# 1NC

## Off

### 1NC – States CP

#### The fifty states and relevant subnational entities should establish a presumption of anticompetition for potential anticompetitive business practices in the technology sector.

#### 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 – Politics DA

#### Budget passes now – PC is key.

BBC 10-28-2021

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

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

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

Karaim 21

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

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

#### Key to avert climate change.

Chow 10-28-21

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

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

#### Warming causes extinction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 1NC – Regulate CP

#### The United States federal government should regulate the technology sector as a public utilities.

#### Regulation solves without linking to the econ DAs.

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

IV. CONCLUSION

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

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

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

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

### 1NC – FTC Tradeoff DA

#### FTC’s increasing enforcement in privacy now---it’s focused on algorithmic bias.

James V. Fazio 21. Special counsel in the Intellectual Property Practice Group at Sheppard, Mullin, Richter & Hampton LLP, with Liisa M. Thomas, 3/11. “What Is FTC’s Course Under Biden?” https://www.natlawreview.com/article/what-ftc-s-course-under-biden

The new acting FTC chair, Rebecca Kelly Slaughter, recently signaled that the FTC may increase enforcement and penalties in the privacy and data security realm. Slaughter pointed to several areas of focus for the FTC this year, which companies will want to keep in mind: Notifying Consumers About FTC Allegations: Slaughter referred favorably to two recent cases: (1) the Everalbum biometric settlement from earlier this year (which we wrote about at the time); and (2) the Flo Health settlement over alleged deceptive data sharing practices (which we also wrote about at the time). In drawing on these two cases, Slaughter indicated that in future cases the FTC intends to include as part of any settlement a requirement to notify customers of any FTC allegations. This, she said, would allow consumers to “vote with their feet” and help them decide whether to recommend their services to others. FTC Intent to Plead All Relevant Violations: According to Slaughter, another lesson the FTC is taking from the Flo case is to include in the cases it brings all potentially applicable violations of all relevant privacy-related laws. In the Flo case, Slaughter said the FTC should have pleaded a violation of the Health Breach Notification Rule, which requires that vendors of personal health records notify consumers of data breaches. Focus on Ed Tech and COPPA: Given the explosive growth of education technology during COVID-19, the FTC is conducting an industry sweep of the industry. Related to this, the FTC is reviewing its Children’s Online Privacy Protection Act Rule. This goes beyond the refresh the agency did of their FAQs earlier in the pandemic (which we wrote about at the time). For now, Slaughter reminds companies that parental consent is needed before collecting information online from children under the age of 13. Examination of Health Apps: The FTC will take a closer look at health apps, including telehealth and contact tracing apps, as more and more consumers are relying on such apps to manage their health during the pandemic. Overlap Between Competition and Privacy: Slaughter also indicated that it is worth looking at situations where there may be not only privacy concerns, but antitrust as well. Because the FTC has a dual mission (consumer protection and competition) she notes that it has a “structural advantage” over other regulators in that it can look at these issues, especially since -she states- “many of the largest players in digital markets are as powerful as they are because of the breadth of their access to and control over consumer data.” Racial Equality and AI/Biometrics/Geotracking: Slaughter noted that COVID-19 is exacerbating racial inequities. She pointed to the unequal access to technology, as well as algorithmic discrimination (the idea that discrimination offline becomes embedded into algorithmic system logic). The FTC intends to focus on algorithmic discrimination, as well as on the discrimination potentially embedded into facial recognition technologies. (This mirrors concerns that gave rise to the recent Portland facial recognition law, which we recently wrote about). Finally, Slaughter commented on the use of location data to identify characteristics of Black Lives Matter protesters, and said she is concerned about the misuse of location data to track Americans engaged in constitutionally protected speech. Putting it Into Practice: Companies that operate health apps, that are in the education technology space, or that use algorithms or facial recognition tools will want to keep in mind that these are areas of focus for the FTC. And for everyone, keep in mind that the FTC has indicated it will beef up privacy law penalties and will ask for more notification to injured consumers.

#### Antitrust enforcement saps up FTC resources and personnel, which are finite.

Tara L. Reinhart, et al. 21. \*\*Head of Skadden, Arps, Slate, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*Steven C. Sunshine, Co-head of Skadden, Arps, Slat, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*David P. Whales, antitrust lawyer with over 25 years of experience in both private and public sectors. \*\*Julia Y. York, partner at Skadden, Arps, Slat, Meagher & Flom LLP. \*\*Bre Jordan, associate at Skadden, Arps, Slat, Meagher & Flom LLP focusing on antitrust law. “Lina Khan’s Appointment as FTC Chair Reflects Biden Administration’s Aggressive Stance on Antitrust Enforcement.” 6/18/21. https://www.skadden.com/insights/publications/2021/06/lina-khans-appointment-as-ftc-chair

Second, like all antitrust enforcers, Ms. Khan and the FTC will face resource constraints. Bringing antitrust litigation is an expensive and laborious process, often requiring millions of dollars for expert fees and a large army of FTC staff attorneys and taking many months or even years to accomplish. Typically, the FTC can only litigate a handful of antitrust matters at a time. It seems likely that Congress will provide more funding to the FTC in the current environment, but even with these extra resources, the FTC will still have to pick its cases carefully and cannot challenge every deal or every instance of alleged unlawful conduct.

#### That trades off with the necessary resources for privacy enforcement.

McGinnis & Sun ’21 [John; George C. Dix Professor @ Northwestern University, JD @ Harvard Law School; and Linda; Associate @ Wilmer Pickering Hale & Dorr LLP, JD @ Northwestern Pritzker School of Law; “Unifying Antitrust Enforcement for the Digital Age,” *Washington and Lee Law Review* 78(1), p. 305-378; AS]

The FTC needs more resources to adequately address the nation's growing privacy concerns. 3 17 Currently, the FTC oversees both consumer protection-encompassing privacy-and antitrust, 318 making the FTC the chief federal agency on privacy policy and enforcement 319 and the nation's de facto privacy agency. 320 The agency has long-standing experience in enforcing privacy statutes 321 and also has special privacy assets, such as an internet lab capable of high-quality tech forensics to track invasions of privacy. 322 The FTC, however, has failed to keep pace with the massive growth of privacy concerns-a phenomenon also driven by modern technology. 323 Very few Americans feel confident in the privacy of their information in the digital age. 324 According to a 2019 study, over 80 percent of Americans feel that they have little to no control over the data collected on them by companies and the government. 325 To adequately address privacy concerns, the FTC needs more resources. 32 The agency has been explicit that it needs more manpower to police tech companies. 32 7 In requesting increased funding from Congress, FTC Director Joseph Simons said the money would allow the agency to hire additional staff and bring more privacy cases. 328 A former director of the FTC's Bureau of Consumer Protection, which houses the privacy unit, has called the FTC "woefully understaffed." 329

As of the spring of 2019, the FTC had only forty employees dedicated to privacy and data security, compared to 500 and 110 employees at comparable agencies in the U.K. and Ireland, respectively. 330 Without more lawyers, investigators, and technologists, the FTC will be forced to conduct privacy investigations less thoroughly, and in some cases, forgo them altogether. 331 Currently, the FTC's resources are spread thin across multiple missions, to the detriment of its privacy efforts. Removing the agency's antitrust responsibilities would reallocate resources from the antitrust department to its privacy unit and other areas of consumer protection. 332 Further, it would free up the scarce time of the commissioners to oversee this essential effort. 333

This reallocation of resources is especially timely because the FTC's privacy responsibilities are expected to grow in the future. The FTC is already on its way to becoming a consumer protection agency primarily focused on privacy. 334 In its 2019 budget request to Congress, over half of the agency's budget was allocated to privacy. 335 In addition, lawmakers on both sides of the political spectrum have proposed federal privacy legislation. 336 Such legislation would expand the FTC's jurisdiction, empower it to bring more privacy actions, and increase the demands on its privacy resources. 337 Right now, the U.S. is one of the only Western countries that does not have a comprehensive federal privacy law.338 Public pressure is great from both industry and scholars to change that, which would lead to increased privacy action at the federal level. 339 Moving the FTC's antitrust duties to the DOJ would cleanly complete a readjusting of priorities that is already happening organically.

#### Unchecked algorithmic bias risks extinction.

Mike Thomas 20. Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn. THE FUTURE OF ARTIFICIAL INTELLIGENCE: 7 ways AI can change the world for better ... or worse, Updated: April 20, 2020, <https://builtin.com/artificial-intelligence/artificial-intelligence-future>

Klabjan also puts little stock in extreme scenarios — the type involving, say, murderous cyborgs that turn the earth into a smoldering hellscape. He’s much more concerned with machines — war robots, for instance — being fed faulty “incentives” by nefarious humans. As MIT physics professors and leading AI researcher Max Tegmark put it in a 2018 TED Talk, “The real threat from AI isn’t malice, like in silly Hollywood movies, but competence — AI accomplishing goals that just aren’t aligned with ours.” That’s Laird’s take, too. “I definitely don’t see the scenario where something wakes up and decides it wants to take over the world,” he says. “I think that’s science fiction and not the way it’s going to play out.” What Laird worries most about isn’t evil AI, per se, but “evil humans using AI as a sort of false force multiplier” for things like bank robbery and credit card fraud, among many other crimes. And so, while he’s often frustrated with the pace of progress, AI’s slow burn may actually be a blessing. “Time to understand what we’re creating and how we’re going to incorporate it into society,” Laird says, “might be exactly what we need.” But no one knows for sure. “There are several major breakthroughs that have to occur, and those could come very quickly,” Russell said during his Westminster talk. Referencing the rapid transformational effect of nuclear fission (atom splitting) by British physicist Ernest Rutherford in 1917, he added, “It’s very, very hard to predict when these conceptual breakthroughs are going to happen.” But whenever they do, if they do, he emphasized the importance of preparation. That means starting or continuing discussions about the ethical use of A.G.I. and whether it should be regulated. That means working to eliminate data bias, which has a corrupting effect on algorithms and is currently a fat fly in the AI ointment. That means working to invent and augment security measures capable of keeping the technology in check. And it means having the humility to realize that just because we can doesn’t mean we should. “Our situation with technology is complicated, but the big picture is rather simple,” Tegmark said during his TED Talk. “Most AGI researchers expect AGI within decades, and if we just bumble into this unprepared, it will probably be the biggest mistake in human history. It could enable brutal global dictatorship with unprecedented inequality, surveillance, suffering and maybe even human extinction. But if we steer carefully, we could end up in a fantastic future where everybody’s better off—the poor are richer, the rich are richer, everybody’s healthy and free to live out their dreams.”

## Innovation

### 1NC – AT: Innovation

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

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

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

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

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

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

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

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

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

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

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

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

#### No UQ in the 1AC – their ev says that big tech may be anticompetitive right now, but not that those practice cause us to lose the innovation race – that’s CX

#### Plan can’t solve only sotps future action

#### Innovation high – antitrust not key

Lambert 20 – Thomas A. Lambert, Wall Chair in Corporate Law and Governance and Professor of Law at the University of Missouri, “The Case Against Legislative Reform of U.S. Antitrust Doctrine,” testimony to the House Subcommittee on Antitrust, Commercial, and Administrative Law, 4/17/20, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3598601

Reduced Investment in Innovation? Proponents of reforming the antitrust laws have also pointed to reductions in the level of venture capital investment as indicative of a market power crisis in the U.S. Such investment slowed somewhat after 2015 (though it appears to have rebounded),27 and some venture capitalists have referred to a “kill zone” around dominant technology firms.28 The claim is that big technology firms either usurp small firms’ innovations or use their power over platforms to force smaller firms that need access to those platforms to sell out at a bargain price. Venture capitalists are less inclined to invest if such outcomes are likely, and innovation therefore suffers.

The evidence, however, does not support the view that lax U.S. antitrust is reducing innovation. Eleven of the top sixteen global spenders on research and development are U.S. firms,29 and six of those—Amazon, Alphabet, Intel, Microsoft, Apple, and Facebook—are “Big Tech” firms that have been accused of acting like monopolists. Moreover, the U.S. is home to half (178 of 356) of the world’s so-called “unicorn” companies—i.e., private companies valued at greater than $1 billion. China ranks second with 90, and all of Europe contains a fraction of that number. The U.S. also far outpaces Europe in terms of venture capital spending, with 10,777 investments in 2019 worth $136.5 billion compared to Europe’s 5,017 deals worth $36.3 billion. Finally, the fact that large American technology firms are purchasing smaller producers of complementary products or technologies in no way implies that the incentive to innovate is thereby reduced. Many start-ups are organized with the goal of being bought out by a larger firm; a buy-out option allows the initial investors in a company to enjoy a return on their investment without the company’s having to incur the significant cost of a public offering.

#### Platforms are key to tech sector innovation

Atkinson ’21 [Robert D; March 10; Ph.D. at UNC-Chapel Hill, the founder and president of ITIF; Information Technology & Innovation Foundation, “How Progressives Have Spun Dubious Theories and Faulty Research into a Harmful New Antitrust Doctrine,” https://itif.org/publications/2021/03/10/how-progressives-have-spun-dubious-theories-and-faulty-research-harmful-new]

Myth 8: Big Technology Companies Create Innovation Kill Zones28

Large U.S. technology platforms invest almost as much in R&D as the entire U.K. economy does (business and government).29 But knowing that innovation is important, neo-Brandeisians have argued that big technology companies actually limit innovation, either by acquiring start-ups in order to terminate the development of innovations that threaten their continued dominance (“killer acquisitions”) or by creating areas of the market in which they exert dominance to the extent others won’t invest in them (“kill zones”). Either way, large tech companies supposedly limit prospective challengers from being able to take root and grow, thereby limiting not only competition but overall U.S. innovation.

In fact, acquisitions may be beneficial, at least to innovation, if they allow the larger firms to benefit from economies of scale or network effects, and enable the smaller firms to reach many more customers much more quickly with a higher quality product. Moreover, the prospect of being purchased by a larger company often motivates founders and venture capitalists to invest. Making it more difficult for them to sell therefore might make it harder for promising firms to find funding.

And rather than looking at so-called kill zones as an innovation deterrent, it is more accurate to view them as an innovation enabler that guides entrepreneurial resources (talent and capital) to areas that have the best chance of success. Why invest in companies seeking to duplicate mature products offered by large firms that benefit from economies of scale or network effects? It is better for society if new companies concentrate instead on other markets they can break into. Indeed, that seems to be occurring, as venture capital investment, especially in early-stage deals, has grown significantly over the last decade, indicating that there is no shortage of innovation opportunities.

Moreover, if they are creating kill zones, why did the number of angel and seed deals rise almost sixfold between 2006 and 2019, peaking in 2015? The number of early deals rose by 2.4 times. It is hard to see any sign of investor activity slowing down. (See figure 5.)

#### Concentration increases innovation.

Portuese ’20 [Aurelien; Director of Antitrust and Innovation Policy @ ITIF, Adjunct Professor of Law @ Global Antitrust Institute of George Mason University, Doctor in Law @ University of Paris II; “Beyond antitrust populism: Towards robust antitrust”; *Economic Affairs* 40(2), p. 237-258; AS]

Economic evidence reveals that increased market concentration can be the result of increased competition and enhanced innovation (Sacher & Yun, 2019, pp. 4–6). Concentration is indeed a rather neutral proxy for evaluating the competitive forces in a given market; the evidence for it, in line with the Schumpeterian intuition, is that firm size increase is positively related to innovation due to financial access and innovation behaviour (Alsharkas, 2014; Hirschey, Skiba, & Wintoki, 2012; Hruska, 1992). The economic evidence has long shown an ambiguous relationship between competition and innovation levels: a so-called U-inverted (concave) relationship reveals that perfect competition suppresses innovation and that a level of imperfect competition is required for the spirit of innovation to be unleashed via firm expansion (Cornett, Erhemjamts, & Tehranian, 2019; Kerber, 2017): high competition intensity increases the incentives for firms to innovate, and so market concentration increases (Aghion & Howitt, 1997; Aghion, Harris, & Vickers, 1997; Boone, 2001; Aghion, Bloom, Blundell, Griffith, & Howitt, 2005; Hashmi, 2013). Thus, market concentration may be the result of, not an impediment to, innovation incentivised by intensive market competition (Scherer, 1967; Blundell, Griffith, & Van Reenen, 1999; Tishler & Milstein, 2009).

