies this basic categorization for several reasons. One is that vast amounts of data-such as one's online browsing before ordering clothes-are unpriced consequences of the production and consumption of other goods and services. Another is that it is often hard to determine where data is created and kept. (From which country does data on an international flight's engineering performance originate? In which country does a multinational firm's cloud storage of its clients' data reside?) Moreover, there is no agreed-on taxonomy for valuing data. In the event of a trade dispute, WTO members may seek legal recourse and ask the organization to make a one-off correction, but such fixes do not address the fundamental inconsistencies between the WTO's framework and the nature of data.

The lack of an internationally accepted framework governing data leaves big questions about the global economy and national security unanswered. Should sovereign governments be able to limit the location and use of their citizens' data within national borders? What does this concept even mean when the cloud and its data are distributed across the Internet? Should governments be able to tax the arrival of data from other nations, just as they levy tariffs on the import of many goods and services? How would this work when the data flows themselves are often unpriced, at least within the firms that gather the data? What controls can sovereign governments impose on data entering their countries? Can they demand that data be stored locally or that they be given access to it?

The absence of an international framework also threatens people's privacy. Who will ensure that governments or other actors do not misuse people's data and violate their economic, political, and human rights? How can governments protect their citizens' privacy while allowing data to move across borders? Today, the United States and the EU do not agree on answers to these questions, causing friction that hurts cooperation on trade, investment, and national security. China, for its part, has shown little commitment to privacy. Without common and verifiable methods of anonymizing data to protect personal privacy, the innovative potential of personal data will be lost-or fundamental rights will be violated.

In the absence of coherent and collective answers to these questions, countries and trade blocs are improvising on their own. This has left the world today with a collection of inconsistent, vague, and piecemeal regulations. Recent regional trade deals have included several provisions regarding data and e-commerce. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which does not include the United States, prohibits requirements that data be stored within a given country and bans duties on cross-border flows of electronic content. It recognizes the growing importance of the digital services sector, and it forbids signatories from demanding access to the source codes of companies' software. The U.S.-Mexico-Canada Agreement (USMCA) has similar provisions. Both free-trade agreements aim to allow unencumbered flows of data, but they are largely untested and, by virtue of being regional, are limited.

The EU sharpened its data rules on privacy in the General Data Protection Regulation. The GDPR attempts to empower individuals to decide how companies can use their data, but many have voiced concerns that the GDPR has effectively established trade barriers for foreign firms operating in EU member countries by requiring expensive compliance measures and raising the European market's liability risks. Moreover, the EU's rules are the subject of continual dispute and litigation.

Of much greater concern to the United States is China's distinct digital ecosystem. Over a generation ago, China began building its "Great Firewall," a combination of laws and technologies that restrict the flow of data in and out of China, in part by blocking foreign websites. China has since adopted a techno-nationalist model that mandates government access to data generated in the country. The sheer quantity of that data fuels China's innovation but also enables the country's repressive system of control and surveillance-and at the expense of open, international flows of data.

Beijing now seeks to expand this model. It has clear plans to use its indigenous technology industry to dominate the digital platforms that manage data, most immediately 5G telecommunications networks. To that end, it has unveiled an audacious plan, China Standards 2035, to set global standards in emerging technologies. And through the so-called Digital Silk Road and the broader Belt and Road Initiative, it is working to spread its model of data governance and expand its access to data by building Internet infrastructure abroad and boosting digital trade.

And the United States? At the federal level, the country has not settled on any legal framework. Nor, beyond the USMCA, has it engaged in any meaningful cross-border agreements on data flows. So far, the United States has not answered China's efforts with a coherent plan to shape technology standards or ensure widespread privacy protections. The United States' ad hoc responses and targeted efforts to encourage other countries to reject the Chinese company Huawei's 5G technology may work in the near term. But they do not constitute an effective long-term plan for harnessing the power of data.

#### LIO prevents global great power war – the alternative is hostile competitive blocs that collapse weak states and undermine collective action on existential risks.

Beckley ’20 [Michael; Associate Professor of Political Science @ Tufts University; “Rogue Superpower Why This Could Be an Illiberal American Century”; *Foreign Affairs* 99(6), p. 73-87]

What would happen to the world if the United States fully embraced this kind of “America first” vision? Some analysts paint catastrophic pictures. Robert Kagan foresees a return to the despotism, protectionism, and strife of the 1930s, with China and Russia reprising the roles of imperial Japan and Nazi Germany. Peter Zeihan predicts a violent scramble for security and resources, in which Russia invades its neighbors and East Asia descends into naval warfare. These forecasts may be extreme, but they reflect an essential truth: the postwar order, although flawed and incomplete in many ways, has fostered the most peaceful and prosperous period in human history, and its absence would make the world a more dangerous place.

Thanks to the U.S.-led order, for decades, most countries have not had to fight for market access, guard their supply chains, or even seriously defend their borders. The U.S. Navy has kept international waterways open, the U.S. market has provided reliable consumer demand and capital for dozens of countries, and U.S. security guarantees have covered nearly 70 nations. Such assurances have benefited everyone: not just Washington’s allies and partners but also its adversaries. U.S. security guarantees had the effect of neutering Germany and Japan, the main regional rivals of Russia and China, respectively. In turn, Moscow and Beijing could focus on forging ties with the rest of the world rather than fighting their historical enemies. Without U.S. patronage and protection, countries would have to get back in the business of securing themselves and their economic lifelines.

Such a world would see the return of great-power mercantilism and new forms of imperialism. Powerful countries would once again try to reduce their economic insecurity by establishing exclusive economic zones, where their firms could enjoy cheap and secure access to raw materials and large captive consumer markets. Today, China is already starting to do this with its Belt and Road Initiative, a network of infrastructure projects around the world; its “Made in China 2025” policy, to stimulate domestic production and consumption; and its attempts to create a closed-off, parallel Internet. If the United States follows suit, other countries will have to attach themselves to an American or a Chinese bloc—or forge blocs of their own. France might seek to restore its grip on its former African colonies. Russia might accelerate its efforts to corral former Soviet states into a regional trade union. Germany increasingly would have to look beyond Europe’s shrinking populations to find buyers for its exports—and it would have to develop the military capacity to secure those new far-flung markets and supply lines, too.

As great powers competed for economic spheres, global governance would erode. Geopolitical conflict would paralyze the UN, as was the case during the Cold War. NATO might dissolve as the United States cherry-picked partners. And the unraveling of the U.S. security blanket over Europe could mean the end of the European Union, too, which already suffers from deep divisions. The few arms control treaties that remain in force today might fall by the wayside as countries militarized to defend themselves. Efforts to combat transnational problems—such as climate change, financial crises, or pandemics—would mimic the world’s shambolic response to COVID-19, when countries hoarded supplies, the World Health Organization parroted Chinese misinformation, and the United States withdrew into itself.

The resulting disorder would jeopardize the very survival of some states. Since 1945, the number of countries in the world has tripled, from 46 to nearly 200. Most of these new states, however, are weak and lack energy, resources, food, domestic markets, advanced technology, military power, or defensible borders. According to research by the political scientist Arjun Chowdhury, two-thirds of all countries today cannot provide basic services to their people without international help. In short, most countries depend critically on the postwar order, which has offered historically unprecedented access to international aid, markets, shipping, and protection. Without such support, some countries would collapse or be conquered. Fragile, aid-dependent states such as Afghanistan, Haiti, and Liberia are only some of the most obvious high-risk cases. Less obvious ones are capable but trade-dependent countries such as Saudi Arabia, Singapore, and South Korea, whose economic systems would struggle to function in a world of closed markets and militarized sea-lanes.

## Off

### 1NC – Politics DA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Karaim 21

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

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

#### Budget key to solve climate change.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Innovation

### Innovation

#### Innovation high now

Andrew G. Isztwan BSE, JD, VP of Litigatation @ Interdigital (25+ years as counsel) , ’19, BRIEF OF AMICUS CURIAE OF INTERDIGITAL, INC. IN SUPPORT OF NEITHER PARTY Case: 19-16122, 08/30/2019, ID: 11417354, DktEntry: 87, Page 1 of 18 https://www.qualcomm.com/media/documents/files/amicus-brief-filed-by-interdigital-inc-in-support-of-neither-party.pdf

Cellular wireless technology has advanced to incredible levels of speed, quality, and ubiquitous adoption. It is no exaggeration to say that the advent of cellular devices has been revolutionary, changing countless aspects of how people experience their daily lives. Cellular adoption began with the first widespread 2G (second generation) cellular phones in the 1990s. Companies like InterDigital and others made enormous investments of time and engineering work to enable steady improvements in technology via the development of 3G standards that became available in the 2000s and 4G standards that became available in the 2010s. Over time, these efforts led to improved stability and data throughput to the point where it is now commonplace to stream high quality video over wireless networks. Looking forward to the 2020s, the move toward 5G standards is now well underway, the culmination of many years of research and development. 5G represents the next widespread deployment of even faster and more robust cellular technology. 5G standards will deliver these improvements through numerous innovations, including expansion into the millimeter wave spectrum and advanced spectrum sharing techniques. The use cases that can be enabled by 5G go far beyond those that have been implemented with current 4G technology. For example, new uses of 5G technology are expected to include:  Virtual reality (VR) and augmented reality (AR) applications via cellular-enabled devices;  Broad expansion of the capabilities of self-driving and autonomous vehicles;  Interconnection of household and commercial products such as large appliances and smart home devices;  Telehealth applications, such as remote surgery; Remote control of critical infrastructure for businesses and governmental users;  Smart city initiatives to integrate traffic, public safety, first response, and more; and  Options for home internet beyond those offered by legacy providers. Rollouts of 5G cellular networks in the United States are currently underway, with a handful of 5G-compatible phones available on the market and infrastructure in place in a few large cities. Within the next one to two years, 5G adoption is expected to quickly accelerate.

