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#### Anti-trust is a psy op to restore the prestige of capital and cover for union busting. Vote neg for socialist governance that refuses faith in smaller is better.

Henwood 21 [Doug, American journalist, economic analyst, author, and financial trader, contributor to the Nation. “Why Socialists Should Distrust Antitrust.” Jacobin. July 2021. <https://www.jacobinmag.com/2021/07/antitrust-law-monopolies-small-business-competition-large-corporations-bigness> //shree]

Last week, Joe Biden tweeted, “Let me be clear: capitalism without competition isn’t capitalism. It’s exploitation.”

It would be too much to expect this rather dim politician to understand, much less endorse, the classic Marxist analysis of profit originating in the exploitation of workers — they produce more in value for their employer than they’re paid in wages. But the remark, in all its naiveté, does capture a spreading belief in liberal policy circles that monopoly is at the heart of our economic troubles, from crappy jobs to crappy pay and benefits. I’m not convinced.

According to the introductory economics I learned in college — which was admittedly long ago — two essential features of monopolized markets were high prices and restricted supply. Those features weren’t at all visible in the US economy until the pandemic began messing with supply chains, resulting in short supplies in some sectors in the face of pent-up demand, demand that was supercharged with stimulus checks.

Even so, the shortages and price spikes are affecting just a few sectors, like new cars and lumber. They’ve yet to spread economy-wide, and there’s no sign they’re about to. They’re not the product of some long-term monopolization. For most of the last forty years, inflation has been quite low — in no small part because the working class was crushed as the 1970s turned into the 1980s and because shortages have been rare.

The giants that people point to as proof of our monopoly problem include Amazon, Google, and Facebook. Amazon, like Walmart before it, is known for low prices that crush competitors. (Workers too.) That’s not standard monopoly behavior. Google and Facebook dominate their fields, but most of their “products” are free. Yes, that means “you’re the product,” as the saying goes, but what kind of improvement would it be if broken-up Googles and Facebooks charged for their services or maintained the same monetizing-the-user’s-identity business model as the originals?

Nor is it clear how introducing competition would improve the quality of service. One of the lures of Facebook, for those subject to the lure, close to three billion users at the most recent count, is that so many people are on it. That facilitates communication. Breaking it up into competing services would be like making an AT&T phone customer incapable of contacting a Deutsche Telekom subscriber.

Behind antitrust is a faith in competition as a positive good. As socialists we should take exception to that. We already have too much competitive individualism in this society, and we don’t need any more. We need solidarity. Stimulating the war of each against all isn’t the way to get there.

A better way to handle bigness is to regulate the behemoths and encourage the growth of unions. That would do more to improve working conditions at Amazon than turning it into four or twenty little Amazons. As political economist Sam Gindin pointed out in an interview on my radio show, the deregulation movement of the 1970s and 1980s was a war on regulated oligopolies, and it was accompanied by union busting, wage cuts, and job losses. That could be a portent of life under monopoly busting.

Why is antitrust getting the attention of liberals these days? In his book on the history of American corporate governance, law professor Mark Roe notes that Franklin Roosevelt saw it as a war against “private” socialism that could stave off “government” socialism. We may be seeing something similar now. With socialism polling decently, socialists working their way into the Democratic Party, and the business class in disrepute with much of the population — Gallup reports that 73 percent of the public is either somewhat or very dissatisfied with major corporations, compared to 48 percent in 2001 — pursuing antitrust may be a campaign to restore the prestige of capitalism itself. Fronting small business as the emblem of commerce is a classic bourgeois self-defense strategy.

There’s nothing magic about smallness. Vincent Carosso ends his huge book on the Morgan banking family by quoting an unnamed socialist refusing to curse the peak Morgan, J. P., on his death: “We grieve that he could not live longer, to further organize the productive forces of the world, because he proved in practice what we hold in theory, that competition is not essential to trade and development.” It’s a sentiment worth recovering.

#### Capitalism drives extinction and structural violence

Allinson et al 21 [Jamie Allinson is Senior Lecturer in Politics and International Relations at Edinburgh University and author of The Age of Counter-revolution. China Miéville is the author of a number of highly acclaimed and prize-winning novels including October: The History of the Russian Revolution. Richard Seymour is the author of numerous works of non-fiction, His writing appears in the New York Times, London Review of Books, Guardian, Prospect, Jacobin. Rosie Warren is an Editor at Verso and the Editor-in-Chief of Salvage. All are writing for the Salvage Collective. “The Tragedy of the Worker: Toward the Proletarocene.” Introduction. July 2021. Verso EBook. ISBN: 9781839762963 //shree]

This is the question that vexed us as we set out to write The Tragedy of the Worker. From the vantage point of the present, the history of capitalist development is, as Marx expected, the history of the development of a global working class, the proletarianisation of the majority of the world’s population. But the very same process of that development has brought us to the precipice of climate disaster. Our position, to recall Trotsky’s rationalisation of War Communism in 1920, is in the highest degree tragic.

It is now clear that we will pass what scientists have long warned will be a tipping point of global warming, accelerating the already catastrophic consequences of capitalist emissions. How do we imagine emancipation on an at best partially habitable planet? Where once communists imagined seizing the means of production, taking the unprecedented capacities of capitalist infrastructures and using them to build a world of plenty, what must we imagine after the apocalypse has befallen us? What does it mean that as capitalism has become truly global, the gravediggers it has created dig not only capitalism’s grave, but also that of much organic life on earth?

Our answers to these questions remain rooted in the politics of revolutionary communism. Our stance is not based on the fantasy of a homeostatic nature that must be defended but on the critique of the capitalist metabolism – the Stoffwechsel- that must be overthrown. Earth scientists are accustomed to speak in terms of ‘cycles’ by which substances circulate in different forms: the water cycle, the rock cycle, the nitrogen cycle, the glacial-interglacial cycle, the carbon cycle, and others. One way of registering the catastrophe of climate change is to see these cycles – most of all, but not solely, the carbon cycle – as disordered, under- or over-accumulating. But this is to ignore the more fundamental circuit of which these now form epicycles, like Ptolemy’s sub-orbits of the heavenly bodies: the circuit of capital accumulation, M-C-M′.

This circuit accumulates profit and produces death. Neither is accidental. It is for this reason that the debates that capitalist ruling classes permit among themselves on ‘adaptation’ versus ‘mitigation’ take place on false premises. What is to be mitigated is the impact of climate change on accumulation, rendered through the ideology of ‘growth’ as something that benefits everyone. What we are to adapt to are the parameters of accumulation, sacrificing just enough islands, eco-systems, indigenous – and non-indigenous – cultures to maintain its imperatives for a period of time until new thresholds must be crossed, and new life sacrificed to the pagan idol of capital. Already, capitalist petro-modernity builds a certain quantum of acceptable death into its predicates: at the very least, the 8.7 million killed by fossil fuels each year according to Harvard University are considered a price worth paying for the stupendous advantages of fossil capital. And the sky can only keep going up, as deforestation, polar melt, ocean acidification, soil de-fertilisation and more intense wildfires and storms tear the web of life into patches. If the necropolitical calculus of the Covid-19 pandemic appears crass, just wait until its premises are applied to climate catastrophe.

## Federalism CP

#### The United States federal government should expand the scope of its core antitrust laws by substantially increasing prohibitions on anticompetitive business practices in agriculture, including input markets & consolidation.

#### The fifty states should condition enforcement of federal law on substantially increasing prohibitions on anticompetitve business practices in agriculture, including input markets & consolidation.

#### State enforcement authority creates leverage over the federal government who is forced to concede---the process of challenging drives uncooperative federalism.

Harvard Law Review 20. “Antitrust Federalism, Preemption, and Judge-Made Law.” 133 Harv. L. Rev. 2557, 6/10/2020. <https://harvardlawreview.org/2020/06/antitrust-federalism-preemption-and-judge-made-law/>

Federal antitrust is uniquely judicial. For such a complex area of law, antitrust’s statutory grounding is rather simple. The Sherman Act, the backbone of federal antitrust, is shockingly short. And both the Sherman Act and the Clayton Act offer only broad, vague legal standards to the courts. Courts and scholars have viewed these open-ended statutes as a legislative delegation to the judiciary. The judiciary has accepted this delegation fully. For example, section 1 of the Sherman Act’s text explicitly outlaws combinations “in restraint of trade or commerce.” Courts have run with this phrase, defining it to include many different types of restraints, including horizontal price-fixing, market divisions, output limitations, refusals to deal, tying, and bundling agreements, all of which are then judged under either a judicially created per se standard or a judicially created rule of reason standard. As then-Justice Rehnquist described federal securities law, so too is federal antitrust law “a judicial oak which has grown from little more than a legislative acorn.”

To be clear, the problem with preemption based on a regulatory regime created through congressional delegation to the judiciary is not that that delegation is unconstitutional. Some scholars do argue that the judicial creation of federal antitrust common law breaches the Constitution’s separation of powers. The Supreme Court, however, has not been persuaded by this argument. After all, the Sherman Act still reigns supreme after over a century of fleshing out by the federal judiciary.

As a policy matter, however, the undemocratic nature of the federal judiciary makes preemption by federal judge-made law more troubling than legislative preemption. In most instances of preemption, state interests are protected through process federalism. Process federalism protects the states from federal encroachment through political and procedural safeguards. The states’ political safeguard is that state representatives pervade the federal system: “States are represented in Congress; states participate in the election of the President through the Electoral College;” and, in a cooperative-federalist manner, “state officials may . . . participate in the administration of federal programs.” The hope is that the states’ defenders in Washington will prevent the degradation of state interests. The states’ procedural safeguards add to their political safeguard: “Even if members of Congress have the will to encroach upon or displace state prerogatives, . . . the legislative gauntlet makes it difficult for Congress to do so.” Any attempt at preemption would require that legislation survive bicameralism, presentment, and Congress’s internal rules.

Preemption by judge-made law, however, avoids these constraints. On the political front, it is far easier for a state to lobby Congress than it is for a state to lobby a federal judge. Moreover, it is certain that the Supreme Court will not have representatives from all fifty states. Finally, whereas voters displeased with federal encroachment into the state sphere can vote out their congressional delegation, they are stuck with federal judges for life. On the procedural front, a judicial opinion has no checks aside from appeal. In fact, the ability of judges to subvert procedural safeguards could encourage Congress to delegate more to the judiciary.

It is true that, in order to expressly preempt state antitrust law in favor of federal judge-made antitrust law, Congress would first have to overcome process federalism’s dual safeguards. There is reason to believe that the safeguards have worked so far. Even in the face of influential detractors like Judge Posner, Congress has only expanded the states’ antitrust role. However, whereas purely legislative preemption would require Congress to pass through the safeguards every time it decided to meddle with state antitrust policies, preemption by judge-made law would require Congress to overcome the safeguards only once. After express preemption passed through, the courts could go about frequently changing federal antitrust law without political or procedural checks, and states would have little recourse.

While these process federalism concerns also apply to federal agency delegation, the concerns are greater in the face of judicial delegation. Agency delegation avoids process federalism’s political safeguards because “[a]gencies are not beholden to states in any politically thick sense.” It avoids procedural safeguards because an agency “bypasses the legislative dam.” But the executive branch is more democratic than is the judiciary. In the antitrust context, DOJ enforcement policy shifts when a new President takes over. States also have more influence on agencies than they do on the judiciary. Federal regulatory regimes often involve state implementation that can “generate dynamics of mutual dependency that may make federal agencies receptive to state interests,” a type of relationship that has been labeled “cooperative federalism.” States can also affect agency policy by challenging it, a type of federalism known as “uncooperative federalism.” Although process federalism’s safeguards are weakened when Congress delegates to agencies, that weakening is at least softened by the above factors — factors that do not help redeem judicial delegation.

The judiciary’s ill fit as policymaker is also a cause for federalism concerns. After all, judiciaries are not built for policymaking, as even Supreme Court Justices regularly admit. Although judges are educated, they may not have expertise in antitrust economics and they are even less likely than the political branches to be able to gather that expertise through others. It may be easy for an antitrust expert like Judge Posner to favor the federal judiciary’s policymaking over that of state legislative and executive branches, but his level of antitrust knowledge is the exception, not the rule. Moreover, to the extent that deciding antitrust policy means deciding what values antitrust law should herald, judges are poor arbiters of the electorate’s views and may replace society’s values with their own. Moreover, because they are limited to adjudicating cases and controversies, courts lack the ability to tackle legislative problems head-on and instead must wait for problems to come to them. The very purpose of the case-or-controversy requirement was to cement the judicial branch’s judicial, rather than legislative, function. This requirement can explain large blind spots in current federal antitrust law. For example, because merging parties will often drop an agency-opposed merger rather than take the issue to court, “the Supreme Court has not decided a case about . . . substantive merger standards since . . . [before] Hart-Scott-Rodino.” Especially in comparison to agencies, with their myriad policymaking tools, the judiciary has policymaking limitations, making the courts look anemic in that sphere. Where Congress has abdicated its role as policymaker in favor of the ill-equipped judiciary (rather than the better-equipped executive), it would be folly to force the state legislature to abdicate its policymaking role as well.

Of course, state judiciaries often play a role in molding antitrust policy, and one could argue that there would be no problem with federal judge-made law preempting state judge-made law. Key to the benefit of states as laboratories of democracy is the states’ ability to experiment legislatively. To say that states can “experiment []” and act as “scientific policymakers” or “innovate” through a collective “evolutionary process” makes most sense if we are actually referring to state legislatures and agencies. So what is the issue with overriding state courts?

For one thing, much (although not all) of what state judiciaries do in the antitrust arena is actually decided by state legislatures. Some state legislatures, for example, have explicitly directed their courts to apply federal case law to corresponding state statutes. Moreover, most state judiciaries are elected. As noted above, sensitivity to the electorate is key to the values-based part of policymaking, so state courts may actually be better policymakers than federal courts are.

Even if all state antitrust law were formed by unelected state judges, there would still be a basic sovereignty rationale for preferring state court decisions to federal court decisions. Congress should recognize that the federal judiciary is a poor policymaking body, but whether the states believe their judiciaries are up to the policymaking challenge is for the states to decide. Consider the secondary holding of Erie Railroad Co. v. Tompkins. Of course, Justice Brandeis famously and primarily held that the concept of a “transcendental body of law” was a “fallacy” and that, therefore, the federal courts should not create a general federal common law. But, secondarily and more relevant here, Justice Brandeis did not prevent the states from continuing to hand down common law from on high: “[W]hether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern.” Justice Brandeis’s willingness to critique common law’s “fallacy” and yet still allow the states to embrace it came from a concern with state sovereignty, an understanding that the states have the right to structure themselves in a manner that the federal government, a separate sovereign, opposes. That same sovereignty rationale should allow states to decide that their judiciaries are sufficiently good at policymaking, even if the federal government should realize that its judiciary is not.

#### Uncooperative federalism is necessary to fill gaps in the current cybersecurity framework

Eric **Rosner, 17**. Eric Rosner is Deputy Branch Chief at Cybersecurity and Infrastructure Security Agency. “CYBER FEDERALISM: DEFINING CYBER’S JURISDICTIONAL BOUNDARIES.” Naval Postgraduate School. December 2017. <https://www.hsdl.org/?view&did=808202>

In Federalist Paper 10: The Same Subject Continued: The Union as a Safeguard against Domestic Faction and Insurrection, Madison and Hamilton concurred with Scottish philosopher David Hume’s theory that large democracies are less vulnerable to tyranny from over-ambitious majorities because there are more checks and balances in place to protect the greater good.15 Hamilton reemphasized the value of checks and balances through a large democracy in Federalist Paper 67: The Executive Department, where he highlighted the rules that limit executive branch authority.16 He argued that the Constitution provided several checks and balances within the federal government to ensure that no one branch of government could seize control of the nation or maintain undue influence.17 2. The Jeffersonian Perspective While Thomas Jefferson once described “The Federalist Papers” as the “best commentary on the principles of government which ever was written,” he did not necessarily agree with all of the arguments outlined in the 85 articles.18 In 1774, Jefferson penned A Summary View of the Rights of British America, which cautioned against an overzealous and unrestrained government because inadequate checks and balances led to tyranny.19 He understood the importance of a federal government, even serving as the third President of the United States, but remains one of the most important supporters of states’ rights in United States history.20 Several of the Founding Fathers concurred with the Jeffersonian view on governing and disagreed with the beliefs outlined in “The Federalist Papers,” which led 15 Madison, “Federalist Number 10.” 16 Alexander Hamilton, “Federalist Number 67,” Congressional Resources, 1787, https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-67. 17 Ibid. 18 “Thomas Jefferson: Establishing a Federal Republic,” Library of Congress, accessed November 4, 2017, https://www.loc.gov/exhibits/jefferson/jefffed.html. 19 Peterson, A Summary View of the Rights of British America, p. 118. 20 “Thomas Jefferson,” White House, accessed November 4, 2017, https://www.whitehouse.gov/1600/presidents/thomasjefferson. 5 to a series of response papers known as “The Anti-Federalist Papers.”21 While these did not have the same lasting impact enjoyed by “The Federalist Papers,” they gave the countermovement a voice and reinforced the importance of states’ rights. For example, in Anti-Federalist Paper 45: Powers of National Government Dangerous to State Governments; New York as an Example, Robert Yates warned that the proposed Constitution made states subordinate to the federal government, “existing solely by its toleration, and possessing powers of which they may be deprived whenever the general government is disposed so to do.”22 He worried that the 10th Amendment, which asserts “the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people,” did not provide adequate protection for state sovereignty.23 However, Yates failed to account for other protections, such as the judicial branch, which allows savvy states to influence federal government policies even when they lack the legal authority to direct federal actions. In Arming States’ Rights: Federalism, Private Lawmakers, and the Battering Ram Strategy, Barak Orbach, Kathleen Callahan, and Lisa Lindemenn argue that states can influence federal policies by challenging them in court.24 Even when states do not win these cases, the mere challenge may put enough political pressure on the federal government to revise unpopular policies.25 The authors contend that “uncooperative federalism,” which is a “set of strategies that uses states’ regulatory powers to challenge the federal government,” allows states to exercise power over federal policymaking, even when armed with limited legal authority.26 21 “Anti-Federalist Papers,” The Federalist Papers Project, accessed November 4, 2017, http://thefederalistpapers.org/anti-federalist-papers. 22 Robert Yates, “Antifederalist Paper 45,” The Federalist Papers Project, accessed November 4, 2017, http://thefederalistpapers.org/antifederalist-paper-45. 23 U.S. Const. amend. X. 24 25 Ibid. 26 Ibid. at 1163. Barak Orbach, Kathleen S. Callahan, and Lisa M. Lindemenn, “Arming States’ Rights: Federalism, Private Lawmakers, and the Battering Ram Strategy,” Arizona Law Review, Vol 52, November 15, 2010, https://ssrn.com/abstract=1696012. 6 Overall, the spirited debates between the Hamiltonians and the Jeffersonians shaped today’s multilayered governing system that provides centralized leadership, while still providing mechanisms for the states to retain their sovereignty and assert their authority. As the country expanded in size and complexity, so did the scope of the federalism conversation; therefore, the next section focuses on the current literature that guides today’s dialogue, as it relates to the role of federalism in homeland security issues. 3. Federalism and Homeland Security Homeland security is no stranger to the federalism debate. When Congress created DHS in 2003, it was the largest reorganization of federal agencies with a homeland security focus since the National Security Act of 1947.27 As a result, it created new jurisdictional overlap within the federal government but also between federal entities and their state counterparts.28 In Federalism and Homeland Security: Our Constitutional System of Governance, Nadav Morag outlines the power struggle between public safety organizations from all levels of government.29 Morag argues, “The time-honored debate over federal vs. state and local power is very much alive in the homeland security realm,” and existing turf wars have expanded as the homeland security mission broadens.30 In other words, jurisdictional lines continue to blur as the homeland security mission evolves. Other scholars point out that the Hamilton versus Jefferson-style debate on the proper role of each level of government is further complicated in catastrophic events. For example, In Federalism, Law Enforcement, and the Supremacy Clause: The Strange Case of Ruby Ridge, Seth Waxman of the Georgetown University Law Center outlines the “anti-commandeering” principle, which prevents the federal government from demanding that state and local authorities assist in enforcing federal laws, even during an event of 27 National Security Act, 50 U.S.C. 15 (1947) § 401. 28 Nadav Morag, “Federalism and Homeland Security: Our Constitutional System of Governance,” Colorado Technical University, September 10, 2012, http://www.coloradotech.edu/resources/blogs/september-2012/federalism-and-homeland-security. 29 Ibid. 30 Ibid. 7 national significance.31 The principle ensures the autonomy of the states, even during a crisis, but it is unclear if this principle would withstand the test of a national emergency.32 Specifically, Waxman notes that the Supreme Court created the “anti- commandeering” principle before the terrorist attacks on September 11, 2001, and reasons that the public may have a higher tolerance for, or even expect, federal intervention in a post-9/11 era.33 Conversely, in Reflections on Homeland Security and American Federalism, scholar Pietro S. Nivola argues that most homeland security issues are local and should be handled by local authorities.34 Like Jefferson, he concedes that the federal government plays an important role, but believes the federal government should focus its resources on inherently federal functions, like border security and preventing international terrorism.35 Interestingly, Nivola does not mention whether he views cybersecurity as a state or federal issue.36 Similarly, in Learning from Disaster: The Role of Federalism and the Importance of Grassroots Response, authors James Carafano and Richard Weitz contend that “Homeland security and disaster management are national, not just federal, missions.”37 While the federal government can support responders by facilitating information sharing across jurisdictions and providing the resources required for an effective response, the states are best positioned to lead emergency response efforts.38 31 Seth P. Waxman, “Federalism, Law Enforcement, and the Supremacy Clause: The Strange Case of Ruby Ridge,” Georgetown Law Faculty Publications, March 2010, http://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?article=1279&context=facpub. 32 Ibid. 33 Ibid. at 153. 34 Pietro S. Nivola, “Reflections on Homeland Security and American Federalism,” Brookings Institute, May 13, 2002, https://www.brookings.edu/articles/reflections-on-homeland-security-and- american-federalism/. 35 Ibid. 36 Ibid. 37 James Carafano and Richard Weitz, “Learning from Disaster: The Role of Federalism and the Importance of Grassroots Response,” The Heritage Foundation, March 21, 2006, http://www.heritage.org/homeland-security/report/learning-disaster-the-role-federalism-and-the- importance-grassroots. 38 Ibid. 8 The literature also acknowledges that the transnational nature of cyber threats requires a coordinated effort from all levels of government. For example, in The Interplay of Borders, Turf, Cyberspace, and Jurisdiction: Issues Confronting U.S. Law Enforcement, Kristin M. Finklea argues that cybersecurity not only blurs jurisdictional boundaries in the United States, it also causes jurisdictional confusion on an international scale.39 As a result, the cyber threat is simply too tangled and complex for the federal government to handle alone.40 Instead, federal entities have used interagency agreements and memoranda of understandings to outline authorities on a case-by-case basis.41 This has led to improved information sharing and coordination, which minimizes the burden on state and local resources.42 In State-Level Cybersecurity, Michael Glennon goes one step further by suggesting that states must take more responsibility in cybersecurity because the federal government and the international community have “largely dropped the ball.”43 Glennon asserts that the federal government has the technology to protect networks, sharing threat indicators, and mitigate the consequences of attacks, but the technology has not been implemented effectively; therefore, it is up to the states to take responsibility for their own security.44 He also argues that states should invest resources to become self- sufficient in cybersecurity because these cyber defense capabilities can lead to long-term financial benefits.45 Overall, the literature contends that as states and local governments continue to become more reliant on technology to provide public services and support their citizens, the need to protect these complex systems becomes increasingly a state and local issue.

