# 1nc

### 1NC – Politics

#### 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

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(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.

### 1NC – States CP

#### The fifty states and relevant subnational entities should, through the Multistate Antitrust Task Force, substantially increase prohibitions on blockchain-related Standard Essential Patents that do not have fair, reasonable, and non-discriminatory terms as specified in a standard setting organization in compliance with Section 2 of the Sherman Act. The attorney generals of the fifty states and relevant subnational entities should enforce these prohibitions.

#### States solve.

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

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

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

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

### 1NC – Courts DA

#### Federal courts are barely recovering from COVID now.

Morris ’21 [Angela; ALM Media's Texas litigation reporter, internally citing several Texas district court judges; 6/11/21; “'Backlogs Keep Me Up at Night': A look at Cases Clogging Texas Dockets Amid Pandemic”; <https://www.law.com/texaslawyer/2021/06/11/backlogs-keep-me-up-at-night-a-look-at-cases-clogging-texas-dockets-amid-pandemic/?slreturn=20210805152423>; Texas Lawyer; accessed 9/5/21; TV]

Texas Lawyer analyzed case data from the administrative office and found that between 2019 and March of this year, the active criminal docket in district courts swelled by 34% to land at nearly 255,800 cases. The number of active family cases grew by 13% since 2019, ending at just over 370,600 this March. In contrast, there was only 2% growth in the number of active civil cases in the time period. The number of juvenile cases actually shrank by 5%. “Any backlog is always concerning to me, because I know backlogs represent unresolved cases,” said 379th Criminal District Judge Ron Rangel of San Antonio. “Backlogs do keep me up at night.” Criminal docket The pandemic was the hardest on criminal cases. Although district courts had a 94% clearance rate for criminal cases in 2019, it dropped to 70% in 2020. It’s recovered somewhat so far this year at 80%. Case clearance rates represent a comparison between the number of old cases that courts dispose of, and the new cases added to their dockets. The gold standard is a 100% clearance rate, and means courts are getting rid of the same number of old cases as the new cases coming in. If courts have a rate less than 100%, that will lead to a growing case backlog. If a court’s clearance rate is more than 100%, it means the court is shrinking its docket. The result of criminal clearance rates dropping so much during the pandemic was a case backlog that skyrocketed from about 7,600 cases in 2019 to over 55,200 backlogged cases in 2020. The backlog number represents the difference in case numbers at the end of the year compared to the beginning. The backlog would remain the same if a court had disposed of the same number of cases as were filed that year. But if a court was not keeping up, the backlog would grow. Backlogs sometimes shrink if courts are clearing cases faster than they are coming in. Overall, the number of active pending criminal cases on district courts’ dockets grew by 29% between 2019 and 2020, to land at nearly 247,000 cases. The docket’s growth continued at a slower rate of 4% so far in 2021, and as of March 31, there were nearly 255,800 active criminal cases in the district courts. Rangel, who serves as the local administrative judge in Bexar County, said criminal case backlogs grew more during 2020 than other case types because virtual jury trials were not available for criminal matters. The U.S. Constitution gives criminal-defendants the right to confront their accusers, and the Texas Supreme Court did not allow a court to compel a virtual trial in criminal cases, he explained. When the pandemic started, judges across Texas granted large numbers of personal recognizance bonds to get defendants with low-level, non-violent offenses out of jails, where conditions were ripe for infections, added Rangel. Once a defendant gets released from jail, it lowers the motivation to resolve a case, he said. “The lack of a jury trial removes significant incentives for defendants to work their cases out,” said Rangel. The issue will get better as courts resume in-person jury trials. Rangel noted that Bexar County started sending out jury summonses in May and setting cases in preparation for restarting in-person jury trials in June. “Cases started moving a lot faster. In district court, we reduced the backlog by 200 cases since May 17,” Rangel said during a June 7 interview. “I have always recognized that having the loss of an in-person trial available makes it very tough to move cases, because the parties recognize nobody can force anything on them.” Judge Robert Schaffer of Harris County’s 152nd Civil District Court said that courts have already been able to cut into coronavirus case backlogs for one simple reason—they’re starting to seat juries for trials. But those trials won’t happen in great numbers for quite some time. “We can try a maximum in Harris County we can take a maximum of four juries a day,” said Schaffer, who is local administrative judge in his county. “Until there is access to jury trials in larger numbers, I don’t know what you can do to fix the backlog.” He said that criminal-defense attorneys might have advised their clients not to go to trial during the pandemic. “Lawyers today say, ‘This is a horrible situation that we are in right now. You should not be trying your case now, because of the makeup of the juries, because of the COVID mask restrictions—you can’t see people’s faces,’” said Schaffer. “If I were a lawyer, I wouldn’t want to try a case in this environment, especially if I had a substantial case.” Family dockets The same reticence to use virtual proceedings may have contributed to the backlog in family law cases. Slayton, the Texas court administrator, said that he has talked with judges and attorneys who felt that it wasn’t a good time to resolve cases during the upheaval of the pandemic. “Judges and attorneys felt it was best dealt with in-person, in a courtroom, than over Zoom. I think there was more resistance to doing that remotely,” Slayton said. District courts in 2019 had a 100% clearance rate for family cases, which dropped to 80% in 2020, leading to a backlog that mushroomed to just over 46,500 cases. The active pending family docket grew by 14% between 2019 and 2020—when it was more than 374,000 cases. There was a slight 1% dip in the first quarter of 2021, but the district courts still had more than 370,600 family cases on their dockets. Civil dockets Civil case dockets were not as badly impacted by the pandemic–perhaps because judges and lawyers embraced remote court. District courts’ civil case clearance rates stayed the same–90%–in 2019, 2020 and so far in 2021. The number of cases considered to be a backlog actually shrank by just under 700 cases between 2019 and 2020. As a result, the civil active pending case docket only grew by 5% during the pandemic year, going from nearly 382,900 in 2019 to nearly 401,700 in 2020. This number has already dropped by 2% in the first quarter of 2021. Judge Amy Clark Meachum of Travis County’s 201st District Court wrote in an email that judges rose to the challenges of the pandemic by using virtual platforms. Travis County judges ran their usual non-jury dockets and met their normal daily demands, she said.

#### Antitrust litigation consumes vast judicial resources – causes backlogs.

Fitch et al. ’21 [Lynn Fitch, Krissy C. Nobile, Justin L. Matheny; Attorney General of Mississippi; Deputy Solicitor General for Mississippi; Assistant Solicitor General; 3/1/21; “BRIEF FOR THE STATES OF MISSISSIPPI, ALABAMA, ARIZONA, ARKANSAS, CONNECTICUT, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KENTUCKY, LOUISIANA, MAINE, MICHIGAN, MINNESOTA, MONTANA, NEW JERSEY, OREGON, SOUTH CAROLINA, TEXAS, UTAH, VIRGINIA, AND WEST VIRGINIA AS AMICI CURIAE IN SUPPORT OF PETITIONER”; <https://www.supremecourt.gov/DocketPDF/20/20-1018/170601/20210301174920932_pdf>; Louisiana Real Estate Appraisers Board v. United States Federal Trade Commission; accessed 9/6/21; TV]

The financial costs and burdens of defending antitrust litigation are also extraordinarily high. To mitigate those costs and burdens, which ultimately are borne by state taxpayers and citizens, States and their political subdivisions have a significant interest in dismissal of antitrust claims at the earliest stage possible whenever dismissal is legally appropriate. “Litigation, though necessary to ensure that officials comply with the law, exacts heavy costs in terms of efficiency and expenditure of valuable time and resources that might otherwise be directed to the proper execution of the work of the Government.” Ashcroft v. Iqbal, 556 U.S. 662, 685 (2009).

Immediate appellate review of a denial of a claim of state-action immunity is also efficient. Antitrust litigation is costly for litigants and the judicial system. Antitrust cases are complex and can easily consume judicial time and resources. Fully resolving state-action immunity on the front-end of litigation focuses on a narrow, outcome-determinative issue and can prevent the waste of judicial resources expended in a trial that, at the end, proves to be unwarranted. Courts therefore have a vested interest in early-stage dismissal of antitrust claims that cannot lead to redress.

An appeal from a final judgment cannot adequately safeguard these important state and judicial interests or adequately protect against financial burdens needlessly imposed by forcing a state entity entitled to state-action immunity to litigate antitrust cases to a final judgment. See Commuter Transp. Sys., 801 F.2d at 1289 (“The purpose of the state action doctrine is to avoid needless waste of public time and money.”). Allowing an immediate appeal to avoid an unnecessary trial when a State or state entity is in fact immune will protect significant public interests; obviate, or at least diminish, unnecessary financial expenditure; foster efficiency; and conserve judicial resources.

B. It is widely recognized that antitrust litigation is particularly costly. Indeed, this Court’s decision in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) is predicated in good measure on the fact that antitrust litigation is notoriously expensive. The complex and protracted discovery inherent in the early stages of antitrust litigation accounts for much of that expense. Id. at 558. In fact, that is why Twombly admonished courts not “to forget that proceeding to antitrust discovery can be expensive.” Id. at 558-59 (citing, inter alia, Note, Modeling the Effect of One-Way Fee Shifting on Discovery Abuse in Private Antitrust Litigation, 78 N.Y.U. L. REV. 1887, 1898-99 (2003) (discussing the unusually high cost of discovery in antitrust cases); Manual for Complex Litigation, Fourth, § 30, p. 519 (2004) (describing extensive scope of discovery in antitrust cases); and Memorandum from Hon. Paul V. Niemeyer, Chair, Advisory Committee on Civil Rules, to Hon. Anthony J. Scirica, Chair, Committee on Rules of Practice and Procedure (May 11, 1999), 192 F.R.D. 354, 357 (2000) (reporting that discovery accounts for as much as 90 percent of litigation costs when discovery is actively employed)).

Twombly stands for the general proposition that, when allegations in a complaint, however true, fail to state a claim for relief, the claim should be dealt with “at the point of minimum expenditure of time and money by the parties and the court.” Twombly, 550 U.S. at 558 (quoting 5 C. Wright & A. Miller, Federal Practice and Procedure § 1216, at 233-234 (3d ed. 2004)). The point of minimum expenditure in an antitrust case, in particular, comes before the case proceeds to discovery. Twombly, 550 U.S. at 568 (citing Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1106 (7th Cir. 1984) (“[T]he costs of modern federal antitrust litigation and the increasing caseload of the federal courts counsel against sending the parties into discovery when there is no reasonable likelihood that the plaintiffs can construct a claim from the events related in the complaint.”)).

If a state entity defendant in an antitrust case is entitled to state-action immunity—whether that immunity is deemed immunity from suit or from liability— there is no reasonable likelihood that a plaintiff can raise a claim of entitlement to relief or recovery. There is thus every reason to allow the state-action immunity issue to be appealed before the parties and the court are faced with the costs of discovery and trial—i.e., to deal with the issue “at the point of minimum expenditure of time and money by the parties and the court.”