#### Plan causes capital flight that crushes US tech leadership. Lack of guarantee of market capture spooks venture funds.

Robert P Taylor, Chair of Antitrust Section of ABA, Patent Law Reform Comission (Direct Appointment by Secretary of Commerce), member of USIJ (foundation representing 30+ startups), ’19, “BRIEF OF AMICUS CURIAE ALLIANCE OF U.S. STARTUPS & INVENTORS FOR JOBS (“USIJ”) IN SUPPORT OF APPELLANT QUALCOMM INCORPORATED “ Case: 19-16122, 08/30/2019, ID: 11417644, DktEntry: 97 <https://www.qualcomm.com/media/documents/files/amicus-brief-filed-by-the-alliance-of-u-s-startups-investors-for-jobs-usij-in-support-of-qualcomm.pdf>

Reviving Antitrust Defenses to the Enforcement of Patents Will Further Erode the Incentives That Patents Are Intended to Provide.

Quite apart from its potential impact on Appellant and the cellular communications industry, another danger in the ruling of the court below is its potential impact on patent owners seeking to license their patents in the future. The decision below is a bad outcome generally for the development of new technologies, for entrepreneurs that give up comfortable and secure jobs to pursue new ideas, for the investors that have great but not unlimited tolerance for risk, and for the United States as a whole. A significant portion of the mechanism by which patents provide incentives for investment and entrepreneurial activities is one of perception – if inventors do not believe that their patents allow the capture of the market value of their inventions, many will simply focus their attentions elsewhere. The decision below, which would have the effect of destroying billions of dollars’ worth of R&D investment – after the fact – can only discourage future investment by Appellant and others.

From the 1930s until the 1980s, both the U.S. Supreme Court and the antitrust enforcement agencies took a narrow view of patent licensing, with the result that patent owners were constantly at risk of running afoul of the antitrust laws, or in some cases just the spirit of the antitrust laws, whenever they attempted to license their patents.15 The result was predictable in that, over time, entire industries that started in the U.S. – color television, video cassette recorders, and DRAMs to name a few – began to move from the U.S. to other countries, never to return.

A Presidential Commission on Industrial Competitiveness headed by John Young, then CEO of Hewlett Packard, was asked to determine the causes and to propose ways of containing the trend. The Commission’s Report, issued in 1985, analyzed this massive migration of technology and industry from the United States to Germany, Japan, Korea, Taiwan and elsewhere. Among the recommendations of the Commission was the restoration of meaningful intellectual property protection: “Research and development are always risky. If the developers of a new technology cannot be assured of gaining adequate financial benefits from its commercialization, they have few incentives to make the huge investments required. … Today, the need to protect intellectual property is greater than ever. A wave of commercial counterfeiting, copyright and design infringement, technology pirating, and other erosions of intellectual property rights is seriously weakening America’s comparative advantage in innovation.”

This earlier era of antitrust was later characterized in a 2003 report of the FTC on patents and innovation as one of “overzealous antitrust enforcement … lacking a sound economic foundation”: “[A]ntitrust dominated and patents were disfavored during the 1960s and 70s. … Overzealous antitrust enforcement culminated in the Department of Justice’s ‘Nine No-Nos,’ a list of nine licensing practices that the Justice Department generally viewed as automatically illegal. Most now believe that antitrust’s ascendency during this period lacked both a sound economic foundation and a sufficient appreciation of the incentives for innovation that patents and patent licensing can provide.”16

FTC’s pursuit of its theories here, which also “lack a sound economic foundation and a sufficient appreciation of the incentives for innovation,” and the district judge’s acceptance of those theories, smack of a return to the overzealous application of our antitrust laws at the expense of innovation. This outcome, if affirmed, bodes poorly for our country and its technology leadership throughout the world.

#### SEP violations don’t harm innovation, they just slightly reduce the margins of Original Equipment Manufacturers.

Robert P Taylor, Chair of Antitrust Section of ABA, Patent Law Reform Comission (Direct Appointment by Secretary of Commerce), member of USIJ (foundation representing 30+ startups), ’19, “BRIEF OF AMICUS CURIAE ALLIANCE OF U.S. STARTUPS & INVENTORS FOR JOBS (“USIJ”) IN SUPPORT OF APPELLANT QUALCOMM INCORPORATED “ Case: 19-16122, 08/30/2019, ID: 11417644, DktEntry: 97 <https://www.qualcomm.com/media/documents/files/amicus-brief-filed-by-the-alliance-of-u-s-startups-investors-for-jobs-usij-in-support-of-qualcomm.pdf>

A moment’s reflection reveals the flaw in the district judge’s analysis. If an OEM could not remain in business without infringing Appellant’s patents, it is not “coercion” for Appellant to refuse to facilitate infringing uses of such patents. The reality is that the FTC, with support from the court below, is attempting to create a new legal construct in which Appellant (and presumably other patent owners) will be forced to grant licenses at the component level, presumably so that OEMs could then assert that under the most recent exhaustion rulings of the Supreme Court, they no longer need the licenses that they have operated under since they first began to use Appellant’s patents. In this restructured world, innovators would be required to capture the full value of their relevant patents at the component level – which most likely would be challenged as not being a “fair” or “reasonable” royalty – or to forego a large portion of the actual value in their inventions. This amicus submits that it is improper for a Federal agency or a Federal judge to try and micromanage an entire industry in this fashion. It is particularly difficult to understand the rationale for allowing these OEMs, some of which are multiples the size of Appellant, to reap a staggering windfall at the expense of the innovators that actually invest large sums in R&D to create the new technologies required for improving existing standards.14

#### Democracy is resilient, but it solves nothing.

Doorenspleet 19 Renske Doorenspleet, Politics Professor at the University of Warwick. [Rethinking the Value of Democracy: A Comparative Perspective, Palgrave Macmillan, p. 239-243]