#### Cyberattacks pave numerous pathways to nuclear escalation

Michael **Klare, 19.** Michael T. Klare is a professor emeritus of peace and world security studies at Hampshire College and senior visiting fellow at the Arms Control Association. This is the fourth in the “Arms Control Tomorrow” series, in which he considers disruptive emerging technologies and their implications for war-fighting and arms control. “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation.” Arms Control Association. November, 2019. <https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation>

In January 2018, details of the Trump administration’s Nuclear Posture Review (NPR) were posted online by the Huffington Post, provoking widespread alarm over what were viewed as dangerous shifts in U.S. nuclear policy. Arousing most concern was a call for the acquisition of several types of low-yield nuclear weapons, a proposal viewed by many analysts as increasing the risk of nuclear weapons use. A U.S. F-22 fighter shadows a Russian Tu-95 bomber on May 20 in international airspace near Alaska. Aircraft and missile detection systems rely heavily on electronic communications, making them potential targets for cyberwarfare. (Photo: NORAD)Another initiative incorporated in the strategy document also aroused concern: the claim that an enemy cyberattack on U.S. nuclear command, control, and communications (NC3) facilities would constitute a “non-nuclear strategic attack” of sufficient magnitude to justify the use of nuclear weapons in response. Under the Obama administration’s NPR report, released in April 2010, the circumstances under which the United States would consider responding to non-nuclear attacks with nuclear weapons were said to be few. “The United States will continue to…reduce the role of nuclear weapons in deterring non-nuclear attacks,” the report stated. Although little was said about what sort of non-nuclear attacks might be deemed severe enough to justify a nuclear response, cyberstrikes were not identified as one of these. The 2018 NPR report, however, portrayed a very different environment, one in which nuclear combat is seen as increasingly possible and in which non-nuclear strategic threats, especially in cyberspace, were viewed as sufficiently menacing to justify a nuclear response. Speaking of Russian technological progress, for example, the draft version of the Trump administration’s NPR report stated, “To…correct any Russian misperceptions of advantage, the president will have an expanding range of limited and graduated [nuclear] options to credibly deter Russian nuclear or non-nuclear strategic attacks, which could now include attacks against U.S. NC3, in space and cyberspace.”1 The notion that a cyberattack on U.S. digital systems, even those used for nuclear weapons, would constitute sufficient grounds to launch a nuclear attack was seen by many observers as a dangerous shift in policy, greatly increasing the risk of accidental or inadvertent nuclear escalation in a crisis. “The entire broadening of the landscape for nuclear deterrence is a very fundamental step in the wrong direction,” said former Secretary of Energy Ernest Moniz. “I think the idea of nuclear deterrence of cyberattacks, broadly, certainly does not make any sense.”2 Despite such admonitions, the Pentagon reaffirmed its views on the links between cyberattacks and nuclear weapons use when it released the final version of the NPR report in February 2018. The official text now states that the president must possess a spectrum of nuclear weapons with which to respond to “attacks against U.S. NC3,” and it identifies cyberattacks as one form of non-nuclear strategic warfare that could trigger a nuclear response. That cyberwarfare had risen to this level of threat, the 2018 NPR report indicated, was a product of the enhanced cybercapabilities of potential adversaries and of the creeping obsolescence of many existing U.S. NC3 systems. To overcome these vulnerabilities, it called for substantial investment in an upgraded NC3 infrastructure. Not mentioned, however, were extensive U.S. efforts to employ cybertools to infiltrate and potentially incapacitate the NC3 systems of likely adversaries, including Russia, China, and North Korea. For the past several years, the U.S. Department of Defense has been exploring how it could employ its own very robust cyberattack capabilities to compromise or destroy enemy missiles from such states as North Korea before they can be fired, a strategy sometimes called “left of launch.”3 Russia and China can assume, on this basis, that their own launch facilities are being probed for such vulnerabilities, presumably leading them to adopt escalatory policies such as those espoused in the 2018 NPR report. Wherever one looks, therefore, the links between cyberwar and nuclear war are growing. The Nuclear-Cyber Connection These links exist because the NC3 systems of the United States and other nuclear-armed states are heavily dependent on computers and other digital processors for virtually every aspect of their operation and because those systems are highly vulnerable to cyberattack. Every nuclear force is composed, most basically, of weapons, early-warning radars, launch facilities, and the top officials, usually presidents or prime ministers, empowered to initiate a nuclear exchange. Connecting them all, however, is an extended network of communications and data-processing systems, all reliant on cyberspace. Warning systems, ground- and space-based, must constantly watch for and analyze possible enemy missile launches. Data on actual threats must rapidly be communicated to decision-makers, who must then weigh possible responses and communicate chosen outcomes to launch facilities, which in turn must provide attack vectors to delivery systems. All of this involves operations in cyberspace, and it is in this domain that great power rivals seek vulnerabilities to exploit in a constant struggle for advantage. The use of cyberspace to gain an advantage over adversaries takes many forms and is not always aimed at nuclear systems. China has been accused of engaging in widespread cyberespionage to steal technical secrets from U.S. firms for economic and military advantages. Russia has been accused, most extensively in the Robert Mueller report, of exploiting cyberspace to interfere in the 2016 U.S. presidential election. Nonstate actors, including terrorist groups such as al Qaeda and the Islamic State group, have used the internet for recruiting combatants and spreading fear. Criminal groups, including some thought to be allied with state actors, such as North Korea, have used cyberspace to extort money from banks, municipalities, and individuals.4 Attacks such as these occupy most of the time and attention of civilian and military cybersecurity organizations that attempt to thwart such attacks. Yet for those who worry about strategic stability and the risks of nuclear escalation, it is the threat of cyberattacks on NC3 systems that provokes the greatest concern. Gen. Paul M. Nakasone, commander of U.S. Cyber Command, testifies during a Senate Armed Services Committee hearing on February 14. He warned that China and Russia are conducting sustained cybercampaigns against the United States. (Photo: Mark Wilson/Getty Images)Gen. Paul M. Nakasone, commander of U.S. Cyber Command, testifies during a Senate Armed Services Committee hearing on February 14. He warned that China and Russia are conducting sustained cybercampaigns against the United States. (Photo: Mark Wilson/Getty Images)This concern stems from the fact that, despite the immense effort devoted to protecting NC3 systems from cyberattack, no enterprise that relies so extensively on computers and cyberspace can be made 100 percent invulnerable to attack. This is so because such systems employ many devices and operating systems of various origins and vintages, most incorporating numerous software updates and “patches” over time, offering multiple vectors for attack. Electronic components can also be modified by hostile actors during production, transit, or insertion; and the whole system itself is dependent to a considerable degree on the electrical grid, which itself is vulnerable to cyberattack and is far less protected. Experienced “cyberwarriors” of every major power have been working for years to probe for weaknesses in these systems and in many cases have devised cyberweapons, typically, malicious software (malware) and computer viruses, to exploit those weaknesses for military advantage.5 Although activity in cyberspace is much more difficult to detect and track than conventional military operations, enough information has become public to indicate that the major nuclear powers, notably China, Russia, and the United States, along with such secondary powers as Iran and North Korea, have established extensive cyberwarfare capabilities and engage in offensive cyberoperations on a regular basis, often aimed at critical military infrastructure. “Cyberspace is a contested environment where we are in constant contact with adversaries,” General Paul M. Nakasone, commander of the U.S. Cyber Command (Cybercom), told the Senate Armed Services Committee in February 2019. “We see near-peer competitors [China and Russia] conducting sustained campaigns below the level of armed conflict to erode American strength and gain strategic advantage.” Although eager to speak of adversary threats to U.S. interests, Nakasone was noticeably but not surprisingly reluctant to say much about U.S. offensive operations in cyberspace. He acknowledged, however, that Cybercom took such action to disrupt possible Russian interference in the 2018 midterm elections. “We created a persistent presence in cyberspace to monitor adversary actions and crafted tools and tactics to frustrate their efforts,” he testified in February. According to press accounts, this included a cyberattack aimed at paralyzing the Internet Research Agency, a “troll farm” in St. Petersburg said to have been deeply involved in generating disruptive propaganda during the 2016 presidential elections.6 Other press investigations have disclosed two other offensive operations undertaken by the United States. One called “Olympic Games” was intended to disrupt Iran’s drive to increase its uranium-enrichment capacity by sabotaging the centrifuges used in the process by infecting them with the so-called Stuxnet virus. Another left of launch effort was intended to cause malfunctions in North Korean missile tests.7 Although not aimed at either of the U.S. principal nuclear adversaries, those two attacks demonstrated a willingness and capacity to conduct cyberattacks on the nuclear infrastructure of other states. Efforts by strategic rivals of the United States to infiltrate and eventually degrade U.S. nuclear infrastructure are far less documented but thought to be no less prevalent. Russia, for example, is believed to have planted malware in the U.S. electrical utility grid, possibly with the intent of cutting off the flow of electricity to critical NC3 facilities in the event of a major crisis.8 Indeed, every major power, including the United States, is believed to have crafted cyberweapons aimed at critical NC3 components and to have implanted malware in enemy systems for potential use in some future confrontation. Pathways to Escalation Knowing that the NC3 systems of the major powers are constantly being probed for weaknesses and probably infested with malware designed to be activated in a crisis, what does this say about the risks of escalation from a nonkinetic battle, that is, one fought without traditional weaponry, to a kinetic one, at first using conventional weapons and then, potentially, nuclear ones? None of this can be predicted in advance, but those analysts who have studied the subject worry about the emergence of dangerous new pathways for escalation. Indeed, several such scenarios have been identified.9 The first and possibly most dangerous path to escalation would arise from the early use of cyberweapons in a great power crisis to paralyze the vital command, control, and communications capabilities of an adversary, many of which serve nuclear and conventional forces. In the “fog of war” that would naturally ensue from such an encounter, the recipient of such an attack might fear more punishing follow-up kinetic attacks, possibly including the use of nuclear weapons, and, fearing the loss of its own arsenal, launch its weapons immediately. This might occur, for example, in a confrontation between NATO and Russian forces in east and central Europe or between U.S. and Chinese forces in the Asia-Pacific region. Speaking of a possible confrontation in Europe, for example, James N. Miller Jr. and Richard Fontaine wrote that “both sides would have overwhelming incentives to go early with offensive cyber and counter-space capabilities to negate the other side’s military capabilities or advantages.” If these early attacks succeeded, “it could result in huge military and coercive advantage for the attacker.” This might induce the recipient of such attacks to back down, affording its rival a major victory at very low cost. Alternatively, however, the recipient might view the attacks on its critical command, control, and communications infrastructure as the prelude to a full-scale attack aimed at neutralizing its nuclear capabilities and choose to strike first. “It is worth considering,” Miller and Fontaine concluded, “how even a very limited attack or incident could set both sides on a slippery slope to rapid escalation.”10 U.S. servicemen conduct a defensive cyberoperations exercise at Ramstein Air Base, Germany, on March 8. (U.S. Air Force photo by Master Sgt. Renae Pittman)U.S. servicemen conduct a defensive cyberoperations exercise at Ramstein Air Base, Germany, on March 8. (U.S. Air Force photo by Master Sgt. Renae Pittman)What makes the insertion of latent malware in an adversary’s NC3 systems so dangerous is that it may not even need to be activated to increase the risk of nuclear escalation. If a nuclear-armed state comes to believe that its critical systems are infested with enemy malware, its leaders might not trust the information provided by its early-warning systems in a crisis and might misconstrue the nature of an enemy attack, leading them to overreact and possibly launch their nuclear weapons out of fear they are at risk of a preemptive strike. “The uncertainty caused by the unique character of a cyber threat could jeopardize the credibility of the nuclear deterrent and undermine strategic stability in ways that advances in nuclear and conventional weapons do not,” Page O. Stoutland and Samantha Pitts-Kiefer wrote in 2018 paper for the Nuclear Threat Initiative. “[T]he introduction of a flaw or malicious code into nuclear weapons through the supply chain that compromises the effectiveness of those weapons could lead to a lack of confidence in the nuclear deterrent,” undermining strategic stability.11 Without confidence in the reliability of its nuclear weapons infrastructure, a nuclear-armed state may misinterpret confusing signals from its early-warning systems and, fearing the worst, launch its own nuclear weapons rather than lose them to an enemy’s first strike. This makes the scenario proffered in the 2018 NPR report, of a nuclear response to an enemy cyberattack, that much more alarming. Yet another pathway to escalation could arise from a cascading series of cyberstrikes and counterstrikes against vital national infrastructure rather than on military targets. All major powers, along with Iran and North Korea, have developed and deployed cyberweapons designed to disrupt and destroy major elements of an adversary’s key economic systems, such as power grids, financial systems, and transportation networks. As noted, Russia has infiltrated the U.S. electrical grid, and it is widely believed that the United States has done the same in Russia.12 The Pentagon has also devised a plan known as “Nitro Zeus,” intended to immobilize the entire Iranian economy and so force it to capitulate to U.S. demands or, if that approach failed, to pave the way for a crippling air and missile attack.13 The danger here is that economic attacks of this sort, if undertaken during a period of tension and crisis, could lead to an escalating series of tit-for-tat attacks against ever more vital elements of an adversary’s critical infrastructure, producing widespread chaos and harm and eventually leading one side to initiate kinetic attacks on critical military targets, risking the slippery slope to nuclear conflict. For example, a Russian cyberattack on the U.S. power grid could trigger U.S. attacks on Russian energy and financial systems, causing widespread disorder in both countries and generating an impulse for even more devastating attacks. At some point, such attacks “could lead to major conflict and possibly nuclear war.”14 These are by no means the only pathways to escalation resulting from the offensive use of cyberweapons. Others include efforts by third parties, such as proxy states or terrorist organizations, to provoke a global nuclear crisis by causing early-warning systems to generate false readings (“spoofing”) of missile launches. Yet, they do provide a clear indication of the severity of the threat. As states’ reliance on cyberspace grows and cyberweapons become more powerful, the dangers of unintended or accidental escalation can only grow more severe.

## Food prices DA

#### Food prices are stable now and expected to lower

Karl R. Ocampo 21, Reporter at the Inquirer, "Food prices stabilizing, says DA," INQUIRER.net, June 22, 2021. https://business.inquirer.net/325475/food-prices-stabilizing-says-da

Food prices stabilized this month and may remain steady in July as agricultural industries are slowly rebounding from the restrictions and economic slowdown caused by the COVID-19 pandemic. Based on the Department of Agriculture’s (DA) latest price monitoring report published on June 18, average prices of basic agricultural commodities have been stable for the past two months, with minimal increases and declines across products. Improved operations DA spokesperson Noel Reyes mainly attributed this positive trend to the ongoing harvest season and the improvements in logistical gaps following the COVID-19 crisis. He added that the agency hoped improved operations in agriculture would lead to lower food inflation, but also noted that the country’s food production and distribution systems might be challenged given the onset of the rainy season. However, records also showed that food prices in the market, at least in Metro Manila, have yet to go back to their pr-pandemic levels, especially for pork, with prices having gone up by as much as 68 percent. For instance, fresh pork ham and pork belly are being sold for P340 and P370 a kilogram, respectively, against the average price of P200 and P220 a kilo in 2019. Similarly, a kilo of beef rump is being sold for P420 on average against its prepandemic rate of P340 a kilo. The average prices of lowland and highland vegetables also recorded an uptick between P5 and P40 a kilo depending on the variety, while prices of common fruits like bananas and mangoes also rose. As for milkfish (bangus) and black carp (tilapia), as well as rice, prices remained stable compared to rates in the same period last year, the same with basic cooking commodities being monitored by the DA like cooking oil and sugar. Consumers, especially minimum wage earners, have decried the increase in food prices and have asked the government to rein in runaway price spikes. In response, economic managers opened up the country to more imports, which agricultural leaders opposed, stressing that such policies will kill local industries and lead to even higher food prices in the long run. Government efforts to strike a balance between maintaining protectionist policies and liberalizing agricultural industries have sparked heated debates among stakeholders. ADVERTISEMENT Authorities, meanwhile, hope that with the ongoing mass vaccination in the country, economic recovery may begin this year thus putting more cash in the pockets of farmers and fisherfolk. Industry groups like the Samahang Industriya ng Agrikultura and the Federation of Free Farmers said, however, that they were not hopeful that the country’s 10.5 million farmers and fishers will be included in the government’s vaccination priority list. INQ

#### Plan increases food prices

Philip Watson & Jason Winfree, 21. Watson is an Associate Professor, Agriculture Economics & Rural Sociology at the University of Idaho. Winfree is an Associate Professor of Agricultural Economics and Rural Sociology at the University of Idaho. "Should we use antitrust policies on big agriculture?" Applied Economic Perspectives and Policy (2021): 1-14.

**Using antitrust to break up “big ag”** could certainly lead to an adverse effect on food prices. The claim that “big ag” is a threat to small farms is based on the argument that large agricultural firms create food prices that are too low and force small, and ostensibly less efficient, producers out of production.10 However, it would be an unusual and counter-productive use of antitrust policy to break up purported monopolies (or oligopolies) in a bid to raise food prices. Antitrust arguments often use the “rule of reason”, which requires proof that firms have engaged in anticompetitive behavior. This implies that the “rule of reason” is used to reduce prices and maximize consumer surplus. Given Engel's law, increasing food prices is regressive, at least on the consumer side. So while increasing food prices could potentially increase profits for small firms (which is ambiguous in terms of regressivity), shifting the costs to food consumers is ill-advised. The arguments to maintain small farms has many fronts. In addressing the full effect of a policy, it is important to look at both consumer and producer surplus effects of polices rather than focus on one or the other.11 Many consumers and groups advocate for agricultural firms that are local, resilient, sustainable, environmentally friendly, or organic. While consumers associate these traits with small farms, the causality is unclear. In other words, consumers may advocate for small farms to maintain resilience and sustainability or vice versa. Regardless, there is a clear movement in favor of small family farms (Jaffe, 2019 (May 5); Warren, 2019 (March 27))

#### Small farms guarantee higher food prices

Tamar **Haspel 14** – farms oysters on Cape Cod and writes about food and science, 9/2. “Small vs. large: Which size farm is better for the planet?” https://www.washingtonpost.com/lifestyle/food/small-vs-large-which-size-farm-is-better-for-the-planet/2014/08/29/ac2a3dc8-2e2d-11e4-994d-202962a9150c\_story.html

1. Small, diversified farms are **less efficient** than large ones. Which means that food grown on them is **more expensive**. Marc Bellemare, an assistant professor in the University of Minnesota’s department of applied economics, calls farmers market produce “luxury goods,” and Tim Griffin, director of the Agriculture, Food and Environment program at Tufts University’s Friedman School of Nutrition Science and Policy, explains the dynamic simply: **economy of scale**. “As the farms get larger, it’s easier to invest in labor-saving machinery, technology and specialized management, and production cost per unit goes down,” he says. It’s **Econ 101**.

Even John Ikerd, professor emeritus of agriculture and applied economics at the University of Missouri and an outspoken advocate of the idea that small organic farms ought to feed the world — an idea Bellemare calls “wishful thinking” — acknowledges that we’d need many more farmers to make that happen, and that **food would be more expensive**. How much more expensive is tough to estimate. Advocates of small-and-local tend to say not much (Ikerd guesses 6 to 8 percent), and skeptics tend to say quite a bit. It would undoubtedly vary significantly by region; areas that are densely populated, where land is expensive, or that have lousy weather, where food is hard to grow, would have higher prices.

**High food prices cause global conflict.**

**Castellaw 17**, 36-year veteran of the U.S. Marine Corps and the Founder and CEO of Farmspace Systems LLC. (John, “Opinion: Food Security Strategy Is Essential to Our National Security,” 5/1/17, https://www.agri-pulse.com/articles/9203-opinion-food-security-strategy-is-essential-to-our-national-security)

The United States faces many **threats** to our National Security. These threats include continuing wars with extremist elements such as **ISIS** and potential wars with rogue state North Korea or regional nuclear power **Iran.** The heated economic and diplomatic competition with **Russia** and a surging **China** could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be a nuanced and comprehensive National Security Strategy combining all elements of National Power including a Food Security Strategy. An **American Food Security Strategy** is an imperative factor in **reducing the multiple threats impacting our National wellbeing.** Recent history has shown that **reliable food supplies and stable prices produce more stable and secure countries.** Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence. **Food insecurity** drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, **generating conflicts**, and threatening our own security by disrupting our economic, military, and diplomatic relationships. **Food system shocks** from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings. Repeatedly, history has taught us that a strong agricultural sector is an unquestionable requirement for inclusive and sustainable growth, broad-based development progress, and long-term stability. The impact can be remarkable and far reaching. Rising income, in addition to reducing the opportunities for an upsurge in extremism, leads to changes in diet, producing demand for more diverse and nutritious foods provided, in many cases, from **American farmers** and ranchers. **Emerging markets** currently purchase 20 percent of U.S. agriculture exports and that figure is **expected to grow** as populations boom. Moving early to ensure stability in strategically significant regions requires long term planning and a disciplined, thoughtful strategy. To combat current threats and work to prevent future ones, our national leadership must employ the entire spectrum of our power including diplomatic, economic, and cultural elements. The best means to prevent future chaos and the resulting instability is positive engagement addressing the causes of instability before it occurs. This is not rocket science. We know where the instability is most likely to occur. The world population will grow by 2.5 billion people by 2050. Unfortunately, this massive population boom is projected to occur primarily in the most fragile and food insecure countries. This alarming math is not just about total numbers. Projections show that the greatest increase is in the age groups most vulnerable to extremism. There are currently 200 million people in Africa between the ages of 15 and 24, with that number expected to double in the next 30 years. Already, 60% of the unemployed in Africa are young people. Too often **these situations deteriorate into shooting wars** requiring the deployment of our military forces. We should be continually mindful that the price we pay for committing military forces is measured in our most precious national resource, the blood of those who serve. For those who live in rural America, this has a disproportionate impact. Fully 40% of those who serve in our military come from the farms, ranches, and non-urban communities that make up only 16% of our population. Actions taken now to increase agricultural sector jobs can provide economic opportunity and stability for those unemployed youths while helping to feed people. A recent report by the Chicago Council on Global Affairs identifies agriculture development as the core essential for providing greater food security, economic growth, and population well-being. Our active support for food security, including agriculture development, has helped stabilize key regions over the past 60 years. A robust food security strategy, as a part of our overall security strategy, can mitigate the growth of terrorism, build important relationships, and support continued American economic and agricultural prosperity while materially contributing to our Nation’s and the world’s security.