Antitrust litigation is legally and factually complex, inevitably requires massive discovery, cannot be conducted without a battery of expert witnesses, and is of protracted duration. See, e.g., Corr Wireless Commc’ns v. AT&T, Inc., 893 F. Supp. 2d 789, 809-10 (N.D. Miss. 2012); Nepresso USA, Inc. v. Ethical Coffee Co. SA, 263 F. Supp. 3d 498, 508 (D. Del. 2017) (highlighting “the financial burden of the discovery process in general, but particularly in antitrust cases”). Those concerns counsel in favor of application of the collateral-order doctrine to allow interlocutory appeals of the denial of claims of state-action immunity in antitrust cases.

#### Court clog produces patent delays.

Ball & Kesan ’10 [Gwendolyn G. & Jay P; Research Fellow Business, Economics and Law Group Institute for Genomic Biology and Information Trust Institute University of Illinois; Professor and Mildred Van.Voorhis Jones Faculty Scholar College of Law Business, Economics and Law Group Institute of Genomic Biology University of Illinois; 4/30/10; “Judges, Courts and Economic Development: the Impact of Judicial Human Capital on the Efficiency and Accuracy of the Court System”; <https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=ALEA2010&paper_id=380>; accessed 9/7/21; TV]

While most economic scholarship analyzing the importance of the courts has focused on disputes over real property, the relationship between the court system and investment is no less strong for intellectual property. And to a large extent, the relationship between the courts and the patent system depends on the quality of “judicial human capital.”

In the United States, as in many countries, the courts are a crucial part of the patent system to the extent that the patent system is can be termed a two-stage process. In the first stage, the U.S. Patent and Trademark Office grants property rights to inventors. In the second stage, inventors can protect those rights through patent infringement suits in the courts and alleged infringers have the right to challenge improvidently granted patents and have them declared invalid. As a consequence, some authors have referred to patent rights as being “probabilistic,” depending not only on whether the innovation embodied in the patent has commercial value, but also on the refinement of that patent property right after litigation.15

Just as with real property, the management of the court system has an impact on both patenting behavior and on investment in research and development. While the majority of all patents are not litigated, those that are disputed in the courts are among the most valuable.16 The rules governing the court system may even “feed back” into patenting behavior; some authors have found evidence that the increasingly “patent friendly” rules17 adopted by the courts are a major factor in the surge in patenting since the 1980s.18 Moreover, the ability to define the “probabilistic” property rights is an important element in determining whether patents fulfill their purpose of promoting innovation.19 Finally, the costs associated with the patent systems can be reduced by an efficient court system; firms may hesitate to invest in new products and technologies which may infringe on existing patents, so any additional delay or cost in clarifying existent rights may slow the process of innovation. The more quickly and cheaply these rights are defined, the more beneficial the patent system will be in promoting and not inhibiting innovation and investment.

However, in the United States this second phase in the patent system is managed by a District Court system in which judges with a general legal background preside over cases ranging from drug trials to anti-trust actions. Under such circumstances, patent infringement suites can pose particular challenges. Patent litigation is officially classified by the U.S. Administrative Office of the District Courts as one of several types of “complex litigation” which place special burdens on judges and other court personnel. Not only are technical issues involved, but there are also procedures and rules that are unique to patent law. For example, since the “Markman” ruling of 1995 on “claim construction,” judges in patent cases have been required to examine the claims stated in the patent document, thereby defining the boundaries of the technology.20 This procedure is a potentially lengthy process involving briefs from the plaintiff and defendant, expert opinions and a special claims construction hearing. Such procedures can create difficulties for judges who are not familiar with the intricacies of patent law. And there is evidence suggesting dissatisfaction with the performance of district courts in patent cases at the District level. Approximately 10% of judgments in other areas of the law are appealed, whereas 50% of the judgments in patent cases are appealed.21 As a consequence, intellectual property disputes are included as one of the topical areas warranting a special section in the Federal Judicial Center (FJC)22 Manual for Complex Litigation (2004), along with anti-trust cases, securities cases, employment discrimination, CERCLA (Superfund) and civil RICO. Moreover, in the FJC’s 2003-04 study of the amount of work required for District Court cases, while an “average” case is assigned a weight of 1, patent cases received a weight of 4.72. Only environmental cases (4.79) and death penalty cases (12.89) received higher weights.23 Thus, lack of familiarity with patent law can be a barrier to efficient resolution of patent disputes, and has led to observations like the following24:

Patent litigation stands among the most complex, with disputes about cutting-edge technology muddied with esoteric and arcane language, laws, and customs.

Even with the assistance of legal and technical experts as well as special masters, generalist judges and juries are often at sea almost from the beginning of a patent case. When compared to other adversarial actions, patent cases benefit significantly from having a judge hear the case who is familiar with technical issues.

Most recently, the issue of judicial human capital has been part of a discussion about whether the United States should have a specialized lower-level patent court; several legislative reforms have been proposed in Congress to create opportunities for specialization at the district court level in patent cases.25

While a detailed discussion the arguments for and against specialized courts is beyond the scope of this paper,26 they can large be categorized under four headings: 1) improvements in judicial human capital, 2) uniformity and predictability in the development of legal doctrine, 3) the impact on and influence of the political economy of the judicial system, and 4) the efficiency of the court system. The creation of a specialized appellate court for patent cases27 in 1982 arguably had some success in dealing with the second and fourth criteria; patent law is now applied in a more uniform manner across the circuits and inefficient forum shopping, though still occurring, is not as great as it once was.28 Nonetheless, there is still a belief that a specialized patent trial court is needed, and the primary rationale for this is improvements in judicial human capital. Many scholars and policy makers believe that the average district court judge hears too few patent cases and/or does not have the specialized training to adequately and expeditiously rule on complex issues. Appellate review of claim construction, for example, results in a relatively high reversal rate.29 However, there is little empirical work exploring the relationship between judicial experience-either general or patent specific-and the efficiency and accuracy of the resolution of cases.30

#### Undermines biotech innovation.

Gregory ’18 [Adam; Associate Patent Attorney at Mewburn Ellis LLP; 11/26/18; “The Importance Of Patents To Biotech Start-Ups”; <https://www.biotechconnection-sg.org/the-importance-of-patents-to-biotech-start-ups/>; Biotech Connection; accessed 9/7/21; TV]

Early-stage biotech companies are often founded based on the exciting results of pre-clinical research relating to a new product or treatment. However, due to the need for refinement/development, as well as the extensive work required to demonstrate safety and efficacy in order to obtain regulatory approval, early-stage biotech companies are often a long way away from bringing a new drug or therapy to market.

Unlike in many industries where a new company will have a product/service that can be readily commercialised to generate revenue, early stage biotech companies often find that they have a concept for a new product/treatment that could ultimately generate billions of dollars in sales annually, but have no obvious way to commercialise or finance the technology in the short-term.

This problem is compounded by the very large amount of capital required to advance a new drug or therapy from the pre-clinical stage to treating patients in the clinic. The Tufts Center for the Study of Drug Development (CSDD) estimates that it now costs more than USD 2.5 billion to bring a new drug to market.

The ability to attract investment is therefore critical for an early stage biotech company to thrive. In the absence of a tangible product, would-be investors will look at the potential future commercial revenue if the product or treatment makes it to market. The decision of whether or not to invest, and the scale of any investment, is based on how well the technologies that form the core of a company have been protected. This is where patents come in.

As the actual and potential scope of commercial exclusivity is the basis for the value proposition, investors look very closely at patent portfolios. Essentially, potential investors ask ‘what can this company do that no other company can do without their permission?’ Any serious investor will usually undertake thorough due diligence of the patent portfolio, looking not only the granted patents, but also at the pending patent applications, to understand what protection the company already has, and what they are seeking protection for.

Patents can also be useful for generating revenue in the short-term. Patents and patent applications can be sold, or licensed to other parties that wish to use the invention. Licensing agreements can also form the basis of collaborations with other companies or research institutions, which can in turn lead to improvements to the technology.

Having patent protection, or the opportunity to obtain patent protection, covering the core technology of the company, and being able to present a plan for generating future IP, can be key to the success of a biotech start-up.

#### Otherwise, ABR causes extinction.

Sachs ’14 (Jeffery; Professor of Sustainable Development, Health Policy and Management at Columbia University, Director of the Earth Institute at Columbia University and Special adviser to the United Nations Secretary-General on the Millennium Development Goals; 8/17/14; “Important lessons from Ebola outbreak”; http://tinyurl.com/kjgvyro; Business World Online)

Ebola **is the latest of many** recent **epidemics**, also **including** AIDS, SARS, H1N1 **flu, H7N9 flu**, and others. AIDS is the deadliest of these killers, claiming nearly 36 million lives since 1981. Of course, even larger **and more** sudden epidemics are possible, such as the 1918 influenza during World War I, which claimed50-100 million lives (far more than the war itself). And, though the 2003 SARS outbreak was contained, causing fewer than 1,000 deaths, the disease was on the verge of deeply disrupting several East Asian economies including China’s. **There are four crucial facts to understand about** Ebola and the other **epidemics**. First, **most emerging infectious diseases** are zoonoses, meaning that they **start in animal populations**, sometimes **with a genetic mutation that enables the jump to humans**. Ebola may have been transmitted from bats; HIV/AIDS emerged from chimpanzees; SARS most likely came from civets traded in animal markets in southern China; and influenza strains such as H1N1 and H7N9 arose from genetic re-combinations of viruses among wild and farm animals. New zoonotic diseases are inevitable as humanity pushes into new ecosystems (such as formerly remote forest regions); th**e** food industry creates **more** conditions for genetic recombination; and climate change scrambles natural habitats **and species interactions**. Second, **once a new infectious disease appears, its** spread through airlines, ships, megacities, and trade in animal products is likely to be extremely rapid. **These epidemic diseases are new markers of globalization, revealing** through their chain of death how **vulnerable the world has become** from the pervasive movement of people and goods. Third, the poor are **the first to suffer and** the worst affected. **The** rural **poor live closest to the infected animals that first transmit the disease**. They often hunt and eat bushmeat, leaving them vulnerable to infection. **Poor**, often illiterate, **individuals are generally unaware of how infectious diseases** -- especially unfamiliar diseases -- are transmitted, making them much more likely to become infected and to infect others. Moreover, given poor nutrition and lack of **access to basic** health services, their weakened **immune** systems are **easily** overcome by infections **that better nourished** and treated individuals **can survive**. And “de-medicalized” conditions -- with few if any professional health workers to ensure an appropriate public-health response to an epidemic (such as isolation of infected individuals, tracing of contacts, surveillance, and so forth) -- make initial outbreaks more severe. Finally, **the required** medicalresponses, including diagnostic tools and effective medications and vaccines, inevitably lag behind the emerging diseases. In any event, such tools must be continually replenished. This requires cutting-edge biotech**nology, immunology, and** ultimately **bioengineering** to create **large-scale** industrial responses (such as millions of doses of vaccines or medicines in the case of large epidemics). The AIDS crisis, for example, called forth tens of billions of dollars for research and development -- and similarly substantial commitments by the pharmaceutical industry -- to produce lifesaving antiretroviral drugs at global scale. Yet each breakthrough **inevitably** leads to **the** pathogen’s mutation, rendering previous treatments less effective. There is no ultimate victory, only a constant arms race **between humanity and disease-causing agents**.