The value of democracy has been taken for granted until recently, but this assumption seems to be under threat now more than ever before. As was explained in Chapter 1, democracy’s claim to be valuable does not rest on just one particular merit, and scholars tend to distinguish three different types of values (Sen 1999). This book focused on the instrumental value of democracy (and hence not on the intrinsic and constructive value), and investigated the value of democracy for peace (Chapters 3 and 4), control of corruption (Chapter 5) and economic development (Chapter 6). This study was based on a search of an enormous academic database for certain keywords,6 then pruned the thousands of articles down to a few hundred articles (see Appendix) which statistically analysed the connection between the democracy and the four expected outcomes. The frst fiding is that a reverse wave away from democracy has not happened (see Chapter 2). Not yet, at least. Democracy is not doing worse than before, at least not in comparative perspective. While it is true that there is a dramatic decline in democracy in some countries,7 a general trend downwards cannot yet be detected. It would be better to talk about ‘stagnation’, as not many dictatorships have democratized recently, while democracies have not yet collapsed. Another fnding is that the instrumental value of democracy is very questionable. The feld has been deeply polarized between researchers who endorse a link between democracy and positive outcomes, and those who reject this optimistic idea and instead emphasize the negative effects of democracy. There has been ‘no consensus’ in the quantitative literature on whether democracy has instrumental value which leads some beneficial general outcomes. Some scholars claim there is a consensus, but they only do so by ignoring a huge amount of literature which rejects their own point of view. After undertaking a large-scale analysis of carefully selected articles published on the topic (see Appendix), this book can conclude that the connections between democracy and expected benefts are not as strong as they seem. Hence, we should not overstate the links between the phenomena. The overall evidence is weak. Take the expected impact of democracy on peace for example. As Chapter 3 showed, the study of democracy and interstate war has been a fourishing theme in political science, particularly since the 1970s. However, there are four reasons why democracy does not cause peace between countries, and why the empirical support for the popular idea of democratic peace is quite weak. Most statistical studies have not found a strong correlation between democracy and interstate war at the dyadic level. They show that there are other—more powerful—explanations for war and peace, and even that the impact of democracy is a spurious one (caveat 1). Moreover, the theoretical foundation of the democratic peace hypothesis is weak, and the causal mechanisms are unclear (caveat 2). In addition, democracies are not necessarily more peaceful in general, and the evidence for the democratic peace hypothesis at the monadic level is inconclusive (caveat 3). Finally, the process of democratization is dangerous. Living in a democratizing country means living in a less peaceful country (caveat 4). With regard to peace between countries, we cannot defend the idea that democracy has instrumental value. Can the (instrumental) value of democracy be found in the prevention of civil war? Or is the evidence for the opposite idea more convincing, and does democracy have a ‘dark side’ which makes civil war more likely? The findings are confusing, which is exacerbated by the fact that different aspects of civil war (prevalence, onset, duration and severity) are mixed up in some civil war studies. Moreover, defining civil war is a delicate, politically sensitive issue. Determining whether there is a civil war in a particular country is incredibly diffcult, while measurements suffer from many weaknesses (caveat 1). Moreover, there is no linear link: civil wars are just as unlikely in democracies as in dictatorships (caveat 2). Civil war is most likely in times of political change. Democratization is a very unpredictable, dangerous process, increasing the chance of civil war significantly. Hybrid systems are at risk as well: the chance of civil war is much higher compared to other political systems (caveat 3). More specifcally, both the strength and type of political institutions matter when explaining civil war. However, the type of political system (e.g. democracy or dictatorship) is not the decisive factor at all (caveat 4). Finally, democracy has only limited explanatory power (caveat 5). Economic factors are far more significant than political factors (such as having a democratic system) when explaining the onset, duration and severity of civil war. To prevent civil war, it would make more sense to make poorer countries richer, instead of promoting democracy. Helping countries to democratize would even be a very dangerous idea, as countries with changing levels of democracy are most vulnerable, making civil wars most likely. It is true that there is evidence that the chance of civil war decreases when the extent of democracy increases considerably. The problem however is that most countries do not go through big political changes but through small changes instead; those small steps—away or towards more democracy—are dangerous. Not only is the onset of civil war likely under such circumstances, but civil wars also tend to be longer, and the confict is more cruel leading to more victims, destruction and killings (see Chapter 4). A more encouraging story can be told around the value for democracy to control corruption in a country (see Chapter 5). Fighting corruption has been high on the agenda of international organizations such as the World Bank and the IMF. Moreover, the theme of corruption has been studied thoroughly in many different academic disciplines—mainly in economics, but also in sociology, political science and law. Democracy has often been suggested as one of the remedies when fghting against high levels of continuous corruption. So far, the statistical evidence has strongly supported this idea. As Chapter 5 showed, dozens of studies with broad quantitative, cross-national and comparative research have found statistically signifcant associations between (less) democracy and (more) corruption. However, there are vast problems around conceptualization (caveat 1) and measurement (caveat 2) of ‘corruption’. Another caveat is that democratizing countries are the poorest performers with regard to controlling corruption (caveat 3). Moreover, it is not democracy in general, but particular political institutions which have an impact on the control of corruption; and a free press also helps a lot in order to limit corruptive practices in a country (caveat 4). In addition, democracies seem to be less affected by corruption than dictatorships, but at the same time, there is clear evidence that economic factors have more explanatory power (caveat 5). In conclusion, more democracy means less corruption, but we need to be modest (as other factors matter more) and cautious (as there are many caveats). The perceived impact of democracy on development has been highly contested as well (see Chapter 6). Some scholars argue that democratic systems have a positive impact, while others argue that high levels of democracy actually reduce the levels of economic growth and development. Particularly since the 1990s, statistical studies have focused on this debate, and the empirical evidence is clear: there is no direct impact of democracy on development. Hence, both approaches cannot be supported (see caveat 1). The indirect impact via other factors is also questionable (caveat 2). Moreover, there is too much variation in levels of economic growth and development among the dictatorial systems, and there are huge regional differences (caveat 3). Adopting a one-size-ftsall approach would not be wise at all. In addition, in order to increase development, it would be better to focus on alternative factors such as improving institutional quality and good governance (caveat 4). There is not suffcient evidence to state that democracy has instrumental value, at least not with regard to economic growth. However, future research needs to include broader concepts and measurements of development in their models, as so far studies have mainly focused on explaining cross-national differences in growth of GDP (caveat 5). Overall, the instrumental value of democracy is—at best—tentative, or—if being less mild—simply non-existent. Democracy is not necessarily better than any alternative form of government. With regard to many of the expected benefts—such as less war, less corruption and more economic development—democracy does deliver, but so do nondemocratic systems. High or low levels of democracy do not make a distinctive difference. Mid-range democracy levels do matter though. Hybrid systems can be associated with many negative outcomes, while this is also the case for democratizing countries. Moreover, other explanations—typically certain favourable economic factors in a country—are much more powerful to explain the expected benefts, at least compared to the single fact that a country is a democracy or not. The impact of democracy fades away in the powerful shadows of the economic factors.8

#### Even extreme warming won’t cause extinction

Dr. Toby **Ord 20**, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 110-112

But the purpose of this chapter is finding and assessing threats that pose a direct existential risk to humanity. Even at such **extreme levels** of warming, it is difficult to see exactly how climate change could do so. Major effectsof climate change include reduced **ag**ricultural yields, sea level rises, water scarcity, increased tropical diseases, ocean acidification and the collapse of the Gulf Stream. While extremely important when assessing the overall risks of climate change, **none** of these **threaten extinction** or irrevocable collapse.

Crops are very sensitive to reductions in temperature (due to frosts), but less sensitive to increases. By all appearances we would **still have food** to support civilization.85 Even if sea levels rose **hundreds of meters** (over centuries), **most** of the Earth’s land area would remain. Similarly, while some areas might conceivably become uninhabitable due to water scarcity, other areas will have increased rainfall. More areas may become susceptible to tropical diseases, but we need only look to the tropics to see civilization **flourish**despite this. The main effect of a collapse of the system of Atlantic Ocean currents that includes the Gulf Stream is a 2°C cooling of Europe—something that poses no permanent threat to global civilization.

From an existential risk perspective, a more serious concern is that the high temperatures (and the rapidity of their change) might cause a large loss of biodiversity and subsequent ecosystem collapse. While the pathway is not entirely clear, a large enough collapse of ecosystems across the globe could perhaps threaten human extinction. The idea that climate change could cause widespread extinctions has some good theoretical support.86 Yet the evidence is **mixed**. For when we look at many of the **past cases** of extremely high global **temp**erature**s** or extremely rapid warming we **don’t see** a corresponding loss of **biod**iversity.87

[FOOTNOTE]

We don’t see such biodiversity loss in the **12°C warmer climate** of the **early Eocene**, nor the rapid global change of the **PETM**, nor in rapid **regional** changes of climate. Willis et al. (2010) state: “We argue that although the underlying mechanisms responsible for these past changes in climate were very different (i.e. natural processes rather than anthropogenic), the rates and magnitude of climate change are similar to those predicted for the future and therefore potentially **relevant** to understanding future biotic response. What emerges from these past records is evidence for **rapid community turnover**, **migrations**, **development** of novel ecosystems and thresholds from one stable ecosystem state to another, but there is **very little evidence** for **broad-scale extinctions** due to a warming world.” There are similar conclusions in **Botkin** et al. (2007), **Dawson** et al. (2011), **Hof** et al. (2011) and **Willis & MacDonald** (2011). The best evidence of warming causing extinction may be from the end-Permian mass extinction, which may have been associated with large-scale warming (see note 91 to this chapter).

[END FOOTNOTE]

So the most important known effect of climate change from the perspective of direct existential risk is probably the most obvious: **heat stress**. We need an environment cooler than our body temperature to be able to rid ourselves of waste heat and stay alive. More precisely, we need to be able to lose heat by sweating, which depends on the humidity as well as the temperature.

A landmark paper by Steven Sherwood and Matthew Huber showed that with sufficient warming there would be parts of the world whose temperature and humidity combine to exceed the level where humans could survive without air conditioning.88 With 12°C of warming, a very large land area—where more than half of all people currently live and where much of our food is grown—would exceed this level at some point during a typical year. Sherwood and Huber suggest that such areas would be uninhabitable. This may not quite be true (particularly if air conditioning is possible during the hottest months), but their habitability is at least in question.

However, **substantial regions** would also **remain below** this threshold. **Even with an extreme 20°C of warming** there would be **many** coastal areas (and some **elevated regions**) that would have no days above the temperature/humidity threshold.89 So there would remain **large areas**in which humanity and **civ**ilization could **continue**. A world with 20°C of warming would be an unparalleled human and environmental tragedy, forcing mass migration and perhaps starvation too. This is reason enough to do our utmost to prevent anything like that from ever happening. However, our present task is identifying existential risks to humanity and it is hard to see how any realistic level of heat stress could pose such a risk. So the runaway and moist greenhouse effects remain the only known mechanisms through which climate change could directly cause our extinction or irrevocable collapse.

This doesn’t rule out unknown mechanisms. We are considering large changes to the Earth that may even be unprecedented in size or speed. It wouldn’t be astonishing if that directly led to our permanent ruin. The best argument against such unknown mechanisms is probably that the PETM did not lead to a mass extinction, despite temperatures rapidly rising about 5°C, to reach a level 14°C above pre-industrial temperatures.90 But this is tempered by the imprecision of paleoclimate data, the sparsity of the fossil record, the smaller size of mammals at the time (making them more heat-tolerant), and a reluctance to rely on a single example. Most importantly, anthropogenic warming could be over a hundred times faster than warming during the PETM, and rapid warming has been suggested as a contributing factor in the end-Permian mass extinction, in which 96 percent of species went extinct.91 In the end, we can say little more than that direct existential risk from climate change appears **very small**, but cannot yet be ruled out.

## Cyber

#### No cyber impact.

Lewis '20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.

State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.

The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability.

#### Won’t go nuclear.

Tucker ’18 [February 2, 2018 Patrick Tucker is technology editor for Defense One. He’s also the author of The Naked Future: What Happens in a World That Anticipates Your Every Move? (Current, 2014). Previously, Tucker was deputy editor for The Futurist for nine years. https://www.defenseone.com/technology/2018/02/no-us-wont-respond-cyber-attack-nukes/145700/]

The idea that the U.S. is building new low-yield nuclear weapons to respond to a cyber attack is “not true,” military leaders told reporters in the runup to the Friday release of the new Nuclear Posture Review.

“The people who say we lowered the threshold for the use of nuclear weapons are saying, ‘but we want these low-yield nuclear weapons so that we can answer a cyber attack because we’re so bad at cyber security.’ That’s just fundamentally not true,” Gen. Paul Selva, vice chairman of the Joints Chiefs of Staff, said Tuesday at a meeting with reporters.