Wright et al. (2018, p. 318) conclude that “an increase in concentration alone might be the result of more competition, less competition, or the product of factors completely unrelated to competition in the economy”. When antitrust policy frowns upon (and prohibits) mergers between hitherto competing firms for the sake of preserving an ‘optimal’ market structure, the innovation factors underpinning the mergers may be overlooked. More importantly, the discovery process inherent in competition is impeded, as market competition is no longer “able to discover the best size of firms and thus the lowest cost at which production can be maintained” (Kirzner, 2000, p.13). The German antitrust authority has acknowledged that in innovationdriven markets (such as digital markets)

the risk of over-enforcement is pointed out because the connection between concentration and innovation is not always clear and not all the influencing factors can be identified. Over-enforcement in such cases could reduce incentives for innovation and harm long-term innovation dynamics. (Bundeskartellamt, 2017, p. 32)

Similarly, the US antitrust agencies, the Federal Trade Commission and the Department of Justice, have acknowledged that concentration is not systematically an effect of decreased levels of competition. Indeed, against the mainstream discourse, and given the lack of compelling evidence, they have seminally concluded, before the OECD, that:

Concentration never tells the whole story about competition, and the proper delineation of the relevant market is critical if concentration is to tell any part of the story … Academics and journalists recently made claims of increasing concentration throughout the U.S. economy … [T]he U.S. Agencies find the claims of increasing concentration are unsupported by data for meaningful markets. (OECD, 2018b, pp. 2–3)

Increased efficiency, better consumer service, and enhanced innovation potential are strong reasons for consolidation of the market. Such consolidation of an industry may also be the result of a tit-for-tat game with other firms, thereby increasing effective competition by smaller firms against bigger players (Demsetz, 1974, p. 167). Consequently, consolidation of an industry may be the prerequisite for incumbents to be effectively challenged. Scale-and-scope economies of mergers enable synergies with lower administrative costs and greater interoperability, especially in the age of digital platforms. These synergies can be pro- or anti-competitive; but mergers, and concentration more generally, can hardly be said to be detrimental to the economy as such (Lianos, 2019, pp. 1486–7; Haucap, 2017).

Because they equate increased concentration with decreased competition, without providing evidence of consumer harm or reduced innovation, the arguments of antitrust populists in favour of more aggressive antitrust enforcement are flawed. Indeed, the “return to structural presumptions, such as a simple but per se ban on mergers that reduce the number of major firms to less than four” (Wu, 2018a, p. 129) is economically nonsensical (competition can be increased by a reduction in the number of firms) and legally impractical (how can we define markets so neatly as to be certain of the exact number of firms they contain?). Seen as “the priority for Neo-Brandeisian antitrust” (Wu, 2018a, p. 127), proposed changes to merger review rest on flawed assumptions and misconstrued proposals.

#### Best data confirms.

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

Breaking up the tech giants would be contrary to the longstanding jurisprudence and current tradition expounded by the consumer benefit standard. Besides ignoring the longstanding principle of consumer welfare, breaking up the big four would have harmful effects on consumers and the American economy.

The internet is a source of great innovation and consumers do not pay for much of the benefits they receive. At consumers' fingertips are a great amount of information that provides a benefit to consumers. Search engines like Google and social media sites like Facebook "generally create the enormous social benefit of connecting content providers with users in a mutually beneficial manner." 118 Professor James Grimmelman argues that "[search engines] allow willing users and content providers to find each other, reducing transaction costs and enabling mutually beneficial exchanges. These benefits depend on the contributions of users, providers, and search engines in the form of queries, content, and ranking algorithms, respectively." 119 Grimmelman further argued that restrictions on search engines may "squander the innovative potential of search engines." 1 20 Although these arguments were aimed at search engines, they also aptly apply to other tech companies. Consumers receive substantial benefits by receiving free or nominally free services. Because of the proliferation of search services like Google, consumers have more access to information at their fingertips than any point in human history. Likewise, because of the advances pioneered by Amazon, consumers have almost an unlimited array of choices when purchasing goods. Even if these corporations have monopolistic power, a monopoly by efficiency in producing and marketing better and cheaper product than other companies does not fall within the scope of the antitrust acts. 121 Breaking up the big tech giants would lessen innovation and is counter to the current approach of antitrust law, which considers the benefit to consumers.

Proponents of breaking up Big Tech contend the consumer welfare standard should apply because the tech giants present a future threat to consumers and small businesses. However, the consumer benefit standard looks at what is benefitting or not benefitting consumers at the time of the analysis. 12 2 Declaring a company a threat to consumers in the future is not sufficient to bring an antitrust action. 123 A reduction of competition does not invoke the Sherman Act until it harms consumer welfare. 124 By breaking up internet companies because of their sheer size, the U.S. would be limiting the amount of innovation that could be produced. Goldman Sachs keeps an index tracking tech industry spending and the June 2018 spending levels are the third highest since Goldman Sachs created the index in 2002.125 This investment is primarily targeted at security software, software as a service applications, analytics, and private and public clouds.1 2 6 Apple, Amazon, and Google have spent a combined $80 billion on physical assets alone such as real estate, powerful computers, and undersea internet cables. 127 These investments benefit the economy and help drive the pace of innovation. Because of these innovations and investment, the tech giants added more market capitalization than the GDP of India since 2008.128 Even the U.S. government is dependent on the benefits of these industries. For example, the Department of Defense relies on Big Tech's cloud computing to meet its needs. 129 Untangling the interwoven nature of Big Tech would be an incredibly difficult task that would likely curb innovation and, in turn, economic growth.

#### Bigness is key to AI development – plan crushes AI innovation

New 19 – Joshua New, senior policy analyst at the Center for Data Innovation, “The Hipster Antitrust Movement Could Undermine American AI,” 5/20/19, https://datainnovation.org/2019/05/the-hipster-antitrust-movement-could-undermine-american-ai/

Elizabeth Warren is the latest politician to become a card-carrying member of the “hipster antitrust” movement by proposing to break up big technology companies. Subscribers to the hipster antitrust philosophy believe that large companies harm society simply by virtue of their bigness, abandoning the core tenant of modern antitrust law that prioritizes consumer welfare in shaping competition policy. Others have aptly explained why such proposals would be a bad idea with serious unintended consequences. However, hipster antitrust policies could have particularly damaging effects on the development of artificial intelligence (AI) in the United States. Warren’s proposal comes during a time when policymakers on both sides of the aisle are vocally stressing the importance of U.S. competitiveness in AI, making it important for policymakers to recognize that these goals are at odds.

The majority of hipster antitrust calls to break up big tech are vague and rely on dubious justification. For example, venture capitalist Roger McNamee wants to see Google “be broken up into eight or 10 different monopolies” because, perplexingly, he is “OK with Google being a monopolist in search…[but] I don’t want them to use it to make their photo search and all these other things.” Scott Galloway, a business professor at New York University, agrees that tech giants should be broken up, arguing that the bigness of companies like Amazon, Google, and Facebook stifles innovation, but fails to articulate how. And others, such as MIT Technology Review editor Konstantin Kakaes, have argued that companies like Facebook should be broken up because they have access to enough data that it could lead to abuses of power.

Breaking up big tech firms along these arbitrary lines would have a significant negative impact on AI development because their bigness is what often allows big tech firms to advance AI. For example, in 2011, Google Brain, the company’s AI research team, developed a system for developing artificial neural networks called DistBelief to create a scalable, distributed platform to advance AI research throughout Google’s many product teams. Over 50 teams across Google and other Alphabet companies quickly adopted DistBelief and developed machine learning applications for products including Google Search, speech recognition, Google Photos, Google Maps, Google Translate, YouTube, and others. Recognizing the broad utility of Distbelief, Google Brain developed a second generation of the system called TensorFlow, designed to be even more scalable and flexible, and made it freely available as open source in November 2015. TensorFlow turned out to be so popular that just eight months later, in June 2016, GitHub, the popular web-based hosting service for computer code, had over 1,500 repositories that reference TensorFlow, only five of which were from Google. Now, TensorFlow is the most popular deep learning framework in the world, beating other frameworks in GitHub activity, arXiv publications, use by developers, and mentions in job descriptions by a wide margin. It is exceedingly unlikely that Google would have had the capability or desire to create such a flexible, widely useful framework for machine learning without the need to meet a wide variety of needs throughout its many lines of business. Because of this scale, they created a product that has significantly transformed and accelerated the AI development landscape. Chopping Google’s various product teams into separate businesses would preclude similar innovations and their spinoff benefits in the future.

To the extent that Senator Warren and others genuinely care about consumer welfare, they should recognize that calls to break up big tech could substantially weaken the ability of the United States to develop and deploy AI, and thus harm consumers and the U.S. economy.

#### Exclusionary conduct is better for innovation.

Miller & Mitchell ’21 [Tracy; Senior Policy Research Editor @ Mercatus Center, Former Professor of Economics @ Grove City College, PhD in Economics @ UChicago; and Trace; Research Associate @ Mercatus Center, JD @ George Mason University; 1/27/21; “Dynamic Competition in Digital Markets: A Critical Analysis of the House Judiciary Committee’s Antitrust Report”; https://www.mercatus.org/publications/antitrust-and-competition-policy/dynamic-competition-digital-markets-critical-analysis; AS]

Many practices that courts and antitrust agencies deemed anticompetitive in decisions before the late 1970s were later found to have no discernible negative effect on consumer welfare; in some instances, they were found even to improve it. Vertical mergers, below-cost pricing, price discrimination, resale price maintenance, tying, and exclusive dealing, which in the past were discouraged by antitrust policy or per se illegal, often enhance competition and promote consumer welfare. Vertical mergers reduce transactions costs for those involved in upstream and downstream production, and the lower costs yield room for both higher profits and lower consumer prices. Tying allows firms to ensure quality and produce innovative new products that have value beyond the sum of their parts. To the extent that courts have penalized or enjoined firms from engaging in these behaviors, they may have, without intention, undermined less obvious mechanisms by which firms compete that contribute to enhanced consumer welfare.

#### No impact to increased concentration – and it’s inevitable

Bourne 20 – Ryan Bourne, R. Evan Scharf Chair for the Public Understanding of Economics at the Cato Institute, “Does Rising Industry Concentration Signify Monopoly Power?” 2/13/20, https://www.cato.org/economic-policy-brief/does-rising-industry-concentration-signify-monopoly-power?

Certain ideas dominate debate about the state of competition in the United States: that market shares for top firms are rising, that consumers and competitors are suffering, and that a lack of enforcement of antitrust laws is a key cause of these difficulties.

Such sentiments echo through the 2020 Democratic presidential primary. In one recent TV debate, Sen. Elizabeth Warren (D-MA) vowed not to “let a handful of monopolists dominate our economy,” while Sen. Amy Klobuchar (D-MN) claimed we are living through “another gilded age.” Sen. Bernie Sanders (I-VT) expressed the predictable policy conclusion: “We need a president who has the guts to appoint an attorney general who will take on these huge monopolies.”1

The impression given is that America’s economy is besieged by a generalized monopoly problem.2 Fewer firms are said to be dominating industries, enjoying rising markups of price over cost. Consumers are supposedly suffering higher prices and less innovation as a result of these companies’ growing market power. Competitors, meanwhile, allegedly struggle to stay afloat because of unfair behavior by these behe­moths. And all this, scholars and politicians tell us, is due to a failure to enforce or strengthen antitrust laws to prevent anti‐​competitive behavior.3

Such a narrative, though, is highly challengeable. The measures of concentration taken as proxies for the health of competition often do not reflect the dominance of top national firms in actual relevant product markets. Local measures of industry concentration, contrary to national trends, appear to have fallen. What’s more, recent evidence suggests that jumps in national concentration have been driven by the strength of highly productive market‐​leading firms, which are expanding, not constraining, output—not what one would expect from firms with monopoly market power.

Economists have long known that increasing concentration need not signify rising market power in an industry. In fact, it can be driven precisely by the competitive process—for example, by consumers opting to buy from more‐​productive and more‐​innovative market leaders that have found cost‐​effective ways to serve more markets. That rising market concentration has also occurred in Europe, which applies competition law very differently than the United States does, suggests that weak enforcement of U.S. antitrust laws is not the likely cause of any rising concentration we have seen.

#### No internal link to synthetic bio – that’s tied to pharma research, not done by tech sector.

#### Alt cause – Chinese IP theft.

Peter **Navarro 16**, PhD economics, Associate Professor of Economics and Public Policy, University of California (Irvine), “China’s State-Sponsored Cyber Attacks Must Stop”, 5/30/16, http://www.theglobalist.com/china-united-states-cyber-crime-politics/

State-sponsored cyber espionage inflicts significant damage on the American economy. And just which nation is most actively engaged against the United States?∂ According to the Commission on the Theft of American Intellectual Property, America’s largest trading partner – China – accounts for as much as 70% of the losses the United States incurs.∂ What American citizens should find most disturbing about China’s role in what amounts to a global IP theft ring is the outsized role its government plays.∂ A watershed report by Mandiant reveals a military force of more than 100,000 cyber spies under the firm control of the People’s Liberation Army and under the clear direction of the Chinese Communist Party.∂ This state-sponsored cyber theft bureaucracy exists despite repeated denials by top government officials that China is even involved in such activities.∂ Stealing blueprints of American businesses∂ While the military may run China’s cyber espionage programs, the People’s Liberation Army nonetheless works hand-in-glove with civilian bureaucrats in charge of advancing China’s industrial policy goals.∂ On any given day, China’s military and civilian hackers seek to steal the obligatory blueprints and proprietary manufacturing processes of American businesses large and small.∂ China’s cyber spies will also vacuum up everything from emails, contact lists, and test results to pricing information and partnership agreements.∂ Sometimes such acts of IP theft can destroy most or all of the value of individual companies. A case in point noted by the IP Commission is American Superconductor: When it “had its wind-energy software code stolen by a major customer in China, it lost not only that customer, but also 90% of its stock value.”

#### 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.

#### Entry barriers are low.

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

Additionally, there are fairly low barriers to entry that prevent someone from starting a successful internet venture. 106 Sure, these tech giants benefit from the number of investors, but venture capitalists and Silicon Valley writ large are always on the lookout for the next big thing in the tech. There is still a robust start-up market for internet-based companies. There has been more venture capital in vested through the first six months of 2018 than any six-month period in history.107 Through the second quarter of 2018, venture capital firms have invested $57.5 billion. 108 Much of that investment has gone to internet-based startups. Venture capitalists funded Snap Inc. with $2.65 billion before it went public.1 09 Now Facebook and its subsidiary Instagram are copying core features of Snapchat, showing that smaller firms are innovating the market.

Venture capital firms are always looking for the next big thing to disrupt the internet. Few could have predicted Facebook's rise from a Harvard dorm room to becoming a company with a market capitalization of $444.76 billion.1 10 At the time of its inception, Friendster and MySpace were the dominant social networking sites. Google was an unknown upstart at the time of its founding attempting to chip away at Yahoo's dominance. Although the tech giants have a commanding market presence, they do not have the power to exclude competitors as new internet companies rise and fall and the barriers to entry are relatively low.

## Antitrust Foundationalism

### 1NC – AT: Antitrust Foundationalism

#### The economy is growing and recovering now – that’s key to global growth

Lynch 21 – David J Lynch, global economics correspondent for the Washington Post, “With stimulus cash and jobs spike, U.S. emerges as main engine for global economic recovery,” 4/4/21, https://www.washingtonpost.com/business/2021/04/04/us-economy-global-recovery/

The robust U.S. economic recovery this year is expected to be good news for factory workers, freight handlers and farmers.

Factory workers in China. Freight handlers in the Netherlands. And farmers in Germany.

Amid steady progress with coronavirus vaccinations, the U.S. economy is gathering so much steam that its gains will not stay at home. Demand for goods and services this year is expected to spill well beyond U.S. borders, making the United States the largest single contributor to global growth for the first time since 2005, according to Oxford Economics.

The U.S. ascent ends — at least for now — China’s long reign as the principal engine powering the $90 trillion global economy.

Free spending by the Biden administration — coupled with the Federal Reserve’s ultralow interest rates — is driving the nascent U.S. boom and lifting other countries, where governments have not responded as aggressively to the pandemic. As Americans spent their $600 government stimulus checks in January on furniture, laptops and clothing, the U.S. imported a record $221 billion worth of goods. And that was before a round of $1,400 checks in March.

“We are ahead of the world,” said Kristin Forbes, who was one of President George W. Bush’s White House economic advisers. “And a meaningful share of the stimulus is likely to leak abroad.”

Fresh evidence of the U.S. outperformance appeared on Friday as the Labor Department reported that the economy had gained 916,000 new jobs in March and that the unemployment rate fell to a post-recession low of 6 percent. The Institute for Supply Management’s gauge of manufacturing activity released on Thursday hit its highest mark since December 1983.

These signs of U.S. strength came as Europe’s economic rebound stalled amid surging coronavirus case totals. France last week announced its third national lockdown; Germany and Italy have imposed partial restrictions on activities.

Accelerating progress in vaccinating people against the coronavirus, plus more generous government spending, explains the U.S. edge. As of the end of March, the United States had vaccinated more than twice as large a share of its population as had the European Union.

Most economists expect China this year to grow at a faster annual rate than the United States. But since the $21 trillion U.S. economy is still significantly larger than China’s, measured in dollars, the American contribution to global growth will be slightly larger, according to Oxford Economics.

To be sure, the U.S. outlook is far from worry-free. Some economists, such as Lawrence Summers, once President Barack Obama’s top economic adviser, say the administration has done too much to spur the economy and is inviting an inflationary price spiral.

The recovery from the pandemic shock also is incomplete: More than 8 million Americans who were working in early 2020 are unemployed and an additional 4 million have quit the labor market.

A strengthening U.S. economy, however, is welcome after a year of pandemic gloom. But as expectations of strong growth drive up long-term interest rates, investors are pulling money out of emerging markets to earn higher returns in the United States. More than $5 billion left developing countries in March, which some analysts worry could herald larger outflows to come and undermine recovery prospects in poor and middle-income nations.

“It’s a double-edged sword,” said Maurice Obstfeld, an economics professor at the University of California at Berkeley. “The effect of higher U.S. demand is spilling over to imports from other countries. But as U.S. growth leads to higher long-term interest rates, that’s a big negative for these countries.”