### Adv CP – 1NC

#### The United States federal government should tax greenhouse gas emissions.

#### The United States federal government should jointly develop and publicize a suite of proportionate measures for response to military provocation in East Asia.

#### Carbon tax solves warming

Noah Kaufman et al 16, economist for the US Climate Initiative in the Global Climate Program, Michael Obeiter, Senior Associate in World Research Institute’s Global Climate Initiative, Eleanor Krause, Researcher and Analyst for World Research Institute’s Carbon Pricing program, “Putting a Price on Carbon: Reducing Emissions” January 2016, https://www.wri.org/sites/default/files/Putting\_a\_Price\_on\_Carbon\_Emissions.pdf

For the United States to meet its goal of over 80 percent emissions reductions by 2050, a transformation of the electricity sector is essential. This will occur only through the development and scaling of new technologies. Most studies of carbon pricing focus on the effects described above because they are relatively predictable. We can measure how consumer demand changes with electricity prices and how low-carbon supply options become more competitive when a carbon price is implemented. But CO2 stays in the atmosphere for hundreds of years and, while the climate is changing today, the worst damages from climate change are decades or centuries away. For that reason, the most important effects of carbon pricing occur over a long-term time scale. A major benefit of carbon pricing policies is that they encourage technological change, so the menu of cost-effective low-carbon alternatives available to producers and consumers will expand over time.

The process that drives technological change is complex and not entirely understood. It includes the invention of new technologies, improvements to existing technologies, and the adoption and diffusion of technologies throughout the economy (Jaffe et al. 2003). We refer to inducing technological change as a “very long-run” effect because it can take decades for new technologies to mature, but the advancements can occur quickly as well (particularly improvements and cost reductions for existing technologies).

Private businesses fund over 60 percent and perform over 70 percent of total R&D in the United States, with industry responsible for even larger portions of applied research and product development (Newell 2015). A carbon price increases incentives for private businesses to invest in low-carbon technologies because it affects the expected return on investments. A strong and predictable carbon price will ensure that the price of producing electricity with fossil fuels incorporates the costs to society of burning these fuels, thus making new low-carbon technologies more competitive if and when they become available. Larger anticipated market shares for low-carbon innovations imply greater expected returns on investments today. Investments flow toward opportunities with higher expected returns, so a carbon price encourages investments in low-carbon technologies, and these investments are what drive innovation.

Increased experience with low carbon technologies will also lead to productivity gains over time. This effect—often referred to as “learning by-doing”—is responsible for major decreases in the costs of solar photovoltaic energy in recent years (Bollinger and Gillingham 2014). Economists attribute a significant portion of the technological progress across the economy to learning-by doing (Arrow 1962).

Figure 5 summarizes the pathways by which a carbon price will lead to emissions reductions via technological change.

Economic theory and empirical evidence suggest that a strong and predictable carbon price is likely to increase the pace of technological development in the electricity sector by the pathways described in Figure 5. A recent study showed that industry leaders agree with this prediction (New Climate Economy 2014). Importantly, a carbon price encourages innovation without requiring accurate predictions regarding which technologies will be most cost-effective at reducing emissions. This is a major advantage because breakthroughs could emerge from any number of sources—for example, solar, wind, energy storage, nuclear, carbon capture, hydrogen fuel cells, advanced smart grids, or technologies as yet unknown.8 A carbon price encourages all clean-energy technologies simultaneously, thus eliminating the possibility of regulations diverting scarce resources to promote the “wrong” technologies.

#### The flexible response plank deters gray zone escalation with China

Morris et al. ’19 [Lyle J. Morris, Michael J. Mazarr, Jeffrey W. Hornung, Stephanie Pezard, Anika Binnendijk, Marta Kepe; senior policy analyst at the RAND Corporation; senior political scientist at the RAND Corporation, former professor and associate dean of academics; as president of the Henry L. Stimson Center at the U.S. National War College; 2019; “Gaining Competitive Advantage in the Gray Zone: Response Options for Coercive Aggression Below the Threshold of Major War”; <https://apps.dtic.mil/sti/pdfs/AD1077788.pdf>; RAND Corporation; accessed 3/23/21; TV]

In addition, the United States should identify and publicize a second bin of actions that would generate immediate and significant economic, informational, and diplomatic costs for the aggressor in the region and beyond, with the possibility of limited U.S. or allied military response in certain instances. Our review of gray zone contingencies suggests the following four candidates for such a roster of gray zone actions:

• Chinese land reclamation at Scarborough Shoal

• Chinese declaration and enforcement of an ADIZ over the entire SCS

• Chinese seizure of new features in the SCS

• large-scale cyberattack of U.S. allies or partners, including

– rendering critical public services inoperable or otherwise ineffective

– swaying the outcome of a democratic election (based on forensic evidence)

– threatening the domestic welfare in Europe or Asia.

To make its deterrence threats credible, the United States could take several other actions. Deterrence requires clarity and consistency, so once these targets of U.S. deterrent policy are in place, they must be reaffirmed in consistent public statements from senior U.S. officials. This is especially true of gray zone contingencies because potential aggressors have many reasons to believe that the United States might not respond. Whatever issues are selected for direct deterrence, they should be clearly enumerated and placed in public policy and strategy documents.

A critical component of any deterrence strategy involves close coordination with allies and partners. Joint response options involve first and foremost developing consensus on which gray zone actions fall into the “extreme aggression” bin and which do not. For the ones that are identified as falling outside of extreme aggression but within the second bin of aggression, joint response options must be discussed during bilateral visits. This requirement cannot be overemphasized. This would include highlighting, during heads-of-state and minister of defense meetings in Asia and Europe, the destabilizing nature of gray zone activities and proposing new or expanded U.S. responses to be considered with the ally or partner. 9 Once the gray zone activities in these two narrow bands are decided, national security bureaucracies at all levels must hone bilateral communication mechanisms to ensure efficient and timely responses, considering the strategic communications, diplomatic, military, and economic dimensions of policymaking.10

To strengthen the will and capability to fulfill these threats, the United States should conduct a larger set of exercises with allies and partners to test responses to gray zone scenarios. This could include local military demonstrations—such as flyovers of Scarborough Shoals and Second Thomas Shoal, transit operations in the ECS, and additional rotational forces circulating through the Baltics—specifically targeted to reinforce the credibility of the enumerated deterrent threats. These types of activities, as well as specific U.S. playbook-type responses, are discussed in more detail in Chapter Six.

Finally, the United States can make modest investments in capabilities designed to support such gray zone contingencies. The United States could benefit from an enhanced ability to respond with paramilitary forces short of formal military escalation, including coast guard and law enforcement capabilities. It could also sell more advanced weapons to allies and partners in identified deterrent situations.

### 1NC – LPE K

#### 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.

Nathan **TANKUS** Research Director Modern Monetary Network **AND** Luke **HERRINE** PhD Candidate @ Yale Law, JD NYU & Former Clerk Second Circuit of Appeals **’21** “Competition Law as Collective Bargaining Law” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3847377> p. 1-3

­ “[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 m**arkets 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.

#### We need a paradigmatic shift from perfect competition to political-economic governance. Antitrust allocates rights to coordinate economic activity. The aff uses the baseline of perfect competition to match antitrust laws to micro-economic assumptions of rationally acting firms.

Luke **HERRINE** PhD Candidate @ Yale Law & Managing Editor LPE Bog **’21** https://lpeproject.org/blog/markets-collective-bargaining-all-the-way-down/

Coase, of course, laid the foundation for the transaction cost approach to conceptualizing the coordinating mechanisms of firms vs. markets. In “The Nature of the Firm”, he asked why there should be firms at all if production can be efficiently coordinated via unplanned markets in the neoclassical utopia. Coase answered that markets have their own costs–transaction costs–that can be reduced by bringing exchanges “into” the firm (i.e. converting them from trades to commands). The idea of transaction costs formed the foundation for the “New Institutional Economics” that provided the groundwork for Oliver Williamson’s **work on firm structure and antitrust** (which was hugely influential on Robert Bork, among others), for Jean Tirole’s theory of platforms as two-sided markets, for Douglass North’s groundbreaking work on economic history, for the “New New” Institutionalism of Acemoglu and Robinson, and for much else besides. It is out of “transaction costs” that neoclassical economists build their theories of institutions, because it is only possible to have enduring institutions (rather than a constantly shifting terrain of self-liquidating contractual relationships) if there is some “cost” preventing spot exchanges from regulating every contingency.

In her article “Antitrust as Allocator of Coordination Rights“, Paul **flips this script**. As the title indicates, Paul is also concerned with theorizing coordination. But she rejects Coase’s way of framing the question. Who cares how coordination would work in a neoclassical utopia? A “market”, as neoclassicals use the term, can never serve as a coordinating mechanism. To use the non-coordination coordination of that utopia as a **descriptive or normative baseline** for reality is to **confuse our analysis**. In the real world, some form of active coordination is always needed in both markets and firms. Antitrust law works together with corporate law, property law, contract law, et al. to determine which forms of coordination within the production and distribution system will be tolerated, which will be favored, and which will be prohibited. To determine how coordination works and how it might work, we must inductively examine how different patterns of coordination rights facilitate different production and distribution processes.

Paul’s article is the inverse of Coase’s in more ways than one. Coase started in the domain of social theory while ignoring law altogether. But it turned out that his social theoretic concepts provided a convenient way to make sense of the awkward mismatch between neoclassical models and instituted reality. Paul starts from the law, though with a critical eye to the way that neoclassical theory has been translated into legal doctrine.

It remains to build a social theory off of her legal groundwork.

Ulysse Lojkine recently suggested one way forward: to combine Paul’s framework with the work of Janos Kornai in a rejiggering of Marxian theories of surplus value and exploitation.

In a forthcoming contribution to an edited volume, Nathan Tankus and I articulate another. We incorporate Paul’s concept of coordination rights into market governance theories found in Postkeynesian economics, institutiontalist economics, and economic sociology in an effort to build out a Neochartalist micoreconomics. Nathan has a summary of one of the central arguments of the article over at his blog (to which readers of this blog should subscribe!). In the remainder of this post, I want to focus more generally on the concept of market governance and how it contributes to an alternative to the Coasian toy models that are so familiar to those of us who live in the world law-and-economics has created.

One way to get at the concept of market governance is to conceptualize the coordination of production and distribution as taking place within a “social field“. A social field exists when a group of individuals understand themselves as participants in a common social space–whether as collaborators, rivals, or some combination. For social fields to endure as stable spaces of action, participants must actively (though not necessarily consciously) **reproduce the terms on which they** **exist**: the rules and norms that govern social action, the rituals and social scripts that organize time, the discourses and knowledge practices that facilitate mutual understanding all only exist to the extent that they are continue to be followed, taught, enforced, etc. The terms on which action in a social field proceeds is the subject of a **settlement that benefits incumbents**, with insurgents benefiting from the stability produced by a settlement but chafing under its terms. This settlement can be challenged and destabilized, whether by insurgents, participants in neighboring fields, or others, whose efforts may be spurred or aided by a technological or organizational change that makes the previous settlement more difficult to sustain, by a collapse of an institution or field on which that field depended (e.g. a shift in a regulatory regime or a failure of some link in a supply chain), or some other deep shift of context with which the field must cope. But open contestation over the terms of the settlement cannot be constant, lest a field lack the stability necessary for coherent social action. Rather, most of the time contestation takes place in a more muted and gradual way, **leaving** most of the terms of **the settlement in place,** with more dramatic destabilization leading either to a field’s collapse or reorganization according to a new settlement.

