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### Religious Freedom---1AC

#### Contention one is Religious Freedom.

#### The plan is key to religious freedom---allows Sherman to cover market-based discrimination.

Barak D. Richman 13. Professor of Law and Business Administration, Duke University. “Saving the First Amendment from Itself: Relief from the Sherman Act Against the Rabbinic Cartels.” Pepperdine Law Review. Vol. 39: 1347, 2013. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3009&context=faculty\_scholarship

Despite Goldfarb’s grave warning against permitting professionals to engage in anticompetitive collusion, there remain professionals who—in violation of the Sherman Act—painstakingly construct industry rules to secure for themselves a captive market that is subject to their exploitation and control. And despite Goldfarb’s sweeping charge to enforce the Sherman Act widely, those professionals continue to claim to be exempted from antitrust scrutiny. But instead of invoking a so-called “learned professionals exemption” to the Sherman Act, they instead hide behind the First Amendment’s Religion Clauses. Worse, these professionals employ the First Amendment as a license to suppress the very religious expression the Religion Clauses are designed to protect.

The professionals at issue are America’s rabbis, who currently organize cartels that control their placement across the nation. When a synagogue needs to hire a pulpit rabbi, it is confronted with tightly controlled professional organizations with strict placement rules. Those rules require both rabbis seeking employment and congregations hoping to hire a pulpit rabbi to exclusively use designated placement offices run by the rabbinical associations. These rules—which are enforced through punishments to both rabbis and congregations that act independently—prohibit rabbis and congregations from communicating directly and seeking preferred matches through multiple media. The rules thus severely limit the supply of rabbis available to hiring congregations and prevent both rabbis and congregations from enjoying the benefits of an open labor market. They also meaningfully interfere with a congregation’s ability to deliberate fully over whom to interview, pursue, and select to be its religious leader of choice. In short, these tight restraints on employment convert the rabbinic organizations into professional cartels that simultaneously restrain the operation of a potentially competitive labor market and prevent congregations from freely expressing their religious practices and beliefs.

Such economic coercion would normally be a textbook Sherman Act violation. Moreover, subjugation of a religious community from pursuing its preferred form of religious practice would be thought to encroach upon the essence of what the First Amendment is supposed to protect. Yet the First Amendment can only offer congregations direct protection from state action. This exposes one of the great limitations of the First Amendment: although the Free Exercise Clause can prohibit government intrusion on religious expression, it does nothing to protect communities from similar intrusion or regulation on the part of private parties, including coreligionists. The Sherman Act, however, does endow parties injured by anticompetitive conduct with private causes of action and therefore can protect these communities from the religious and economic bullying by the rabbinic organizations.

Yet, in an illustration of the First Amendment’s double-edges, the Religion Clauses are not only unable to protect congregations from the economic coercion of rabbinic bodies, but they have been invoked to sanitize that very subjugation. Because the Religion Clauses protect religious groups against certain enforcement actions by the state, any private legal action against these rabbinic organizations—even if such an action was intended to promote religious expression—also must conform to the First Amendment. Therefore, if the Sherman Act were to protect community synagogues and compensate for the shortcomings of the Religion Clauses, it must also jump through the hoops set by those same clauses.

This essay explores this interesting—and important—intersection between the Sherman Act and the First Amendment’s religious protections. It focuses on the labor market for pulpit rabbis, in which national rabbinic associations impose rules upon both their members and hiring congregations that deny basic economic freedoms. These freedoms are normally protected by the Sherman Act and, I argue, should be so protected, not only to secure for congregations the benefits of market choice, fair competition, and protection against economic exploitation, but also to secure their religious liberties. After detailing the rabbinic labor market and placement policies, the essay offers a constitutional analysis of alleged First Amendment protections, and a normative analysis of how proper application of the Sherman Act would liberate both the American rabbinate and American Judaism. The central argument is quite simple: both the Sherman Act and the Religion Clauses are intended to protect the populous from entrenched power, one against economic concentration and the other against the concentration of religious authority. When entrenched economic power is religious in nature, the Sherman Act and First Amendment should act in concert, rather than at odds with one another.

#### Ministry cartels are pervasive and self-perpetuating---only antitrust can decentralize religion and guarantee constitutional expression.

Barak D. Richman 19. Edgar P. & Elizabeth C. Bartlett Professor of Law and Business Administration, Duke University. "Religious Freedom through Market Freedom: The Sherman Act and the Marketplace for Religion." William & Mary Law Review 60, No. 4. 1523-1544.

B. The Case of a Religious Cartel

In the realm of the practice of religion, a private body is no less capable of imposing restraints on free expression than the government. This Part articulates how a cartel of ministers, such as the Rabbinical Assembly, exercises control over the freedom of religion in a number of ways."

In the case of the Rabbinical Assembly (RA), the organization that comprises the Conservative movement's 1700 rabbis,8 6 control over expression is both pervasive and self-perpetuating. 7 Membership in the RA is "voluntary, but ... essential," to being employed by a congregation that wants to affiliate itself with a particular movement." The RA administers placement commissions that are restrictive in their rules; restrictions that profoundly impact a congregation's right to practice as it chooses.89

The RA's placement manual for congregations, Aliyah, highlights these restrictions in bullet form:

* A congregation may search for a rabbi only through the offices of the [Placement Commission].
* Eligible candidates are those whose resumes are forwarded by the [Placement Commission].
* A congregation served by the [Placement Commission] shall not advertise in the media for a rabbi. If a congregation advertises, it will be removed from the Placement List.
* If a congregation interviews a non-RA rabbi without the specific written approval of the [Placement Commission], the congregation may be removed from the Placement List.
* If a congregation engages a non-RA rabbi without the specific written approval of the [Placement Commission], the congregation will lose placement privileges.
* Similar rules apply to rabbinic candidates as well.'

The tension with the principles of the First Amendment's Religion Clauses is obvious. For instance, despite Chief Justice Roberts's visceral language about the importance of a community choosing its own minister, the RA has laden that process with restrictions designed precisely to centralize control over choice." That upward channeling of power from the practicing congregation to the cartel is anathema to the tradition of free expression embodied by the Religion Clauses.9 2

As dangerous as a self-regulated cartel of professionals is to competition in any field, religious organizations are under unique threat from that anticompetitive conduct. Religious freedom, manifested by the expression of religious values, is in peril if we fail to enforce the Sherman Act to preserve fair markets for religion. Because of the nature of religious leadership and the sincerity of congregants in preserving their traditions, there is a natural danger for market consolidation and exclusionary conduct." That conduct also introduces dynamic costs. For example, a congregation that is not responsive to its constituents, that cannot be responsive because of restraints placed on it by a cartel, is destined to fail in the long run.9 4 In the short run, the cartel is undeniably infringing on the congregation's ability to exercise free expression." This is nothing short of oppression in contradiction to the spirit of the First Amendment of the Constitution.9 6

Moreover, it is not enough to say, as the RA does, that these cartel restraints are benign or beneficial." As a matter of law, that is irrelevant in the context of a group boycott.9 8 As a matter of fact, disallowing particular market choices is by definition a limit on expression." A congregation's autonomy is, as we have seen, central to the vibrancy of religious life in this country.oo A free market for religious belief, secured by the Sherman Act, preserves religious liberty, pursuant to the rights guaranteed by the First Amendment. Not only then does the First Amendment not preclude enforcement of the Sherman Act, it encourages it.

There is a role for ministerial organizations such as the RA. Developing a certification system can help the traditions to maintain a lineage and authenticity, without imposing a restriction on expression.'o Nonetheless, it is very different to say that a congregation should hire a certain minister because she has been trained well by us and saying that the congregation must hire a minister that has been trained by us, as the RA does. 102 In the former case, the congregation still retains its autonomy. That is, the community retains its ability to express its religious values and to find a person to lead it-a fundamental constitutional right of the congregation."o'

#### The congregation-clergy relationship is key---immunizing the clergy’s relationship with itself collapses religious self-determination.

Barak D. Richman 13. Professor of Law and Business Administration, Duke University. “Saving the First Amendment from Itself: Relief from the Sherman Act Against the Rabbinic Cartels.” Pepperdine Law Review. Vol. 39: 1347, 2013. https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=3009&context=faculty\_scholarship

A deeper understanding of the ministerial exception reveals that its essence vindicates a congregational polity’s use of the Sherman Act against powerful clergy. The Supreme Court emphasized that the constitutional motivation behind the exception is “the interest of religious groups in choosing who will preach their beliefs, teach their faith, and carry out their mission,”92 and the exception is designed to prevent “government interference with an internal church decision that affects the faith and mission of the church itself.”93 Because in congregational polities the internal decision over which minister, pastor, or rabbi to hire lies in the congregation itself, immunizing a professional organization of clergy from Sherman Act liability actually is contrary to the motivations underlying the ministerial exception. This spirit underlying the ministerial exception was born long before the Supreme Court recognized it earlier this year. In McClure v. Salvation Army, a Fifth Circuit opinion that first articulated a constitutional bar on employment discrimination claims against religious employers by ministerial employees, the court passionately observed that “[t]he relationship between an organized church and its ministers is its lifeblood” and “[t]he minister is the chief instrument by which the church seeks to fulfill its purpose. Matters touching this relationship must necessarily be recognized as of prime ecclesiastical concern.”94

Any claim by the Rabbinical Assembly—or their reform or reconstructionist counterparts—of being protected by the ministerial exception, therefore, is misguided on both legal and theological grounds. True, courts are prohibited from regulating a hierarchical religious order, like the Catholic Church in Gonzalez and the Serbian and Russian Orthodox Churches in Milivojevich and Kedroff, and are appropriately prohibited from intervening in matters concerning the appointment and retention of clergy by religious employers. But the ministerial exception is targeted to protect the employment relationship between religious organizations and its ministerial employees from government regulation. In congregational orders, where authority is invested in the congregation, the protected relationship is between the congregation and its clergy, not the clergy’s professional relationship with itself. Moreover, claiming that the exception immunizes all conduct related to seeking and obtaining clergy undermines the ministerial exception itself. The exception is founded on a constitutional commitment to safeguard the religious freedom of individual communities— the very autonomy and self-determination that many have argued has fueled the blossoming of diverse Jewish experiences for two thousand years. The ministerial exception not only does not bar a Sherman Act suit, but its motivations might even encourage one.

#### Religious self-determination is modeled---leadership now is key.

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And no person can ever be true to any faith that believes in the dignity of all human life if they do not act out of concern for those whose dignity is assailed because of their faith. Sadly, our religious freedoms are being eroded here at home.

Our preservation of religious freedom has crucial implications for our foreign policy, because whether we are committed to our founding principles at home affects our ability to engage with and lead our allies and partners around the world — our ability to be that “shining city on a hill.”

As Secretary, I formed the Commission on Unalienable Rights to examine just this connection. I asked a diverse set of scholars who agreed to serve on the Commission, led by Mary Ann Glendon, to furnish advice on human rights policy grounded in both our nation’s founding principles as well as the 1948 Universal Declaration of Human Rights. The Commission’s final report reminded Americans of what is best in our country’s traditions, while also inviting other peoples and nations to draw on their own heritages in order to renew a shared dedication to human rights. Just months after the Commission’s report was published, I traveled to Indonesia and met with Nahdlatul Ulama, the largest independent Muslim organization in the world, to discuss with them the common ground of the report’s findings.

Unfortunately, today there are numerous authoritarian governments that violate their people’s rights to religious liberty. In China, under the rule of the Chinese Communist Party, we see a modern-day example of a government that cares little for the inherent freedoms of its people and dismisses their unique dignity. Thin claims of religious extremism have been invoked by the CCP to justify the oppression of religious and ethnic minorities among their own people. The most egregious example is the ongoing, shocking, and horrifying treatment of the Uighur population in Xinjiang that has included, among other atrocities, slave labor, and forced sterilization.

During my tenure as Secretary of State, the State Department designated CCP activity in Xinjiang as genocide. It is a good thing that the current administration has confirmed this important designation. What we see in Xinjiang today echoes the tyranny and persecution the CCP inflicts on the province of Tibet and what we also have seen from them in Hong Kong.

Christians throughout China continue to suffer under the CCP’s rule as well. Congregations that are not sanctioned and monitored by the CCP are outlawed and any scripture not approved by the party is deemed illegal. China’s example should clarify for all that a society that lacks regard for religious liberty will soon see its political liberties disappear.

To address the assault on religious freedom both in China and around the world, I convened the Ministerial to Advance Religious Freedom for three straight years. These were the largest human rights events ever held at the State Department. The Ministerial brought together leaders from every corner of the globe to discuss the issues threatening religious freedom and to find solutions together. It proved that religious liberty matters to so many around the world and that it is an issue where America can and must lead.

President Reagan once said, “If we lose freedom here, there is no place to escape. This is the last stand on earth.” I saw that as your Secretary of State around the globe. I am confident that the American star will shine across the heavens so long as we keep a proper understanding of our God-given rights at the center of our unending quest to secure freedom for our own people and all of mankind.

#### Religious freedom solves global war.

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Introduction

Religious freedom is an authentic weapon of peace, with an historical and prophetic mission (Pope Benedict XVI)1

Religious freedom2 has long been recognised as a central, universal and even fundamental human right that has been enshrined in various international laws, charters, treaties and national constitutions.3 These include the 1948 United Nations Declaration on Human Rights, the 1966 International Covenant on Civil and Political Rights, and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Importantly, these international standards were developed by a broad coalition representing many religions and countries around the world.

Though religious freedom is enshrined in various international human rights covenants and most national constitutions, successive reports by the Pew Research Center have found that government restrictions on religion and social hostilities involving religion have been steadily increasing since 2007. Today, restrictions on religion are ‘high’ or ‘very high’ in 43% of countries, and these restrictions affect 76% of the world’s population.4 Indeed, the default position of many policymakers around the world has not been to embrace religious liberty in the wake of religion’s global resurgence, but rather to curb its influence or repress it outright. This crisis in global religious freedom will only become more dire as the world becomes more religious and individual countries become more religiously heterogeneous as global mobility increases.5

Some might see religious liberty as a normatively good idea – a humanitarian matter commonly involving the right not to be persecuted because of one’s faith or the right to practice one’s faith privately – but not centrally related to issues of security. This article finds that this conventional wisdom is incorrect; religious liberty is connected to political stability in deep and profound ways. Where religious liberty is threatened, the chance of a state experiencing sectarian violence increases as does the likelihood that violence in the form of terrorism will spread to neighbouring countries or that these countries will become involved in interstate conflict.

This article progresses in four parts. The first discusses the distinctiveness and importance of religious freedom. It argues that religious freedom is not merely a subset of broader rights and liberties but rather is an independent right that forms the basis of other rights in society and, for this reason, merits special attention. The second part discusses the relationship between religious freedom and violence. It identifies different pathways by which religious restrictions lead to both domestic and international violence and marshals data from various conflict databases showing that religiously restrictive countries do, in fact, suffer disproportionately in all four areas of violence. Importantly, it also shows that it is religious restrictions specifically and not a lack of democracy more generally that lead to these negative outcomes. The third section outlines mechanisms by which religious freedom encourages peace and stability. The conclusion discusses the implications of the article in the context of policymaking.

The distinctiveness and importance of religious freedom

While much scholarship has examined the relationship of democracy to conflict, very little has looked at the issue of religious liberty specifically. The social sciences have been slow to focus on religious variables because it has been guided, in large part, by the ‘secularisation thesis’ – the belief (even the hope on the part of some) that religion would eventually fade into irrelevance. For this reason, little attention has been paid to the effect of religious factors, including religious liberty, on conflict and political stability.

Some might reason that any argument about the causal importance of religious freedom is really one about human rights more generally, since religious freedom is simply a subset of a broader culture of rights. It is true that religious freedom often comes as part of a ‘bundled commodity’ with other basic freedoms. A good case can be made, however, that these individuals have the causal linkage reversed: religious liberty is not just a derivative subset of broader political and civil rights, but is rather an independent right, which forms the basis for all other rights in society – the so-called ‘first freedom’, or, as political philosopher Timothy Samuel Shah puts it, ‘the thin end of liberty’s wedge’. 6 The idea is that religious freedom is necessary for individual flourishing and the overall success of societies, particularly highly religious ones. Leaders who grant religious freedom recognise the right of their people to seek ultimate truth or revelation in places outside of their authority – reality which transcends the powers of the state. In short, because religious freedom at its core emphasises freedom from the lordship of the state, all other freedoms flow from this central realisation.

Research has shown that religious freedom is not only important in its own right but also correlates with a host of other goods like civil and political liberties, freedom of the press, democratic longevity, better health care and economic prosperity.7 While correlation obviously does not prove causation, there are notable reasons to think that religious freedom directly contributes to these positive upshots. Consider the issue of economic prosperity. A recent study titled ‘Is Religious Freedom Good for Business?: A Conceptual and Empirical Analysis’ finds that religious freedom is one of only three factors associated with economic growth. The reason is straightforward: religious restrictions and social hostilities involving religion serve to scare away foreign and domestic investment, compromise development and unsettle different sectors of the economy. Conversely, religious freedom tends to promote stability, which creates more opportunities for investment and predictable business procedures.8 These findings corroborate an earlier analysis, which found that religious freedom contributed to economic prosperity even more than political and economic freedoms.9

#### Our internal link is reverse causal---religious soft power causes reforms AND withdrawal lets adversaries win.

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Most examples of religious soft power involve the Middle East or Muslim World. But religious soft power arises around the world, including two great powers whose geopolitical struggles define contemporary international relations: the United States of America and Russia.

Both have drawn on faith as part of their geopolitical struggles. During the Cold War, America deployed its Christian identity to undermine the appeal of Soviet communism. After the Cold War, it promoted moderate religious voices as a counter to extremism and created official bodies to address religious issues. Religion has also been a significant element in post-Cold War Russian politics. Under Vladimir Putin, Russia justified its foreign policy through Christian faith and presented the country as a champion of conservative Christian values.

While it is difficult to untangle the influence of military, economic, and cultural factors, the religious soft power of the United States and Russia does matter. Several states with questionable rights records—such as the United Arab Emirates and Egypt—have emphasized their devotion to religious tolerance and the defense of persecuted Christians in response to U.S. pressure. And Russian has used its ties to the Orthodox Church to justify aggressive policies, while its religious rhetoric has won it the support of far-right nationalists and conservative Christians.

Religious Soft Power in U.S. Foreign Policy

Religion has been part of America’s soft power since the Cold War. America appealed to the Christian identity of its allies to combat the officially atheist Soviet Union’s appeal. President Dwight D. Eisenhower turned to famous evangelical preacher Billy Graham as “America’s pastor,” a role which included a series of revivals in West Germany that mixed piety with anti-Communist messages. America also attempted to promote the Saudi monarchy as a kind of “Islamic papacy,” hoping Muslims would flock to the U.S.-backed Saudis instead of Soviet-aligned regimes.

Religious soft power continued to play a role in U.S. foreign policy as the United States pushed “moderate Islam” as a counter to Al-Qaeda after 9/11. The United States turned to countries like Jordan as a model for “moderate Islam” and emphasized their common enemy in Al-Qaeda. In a meeting with Jordan’s King Abdullah, President George W. Bush argued, “our war is against evil, not against Islam,” and noted the “thousands of Muslims who proudly call themselves Americans.”

Religion also mattered in America’s foreign policy outside of security. Beginning in the late 1990s, the United States officially advocated for international religious freedom (IRF) around the world. During the Obama administration, State Department efforts expanded to include broader religious engagement through the creation of a new Office of Religion and Global Affairs (RGA). While the IRF office emphasizes “naming and shaming” to pressure states into changing their policies, it has also tried to demonstrate the attractiveness of religious tolerance through outreach efforts. The RGA office, in turn, advised the secretary of state on religious issues, worked with religious communities across a broad array of diplomatic functions, and facilitated other State Department offices’ efforts to incorporate religion positively into their work. For example, Shaun Casey, the special representative for religion and global affairs, argued his State Department office hoped to “engage the religious communities” who cut across multiple issues in order to “make progress on human rights, poverty,” and “conflict.”

These religious appeals in U.S. foreign policy served as a form of religious soft power for the United States. The United States hoped its Cold War-era deployment of religion would increase its attractiveness to those wary of the atheist Soviet Union. Its post-Cold War religious appeals had a similar function, highlighting America’s common ground with Muslims in the struggle against Al-Qaeda and promoting America as a partner for people of faith around the world.

Religious Soft Power in Russian Foreign Policy

Religion has become an important element of Russian foreign policy. While religion played little role in the Soviet era, this changed after the Cold War ended. Boris Yeltsin, Russia’s first post-Soviet president, re-joined the Russian Orthodox Church and called on Russians to “practice patience and humility and strive for spiritual purification.” Vladimir Putin then intensified the ties between the Russian state and the church. Putin has “co-opted and subsumed” the Russian Orthodox Church, granting it funding in return for its support. Examples include the Defense Ministry building an Orthodox cathedral and the patriarch of the church calling Putin’s reign a “miracle from God.”