It’s an idea that military leaders have been pushing back against since the New York Times ran a Jan. 16 story headlined, “Pentagon Suggests Countering Devastating Cyberattacks With Nuclear Arms.”

When would the U.S. launch a nuclear attack in response to a non-nuclear event? The Defense Department says the threshold hasn’t changed since the Obama administration’s own nuclear posture review in 2010, but a draft of the new review that leaked online caused a bit of drama in its attempts to dispel “ambiguity.”

The new review gives examples of “non-nuclear strategic attacks,” Robert Soofer, deputy assistant secretary for nuclear and missile defense policy, told reporters on Thursday. “It could be catastrophic attacks against civilian populations, against infrastructure. It could be an attack using a non-nuclear weapon against our nuclear command-and-control [or] early-warning satellites. But we don’t talk about cyber.”

In his own conversation with reporters, Selva broadened “early warning” systems to include ones that provide “indications of warning that are important to our detection of an attack.” He also emphasized, “We never said ‘cyber.’”

There’s a reason for that. While cyber attacks on physical infrastructure can be very dangerous, they are unlikely to kill enough people to provoke a U.S. nuclear response.

An National Academies of Science and Engineering analysis of the vulnerability of U.S. infrastructure makes that point. A major cyber attack could cut off electrical power, resulting in “people dying from heat or cold exposure, etc.,” said Granger Morgan, co-director of the Carnegie Mellon Electricity Industry Center and one of the chairs of the report.  “A large outage of long duration could cover many states and last for weeks or longer. Whether and how many casualties there could be would depend on things like what the weather was during the outage.”

It’s a huge problem but not an event resulting in tens of thousands of immediate deaths.

Contrast that with a nuclear attack on a city like Moscow, even one using a device of 6 kilotons, much smaller than the ones the United States used against Japanese targets in World War II. The immediate result: there would be 40,000 deaths, according to the online nuclear simulation tool NukeMap.

Russia has demonstrated a willingness to take down power services with cyber attacks, as they did in Ukraine on Christmas Eve 2015. But these attacks were brief and occured in the context of actual fighting.

In other words, the worst cyber physical attack that top experts believe credible likely does not meet the threshold that the Defense Department has set out for deploying a nuclear weapon.

# 2NC

## CP – Regulate

#### The counterplan alone avoids the innovation turn. Including antitrust law allows companies to sue for treble damages which is too significant of a penalty for innovators to risk. The penalties for patent law are sufficient to deter, but not high enough to over deter.

Andrew G. Isztwan BSE, JD, VP of Litigatation @ Interdigital (25+ years as counsel) , ’19, BRIEF OF AMICUS CURIAE OF INTERDIGITAL, INC. IN SUPPORT OF NEITHER PARTY Case: 19-16122, 08/30/2019, ID: 11417354, DktEntry: 87, Page 1 of 18 https://www.qualcomm.com/media/documents/files/amicus-brief-filed-by-interdigital-inc-in-support-of-neither-party.pdf

A Sherman Act claim requires a showing of harm to competition, not merely harm to a competitor. Gorlick Distrib. Ctrs., LLC v. Car Sound Exhaust Sys. Inc., 723 F.3d 1019, 1024 (9th Cir. 2013). However, obtaining relatively high royalties is not sufficient to demonstrate harm to the competitive process. The Court should not adopt or affirm any interpretation of the district court’s ruling that suggests that an SEP owner’s receipt of purportedly “unreasonable” royalties by itself is enough to demonstrate anticompetitive harm as a predicate for a Sherman Act violation. In general, courts reject the premise that higher prices necessarily equate to harm to the competitive process for purposes of an antitrust claim. See Harrison Aire, Inc. v. Aerostar Int’l, Inc., 423 F.3d 374, 381 (3d Cir. 2005) (“Competitive markets are characterized by both price and quality competition, and a firm’s comparatively high price may simply reflect a superior product.”). To the contrary, “mere possession of monopoly power, and the concomitant charging of monopoly prices, is not only not unlawful; it is an important element of the free-market system.” Verizon Commc’ns, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 407 (2004).

In particular, in a case addressing alleged monopolization via standardsessential patents, the D.C. Circuit held that under Supreme Court precedent, a monopolization claim cannot exist where the alleged exclusionary behavior caused increased royalties but had no effect on competitive structure. Rambus Inc. v. FTC, 522 F.3d 456, 466 (D.C. Cir. 2008) (finding that “supposition that there is a cognizable violation of the Sherman Act when a lawful monopolist’s deceit has the effect of raising prices (without an effect on competitive structure)” is improper because it “conflicts with NYNEX”); see also NYNEX Corp. v. Discon, 525 U.S. 128 (1998) (fraud that raised prices cannot be Sherman Act Section 2 violation in absence of effect on competition). A theory that rests solely on obtaining higher prices does not explain in any coherent manner how the competitive structure of a market is affected, and therefore does not make out a Sherman Act Section 2 violation. Rambus, 522 F.3d at 466 (“[A]n otherwise lawful monopolist’s end-run around price constraints, even when deceptive or fraudulent, does not alone present a harm to competition in the monopolized market.”).

Antitrust law is also ill-suited to address claimed breaches of FRAND commitments based on allegedly excessive royalties, where plaintiffs can instead seek to enforce the commitments as a contractual matter to the extent any breaches have actually occurred.2

Transforming simple breaches of contract into trebledamages antitrust violations would serve only to enable hold-out by implementers who refuse to pay adequate and fair compensation for the patented technology they use in their products. This, in turn, would strongly deter standards participation and reduce investments in innovation, undermining the progress of standards development, ultimately to the detriment of consumers.

Increasingly, the most intractable FRAND disputes are not based on genuine disagreements raised by a potential licensee about the appropriate and fair value to be paid as royalties in return for use of patented technologies. Instead, implementers may opportunistically threaten (and even assert) antitrust claims seeking injunctions and treble damages as part of a hold-out strategy to gain unwarranted leverage in license negotiations. Implementers thereby seek to coerce patent owners into accepting minimal, sub-FRAND royalties that are not nearly sufficient to provide an adequate and fair reward for use of the intellectual property. Under a threat of treble damages, the patent owner is faced with a tremendously outsized risk, which inappropriately tilts the balance of negotiating power far in favor of the implementer asserting the claim. Often the intellectual property in question has been developed over many years as a result of the investment of enormous sums in research and development. Yet the prospects of obtaining an adequate and fair return on this investment are significantly reduced to the extent unwilling licensees are able to use strategic antitrust claims to force royalty terms far below FRAND levels—or even to avoid payment of royalties completely

#### The counterplan PICS out of “core antitrust law” because it doesn’t the three federal “core antitrust laws” – prefer contextual evidence defining conjunctive phrases. Severance is a voting issue for neg ground.

Sonia Kuester Pfaffenroth et al, Justin Hedge and Monique N. Boyce Arnold & Porter, ‘21 “ A Comparison Of Proposed Antitrust Legislation In 2021: Federal And New York State”

At the federal level, there are three core antitrust laws: (1) the Sherman Act, in which Section 1 outlaws "every contract, combination, or conspiracy in [unreasonable] restraint of trade," and Section 2 outlaws any "monopolization, attempted monopolization, or conspiracy or combination to monopolize";1 (2) the Federal Trade Commission Act, which prohibits "unfair methods of competition" and "unfair or deceptive acts or practices";2 and (3) Section 7 of the Clayton Act, which prohibits mergers and acquisitions where the effect "may be substantially to lessen competition, or to tend to create a monopoly."3 Criminal violations of the Sherman Act carry a maximum penalty of a $100 million fine for corporations, and a maximum penalty of 10 years in prison and a $1 million fine for individuals. A prevailing plaintiff in a civil suit can recover treble damages and attorneys' fees. But federal law currently does not provide for civil penalties when the government brings an antitrust case, only injunctive relief.

#### Their definition of “scope” is unlimiting and would allow affs to expand CFIUS, the 14th amendment, or any regulatory prohibition as a topical mechanism. A more limiting definition of scope refers only to the total number of prohibited business practices.

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

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

#### Recency and specificity – their evidence is only about the FTC’s resources in 2008. It doesn’t assume new sophisticated capabilities held by the USPTO, the ITC and the Federal circuits.

JOHN J. VECCHIONE et al, Senior Litigation Counsel @ Cause of Action, MICHAEL PEPSON JESSICA THOMPSON, ’19, CAUSE OF ACTION INSTITUTE BRIEF OF AMICUS CURIAE CAUSE OF ACTION INSTITUTE IN SUPPORT OF DEFENDANT-APPELLANT QUALCOMM INCORPORATED https://causeofaction.org/wp-content/uploads/2019/09/CoA-Inst.-Amicus-Br.-FTC-v.-Qualcomm-No.-19-16122.pdf

5. No Enforcement-Related Need

Finally, preclusion is appropriate where, as here, “any enforcement-related need for an antitrust lawsuit is unusually small.” See Billing, 551 U.S. at 283. First, the USPTO, ITC, and the Federal Circuit already actively supervise and enforce the boundaries SEP holders must abide by. See, e.g., Apple Inc. v. Motorola, Inc., 757 F.3d 1286, 1331-32 (Fed. Cir. 2014). Second, sophisticated, well-resourced private parties and SSOs are fully capable of vindicating their legal rights under patent and contract law without the aid of FTC.28 These sophisticated parties have shown themselves capable of protecting their interests through patent litigation without need to resort to the FTC Act. There is simply no need for antitrust intervention here.

