# 1AC v Navy KR

#### Same as Round 2

# 2AC v Navy KR

## T

#### Prohibit can mean ‘severely hinder’---doesn’t necessitate a ban.

Washington Court of Appeals 19 (KORSMO-judge. Opinion in State v. Kimball, No. 35441-5-III (Wash. Ct. App. Apr. 2, 2019). Google scholar caselaw. Date accessed 7/13/21).

His argument runs counter to the meaning of the word "prohibit." It means "1. To forbid by law. 2. To prevent, preclude, or severely hinder." BLACK'S LAW DICTIONARY 1405 (10th ed. 2014). As "severely hinder" suggests, a "prohibition" need not be an all or nothing proposition.

#### Prohibition includes per se and rule of reason.

Anu Bradford and Adam S. Chilton 18. Anu Bradford Henry L. Moses Professor of Law and International Organization, Columbia Law School. Adam S. Chilton. Assistant Professor of Law and Walter Mander Research Scholar.

Before discussing our data and the coding of the CLI, it is important to recognize that there are limitations to any index that attempts to quantify competition regulation. This is because it is difficult to produce a single metric that tells the comprehensive story of country’s competition regime. For example, if a specific type of conduct is prohibited, is it prohibited always (per se) or sometimes (rule of reason)? This seems like a relevant distinction to code, but it turns out to be difficult to capture systematically in many jurisdictions. For instance, Article 101(3) of the Treaty on the Functioning of the European Union (TFEU) seems to regulate anticompetitive agreements under the rule of reason standard in the European Union, but, in practice, cartels are per se prohibited. This highlights the challenge of coding even just the law in books, let alone accounting for all the nuances of a country’s competition policies.20

#### Prefer it:

#### 4. Grammar---“by” means expanding antitrust is the way in which we prohibit---making it illegal under antitrust should be sufficient.

Crown Academy of English 18, (Andrew, Fully qualified English teacher with TESOL (Teaching English to Speakers of Other Languages) qualification. “Preposition BY – Meaning and use”, https://www.crownacademyenglish.com/preposition-by-meaning-use/)

by + ING form of verb

This describes how to do something. It describes the method for achieving a a particular result.

## States CP --- 2AC

#### State labor actions get pre-empted under the NLRA---thousands of empirics.

Moshe Marvit 17. attorney and fellow at the Century Foundation, and co-author with Richard D. Kahlenberg of Why Labor Organizing Should Be a Civil Right: Rebuilding a Middle-Class Democracy by Enhancing Worker Voice. “The Way Forward for Labor Is Through the States.” The American Prospect. 9/1/2017. <https://prospect.org/labor/way-forward-labor-states/>

While reforms to federal law have been blocked by Congress, states and cities have faced a different hurdle: the courts. Starting in 1959, **the Supreme Court has written into the National Labor Relations Act (NLRA) a continually expanding preemption doctrine that prevents states and cities from passing laws that touch upon anything related to labor**, involve the interpretation of a collective bargaining agreement, or even involve issues that the courts believe Congress intended to leave to the free play of market forces. Congress can, and often does, expressly preempt states from passing laws that fall within a defined scope. Neither the NLRA nor its extensive legislative history, however, contains any mention of preemption: Congress did not expressly preempt states from acting. **In instances where Congress has not expressly preempted states from acting, state laws that actually conflict with federal laws are still preempted**. However, neither the NLRA nor its legislative history show any consensus that Congress meant to push states and cities from making laws that advanced, and do not conflict with, the pro-collective-bargaining policies of the NLRA. And yet, as Harvard Law Professor Ben Sachs has pointed out, the Supreme Court has not employed the typical typologies of preemption at all when dealing with labor law. Rather, it has created a preemption doctrine [that] is among the broadest and most robust in federal law. In most other areas of worker protection, from minimum wage to antidiscrimination laws, the federal government has set the floor under which states and cities may not go, but they can and often do raise the ceiling by increasing state or local minimum wage or including additional protected categories such as sexual orientation to existing protections. Indeed, the evolution of many of the nation's employment and civil rights protections began at the state level and trickled up to the federal government. It is only in the area of workers' labor rights that states and cities are powerless to act and that, solely as the result of judicial decisions. The Supreme Court's preemption doctrine started with the 1959 case, San Diego Building Trades v. Garmon, where the employer got a state court injunction against the union for picketing. The Supreme Court should have held that the picketing that the union was engaged in was a protected right under federal labor law, and therefore the state could not pass a law that conflicts with that right. Instead, the Court went further and held that Congress gave the National Labor Relations Board primary agency jurisdiction, and so when something is arguably protected or prohibited by the NLRA, then only the Board can act. Furthermore, only the Board can answer the initial question of whether conduct is arguably under the Board’s jurisdiction. The Supreme Court then doubled down on its preemption doctrine in the 1976 case, Machinists v. Wisconsin Employment Relations Commission. In the Machinist case, an employer brought an unfair labor practice charge against union workers who engaged in concerted refusal to work overtime during contract negotiations. The NLRB dismissed the charge because it held that the work refusal was not prohibited under the NLRA, so the employer brought a state court action against the union. In response, the Supreme Court expanded its earlier Garmon preemption to hold that Congress intended that certain conduct be left unregulated and left to be controlled by the free play of economic forces. Though the union in the Machinists case benefitted from the Court’s expansion of federal preemption, the decision has led to states and cities being almost absolutely prohibited from passing laws that promote unionization and collective bargaining. These Court decisions, and **thousands of lower court decisions that have followed the precedent in overturning state and local laws,** rely on three types of specious and archaic reasons that deserve challenge and reconsideration. First, the Court has repeatedly shown a strong reliance on the state of the economy and labor force during the time when these decisions were issued. In the Machinists case, the Court described how it experimented with various types of preemption before settling on the broad form begun by Garmon, stating, as it was, in short, experience, not pure logic, which initially taught that each of these methods sacrificed important federal interests in a uniform law of labor relations. The experience the Court referred to was that of the late 1940s and 1950s, when union membership was at its peak. Whatever balance between labor and management that may have existed then has since eroded. Second, the Court has long interpreted the statute to require a uniform labor law across the country, and yet, labor law has become in many ways a crazy quilt, varying from region to region, from state to state, and from one president to the next. The NLRB has become a highly politicized agency, with its decisions swinging wildly every time a new president appoints new members and a general counsel. Cases that proceed through the National Labor Relations Board are often appealed to federal courts, and different federal circuits often come to opposite conclusions, meaning that the laws in different states effectively differ though it is the courts, not state or local governments, that create those differences. Further, the expansion of state right to work laws, as well as a variety of state public sector labor laws have also undermined any goal of national uniformity in labor law. Lastly, the Court's determination that Congress intended to leave a wide variety of conduct to the free play of economic forces has, in the words of NYU Law Professor Cynthia Estlund, done what Congress did not do in the NLRA, or even with the Taft-Hartley Act: It has granted to employers a federal right to use their economic power against unions. The Congress that passed the NLRA may have intended to ensure a balance between employer and union power, but there is no indication that it intended employers to be able to use the Act to evade any regulation in broad areas through a laissez faire argument. The result of this judicially created broad preemption has been to limit state and local experimentation in line with what Justice Brandeis described as laboratories of democracy with labor laws that advance the stated purpose of federal labor law. However, since states and cities cannot act in the field of labor law, all discussions of federal labor law reform are purely theoretical and lack any empirical basis for their possible effects. Numerous labor law scholars have written critically over the years of the rationale for such broad preemption, as well as the effects it has had on workers' ability to organize. Recently, Lewis & Clark Law Professor Henry Drummonds came up with a list of ten potential reforms that would advance the pro-collective bargaining mission of the NLRA if states could be able to pass such reforms under normal preemption rules. These include allowing states to: increase damages for violating workers' labor rights so the penalties are in line with those for other forms of workplace discrimination; experiment with restrictions on permanent replacement of striking workers and on the use of employer lockouts; experiment with â€œcard checkâ€ recognition of the union; provide equal access to union advocates as well as employers during a campaign for unions; and require arbitration if an impasse arises in the bargaining over a first contract. **The one and only major state labor reform since** the **1935** enactment of the NLRA has had a profound effect on the division of wealth and power in the United States. That, of course, **was the provision of the 1947 Taft-Hartley Act enabling states to pass right to work laws.** Allowing states and cities to create local rules that promote unionization and collective bargaining that are tailored to local needs and local industries could prove just as significant in the opposite direction.

#### The DOJ and FTC undermine states.

The Open Markets Institute and Service Employees International Union 19. “How the Antitrust Agencies Can Help—Instead of Hurt—Workers”. https://www.justice.gov/atr/page/file/1217856/download

The DOJ and the FTC have largely failed American workers today by allowing a concentration crisis in scores of industries to weaken competition for labor. Instead of actively policing mergers for harms to workers, they have let employer-side concentration reach very high levels. Troublingly, when the FTC and DOJ have acted against practices in labor markets, the two agencies often have used antitrust laws to either undermine efforts by employees and states to challenge abusive behavior by employers or actually targeted efforts by workers or professional to work together. The FTC, for instance, has filed numerous complaints against workers for engaging in collective bargaining and other joint action. Furthermore, the FTC has campaigned against state and local occupational licensing rules that can enhance the bargaining power and earnings of workers, professionals, and independent entrepreneurs. The DOJ meanwhile has endorsed legal standards that would empower franchisees to collude against workers.

The DOJ’s and FTC’s general inactivity against employers and activity against workers reinforce and deepen inequality between the individual and the corporation. The agencies should reorient their enforcement priorities and focus on protecting workers from employers rather than on interfering with the basic rights of workers, professionals, and independent entrepreneurs to organize.2

#### Even with fiat, states lack enforcement mechanisms and administrative infrastructures to protect workers’ rights.

Bourree Lam 17. former staff writer at The Atlantic. She was previously the editor of Freakonomics.com. “Will States Take Up the Mantle of Worker Protection?” The Atlantic. 1/17/2017. <https://www.theatlantic.com/business/archive/2017/01/worker-protection-schneiderman/513182/>

But it’s not as though states took a backseat during the Obama administration. Some states took on an increased role in handling wage and labor practices, with a growing number of have passed their own minimum wage and paid-leave laws. Seven states—California, Connecticut, Massachusetts, Oregon, Vermont, and most recently Arizona and Washington—now have laws requiring paid sick leave. Minimum wage went up in 21 states and 22 cities at the start of this year. For labor advocates, the concern about this approach is what happens to people in states that are less adamant about enforcement. While workers in states that have been active on these issues in the past—such as California, Connecticut, Illinois, and Massachusetts to name a few—will likely continue to be protected by their state agencies, states without established resources in place will **have a harder time stepping up in the same way**. In Georgia, for example, there is no state-level enforcement process, and wage claims are **filed directly to the Department of Labor**. “It’s far from ideal, if this ends up happening,” says Tsedeye Gebreselassie, an attorney at the National Employment Law Project. “The way that this should be done is that the federal Department of Labor remains an effective recourse for workers whose rights have been violated, not just on minimum wage but all the federal laws that the Department of Labor enforces. But then you also have states there too as another avenue through which workers can recover their unpaid wages.” Additionally, though states can play a key role on some employment issues, there are workplace issues that **require federal enforcement**. "States can play a tremendously important role in combating wage theft, but in other critical areas, like workplace safety and health or workers' right to organize, states may have a harder time filling in the gap because they are often preempted by federal law from directly enforcing these laws," says Gerstein. “To me, there’s no question that it’s federalism from below,” says Janice Fine, an associate professor and labor expert at Rutgers University’s School of Management and Labor Relations. Fine has been studying how states and localities think about enforcement, and while she’s concerned about states with less enforcement, she’s found that there can be see creative solutions. She cites the example of the Fair Food Standards Council in Florida, a labor group which won over companies on fair work conditions and now acts as a private enforcement agency to protect farmers on health, safety and wage issues, as well as the work of the Workers Defense Project in Texas, which has notably pushed through a bill that makes it easier for police departments across Texas to arrest employers engaging in wage theft. A state-by-state approach means that worker protection becomes less an American project, and more a feature of the particular place one lives. And for workers who don’t live in the states that will fill in where the federal government leaves off, that could mean many American workers not getting paid what they’re owed.

#### Can’t solve international coop---the DOJ and FTC are key to American antitrust’s global solvency.

Garza et. al. 07. Chair of the Antitrust Modernization Commission, a bi-partisan blue ribbon commission created by Congress to advise Congress and the President on the state of U.S. Antitrust law enforcement and former DOJ Antitrust Deputy Assistant Attorney General for Regulatory Affairs. “Antitrust Modernization Commission: Report and Recommendations: Chapter 2,” p. 216-217. Antitrust Modernization Commission. 2/4/2007. https://govinfo.library.unt.edu/amc/report\_recommendation/chapter2.pdf

The Antitrust Division of the Department of Justice (DOJ) and the Federal Trade Commission (FTC) have made extensive efforts to improve cooperation between the United States and other nations’ antitrust enforcers.26 Both U.S. antitrust agencies “enjoy [a] strong cooperative relationship[] with a large and increasing number of foreign enforcement agencies, enabling close cooperation on cases, coordination on international antitrust policy, and provision of technical assistance to new agencies around the world.”27 Whereas U.S. requests for cooperation previously took up to a year to be processed,28 today antitrust agencies worldwide have a “pick up the phone” approach toward sharing information and assisting each other in their antitrust enforcement efforts.29 This high degree of cooperation has facilitated convergence of both procedural and substantive aspects of antitrust law.