Kristalina Georgieva, managing director of the International Monetary Fund, warned in a speech last week that the U.S. and Chinese economies could leave behind poorer nations in a “multispeed recovery.” By next year, emerging markets are likely to have suffered a 20 percent loss in per-person income, almost twice the figure in the industrial world, according to IMF data.

“Prospects are diverging dangerously not only within nations but also across countries and regions,” she said.

On Monday, global finance officials and central bank chiefs are scheduled to kick off the annual spring meetings of the IMF and World Bank, where Georgieva plans to release a rosier 2021 forecast.

The U.S. role in leading the global economy this year contrasts with the aftermath of the 2008 financial crisis, when China unleashed a massive stimulus program that funded new railroads, airports, roads and public housing programs. The construction splurge rained money on commodity-producing countries, helping avert a more punishing global downturn.

In the United States, a fierce debate about the rising federal budget deficit short-circuited stimulus spending and left the U.S. share of global growth by 2010 at just half of this year’s forecast of 28 percent, according to Oxford Economics.

Congress in March approved the Biden administration’s $1.9 trillion American Rescue Plan. Together with a $900 billion bill in December, it will add almost 1.5 percent to the global economy’s growth rate this year, according to the Organization for Economic Cooperation and Development.

“This will not only benefit the U.S. economy, but it will fuel global growth,” Laurence Boone, the OECD’s chief economist, said last month.

The impact of the U.S. government rescue plan will be felt in India, Australia, South Korea, the United Kingdom, Canada and elsewhere, the OECD said.

#### Current antitrust law fosters innovation and competition – the plan crushes growth

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Independently, expanded antitrust regulation increases inflation

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

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

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

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

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

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

Let’s start with food prices and Big Ag.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Competing factors

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

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

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

The inflationary forces are pretty powerful in their own right.

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

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

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

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

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

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

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

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

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

“Is it really going to be all temporary?”

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

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

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

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

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

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

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

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

#### Alt causes to inequality – health care, wages, unionization.

#### Antitrust doesn’t solve inequality

Crane 16 – Daniel Crane, Associate Dean for Faculty and Research and Frederick Paul Furth, Sr. Professor of Law, University of Michigan, “Antitrust and Wealth Inequality,” *Cornell Law Review*, Volume 101, Number 5, 2016, pp. 1171-1228

Amid this broad debate, a particular claim has emerged regarding the relationship between market competition and inequality. A wide array of scholars and public intellectuals, including such notable figures as Nobel Laureates Joseph Stiglitz4 and Paul Krugman5 and former Labor Secretary Robert Reich,6 among others, have claimed that monopoly and anticompetitive market conditions are among the root causes of wealth inequality.7 Some of these commentators blame the rising tide of wealth inequality on a weak record of antitrust enforcement in the United States.8 All seem to propose that enhancing antitrust enforcement against mergers, monopolies, and anticompetitive agreements could contribute to creating a more equal society.

This Article challenges this emerging monopoly regressivity claim in two ways. First, it shows that the relationship between enforcement of the antitrust laws and wealth inequality is far more complex than monopoly regressivity critics recognize. The relationship between market power (the subject of antitrust law) and income distribution is subtle, circumstantially contingent, and, at least for a developed economy, extremely difficult to generalize. Whatever their other faults, it is far from certain that antitrust violations (including cartels, anticompetitive mergers, and abuses of dominance) systematically redirect wealth from the poor to the rich. To sustain a showing that they do, one would need information about a large number of factors, including the relative wealth of producers and consumers, overcharge pass-on rates, the effects of market power on employees of the firm, the distribution of rents between managers and shareholders, the progressive or regressive effects of antitrust violations where government entities are the purchasers, and the distribution of rents among classes of managers. Although there are undoubtedly cases where antitrust violations have regressive effects, there are also undoubtedly many cases where their effects are progressive or distributively neutral. It is virtually impossible to calculate the net effect on wealth distribution from general increases or decreases in overall antitrust enforcement.

The second response this Article makes to the monopoly regressivity claim is that a significant set of antitrust interventions actually impede voluntary efforts to secure a more equitable and just society. In a set of important cases, application of conventional antitrust principles frustrated private actors seeking to promote social justice by diverting market forces from their ordinary paths.9 Hence, an undifferentiated increase in antitrust enforcement could, in many instances, exacerbate rather than diminish inequality and related forms of social justice.

To motivate this angle, consider some glimpses of the kinds of cases in which antitrust has posed an obstacle to private actors pursuing wealth redistribution goals. Examples include an antitrust challenge to an agreement by the Ivy League universities on a financial aid system designed to increase educational diversity;10 antitrust concerns preventing garment manufacturers in the United States from joining forces to pressure foreign suppliers to conform to minimal labor and employment standards;11 and antitrust challenges to National Collegiate Athletic Association (NCAA) rules prohibiting its members from paying student athletes, which could disrupt the cross subsidization of women’s athletic programs and other less popular sporting programs.12 In each of these cases, discussed in greater detail below, there is a plausible argument that application of unqualified antitrust principles would increase the welfare of consumers but also impair the ability of private actors to pursue solutions to serious equality problems.

In tandem, these twin objections throw a wrench into the growing progressive claim that more antitrust enforcement would lead to a more just distribution of wealth. Not only could an undifferentiated increase in antitrust enforcement exacerbate wealth inequality in various ways but it could also impede private, voluntary pursuit of related social justice objectives.

Thus far, this introduction has considered the effect of an undifferentiated increase in antitrust enforcement—actions to augment and strengthen enforcement as a general matter, such as by providing more funding to the antitrust agencies, liberalizing rules for private enforcement, increasing fines and penalties, or adopting rules making antitrust claims easier to win. Changes in the level of antitrust enforcement have no clear effect on the regressivity or progressivity of wealth distribution and social justice more generally, but one could try to tailor antitrust policy to maximize wealth redistribution and social justice in particular cases. Although it might sometimes be prudent as a matter of prosecutorial discretion to prioritize resource allocation in the direction of fighting antitrust violations with highly regressive effects, it would be a mistake to recalibrate antitrust doctrine in an effort to combat wealth inequality. Even putting aside the likely deleterious effects on productive and allocative efficiency such doctrinal shifts might entail, it is impossible to craft a distributively-oriented body of antitrust law that would reliably increase wealth equality by clamping down on regressive forms of market power exploitation.

#### Don’t solve monopoly power – ag, telecomm, finance etc are all concentrated, plan only affects the tech sector.

#### Monopolies decrease inequality – they provide a monopoly wage premium

Crane 16 – Daniel Crane, Associate Dean for Faculty and Research and Frederick Paul Furth, Sr. Professor of Law, University of Michigan, “Antitrust and Wealth Inequality,” *Cornell Law Review*, Volume 101, Number 5, 2016, pp. 1171-1228

Contrary to the assumption that shareholders and senior managers are capturing virtually all of the monopoly rents obtained by corporations, the evidence suggests that a significant amount of rent sharing occurs within the firm. As Mark Roe has noted, “[e]mployees of monopoly firms can, and do, ally with capital to split the rents, to facilitate constricting production and raising price, and to seek barriers to competitive entry.” 84 Empirical evidence shows that nonunion employees see higher wages as the market concentration of their industry increases and also that higher seller concentration leads to stronger unionization, which in turn leads to higher wages.85 The monopoly labor wage premium has been observed across a variety of industries.86 For present purposes, the monopoly labor wage premium is important because it suggests the ability of blue-collar workers to extract significant monopoly rents from their employers, thus counterbalancing any regressive effects from shareholder or senior management rent extraction.87

Consistent with the evidence that increases in market power yield higher wages for blue-collar employees, there is evidence of labor union support for large corporate mergers that raise serious competitive issues. For example, the Communication Workers of America came out in favor of the AT&T and T-Mobile merger that the Federal Communications Commission and the Justice Department both opposed, and that AT&T and Deutsche Telekom, T-Mobile’s parent corporation, ultimately withdrew from.88 An editorial published in the Huffington Post explained that progressives should support the proposed merger “[b]ecause AT&T is the ONLY unionized wireless company in the country and the merger would ensure that 20,000+ T-Mobile workers would have the chance to join the 43,000 currently unionized AT&T Mobility employees with decent wages and legal protections on the job.”89 Similarly, the three airline employee unions supported American Airlines’ questionable merger with US Airways, believing that employees would fare better in the combined company.90

A related point concerns the differentiating effects among different classes of workers from increases in product market competition. Such competition may increase wage inequality by shifting demand in favor of skilled labor at the expense of unskilled labor, with the effect that a wage gap grows between skilled and unskilled labor.91 Such instances of income stratification have ambiguous effects on the overall distribution of wealth but would likely be regressive on net since they would shift down the average salaries of workers at the lowest end of the income distribution.

The progressive effects of market power–enhancing mergers may go beyond the financially quantifiable and spill outside the boundaries of the firm. Civil rights organizations have supported controversial mergers, arguing that the combined firm would cater better to the needs of minorities. For example, the Reverend Al Sharpton played a leading role in supporting the Comcast and NBC Universal merger, arguing that the deal would enhance racial diversity in broadcasting.92 The NAACP supported the AT&T and T-Mobile merger, arguing that AT&T had been a progressive corporate citizen that would bring a better culture to T-Mobile’s employment conditions and contracting practices.93 It also supported the Sirius and XM merger, which resulted in a monopoly in satellite radio.94 Other civil rights organizations have similarly weighed in favor of mergers ultimately challenged on antitrust grounds.95

At a minimum, the monopoly labor wage premium and evidence of union and civil rights organization support for competitively controversial corporate mergers should call into question the progressive argument that stronger merger enforcement would advance progressive wealth redistribution. Many interests within and without the firm have an opportunity to extract monopoly rents or otherwise benefit from business reorganizations that contribute to the creation of market power.

#### Inequality has only a minor effect on growth at worst, especially in the U.S.

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

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

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

Walt ’20 [Stephen; Robert and Renée Belfer professor of international relations @ Harvard University; 5/13/20; "Will a Global Depression Trigger Another World War?"; Foreign Policy; https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/]

One familiar argument is the so-called diversionary (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to divert attention from their failures by provoking a crisis with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald Trump will decide to attack a country like Iran or Venezuela in the run-up to the presidential election and especially if he thinks he’s likely to lose. This outcome strikes me as unlikely, even if one ignores the logical and empirical flaws in the theory itself. War is always a gamble, and should things go badly—even a little bit—it would hammer the last nail in the coffin of Trump’s declining fortunes. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his staunchest supporters may wonder why he is wasting time and money going after Iran or Venezuela at a moment when thousands of Americans are dying preventable deaths at home. Even a successful military action won’t put Americans back to work, create the sort of testing-and-tracing regime that competent governments around the world have been able to implement already, or hasten the development of a vaccine. The same logic is likely to guide the decisions of other world leaders too. Another familiar folk theory is “military Keynesianism.” War generates a lot of economic demand, and it can sometimes lift depressed economies out of the doldrums and back toward prosperity and full employment. The obvious case in point here is World War II, which did help the U.S economy finally escape the quicksand of the Great Depression. Those who are convinced that great powers go to war primarily to keep Big Business (or the arms industry) happy are naturally drawn to this sort of argument, and they might worry that governments looking at bleak economic forecasts will try to restart their economies through some sort of military adventure. I doubt it. It takes a really big war to generate a significant stimulus, and it is hard to imagine any country launching a large-scale war—with all its attendant risks—at a moment when debt levels are already soaring. More importantly, there are lots of easier and more direct ways to stimulate the economy—infrastructure spending, unemployment insurance, even “helicopter payments”—and launching a war has to be one of the least efficient methods available. The threat of war usually spooks investors too, which any politician with their eye on the stock market would be loath to do. Economic downturns can encourage war in some special circumstances, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value. Saddam Hussein’s decision to seize Kuwait in 1990 fits this model perfectly: The Iraqi economy was in terrible shape after its long war with Iran; unemployment was threatening Saddam’s domestic position; Kuwait’s vast oil riches were a considerable prize; and seizing the lightly armed emirate was exceedingly easy to do. Iraq also owed Kuwait a lot of money, and a hostile takeover by Baghdad would wipe those debts off the books overnight. In this case, Iraq’s parlous economic condition clearly made war more likely. Yet I cannot think of any country in similar circumstances today. Now is hardly the time for Russia to try to grab more of Ukraine—if it even wanted to—or for China to make a play for Taiwan, because the costs of doing so would clearly outweigh the economic benefits. Even conquering an oil-rich country—the sort of greedy acquisitiveness that Trump occasionally hints at—doesn’t look attractive when there’s a vast glut on the market. I might be worried if some weak and defenseless country somehow came to possess the entire global stock of a successful coronavirus vaccine, but that scenario is not even remotely possible. If one takes a longer-term perspective, however, a sustained economic depression could make war more likely by strengthening fascist or xenophobic political movements, fueling protectionism and hypernationalism, and making it more difficult for countries to reach mutually acceptable bargains with each other. The history of the 1930s shows where such trends can lead, although the economic effects of the Depression are hardly the only reason world politics took such a deadly turn in the 1930s. Nationalism, xenophobia, and authoritarian rule were making a comeback well before COVID-19 struck, but the economic misery now occurring in every corner of the world could intensify these trends and leave us in a more war-prone condition when fear of the virus has diminished. On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).” Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success. Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then. The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term. To be sure, I can’t rule out another powerful cause of war—stupidity—especially when it is so much in evidence in some quarters these days. So there is no guarantee that we won’t see misguided leaders stumbling into another foolish bloodletting. But given that it’s hard to find any rays of sunshine at this particular moment in history, I’m going to hope I’m right about this one.

#### They don’t solve misinformation – platforms still allow internet trolls and false content after the plan – none of that is tied to anticompetitive practices.

#### No Russia war – military agreements check.

Simon Saradzhyan 20, Master’s in Public Administration from the John F. Kennedy School of Government and Founding Director of Russia Matters, “What Stops US and Russia From Stumbling Into War?”, Russia Matters, In The Thick of It – Blog of the Harvard Belfer Center on Science and International Affairs,

As we are all well aware, the original Cold War, which officially ended 30 years ago last month, featured a number of close calls that almost turned it into a hot war. Thankfully, neither the Cuban Missile Crisis of 1962 nor the Able Archer exercise of 1983 (nor any other perilous incidents), led to a war between Washington and Moscow. More recently, however, respected statesmen have again begun to sound alarms. “Not since the 1962 Cuban Missile Crisis has the risk of a U.S.-Russian confrontation involving the use of nuclear weapons been as high as it is today,” former U.S. Energy Secretary Ernest Moniz and former U.S. Sen. Sam Nunn warned in a recent article in Foreign Affairs. I have expressed some doubts about this proposition, but it is nevertheless worth asking what it is—other than the fear of mutually assured destruction—that keeps the U.S. and Russia from stumbling into a war today or tomorrow. Part of the answer lies in the bilateral and multilateral agreements specifically designed to prevent incidents that could escalate into a war.

As is clear from the list below, there are at least half a dozen bilateral agreements between Moscow and Washington that have been concluded for the purposes of preventing dangerous military incidents. These deals include the 1972 U.S.-Soviet agreement on prevention of incidents on and over the high seas and the 1989 U.S.-Soviet agreement on prevention of dangerous military activities. Some other NATO members—including the United Kingdom, Germany, France, Italy, Norway, Spain, the Netherlands, Canada, Greece and Portugal—have agreements with Russia on prevention of incidents on the high seas that are similar to the 1972 agreement between Moscow and Washington, while Canada and Greece also have agreements with Russia on prevention of dangerous military activities. However, almost a dozen NATO members have no such agreements with Russia, even though they abut seas. These countries include Albania, Bulgaria, Croatia, Latvia, Lithuania, Romania and Slovenia. Nor are there any multilateral NATO-Russia (or NATO-Collective Security Treaty Organization) agreements on prevention of dangerous military incidents, though a NATO-Russia Memorandum of Understanding on avoiding and managing such incidents has been discussed in Track II.