If we understand production and distribution as taking place within overlapping social fields, we can conceptualize coordination and competition as always going on–always coexisting–at multiple levels. What neoclassical economics thinks of as “perfect” competition appears not as a plausible way of organizing a social space but as unmanageable chaos. It exists only times of social instability, when fields are in crisis. Most of the time, competition proceeds according to a social settlement that preserves the stability necessary for coherent social action (while preserving the advantage of incumbents). The pattern of coordination rights at any given time are part of this settlement.

To this general sociological account of economic action we can add heterodox economic accounts of modern production and distribution processes as money-mediated, with businesses operating as “going concerns”. As Jamee Moudud put it in a post on this blog,

Pricing policy is central to the going concern: setting an appropriate price over unit costs in an attempt to obtain a target rate of return has to generate adequate cash flow for the firm to grow. Crucially, the time gap between current debt obligations and future revenues always compels the firm to have an adequate stock of liquidity, or cash on hand to pay debts. This money-centered view of the firm is not consistent with the barter-based framework undergirding neoclassical economics which separates money from the “real” (production-based) economy.

In order to manage the inward and outward flows of money, participants in a production and distribution process must create a stable set of pricing practices–they must administer prices, to use a term from Gardiner Means. This can be done within a firm, but it can also be done across entities via horizontal coordination (in a cartel, via fair trade laws, or through other means). Thus, the practice of pricing (among other practices) can be understood as the subject of a settlement that stabilizes the social field in which money-mediated institutions operate.

With this lens, we can avoid comparing the real world to a single model of an ideal market and instead explore different ways that prices have been and might be stabilized. And we can then explore the good and bad of each form of price stabilization. Nathan and I begin this project in our article, surveying multiple contemporary forms of price stabilization (chartered exchanges vs. oligopolistic corporations, e.g.) and analyzing several historical forms (fairs, formal markets, early chartered exchanges). In doing so, we hope to illustrate a fundamentally different way of thinking about how coordination works, one that treats “microfoundations” as a project of attention to institutional detail rather than rational choice reconstruction

We think **a paradigm shift** along these lines will be crucial in connecting different LPE projects–for instance, the reconsiderations of money, banking, and financial regulation with the reconsiderations of antitrust, of public utility, and of corporate governance with the revisiting of the financial and organizational architecture of slave plantations. If we want to build on a different foundation than neoclassical economics, the anti-Coasian foundations of Paul’s groundbreaking work seems like a good place to start.

#### 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.

### 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.

#### No internal link – blockchain is an information storage technology – it can’t independently solve agriculture

#### End-user licensing reduces transaction costs and jurisdictional uniformity – key to innovation and 3GPP standard setting.

Ryan W. Koppelman, ALSTON & BIRD LLP, Attorney for Nokia Technologies, ’19, “UNOPPOSED MOTION OF NOKIA TECHNOLOGIES OY TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF NEITHER PARTY” https://www.qualcomm.com/media/documents/files/unopposed-motion-of-nokia-filed-as-amicus-brief-in-support-of-neither-party.pdf

There are good reasons for SEP owners to structure their licensing programs to license end-user products. This prevailing industry practice reduces transaction costs and complexities associated with negotiating and executing licenses at multiple points in the supply chain. It also avoids overlapping and duplicative licensing.

Additionally, it expedites access to SEPs for the entire supply chain, while also providing greater visibility to what products are actually licensed, for example, for auditing purposes. End-product level licensing thereby avoids potentially overlapping and duplicative licensing at different levels of the supply chain. While the general industry practice of licensing at the end-user product level developed well before issues of U.S. patent exhaustion came to the fore, the industry practice also accounts for any such concerns.9

With component-level licensing, licensees may contend that SEP owners need to splinter their portfolios and license subsets of their relevant SEP claims to various component suppliers at different levels, and then contend that alleged U.S. patent exhaustion alleviates any need for a license to other SEP claims at their point in the supply chain. If licenses must be issued at the component level, then component vendors may also argue that additional SEP claims are exhausted at other points in the supply chain (e.g., the enduser product level). End-user product licensing addresses these issues by providing a single point of license at the downstream end of the chain with rights covering both end-user products and component suppliers without conflicting claims of exhaustion at various levels.

Moreover, incompatible licensing obligations would create a patchwork of confusing requirements for SEP owners and implementers across various jurisdictions, and even among SEP owners depending on the member organizations through which they have participated in 3GPP and 3GPP2. Such a regime would lead to widescale confusion, higher transaction costs, and uncertainty, at best.10 And at worst, inconsistent licensing obligations could result in lower participation in standards-related activities and implementation worldwide, particularly as related to new technologies.

SEP licensing has been highly successful in practice: the current industry approach has minimized complexities, while maintaining efficiencies. Parties correspondingly have engaged in bilateral negotiations, leading to hundreds of licenses covering cellular SEPs and widespread implementation of the cellular standards. And consumers—who now have more access to new technologies—have benefited greatly. Novel interpretations of the ATIS and TIA IPR Policies to require component-level licensing in certain jurisdictions, however, may have negative effects on the continued success of standards development and, relatedly, SEP licensing.

#### SEP FRAND 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

#### No food wars.

Vestby ’18 [Vestby, Ida Rudolfsen, and Halvard Buhaug; 5-18-18; Doctoral Researcher at the Peace Research Institute Oslo; doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO; Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography; “Does hunger cause conflict?” Prio, https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/]

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests.

Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

#### Antitrust law cannot be applied to patents – asymmetries in terminology make application impossible

Feldman 8 - Arthur J. Goldberg Distinguished Professor of Law and Director of the Center for Innovation at UC Hastings. (Robin, "Patent and antitrust: Differing shades of meaning." Va. JL & Tech. 13 (2008): 1. <https://web.stanford.edu/dept/law/ipsc/pdf/feldman-robin.pdf>) //S.He

The relationship between patent law and antitrust law has challenged legal minds since the emergence of antitrust law in the late 19th century. In reductionist form, the two concepts pose a natural contradiction: One encourages monopoly while the other restricts it. The inherent tension can be framed in the following manner: Can a body of case law that grants monopoly opportunities be reconciled with a body of case law that curtails monopolization.2

To avoid uncomfortable dissonance, the trend across time has been to try to harmonize patent and antitrust law. Since the 1930s, for example, the Supreme Court has ruled that antitrust law operates only when patent holders reach beyond the boundaries inherent in the patent grant. 3

It is an inspired attempt at reconciling the two bodies of case law. Unfortunately, no one has been able to determine what boundaries are inherent in the patent grant, a confusion that has spawned almost a century of consternation and conflict over what exercise of power lies within the patent grant and what lies outside. In recent decades, harmonization efforts have led Congress and the courts to engage in a series of attempts, some aborted and some half-formed, to graft antitrust doctrines onto patent law. 4 In addition, many scholars have advocated various harmonization approaches. 5

These efforts, too, have failed to resolve the conflicts. This piece argues that the deviations between patent law and antitrust law run far deeper than courts and commentators recognize. The problem isn't just that one encourages monopoly while the other limits it. Rather, patent law and antitrust law often use the same concepts and terminology with differing meanings and contexts. In other words, it may appear that they are talking about the same things, and yet, they are not.

Our tendency to assume parallel meanings threatens any attempt to reconcile the two bodies of law. Most importantly, ignoring asymmetries can lead to both underprotection and overprotection of patent rights, as well as the improper application of antitrust laws. To highlight the problem, this piece explores a number of examples of differing meanings in hopes of promoting a more subtle understanding of the patent/antitrust terrain.

The relationship between patent and antitrust is particularly important at this moment in time. Patent law is experiencing a moment in the sun, both in the courts and in the public eye. In particular, after accepting relatively few patent cases over the last decade, the Supreme Court accepted a record number of patent cases last term and this term, including ones that touch on the boundaries of the exercise of power permitted to patent holders6 . The Supreme Court also has accepted an unusually large number of antitrust cases. As both patent and antitrust law enjoy the spotlight of focus, it is particularly important to develop a more nuanced understanding of the shades of meaning in patent law and how those differ from antitrust.

#### Antitrust can’t solve unfair patenting – lack of evidence and courts can’t enforce

Lemley 07, Mark A. William H. Neukom Professor of Law at Stanford Law School and the Director of the Stanford Law School Program in Law, Science & Technology, as well as a founding partner of the law firm of Durie Tangri LLP ("Ten things to do about patent holdup of standards (and one not to)." BCL Rev. 48 (2007): 149. <https://www.bc.edu/content/dam/files/schools/law/bclawreview/pdf/48_1/06_lemley.pdf>) //S.He

C. Antitrust Law Can’t Solve the Holdup Problem

Note what is not on this list: antitrust law. I have made ten more or less radical proposals for doing something about patent holdup, and not one of them mentions antitrust, except to say antitrust law should get out of the way of SSOs. That’s not an accident. I think antitrust law serves a valuable purpose, but where the holdup problem is concerned, it is a backstop. In this particular circumstance, it’s a backstop that’s going to apply only if private efforts in SSOs and IP law have already failed us.

Even then, it is not clear that antitrust law is up to the task of policing patent holdup.88 Courts may be reluctant to second-guess what they see as the judgment of patent law to give certain rights to patent owners.89 Certainly, some courts have shown undue deference to patents even in circumstances that more clearly violate the antitrust laws.90 Further, proving an antitrust violation requires detailed evidence of both causation and intent, something that may be difficult even when, as a policy matter, a patentee should not be permitted to extend its rights.91 We have yet to see a successful contested prosecution of standard-setting abuse.92 Antitrust law can play a role here in extreme cases, such as in In re Rambus, Inc.93 But if we design the patent law and the SSO rules correctly, those cases should not arise.

### Standard Setting

#### Patent law and breach of contract solve licensing dispute – antitrust is overkill.

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.