The efforts of the U.S. antitrust agencies have been advanced in part through their participation in two organizations, the OECD and the ICN.30 The OECD was created in 1961 to expand free trade and improve development in member countries.31 As part of these efforts, it created a Competition Law and Policy Committee that provides a variety of means for countries to share their best practices regarding antitrust and competition policy.32 The ICN, in comparison, is relatively new, but has a more broad-based membership. It was created after ICPAC called for the creation of a “Global Competition Initiative” to address antitrust enforcement in a growing globalized economy.33 Membership in the ICN has increased from fourteen jurisdictions when it began in 200134 to ninety-seven members from eighty-five jurisdictions in 2007.35

The ICN and OECD have promulgated “best practices” on merger reviews and cartel investigations and continue to work on convergence of substantive and procedural law.36 For example, the ICN is currently undertaking a study of unilateral conduct standards with the goal of developing a consensus on the objectives and legal and economic bases of enforcement regarding unilateral conduct.37 The ICN in the past has developed principles of best practices regarding merger notification regimes, with the objective of highlighting the importance of transparency and clarity in each jurisdiction’s rules regarding filing requirements and review.38 Overall, through their efforts, these institutions have had a meaningful influence in “promoting convergence in antitrust enforcement”39 and have contributed to the “significant recent progress in reducing conflicts by increasing cooperation, information sharing, and networking.”40 Indeed, their successes are reflected at least in part by the fact that the vast majority of international investigations are conducted without incident.41

#### Coercive process collapses democratic legitimacy impacted out by advantage 3

Peter M. Shane 03. Joseph S. Platt-Porter, Wright, Morris and Arthur Professor of Law, Moritz College of Law, The Ohio State University and Distinguished Service Professor Adjunct of Law and Public Policy, H. J. Heinz III School of Public Policy and Management, Carnegie Mellon University. "When Inter-Branch Norms Break Down: Of Arms-for-Hostages, Orderly Shutdowns, Presidential Impeachments, and Judicial Coups," Cornell Journal of Law and Public Policy: Vol. 12: Iss. 3, Article 3. Available at: http://scholarship.law.cornell.edu/cjlpp/vol12/iss3/3

The reason this matters is complex. We have a national system of government whose orderly and effective operation depends to an exceptional degree upon certain norms of cooperation among its competing branches. The strength of those norms is essential to securing the primary political asset that our government design was intended to help realize: an especially robust form of democratic legitimacy. If recent norm-bending initiatives constitute a trend, rather than a series of coincidental, but unlinked episodes, then the capacity of our government to manifest this particular form of legitimacy may be endangered. Such a development should not proceed unnoticed.

## Regs CP---2AC

#### Antitrust is a pre-requisite to effective labor law. Anything else allows skirting damages and prevention of effective collective bargaining.

Marshall Steinbam 19. Professor of Law, University of Utah. “Antitrust, The Gig Economy, and Labor Market Power.” *Law and Contemporary Problems* 82(3): 61-64.

This paper sets out an important but under-appreciated aspect of the rise in labor market precarity and diminishing worker bargaining power: the erosion of antitrust laws restricting dominant firms’ ability to use vertical restraints to control and restrict both less powerful affiliates and the workers who work for them, and the concurrent use of antitrust against any attempt by those workers or independent businessmen or contractors to bargain collectively against such concentrations of power. In ascertaining the causes of contemporary inequality in wealth, income, and social status, especially with respect to the labor market, we cannot overlook the role that antitrust has played.

This contrasts with a recent Economic Policy Institute paper by Heidi Shierholz and Josh Bivens that treats the rise of employer power in labor markets, and the extent to which weakening antitrust has caused that phenomenon, as a less important cause of rising inequality and stagnant wages compared to the erosion of labor law and thus of collective bargaining.95 Their evidence for the contention that diminishing worker bargaining power matters more than concentrated employer bargaining power is that inequality within the distribution of labor income is a more significant cause of stagnating wages and the growing gap between median worker pay and average worker productivity than is the declining labor share of national income, which is of more recent vintage than either of the first two economic trends.

But we cannot map rising labor income inequality to worker bargaining power and labor law and the declining labor share of income to employer power and antitrust so neatly. As the analysis in Parts II and III show, income inequality is to a large extent caused by rising earnings inequality between firms, rather than between workers, reflecting employer power to set wages. This is the result of the legalization of business models like the fissured workplace that allow powerful employers to segregate workers from the profits they earn for their bosses. The point of Part II of this paper is that the fissured workplace is the product of both labor regulation and antitrust. Thus, increasing inequality of power between employers and workers cannot be coherently treated as two separate phenomena: rising employer power, and declining worker power.

That means the solution to unequal bargaining power is not necessarily or not entirely an antitrust solution, but antitrust must play a major part, since it implicates the business models available to the economy’s dominant firms. In particular, we should seek, through revived antitrust and labor regulations that both take account of how the economy actually works, and how power is exercised within it, to re-establish the sharp distinction embodied in Richfield Oil. Either workers are employees, in which case they can be controlled by their bosses, who in turn owe them statutory protections including the right to bargain collectively, or they are independent businesses, in which case they cannot be coerced by contract or by any other means. Proposals to extend and strengthen labor law tests for statutory employment to take account of gig economy technologies are crucial, but they will be ineffective so long as employers and lead firms retain the strong incentive to push workers outside their protection. The role of antitrust in that context is to create a significant cost to so doing: the potential for treble damages under antitrust liability should a lead firm be caught coordinating and directing the activities of its non-employee subsidiaries and contractors. That is the mechanism that would weigh against employers’ incentive to mis-classify.

Putting such an antitrust regime in place entails the abandonment of both the consumer welfare standard and, with it, the Chicago School’s jurisprudence of vertical restraints. Instead, any vertical restraint, price or non-price, should be a presumptive violation of the Sherman Act if it is imposed by a firm with market power. And antitrust’s definition of market power must, in turn, be expanded beyond the confined market-share-based Sherman Act jurisprudence to instead take account of the many ways economists have of testing for the existence of market power. Firms would be judged to have market power if they:

• Have the power to unilaterally raise prices for their customers or lower them for their suppliers, including workers;

• Wage- or price-discriminate among customers, suppliers, or workers;

• Unilaterally impose non-price, uncompensated contractual provisions on their counterparties, like non-compete agreements in labor contracts;

• Impede or control entry by would-be competitors; or

• Earn profits and/or make payments to their shareholders at a rate in excess of their market cost of capital.

All of these things are economic indicia of market power because they could not be done by any one or more firms acting in concert in the face of competition from rivals—therefore they should be legal indicia of market power as well.96

Drilling down on how the antitrust laws should target labor market monopsony in particular, not merely prohibit vertical restraints that enable fissured workplace-style business models, the antitrust authorities should bring a monopsonization suit against an online labor platform like Uber that fixes wages and imposes exclusivity on independent businesses, along the lines of Meyer v. Kalanick. If, as would be expected, that case would be adjudicated under the Rule of Reason, despite its economic equivalence to the FTC’s per se cases against professional organizations and unions of independent contractors, then Congress should streamline the Rule of Reason for labor monopsony. This should be done along the lines proposed by Ioana Marinescu and Eric Posner, setting out principles to guide market definition that are responsive to measured firm-level labor supply elasticities.97 In fact, if firms have the unilateral power to dictate wages without causing a significant share of their workforce to leave, then the proper market definition for a monopsonization case may be significantly smaller than the one those authors recommend as a baseline. The point of such a suit is to force Uber to choose one business model or another: either employ the drivers if Uber wants to fix their wages and monitor them on the job, or give up the price- setting and market coordination power that makes the platform such a value proposition for its investors. It cannot be allowed to do both. Meanwhile, workers themselves who are not statutory employees should be protected by antitrust’s labor exemption and should be permitted to bargain collectively. However, any such extension of the labor exemption must not also immunize the powerful employer against whom they would seek to bargain. And at the very least, both no-poaching clauses in franchising contracts and non-compete clauses in employment contracts should be illegal per se.98

Finally, analysis of labor market impact should be incorporated in the statutory prospective merger review process that federal agencies undertake as a matter of routine, in order to prevent the harmful accumulation of monopsony power in labor markets by merger. The current FTC Chairman, Joseph Simons, said as much in Congressional testimony in the fall of 2018,99 but to date there is no evidence that any such investigation has taken place. In the recent merger approval for Staples’s takeover of its supplier Essendant, the majority of the commission claimed that the merger would have a pro-competitive impact on input markets.100 Specifically, if the combined firm reduced the price it pays to manufacturer, it would in fact purchase more from them, not less, and hence that price reduction would not be an exercise of buyer power (the majority’s opinion says nothing about labor specifically as an input). But the idea that the volume of sales is dispositive about the anti-competitive exercise of monopsony power is not correct. Wilmers finds evidence that dominant retailers and manufacturers impose price reductions on the suppliers over whom they exercise market power, and those suppliers in turn pass those price reductions through to their workers in the form of lower wages.101 That is an exercise of monopsony power, but it might well be accompanied by greater sales volume from the supplier to the dominant customer.

Altogether, the thesis of this paper is that there is no way to confront the economy’s crisis of unequal bargaining power without confronting the role that antitrust has played in getting us there. Antitrust is not a substitute to any of the many other ways that policy ought to be extended to halt and reverse the economy-wide erosion of worker bargaining power behind rising inequality and wage stagnation. But strengthening it is a necessary condition for the success of many of those alternatives, notably, labor law reform and collective bargaining on the part of precariously employed gig economy workers.

#### Regs fail---prefer case-by-case enforcement.

Howard Shelanski 21. Professor of Law, Georgetown University; Partner, Davis Polk & Wardwell LLP. “Antitrust and Deregulation.” *Yale Law Journal* (127): 1951-1953. <https://www.yalelawjournal.org/pdf/Shelanski_kcn6n4k3.pdf>

A longstanding debate examines the comparative advantages of antitrust and regulation. The late Cornell economist Alfred Kahn, the architect of airline deregulation in the Carter Administration, wrote that “society’s choices are always between or among imperfect systems, but that, wherever it seems likely to be effective, even very imperfect competition is preferable to regulation.”117 Kahn does not address antitrust in that quotation, but it suggests that he would find antitrust law’s more targeted, case-by-case approach to governing competition to be preferable to regulation. Indeed, Kahn elsewhere wrote, while expressing his “belief in vigorous enforcement of the antitrust laws,” that “the antitrust laws are not just another form of regulation but an alternative to it—indeed, its very opposite.”118 Then-Judge Stephen Breyer has similarly stated that “antitrust is not another form of regulation. Antitrust is an alternative to regulation and, where feasible, a better alternative.”119

The comparisons that Breyer and Kahn made were, in context, mostly between antitrust and rate regulation, where the agency was trying to protect consumers from monopoly pricing.120 But some of these criticisms, including “high cost; ineffectiveness and waste; procedural unfairness, complexity, and delay; unresponsiveness to democratic control; and the inherent unpredictability of the end result,” apply to most kinds of regulation.121 Regulation might well be worthwhile despite those potential drawbacks, but certain attributes—ex post and case-by-case enforcement, judicial oversight with the government bearing the burden of proof—make antitrust enforcement less vulnerable to those critiques.

Regulation can also be comparatively slow to adapt to new market conditions, and that delay can affect an entire regulated industry.122 Antitrust authorities also might fail to foresee relevant market changes, but their actions typically affect only one discrete case and they generally have flexibility, as conditions change, to modify relevant consent decrees and decline to pursue similar investigations or sanctions.123 It is harder for government agencies to make changes to established regulatory programs,124 making regulation more likely than antitrust to outlast the problems it was implemented to solve. Regulation’s delayed adaptation to changing conditions can be costly,125 especially as markets transition to more competitive structures.126 As Michael Boudin, a former DOJ antitrust official (and later federal judge) put it, “regulation almost always will be very difficult to dislodge, even if it proves mistaken. Almost any regulatory regime will develop a constituency, armed with congressmen and self-interested bureaucrats . . . [and] become[] the foundation on which private arrangements are constructed, arrangements that cannot easily be discarded.”127

#### Only the plan imposes harsh enough penalties.

Samuel Weinstein 19. Assistant Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University. “Article: Financial Regulation in the (Receding) Shadow of Antitrust.” *Temple Law Review* (91): 487-491.