#### No hybrid war

Dr. Samuel Charap 16, Ph.D. in Political Science from the University of Oxford, M.Phil. in Russian and East European Studies from the University of Oxford, B.A. in Political Science and Russian from Amherst College, Senior Fellow for Russia and Eurasia at the International Institute for Strategic Studies, “The Ghost of Hybrid War”, Survival, Volume 57, Number 6, December 2015 – January 2016

Analysts in the West tend to think that Russia would choose hybrid tactics in order to sow discord within NATO – using ambiguity to create divisions among allies about what was happening and how to respond – and thus break the Alliance politically, without firing a shot.13 This scenario reflects well-founded doubts about Alliance cohesion and unity. It does not reflect the reality of Russian strategy. An extensive search of Russian military writings produces no evidence of such considerations. Moreover, what we do know about Russian military thought suggests that a hybrid war with NATO would not make strategic sense from Moscow’s perspective. For the Russian military, the most significant threat in the Baltic region, particularly because of the strategically vulnerable Kaliningrad exclave, where the Russian Baltic Fleet is based, is the potential deployment of US forces and high-end capabilities. A Russian hybrid operation would give ample time for the US to do just that. So, in the time it took for Narva, the Russian-speaking Estonian border town, to be occupied by the little green men, the 101st Airborne Division could land in Tallinn and a US carrier group could set sail for the Gulf of Finland. Moreover, Moscow has options to prevent this scenario from materialising. For example, the army, with air support, could rapidly push from the Estonian border to the Baltic Sea, destroying all Estonian forces and denying the US access to the region before anyone in Washington or Brussels had the chance to navel gaze. One Russian analyst noted that it would take 30,000 NATO troops about a month to deploy to the Baltic region, while a Russian force of three times the size could be sent there in just 24 hours. He concluded that ‘while Europe’s top brass discuss and argue how to transit to the theater, and coordinate all of this with [the US], Warsaw, Riga, Tallinn and Vilnius would be transformed into a rubbish heap’.14

Some analysts have gone even further than discerning a doctrine and now claim that Russia is already conducting hybrid warfare on the West. As one recent report claimed, ‘The various diplomatic, economic, military and subversive measures that have been employed by Russia in the Baltic Region and increasingly in the Balkans, Black Sea and Mediterranean regions, could be interpreted as elements of a protracted campaign already underway.’15 The author thus equates hard-nosed – but commonplace – tactics to gain influence with subversion that represents a threat to national security. But there is a major difference between efforts to subvert a population against its government on the one hand, and the use of normal tools of statecraft to gain influence on the other.16 The former would be, of course, a real problem for NATO; fortunately, nothing like the subversion of eastern Ukraine is happening inside member states today. As for all the other unpleasant activities that Russia undertakes inside NATO and EU member states, such as funding political parties or developing media in local languages, these certainly do not merit the label ‘hybrid’, let alone ‘war’. After all, Western countries have been doing many of the same things inside of Russia for years. And no one considered those activities ‘elements of a protracted campaign already underway’.

\* \* \*

Three parallels between the developing conventional wisdom in Russia and the West on hybrid war emerge from the literature. Firstly, Russian strategists believe that the US is willing to risk conducting a limited, hybrid operation in Russia – that is, on the territory of a nuclear power – just as NATO strategists believe Russia is willing to risk the same on the territory of a nuclear alliance. Secondly, Russian analysts project well-founded fears about their country’s long-term political cohesion onto the West’s intentions. In other words, they know their political system is brittle, so therefore the Americans must be out to undermine it. In the same way, NATO analysts know there are divergences regarding threat perceptions inside the Alliance, so therefore Russia must be planning to take advantage of them. Finally, each side believes that Ukraine represents the other’s successful hybrid operation, and a potential precursor to such an operation being directed against it. Fortunately, on all three counts, the new conventional wisdom in both Russia and the West is wrong.

#### New antitrust is circumvented and watered down – durable fiat doesn’t solve judicial disregard and congressional inaction

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

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

#### Courts will use rule of reason analysis to water down new and past precedent

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

Consider the case law governing boycotts. In Klor's, Inc. v. Broadway-Hale Stores, Inc., the Court examined a group of appliance manufacturers and distributors boycotting a particular retail store.8 2 The Court unambiguously stated that such boycotts were per se Sherman Act violations: Group boycotts, or concerted refusals by traders to deal with other traders, have long been held to be in the forbidden category. They have not been saved by allegations that they were reasonable in the specific circumstances . . . . Even when they operated to lower prices or temporarily to stimulate competition they were banned.... It clearly has, by its "nature" and "character," a "monopolistic tendency."83 Without explicitly overruling this seemingly bright-line and straightforward per se rule, the Court has blurred its boundaries significantly. 84 For example, in Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co., the Court reversed the Ninth Circuit's application of the per se rule against boycotts to a purchasing cooperative's boycott of a certain retailer.8 5 Although reaffirming that "group boycotts are so likely to restrict competition . . . that they should be condemned as per se violations of § 1 of the Sherman Act," the Court warned that "[e]xactly what types of activity fall within the forbidden category is, however, far from certain."8 6 The Court's analysis provided a number of threshold factors to be considered prior to application of the per se rule, which the Ninth Circuit later summarized as whether: "(1) the boycott cuts off access to a supply, facility, or market necessary to enable the victim firm to compete; (2) the boycotting firm possesses a dominant market position; and (3) the practices are not justified by plausible arguments that they enhanced overall efficiency or competition." But these threshold inquiries-market structure, efficiency, and market power-are classic components of the more flexible and amorphous rule of reason. In other words, the case law dictates that ''courts must apply the rule of reason in order to determine whether the per se rule applies" in the first place.88 To the extent that the ambiguities inherent in the rule of reason are effectively imported into per se analyses as a step-zero inquiry, the latter category is no less vaguely defined.

#### Courts will always read statutes down.

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

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

#### New enforcement causes void-for-vagueness challenges that gut all antitrust

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

The Sherman Act's judicially-created framework of rules, instead of providing the notice and consistency otherwise lacking in the statutory text itself, has thus single-mindedly elevated discretion and flexibility. One by one, the courts have eliminated the bright and predictable lines of per se analysis, whether explicitly and outright or implicitly through threshold rule-of-reason inquiry. Compliance in the shadow of Sherman Act jurisprudence thereby means weighing the totality of all economic factors and market effects and determining whether the activity in question will be found "reasonable" down the line by a judge or jury. Or, to circle back to the L. Cohen Grocery holding reaffirmed by the Court in Johnson: "to attempt to enforce the section would be the exact equivalent of an effort to carry out a statute which in terms merely penalized and punished all acts detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury."10 3 Thus, at least on its face, a modern void-for-vagueness challenge would present a serious threat to the Sherman Act.

# 2NC

## CP – States

### 2NC – OV

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

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

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

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

### 2NC – AT: 50 States

#### 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.

### 2NC – AT: Patchwork

#### C) No preemption.

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

C. Federal Government "Displacement"?

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

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

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

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

#### B) No regulatory capture.

Taylor ’21 [Luke; JD @ Harvard Law School; “Misclassified Workers and Antitrust Federalism: Local Pathways to Unionization,” *New York University Review of Law & Social Change* 44(4), p. 633-678; AS]

IV. THE CAPTURE ARGUMENT

There is circumstantial reason to believe Lafayette and Boulder imposed their clear articulation requirement at least in part to guard against the capture of municipal legislatures by interest groups. Multiple commentators have suggested that Lafayette and Boulder were part of a spree of state action cases in which the Court, operating in an intellectual climate that feared the capture of regulators by interest groups, tightened the scope of state action immunity. 224 These commentators argue not that the Court viewed municipalities as more susceptible than state legislatures to capture, but that it feared capture of both municipal and state governments and thus sought to scale back Parker immunity anywhere it could. Conditioning municipalities' immunity on clear articulation of state policy was simply one way of doing so.

The capture theory warrants brief address even though the Court has not said that capture concerns motivated its municipal state action cases, and lower courts have not left easily discernible clues that capture concerns motivate their decisions in municipal state action cases. 225 After all, there is a colorable argument that the Sherman Act-enacting Congress, to prevent capture, would have wanted municipalities to face the heightened requirements for Parker immunity that state action doctrine currently imposes. A primary motivation for Dillon's Rule226 was to curtail municipalities' practice of offering subsidies to railroads and other industries. Dillon feared these subsidies wasted tax dollars and reduced industries' overall economic efficiency. 227 Insofar as this 19th-century practice persuaded Congress that the trusts the Act sought to combat could easily influence municipalities to restrain competition, Congress might have wanted to preempt municipal competitive restraints the state did not affirmatively approve and to require state supervision of municipal hybrid restraints.

A. The Capture Argument's Theoretical Failure

We should not assume the 1890 Congress would have intended municipalities' lesser Parker immunity, because, by 1890, states had already widely enacted Dillon's Rule regimes that guarded against municipal capture. 228 Congress would not have needed to enact a preemption regime that duplicated Dillon's Rule's protection against municipal capture. 229 Granted, the home rule movement was already underway in the late 19th century. 230 So the 1890 Congress might have worried home rule states would liberate municipalities to enact ill-advised restraints on competition at a trust's behest. But home rule states retain various checks on municipal corruption that counsel against assuming Congress would have intended municipalities' lesser Parker immunity. I summarize these checks infra IV.B.

Capture concerns also fail to justify municipalities' lesser Parker immunity because capture is probably not a proper concern for a doctrine grounded in federalism. Parker's presumption against preemption is one that courts use to respect states' traditional authority to govern themselves. And this presumption is one the Court has applied to shelter both state and municipal laws from preemption (in contexts outside state action doctrine). 23 1 It is somewhat empty for federal courts to agree to respect states' and municipalities' role in governing themselves only insofar as federal courts think states and municipalities are governing themselves well.

True, insofar as Parker immunity's legitimacy is based on state and municipal officials' accountability to their constituents, one might think state action doctrine should waive deference to a captured government because that government is not truly accountable to those constituents. 232 Yet even were interest group capture a proper concern for state action doctrine, the Court's own state action doctrine cases recognize that municipal officials are meaningfully electorally accountable and unlikely to stand as fronts for private price-fixing schemes. 233

And it would be strange to grant municipalities lesser immunity than states due to capture concerns when there is no strong reason to think municipalities are more susceptible to capture than states. Interest group theorists present countervailing reasons to think either municipal or state governments are comparatively more susceptible to capture. Arguments that municipalities are more susceptible stress "the relative capacity of large polities to generate a multiplicity of interest groups" that can offset or dampen each other's influence. 234 Arguments that state governments are more susceptible stress that state officials depend on campaign donations more than local officials do.235 They also stress that transportation costs and more extensive procedural hurdles for state legislation impose costs that impede less-financed groups' ability to effectively gather information and lobby at the state level.23 6

One might object that, even if states and municipalities are equally capturable, capture concerns warrant state action doctrine's subordinating municipalities to the state insofar as this subordination requires interest groups to capture two governments rather than one before effecting a municipal competitive restraint. But whatever accountability benefits this second layer of protection adds are likely outweighed by the cost of stymying municipal laws that receive support from constituents outside some narrow interest group that captured local officials.

B. The Capture Argument's Practical Failure

States police even home rule municipalities' laws for capture in various ways, including public purpose requirements, single subject requirements, and private law limits for municipal laws. 237 These tools give state courts substantial discretion to invalidate municipal laws that state courts determine serve impermissibly narrow interests. 238

1. Single Subject Requirements

Single subject requirements require that any particular local ordinance address a single subject only. These clauses are common in state constitutions. 239 Their purpose is to prevent narrow interests from using logrolling 240 to achieve ends voters do not broadly support. 24 1 Because the subject of any given law can be defined at various levels of generality, state courts have substantial discretion to decide whether or not a law violates a single subject clause. Courts sometimes use these clauses as vehicles for invalidating laws courts judge to serve unduly narrow interests. 242

2. Public Purpose Requirements

Public purpose requirements require that local laws benefit public welfare generally rather than some narrow private interest. 243 Forty-six states have public purpose requirements in their constitutions and the remaining states impose such requirements through rules their courts have created. 244 State courts frequently interpret public purpose requirements quite permissively, 245 but do sometimes hold that these requirements invalidate municipal legislation. 246

3. Private Law Limits

Private law limits in state constitutions offer state courts another tool for invalidating local laws the court determines to have arisen out of capture. 247 States typically phrase these limits along the following lines: "This grant of home rule powers shall not include the power to enact private or civil law governing civil relationships except as incident to an exercise of an independent county or city power." 248 Granted, the conventionally understood purpose of private law limits is to prevent intrastate fragmentation of contract, tort, and property 1aw2 49 -not to prevent laws that serve narrow interests. But the broad discretion250 courts retain to interpret these limits allows courts to invalidate laws they disapprove of for capture reasons. 251

And state courts, as shown below, have used private law limits to invalidate municipal competitive restraints. Capture concerns might not have motivated these courts. But these decisions show that private law limits give state courts another tool for invalidating municipal laws the courts deem inconsistent with state policy, and thus help render state action doctrine's clear articulation requirement superfluous.

Rent control provides one example. Fisher v. City ofBerkeley2 5 2 rejected the claim that the Act preempted a municipal rent control ordinance. 25 3 Yet Fisher has not prevented state courts from using private law limits to invalidate rent control regulations. Massachusetts' high court held that municipal rent control ordinances-absent a specific state delegation of power-violated the state's private law limit on municipal home rule authority. 254

Private law limits also let state courts invalidate other laws that allegedly sanction price-fixing, such as municipal ordinances permitting collective bargaining for misclassified workers. At least two Louisiana Supreme Court justices would have invalidated New Orleans' livable wage ordinance as violating the state's private law limit-an issue the majority opinion did not reach. One justice reasoned that the ordinance violated Louisiana's private law limit because the ordinance "impermissibly seeks to 'govern' the private employment relationship because it modifies existing rights and obligations between the parties to the relationships, directly and unavoidably affecting the ability of the parties to negotiate price."255 Since ordinances letting putative independent contractors collectively bargain affect the ability of such workers to negotiate wages with firms, a state court could possibly use similar reasoning to hold the ordinance violates any private law limit the state imposes on municipal regulation.256

#### 4. Finally, their ev concludes collective action solves uniformity issues!

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

II. PRIOR DIVERGENCES BETWEEN STATE AND FEDERAL ENFORCERS

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

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

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

### AT: Commerce Clause

#### 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.

## Innovation

### XT 1NC 1-4 – Innovation High

#### 2. U.S. innovation is high and globally dominant---big business is key.

Wolf ’21 [Martin; April 27; Chief Economics Commentator, M.A. in Economics from Oxford University; Financial Times, “China is wrong to think the US faces inevitable decline,” <https://www.ft.com/content/8336169e-d1a8-4be8-b143-308e5b52e355>]

The Chinese elite are convinced that the US is in irreversible decline. So reports Jude Blanchette of the Center for Strategic and International Studies, a respected Washington-based think-tank. What has been happening in the US in recent years, particularly in politics, supports this perspective. A stable liberal democracy would not elect Donald Trump — a man lacking all necessary qualities and abilities — to national leadership. Nevertheless, the notion of US decline is exaggerated. The US retains big assets, notably in economics.

For one and half centuries, the US has been the world’s most innovative economy. That has been the basis of its global power and influence. So how does its innovative power look today? The answer is: rather good, despite competition from China.

Stock markets are imperfect. But the value investors put on companies is at least a relatively impartial assessment of their prospects. At the end of last week, 7 of the 10 most valuable companies in the world and 14 of the top 20, were headquartered in the US.

If it were not for Saudi Arabian oil, the five most valuable companies in the world would be US technology giants: Apple, Microsoft, Amazon, Alphabet and Facebook. China has two valuable technology companies: Tencent (at seventh position) and Alibaba (at ninth). But those are China’s only companies in the top 20. The most valuable European company is LVMH at 17th. Yet LVMH is just a collection of established luxury brands. That ought to worry Europeans.

When we look only at technology companies, the US has 12 of the top 20; China (with Hong Kong but excluding Taiwan) has three; and there are two Dutch companies, one of which, ASML, is the largest manufacturer of machines that make integrated circuits. Taiwan has the Taiwan Semiconductor Manufacturing Company, the world’s biggest contract computer chipmaker, and South Korea has Samsung Electronics.

Life sciences are another crucial sector for future prosperity. Here there are seven European companies (with Switzerland and the UK included) in the top 20. But the US has seven of the top 10, and 11 of the top 20. There is also one Australian and one Japanese company, but no Chinese businesses.

In sum, US companies are globally dominant and nearly all the most valuable non-US firms are headquartered in allied countries.

#### 3. A new wave of innovation is imminent, reaching all sectors---large firms are key.

Gourevitch ’21 [Antoine and Massimo Portincaso; March 11; Managing Director and Senior Partner at the Boston Consulting Group, M.B.A. from INSEAD, M.A. from Ecole Centrale in Paris; Boston Consulting Group, “Deep Tech and the Great Wave of Innovation,” <https://www.bcg.com/publications/2021/deep-tech-innovation>]

Despite the inherent risks of failure, businesses and investors have shown increasing interest in deep tech. According to our preliminary estimates, investment in deep tech (including private investments, minority stakes, mergers and acquisitions, and IPOs) more than quadrupled over a five-year period, from $15 billion in 2016 to more than $60 billion in 2020. The average disclosed amount per private investment event for startups and scale-ups rose from $13 million in 2016 to $44 million in 2020. For early-stage startups, the most recent survey by Hello Tomorrow found that the amount per investment event increased from $36,000 to $2 million between 2016 and 2019.

And funding sources are expanding. While information and communications technology (ICT) and biopharma companies continue to invest substantially in deep tech, more traditional large enterprises are becoming increasingly active. For example, Sumitomo Chemical has signed a multiyear partnership with Zymergen to bring new specialty materials to the electronics products market, and Eni has invested $50 million in Commonwealth Fusion Systems and joined its board of directors. Bayer has joined forces with Ginkgo Bioworks to reduce agriculture’s reliance on carbon-intensive nitrogen fertilizers. The resulting venture, Joyn Bio uses synthetic biology to engineer nitrogen-fixing microbes that enable cereal crops to extract nitrogen from the air in a usable form. Sovereign wealth funds are playing too. Singapore’s Temasek Holdings invested in JUST (plant-based egg alternatives), Commonwealth Fusion Systems (commercial fusion energy), and Memphis Meats (animal-cell-based meat).

More and more mainstream companies and institutions are recognizing that solutions to big problems—and the future of innovation—lie in deep tech.

The Fourth Wave of Innovation

The first wave of modern business innovation started in the nineteenth and early twentieth centuries with breakthroughs such as the Bessemer process for manufacturing steel and the Haber-Bosch process for making ammonia.