#### The FTC is comparatively less expert – these apply equally to the case.

JOHN J. VECCHIONE et al, Senior Litigation Counsel @ Cause of Action, MICHAEL PEPSON JESSICA THOMPSON, ’19, CAUSE OF ACTION INSTITUTE BRIEF OF AMICUS CURIAE CAUSE OF ACTION INSTITUTE IN SUPPORT OF DEFENDANT-APPELLANT QUALCOMM INCORPORATED https://causeofaction.org/wp-content/uploads/2019/09/CoA-Inst.-Amicus-Br.-FTC-v.-Qualcomm-No.-19-16122.pdf

1. FTC Lacks Intellectual Property Expertise

Under Billing, a “need for [industry]-related expertise” to effectively regulate, 551 U.S. at 283, 285, weighs in favor of preclusion. Where permitting two separate regulatory regimes undermines consistency and creates a risk of arbitrary enforcement, see id. at 281-82, conflict is more likely. So too here. Effective administration of patent law requires deep understanding of the relevant technology and the economics of innovation—an expertise the USPTO, ITC, and the Federal Circuit have developed. See Sipe, supra, at 460-63. By contrast, FTC is a generalist agency. “It is…a difficult task for an antitrust regulator or court to identify and distinguish anticompetitive patent licenses from neutral or welfare-increasing behavior.”23

#### This is another link magnifier – the FTC will make clumsy regulations that chill innovation more than patent law alone.

JOHN J. VECCHIONE et al, Senior Litigation Counsel @ Cause of Action, MICHAEL PEPSON JESSICA THOMPSON, ’19, CAUSE OF ACTION INSTITUTE BRIEF OF AMICUS CURIAE CAUSE OF ACTION INSTITUTE IN SUPPORT OF DEFENDANT-APPELLANT QUALCOMM INCORPORATED https://causeofaction.org/wp-content/uploads/2019/09/CoA-Inst.-Amicus-Br.-FTC-v.-Qualcomm-No.-19-16122.pdf

There is a broader inherent potential conflict between patent and antitrust law. See U.S. v. Westinghouse Elec. Corp., 648 F.2d 642, 646-67 (9th Cir. 1981). “The conflict between the antitrust and patent laws arises in the methods they embrace that were designed to achieve reciprocal goals.” SCM Corp. v. Xerox Corp., 645 F.2d 1195, 1203 (2d Cir. 1981). “The point of antitrust law is to encourage competitive markets to promote consumer welfare. The point of patent law is to grant limited monopolies as a way of encouraging innovation.” Actavis, 570 U.S. at 161 (Roberts, J., dissenting).

In some cases, these two legal constructs can be reconciled. But this requires the exercise of restraint and discretion by FTC, absent here. At least with respect to the specific SEP-licensing practices at issue here, FTC’s views of the law will continue to collide and conflict with that of its sister agencies, federal courts, and the Patent Act. This weighs in favor of preclusion of antitrust liability. Cf. Billing, 551 U.S. at 273, 280-81.

#### The patent office is filled with experts. Generic “generalism” indicts don’t apply.

Wasserman 12, Melissa F. Charles Tilford McCormick Professor of Law at the University of Texas, JD from NYU and PhD from Princeton. ("The changing guard of patent law: Chevron deference for the PTO." Wm. & Mary L. Rev. 54 (2012): 1959. <https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/wmlr54&section=52>) //S.He

Yet, as criticism toward the patent system has grown, so too have the challenges to this unusual power dynamic.6 An increasing number of commentators believe this lopsided institutional structure is the root cause of the patent system’s systemic failures.7 An even larger contingency of scholars support reforms that would shift greater power to the PTO.8 The cries for institutional reform culminated in 2011 when Congress enacted the historic Leahy-Smith America Invents Act (AIA).9 The AIA provided the first major overhaul to the patent system in sixty years and undeniably increased the stature of the PTO by granting the Agency a host of new responsibilities, such as fee-setting authority10 and the ability to conduct new adjudicatory proceedings in which patent rights may be obtained or challenged.11

This Article contends, however, that commentators have generally failed to recognize the extent to which the AIA alters the fundamental power dynamic between the Federal Circuit and the PTO. Although scholars acknowledge that the AIA bestows a glut of new powers upon the Agency,12 they have nearly uniformly concluded that “Congress stopped short of allowing the PTO to interpret the core provisions of the Patent Act—those that affect the scope of what is patentable.”13 Though Stuart Benjamin and Arti Rai have observed that certain congressional bestowals of adjudicatory authority may entitle the PTO’s legal interpretations of the Patent Act to strong judicial deference,14 this Article provides the first in-depth exploration of whether the actual powers granted by the AIA would result in the PTO becoming the primary interpreter of the core patentability requirements. This Article concludes that the AIA rejects over two hundred years of court dominance in patent policy by anointing the PTO as the chief expositor of substantive patent law standards.

In general, the patent system has historically suffered from a lack of serious engagement with administrative law,15 even though Supreme Court intervention in 1999 made clear that standard administrative law norms—including the Administrative Procedure Act—apply to the PTO.16 Applying administrative law principles to the AIA provides that the PTO’s legal interpretations of the Patent Act, as announced by its new adjudicatory proceedings, are entitled to the highly deferential standard of review articulated in Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc. 17 As this Article argues, this deference is a normatively desirable outcome.18 Making the PTO the primary interpreter of the core patentability standards ushers the patent system into the modern administrative era, which has long recognized the deficiencies associated with judge-driven policy.19 This provides the institutional foundation for infusing economic policy into the patent system, enabling the tailoring of patentability standards to advance the system’s constitutionally mandated goal: the promotion of innovation.

#### Their argument supercharges the link to our DA. The plan is over-deterrence, because it allows companies to pursue treble damages, which are far greater than the penalties in patent and contract law. The counterplan is sufficient and goldilocks, the plan is overkill. That’s Itzwan in the overview AND

Kobayashi & Wright ‘8 [Bruce H & Joshua D; Professor of Law, George Mason University School of Law; , Scholar in Residence, Federal Trade Commission; Assistant Professor, George Mason University School of Law; 6/10/08; “Federalism, Substantive Preemption, and Limits on Antitrust: An Application to Patent Holdup”; <https://www.law.gmu.edu/assets/files/publications/working_papers/08-32%20Federalism,%20Substantive%20Preemption%20(2008-06-11).pdf>; George Mason University Law and Economics Research Paper Series; accessed 9/18/21; TV]