Even when sector regulators prioritize protecting competition, many lack the expertise and institutional mechanisms to do so effectively. Regulatory agencies might not employ investigatory and adjudicatory procedures sufficient to root out anticompetitive conduct. While courts must in many cases allow for exhaustive discovery, the same cannot be said for most agency proceedings. As a result, even those sector regulators that value protecting competition may not have the institutional systems necessary to follow through effectively.

The relative weakness of remedies typically available to regulatory agencies compounds these problems. Most agencies do not have access to remedies as stringent as an antitrust court's power to assign treble damages under the Sherman Act or to permanently enjoin anticompetitive conduct. The administrative record in Trinko showed that Verizon admitted it had violated its open-access commitments and voluntarily paid $ 3 million to the FCC and $ 10 [\*488] million to competitive local exchange carriers. While the Trinko opinion relied on these sanctions in part for its conclusion that the FCC's regulatory regime had fulfilled the antitrust function, the FCC Chairman subsequently told Congress that the Commission's maximum fine authority was in many instances "insufficient to punish and deter violations" that incumbent local exchange carriers like Verizon had committed with the aim of "slow[ing] the development of local competition." Among other measures, Chairman Powell recommended increasing the FCC's forfeiture authority against common carriers for single continuing violations of the Telecommunications Act from $ 1.2 million to "at least $ 10 million."

Agency capture is another explanation for regulators' relative weakness as competition enforcers. The literature on capture is well developed. There is a general scholarly consensus that the political nature of top agency jobs and the revolving door between agencies and the industries they oversee make sector regulators much more susceptible to industry pressure than antitrust courts. Studies have shown that capture may be a particular problem at the financial regulatory agencies. There is a steady flow of lawyers between the SEC and CFTC, on the one hand, and Wall Street firms and the law firms and lobbyists [\*489] that represent them on the other, which appears to affect outcomes of agency proceedings in some cases.

Objective measures of the relative competition-enforcement abilities of the antitrust agencies versus the sector regulators tend to confirm the supposition that sector regulators generally cannot be relied on to fulfill the antitrust function in regulated markets. The expert staffs of the antitrust agencies are far larger and more experienced than the competition staffs, if any, at the sector regulators. In recent years, the Antitrust Division typically has had between 340 and 400 attorneys and approximately 50 economists dedicated to competition enforcement, while the FTC's Bureau of Competition has had around 300 attorneys and support staff and approximately 50 antitrust economists. Some regulatory agencies, like the FCC, Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve, have dedicated competition staff with specific expertise. The FCC has a Wireline Competition Bureau, which includes a Competition Policy Division. The FDIC, Federal Reserve, and the Office of the Comptroller of the Currency have staff dedicated to reviewing proposed bank mergers. Even at these agencies, however, the competition staff is smaller and more narrowly focused than the staffs of the Antitrust Division and FTC. [\*490] The comparison with the SEC and CFTC is starker. Neither agency has a dedicated competition division or group. And neither agency established such a body post-Credit Suisse, when it appeared the SEC and CFTC would have increased responsibility for competition matters, or in the wake of Dodd-Frank, which required the agencies to monitor and protect competition in the derivatives markets. This paucity of personnel resources is perhaps predictable given these agencies' bureaucratic cultures.

Considering this lack of experienced competition staff, it is unsurprising that the SEC and CFTC bring very few independent competition-related enforcement actions. While these agencies have collaborated with the [\*491] Department of Justice and other enforcement agencies on significant competition investigations, there is little evidence that they would bring such cases on their own. It seems clear that the financial services agencies are either unwilling or unable to "perform the antitrust function" as envisioned by the Supreme Court's case law balancing antitrust and regulation. This conclusion is troubling. It means that when courts apply Credit Suisse or Trinko to shift the responsibility for policing competition away from the expert antitrust agencies to regulatory bodies that are unprepared for the task, they are leaving some regulated markets, especially the financial markets, vulnerable to anticompetitive conduct.

#### Regs can’t solve future problems.

Jon Sallet 18. Partner at Steptoe. Previously, he was General Counsel of the Federal Communications Commission and Deputy Assistant Attorney General at the Antitrust Division. Before the Federal Trade Commission. “Competition and Consumer Protection in the 21st Century”. https://www.ftc.gov/system/files/documents/public\_events/1415284/ftc\_hearings\_session\_5\_transcript\_11-1-18\_0.pdf

One, we will look at incipiency, actions that have not had the kind of competitive effect that he thought the Sherman Act examined. Secondly, because, he said, there will be new kinds of harm that we cannot anticipate. If we write a detailed list, we are going to miss some. So he wanted a standard that would evolve as economic issues as the facts evolved.

#### Perm do both---that’s best.

Eric A. Posner 21. 8/13/21. Kirkland & Ellis Distinguished Service Professor at University of Chicago. How Antitrust Failed Workers. Oxford University Press, 2021.

The antitrust litigation gap has not been filled with other legal protections for workers. But even if those legal protections were introduced, a role remains for antitrust law. Labor markets, like product markets, are best for society when they are competitive. In part II, I propose ways for strengthening antitrust law so it can more adequately address labor monopsony.

#### Perm do the CP---antitrust laws are regs.

Robinhood 20. Robinhood Financial LLC. “What are Antitrust Laws?”. 10-6-20. https://learn.robinhood.com/articles/4x5oCZOtg43uORfxEnxPRW/what-are-antitrust-laws/

Antitrust laws are regulations that aim to promote fair business competition in an open market and protect consumers by banning certain predatory practices.

## Politics

#### Won’t pass- Dems factions are miles apart

Heather Caygle, 10-12-2021, "Dem tension keeps spiking ahead of make-or-break 3 weeks," POLITICO, https://www.politico.com/news/2021/10/12/democrats-reconciliation-agenda-515837

Top Democrats are continuing to talk past each other as they openly spar over the scope of President Joe Biden’s social agenda ahead of a critical three-week stretch in the negotiations.

Speaker Nancy Pelosi and other Democrats have indicated they hope to reach a deal on the massive social safety net bill by the end of the month. But if the dueling messages Tuesday are any indication, Democrats remain miles apart on an agreement to address everything from child care and paid family leave to a massive health care expansion to climate change, as the party grapples with which priorities in the bill should stay, which should go and which should be trimmed.

“We have some important decisions to make in the next few days so that we can proceed,” Pelosi told reporters in a press conference Tuesday. “At $3.5 trillion we were doing everything well. … We’re still talking about a couple of trillion dollars but it’s much less.”

Pelosi indicated Tuesday that Democrats are eyeing a double-barrel approach: trimming both the number of priorities in their social spending package as well as cutting back on the length certain programs would be funded. Democratic leaders hope the two-prong plan can dramatically cut the package from its initial price tag of $3.5 trillion to a spending target Senate moderates are comfortable supporting.

But top progressives didn’t hide their exasperation, both with the pace of the talks and what little they have heard from two key negotiators — Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.).

“We are prepared to negotiate, we are prepared to compromise, but we’re not going to negotiate with ourselves,” Senate Budget Chair Bernie Sanders (I-Vt.) told reporters in a press call Tuesday.s

Democrats are increasingly anxious about the enormous obstacles to completing the package in the coming weeks, with pressure building to deliver a key Biden priority amid his lagging approval ratings. Privately, some Democrats fear that the sprawling bill could spill over into the December of hell, when the party will also need to pass a trillion-dollar government spending bill and avoid a debt crisis.

#### No deal or PC not key

Jeff Stein, 10-9-2021, "Biden faces shrinking timetable to salvage his agenda," Washington Post, https://www.washingtonpost.com/us-policy/2021/10/09/biden-faces-shrinking-timetable-salvage-his-agenda/

As they battle over the size of the legislation, Democrats are also debating how to structure the benefit programs so they fit under the final cap.

Manchin argues forcefully that Democrats should impose income limits on programs like the child tax credit, so that wealthier households do not receive benefits they may not need. But if the child tax credit is adjusted that way, it could violate Biden’s pledge not to raise taxes on households earning less than $400,000 per year, while adding administrative complications to a program still in its infancy.

Some liberal lawmakers, in turn, have floated the idea of funding some new programs only for a set number of years, which in theory would lower their costs. The liberals hope, however, that the programs will prove so popular that Congress would be forced to extend them later. But some centrist lawmakers are balking at that accounting strategy.

Biden’s challenge is that both wings of the Democratic Party believe they have already been forced to yield too much. Centrists complain that the president has taken the liberals’ side by tying the infrastructure package to the far more liberal safety net bill.

“If Biden thinks he’s adopted a middle course that should leave people equally happy, he has misjudged the situation,” said Bill Galston, a former domestic policy official in President Bill Clinton’s administration. “The prevailing view of the centrists is the president has tilted decisively in the other direction. There’s not a lot of joy in Mudville.”

Liberals are rankled that, after they agreed to cut the size of the safety net package significantly, to $3.5 trillion, they are now being told they must reduce it much more.

“There is nothing superfluous in the agenda. Every dollar is needed to deliver millions of good-paying jobs, affordable child care and health care, and a clean energy future,” said Lindsay Owens, executive director of Groundwork Collaborative, a left-leaning group.

If Biden has one weapon in his arsenal, it’s the recognition by many Democrats that if his agenda collapses, it could be devastating for the party in the 2022 midterm elections and beyond.

Democrats, above all else, are trying desperately to avoid what happened with President Donald Trump’s pledge to repeal the Affordable Care Act in 2017. That effort bogged down the congressional Republican majority for months, and when then-Senate Majority Leader Mitch McConnell (R-Ky.) finally brought a repeal provision to the floor for a vote, it was defeated in a major embarrassment.

#### Biden’s PC wrecked now

Scott Wong & Mike Lillis, 10-11. Scott Wong is a Senior Reporter at The Hill. Mike Lillis is a Senior reporter at The Hill. “Bleak midterm outlook shadows bitter Democratic battle.” 10/11/21. https://thehill.com/homenews/house/575993-bleak-midterm-outlook-shadows-bitter-democratic-battle

It’s numbers like that that are making Republicans very confident about their chances of winning back the House next year. “Pretty remarkable given it was THAT much money, ostensibly needed for an 'emergency,' and at the height of Biden’s political capital… and just a few months later it’s underwater,” a GOP aide said in an email. A Daily Kos-Civiqs survey in August offered a similar warning to Democrats, finding that 57 percent of voters say the Biden administration has done nothing to benefit them personally. “If a large infrastructure bill passes, there's no guarantee his approval will recover,” said Wasserman. “But if it fails, it could get worse — and that's what Democrats have to fear." Kyle Kondik, managing editor of Sabato's Crystal Ball, an election handicapper based at the University of Virginia, provided a similar analysis, noting that Biden's agenda, while popular in some districts, could be a liability in others where Republicans will attack the safety net expansion as government overreach. “Having some success to point to always seems preferable to failure,” Kondik said. “But let’s say the Democrats pass the bipartisan bill and a reconciliation package — maybe it helps them, or maybe it gives Republicans something to point to as they argue for checks and balances next year.”

#### Biden can’t and won’t use PC to move Sinema or Manchin

Alexander Bolton 10/15/21. The Hill "Biden's soft touch with Manchin, Sinema frustrates Democrats". TheHill. 10-15-2021. https://thehill.com/homenews/senate/576861-bidens-soft-touch-with-manchin-sinema-frustrates-democrats

A growing number of Senate Democrats are getting impatient with President Biden’s kid-glove approach to negotiating with Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.).

Biden’s approach has involved a lot of facetime and personal attention, but little in the way of public concessions or discernible movement.

After talks on the scale and scope of the Democrats’ $3.5 trillion reconciliation spending bill stalled in September, Democratic senators expressed hope that Biden’s personal involvement would yield a breakthrough.

Yet after several one-on-one meetings between the president, Manchin and Sinema, Democrats don’t seem any closer to agreeing on a framework than a month ago.

This is fueling frustration among senators who see this Congress as a once-in-a-generation opportunity to pass bold reforms as the House and possibly the Senate are in danger of flipping to Republicans in the 2022 midterm election.

“Both of them have left the president hanging,” grumbled one Democratic senator who requested anonymity to vent about the lack of progress since Biden reached out personally to Manchin and Sinema.

Biden met one-on-one with Sinema on the morning of Sept. 15 and then with Manchin later that day. He also held separate meetings with the two senators on Sept. 28.

Little news came out of any of the meetings other than a report that Sinema issued an ultimatum to Biden, warning him she wouldn’t back the reconciliation bill if the $1 trillion bipartisan infrastructure bill was delayed or failed in the House.

“If [Biden] had been able to walk away and say, 'I have a commitment to $2 trillion from both [senators] and now we’re working on the details,' it would have been like a sense of momentum. ‘The president’s magic of the Oval Office comes in once again.’ But instead it was like, ‘There’s no magic in the Oval Office right now,’” the senator who spoke to The Hill said of the meetings.

Some Democratic senators think Biden’s deference to Manchin and Sinema has only emboldened them to dig in their heels even more.