#### Circumvention – plan creates type 2 errors. FTC defines “reasonable” clumsily because they lack expertise.

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

#### No solvency – injunctive relief can’t be enforced in China.

Ben Bradshaw et al is a par tner and Julia Schiller a counsel in the Washington, DC office of O’Melveny & Myers LLP, Remi Moncel is an associate in O’Melveny’s San Francisco office, ’17, "International Comity in the Enforcement of U.S. Antitrust Law in the Wake of in Re Vitamin C," Antitrust 31, no. 2 (Spring 2017): 87-93

Having found that Chinese law required defendants to violate U.S. antitrust law, the Second Circuit went on to consider whether the remaining factors in the Timberlane/ Mannington Mills balancing test weighed in favor of dismissal. The court concluded that they did.32 Of particular note, the court found that while the plaintiffs may have been unable to obtain a Sherman Act remedy in another forum, complaints as to China’s export policies could be adequately addressed through diplomatic channels and the World Trade Organization, of which both the United States and China are members.33 The court found it significant that there was no evidence that the defendants acted with the express purpose or intent to affect U.S. commerce or harm businesses in particular. Moreover, the regulations at issue were intended to assist China in its transition from a staterun economy and to remain a competitive participant in the global Vitamin C market.34 Finally, the court recognized that according to MOFCOM the exercise of jurisdiction had already negatively affected U.S.-China relations, and it would be unlikely that the injunctive relief obtained by the plaintiffs in the district court would be enforceable in China, just as a similar injunction issued in China against a U.S. company would be difficult to enforce in the United States.35 Upon consideration of all of these factors, the court concluded that exercising jurisdiction was inappropriate and dismissed the case.

#### 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.

#### No impact to Chinese tech dominance.

QING WANG, PROFESSOR OF MARKETING & INNOVATION, UNIVERSITY OF WARWICK, ’19, "Is Huawei a security threat? Seven experts weigh in," Verge, https://www.theverge.com/2019/3/17/18264283/huawei-security-threat-experts-china-spying-5g

Huawei a security threat? There is no hard evidence to support this notion, and some of the reasons put forward for this notion are weak. For example, the background of the chairmen of Huawei. Huawei founder Mr. Ren Zhengfei once served in the People’s Liberation Army. As we know, serving in the army was one way of getting out of poverty for people in the countryside, which is where Mr. Ren is from. His time in the army was a short one and he was not in any important position.

In terms of the background of the company, unlike state-owned enterprises such as China Mobile and China Railway Corporation, Huawei is a private enterprise, like Alibaba, Tencent, and Haier, that emerged from the economic reform of China in the 1980s. These enterprises would have never existed, let alone grew, if there was no economic reform and move from planned economy to market economy. State-owned enterprises operate differently from private enterprises. The CEOs of state-owned enterprises are government officials and are directly appointed by the government; they are the products of the old communist legacy. On the other hand, the CEOs of the private enterprises are either the founders themselves, or their offspring who succeed their family businesses. These enterprises have developed their technological capabilities and business acumen through market mechanisms both inside and outside China, and adopted the same business practice and competed with their Western counterparts without preferential treatment from the government. At most, government resources and supports are directed to the state-owned enterprises because they are no longer fit for the new market economy.

For someone like me who has studied emerging market enterprises for decades, Huawei is the textbook case of a great company in the making; unfortunately, it has fallen victim to the anti-globalization policy and sentiment of the US and the ongoing trade war with China. Huawei has been accused of close or even dubious relationships with the Chinese government — hence, a security threat to the Western world. It is true that now that these companies have become competitive in the global market, creating jobs and tax revenue for the government, the government is keen to see that their success can continue. If anything, it is in the interest of Huawei and the government to see the reputation and technological leadership continue rather than being ruined by scandals such as espionage.

# 2nc

### Struck down

#### Doesn’t violate Dormant Commerce Clause.

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

A. Doctrinal Limits of State Enforcement?

The first broad category of explanations for the failure of early state antitrust enforcement is doctrinal. Under such arguments, irrespective of states' intentions, they lacked sufficient legal power to pursue meaningful antitrust enforcement. In turn, this category is divided into three lines of attack: (1) arguments that the dormant Commerce Clause prevented states from regulating the trusts; (2) arguments that the Fourteenth Amendment's Due Process Clause precluded effective state antitrust enforcement; and (3) arguments that, on their own terms, the text of state statutes did not permit the effective prosecution of antitrust violations. Each of these claims is considered below.

1. The Dormant Commerce Clause

A first doctrinal argument stems from the so-called "Dormant Commerce Clause." Under Dormant Commerce Clause jurisprudence, states are forbidden from legislating when doing so would have a significant adverse effect on interstate commerce. 7 3 Analyzing this doctrine, some have argued that early state antitrust laws were in constitutional peril from the start, since enforcing them might impose unacceptable economic effects beyond state borders. 74

There is no doubt that lawyers of the 1890s thought certain types of economic activity could be off-limits to state antitrust enforcement: indeed, this assumption is partially what motivated the passage of the Sherman Act. 75 However, these categories were not very broad and, therefore, would not have substantially reduced the capacity for state-level enforcement. To the contrary, the Commerce Clause jurisprudence of this period was, if anything, hostile to federal, not state, interventions. Perhaps the leading example of this tendency is the 1895 case of United States v. E. C. Knight Co. 76 There, the federal government brought a Sherman Act prosecution against a group of major sugar manufacturers, all operating within Pennsylvania. Although these manufacturers collectively possessed an enormous share of the sugar market, the Court found this challenge to be beyond the scope of the Commerce Clause, finding the factories were engaged merely in "manufacture," and not in the transport of goods across state lines. 7 7 Yet in doing so, at least some believe that the Court was motivated not so much by a laissez-faire defense of corporate wealth, but by an effort to buttress state authority over the intrastate operations of interstate combinations.78

Accordingly, throughout the period at issue in this analysis, it would have been most logical to conclude, as a doctrinal matter, that state power to regulate the economy, even if such regulations impacted events beyond state borders, was quite robust. Indeed, this point would be confirmed by the Supreme Court in Justice Holmes' opinion in Standard Oil Co. of Kentucky v. Tennessee.7 9 In that case, a Kentucky-based corporation appealed from a conviction under Tennessee's state antitrust statute, arguing that under the Constitution, a state's courts could not levy criminal penalties against an out-of-state corporate entity. 0 In particular, it argued such penalties would violate the Dormant Commerce Clause because it would constitute one state imposing impermissible regulations across state lines. 1 The Court disagreed, instead finding that each state clearly had jurisdiction to regulate economic effects caused within its jurisdiction, even if caused by out-of-state actors:

The present statute deals with the conduct of third persons, strangers to the business. It does not regulate the business at all. It is not even directed against interference with that business specifically, but against acts of a certain kind that the state disapproves in whatever connection. The mere fact that it may happen to remove an interference with commerce among the states as well with the rest does not invalidate it. It hardly would be an answer to an indictment for forgery that the instrument forged was a foreign bill of lading, or for assault and battery, that the person assaulted was engaged in peddling goods from another state. How far Congress could deal with such cases we need not consider, but certainly there is nothing in the present state of the law, at least, that excludes the states from a familiar exercise of their power.8 2

To be sure, this power would be limited since "Congress would have understood that state imposition or regulation of direct restraints of interstate commerce would violate the Dormant Commerce Clause."83 However, on the whole, the power available would have been considerable, especially since, as discussed below, America's economy at this time was far more concentrated at the state level anyway.84 Thus, the Dormant Commerce Clause jurisprudence of this era would not have seemed to be a fatal obstacle to effective state antitrust enforcement.

#### Court won’t strike down on Commerce Clause grounds.

Madden ’16 [Sean; JD Candidate @ Campbell University School of Law; “Out of Bounds: Commerce Clause Protection from State Antitrust Statutes for Regional Athletic Conferences,” *Campbell Law Review* 38(1), p. 109-130; AS]

State courts in the first half of the twentieth century construed their antitrust statutes to exclude interstate commerce from their reach, based largely on an idea of mutually exclusive sovereignties. 48 As federal constitutional law shifted to allow Congress to reach intrastate activity,49 the notion of mutually exclusive sovereignties began to dissipate and state courts reanalyzed earlier constructions of their antitrust laws.50 Consequently, state courts began to broaden the scope of their antitrust statutes, holding that their antitrust laws could reach both interstate and intrastate activities. 5

However, the Commerce Clause does not nullify the application of a state antitrust law simply because the statute can reach and may have effects beyond state lines.52 Instead, the general rule, discussed in Pike v. Bruce Church, Inc.,53 is "[w]here the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits."5 4 Thus, the court must balance the putative local benefit of a state's antitrust act against the burden it places on interstate commerce.

State antitrust laws have held up against claims that they violate the Commerce Clause.56 In United Nuclear Corp. v. General Atomic Co.,5 the New Mexico Supreme Court affirmed the trial court's decision that General Atomic Company (GAC) violated New Mexico's antitrust laws despite arguments from GAC that the state's antitrust laws violated the Commerce 58 Clause. In that case, the plaintiff sued GAC alleging that its contract to supply a public utility company with uranium was in violation of New Mexico's state antitrust laws. 59 GAC first contended that the Commerce Clause bars the application of state antitrust law where the activities in question are overwhelmingly in interstate commerce.60 Citing a long line of cases, the court dismissed that argument, holding that state antitrust laws can "reach up to include the regulation of interstate commerce." 6

Next, GAC, relying in part on the Supreme Court's decision in Southern Pacific Co. v. Arizona,62 argued that the uranium market was a national market that "must be addressed uniformly by the federal government." 63 The New Mexico Supreme Court, however, rejected GAC's argument,64 relying on the United States Supreme Court's decision in the similar case of Exxon Corp. v. Governor of Maryland.65 There, the Supreme Court rejected a similar argument posed by Gulf Oil and other oil companies with respect to the national scope of the petroleum market. 66 In response to the argument, the Supreme Court stated that the Commerce Clause would only preempt an entire field when a "lack of national uniformity would impede the flow of interstate goods."67 In Exxon however, the Supreme Court found that whatever cost the application of state antitrust law would have it did not warrant Commerce Clause 68 preemption.

#### No preemption in antitrust.

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

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

### Expertise

#### Coordination with private counsel solves resource/expert problems

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

Coordination between state enforcers and private counsel

In general, there often is an overlap between the victims of antitrust violations that state attorneys general seek to represent when suing for damages in their parens patriae capacity and those that private class action counsel seek to represent. This overlap creates the opportunity for close coordination as well as direct conflict. On the one hand, this overlap in ‘clients’ can lead to significant conflict because state antitrust enforcers and class counsel ‘can differ sharply in their respective goals, approaches, and incentives’.

On the other hand, this overlap in ‘clients’ can result in significant coordination because state antitrust enforcers and private counsel can realise meaningful efficiencies by working together during fact and expert discovery, and can ultimately obtain a better result by ‘presenting a united front in settlement discussions’. In addition, state antitrust enforcers can benefit from having access to class counsel’s ‘more experienced trial attorneys and readier access to economic experts’. In turn, class counsel can utilise the state antitrust enforcers’ ‘pre-complaint discovery’ to defeat any motions to dismiss and implement an effective fact and expert discovery plan. Moreover, class counsel can avoid various class certification issues when state attorneys general invoke their parens patriae authority.

Oftentimes, the degree of coordination between state antitrust enforcers and class counsel will depend on various factors, such as the stage of the case, the state attorneys general and private lawyers involved in the case, and each group’s perceptions of possible outcomes. For instance, state antitrust enforcers are generally less inclined to coordinate with class counsel where class counsel is perceived as simply filing a follow-on action that seeks to piggyback off the work conducted by government enforcers during their investigation and litigation. In contrast, state attorneys general are more inclined to coordinate with class counsel that has made significant investments in developing the case and demonstrated a genuine desire to secure the best outcome for consumers rather than simply maximising their fee award.