## FTC DA

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

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

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

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

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

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

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

John O. McGinnis\* and Linda Sun\*\* 20. \*George C. Dix Professor, Northwestern University, and Associate-Designate, Wilmer Pickering Hale & Dorr LLP. “Unifying Antitrust Enforcement for the Digital Age.” Northwestern Public Law Research Paper No. 20-20. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3669087

The FTC needs more resources to adequately address the nation’s growing privacy concerns. Currently, the FTC oversees both consumer protection—encompassing privacy—and antitrust,249 making the FTC the chief federal agency on privacy policy and enforcement250 and the nation’s de-facto privacy agency.251 The agency has long-standing experience in enforcing privacy statutes252 and also has special privacy assets, such as an internet lab capable of high-quality tech forensics to track invasions of privacy.253 The FTC, however, has failed to keep pace with the massive growth of privacy concerns—a phenomenon also driven by modern technology. Very few Americans feel conﬁdent in the privacy of their information in the digital age.254 According to a 2019 study, over 80% of Americans feel that they have little to no control over the data collected on them by companies and the government.255 To adequately address privacy concerns, the FTC needs more resources.256 The agency has been explicit that it needs more manpower to police tech companies. In requesting increased funding from Congress, FTC Director Joseph Simons said the money would allow the agency to hire additional staff and bring more privacy cases.257 A former director of the FTC’s Bureau of Consumer Protection, which houses the privacy unit, has called the FTC “woefully understaffed.”258 As of the spring of 2019, the FTC had only forty employees dedicated to privacy and data security, compared to 500 and 110 employees at comparable agencies in the UK. and Ireland, respectively.259 Without more lawyers, investigators, and technologists, the FTC will be forced to conduct privacy investigations less thoroughly, and in some cases, forgo them altogether.260 Currently, the FT C’s resources are spread thin across multiple missions, to the detriment of its privacy efforts. Removing the agency’s antitrust responsibilities would reallocate resources from the antitrust department to its privacy unit and other areas of consumer protection. Further, it would free up the scarce time of the commissioners to oversee this essential effort.261

#### Unchecked algorithmic bias risks massive inequality and extinction.

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

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

## Adv 1

### Squo solves soil health --- 1NC

#### Status quo solves soil erosion in ag

Lina Tran, 21. Science Writer at NASA Goddard Space Flight Center. NASA’s Goddard Space Flight Center, Greenbelt, Md. “Shoring up the Corn Belt’s Soil Health with NASA Data.” NASA, Jul 28, 2021. https://www.nasa.gov/feature/goddard/2021/shoring-corn-belt-soil-health-erosion-with-nasa-data

Building soil health is the leading strategy for controlling erosion. Healthy soil is rich with biodiversity and organic matter—the better to glue and anchor clumps of earth. Practices like cover crops and no-till planting are proven to boost soil health. But adopting new ways comes with obstacles, something Jeschke is familiar with in his fourth year of trials.

Hundreds of miles above the Corn Belt, NASA satellites provide critical views of the region. They’re helping scientists study soil loss over time and develop tools to support farmers as they adopt and manage conservation techniques.

“The good that conservation practices do is significant," said Laura Gentry, a University of Illinois adjunct assistant professor and director of water quality research at the Illinois Corn Growers Association. She is a partner with NASA Harvest, NASA’s food security and agriculture program within the Earth Science division. "Whatever the hurdles are, it's worth it to help farmers address them.”

Tracking soil erosion

The Corn Belt is home to the nation’s most productive soils. “They should be viewed as a national treasure,” Gentry said. “If we aren’t doing a good job of protecting them, people all over this country will feel it.”

Bit by bit, wind, water and gravity strip away valuable topsoil. That much is natural, but extreme weather and tillage—overturning soil to prepare it for planting—accelerate erosion. Eroded soils are less productive and leach nutrients. The poorer they are, the more they erode.

Once it’s uprooted, soil—and everything in it—is considered pollution. Farmers may compensate for lost nutrients with more costly fertilizers. That sends more pollution into waterways, which impacts local water supplies, and, at worst, leads to disturbances downstream like the Gulf of Mexico’s dead zones.

“Erosion affects people on that farm, in that rural community, and in the larger watershed, statewide, regionwide—really the whole country,” said Skye Wills, national leader of soil science research at the U.S. Department of Agriculture’s National Soil Survey Center in Nebraska. “It just scales up.”

Soil also stores carbon: the remnants of once-living things like plants, microbes and insects. When it’s disturbed, it releases that carbon to the atmosphere as carbon dioxide, an important greenhouse gas. As one of Earth’s biggest carbon sinks, meaning an area that absorbs large amounts of carbon, soil represents an important part of the global carbon cycle.

Views from space help researchers study big-scale problems. NASA’s MODIS, or Moderate Resolution Imaging Spectroradiometer, instruments on board the Terra and Aqua satellites, along with the joint NASA-U.S. Geological Survey’s Landsat satellites, provide regular observations across the region. Starting with the launch of Landsat 1 in 1972, Landsat's record stretches nearly 50 years back, helping scientists track decades-long changes.

Assessing the extent of erosion has long required time-consuming surveys, but the availability of satellite data and powerful computing tools has led to novel, region-wide approaches.

The Corn Belt is known for its fertile topsoil, the product of millennia of deep-rooted prairie grasses. From space, it looks like dark chocolate, while poor, eroded layers are a lighter milk chocolate. "You can see this driving around or scrolling through Google maps across the Midwest,” said Evan Thaler, a University of Massachusetts Amherst geosciences Ph.D. student.

A true-color satellite image and topographic map of a field near Clear Lake, Iowa. Scientists took advantage of the contrast between the dark-colored topsoil and lighter-colored poorer layers beneath to estimate the Corn Belt's soil loss. Light-colored areas outlined in black are predicted to have lost topsoil. Topographic map shows widespread erosion on slopes: Red pixels mark convex slopes, or hilltops, while blue pixels mark concave slopes, or the hollows between hills. Hilltops appear lightest, while dark, displaced soil pools in the valleys.

In a recent NASA-supported study, Thaler and his colleagues took advantage of this contrast to estimate the region’s total soil loss. Combining topographic data and satellite imagery, they found widespread erosion on slopes. Hilltops appeared lightest, while dark, displaced soil pooled in the valleys.

This pattern suggests tilling is responsible for the most dramatic displacement, Thaler explained. When soil is overturned, it slips down hills, little by little.

Overall, the group estimated roughly one-third of the region’s farmland has lost its topsoil entirely. They estimate farmers shoulder up to $3 billion in resulting annual losses.

Much has changed over time. Tilling is far less intense than it was just 50 years ago, said Brian Gelder, a soil scientist at Iowa State University in Ames. Erosion results from many processes occurring at different rates. As climate change leads to more extreme rainfall or drier fields, the picture will continue shifting.

By regularly tracking erosion, researchers can examine how these different processes interact. Gelder co-leads the Daily Erosion Project, which provides farmers and watershed managers estimates of erosion and runoff in Iowa, Nebraska, Minnesota, Kansas and Wisconsin. The team’s model is based on topographic and weather data, as well as Landsat and Google Earth Engine to identify tillage practices and the Cropland Data Layer from the USDA’s National Agricultural Statistics Service, which draws upon Landsat to identify what grows where each year.

“Satellite views allow us to stay current,” Gelder said. “Without them, we wouldn’t be able to continuously update our models.”

Since 2008, the USDA's National Agricultural Statistics Service, or NASS, has drawn on Landsat data to monitor dozens of crops in the lower 48 states as part of NASS's Cropland Data Layer program.

### ---1NC – Regenerative Ag Fails - General

**Regenerative farming is not possible**

Andrew **McGuire 18**, Agronomist, B.S. degree in Agricultural Engineering from Colorado State University and a M.S. degree in Agronomy from the University of California-Davis, April 4, 2018, Regenerative Agriculture: Solid Principles, Extraordinary Claims, https://csanr.wsu.edu/regen-ag-solid-principles-extraordinary-claims/

Topsoil depth increases from 3” to 14” while soil organic matter (SOM) increases from 1.7% to 11.1%. Increasing soil organic matter by a few percentage points is normally thought of as a long, difficult process, unless you use a lot of imported manure or compost. Here, however, Brown claims to have increased SOM by over 9 percentage points. How? According to the slide, by cover crops, multi-species cover crops, and livestock integration. **Let’s do the numbers** according to what current soil science tells us this would require. First, some assumptions. My calculations are for the top 6” of soil for all 20 years. This ignores the increased topsoil depth shown on the slide and is therefore conservative. I am assuming that what Brown is showing is real organic matter, and not just undecomposed plant roots or shoots. Soil organic matter is not all organic material in the soil, it is the result of a complex biological process, with the resulting organic matter having very different properties from plant roots or shoots.

In the process from plant (or microbe) biomass to SOM, losses of mass (CO2 released to the atmosphere) range from 80-90% PDF. I assumed a loss of 85%, equivalent to a plant/microbe mass to SOM mass conversion rate of 15%. I took the nutrient contents of SOM from this NRCS publication PDF.

For ease of calculations, I assumed a constant rate of SOM increase. In reality, it is generally easier to increase SOM when levels are lower and more difficult as they get higher. Now we are ready for the calculations.

First, the amount of plant biomass required to obtain Brown’s increase in SOM. Given the 15% conversion rate, he would **have had to add 31 tons (dry), per acre**, of plant or other biomass to the soil, every year, for 20 years (see figure 1). If 31 tons does not mean much to you, it is more than the entire aboveground biomass of a fully fertilized, irrigated corn crop. It is more than a full season, four cuttings, of irrigated alfalfa hay production. It’s a lot of biomass. And this amount of biomass was added to the soil –what was harvested as a crop or as meat through livestock grazing is in addition to this 31 tons per acre per year.

Building soil organic matter requires more than biomass; nutrients are also needed, either in the added biomass or from the soil. SOM averages 5% nitrogen and 0.5% phosphorus. So then, Brown’s SOM increase requires 470 lb. of nitrogen and 47 lb. of phosphorus per acre, each year, for 20 years. This is more nitrogen than is applied to a high yielding irrigated potato crop, and as much as is harvested in a 9 ton per acre alfalfa crop. And this 470 lb of nitrogen per acre is in addition to what is needed to produce a crop or to produce meat.

Diagram indicates that every year, **31 tons (dry) biomass per acre per year is needed** in order for 15% to go to soil organic matter (while 85% is lost), every year for 20 years to go from 1.7% to 11.1% soil organic matter. Also required every year is 470 lb N/ac, 47 lb P/ac, 19 lb S/ac.

To top this all, Brown states (after mentioning his land with 11.1% SOM), “We’ve done this without the use of any synthetic fertilizers, pesticides, or fungicides.”

**We are to believe** that biodiversity-powered microbes free up large amounts of phosphorus, fix large amounts of nitrogen from the air, while plants produce 31 tons of biomass in a short North Dakota season, while also producing harvested crops and livestock**?**

I cannot say that this scenario is impossible, but I find it **highly improbable**, because if this is true, then it means that science has missed an astounding, extraordinary process. And it has been missed by not just agricultural soil scientists, but also those who work in prairies and forests, because, according to regenerative agriculture, this is how it works in nature. And we have been studying nature for a long time. And this is not just about a claim made by Gabe Brown; similar claims are commonplace in regenerative ag circles. If this and similar claims are true, then we are talking about a revolution in agriculture, which is what regenerative farmers and their supporters say it is.

### ---1NC - Transition to US regenerative ag now

#### Transition to regenerative ag in the US is already here. Status quo solves the aff.

Kevin Winter, 21. Staff Writer Lake County Examiner (Oregon) “Local ranching podcast explains complex topics.” August 25, 2021. https://www.lakecountyexam.com/local-ranching-podcast-explains-complex-topics/article\_aa65e15a-6c75-57bd-96c2-a2a579e3f230.html

Wanting to help farmers, ranchers and the public understand the importance of regenerative agriculture, local resident Richard Bradbury has started a podcast called “Ranch and Range.” “One of the points of the podcast and the project is that there is a transition occurring in the ranching industry such as investments, technology and certification. The amount of information can be overwhelming for ranchers and producers,” said Bradbury. With so much information available, people might not have the time to follow up on all the different types of programs available, and how they might impact their operations. Bradbury brings in guests from across the United States who are involved in the future of farming and ranching to talk about the newest methods and techniques available to use on the land to make the land healthier and more vibrant. He said that he would like people who are not necessarily involved in ranching or farming to listen to his podcast, so that they can become informed about the modern techniques farmers and ranchers use. The focus of the podcast is on regenerative agriculture, which is a method where agriculture is combined with rehabilitation and conservation of the land — making sure the topsoil is regenerated, increasing biodiversity on the land, and improving the water cycle. Another focus of the podcast is on the real estate market for ranchers and farmers. Bradbury said there is a lot of money floating out on the market right now as investors look for ways to invest their money. He said many investors might not know about the realities of the ranching market. Bradbury said his podcast will help clarify many of the misconceptions about investing in ranch or farmland, especially for people who are just getting into the industry. “There is a lot of excitement around carbon sequestering, carbon markets, and regenerative agriculture that it can be overwhelming. I am taking a deep dive into each topic to help clear the air,” said Bradbury. This can include helping farmers and ranchers understand how they can access the carbon market; this is where they sell carbon credits their production can sequester on the market to either individuals or companies. He said a company called Indigo Agriculture helps farmers access the carbon markets, and that such markets will become more important as carbon sequestering and cap and trade come to the forefront of climate change. “The market is changing. RFID tags are becoming more common and will become the norm soon, and if producers do not adapt then they will not survive. I hope with my podcast that it will help clear the air and provide accurate information of what is coming down the pipe,” said Bradbury. He will be having a guest on each podcast who is an expert in their field.

### ---1NC - Soil Erosion

#### Big ag key to solve soil erosion

Dr. Jayson Lusk, 16. Professor of agricultural economics at Oklahoma State University. “Why Industrial Farms Are Good for the Environment.” September 23, 2016. https://www.nytimes.com/2016/09/25/opinion/sunday/why-industrial-farms-are-good-for-the-environment.html

There is much to like about small, local farms and their influence on what we eat. But if we are to sustainably deal with problems presented by population growth and climate change, we need to look to the farmers who grow a majority of the country’s food and fiber. Large farmers — who are responsible for 80 percent of the food sales in the United States, though they make up fewer than 8 percent of all farms, according to 2012 data from the Department of Agriculture — are among the most progressive, technologically savvy growers on the planet. Their technology has helped make them far gentler on the environment than at any time in history. And a new wave of innovation makes them more sustainable still. A vast majority of the farms are family-owned. Very few, about 3 percent, are run by nonfamily corporations. Large farm owners (about 159,000) number fewer than the residents of a medium-size city like Springfield, Mo. Their wares, from milk, lettuce and beef to soy, are unlikely to be highlighted on the menus of farm-to-table restaurants, but they fill the shelves at your local grocery store. There are legitimate fears about soil erosion, manure lagoons, animal welfare and nitrogen runoff at large farms — but it’s not just environmental groups that worry. Farmers are also concerned about fertilizer use and soil runoff. That’s one reason they’re turning to high-tech solutions like precision agriculture. Using location-specific information about soil nutrients, moisture and productivity of the previous year, new tools, known as “variable rate applicators,” can put fertilizer only on those areas of the field that need it (which may reduce nitrogen runoff into waterways). GPS signals drive many of today’s tractors, and new planters are allowing farmers to distribute seed varieties to diverse spots of a field to produce more food from each unit of land. They also modulate the amount and type of seed on each part of a field — in some places, leaving none at all. Many food shoppers have difficulty comprehending the scale and complexity facing modern farmers, especially those who compete in a global marketplace. For example, the median lettuce field is managed by a farmer who has 1,373 football fields of that plant to oversee. For tomatoes, the figure is 620 football fields; for wheat, 688 football fields; for corn, 453 football fields. How are farmers able to manage growing crops on this daunting scale? Decades ago, they dreamed about tools to make their jobs easier, more efficient and better for the land: soil sensors to measure water content, drones, satellite images, alternative management techniques like low- and no-till farming, efficient irrigation and mechanical harvesters. Today, that technology is a regular part of operations at large farms. Farmers watch the evolution of crop prices and track thunderstorms on their smartphones. They use livestock waste to create electricity using anaerobic digesters, which convert manure to methane. Drones monitor crop yields, insect infestations and the location and health of cattle. Innovators are moving high-value crops indoors to better control water use and pests. Before “factory farming” became a pejorative, agricultural scholars of the mid-20th century were calling for farmers to do just that — become more factorylike and businesslike. From that time, farm sizes have risen significantly. It is precisely this large size that is often criticized today in the belief that large farms put profit ahead of soil and animal health. But increased size has advantages, especially better opportunities to invest in new technologies and to benefit from economies of scale. Buying a $400,000 combine that gives farmers detailed information on the variations in crop yield in different parts of the field would never pay on just five acres of land; at 5,000 acres, it is a different story. These technologies reduce the use of water and fertilizer and harm to the environment. Modern seed varieties, some of which were brought about by biotechnology, have allowed farmers to convert to low- and no-till cropping systems, and can encourage the adoption of nitrogen-fixing cover crops such as clover or alfalfa to promote soil health. Herbicide-resistant crops let farmers control weeds without plowing, and the same technology allows growers to kill off cover crops if they interfere with the planting of cash crops. The herbicide-resistant crops have some downsides: They can lead to farmers’ using more herbicide (though the type of herbicide is important, and the new crops have often led to the use of safer, less toxic ones). But in most cases, it’s a trade-off worth making, because they enable no-till farming methods, which help prevent soil erosion. These practices are one reason soil erosion has declined more than 40 percent since the 1980s.

### Soil Erosion D --- 1NC

**No impact to soil erosion**

Hannah **Ritchie 21**, Senior Researcher, PhD in Geosciences from the U of Edinburgh, January 14, 2021, "Do we only have 60 harvests left?" Our World in Data, <https://ourworldindata.org/soil-lifespans>

There is no single lifespan of the world’s soils

What do we know about the state of the world’s soils?

A recent study by Daniel Evans and colleagues gave us a first assessment of the range of soil lifespans across the world.3 This drew upon a database of 4285 measured soil erosion rates, from 240 studies, covering 255 unique locations across 38 countries. As shown in the map, these 255 locations span all continents of the world.

How would we estimate the ‘lifespan’ of a soil? There is no single metric to do so: soils are complex and have a range of properties from nutrient balance, to density, and structure. The best proxy – and the metric that Daniel Evans and his colleagues used – was net erosion rates of the crucial topsoil layer, the topmost layer that is around 30 centimeters thick [in reality, this thickness varies from soil to soil, but 0.3m is the most commonly adopted figure for this upper productive layer]. Crops need this layer to grow: it’s where the carbon, water and nutrients get stored.4

Depending on how the soil is managed, this topsoil can thin or thicken. If we know what rate it’s thinning, we can estimate how long it would take for this layer to disappear. For example, if a topsoil was thinning by 0.5 centimeters every year, it would take 60 years to lose 30 centimeters.5 If you want a more detailed understanding of soil lifespans and how they’re calculated, the lead author explains this here.

It’s not the only metric that determines soil productivity, but it’s a meaningful metric that tells us something valuable about the state of the world’s soils.

The lifespans of the world’s soils span five orders of magnitude

What did this study tell us about the lifespan of our soils?

Soils from the 4285 data points in the study were grouped into three categories.

‘Bare’ soils are plots of land which are deliberately kept free from any crops to determine erosion rates of soils without vegetation. These are used to assess a ‘worst-case scenario’.

Conventionally managed soils are those which are actively farmed, without implementing notable conservation practices. These are used to represent a ‘business-as-usual scenario’.

Conservation management soils were those that had been subject to soil conservation techniques such as land use change (to forests and grasslands) or improved agricultural practices such as intercropping, no-tillage, or contour farming. We will look at the impact of these techniques later.

In the chart here we see how the distribution of estimated soil lifespans in these three categories varied across the global dataset. On the x-axis we have the lifespan in years and on the y-axis we have the cumulative percentage of soils that were found to have that lifespan. Notice that the scale on the lifespan axis is logarithmic and stretches from 10 years to 10 million years. This further demonstrates how citing a single lifespan for the world’s soils is **inaccurate** and **nonsensical**.

Let’s focus on the ‘conventionally managed’ soils, shown in blue. These data are relevant for understanding many of the world’s farming practices. We will look at conservation techniques later.

Many of these soils are thinning; some very quickly. 16% have a lifespan of less than 100 years if they continue to erode at their current rates. This is not a local problem: there are examples of soils with lifespans shorter than a century on all continents, including the United States, Australia, Spain, Italy, Brazil and China. The longevity of these soils is concerning and we should be acting quickly to preserve them.

But the “60 harvests” claim is quite clearly false. **More than 90%** of conventionally managed soils had a ‘lifespan’ **greater than 60 years**. The median was **491 years** for thinning soils. Half had a lifespan greater than 1,000 years, and 18% exceeded **10,000 years**. There were also some soils that were **not eroding at all**. Where soil formation rates exceeded erosion rates, soils thickened. In fact, **some were thickening** – soil was forming quicker than it was eroding. In the bottom-right of the chart we see the rates of soil gain. 7% of conventionally managed soils **were thickening.**

If we were to keep our land completely bare – by removing any vegetation and preventing any natural regrowth through pesticides – our soils could erode more quickly. One-third (34%) of bare soils had lifespans less than 100 years.

There is no single figure for how many harvests the world has left because there is so much variation in the types, quality, and management of our soils. It’s just implausible that they would all be degrading at exactly the same rate. As these results show: some soils are eroding quickly while others are thickening.

**Organic ag still causes soil erosion.**

**SCNow 20**, "How eco-friendly is organic farming? Is there another way?" September 26, 2020. <https://scnow.com/agriculture/how-eco-friendly-is-organic-farming-is-there-another-way/article_82638390-ff56-11ea-8462-cfc7547720cb.html>

Grocery shoppers who care that their food is grown in a responsible and environmentally friendly fashion enjoy plenty of opportunities to buy organic fruits and vegetables — and increasingly they are taking advantage of those opportunities. The proof: Organic food sales in the United States reached $50.1 billion in 2019, up 4.6% from the previous year, according to the 2020 Organic Industry Survey conducted by the Organic Trade Association. In comparison, the growth rate for total food sales was about 2 percent. But consumers who feel that organic is the be-all and end-all for sustainability are missing a bigger picture, says Steve Groff (stevegroff.com), author of “The Future-Proof Farm” and founder of Cover Crop Coaching, which educates farmers and farm advisers about effective cover crop use. “Any kind of growing method involves a degree of compromise, including organic agriculture,” Groff says. “Organic farmers use pesticides too. They are derived from natural sources, but that doesn’t necessarily make them safer. And most organic farmers **still till the soil**, which kills the life within it and **subjects it to erosion**. Organic farming generally is a good system, but it definitely is not the pinnacle of sustainability.” Unfortunately, Groff says, the agriculture community isn't always good at educating consumers about other forms of sustainability, such as the use of cover crops that he advocates.