Following World War II, the second wave of modern business innovation—the information revolution—gave birth to large-company R&D, particularly in the ICT and pharma sectors. Bell Labs, IBM, and Xerox PARC became household names and Nobel Prize workshops. Merck alone launched seven major new drugs during the 1980s.

In the third wave, the digital revolution, two guys in a garage (or a Harvard dorm room) led the innovation charge, which resulted in the rise of Silicon Valley and, later, China’s Gold Coast as global centers of computing and communications technology and economic growth. At the same time, the new field of biotech, also driven by entrepreneurs, fueled much of the innovation in pharmaceuticals.

The wave now taking shape as older barriers to innovation crumble embraces a new model and promises to radically broaden and deepen innovation in every business sector. The increasing power and falling cost of computing and the rise of technology platforms are the most important contributors. Cloud computing is steadily improving performance and expanding breadth of use. Biofoundries are becoming for synthetic biology what cloud computing already is for computation. Similar platforms are emerging in advanced materials (Kebotix and VSPARTICLE are two examples).

Meanwhile, costs continue to fall, including those related to equipment, technology, and access to infrastructure. Increasing use of standards, toolkits, and an open approach to innovation, paired with the ever-increasing availability of information and data, plays an important role as well.

### XT 1NC 5-9: Innovation Turn

#### 4. Their evidence also doesn’t assume global spillover effects. The perception of the plan alone over deters foreign investment into the US.

MAKAN DELRAHIM, Assistant Attorney General, Antitrust Division, ’20, Case 3:19-cv-02933-M Document 278 Filed 02/27/20 Page 12 of 37 PageID 7223 https://www.justice.gov/atr/case-document/file/1253361/download

Contract and patent remedies are available to Continental if Defendants have, in fact, breached their FRAND commitments, deceived the SSOs about their licensing intentions, erroneously asserted their patents, or otherwise acted in bad faith. See, e.g., Microsoft Corp. v. Motorola, Inc., 795 F.3d 1024 (9th Cir. 2015). Indeed, an implementer does not need to rely on antitrust law and the threat of treble damages to enforce a FRAND promise when it can also seek declaratory relief and a FRAND determination. Similarly, for alleged abuses of patent rights, including bad-faith assertion, implementers have adequate recourse within patent law. Where contract and patent remedies are available to deter breach and to facilitate transparent dealing, an additional remedy—treble damages under the antitrust laws—would threaten to chill lawful, procompetitive licensing conduct. See Trinko, 540 U.S. at 414 (“Mistaken inferences and the resulting false condemnations ‘are especially costly, because they chill the very conduct the antitrust laws are designed to protect.’” (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 594 (1986)));23 see also NYNEX, 525 U.S. at 136-37 (cautioning against “transform[ing] cases involving business behavior that is improper for various reasons . . into treble-damages antitrust cases”). Moreover, improperly extending the scope of liability to include antitrust treble damages in the U.S. could have a cascade effect in foreign jurisdictions— either as a consequence of misunderstanding, misinterpretation or even misuse by foreign governments or parties—further amplifying the risk of harm to innovators and undermining dynamic competition in the US economy for no appreciable efficiency gains in licensing conduct.24 Antitrust remedies are too blunt an instrument to address conduct that violates the expectations of contracting parties but does not harm the competitive process. If a party can threaten its counter-party with treble damages under Section 4 of the Clayton Act by alleging violations of a contractual commitment, then it may be able to extract more than the benefit of its bargain. This risk could deter parties from entering into efficient contracts in the first place, resulting in deadweight economic losses.25 Indeed, many scholars have expressed concern that the use of antitrust remedies to address the breach of FRAND commitments will have the consequence of deterring procompetitive participation in standard setting organizations—which would, ironically, undermine the fundamental goal of both antitrust and IP laws, which is to promote innovation and dynamic competition.26 If patent holders with valuable technology must risk antitrust liability whenever they negotiate in an effort to obtain rates that reflect the true value of their inventions, they will be less likely to contribute their technology to a standard that requires a FRAND commitment. This could lead to lower-quality standards, competing standards that fragment the market, or an unwillingness to enter FRAND commitments in the first place.

#### 5. Best data confirms big tech increases innovation.

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

Breaking up the tech giants would be contrary to the longstanding jurisprudence and current tradition expounded by the consumer benefit standard. Besides ignoring the longstanding principle of consumer welfare, breaking up the big four would have harmful effects on consumers and the American economy.

The internet is a source of great innovation and consumers do not pay for much of the benefits they receive. At consumers' fingertips are a great amount of information that provides a benefit to consumers. Search engines like Google and social media sites like Facebook "generally create the enormous social benefit of connecting content providers with users in a mutually beneficial manner." 118 Professor James Grimmelman argues that "[search engines] allow willing users and content providers to find each other, reducing transaction costs and enabling mutually beneficial exchanges. These benefits depend on the contributions of users, providers, and search engines in the form of queries, content, and ranking algorithms, respectively." 119 Grimmelman further argued that restrictions on search engines may "squander the innovative potential of search engines." 1 20 Although these arguments were aimed at search engines, they also aptly apply to other tech companies. Consumers receive substantial benefits by receiving free or nominally free services. Because of the proliferation of search services like Google, consumers have more access to information at their fingertips than any point in human history. Likewise, because of the advances pioneered by Amazon, consumers have almost an unlimited array of choices when purchasing goods. Even if these corporations have monopolistic power, a monopoly by efficiency in producing and marketing better and cheaper product than other companies does not fall within the scope of the antitrust acts. 121 Breaking up the big tech giants would lessen innovation and is counter to the current approach of antitrust law, which considers the benefit to consumers.

Proponents of breaking up Big Tech contend the consumer welfare standard should apply because the tech giants present a future threat to consumers and small businesses. However, the consumer benefit standard looks at what is benefitting or not benefitting consumers at the time of the analysis. 12 2 Declaring a company a threat to consumers in the future is not sufficient to bring an antitrust action. 123 A reduction of competition does not invoke the Sherman Act until it harms consumer welfare. 124 By breaking up internet companies because of their sheer size, the U.S. would be limiting the amount of innovation that could be produced. Goldman Sachs keeps an index tracking tech industry spending and the June 2018 spending levels are the third highest since Goldman Sachs created the index in 2002.125 This investment is primarily targeted at security software, software as a service applications, analytics, and private and public clouds.1 2 6 Apple, Amazon, and Google have spent a combined $80 billion on physical assets alone such as real estate, powerful computers, and undersea internet cables. 127 These investments benefit the economy and help drive the pace of innovation. Because of these innovations and investment, the tech giants added more market capitalization than the GDP of India since 2008.128 Even the U.S. government is dependent on the benefits of these industries. For example, the Department of Defense relies on Big Tech's cloud computing to meet its needs. 129 Untangling the interwoven nature of Big Tech would be an incredibly difficult task that would likely curb innovation and, in turn, economic growth.

#### 6. Expansion sets precedent, injecting uncertainty into the tech sector---that crushes innovation.

Huddleston ’20 [Jennifer; December 18; Director of Technology and Innovation Policy at the American Action Forum, J.D. from the University of Alabama; American Action Forum, “Antitrust Actions Beyond the Federal Government: The Potential Impact of State and Private Litigation,” <https://www.americanactionforum.org/insight/antitrust-actions-beyond-the-federal-government-the-potential-impact-of-state-and-private-litigation/>]

With a growing number of likely divergent claims, the current tech antitrust battles could continue for some time and lead to more confusion around the application of antitrust to this dynamic sector of economy. This may appear to be a short term problem, but uncertainty around the application of competition policy could impact numerous sectors of the economy. Regulators already appear to be increasing scrutiny of acquisitions related to the technology sector well-beyond the tech giants. Multiple court cases with a wide-range of theories that do not follow traditional antitrust applications could further the uncertainty or thought that previously justified actions might be subject to greater scrutiny. If a court chooses to embrace the creative and expansive theories at the center of these state-led cases, it could set precedent that changes the application of antitrust law in the future not only for the technology industry, but in many other areas of the economy as well. Regardless of the impact of these cases—and there is reason to think that these antitrust actions would [not remedy](https://www.americanactionforum.org/insight/continuing-a-principled-approach-to-antitrust/) the underlying policy concerns—the uncertainty and broad reach created by these competing state cases would likely stifle economic growth and innovation.

### Link---AT: Small Firms---1NR

#### Large firms have higher R&D *investment* and *productivity*

Kennedy 20 - Dr. Kennedy was the chief economist for the U.S Department of Commerce (Joe, <https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones>, emuse)

So-Called Kill Zones Could Maximize Welfare and Innovation To the extent established companies are conducting research in a narrow market, it makes sense for entrants to avoid head-on competition and instead exploit complementary markets. This is almost as likely to be true whether the industry is dominated by one firm or five. Breaking into an industry with relatively mature technology dominated by large players is never easy. That is why many industries have gone through periods of heavy investment in the early stages of an industry as companies try to become one of the dominant players. Once the industry has matured to achieve economies of scale or network effects, new entrants tend to focus on complementary technology rather than trying to challenge the larger companies head-on. Few complained after the 1930s automobile-sector start-ups declined precipitously. By the 1930s, it made little sense to invest in new automobile companies when it was clear the technology system (internal combustion engine) and major players (American Motors, Chrysler, Ford, and GM) had already been established. Investment to create new entrants would have represented a waste of societal resources. Instead, funding went to emerging industries such as radios, chemicals, and machine tools. Today is no different. The technology and business models for search, social networks, and Internet retailing are relatively mature; society is better off if entrepreneurs and venture capitalists focus on other areas. Indeed, to the extent investors may be focusing their capital outside a few areas where large firms have established positions in what are somewhat mature technologies, it is arguably a good thing because it means there is more capital for other promising areas. Hathaway, in fact, acknowledged the possibility that “venture capital investment may have increased in non-tech sectors too, so that the tech giants have simply diverted the flow of capital to other areas.”25 The is buttressed by an earlier study by Oliver Wyman, which shows that acquisitions by Facebook, Google, and Amazon have not had a negative effect on the amount of venture capital flowing into tech industries.26 (See figures 1 and 2.) Acquisitions Often Increase Innovation There is often an assumption that acquisitions decrease innovation, but a number of studies suggest the opposite. A Dutch study looks at acquisitions in the manufacturing sector, which includes technology companies, and finds that both acquisitions and divestitures are positively correlated with increased innovation.27 Likewise, a paper by Igor Letina, Armin Schmutzler, and Regina Seibel argues that prohibiting killer acquisitions strictly reduces the variety of innovation projects

#### Large companies are more innovative---best empirical studies

Kennedy 20 - Dr. Kennedy was the chief economist for the U.S Department of Commerce (Joe, <https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones>, emuse)

The Assumption That Small Firms Are Inherently More Innovative Than Large Firms Is Not Borne Out by the Evidence One core argument made by anti-monopolists who oppose large companies and argue that kill zones and killer acquisitions are real and harmful is that small firms are inherently more innovative than large firms. As FTC Commissioner Christine Wilson argued, “[M]any today believe that small firms are inherently more innovative than large ones, so that the acquisition of a small firm by a large one necessarily reduces innovation.”45 For example, Tim Wu recently testified before Congress that innovation in technology sectors would increase if government imposed greater regulations and increased antitrust enforcement because “[o]ver the last century, competitive, open sectors—ecosystems—have proved themselves superior to those monopolized or dominated by a ‘big three’ or ‘big four.’”46 In fact, large companies are as or more innovative than small firms. In a 1996 paper, Wesley M. Cohen and Steven Klepper found that large firms invest more in R&D as a share of sales.47 The number of patents and innovations produced per R&D dollar decline with increasing firm size. But they argued that this reflects a mismeasurement of innovation outputs. Large firms benefit from “cost spreading,” because they can spread the benefits from one innovation across more units and products, leading to a greater overall level of innovation per unit of R&D. They wrote, “Not only does cost spreading provide the basis for explaining the R&D-size relationship, it also challenges the consensus that has emerged from the R&D literature that large firm size imparts no advantage in R&D competition.”48 More recently, in 2016, business professors Anne Marie Knott and Carl Vieregger estimated that a 10 percent increase in the number of employees increases R&D by 7.2 percent, and a 10 percent increase in firm revenues increases R&D productivity by 0.14 percent. This shows that large firms not only invest more in R&D activities, they also enjoy higher returns on innovation output per dollar invested in R&D.49 Other research has found that “small firms prevail in the early stages and innovation tends to concentrate in larger firms as industries evolve towards maturity.”50 In the 1990s, many small firms emerged and competed to be the winners in IT platforms. But only a few firms could emerge as winners, and the ones that did continue to invest in innovation. Data on Venture Investments Suggests Tech Acquisitions and High Market Share Do Not Hurt Start-Ups The right measure of the effect of killer zones is not the trend in the specific market wherein large tech firms operate, but in the overall tech innovation ecosystem. Even Hathaway acknowledged that the relative declines he observed in the narrow markets where the big firms are strongest could be offset by investments moving to other, more promising, markets. In fact, that appears to be exactly what has happened. From 2006 to 2019, venture capital investments in IT deals increased steadily and significantly. Although it leveled off in 2019, tech funding was still 54 percent above the 2017 level. Figure 2 shows the number of technology angel and seed deals as well as the number of early stage deals. The number of angel and seed deals rose by almost six-fold between 2006 and 2019, peaking in 2015. The number of early deals rose by 2.4 times. It is hard to see any sign of investor activity slowing down.

## Antitrust

### XT 1NC 1 – Econ High

#### 2. The US recovery is accelerating and driving global growth, but it’s still fragile

Crutsinger 21 – Martin Crutsinger, writer for the Associated Press, “US recovery from pandemic recession is showing momentum,” 4/29/21, https://apnews.com/article/economy-gross-domestic-product-coronavirus-business-health-8f0e1c51128f4f7fc95f35ae9cea57c0

Powered by consumers and fueled by government aid, the U.S. economy is achieving a remarkably fast recovery from the recession that ripped through the nation last year on the heels of the coronavirus and cost tens of millions of Americans their jobs and businesses.

The economy grew last quarter at a vigorous 6.4% annual rate, the government said Thursday, and expectations are that the current quarter will be even better. The number of people seeking unemployment aid — a rough reflection of layoffs — last week reached its lowest point since the pandemic struck. And the National Association of Realtors said Thursday that more Americans signed contracts to buy homes in March, reflecting a strong housing market as summer approaches.

Economists say that widespread vaccinations and declining viral cases, the reopening of more businesses, a huge infusion of federal aid and healthy job gains should help sustain steady growth. For 2021 as a whole, they expect the economy to expand around 7%, which would mark the fastest calendar-year growth since 1984.

As American consumers have stepped up their spending in recent months, they have consumed physical goods far more than they have services, like haircuts, airline tickets and restaurant meals: Spending on goods accelerated at an annual pace of nearly 24% last quarter; services spending rose at a rate below 5%.

But now, that disparity will likely shift as more restaurants and entertainment venues reopen and people look to spend more on experiences and less on tangible items. On Friday, for example, Disneyland will reopen, with limited capacity, to California residents.

Andrew Song, whose family owns Kwan’s Deli across from Atlanta’s Centennial Olympic Park, is finally feeling hopeful after having lost most of his business last year as office workers stayed home. The deli should be able to sustain itself, Song said, from a rise in hotel guests, convention goers and tourists, even if office workers don’t all return. Recently, he called a laid-off employee back to work.

Song credited the rebound, at least in part, to the rise in vaccinations, which he thinks has made Americans more comfortable about venturing out.

“More tourists are coming,” he said. “We’re seeing some familiar faces back inside the restaurant.”

Online sites that have capitalized on goods purchases during the pandemic — from Amazon to Etsy to eBay — are under pressure to show they can sustain accelerating growth even as consumers look more toward services and less on goods. So far, Amazon, the dominant site by far, is hardly showing signs of slowing down. On Thursday, it reported that its first-quarter profit more than tripled from a year ago, fueled by online shopping.

The speed of the rebounding U.S. economy has been particularly striking given the depth of damage the pandemic inflicted on it beginning last year. With businesses all but shut down, the economy contracted at a record annual pace of 31% in the April-June quarter of last year before rebounding sharply in the subsequent months.

The bounce-back has been swift. In March, employers added 916,000 jobs — the biggest burst of hiring since August. Meantime, retail spending has surged, manufacturing output is up and consumer confidence has reached its highest point since the pandemic began.

“We are seeing all the engines of the economy rev up,” said Gregory Daco, chief economist at Oxford Economics. “We have an improving health environment, fiscal stimulus remains abundant and we are starting to see rebounding employment.”

The renewed strength in the United States — the largest economy — is helping lead the developed world out of recession. In Europe, for instance, a recovery has lagged because of smaller government aid and slower vaccination rollouts that have prolonged lockdowns. Economists at Berenberg Bank estimate that the 19 countries that use the euro currency actually contracted in the first quarter.

For all the U.S. economy’s gains, it still has a long way to go. More than 8 million jobs remain lost to the pandemic. And the recovery remains sharply uneven: Most college-educated and white collar employees have been able to work from home over the past year. Many have even built up savings and expanded their wealth from rising home values and a record-setting stock market, which has rocketed more than 80% from March of last year.

By contrast, job cuts have fallen heavily on low-wage workers, racial minorities and people without college educations. In addition, many women, especially working mothers, have had to leave the workforce to care for children.