The e-Books Litigation is a recent example of effective coordination between state attorneys general and class counsel that resulted in consumers receiving nearly US$600 million in direct repayments from the defendants. Another example of effective coordination between state attorneys general and class counsel are the lawsuits brought by 23 state attorneys general and private class counsel related to a vitamin price-fixing conspiracy that resulted in US$305 million in settlements for indirect purchasers.

#### Multistate task forces solves coordination and enforcement

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

Coordination among state antitrust enforcers

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

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

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

### 5 – state AGs

#### State coordination is more efficacious than the fed.

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

3. State Statutory Text

A final doctrinal argument is the state antitrust statutes themselves were simply insufficiently vigorous to allow for effective prosecution.94 Proponents of this approach sometimes latch on to language perceived as unduly verbose or anachronistic to suggest that the statutes in question would not have offered a viable enforcement mechanism.95 This interpretation, however, seems misguided. Instead, if anything, the language of early state antitrust statutes offered more efficacious redress than the federal analog. As Werner Troesken observes:

As for enforcement mechanisms, the Sherman Act was limited to authorizing the U.S. Attorney General to enforce the law. State antitrust laws threatened their attorneys general with imprisonment and fines for failure to enforce antitrust violations (Kansas); allowed attorneys general to keep a percentage of all fines won in antitrust cases (Iowa, Missouri, Nebraska, and North Carolina); and required all businesses in the state to regularly file affidavits swearing they were not associated with any illegal combinations (Illinois, Maine, Missouri, South Carolina, and Texas). If a business failed to file such an affidavit, it risked incurring a large fine or having its corporate charter revoked. One state (South Dakota) required its attorney general to file suit whenever they received a sworn affidavit from a private citizen declaring he had been harmed by a monopolistic combination . . . . Where the Sherman Act was vague and narrow, state antitrust laws were precise and sweeping, expressly prohibiting a broad class of potentially anti-competitive [conduct].96

It is thus highly unlikely that the specific language of state antitrust statutes account for such widespread state inactivity. Moreover, this conclusion is further supported by two crucial pieces of evidence. First, the data gathered in Part II does not reveal a pattern of total inactivity. Instead, it reveals that in at least some states, statutory prosecutions were both viable and consequential. Second, even as state enforcement languished, private suits brought under state antitrust law were brought considerably more frequently, 97 suggesting statutory text sufficient to viably address antitrust violations.

### 6 – Theory

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

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

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

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

### case

#### 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. If Appellant’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.

# 1nr

### 1NR – Impact

#### Magnitude – nuclear war doesn’t cause extinction.

McDonald 19, writer and geography PhD student at University of Oxford studying the intersection of grassroots movements and energy transition. (Samuel Miller, 1-4-2019, “Deathly Salvation”, *The Trouble*, https://www.the-trouble.com/content/2019/1/4/deathly-salvation)

A devastating fact of climate collapse is that there may be a silver lining to the mushroom cloud. First, it should be noted that a nuclear exchange does not inevitably result in apocalyptic loss of life. Nuclear winter—the idea that firestorms would make the earth uninhabitable—is based on shaky science. There’s no reliable model that can determine how many megatons would decimate agriculture or make humans extinct. Nations have already detonated 2,476 nuclear devices. An exchange that shuts down the global economy but stops short of human extinction may be the only blade realistically likely to cut the carbon knot we’re trapped within. It would decimate existing infrastructures, providing an opportunity to build new energy infrastructure and intervene in the current investments and subsidies keeping fossil fuels alive. In the near term, emissions would almost certainly rise as militaries are some of the world’s largest emitters. Given what we know of human history, though, conflict may be the only way to build the mass social cohesion necessary for undertaking the kind of huge, collective action needed for global sequestration and energy transition. Like the 20th century’s world wars, a nuclear exchange could serve as an economic leveler. It could provide justification for nationalizing energy industries with the interest of shuttering fossil fuel plants and transitioning to renewables and, uh, nuclear energy. It could shock us into reimagining a less ~~suicidal~~ civilization, one that dethrones the death-cult zealots who are currently in power. And it may toss particulates into the atmosphere sufficient to block out some of the solar heat helping to drive global warming. Or it may have the opposite effects. Who knows? What we do know is that humans can survive and recover from war, probably even a nuclear one. Humans cannot recover from runaway climate change. Nuclear war is not an inevitable extinction event; six degrees of warming is.

#### Climate change creates multiple scenarios for extinction – every degree matters

Pachauri & Meyer 15 (Rajendra K., Chairman of the IPCC, Leo, Head, Technical Support Unit of the IPCC, were the editors for this IPCC report, “Climate Change 2014 Synthesis Report,” IPCC, pg. 151, http://epic.awi.de/37530/1/IPCC\_AR5\_SYR\_Final.pdf IPCC, Geneva, Switzerland)

Risk of climate-related impacts results from the interaction of climate-related hazards (including hazardous events and trends) with the vulnerability and exposure of human and natural systems, including their ability to adapt. Rising rates and magnitudes of warming and other changes in the climate system, accompanied by ocean acidification, increase the risk of severe, pervasive and in some cases irreversible detrimental impacts. Some risks are particularly relevant for individual regions (Figure SPM.8), while others are global. The overall risks of future climate change impacts can be reduced by limiting the rate and magnitude of climate change, including ocean acidification. The precise levels of climate change sufficient to trigger abrupt and irreversible change remain uncertain, but the risk associated with crossing such thresholds increases with rising temperature (medium confidence). For risk assessment, it is important to evaluate the widest possible range of impacts, including low-probability outcomes with large consequences. {1.5, 2.3, 2.4, 3.3, Box Introduction.1, Box 2.3, Box 2.4} A large fraction of species faces increased extinction risk due to climate change during and beyond the 21st century, especially as climate change interacts with other stressors (high confidence). Most plant species cannot naturally shift their geographical ranges sufficiently fast to keep up with current and high projected rates of climate change in most landscapes; most small mammals and freshwater molluscs will not be able to keep up at the rates projected under RCP4.5 and above in flat landscapes in this century (high confidence). Future risk is indicated to be high by the observation that natural global climate change at rates lower than current anthropogenic climate change caused significant ecosystem shifts and species extinctions during the past millions of years. Marine organisms will face progressively lower oxygen levels and high rates and magnitudes of ocean acidification (high confidence), with associated risks exacerbated by rising ocean temperature extremes (medium confidence). Coral reefs and polar ecosystems are highly vulnerable. Coastal systems and low-lying areas are at risk from sea level rise, which will continue for centuries even if the global mean temperature is stabilized (high confidence). {2.3, 2.4, Figure 2.5} Climate change is projected to undermine food security (Figure SPM.9). Due to projected climate change by the mid-21st century and beyond, global marine species redistribution and marine biodiversity reduction in sensitive regions will challenge the sustained provision of fisheries productivity and other ecosystem services (high confidence). For wheat, rice and maize in tropical and temperate regions, climate change without adaptation is projected to negatively impact production for local temperature increases of 2°C or more above late 20th century levels, although individual locations may benefit (medium confidence). Global temperature increases of ~4°C or more 13 above late 20th century levels, combined with increasing food demand, would pose large risks to food security globally (high confidence). Climate change is projected to reduce renewable surface water and groundwater resources in most dry subtropical regions (robust evidence, high agreement), intensifying competition for water among sectors (limited evidence, medium agreement). {2.3.1, 2.3.2} Until mid-century, projected climate change will impact human health mainly by exacerbating health problems that already exist (very high confidence). Throughout the 21st century, climate change is expected to lead to increases in ill-health in many regions and especially in developing countries with low income, as compared to a baseline without climate change (high confidence). By 2100 for RCP8.5, the combination of high temperature and humidity in some areas for parts of the year is expected to compromise common human activities, including growing food and working outdoors (high confidence). {2.3.2} In urban areas climate change is projected to increase risks for people, assets, economies and ecosystems, including risks from heat stress, storms and extreme precipitation, inland and coastal flooding, landslides, air pollution, drought, water scarcity, sea level rise and storm surges (very high confidence). These risks are amplified for those lacking essential infrastructure and services or living in exposed areas. {2.3.2} Rural areas are expected to experience major impacts on water availability and supply, food security, infrastructure and agricultural incomes, including shifts in the production areas of food and non-food crops around the world (high confidence). {2.3.2} Aggregate economic losses accelerate with increasing temperature (limited evidence, high agreement), but global economic impacts from climate change are currently difficult to estimate. From a poverty perspective, climate change impacts are projected to slow down economic growth, make poverty reduction more difficult, further erode food security and prolong existing and create new poverty traps, the latter particularly in urban areas and emerging hotspots of hunger (medium confidence). International dimensions such as trade and relations among states are also important for understanding the risks of climate change at regional scales. {2.3.2} Climate change is projected to increase displacement of people (medium evidence, high agreement). Populations that lack the resources for planned migration experience higher exposure to extreme weather events, particularly in developing countries with low income. Climate change can indirectly increase risks of violent conflicts by amplifying well-documented drivers of these conflicts such as poverty and economic shocks (medium confidence). {2.3.2}

### 1NR - UQ

#### Passes now – pressure from leadership and stimulus.

Julia Cherner 9/12/21. Desk Assistant at ABC News. “Manchin, Sanders at odds over $3.5 trillion budget resolution”. ABC News. Sept 12 2021. https://abcnews.go.com/Politics/strategic-pause-budget-bill-sen-joe-manchin/story?id=79961426

Sanders emphasized the scope of the reconciliation bill, arguing that polling has shown now is the time for Congress to tackle these challenges through passing both bills.

"Working families cannot afford child care for their kids, young people cannot afford to go to college," Sanders said. "And then on top of all of that, the scientific community is telling us that we're looking at a cataclysmic crisis in terms of climate -- Oregon is burning, California is burning."

"I think we can do all of this," Sanders added. "We can do the physical infrastructure. We can do the reconciliation bill, create millions of good jobs, and finally tell the American people that we are going to stand up for working families."

Stephanopoulos pressed Sanders on the slim Democratic majority in the Senate.

"There's no margin for error in the Senate. If you vote against it, it doesn't pass. If Sen. Manchin votes against it, it doesn't pass. I mean -- so, you're likely, if you both stick to your positions, you're going to end up with nothing," Stephanopoulos said.

"That is a possibility, and I think that would be a disaster for the American people," Sanders responded. "But you've got the president of the United States, you've got leadership in the House and the Senate … you know, this is not Joe Manchin versus Bernie Sanders."

Sanders added that the "real danger" is that the infrastructure bill will not pass in the House, as some progressive Democrats have pledged to not vote for it unless the budget bill is on the table as well.

Ultimately Sanders said he is optimistic about the bills’ prospects, pointing to the successful passage of the American Rescue Plan, Biden’s first major legislative victory granting $1.9 trillion to stimulus payments and coronavirus economic relief.

"We worked together (on the American Rescue Plan), we did, and I think we're going to do it again," Sanders said.