To be sure, application of contract law is sure to result in some errors in identifying holdup. However, the substantive superiority of contract law is clear. The most obvious advantage is that where antitrust law would find a violation in any modification of a FRAND commitment, with the remedial consequences in private and state follow‐on litigation of such a finding, contract law allows for the economic reality that long‐term relationships frequently involve modification over time. Further, the error rate under contract law is likely to be much lower than antitrust since substantive antitrust doctrine contains nothing that would allow it to engage in the flexible inquiry invited by contract law. In addition, cases like N‐Data suggest that antitrust enforcers have little interest immunizing good faith modifications of SSO commitments from antitrust liability. Not only is the error rate likely to be significantly higher in antitrust law than under contract law, but the social welfare losses associated with errors are likely to be much larger when antitrust liability is involved. If this were not the case, one might argue that overlapping contract and antitrust liability are appropriate. However, the case for the comparative advantage of contract law is made stronger because antitrust liability threatens to produce social welfare losses in this setting. There are several reasons for this. First, the conventional argument that breach of contract does not have any efficiency justification and so amounts to “cheap exclusion” is incomplete. Modifications of long‐term agreements where asset specific investments have been made frequently require flexible ex post adjustments by the parties to maximize efficiency. Modification of SSO commitments can be efficient. Further, unlike socially wasteful conduct typically raised as examples of “cheap exclusion,” such as setting fire to a rival’s plant, breach of contract may be efficient in the sense that it results in greater social welfare. Second, because modification of breach of FRAND commitments might increase social welfare in some circumstances, efficient conduct might be over‐ deterred as a result of antitrust liability. Whereas the conventional argument in favor of treble damages is that super‐compensatory damages are necessary to compensate for a low probability of detection of the violation, that argument does not make sense in the case of holdup. “Holdup,” as the definition suggests, requires the patent holder to announce to the SSO that it is violating the prior terms and “holding up” its members. The likelihood that this conduct would go unnoticed by the SSO members, whether the holdup is successful or otherwise, approximates zero. The case of treble damages for this sort of “open and notorious” conduct is weak. The concerns with over‐deterrence are even greater when one considers follow‐on private litigation and state remedies. To the contrary, the payment of expectation damages under contract law is not likely to generate these over‐deterrence concerns. Third, to the extent that one accepts the arguments, based on the analysis in NYNEX and Rambus, that breach of a FRAND commitment made in good faith involves an attempt by a lawful monopolist to raise prices, the Supreme Court has consistently made clear that the Sherman Act does not condemn high prices alone. Rather, as the Supreme Court notes in Trinko, the returns to the lawful monopolist are related to the pro‐competitive incentive to innovate: The opportunity to charge monopoly prices—at least for a short period— is what attracts “business acumen” in the first place; it induces risk taking that produces innovation and economic growth. To safeguard the incentive to innovate, the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive conduct. In sum, antitrust enforcement creates the potential for significant error costs, increased transactions costs, and reduced social welfare. While substantive contract law and contact remedies are better suited to detect patent holdup and distinguish it from good faith modification or efficient breach, it would do little good if there were no appropriate parties to enforce FRAND commitments. Indeed, the debate in the antitrust community has largely ignored the superiority of substantive contract doctrine in favor of an analysis that narrowly focuses on whether a sufficient number of parties could enforce FRAND commitments in a breach of contract action. Commentators have pointed to the fact that standing would be limited to SSO members as a weakness of the contractual approach to regulating patent holdup because losses to non‐ members and, more importantly, consumers would not be actionable.124 We view this standing critique as incomplete and unpersuasive. It is incomplete because the discussion largely ignores the question of how much enforcement would be optimal from a social welfare perspective. It is certainly correct as a matter of law that non‐SSO members lack standing to enforce the FRAND commitment. Commentators typically argue that contract enforcement is insufficient because injured consumers do not have standing, and thus antitrust enforcement is justified. These arguments typically assume both that: (1) all ex post modifications of FRAND commitments are inefficient; and (2) treble damages are required for optimal deterrence of patent holdup. As we’ve discussed above, both assumptions are likely incorrect. Some modifications or breaches of FRAND commitments are efficient, and therefore a rule that deters such conduct is likely to result in social welfare losses. Further, because the probability of detecting patent holdup is nearly certain, the case of requiring treble damages and antitrust remedies is weak in this setting. Contract law damages are less likely to over‐deter efficient conduct.125 Finally, a number of alternative common law doctrines might allow some recovery for non‐SSO members. For example, third parties might be able to recover reliance interests under the doctrine of promissory estoppel where the third party knew of the patent holders promise to the SSO and the patent holder had reason to know that the third party would have expected to benefit from the promise.126 In addition, as discussed above, patent law might grant an “implied license” to third parties on the grounds that the third parties might reasonably assume that they are entitled to use the standard at the FRAND royalty rate.127 To be sure, judicial application of these alternative state and federal doctrines is fraught with opportunities for error in distinguish good faith renegotiation from bad faith hold up, interpreting SSO terms, and identifying breach of those terms where appropriate. Our claim is not that contract law handles these claims perfectly. Indeed, it is transacting parties’ ability to contract around most contract default rules that mitigates these error costs where they are significant. Rather, we note that the case for federal antitrust regulation depends on the notion that the welfare losses associated with patent holdup are sufficiently great after accounting for the mitigation of those harms through state law regimes. In our view, the substantive superiority of contract law undermines any potential justification for the application of the heavy and inflexible machinery of antitrust law in the patent holdup context. The substantive superiority of contract law also provides the basis for rejecting the possibility that the Commission should incorporate the flexible standards of UCC 2‐209 into antitrust law, exclusively through the application of Section 5 of the FTC Act and without Section 2 of the Sherman Act, in order to improve its analysis of patent holdup to account for the possibility of good faith modification. While such a development would provide a marginal improvement over the status quo, largely because the threat of private follow‐on actions and treble damages would be minimized, any benefits from such a change would be superficial and would come at a significant cost. First, as discussed, it should be noted that N‐Data suggests that the Commission is not interested in distinguishing good faith modification from opportunism. Rather, N‐Data appears to adopt the view that any deviation from an ex ante FRAND commitment amounts to a violation of the antitrust laws. Second, N‐Data also suggests that the Commission might be more than willing to apply a monopolization theory under Section 2 in a case with similar facts to N‐Data, involving only the renegotiation of ex ante FRAND commitments made in good faith. The language in the N‐Data majority to this effect gives us reason to treat with skepticism the argument that the Commission is likely to limit itself to application of Section 5. Finally, and most importantly from our economics of federalism perspective, is such a policy change by the Commission would amount to federalizing contract law and would eliminate any benefits from jurisdictional competition between the states on substantive doctrine.

## Biz Con DA

#### Business investment rising – generates longer-term growth

Ro 21 – Sam Ro, Markets Correspondent for Axios, “The "remarkable" business investment recovery,” 7/28/21, <https://www.axios.com/business-investment-recovery-0f7e7080-269e-4838-976a-fc91debb8d4f.html>

[Capex = capital expenditure]

Businesses are investing in themselves. Why it matters: Core capital goods orders, or those for durable goods that aren’t aircraft or defense-related, are a proxy for business investment. These equipment orders will get fulfilled in the months ahead, so they reflect businesses’ expectations for the future. Continued growth in this measure suggests the economic growth we’re experiencing today may not be the peak. By the numbers: Core capital goods orders increased by 0.5% in June to $76.1 billion, up from an upwardly revised $75.7 billion in May. Year-over-year, this measure is up 16.7%. What they’re saying: Pantheon Macroeconomics’ Ian Shepherdson says the elevated levels of these orders is “remarkable.” “A combination of rebounding earnings and support from the federal government, coupled recently with clear evidence of acute labor shortages, is pushing companies into raising capex in order to expand capacity and remain competitive,” he writes. “If you aren't spending but your competitors are, you'll lose market share," Shepherdson adds. The big picture: “These data points provide insight into businesses’ plans for investment in the third quarter,” Grant Thornton chief economist Diane Swonk writes. “Continued strength in computers and electronics offset a small drop in orders in the vehicle sector, which has suffered some of the biggest supply-chain problems due to a shortage of computer chips,” Swonk says. What to watch: These mounting orders for new capital equipment should translate to higher growth expectations from businesses. Meanwhile, the monthly durable goods reports bear watching to see if these core capital goods orders continue to rise. “Companies in aggregate are cash-rich, but they remain asset-constrained after a decade of under-investment following the financial crisis,” Shepherdson said. “Accordingly, we expect capex to continue rising at a rapid pace for the foreseeable future.” The bottom line: Orders for business equipment represent companies putting their money where their mouths are. Whether or not you believe economic activity has peaked, it is the case that businesses are positioning themselves for more growth.

### Link – 2NC

#### The aff’s narrow scope actually proves the link – narrow antitrust decisions create greater uncertainty about future application of rules, which chills pro-competitive conduct

Broulik 19 – Jan Broulik, Emile Noël Fellow, Jean Monnet Center for International and Regional Economic Law & Justice, New York University School of Law, “Preventing Anticompetitive Conduct Directly and Indirectly: Accuracy Versus Predictability,” *The Antitrust Bulletin*, Volume 64, Issue 1, 2019, pp. 115-127

The indirect mechanism, in contrast, attaches no intrinsic negative value to an error per se. What matters instead are expectations held by businesses that their conduct might be falsely convicted or acquitted in the future.36 It is not possible, however, to simply associate expectations of false convictions with deterrence of procompetitive conduct and expectations of false acquittals with non-deterrence of anticompetitive conduct. This is because the deterrent effect depends on the difference between the sanction expected for engaging in procompetitive and anticompetitive conduct, and the probabilities of both false convictions and acquittals influence this difference.37

Despite the differences between the mechanisms, accuracy enhances effectiveness of both. Ceteris paribus, antitrust designers should therefore always strive for more and more accurate adjudication.

IV. Predictability

Another property of antitrust adjudication is its predictability, often also called certainty.38 Voigt and Schmidt define it as the businesses’ capacity to make predictions concerning the adjudicative assessment of their conduct that have a high chance of turning out to be correct.39 Note that predictability is conceptually independent of accuracy—adjudicative decisions may be predictable or unpredictable regardless of whether they are accurate or erroneous.40

A. Predictability and Differentiation

The more differentiated an antitrust rule is, the more difficult it is to predict the outcomes of its application.41 Consider, for example, Hawk and Denaeijer’s view: “An analysis of the competitive effects (benefits and harms) of a practice necessarily introduces some legal uncertainty. It is probably fair to say that the more refined/robust the inquiry into the actual competitive effects and justifications of a practice, the greater the uncertainty.”42 Bo Vesterdorf, then president of the European Court of First Instance, argues similarly that “a precise, case by case, full-blown, effects-based, economic analysis does not always go hand in hand with legal certainty.”43

Higher differentiation of antitrust rules brings about unpredictability in two ways. First, businesses may have poor information about the facts upon which the decision applying the rules is to be based. While the business decision needs to be taken before the respective practice is implemented, the adjudicative decision assessing the practice usually enjoys the benefit of hindsight. Moreover, the adjudicator has access to data generally inaccessible by the assessed business, for example, competitors’ data.44 It is then clearly possible that a business lacking the knowledge of the relevant facts arrives at a different conclusion about the lawfulness of a given practice than the adjudicator.

Second, businesses may not be sure what modeling choices adjudicators will adopt in their economic analyses. It is an often-criticized fact that several different models can regularly be used for a particular situation, all of which appear to represent the reality sufficiently well.45 If these models lead to contradictory conclusions, the question arises as to which model and conclusion should be preferred.46 If the business has no ex ante knowledge about which model will eventually be used by the adjudicator, this again limits its ability to predict.47

The issue of unpredictable adjudication based on highly differentiated rules can be rephrased as a prohibitive costliness of determination of the relevant facts. Businesses will attempt to determine the facts only if the benefits of being informed exceed the costs of gaining the information.48 If, however, the expected gain from becoming informed is lower than the price paid for the economic analysis, businesses will prefer to stay uninformed.49

B. Predictability and the Two Mechanisms

Predictability of adjudication does not have bearing on effectiveness of both preventive mechanisms. The ability of businesses to predict future decisions of antitrust adjudicators matters only as long as the law aims at influencing the conduct of the businesses by the prospect of these future decisions. This ability is therefore immaterial for direct prevention of anticompetitive conduct, which only requires businesses to react to an individualized infringement decision after they learn about it.