In its report Thursday, the government said the nation’s gross domestic product — its total output of goods and services — accelerated in the January-March quarter from a 4.3% annual gain in the last quarter of 2020. Some economists say growth in the current April-June period could reach a 10% annual pace or more, driven by a surge in people traveling, shopping, dining out and otherwise resuming their spending habits.

A major reason for the brightening expectations is the record-level federal spending that is poised to flow into the economy. A $1.9 trillion package that President Joe Biden got through Congress in March provided, among other rescue aid, $1,400 stimulus payments to most adults. On top of that, Biden is proposing two additional huge spending plans: a $2.3 trillion infrastructure package and a $1.8 trillion investment in children, families and education that the president promoted Wednesday night in his first address to a joint session of Congress.

The Federal Reserve’s ultra-low interest-rate policy, designed to encourage borrowing and spending, has provided significant support, too. In fact, the economy is expected to expand so fast that some economists have raised concerns that it could ignite inflation. In part, this is because rising demand has caused supply bottlenecks and shortages of some components, notably semiconductors, which are critical to the auto, technology and medical device industries, among others.

At a news conference Wednesday, though, Chair Jerome Powell reiterated his confidence that any jump in inflation would prove temporary. And he said the Fed wants to see a substantial and sustained recovery before it would consider withdrawing its economic support. In the meantime, Powell made clear, the central bank isn’t even close to beginning a pullback in its ultra-low rate policies.

As more business restrictions are lifted and more people venture out to shop and eat out, companies that serve them are benefiting. McDonald’s, for example, posted a sharp jump in revenue last quarter — even surpassing the same period in 2019, long before the pandemic flattened the economy. Likewise, most major tech companies have reported impressive earnings. At Apple, for instance, demand for the iPhone and other company products drove profits to more than double in the January-March period.

In New York City, Mayor Bill de Blasio said he expects to expects the city to “fully reopen” by July 1. “We are ready for stores to open, for businesses to open, offices, theaters, full strength,” he said.

On Thursday, Biden left Washington on a trip to promote his spending proposals, which the White House cast as key to continued growth.

“This economic recovery is the result of a robust vaccination program that has helped us get the pandemic under control and an economic strategy that puts American’s hardworking families first,” Deputy Press Secretary Karine Jean-Pierre told reporters on Air Force One.

Thursday’s GDP report showed that consumer spending, which accounts for more than two-thirds of the economy, surged at a 10.7% annual rate in the January-March quarter, a significant acceleration after spending had slowed to a 2.3% annual gain in the final three months of 2020. As consumers spend more freely, employers are likely to keep hiring to keep up with customer demand. Daco said he thinks job growth in some months this year will surpass the nearly 1 million that were added in March.

Consumers weren’t alone in driving last month’s growth. Business investment rose at a strong rate of nearly 10%, reflecting a burst of spending on equipment. And government spending grew at a 6.3% annual rate after two straight declines that had reflected weakness at the state and local level as the recession shrank tax revenue.

### XT 1NC 2-4 – Econ Turn

#### 3. The aff is a disaster for innovation – creates a chilling effect across the entire economy

Downes 18 – Larry Downes, Internet industry analyst and author on business strategies and information technology, “How More Regulation for U.S. Tech Could Backfire,” 2/9/18, https://hbr.org/2018/02/how-more-regulation-for-u-s-tech-could-backfire

In particular, breaking up the most successful Internet and cloud-based companies only looks like a solution. It isn’t. Antitrust is meant to punish dominant companies that use their leverage to raise costs for consumers. Yet the services provided by technology companies are often widely available at little or no cost. Many of the products and services of Amazon, Apple, Google, Facebook and Microsoft — the internet giants referred to by the New York Times as “the frightful five” — are free for consumers.

More to the point, break-ups almost always backfire. Think of the former AT&T, which was regulated as a monopoly utility until 1982, when the government changed its mind and split the company into component long-distance and regional phone companies. The sum of the parts actually increased in value — except for the long-distance company, which faded in the face of unregulated new competitors.

Then, over the next 20 years, the regional companies put themselves back together, and, with economies of scale, reemerged as a mobile internet network and Pay TV provider, competing with cable companies and fast-growing internet-based video services including YouTube, Amazon and Netflix. What started as a regulatory punishment for AT&T led to an even bigger network of companies.

On the other hand, the constant threat of a forced divestiture can be disastrous for consumers and enterprise alike. IBM prevailed against multiple efforts to break it up along product lines, but was so shaken by the decades-long experience that the company became dangerously timid about future innovations, missing the shifts first to client-server and then to Internet-based computing architectures, nearly bankrupting the business.

Microsoft, similarly, was so distracted by its multi-year fight to avoid break-up both by U.S. and European regulators that it lost essential momentum. It mostly missed out on the mobile revolution, and hesitated in responding to open-source alternatives to operating systems, desktop applications, and other software apps that seriously eroded the company’s once-formidable competitive advantage. (The company is now growing a cloud services business, but is still far behind Google and Amazon.)

These examples hint at an alternative to random and unproven new forms of regulation for emerging technologies: simply waiting for the next generation of innovations and the entrepreneurs who wield them to disrupt the supposed monopolists right out of their disagreeable behaviors, sometimes fatally.

Today, it might seem that the companies in the frightful five have unbeatable leads in retailing and cloud services, social media, search, advertising, desktop operating systems and mobile devices. But the landscape of business history is littered with the corpses of supposedly invulnerable giants. In our research on wildly successful enterprises who fail to find a second act, Paul Nunes and I note that the average life span of companies on the Standard & Poor’s 500 has fallen from 67 years in the 1920s to just 15 years today.

In the early years of the internet age, a half-dozen companies were serially crowned the victor in search, only to be unseated by more innovative technology soon after. Yahoo and others gave way to Google, just as Blackberry faded in response to the iPhone. MySpace (remember them?) collapsed at the introduction of Facebook, which, at the time, was little more than a bit of software from a college student. Napster lost in court (no new laws were needed for that), leaving Apple to define a working market for digital music. And who remembers the alarm bells rung in 2000 when then-dominant ISP America On-Line merged with content behemoth Time Warner?

The best regulator of technology, it seems, is simply more technology. And despite fears that channels are blocked, markets are locked up, and gatekeepers have closed networks that the next generation of entrepreneurs need to reach their audience, somehow they do it anyway — often embarrassingly fast, whether the presumed tyrant being deposed is a long-time incumbent or last year’s startup darling.

#### 4. Breaking up tech firms punishes them for competing successfully – that crushes innovation and growth across the economy

Wright 21 – Joshua D. Wright, Executive Director of the Global Antitrust Institute at the Antonin Scalia Law School, former commissioner of the U.S. Federal Trade Commission from 2013 to 2015, interviewed by James Pethokoukis, senior fellow at AEI, “Will US antitrust law break up Big Tech? My long-read Q&A with Joshua D. Wright,” 2/9/21, <https://www.aei.org/economics/will-us-antitrust-law-break-up-big-tech-my-long-read-qa-with-joshua-d-wright/>

[Italics denote questions from Pethokoukis]

*One reason we’re talking about antitrust law is in the context of Big Tech. Some people would really like to break them up. They have breakup plans for Amazon, Google, and Facebook. They’ve forgotten about Microsoft, but maybe aim to break up Apple. It seems to me that breaking somebody up is a pretty severe remedy. If, over the next five to seven years, we were to break up four or five companies — all of which are the largest in the United States and the world — would that be the most mind-boggling thing ever to happen in antitrust? Breaking up one of those companies would be a pretty big deal, but if we were to start carving off pieces of all of them, that would be historic, wouldn’t it?*

It would be historic, and it would also be wrong-headed for lots of reasons. For one, we’re having this chat virtually, in the middle of a pandemic, in a time where lots of people are benefiting more than ever from the goods and services provided by some of these firms. But on top of the atmospherics, the world’s most successful and innovative companies are here in the US where, in large part, our antitrust regime has avoided ex-ante regulation of these firms, at least through a competition policy lens. It’s avoided the structural breakups of these firms, as opposed to the European or Chinese approach.

Sure, there are certainly calls to break these firms up just like you have in Europe and China, where the firms don’t exist. But to cut to the chase on the law of this stuff a little bit, one of the reasons why breakup is incredibly unlikely, no matter who’s in the administration or appointed to these jobs, is because of one key feature of the US antitrust system. (And this is one of the first things I explain to my students as well, because it’s the way Europe sues Google, fined Google $5 billion, fined Amazon, and will eventually fine Apple, and Facebook, and everybody else.) One of the signature features of the US system is that US antitrust laws do not punish companies for competing successfully and becoming large. You can “build a better mouse trap,” even if you become the monopolist. There’s a famous passage by Justice Scalia in the Supreme Court case Trinko — it reads a little bit like an ode to the successful company who earns monopoly power and gets to charge the monopoly price because it out competed its rivals. So we don’t have a system in the US where we make an antitrust cause of action out of successful innovation.

They have that in China and Europe. They’ve got a more hands-on, ex-ante regulatory framework that they use to control the inner workings of these companies. In those countries, where you come out of the gate already doing things that are unlawful, you start the game in a bargaining position with the regulator. It’s illegal to be the monopolist, so you’re just going to bargain over what you are and are not allowed to do. It’s a culture of consent with the regulatory authorities.

In the US, we punish abuse of monopoly power. If you “built a better mouse trap,” but then you climb to the top of the ladder and burn it down, we have antitrust cases for that, some of which the government wins. When the government can prove that the firms are monopolist and harm competition, then the government can and will win those cases from time to time. But you’ve got to go to court to do it.

In this country, we’ve got meaningful judicial review of the government’s theories in those cases. You cannot just shout in a crowded room that the company is big and bad and just break them up that way. You’ve got to go to court and prove something like monopoly power, anti-competitive conduct, or that the companies are engaged in conduct that abuses monopoly power — something more than competition on the merits.

*But you can’t just say, “Because Google has 89.2 percent of the browser market, then they must be a monopoly and are therefore bad, so now we have to do something.”*

Right. You can’t do that here, but you can in other jurisdictions. I think that’s a feature, not a bug, of the US system. It’s one of the reasons — it’s a complicated world and there’s more than one thing going on here — why you’ve got an environment here, at least in terms of antitrust regulation, that’s been more hospitable to innovation and to hosting these companies than other jurisdictions around the world. Antitrust institutions are obviously just one part of a complex ecosystem of regulation, but they’re an increasingly important part. And so you can’t just say, “Look, this firm’s got monopoly power. Where do I go to get my remedy?” You’ve got to prove that they’ve used that power in a harmful way — and not just any harmful way, but in a harmful way that has reduced competition. That’s where these cases often go to die.

#### 5. The perception of the plan alone is sufficient. Antitrust decisions create greater uncertainty about future application of rules, which chills pro-competitive conduct

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

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

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

IV. Predictability

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

A. Predictability and Differentiation

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

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

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

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

B. Predictability and the Two Mechanisms

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

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

### XT 1NC 5-8 – Inequality

#### 3. There is no tradeoff between inequality and growth---the newest high-quality data proves

Nathalie Scholl 16, PhD in Globalization & Development from Göttingen University, Research Associate with the Development Economics Research Group at Göttingen University, and Stephan Klasen, Professor of Development Economics at the University of Göttingen, director of the Ibero-America Institute for Economic Research, Coordinator of the Courant Research Center, PhD in Economics from Harvard, “Re-estimating the relationship between inequality and growth,” Courant Research Centre: Poverty, Equity and Growth - Discussion Papers, No. 205 [rev.], September 2016, https://www.econstor.eu/bitstream/10419/146554/1/868722448.pdf

In this paper, we have revisited the inequality-growth relationship using an enhanced panel data set with improved inequality data and special attention to the role of transition countries. We based our analysis on the specification of Forbes (2000), but also addressed the functional form concerns raised by Banerjee and Duflo (2003). Using the SWIID data, which provide an improved and substantially longer panel dataset, we can avoid several of the data concerns brought up by the literature, such as consistency over time and between countries, and a low within-country variation. We also take into account the unique experience of transition countries, which suffered a large negative output shock at the start of the transition period in the early 1990s from which they slowly recovered in the late 1990s and early 2000s. This was coincidental with large increases in inequality, which had been kept at low levels during the Communist rule.¶ Using robust dynamic panel estimation and multiple imputation estimation, we find no robust, systematic relationship between inequality and subsequent growth,

neither for levels nor for changes in inequality. While higher inequality appears to be significantly associated with higher subsequent growth when Forbes’ and Banerjee and Duflo’s basic specifications are used, we find that this effect is entirely driven by the experience of transition countries and is not present in the remaining country sample. Once we introduce separate time effects for the transition countries, these associations disappear for this group of countries as well. These results hold for different lag structures as well as for the medium- rather than the short term, and the empirical patterns observed emerge not only in the SWIID, but also the WIID data.¶ Our results point to two conclusions. First, there does not appear to be a trade-off between inequality and growth. Second, because the positive impact of inequality on growth in transition countries is not robust to the inclusion of separate time effects, it appears to be driven by other events. Our findings are hence consistent with the claim that the relationship is due to the particular timing of inequality and growth dynamics in transition countries. In particular, the rise in inequality in the 1990s coincided with a sharp output collapse, leading us to find an association between the large increase in inequality in the early 1990 and a growth recovery in the late 1990s.

#### 4. The best empirical evidence disproves the inequality-crisis link---their authors are way outside the academic consensus

Michael D. Bordo 12, Professor of Economics and Director of the Center for Monetary and Financial History at Rutgers University, PhD from the University of Chicago, and Christopher M. Meissner, professor of economics at UC Davis, PhD in Economics from UC Berkeley, “Does Inequality Lead to a Financial Crisis?” NBER Working Paper No. 17896, March 2012, <http://www.nber.org/papers/w17896.pdf>

The recent financial crisis in the U.S. has been attributed to a rise in inequality by several authors. In his 2010 book, Fault Lines, Raghuram Rajan argued that rising inequality in the past three decades led to political pressure for redistribution that eventually came in the form of subsidized housing finance. Political pressure was exerted so that low income households who otherwise would not have qualified received improved access to mortgage finance. The resulting lending boom created a massive run-up in housing prices which reversed in 2007 and led to the banking crisis of 2008.¶ Along these lines, Kumhof and Rancière (2011) study the links between inequality, credit and crises complementing the Rajan hypothesis with a DSGE model. In this model, rising inequality and stagnant incomes in the lower deciles lead workers to borrow to maintain their consumption growth. As these households become increasingly indebted, they continue to borrow more to maintain their consumption. This increases leverage, and eventually a shock to the economy leads to a financial crisis. They posit that their story holds both for the 1920s stock market boom in the US and the run up to the 2008 crisis. The focus on income inequality by Kumhof and Rancière and Rajan is a novel approach to understanding macroeconomic outcomes prior to the recent financial crisis, and to the Great Depression. The theme deserves further empirical scrutiny from other time periods and countries.¶ There is reason to wonder about the generality of this new view since income inequality rarely plays a significant role in the large literature on financial instability and credit booms. Mendoza and Terrones (2008) study the experience of a large number of advanced and emerging economies since the 1960s finding that current account deficits, strong economic growth and fixed exchange rates accompanied credit booms. Borio and White (2003) have also elaborated a view of pro-cyclical financial systems. Periods of expected low and stable inflation, strong economic growth and liberalized finance can give rise to complacency amongst borrowers, lenders and regulators. Endogenous market forces that might normally “rein in” these imbalances seem to be absent. Massive buildups in credit lead to financial instability in this case. Income inequality plays no active role in generating the boom-bust outcome in these contributions. ¶ In this paper, we present new empirical evidence on whether rising inequality has any explanatory power in accounting for credit booms and financial crises. Rather than limiting the focus to inequality as the Rajan/Kumhof/Rancière (RKR) frameworks do, we control for more traditional determinants of the credit cycle. Different from these authors, we also bring evidence from a much larger sample than the two unique periods in US economic history that are the focus of RKR. Our sample is a panel of 14 mainly advanced countries from 1920 to 2008 covering a wide variety of boom-bust episodes and financial crises.¶ We find very little evidence linking credit booms and financial crises to rising inequality. Instead, the two key determinants of credit booms are the upswing of the business cycle or economic expansion and low interest rates. This is very much consistent with a broader literature on credit cycles. While inequality often ticks upwards in the expansionary phase of the business cycle, this factor does not appear to be a significant determinant of credit growth once we condition on other macroeconomic aggregates. Neither is income concentration a good predictor of the financial crises that often follow above average growth in credit. The anecdotal evidence from several historical credit booms finds little support for the inequality/crisis hypothesis.