#### There’s consensus.

Sean Sullivan et. al 9/12/21. Reporter covering national politics. Marianna Sotomayor reports on Democratic and Republican leadership in the House. Tyler Pager is a White House reporter. Jeff Stein is the White House economics reporter. “Democrats sorting through painful sacrifices as social bill enters final stretch”. Washington Post. Sept 12 2021. https://www.washingtonpost.com/politics/democrats-sorting-through-painful-sacrifices-as-social-bill-enters-final-stretch/2021/09/11/49c4106c-122f-11ec-bc8a-8d9a5b534194\_story.html

In some ways, the debate is less about individual policies than the broader identity of a Democratic Party that has moved decisively to the left, a shift that is exciting liberals and worrying moderates.

Rep. Stephanie Murphy (D-Fla.), a centrist, pledged during last week’s Ways and Means Committee meeting to vote against each element of the bill because the rushed process fails to account for “how much we’re spending, how much we’re raising, how we’re spending some of the money, and how we’re raising any of the money.”

Still, most Democrats are optimistic they will reach a deal, saying their members recognize the stakes — and the price of failing to seize the opportunity.

“Windows open and windows close for reasons you can’t control,” said former senator Christopher J. Dodd of Connecticut, a Biden friend. “This is a moment to do something in a meaningful way. You don’t let a moment pass.”

### 1NR – PC Key

#### Biden’s using PC on the budget – that gets it across the finish line.

Amie Parnes and Morgan Chalfant 9/15/21. Reporters. “Democrats say Biden must get more involved in budget fight”. The Hill. Sept 15 2021. https://thehill.com/homenews/administration/572295-democrats-say-biden-must-get-more-involved-in-budget-fight

Democrats expect to see President Biden get more intimately involved in the messy budget reconciliation process in the House and Senate to ensure that the $3.5 trillion social spending package gets across the finish line.

Biden for the last month has been occupied by major crises — namely the U.S. withdrawal from Afghanistan and the COVID-19 pandemic — and has largely left it to congressional officials to work out the details of the package.

Yet to get the measure through a Congress narrowly held by his party, Democrats believe Biden needs to publicly and privately put more muscle into resolving disputes within his party.

“He has to get involved for a lot of reasons,” said one Democratic strategist who talks to the White House. “He doesn’t want to apply pressure, but he knows he has to in his own way. This is a massive legacy item for him.”

“He doesn’t want it to be winnowed down like Obama’s bill,” the strategist said, referring to the 2009 stimulus legislation.

That legislation cost more than $700 billion, a huge amount at the time, but might have been even larger if Democrats had been able to win more support from Republicans and centrists in their own party.

Biden will take a big step toward getting more involved on Wednesday. He is expected to meet separately with Sen. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) to hear their concerns about the reconciliation package.

Those close to the White House say Biden will continue speaking to key players involved in the congressional battle. He’s likely to travel and speak about the legislation when the time is right, the sources said.

Biden has already been plugging his economic agenda, and specifically the aspects of it that address climate change, during his first official trip out West as president this week.

“I think Biden will be involved but probably more behind the scenes until he needs to apply public pressure. We’re still in the posturing and positioning phase right now,” added Democratic strategist Joel Payne.

Payne predicted Biden would likely do some kind of “road show” to sell the package.

“I think when he needs to, he will use the bully pulpit of the White House to apply pressure and get it over the finish line,” he said.

The White House says that Biden and other officials are regularly engaged with lawmakers on Capitol Hill about his agenda. But officials have kept Biden’s conversations with lawmakers largely private, including avoiding saying whether he’s spoken to Manchin, a centrist who has aired complaints about the $3.5 trillion price tag of the reconciliation package.

“The president and White House officials are in constant communication and contact with members on the Hill, their staff, and this has been, for us, all hands on deck in making sure the president’s agenda moves forward,” White House principal deputy press secretary Karine Jean-Pierre told reporters aboard Air Force One on Tuesday, after declining to confirm any calls with Manchin. “We’re continuing to do that.”

The success of the reconciliation bill depends on getting support from centrist Democrats like Manchin, Sinema and Sen. Jon Tester (Mont.) without alienating progressives, who see $3.5 trillion as the baseline price tag for the reconciliation package.

It’s clear that the ongoing negotiations are on Biden’s mind. During a speech Monday evening in Sacramento, he swatted away concerns about the package’s price tag, saying that it would be “as much as $3.5 trillion” but that it would be spread over 10 years.

“He supports $3.5 trillion, which is a bill that he proposed, legislation that he proposed, and he’s going to continue to work with Congress in pushing that agenda through,” Jean-Pierre said Tuesday, declining to say Biden’s words are an indication he is open to a smaller package.

Democrats say it will soon be necessary for Biden to get more publicly engaged in the process.

“The fact of the matter is, a lot of this stuff right now, properly, should be handled by Speaker [Nancy] Pelosi and Senate Majority Leader [Charles] Schumer. However, as we get deeper into the process, I only assume that the president is going to have to get more personally involved,” said Democratic strategist Jim Manley, who was a top aide to former Senate Majority Leader Harry Reid (D-Nev.).

Manley, like other Democrats, predicted that the package will ultimately fall below $3.5 trillion but that the number Manchin has floated‚ $1.5 trillion‚ won’t cut it.

“At some point the president himself is going to have to weigh in on that,” Manley said.

Speaking to reporters last week, Biden expressed confidence he could get Manchin on board.

“Joe at the end has always been there. He’s always been with me. I think we can work something out. I look forward to speaking with him,” Biden said.

Progressives who have expressed disappointment at what they’ve described as Biden’s insufficient engagement in the fight over voting rights legislation also expect to see the president spend more capital on muscling through a final package that doesn’t fall short on Democratic priorities.

Mary Small, the national advocacy director for progressive group Indivisible, said the expectation is that Biden is going to “go all in” to get the package across the finish line. That means he’ll be at least as dedicated to getting the reconciliation bill passed as he was to getting a bipartisan infrastructure deal, Small said.

During the infrastructure negotiations, Biden on multiple occasions hosted bipartisan lawmakers at the White House to discuss the potential deal. He visited Capitol Hill in July to meet with senators for lunch after Senate Democrats agreed to a top-line $3.5 trillion figure for the budget package.

#### He’s all in AND PC is the key determinant.

Michael Rainey 9/15/21. Managing editor. “Biden Jumps Into Democrats’ Big Budget Battle”. The Fiscal Times. Sept 15 2021. https://www.thefiscaltimes.com/2021/09/15/Biden-Jumps-Democrats-Big-Budget-Battle

With House Democrats rushing to meet a September 15 deadline for writing the $3.5 trillion spending package that contains much of President Joe Biden’s economic agenda, the president himself jumped into the political battle that could determine whether the proposed legislation ever becomes law.

Biden met with Sen. Kyrsten Sinema (D-AZ) in the morning on Wednesday to discuss the effort and planned to meet with Sen. Joe Manchin (D-WV) later in the day. Both lawmakers have expressed deep reservations about the size and scope of the Democratic proposal, and with no votes to spare in an evenly divided Senate, they will have to be convinced to support the package if it’s to have any chance of passing.

The meetings confirm that Biden, the former senator, will be using his influence in Congress to move his agenda forward. As Rep. Pramila Jayapal (D-WA), chair of the Congressional Progressive Caucus, put it earlier this week, “We are going to need the White House to be all in” in order to get the bill passed.

#### Biden’s focusing PC on the budget – insider sources.

Brigid Kennedy 8/31/21. staff writer at The Week, graduate of Syracuse University's S.I. Newhouse School of Public Communications. “The Biden administration's post-Afghanistan 'political calculation'”. The Week. Aug 31 2021. https://theweek.com/joe-biden/1004367/the-biden-administrations-post-afghanistan-political-calculation

With the war in Afghanistan in the rearview (at least for now), President Biden and the White House are said to now be focusing on the COVID-19 crisis as well as the president's "sweeping economic agenda" as their means of tactically moving forward, Politico writes.

The "political calculation" is grounded in the notion that eventually, Americans will come to see the exit from Afghanistan as necessary, "even if they have doubts about its execution," per Politico.

Hopefully,"the president's ability to quickly shepherd his infrastructure and social spending plans through Congress" will negate or improve the recent drop in favorability that administration sources, outside allies, and some Democrats believe to be temporary and fixable.

"The path forward for [the White House] in the fall remains COVID and infrastructure," said Jennifer Palmieri, a former Obama staffer who is close to the Biden administration. "The most important facts about Afghanistan remain that he got the U.S. out, in terms of what the public cares about."

There is risk to simply waiting for the withdrawal to "fade from the headlines," Politico writes, but "ultimately, voters will judge the administration on economic recovery, job creation and help for working families — as well as the president's ability to get COVID under control," says John Anzalone, Biden's "chief pollster."

The passage of his economic agenda is sure to be difficult, and some lawmakers are concerned that bad news for the White House "on multiple fronts" might "complicate the legislative strategy." "This is a very delicate moment," said Rep. Emanuel Cleaver (D-Mo.).

Still, aides hope "to see new successes" with the return of Congress next week. Administration officials believe "time is on their side." And, hopefully, at least in the eyes of the White House, Americans come to the same Afghanistan conclusion Biden did. Read more at Politico.

#### PC is key to a big bill.

Chuck Todd et. al 8/20/21. moderator of "Meet The Press" and NBC News' political director. Mark Murray is a senior political editor at NBC News. Ben Kamisar is a political writer for NBC News. Benjy Sarlin is policy editor for NBC News. “Here's how Democrats could pay for their big reconciliation bill”. NBC News. Aug 20 2021. https://www.nbcnews.com/politics/meet-the-press/here-s-how-democrats-could-pay-their-big-reconciliation-bill-n1277245

WASHINGTON — With Democrats already sniping at each other over the size of their budget deal, expect a lot of fights in the coming weeks over how much to spend and especially how to finance it.

Here’s the upshot for Democrats, according to a new analysis by the Wharton School at the University of Pennsylvania: The money is there. Under a straight reading of Biden’s own proposals for new taxes, revenue raisers and savings, there should be $4.2 trillion over the next decade to cover the $3.5 trillion budget framework.

But Democrats are unlikely to stick to Biden’s plan to the letter, so analysts used the Penn Wharton Budget Model to produce “medium” and “low” revenue scenarios as well.

“We mostly defined the ‘high’ option to be what we think the administration's most ambitious goals are,” John Ricco, Associate Director of Policy Analysis at PWBM, told NBC News.

The “medium” scenario is $1.8 trillion, which is technically the amount that Democrats could raise while still spending the full $3.5 trillion under the letter of the budget resolution. In practical terms, though, moderates could thwart attempts to spend too far beyond the pay-fors. The “low” is about $1 trillion, enough to finance a stripped-down compromise. There are also potential pay-fors outside the scope of their analysis.

Some areas already appear likely to fall short of Biden’s initial requests. Sen. Joe Manchin, D-W.V., has said he prefers a 25 percent corporate tax rate to Biden’s 28 percent (a $376 billion difference). There’s Democratic skepticism towards Biden’s call for taxing capital gains as regular income for high earners, which would set the top rate at 43.4 percent, as well as his plan to require heirs to large fortunes to pay taxes on the prior gains.