#### PC is fake.

Roberts 20 [David Roberts, writer about energy and climate change @ Vox. 12-1-2020, "Joe Biden should do everything at once," Vox, accessed 7-12-2021, https://www.vox.com/policy-and-politics/21724758/biden-transition-trump-polarized-climate-change-health-immigration] //BY \*\*\*edited for gendered language

Two-party partisan politics really is a zero-sum game

The theme of these stories is that Democrats relied on clever sequencing over and over again, imagining some amount of political capital (“credibility”) that they could ~~husband~~ [gather] and spend strategically to get assistance across the aisle, at every juncture underestimating the ferocity and unanimity of Republican opposition. They kept behaving as though they would find good-faith negotiating partners, as though they were still in the postwar American era of relatively low (or at least manageable) polarization.

What too few of them realized was that they were already in a new era of near-total polarization, with the population sorted into like-minded enclaves, a bifurcated media ecosystem nurturing stacked (and diametrically opposed) “mega-identities,” and voters motivated primarily by “negative partisanship,” which is to say, hatred of the other side.

A fully polarized two-party system really is a zero-sum game. Any victories or gains by one side come at the other side’s expense, even if the victory secures shared goals. The rational course for the party out of power is to fight with full intensity against everything, always, and that’s what Republicans did under Obama. With scarcely any exceptions, from 2010 through 2020, they pushed in every case for maximal partisan advantage, no matter the stakes or possible cost.

#### Haitian migrants, Afghanistan, declining polls thump PC

Alex Seitz-Wald, 9-27-2021, "Biden in a bind on border: 'The coalition that elected him will collapse'," NBC News, <https://www.nbcnews.com/politics/joe-biden/biden-bind-border-politics-finally-got-better-their-policy-n1280044>

“President Biden needs to show moral clarity in this moment,” said Julián Castro, the former Obama Cabinet member and 2020 Democratic presidential candidate. “If he doesn’t, the coalition that elected him will collapse.”

There were no snakes and alligators, as Trump reportedly wanted on the U.S.-Mexico border. But the images of Border Patrol agents on horseback chasing Haitian asylum-seekers attempting to cross the Rio Grande has many of Biden’s allies comparing him to his predecessor and questioning his commitment to the larger reform project.

The administration has attempted to distance itself from actions taking place under its oversight.

Homeland Security Secretary Alejandro Mayorkas called the images “horrible and horrific,” and the White House said horses will no longer be used in the area.

Vice President Kamala Harris, who has been tasked with dealing with some border issues, released an eyebrow-raising readout of a call she held with Mayorkas speaking to her nominal subordinate the way she might to a hostile a foreign leader.

But none of it seems to have helped much.

The administration’s top envoy to Haiti resigned in protest of the "inhumane, counterproductive decision" to deport Haitian refugees back to a country seemingly everyone agrees is unsafe as it grapples with political unrest and the aftermath of a hurricane and earthquake.

And Republicans are still insisting Biden is promoting “uncontrolled illegal immigration into the country,” as Missouri Sen. Josh Hawley said during a hearing with Mayorkas.

For some, like Frank Sharry, the longtime head of the immigration advocacy group America's Voice, it’s all too familiar to see a Democrat have their dreams — and backbone — crushed by a media firestorm over an immigration flashpoint.

“I’ve been in this debate for 40 years, and it feels like groundhog,” Sharry said, noting every president for decades has dealt with surges of Haitian and Central American migrants.

Back in March, when a different surge of migrants was in the news, many of the questions at Biden’s first news conference were about the border. The new president stood by his plan for a regional approach to stem the flow of migrants, fix the asylum system and “undo the moral and national shame of the previous administration.”

But since then, Biden has faced one challenge after another, from the pandemic to the pullout of Afghanistan, with his poll numbers declining along with the prospects for his domestic legislative agenda on Capitol Hill, leaving little political capital left for a fight on one of the most divisive issues in the country.

“The politics finally got the better of their policy vision,” Sharry said. “In my view, they held their nerve. And in the last week, they choked.”

#### Best climate measures will be cut- ineffective and hurts international perception

Coral Davenport, 10-15-2021, "Key to Biden’s Climate Agenda Likely to Be Cut Because of Manchin Opposition," New York Times, https://www.nytimes.com/2021/10/15/climate/biden-clean-energy-manchin.html

The most powerful part of President Biden’s climate agenda — a program to rapidly replace the nation’s coal- and gas-fired power plants with wind, solar and nuclear energy — will likely be dropped from the massive budget bill pending in Congress, according to congressional staffers and lobbyists familiar with the matter.

Senator Joe Manchin III, the Democrat from coal-rich West Virginia whose vote is crucial to passage of the bill, has told the White House that he strongly opposes the clean electricity program, according to three of those people. As a result, White House staffers are now rewriting the legislation without that climate provision, and are trying to cobble together a mix of other policies that could also cut emissions.

A White House spokesman, Vedant Patel, declined to comment on the specifics of the bill, saying, “the White House is laser focused on advancing the president’s climate goals and positioning the United States to meet its emission targets in a way that grows domestic industries and good jobs.”

A spokeswoman for Mr. Manchin, Sam Runyon, wrote in an email, “Senator Manchin has clearly expressed his concerns about using taxpayer dollars to pay private companies to do things they’re already doing. He continues to support efforts to combat climate change while protecting American energy independence and ensuring our energy reliability.”

West Virginia’s other senator, Republican Shelley Moore Capito, said she was “vehemently opposed” to the clean electricity program because it is “designed to ultimately eliminate coal and natural gas from our electricity mix, and would be absolutely devastating for my state.”

The $150 billion clean electricity program was the muscle behind Mr. Biden’s ambitious climate agenda. It would reward utilities that switched from burning fossil fuels to renewable energy sources, and penalize those that do not.

Experts have said that the policy over the next decade would drastically reduce the greenhouse gases that are heating the planet and that it would be the strongest climate change policy ever enacted by the United States.

“This is absolutely the most important climate policy in the package,” said Leah Stokes, an expert on climate policy, who has been advising Senate Democrats on how to craft the program. “We fundamentally need it to meet our climate goals. That’s just the reality. And now we can’t. So this is pretty sad.”

The setback also means that President Biden will have a weakened hand when he travels to Glasgow in two weeks for a major United Nations climate change summit. He had hoped to point to the clean electricity program as evidence that the United States, which is historically the largest emitter of planet-warming pollution, was serious about changing course and leading a global effort to fight climate change. Mr. Biden has vowed that the United States will cut its emissions 50 percent from 2005 levels by 2030.

The rest of the world remains deeply wary of the country’s commitment to tackling global warming after four years in which former President Donald J. Trump openly mocked the science of climate change and enacted policies that encouraged more drilling and burning of fossil fuels.

“This will create a huge problem for the White House in Glasgow,” said David G. Victor, co-director of the Deep Decarbonization Initiative at the University of California, San Diego. “If you see the president coming in and saying all the right things with all the right aspirations, and then one of the earliest tests of whether he can deliver falls apart, it creates the question of whether you can believe him.”

## FTC DA---2AC

#### The FTC’s ramping up antitrust enforcement now beyond the scope of existing antitrust law

Caitlin Styrsky 8/17/21. Staff writer at Ballotpedia. “Checks and Balances: FTC expands interpretation of its antitrust enforcement authority.” https://news.ballotpedia.org/2021/08/17/checks-and-balances-ftc-expands-interpretation-of-its-antitrust-enforcement-authority/

The Federal Trade Commission (FTC) on July 1 voted 3-2 to broaden its interpretation of the commission’s Section 5 authority, which authorizes the FTC to investigate and challenge what it deems “unfair methods of competition in or affecting commerce.” The change could allow the agency to expand enforcement proceedings against companies that don’t expressly violate federal antitrust statutes.

The new interpretation departs from the commission’s 2015 precedent, established through internal guidance, that relied on the consumer welfare standard to determine what constitutes antitrust activity. According to the consumer welfare standard, only companies that artificially raise prices qualify as monopolies for the purposes of FTC enforcement. The FTC did not pursue companies via this standard if enforcement through the Sherman Act or the Clayton Act could address the competitive harm.

Under the FTC’s broadened interpretation of its authority, the commission can issue civil penalties to challenge what it deems to be anti-competitive behavior regardless of whether the behavior violates federal antitrust statutes. The change could allow the FTC to bring enforcement proceedings against tech companies that do not qualify as monopolies but that, in the opinion of FTC Chair Lina Khan, have been alleged to have exhibited anti-competitive practices.

“Withdrawing the 2015 Statement is only the start of our efforts to clarify the meaning of Section 5 and apply it to today’s markets,” wrote Khan in a statement. “Section 5 is one of the Commission’s core statutory authorities in competition cases; it is a critical tool that the agency can and must utilize in fulfilling its congressional mandate to condemn unfair methods of competition.”

#### FTC overstretch is inevitable---the plan fiats legislative backing and court victory---that’s key to legitimacy and funding.

Marianela Lopez-Galdos 21. 7-28-21. Global Competition Counsel at the Computer& Communications Industry Association, previously served as Director of Competition & Regulatory Policy, and is a professor at George Washington University Competition Law Center and at the University of Melbourne Law School. “Policy Decisions of Antitrust Institutions Series: The Future of the FTC and Its Perils”. Disruptive Competition Project. https://www.project-disco.org/competition/072821-policy-decisions-of-antitrust-institutions-series-the-future-of-the-ftc-and-its-perils/

But the current FTC leadership seems to have overlooked the agency’s history. As such, it has already promised to produce different policy outcomes and noted that the Section 5 Policy Guidelines were shortsighted. As a result, the current FTC has decided, with the support of the other two Democratic Commissioners, to rescind the Policy Guidelines.

It is unknown whether the current FTC will try to adopt different guidelines or whether it will start opening more cases under Section 5 of the FTC Act. Furthermore, it is less clear whether the new FTC leadership currently counts with the sufficient and aligned Neo-Brandeisian human talent to bring solid cases that are not based on the consumer welfare standard or to litigate before judges that support the Neo-Brandeisian vision of antitrust.

What seems clear is that the new agency’s leader might find it hard to bring all Commissioners to an agreement with respect to what the agency can do with Section 5 of the FTC Act, and this situation, in and of itself, puts the agency in peril.

The FTC’s Rulemaking Authority

Another important policy change that may be detrimental to the FTC is its expressed willingness to expand the agency’s rulemaking authority under, e.g., Section 18 of the FTC Act. It is well known that in addition to its authority to investigate law violations by individuals and businesses, the FTC also has federal rulemaking authority to issue industry-wide regulations.

However, the agency’s rulemaking authority has been self-limited since the 80s in an effort to ensure the institution doesn’t overuse its capacity to adopt industry-wide regulations and raise concerns with those policy makers that are against the legislature deferring its core mandate to an independent agency that doesn’t represent the people.

Traditionally the legislature has the constitutional mandate to create laws affecting different sectors of the economy. Whereas it is legally accepted to design independent agencies with constrained mandates to adopt regulations, such powers are not necessarily understood to construe independent agencies as substitutes for the legislature’s powers. It is a basic tenet of administrative law, that agencies are constrained by the enabling statute that gives them authority to promulgate regulations in the first place.

Against this background, it seems risky for the new leadership to engage in broad rulemaking endeavors that might raise concerns from an institution legitimacy perspective. In the long term, it is predictable that many policymakers might not be supportive of an agency that implements its rulemaking authority in its broadest sense. As a result, some degree of political backlash against the agency might not help the agency’s lifecycle, especially if the agency is not granted with specific legislative guidance in the form of new legislation.

The Future of the FTC

One of the most challenging matters to tackle when it comes to leadership of antitrust authorities, or administrative agency for that matter, is legacy and the impact for the future of the agency. To put it simply, while antitrust leaders leave agencies, the side effects of leadership’s successes and failures condition the future of the agencies. Their leadership has consequences and sets precedent which will bind the agency well into the future.

Under the current political context, it would not be surprising if the current Neo-Brandeisian FTC enjoyed political support and success with its decision to bring big cases, especially against leading tech companies. In the short term, if the FTC makes headlines for opening cases against “Big Tech”, policymakers pushing for antitrust reforms will surely applaud the new changes as they would reflect a commitment to enhanced enforcement outcomes notwithstanding the strength of the cases.

However, in the mid-and long-term, if the FTC loses the big cases, the commitment to policy outcomes won’t be met. And then, it is unlikely that the question would be whether the antitrust norms are fit for today’s economy, but rather if the agency is capable of executing its mandate effectively. The recent decision in the FTC v. Facebook case is a good example of this paradigm, where the Judge expressed that the FTC had not carried out a sufficiently robust analysis supported by evidence, and therefore dismissed the case.

Eventually, the agency’s short-term reputational gains could quickly turn into a debacle for the institution itself with the caveat that by then, most probably, Neo-Brandeisian leadership will be long gone. Unfortunately then, the U.S. antitrust system — which is the only one to keep two federal antitrust agencies, bringing about positive outcomes for consumers — might be at risk. Political support to merge these two institutions could gain even more support, as has happened in the past, to the detriment of consumers.