Putin has relied on the Russian Orthodox Church to justify his aggressive foreign policies. Putin defended intervening in the Syrian civil war by pointing to the presence of Syrian Christians and claiming Russia would restore Christian communities affected by the fighting. Putin relied on the Russian Orthodox Church’s authority over the Ukraine Orthodox Church as a means of influencing that country’s politics, which is why the latter's split from the Russian Church was so significant. Putin has also tried to "cast himself as the protector of the faith" to gain support among Orthodox Christians, an effort the Russian Orthodox Church has echoed.

Additionally, Putin has framed Russia as the defender of conservative values. Putin has promoted Russia as a “moral counterweight to the United States” and a “bastion of traditional values.” He discussed the annexation of Crimea as a holy mission, arguing the peninsula has an “undeniable civilizational and even sacral value” for the country. Putin has also pushed conservative social values inside Russia, such as crackdowns on LGBTQ Russians and abortion restrictions.

These religious appeals function as a form of soft power in Russia’s foreign policy. Russia has made use of its hard power in international relations, bullying and threatening its neighbors and interfering in U.S. politics. Framing these policies as part of a religious mission is an attempt to grant them a legitimacy that may attract international support for Russia’s international ambitions, while pushing conservative values in domestic politics may increase admiration for Russia among conservatives around the world.

Just Cheap Talk? How Religious Soft Power Matters

Few would deny that America and Russia occasionally appeal to religion. The more important question, however, is whether this is an important element of geopolitics, or whether it is just “cheap talk.”

It is true that the religious elements of U.S. soft power have never been an important part of its foreign policy. Yet, despite being frequently downplayed, the religious aspects of U.S. foreign policy have persisted and even expanded. This suggests they are far from neglected in U.S. foreign policy. Similarly, while Putin has attempted to present himself as a duly pious Christian, some have argued that Putin's alliance with the Russian Orthodox Church is often based on convenience. Even if Putin’s religious appeals are only cynical ploys, however, they do play a persistent role in Russia’s foreign policy.

Additionally, there are signs these religious appeals affect other states’ behavior. There are several examples of the impacts of America's religious soft power. Jordan has presented itself as a champion of moderate Islam since 9/11, some of which is in response to U.S. priorities. Additionally, the UAE launched a religious tolerance campaign, in line with U.S. international religious freedom initiatives. Egypt’s military regime has similarly emphasized its dedication to protecting the persecuted Coptic Christian minority, also in accord with U.S. urging. Outside the Middle East, Vietnam engaged in a series of negotiations with America over its religious freedom record, resulting in it being removed from the “Countries of Particular Concern” list of particularly severe abusers of religious freedom. Each of these examples includes military or economic motivations for the country’s shifting religious policies. Yet, even if they only felt the need to adopt U.S. religious priorities in order to maintain good ties with America, this still indicates U.S. religious appeals were having some impact on other states’ behavior.

Similarly, whether or not Putin is sincere, his religious appeals have increased Russian influence. Putin has reached out to the Greek Orthodox Church, which corresponded with public approval for his rule in Greece. While it is hard to point solely to his religious appeals, they have resonated with Orthodox religious figures in Greece—one called him the "model of an Orthodox leader"—and this, in turn, likely influenced broader public opinion. Putin's religious appeals have also resonated beyond the Orthodox Church. Putin is incredibly popular among right-wing parties around Europe, and their political power means Putin faces sympathetic politicians in many of the countries he butts heads with.

Another area where his appeals have worked is among American Christians. Prominent evangelical Franklin Graham expressed support for Putin's anti-LGBTQ laws. Graham also pushed back when the United States criticized Russia’s hosting of the 2014 Olympics, granting Putin important political cover. Likewise, the Christian Post uncritically reported on Putin's "vows to defend Christianity," noting that Putin has "long been a supporter of Christianity and Christian values within Russia." This sympathy for Putin among evangelicals may be especially valuable. Evangelical Christians are an important bloc supporting U.S. President Donald Trump, who is facing charges of colluding with Russia in the 2016 election.

What Does This Mean for Geopolitics?

Thus, religious appeals play an important role in the contemporary foreign policies of both the United States and Russia. Religious soft power is an element of international relations even beyond the Middle East and Muslim world. Those trying to understand these states’ foreign policies should not ignore the significance of religion, just as those studying religion in international relations should not confine themselves to Muslim states.

This can also tell us a few things about the nature of geopolitics itself. As I noted, it is hard to differentiate between the effects of religious soft power and the effects of material factors, like—for example—America’s military and economic might. This only matters, however, if we think of religious soft power and material power as mutually exclusive. Instead, scholars of power politics argue that states have a variety of tools—military, economic, cultural, symbolic—to choose from when engaging in geopolitical competition with others. Religious soft power is one among many of these tools, even if it is used in tandem with military or economic pressure. It may be difficult to find examples of religious soft power mattering more than military or economic might. Likewise, there are clear limits to the effectiveness of these appeals, as seen in the split between the Russian and Ukrainian Orthodox Churches. But religious appeals seem to amplify the effectiveness of material power. Additionally, the fact that states like America and Russia keep relying on religious appeals—even if they are not always effective—demonstrates religious soft power has value to those who deploy it.

Finally, there is an important caveat to discussions of religious soft power: we often assume faith’s impact on geopolitics will be positive, but that is not always the case. America’s religious soft power may have convinced Egypt to emphasize protecting its Coptic Christian population, but that has only deflected criticism of its abysmal human rights record. Likewise, Russia’s religious appeals have led to destabilizing impacts throughout the world.

Ultimately, religious soft power is not irrelevant to geopolitics, but neither is it a cure for conventional power politics. Instead, it will be an indelible part of states’ foreign policies throughout the twenty-first century, although America and Russia are diverging in their approach. Russia seems to be intensifying its religious appeals as it continues to disrupt international order. By contrast, under the Trump administration, the United States is narrowing its focus to international religious freedom and jettisoning some of the “soft power” elements of the Obama administration, such as the RGA office. As a result, America risks losing an important foreign policy tool even as rivals, like Russia, become more comfortable with its use.

#### ONLY correcting the First Amendment’s restriction on religious freedom solves religious expression---it shifts from religious authoritarianism toward dynamism.

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IV. CONCLUSION

The Rabbinical Assembly’s rules governing its Joint Placement Commission are illegal. Since the Central Conference of American Rabbis and the Reconstructionist Rabbinical Association have developed similar rules governing the placement of pulpit rabbis, those rabbinic organizations are also in violation of the law. Each placement system imposes severe restrictions on the labor market for pulpit rabbis without creating any identifiable pro-competitive benefit, and they are outside the protection of the First Amendment. By instituting its placement rules, these rabbinic organizations are acting to advance their own commercial interests to the detriment of the welfare of consumers, namely the congregations and congregants who hire and ultimately benefit from a rabbi’s services.

There is much that is troubling about claiming that the First Amendment protects these organizations from Sherman Act scrutiny. First, it reflects an arrogant rejection of the decentralization that has sustained Jewish communities worldwide for nearly two millennia—through global wars, holy wars, unfriendly host nations, dramatic technological change, and spectacular social change. And second, it invokes the First Amendment to sanitize what is little more than the suppression of religious expression. The First Amendment may not, and ought not, be used to subvert itself. Although the First Amendment does not support a claim against the rabbinic organizations that stifle religious expression, the Sherman Act does. At the very least, the First Amendment should not prevent a claim that would advance its principles.

Permitting the Sherman Act to fulfill its mandate from Congress to promote competition and dislodge entrenched concentrations of power will not only liberate congregations from economic restraints. It will also significantly contribute to the vitality of Judaism in America. Were rabbinical organizations to adopt rules that are consistent with the Sherman Act—rules that empower individual communities and defer to the preferences of both congregants and rabbis—they would kindle the passions and empower the dynamism that Jewish communities have shown over time. Submitting to the Sherman Act might also transform the national rabbinic organizations themselves, reorienting them away from authoritarian placement policies and towards an empowering role in which they help rabbis pursue fulfilling careers and abet congregations to hire the rabbi that best suits their needs. Doing so would advance social welfare consistent with the dictates of the Sherman Act, advance the First Amendment’s principles of free religious expression, and advance the strength and robustness of American Judaism.

#### Authoritarian religion causes religious extremism and militants---dynamism solves

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Fourth, religious freedom promotes a diversity of views within and between religions by allowing each faith tradition to believe in private and practice in public as it wishes free from interference. Whereas religiously restrictive environments facilitate radical theologies by stifling open debate and the channels of discourse about the proper interpretation of religion, religiously-free settings allow for the exposing of logical inconsistencies and incorrect construal of the radical narrative by allowing diverse perspectives to be heard. In religiously-free settings, radicals will have their views challenged and critiqued in the marketplace of ideas and have to defend them. An embrace of religious pluralism can serve to undermine the claims of religious militants that their faith is under attack by the state and that violence is the best way to achieve whatever religiously-informed goals they might have.51 Diversity also has the effect of harnessing the energies of all citizens, fostering creativity, and attracting talent from abroad. For these reasons, freedom granted to religious communities allows for the proliferation of doctrines, interpretations and practices and generally has the effect of moderating otherwise extremist groups.52

#### Repression-based religious terrorism is unique---statistically larger probability and magnitude.

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As Saiya documents, terrorism based on religious motivations has risen massively around the globe since the attacks of September 11, 2001. Religious terrorism has been a sizable chunk of terrorism in general, he shows, accounting for 38 of 50 of the deadliest attacks and 71% of the lives lost in attacks between 1970 and 2014 – figures all the more remarkable given that this form of terrorism only began to spread in the 1990s. Religious terrorist groups are demonstrably deadlier and longer lasting than other terrorist groups, he also demonstrates.

Through careful social science, Saiya then shows that religiously repressive regimes are a major contributor to religious terrorism. His statistical study of 151 countries from 2001-2013 shows that government restrictions of religion correlate strongly with religious terrorism. He illustrates how repression breeds violence in eight countries – Pakistan, Central African Republic, India, Burma, Israel, Egypt, Libya, and Tunisia – and, conversely, how religious freedom unleashes religious communities to contribute to the common good in three countries – South Africa, Senegal, and the United States. These dynamics admit of variation but share a common core logic: Religious communities turn to violence when their aspirations to express and spread their beliefs are suppressed.

It is not hard to see how all of this is relevant to American national interests. Since at least 2001, U.S. foreign policy has been pre-occupied with countering violent extremism – a large proportion of it religious. Precisely to contain religious terrorism, the U.S. has fought the longest war in its history in Afghanistan.

#### Causes extinction---nuclear escalation.

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The escalating threats between North Korea and the United States make it easy to forget the “nuclear nightmare,” as former US Secretary of Defense William J. Perry put it, that could result even from the use of just a single terrorist nuclear bomb in the heart of a major city. At the risk of repeating the vast literature on the tragedies of Hiroshima and Nagasaki—and the substantial literature surrounding nuclear tests and simulations since then—we attempt to spell out here the likely consequences of the explosion of a single terrorist nuclear bomb on a major city, and its subsequent ripple effects on the rest of the planet. Depending on where and when it was detonated, the blast, fire, initial radiation, and long-term radioactive fallout from such a bomb could leave the heart of a major city a smoldering radioactive ruin, killing tens or hundreds of thousands of people and wounding hundreds of thousands more. Vast areas would have to be evacuated and might be uninhabitable for years. Economic, political, and social aftershocks would ripple throughout the world. A single terrorist nuclear bomb would change history. The country attacked—and the world—would never be the same. The idea of terrorists accomplishing such a thing is, unfortunately, not out of the question; it is far easier to make a crude, unsafe, unreliable nuclear explosive that might fit in the back of a truck than it is to make a safe, reliable weapon of known yield that can be delivered by missile or combat aircraft. Numerous government studies have concluded that it is plausible that a sophisticated terrorist group could make a crude bomb if they got the needed nuclear material. And in the last quarter century, there have been some 20 seizures of stolen, weapons-usable nuclear material, and at least two terrorist groups have made significant efforts to acquire nuclear bombs. Terrorist use of an actual nuclear bomb is a low-probability event—but the immensity of the consequences means that even a small chance is enough to justify an intensive effort to reduce the risk. Fortunately, since the early 1990s, countries around the world have significantly reduced the danger—but it remains very real, and there is more to do to ensure this nightmare never becomes reality. Brighter than a thousand suns. Imagine a crude terrorist nuclear bomb—containing a chunk of highly enriched uranium just under the size of a regulation bowling ball, or a much smaller chunk of plutonium—suddenly detonating inside a delivery van parked in the heart of a major city. Such a terrorist bomb would release as much as 10 kilotons of explosive energy, or the equivalent of 10,000 tons of conventional explosives, a volume of explosives large enough to fill all the cars of a mile-long train. In a millionth of a second, all of that energy would be released inside that small ball of nuclear material, creating temperatures and pressures as high as those at the center of the sun. That furious energy would explode outward, releasing its energy in three main ways: a powerful blast wave; intense heat; and deadly radiation. The ball would expand almost instantly into a fireball the width of four football fields, incinerating essentially everything and everyone within. The heated fireball would rise, sucking in air from below and expanding above, creating the mushroom cloud that has become the symbol of the terror of the nuclear age. The ionized plasma in the fireball would create a localized electromagnetic pulse more powerful than lightning, shorting out communications and electronics nearby—though most would be destroyed by the bomb’s other effects in any case. (Estimates of heat, blast, and radiation effects in this article are drawn primarily from Alex Wellerstein’s “Nukemap,” which itself comes from declassified US government data, such as the 660-page government textbook The Effects of Nuclear Weapons.) At the instant of its detonation, the bomb would also release an intense burst of gamma and neutron radiation which would be lethal for nearly everyone directly exposed within about two-thirds of a mile from the center of the blast. (Those who happened to be shielded by being inside, or having buildings between them and the bomb, would be partly protected—in some cases, reducing their doses by ten times or more.) The nuclear flash from the heat of the fireball would radiate in both visible light and the infrared; it would be “brighter than a thousand suns,” in the words of the title of a book describing the development of nuclear weapons—adapting a phrase from the Hindu epic the Bhagavad-Gita. Anyone who looked directly at the blast would be blinded. The heat from the fireball would ignite fires and horribly burn everyone exposed outside at distances of nearly a mile away. (In the Nagasaki Atomic Bomb Museum, visitors gaze in horror at the bones of a human hand embedded in glass melted by the bomb.) No one has burned a city on that scale in the decades since World War II, so it is difficult to predict the full extent of the fire damage that would occur from the explosion of a nuclear bomb in one of today’s cities. Modern glass, steel, and concrete buildings would presumably be less flammable than the wood-and-rice-paper housing of Hiroshima or Nagasaki in the 1940s—but many questions remain, including exactly how thousands of broken gas lines might contribute to fire damage (as they did in Dresden during World War II). On 9/11, the buildings of the World Trade Center proved to be much more vulnerable to fire damage than had been expected. Ultimately, even a crude terrorist nuclear bomb would carry the possibility that the countless fires touched off by the explosion would coalesce into a devastating firestorm, as occurred at Hiroshima. In a firestorm, the rising column of hot air from the massive fire sucks in the air from all around, creating hurricane-force winds; everything flammable and everything alive within the firestorm would be consumed. The fires and the dust from the blast would make it extremely difficult for either rescuers or survivors to see. The explosion would create a powerful blast wave rushing out in every direction. For more than a quarter-mile all around the blast, the pulse of pressure would be over 20 pounds per square inch above atmospheric pressure (known as “overpressure”), destroying or severely damaging even sturdy buildings. The combination of blast, heat, and radiation would kill virtually everyone in this zone. The blast would be accompanied by winds of many hundreds of miles per hour. The damage from the explosion would extend far beyond this inner zone of almost total death. Out to more than half a mile, the blast would be strong enough to collapse most residential buildings and create a serious danger that office buildings would topple over, killing those inside and those in the path of the rubble. (On the other hand, the office towers of a modern city would tend to block the blast wave in some areas, providing partial protection from the blast, as well as from the heat and radiation.) In that zone, almost anything made of wood would be destroyed: Roofs would cave in, windows would shatter, gas lines would rupture. Telephone poles, street lamps, and utility lines would be severely damaged. Many roads would be blocked by mountains of wreckage. In this zone, many people would be killed or injured in building collapses, or trapped under the rubble; many more would be burned, blinded, or injured by flying debris. In many cases, their charred skin would become ragged and fall off in sheets. The effects of the detonation would act in deadly synergy. The smashed materials of buildings broken by the blast would be far easier for the fires to ignite than intact structures. The effects of radiation would make it far more difficult for burned and injured people to recover. The combination of burns, radiation, and physical injuries would cause far more death and suffering than any one of them would alone. The silent killer. The bomb’s immediate effects would be followed by a slow, lingering killer: radioactive fallout. A bomb detonated at ground level would dig a huge crater, hurling tons of earth and debris thousands of feet into the sky. Sucked into the rising fireball, these particles would mix with the radioactive remainders of the bomb, and over the next few hours or days, the debris would rain down for miles downwind. Depending on weather and wind patterns, the fallout could actually be deadlier and make a far larger area unusable than the blast itself. Acute radiation sickness from the initial radiation pulse and the fallout would likely affect tens of thousands of people. Depending on the dose, they might suffer from vomiting, watery diarrhea, fever, sores, loss of hair, and bone marrow depletion. Some would survive; some would die within days; some would take months to die. Cancer rates among the survivors would rise. Women would be more vulnerable than men—children and infants especially so. Much of the radiation from a nuclear blast is short-lived; radiation levels even a few days after the blast would be far below those in the first hours. For those not killed or terribly wounded by the initial explosion, the best advice would be to take shelter in a basement for at least several days. But many would be too terrified to stay. Thousands of panic-stricken people might receive deadly doses of radiation as they fled from their homes. Some of the radiation will be longer-lived; areas most severely affected would have to be abandoned for many years after the attack. The combination of radioactive fallout and the devastation of nearly all life-sustaining infrastructure over a vast area would mean that hundreds of thousands of people would have to evacuate. Ambulances to nowhere. The explosion would also destroy much of the city’s ability to respond. Hospitals would be leveled, doctors and nurses killed and wounded, ambulances destroyed. (In Hiroshima, 42 of 45 hospitals were destroyed or severely damaged, and 270 of 300 doctors were killed.) Resources that survived outside the zone of destruction would be utterly overwhelmed. Hospitals have no ability to cope with tens or hundreds of thousands of terribly burned and injured people all at once; the United States, for example, has 1,760 burn beds in hospitals nationwide, of which a third are available on any given day. And the problem would not be limited to hospitals; firefighters, for example, would have little ability to cope with thousands of fires raging out of control at once. Fire stations and equipment would be destroyed in the affected area, and firemen killed, along with police and other emergency responders. Some of the first responders may become casualties themselves, from radioactive fallout, fire, and collapsing buildings. Over much of the affected area, communications would be destroyed, by both the physical effects and the electromagnetic pulse from the explosion. Better preparation for such a disaster could save thousands of lives—but ultimately, there is no way any city can genuinely be prepared for a catastrophe on such a historic scale, occurring in a flash, with zero warning. Rescue and recovery attempts would be impeded by the destruction of most of the needed personnel and equipment, and by fire, debris, radiation, fear, lack of communications, and the immense scale of the disaster. The US military and the national guard could provide critically important capabilities—but federal plans assume that “no significant federal response” would be available for 24-to-72 hours. Many of those burned and injured would wait in vain for help, food, or water, perhaps for days. The scale of death and suffering. How many would die in such an event, and how many would be terribly wounded, would depend on where and when the bomb was detonated, what the weather conditions were at the time, how successful the response was in helping the wounded survivors, and more. Many estimates of casualties are based on census data, which reflect where people sleep at night; if the attack occurred in the middle of a workday, the numbers of people crowded into the office towers at the heart of many modern cities would be far higher. The daytime population of Manhattan, for example, is roughly twice its nighttime population; in Midtown on a typical workday, there are an estimated 980,000 people per square mile. A 10-kiloton weapon detonated there might well kill half a million people—not counting those who might die of radiation sickness from the fallout. (These effects were analyzed in great detail in the Rand Corporation’s Considering the Effects of a Catastrophic Terrorist Attack and the British Medical Journal’s “Nuclear terrorism.”) On a typical day, the wind would blow the fallout north, seriously contaminating virtually all of Manhattan above Gramercy Park; people living as far away as Stamford, Connecticut would likely have to evacuate. Seriously injured survivors would greatly outnumber the dead, their suffering magnified by the complete inadequacy of available help. The psychological and social effects—overwhelming sadness, depression, post-traumatic stress disorder, myriad forms of anxiety—would be profound and long-lasting. The scenario we have been describing is a groundburst. An airburst—such as might occur, for example, if terrorists put their bomb in a small aircraft they had purchased or rented—would extend the blast and fire effects over a wider area, killing and injuring even larger numbers of people immediately. But an airburst would not have the same lingering effects from fallout as a groundburst, because the rock and dirt would not be sucked up into the fireball and contaminated. The 10-kiloton blast we have been discussing is likely toward the high end of what terrorists could plausibly achieve with a crude, improvised bomb, but even a 1-kiloton blast would be a catastrophic event, having a deadly radius between one-third and one-half that of a 10-kiloton blast. These hundreds of thousands of people would not be mere statistics, but countless individual stories of loss—parents, children, entire families; all religions; rich and poor alike—killed or horribly mutilated. Human suffering and tragedy on this scale does not have to be imagined; it can be remembered through the stories of the survivors of the US atomic bombings of Hiroshima and Nagasaki, the only times in history when nuclear weapons have been used intentionally against human beings. The pain and suffering caused by those bombings are almost beyond human comprehension; the eloquent testimony of the Hibakusha—the survivors who passed through the atomic fire—should stand as an eternal reminder of the need to prevent nuclear weapons from ever being used in anger again. Global economic disaster. The economic impact of such an attack would be enormous. The effects would reverberate for so far and so long that they are difficult to estimate in all their complexity. Hundreds of thousands of people would be too injured or sick to work for weeks or months. Hundreds of thousands more would evacuate to locations far from their jobs. Many places of employment would have to be abandoned because of the radioactive fallout. Insurance companies would reel under the losses; but at the same time, many insurance policies exclude the effects of nuclear attacks—an item insurers considered beyond their ability to cover—so the owners of thousands of buildings would not have the insurance payments needed to cover the cost of fixing them, thousands of companies would go bankrupt, and banks would be left holding an immense number of mortgages that would never be repaid. Consumer and investor confidence would likely be dramatically affected, as worried people slowed their spending. Enormous new homeland security and military investments would be very likely. If the bomb had come in a shipping container, the targeted country—and possibly others—might stop all containers from entering until it could devise a system for ensuring they could never again be used for such a purpose, throwing a wrench into the gears of global trade for an extended period. (And this might well occur even if a shipping container had not been the means of delivery.) Even the far smaller 9/11 attacks are estimated to have caused economic aftershocks costing almost $1 trillion even excluding the multi-trillion-dollar costs of the wars that ensued. The cost of a terrorist nuclear attack in a major city would likely be many times higher. The most severe effects would be local, but the effects of trade disruptions, reduced economic activity, and more would reverberate around the world. Consequently, while some countries may feel that nuclear terrorism is only a concern for the countries most likely to be targeted—such as the United States—in reality it is a threat to everyone, everywhere. In 2005, then-UN Secretary-General Kofi Annan warned that these global effects would push “tens of millions of people into dire poverty,” creating “a second death toll throughout the developing world.” One recent estimate suggested that a nuclear attack in an urban area would cause a global recession, cutting global Gross Domestic Product by some two percent, and pushing an additional 30 million people in the developing world into extreme poverty. Desperate dilemmas. In short, an act of nuclear terrorism could rip the heart out of a major city, and cause ripple effects throughout the world. The government of the country attacked would face desperate decisions: How to help the city attacked? How to prevent further attacks? How to respond or retaliate? Terrorists—either those who committed the attack or others—would probably claim they had more bombs already hidden in other cities (whether they did or not), and threaten to detonate them unless their demands were met. The fear that this might be true could lead people to flee major cities in a large-scale, uncontrolled evacuation. There is very little ability to support the population of major cities in the surrounding countryside. The potential for widespread havoc and economic chaos is very real. If the detonation took place in the capital of the nation attacked, much of the government might be destroyed. A bomb in Washington, D.C., for example, might kill the President, the Vice President, and many of the members of Congress and the Supreme Court. (Having some plausible national leader survive is a key reason why one cabinet member is always elsewhere on the night of the State of the Union address.) Elaborate, classified plans for “continuity of government” have already been drawn up in a number of countries, but the potential for chaos and confusion—if almost all of a country’s top leaders were killed—would still be enormous. Who, for example, could address the public on what the government would do, and what the public should do, to respond? Could anyone honestly assure the public there would be no further attacks? If they did, who would believe them? In the United States, given the practical impossibility of passing major legislation with Congress in ruins and most of its members dead or seriously injured, some have argued for passing legislation in advance giving the government emergency powers to act—and creating procedures, for example, for legitimately replacing most of the House of Representatives. But to date, no such legislative preparations have been made. In what would inevitably be a desperate effort to prevent further attacks, traditional standards of civil liberties might be jettisoned, at least for a time—particularly when people realized that the fuel for the bomb that had done such damage would easily have fit in a suitcase. Old rules limiting search and surveillance could be among the first to go. The government might well impose martial law as it sought to control the situation, hunt for the perpetrators, and find any additional weapons or nuclear materials they might have. Even the far smaller attacks of 9/11 saw the US government authorizing torture of prisoners and mass electronic surveillance. And what standards of international order and law would still hold sway? The country attacked might well lash out militarily at whatever countries it thought might bear a portion of responsibility. (A terrifying description of the kinds of discussions that might occur appeared in Brian Jenkins’ book, Will Terrorists Go Nuclear?) With the nuclear threshold already crossed in this scenario—at least by terrorists—it is conceivable that some of the resulting conflicts might escalate to nuclear use. International politics could become more brutish and violent, with powerful states taking unilateral action, by force if necessary, in an effort to ensure their security. After 9/11, the United States led the invasions of two sovereign nations, in wars that have since cost hundreds of thousands of lives and trillions of dollars, while plunging a region into chaos. Would the reaction after a far more devastating nuclear attack be any less