The indirect mechanism, in contrast, requires that businesses be informed ex ante. Since effectiveness of deterrence is based on expectations of businesses about future adjudicative decisions, it hinges upon predictability.50 If businesses are unable to know whether their conduct would eventually end up convicted and sanctioned, they may be prevented from procompetitive practices as well as not prevented from anticompetitive ones.51 Unpredictable adjudication therefore reduces effectiveness of the indirect mechanism.

#### The threat created by the plan will be perceived as encouraging over-caution in other industries

Crews 19 – Clyde Wayne Crews, VP for policy & director of technology studies at the Competitive Enterprise Institute, “The Case against Antitrust Law,” 4/16/19, https://cei.org/studies/the-case-against-antitrust-law/

The issue has taken on greater urgency, as populist politicians from both left and right push for more aggressive antitrust enforcement. Regulators in the United States and the European Union have expressed an interest in pursuing antitrust actions against tech giants known as the FAANG companies— Facebook, Apple, Amazon, Netflix, and Google. President Trump has specifically singled out Facebook, Google, and Amazon as antitrust targets. Entire business models, such as franchising, are at risk from potential antitrust regulation.

The mere threat of legal penalties—and the environment of over-caution it engenders—also has a chilling effect on entrepreneurs who want to try new business practices and innovate. Such opportunity costs are impossible to measure.

Few large antitrust cases have been brought in the United States recently, and overall enforcement activity has been slower than in previous eras, but there is a large pool of potential cases that populist politicians are interested in pursuing.

#### Err neg – enforcement actions have subtle over-deterrence effects and it’s better to err on the side of less regulation

Auer 18 – Dick Auer, Senior Fellow, International Center for Law & Economics, “Comments of the International Center for Law & Economics: Topic 4: Antitrust law and the consumer welfare standard,” FTC Hearings on Competition & Consumer Protection in the 21st Century, https://www.ftc.gov/system/files/documents/public\_comments/2018/10/ftc-2018-0074-d-0071-155999.pdf

One of the important lessons of economics in antitrust is that economic tools are uniquely capable (although still imperfectly so) of distinguishing competitive from anticompetitive conduct — the perennial challenge of (non-cartel) antitrust enforcement and adjudication. Non-economic evidence (so-called “hot docs,” for example) can be counter-productive and can obscure rather than illuminate the competitive significance of challenged conduct. A rigorous adherence to economic principles and economic reasoning is essential if antitrust enforcers are to ensure that their interventions actu-ally benefit consumers.

Thus, a necessary corollary to reliance on the consumer welfare standard in antitrust cases is that an evidence-based approach rooted in error-cost analysis is crucial. Particularly in innovative markets where unfamiliar business strategies are attempted, and the relative knowledge of regulators and enforcers is low, it is critical to hew to an evidence-led, error-cost approach to antitrust evaluation.57

The error-cost framework in antitrust originates with Easterbrook’s seminal analysis,58 itself built on twin premises: first, that false positives in enforcement are more costly than false negatives because self-correction mechanisms mitigate the latter but not the former; and second, that errors of both types are inevitable, because distinguishing procompetitive conduct from anticompetitive conduct is an inherently difficult task.59

A key virtue of employing the error-cost framework is that it helps to avoid the bias of economists, who frequently fail to conduct their analyses in a realistic institutional setting and avoid incorporating the social costs of erroneous enforcement decisions into their recommendations for legal rules.

Antitrust over-deterrence is not costless — the losses from erroneously deterred innovative business practices may be unseen, but they function as a drag on society nonetheless. The goal of the error-cost approach is optimal enforcement that errs on the side of permitting innovative practices that might otherwise be difficult to square under existing antitrust rules.

## Innovation

**The industry is highly competitive – empirical indicators prove licenses have minimal effect on overall innovation.**

Robert P **Taylor**, Chair of Antitrust Section of ABA, Patent Law Reform Comission (Direct Appointment by Secretary of Commerce), member of USIJ (foundation representing 30+ startups), **’19**, “BRIEF OF AMICUS CURIAE ALLIANCE OF U.S. STARTUPS & INVENTORS FOR JOBS (“USIJ”) IN SUPPORT OF APPELLANT QUALCOMM INCORPORATED “ Case: 19-16122, 08/30/2019, ID: 11417644, DktEntry: 97 <https://www.qualcomm.com/media/documents/files/amicus-brief-filed-by-the-alliance-of-u-s-startups-investors-for-jobs-usij-in-support-of-qualcomm.pdf>

This distinction is particularly compelling in light of two incontrovertible facts. First, consumers all over the world have enjoyed **intense and dynamic competition** that is **readily apparent** to everyone. **It is difficult to imagine a more competitive industry than this one over the last decade**. IfAppellant’s licensing practices had actually reduced competition, as the district court concluded, consumers would not have the available choices, the rapidly falling prices for legacy products, and the constant and accelerating improvements in the quality of new products and services that are available.

**Link magnitude is significant – 1NC evidence cites billions of dollars in lost funding. Link threshold is low because of investor risk tolerance – investors and entrepreneurs will only risk developing new technology if the know they can capture the market.**

Robert P **Taylor**, Chair of Antitrust Section of ABA, Patent Law Reform Comission (Direct Appointment by Secretary of Commerce), member of USIJ (foundation representing 30+ startups), **’19**, “BRIEF OF AMICUS CURIAE ALLIANCE OF U.S. STARTUPS & INVENTORS FOR JOBS (“USIJ”) IN SUPPORT OF APPELLANT QUALCOMM INCORPORATED “ Case: 19-16122, 08/30/2019, ID: 11417644, DktEntry: 97 <https://www.qualcomm.com/media/documents/files/amicus-brief-filed-by-the-alliance-of-u-s-startups-investors-for-jobs-usij-in-support-of-qualcomm.pdf>

The decision below misinterprets both antitrust law and patent law in ways that, if allowed to stand, will **diminish significantly**the incentives of **entrepreneurs**, **startups**, **inventors** and their **investors** to pursue **risky new ventures** and unproven technologies. Many new technologies invented by entrepreneurs and small companies have value **only if they can be licensed to** sellers of larger products or systems. The district judge’s vehement and repetitious use of the term “anticompetitive” to describe the normal give and take that occurs in contract negotiations vilifies a patent owner’s insistence that infringers take licenses to the patents they want to use. This will inhibit the ability of many patent owners to negotiate patent licenses, particularly the smaller companies that do not have a great deal of bargaining power other than the potential enforcement of their patents. By vilifying patent owners that take a firm stand against infringement of their property rights, the decision lends credibility to the false but often used argument that patents are just a nuisance and interfere with real innovation. In fact, patents allow truly inventive companies to overcome the obstacles – economic and otherwise – that large incumbent companies are able to employ to protect their markets. Smaller companies **already have a difficult time** trying to benefit from their inventive efforts; the instant decision will add to the difficulty.

# 1NR

## K – LPE

This ev. concedes they view the failure of SEP as an opportunity to coordinate correction (we read blue).

Melamed & Shapiro 18, \*A. Douglas Melamed is Professor of the Practice of Law at Stanford Law School; \*Carl Shapiro is the Transamerica Professor of Business Strategy at the Haas School of Business at the University of California at Berkeley; (May 2018, “How Antitrust Law Can Make FRAND Commitments More Effective”, https://www-cdn.law.stanford.edu/wp-content/uploads/2018/05/How-Antitrust-Law-Can-Make-FRAND-Commitments-More-Effective.pdf)

Antitrust enforcement aimed only at SEP holders is not sufficient to prevent or remedy ex post opportunism. First, as described in Part I, that kind of enforcement must be implemented separately for each patent holder, and for many standards, there are hundreds or even thousands of SEP holders. Second, some of the most common kinds of opportunism are arguably beyond the reach of antitrust claims against SEP holders. 61 Moreover, enforcement aimed at SEP holders is not directed at the basic problem: the failure of the SSOs to take adequate steps to prevent the ex post opportunism that the SSOs’ conduct enabled. There is, therefore, another important role for Section 1 of the Sherman Act to help guard against ex post opportunism by SEP holders—one that the courts have not yet had occasion to recognize. This role is soundly based on well-established Supreme Court precedent regarding the application of Section 1 to activities by SSOs and their members.

#### These debates are at the core of the antitrust. The economic concepts and worldviews embedded in antitrust advocacy should be evaluated upstream of specific cost-benefit comparison of implementation.

Sabel **RAHMAN** Law @ Brooklyn **’20** “Structuralist Regulation” Prepared for NYU Law School Public Law Colloquium, September 2020

Second, this concept of structuralist regulation helps provide a policy framework for understanding and engaging some of the structuralist claims made by grassroots reform movements especially in this moment. We are in a **unique moment** of resurgent grassroots activism, and as scholars of social movements have argued, many of these movements are advancing structural, transformative visions of public policy and legal-institutional change.20 But these claims are often seen as **outside the scope of more traditional modes** of **policy debate and analysis**. Building a conceptual framework of what we mean by ‘structural’ reform can help bridge the reform ideas being generated by grassroots movements on the one hand, and those arising from policymakers and academics on the other. More broadly, we might even say we are on the cusp of a revival of interest in structuralist policy solutions in response to the deeper problems of economic

inequality,21 racial subordination,22 power in public law,23 and political economy approaches to law and public policy.24 A clearer understanding of structuralist policy design will be important to inform the kind of inclusionary policy agenda needed to remedy these inequities.