**---1NC - Land Conversion (Biod impact)**

**Newest studies confirm high yield agricultural practices are net better for the environment because they require less land – the alternative is mass extinction**

Phys.org, 18. 'High-yield' farming costs the environment less than previously thought—and could help spare habitats. September 14, 2018. <https://phys.org/news/2018-09-high-yield-farming-environment-previously-thoughtand.html)>)

Agriculture that appears to be more eco-friendly but uses more land may actually have **greater environmental costs** per unit of food than "high-yield" farming that uses less land, a new study has found. There is mounting evidence that the best way to meet rising food demand while conserving biodiversity is to wring as much food as sustainably possible from the land we do farm, so that more natural habitats can be "spared the plough". However, this involves intensive farming techniques thought to create disproportionate levels of pollution, water scarcity and soil erosion. Now, a study published today in the journal Nature Sustainability shows this is not necessarily the case. Scientists have put together measures for some of the major "externalities—such as greenhouse gas emission, fertiliser and water use—generated by high- and low-yield farming systems, and compared the environmental costs of producing a given amount of food in different ways. Previous research compared these costs by land area. As high-yield farming needs less land to produce the same quantity of food, the study's authors say this approach overestimates its environmental impact. Their results from four major agricultural sectors suggest that, contrary to many people's perceptions, more intensive agriculture that uses less land may also produce **fewer pollutants, cause less soil loss and consume less water**. However, the team behind the study, led by scientists from the University of Cambridge, caution that if higher yields are simply used to increase profit or lower prices, they will only accelerate the extinction crisis we are already seeing. "Agriculture is the most significant cause of biodiversity loss on the planet," said study lead author Andrew Balmford, Professor of Conservation Science from Cambridge's Department of Zoology. "Habitats are continuing to be cleared to make way for farmland, leaving ever less space for wildlife." "Our results suggest that high-yield farming could be harnessed to meet the growing demand for food without destroying more of the natural world. However, if we are to avert **mass extinction** it is **vital** that land-efficient agriculture is linked to more wilderness being spared the plough." The Cambridge scientists conducted the study with a research team from 17 organisations across the UK and around the globe, including colleagues from Poland, Brazil, Australia, Mexico and Colombia. The study analysed information from hundreds of investigations into four vast food sectors, accounting for large percentages of the global output for each product: Asian paddy rice (90%), European wheat (33%), Latin American beef (23%), and European dairy (53%). Examples of high-yield strategies include enhanced pasture systems and livestock breeds in beef production, use of chemical fertilizer on crops, and keeping dairy cows indoors for longer. The scientists found data to be limited, and say more research is urgently needed on the environmental cost of different farming systems. Nevertheless, results suggest many high-yield systems are less ecologically damaging and, crucially, use much less land. For example, in field trials, inorganic nitrogen boosted yields with little to no greenhouse gas "penalty" and lower water use per tonne of rice. Per tonne of beef, the team found greenhouse gas emissions could be halved in some systems where yields are boosted by adding trees to provide shade and forage for cattle. The study only looked at organic farming in the European dairy sector, but found that—for the same amount of milk—organic systems caused at least one third more soil loss, and take up twice as much land, as conventional dairy farming. Co-author Professor Phil Garnsworthy from the University of Nottingham, who led the dairy team, said: "Across all dairy systems we find that higher milk yield per unit of land generally leads to greater biological and economic efficiency of production. Dairy farmers should welcome the news that more efficient systems have lower environmental impact." Conservation expert and co-author Dr. David Edwards, from the University of Sheffield, said: "Organic systems are often considered to be far more environmentally friendly than conventional farming, but our work suggested the opposite. By using more land to produce the same yield, organic may ultimately accrue larger environmental costs." The study authors say that high-yield farming must be combined with mechanisms that limit agricultural expansion if they are to have any environmental benefit. These could include strict land-use zoning and restructured rural subsidies. "These results add to the evidence that sparing natural habitats by using **high-yield farming** to produce food is the least bad way forward," added Balmford.

**Stopping land conversion to agriculture is critical to preserving biodiversity**

David Douglas & Linus Blomqvist, 16. PhD Student, UCSB Bren School, Douglas is a Breakthrough Institute researcher, “Is Precision Agriculture the Way to Peak Cropland?” Breakthrough Institute, December 7, 2016, <https://thebreakthrough.org/articles/is-precision-agriculture-the-way-to-peak-cropland>, accessed 6-12-21

As threats to wildlife and habitats go, the global expansion of farmland – including land used for crops and livestock – is unrivaled. Forests, grasslands, and wetlands representing more than two-fifths of the earth’s ice-free surface have given way to farming.1 Over the past half century alone, farmland has grown by more than 400 million hectares2 – an area nearly half the size of the United States. More than half of recent agricultural expansion in the tropics has come at the expense of old-growth forests.3 Conversion of natural habitats to farmland has been a leading cause of precipitous declines in terrestrial wildlife populations, which on average fell by more than half between 1970 and 2012.4 If farmland continues to grow over the next several decades, the consequences for habitats and wildlife would be dire. As such, slowing, halting, and eventually **reversing the growth in agricultural area** must be a top priority – perhaps the top priority – for global conservation.

### AT: Bio-D---1NC

#### The threat of biodiversity loss is overhyped

G. Bailey 19. “Letters | ‘Mass species extinction’ headlines are overblown and ignore success in conservation efforts” South China Morning Post. 05-14-2019. <https://www.scmp.com/comment/letters/article/3010008/mass-species-extinction-headlines-are-overblown-and-ignore-success>

David Dodwell admits he may have exaggerated just a bit when lamenting the loss of life in the seas around his idyllic home, and is amazed at the wonderful diversity of natural life in Hong Kong (“Loud and clear alarm bell sounded on species extinction. What now?”, May 11). I share his amazement and wonder, but it’s a shame he wasn’t able to see that the United Nations IPBES’ (Intergovernmental Science Policy Platform on Biodiversity and Ecosystem Services) claim, that one million species are heading for extinction due to human activities, may have also been a bit of **an exaggeration** – just a bit. How exactly did this UN body arrive at such a huge and frightening figure? Apparently it was referring to one million species **out of eight million**, but all you see in yet **more doomsday headlines** is “one million species under threat”. In fact, **less than 2 per cent** of bird and mammal species have gone extinct over the last few centuries. The **success stories** about the revitalisation of nature and species is **completely ignored.** Humpback whales, for example, are flourishing after being under threat. Others do remain under threat, and many, like the orangutan, are under threat due to the demand for biofuels to replace fossil fuels to combat climate change. Sad, but true.

### AT: Endocrine Disruption

#### No impact to endocrine disruptors.

Breithaupt 4(Holger, PhD from U. Düsseldorf Institute of Enzyme Technology, EMBO Reports, “A cause without a disease”, 5:1, <http://www.nature.com/embor/journal/v5/n1/full/7400063.html>)

Endocrine disruptors—or 'gender benders' as they are often referred to by the public—have become the focus of environmentalists and public health advocates who decry a slow poisoning of humans and the environment by the chemical and consumer goods industries. The term is a rather broad label for substances that are able to interfere with hormone receptors or hormonal pathways in the cell. Endocrine disruptors have caused serious public concern, because their interaction with the hormone system could potentially wreak havoc with prenatal and early development and affect a wide variety of organs. Theo Colborn, a researcher for the World Wildlife Fund, painted a bleak picture of their effects at a 2001 meeting of the US Department of the Interior: "... these chemicals can undermine the development of the brain, and intelligence and behaviour, and the endocrine, immune and reproductive systems. ... there is now a growing collection of studies revealing that some of these chemicals can affect our children's ability to learn, to socially integrate, to fend off disease and to reproduce" (Colborn 01). In fact, early observations on wild and laboratory animals showed that some compounds that are able to interact with receptor molecules, in particular with the oestrogen receptor, exert effects on the reproductive system of these animals. These observations were accompanied by reports on the increasing incidence of breast and prostate cancer and declining male fertility, and it was only a matter of time before the press took up the issue and parents became concerned about this slow poisoning of their children. However, as public fear mounted, the evidence for a creeping epidemic caused by endocrine disruptors in the environment remained elusive. Although most scientists now acknowledge that many substances can have an effect on the human endocrine system, more recent analysis has shown that many of the claims about health effects were either exaggerated or based on flawed analysis of observations. As Stephen H. Safe, Professor of Veterinary Physiology and Pharmacology and of Biochemistry and Biophysics at Texas A&M University (College Station, TX, USA) put it: "The hypothesis is okay, but we don't even have a problem." The scientific chapter of the endocrine disruptor story began in the early 1990s with a 'hypothesis' article in The Lancet in which Richard M. Sharpe from the MRC Reproductive Unit at the University of Edinburgh, UK, and Niels E. Skakkebaek from the Department of Growth and Reproduction at the University of Copenhagen, Denmark, wrote, "exposure to exogenous oestrogens, ... during foetal and neonatal life can lead to an increase in reproductive disorders" (Sharpe & Skakkebaek, 1993). On the basis of a meta-analysis of more than 60 studies published between 1940 and 1990, they suggested that abnormalities in the development of male sex organs and a 50% decline in sperm count could be attributed to exposure to oestrogens in utero. The finding that the prescription of an artificial oestrogen, diethylstilboestrol, for pregnant women from the 1940s to the 1970s had caused an increased rate of cervical cancer among the daughters of these women further supported Sharpe and Skakkebaek's hypothesis, and the fear that men could also be affected did not seem so far-fetched. Observation of wildlife also provided evidence for the effects of endocrine disruptors on reproductive health. Various publications described how chemicals suspected to have endocrine-disrupting effects, including DDT, dioxins, polychlorinated biphenyls (PCBs), which are all banned, and various pesticides and fungicides, caused a wide range of reproductive disorders and deformities of sexual organs among wild animals in polluted areas. Nonylphenol, a degradation product from many detergents, herbicides, spermicides and cosmetics, has been shown to cause imposex in oysters, which is a pseudo-hermaphroditic condition in which females acquire male sex characteristics (Nice et al 03). Scientists in the UK found that oestrogenic compounds in human and agricultural wastewater triggered the feminization of male fish in British lakes and rivers. Else-where, US scientists found that female mosquito fish in Florida exposed to pulp-mill effluent developed a gonopodium, an organ normally found only in males. Similarly, male alligators in various contaminated lakes in Florida suffered from phallus deformations and an impaired immune system. Half of male carp caught in the Tama River in Japan were found to produce unusually large amounts of the yolk precursor protein vitellogenin, specific to female fish. In 1996, Colborn, together with science writers Dianne Dumanoski and John Peterson Myers, compiled these observations into the book Our Stolen Future and drew a straight line between the effects observed in wild animals and human health effects, including breast and prostate cancer and decreasing male fertility caused by decreasing sperm counts, cryptorchidism (where one or both testicles fail to descend from the body) and hypospadias (deformation of the phallus). Often compared to Rachel Carson's Silent Spring, Colborn's book had an enormous impact on public opinion and triggered intense media coverage about the suspected epidemic of cancers and male infertility. The media obtained further ammunition when Fred vom Saal and co-workers at the University of Missouri (Columbia, MO, USA) showed that bisphenol A (BPA), a commonly used compound found in many plastics, caused abnormal prostate growth and decreased sperm production in rats at doses far lower than those considered to be safe (Nagel et al, 1997; vom Saal et al, 1998). Patricia Hunt at Case Western Reserve University (Cleveland, OH, USA) observed that BPA caused severe aberrations of the meiotic cell division in mouse oocytes in up to 40% of all cases (Hunt et al 03). Although industrial and academic researchers have so far failed to reproduce vom Saal's findings, his work has become the main argument for public health advocates who seek to ban chemicals such as BPA because they can exert their toxic effects at extremely low doses. The political reaction to these reports was swift, particularly in the USA. The US Environmental Protection Agency (EPA) convened two workshops in 1995 to make recommendations for research into the health threat of endocrine disruptors, including their effects on reproductive, neurological and immunological function and carcinogenic activity. In 1996, the US Congress amended the Food Quality Protection Act and the Safe Drinking Water Act to require the testing of food-use pesticides and drinking water contaminants for endocrine activity, which mandated the EPA to screen up to 70,000 chemicals regulated under the Toxic Substances Control Act for endocrine-disruptive effects. In 1999, the EPA launched the Endocrine Disruptor Screening Program (EDSP) and is now developing animal tests and other assays to screen for hormone activity. In Japan, the Ministry of the Environment decided to start risk assessment studies on more than 40 substances suspected to have endocrine-disrupting effects (Iguchi et al 02). On 29 October 2003, the European Commission proposed a new regulatory framework for all chemicals manufactured or imported in quantities of more than a tonne per year. Among the chemicals labelled as being of 'very high concern' that require authorization for particular use are substances that could cause reproductive damage or affect fetal development—in other words, endocrine disruptors. The only problem is that nobody actually knows whether the levels of endocrine disruptors in the environment are a threat to public health. "The so-called epidemic of endocrine diseases remains to be established," said Raphael J. Witorsch, Professor of Physiology at Virginia Commonwealth University in Richmond, VA, USA. A working group, convened by the Royal Society of London, UK, that investigated the health threat of endocrine- disrupting chemicals (EDCs) came to the same conclusion: "whilst high levels of exposure to some EDCs could theoretically increase the risk of such disorders, no direct evidence is available at present" (The Royal Society 00). Richard Sharpe, one of the original authors of the endocrine disruptor hypothesis, also acknowledged that "the threat [to human health] is minimal." In fact, a series of studies that closely investigated the original publications claiming an increase in breast and prostate cancer and a decline in male fertility found that this is not so. "We now know that this is absolutely not true," Safe said about health advocates who warn that endocrine disruptors could cause a worldwide epidemic of disorders and diseases. According to Witorsch, many of the original epidemiological analyses were flawed and lacked confounding factors. In addition, large-scale studies among elderly women in the USA and the UK showed that the increase in breast and cervical cancer was caused mainly by hormone replacement therapy for post-menopausal women (Brower 03) rather than hormonally active compounds in the environment. In fact, many of the chemicals under suspicion bind only weakly to the oestrogen receptor and it is not clear whether they have an estrogenic, anti-estrogenic or anti-androgenic effect. Furthermore, critics maintain that EDCs have to compete with more effectively binding natural oestrogens that are abundant in the diet, in medicines and in contraceptives at much higher concentrations. "In terms of magnitude and extent, all such exposures to so-called endocrine disruptors are dwarfed by the extensive use of oral contraceptives and estrogens for the treatment of menopausal and post-menopausal disorders. Also, the exposure to hormonally active xenobiotics is virtually insignificant when compared with the intake of the phytoestrogens that are present in food and beverages," commented Robert Nilsson, Professor of Toxicology at Stockholm University, Sweden (Nilsson 00). "So we've got all these [phytohormones] out there in the diet," Safe concluded, but "my scepticism is how could small concentrations [of other chemicals] in the environment be a problem?" Equally, the low-dose effects that vom Saal observed in mice have come under criticism. "I remain completely unconvinced by the low-dose studies. ... How does BPA in Fred vom Saal's study induce an effect at concentrations at which we know that it doesn't bind to the oestrogen receptor?" Sharpe said. "I want to see that these effects can lead to disorders that are directly related to human health issues." But Sharpe still sees a potential problem with compounds that act elsewhere in the signalling pathway and modify the internal balance of hormones. "If you alter the endogenous hormonal milieu, then you get a disease," he said. "I have no problem with understanding that chemicals that have that ability can cause health problems." Indeed, the evidence of detrimental effects of endocrine disruptors in animals, particularly for aquatic organisms, is quite convincing, Sharpe maintained. He cited the example of TBT (tributyltin), widely used in ship paint. The chemical does not bind to a hormone receptor but modulates the endogenous hormonal milieu in mussels elsewhere to cause imposex. Consequently, as the human fetus is "kind of an aquatic organism," as Sharpe put it, such chemicals could potentially impair prenatal development and cause effects later in life. But "humans are different from fish," Safe countered, and he questioned the sense of extrapolating observations made in wild or laboratory animals to humans, who often have very different hormonal metabolisms. "There isn't a single chemical that doesn't have an effect," he said, but "what are these animal studies telling us?" Witorsch agreed that making such assumptions is like "shooting from the hip". "To judge in utero effects in rodents and try to extrapolate them to humans has to be done with caution," he said. "An observation doesn't mean that you should ban a substance and a lack of observation doesn't necessarily mean that it is safe."

#### Plastics and birth control are alt-causes to endocrine disruption.

**---1NC - Land Conversion (Disease Impact)**

**High-yield agriculture conserves land for habitat use – that prevents zoonotic diseases from spreading.**

Alex Smith, 20. Food and Agriculture Analyst, Breakthrough Institute, “To Combat Pandemics, Intensify Agriculture.” Breakthrough Institute, 4—13—20, <https://thebreakthrough.org/issues/food/zoonosis>, accessed 6-15-21

There is broad agreement in the epidemiological and virological studies of zoonoses that the **most important factor** in the development of new zoonotic diseases is land-use change. The development of wild lands, whether caused by agricultural extensification, mining, or other factors, simultaneously shrinks the habitat of wildlife and brings that wildlife in close proximity to human settlements. The combination of shrinking habitats, human-wildlife interactions, and food insecurity is a recipe for zoonosis. In West Africa, these three factors combined were responsible for HIV/AIDS and the slew of recent Ebola outbreaks. Even when food insecurity and the consumption of wildlife are taken out of the equation, land-use change is a powerful driver of zoonotic disease, and has resulted in outbreaks of zoonotic diseases like malaria, yellow fever, dengue fever, Nipah virus, West Nile virus, Zika virus, and Lyme disease. Often, these diseases are transmitted from animals to humans through an intermediary, sometimes an insect (mosquitoes or ticks) and sometimes through livestock that live too close to wildlife populations, as was the case with Nipah. Because the biggest driver of land-use change is agriculture, “intensive” high-yield agriculture often takes the blame, but the alternative — extensive, low-yield farming — **would be worse**. To prevent further pandemics, we must do as much as we can to stop land-use change while improving food security. We must, in other words, improve agricultural yields, allowing us to grow more food on less land. So, contrary to what many have asserted, a vital lever for limiting land-use change and providing cheap food for all is not to abandon intensive agriculture, but to intensify it further, especially in the developing world where food insecurity is greatest and where growing populations means rising food demand. It is thanks to rising yields that farmers, globally, produce about three times the amount of crops while only using 13% more land than in 1950. For example, if yields from cereal production hadn’t increased since 1961, the global agricultural footprint would be 24% larger than it is today — increasing from roughly 50% at current levels to 62% of total habitable land — and would likely have resulted in even deadlier zoonotic outbreaks. Alongside reducing deforestation and land-use change and improving food access and security, sustainably intensifying agriculture across the globe would benefit biodiversity by protecting habitats and keeping them from agricultural development. While monoculture means less biodiversity on farmland, the productivity gains of monocropping — and other intensive agricultural practices — allow for the sparing of far greater land that can be used as habitat for wild flora and fauna. Certainly, agricultural intensification alone is not enough to maximize land-sparing benefits, as improved conservation and land policy is needed to minimize rebound effects. But greater productivity is likely the longest lever for achieving ambitious conservation goals.

### No Disease Impact---1NC/2AC

#### Burnout and geographic dispersion check disease.

Sebastian Farquhar 17. \*\*Project Manager at FHI responsible for external relations, M.A in Physics and Philosophy, Oxford. \*\*John Halstead, Global Priorities Project. \*\*Owen Cotton-Barratt, Research Associate in the FHI at Oxford, Lecturer in Mathematics at St. Hugh’s College. \*\*Stefan Schubert, PhD in philosophy, Researcher at the Centre for Effective Altruism. \*\*Haydn Belfield, Academic Project Manager, Centre for the Study of Existential Risk, Cambridge. \*\*Andrew Snyder-Beattie, Director of Research at FHI. “Existential Risk: Diplomacy and Governance.” *Future of Humanity Institute*. Oxford, Global Priorities Project. <https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf>.

For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic.

One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

#### Their ev is from pre-covid – impact is irrelevant

## Adv 2

### Antitrust in ag fails --- 1NC

#### Antitrust applied to ag regulation fails, gets circumvented

Sergey Zyryanov, et. al 21. Sergey is an associate professor, since 2007 - Professor of the Department of Clinical Pharmacology of Russian State Medical University (RSMU). Anastasia Kalmykova, Tatyana Levonenkova, Ekaterina Kozlova, and Olyesya Starodubova. "New trends in regulation of agriculture." In E3S Web of Conferences, vol. 273, p. 08018. EDP Sciences, 2021.

4 Food safety and environmental protection

These areas are much more regulated. At the same time, we can see regulatory purposes conflict. Regulating relations methods in agriculture are extremely diverse, they can be aimed at achieving different goals (environmental protection, labour safety, product safety, support for farmers, **antitrust regulation**, etc.). Each direction of regulation, defined by a corresponding goal, is considered to be risk management, and different regulators may be responsible for it. For any of these goals it is necessary to achieve compromises. In addition, it is sometimes difficult to say which of the goals is more important. Thus, we need tools through which it is possible to reach compromises and make reasonable decisions. The cost-benefit analysis is one of such tools. Margot J. Pollans argues that interagency cooperation or executive oversight are also used as tools [10]. In fact, there are much more such tools. For example, the Conservation Stewardship Program (USDA) is used as payments to farmers for implementing environmental practices. However, it is noted that such programs are not popular among farmers [11]. The program of labelling products as environmentally friendly, introduced in 1990, was promising. The Organic Foods Production Act, similar programs are now being introduced in other countries, too. However, their implementation shows ambiguous results [12, 13]. We can make examples when the regulator actually imposes certification and labelling of products as environmentally friendly on manufacturers. The environmental damage caused by agriculture as a result harms agriculture itself, making risks of soil erosion, water scarcity, and reduced resistance to pests and diseases [14]. But measures to counteract these consequences increase production costs such as crop rotation and reducing the use of pesticides. The report of the US Environmental Protection Agency notes that farmers are aging, their average age is 57 years old, and they are not going to give their business to their children and grandchildren, and this is reflected in their behaviour and interest in environmental protection [10]. The USDA has significant power to set standards for dairy products, meat, and poultry. Its structure includes the Food Safety Inspection Service, conducting inspections of farms and enterprises. Other agricultural products are regulated by the FDA [15]. In 2010 FDA got more power to ensure products safety and began to implement proactive regulation instead of the traditional surgical intervention after detecting a violation[16]. In accordance with the FSMA, adopted by the US Congress in 2011, the FDA’s power was further expanded, its focus in food safety was shifted to prevention. According to the law manufacturers and importers of food products must to make the risk analysis, develop the preventive HARPC control plans (improved HACCP, aimed at critical points) [17]. In addition, the law ordered the FDA to develop safety regulations for fresh food production, approved in 2015 and called as the FSMA. The regulatory structure introduced by the USDA in the 1990s obliged regulated organizations to develop plans to reduce the risk to food safety and to implement production control. It is the "hazard analysis and critical control points" ("HACCP") system. This is an example of the transition from a command and control style of regulation to a promising "management-style regulation" [18]. Regulators all over the world, regardless of the areas of regulation, gradually abandon the command and control model of regulation based on deterrence with the threat of sanctions, and this is not accidental – empirical studies show that in reality people behave more honestly [19]. As for the USDA, the implementation of the management-based regulation in the form of HACCP was supposed to be successful, since its activity is limited to the production only of meat, poultry and milk, and its inspectors always visited factories, but the regulation was unsuccessful because of the lack of trained specialists with knowledge about potential sources of microbial contamination. The plans of the enterprises turned out to be formal, and their revision needs long work. The USDA is not able to cover all the enterprises with inspections. Despite this, the tests showed a significant reduction of salmonella in meat in comparison with the basic data for a few years of the HACCP program implementation. And the CDC surveillance presented an overall reducing morbidity of tracked pathogens for five years. The program also affected environmental issues. During this time, we can see a decrease in the use of toxic pesticides. In this case, the principle of mutual learning and competition of regulated persons is used. Companies introduce new techniques it makes it possible to save on fertilizers, pesticides, and fines for pollution. Neighbours quickly adopt this experience and it becomes widespread. The current Food Safety Act provides for the approval of the FDA performance standards, supporting the best manufacturing practices (GAP) and providing flexible regulation and the right for farmers to choose ways of reaching requirements set by these standards. However, the problem is complicated by conflicting requirements, high costs that farmers often are not able to do. For example, the requirement to sterilize the soil from pathogenic bacteria can lead to the microbial diversity loss and the decrease in soil productivity and the need to use more fertilizers [20]. The Marketing agreement Act of 1937 concluded by manufacturers and sellers is an interesting example of the regulation of leaf salad safety after the outbreak of intestinal disease in California in 2006 The LGMA Marketing agreement is an obligation of the parties to comply with the standards of the agreement to undergo the procedure of voluntary certification and obtain the right to use the conformity mark. The California Department of Food and Agriculture (CDFA) has the power to make inspections from time to time for compliance with LGMA standards. The parties formed the Leafy Green Products Handler Advisory Board, managing the voluntary agreement between the firms and, on the basis of a contract with the CDFA, conducts an external audit of the leafy salad production [21]. It should be noted that the LGMA has almost reached the universal acceptance of its standards in California Excessive enforcement may be due to the behavioural characteristics of the regulator's employees. The transition to management-style regulation makes their work more complicated, increases the qualification requirements. The field employee is not always able to understand the individual management decision of the farmer. In addition, farmers themselves often understand purposes of regulation and their role in it in different ways. Taking into consideration that product safety requirements are more strict, than environmental ones, that the FDA supervision is primarily focused on achieving the first goal, farmers are left to their own in prioritizing, it can be assumed that they will pay more attention to product safety. Pollans notes that the Food Safety Act includes several trade-off management tools such as the cost-benefit analysis, the National Environmental Policy Act ("NEPA") compliance requirement, and the notice-and-comment in rulemaking procedure, but they do not work properly [10]. The co-regulation, the creation of non-state control organizations and the partial delegation of the inspection process to such external auditors is another promising tool [9]. However, in connection with this there is a problem of ensuring the proper supervision by the regulator. This problem can be solved before the rule-making procedure beginning, during the development and the adoption of standards, during their validity period.