# 1NR

## FTC Tradeoff

### 1NR – AT: Thumpers

#### No major antitrust actions coming now – it’s all tinkering around the edges

Wright 21 – Joshua D. Wright, Executive Director of the Global Antitrust Institute at the Antonin Scalia Law School, former commissioner of the U.S. Federal Trade Commission from 2013 to 2015, interviewed by James Pethokoukis, senior fellow at AEI, “Will US antitrust law break up Big Tech? My long-read Q&A with Joshua D. Wright,” 2/9/21, <https://www.aei.org/economics/will-us-antitrust-law-break-up-big-tech-my-long-read-qa-with-joshua-d-wright/>

[Italics denote questions from Pethokoukis]

*Do you think that, if we have this conversation in four years, we will have seen any major action against any of the largest technology companies that involves them selling off a significant business?*

That’s a great question. I bet the under, and here’s why. The US antitrust doctrine is what it is right now, and we still have meaningful judicial review. And on the left and the right, you see all of the attention paid to legislative change — they’re not going to win in the court. The DOJ will bring its case against Google, the FTC has a Facebook case where they might be able to convince a court to spin off WhatsApp or Instagram. I’m skeptical that those are good cases, but neither of them are the big-breakup, affect-the-business-model case that proponents of a new antitrust are looking for. For what it’s worth, my money is that the government loses both of those cases, but those cases exist. But overall, I think that the hope for the antitrust reformers lies, not in the courts, but in Congress.

Maybe I’ve been in DC too long, but I always bet the under if someone tells me that the revolution is coming from Congress. I don’t think we’re going to see legislation that undoes the consumer welfare standard. I do think that you’ll see some antitrust legislation. You’ll get bigger budgets for the agencies, and maybe you’ll get tinkering around the margins with the presumption here or presumption there. But I don’t think that you’re going to see a regulatory antitrust revolution via Congress.

I think it’s going to have to be done through the courts, and I’m skeptical. My silver lining of hope when watching some of these discussions happen is that you’ve got to win in the Article III courts, and that means you’ve got to have proof, not just political grievances. I don’t think they’ve got that.

#### No action now – limited by Congress and the Courts.

McGinnis 21 – John O. McGinnis, George C. Dix Professor in Constitutional Law at Northwestern University, “Abandoning the Consumer Welfare Standard,” 8/26/21, https://lawliberty.org/abandoning-the-consumer-welfare-standard/

The Executive Order, however ill-conceived the specifics are, will do the most damage if it changes antitrust law fundamentally. And here the Biden administration happily faces problems. We have had forty years of bipartisan competition policy focused generally on consumer welfare. The President does not have a political eraser to wipe that away.

One possibility is for the Biden administration to persuade Congress to enact major changes in antitrust law. The House Judiciary Committee has passed a few bills that would make is harder for tech companies to merge with other companies. But these measures are not yet going anywhere on the House floor, and it will be difficult, if not impossible, to get any substantial changes in antitrust law through the evenly divided Senate.

Thus, the administration has pinned its strategy on transformation through administrative fiat. To that end, it appointed Lina Khan, a 32-year-old associate law professor to become Chairman of the FTC. Khan may be the single most radical appointment in the Biden administration. She opposed Amazon’s acquisition of Whole Foods, although Amazon and Whole Foods together constitute a very small part of the grocery market, and no other company in the history of the United States has been more innovative than Amazon.

Khan has begun by voting along with her Democratic colleagues on the commission to revoke a policy of the FTC supported by both Democratic and Republican administrations that essentially defined “unfair method of competition” by reference to methods that undermined consumer welfare. The idea no doubt is to write a regulation that would provide a more open-ended approach, perhaps taking into account other values like democracy and decentralization, even if these are at the expense of consumer welfare.

But it is not at all clear Khan can succeed. On such a central question as the definition of competition, courts may not give her agency much deference now that the Roberts Court appears to have stopped applying Chevron—the quintessential modern case for agency deference—to major questions raised by a statute. The meaning of competition is obviously the major question for competition law, and courts are likely to determine that for themselves, influenced by decades of their own consumer welfare jurisprudence.

Beyond that technical obstacle, Khan may be a poor choice for overhauling antitrust law because of her lack of practical experience in litigation or administration. She has already alienated her agency staff by refusing to let them speak at professional panels, as they have for years. That is a rookie mistake. Moreover, she has been so strident in her attacks as an activist against companies like Google and Amazon that the courts are likely to look at her enforcement actions with suspicion, even if the companies do not get her recused for her past opinions.

Even if the Biden administration is unlikely to succeed in the near term in transforming antitrust, it has put on the table a new vision, however amorphous, that may well influence the approach of Democratic administrations and legislators for years to come. We are moving from an era of bipartisan consensus around a constrained and economically focused antitrust law to an era of fundamental partisan disagreement. In that sense, antitrust law will become—like many other areas of our law—a reflection of polarization and a source of instability. But here the folly and instability will make us poorer.

## Politics

### 1NR – O/V

#### Turns advantage 1 – passage is key to win the tech race.

Rubin '21 [Trudy; 4/11/21; columnist and editorial-board member for the Philadelphia Inquirer; "Infrastructure plan key to competition with China," https://theindependent.com/opinion/columnists/infrastructure-plan-key-to-competition-with-china/article\_ceb0dfcc-997f-11eb-b021-ffa9ef540225.html/]

Anyone who has visited China in the past decade knows why President Joe Biden is pushing so hard to overhaul U.S. infrastructure.

“If we don’t get moving, they are going to eat our lunch,” Biden rightly recently warned a bipartisan group of U.S. senators — while pitching his $2 trillion proposal to upgrade transport, grids, water systems, broadband internet coverage and basic research.

The Chinese leadership has been massively investing for decades in roads, high speed rail, airports, internet connectivity and basic research in critical technologies, while the United States rested on its laurels. The comparison isn’t pretty.

It demonstrates to Beijing what Chinese leaders are already convinced of — that China’s authoritarian regime is destined to surpass a declining America economically and technologically.

So Biden’s massive infrastructure plan is as critical for U.S. foreign policy as it is for the home front. Which is another reason why the knee-jerk trashing of Biden’s plan by GOP legislators — without offering a serious alternative — is inexcusably blind.

I have watched the results of a Chinese leadership determined to build up the country’s infrastructure since my first trip to the country in 1986, and the results are stunning. Shanghai that year was a city of bicycles and hardly any cars. Pudong was then an empty marsh. Now, it is the economic heart of the city, with a forest of skyscrapers that look like New York and Chicago combined.

Visitors can now arrive at Shanghai on a maglev train from a gleaming new Pudong airport. (Nearly every minor Chinese city has a new airport, with the Chinese government planning 162 new civilian airports, and Beijing having opened a new $11 billion international airport last year.) Or travelers can take the bullet train from Beijing to Shanghai that takes four hours and 18 minutes to cover approximately 748 miles, part of China’s 23,550 mile network of high speed rail. (Compare this with almost seven hours on the Acela to travel the 439 miles from Boston to Washington, DC.)

Of course, Beijing’s authoritarian system runs on central government five-year plans, which risk overbuilding, waste and rights violations. But the point is that the central government plans strategically, and it achieved an infrastructure backbone that propelled the country’s stunning growth.

The United States, on the other hand, where much infrastructure depends on complex agreements between local, state and federal officials, has built one new airport — Denver — since the 1990s. America welcomes international visitors to NYC at the disgraceful mess of John F. Kennedy Airport and travelers then have no easy, direct rail transport to the city.

No wonder the American Society of Civil Engineers, in a 2017 report, ranked the nation’s infrastructure an average D+, meaning that conditions were “mostly below standard” and “with a strong risk of failure.” Think of that electrical grid in Texas that collapsed in cold weather in February.

That is before you even get to the comparison between China and the U.S. on broadband internet technology, where China has nearly the whole country covered, while more than one-third of Americans in rural areas still lack high-speed access. This is something Biden’s plan will also address.

And the most dangerous area of all is the U.S. lag in basic research and development. This is the research that explores the new 21st technologies, which can give countries the economic and military lead in the future. For example, both the Trump and Biden administrations have banned the Chinese company Huawei from exporting hardware that enables 5G, the next high speed generation of internet. But the United States has no equivalent company to Huawei.

From 1995 through 2018, Chinese research and development from public and private sources increased by over 15% a year on average, according to the Organization for Economic Cooperation and Development. Meantime, U.S. federal funding steadily fell. As Biden said, when promoting his plan, “We’re one of only a few major economies in the world whose public investment in research and development as a share of GDP has declined constantly over the last 25 years.”

The result: In 2018, Chinese research and development reached $463 billion, only $89 billion behind the United States, and the gap is closing. Biden’s plan wants to keep and expand the U.S. lead. How can the GOP oppose this idea?

There are plenty more details of Biden’s huge plan that can be debated. But the bottom line is that the U.S.’s crumbling infrastructure — ranked 13 in the world — undermines America’s future economic prospects. And it convinces China and Russia that U.S. power is on the wane.

This is a moment when a national infrastructure strategy, and full funding, are needed to keep America strong.

#### Turns advantage two – boosts growth.

Glassman '9/8 [Jim; 9/8/21; Ph.D. in Economics from Northwestern University, Managing Director and Head Economist for Commercial Banking at JP Morgan Chase, former Senior Economist the in Research & Statistics and Monetary Affairs departments at the Federal Reserve Board; "How a Big Infrastructure Investment Could Pay Off," https://www.jpmorgan.com/commercial-banking/insights/the-economic-case-for-infrastructure-spending/]

Congestion isn’t just a honking headache. It’s a serious drag on time and resources across the U.S. economy. Updating the nation’s infrastructure so that goods and people can move from point A to point B more efficiently can trigger growth that more than outweighs the cost of the leading infrastructure proposals in Congress.

The transportation data firm INRIX estimates that American commuters lose $88 billion in time annually to traffic congestion.

The American Transportation Research Institute estimates traffic delays cost the trucking industry $74 billion every year.

The White House’s proposed infrastructure deal would put $110 billion toward new highway projects. The time savings from traffic reductions alone would justify that sticker price.

Infrastructure Likely Pays for Itself

Faster growth could easily offset the additional debt from infrastructure spending. With the slow growth of the U.S. working-age population and steadily climbing medical expenses for retirees, investments in infrastructure that accelerate economic growth can improve the presently grim fiscal outlook.

Raising worker productivity and growing the workforce could be the best ways to finance America’s future obligations.

The nonpartisan Congressional Budget Office forecasts the current infrastructure proposal will add $256 billion to the deficit over the next decade.

At current interest rates, that deficit spending won't significantly alter the nation’s fiscal outlook.

Investments that expand the nation’s growth potential will likely grow the tax base and eventually pay for themselves.

Investments Beyond Highways

The infrastructure proposal includes funding for projects beyond roadways that should ultimately grow the economy. Some potential benefits may be difficult to quantify, but are likely considerable.

Homebuyers living near rapid transit paid a 4%-24% higher median price for their real estate between 2012 and 2016, based on an American Public Transportation Association report. The report suggests investing in public transit could add significant value to unserved or underserved neighborhoods.

The nation’s seaports handled $1.5 trillion in imported and exported goods in 2020, by U.S. Bureau of Transportation estimates. Expanding seaport capacity means that cargo vessels can dock, unload and reload goods without waiting several days out on the water.

Removing lead pipes could improve health outcomes, as they pose serious public health risks for approximately 10 million American households, according to the White House.

Expanding broadband internet service can open new opportunities for telework and e-commerce jobs for rural communities. The proposal aims to bring broadband access to almost every household in the nation.

Improvements to the electrical grid will be needed to support the ongoing electrification of the U.S. economy, which promises to drive growth in the coming decades.

#### Independently, infrastructure solves non-linear extinction risks.

Pamlin and Armstrong ’15 [Dennis and Stuart; February 2015; Executive Project Manager at the Global Challenges Foundation; James Martin Research Fellow at the Future of Humanity Institute and in the Oxford Martin School at the University of Oxford; Global Challenges Foundation, “12 Risks that threaten human civilization,” <https://www.pamlin.net/material/2017/10/10/without-us-progress-still-possible-article-in-china-daily-m9hnk>]

Global Challenges – Twelve risks that threaten human civilisation – The case for a new category of risks 89 3.1 Current risks 3.1.5 Global System Collapse Global system collapse is defined here as either an economic or societal collapse on the global scale. There is no precise definition of a system collapse. The term has been used to describe a broad range of bad economic conditions, ranging from a severe, prolonged depression with high bankruptcy rates and high unemployment, to a breakdown in normal commerce caused by hyperinflation, or even an economically-caused sharp increase in the death rate and perhaps even a decline in population. 310 Often economic collapse is accompanied by social chaos, civil unrest and sometimes a breakdown of law and order. Societal collapse usually refers to the fall or disintegration of human societies, often along with their life support systems. It broadly includes both quite abrupt societal failures typified by collapses, and more extended gradual declines of superpowers. Here only the former is included. 3.1.5.1 Expected impact The world economic and political system is made up of many actors with many objectives and many links between them. Such intricate, interconnected systems are subject to unexpected system-wide failures due to the structure of the network311 – even if each component of the network is reliable. This gives rise to systemic risk: systemic risk occurs when parts that individually may function well become vulnerable when connected as a system to a self-reinforcing joint risk that can spread from part to part (contagion), potentially affecting the entire system and possibly spilling over to related outside systems.312 Such effects have been observed in such diverse areas as ecology,313 finance314 and critical infrastructure315 (such as power grids). They are characterised by the possibility that a small internal or external disruption could cause a highly non-linear effect,316 including a cascading failure that infects the whole system,317 as in the 2008-2009 financial crisis. The possibility of collapse becomes more acute when several independent networks depend on each other, as is increasingly the case (water supply, transport, fuel and power stations are strongly coupled, for instance).318 This dependence links social and technological systems as well.319 This trend is likely to be intensified by continuing globalisation,320 while global governance and regulatory mechanisms seem inadequate to address the issue.321 This is possibly because the tension between resilience and efficiency 322 can even exacerbate the problem.323 Many triggers could start such a failure cascade, such as the infrastructure damage wrought by a coronal mass ejection,324 an ongoing cyber conflict, or a milder form of some of the risks presented in the rest of the paper. Indeed the main risk factor with global systems collapse is as something which may exacerbate some of the other risks in this paper, or as a trigger. But a simple global systems collapse still poses risks on its own. The productivity of modern societies is largely dependent on the careful matching of different types of capital 325 (social, technological, natural...) with each other. If this matching is disrupted, this could trigger a “social collapse” far out of proportion to the initial disruption.326 States and institutions have collapsed in the past for seemingly minor systemic reasons. 327 And institutional collapses can create knock-on effects, such as the descent of formerly prosperous states to much more impoverished and destabilising entities.328 Such processes could trigger damage on a large scale if they weaken global political and economic systems to such an extent that secondary effects (such as conflict or starvation) could cause great death and suffering. 3.1.5.2 Probability disaggregation Five important factors in estimating the probabilities of various impacts: 1. Whether global system collapse will trigger subsequent collapses or fragility in other areas. 2. What the true trade-off is between efficiency and resilience. 3. Whether effective regulation and resilience can be developed. 4. Whether an external disruption will trigger a collapse. 5. Whether an internal event will trigger a collapse. 1. Increased global coordination and cooperation may allow effective regulatory responses, but it also causes the integration of many different aspects of today’s world, likely increasing systemic risk. 2. Systemic risk is only gradually becoming understood, and further research is needed, especially when it comes to actually reducing systemic risk. 3. Since systemic risk is risk in the entire system, rather than in any individual component of it, only institutions with overall views and effects can tackle it. But regulating systemic risk is a new and uncertain task. 4. Building resilience – the ability of system components to survive shocks – should reduce systemic risk. 5. Fragile systems are often built because they are more efficient than robust systems, and hence more profitable. 6. General mitigation efforts should involve features that are disconnected from the standard system, and thus should remain able to continue being of use if the main system collapses 7. A system collapse could spread to other areas, infecting previously untouched systems (as the subprime mortgage crisis affected the world financial system, economy, and ultimately its political system). 8. The system collapse may lead to increased fragility in areas that it does not directly damage, making them vulnerable to subsequent shocks. 9. A collapse that spread to government institutions would undermine the possibilities of combating the collapse. 10. A natural ecosystem collapse could be a cause or consequence of a collapse in humanity’s institutions. 11. Economic collapse is an obvious and visible way in which system collapse could cause a lot of damage. 12. In order to cause mass casualties, a system collapse would need to cause major disruptions to the world’s political and economic system. 13. If the current world system collapses, there is a risk of casualties through loss of trade, poverty, wars and increased fragility. 14. It is not obvious that the world’s institutions and systems can be put together again after a collapse; they may be stuck in a suboptimal equilibrium. 15. Power grids are often analysed as possible candidates for system collapse, and they are becoming more integrated. 16. The world’s financial systems have already caused a system collapse, and they are still growing more integrated. 17. The world’s economies are also getting integrated, spreading recessions across national boundaries. 18. The world’s political and legal systems are becoming more closely integrated as well. Any risk has not been extensively researched yet, and there remain strong obstacles (mainly at the nation state level) slowing down this form of integration. 19. The politics of the post-system collapse world will be important in formulating an effective response instead of an indifferent or counterproductive one. 20. System collapses can be triggered internally by very small events, without an apparent cause. 21. External disruptions can trigger the collapse of an already fragile system. 22. The trade-off between efficiency and resilience is a key source of fragility in a world economy built around maximising efficiency. 23. Climate change, mass movements of animals and agricultural mono-cultures are interlinking ecosystems with each other and with human institutions. 24. There is a lot of uncertainty about systemic risk, especially in the interactions between different fragilities that would not be sufficient to cause a collapse on their own.