# 1AR vs Navy KR

# 1AR vs Navy KR

## States

#### Technical assistance.

Garza et. al. 07. Chair of the Antitrust Modernization Commission, a bi-partisan blue ribbon commission created by Congress to advise Congress and the President on the state of U.S. Antitrust law enforcement and former DOJ Antitrust Deputy Assistant Attorney General for Regulatory Affairs. “Antitrust Modernization Commission: Report and Recommendations: Chapter 2,” p. 219. Antitrust Modernization Commission. 2/4/2007. https://govinfo.library.unt.edu/amc/report\_recommendation/chapter2.pdf

The DOJ and the FTC provide extensive technical assistance to nascent competition law regimes.61 The agencies use a variety of means—such as supplying on-site, long-term advisors and conducting workshops involving personnel from agencies in several countries— to provide assistance and training.62 Such training assists other countries in the development of their enforcement institutions as well as in their understanding of the appropriate economic and legal underpinnings of sound competition policy.63 It provides assistance in “the development of framework laws,” and in the “training of personnel in the substantive legal principles, analytical framework, and investigative techniques . . . .”64 Taken together, these services will foster greater cooperation and convergence on sound antitrust law principles.65

## Reg CP

### PDB

#### Links to the net benefit---antitrust is the less stringent option.

Daniel Crane 18. Frederick Paul Furth Professor of Law, University of Michigan. “Antitrust's Unconventional Politics.” *Virginia Law Review* (104): 134-135. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3019&context=articles>.

Beyond the concern that, absent antitrust, capitalism itself might succumb to reformist pressures, there is a more modest possibility that, absent antitrust, political pressures would lead to overregulation. Antitrust and administrative regulation are conventionally viewed as alternatives to address market failures. From the Reagan Administration to the Financial Crisis of 2008, the overall arc of American law involved simultaneous deregulation and relaxation of antitrust enforcement. If popular dissatisfaction with the economic status quo grows, demand might grow to pull either the regulatory or antitrust lever. Those ideologically committed to a light governmental hand on the market might prefer the antitrust alternative.

It is hard to judge at any given moment how much political support for antitrust intervention is motivated by genuine concern over monopoly and competition, and how much of it derives from the fact that, in the face of popular demand for a governmental cure to a perceived evil, it is often easier to delegate the solution to antitrust than to propose a regulatory solution. From the Sherman Act forward, however, it is certain that antitrust has often been deployed as a foil to more interventionist forms of regulation. The ideological and political implications of that move are complex and not neatly housed in left– right categories.

## FTC DA

### 2ac 1

#### FTC can’t keep up with its workload now.

Elsa Pearson 9/2/21. Senior policy analyst at Boston University School of Public Health. “Hospital mergers and acquisitions are a bad deal for patients. Why aren’t they being stopped?” https://www.statnews.com/2021/09/02/hospital-mergers-more-oversight-federal-state-officials/

What’s more, the FTC has acknowledged it can’t keep up with its workload this year. It modified its antitrust review process to accommodate an increasing number of requests and its stagnant capacity. In July, the Biden administration issued an executive order about economic competition that explicitly acknowledges the negative impact of health care consolidation on U.S. communities. This is encouraging, signaling that the government is taking mergers seriously. Yet it’s unclear if the executive order will give the FTC more capacity, which is essential if it is to actually enforce antitrust laws.

#### Proves why fiated plan is key

### 2AC 2 - Losers Lose

#### FTC is losing cases in the squo – they’ve overstretched and losing support due to a lack of legislative support

#### Losers lose---defeats crush authority and demoralize staff.

David Mclaughlin 21. Reporter @ Bloomberg "Antitrust Crusader Lina Khan Faces a Big Obstacle: The Courts". Bloomberg. 6-23-2021. https://www.bloomberg.com/news/articles/2021-06-23/tech-antitrust-lina-khan-faces-courts-as-challenge-to-ftc-s-progressive-agenda

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

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

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

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

#### Means the plan link turns the DA – only with a clear standard can the FTC gain the support and means to be effective

#### Hopes are pinned on Khan---FTC will fail unless Congress rewrites the CWS.

Bhaskar Chakravorti 7/7/21. Dean of global business at Tufts University’s Fletcher School of Law and Diplomacy. "Lina Khan Has Her Own Antitrust Paradox". Foreign Policy. 7-7-2021. https://foreignpolicy.com/2021/07/07/ftc-lina-khan-regulate-tech-congress/

A poisoned chalice is not the most welcoming of gifts for a new chair of a major federal agency. But that is what legal scholar Lina Khan has been handed as she arrives at her office at the Federal Trade Commission (FTC), with media coverage more befitting a rock star than a regulator. She is breathlessly described as a legal wunderkind and her “Amazon’s Antitrust Paradox” may already be the most widely talked about note in the history of the Yale Law Journal. Even Sen. Ted Cruz said he looks forward to working with her—and you know that puts her in an extremely select club. The clock is ticking on her very first assignment—to refile an antitrust complaint against Facebook and convince a federal judge to reconsider a complaint he so expeditiously threw out. Khan has under 30 days.

The best thing Khan can do? Nothing.

Congress ought to make the next move and do the responsible thing by getting its act together and reaching an agreement over a slate of bills it has been bickering over, creating a modern regulatory infrastructure for today’s tech. U.S. lawmakers ought to stop cheering Khan from the sidelines and egging her into a legal skirmish. Instead, they need to do the hard work of taking the longer view—bringing antitrust law to the digital age before refiling another complaint. Unless our lawmakers create the right framework and agency responsible for regulating the digital industry, Khan’s FTC—and U.S. consumers—will be drawn into near-term battles while the actual war rages on.

Here is the plot so far and what must be done.

The Facebook antitrust rewrite Khan is being pushed into is fraught with problems. The FTC, under the previous administration, rushed through a lawsuit against Facebook in December 2020, alleging the company’s acquisitions of Instagram and WhatsApp were anti-competitive. Regardless of the merits or demerits of Facebook’s purchases, a federal judge did not buy it. He did offer a 30-day period for revising and refiling.

To be sure, antitrust lawsuits must meet high hurdles and take their time to wind through courts, but the speed of this rejection was stunning. Unsurprisingly, hopes are now pinned on Khan being precisely the person to take on the challenge—and advice is pouring in on how to go back for round two. Some have argued the agency just needs to be more explicit about its definition of the market and the data it is relying on.

It is useful to recall that, as the judge threw out the complaint, he also ruled that “the FTC’s inability to offer any indication of the metric(s) or method(s) it used to calculate Facebook’s market share renders its vague ‘60%-plus’ assertion too speculative and conclusory to go forward.” Defining the “market” and “market share” as well as putting data against these are not straightforward in Facebook’s case.

Since access to the social media platform is free to users, figuring out the “market” might mean considering the advertising customers who actually pay for space there see. Here, Facebook’s share is as low as across all U.S. online advertising. The share climbs to 60 percent when limited to U.S. social media advertising but then drops away when the social media advertising market is considered globally. Moreover, “social networking” itself is a fluid category. A Facebook commissioned study found that 90 percent of the people who use one of Facebook’s apps also use YouTube and 25 percent also use Twitter. To complicate matters further, in Apple’s App Store, Facebook is classified as “social networking,” but YouTube is “video, music, and live streaming” and Twitter is “news.” Other metrics, such as time spent on the apps or total user interactions, are not regularly reported. No matter how the FTC reframes the market and market share (and even if it is accepted by the judge), the definitions will be open to numerous challenges, which will surely lengthen the legal process, giving the defendant the upper hand.

One might argue the conventional metrics for proving monopoly power—“market share” and related measures—are outmoded and a different approach is needed. The FTC might, instead, frame the complaint against Facebook differently: The company used its dominance to play fast and loose with user data. For such an argument to hold though, it needs to be linked to implications for consumer welfare—the prevailing standard for antitrust that has been applied since the 1960s. But how does one prove consumers are harmed by the fact that Facebook is collecting their data? Clearly, part of the data being collected gives users services tailored to their interests that many users find beneficial. This begs more questions: Are users being asked for more data than is strictly necessary? Is the information being collected in intrusive or abusive ways? Ultimately, the FTC and the courts would have decide if customers are getting a good value in exchange for their data.

Regardless of how one discusses consumer welfare, Khan, especially, ought to resist being forced into this straightjacket; after all, she has argued that antitrust standards based on consumer welfare are unfit to gauge competitiveness in the digital economy. To put her ideas into practice, she ought to have the freedom to bring a case that rests on the argument that a company’s impact on the market structure inhibits competition.

Since Khan has written forcefully about revisiting antitrust standards, it is natural to expect this case would be her chance to rewrite not only the charge against Facebook but to change those standards more broadly. There is little doubt this is where her mind is. The FTC under her leadership voted to revoke a 2015 policy statement that limited the agency’s reach, giving it room to frame cases beyond the two foundational boundaries of antitrust in the United States: the Sherman Antitrust Act and the Clayton Antitrust Act.

But the FTC’s levers are limited.

Although Khan can reframe the fundamentals of the antitrust complaint, without adequate regulatory infrastructure—something only Congress can provide—there are likely to be unsurmountable obstacles as the chess game between the law and Facebook unfolds. No matter how brilliantly Khan’s FTC rewrites the case against Facebook, the agency’s powers, budget, and resources are still limited. Ad hoc adjustments to the FTC’s budget, as envisioned in one of the bills in Congress, and stopgap measures to expand its powers do not get around the fundamental fact that the FTC was not set up to pursue the breadth of novel issues and policy trade-offs that digital industries create.

#### That decimates the FTC---losses threaten the institution.

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But the current FTC leadership seems to have overlooked the agency’s history. As such, it has already promised to produce different policy outcomes and noted that the Section 5 Policy Guidelines were shortsighted. As a result, the current FTC has decided, with the support of the other two Democratic Commissioners, to rescind the Policy Guidelines.

It is unknown whether the current FTC will try to adopt different guidelines or whether it will start opening more cases under Section 5 of the FTC Act. Furthermore, it is less clear whether the new FTC leadership currently counts with the sufficient and aligned Neo-Brandeisian human talent to bring solid cases that are not based on the consumer welfare standard or to litigate before judges that support the Neo-Brandeisian vision of antitrust.

What seems clear is that the new agency’s leader might find it hard to bring all Commissioners to an agreement with respect to what the agency can do with Section 5 of the FTC Act, and this situation, in and of itself, puts the agency in peril.

The FTC’s Rulemaking Authority

Another important policy change that may be detrimental to the FTC is its expressed willingness to expand the agency’s rulemaking authority under, e.g., Section 18 of the FTC Act. It is well known that in addition to its authority to investigate law violations by individuals and businesses, the FTC also has federal rulemaking authority to issue industry-wide regulations.

However, the agency’s rulemaking authority has been self-limited since the 80s in an effort to ensure the institution doesn’t overuse its capacity to adopt industry-wide regulations and raise concerns with those policy makers that are against the legislature deferring its core mandate to an independent agency that doesn’t represent the people.

Traditionally the legislature has the constitutional mandate to create laws affecting different sectors of the economy. Whereas it is legally accepted to design independent agencies with constrained mandates to adopt regulations, such powers are not necessarily understood to construe independent agencies as substitutes for the legislature’s powers. It is a basic tenet of administrative law, that agencies are constrained by the enabling statute that gives them authority to promulgate regulations in the first place.

Against this background, it seems risky for the new leadership to engage in broad rulemaking endeavors that might raise concerns from an institution legitimacy perspective. In the long term, it is predictable that many policymakers might not be supportive of an agency that implements its rulemaking authority in its broadest sense. As a result, some degree of political backlash against the agency might not help the agency’s lifecycle, especially if the agency is not granted with specific legislative guidance in the form of new legislation.

The Future of the FTC

One of the most challenging matters to tackle when it comes to leadership of antitrust authorities, or administrative agency for that matter, is legacy and the impact for the future of the agency. To put it simply, while antitrust leaders leave agencies, the side effects of leadership’s successes and failures condition the future of the agencies. Their leadership has consequences and sets precedent which will bind the agency well into the future.

Under the current political context, it would not be surprising if the current Neo-Brandeisian FTC enjoyed political support and success with its decision to bring big cases, especially against leading tech companies. In the short term, if the FTC makes headlines for opening cases against “Big Tech”, policymakers pushing for antitrust reforms will surely applaud the new changes as they would reflect a commitment to enhanced enforcement outcomes notwithstanding the strength of the cases.

However, in the mid-and long-term, if the FTC loses the big cases, the commitment to policy outcomes won’t be met. And then, it is unlikely that the question would be whether the antitrust norms are fit for today’s economy, but rather if the agency is capable of executing its mandate effectively. The recent decision in the FTC v. Facebook case is a good example of this paradigm, where the Judge expressed that the FTC had not carried out a sufficiently robust analysis supported by evidence, and therefore dismissed the case.