Before the rule-making process beginning, it is necessary to determine two important things on which the success (or failure) of regulation depends. These are how the legislator distributes the subjects of competence and powers of regulators, and how extensive the powers will be given to them. There are risks connected with insufficient attention of the agency, ignoring related aspects and threats because of its own problems, and duplication of powers (tunnel vision). It is possible to reduce the number of these risks by establishing mandatory consultations with other regulators and executive oversight by OIRA, by other means provided for by the Administrative Procedure Act, Regulatory Flexibility Act, etc. Limited information on the basis of which the agency makes regulation is also the reason of risks in the rule-making process. Researchers note selective influence when the regulator pays more attention to one of the areas of its activity. Pollans gives an example with Forest Service. Forest Service has to provide environment protection and regulate forest resources extraction, but it is accused of ignoring environmental problems [10]. The notice and comment process provided by the Administrative Procedure Act also plays an important role. The Administrative Procedure Act makes it possible to take into consideration own opinions of farmers and all the interested groups of the population, whose interests may be affected by the developed solutions. At last, after the final adoption of the rules, it is also possible to manage trade-offs. The important role in this process belongs to courts, but a regulator that remains committed to flexible regulation can do more by using performance standards, which only set goals, and the regulated persons can choose the most effective and convenient ways for achieving such goals. Although new strategies appear in regulatory practice, the competition of regulatory objectives is still an unsolved problem, which is more and more compounded by the competition of regulatory agencies. 5

Conclusion

We in brief presented some challenges faced by regulators trying to ensure the development of agriculture, protect farmers, the environment, and the rights of consumers to food safety. Of course, because of the limited scope of the article, we could not investigate all the issues and means of regulation which coincide modern ideas about the forms, methods and limits of state interference into the private sector of the economy, such as agriculture. We did not investigate mandatory insurance, taxation, farm subsidy programs, the involvement of external auditors and industry associations, and we did not concern the analyses of the internal threats (lack of information, scarce resources, unclear goals, lack of mission understood and accepted by employees, low qualifications of employees, lagging behind in the development of technology, the economy digitalization, bureaucratic obstacles, regulatory capture and corruption). According to our analyses regulatory agencies are forced to make decisions in difficult conditions of information lack, unpredictable changes, high probability of diseases spread, changes in supply and demand, political processes which the regulator cannot always influence, large territories where regulated persons operate. The regulation of agriculture is also extremely difficult for other reasons because simultaneously several regulatory agencies regulate this industry, and each of them strive to achieve several competing goals. In these conditions, regulators can no longer act the old-fashioned way. This is expensive and inefficient. They are forced to develop new regulatory strategies, involve regulated persons in this activity, using management-based regulation technology, carry on trilateral negotiations, and take into consideration opinions of interested parties at the notes and comments stage in administrative procedures during developing rules and standards. Thus, the post-ante analysis of regulation and the obtained results, the identification of problems and shortcomings, training based on this information, and the adjustment of regulatory models and strategies are very important components of the regulatory process. The regulator should be responsible for the results of this activity to politicians, society and regulated persons.

**---1NC - Food Security**

**Industrial agriculture key to meet global food demands**

Ted Nordhaus, 15. Founder and Executive Director, Breakthrough Institute, “The Environmental Case for Industrial Agriculture,” Keynote Address at Institute for Food and Agricultural Literacy Symposium, June 3, 2016, published online 6—8—15, <https://thebreakthrough.org/issues/food/the-environmental-case-for-industrial-agriculture>, accessed 6-15-21]

To be clear, modern agriculture is characterized by no shortage of charnel horrors –– labor exploitation, factory farms, and poisoned land. I make these observations about the nature of agriculture and the modern food system not to absolve industrial agriculture of its problems, but rather to offer some more useful parameters for thinking about what we should want from our food system. In that spirit, let me suggest a few basic principles. First, and most importantly, the food system globally needs to grow enough food to meet the basic nutritional needs of somewhere in the vicinity of nine billion people by the middle of this century. While the discussion in recent years about food and nutrition in the United States has been heavily focused on obesity, the reality is that much of the world still needs to consume more calories, not less. Nearly a billion people globally still struggle to meet their basic, daily caloric needs. Several billions more are just beginning to consume modest levels of dietary protein and fat. Suffice to say that the daily ration of farm-fresh vegetables that for so many of us symbolizes a healthful diet is still beyond the means of most people on the planet.

### ---1NC – Yields/Deforestation

**Deforestation causes extinction**

Rebecca Lindsey, 07. Staff writer, managing editor for NASA's Earth Observatory. NASA Earth Observatory, “Tropical Deforestation,” 3-30-7, <http://earthobservatory.nasa.gov/Features/Deforestation/> Accessed: 3/11/15)

Stretching out from the equator on all Earth’s land surfaces is a wide belt of forests of amazing diversity and productivity. Tropical forests include dense rainforests, where rainfall is abundant year-round; seasonally moist forests, where rainfall is abundant, but seasonal; and drier, more open woodlands. Tropical forests of all varieties are disappearing rapidly as humans clear the natural landscape to make room for farms and pastures, to harvest timber for construction and fuel, and to build roads and urban areas. Although deforestation meets some human needs, it also has profound, sometimes devastating, consequences, including **social conflict**, **extinction** of plants and animals, and climate change—challenges that aren’t just local, but **global**. NASA supports and conducts research on tropical forests from space-based and ground-based perspectives, helping provide the information that national and international leaders need to develop strategies for sustaining human populations and preserving tropical forest biodiversity. Impacts of Deforestation: Biodiversity Impacts Although tropical forests cover only about 7 percent of the Earth’s dry land, they probably harbor about half of all species on Earth. Many species are so specialized to microhabitats within the forest that they can only be found in small areas. Their specialization makes them vulnerable to extinction. In addition to the species lost when an area is totally deforested, the plants and animals in the fragments of forest that remain also become increasingly vulnerable, sometimes even committed, to extinction. The edges of the fragments dry out and are buffeted by hot winds; mature rainforest trees often die standing at the margins. Cascading changes in the types of trees, plants, and insects that can survive in the fragments rapidly reduces biodiversity in the forest that remains. People may disagree about whether the extinction of other species through human action is an ethical issue, but there is little doubt about the practical problems that extinction poses. First, global markets consume rainforest products that depend on sustainable harvesting: latex, cork, fruit, nuts, timber, fibers, spices, natural oils and resins, and medicines. In addition, the genetic diversity of tropical forests is basically the deepest end of the planetary gene pool. Hidden in the genes of plants, animals, fungi, and bacteria that have not even been discovered yet may be cures for cancer and other **diseases** or the key to improving the yield and nutritional quality of foods—which the U.N. Food and Agriculture Organization says will be crucial for feeding the nearly ten billion people the Earth will likely need to support in coming decades. Finally, genetic diversity in the planetary gene pool is crucial for the resilience of all life on Earth to rare but catastrophic environmental events, such as meteor impacts or massive, sustained volcanism. Soil Impacts With all the lushness and productivity that exist in tropical forests, it can be surprising to learn that tropical soils areactually very thin and poor in nutrients. The underlying “parent” rock weathers rapidly in the tropics’ high temperatures and heavy rains, and over time, most of the minerals have washed from the soil. Nearly all the nutrient content of a tropical forest is in the living plants and the decomposing litter on the forest floor. When an area is completely deforested for farming, the farmer typically burns the trees and vegetation to create a fertilizing layer of ash. After this slash-and-burn deforestation, the nutrient reservoir is lost, flooding and erosion rates are high, and soils often become unable to support crops in just a few years. If the area is then turned into cattle pasture, the ground may become compacted as well, slowing down or preventing forest recovery.

# 2NC

## FTC DA

### Top Level---2NC

#### **1. Algorithmic bias risks nuke war.**

Elsa B. Kania 17. Adjunct fellow with the Technology and National Security Program at the Center for a New American Security, 11/15/17. “The critical human element in the machine age of warfare.” https://thebulletin.org/2017/11/the-critical-human-element-in-the-machine-age-of-warfare/

Today, however, the human in question might be considerably less willing to question the machine. The known human tendency towards greater reliance on computer-generated or automated recommendations from intelligent decision-support systems can result in compromised decision-making. This dynamic—known as automation bias or the overreliance on automation that results in complacency—may become more pervasive, as humans accustom themselves to relying more and more upon algorithmic judgment in day-to-day life.

In some cases, the introduction of algorithms could reveal and mitigate human cognitive biases. However, the risks of algorithmic bias have become increasingly apparent. In a societal context, “biased” algorithms have resulted in discrimination; in military applications, the effects could be lethal. In this regard, the use of autonomous weapons necessarily conveys operational risk. Even greater degrees of automation—such as with the introduction of machine learning in systems not directly involved in decisions of lethal force (e.g., early warning and intelligence)—could contribute to a range of risks.

Friendly fire—and worse. As multiple militaries have begun to use AI to enhance their capabilities on the battlefield, several deadly mistakes have shown the risks of automation and semi-autonomous systems, even when human operators are notionally in the loop. In 1988, the USS Vincennes shot down an Iranian passenger jet in the Persian Gulf after the ship’s Aegis radar-and-fire-control system incorrectly identified the civilian airplane as a military fighter jet. In this case, the crew responsible for decision-making failed to recognize this inaccuracy in the system—in part because of the complexities of the user interface—and trusted the Aegis targeting system too much to challenge its determination. Similarly, in 2003, the US Army’s Patriot air defense system, which is highly automated with high levels of complexity, was involved in two incidents of fratricide. In these stances, “naïve” trust in the system and the lack of adequate preparation for its operators resulted in fatal, unintended engagements.

As the US, Chinese, and other militaries seek to leverage AI to support applications that include early warning, automatic target recognition, intelligence analysis, and command decision-making, it is critical that they learn from such prior errors, close calls, and tragedies. In Petrov’s successful intervention, his intuition and willingness to question the system averted a nuclear war. In the case of the USS Vincennes and the Patriot system, human operators placed too much trust in and relied too heavily on complex, automated systems. It is clear that the mitigation of errors associated with highly automated and autonomous systems requires a greater focus on this human dimension.

#### 2. Algorithmic bias in AI is an existential threat.

Mara Hvistendahl 19 – correspondent with Science magazine, 3/28/19. “Can we stop AI outsmarting humanity?” <https://www.theguardian.com/technology/2019/mar/28/can-we-stop-robots-outsmarting-humanity-artificial-intelligence-singularity>

Existential risks – or X-risks, as Tallinn calls them – are threats to humanity’s survival. In addition to AI, the 20-odd researchers at CSER study climate change, nuclear war and bioweapons. But, to Tallinn, those other disciplines “are really just gateway drugs”. Concern about more widely accepted threats, such as climate change, might draw people in. The horror of superintelligent machines taking over the world, he hopes, will convince them to stay. He was visiting Cambridge for a conference because he wants the academic community to take AI safety more seriously.

At Jesus College, our dining companions were a random assortment of conference-goers, including a woman from Hong Kong who was studying robotics and a British man who graduated from Cambridge in the 1960s. The older man asked everybody at the table where they attended university. (Tallinn’s answer, Estonia’s University of Tartu, did not impress him.) He then tried to steer the conversation toward the news. Tallinn looked at him blankly. “I am not interested in near-term risks,” he said.

Tallinn changed the topic to the threat of superintelligence. When not talking to other programmers, he defaults to metaphors, and he ran through his suite of them: advanced AI can dispose of us as swiftly as humans chop down trees. Superintelligence is to us what we are to gorillas.

An AI would need a body to take over, the older man said. Without some kind of physical casing, how could it possibly gain physical control?

Tallinn had another metaphor ready: “Put me in a basement with an internet connection, and I could do a lot of damage,” he said. Then he took a bite of risotto.

Every AI, whether it’s a Roomba or one of its potential world-dominating descendants, is driven by outcomes. Programmers assign these goals, along with a series of rules on how to pursue them. Advanced AI wouldn’t necessarily need to be given the goal of world domination in order to achieve it – it could just be accidental. And the history of computer programming is rife with small errors that sparked catastrophes. In 2010, for example, when a trader with the mutual-fund company Waddell & Reed sold thousands of futures contracts, the firm’s software left out a key variable from the algorithm that helped execute the trade. The result was the trillion-dollar US “flash crash”.

The researchers Tallinn funds believe that if the reward structure of a superhuman AI is not properly programmed, even benign objectives could have insidious ends. One well-known example, laid out by the Oxford University philosopher Nick Bostrom in his book Superintelligence, is a fictional agent directed to make as many paperclips as possible. The AI might decide that the atoms in human bodies would be better put to use as raw material.

Tallinn’s views have their share of detractors, even among the community of people concerned with AI safety. Some object that it is too early to worry about restricting superintelligent AI when we don’t yet understand it. Others say that focusing on rogue technological actors diverts attention from the most urgent problems facing the field, like the fact that the majority of algorithms are designed by white men, or based on data biased toward them. “We’re in danger of building a world that we don’t want to live in if we don’t address those challenges in the near term,” said Terah Lyons, executive director of the Partnership on AI, a technology industry consortium focused on AI safety and other issues. (Several of the institutes Tallinn backs are members.) But, she added, some of the near-term challenges facing researchers, such as weeding out algorithmic bias, are precursors to ones that humanity might see with super-intelligent AI.

Tallinn isn’t so convinced. He counters that superintelligent AI brings unique threats. Ultimately, he hopes that the AI community might follow the lead of the anti-nuclear movement in the 1940s. In the wake of the bombings of Hiroshima and Nagasaki, scientists banded together to try to limit further nuclear testing. “The Manhattan Project scientists could have said: ‘Look, we are doing innovation here, and innovation is always good, so let’s just plunge ahead,’” he told me. “But they were more responsible than that.”

### Turns Democracy --- 2NC

#### Algorithmic bias destroys democracy – turns adv 2

Karl Manheim\* and Lyric Kaplan\*\*, 19 – \*Professor of Law, Loyola Law School, and \*\*Associate in Privacy & Data Security Group, Frankfurt Kurnit Klein & Selz. “Artificial Intelligence: Risks to Privacy and Democracy.” 21 Yale J.L. & Tech. 106. https://yjolt.org/sites/default/files/21\_yale\_j.l.\_tech.\_106\_0.pdf

This article explores present and predicted dangers that AI poses to core democratic principles of privacy, autonomy, equality, the po- litical process, and the rule of law. Some of these dangers predate the advent of AI, such as covert manipulation of consumer and voter preferences, but are made all the more effective with the vast pro- cessing power that AI provides. More concerning, however, are AI’s sui generis risks. These include, for instance, AI’s ability to generate comprehensive behavioral profiles from diverse datasets and to re- identify anonymized data. These expose our most intimate personal details to advertisers, governments, and strangers. The biggest dan- gers here are from social media, which rely on AI to fuel their growth and revenue models. Other novel features that have gener- ated controversy include “algorithmic bias” and “unexplained AI.” The former describes AI’s tendency to amplify social biases, but covertly and with the pretense of objectivity. The latter describes AI’s lack of transparency. AI results are often based on reasoning and processing that are unknown and unknowable to humans. The opacity of AI “black box” decision-making14 is the antithesis of democratic self-governance and due process in that they preclude AI outputs from being tested against constitutional norms.

We do not underestimate the productive benefits of AI, and its inev- itable trajectory, but feel it necessary to highlight its risks as well. This is not a vision of a dystopian future, as found in many dire warnings about artificial intelligence. Humans may not be at risk as a species, but we are surely at risk in terms of our democratic institutions and values.

### Privacy Focus---2NC

#### FTC is focused on privacy enforcement now.

#### 1. Key priority is privacy and data scrutiny.

Liisa Thomas 8/12/21. Partner and Leader of the Privacy and Cybersecurity Practice Group @ Sheppard Mullin, with Kari Rollins & Charles Glover, “FTC Signals Focus on Healthcare and Technology Platforms, Among Others.” https://www.eyeonprivacy.com/2021/08/ftc-healthcare-technology-platforms/

The FTC recently voted to authorize the use of compulsory processes—the FTC’s primary investigatory tools—on what it calls “key law enforcement priorities.” The resolutions allow investigators to take actions like issuing subpoenas and civil investigations demands (commonly referred to as “CIDs”) in a variety of areas. Of note is the inclusion of both healthcare markets and technology platforms, signaling a potential FTC interest in those sectors. These resolutions compliment the agency’s existing authority to investigate deceptive or unfair acts, and comes on the heels of the blow the FTC suffered as a result of the Supreme Court’s AMG decision. For those in the healthcare and technology platform space, this may signal an increase in privacy and data security scrutiny by the FTC. Putting it Into Practice: The authorization of the use of compulsory processes suggests that the FTC will not be backing off from bringing actions to enforce against unfair and deceptive practices. We will continue to monitor to see the impact this may have on privacy and data security cases brought by the agency in the healthcare and technology platform industries.

#### 2. It requires the full range of FTC resources.

Kate Berry, 21 – associate at Davis Wright Tremaine, LLP, 3/2, “Acting FTC Chair Signals Potential Enforcement Priorities: Privacy and AI.” https://www.jdsupra.com/legalnews/acting-ftc-chair-signals-potential-7116509/

In opening remarks at the Future of Privacy Forum, Acting Federal Trade Commission (FTC) Chairwoman Rebecca Kelly Slaughter previewed enforcement priorities under the Biden Administration. Slaughter's speech marked her first major public address as acting chair, and she highlighted particular technologies and activities likely to receive the FTC's attention. Support for Federal Data Privacy Legislation Noting the privacy and data risks raised by Americans' increased reliance on the internet for work, education, and socialization during COVID-19, Slaughter reminded the audience of her support for federal privacy legislation. While an omnibus privacy law would likely give the FTC explicit enforcement authority, Slaughter emphasized that the FTC has been creative in its efforts to protect consumers' privacy and data, even in the absence of such a law. She is encouraging FTC staff be "innovative and creative" in its use of "the full panoply of tools available to the FTC."

#### 3. Focus on privacy enforcement now---strategic resource deployment is key.

Arianna Evers et al., 21 – Counsel at Wilmer Hale, with Kirk J. Nahra and Reade Jacob, 4/2. “FTC Set to Flex Its Rulemaking Authority.” https://www.wilmerhale.com/en/insights/blogs/wilmerhale-privacy-and-cybersecurity-law/20210402-ftc-set-to-flex-its-rulemaking-authority

Last Friday—on March 25, 2021—Acting FTC Chairwoman Rebecca Kelly Slaughter announced the creation of a new rulemaking group within the FTC’s Office of the General Counsel. With this group, the FTC is poised to create new rules as well as strengthen existing ones across its vast consumer protection and competition portfolio. This is significant because it signals that the FTC is ready to strengthen its enforcement reach and may start the rulemaking process for a comprehensive privacy rule that is not sector specific, and that could stretch beyond what we typically think of as “privacy” in order to reach related competitive harms caused by companies’ data practices.

For the past several years, FTC commissioners have vocally supported federal privacy legislation and, in its absence, have been asking Congress for civil penalty authority, something they generally do not have for first time violations of Section 5 of the FTC Act. Congressional inaction in both of these areas has resulted in the FTC actively looking for ways to maximize its enforcement reach through the strategic deployment of existing remedies and tools. To that end, the FTC has recently gotten creative with its remedies, requiring companies to delete allegedly ill-gotten data (Everalbum) and provide notice to consumers (Flo Health). It has also used its Section 6(b) authority to examine the data practices of social media and video streaming services and the privacy practices of broadband provides, and two of the commissioners have suggested stretching existing trade regulation rules—specifically the Health Breach Notification Rule—to activities where their application is not immediately obvious.

Given the continued uncertainty around whether and when we might see congressional agreement on a federal privacy bill, the creation of this new group is likely the FTC’s first step towards moving forward with privacy rulemaking under the FTC’s Section 18 authority. This authority, which is also referred to as Magnuson-Moss rulemaking, establishes the process for FTC rulemaking undertaken without direct congressional authorization. However, it is rarely used because it is more burdensome than Administrative Procedure Act notice and comment rulemaking.

This new rulemaking group is also a reaction to AMG Capital Mgmt., LLC v. FTC, a case before the Supreme Court in which the court is deciding whether or not the FTC can properly seek monetary relief under Section 13(b) of the FTC Act. Section 13(b) allows the FTC to seek an injunction to prevent unfair or deceptive acts affecting commerce, and the FTC has long relied on this authority to provide monetary redress to consumers in consumer protection cases.

The creation of this new rulemaking group should not be a surprise to anyone who has been paying attention to the commissioners’ recent focus on improving the effectiveness of the FTC’s existing remedies and using all the tools at its disposal to pursue perceived instances of consumer harm. The FTC also likely sees little downside to beginning the rulemaking process for a comprehensive privacy rule at this time. Congress does not appear close to federal privacy legislation and many states are have moved ahead with their own laws or are posed to do so. Either this is a move that, in combination with activity in the states, could galvanize Congress to finally act, or it will move the FTC closer to obtaining the clear enforcement authority that it has been seeking in the privacy space.

### AT: Antitrust Enforcement Now

#### No aggressive anti-trust enforcement now.

#### 1. Resource constraints.

Andrea Beaty and Henry Burke 21. Research assistant at the Revolving Door Project and research intern at the Revolving Door Project, 5/28/21. “Hobbled FTC Lacks Budget To Combat Corporate Buying Spree.” https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/

Progressives have been encouraged by President Biden’s choices of anti-monopoly leadership in Lina Khan, Tim Wu, and (potentially) Jonathan Kanter. But in the interregnum between personnel announcements and actual confirmations, corporations are getting as many transactions done now as possible. And while the Biden Administration seems on the precipice of reining in the power of Big Tech and other monopolists soon, the FTC, one of the two agencies charged with enforcing antitrust law, continues to be hobbled by chronic underfunding. Since last year, the number of Hart Scott Rodino (HSR) premerger notifications — the program by which corporations alert the FTC and DOJ Antitrust Division they plan to merge — has tripled, with 266 filings this April compared to 79 filings last April. Recent mergers approved by the FTC, like AstraZeneca’s Alexion acquisition, have also encouraged a corporate buying spree. As Matt Stoller wrote, the FTC greenlit the $39 billion merger without a second request for information (meaning the agency took no action to even formally assess possible anticompetitive effects), causing investors to rejoice that “it’s business as usual in the merger world.” Wall Street Journal reporter Charley Grant speculated the AstraZeneca-Alexion merger shows changes in the enforcement “status quo seems unlikely in the near term, as the administration has focused on other priorities.” Even if the will to stop it exists, the FTC doesn’t have the funding to stop this boom. In fact, it hasn’t had the funding to keep up with a steady uptick in mergers in years. Aside from the recent spike, the total number of premerger filings increased by 80 percent over the last 10 years. In 2010, corporations filed 1166 premerger notifications. By 2019, yearly filings almost doubled to 2089. While the number of transactions the FTC is charged with regulating has increased steadily, the number of enforcement actions — challenges to anticompetitive mergers or conduct — has stagnated. A 2020 paper from Equitable Growth showed that while the number of enforcement actions from both the FTC and DOJ hovered at about 40 challenges per year from 2010 to 2019, even as the number of corporations seeking merger approval grew. The FTC’s enforcement actions over the past ten years show the agency hasn’t kept up with increased HSR filings: while FY 2010 saw 22 enforcement actions for 1166 reported mergers, a ratio of approximately one enforcement action for every 53 mergers, FY 2019 saw a mere 21 enforcement actions for 2089 mergers, meaning there was only one FTC enforcement action for every 99 mergers. Overall funding and staffing levels at the FTC have similarly stagnated. Then-FTC commissioner Rebecca Slaughter said in 2020 that it is an “indisputable” fact that FTC funding has not kept up with market demands; according to Slaughter, the FTC budget has only increased by 13% since 2010 and the employee headcount decreased. This budget increase has not come from increased discretionary appropriations from Congress however, but from a massive increase in merger filings and their accompanying fees. Startlingly, Slaughter notes that “the FTC had roughly 50% more full-time employees at the beginning of the Reagan Administration than it does today.” The situation has become so dire that increased budgets for the enforcement agencies has become a rare bipartisan issue in the Senate.