The rest of the paper proceeds as follows. Part I provides a conceptualization of ‘structuralist’ policymaking, identifying the underlying assumptions that animate structuralism as a regulatory strategy. This Part also notes that this concept of regulatory strategy (or what I call “regulatory logic”, as defined below) should be understood as a distinct way of unpacking and analyzing the patterns of policymaking judgment distinct from other modes of analysis like cost-benefit analysis or the rules-versus-standards debate. Part II then looks at examples of structuralist policy proposals in recent economic policy debates: the debate over tech platforms, the debate over too-big-to-fail financial firms and systemic risk, and the renewed interest in anti-trust and anti-monopoly law. These examples help illustrate structuralist regulatory logics in action, and their distinctive assumptions and potential benefits over more conventional regulatory approaches. The purpose of this Part is not to offer a full-throated defense of structuralist policies in each of these sectors (although I am perhaps unsurprisingly sympathetic to the arguments on the merits); rather the purpose here is simply to illustrate structuralism as a distinct mode of thinking about policymaking. Part III articulates some broader implications for how to implement and institutionalize structuralist policies. Part IV concludes with some closing thoughts on how structuralism as a way of thinking about regulation connects to this broader moment of intense political and scholarly interest in inequality and racial (in)justice.

I. Structure as regulatory subject and strategy

Regulatory logics

The task of creating an effective and responsive regulatory system is often thought of in terms of questions of institutional design the balance of responsibilities between legislatures, agencies, and judges; how agencies should be structured; how agency heads should be appointed; how agencies can generate sufficient expertise to regulate effectively without falling prey to industry capture. But part of the challenge in ensuring effective and responsive regulation lies within the ways in which regulators and policymakers more broadly think about their task—**the concepts and worldviews** that operate within the ‘black box’ of policy decisionmaking and judgment.

However stringently we might read the external legal constraints on regulatory action— whether through judicial review or command—the fact of regulator discretion and judgment is inescapable.25 So how then should we think about the analytical methods or frameworks employed by regulators themselves? Regulators and legislators are not merely technical automatons executing the public will or legislative command. Nor are they simply political ideologues. Rather, policymakers are necessarily making decisions that involve degrees of subjective, normative, and policy judgments. The **ways in which that judgment is exercised** has an **impact on the dynamics of regulatory policy**.

Embedded in these judgments are a **range of assumptions, values, and concerns**. **How are policymakers understanding the purposes of regulation in a given domain**? Do they see their enterprise as complementary to existing private parties and practices? Or as fundamentally critical and oppositional? How do regulators view their own capacities and institutional competency—particularly relative to other private or governmental actors? Do they see themselves as outgunned and undermanned? Or well-informed and capable? What is their analysis of the systems and causes that drive the problems they are trying to solve—and which of those causes are, in their view, most amenable to the tools they have on hand? These are the kinds of **underlying questions** that **operate upstream from a discrete policy issue** or **costbenefit analysis inquiry**.

These questions often aggregate into distinctive patterns of judgment, consistent regulatory strategies, or what I call in this paper “regulatory logics”. Regulatory logics live squarely in the midst of the black box of regulatory judgment; they are more reasoned and grounded in understandings of the empirical nature of the world than pure political ideology, but at the same time they also share some degree of normative, subjective judgment beyond merely technical calculations of risk, costs, and benefits. We can think of “regulatory logics” as analogous to canons and methods of statutory interpretation in the judiciary. Just as canons offer a **conceptual framework** and **method of reasoning** **for judges** seeking to fill in the gaps between statutory text and a new fact situation, regulatory logics can be thought of as a bundle of presumptions about the social goals of regulation, about the relative institutional competency of regulators in comparison to private actors, and about the appropriate methods of analysis required in formulating rules responding to new circumstances. And, like modes of interpretive reasoning, regulatory logics do not predetermine a specific outcome—though they may shade in some directions making some policy determinations and outcomes more likely than others. Nor are the same logics necessarily appropriate in all circumstances; different conditions may demand different regulatory logics.

#### Private markets are not more efficient than public provisioning. Comprehensive studies prove.

Michael **BERNSTEIN** John Christie Barr Prf. of History and Economics @ Tulane **’18** “Reconstructing a public economics: markets, states and societies” *Real-World Economics Review* 84 p. 14

In thralldom to the dominant catechism of neoclassical economic theory, the vast majority of investigators assume that private markets, if “perfectly” structured and operationalized, will always generate more efficient outcomes than public provision. Yet empirical evidence, drawn from an array of national and regional examples, proves otherwise. David Hall (“The Relative Efficiency of Public Provision of Public Services”) is able to demonstrate this fact with remarkable clarity – and with large stores of data drawn from both highly developed and currently emergent economies. His are a particularly striking set of findings insofar as they strike at the heart of the unsubstantiated pronouncements of orthodox theory regarding the alleged virtues of unfettered markets – in both “private” and “public” settings.

#### Impact turns based on the core assumptions that we’ve criticized should be disregarded. The neoclassical models give us zero basis for robust economic assessment.

Michael **BERNSTEIN** John Christie Barr Prf. of History and Economics @ Tulane **’18** “Reconstructing a public economics: markets, states and societies” *Real-World Economics Review* 84 p. 2-3

Liberating contemporary economic analysis from the straitjacket of mainstream neoclassical theory is the animating theme of the essays assembled in this special number of the Real-World Economics Review (RWER). The authors of the works assembled here are all committed to the idea that what is regarded by traditional economic theory as a set of exogenous forces framed and deployed from outside the market mechanisms that are the focus of the discipline – namely, the public sector – is in fact an integral agent that directly affects the very issues and phenomena neoclassical theory claims to explain. Indeed, it is the very failure of traditional economic thinking to account for the “public economy” in any systematic and meaningful fashion that prevents it from explaining how societies actually produce goods and services and, in compensation, constructs inapt and futile framings, such as “market failures,” to explain why governments exist.

In contradistinction to prevailing doctrine, the following articles strive to reconstruct a public economics by embedding the public sector intrinsically within economic models. Rather than separate the “public sector” from economics, understanding collective action as something distinct from the economy, a public economics views the **entire economic system** – the “macroeconomy” as a whole – as comprised of multiple economic systems: of markets, of public activities, and of domestic interactions. As Neva Goodwin explains (“There is More Than One Economy”), human economies may be understand as a construction of the market or “private business economy,” a “public purpose economy,” and a “core economy.” The market is the focus of virtually all of mainstream economic thinking today. Public purpose economy is defined by Goodwin as government, non-profit, and non-governmental entities that focus on a broader array of goals not simply defined by profit-maximization. In the core economy, one finds the domestic activities of consumption, distribution, and resource management that are focused on the survival, nurturing, and welfare of its constituents.

Simply understood as venues within which rational agents pursue optimization goals, markets cannot account for public purpose articulated and projected within collective-action dynamics, domestic and intimate goals framed by affective and cultural behaviors, and ecological and environmental contexts imposed by the physical and biological realms within which all human activities occur. That being the case, an economics that only accounts for the workings of “perfect” markets, understood to exist separately from domestic, public, and ecological frameworks, is not even remotely useful in explaining how economies actually function, let alone how they might be improved. If, for example, government is understood simply as a remedial instrument to rectify **“market failure**,” its essential role in the economic mechanisms of consumption, production, and distribution is obscured. Similarly, if both the domestic sphere (of family and human relationships) and the environment are grasped as dimensions external to, and non-constitutive of the economy, it becomes **impossible** to **analyze** and **predict** **economic** **behaviors and outcomes in reliable ways**.

Reframing how economic theory accounts for the public and domestic realms of social life is uniquely tied to the manner by which we understand government action. As June Sekera demonstrates (“The Public Economy: Understanding Government as a Producer”), by viewing governments as essentially economic “operating systems,” that function according to a non-market economic logic and within the constraints of biophysical realities, we gain a far more effective understanding and appreciation of society, markets, and the environmental impacts of economic activity. This not only allows for more accurate analyses of proposed policies; it also animates a deeper and more genuine understanding of the ways in which public goals and purposes may in fact be effectively conceptualized and achieved. There is no better historical demonstration of this fact than in the twentieth century experience in the United States.

#### Change in policy without change in framework is less likely to solve.

Frank **PASQUALE** Law @ Maryland **’16** “Two Narratives of Platform Capitalism” *Yale Law & Policy Review* 35(1) p. 310-312

One may challenge the narratives of conventional, neoliberal economics by contesting the empirical validity of the factual foundations of its narratives. Such an empirical approach is one way of pursuing a fruitful hermeneutics of suspicion. But it is not sufficient to dislodge conventional narratives from the heuristics so often **resorted to by policymakers**. Rather, just as it "takes a theory to beat a theory," a **plausible counternarrative** is far more likely to **displace a conventional narrative** than **isolated empirical challenges** to the conventional narrative's **factual foundations**. This essay develops a counternarrative to dominant approaches to platform capitalism, schematically presented below.

[INFOGRAPH TABLE OMITTED – TURNER]

While science aspires to convergence on settled truths and natural laws, narrative is often plural: there can be more than one side to a story. For positivists, science is a more solid and reliable form of knowledge (and foundation for judgment) than storytelling. However, the free will of humans, plasticity of our institutions, and opacity of our thoughts recurrently frustrate social scientists who aspire to the type of prediction and control regularly achieved by natural scientists and engineers in the world of things and non-human animals. If we are to better understand the most important economic phenomena of our day, we must reveal the stories about competition, desert, and regulation that both animate and undermine the models and empirical analyses in mathematicized and quantitative social science.