Eventually, the agency’s short-term reputational gains could quickly turn into a debacle for the institution itself with the caveat that by then, most probably, Neo-Brandeisian leadership will be long gone. Unfortunately then, the U.S. antitrust system — which is the only one to keep two federal antitrust agencies, bringing about positive outcomes for consumers — might be at risk. Political support to merge these two institutions could gain even more support, as has happened in the past, to the detriment of consumers.

## PTX

### 2AC ! Calc

#### Warming’s not existential---framing it as such undermines solvency.

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In the lead-up to the 2014 IPCC Fifth Assessment Report (AR5), researchers developed four scenarios for what might happen to greenhouse-gas emissions and climate warming by 2100. They gave these scenarios a catchy title: Representative Concentration Pathways (RCPs)1. One describes a world in which global warming is kept well below 2 °C relative to pre-industrial temperatures (as nations later pledged to do under the Paris climate agreement in 2015); it is called RCP2.6. Another paints a dystopian future that is fossil-fuel intensive and excludes any climate mitigation policies, leading to nearly 5 °C of warming by the end of the century2,3. That one is named RCP8.5.

RCP8.5 was intended to explore an unlikely high-risk future2. But it has been widely used by some experts, policymakers and the media as something else entirely: as a likely ‘business as usual’ outcome. A sizeable portion of the literature on climate impacts refers to RCP8.5 as business as usual, implying that it is probable in the absence of stringent climate mitigation. The media then often amplifies this message, sometimes without communicating the nuances. This results in further confusion regarding probable emissions outcomes, because many climate researchers are not familiar with the details of these scenarios in the energy-modelling literature.

This is particularly problematic when the worst-case scenario is contrasted with the most optimistic one, especially in high-profile scholarly work. This includes studies by the IPCC, such as AR5 and last year’s special report on the impact of climate change on the ocean and cryosphere4. The focus becomes the extremes, rather than the multitude of more likely pathways in between.

Happily — and that’s a word we climatologists rarely get to use — the world imagined in RCP8.5 is one that, in our view, becomes increasingly implausible with every passing year5. Emission pathways to get to RCP8.5 generally require an unprecedented fivefold increase in coal use by the end of the century, an amount larger than some estimates of recoverable coal reserves6. It is thought that global coal use peaked in 2013, and although increases are still possible, many energy forecasts expect it to flatline over the next few decades7. Furthermore, the falling cost of clean energy sources is a trend that is unlikely to reverse, even in the absence of new climate policies7.

Assessment of current policies suggests that the world is on course for around 3 °C of warming above pre-industrial levels by the end of the century — still a catastrophic outcome, but a long way from 5 °C7,8. We cannot settle for 3 °C; nor should we dismiss progress.

Plan for progress

Some researchers argue that RCP8.5 could be more likely than was originally proposed. This is because some important feedback effects — such as the release of greenhouse gases from thawing permafrost9,10 — might be much larger than has been estimated by current climate models. These researchers point out that current emissions are in line with such a worst-case scenario11. Yet, in our view, reports of emissions over the past decade suggest that they are actually closer to those in the median scenarios7. We contend that these critics are looking at the extremes and assuming that all the dice are loaded with the worst outcomes.

Asking ‘what’s the worst that could happen?’ is a helpful exercise. It flags potential risks that emerge only at the extremes. RCP8.5 was a useful way to benchmark climate models over an extended period of time, by keeping future scenarios consistent. Perhaps it is for these reasons that the climate-modelling community suggested RCP8.5 “should be considered the highest priority”12.

We must all — from physical scientists and climate-impact modellers to communicators and policymakers — stop presenting the worst-case scenario as the most likely one. Overstating the likelihood of extreme climate impacts can make mitigation seem harder than it actually is. This could lead to defeatism, because the problem is perceived as being out of control and unsolvable. Pressingly, it might result in poor planning, whereas a more realistic range of baseline scenarios will strengthen the assessment of climate risk.