#### 2. Currently extremely limited.

Andrew Coopersmith 7/26/21 – Managing Director of the Penn Program on Regulation, 7/26/21. “The Biden Executive Order on Restructuring Competition.” <https://www.theregreview.org/2021/07/26/coopersmith-biden-executive-order-restructuring-competition/>  
Cites Ioana Marinescu, Associate Professor at Penn’s School of Social Policy and Practice

Expanding the basis for antitrust decision-making, Klick cautioned, can open the door to governmental actions taken “not for merit-based reasons, but more for political type reasons.” Hovenkamp, while still supporting the consumer welfare basis for antitrust decision-making, sees some potential for applying antitrust law in new ways, especially in the regulation of Big Tech. “There are certain types of mergers that we’re not going after because our current merger guidelines don’t cover them, particularly mergers that are intended to eliminate competitors”—for example, Facebook buying Instagram—“or that entail other anticompetitive practices that are not collusive,” he explained. Hovenkamp stated that he thinks that the U.S. already has effective tools such as the Sherman Act that can allow regulators to use “focused injunctions to stop the conduct without doing unnecessary harm … to the efficiencies and the network effects that have made the tech market so valuable.” Part of what impressed Hovenkamp about Biden’s executive order is how moderate and un-political it seems. “While this was widely touted as a progressive document,” Hovenkamp noted, “the fact is that it preserves the centrality of economic concerns in antitrust. It never speaks of political power as an antitrust concern.” And it never uses the word “breakup” in reference to Big Tech. Hovenkamp expects, however, that the FTC and other regulators will start deploying economic ideas that are “more interventionist and more based on imperfect competition models.” Marinescu emphasized the practical problem of trying to expand federal antitrust enforcement with the limited resources that federal agencies have available. She maintained that much still could be gained for workers even with just a small commitment of additional resources from regulators, given that there has been “almost no enforcement” against anticompetitive labor practices to date.

#### 3. Recent actions are in line with the FTC’s antitrust caseload.

Kaj Rozga and Douglas E. \*\*Litvack 8/10/21 – former Federal Trade Commission attorney with a breadth of antitrust experience and \*\*partner in DWT's Washington, D.C., office, 8/10/21. “Antitrust State of Play for Healthcare Providers Under a New Administration - Part I: Mergers and Acquisitions.” https://www.dwt.com/insights/2021/08/biden-administration-healthcare-antitrust

None of the recent actions of the Biden Administration or FTC are significantly out of step with the recent trend of vigorous merger enforcement against healthcare providers.

The healthcare industry has grown accustomed in the last decade to close scrutiny and frequent challenges to hospital and physician practice deals. A 2019 report from the FTC detailed at least nine hospital mergers and six physician group acquisitions that the agency challenged going back to 2008.5 Since then, it has challenged at least three more hospital deals, in addition to launching a merger retrospective study earlier this year to analyze the market effects of physician group and hospital consolidation.6

### AT: FTC Overwhelmed

#### Uniqueness doesn’t overwhelm.

#### 1. FTC can handle current caseload, but barely---the aff tips it over the edge.

David McLaughlin 7/28/21 – Reporter at Bloomberg, with Anna Edgerton, “FTC’s Khan Says Merger Wave Is Straining Agency Resources.” https://www.bloomberg.com/news/articles/2021-07-28/ftc-s-khan-says-merger-wave-is-straining-agency-resources

The head of the U.S. Federal Trade Commission said the antitrust agency is struggling to handle a merger boom that is rapidly consolidating industries across the economy. Chair Lina Khan told House lawmakers at a hearing Wednesday that antitrust officials are processing the highest number of merger filings in two decades. “Although the FTC is working to review many of these deals, the sheer volume of transactions is significantly straining commission resources,” Khan said. “I am deeply concerned that the current merger boom will further exacerbate deep asymmetries of power across our economy, further enabling abuses.” Khan’s remarks to a panel of the House Energy & Commerce Committee marked her first appearance before Congress since becoming chair of the agency in June. The merger wave is one of three main problems facing the agency, Khan told lawmakers. She also cited a Supreme Court decision that made it harder for the agency to recover money for consumers harmed by scams and deceptive practices by businesses and warned about the increase of fraud during the coronavirus pandemic that has been “supercharged by digital platforms.”

#### 2. They’re taking it slow now---will implement the new agenda over time.

Ben Brody 7/30/21 – senior reporter at Protocol, formerly covered tech policy and lobbying at Bloomberg News. “Lina Khan wants to hear from you: The new FTC chair is trying to get herself, and the sometimes timid tech-regulating agency she oversees, up to speed while she still can.” https://www.protocol.com/policy/khan-ftc-momentum

For now, though, Congress and the White House seem inclined to back the FTC in corralling tech after years of companies facing virtually no regulation and insisting they've done nothing wrong. The gridlocked Congress, for instance, has looked to the FTC on issues like privacy and competition. President Joe Biden, in naming Khan as chair, seemed to take for granted the criticisms that the FTC has for decades been too timid and intellectually out-gunned under Democratic and Republican administrations alike.

In July, Biden even issued his own sweeping order on competition, which Khan called "a hugely significant document." Then there have been her own efforts — to speed up rule-makings, to remove the agency's self-imposed limits on its powers over "unfair methods of competition," to issue guidance boosting consumers' rights to repair their devices and to clear the way to require more disclosure of future deals from those who break the merger laws. The monthly open meetings are new, too.

"It's, what — week five, week six for us?" she said, adding that she's giving herself the rest of the summer to "understand how the agency works" and get a sense of what's already being worked on so she can implement her agenda.

Khan is hardly working alone. The agency's chief technologist recently floated the idea of forcing companies to give up algorithms built on data abuses and restructuring companies that "sacrifice security" illegally. Khan and the other commissioners also spent Wednesday testifying in a congressional hearing about what kinds of additional consumer protection powers and funding the agency is seeking.

It's a long and ambitious set of changes to have rolled out in just a few weeks, far more than the bread-and-butter patrolling for scams and potentially anticompetitive mergers that has defined the FTC's efforts in recent decades. And those are just the things Khan will talk about. She and an aide declined to answer questions about the Facebook case, which the FTC must re-file by mid-August to continue, or its Amazon investigations, or the two companies' efforts to have her recuse herself from their cases because of her prior work in law journals and Congress.

#### 3. Current resource levels are just enough for the caseload the FTC has now---greater antitrust work overloads it.

Andrea Beaty and Henry Burke 21. Research assistant at the Revolving Door Project and research intern at the Revolving Door Project, 5/28/21. “Hobbled FTC Lacks Budget To Combat Corporate Buying Spree.” https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/

The Biden Administration has made some efforts to better equip the FTC to regulate mergers. The American Rescue Plan allocated $24 million for the FTC to hire more full-time employees “to address unfair or deceptive acts or practices, including those related to the coronavirus.” It’s unclear how much of the funding was allocated to merger enforcement, but in the months that followed the FTC began hiring for Bureau of Competition staff, including attorneys in the Mergers I, Mergers II, Mergers III, Mergers IV, and Technology Enforcement Divisions. These attorneys investigate proposed mergers for anticompetitive effects; more of them means more manpower to take action on mergers that would otherwise pass through the regulators unchallenged. While the estimate for the FY 2020 and 2021 budgets does provide the agency with marginally more discretionary budgetary authority and staffing, the levels are not sufficient to return the agency to the strength of the early Obama years. But even a return to Obama era levels of funding would not repair the damage done by 40 years of weak antitrust enforcement. As the American Economic Liberties Project argued, economic consolidation has eroded the economy, “undermining the economic liberties of consumers, working people, independent businesses, ordinary investors, and communities.” And if the Biden Administration hopes to rebalance the scales, they will need to not only empower commissioners to pursue aggressive enforcement, but provide the staffing and resources necessary to accomplish such a gargantuan task.

### Link---Privacy Trade Off---2NC

#### There is a tradeoff.

#### 1. FTC is cash-strapped---the plan destroys other enforcement priorities.

Nicolás Rivero 21. Technology reporter at Quartz. “Biden’s antitrust crusaders can’t crusade without Congress.” 3/11/21. https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/

But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years.

A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.”

#### 2. Limited resources force tradeoffs in enforcement decisions.

Bernard (Barry) A. Nigro Jr. et al., 21 – Chair of Fried Frank's Global Antitrust and Competition Department, former Principal Deputy Assistant Attorney General at the DOJ, with Nathaniel L. Asker and Aleksandr B. Livshits, 1/5/21. “Managing Antitrust Risk in the Biden Administration.” Fried Frank Antitrust & Competition Law Alert. https://www.friedfrank.com/siteFiles/Publications/FFAntitrustAggressiveAntitrustEnforcement01052021.pdf

Further, despite a record number of litigated cases, the budget at the antitrust agencies is insufficient to match the rhetoric of more enforcement. The DOJ had 25% fewer full-time employees in 2019 than it had 10 years earlier9 and the FTC recently imposed a hiring freeze. With limited resources, the agencies are forced to make important tradeoffs in deciding what matters to challenge, settle, or walk away from. Indeed, Commissioner Wilson reportedly voted against bringing a lawsuit to block CoStar’s acquisition of RentPath, in part, because of limited FTC resources.10 Although the agencies will receive a modest budget increase for the current fiscal year,11 it is far short of what some think is needed.12 As antitrust enforcement has become a bipartisan issue, a significant increase in the antitrust agencies’ budgets in the future is likely.

#### 3. It directly undermines privacy enforcement.

David Hyman 19 – Professor at Georgetown University Law Center, with William E. Kovacic, “Implementing Privacy Policy: Who Should Do What?” 29 Fordham Intell. Prop. Media & Ent. L.J. 1117 (2019). https://ir.lawnet.fordham.edu/iplj/vol29/iss4/3

The case for making an enhanced FTC the national privacy regulator is straightforward. Of all U.S. privacy implementation institutions, the FTC has unequaled capacity in the form of expert case handling and policy teams and physical resources (including the development, over the past decade, of an internet laboratory to do high-quality forensic work, and the hiring of technology experts to assist in that effort). The agency’s capacity also is the product of extensive experience in applying its UDAP authority and enforcing statutes such as the FCRA and COPPA. The FTC has a broad portfolio of policy instruments (litigation, rulemaking, consumer and business education, data collection, the preparation of reports, the convening of conferences), and it has demonstrated its ability to use all of them to good effect in the privacy domain. The FTC’s stature as an independent agency gives it additional credibility in the eyes of foreign officials, who generally distrust the vesting of privacy powers in an executive department.

Within an enhanced FTC, privacy policy implementation also would be informed by the Commission’s larger experience with consumer protection. The FTC’s privacy unit is one part of its Bureau of Consumer Protection, rather than being a self-contained bureau. This reflected the institution’s reasonable view that the effort to safeguard consumer interests in “privacy” was one dimension of “consumer protection,” rather than a wholly distinct policy realm. Our impression is that many matters that involve privacy issues also raise problems that fit within other areas of the FTC’s consumer protection program. The analysis of the “privacy” issue often benefits from perspectives developed in the course of applying the agency’s deception and unfairness authority in other cases. The intertwining of privacy issues with other consumer protection concerns in many scenarios has important implications for how the mandate of a privacy agency should be defined. In whatever setting one ultimately might place a “privacy” mandate, we would expect that the host agency would have a mandate that incorporates powers that traditionally have been associated with the FTC’s broader consumer protection program.83

The FTC’s expertise in antitrust should also help it develop and enforce privacy policy. Enforcing antitrust law has given the FTC ongoing involvement in multiple high-tech markets—as well as an understanding of how competition can motivate companies to offer better privacy protections. The FTC’s work in both consumer protection and antitrust draws upon a Bureau of Economics with over 80 PhDs in economics.84 The Bureau of Economics has developed considerable skill in sub-disciplines (including behavioral economics) with special application to privacy issues.

Of course, inputs are not the same thing as outputs. The FTC has not always achieved the full integration of perspectives that the combination of these institutional capacities would permit. And, although there are policy complementarities across the domains of antitrust, consumer protection, and privacy, this combination of functions is not an unmixed blessing. An agency with all three functions might seek to use its position as a gatekeeper with respect to one policy domain to leverage concessions from firms over which it exercises oversight in another domain.85 Such temptations have been present when the FTC has applied its antitrust powers to review mergers involving companies in the information services sector.86

Finally, there is the possibility that any one of these functions might be diminished if all three are contained in the same agency. An agency focused solely on privacy will make privacy policy its single concern. An agency responsible for antitrust, consumer protection, and privacy is likely to find itself making tradeoffs as it sets priorities for how to use its resources.

#### 4. Companies will drag out cases and drain FTC resources.

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

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

### AT: Plan =/= FTC

Means dual enforcement irrelevant

#### The plan is enforced by the FTC.

#### 1. FTC covers all core antitrust law.

Emilia R. Rubin 19. J.D. Candidate, University of California, Hastings College of the Law. “The Heavy Burden of a Lighter Touch Framework The Inadequacy of Antitrust Laws as a Substitute for Net Neutrality.” Summer 2019. Hastings Science and Technology Journal 10.2, 229-261.

The FCC additionally justified repealing the 2015 Order by relying on the ability of both the FTC and private citizens to bring antitrust actions challenging any anticompetitive conduct in the internet sector.115 The FTC enforces three laws with respect to antitrust law: the Sherman Act, the FTC Act, and the Clayton Act. These are the three core federal antitrust laws in effect today. The Sherman Act outlaws “every contract, combination, or conspiracy in restraint of trade,” and any “monopolization, attempted monopolization, or conspiracy or combination to monopolize.” The standard for assessing business conduct under the Sherman Act is a two-pronged approach: (1) per se illegality if the conduct is considered “so harmful to competition that they are almost always illegal;” and (2) rule of reason analysis if the conduct does not fall into an established anticompetitive category articulated under law.116

#### 2. They’re tasked with enforcing antitrust laws.

Katie Canales 20. Tech reporter at Business Insider, 12/9/20. “Facebook was just hit with 2 big antitrust lawsuits. Here's what 'antitrust' means and how 'trust-busting' laws attempt to keep the biggest firms in US history from growing too powerful.” https://www.businessinsider.com/what-is-antitrust-laws-big-tech-hearing-2020-7

There are three core federal US antitrust laws you should care about: the Sherman Act of 1890, the Clayton Act of 1914, and the Federal Trade Commission Act of 1914. The last would lead to the creation of the Federal Trade Commission, which is the main government entity tasked with enforcing antitrust laws today.

#### 3. They have authority over competition policy.

MARIANELA LOPEZ-GALDOS 21. Global Competition Counsel at the Computer & Communications Industry Association, 7/28/21. “Policy Decisions of Antitrust Institutions Series: The Future of the FTC and Its Perils.” https://www.project-disco.org/competition/072821-policy-decisions-of-antitrust-institutions-series-the-future-of-the-ftc-and-its-perils/

Let’s get started by understanding why the FTC’s antitrust policy rerouting has raised a lot of questions. The FTC is one of the two federal agencies that has authority over competition, and consumer protection matters. Throughout its enforcement, advocacy and regulatory activities, the FTC has endorsed competition policy that has inured to the benefit of consumers in the U.S. economy.

## Adv 1

### 1NC 2 – Reg Ag Fails

#### Regenerative ag fails – lack of peer reviewed evidence confirms

Andrew McGuire, 18. McGuire is an agronomist working in the Columbia Basin’s irrigated cropping systems. He has been with the CSANR (Center for Sustaining Agriculture and Natural Resources) since 1999. B.S. degree in Agricultural Engineering from Colorado State University and a M.S. degree in Agronomy from the University of California-Davis. “Regenerative Agriculture: Solid Principles, Extraordinary Claims.” April 4, 2018. https://csanr.wsu.edu/regen-ag-solid-principles-extraordinary-claims/

ANOTHER PRINCIPLE

However, there is another principle here: extraordinary claims require extraordinary evidence. What counts as evidence are peer-reviewed publications in scientific journals – I have looked for the evidence to support the claims of regenerative agriculture. What I have found are lots of YouTube videos, testimonials, articles and interviews. None of these sources are extraordinary evidence.

Extraordinary claims also require scrutiny, which is why I wrote this piece. I cannot disprove with words and calculations what Brown says he has observed in the field, but words and calculations can show that this is extraordinary, and so demand more evidence. I also wrote it to show the regenerative agriculture community the reasons why people like me, scientists and researchers, and those who believe in the scientific process, are skeptical of their claims.

If the claims of regenerative agriculture are real and repeatable, then they are of such magnitude (i.e. 1.7 to 11.1% SOM) that they should be easy to measure. So here is a challenge to regenerative agriculture. Provide the extraordinary evidence. If it exists, let me know and I will post it here. If the research still needs to be done, connect with researchers to start the process. Don’t let regenerative ag become the cold fusion of agriculture. Pursue rigorous science to demonstrate its value.

#### Regenerative ag doesn’t solve the environment or food production

Ken E. Giller et. al. 21, Ken E. Giller is a Professor in the Department of Soil Science and Agricultural Engineering at University of Zimbabwe; and Department of Plant Sciences, Plant Production Systems, Wageningen University. Renske Hijbeek, Jens A. Andersson, and James Sumberg. "Regenerative Agriculture: An agronomic perspective." *Outlook on Agriculture* 50, no. 1 (2021): 13-25.

The growing enthusiasm for Regenerative Agriculture highlights the need for agronomists to be more explicit about the fact that many of the categories and dichotomies that frame public, and to some degree the scientific debates about agriculture, have little if any analytical purchase. These include e.g. alternative/conventional; family/industrial; regenerative/degenerative; and sustainable/unsustainable. Regardless of their currency in public discourse, these categories are far too broad and undefinable to have any place in guiding agronomic research (although the politics behind their use and abuse in discourse remains of considerable interest). It is clear from many farmer’s testimonials on the Internet that their moves towards Regenerative Agriculture are underpinned by a philosophy that seeks to protect and enhance the environment. The core argument is most often around soil health, and in particular soil biological health, which is seen as being under threat and is attributed somewhat mythical properties. In much of the promotional material available in the public domain, exaggerated claims are made for the potency and functioning of soil microorganisms in particular. By contrast, for many campaigning NGOs, the locking up or sequestration of carbon in the soil is paramount, with a vision of an agriculture free of external inputs or GMOs, that mimics nature and contributes to solving the climate crisis. Not surprisingly the claimed potential of Regenerative Agriculture has attracted considerable critique – as McGuire (2018) aptly captures in his blog entitled ‘Regenerative Agriculture: Solid Principles, Extraordinary Claims’. It seems unlikely that Regenerative Agriculture can deliver all of the positive environmental benefits as well as the increase in global food production that is required. Reflective engagement by research agronomists is now critically important.

### 1NC 3 – Reg Ag = Squo

#### Transition to regenerative ag already happening in the US

CJ Clouse, 20. Contributor, Greenbiz.com. “How carbon-smart farming is catalyzing the big bucks needed to transform the way America eats.” December 21, 2020. https://www.greenbiz.com/article/how-carbon-smart-farming-catalyzing-big-bucks-needed-transform-way-america-eats

I’ve come to Stone House Farm from Brooklyn to learn more about how regenerative agriculture — the nature-based approach to farming generating all kinds of buzz around its climate mitigation potential — actually works. Standing alone in the open field, the solar-powered equipment Sheffer shows me could be mistaken for some sort of high-tech scarecrow, but it has a far different job: to monitor and measure the CO2 in the soil at this farming operation and research center in New York’s Hudson Valley. Many scientists and other experts agree that regenerative practices — growing diverse crops rather than monocultures; planting cover crops (such as the alfalfa and grasses) on resting fields instead of leaving them bare; minimizing mechanical tillage of the soil; and incorporating livestock into the crop rotation — lead to environmental and health benefits. The soil becomes richer and healthier, runoff that pollutes water is reduced, biodiversity and habitat for the birds, bees and other wildlife increases, farm animals live better, and the food produced is more nutritious. Early research also indicates farmers using these techniques can reap long-term financial gains. Still, it’s regenerative agriculture’s potential as a carbon sink that’s driving **millions of corporate and investor dollars** into soil-climate initiatives, large and modest. And while there’s plenty of room for skepticism when Big Ag gets into the sustainability business, this trend represents something of a **game-changer**, a level of investment in sustainable farming that never has happened before. In fact, the current system of agriculture finance in the United States has, for decades, worked against any large-scale transition away from the industrial farming complex it was built to support. Scientists may not agree on exactly how much CO2 agricultural soil can sequester — in fact, they spend a fair amount of time blog fighting about it. But in a way, it doesn’t matter. Given that American agriculture needs to change, for a whole slew of reasons including its contribution to the heating of the planet, if the hype around soil carbon helps to fuel that **transformation**, that in itself is a good thing.

### 1NC 6 – Big Ag Bio-d Turn

High yield better – that’s Phys 18

#### Big Ag is better for conserving land, biod

Ted **Nordhaus** **&** Dan **Blaustein**-**Rejto** **21**, Ted Nordhaus is the founder and executive director of the Breakthrough Institute and a co-author of An Ecomodernist Manifesto. Dan Blaustein-Rejto is the director of food and agriculture at the Breakthrough Institute, where he analyzes the economics and potential of sustainable agriculture policies and practices. He has conducted research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition. "Big Agriculture Is Best," *Foreign Policy*, April 18, 2021. <https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/>

Debates about the social and environmental impacts of America’s food system cannot be disentangled from the basic reality that in a modern industrialized society, most people will live in cities and suburbs and will not work in agriculture. As a result, most food will need to be produced by large farms, with little labor, far away from the people who will consume it. Many sustainable agriculture advocates tout the recent growth of organic agriculture as proof that an alternative food system is possible. But growing market share vastly overstates how much food is actually produced organically. In reality, organic production accounts for little more than 1 percent of total U.S. agricultural land use. Meanwhile, only a bit more than 5 percent of food sales come from organic producers, mostly because organic sales are overwhelmingly concentrated in high-value sectors of the market, namely produce and dairy, and fetch a premium from well-heeled consumers. Moreover, organic farms, large and small, don’t actually outperform large conventional farms by many important environmental measures. Scale, technology, and productivity make good environmental sense and economic sense. Because organic farming requires more land for every calorie or pound produced, a large-scale shift to organic farming would entail **converting more forest and other land to farming**, resulting in greater habitat loss and more greenhouse gas emissions. And while organic farming doesn’t use synthetic pesticides or fertilizers, it often results in greater nitrogen pollution because manure is a highly inefficient way to deliver nutrients to crops.