#### AND authoritarian religious nationalism causes right-wing religious violence and collapses democracy.

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In order to understand what led to the deadly Capitol insurrection and the spate of proposed voting laws we must account for the influence of Christian nationalism, a political theology that fuses American identity with an ultra-conservative strain of Christianity. But this Christianity is something more than the orthodox Christianity of ancient creeds; it is more of an ethnic Christian-ism. In its most extreme form it legitimizes the type of violence we saw on Jan. 6 and the recent flood of voting restrictions. Violence and legislation not in service of democracy, but instead for fundamentally anti-democratic goals.

In our book, Taking America Back for God: Christian Nationalism in the United States, we use several large, national surveys of Americans collected over the last decade to show that about 20 percent of Americans―those we call “Ambassadors”―strongly embrace Christian nationalism.

As a political theology that co-opts Christian narratives and symbolism, Christian nationalism has its own version of the “elect,” those chosen by God. They are “people like us,” meaning conservative Christian, but also white, natural-born citizens. Moreover, in a prosperous nation, only “the elect” should control the political process while others must be closely scrutinized, discouraged, or even denied access. This ideology is fundamentally a threat to a pluralistic, democratic society.

It is important to note that by “Christian nationalists” we don’t necessarily mean all white theologically conservative Christian groups. In fact, we show in our book that traditional indicators of religious commitment and Christian nationalism oftentimes influence people in opposite directions. The threat generally comes from Christian nationalism, embraced by many conservative Christians as well as non-Christians, rather than from all committed Christians.

Though its modern-day proponents might not be so explicit to speak in terms of “the elect” or chosen citizens, throughout our nation’s history and even before, Christian nationalism has sought privilege for and ascribed moral worth to an “us” (white, natural-born, cultural conservatives) over and against a “them” (everyone else). It baptizes a quest for power and privilege in the public sphere predicated on ensuring only certain Americans feel welcome to fully participate in civic life. This includes voting, the cornerstone of any functioning democracy.

While a very small minority of these Americans might ever end up at an insurrection or be in the position to systematically limit fellow citizens’ access to the vote, our research shows that the anti-democratic impulse that motivated the insurrectionists—and their willingness to resort to violence—and recent lawmakers is pervasive to Christian nationalism.

In national data collected just before the 2020 election, we asked Americans about their views on voter access, supposed voter fraud, and voter disenfranchisement. The strength of the link between Christian nationalism and anti-democratic attitudes is stunning.

The 20 percent of white Americans who strongly embrace Christian nationalism—about 30 million adults—are more likely to believe that we make it “too easy to vote” in the U.S. They also support hypothetical policies that exclude those who could not pass a basic civics test from voting or policies that disenfranchise certain criminal offenders for the rest of their lives. These white Americans we call “Ambassadors” of Christian nationalism are also much more likely to believe that “voter fraud is getting rampant” and deny “voter suppression” (historically targeted against minority communities) is a problem at all.

They are also less likely to feel we need to “address gerrymandering in order to ensure fairer congressional elections” and are tremendous fans of the Electoral College system. Research shows the Electoral College gives a disproportionate weight to whites’ votes above others and preserves a fighting chance for GOP Presidential candidates.

These ideas were powerful even before the November 2020 election. The election aftermath where Trump and his supporters continuously pushed false charges of election fraud only served to reinforce and activate them. It is no surprise, then, that so many Americans who embrace Christian nationalism and support Trump were ready to believe any narrative of a stolen election.

The relationship between Christian nationalism and anti-democratic attitudes has a long history in this country. Limiting access to voting and employing violence in order to disrupt the democratic process are not aberrations. After the Civil War and throughout the years of Jim Crow, Christian leaders routinely provided the theological arguments needed to rationalize limiting Black Americans’ access to participation in the democratic process. They explicitly tied these efforts to their desire to protect the purity of a “Christian” nation.

Consider the most infamous articulation of Christian nationalism’s anti-democratic goals from Paul Weyrich, co-founder of the Moral Majority. In an oft-repeated 1980 speech to a group of evangelical leaders, Weyrich explained:

“Now many of our Christians have what I call the goo-goo syndrome―good government. They want everybody to vote. I don’t want everybody to vote. Elections are not won by a majority of people, they never have been from the beginning of our country and they are not now. As a matter of fact, our leverage in the elections quite candidly goes up as the voting populace goes down.”

Even then Weyrich was aware that a democracy with free and open elections threatened the likelihood of white, culturally conservative Christians maintaining privileged access to the levers of power. The takeaway was obvious: make it more difficult for the political opposition―non-conservatives, but implicitly racial and ethnic minorities―to vote.

Weyrich took his own advice. He and others worked to create organizations intent on bringing Christian nationalism’s anti-democratic impulses into reality. The American Legislative Exchange Council (ALEC)—also co-founded by Weyrich in 1973—is one example. To this day ALEC supports restrictive voter policies that disproportionately affect people of color: strict voter ID laws, automated purging of registration lists, limiting mail-in or early voting, or slashing the number of polling places.

So if the voting restrictions put into place by the lawmakers in Georgia, Florida, and Texas sound familiar, they should. History might not repeat itself but it certainly does rhyme.

The threat of Christian nationalism is buried within the seemingly harmless language of “heritage,” “culture,” and “values.” But within this language is an implicit understanding of civic belonging and relative worth. Study after study shows Christian nationalism is strongly associated with attitudes concerning proper social hierarchies by religion, race, and nativity. These views naturally extend to whom Americans think should have the right to participate in the political process and whether everyone should have equal access to voting.

Pair this hierarchical thinking with the propensity of Americans who embrace Christian nationalism to believe in conspiracy theories, trust Donald Trump above all other sources of information, and baptize violence in the name of protecting the United States. Doing so illuminates why so many would support a violent insurrection in the name of Jesus or pass laws aimed at limiting minorities’ access to the democratic process in opposition to the results of a fair and free election.

White Christian nationalists see the nation as their own both historically and theologically and so any Presidential election that does not produce the desired result must be illegitimate. True patriots, in this understanding, have the right―the duty, even―to take it back, by force if necessary.

As one pastor who participated in the insurrection explained on Parler after the riot: “If the election is being stolen, what is it going to take? Is it going to take people just talking about it? I’m probably going to lose my job as a pastor after this, but, what is it going to take? I don’t care about my reputation, I care about my nation…It is more than just talking, it is doing.”

Viewing the problematic history of limiting who can vote in the United States alongside our recent findings underscore the clear and present danger Christian nationalism poses to democracy. Efforts to neutralize the political threat of minority groups by subverting their ability to vote strikes at the very heart of the idea of fair and free elections.

This threat will not disappear, no matter which party controls the three branches of the federal government. Christian nationalism will not fade into obscurity any time soon. It has survived over decades and permeates much of our civic life and culture. The violent, anti-democratic impulses of Christian nationalism still course through the veins of our body politic, waiting for the next opportunistic strongman willing to put them to use.

Just as the January 6th insurrection and recent voting laws are not aberrations but a reflection of similar events in our nation’s history, they too may be a bellwether of events to come if we do not acknowledge and confront Christian nationalism. Our democracy is at stake.

#### They’ll use CBRNs---they have means and motive.

\*\*NOTE: we have right wing CBRN bad stuff in the Hungary aff from last year.

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Introduction

On August 12, 2017, during the “Unite the Right” rally in Charlottesville, Virginia extreme right violence cumulated in a vehicle born terror attack, killing one and injuring 19 victims. The violent Far-right subsequently “surged into the national view” as “the most visible manifestation” of right-wing militancy.

Around the same time, an anti-government extremist seeking to engage in terrorism received much less attention. Jerry Drake Varnell, a follower of the anti-government “Three Percenter” ideology was arrested for plotting to detonate a 1,000-pound vehicle bomb in downtown Oklahoma City. Varnell was reportedly worried that groups like ISIS could steal credit for the attack from him. These are just two examples of the increasing terror threat posed by far-right extremists (understood as an overlapping web of for example neo-Nazis, Ku Klux Klan, white supremacists, white nationalists, Christian Identity, racist skinheads, as well as parts of anti-government militia, sovereign citizen, or armed patriot groups) of which U.S. law enforcement and intelligences agencies have warned months, even years ago. Indeed, right-wing terrorists have killed more Americans since 9/11 than any other form of violent extremism, are overall more active in committing homicides , are perceived to be the no. 1 threat by local law enforcement agencies, and worship one of the deadliest terrorist in American history: Timothy McVeigh.

As the threat from domestic terrorism is clearly increasing, one must ask if violent tactics used by these attackers might develop beyond the use of explosives and guns. The vehicle attack in Charlottesville was an indication of that tactics diversification, even though this was not the first incident of its kind in the United States. As the Oklahoma plot shows, far-right terrorists might see themselves in some kind of competition for public recognition with Jihadist groups like ISIS, which could lead to a further escalation of tactics used for example with the deployment of chemical, biological, radiological or nuclear (CBRN) weapons. In fact, right-wing terrorists have for decades been attempting to develop and use chemical and biological weapons. This article aims to give a short overview on the history of such efforts, the potential for right-wing terrorism to use chemical and biological agents in the future, and how authorities can counter this threat.

A Look at the Cases

Even though no significant cases of successful right-wing CBRN terror attacks in Western countries are known, a number of plots have been uncovered that indicate the motives and tactics of these extremists. In 2009 Ian Davidson, who was the leader of the right-wing terrorist Aryan Strike Force (ASF), became the first British citizen convicted of producing a chemical weapon of mass destruction. When Davidson and his son Nicky were arrested in the United Kingdom, the subsequent trial and conviction made history. His plot aimed to poison water supplies of Muslims in Serbia using the toxin ricin, which he already had produced in a significant amount. Estimations by investigators regarding the lethality of the material varied drastically but some thought the amount produced by Davison could have killed up to 1,000 people.

In the mid-1980s one of the few right-wing terrorist organizations in the United States, “The Covenant, the Sword, and the Arm of the Lord”, acquired large amounts of cyanide, intending to poison water supplies in major U.S. cities, but failed to overcome the technical difficulties of dissemination. In May 1996, a laboratory staff member and white supremacist in Ohio, Larry Wayne Harris, successfully acquired plague bacteria – not illegal at that time. Two years later, Harris and a co-conspirator were arrested for threatening to release anthrax in Las Vegas, even though his strain was a vaccine grade and harmless version. Material to extract ricin was also found at the home of white supremacist James Kenneth Gluck in Tampa, Fla., who was arrested by the FBI in November 1999 after he threatened judges with biological warfare. More serious seems to have been the plot led by neo-Nazi William Krar of Texas, arrested in April 2003. Investigators found more than 500,000 rounds of ammunition, 65 pipe bombs and remote-control briefcase bombs, and almost two pounds of deadly sodium cyanide. Along with white supremacist and anti-government material, components to convert the cyanide into a bomb capable of killing thousands were also secured. In November 2011, a plot to blow up government buildings and kill masses of people using ricin by a group of four men belonging to an anti-government militia in Georgia was uncovered. Especially concerning was the fact that one of the four was working for the federal Department of Agriculture, giving him access to chemicals, technical equipment and ways to disseminate the poison into food and water supplies. In February 2017, 27 year old William Christopher Gibbs, member of the white supremacist Creativity Movement, was arrested after hospitalizing himself for side effects of his experiments with ricin, triggering a large FBI operation.

When looking at these cases, far-right extremists attempting to acquire and use CBRN weapons have very mixed backgrounds, ranging from career criminals to senior biodefense researchers at United States Army institutions. However, the more serious plots came from well-educated individuals with necessary access to equipment and dissemination ways indicating that right-wing terrorists might be quite well embedded in Western societies. In his seminal study about far-right terrorists’ recruitment and radicalization from 2012 for example, Pete Simi found 56% of his sample belonged to middle or upper social class and 53% had some form of college or higher education (with and without degrees). The majority of far-right CBRN plotters were part of groups and networks associated with their ideological and criminal conduct but not all of them. However, every far-right CBRN incident appears to be a culmination of a radicalization escalation process, sometimes even over years, with long histories of openly expressed violent, right-wing extremist, racist or anti-government opinions. Many of the plotters repeatedly threatened to use CBRN weapons in public to bystanders, families or friends. Even the lone actors were known to have gradually distanced themselves from their social environments getting more and more agitated and aggressive.

Now, the key question is: what makes a threat of far-right CBRN terrorism more likely and dangerous than compared with other violent ideologies, such as left-wing or jihadi terrorism? Of course, far-right extremists have equal access to open market technical equipment and supplies for manufacturing such weaponry as all other extremists in the country and their ideology is not more or less dangerous than jihadi or left-wing extremism, for example. Nevertheless, in 2012 international terrorism expert Peter Bergen stated, that “11 right-wing and left-wing extremists have managed to acquire CBRN material that they planned to use against the public, government employees or both” while there was no evidence of jihadists in the United States managing to do that. From these 11 cases only one (Joseph Konopka) was motivated by left-wing extremist (more specifically anarchist) political ideals. This fact is striking, since other violent extremists, especially Jihadists, certainly do not lack the willingness to use weapons of mass destruction (WMDs), as it is currently experienced in Syria and Iraq. But how indicative is this retrospectively almost singular right-wing CBRN terror threat for the future?

To assess the possibility of an attack, one has to take three factors into account: 1) the feasibility of the used weapon (acquisition, available know-how, technology, materials or agents), 2) the “effectivity” or costs and benefits of the weapon and 3) the motivation to use the weapon regarding the pursued aims. The assassination of an individual person with a plain firearm is feasible (through the ease of acquiring a firearm), effective (since a single, well-placed bullet will “do the job”) and sends a clear message in terms of motivation, however not to an extent exceeding every-day criminality encountered on the streets of big cities. Using a deadly toxin, like ricin, presents bigger hurdles in terms of feasibility, but is also highly effective (in terms of toxicity and evasion of forensic investigation) and, more important, will provide added value in terms of public attention and media coverage about the attack and the very ideology of the originators. Considering the attack on a crowded public space, planting explosives will lead to severe damage as well potentially high lethality. However, by mixing the explosives with radioactive material – a so called dirty bomb – will not only cause more fatalities through radiation, but also evoke a higher level of fear and terror. Additionally, such an incident would represent a difficult challenge for first responders and might render the government incompetent of an appropriate response and preparation in the eyes of the public. All terrorists potentially share this goal to make their attacks more impactful and deadly, even though right-wing terrorists rarely have aimed to produce mass casualties, so far.

Factor 2, the effectivity of a weapon is, depending on the planned operation, similar for all kinds of terrorist as well. However, the feasibility to use CBRN weapons (factor 1) might be higher for far-right terrorists than for others, e.g. jihadists, since the extreme right can rely on established and much larger support networks, which can provide the required material, know-how and dissemination ways. Of course, it is not impossible for lone actors from all ideological strands to acquire the material as well as the know-how. Regarding factor 3, the motive, the violent far-right might be in an extraordinary position right now, making it more dangerous than ever.

The current Trump administration is openly courting the extreme right and – in the eyes of observers – fuelling a rising far-right terror threat, for example through the inadequate reaction to the Charlottesville attack. In addition, the general public is much less likely to perceive violent actions from far-right extremists as “terrorism” compared, for example, with those acts by Islamic extremists. This gives violent extremists from the far-right considerably more space to radicalize, escalate violent tactics and plot attacks without interference from the outside than from any other violent extremist group in Western countries. The most significant danger, however, will come to light after the demise of the Trump administration. A future US government trying to put the far-right jinni that Trump has released back into the bottle will face a much stronger, self-confident and aggressive opponent, already dreaming of a race war. The current government is favoured by anti-government militias and sovereign citizens and they are looking for a new enemy: those “counter-revolutionaries” attempting to return the United States to a pre-Trump state. Even open civil war was threatened in a case of impeachment. far-right extremists of all different strands might have heavily stockpiled firearms and explosives, but they know they cannot outgun and outman law enforcement, National Guard or the Military. A fight to retain their perceived newly gained freedom and powers therefore must include a tactical edge forcing the government to refrain from a too aggressive crackdown. CBRN agents or even the potential to quickly acquire them are the most effective and logical way to ensure the government’s passivity, especially giving the history of CBRN plots within the far-right.