#### Nuclear war causes extinction---best, most recent studies.

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Nuclear warfare could have devastating impacts on millions of people, yet it has been suggested that regional or global nuclear conflict may be possible in the future (Toon et al., 2019). In addition to the calamitous impacts of nuclear conflict on a local level, research conducted with a range of climate models finds a global cooling in response to various conflict scenarios (Coupe et al., 2019; Malone et al., 1985; Mills et al., 2014; Pausata et al., 2016; Robock et al., 2007; Turco et al., 1983). This global cooling is driven by fires started by the nuclear weapons. These fires inject smoke into the upper troposphere, where rapid lofting can spread the sunlight-absorbing soot particles into the stratosphere (Turco et al., 1983). Recent research implies that even a small nuclear conflict may have impacts on the global climate system, affecting the state and circulation of the atmosphere (Robock et al., 2007), increasing the sea ice extent in both hemispheres (Mills et al., 2014), and reducing plant productivity and crop yields in regions far from the conflict location (Özdogan et al., ˘ 2013; Toon et al., 2019; Xia & Robock, 2013). While less studied, the potential impacts of nuclear conflict on the ocean are many. Numerous physical, chemical, and biological processes in the ocean are temperature dependent, and sunlight is a critical ingredient for photosynthesizing phytoplankton at the base of the marine food web. Using a climate model with an interactive ocean, Mills et al. (2014) evaluated the ocean physical response to a potential India/Pakistan nuclear war that lofts 5 Tg of black carbon particles into the stratosphere; they find a 0.8◦ C decrease in globally averaged sea surface temperature, with smaller temperature reductions at depth. Recently Toon et al. (2019) used an Earth system model that includes a representation for phytoplankton to evaluate the ocean biological response to nuclear conflict; they report a 5–15% decrease in phytoplankton productivity under a range of conflict scenarios. Such findings prompt further investigation into how nuclear conflict and the resulting global cooling may alter the chemical state of the ocean. Perturbations in the ocean's carbonate chemistry are of particular interest, owing to their importance for ocean acidification. Ocean acidification is an ongoing, large-scale environmental problem driven by fossil fuel emissions of carbon dioxide (CO2). Cumulatively since the preindustrial era, the ocean has absorbed 41% of the carbon emitted by human industrial activities (McKinley et al., 2017). While this ocean absorption of carbon has partially mitigated anthropogenic global warming, it has fundamentally altered the carbonate chemistry of the ocean, increasing the concentration of hydrogen ions ([H+]) while decreasing the concentration of carbonate ions ([CO2− 3 ]). Observations collected at time series sites across the global ocean find statistically significant reductions in the potential hydrogen (pH = −log([H+])) and the saturation state of the calcium carbonate mineral aragonite (Ωarag, which is proportional to [CO2− 3 ]) over the past few decades (Bates et al., 2014). These changes are a direct consequence of the ocean absorption of anthropogenic carbon; carbonate chemistry dictates that the excess carbon will react with water and CO2− 3 to decrease ocean pH and Ω (Feely et al., 2004). Both of these changes may have negative consequences for marine organisms, in particular for those that precipitate calcium carbonate shells (e.g., coccolithophores, pteropods, foraminifera, corals, molluscs, and echinoderms), as the precipitation is hindered by low pH, and because decreases in Ω favor shell dissolution (Doney et al., 2009). To date, there have been no studies of the effects of nuclear conflict on ocean acidification, though past modeling studies on the ocean's response to volcanic forcing and to proposed geoengineering schemes have intimated that ocean carbonate chemistry is highly sensitive to these types of external forcings. Using a fully coupled carbon-climate model, Frölicher et al. (2011) find that volcanic-induced cooling following the 1991 Mt. Pinatubo eruption led to immediate increases in the flux of carbon from atmosphere to ocean and consequently, increases in the total dissolved inorganic carbon (DIC) concentration in the surface ocean. Eddebbar et al. (2019) demonstrate that air-to-sea CO2 fluxes are significantly enhanced following the eruptions of Agung, El Chichón, and Pinatubo in a large ensemble of simulations with an Earth system model. Matthews et al. (2009) conduct solar radiation management climate engineering simulations with an intermediate complexity model of the coupled climate-carbon system; they find changes in ocean pH and Ωarag as a result of the anomalous cooling. Similarly, Lauvset et al. (2017) indicate that radiation management geoengineering leads to changes in North Atlantic pH in a fully coupled Earth system model, but they do not explore changes in Ωarag. While these studies are suggestive of the carbonate chemistry response to nuclear conflict, the external forcing perturbations are of a different magnitude and duration than those imposed by nuclear conflict. Further, it is difficult to mechanistically understand the ocean carbonate chemistry response to such external forcing perturbations in fully coupled models, where the terrestrial response to forcing additionally influences the atmospheric CO2 concentration. Here, we use a state-of-the art Earth system model to simulate the ocean carbonate chemistry response to a range of nuclear conflict scenarios. We decouple the ocean carbon cycle from that of the terrestrial carbon cycle via a direct prescription of the atmospheric CO2 boundary condition used for air-sea CO2 flux, that is, changes in the terrestrial biosphere have no influence on the atmospheric CO2 that the ocean sees. As we will demonstrate, we find large perturbations in ocean pH and Ωarag as a result of nuclear conflict. These perturbations have relatively long duration (order of 10 years) and are driven by decreases in temperature and subsequent increases in the ocean carbon inventory. 2. Methods We analyse output generated by the Community Earth System Model (CESM) version 1.3, a state-of-the-art coupled climate model consisting of atmosphere, ocean, land, and sea ice components (Hurrell et al., 2013). The atmosphere component of CESM in our simulations is the Whole Atmosphere Community Climate Model (WACCM; Marsh et al., 2013) with nominal 2◦ resolution, 66 vertical levels, and a model top at ∼145 km; it uses the Rapid Radiative Transfer Model for GCMs (RRTMG; Iacono et al., 2000) for the radiative transfer. The Community Aerosol and Radiation Model for Atmospheres (Bardeen et al., 2008) is coupled with WACCM to simulate the injection, lofting, advection, and removal of soot aerosols in the troposphere and stratosphere, and their subsequent impact on climate (Coupe et al., 2019; Toon et al., 2019). The ocean component of CESM is the Parallel Ocean Program version 2 (Danabasoglu et al., 2012) with nominal 1◦ resolution and 60 vertical levels. The biogeochemical ocean component of CESM is the Biogeochemical Elemental Cycling model that represents the lower trophic levels of the marine ecosystem, full carbonate system thermodynamics, air-sea CO2 fluxes, and a dynamic iron cycle (Doney et al., 2006; Moore et al., 2004, 2013; Moore & Braucher, 2008; Long et al., 2013; Lindsay et al., 2014). LOVENDUSKI ET AL. 2 of 9 Geophysical Research Letters 10.1029/2019GL086246 The ocean in the coupled CESM simulation is initialized from rest with World Ocean Circulation (WOCE) temperature and salinity (Gouretski & Koltermann, 2004). Biogeochemical tracers are initialized to observationally based climatologies where possible (Lauvset et al., 2016); where these were not available (such as dissolved iron and phytoplankton biomass), the model is initialized with fields interpolated from an existing CESM simulation. The new, fully coupled simulation was spun up for 4 years to an approximate steady state with a constant atmospheric CO2 mixing ratio of 370 ppm, representative of the mixing ratio in the year 2000. Due to the relatively short spin-up period, the globally integrated air-sea CO2 flux is not in steady state (drifting at a rate of 0.14 Pg C year−2) when the perturbation forcing is applied. We therefore present our results as anomalies from the drifting control integrations. Three control simulations of 20-year duration are generated using round-off level differences in atmospheric initial conditions. As each of these control simulations has different phasing of internal variability (e.g., El Niño-Southern Oscillation), we use the standard deviation across this ensemble to identify statistically significant perturbations due to nuclear conflict. We report on the anomalies generated from four simulations of nuclear conflict with varying amounts of soot injection: three India/Pakistan conflict scenarios that inject 5, 27, and 47 Tg of soot, respectively, and one US/Russia conflict scenario that injects 150 Tg of soot. The initial soot injection amounts are generated from plausible scenarios for nuclear conflict following advice from a number of military and policy experts; the reader is referred to Toon et al. (2019) for further details on scenario development. In each case, we prescribe that the conflict begins on 15 May of the 5th year of the first control simulation, and we integrate the model for a 15-year period following the injection. We assume that the smoke generated by mass fires from nuclear conflict is injected into the upper troposphere above the target sites (in the U. S./Russia case, smoke is spread evenly over the two nations), as in Toon et al. (2019). WACCM lofts much of this smoke higher into the stratosphere via solar heating of black carbon aerosols in the smoke, where the black carbon aerosols persist for about a decade. The resulting annual mean, post-conflict (May to the following April) anomalies in aerosol optical depth are shown in Figure 1a. These optical depth changes result in a 10–40% reduction in incoming solar energy (Toon et al., 2019). While we discuss the anomalies generated from all four of these conflict simulations, we describe two in greater detail throughout this manuscript: the U. S./Russia case, as it is the largest climate perturbation overall, and the India/Pakistan 47-Tg case, as it is the largest climate perturbation generated by a regional nuclear conflict. Ocean biogeochemistry in the version of CESM used for our simulations has been extensively validated in the literature (Brady et al., 2019; Freeman et al., 2018; Harrison et al., 2018; Krumhardt et al., 2017; Lindsay et al., 2014; Lovenduski et al., 2015, 2016; Long et al., 2013, 2016; Moore et al., 2013; McKinley et al., 2016; Negrete-García et al., 2019). Of particular note for our study, the simulated surface ocean carbonate ion concentration from a long, preindustrial control simulation of CESM compares favorably with reconstructed observations, albeit with lower interannual variance than has been measured at subtropical time series sites (Lovenduski et al., 2015). In Figure S1 in the supporting information, we illustrate the comparison between observationally based estimates of surface ocean pH and Ωarag (from GLODAPv2; Lauvset et al., 2016) and the CESM control ensemble mean. In this comparison, we note that the observational estimates have been extensively interpolated and are intended to represent year 2002 carbonate chemistry parameters, whereas CESM has been integrated under an atmospheric CO2 mixing ratio that corresponds to year 2000 forcing. We find high correspondence between the spatial patterns of modeled and observed pH and Ωarag, giving us confidence that CESM is capable of representing the mean state of these two variables. 3. Results Globally averaged surface ocean pH increases in response to each of the nuclear conflicts, where the magnitude of the pH anomaly scales with the amount of soot injected (Figure 1b). In each case, the pH anomaly exceeds the interannual standard deviation of pH in the control ensemble mean (gray shading in Figure 1b). We observe the largest increases in surface ocean pH in response to the U. S./Russia 150-Tg case; here the globally averaged surface ocean pH anomaly exceeds 0.05, corresponding to a ∼10% decrease in the global mean hydrogen ion concentration. Under each scenario, the pH anomaly peaks 2–4 years after the conflict and persists for ∼10 years. With the exception of the high-latitude oceans, the pH increase following the nuclear conflict is pervasive across the surface ocean (Figures 2a– 2c). In the 47-Tg India/Pakistan scenario, we observe local pH anomalies exceeding 0.06 units on average in years 2–5 post conflict (Figure 2c); the anomalies are largest in the North Atlantic, North Pacific, and Equatorial Pacific. These large, abrupt changes in surface ocean pH may have important consequences for calcifying organisms, as shell precipitation can be affected by the ambient hydrogen ion concentration in seawater (Kroeker et al., 2013). Since the beginning of the industrial revolution, global ocean pH has dropped by an estimated 0.1 units (Ciais & Sabine, 2013). The anomalies in pH generated by our simulations exceed 50% of this historical change and occur over a much shorter time period. Whether and how organisms respond to the initial and rapid alleviation of low pH, followed by an immediate return to the current pH state in the global ocean, is as yet unknown (see, e.g., Haigh et al., 2015). In contrast to our results for pH, we observe decreases in surface ocean Ωarag following nuclear conflict (Figure 1c), which should tend to inhibit the maintenance of shells and skeletons in calcified organisms. While minimal changes in Ωarag are simulated for the 5-Tg India/Pakistan case, the other three cases produce large decreases in saturation state, on the order of 0.1 to 0.3 units (Figure 1c). In each of these three cases, the anomalies exceed the interannual standard deviation of Ωarag in the control ensemble mean (gray shading in Figure 1c). The peak response in these three cases occurs 3–5 years post conflict, a year or so later than the pH response. While for pH the globally averaged anomaly is negligibly small, 10-years post conflict; anomalies in globally averaged Ωarag persist beyond our 15-year simulation time frame for all conflict scenarios. The decreases in aragonite saturation state span the tropics and subtropics, with the exception of the central and eastern Equatorial Pacific region (Figures 2d– 2f). Local decreases in saturation state exceed 0.5 units in the western North Atlantic and western North Pacific under the 47-Tg India/Pakistan scenario (Figure 2f). Importantly, the simulated decreases in saturation state are highly pronounced in regions that host diverse coral reef ecosystems (for instance, the western and southwestern Pacific and the Caribbean), and like pH, the changes in saturation state occur fairly rapidly. Projections from climate models suggest that coral reef ecosystems across the world will experience aragonite saturation state declines from their preindustrial value of 3.5 to 3.0 by the end of the century (Ricke et al., 2013); alarmingly, our simulations project similar Ωarag declines over a 3- to 5-year period, which then persist for years after the initial forcing dissipates. The opposite-signed anomalies in pH and Ωarag induced by nuclear conflict seem puzzling at first, as for "typical" anthropogenic ocean acidification scenarios, both of these variables simultaneously decrease. Why would nuclear conflict cause opposing responses in pH and saturation state? To understand these opposing responses, we need to consider the carbonate chemistry system in seawater and its sensitivity to changing temperature. Gaseous CO2 reacts with seawater to form carbonic acid (H2CO3), which then dissociates to form H+ and bicarbonate (HCO− 3 ). The hydrogen ion then reacts with CO2− 3 to form additional HCO− 3 , CO2 + H2O− ↽−−−−−−⇀−H2CO3. (1) H2CO3− ↽−−−−−−⇀−H+ + HCO− 3 . (2) H+ + CO2− 3 − ↽−−−−−−⇀−HCO− 3 . (3) The equilibrium constants for these reactions (typically expressed as K0, K1, and K2, respectively; Sarmiento & Gruber, 2006) are sensitive to changes in temperature, for example, the cooling induced by nuclear conflict. We need to also consider the dissolution reaction for mineral calcium carbonate (CaCO3) in seawater, CaCO3(s)− ↽−−−−−−⇀−Ca2+ sat + CO2− 3,sat, (4) where [Ca2+]sat and [CO2− 3 ]sat are the concentrations of dissolved calcium and carbonate in equilibrium with mineral CaCO3, and the solubility product (Ksp) for this reaction is also sensitive to temperature (Sarmiento & Gruber, 2006). Further, the saturation state for a calcium carbonate mineral in seawater (here: aragonite), can be expressed as Ωarag = [Ca2+][CO2− 3 ] Ksp , (5) where both [CO2− 3 ] and Ksp are affected by changes in temperature (Ca2+ is highly abundant in seawater, and thus changes in temperature do not affect its concentration enough to matter for CaCO3 dissolution; Emerson & Hedges, 2008; Sarmiento & Gruber, 2006). Thus, we can decompose the anomalies in pH and Ωarag into the component driven by temperature-induced changes in the carbonate chemistry equilibrium constants (K0, K1, K2, and Ksp) and the component driven by all other changes to the carbonate chemistry system, such as changes in the DIC concentration, the alkalinity, or the salinity. We approximate the temperature sensitivity of the equilibrium constants using a program developed for CO2 system calculations (CO2SYS; van Heuven et al., 2011) via finite difference approximation. The component driven by all other changes to the carbonate system is computed as the residual of the other two terms. The pH response to nuclear conflict is the sum of two opposing drivers: an increase in pH driven by a decrease in sea surface temperature that alters the carbonate chemistry equilibrium constants and a decrease in pH driven by an increase in the DIC concentration of the upper ocean. Figure 1b illustrates the temporal evolution of the components of the global pH anomalies from the India/Pakistan 47-Tg simulation driven by changes in the equilibrium constants versus all other changes in the carbonate chemistry system. The equilibrium constant-driven pH anomaly is positive, peaking 2–3 years after the conflict, whereas the “other” component of the pH anomaly is negative, peaking 3–5 years after the conflict. The resulting total pH anomaly is positive, indicating that it is more strongly influenced by changes in the equilibrium constants than other changes. In the India/Pakistan 47-Tg case, globally averaged temperature reaches a minimum 2 to 3-years post conflict; the model initially produces 3.5◦C–4◦C anomalies at the surface that rewarm toward pre-conflict values for the duration of the simulation (Figure 3a). In contrast, surface ocean salinity-normalized DIC anomalies peak 3 to 5-years post conflict (Figure 3b), mainly as a result of the enhanced solubility of CO2 in colder seawater. While decreasing biological export production also contributes to increased DIC in the surface ocean, this signal is small relative to the change driven by enhanced air-to-sea CO2 flux (e.g., Figure S2). The delay in DIC relative to temperature anomalies is a result of the long (order months to years) timescale for CO2 to fully equilibrate with the surface mixed layer (Emerson & Hedges, 2008). The cold, high DIC surface anomalies slowly propagate into the global ocean thermocline; we observe 1◦ C and 10 mmol m−3 anomalies in temperature and DIC, respectively, at a depth of 300 m that persist beyond the length of our simulation (Figure 3). As there are no significant anomalies in global mean alkalinity or salinity post conflict (not shown), we conclude that the DIC perturbation drives the “other” component of the pH anomalies. We find similar behavior for these components in the other conflict scenarios (not shown). The negative Ωarag anomalies post conflict are driven by a combination of lower temperatures and higher DIC concentrations. Colder surface temperatures tend to increase Ksp, while higher surface DIC concentrations tend to decrease [CO2− 3 ], resulting in lower Ωarag values post conflict. Figure 1c illustrates that the DIC (other) component dominates the total Ωarag anomaly for the India/Pakistan 47-Tg simulation. As for pH, the equilibrium constant component peaks earlier than the other component; this is due to the timing of the temperature and DIC perturbations (Figure 3). The spatial patterns of the post-conflict surface pH and Ωarag anomalies in the India/Pakistan 47-Tg scenario (Figures 2c and 2f) result from perturbations in local surface ocean temperature and DIC (Figure S3). Negative temperature anomalies and positive DIC anomalies are pervasive in the tropics and extratropics, with the exception of the eastern Equatorial Pacific, where a large and long-lasting El Niño-like event develops following the conflict (Coupe, et al., manuscript in review). This strong reduction in the equatorial trade winds greatly weakens upwelling in the cold tongue region, producing near-zero surface temperature anomalies and a reduction in vertical DIC supply here (Figure S3). In the Southern Ocean, temperature and DIC are not much affected by the nuclear conflict, likely a result of enhanced upwelling of warm water from the subsurface (Harrison, et al., manuscript in preparation). Taken together, the aforementioned changes in temperature and DIC lead to increases in pH and decreases in Ωarag over most of the ocean surface (Figure S4). The changes in surface ocean pH that we simulate for nuclear conflict resemble the simulated response of pH to volcanic eruptions, but are an order of magnitude larger. Figure S5 illustrates the anomaly in surface ocean pH in the first year following the eruptions of Agung, El Chichón, and Mt. Pinatubo, as estimated by the CESM Large Ensemble (Kay et al., 2015), which uses the same physical and biogeochemical ocean components as in our nuclear conflict simulations. The ensemble mean isolates the evolution of the Earth system under historical external forcing, including the aerosol loading following volcanic eruptions (Eddebbar et al., 2019), and averages across the various representations of internal variability (Deser et al., 2012; we note that ensembles are not necessary for the nuclear conflict scenarios since the much larger magnitude of forcing provides a higher signal-to-noise ratio). The anomaly in the ensemble mean shown here thus cleanly captures the response of surface ocean pH to volcanic eruptions. Here we show the anomaly in preindustrial pH (pH anomalies in equilibrium with preindustrial atmospheric CO2, which is computed simultaneously with contemporary pH at model run time), as the contemporary pH anomalies include also the response to increasing atmospheric CO2 from one year to the next. The similarity in the spatial patterns of volcanically induced pH anomalies and those produced under nuclear conflict is striking (cf. Figures S5 and 2c), suggesting that volcanic forcing produces similar temperature, DIC, and thus pH anomalies (including the El Niño-like response to volcanic forcing in the eastern Equatorial Pacific, described in Eddebbar et al., 2019). However, the eruption-driven pH anomaly is both smaller (an order of magnitude) and of shorter duration (∼2 years) than in the India/Pakistan 47-Tg simulation. Unfortunately, a similar analysis of volcanic Ωarag anomalies in the CESM Large Ensemble was not possible as preindustrial [CO2− 3 ] was not saved to disk. 4. Conclusions and Discussion We report on the surface ocean pH and Ωarag anomalies generated from four simulations of nuclear conflict using the CESM with full ocean carbonate system thermodynamics. Globally averaged surface ocean pH increases in response to each conflict, with the largest increases in the North Atlantic, North Pacific, and Equatorial Pacific Ocean. The pH anomalies persist for 10 years post conflict and are primarily driven by changes in the carbonate chemistry equilibrium constants as a result of decreases in sea surface temperature. In contrast, CESM simulates globally averaged decreases in surface ocean Ωarag in response to nuclear conflict, with the largest decreases in the tropics and subtropics. The Ωarag anomalies persist beyond the length of our 15-year simulations and are driven by a combination of changes in the carbonate chemistry equilibrium constants and the solubility-driven increases in DIC. We further demonstrate that the surface pH anomalies induced by nuclear conflict resemble those induced by volcanic eruptions in the same modeling system. The simulated changes in global and regional pH and Ωarag as a result of nuclear conflict are large and abrupt. In the most extreme forcing scenario (U. S./Russia 150 Tg), over a period of ∼5 years, global surface ocean pH increases by 0.06 units, and Ωarag decreases by 0.3 units. To put these numbers into perspective, this simulated rate of change of pH is 10 times larger than the rate of change we have observed over the past two decades as a result of ocean acidification (−0.0018 year−1; Lauvset et al., 2015). Worryingly, surface ocean Ωarag decreases more than six times faster than has been observed in the open ocean over the past three decades (−0.0095 year−1 at the Bermuda Atlantic time series; Bates et al., 2014). While the cooling associated with nuclear conflict rapidly and briefly alleviates the decline in pH associated with ocean acidification, the increase in solubility causes the ocean to absorb ∼11 Pg of excess carbon in a 10-year period, leading to a rapid drop in Ωarag. Whether and how calcifying organisms might respond to such rapid and opposing changes in pH and Ωarag is as yet unknown. In order to measure organism response to ocean acidification, a majority of laboratory studies perform CO2 bubbling perturbation experiments, which simultaneously decrease the pH and Ωarag in the surrounding seawater solution (Pörtner et al., 2014). This simultaneous change in two carbonate chemistry parameters challenges our ability to isolate the organism response to changes in pH or changes in Ωarag alone. A recent laboratory sensitivity study of marine bivalve larvae used chemical manipulation experiments to decouple these two parameters; they found that larval shell development and growth were negatively impacted by decreasing Ω and unaffected by changes in pH (Waldbusser et al., 2014). If these sensitivities are sustained in other organisms, we might conclude that calcifying organisms would be severely affected by nuclear conflict. Our findings shed light on the ocean biogeochemical response to other forms of extreme external forcing, such as volcanic eruptions (Eddebbar et al., 2019; Frölicher et al., 2011) and solar radiation management climate engineering (Lauvset et al., 2017; Matthews et al., 2009). They may further inform the study and understanding of the role of ocean acidification in marine extinction following the Chicxulub impact event (Henehan et al., 2019). Importantly, our results suggest that even a regional nuclear conflict can have an impact on global ocean acidification, adding to the list of the many, far-reaching consequences of nuclear conflict for global society.