#### U.S. industrial agriculture is improving now – increased crop yields on less land

Caroline Grunewald & Dan Blaustein-Rejto, 19. Caroline Grunewald, Food and Agriculture Analyst, Breakthrough Institute and Dan Blaustein-Rejto, Director, Food and Agriculture Program, Breakthrough Institute, “Big, Not Broken,” Breakthrough Institute, December 9, 2019. <https://thebreakthrough.org/issues/food/big-not-broken>, accessed 6-15-21]

If we care about agricultural sustainability, we should care enough to measure it, holding constant confounding trends that say nothing about the environmental performance of food production itself. We can accomplish this by tracking intensity measures. Unlike total impacts, intensity measures — the environmental impact or quantity of inputs per unit of agricultural production — isolate the environmental performance of farmers and other agricultural producers. Once we hone in on the environmental intensity of agricultural production, we can see that US farmers have steadily been improving for the last half-century. However much better we might think agricultural sustainability would be in a radically different vision of food production, intellectual honesty dictates that we acknowledge what has actually been occurring, and that the further improvements we desire would continue or accelerate, rather than reverse, the historical trajectory. Among many dramatic improvements in US environmental intensity, reductions in land use intensity — the amount of land used to produce each unit of food — stand out. Since 1961 the amount of land required to grow a ton of wheat has fallen by nearly 50 percent, and we’ve witnessed similar trends for corn, soy, and rice. **Growing more food on less land** means less forestland converted to farmland and less greenhouse gas emissions released in the process. And land-use change pressures are an immediate concern — in the absence of yield gains, WRI predicts that agriculture’s global land footprint would expand by 3.3 billion hectares by 2050. Because US agriculture is less land intensive than farming in almost every other country, continuing to increase yields and concentrating more food production in the US could reduce global land-use change.

## Adv 2

### 1NC 1 – Antitrust Fails – Circumvent

#### Finishing 1NC Zyranov 21

We in brief presented some challenges faced by regulators trying to ensure the development of agriculture, protect farmers, the environment, and the rights of consumers to food safety. Of course, because of the limited scope of the article, we could not investigate all the issues and means of regulation which coincide modern ideas about the forms, methods and limits of state interference into the private sector of the economy, such as agriculture. We did not investigate mandatory insurance, taxation, farm subsidy programs, the involvement of external auditors and industry associations, and we did not concern the analyses of the internal threats (lack of information, scarce resources, unclear goals, lack of mission understood and accepted by employees, low qualifications of employees, lagging behind in the development of technology, the economy digitalization, bureaucratic obstacles, regulatory capture and corruption). According to our analyses regulatory agencies are forced to make decisions in difficult conditions of information lack, unpredictable changes, high probability of diseases spread, changes in supply and demand, political processes which the regulator cannot always influence, large territories where regulated persons operate. The regulation of agriculture is also extremely difficult for other reasons because simultaneously several regulatory agencies regulate this industry, and each of them strive to achieve several competing goals. In these conditions, regulators can no longer act the old-fashioned way. This is expensive and inefficient. They are forced to develop new regulatory strategies, involve regulated persons in this activity, using management-based regulation technology, carry on trilateral negotiations, and take into consideration opinions of interested parties at the notes and comments stage in administrative procedures during developing rules and standards. Thus, the post-ante analysis of regulation and the obtained results, the identification of problems and shortcomings, training based on this information, and the adjustment of regulatory models and strategies are very important components of the regulatory process. The regulator should be responsible for the results of this activity to politicians, society and regulated persons.

### 1NC 2 – Big Ag K2 Food security

#### Food insecurity creates conditions conducive to terrorism.

Ertharin Cousin 21. Distinguished fellow of global food and agriculture at the Chicago Council on Global Affairs and a visiting scholar at Stanford University’s Center on Food Security and the Environment. “Hunger Is a Weapon of War. Food Can Help Prevent It.” *Foreign Policy,* <https://foreignpolicy.com/2021/02/22/yemen-conflict-food-prevent-hunger-famine>)

Large, targeted efforts to improve the food security of vulnerable populations would almost certainly provide a major point of resistance against conflict’s entrenchment and spread. One reason extremist groups across northwestern Africa have gained so much traction is that they offer suffering communities a source of food and security. Controlling the cost of food would not just get to the roots of conflict—it would create a preventive mechanism against it. There is an emerging consensus that rising food prices increase the risk of unrest: When global food prices soared between 2007 and 2008, a spike in riots and civil conflict followed. That’s because the specter of hunger drew in much broader swaths of the population—including students and low- and middle-income earners. Historical data suggests that those unable to afford food before prices rise find little reason to take to the streets when they do. Importantly, food riots don’t cluster in places where chronic food insecurity is the most profound but in urban areas where market-dependent working-class communities feel a sudden change in their purchasing power. As a result, countries experiencing acute food price inflation must prioritize not only relief for the chronically hungry but price-stabilizing efforts for populations traditionally seen as less vulnerable. Doing so can mitigate—or even prevent—riots and violent conflict.

### 1NC 3 – Big Ag K2 Defo

**Industrial ag better prevents human impacts on the land.**

Ted Nordhaus, 15. Founder and Executive Director, Breakthrough Institute, “The Environmental Case for Industrial Agriculture,” Keynote Address at Institute for Food and Agricultural Literacy Symposium, June 3, 2016, published online 6—8—15, <https://thebreakthrough.org/issues/food/the-environmental-case-for-industrial-agriculture>, accessed 6-15-21]

Debates about specific agricultural technologies and environmental impacts often lose sight of the forest through the trees in terms of the relationship between food production and the environment. Low-productivity food systems have **devastating impacts on the environment**. As much as three-quarters of all deforestation globally occurred prior to the Industrial Revolution, almost entirely due to two related uses, clearing land for agriculture and using wood for energy. Indeed, many places that we now think of as vast wilderness were once farmed. Even the Amazon basin, long thought to have been a primeval Eden turns out to have been the site of extensive agriculture prior to the decimation of the pre-Columbian population due to conquest and disease. Today, forests have come back in New England and many other parts of the world not due to disease, privation, or genocide but rather because agricultural productivity has risen so dramatically that many marginal agricultural lands have been abandoned. Meanwhile, everywhere that people depend upon bushmeat for protein, forests and other habitat continue to be defaunated. Moreover, low-intensity pasturing of livestock represents the largest single human land use, larger even than cropland. When leading public intellectuals and chefs like Michael Pollan and Alice Waters decry feedlot meat and rhapsodize about the culinary and environmental benefits of grass-fed beef, what they are really proposing is a vast expansion of human impacts on the land. Even with much lower levels of per-capita beef consumption, there is no way that American beef consumption, much less global consumption, could be met with pastured beef without dedicating much more land to pasture. Even accounting for the immense amount of grain needed to feed cattle, feedlot beef is more land efficient than grass-fed. In short, were such a thing even possible, attempting to feed a world of seven-going-on-nine billion people with a preindustrial food system would almost certainly result in a massive expansion of human impacts through accelerated conversion of forests, grasslands, and other habitat to cropland and pasture.

#### Organic agriculture requires more land.

AbigailHaddad, 08. Research assistant at the American Enterprise Institute. “The Problem With Organic Food,” The American, June 10, 2008. http://www.american.com/archive/2008/june-06-08/the-problem-with-organic-food.

Shifting toward organic farming would require major changes in land and labor allocation. One of the successes of industrial agriculture has been its ability to create more with less. Over the past 60 years, the labor hours devoted to farming have shrunk by about 3 percent annually, even as output has skyrocketed, and the amount of land used for farming has decreased by nearly 30 percent. These aren’t problems to be overcome; they are major economic success stories that have resulted in cheaper food.

#### Industrial fertilizer key to maintain high yields

Fred Singer & Dennis Avery, 07. President of the Science and Environmental Policy Project and Distinguished Research Professor @ George Mason, Prof. Emeritus Environmental Science @ UVA and First Director of the National Weather Satellite Service, and Director of Global Food Issues @ Hudson Institute, M.S. Agricultural Economics, The University of Wisconsin-Madison. “Unstoppable Global Warming: Every 1,500 Years,” p. 193.

Industrial nitrogen fertilizer is one of the biggest farming advances in human history. Before 1908, farmers could only maintain their soil nutrient levels by adding livestock manure or by growing more green-manure crops, such as clover. Both of those strategies require lots of land. In 1908, however, the Haber-Bosch Process began taking nitrogen from the air, which is 78 percent nitrogen. Today’s farmers apply about 80 million tons of industrial nitrogen per year to maintain their soils’ fertility and it doesn’t cost a single acre of land. To get 80 million tons of nitrogen per year from cattle manure, **the world would require nearly eight billion additional cattle**, plus five acres or so of forage land per beast. We’d thus have to eliminate half the people, clear all the forests, or use some combination of those strategies.

#### High yields key to prevent deforestation.

Alex Avery, 00. Director of Research and Education at the Center for Global Food Issues of the Hudson Institute. “High-Yield Conservation: The Only Global Sustainability for the 21st Century,” March 28, Center for Global Food Issues, http://www.cgfi.org/2000/03/28/high-yield-conservation-the-only-global-sustainability-for-the-21st-century/.

The world’s population today is 80 percent bigger than in 1960. The environmental wonder of the 20th Century is that today’s farmers are feeding better diets to almost twice as many people from virtually the same cropland base. We used 1,394 million hectares of land for crops in 1961—and only 1,441 million hectares in 1992 to get twice the grain and oilseeds.[5],[6] In addition, the average Third World citizen is getting 28 percent more calories, including 59 percent more vegetable oil (twice the resource cost of cereal calories) and 50 percent more animal calories (three times the resource cost of cereals).[7] Producing today’s world food supply with 1960 crop yields would probably require an additional 10.9 million square miles of land, or more than the total land area of Europe and the U.S. combined! This is no precise estimate—but it underscores the enormous environmental importance of continuing to raise crop and forest yields if we are to have wildlands in the future.

# 1NR

#### E. It has empirically worked across multiple policy arenas.

David A. Lied 13. Correspondent at The Associated Press. “Federal nullification efforts give local, federal police conflicting orders.” 6/21/2013. Police1. https://www.police1.com/federal-law-enforcement/articles/federal-nullification-efforts-give-local-federal-police-conflicting-orders-jA2JbyrzZKGgyZeE/

The Missouri legislation is perhaps the most extreme example of a states' rights movement that has been spreading across the nation. States are increasingly adopting laws that purport to nullify federal laws — setting up intentional legal conflicts, directing local police not to enforce federal laws and, in rare cases, even threatening criminal charges for federal agents who dare to do their jobs.

An Associated Press analysis found that about four-fifths of the states now have enacted local laws that directly reject or ignore federal laws on marijuana use, gun control, health insurance requirements and identification standards for driver's licenses. The recent trend began in Democratic leaning California with a 1996 medical marijuana law and has proliferated lately in Republican strongholds like Kansas, where Gov. Sam Brownback this spring became the first to sign a measure threatening felony charges against federal agents who enforce certain firearms laws in his state.

Some states, such as Montana and Arizona, have said "no" to the feds again and again — passing states' rights measures on all four subjects examined by the AP — despite questions about whether their "no" carries any legal significance.

"It seems that there has been an uptick in nullification efforts from both the left and the right," said Adam Winkler, a professor at the University of California at Los Angeles who specializes in constitutional law.

Yet "the law is clear — the supremacy clause (of the U.S. Constitution) says specifically that the federal laws are supreme over contrary state laws, even if the state doesn't like those laws," Winkler added.

The fact that U.S. courts have repeatedly upheld federal laws over conflicting state ones hasn't stopped some states from flouting those federal laws — sometimes successfully.

About 20 states now have medical marijuana laws allowing people to use pot to treat chronic pain and other ailments \_ despite a federal law that still criminalizes marijuana distribution and possession. Ceding ground to the states, President Barack Obama's administration has made it known to federal prosecutors that it wasn't worth their time to target those people.

Federal authorities have repeatedly delayed implementation of the 2005 Real ID Act, an anti-terrorism law that set stringent requirements for photo identification cards to be used to board commercial flights or enter federal buildings. The law has been stymied, in part, because about half the state legislatures have opposed its implementation, according to the National Conference of State Legislatures.

About 20 states have enacted measures challenging Obama's 2010 health care laws, many of which specifically reject the provision mandating that most people have health insurance or face tax penalties beginning in 2014.

After Montana passed a 2009 law declaring that federal firearms regulations don't apply to guns made and kept in that state, eight other states have enacted similar laws. Gun activist Gary Marbut said he crafted the Montana measure as a foundation for a legal challenge to the federal power to regulate interstate commerce under the U.S. Constitution. His lawsuit was dismissed by a trial judge but is now pending before the 9th U.S. Circuit Court of Appeals.

"The states created this federal monster, and so it's time for the states to get their monster on a leash," said Marbut, president of the Montana Shooting Sports Association.

The Supreme Court ruled in 1997 that local police could not be compelled to carry out provisions of a federal gun control law. But some states are now attempting to take that a step further by asserting that certain federal laws can't even be enforced by federal authorities.

A new Kansas law makes it a felony for a federal agent to attempt to enforce laws on guns made and owned in Kansas. A similar Wyoming law, passed in 2010, made it a misdemeanor. The Missouri bill also would declare it a misdemeanor crime but would apply more broadly to all federal gun laws and regulations — past, present, or future — that "infringe on the people's right to keep and bear arms."

U.S. Attorney General Eric Holder sent a letter in late April to the Kansas governor warning that the federal government is willing to go to court over the new law.

"Kansas may not prevent federal employees and officials from carrying out their official responsibilities," Holder wrote.

Federal authorities in the western district of Missouri led the nation in prosecutions for federal weapons offenses through the first seven months of the 2013 fiscal year, with Kansas close behind, according to a data clearinghouse at Syracuse University.

Felons illegally possessing firearms is the most common charge nationally. But the Missouri measure sets it sights on nullifying federal firearms registrations and, among other things, a 1934 law that imposes a tax on transferring machine guns or silencers. Last year, the federal government prosecuted 83 people nationally for unlawful possession of machine guns.

So what would happen if a local prosecutor actually charges a federal agent for doing his or her job?

"They're going to have problems if they do it — there's no doubt about it," said Michael Boldin, executive director of the Tenth Amendment Center, a Los Angeles-based entity that promotes states' rights. "There's no federal court in the country that's going to say that a state can pull this off."

Yet states may never need to prosecute federal agents in order to make their point.

If enough states resist, "it's going to be very difficult for the federal government to force their laws down our throats," Boldin said.

**2ac 2:** It does unwind merger why would it not. The states make the federal government do the plan. If the plan unwinds mergers so does the CP.

#### A. The perm ends dissent by forcing the states to be allies with the federal government, which prevents the ongoing friction that is necessary to solve.

Elizabeth Weeks Leonard, 10. Visiting Professor of Law at the University of Georgia and Professor of Law at the University of Kansas. “Rhetorical Federalism: The Value of State-Based Dissent to Federal Health Reform” 39 Hofstra L. Rev. 111. https://digitalcommons.law.uga.edu/fac\_artchop/769/

A. Uncooperative Federalism

Uncooperative federalism, a theory articulated by Jessica BulmanPozen and Heather Gerken,48 suggests that even when states actively refuse to cooperate with the federal government, their resistance may be beneficial. 49 To understand uncooperative federalism, it is helpful to place the theory in the context of other federalism theories. BulmanPozen and Gerken offer the following matrix, which I slightly modify, in their footnote 18.50

Table

Description automatically generated

The vertical axis represents the normative position of what states should do: either they should serve as rivals or challengers to the federal government, or they should serve as friends or allies with the federal government. The horizontal axis identifies two strategies to facilitate healthy federal-state relations: either the power of states as sovereigns, or the power of states as servants. The authors note that most existing scholarship falls in Box 1, the state autonomy or dual sovereignty view of federal-state relations, or Box 4, the cooperative federalism view. 51 Their theory fills Box 2, the affirmative case for states as rivals and challengers from the posture of servants.

For Box 3, Bulman-Pozen and Gerken suggest Roderick Hills's "functional theory. 52 Hills favors state autonomy not so that states can operate as dual or separate sovereigns, but so that they can bargain effectively for their role within a cooperative, integrated federal regime. 53 States, under their reserved powers, hold a property right to refuse to lend state administrative processes to implement federal policies, which right they can sell in a freely negotiated trade, like any other private contractor.54 Cooperation is a good thing, but only when the federal government "purchases" state services through voluntary agreements.

Dual sovereignty or state autonomy, like uncooperative federalism, urges states to rival and challenge the federal government but from the posture of sovereign powers. Values associated with the dual sovereignty view include providing alternative, more accessible forums for citizen participation in the political process. 56 In addition, different territories may have different tastes and needs, especially on social policy matters.57 The diversity of approaches creates a "political market," allowing citizenry a choice of "laws, customs, and attitudes,'""8 and ultimately, exit rights.59 States also serve as laboratories of democracy, experimenting and crafting solutions to problems, which approaches can be borrowed by other states and the federal government.60

The dual sovereignty scholarship recognizes the value of dissent, especially state-level dissent, within the federal system. 61 Dissent "contributes to the marketplace of ideas, engages electoral minorities[,]... and facilitates self-expression., 62 The Framers envisioned friction, clashes, and jarring as part of the constitutional design.63 States may act as lobbyists and litigants, challenging federal policies and laws. 64 Objections may be voiced by states qua states, 65 or by states as spokespersons for individuals.66

Cooperative federalism, by contrast, envisions the federal government and states working together as partners to address common problems or implement legislation. 67 States serve as supportive allies, freely and voluntarily, albeit often with strong encouragement, implementing federal policies.68 Conditional spending programs,69 such as Medicaid, are prime examples of cooperative federalism. 70 Under its spending power, Congress entices states to enact laws or implement programs by conditioning federal funding on states' compliance with broad federal requirements, 7' even though the federal government cannot directly regulate states or "commandeer" state regulatory authorities to implement, administer, or enforce federal programs.7 ACA employs several cooperative federalism strategies, including conditional spending, conditional preemption, grants, and contracts, to engage state cooperation in implementing the massive package of health care reforms.73

Uncooperative federalism focuses on the power that states wield precisely because of their subservient posture vis-A-vis the federal government.7 4 The theory emphasizes the "power of the servant" and "the ways in which integration can serve as a distinct source of strength., 75 Lacking adequate financial resources or regulatory reach to implement comprehensive programs, the federal government often depends on states to implement and administer federal policies. 76 Because Congress cannot simply mandate states to administer federal programs, it must offer carrots, such as conditional funding or block grants, or sticks, such as conditional preemption or threats to usurp state implementation.77 In so doing, the federal government cedes considerable power and discretion to states. For example, under Medicaid, states must comply with broad federal requirements but otherwise are free to tailor their state plans to meet their citizens' particular needs, still receiving federal matching dollars for every state dollar spent.7 8 Even though the federal government ultimately holds the threat of revoking federal funds or taking over state programs, financial, political, and practical realities may render that threat an empty one. 79

States' power as servants also derives from their integration into federal program implementation.80 State regulators and policymakers have regular interaction with federal authorities in administering complex, cooperative programs. State actors may develop subject-matter specialization within certain areas, such as environmental or health policy, which transcends federal and state lines of authority.81 A related source of power derives from the fact that states serve two masters: the federal government and their state constituents.82 Voters' dissenting views give states the political will and capital to challenge federal policies.

Bulman-Pozen and Gerken conclude that uncooperative federalism can be useful within a well-functioning federal system.8 3 Friction between the federal government and states fosters a rich dialogue, clarifies accountability, and encourages political participation. 4 Doctrinal implications of the uncooperative federalism theory suggest that commandeering, which is considered unacceptably intrusive on state autonomy to Box 1 adherents, perhaps should be allowed or encouraged under Box 2 because it engenders dissent.8 5 Uncooperative federalism, like state autonomy or dual sovereignty, prefers narrow preemption but not because state power should be interpreted as broadly as possible but, rather, as a way to create larger overlapping spheres of federal and state regulatory authority thereby ensuring ongoing conflict and jarring.8 6

#### B. Current court doctrine prioritizes preemption over commandeering---reversing them is essential for strong uncooperative federalism.

Anne Richardson Oakes and Ilaria Di Gioia 17. Ph.D., Director at the Center for American Legal Studies at Birmingham City University Law School; Ph D. candidate, Lecturer at the Center for American Legal Studies at Birmingham City University Law School. “Uncooperative Federalism or Dinosaur Constitutionalism: The Affordable Care Act and the Language of States Rights’\*” Birmingham City University. 7/25/2017. <http://www.open-access.bcu.ac.uk/4833/>

As Professors Bulman-Pozen and Gerken point out, traditional states’ rights arguments fit a model of federalism in which autonomous states rival the federal government from a position of outsider.75 The alternative model of “co-operative federalism” allocates to the states only a subservient role as “supportive insiders--servants and allies to the federal government” with, as Bulman-Pozen and Gerken put it, no “fully developed account of the ways in which states playing the role of federal servant can also resist federal mandates, the ways in which integration--and not just autonomy--can empower states to challenge federal authority”76 If the negative connotations of state challenges to federal authority are to be discarded, what is needed is new constitutional theorising with a new conceptual framework and vocabulary that can not only accommodate but accord value to challenge, dissent and even resistance at state-level. Bulman-Pozen and Gerken’s “uncooperative federalism” which celebrates state strength at the heart of the federal regulatory state offers just such a model, not least because of their “counter-intuitive” conclusions concerning current Supreme Court federalism doctrine:

In our view, a strong commitment to uncooperative federalism would lead you to conclude that the Supreme Court has two central doctrines of federalism backwards. Rather than proscribe commandeering and expansively construe preemption as it does now, a Court attentive to uncooperative federalism should allow commandeering and cabin preemption. By fostering integration and overlap in regulatory spheres, this doctrinal 180 would facilitate state dissent while pushing federal engagement with state challenges.77

Given the current political balance on the Supreme Court and the likely impact of future presidential nominees, we are tempted to say that at the present time, this is for the birds. We return therefore to the point where we began this paper and President Obama’s observations concerning the negative history of states’ rights arguments. This history needed to be addressed, he continued, “so that [opponents] understand if I am concerned about leaving it up to states to expand Medicaid that it may not simply be because I am this power-hungry guy in Washington who wants to crush states’ rights but, rather, because we are one country and I think it is going to be important for the entire country to make sure that poor folks in Mississippi and not just Massachusetts are healthy”78

#### Now is key---this conservative court would switch to commandeering first because of partisanship, but bad GOP arguments prevent it---the perm prevents the necessary legal battle.

Arnab Datta 21. senior counsel at Employ America. “The GOP’s Long-Game Plan to Thwart Biden’s Agenda Is Already in Action” Slate. 3/24/2021. https://slate.com/news-and-politics/2021/03/stimulus-bill-gop-lawsuits-janet-yellen.html

In defense of the provision, the Treasury Department has argued that such “reasonable conditions are used all the time,” and pointed out that the law does not in fact prohibit tax cuts. Rather, it requires that states not use the appropriated money to offset revenue losses from tax cuts. Substantively, the Treasury Department is right—the bill deploys the spending power, which has long been considered Congress’ least restricted power. Nevertheless, the Supreme Court limited this power when it struck down the mandatory Medicaid expansion in the Affordable Care Act, and it could take the same aggressive approach here. In other words, this lawsuit raises issues that an opportunistic conservative judiciary could use to limit the power of the federal government, a difficulty the Biden administration is likely to face again and again.