#### CBRN attacks cause extinction.

Marko M. Krstic 17. Ministry of Internal Affairs of the Republic of Serbia. Published in the Military Techinical Courier--Vol 65, Issue 2--a multidisciplinary scientific journal of the Ministry of Defence of the Republic of Serbia. TENDENCY OF USING CHEMICAL, BIOLOGICAL, RADIOLOGICAL AND NUCLEAR WEAPONS FOR TERRORIST PURPOSES. 2017. scindeks-clanci.ceon.rs/data/pdf/0042-8469/2017/0042-84691702481K.pdf

The studies of a few cases of earlier CBRN actions have led experts to identify the key characteristics of terrorist groups that could potentially have an interest to use these weapons. It is thought that conservatism is inherent in terrorist organizations, but it must not be forgotten that some terrorists are inclined to innovations in weapons and tactics, as well as to taking risks in actions or in the choice of weapons. Many experts agree that most terrorist organizations want to use proven methods to achieve desired effects. Innovations, especially in the field of CBRN weapons, often indicate terrorists are likely to be led by other factors rather than by pure curiosity and desire to experiment. For some individuals, repression and democratic and strong rule of law are positive determinants of the emergence of CBRN actions which points to a new and more complex global security environment with an increasing risk of terrorists trying to perform a CBRN attack. It is a frightening fact that a single terrorist or isolated terrorist group could improvise a biological weapon or use other ways to spread anthrax, smallpox or other biological agents and thereby cause mass casualties and destroy the health care system of a state. CBRN weapons are secretly shipped to terrorists or hostile governments and represent a significant and growing threat to many countries. Although the threat of CBRN attacks is widely recognized as the central issue of national security, most analysts assume that the primary danger is a threat of the military use of these weapons in conventional wars with tra-ditional military means while the threat of covert attacks, which include terrorism, is rashly and unfairly neglected. Covert attacks are difficult to deter or prevent and CBRN weapons suitable for this type of attack are available to a growing number of enemy states and groups. At the same time, restrictions on their use appear to be diminishing, and so-called new terrorists do not always escalate and become apparent only by using unconventional weapons. These weapons are easily spread or transmitted from person to person, have a high mortality rate and a potential impact on public health, causing mass casualties that can crush health systems and cause public panic and social disruption, thus requiring special efforts to suppress them. When assessing the threat of CBRN weapons, we should take into account the change in capacity to carry out terrorist attacks that are on the rise among countries and non-government elements. Analysts believe that the fear of chemical and biological terrorist attacks is excessive, they point out that, in the past, very few attacks involved these weapons, and even those few attempts that have occurred were mostly thwarted by the authorities. A relative ease with which biological weapons can be obtained, along with other current changes and turbulences in the world, sets the stage for another type of warfare in the 21st century. The potential for CBRN terrorism has widely grown since 11 September, when some of these materials were used. The danger of terrorist use of nuclear weapons and other weapons of mass destruction represents a very serious threat for many countries; if a terrorist group could gain access to this weapon, it is highly likely it would use it, or threaten to use it. Although there is very little information on terrorists and their ability to come into possession of nuclear weapons or on their intentions to get them, the risk of CBRN weapons has certainly increased since the terrorists started to become more familiar with these agents and their harmful consequences. Discovering the nature of the threat of biological weapons, as well as the appropriate response to them requires an emphasis on the biological characteristics of these instruments of war and terror. Preparing for a terrorist attack may seem daunting and there are a small number of people with practical experience and a good knowledge of CBRN weapons, because until recently there was no need to own them. In the past, most of the planning regarding emergency response to terrorism concentrated on the concerns of open attacks (bombing). However, the threats of CBRN weapons are taken seriously, especially in the USA, where media, fascinated by new weapons of mass destruction, encourage a growing fear for public safety. Terrorists who have significant human and material resources are much more likely to realize their intentions than lone perpetrators or small terrorist groups. A CBRN terrorism threat is certainly a matter of concern; however, terrorists will face many obstacles in the implementation of an attack of this kind. This includes the acquisition of materials and preparation for spreading them as well as a selection and a survey of a chosen objective and a correct dose required to achieve a desired effect. The growing threat of CBRN terrorism Terrorism can be defined as a deliberate act of violence intended to cause damage, but also to create an appropriate political and ideological situation, so that the use of these non-traditional weapons of terror outside the context is obvious, and the goals will not be military, but civilian ones (Bioterrorism, chemical weapons, and radiation terrorism, nd). Toxic substances, regardless of whether they are of animal, vegetable or mineral origin, were used throughout the history for political assassinations and sabotage; despite the risk of severe penalties, the prospects for success favoured the use of toxic substances. Such use has always been reduced, however, since only a small number of people had access to substances and possessed the ability of learn how to use them (Pascal, 1999). CBRN weapons are rightly viewed with a special sense of horror, their effects can be devastating and indiscriminating, and they take the most stringent toll among the most vulnerable population, non-combatants (e.g. a biological attack cannot be detected sufficiently fast after the disease spreads through the population). Moreover, chemical and biological weapons are a particularly attractive alternative for groups that do not have the ability to produce nuclear weapons, and this risk raises complex but important ethical issues (London, 2003). The common name for CBRN terrorism which causes the death of a large number of people, large scale damage and a strong echo worldwide is post-industrial or hyper-terrorism. This means that non-state elements possess and dispose of assets that were previously held only by states, but unlike them, which often fear reprisals after WMD attacks, terrorists, having no geographical location, are ready to use WMD with much less scrupulousness and fear (Kurmnik, Ribnikar, 2003). Some authors have described the factors that make chemical, biological, radiological and nuclear terrorist attacks in many ways unique and demanding, such as an element of surprise, invisible agents, ordnance, the risk of repetition and new types of risks (Ruggiero, Voss, 2015). In the past 30 years, the use of CBRN weapons has become a major concern for many nations around the world. The public has become insensitive to traditional terrorist attacks that seem to be a less efficient way for terrorist organizations to achieve their goals. What causes shock and fear is actually presenting the properties of weapons which can be used by terrorist organizations to enhance their efforts and the effectiveness of attacks. CBRN terrorism is often a synonym for weapons of mass destruction, although this form of terrorism and related incidents do not require attacks and inflicting harm to large numbers of people - they do not even require deadly attacks at all. The number of studies on this type of terrorism is limited due to the lack of available data on this terrorism type. There is a very small number of databases of CBRN incidents, and even the existing ones have relatively little to do with them and they are compared to conventional terrorism (Jesse, 2012). Some experts emphasize the factors that promote such attacks and these factors include the availability of information and expertise, increased frustration of terrorists, demonization of the target population, as well as a millennial, apocalyptic or messianic vision. Experts also differ in opinion when it comes to possible perpetrators of CBRN incidents, and include religious fundamentalists and cults1 as possible perpetrators of such attacks, especially when these groups address to ethereal audience, emphasizing the hatred of unbelievers (Ivanova, Sandler, 2007). Concerns about super terrorism which involves the use of CBRN weapons are mainly focused on what terrorists can do in the context of our social reality, with an emphasis on terrorist motivations, initiatives and limitations. When considering which terrorist groups may be inclined to commit CBRN terrorism, it is important to recognize the spectrum of these acts, as well as to analyze the following categorization: (a) massive casualty events produced by conventional weapons; (b) CBRN scams; (c) conventional attack on a nuclear facility; (d) limited-scale chemical or biological attack or a radiological dispersion; (e) large scale chemical or biological attack or a radiological dispersion; and (f) CBRN strikes (super terrorism) that can lead to thousands of victims. In addition to the motivation and willingness to inflict mass casualties in any way, terrorists must have technical and financial capabilities to come into possession of material and acquire skills for these types of weapons and materials and carry out a successful attack. Chemical and biological weapons can pose a risk to terrorists thus deterring them from using such weapons (Post, 2005, pp.148-151). The possibility that terrorists use chemical or biological substances may increase over the next decade, according to US intelligence agencies. According to CIA2 , an interest among non-state actors, including terrorists, for biological and chemical materials is real and growing, and the number of potential perpetrators is increasing. The agency also noted that many of these groups had developed an international network and did not need to rely on state sponsors for financial and technical support. However, it is believed that it is less likely that terrorists would choose chemical and biological weapons over conventional explosives, because these weapons are difficult to control and their results are unpredictable (Condesman, Burke, 2001). The risk of CBRN weapons is growing since terrorists are better acquainted with these agents and their potential for causing harm3 . These agents possess desirable characteristics as weapons of terror; they are biologically invisible to the naked eye, odorless and potentially lethal in the form of particles; natural organisms are so readily available, and can be "camouflaged" in natural disasters and used to spread fear and various diseases. Chemical agents quickly attack the critical physiological centers of the body, disabling or killing the victim. Biological and chemical weapons require the application of huge amounts of resources and result in different effects, causing fear and panic in the contaminated areas. Often referred to as "weapons of mass destruction", but, in medical terms, they are weapons of potential mass casualties because they can lead to massive death toll in the absence of preventive measures and timely response (Meyer, Spinella, 2014, pp.645-656). "Bioterrorism is the intentional use of microorganisms or toxins derived from living organisms used for hostile purposes intended to cause disease or death in man, animals and plants, on which they depend". The threat of bioterrorist attacks is real, and each individual is a potential terrorist, when terrorists are "invisible" prior to an attack which also can be "invisible" in the form of causing infectious disea-ses or epidemics. Citizens who are not aware they are infected are potential safety hazard and so-called dangerous bodies (Mijalković, 2011). In the last ten years, the issue of CBRN weapons has attracted the attention of experts, but a list of priorities by the heads of states has never been established. Biological weapons almost became forgotten after they had been banned by the 1972 Convention on Biological Weapons. A significant attention was paid to them during the 90s of the last century. The important thing is that biological weapons attract much less attention than other similar weapons, but probably represent the greatest danger, and in addition to their use in war, they are available as instruments of terror in peace. Some countries showed willingness to use such weapons against defenseless populations to achieve strategic objectives, and in this regard, some analysts believe that those who attacked the World Trade Center in 1993 applied cyanide on their bombs (this was not confirmed, but a large amount of cyanide was found in possession of the perpetrators). Such a group will prove to be less inefficient, because if terrorists decide to shock and surprise the government by inflicting enormous damage, CBRN weapons will become more attractive and more accessible (Bettis, 1998). Motives and forms of behavior of individuals and groups who acquired or used CBRN weapons have existed since long ago and there is no doubt that modern society is vulnerable to such attacks (Tucker, 2000). Fear of biological terrorism is certainly greater than the fear of the conventional forms of terrorism; some of these fears are justified and some are often exaggerated. Some agents are really very contagious and deadly, and if used properly, have a potential to result in casualties similar to those in a nuclear attack. Perhaps the scariest aspect of biological weapons is that the body is attacked without warning, people are afraid of the threat as it is invisible, and cannot be heard or felt. The history of warfare, terrorism and crime involving biological agents in the last century is considerably less dangerous and more deadly than the history of conventional warfare (Parachini, 2001). Today, some states and some terrorist groups can more easily overcome technological barriers due to the increased flow of information and access to previously unavailable technologies. Along with nuclear and chemical weapons, biological weapons are part of an unholy trinity of weapons of mass destruction (Davis, Johnson-Winegar, 2000, pp.15-28). The society is now faced with the threat of an apocalyptic and asymmetric war scenario in which kamikaze attackers are able to arm themselves with WMD4 without even having to have a "physical" weapon to create fear; they probably still prefer simple, proven methods: a stampede in an enclosed place, or just an explosive device, which will kill many people5 (Palmer, 2004, pp.3-9). Early detection and response to biological or chemical terrorism are crucial to solving this problem (U.S. Congress House, 2003, p.117).

#### Democracy solves great power war.

Larry Diamond 19. PhD in Sociology, professor of Sociology and Political Science at Stanford University. “Ill Winds: Saving Democracy from Russian Rage, Chinese Ambition and American Complacency,” Kindle Edition

In such a near future, my fellow experts would no longer talk of “democratic erosion.” We would be spiraling downward into a time of democratic despair, recalling Daniel Patrick Moynihan’s grim observation from the 1970s that liberal democracy “is where the world was, not where it is going.” 5 The world pulled out of that downward spiral—but it took new, more purposeful American leadership. The planet was not so lucky in the 1930s, when the global implosion of democracy led to a catastrophic world war, between a rising axis of emboldened dictatorships and a shaken and economically depressed collection of selfdoubting democracies. These are the stakes. Expanding democracy—with its liberal norms and constitutional commitments—is a crucial foundation for world peace and security. Knock that away, and our most basic hopes and assumptions will be imperiled. The problem is not just that the ground is slipping. It is that we are perched on a global precipice. That ledge has been gradually giving way for a decade. If the erosion continues, we may well reach a tipping point where democracy goes bankrupt suddenly—plunging the world into depths of oppression and aggression that we have not seen since the end of World War II. As a political scientist, I know that our theories and tools are not nearly good enough to tell us just how close we are getting to that point—until it happens.

#### Antitrust is key---marketplace choice creates religious freedoms---alternatives are private suppression.

Barak D. Richman 19. Edgar P. & Elizabeth C. Bartlett Professor of Law and Business Administration, Duke University. "Religious Freedom through Market Freedom: The Sherman Act and the Marketplace for Religion." William & Mary Law Review 60, No. 4. 1523-1544.

During the only recorded debate on the First Amendment's Religion Clauses in the House of Representatives, James Madison spoke of the concern that "one sect might obtain a pre-eminence, or two combine together, and establish a religion to which they would compel others to conform."' He was referring to the danger of a government being controlled by a particular religious denomination, and thus advocated an Establishment Clause that would prevent a ruling coalition from imposing its religious will on others.2 But his words also speak to the dangers of dominant sects asserting private power-either through unilateral or cartel arrangements-and suppressing the religious preferences of minorities through nongovernmental means.

The chief legal weapon available to combat the abuse of concentrated private authority is the Sherman Act.' It is explicitly designed to counteract powerful economic or professional entities from constraining the preferences and dynamism of individual creativity.4 Thus, when religious organizations pursue private arrangements to preempt or constrain the ability of individuals or smaller groups from pursuing their own religious freedoms, the Sherman Act is not only an appropriate remedy but one that is naturally encouraged by the spirit and jurisprudence underlying the First Amendment.'

This Article follows prior work that examined certain restraints by private religious organizations and concluded that, as a doctrinal matter, the First Amendment did not protect these organizations from antitrust liability.6 This Article offers a stronger argument: First Amendment values demand antitrust enforcement. Because American religious freedoms, enshrined in the Constitution and reflected in American history, are quintessentially exercised when decentralized communities create their own religious expression, the First Amendment's Religion Clauses are best exemplified by a proverbial marketplace for religions.

The Article first examines how the antitrust case law has developed to incorporate constitutional language, illustrating the Sherman Act's importance to the constitutional framework and the natural application of antitrust law to secure constitutional values.' It then examines Religion Clause cases and reveals how centrality of choice and personal preference illuminate First Amendment jurisprudence.! This emphasis on choice, much like the reverence afforded to consumers in antitrust cases, is especially heightened when religious organizations make hiring decisionsthus acting as both religious and economic actors-as illustrated in the ministerial exception cases.' The Article concludes that the Religion Clauses and the Sherman Act reinforce each other, offering effective preservation of religious liberty against public and private authority alike.

### Establishment Creep---1AC

#### Contention two is Establishment Creep.

#### Antitrust’s religious exemption causes Establishment Clause creep---carve outs create entanglement defenses that prevent contract enforcement. Only the plan solves legal confusion.

Barak Richman 12. Professor of Law and Business Administration, Duke University. "Organizational Values, Neutral Principles, and Economic Power". Law and Religion Forum. 10-9-2012. https://lawandreligionforum.org/2012/10/09/organizational-values-neutral-principles-and-economic-power/

Dan Crane, again with great eloquence, concludes his insightful and personal post by asking, “So where does it leave us if bargaining over money is an unavoidable aspect of much religious hiring but that rivalry over finances is contrary to the principles and self-understanding of many religious organizations?” This is indeed a foundational problem in nations (like ours) that do not rely on state support for religious activity, but I respectfully submit that this is not a new problem. Indeed, as I wrote in my earlier posts, the suggestion that religious and nonprofit organizations pursue non-pecuniary objectives — as they clearly do — has often been invoked to shield them from antitrust and regulatory scrutiny, which has led to both economic harm and legal confusion.

It has also led to a mistaken expansion of First Amendment defenses. Some commentators have spread the mistaken fear that applying neutral principles of law to religious organizations requires, as Dan suggests, an inquiry into “the values of each organization.” Michael Helfand, a rising star in the field, has called this fear “Establishment Clause creep” and has contributed to a growing immunity for religious organizations from general laws. The Supreme Court’s endorsement of the Ministerial Exception this past year codified this immunity from employment and other discrimination laws, which is a decision I support (disclosure: I authored an amicus brief for Hosanna Tabor that articulated a position that did not contradict with either the petitioner or the respondent in the case). But if Dan means to extend this immunity to protection from the antitrust laws, would he also extend it to other economic torts? Or contract actions?

Without doubt, religious organizations and committed religious individuals do an enormous amount of social good. Dan’s parents are paradigmatic cases in point. But there needs to be a realistic appreciation that the road to good intentions often strays from the beneficent path, and the law is designed to protect the parties injured from actions motivated by these otherwise well-intended actions. If a pastor who signed an employment contract that included a severance package is dismissed (perhaps the pastor’s and the congregation’s ideologies parted ways), the church is obligated to pay severance. If they refuse and the pastor sues, there is no need for a court to inquire into the values underlying the religious motivations or values of either the congregation or the pastor. Applying neutral principles, the court should enforce the contract. If a church becomes so popular that its members, to gain entrance to the church, pass over a neighbor’s yard and cause damage, the church would be subject to a tort and should pay compensation. Again, no need to inquire into the church’s mission. These situations extend, especially, to intra-denominational disputes between large and small parties. What if the neighbor to the large church is a small church? The smaller congregation relies on neutral law for protection, otherwise an expansive First Amendment could allow an “entanglement” defense to preclude a court’s intervention into the trespass dispute.

The same logic applies to the antitrust laws. Neutral principles can and should take a court a long way to resolving a dispute over what essentially is an economic tort. It is true that the Rabbinical Assembly’s control over the labor market infringes upon a congregation’s Free Exercise rights, but a court need not inquire into either those rights nor the Free Exercise interests of the Rabbinical Assembly as it implements its cartel. Neutral principles works very well here, and a court that proceeds along this path would succeed in not interfering with religious organizational values much better than a court that refuses to intervene. Refusing to intervene would allow the economically powerful to infringe on the mission of the weak.

Although my primary area of expertise is antitrust, I know enough about the First Amendment and the Religion Clauses to appreciate how central they are to American life and American law. But if the First Amendment prevents courts from enforcing secular law according to neutral principles, then it can defeat its own mission (see Saving the First Amendment from Itself). The law should not and cannot be dogmatic in its refusal to adjudicate disputes between religious organizations because that would remove protections from organizations that need and rely on the law. And it would — again, contrary to the best of intentions — enshrine the powerful and undermine the religious values of those without power.

#### It kills the regulatory state---religious rights as institutional allows ever growing for-profit exemptions.

Elizabeth Sepper 18. Associate Professor, Washington University School of Law. “Zombie Religious Institutions” Northwestern University Law Review. Vol. 112, No. 5. <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1328&context=nulr>

West Suburban Hospital is a zombie religious institution. It does not unite a community of religious people. It is disconnected from any church. Located in Oak Park, Illinois, a suburb of Chicago, West Suburban was an independent community hospital when Catholic Resurrection Health sought to purchase it in 2004.1 Its medical staff did not share the Catholic values of the buyer; indeed, they opposed religious restrictions on their treatment of patients. The sale, however, ultimately went through.2 West Suburban became Catholic. Just five years later, West Suburban was sold to a for-profit investor. By the terms of the sale, the now-for-profit hospital will not be listed as Catholic and must remove crucifixes and religious art.3 Nonetheless, it remains obligated to prohibit the performance of abortions and sterilizations.4 Based on five years of Catholic ownership in its almost 100- year history, West Suburban became perpetually bound to Catholic restrictions.5 By contract, this previously secular institution became religious. Once sold, the religious institution survived in zombie form— lacking a live connection to religion but contractually committed to religious identity.