### 2ac 1

#### Dems too far apart on key priorities

Heather Caygle & Sarah Ferris, 10-12-2021, "Dem tension keeps spiking ahead of make-or-break 3 weeks," POLITICO, https://www.politico.com/news/2021/10/12/democrats-reconciliation-agenda-515837

Some Democrats privately said they hoped that since Pelosi was back from an overseas trip, the negotiations with Democratic leaders, liberals, Manchin and Sinema could resume in earnest. But many were still skeptical that the key party members could reach a deal by the desired Oct. 31 deadline.

Pelosi is focusing her negotiations in three main areas: climate change; family issues including child care and paid family leave; and health care — specifically House Democratic leaders desire to strengthen Obamacare and extend Medicaid to red states that have refused to expand the program.

But the party’s two factions still remain far apart on some key areas even within those three buckets.

Manchin has spoken against certain climate provisions while Sinema has rebuffed progressives on efforts to lower prescription drug costs. Sanders, meanwhile, continues to buck House Democratic leaders on health care, saying his push to expand Medicare to cover vision, hearing and dental benefits is a must.

But privately, Democratic negotiators say there’s no way to have both Sanders’ Medicare push — of which the dental expansion in particular is very costly — along with efforts to shore up Obamacare and Medicaid, especially in a bill that will be dramatically lower in cost.

“The truth of the matter is these predictions should have been included in the original Medicare bill, they were not,” Sanders said. "This to me is not negotiable.”

### 2AC 5 – Biden No Use

#### Biden is botching it- attempts to use PC fail

SARAH FERRIS et al 10-1-2021, "Infrastructure vote ‘ain’t going to happen’ until agreement on larger plan, Biden says," https://www.politico.com/news/2021/10/01/house-democrats-biden-infrastructure-deal-514878

The president told members during the meeting that the infrastructure bill “ain’t going to happen until we reach an agreement on the next piece of legislation.”

“Let’s try to figure out what we are for in reconciliation … and then we can move ahead," Biden said, adding that even a bill smaller than $3.5 trillion "can make historic investments."

Biden’s 40-minute speech in the caucus’s basement meeting room — in which he took no questions — only seemed to sow confusion and rile up frustrated Democrats as the prospects of a large deal remained out of reach.

Biden’s lack of urgency for an infrastructure vote on Friday made it all but certain that the House would not take it up that day, just hours after members declared they were prepared to spend their weekends in the Capitol. Instead, top Democrats decided to pass a 30-day patch for a highways funding program using a fast-track method for noncontroversial bills.

Senior Democrats discussed another vote related to the president's infrastructure and spending packages — a wonky procedural tactic to formally link the bills and show forward momentum on the bill. But moderates shot down the idea, and leadership dropped it by dinnertime Friday.

“We’re going back in and we’re going to vote on the highway patch," House Majority Leader Steny Hoyer (D-Md.) said, announcing plans for lawmakers to approve the highway extension and then depart the Capitol.

While liberal Democrats acknowledged after Biden’s huddle they would need to narrow their ambition for the size of the broader spending package, many progressives also felt that the White House was acknowledging their position for the first time in months.

"I feel great," said Rep. Chuy García (D-Ill.), one of dozens of progressives who had threatened he wouldn’t back the president’s infrastructure bill without promises on the broader spending plan.

Still, Congressional Progressive Caucus Chair Pramila Jayapal (D-Wash.) said it would be “tough” to lower their sights for the party’s broader bill.

“We're gonna have to come down on our number and we're gonna have to do that work,” Jayapal said.

But Biden’s lengthy speech — in which he seemed to speak more about the merits of the bills — left several moderates lost in the wilderness after they spent weeks calling for an immediate vote on the president’s own infrastructure bill.

"The president made the call,” said centrist Rep Elissa Slotkin (D-Mich). “And we will wait to see, and hopefully as soon as possible both these bills will come to the floor."

Several Democrats — not all of whom were centrists — said they were stunned at the lack of specifics from Biden’s speech, saying they were left with zero clarity about the next steps for the president’s two biggest priorities.

"It was a shocking failure to meet the moment," said one Democratic moderate, who emerged disappointed that Biden hadn’t delivered a call to action for the caucus, and instead appeared to tick through the major tenets of his plans.

Biden’s huddle with the House Democrats’ caucus was their second all-members gathering of the day as Pelosi, the president and Senate Majority Leader Chuck Schumer work to strike an agreement to establish the broad strokes of the party’s mammoth social spending plan. Without an accord, progressives are vowing to tank Biden’s separate infrastructure bill, which is now set for a vote later Friday after a series of delays this week.

Several Democrats publicly said Biden’s appearance is long overdue, complaining in private that he spent too much time focused on a pair of key Democratic senators— Joe Manchin (W.Va.) and Kyrsten Sinema (Ariz.) — and no one else. Just before Biden arrived at the Capitol, Sinema was on the phone with the White House from Arizona as the key players continued to negotiate a potential framework for the spending bill.

Biden and party leaders have struggled to mollify the restive caucus, which can only lose three votes on the floor, or risk a potentially fatal blow to both bills.

#### Won’t pass- assumes PC

Susan B. Glasser, 10-1-2021, "The Democratic Civil War Has a Winner: Donald Trump," New Yorker, https://www.newyorker.com/news/letter-from-bidens-washington/the-democratic-civil-war-has-a-winner-donald-trump

Then again, not shutting down the government because you managed to pass and sign a bill pushing the problem off until early December is hardly an accomplishment for the ages. President Biden and Speaker Nancy Pelosi have promised—and not yet delivered—a House vote on the bipartisan infrastructure bill that passed the Senate this summer. That vote was blocked by members of their own party, which cannot agree on the size and specifics of the three-and-a-half-trillion-dollar budget-reconciliation-and-everything-else bill that Biden has proposed as the centerpiece of his Presidency. The long-predicted Democratic civil war between progressives and moderates has begun.

The two leaders threw all the political capital they had at reaching a deal by their own self-imposed deadline, and couldn’t get there. Biden personally involved himself in hours of talks with the feuding Democratic factions, and gave extraordinary time to a lone senator, Kyrsten Sinema, of Arizona, who never publicly explained her position. A surprise Presidential visit to the annual Congressional Baseball Game did not close the deal, nor did an absolute insistence on a Thursday vote that never took place. Pelosi, relentless and ever optimistic, was adamant that there would be a vote and that she would win it, until long after even fellow Democratic leaders had given up this line. But, at the end of a long week of the Speaker not getting her way, one Washington axiom still applies: it’s never a good idea to bet against Nancy Pelosi. If and when she closes a deal on the budget-reconciliation measure, whose price tag of three and a half trillion dollars was never going to last, and brings the infrastructure bill to the floor—a roughly trillion-dollar measure that got the votes of nineteen Senate Republicans as well as those of all of that chamber’s Democrats—the week’s many delays will be forgotten.

Harder to forget will be the intensifying divisions revealed by this week’s haggling: the House-Senate divide, the progressive-moderate divide, the everyone-versus-Joe-Manchin-and-Kyrsten-Sinema divide. (“Biden Bets It All on Unlocking the Manchinema Puzzle,” as one headline put it. Punchbowl News prefers “Sinemanchin.”) It’s sure to get nastier before the deal gets done. Representative Steve Cohen, of Tennessee, a Democratic moderate, said, on CNN, that his car was older than some of the progressives holding up the vote on the infrastructure bill. The progressives, meanwhile, were not in an accommodating mood. “We’re pushing back and saying, ‘Hell, no,’ ” Jamaal Bowman, a first-year congressman from New York, said. At the end of it all, Democrats were still negotiating with themselves. Fighting with themselves. Getting mad at one another. It’s as if they never really accepted until this week the idea that a fifty-fifty Senate means that any one Democratic senator—or two, in this case—can have extraordinary power to dictate the outcome of legislation.

### 2AC 9 –

#### Will have to weaken climate programs for Manchin

Zach Colman, 10-14-2021, "To woo Manchin, Dems could OK climate funds for coal and gas plants," https://www.politico.com/news/2021/10/14/coal-gas-plants-climate-funds-515988

Lawmakers and the White House may soften a major clean energy component of Democrats’ climate change and social spending legislation in a bid to overcome objections from Sen. Joe Manchin, two people familiar with the discussions said on Wednesday.

The changes under consideration could make it easier for coal and natural gas power plants to receive billions of dollars in financial incentives for clean energy, a potential boon for fossil fuel producers in Manchin's home state.

But that shift could bring objections from progressive Democrats who want to see the incentives hasten the nation's transition to greener sources. Under the proposed change, as long as coal and gas plants were equipped with technology to capture their greenhouse gas emissions, they could qualify for a plan that would pay power companies to deploy more renewable power and impose fines on those that don't.

Climate advocates consider that effort, called the Clean Electricity Performance Program, one of the core elements of Democrats' effort to speed the transition toward solar and wind power and slash greenhouse gas emissions. But Manchin (D-W.Va.) has raised issues with the concept both publicly and privately, putting its inclusion in any final compromise reconciliation bill in doubt.

The people familiar with the discussions said lawmakers and the White House could raise the program’s carbon emissions factor, a figure that determines which power plants would qualify as clean energy. Increasing that figure from the level of 0.1 metric ton of carbon dioxide equivalent per megawatt-hour that was approved by the House Energy and Commerce Committee could enable natural gas and coal-fired power plants outfitted with carbon capture equipment to qualify for payments, which could help win over Manchin.

“That number is movable,” one of the people said.

The other person said the conversation is linked with a separate discussion that would change eligibility requirements for a tax credit that would offer incentives to carbon capture and storage technology. The person said changes to that tax credit, known as 45Q, would not on their own be enough to convince companies to launch new projects — unless the CEPP was altered to make it easier for coal power plants outfitted with carbon capture to participate.

President Joe Biden has pledged to put the country on a path to reduce its greenhouse gas emissions 50 to 52 percent below 2005 levels by 2030. He also wants to reach net-zero emissions on the power grid by 2035.

Biden’s climate platform allowed for the deployment of carbon capture and storage technology, which proponents say would prevent heat-trapping gases from reaching the atmosphere. While that technology is not yet economically viable on its own for the U.S. power sector without subsidies, labor unions connected to the energy industry favor the technology, saying it could provide jobs even as the nation transitions to cleaner fuel sources.

Several of those unions sent a letter on Friday that was obtained by POLITICO to House Speaker Nancy Pelosi and Majority Leader Chuck Schumer, calling for the CEPP to better accommodate carbon capture technology.

But some environmental groups dismiss carbon capture as a false solution for fighting climate change, complaining that it would prolong the use of fossil fuels that would still cause local pollution problems from extracting oil, coal and natural gas.