The PW analysis includes a 28 percent capital gains rate in its “medium” scenario ($128 billion less). There’s also a $300 billion-plus range of savings from potential drug pricing reform plans, an area where Democrats in areas with a strong pharmaceutical industry presence could resist more far-reaching changes.

What separates the high-end revenue generators from the lower ones is that they often require more significant changes to the underlying system, rather than just turning the dial on tax rates up a notch. That likely will take more political capital to pull off.

“The ‘low’ is tweaking around margins, it’s low-hanging fruit, it’s not any major reform to how things work,” Ricco said. “It’s when you get to the more fundamental reform aspects where there are clear winners and losers within industries and among types of taxpayers that it becomes more of an issue.”

### 1NR – Top of Agenda

#### It’s TOA – vote before other stuff.

Lauren Fox 9/13/21. congressional correspondent for CNN. “Democrats on Capitol Hill face a crushing set of deadlines. Here's what's next.”. News Channel Nebraska. Sept 13 2021. https://metro.newschannelnebraska.com/story/44720460/democrats-on-capitol-hill-face-a-crushing-set-of-deadlines-heres-whats-next

The deadlines

Finalize the $3.5 trillion social safety net bill by Wednesday.

Pass that legislation through the House next week.

Vote on a separate, $1 trillion bipartisan infrastructure bill in the House by September 27.

Fund the government by October 1

Raise the debt ceiling by mid-October

#### It’s the priority.

Elizabeth Crisp 9/16/21. Washington Correspondent for Newsweek. “Where Does Democrats' $3.5 Trillion Social Safety Net Spending Proposal Stand?”. Newsweek. Sept 16 2021. https://www.newsweek.com/where-does-democrats-35-trillion-social-safety-net-spending-proposal-stand-1627060

President Joe Biden has been on an aggressive push to get his "Build Back Better" agenda through Congress in the coming weeks, but in-fighting among Democrats could further delay Biden's priority package.

### 1NR - Link

#### Silicon Valley money causes an intraparty brawl over the aff.

Rachael Bade et. al 7/14/21. political analyst for CNN, 10-year veteran of the congressional press corps. Eugene Daniels, Playbook author and White House correspondent. Eli Okun, Playbook producer and Playbook PM co-author. Garrett Ross, Playbook producer and Playbook PM co-author. “POLITICO Playbook PM: Progressive brawl over antitrust measures gets personal”. Jul 14 2021. POLITICO. https://www.politico.com/newsletters/playbook-pm/2021/07/14/progressive-brawl-over-antitrust-measures-gets-personal-493575

While we wait, a “Dems in disarray” story …

CPC ANTITRUST MEETING DEVOLVES INTO UGLY DISPUTE — When Congressional Progressive Caucus members jumped on the phone Tuesday for their weekly check-in, it was supposed to be a friendly space to ask Rep. DAVID CICILLINE (D-R.I.) about five bipartisan antitrust bills he shepherded through the House Judiciary Committee. It quickly turned into an ugly and personal brawl between the bills’ backers and Rep. ZOE LOFGREN, who represents a large chunk of Silicon Valley. Ryan Grim at The Intercept wrote about it this morning, and we’ve received quite a few calls about the fight, which has dominated watercooler chatter on the Hill.

Here’s what happened:

After several members expressed support for Cicilline’s antitrust bills during the call, Lofgren asked to be recognized and went on a lengthy diatribe.

— Lofgren said she thought Cicilline’s legislation was shoddy work advanced in a hasty, bungled process. She complained that there were only 11 days between the package’s introduction and the marathon 24-hour-plus markup process — which she chided her Judiciary colleagues for continuing into the wee hours of the morning.

— Lofgren talked about Big Tech’s financial support for her — and, by proxy, other Dems. “I’m from Silicon Valley. I have received support over the years from these companies,” Lofgren said, according to people on the call.

“The last time I actually spent any money on my own campaign was in ’96, when I sent a postcard,” she said. “All the money I raise is for other candidates. … Last Congress, I raised almost $7 million for other candidates. Whatever I’m raising, it’s going to them, not me.”

— Multiple members were floored that Lofgren would mention Big Tech’s financial support at all during the discussion, though some took her remarks as a prebuttal of accusations that she’s in the pocket of the industry.

Many of the Dems on the call were stunned and angry at Lofgren’s criticism of the process, which ended only after CPC Chair PRAMILA JAYAPAL (D-Wash.) jumped in to get her to stop talking. (Members typically get only about two minutes each on these all-hands calls, though Lofgren’s office disputes that she was given real time to make her policy points.) Jayapal mentioned that while Amazon is headquartered in her own district in Seattle, she’s not afraid to take on the industry.

— Cicilline was furious, and accused Lofgren of spouting “industry talking points” about his antitrust bills and insulting the work and intelligence of Judiciary Committee members.

“With all due respect, Zoe, we studied the marketplace for two years,” Cicilline said, noting that tech executives were invited to sit for public hearings and respond. “We listened and consulted with top antitrust experts, including [now-FTC Chair] LINA KHAN. We had hearings. … You can disagree with the bill, but it’s deeply offensive … to suggest our members don’t understand [the legislation].”

— Other progressives on the call backed up Cicilline, including Jayapal, House Judiciary Chair JERRY NADLER, House Democratic Conference Chair HAKEEM JEFFRIES and Reps. JOE NEGUSE, JAMIE RASKIN and ALEXANDRIA OCASIO-CORTEZ.

WHY THIS MATTERS: Everybody in politics loves a good intraparty brawl. But this fight is particularly timely given Biden’s moves to take on the tech industry, as seen in his appointments of lefty antitrust heroes like Khan to the FTC and TIM WU to the National Economic Council.

The CPC fight signals that Silicon Valley still enjoys support in both parties. Though many prominent conservatives have been quick to pick up the anti-Big Tech banner, some Republicans voted against the antitrust bills. Plus, Democratic leaders have signaled they’re not super jazzed about bringing this to the floor anytime soon. The tech industry has lots of money for campaigns, too.

LOFGREN ALLIES ARE STILL SMARTING FROM THIS EXCHANGE. We received messages Tuesday night suggesting that Lofgren was the one being attacked by her CPC colleagues, though most people on the call refuted that. Two people said that they suspected the CPC was trying to silence criticism, though CPC leaders did call on Lofgren to talk, knowing full well that she was a critic of the bills.

— Rep. RO KHANNA, another progressive from the Silicon Valley area, sent us a statement coming to Lofgren’s defense and shaming his CPC colleagues: “Quite a few members were appalled and offended by the personal attacks on Zoe Lofgren’s integrity. That has no place in our Caucus. Argue the merits, but do not launch ad hominem attacks about a person’s motives. I shared my feelings with Speaker [NANCY] PELOSI, ANNA ESHOO and others who, like me, have known Zoe for decades.”

#### Tech lobby is huge – McCarthy and Jordan.

Melanie Zanona et. al 6/23/21. congressional reporter and Huddle author at POLITICO. Olivia Beavers, reporter for POLITICO. Emily Birnbaum, reporter for POLITICO. “GOP riven by infighting over Big Tech crackdown”. POLITICO. June 23 2021. <https://www.politico.com/news/2021/06/23/gop-infighting-big-tech-crackdown-495605> [R-Ohio next to Jordan added for reference]

Further complicating the debate is the tech industry's status as one of the biggest political spenders in Washington. While lobbying is commonplace on Capitol Hill, GOP proponents of the antitrust proposal have still blamed “the D.C. swamp” for tainting Republicans’ views on it. They say Big Tech's advocates have been aggressively seeking to influence their positions — including Jeff Miller, an independent lobbyist linked to McCarthy who represents several tech clients.

Miller has been seeking out lawmakers, catching them in person or pressing them over the phone, to lobby them to oppose the legislation, according to multiple sources. One Republican said Miller left a particularly aggressive voicemail on a lawmaker’s phone.

“I have heard a couple of instances of lobbyists leaving voice messages that were really, in my opinion, unprofessional. They were demonstrating tempers and language that is inappropriate,” Buck said, though he declined to single out lobbyists by name.

Gooden echoed that sentiment to The Wall Street Journal, telling the publication last week: “Industry lobbyists in Washington are going absolutely crazy. I have received text messages and calls, some friendly and some not, but all very much against these bills.”

Miller is a registered lobbyist for both Apple and Amazon, two companies that the antitrust overhaul would directly affect. Apple has paid Miller $600,000 since he registered to lobby for the company in 2019, a significant sum for a company with a smaller K Street footprint than its tech industry peers.

Amazon Web Services, Amazon’s cloud-computing arm, has paid Miller $440,000 since he registered on its behalf in 2019. Miller has also been paid $250,000 since registering as a lobbyist for California Business Roundtable in 2020. The Roundtable counts Amazon CEO Jeff Bezos and Apple CEO Tim Cook as members.

Since 2018, when McCarthy was the second-highest ranking House Republican, Miller has given $82,500 to PACs affiliated with McCarthy and $46,100 to the GOP campaign arm, the National Republican Congressional Committee, for a total of $128,600, according to federal campaign finance records.

Meanwhile, McCarthy has received tens of thousands of dollars from Google, Amazon and Facebook, as well as the Koch Industries PAC, in recent years. The Koch companies' powerful network of advocacy organizations and trade groups is also lobbying against the bills, saying they would create too much government intervention in the economy.

Miller, however, is more than just a lobbyist: He also acts as a political adviser to McCarthy and has a long-standing personal relationship with the California Republican. Miller travels with the House GOP leader and has been known to appear at politically focused off-campus conference meetings.

One GOP lawmaker, who said Miller is clearly trying to influence policy, said rank-and-file members aren’t sure whether crossing the lobbyist means they are also crossing McCarthy.

“I don’t think anyone really knows the answer to that," this lawmaker added, addressing Miller candidly on condition of anonymity. "I suspect that Jeff Miller’s influence is greater in Jeff Miller's mind than Kevin McCarthy’s mind."

McCarthy’s allies counter that he has consistently railed against Silicon Valley and conservative bias in recent years. They maintain that his opposition to the package of antitrust bills is based on legitimate policy qualms — not political concerns or connections to Miller.

But the McCarthy-Miller nexus is not the only GOP-Big Tech connection drawing conservative criticism. Mike Davis, who formerly worked as the chief counsel of nominations for then-Senate Judiciary Chair Chuck Grassley (R-Iowa), is among the Republicans accusing Jordan [R-Ohio] of carrying water for Google. Jordan has received over $43,000 in donations from Google since 2005, according to campaign finance records, and Google’s parent company Alphabet was one of the top contributors to his campaign in 2020 with a $10,000 donation.

Jordan earlier this week sent a letter criticizing Microsoft, one of Google’s major rivals. “In case anyone was wondering if Jim Jordan's talking points against the bipartisan antitrust legislation were being written by Google, this is a huge tell,” Yelp’s senior vice president of public policy, Luther Lowe, said about the letter.