Zombie religious institutions have emerged at a moment when law and theory have taken a distinctly institutional turn. This new religious institutionalism places institutions—not individuals—at the core of religious liberty and grants them a special status in the social order.6 The doctrinal high-water mark is the 2012 Hosanna-Tabor Evangelical Lutheran Church & School v. EEOC decision, in which the Supreme Court carved out a constitutional sphere of substantial autonomy from regulation for religious institutions through a doctrine known as the ministerial exception.7 Encouraged by Hosanna-Tabor, a number of legal scholars advocate granting near-absolute immunity from governmental regulation to churches—defined to encompass at least some commercial entities.8

The Supreme Court’s 2014 decision in Burwell v. Hobby Lobby Stores, Inc. shed additional light on this problem.9 In a challenge to the Affordable Care Act’s mandate that insurance plans cover contraception, the Supreme Court held that closely held for-profit corporations could promote religion like nonprofit religious organizations and were equally entitled to religious accommodation.10 Ascribing religion to the for-profit corporation—that is, a nexus of contracts11—the Court’s decision further raised the stakes for religious institutionalism.12

Using healthcare as its case study, this Article argues that when religion and commerce combine, commercial transactions shape religious compliance and identity. As religious identity spreads through contract, “religious” institutions far removed from the paradigm of the church populate the marketplace. Secular, for-profit, and government institutions can become religious and eligible for legislative and judicial exemptions from regulation. This contracting of religion—the rise of zombie religious institutions in particular—exposes the weakness in the theory of religious institutionalism, which would allow institutions the authority to define their boundaries and the autonomy to avoid state regulation. As ever-wider categories of institutions become eligible for exemption, the concept of a religious institution comes under strain.

Part I of the Article describes an important phenomenon: private law has worked to create religious compliance—sometimes in perpetuity—in facilities that are not, or never have been, religious and by providers who do not share the institution’s religious precepts. This Article looks to the experience of healthcare because the religious hospital has long served as the exemplar of the religious institution flourishing in commerce.13 Through contract, healthcare facilities identified as secular, affiliated with other faiths, or operated as public hospitals assume new religious obligations and privileges. Healthcare systems with names like “Optima” and hospitals with names like “Daniel Freeman Marina Hospital” come to require providers’ obedience to religious doctrine.14 Distinctions between secular and religious, public and private, and nonprofit and for-profit no longer hold.

The expansion of religious restrictions and identity is not limited to ongoing relationships between religious and secular institutions. By the terms of their sales, formerly religious hospitals maintain a religious identity. In other instances, hospitals lose their religious affiliation after sale but continue their compliance with religious rules. Zombie religious hospitals— removed of the leadership or mission that might have given them special status as religious institutions—carry on.

Part II contends that private law impedes public policy by expanding the universe of institutions eligible for religious exemption from law. The growing number of institutions adopting religious identity belies a fundamental assumption of legislative and judicial exemptions: that religious objections will not be so numerous or categorical as to thwart the state’s goals. To the extent that contracts of religious compliance demand behavior below standards set by generally applicable laws, they do not promote corporate social responsibility but instead effectively immunize secular, forprofit, and government institutions from employee and consumer protections.

Part III argues that the combination of commerce and religion destabilizes the theory of religious institutionalism that seemed triumphant after Hosanna-Tabor and Hobby Lobby. Religious institutionalists ground their claims to broad institutional autonomy from regulation on values of pluralism and voluntarism. According to this view, robust institutional protection leads to the flourishing of diverse institutions, alternative sources of authority, and individual liberty. But in the marketplace, powerful economic entities may reduce pluralism, both religious and secular. Institutions gain faith through commercial transaction instead of organic development. They unite individuals through contract, not devotion. In this way, the healthcare market realizes fears articulated by several courts in the 1980s that, having been granted religious exemptions, religious institutions might “extend their influence and propagate their faith by entering the commercial, profit-making world.”15

#### Regulation solves extinction---prevents environmental and nuclear threats.

Steve Cohen 18. Former Executive Director of Columbia University's Earth Institute. "We Need to Reinvent Regulation, Not Destroy It". State of the Planet. 1-10-2018. <https://news.climate.columbia.edu/2018/01/10/need-reinvent-regulation-not-destroy/>

It’s time to turn the page and reinvent regulation. Regulation is not cost free, but pollution, poisoned drugs and food, unsafe work sites, and unfair labor practices also bring high costs. There are very few advocates for poisoned food and dangerous work sites. The issue is who pays for the cost of compliance and how and when those costs are charged. This silliness of cutting the number of rules, or repairing the damaged psyches of our “discouraged” business leaders, really needs to be discarded. We need to grow up and figure out how to grow economic activity in ways that preserve the planet, protect workers, promote fairness and protect our children’s future.

The world is not the simple uncrowded place our founders knew in 1776. Technology has transformed economic life and freed us from a great deal of drudgery and pain. But it has introduced dangers unimaginable two and a half centuries ago. Terror, mass financial fraud and manipulation, nuclear war, biological contamination, toxic chemicals, invasive species, climate change and species extinction are real and present dangers. We need to police ourselves and make sure that the rules of correct behavior are clear, fair, well understood and creatively applied. Our goal should be to maximize individual freedom but to balance that freedom against the needs of our community. The goal of regulation is not to show who’s in charge or to declare winners and losers; it’s to manage the complex interactions that provide us with the benefits of our technological age, with the least possible cost. Regulation is simply too important to leave to the ideologues.

#### Unchecked climate change causes extinction.

Jeff Master 21. Ph.D. is a former hurricane hunter and scientist for the National Oceanic and Atmospheric Administration (NOAA), as well as the co-founder of Weather Underground. He writes about extreme weather and climate change for Yale Climate Connections. “How easily the climate crisis can become global chaos” The Hill. 09-01-21. <https://thehill.com/opinion/energy-environment/570284-how-easily-the-climate-crisis-can-become-global-chaos?amp>

After months of one extreme weather event after another, it's hard to imagine how climate impacts could get any worse.

Unfortunately, it could. Imagine a year - **not far in the future** - just a couple years from now, where it all goes wrong:

A strong El Niño event warms the equatorial Pacific, bringing Earth's hottest January on record. Extreme drought grips Australia, the world's No. 3 exporter of wheat, bringing its most intense drought in history. A 58 **percent decline in wheat production** results, as occurred after their 2002 drought. **Global food prices spike.**

In April, record rainfall hits Canada, the world's No. 2 wheat exporter. Canada's wheat harvest falls 14 percent, as occurred after extreme rains in 2010. Unrelenting torrential rains hit the central U.S., delaying spring planting of crops and bringing near-record flooding on the Mississippi and Missouri rivers. Fortunately, because of infrastructure bills passed in 2021 and 2022, which gave funds for flood preparedness, the damage is billions of dollars less than from the great floods of 2011 and 1993.

As summer arrives, the jet stream gets "stuck" in the type of resonant pattern linked to human-caused climate change that has become more frequent in recent years. The stuck jet stream brings cool air, relentless rain-bearing low-pressure systems and record rains to the central United States. Production of corn falls 4 percent and wheat 25 percent, as occurred in 2017 after a similarly wet year. In the western U.S. and Canada, the stuck jet stream brings a **record-strength dome of high pressure**, exacerbating their intense drought and bringing another year of **hellacious wildfires and choking smoke** that leads to thousands of premature air pollution deaths.

Severe drought, typical of an El Niño year, hits India and Southeast Asia, causing failure of the monsoon rains. In India, "Day Zero" arrives for an additional 100 million people, as taps run dry from years of excessive groundwater pumping and a wasteful water supply system. Rice yields fall 23 percent in India, the world's No. 1 rice exporter, as occurred in 2002.

In the fall, another bonkers Atlantic hurricane season unfolds as record-warm waters in the Caribbean fuel five major hurricanes, bucking the tendency of El Niño to suppress hurricanes. In mid-October, a hurricane - a carbon copy of 2021's Hurricane Ida, except occurring during peak harvest season - trashes three of America's 15 largest ports, which lie along the Lower Mississippi River and handle 60 percent of all U.S. grain exports to the world. Barge traffic on the Mississippi is crippled for months, during the peak export period for U.S. grain.

The extreme weather **onslaught causes food prices** to spike to quadruple the levels of 2000. **Food riots break out** in urban areas across the Middle East, North Africa and Latin America. The Euro weakens and the main European stock markets lose 10 percent of their value; U.S. stock markets fall 5 percent. **Civil war erupts** in Nigeria, **famine kills nearly a million** people in Bangladesh and Africa, and Mali becomes a failed state. **Military tensions heighten** between Russia and NATO; **nuclear-armed India and Pakistan fight** a border skirmish over water rights. Even more dramatic stock market falls ensue, and the **global economy tumbles into a deep recession.**

This worst-case scenario year - though unlikely to occur exactly this way - illustrates one of the greatest threats of climate change: **extreme droughts and floods** hitting multiple major grain-producing "breadbaskets" simultaneously. The scenario is similar to one outlined by insurance giant Lloyds of London in a "Food System Shock" report issued in 2015. Lloyds gave uncomfortably high odds of such an event occurring - well over 0.5 percent per year, or more than an 18 percent chance over a 40-year period.

Given the unprecedented weather extremes that have rocked the world recently, the odds of a devastating food system shock are probably **much higher**. What's more, these odds are steadily **increasing as humans burn fossil fuels and pump more heat-trapping greenhouse gases into the air.**

A warming planet provides more **energy to power stronger storms**, and more energy to intensify droughts, heatwaves and wildfires when storms are not present. Earth's **oceans are heating at an accelerating rate,** storing energy equivalent to an astonishing three to six Hiroshima-sized atom bombs per second. That extra heat energy allows more water vapor to evaporate and power stronger and wetter storms - like Hurricane Ida, and the catastrophic storms that hit Europe and China in July, costing over $25 billion each.

Earth's extra heat energy also intensifies droughts and heatwaves, like the one that brought Canada's all-time heat record in June: 121 degrees Fahrenheit in Lytton, British Columbia, a day before a wildfire burned the town down. Global warming also intensified the 2010 Russian drought, which caused a doubling in global wheat prices, helping fuel the Arab Spring protests that led to the deadly uprisings in seven nations and the overthrow of multiple governments.

If business-as-usual is allowed to continue, **a civilization-threatening climate catastrophe will occur.** Mother Nature's primal fury of 2021 is just a preview of what is coming. Global temperatures are currently about 1.2 degrees Celsius (2.2 degrees Fahrenheit) warmer than pre-industrial levels, and this year may well be the coolest year of the rest of our lives. Catastrophic extreme weather events will **grow exponentially worse** with 3 degrees Celsius of warming - **the course we are currently on.**

#### Establishment creep prevents Islamic finance markets in the US---only the plan’s certainty solves.

Michael A. Helfand and Barak D. Richman 15. Michael A. Helfand. Associate Professor of Law, Pepperdine University School of Law; Associate Director, Diane and Guilford Glazer Institute for Jewish Studies. & Barak D. Richman. Bartlett Professor of Law and Business Administration, Duke University School of Law; Senior Fellow, Kenan Institute for Ethics, Duke University. "The Challenge of Co-Religionist Commerce." Duke Law Journal, vol. 64, no. 5, February 2015, p. 769-822. HeinOnline.

This resistance to enforcing co-religionist commercial instruments-and its application in the context of Islamic contracts is being noticed by more than soon-to-be-married couples. The financial press has reported that, in large part because of rulings on mahr agreements like Soleimani, the United States is not perceived to be hospitable to the growing market for Islamic finance. 9 In fact, Fitch Ratings recently observed that U.S. legal precedents serve as "[o]ne of the main limitations [preventing] effective enforcement" of Islamic bonds. Although the Islamic bond market is growing worldwide, Fitch Ratings warned that "[ilt remains uncertain whether certificate holders will be able to enforce their contractual rights in [U.S.] courts."' These uncertainties are only exacerbated by the continued barrage of legislative initiatives in several states to pass anti-Sharia laws.161

These concerns are a material indicator of the economic harm to say nothing of limitations on religious commitments-imposed by Establishment Clause Creep. Although there has been little litigation over Islamic bond instruments,' the growing case law over mahr agreements and other co-religionist commercial documents has been noticed by sophisticated commercial parties, further undermining the credibility of many co-religionist commercial instruments.

#### Allows US investment in MENA infrastructure projects---key to outpace China.

Sarah Snebold 21. JD Candidate at University of Minnesota Law School. “Why Does the United States Fail to Address the Green Sukuk as an Ideal Vehicle for Environment-Forward Projects?” Minnesota Law Review, Volume 105. https://minnesotalawreview.org/2021/03/31/why-does-the-united-states-fail-to-address-the-green-sukuk-as-an-ideal-vehicle-for-environment-forward-projects/

The SEC transaction represents how the AAOIFI and market participants responded to the downturn through strengthening green sukuk and integrating green standards into its norms.[46] It represents the prominence of sovereign or government-related entities to issue the sukuk in the GCC.[47] And points to how the energy sector, particularly power, oil, and gas, is dominating the sukuk issuance market.[48] The SEC transaction and the rise of green sukuk signals the fact that Islamic finance is not disappearing.

Furthermore, the market for green investments—investment activities focusing on companies and projects committed to environmentally conscious business practices[49]— continues to grow and is projected to grow exponentially.[50] Simultaneously, the need for infrastructure, energy, and financing liquidity within the Middle East and North Africa (MENA), creates a strong incentive to utilize the green sukuk.[51] Despite this, the U.S. plays an inactive role financing projects in the MENA region in comparison to China, whose activities are of particular interest to U.S. foreign policy.[52]

---FOOTNOTE 52 STARTS, MIDPARAGRAPH---

[52] See Jordi Quero, China’s Impact on the Middle East and North Africa’s Regional Order: Unfolding Regional Effects of Challenging the Global Order, 13 Contemp. Arab Affs. 86 (2020) (discussing how China may prove successful in creating alternative norms and institutions in comparison to those which currently define the global liberal order, and so could trigger shifts in the MENA normative environment).

---FOOTNOTE 52 ENDS, PARAGRAPH CONTINUES---

Nor are there any U.S. laws specifically addressing Islamic finance.[53] The unique characteristics of Islamic finance combined with the lack of U.S. laws and resources makes it more difficult for U.S. businesses to fully take advantage of the market. Thus, the U.S. legislature needs to respond by addressing Islamic finance and allow U.S. businesses to profit from the market during its’ projected exponential growth.

#### Chinese MENA finance lets them outpace the US---collapses Middle East hegemony.

Aisha Han and Rachel Rossi 18. Aisha Han is an intern at the Rafik Hariri Center at the Atlantic Council. Rachel Rossi is an intern at the Rafik Hariri Center at the Atlantic Council. "What are the implications of expanded Chinese investment in the MENA region?". Atlantic Council. 8-10-2018. <https://www.atlanticcouncil.org/blogs/menasource/what-are-the-implications-of-expanded-chinese-investment-in-the-mena-region/>

By 2020, China aims to reach a $600 billion trade aggregate with the Middle East. Undoubtedly, this will be a boon to some countries. Other countries, however, have expressed concern about China’s expansionist ambitions. The United States potentially has the most to lose. Projects like the BRI suggest that Beijing has the desire to augment its growing economic and strategic influence with a “soft power” narrative that presents China as an alternative leader to the global hegemony of the United States. Essentially, China is continuing to use financial mechanisms to become an international player deeply embedded in the MENA region’s geopolitical landscape. As China moves forward with its own agenda, its MENA investments should be closely monitored.

#### Only MENA hegemony deters China---Taiwan and the SCS are indefensible but countervailing energy power solves.

Anthony H. Cordesman 10/15/21. Emeritus Chair in Strategy. "China, Asia, and the Changing Strategic Importance of the Gulf and MENA Region". No Publication. 10-15-2021. https://www.csis.org/analysis/china-asia-and-changing-strategic-importance-gulf-and-mena-region

More generally, the U.S. cannot let itself be trapped into focusing on the areas of direct military competition where China has the greatest advantages in terms of strategic geography and warfighting capability. The U.S. may or may not be able to challenge China indefinitely in an effort to secure the independence of Taiwan or freedom of navigation in the South China Sea, but even today, U.S. studies and wargames find the past U.S. advantage has sharply eroded and that the U.S. can “lose” some possible war scenarios.

If the U.S. is to successfully deter China and coerce it into peaceful competition and cooperation, then the U.S. must compete on a global level – confronting China with the threat of a local confrontation would be more costly in global terms than the victory is worth. It must match – or outmatch – China’s advantages in terms of countervailing powers in the Eastern Pacific with U.S. strategic leverage in other areas and do so in Chinese terms.

This means exploiting every major advantage in political and economic competition with China, as well as in military competition. Such “white area” competition may not be warfare in the literal sense but – as both current Chinese strategic doctrine and Sun Tzu make clear – victory is best achieved by avoiding or limiting war. A reliance on military means not only is costly in ways that have only minimal civil benefits, it presents massive risks in terms of the burden that military spending places on the national economy, the cost of any major theater conflict to the U.S. and its strategic partners, and the risk – however limited – of an escalation to nuclear war.

The Growing Importance of Gulf and MENA Exports to China and Asia

Second, direct U.S. dependence on oil imports from the MENA region may have gone down to the point where the U.S. is nearly self-sufficient in petroleum and gas, but the U.S. Energy Information Administration (EIA) makes it clear that the period of U.S. “independence” is uncertain, and much depends on the success of programs that will substitute renewables for fossil fuels – programs that the current energy crisis has made clear are uncertain in terms of volume of output and price.

What is more important from a strategic viewpoint, however, is that global energy projections that the EIA issues in the International Energy Outlook, issued in October 2021, make it clear that China and Asia will have a sharply growing dependence on MENA and Gulf petroleum exports that may well extend through 2050.1

Moreover, the same projections show the limits to Russian and other sources of exports. The degree of U.S. influence and strategic partnerships in the MENA region give the U.S. a major potential strategic advantage – one that may well be more important in practice than the past effort to secure key sources of oil exports to the United States.

The data – as the EIA makes clear in depth – are uncertain, and different energy futures are possible even with today’s knowledge of energy resources and technology. The EIA projections do, however, precede the current crisis in Chinese coal supplies as well as the unexpected reductions in the output from renewables in Europe and some of the uncertainties in the global levels of hydroelectric power.

Even a quick parametric review of the EIA data makes it clear that it is highly unlikely that the EIA projections through 2040 will not be broadly correct in estimating China’s growing dependence on MENA petroleum exports unless a truly massive technical breakthrough takes place in the energy output from renewables or some form of nuclear energy.

Putting Gulf and MENA Energy Production into Perspective

The EIA projections also show that China’s only credible source of much of its current level of petroleum exports – and the future increases it will need – is the MENA region. China will depend – as will the rest of Asia – on energy exporters like Algeria, Libya, Egypt, and Syria, as well as the states of the Arab/Persian Gulf – Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, the UAE, and Yemen.

The main MENA exporters to Asia are the Arab/Persian Gulf states. To the extent there exist hard data on something approaching a “normal” or pre-Covid year – the EIA estimates that they totaled some 20.7 million barrels per day (MMBD) through the Strait of Hormuz in 2018, plus 2.7 MMBD that passed through pipelines from Saudi Arabia and the UAE that went to ports in the Red Sea and Indian Ocean. This was a total of 23.4 MMBD or some 37% of all global maritime exports and 23% of all global consumption of crude oil, condensate, and petroleum products.2 The key consumers were China, India, Japan, South Korea, Singapore, and “other Asia,” plus a limited continued flow to the United States.

China’s Maritime Silk Road and Current Dependence on Oil Imports

As Figure One shows, this flow was part of a maritime “silk road” of critical strategic importance to China, not only for the flow of energy to China but for the flow of Chinese exports to Asia, the Middle East, and Europe through the Suez Canal. China clearly recognizes the importance of this route, not only for global trade but for trade within Asia and the Indian Ocean region. The table in Figure One illustrates port and basing activity in Asia, the Indian Ocean, the Red Sea area, and East Africa.

Figure Two puts China’s recent dependence in a more detailed perspective, and it also shows the degree to which it has sought to diversify its sources of petroleum imports. At the same time, this table is based on Department of Defense (DoD) estimates that not only date back to a pre-Covid period, they date back to a time when China had not yet experienced its current crisis in coal supply, the U.S. commitment to limiting nuclear energy, and the U.S. agreement to place so much future strategic dependence on renewables and alternative energy supplies.

Both figures illustrate a level of Chinese dependence that already makes the security of the Gulf region and the control of the maritime routes to Asia vital strategic interests to the United States. Important as freedom of navigation may be in the South China Sea and to preserving the independence of Taiwan, the military capability to dominate the maritime routes west of the Strait of Malacca and in the Indian Ocean is critical to China, and it offers the United States a significant advantage in countervailing power relative to China.

Chinese and Asian Economic Growth Mean Massive Increases in Energy Demand and in Flow of Imports from MENA

It is not China or Asia’s current dependence on energy imports, however, that determines the strategic importance of MENA and Gulf exports. As noted earlier, the U.S. Department of Energy (DoE) has just released an updated version of its International Energy Outlook or IEO.3 Figure Three is drawn from this report, and projects a massive increase in Asian economic growth in both China and many other Asian states. This rise is far smaller for the developed Asian states in the OECD like America’s key strategic partners, but it is striking in the case of India and a wide range of other states – many of which rely on MENA exports.