To understand the lawsuit, it’s worth considering the relevant conditions attached to the appropriation. First, states can only use the funds in certain ways, like filling fiscal shortfalls, investing in infrastructure, or aiding those affected by the pandemic. A state must also certify that it requires the funds to carry out these activities. And second, states receiving funds cannot reduce their net tax revenue for three years. The logic between these conditions should be clear—if a state can’t fill these gaps with its own revenue, surely it can’t afford to reduce revenue either.

But that is basically what the GOP governors are requesting—that states be allowed to use federal funds to pay for tax cuts. And their legal arguments are tailor-made for a judiciary hostile to the federal government.

Both the Ohio suit and the attorneys general’s letter make three basic arguments. The first is that the tax provision is too ambiguous. In Pennhurst, the Supreme Court held that federal grants to states are “in the nature of a contract,” and so the conditions must be unambiguous to give clear notice. Here, the conditions state that funds cannot be used to “either directly or indirectly offset a reduction in the net tax revenue of such State or territory.” The GOP argument suggests there is a lack of clarity in what it means to “indirectly” offset a net tax revenue reduction, making this condition “hopelessly ambiguous.” But with the presence of both “directly” and “indirectly,” the statute can be read to prohibit using the funds to offset any net decrease in tax revenue. And the GOP’s second argument concedes this exact point, relying on the assumption that the legislation is plain in its intention to prevent states from reducing net tax revenue. They suggest that the provision would amount to an “unprecedented and unconstitutional … federal usurpation of essentially one half of the State’s fiscal ledgers” by limiting the states’ ability to lower taxes. They argue that the provision would create a system that “would eliminate the democratic accountability that federalism serves to protect” by prohibiting governors from enacting any tax cuts. In their view, this amounts to a violation of the 10th Amendment.

But this is just not true. The bill doesn’t prohibit tax cuts. Instead, it requires—as a condition for choosing to accept aid—that states do not affirmatively choose to decrease net tax revenues. Governors still have policy control over the tax side of their balance sheet: Any number of tax cuts could be passed so long as they were balanced out by increased revenue elsewhere.

Finally, the GOP argues that the statute is unduly coercive, claiming states have no choice but to accept these funds during a pandemic. While the Supreme Court has not identified a clear, bright-line rule to determine what constitutes undue coercion, the Court did strike down mandatory Medicaid expansion in NFIB v. Sebelius. But this provision should be distinguishable from Medicaid expansion, given that the ARP funding is a temporary measure and affects policy for just three years. And while failing to adhere to the Medicaid conditionality would have resulted in a total loss of federal Medicaid funding for the state, the ARP conditionality does not threaten existing funding that states rely on. Essentially, the condition provides important protection to the federal government—that a contractual agreement to share burdens arising from revenue loss remain shared.

Although the GOP arguments don’t hold up to serious scrutiny, a judiciary inclined to diminish the federal government’s power to enact progressive change may still support them. If this lawsuit were vigorously litigated by both parties, a 6–3 conservative majority on the Supreme Court could build on NFIB and further limit the ability of the federal government to enact policy change through the spending power.

Therefore, in responding to this suit, Yellen faces a precarious choice. To fight the claim that the condition is unambiguous, the government would likely have to argue that the law unambiguously states that any tax policy change that creates a net revenue loss would need to be offset with a revenue increase. But such a broad provision could be seen as heavy-handed and push a conservative judiciary to find a violation of the anti-commandeering doctrine.

Alternatively, the Treasury Department could provide clarity on the tax provision through rulemaking. Per the Chevron doctrine, which makes commonsense regulation easier, courts would defer to an agency’s clarification of an ambiguous statute. But this could create a doctrinal conflict, as the Supreme Court has not considered whether a statute subject to the Pennhurst clear-notice rule can be clarified with agency regulation through Chevron deference. Until now this conflict between Pennhurst and Chevron has been the subject of scholarly work, and a few lower court cases, but this lawsuit could put the issue before the Supreme Court for the first time. If that happens, the current conservative-dominated Supreme Court, which is hostile to regulation, could respond by narrowing Chevron deference (if only slightly) while simultaneously weakening the federal spending power.

How can Democrats respond? The statute gives Yellen broad authority to issue necessary regulations. She could provide guidance to determine how the contract set forth in the ARP is to be executed, further rooting it in a clear burden-sharing agreement. First, the secretary could specify what particular fiscal effects qualify for this funding, such as revenue shortfalls, infrastructure gaps exposed by the pandemic, or inadequate revenue to restore services and rehire state employees let go earlier in the pandemic. Next, the Secretary could align that guidance with the certification process. Per the statute, states must provide certification that they require “the payment or transfer to carry out the activities specified.” A rigorous certification process would further strengthen the contractual nature of the appropriation. The secretary could add further guidance that the funding must be used to fill the gap between insufficient expected revenues and the stated intended use. These actions could strengthen the legal case that this statute is a contractual agreement. Of course, states are free to cut tax revenues if they so desire, but because this appropriation is a contractual agreement to burden-share, states shouldn’t be allowed to release their share of the burden after getting the money.

It’s possible that this lawsuit goes nowhere and the substantial costs of litigation for both sides deter further action. But regardless of what happens, the GOP will surely launch more legal attacks on the federal spending power. With the GOP shut out of the presidency and both houses of Congress, it will turn to the branch of government where it still exerts firm control: the judiciary. This case symbolizes a core challenge for the Biden administration: designing policy that can withstand a conservative legal onslaught. That battle will require legal argumentation and the use of regulatory power described above.

But perhaps most importantly, it demands a unique level of care and attention during the legislative process. Democrats must ensure they don’t provide easy bait for conservatives to further limit the federal government’s power. Justice John Roberts has already reinvented 10th Amendment federalism jurisprudence to gut not just the Medicaid expansion but also the Voting Rights Act. Justices Neil Gorsuch, Clarence Thomas, and Brett Kavanaugh stand ready to destroy the federal government’s ability to regulate to further progressive goals. At times, this may require sacrificing short-term progressive victories to ensure future ones can endure.

#### However, uniformity wins them, and other federal actors, over.

Mitchel Herian 11. Research Specialist at the University of Nebraska Public Policy Center, M.A. and Ph.D. from the University of Nebraska-Lincoln. *Governing the States and the Nation: The Intergovernmental Policy Influence of the National Governors Association*. Kindle.

The second reason it is advantageous to examine the NGA rather than individual governors is that a number of factors suggest that governors would be more effective in securing state-friendly policies for the states at large if they worked together. For example, governors are responsible for handling many of the federal funds that are granted to the states. Thus, they actively lobby Congress for policies that are favorable to them and their states, and it would make sense for governors to take a collective approach to such lobbying efforts. Obviously, the congressional delegation from Texas is unlikely to be swayed by the preferences of the governor of North Dakota, save for ideological or partisan reasons. In contrast, a united front by all governors—the most powerful policy actors within the states, and the central managers of federal funds flowing to the states—is more likely to gain the attention of all key federal policy actors.

However, the effort necessary to align the governors introduces a classic collective action problem (Olson 1965) that is somewhat distinct from those faced by other interest groups. Clearly, it is difficult to achieve unanimity among all governors on every issue that comes before them. Therefore, the NGA provides a place for governors to aggregate their policy preferences in a singularly stated policy position that, ideally, represents the interests of the governors and the states and provides the solution to the collective action problem that the governors face. Thus, the NGA is even more important to study because it provides the tools that governors use to organize their activities so that they can work together for maximum effectiveness.

### 2ac 4 : 2NC---AT: PDCP

#### No perm do the counterplan---it’s severance, which spikes out of links and kills neg ground, which makes it a voter for fairness and education:

#### A. ‘federal’ is distinct from states

Marriam-Webster ND. <https://www.merriam-webster.com/dictionary/federal>

Legal Definition of federal

1: of or constituting a form of government in which power is distributed between a central authority and a number of constituent territorial units (as states)

a federal government

2: of or relating to the central government of a federation as distinguished from the governments of the constituent territorial units (as states)

especially : of or relating to the laws made and enforced by the federal government

a federal crime

#### B. Resolved requires the plan be certain

Webster’s Revised Dictionary 1996 ((1.) RESOLVED MEANS “HAVING A FIXED PURPOSE; DETERMINED; RESOLUTE”)

#### C. “Should” means “must” and requires immediate legal effect

Summers 94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

4 The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling *in praesenti*.[14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn14) The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.[16](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn16)  [CONTINUES – TO FOOTNOTE] [13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability**.** Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, [802 P.2d 813](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=802&box2=P.2D&box3=813) (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) *In praesenti* means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or *immediately effective*, as opposed to something that*will* or *would* become effective *in the future [in futurol*]. See Van Wyck v. Knevals, [106 U.S. 360](http://www.oscn.net/applications/oscn/deliverdocument.asp?box1=106&box2=U.S.&box3=360), 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

#### Federal reliance on state enforcement creates leverage

Austin Raynor 15. JD, University of Virginia School of Law. “The New State Sovereignty Movement” *Indiana Law Journal*, Vol. 90, Issue 2. <https://www.repository.law.indiana.edu/ilj/vol90/iss2/4/>

Finally, opposition laws are capable of exerting a direct influence on both the federal government’s enforcement priorities and its substantive policies. The statutes with the most significant real-world impact in this respect fall into two categories: those that exempt conduct from state penalties and those that prohibit state officers from assisting in the enforcement of federal law.233 The former may convince the federal government to allocate enforcement resources elsewhere in order to address conduct criminalized under both state and federal regimes, while the latter may induce the federal government to alter its substantive policies in order to coax states into offering enforcement assistance.

The War on Drugs represents the most prominent setting in which state laws have significantly influenced federal enforcement priorities. The federal government lacks the resources to comprehensively enforce its marijuana ban: “[o]nly 1 percent of the roughly 800,000 marijuana cases generated every year are handled by federal authorities.”234 As a result, the federal government must carefully choose where to allocate its enforcement capital. Widespread state legalization235 of medical236 marijuana has apparently convinced the Department of Justice (DOJ) to moderate its prosecution of individuals who use the drug in compliance with state regulations.237 Attorney General Eric Holder announced in 2009 that “it will not be a priority to use federal resources to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana.”238

A contemporaneous memorandum issued to United States Attorneys reaffirms this policy,239 but is careful to note that “clear and unambiguous compliance with state law” does not “create a legal defense to a violation of the Controlled Substances Act.”240 The policy contained in the memorandum is therefore “intended solely as a guide to the exercise of investigative and prosecutorial discretion.”241 Thus, although state medical marijuana statutes are incapable of neutralizing federal penalties, they have achieved limited success by prompting (at least for now) a reallocation of federal enforcement resources.242 The current policy may even survive the transition to a new administration insofar as it creates reliance interests and special interest groups that serve as impediments to change.

Opposition statutes are also capable of influencing the federal government’s substantive agenda. Enactments that prohibit state officers from assisting in the enforcement of federal law are especially likely to have this effect for two reasons. First, state opposition can sensitize federal officials to constitutional concerns they had not previously been inclined to address. This phenomenon may already have materialized in the War on Terror, where local opposition to Patriot Act enforcement has repeatedly forced federal officials to publicly confront civil liberties issues that they would have preferred to ignore.243

Second, the federal government may be inclined to modify its position in order to induce state enforcement assistance. The War on Terror again serves as a paradigmatic example. Federal authorities lack the manpower to ensure national security on their own.244 And, under the anticommandeering rule, the federal government cannot mandate that state officers provide aid.245 It therefore has a powerful incentive to moderate its substantive position in order to persuade reluctant or dissenting states to cooperate.246 In short, federal dependence on state assistance may compel national lawmakers to grant concessions to state concerns in order to achieve federal policy objectives.247 Although the secrecy surrounding Patriot Act implementation makes a comprehensive evaluation difficult, certain indicators suggest that an effect of this nature may already have occurred.248

#### A. The federal government cannot afford to say no—they are forced to concede.

Heather K. Gerken and Joshua Revesz 17. Professor of Law at Yale Law School and a third-year student at Yale Law School. “Progressive Federalism: A User’s Guide” Democracy Journal, Spring No. 44. <https://democracyjournal.org/magazine/44/progressive-federalism-a-users-guide/>

Needless to say, though, the devil is in the details. So below we offer a “user’s guide” that identifies four ways that progressive leaders—from Jerry Brown and Bill de Blasio to small-city mayors—can push back against federal policy and force compromise. And, in doing so, we hope to persuade even the most fervent nationalist to become a fan of federalism. While we fashion this as a progressive user’s guide, it could, in theory, work just as well for conservatives should they lose the presidency in 2020. That’s precisely the point.

Types of Resistance

We often forget that the federal government’s administrative capacity is modest, relatively speaking. Excluding the military, it employs just short of three million personnel. Its 2015 budget (excluding defense, Social Security, and mandatory spending obligations) was less than $600 billion. Together, state and local governments dwarf these figures, with more than 14 million workers and a combined budget of more than $2.5 trillion.

Because of this, Washington can’t go it alone. When Congress makes a law, it often lacks the resources to enforce it. Instead, it relies on states and localities to carry out its policies. Without those local actors, the feds cannot enforce immigration law, implement environmental policy, build infrastructure, or prosecute drug offenses. Changing policies in these areas—and many more—is possible only if cities and states lend a hand. This arrangement creates opportunities for federal-state cooperation. But it also allows for “uncooperative federalism”: State and local officials can use their leverage over the feds to shape national policy.

This means that states can shape policy simply by refusing to partner with the federal government. This form of resistance involves more than mere obstruction. It allows progressive states to help set the federal agenda by forcing debates that conservatives would rather avoid and by creating incentives for compromise. When states opt out of a federal program, it costs the federal government resources and political capital. That’s why President Trump has a lot more incentive to compromise with Democrats in Sacramento than with those on the Hill.

Examples of uncooperative federalism abound. For example, red states and blue states alike objected to some of the PATRIOT Act’s expansive surveillance and detention rules as an attack on civil liberties. Rather than just complaining, they instructed their officials not to collect or share certain information with the feds unless the actions accorded with the states’ constitutions.

Or consider marijuana. Federal dependence on the states is so pronounced in criminal law that Vanderbilt law professor Robert Mikos has argued that states can “nullify” federal marijuana law by withdrawing enforcement resources. Colorado and Washington have already done so. These changes may be entrenched enough that even Jeff Sessions’s marijuana-hostile Department of Justice won’t be able to change the equation.

On other occasions, states have avoided a head-on confrontation with the feds and instead waged wars of attrition. For example, consider the response to the No Child Left Behind Act, perhaps the centerpiece of George W. Bush’s domestic policy. States accepted the federal grant money, but slow-walked reforms and often fudged testing standards. Their recalcitrance won out: The Bush Administration gave up and granted states so many waivers that they effectively gutted the federal program. The war has continued with the Obama Administration, which has struggled to rope states and localities into cooperating with its education agenda.

#### Recent cyber insecurity will escalate to great power war

Katrina **Manson, 7-27**-21. Katrina Manson covers US foreign policy, defence and intelligence. Flying with the Pentagon, she has visited Afghanistan, the Munich Security Conference, San Diego’s Navy Seals base and glimpsed North Korea. She takes particular interest in US-China competition. She was previously the FT’s East Africa correspondent in Kenya for five years, and before that based in DR Congo, Sierra Leone and Burkina Faso. She won the 2016 FT award for outstanding reporting in international affairs by a journalist under 40. “Biden warns cyber attacks could lead to a ‘real shooting war.’” Financial Times. July 27, 2021. <https://www.ft.com/content/5bbaa89b-2e85-4c5f-b918-566e6712d273>

Joe Biden has warned that cyber attacks could escalate into a full-blown war as tensions with Russia and China mounted over a series of hacking incidents targeting US government agencies, companies and infrastructure. Biden said on Tuesday that cyber threats including ransomware attacks “increasingly are able to cause damage and disruption in the real world”. “If we end up in a war, a real shooting war with a major power, it’s going to be as a consequence of a cyber breach,” the president said in a speech at the Office for the Director of National Intelligence, which oversees 18 US intelligence agencies. A number of recent hacks revealed the extent of US cyber vulnerability, ranging from extensive espionage breaches that have struck at the heart of government to ransomware attacks that have brought operations at an important oil pipeline and meat packing plants to a halt. The Biden administration has accused the governments of Russia and China, or hackers based inside the two countries, of some of the attacks. US officials have warned that the administration would respond with a “mix of tools seen and unseen” actions, but cyber breaches have continued. Although he did not say who such a war might be fought against, Biden immediately name-checked Russia’s president Vladimir Putin, alleging that Russia was spreading misinformation ahead of the 2022 US midterm elections. “It’s a pure violation of our sovereignty,” he said. “Mr Putin . . . has a real problem. He is sitting on top of an economy that has nuclear weapons and oil wells and nothing else. Nothing else,” Biden said. “He knows he’s in real trouble, which makes him even more dangerous.” At a June summit in Geneva, Biden personally warned Putin that the US would “respond with cyber” if the Russian state or Russian-based hackers targeted critical US infrastructure. The prohibited sectors spanned energy, healthcare, IT and commercial facilities, all of which have already allegedly been targeted by Russian hackers since the 2020 US elections. Others included transport, financial services and chemicals. Biden also said Chinese president Xi Jinping was “deadly earnest” about China becoming the most powerful military force in the world by the 2040s, as well as the largest and most prominent economy. “It’s real . . . This boy’s got a plan,” Biden said, adding: “We better figure out how we’re going to keep pace without exacerbating [the situation].” Biden stressed that cyber attacks were just one aspect of the growing threats facing the US, saying that there would be more developments in the next 10 years than in the past 50, placing a tremendous burden on the intelligence community. “It’s really going to get tougher,” he said.

### Cyberattacks---AT: ID

#### Attacks on the grid cascade and undermine essential systems.

Garrett M. Graff 20. Journalist, director of cyber initiatives at The Aspen Institute. "Experts Knew a Pandemic Was Coming. Here’s What They’re Worried About Next." Politico. 5-7-2020. https://www.politico.com/news/magazine/2020/05/07/experts-knew-pandemic-was-coming-what-they-fear-next-238686

Russia in particular has been building and testing a playbook to upend modern life: It has knocked out the Ukrainian power grid, frozen the operations of multinational companies and cost them hundreds of millions in damages, and disrupted and pillaged multilateral institutions. North Korea also unleashed the WannaCry ransomware that caused global system outages—including knocking large parts of the UK’s National Health System offline—and cost billions.

The risk is only getting worse: The more wired everyday society becomes, the more reliant it is on interlocking technology systems that were never designed with security in mind.

Take satellites. The Trump administration’s much-mocked embrace of the Space Force has obscured the real calls of alarm from national security officials about the rising vulnerability of the satellite systems overhead, everything from the GPS network—which underpins gas pumps and Uber, ATMs and stock trades—to weather satellites, surveillance satellites, early warning satellites that monitor for ballistic missile launches and communication satellites. In recent years, China and Russia have been developing new anti-satellite weapons as well as competing navigation satellite networks. (The American GPS system has traditionally been used universally around the world.) “The fact that Russia and China are a minute away from their own GPS systems, now all of a sudden that protection by shared need is obliterated,” Gordon says. “The degradation of that service to the point where it’s no longer reliable—put aside the societal and economic impacts, your military deterrence is gone.”

You don’t need a bad actor to bring devastating, paralyzing results.

The increasing complexity and interconnectedness of the various networks that power everyday life increases the chances of what Jason Matheny calls a “digital flubber” incident—the possibility of an autonomous system working as intended, yet spiraling and cascading with unintended and unforeseen consequences. Think the 2010 “flash crash” on Wall Street led by algorithmic trading systems that over-responded to a falling stock market and triggered a massive, momentary sell-off—or the way that quirks in automatic listings on Amazon and bot-driven price wars can result in a used science book being offered for sale for $23,698,655.93 (plus $3.99 shipping). Similarly, the 2003 power blackout that blanketed the northeast and Canada, affecting more than 50 million people, was triggered by a system at Ohio’s FirstEnergy mis-responding to a single power line brushing against overgrown trees.

These problems are often correctable in hindsight—the Wall Street Journal noted this week that the more resilient systems and safeguards put into place after the 2010 flash crash have largely worked during the stock market’s roller-coaster ups and downs amid the Covid-19 crisis. But the unforeseen impacts of similar events will almost certainly increase as the universe of so-called Internet of Things (IoT) expands and more autonomous systems are adopted in our daily lives.

There’s also the threat of an electromagnetic pulse (EMP) frying the guts of the globe’s circuitry. While most serious thinkers downplay the idea that a rogue nation or terrorist group could launch a devastating EMP—a threat that’s a favorite bogeyman of Newt Gingrich and others—scientists do fear unexpected solar storms could knock out electrical systems on earth. As a 2017 commission concluded, “NASA estimates the likelihood of such an event to be 10 [percent] to 12 percent per decade, making it very likely that Earth will be affected by a solar superstorm within a matter of decades. Such an event could black out electric grids and other life-sustaining critical infrastructures, putting at risk the lives of many millions.”

The worst-case scenario—whether brought on by a manmade cyberattack or a so-called Geomagentic Disturbance (GMD) from space—is the physical destruction of critical infrastructure, particularly power generation equipment; one government test at Idaho National Lab in 2007, nicknamed Aurora, horrified policymakers as it demonstrated how an attacker could lead a commercial generator to self-destruct. Just as the nation (and the world) has struggled to boost manufacturing capacity for health care protective equipment, those large-scale generators that undergird the power grid require months to manufacture, and any incident that knocked out dozens or scores of generators might leave portions of the country in the black for months or longer. As a former senior government official explains, “A lot of our power grid problems have the ventilator problem—our transformers and big physical power infrastructure, we simply can't replace them. The lead time to build these things is not in months. If you don't have them, you don't have them.”

### 2NC---Cyber---Turn

#### Coordination on cyber-security issues leads to increased antitrust liability- turns the aff

Andrew **Nolan, 15.** Andrew Nolan is a legislative attorney who writes for and is published by the Congressional Research Service. “Cybersecurity and Information Sharing: Legal Challenges and Solutions.” Congressional Research Service. March 16, 2015. <https://fas.org/sgp/crs/intel/R43941.pdf>

Cybersecurity and Information Sharing: Legal Challenges and Solutions anticompetitive that each is illegal per se without inquiry into the harm it has actually caused.”208 Other agreements, such as mergers or joint ventures that may facilitate more effective competition, are adjudged under the “rule of reason,” in which a court will weigh the legitimate justifications for a restraint against any anticompetitive effects.209 In other words, determining whether a given agreement between two private businesses violates the Sherman Act largely depends upon the specifics of that particular agreement.210 Businesses that are alleged to violate federal antitrust laws face potential criminal prosecutions,211 as well as civil actions that could be initiated by the federal government,212 state governments,213 or even aggrieved private litigants.214 Civil litigation risks treble damages—damages three times the amount of actual damage—being paid to successful plaintiffs.215 While fears abound that any coordination on cyber-defense could give rise to antitrust liability,216 the likelihood of such liability will likely depend on the nature and purpose of the underlying agreement to share cyber-threat information.217 Exchanges of information among competitors do not constitute per se violations of the Sherman Act, as the Supreme Court has found that such practices can “increase economic efficiency and render markets more ... competitive.”218 Moreover, the Court has been reluctant “to condemn rules adopted by professional associations as unreasonable per se.... ”219 As a consequence, perhaps a few agreements to coordinate on cyber- defense—such as an agreement amongst competitors to “implement a uniform set of cyber- 208 Id.; see also Nat’l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Okla., 468 U.S. 85, 103-04 (1984) (“Per se rules are invoked when surrounding circumstances make the likelihood of anticompetitive conduct so great as to render unjustified further examination of the challenged conduct.”); United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 223 (1940) (“[C]ombination[s] formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal per se.”).