### 2NC – AT: Won’t Pass

#### Their ev cites Mechininema – New 1.75 number secures their support- insiders agree

Carney 10-28-21

(Jordain, https://thehill.com/homenews/senate/579016-manchin-signals-hes-okay-with-175t-spending-framework-price-tag)

Sen. Joe Manchin (D-W.Va.) signaled on Thursday that he could support the $1.75 trillion price tag for Democrats' social spending plan, even as he hasn't said if he supports the overall framework deal. "We negotiated a good number that we worked off of, and we're all dealing in a good faith," Manchin told reporters. Asked if $1.75 trillion was too high, Manchin replied: "That was negotiated." ADVERTISEMENT Manchin's comments are his first indication that he supports a $1.75 trillion top line — the size of the framework deal that Biden announced. Democrats are proposing paying for their plan, in part, with tax increases focused on high-income households and corporations. The top line is dramatically smaller than the $3.5 trillion spending ceiling that Democrats paved the way for with a budget resolution earlier this year that teed up the spending deal. Progressives had hoped for a $6 trillion bill. But Manchin's preferred price tag has been substantially smaller. Manchin had said for weeks that he was at $1.5 trillion. Biden then threw out a top line of around $2 trillion, and Democrats over the past week said they hoped to get Manchin to come up to between $1.7 trillion and $2 trillion. Manchin's suggestion that he helped negotiate the $1.75 trillion top line for the deal on the spending framework comes as he sidestepped several times on Thursday saying if he supports the framework. “This is all in the hands of the House right now. I’ve worked in good faith and I look forward to continuing to work in good faith and that’s all I’m going to say,” Manchin told reporters earlier Thursday. ADVERTISEMENT Manchin has been at the center of a lobbying storm as Democrats try to lock down his support for different provisions of the spending framework. During a vote on Thursday, Senate Finance Committee Chairman Ron Wyden (D-Ore.), Senate Environment and Public Works Committee Chairman Tom Carper (D-Del.), Senate Democratic Whip Dick Durbin (D-Ill.), Senate Majority Leader Charles Schumer (D-N.Y.) and Sen. Angus King (I-Maine) stopped Manchin to speak with him. Sen. Kirsten Gillibrand (D-N.Y.), who is also trying to get Manchin's support for including a paid family leave plan in the package, was also spotted lobbying him on the Senate floor. Even as Manchin hasn't said whether he supports the framework, some of his Democratic colleagues told reporters on Thursday that they believe it has the backing of all 50 Senate Democrats. Ocasio-Cortez presses Biden on student debt: 'Doesn't need Manchin's... Manchin, Sinema put stamp on party, to progressive chagrin “It's clear that they back this plan," Sen. Chris Coons (D-Del.) told reporters about Manchin and Sen. Kyrsten Sinema (D-Ariz.), adding that he had spoken to both of them. Sen. Tim Kaine (D-Va.) added that he also believed there were 50 votes for the framework deal. "Joe Biden would not have announced this deal and put Sens. [Sinema] and Manchin’s name in the first paragraph of the announcement unless he felt a high degree of confidence," Kaine said.

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

Mascaro 10-28-21

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Seeking to make history

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

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

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

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

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

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

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

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

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

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

### 2NC – AT: No PC

#### “Biden powerless” narrative is absurd. He’s the President.

Sirota '21 [David; 3/1/21; award-winning investigative journalist and columnist for the Guardian, editor at large at Jacobin, founder of The Daily Poster; "Joe Biden says his hands are tied on a $15 minimum wage. That's not true," https://www.theguardian.com/commentisfree/2021/mar/01/joe-biden-minimum-wage-democrats/]

When a Republican is president, Democratic politicians, pundits and activists will tell you that the presidency is an all-powerful office that can do anything it wants. When a Democrat is president, these same politicians, pundits and activists will tell you that the presidency has no power to do anything. In fact, they will tell you a Democratic president cannot even use the bully pulpit and other forms of pressure to try to shift the votes of senators in his own party.

A tale from history proves this latter myth is complete garbage – and that tale is newly relevant in today’s supercharged debate over a $15 minimum wage.

In that debate so far, we have seen Democratic senators prepare to surrender the $15 minimum wage their party promised by insisting they are powerless in the face of a non-binding advisory opinion of a parliamentarian they can ignore or fire.

That explanation is patently ridiculous and factually false, so Democratic apologists are starting to further justify the surrender by suggesting that even if the party kept a $15 minimum wage in the Covid relief bill, conservative Democrats such as Joe Manchin and Kyrsten Sinema would block it anyway.

The White House itself is now falling back on the idea that it doesn’t have the votes to do much of anything, insinuating that Joe Biden – who occupies the world’s most powerful office – somehow has no power to try to change the legislative dynamic. And this spin is being predictably amplified across social media.

To be sure, there is no guarantee that Manchin or Sinema could be moved. Maybe they couldn’t, but maybe they could, considering they have both previously supported bills to increase the minimum wage. And we know they may be sensitive to pressure. After all, Manchin recently freaked out and whined that “no one called me” when Vice-President Kamala Harris dared to do one straightforward interview with a West Virginia television station.

Whether such pressure ultimately works, the point is indisputable: it is laughable and preposterous to argue that a newly elected president has zero power to even try to shift the dynamic.

And yet, whether you call this all deliberate deception or learned helplessness, this fantastical myth of the Powerless President will inevitably be used to shield Biden from criticism for abandoning his pledge to fight for a $15 minimum wage.

The apologism is particularly absurd because unlike his predecessor Barack Obama, who was a relative newcomer to politics, Biden’s major selling point was that he knows “how to make government work”. The guy explicitly pitched himself as the best Democratic presidential candidate by suggesting that in an era of gridlock, he knows how to make the Democratic agenda a reality and Get Things Done™, like master of the Senate Lyndon Baines Johnson.

#### The key is to preserve capital. Empirics prove wasting it tanks the agenda.

The Economist '21 [1/21/21; The Economist; "After the chaos of the Trump era, what can Joe Biden hope to achieve?" https://www.economist.com/briefing/2021/01/23/after-the-chaos-of-the-trump-era-what-can-joe-biden-hope-to-achieve/]

And yet Mr Biden looks well suited to the work at hand. He assumes the presidency after nearly half a century in government. He is a conciliatory elder statesman who may serve only one term, not a culture warrior hellbent on securing re-election. His cadre of experienced appointees (see graphic) will immediately wield the tools of the administrative state to undo much of the damage of the Trump era. Harsh immigration policies will be lifted. The drive to weaken environmental protections will be reversed. European allies jittery about America’s commitment to mutual defence and combating climate change will be reassured.

More lasting change will require legislation. Both chambers of Congress are under Democratic control, albeit by the narrowest of margins. The Democrats hold the House of Representatives by just four seats. They will retain control of the Senate—which is split equally between the two parties—thanks only to the deciding vote of Kamala Harris, the vice-president.

Marshalling enough support to pass serious reforms will be possible, but will require bipartisan negotiations and a ruthless mastery of the Senate last demonstrated by Lyndon Johnson. Any lone dissident Democratic senator, of left-leaning or conservative convictions, or a sufficiently large bloc of Democrats in the House (a squad of six, say) will be able to scuttle Mr Biden’s proposals in the face of unified Republican opposition. The filibuster, a procedure which allows an obstreperous minority to block most laws unless 60 of the 100 senators vote otherwise, will almost certainly remain in place.

As a result, those on the left of the new president’s party are destined to be disappointed. During the Democratic primary Mr Biden rejected their most contentious proposals, including Medicare for All, the Green New Deal, and defunding the police. Other sweeping ideas such as packing the Supreme Court with new justices or ditching the electoral college look impossible.

And yet Mr Biden’s opposition to his party’s most radical ideas has obscured the fact that he hopes to govern well to the left of Barack Obama and Bill Clinton. His New Deal-esque agenda will retain populist economic ideas, such as minimum-wage increases, industrial policy and substantial government spending.

The early days of the administration will be dominated by legislation to contain covid-19 and further cushioning its economic fallout. The logic is clear. The proposals to “build back better”, as the new president’s team calls it, will address America’s most urgent crises. They may also attract Republican votes and should conserve Mr Biden’s political capital for more fraught matters later on. That does not mean that they will be modest.

Ready, steady, Joe!

The first order of business, which Mr Biden outlined in a speech on January 14th, will be another covid-19 relief bill, costing $1.9trn. It would provide $160bn to pay for a national vaccine programme, expanded testing and contact-tracers. It would shovel more cash to Americans via cheques of $1,400 per person, increases in unemployment benefits and a temporarily enhanced child tax credit (a policy which would, almost on its own, halve poverty among children). Republicans may balk at the cost—their worries about the deficit and debt are noticeably more acute under Democratic presidents—or some of its provisions, such as increasing the national minimum wage to $15 an hour. But the proposal cannot be accused, as some of Mr Obama’s were, of pre-emptive compromise.

Mr Biden’s economic team has dubbed this bill a “rescue” measure. Hard on its heels will come a “recovery” bill, the details of which are yet to be unveiled. If the first foray into policymaking is any indication, it too will probably be a juggernaut. The recovery bill will propose massive infrastructure spending, perhaps the $2trn pledged in the campaign. It would also be the primary vehicle for some of Mr Biden’s most ambitious climate-change pledges. Mr Biden has promised to ensure universal broadband access, spend $400bn on energy and climate research and create 10m new clean-energy jobs on the way to decarbonising the electricity sector by 2035 and the economy as a whole by 2050. The trillions proposed will also channel Mr Biden’s neo-Rooseveltian instincts: he nostalgically aims for a domestic manufacturing renaissance powered by unionised workers.

These are opening, maximalist positions. They give a sense of the scale of Mr Biden’s ambitions to exploit the crises he faces—and the fractious state of Republicans fighting over the legacy of Trumpism—to remake the American economy. They hint at his strategy for placating the left-wing gadflies of his party (who are also grudgingly thrilled at the diversity of his otherwise conventionally centrist appointees). Mr Biden seems to have grasped that unified control of government is a necessary but not sufficient condition for passing major legislation. Mr Clinton in 1993, Mr Obama in 2009 and Mr Trump in 2017 all came to Washington with the gift of an agreeable Congress. They squandered much of their political capital on trying to push through health-care legislation. Only Mr Obama succeeded.

One cliché of American politics is that such legislative overreach produces the swing back to the opposition party typically seen during a president’s first mid-term elections. The last five presidents have lost on average 31 seats in the House of Representatives during these elections (and two in the Senate). For Mr Biden, that would spell the loss of both chambers, probably dooming the chances of any serious lawmaking for the final two years of his term.

Democrats have learned from the drubbing Mr Obama received in 2010. The issues that provoke deep partisan divisions and sap political capital—such as sweeping reforms of the immigration system—may be introduced for debate in Congress but any serious action will probably have to wait.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### 6.PC is key for Biden to unify Dems around the latest bill.

Eleon ‘10/29 [Eleon; 10/29/21; “Biden’s future – and his party’s – depends on Democrats’ ability to unify”; <https://goodwordnews.com/bidens-future-and-his-partys-depends-on-democrats-ability-to-unify/>; Good Word News; accessed 10/29/21; TV]

The best way to guarantee the gains and the promises made today is to take a little more time to see the real bill and make sure Manchin and Sinema say ‘yes'”, Adam Green, co-founder of the Campaign Committee for Gradual Change said of the framework agreement Biden announced.

In other words, Progressives plan to hold out until the ink is dry on a plan Biden negotiated with Manchin and Sinema. Although they did not pledge to vote for anything, members of the Congressional Progressive Caucus said in a statement Thursday that they “overwhelmingly” supported the framework.

Still, a faction of them told Pelosi on Thursday that they would not vote for infrastructure until there was a hard deal with the Senate to pass the social spending bill, according to one of the recalcitrant lawmakers. The rebel group’s estimates range from around two dozen to over three dozen. This forced Pelosi to give up hope for an infrastructure vote this week.

It shouldn’t have come as a surprise to anyone, let alone leaders Biden and Congressional Democrats, that the two centrists dictate the terms of any deal. Each of them has an effective veto on the Build Better plan because the Senate is split 50-50 and Republicans have not engaged or been invited to engage in negotiations. All will vote against.

The vast majority of Democrats in the House and Senate would readily vote for both bills, in any order, and claim a major victory for the American public and their party. But Biden, Pelosi, and Schumer don’t have the juice to gain more weight with the centrists or progressives.

Manchin doesn’t need party leaders to help him get reelected in a state that gave Biden less than 30% of his vote in 2020. Sinema’s political calculation is different in Arizona, where Biden won around 10,000 votes, but she’s not going. struggling to raise funds – key electoral aid that national party leaders can still help with – and it’s not on the ballot until 2024

Likewise, progressives in the House do not depend on Pelosi for re-election. For many of them, their booth gives them a bigger national platform. Anyone who retreats risks being seen as an apostate by progressive activists. And they mostly come from politically safe neighborhoods where the only fear is a main challenge from their left flank.

There are other factors at play, but they all lead to the same conclusion: the only tool Biden, Schumer, and Pelosi have is an appeal to the collective interests of the party.

He may ultimately provide enough leverage to push both bills through Congress, but repeated use of the tool reveals the limits of his power and exposes the party’s lack of a unified purpose.

Now a president who has campaigned to bring the whole country together will be lucky if he can demonstrate his ability to unify half of it.

To do this, he needs his fellow Democrats to put aside their political differences, small grievances and personal ambitions long enough to achieve their common agenda.

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

Amie Parnes and Morgan Chalfant 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.

#### 8 – Biden’s necessary to broker compromise.

Greve '21 [Joan; 9/7/21; reporter for the Guardian; "Joe Biden to referee Democrats in brewing battle over $3.5tn budget bill,"https://www.theguardian.com/us-news/2021/sep/07/biden-democrats-brewing-battle-budget-bill/]

Democratic lawmakers are looking to pass their $3.5tn spending package, after the House and the Senate approved the blueprint for the budget bill last month. The ambitious legislation encompasses much of Joe Biden’s economic agenda, including proposals to expand access to affordable childcare, invest in climate-related initiatives and broaden Medicare coverage.

But to get the bill passed, Democrats will first need to reach an agreement on the cost of the legislation. Centrist Democrats, including Senators Kyrsten Sinema and Joe Manchin, have expressed concern about the bill’s $3.5tn price tag, while progressives have indicated they will fiercely oppose any attempt to cut funding in the proposal.

With his entire economic agenda hanging in the balance, Biden will need to convince the two fractious wings of his party to come together and pass a comprehensive spending package. And given Democrats’ extremely narrow majorities in both the House and the Senate, there is virtually no room for error.

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

Michael Rainey 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.

#### 10 – Biden’s PC is finite and necessary for legislative success. Links prove the plan burns bridges with key votes.

Hutzler '21 [Alexandra; 2/24/21; staff writer for the Newsweek politics team; "Joe Biden's Backing of Neera Tanden Could Cost Him Key Political Capital, Experts Say," https://www.newsweek.com/joe-bidens-backing-neera-tanden-could-cost-him-key-political-capital-experts-say-1571737/]

But experts warned against Biden dragging out Tanden's nomination, arguing that he could risk losing political capital he will need to pass much of his legislative agenda over the next four years.

"I suspect that he will not prolong this," Kathryn Dunn Tenpas, a nonresident senior fellow with governance studies at the Brookings Institution, told Newsweek.

"My advice would be to not lose any more political capital than you already have, don't go to the mat for it, because this is one of several really important appointments that you need to get in place quickly," she added. "Already, they're behind. They only have six of 15."

Tenpas also noted that it's important for Biden not to "burn bridges" this early on, especially when the Senate is so narrowly divided. The upper chamber is split 50-50 with Vice President Kamala Harris acting as the tiebreaker. Any appointment from the president needs a majority vote.

David Leblang, a professor of public policy at the University of Virginia and a senior fellow at the Miller Center of Public Affairs, specifically cited the need for Biden to stay on the good side of senators—among them Joe Manchin (D-W.Va.), Susan Collins (R-Maine) and Mitt Romney (R-Utah).

### 2NC – AT: Can’t Solve Warming

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

Sheffey 10-28-21

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

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

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

Freedland 10-29-21

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

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

#### Independently, the signal of US leadership now uniquely drives international action.

Liptak 10-20-21

(Kevin, https://www.kake.com/story/45010617/biden-sees-american-credibility-on-the-line-as-he-races-to-lock-down-climate-action-ahead-of-glasgow)

President Joe Biden wanted the stakes to be perfectly clear when he sat down with nine liberal Democrats in the Oval Office Tuesday to discuss ongoing legislative negotiations. Going around the room and staring them each in the eye, the President warned of dire consequences if he arrives in Scotland next week for a United Nations climate summit without a deal that meets his pledge to dramatically reduce American greenhouse gas emissions. "The prestige of the United States is on the line," Biden told the group, according to one participant -- Rep. Ro Khanna, a California Democrat. "I need this to go represent the United States overseas. I need people to see that the Democratic Party is working, that the country is working, that we can govern." A week before he is set to depart for Europe and the COP26 summit, Biden and White House officials are scrambling to wrap up the slogging negotiations over his sweeping domestic agenda, which would include the largest-ever US investment to combat climate change. They are increasingly using the looming summit as another tool to try and force a deal between the Democratic Party's warring factions. While Biden plans to trumpet his pledge to halve US emissions by 2030 from 2005 levels during the climate summit, a legislative agreement would make a strong case to other countries that they must ramp up their own contributions to reducing greenhouse gas emissions by demonstrating the US can live up to Biden's ambitious climate goals.