Figure Four provides a more detailed breakout of the rise in Chinese and other Asian liquid fuel consumption. It projects a sustained rise in Chinese demand through at least 2035 and a far sharper rise in demand from India and other non-OECD states. This means that if China and/or Russia should displace the U.S. in strategic influence in the Gulf and MENA area, it would result in a major increase in their strategic leverage over much of Asia.4

Both figures project a steady increase in the strategic importance of the Gulf and MENA area directly relating to China and in creating a stable base for U.S. global competition with China in the many parts of the world where China is seeking to expand its “white area” leverage and could attempt to use “gray area” military options.

The narrative section of the IEO report notes that:5

The regions with the fastest-growing economies in the IEO2021 Reference case are non-OECD countries in Asia. India’s growth is greatest, but the WEPS regions7 of Other non-OECD Asia, Africa, China, and Other non-OECD Europe and Eurasia remain leaders in economic growth as well. Although China continues to grow at an average rate equal to Africa and Other non-OECD Europe and Eurasia, its growth notably slows throughout the projection period. Together, these top five growth regions were home to 70% of the world’s population in 2020 and 44% of GDP. By 2050, these shares grow to 73% and 59%, respectively.

Economic growth varies widely among Asian regions in the IEO2021 Reference case. Most notably, the projected GDP growth rate in China slows considerably compared with its growth rate from 2000 to 2010, when GDP increased by an average of over 10% per year. We also project slower economic growth for Japan and South Korea, illustrating the interconnectedness of Asian economies, as the decline in Chinese demand and trade for intermediate and finished goods, in addition to other structural and demographic factors, affects economic growth in these neighboring countries.

Moreover, the increases in Russian negotiations with the MENA and Gulf states over oil production quotas and prices could increase Russian and potentially Russian-Chinese strategic influence, both in Asia and on a broader global level if the U.S. does not continue to support its Gulf strategic partners. Moreover, both China and Russia already are seeking to increase their arms sales, advisory roles, and strategic presence.

Rising Global and Asian Dependence on Liquid Fuels Through 2050

The projected increases in the consumption of liquid fossil fuels occur, in spite of the fact that Figure Five shows that the IEO makes relatively optimistic assumptions about the real-world future ability to make global increases in the supply of renewables and natural gas. (Although it avoids the political trap the International Energy Agency (IEA) has faced of having to assume that political goals for reducing fossil fuel consumption will actually be met).

As for the broader overview of dependence on liquid fuels in the IEO, the report states that:6

Oil and natural gas production will continue to grow, mainly to support increasing energy consumption in developing Asian economies…Driven by increasing populations and fast-growing economies, consumption of liquid fuels will grow the most in non-OECD Asia, where total consumption nearly doubles by 2050 from 2020 levels in the Reference case.

Because these countries will consume more liquid fuels than they produce in the Reference case, we project that non-OECD Asia will supplement local production with increased imports of crude oil and finished petroleum products. The increased imports will primarily be supported by increased production in the Middle East. In the Reference case, by 2050, non-OECD Asia will become the largest importer of natural gas, and Russia will become the largest net exporter of natural gas.

Gulf versus Other Sources of Petroleum Production

Figure Six supplements the previous data by showing the projected trends in petroleum projection from key sources through 2050. The key role of the MENA region – which is clearly dominated by the Arab/Persian Gulf – is clear. So are the sharp limits to the increases in Russian, U.S., Canadian, and Brazilian production.

The good news is that the U.S. is projected to sustain a high level of independence from petroleum imports if it meets its goals for expanding renewables. The mixed news, however, is just how critical U.S. ties to its strategic partners in the Gulf and MENA areas will remain.

U.S. Competition with China and Russia, the Gulf and MENA Region, and Countervailing Power

Given these trends, the strategic priority of the MENA region has shifted from protecting U.S. petroleum imports to competing with China and Russia and to maintaining a global economic system that favors the United States. The strategic importance of the MENA region and the Gulf remains as much of a vital U.S. strategic interest as it was during the peak period of U.S. dependence on petroleum imports – and may well be higher in the future.

Asian dependence on petroleum exports has already made U.S. strategic partnerships in the MENA region a critical tool in maintaining U.S. countervailing power against China, in aiding America’s partners in Asia, and in addressing the continuing threat of instability – and terrorism and extremism – in the MENA region. It will continue to make U.S. ability to protect its strategic partners from Iran and other threats within the region a vital strategic interest.

#### Extinction---causes global wars.

Captain Todd Bonnar 20. MSC, CD joined the Canadian Armed Forces as a Direct Entry Officer in 1997. In 2017 he represented Canada as Chief of Staff and Deputy Commander of NATO’s high readiness maritime Task Group, Standing NATO Maritime Group One, participating in Operation REASSURANCE in the Baltic Sea and Operation SEA GUARDIAN, NATO’s enduring counter-terrorism and security operation in the Mediterranean, earning the Meritorious Service Cross for his leadership of the Task Group. He holds a Bachelor of Social Sciences Degree from the University of Ottawa and a Masters of Defence Studies with a focus on Chinese Domestic Policy, from the Royal Military College of Canada. He is a graduate of CF Joint Command and Staff Program 36. "Opinion: Maritime Freedom & the Global Commons". MarineLink. 3-18-2020. https://www.marinelink.com/news/opinion-maritime-freedom-global-commons-476727

Likewise, China’s attempts to rationalize and assert control of 80 to 90 percent of the South China Sea, including waters allocated to neighboring sovereign states under the U.N. Convention on the Law of the Sea (UNCLOS) are equally troubling. 4 As author Bill Hayton aptly describes it in book The South China Sea: The Struggle for Power in Asia, the South China Sea is “both the fulcrum of world trade and the crucible for conflict.” 5 The challenge posed by China’s refusal to abide by international law in the South China Sea may potentially re-define the practical application of the concept of maritime freedom. Beijing is bullying its way through its selective application of UNCLOS to a maritime entitlement five times larger than permitted via the convention (China ratified UNCLOS in 1996) and customary international law, carving out an illegitimate sphere of influence. 6 In effect, if Beijing gets its way, the South China Sea will become a seaward extension of Chinese territory and the ruling Chinese Communist Party will ipso facto dictate what foreign vessels and aircraft can and cannot do. 7 The cascading effects for other critical SLOCs, from the Persian Gulf to the ever increasingly more accessible Arctic routes, could be severe if other coastal states, such as Iran and Russia, decide to press their own revisionist interpretations of maritime law. 8

Many Russia watcher and analysts support the premise that Russia, through its confrontation with the Ukrainian Navy in the Kerch Straits in November of 2018 and its subsequent restrictions on shipping, is similarly trying to rewrite the rules in the Sea of Azov, just as China has done in the South China Sea. Experts such as James Holmes, a professor of maritime strategy at the United States Naval War College, agree that the Russian actions in the Black Sea region pose a challenge to international maritime law.

“It’s an effort to set a precedent that Russia can then apply to other seas that it would also like to dominate if not control, much as the South China Sea is an expanse that China would like to ‘own,’ ” he said. “If Russia can define the Azov Sea as Russian territorial waters, there is no reason in principle it could not do so in the wider Black Sea, the Baltic Sea, Sea of Okhotsk, et cetera. So this is an easy win for Moscow and an easy place to set that precedent.” 9

In all of the examples above, the international norms and UNCLOS regulated system of maritime trade, commerce and military endeavors has come under direct challenge. In all such cases, it is incumbent upon maritime nations that believe in the freedom of the sea and require international sea based trade to maintain their quality of being, help defend this centuries-old concept that the high seas are a global commons. International waters belong to everyone and no one, with few, minor and narrowly defined exceptions. No state owns it, and no state can make laws dictating what others do there. 10 Operations, such as the ones listed above, threaten the freedom of the seas, seek to intimidate neighboring states and coerce weaker nations into violation of international law.

On a daily basis, surface naval forces of the NATO Alliance’s nations and partners are conducting peaceful operations across the globe. These joint forces at sea protect freedom of maneuver, secure the sea-lanes for global trade and economic growth, defend and promote key national interests and prevent competitors and adversaries from leveraging the world’s oceans against us. The navies of the democratic and peaceful countries of the world and the international maritime community share concern over safeguarding strategic sea lines of communication.

Versatile and scalable naval forces fulfill these crucial roles, which are the necessary preconditions to ensure the free movement of trade and commerce and to safeguard the interests of NATO and partner nations all the while maintaining a strictly defensive posture. The persistent forward presence and power projection of the Alliance’s naval forces backed by credible combat capability deters potential aggression and seeks to limit regional frictions from escalating to greater levels of conflict. These forces strengthen conditions that enable mutual prosperity.

The freedoms to use the maritime domain—the oceans, the littorals, waterways, and seafloor; the rise of global information systems, especially the role of data in decision making and the security of data supporting operational decision making are shared fundamental areas of concern, not only for the individual nations and the Alliance in general, but also for the maritime industry.

Security in the global maritime commons is not a given. Without a comprehensive, shared understanding of what is occurring in the maritime domain, achieved through a robust Maritime Situational Awareness (MSA), vital opportunities to detect and mitigate threats or critical vulnerabilities at the earliest opportunity may be lost. A comprehensive MSA network is required to facilitate information sharing and can only be established with the cooperation of military forces, national law enforcement agencies, and close cooperation with the international maritime transportation industry. Understanding Pattern of Life is critical to identifying abnormalities that may be indicators to hostile or subversive actions.

The lack of modern and agile global and regional governance structures has generated friction between the globalized corporate sector, maritime authorities and military policy-makers that undermines the maintenance of persistence relationships necessary to enhance true maritime situational awareness. In an increasingly inter-connected, inter-dependent and rapidly changing globalized world, there continues to be an absence of persistent relationships between the ever-increasing number of key stakeholders in the global maritime community of interest.

Operating according to disparate mandates, objectives, areas of responsibility and jurisdiction, there is an obvious need to develop a shared network and develop a collaborative contribution to achieve a comprehensive MSA capability in which all stakeholders’ requirements are met and enhanced. In the maritime domain, our continued freedom of the global commons requires an understanding of persistent relationships, time, space, risk, oceanography, the global supply chain, critical infrastructure and the environment, as well as the nature of the risk, and the capabilities, readiness and location of one’s competitors. So as James Holmes so eloquently states, these clashes are not merely about the Strait of Hormuz or the South China Sea.

The world’s oceans and seas comprise a single interconnected body of water. Seagoing nations must stand on the principle that maritime freedom is likewise indivisible. If the maritime community in general relinquishes its inherent freedoms in the global commons in one body of water for the sake of placating a predatory coastal state such as China, the global maritime community stands the risk some other strong coastal state will mount similar challenges in some other strategic waterway.

# 2AC Round 4

## T Prohibit

#### We meet---the plan is a per se prohibition---plan text in a vacuum.

Brad Pollina 12. 3L at NYU. “Rabbinical Cartel Ought to Face Antitrust Scrutiny” Antitrust Connect Blog. 09-06-12. http://antitrustconnect.com/2012/09/04/rabbinical-cartel-ought-to-face-antitrust-scrutiny/

**Professor Sagers,**

I really enjoyed your article. I am a 3L student at NYU interested in antitrust and was wondering if you are of the view that the arrangements you and Professor Richman speak of **ought to be declared per se illegal?** Or under cases like NCAA, do you think they deserve a Rule of Reason analysis because in this area, some restraints may be necessary and per se condemnation is inappropriate. Further, under the Rule of Reason, how do you think courts would deal with quality-based arguments (e.g., the arrangement ensures only rabbis of the “best quality” or best pedigree are placed in synagogues). Justice Souter’s opinion in California Dental seems to indicate such arguments have gained traction and may be counted as pro-competitive justifications.

Many thanks in advance for your thoughts.

Brad Pollina

REPLY

Chris Sagers

SEPTEMBER 7, 2012 AT 10:01 PM

Hi Brad!

I think it’s a **hard question**, because on the one hand one has to have sympathy for the religious order, for obvious reasons.

But on the other hand, **if there is one clear rule in antitrust** it is that you cannot defend against liability by arguing that some value other than competition is served by your conduct. E.g., if the Rabbinical Assembly’s restraints really are subject to antitrust at all, they **cannot be defended by saying that they are needed for theological reasons.** (E.g., I do not believe salary and hiring restraints could be justified by saying they are necessary to preserve the theological purity of Conservative Judaism.) **They have to be defended as pro-competitive**, meaning that they reduce prices (here, they plainly do not), increase output (ditto), or lead to innovation or quality improvements (this seems at least more plausible but I doubt that naked price and output restraints will be held to do so). And, indeed, the Supreme Court itself has already held that if a restraint would **otherwise be per se illegal,** it cannot **be given rule of reason treatment** in order to respect **First Amendment values.** The Court so held in Superior Court Trial Lawyers.

As a separate issue, I would feel much better about liability if it were clear that the Rabbinical Assembly could face only injunctive and not monetary relief, but there is no rule in American antitrust that money damages are not available because a **particular defendant is sympathetic.**

So I think it’s hard. But I also think they’ve kind of engaged in legally risky conduct on the unsafe assumption that antitrust did not apply, and harms have resulted of the kind that antitrust is meant to remedy.

I think it’s useful to remember a distinction that Barak has stressed–the restraints in this particular case are not imposed in a religion that is organized by a central hierarchy that itself employs the individual clerics. This whole scenario would seem different were that the case.

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

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

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

#### Anticompetitive business practices include rule of reason.

Charlotte Wezi Mesikano-Malonda 16. Executive director. "Global Competition Review". No Publication. 7-22-2016. https://globalcompetitionreview.com/review/the-european-middle-eastern-and-african-antitrust-review/the-european-middle-eastern-and-african-antitrust-review-2017/article/malawi-competition-and-fair-trading-commission

Anticompetitive business practices are generally defined as the category of agreements, decisions and concerted practices that result in the prevention, restriction or distortion of either actual or potential competition. Abuse of dominance and market power is an example of anticompetitive business practices and hence falls within the purview of the CFTA.3 Anticompetitive business practices are either illegal per se or illegal by rule of reason. A conduct is illegal per se if, regardless of its objective and effect or any justifications of the conduct, there is a presumption of harm on competition.

## States CP

#### Religious commerce is interstate---Congress is charged with regulating the field.

Cole Durham 98. Cole Durham, Jr. BYU Law School. Hearing Before the Subcommittee on the Constitution of the Committee on the Judiciary House of Reps. On H.R. 4019. June 16 and July 14, 1998. https://www.justice.gov/sites/default/files/jmd/legacy/2014/01/13/hear-134-1998.pdf

Many **religious organizations are interstate and** indeed **international** organizations. The DePaul Survey cited above indicates that while approximately 60% **of the denominational respondents** indicate that final decisions as to location and property acquisition are made at the local level, nearly **20% indicated that** such **decisions are made** by state, regional, or national **bodies.**28 This means that for a **substantial number** of religious organizations, **decisions regarding church building** and expansion **are made in one state and implemented in another.** Funds typically **flow in interstate commerce** from one location to another in support of these objectives.

In some ecclesiastical polities, funds are collected and retained at the local level, but in others, they are gathered, **transferred** electronically **to a central location**, and then distributed back out nationally or internationally in accordance with the needs of various congregations. Charitable aid flowing through these channels depends to some extent on where congregations are ultimately located. Even where facilities are leased, the **funds involved often flow in interstate commerce**. Local as well as national organizations often own retreat facilities which may be located at a distance, even in a different state. Many religious organizations undertake humanitarian aid projects that involve sending goods (e.g., clothing) and services (e.g., medical aid) across state and international boundaries. Land use regulations impeding such uses obviously regulate activity that substantially affects interstate commerce.

**City regulation** of religious land use has the potential to **divert the flow of commerce** from one state to another. Certainly, it often impedes the flow, for substantial periods, while churches administered nationally look for alternative sites. The L.D.S. Church currently builds 300-400 churches annually. The cost of such buildings typically runs into the multimillion dollar range. Approximately half of these are built in various states of the United States, and the remainder are located inter- nationally. This experience must be multiplied by that of hundreds of other denominations in the United States. **Land-use regulations** unquestionably **delay or block such religious activity, with direct negative impacts on commerce** that would otherwise occur.

Some religious facilities may attract believers to **travel across state lines** to regional retreat or worship facilities. Temples have this characteristic for believing Mormons; countless other churches have similar structures. Retreat, camp, or recreational facilities may lie across state lines. The location of a new church building in a municipality will typically result in a new flow of literature, media items, computers, and other such matters, as well as the installation of new interstate telephone lines and other means of communication. Often, supervisory personnel will need to travel to assure that new construction is handled properly and that existing facilities are properly maintained. These are **precisely the types of activity** that have **justified Congressional regulation** in the interest of civil rights in other contexts.29

All too frequently, the current land use regime operates as a kind of non-tariff trade barrier against new and less popular religious groups, with ripple impacts on all the other types of commerce that the new religious activity would otherwise stimulate. Moreover, as noted above, current administration of land use rules creates in effect an unfairly burdensome excessive market for real estate options, as the sorry experience of numerous religious groups in proffering site after site to local planning authorities confirms. **Congress can legitimately determine that it will regulate a field** (or occupy a field with non-regulation) where it desires to assure that activities **substantially affecting commerce** (here: **religious activities**) should not be burdened, or should be burdened only where there are strong and non-discriminatory grounds for the burden.

Examples could be multiplied, but what has been said amply supports the truly massive impact religious activity in general, and more particularly, religious activity directly impacted by land use regulation, has on interstate commerce. Particularly when replicated across denominations and across the thousands of municipalities in the United States, the substantial effect on commerce is undeniable. **Eliminating unjustified burdens on religious exercise will promote commerce**, and justifies Congressional intervention to assure that religious activity and its substantial affects on commerce is not unfairly burdened by differential land use regimes around the country.

#### Federal religious exemptions shield from state laws.

Dan Handman and Netta Rotstein 20. Hirschfeld Kraemer LLP. “U.S. Supreme Court Shields Religious Employers From Anti-Discrimination Laws” JD Supra. 07-15-20. https://www.jdsupra.com/legalnews/u-s-supreme-court-shields-religious-26477/

On Wednesday, July 8, **the U.S. Supreme Court issued a** much-anticipated **ruling deciding** that **teachers at religious schools could not claim protections under anti-discrimination laws.** The central issue in Our Lady of Guadalupe School v. Morrissey-Berru **concerned the scope of the “ministerial exception”—a legal doctrine grounded in the First Amendment** fashioned to **protect a religious institution’s freedom to manage its internal operations**, including making personnel decisions, without governmental interference.

Consolidating two cases involving elementary school teachers at Catholic schools who claimed they were unlawfully terminated (one due to her age and the other because of a serious medical condition), the Supreme Court expanded the reach of the ministerial exception (previously only applied to individuals holding a “ministerial position”) to employees who perform “vital religious duties” in carrying out the institution’s religious mission.

The decision clarified and **resolved ambiguities** stemming from a prior unanimous Supreme Court decision, Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC, regarding who qualifies as a “minister” for the purposes of the ministerial exception. Our Lady stressed that there is no magic formula for making this assessment and cautioned against heavily relying on the semantics of an employee’s title or educational training. Instead, the Court underscored that “what matters, at bottom, is what an employee does.”

Significantly, Our Lady assured that **great deference should be afforded** to a religious institution’s explanation of the importance of the role of its employees in advancing the institution’s mission. Especially persuasive to the Court were the teachers’ employment agreements and faculty handbooks, which expressly represented that educating and forming students in the Catholic faith lay at the core of the mission of the schools where they taught. Based on that evidence, the Court concluded that the teachers were expected to help the schools carry out their religious missions in meaningful ways.

**The Our Lady decision is unquestionably a win for religious entities, as it gives them a ready-made defense to any** discrimination or harassment **case, whether under federal or state law.** The scope of the defense and its practical effects, however, remain to be seen. Since Our Lady’s ministerial exemption only applies to employees who perform “vital religious duties,” it stands to reason that lower courts will grapple over exactly which duties are vital to religion and which duties are not. It would not be at all surprising if a trial court allowed a jury to make that decision.

## Regs CP

#### Perm do the counterplan---antitrust law refers to any competition law.

U.S. Code 82. Title 15: Commerce and Trade. Chapter 66: Promotion of Export Trade. Subchapter II: Export Trade Certifications of Review. Section 4021: Definitions. Section Effective Oct. 8, 1982, see section 312 of Pub. L. 97–290, set out as a note under section 4011 of this title.

Copyright Act of 1976, 17 U.S.C. §§ 101-1332 (2012)

As used in this subchapter—

(1)the term “export trade” means trade or commerce in goods, wares, merchandise, or services exported, or in the course of being exported, from the United States or any territory thereof to any foreign nation,

(2)the term “service” means intangible economic output, including, but not limited to—

(A)business, repair, and amusement services,

(B)management, legal, engineering, architectural, and other professional services, and

(C)financial, insurance, transportation, informational and any other data-based services, and communication services,

(3)the term “export trade activities” means activities or agreements in the course of export trade,

(4)the term “methods of operation” means any method by which a person conducts or proposes to conduct export trade,

(5)the term “person” means an individual who is a resident of the United States; a partnership that is created under and exists pursuant to the laws of any State or of the United States; a State or local government entity; a corporation, whether organized as a profit or nonprofit corporation, that is created under and exists pursuant to the laws of any State or of the United States; or any association or combination, by contract or other arrangement, between or among such persons,

(6)the term “antitrust laws” means the antitrust laws, as such term is defined in section 12 of this title, and section 45 of this title (to the extent that section 45 of this title prohibits unfair methods of competition), and any State antitrust or unfair competition law,

(7)the term “Secretary” means the Secretary of Commerce or his designee, and

(8)the term “Attorney General” means the Attorney General of the United States or his designee.

#### Only removing the antitrust exemption is facially neutral---the counterplan unconstitutionally targets religious group.

Justice Kennedy 93. “Church of Lukumi Babalu Aye, Inc. v. Hialeah, 508 US 520 - Supreme Court 1993” <https://scholar.google.com/scholar_case?case=975414503455261754#p532>

Although a law targeting religious beliefs as such is never permissible, McDaniel v. Paty, supra, at 626 (plurality opinion); Cantwell v. Connecticut, supra, at 303-304, if the **object of a law is to infringe upon or restrict practices** because of their religious motivation, **the law is not neutral**, see Employment Div., Dept. of Human Resources of Ore. v. Smith, supra, at 878-879; and **it is invalid** unless it is justified by a compelling interest and is narrowly tailored to advance that interest. There are, of course, **many ways** of demonstrating that the object or purpose of a law is the suppression of religion or **religious conduct**. To determine the object of a law, we must begin with its text, for the minimum requirement of neutrality is that a law not discriminate on its face. A law **lacks facial neutrality** if it **refers to a religious practice** without a secular meaning discernible from the language or context. Petitioners contend that three of the ordinances fail this test of facial neutrality because they use the words 534\*534 "sacrifice" and "ritual," words with strong religious connotations. Brief for Petitioners 16-17. We agree that these words are consistent with the claim of facial discrimination, but the argument is not conclusive. The words "sacrifice" and "ritual" have a religious origin, but current use admits also of secular meanings. See Webster's Third New International Dictionary 1961, 1996 (1971). See also 12 Encyclopedia of Religion, at 556 ("[T]he word sacrifice ultimately became very much a secular term in common usage"). The ordinances, furthermore, define "sacrifice" in secular terms, without referring to religious practices.

We reject the contention advanced by the city, see Brief for Respondent 15, that our inquiry must end with the text of the laws at issue. Facial neutrality is not determinative. The Free Exercise Clause, like the Establishment Clause, **extends beyond facial discrimination**. The Clause "forbids subtle departures from neutrality," Gillette v. United States, 401 U. S. 437, 452 (1971), and "**covert suppression of particular religious beliefs**," Bowen v. Roy, supra, at 703 (opinion of Burger, C. J.). Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked as well as overt. "The Court must survey meticulously the circumstances of governmental categories to eliminate, as it were, religious gerrymanders." Walz v. Tax Comm'n of New York City, 397 U. S. 664, 696 (1970) (Harlan, J., concurring).

#### Deterrence---regulations don’t solve.

Diana Moss 18. President of the AAI. “Public Roundtable Discussion Series on Regulation & Antitrust Law” DOJ. 03-14-18. https://www.justice.gov/atr/page/file/1054996/download

Another takeaway is that immunities and exemptions **disrupt** the very important natural complementarity between antitrust and regulation. There are things that regulation can reach to, that **antitrust can reach to, that regulation cannot** and vice versa-- there are types of conduct that regulation can reach to that antitrust cannot. We see complementarity in antitrust and regulatory remedies.

But perhaps most important, the **role of antitrust** serves very much in the capacity of law enforcement, to **deter anti-competitive behavior**. That's a very, very different animal than regulation, which is designed to promote a public interest standard under a set of rule makings and initiatives that are designed to implement the underlying laws. They're very, very different, but they serve in a complimentary capacity. Immunities and exemptions can disrupt that.

## Sunsets CP

#### Expanding antitrust law is necessary---the existence of competition statutes that don’t cover religious behavior would be unconstitutional.

Rogers ’11 [Sally; June 3, re-uploaded after original publication in Winter 1983; Editor of the University Law Review; Valparaiso University Law Review, "Sherman Act Liability for a Religious Motivated Boycott," p. 515-546]

Status and purpose were constitutionally protected in Noerr and Parker. The church defendants argue that they are similarly protected. But the Supreme Court has never held that the free exercise clause protects all religious acts or conduct. Only belief is held inviolate. The church defendants contend that immunity is predicated not upon the religious motivation but on the lack of a commercial motivation. Defining religion and weighing the belief-act distinction would be necessary only to the extent necessary to prove a non-commercial motive. Such a narrow reading of the Sherman Act would significantly diminish its importance and effect, for there is no limit to the range of purposes a group might characterize as religious to promote their own competitive interests.

The Sherman Act is presumed applicable to all anticompetitive conduct except that constitutionally protected. Any exemption for religiously motivated conduct would, therefore, be contingent upon a finding of constitutional protection for the free exercise claim. Free exercise can be burdened where a governmental interest of the highest order overbalances the claim.

The Sherman Act has been characterized as an act of constitutional proportions.'76 Protection and promotion of competition in our free enterprise system is undoubtedly a compelling interest. The question then becomes whether the exercise of belief to be regulated by the antitrust laws poses a substantial threat to public safety, peace or order. Only the "gravest abuses, endangering paramount interests, give occasion for permissible limitation" of religious practices. 77 The commercial harm to Costello must be found to be tantamount to a threat to public safety, peace or order.

In light of the Court's reluctance to find implied exemptions from the antitrust laws'78 and its willingness to limit religious conduct when an overriding interest is at stake, absolute immunity for a religiously motivated boycott seems implausible. At best, the religious nature of the boycott may provide a defense'79 to the Sherman Act liability. The success of a first amendment defense will depend upon whether the economic pressure tactics used by the church were legitimately geared to the Church's protection of the liturgy or its survival in the marketplace of books.'' Even assuming the Church's activity was a legitimate expression of religious belief, the general community's interest in conducting commerce free of anticompetitive arrangements may justify a denial of their free exercise claim. This is true especially where less drastic means are available to the group.' Most importantly, the balance struck between the Sherman Act and the free exercise of religion cannot significantly encourage or discourage religious life.

Conclusion

An intent to infringe upon the first amendment free exercise of religion by the Sherman Act should not lightly be imputed to Congress.8 ' Thus, the Sherman Act cannot mean precisely what it says. "[A]ll combinations in restraint of trade" must primarily refer to commercially motivated and not politically, socially, or religiously motivated groups. The legislative history of the Act evinces a clear intent to prohibit commercial combinations whose conduct restrains trade. Whether Congress intended a non-commercial status and purpose to shield an actor from liability is less clear. Congress left to the judiciary the task of balancing policy conflicts under the Sherman Act.

In according antitrust exemptions the Court has considered the status and purpose of the actor in light of constitutional guarantees or compelling policy considerations. Where imposition of antitrust liability impermissibly burdens or virtually prohibits the protected conduct, the antitrust laws must give way. In the case of a religiously motivated boycott the constitutional guarantee of free exercise must be weighed against the interest of free and unfettered competition. However, the dual aspect of the religion guarantee strongly suggests that application of the antitrust laws would be appropriate. If

liability under the Sherman Act is not tantamount to a virtual prohibition of the right of free exercise, it is constitutionally permissible. This is particularly true where the lawful purpose claimed by the defendants as their main one could have been achieved by other means at less cost to competition and at little or no cost to the defendants. To hold otherwise would impermissibly advance the exercise of a particular religion, thereby violating the establishment ban. Government may justify a limitation on religious liberty by showing that it is essential to the accomplishment of an overriding governmental policy or program. The need to maintain an organized society that guarantees religious freedom to all legitimizes this limitation on acts, not belief. Such a guarantee requires that some religious practices yield to the common good-free and unfettered competition.

## CIL CP

#### Contravening CIL causes uncertainty, ends legitimacy, and destroys the constitution.

Kundmueller ‘2 [Michelle; May 1; Attorney specializing in constitutional law, candidate for a J.D. and M.A. in Political Theory from the University of Notre Dame, B.A. from Flagler College; Journal of Legislation, “Note: The Application of Customary International Law in US Courts: Custom, Convention, or Pseudolegislation?” vol. 28]

V. CONCLUSION

This Note has attempted to demonstrate some of the difficulties of applying customary international law in U.S. courts. At every level, there are unanswered questions. Many of these issues, like how "general" a practice or its acceptance must be in order to constitute customary international law, can only be given imprecise answers. Not only are these general problems inherent in all legal questions involving line-drawing in the defining of customary international law, but there is a virtual war being waged over where that line should be drawn and by whom. This issue, in turn, raises questions of constitutional importance, the gravity of which it is almost impossible to overstate. Practical concerns about the balance of powers, no less than theoretical misgivings over undermining our government's consent-based authority and legitimacy, demand our attention as the possibility of directly incorporating customary international law, perhaps even when in direct contravention of federal statute, comes closer to becoming a reality.

Current cases do not present any of these possibilities as realities. They do, however, contain the beginnings of what could become fundamental structural changes in customary-and hence, United States-law should the judicial system prove dominant in determining customary international law. Current cases show U.S. courts, on a fairly modest level, defining, determining, and applying customary international law. The cases have yet to produce a real showdown between domestic, either constitutional or congressional, and customary law. To date, congressional and executive actions and statements have been taken as one type of evidence in determining the content of customary international law, but they have not served as dispositive or controlling in the face of overwhelming evidence that customary international law as a whole dictates a contrary outcome.

This,. of course, is the real issue. What happens when the will of the people or a dictate of the Constitution conflicts directly with customary international law? No doubt, our courts will do their best to interpret creatively so as to avoid such a conflict, but, eventually, the conflict will come, and a decision will be made. The conflict is inevitable due to the nature of modern customary international law. No longer delegated to issues traditionally understood as exterior, modern customary international law is beginning to define relationships between governments and their citizens and amongst citizens.

## Courts CP

## LPE K

#### No link---the 1AC does not “construct the firm as the locus of competition”---it centers religion through the lens of freedom. It doesn’t focus on firms nor competition. Their link argument doesn’t contextually apply to our 1AC.

Barak D. Richman 19. Edgar P. & Elizabeth C. Bartlett Professor of Law and Business Administration, Duke University. "Religious Freedom through Market Freedom: The Sherman Act and the Marketplace for Religion." William & Mary Law Review 60, No. 4. 1523-1544.

The Sherman Act's quasi-constitutional status relates less to a judicial fidelity to neoliberal notions of market efficiency than to a deference to individual choice.27 The Court's treatment of a consumer's freedom relates to its treatment of other individual prerogatives in a democracy, in particular the constitutional protections cemented in the First Amendment." At the heart of both the First Amendment and the Sherman Act is the protection of individual choice.

The language of individual choice, as an expression of individual freedom, is central to the Court's understanding of the Religion Clauses. In an opinion concurring with the Court's conclusion that mandated prayer in public schools is unconstitutional, Justice Brennan remarked:

The choice which is thus preserved is between a public secular education with its uniquely democratic values, and some form of private or sectarian education, which offers values of its own. In my judgment the First Amendment forbids the State to inhibit that freedom of choice by diminishing the attractiveness of either alternative-either by restricting the liberty of the private schools to inculcate whatever values they wish, or by jeopardizing the freedom of the public schools from private or sectarian pressures. The choice between these very different forms of education is one-very much like the choice of whether or not to worship-which our Constitution leaves to the individual parent. It is no proper function of the state or local government to influence or restrict that election."9

The key sentence in the above excerpt deserves repeating: "In my judgment the First Amendment forbids the State to inhibit that freedom of choice."30 In Justice Brennan's eyes, the constitutional violation occurred by denying individual choice in a setting in which various religious expressions were available." The centrality of individual choice within a diversity of religions has not only been echoed in subsequent Court rulings, but the essence of choice has also been fused to the very foundation of First Amendment freedoms. 32 The Court summarized its Religion Clause rulings in a succinct connection between religious choices and the nation's constitutional fabric: "The rule of th[e]se cases, one which seems fairly implicit in the history of our First Amendment, is that the government may not displace the free religious choices of its citizens by placing its weight behind a particular religious belief, tenet, or sect.""

#### Markets solve their impact.

Mark Budolfson 21. PhD in Philosophy. Assistant Professor in the Department of Environmental and Occupational Health and Justice at the Rutgers School of Public Health and Center for Population–Level Bioethics "Arguments for Well-Regulated Capitalism, and Implications for Global Ethics, Food, Environment, Climate Change, and Beyond". Cambridge Core. 5-7-2021. https://www-cambridge-org.proxy.library.emory.edu/core/journals/ethics-and-international-affairs/article/arguments-for-wellregulated-capitalism-and-implications-for-global-ethics-food-environment-climate-change-and-beyond/96F422D04E171EECDEF77312266AE9DD

Applications to Food, Environment, and Climate Change

Let us turn to a concrete example. It is often claimed that we need less capitalism, less growth, and less globalization if we are to successfully address such challenges as climate change, population growth, air and water pollution, feeding the world, ensuring sustainable development for the world's poorest people, and other interrelated challenges at the environmental nexus.22

However, if the argument for well-regulated capitalism is sound, then these claims are wrong. Just because the aforementioned challenges may require pervasive changes throughout the economy does not mean that they require large changes to the basic structure of the economy such as a move away from capitalism.

Climate change—like many large-scale environmental harms—is the perfect example to illustrate why large environmental challenges that require pervasive changes to the economy need not require large changes to the economy's basic structure. The key point is that in that an unregulated marketplace polluters do not pay the true cost to society of their pollution, which incentivizes too much pollution; the best solution for society in the case of climate change and many other large environmental challenges is simply to use markets to regulate the relevant pollution by putting an appropriate price on emissions (reflecting the cost to society), so that people and firms have to pay the true cost of their emissions. This could be accomplished by putting a simple tax on emissions, or by instituting a more complicated market-based system.23

In more detail, the problem of climate change arises because humans do not have to pay the cost of the harms from greenhouse gas (GHG) emissions when they engage in emitting activities. As a result of not having to pay the true cost of these activities, we make decisions that lead to too many emissions, and a worse outcome than we could achieve if we behaved differently, which would require pervasive changes throughout the economy. But according to mainstream economics, the best solution to this problem is a textbook example of well-regulated capitalism that applies the theory of externalities to achieve pervasive changes across the economy at the least cost to society: We should tax24 GHG emissions at a rate equal to the harm they inflict if emitted, because this will (to a first approximation) create the right incentives to cause all of the pervasive changes throughout every aspect of the economy in the way that best achieves the optimal level of GHG emissions for society.25 And because one ton of GHG emissions does the same harm regardless of where it is emitted on the earth, there is just a single price that we should use as a tax on all emissions regardless of where they occur.

Many economists, including Nobel laureate William Nordhaus, argue that pricing the externality in this simple way is not only necessary to solving climate change but also essentially sufficient.26 Other economists argue that investments in public goods like basic knowledge and infrastructure might also be necessary, as well as measures to address equity and justice (such as investing the revenues from a carbon tax in a progressive way, having different carbon prices in different regions that collectively lead to the same globally optimal reductions that could be achieved with a single uniform global price, or even putting additional weight on co-benefits from air pollution reductions via climate policy in places where minorities have historically been unjustly saddled with disproportionately high exposure to pollutants). These additional measures would be taken on the grounds that climate policy will be enacted in a “nonideal”/“second-best” context in which background distortions, inequity, and injustice make them necessary to achieve the best outcome.27 But these measures are all part and parcel to well-regulated capitalism.

Furthermore, getting rid of capitalism would involve harm to the world's poorest and most vulnerable people that could exceed the harm that is at stake for the world in connection with climate change and other environmental harms. Evidence for this claim is provided by taking the quantitative magnitude of health, wellbeing, and justice gains due to capitalism, according to the argument for premise 1 above, projecting trends into the future, and comparing these gains to the quantitative magnitude of health, wellbeing, and justice losses at issue in connection with climate change and other environmental harms, as provided by leading estimates.28 Again, according to the argument for well-regulated capitalism, the essence of our situation is that humanity is better off with our current flawed forms of capitalism than we would be without capitalism; however, we are not as well off as we could be if we properly regulated the externalities that are causing environmental harms, so there is no argument in favor of the status quo. Instead, we should properly regulate externalities, and thus move toward well-regulated capitalism, which would yield the optimal trade-off for humanity between the benefits of capitalism and the costs of pollution and other ills.

Viewed through the lens of the argument for well-regulated capitalism, other environmental challenges have a similar structure, such as food-systems challenges (including feeding the world without destroying the environment), air and water pollution, ensuring sustainable development for the world's poorest, and other interrelated challenges at the environmental nexus. These problems are more complicated than climate change because they each involve multiple externalities and multiple background distortions, where the magnitude of those is sometimes highly location dependent, and issues of equity and justice are exceedingly complex. But the basic mechanisms for the best solutions are the same according to proponents of the argument for well-regulated capitalism, and indeed the best responses all require capitalism in order to work well and avoid a cure that is worse than the disease.

As a point of optimism in connection with these often-discouraging challenges, the relationship between the wealth of a society and environmental degradation often has an inverted U shape: As society initially gets wealthier, environmental degradation increases, until a point of peak degradation, after which the environment improves as society becomes rich enough to invest more and more in environmental quality rather than in basic needs. In the richest nations of the world, the peak of degradation arguably happened in the mid- to late twentieth century, and can be seen in measures of, for example, air and water pollution.29 In some emerging economies like China, there is hope that the peak has been reached and environmental degradation will now decline as society becomes richer and richer. For other developing nations, the peak has not been reached yet. Moreover, different forms of degradation (such as industrial air pollution and agricultural water pollution) might peak at different points within a nation. Putting this together, there is reason to hope that environmental challenges will reach a peak in our lifetime, and if we can meet them with well-regulated capitalism, they will begin to progressively improve over time in line with the end of extreme poverty for the entire world. Capitalism has brought these problems to a head because it has caused the world to get richer so quickly. But according to the argument for well-regulated capitalism, this is a good problem to have, as it is a symptom of a global society that is on the cusp of growing its way out of poverty and out of widespread environmental degradation. According to this argument, we should want to grow our way out of both of these problems as quickly as possible, rather than keep both problems around indefinitely b

## Biz Con DA

#### Business confidence is a useless indicator of economic prosperity.

Cameron Bagrie 18. Managing Director and Chief Economist at Bagrie Economics. Independent and straight-talking economics. Formerly Chief Economist, ANZ, New Zealand. "Business confidence is a hopeless indicator. But that doesn't mean the economy isn't in trouble," Spinoff, https://thespinoff.co.nz/business/09-08-2018/business-confidence-is-bullshit-but-that-doesnt-mean-the-economy-isnt-in-trouble/

Business confidence has fallen off a cliff. Economist Cameron Bagrie says it’s meaningless, but other bad indicators can’t be ignored. The economy is headed for recession if you believe the readings from business confidence. Thankfully we can largely ignore business confidence readings. We can’t ignore other survey measures though that are saying growth has slowed and the official statistics are showing the same. The last three quarterly GDP prints have been 0.6, 0.6 and 0.5% and we only have data up to March 2018. That’s annualised growth in the low 2’s and a dip below 2% now looks likely. We have the potential for a growth pothole. That is becoming a concern as the wheels of the economy need to be turning and tax revenue coming in the door for social agenda demands to be met. A whopping net 45% of firms are pessimistic about the general economy according to the ANZ Business Outlook survey. That’s a level last seen around the global financial crisis. Of course, no one really believes things are that bad. We can’t blame the global scene as other countries would be seeing massive falls in confidence too if that was a key factor. Other countries are not. The New Zealand Institute of Economic Research (NZIER) is showing weak readings for business confidence within their Quarterly Survey of Business Opinion (QSBO) too. The good news is that business confidence is hopeless as an economic indicator. The correlation with economic growth is poor and I largely ignore business confidence readings. Changes in direction can provide some insightful information – whether things are picking up or slowing down, but not the levels. Businesses tend to be more upbeat regarding general confidence about the economy under a blue flag as opposed to a red one. Business confidence averaged minus 18 between 2000 and 2007. The economy (measured by real gross domestic product) grew on average by more than 3.5% per year. Yep, confidence was negative, but growth was positive. So, we ignore business confidence as an economic indicator. This is nothing new. It’s surprising headline business confidence figures receive so much attention.

#### Economic predictions fail---variables have undergone pandemic-induced deterioration.

David J. Lynch 1-11. Global Economics Correspondent for Washington Post with a MA in International Relations from Wesleyan University. Here’s another thing the pandemic has screwed up: Economic forecasts. Washington Post. 1-11-2022. <https://www.washingtonpost.com/business/2022/01/11/jobs-pandemic-shepherdson-omicron/>

Ian Shepherdson knew he was sticking his neck out. But last Thursday, he went public with a startling forecast: The next government labor market report would show that the U.S. economy had created 850,000 jobs in December.

Less than 24 hours later, it became clear that Shepherdson, the chief economist and founder of Pantheon Macroeconomics, had missed the mark and missed badly. Employers in the last month of the year actually had hired just 199,000 workers, less than one-fourth the number he predicted, according to the government’s closely watched monthly tally.

For Shepherdson — and many others on Wall Street — the jobs forecast was both an unmitigated flop and an illustration of how difficult the pandemic makes it for even the most astute observers to assess the $23 trillion economy.

“Everybody wants to be pursuing precision,” he said Monday in an interview. “But even before covid, it was like hitting a moving target from a moving vehicle. Now, we’ve got a blindfold on as well.”

Indeed, economic prognostication long has provided proof for a remark attributed to baseball great Yogi Berra: “It’s tough to make predictions, especially about the future.”

But the pandemic is making a tough job even tougher. As the virus waxed and waned, it delivered some of the wildest ups and downs in U.S. labor market history. The covid recession and recovery also erased long-standing economic relationships, emptying downtown office districts, sending workers to toil in their living rooms and leaving economists fumbling for insight.

That’s resulted in an economy perched uncomfortably between the world of early 2020 and whatever reality will emerge once the pandemic is a memory. Meanwhile, familiar relationships among key economic variables have gone haywire.

Though wages are growing faster than at any point in the decade before the pandemic, for example, the number of Americans lured back into the labor market has been disappointing. Two years after covid-19 first hit the United States, the labor force participation rate remains near its lowest mark since the 1970s, when women began entering the workforce in significant numbers.

Yet a different measure, which tracks the number of employed Americans 25 to 54 years of age, relative to the total population, last year showed the fastest one-year gain since the government began keeping track in 1949.

“This is a historically unique U.S. economy,” tweeted economist Skanda Amarnath, executive director of Employ America, a nonprofit that promotes tight labor markets.

Monthly jobs gains also have been exceptionally volatile. In the last half of 2019, each month’s hiring ranged between 161,000 and 234,000 individuals. The last six months of 2021 saw swings between 199,000 and 1.1 million, a much wider band.

All this tumult has left government and private-sector economists struggling to fathom what businesses, workers and consumers will do next.

“It is extremely difficult to forecast in the current environment,” said Gregory Daco, chief U.S. economist for Oxford Economics. “It requires a heavy dose of humility. We’re more likely to be wrong, given how rapidly things are shifting.”

Even if economists are well schooled to calculate future levels of hiring, investment or trade, they are no better qualified than anyone else to foretell the next move by a shape-shifting virus — or the likely policy response in a hyper-polarized capital.

Still, after more than three decades tracking major economies, Shepherdson is no novice. He launched the research firm Pantheon, which is based in Newcastle upon Tyne in the United Kingdom, in 2012 after stints at two other firms. And he is a two-time winner, in 2014 and 2003, of the Wall Street Journal’s award for best economic forecaster.

He also wasn’t alone in botching the December jobs call. The consensus of professional economists called for more than twice as many jobs as were actually added. Moody’s Mark Zandi expected 750,000 while analysts at Goldman Sachs predicted 500,000.

Economic forecasters rely on computer models to predict the future. In layman’s language, they analyze how companies and workers have behaved in the past under various economic conditions to predict how they will behave in the future.

Ideally, economists make predictions by comparing current conditions to a previous period when the underlying structure of the economy was similar, said economist Michael Strain of the American Enterprise Institute.

But there is no precedent for determining what happens when a globalized economy operates amid a lethal respiratory virus that has killed more than 5 million people worldwide.

“The problem is what possible period do we have when the economy is close to what it is today?” said Strain, a former Federal Reserve system economist. “Some people are just using the same models they’ve been using and that’s not working.”

Shepherdson isn’t one of them. He says he realized that the pandemic had rendered traditional models — based on macroeconomic indicators such as industrial production and oil prices — “more or less useless.”

So he completely overhauled his proprietary formula to take account of the economy’s ongoing makeover, placing greater reliance upon high-frequency data from HomeBase, a provider of scheduling and payroll software for small businesses.

The British-born economist blends the HomeBase data with additional real-time input from ADP, a payroll processing company that releases its own employee count, as well as other economic inputs, to get a monthly payrolls estimate.

HomeBase data has been praised by Federal Reserve officials for its usefulness in anticipating labor market moves. But the firm has been producing its monthly reports only since the start of the pandemic, while traditional government labor market data extends to the late 1940s.

Relying on a shorter data series inevitably means a fatter margin of error, Shepherdson said.

“Until we’ve got five years of this HomeBase data, we won’t really know how useful it is,” he said, adding that he may begin emphasizing the wide range of possible outcomes when he issues future payroll estimates.

Forecasters today face a double-barreled challenge: uncertainty over where the United States is in the business cycle and what the post-pandemic economy will look like, according to Erica Groshen, senior economic adviser to Cornell University’s School of Industrial and Labor Relations.

The adjustments that government economists use to compensate for routine seasonal fluctuations, including retailers’ big holiday season hiring and firing cycle, also are misfiring amid the pandemic. Lower response rates to the government’s monthly surveys are further complicating assessments.

“Models are predicting what’s normal in a world that isn’t normal,” said Groshen, a former head of the Bureau of Labor Statistics.

This is not the first time models have failed. In 2008, many Wall Street firms were stunned when the housing implosion triggered huge losses on mortgage-backed securities. The big banks’ “value-at-risk” models, based on years of housing market data, had made no provision for housing prices to decline on a national basis.

Since previous downturns had been limited to specific regions, such as Southern California, Wall Street’s best-and-brightest assumed future declines would be similarly limited. When they weren’t, a wave of foreclosures led to massive losses on securities made up of repayment streams from hundreds of individual mortgages.

Venerable firms such as Bear Stearns, Lehman Brothers and Merrill Lynch failed or were swallowed up by rivals. American households’ net worth fell by more than $11 trillion.

“This entire market depended on finely honed computer models — which turned out to be divorced from reality,” concluded the 2011 report of the Financial Crisis Inquiry Commission.

Wall Street’s reliance on the past to predict the future has limits. Most investment solicitations carry some version of the warning “past performance is no guarantee of future results,” Wall Street’s way of saying your mileage may vary.

## FTC DA

#### Professional collaboration cases thump and prove that it’s not a burden for the FTC.

Jarod Bona 21. Founder and CEO of Bona Law PC. “Classic Antitrust Cases: National Society of Professional Engineers v. United States, 435 U.S. 679 (1978)” The Antitrust Attorney Blog. 10-24-21. <https://www.theantitrustattorney.com/classic-antitrust-cases-national-society-professional-engineers-v-united-states-435-u-s-679-1978/>

As an antitrust attorney, over time you see the same **major cases cited again and again**. It is only natural that you develop favorites. Here at The Antitrust Attorney Blog, we, from time-to-time, highlight some of the “Classic Antitrust Cases” that we love, that we hate, or that we merely find interesting.

The Supreme Court decided **National Society of Professional Engineers** in the late 1970s—when I was two-years old—and before the Reagan Revolution. But the views that the author, Justice John Paul Stevens, expressed on behalf of the Supreme Court perhaps **ushered in the faith** in competition often associated with the 1980s.

The National Society of Professional Engineers thought that its members were above price competition. Indeed, it strictly forbid them from competing on price.

The reason was simple: “it would be cheaper and easier for an engineer ‘to design and specify inefficient and unnecessarily expensive structures and methods of construction.’ Accordingly, competitive pressure to offer engineering services at the lowest possible price would adversely affect the quality of engineering. Moreover, the practice of awarding engineering contracts to the lowest bidder, regardless of quality, would be dangerous to the public health, safety, and welfare.” (684-85).

So price competition will cause bridges to collapse? I suppose the same argument could be made for any market where greater expense can improve the health or safety of a product or service. We better not let the car manufacturers compete to provide us with cars because they will skimp on the brakes. It is often the professionals–including and especially lawyers–that find competition distasteful or damaging for their particular profession and believe that they are above it. Well, according to the US Supreme Court, they are not.

Indeed, quite **recently**, in **NCAA v. Alston** (analyzed here by Steve Cernak), the US Supreme Court **reaffirmed and applied** National Society of Professional Engineers when it told the NCAA that if they don’t like competition, they better go to Congress because, as of now, **the Sherman Act applies to them** and that law is predicated on one assumption alone: “competition is the best method of allocating resources” in the Nation’s economy.

Let’s look at how Justice Stevens and the Supreme Court responded to the Engineers

Before addressing the Society’s argument that they are too important for competition, the Supreme Court offered a little lesson on the rule of reason and how antitrust law develops. If you read the Sherman Act for the first time, you will notice that it says, roughly, that every contract that restrains trade is illegal. That, of course, can’t be right. A single contract between two parties to buy and sell a Nintendo Switch, for example, restrains trade because only one party can buy that particular Nintendo Switch at that moment (my son is pretty much a Nintendo and overall technology historian at this point, so that example came to mind quickly).

As Justice Stevens says, quoting Justice Brandeis, “read literally, § 1 [of the Sherman Act] would outlaw the entire body of private contract law.” (687-88). Instead, Congress meant for the courts to “give shape to the statute’s broad mandate by drawing on common-law tradition.” (688). And that is just what the courts have done.

That, in fact, is part of what I enjoy about antitrust law. It really does evolve as our understanding of competition and economics develops. We are happy to play even a small role in that process, and part of the goal of The Antitrust Attorney Blog is to highlight the practical workings of competition itself, beyond the confines of antitrust law, which is merely a tool to support competition. Indeed, we attempt as best we can to educate the public on antitrust and competition issues in a straightforward and jargon-minimal way.

In fact, that is what this Court explains—antitrust law is all about supporting competition: “The Sherman Act reflects a legislative judgment that ultimately competition will produce not only lower prices, but also better goods and services.” (695). Then, quoting Standard Oil v. FTC, Justice Stevens repeats one of my favorite Supreme Court antitrust lines: “The heart of our national economy long has been faith in the value of competition.” (695). Short, simple, and to the point; I love it.

Back to the case itself: “In this case, we are presented with an agreement among competitors to refuse to discuss prices with potential customers until after negotiations have resulted in the initial selection of an engineer.” (692). The Supreme Court acknowledged that “no elaborate industry analysis is required to demonstrate the anticompetitive character of such an agreement.” (692).

The ban on competitive bidding “prevents all customers from making price comparisons in the initial selection of an engineer, and imposes the Society’s views of the costs and benefits of competition on the entire marketplace.” (695).

This point is notable because the association of engineers isn’t the only group of professionals that wants to impose its view of “the costs and benefits of competition” on their customers. Lawyers, medical doctors, dentists, and a whole host of professions have a similar perspective. Everyone sees the world through their own lens and has an exaggerated idea of their profession’s importance in the world.

Justice Stevens correctly points out that the engineers’ attempt to justify their restraint “on the basis of the potential threat that competition poses to the public safety and the ethics of its profession is nothing less than a frontal assault on the basic policy of the Sherman Act.” (695). I like the way he put that—no hesitation, no lawyerly wavering, but a clear “frontal assault” on the core purpose of the antitrust act itself. He’s right.

An antitrust case is not the place to debate whether competition is good or bad. Congress has already decided that it is how we are ordering our economy: “The assumption that competition is the best method of allocating resources in a free market recognizes that all elements of a bargain—quality, service, safety, and durability—and not just the immediate cost, are favorably affected by the free opportunity to select among alternative offers.” (695).

Pay attention to this line: “the statutory policy precludes inquiry into the question whether competition is good or bad.” (696).

Although decided almost forty-years ago, the case is **very relevant** today and is **constantly cited**, as we saw in the NCAA v. Alston case. Different groups, usually a professional organization or board of one type of another, often **try to get away with clearly anticompetitive restraints**, then argue that they are above the federal antitrust laws because “they,” in particular, are very important and without these restraints, the world will collapse as their customers are incapable of evaluating their or their competitors’ services.

As Justice Stevens said, in my own words, “**It’s Hogwash**.”

## Politics DA

#### Doesn’t solve digital authoritarianism.

Casey Newton 18, Silicon Valley Editor, 11-1-2018, "Internet freedom continues to decline around the world, a new report says," Verge, https://www.theverge.com/2018/11/1/18050394/internet-freedom-report-2018-freedom-house-chertoff

Digital authoritarianism is on the rise, according to a new report from a group that monitors internet freedoms. Freedom House, a pro-democracy think tank, said today that governments are seeking more control over users’ data while also using laws nominally intended to address “fake news” to suppress dissent. It marked the eighth consecutive year that Freedom House found a decline in online freedoms around the world. “The clear emergent theme in this report is the growing recognition that the internet, once seen as a liberating technology, is increasingly being used to disrupt democracies as opposed to destabilizing dictatorships,” said Mike Abramowitz, president of Freedom House, in a call with reporters. “Propaganda and disinformation are increasingly poisoning the digital sphere, and authoritarians and populists are using the fight against fake news as a pretext to jail prominent journalists and social media critics, often through laws that criminalize the spread of false information.” In the United States, internet freedom declined in 2018 due to the Federal Communications Commission’s repeal of net neutrality rules. Other countries fared much worse — 17 out of 65 surveyed had adopted laws restricting online media. Of those, 13 prosecuted citizens for allegedly spreading false information. And mo

re countries are accepting training and technology from China, which Freedom House describes as an effort to export a system of censorship and surveillance around the world. “PROPAGANDA AND DISINFORMATION ARE INCREASINGLY POISONING THE DIGITAL SPHERE, AND AUTHORITARIANS AND POPULISTS ARE USING THE FIGHT AGAINST FAKE NEWS AS A PRETEXT TO JAIL PROMINENT JOURNALISTS.” Of course, there are tradeoffs between freedom and security. The report is critical of Sri Lanka and India, which have periodically shut down or limited access to the internet in response to the outbreak of ethnic and religious conflict. In both cases, citizens were being murdered by mobs that had encountered misinformation spread through social media. “Cutting off internet service is a draconian response, particularly at a time when citizens may need it the most, whether to dispel rumors, check in with loved ones, or avoid dangerous areas,” said Adrian Shahbaz, research director for technology and democracy. “While deliberately falsified content is a genuine problem, some governments are increasingly using ‘fake news’ as a pretense to consolidate their control over information and suppress dissent.” The report also found: Governments in 18 countries increased state surveillance between June 2017 and now, with 15 considering new “data protection” laws, which can require companies to store user data locally and potentially make it easier for governments to access. Governments in 32 countries used paid commentators, bots, and trolls in an effort to manipulate online conversations. WhatsApp and other closed messaging apps are becoming more popular targets for manipulation, the authors write.

#### Voting rights proves Biden too incompetent to use PC.

Gail Collins and Bret Stephens, 1-17-2022, "Welcome to the ‘Well, Now What?’ Stage of the Story," New York Times, <https://www.nytimes.com/2022/01/17/opinion/biden-voting-rights-social-media.html> ellipses in original

Gail: Yet here we are. Looks like Joe Biden’s voting rights package is doomed because he can’t get 60 votes in the Senate to break a filibuster. I’m inclined to sigh deeply and then change the subject, but duty prevails.

Bret: It’s another depressing sign of Team Biden’s **political incompetence.** How did they think it was a good idea for the president to go to Georgia to give his blistering speech on voting rights **without first checking** with Kyrsten Sinema that she’d be willing to modify the filibuster in order to have a chance of passing the bill? And then there was the speech itself, which struck me as … misjudged. Your thoughts?

Gail: If you mean, was it poorly delivered — well, after all these years we know that’s the Biden Way. He can rise above, as he did with the speech about the Jan. 6 uprising, but it’s not gonna happen a whole lot.

Bret: I meant Biden’s suggestion that anyone who disagreed with him was on the side of Jefferson Davis, George Wallace and Bull Connor. The increasingly casual habit of calling people racist when they disagree with a policy position is the stuff I’ve come to expect from Twitter, not a president who bills himself as a unifier. And again, it’s political malpractice, at least if the aim is to do more than just sound off to impress the progressive base.

Gail: I don’t see anything wrong with expressing anger about the way some states operate their elections. Making it very tough to vote by mail. Requiring citizens to register at least 30 days before the actual election, like Mississippi does. Can’t tell me the goal isn’t to restrict the number of voters, particularly new voters who won’t necessarily feel super welcome at the polls.

Bret: A lot of the allegedly restrictive voting laws in red states are actually the same or better than they are in some of the blue states. For instance, Georgia has 17 days of early voting. New Jersey has nine. Georgia allows anyone to vote by mail. Absent a pandemic, New York allows it only if you’re out of town or have a prescribed excuse.

Even if there are aspects of these laws that could be improved, I don’t see how this adds up to Jim Crow 2.0, as the president seems to think. He’d do better working to fix the Electoral Count Act, or make it a felony — if it isn’t one already — to pressure state officials to meddle with the vote, the way Donald Trump did with Georgia’s Brad Raffensperger when he asked him to “find 11,780 votes.”

Gail: Well we are in total agreement about the Electoral Count Act of 1887. Back to Kyrsten Sinema for a minute — **nothing is going to induce her to do anything that would threaten the filibuster**, also known as the Rule That Makes Senator Sinema Marginally Relevant.

Bret: You won’t be surprised to learn that I like the newest Arizona maverick more and more. Everyone hates the filibuster until it’s their turn to be in the Senate minority, at which point it becomes a vital institutional safeguard against the tyranny of the majority. I take it you don’t agree …

# 1AR

## Politics DA

#### 4. No Russia war--- No Russia impact.

Luisa Rodriguez 19, research fellow at the Forethought Foundation for Global Priorities Research, she also researched nuclear war at Rethink Priorities and as a visiting researcher at the Future of Humanity Institute, holds an M.A. from The Heller School for Social Policy and Management at Brandeis University, “How likely is a nuclear exchange between the US and Russia?”, https://forum.effectivealtruism.org/posts/PAYa6on5gJKwAywrF/how-likely-is-a-nuclear-exchange-between-the-us-and-russia

My previous posts address how bad a nuclear war is likely to be, conditional on there being a nuclear war (see [this post on the deaths caused directly by a US-Russia nuclear exchange](https://forum.effectivealtruism.org/posts/pMsnCieusmYqGW26W/how-bad-would-nuclear-winter-caused-by-a-us-russia-nuclear), and [this post on the deaths caused by a nuclear famine](https://forum.effectivealtruism.org/posts/dtQ5hpYjniYKWhmhx/would-us-and-russian-nuclear-forces-survive-a-first-strike)), but they don’t consider the likelihood that we actually see a US-Russia nuclear exchange unfold in the first place. In this post, I get a rough sense of how probable a nuclear war might be by looking at historical evidence, the views of experts, and predictions made by forecasters. I find that, if we aggregate those perspectives, there’s about a 1.1% chance of nuclear war each year, and that the chances of a nuclear war between the US and Russia, in particular, are around 0.38% per year.

A screenshot of a cell phone

Description automatically generated

#### Congress is intervening in agency antitrust enforcement.

Danielle Abril 20. Tech reporter for Fortune. “Google, Amazon, Apple, and Facebook likely to face heavy ‘tech bashing’ at congressional hearing”. Fortune. 7/28/20. https://fortune.com/2020/07/28/google-amazon-apple-facebook-antitrust-hearing-congress-what-to-expect-mark-zuckerberg-jeff-bezos-tim-cook-sundar-pichai/

Google, [Amazon](https://fortune.com/company/amazon-com), [Apple](https://fortune.com/company/apple), and [Facebook](https://fortune.com/company/facebook) CEOs are expected to face a heated line of questions from members of the House Judiciary Antitrust Subcommittee on Wednesday. The virtual hearing, which was [postponed by a couple of days](https://www.theverge.com/2020/7/24/21337052/tech-ceo-hearing-postpone-john-lewis-facebook-google-apple-amazon) for Congress members to pay their respects to [Rep. John Lewis](https://fortune.com/2020/07/18/john-lewis-obit-civil-rights-congress-dies-at-80/), will include testimony from Facebook’s Mark Zuckerberg, Amazon’s Jeff Bezos, Apple’s Tim Cook, and Sundar Pichai of Alphabet, which owns [Google](https://fortune.com/company/alphabet), and aims to explore the dominance of tech giants. Antitrust experts expect to witness two things during the hearing: critical statements and questions from Congress members across party lines, and defenses from the tech CEOs about why their services and practices do more good than bad. “You’ll see a lot of tech bashing from both sides,” said Douglas Melamed, Stanford Law School professor who previously served as acting assistant attorney general for the U.S. Department of Justice’s antitrust division. But the “heavy lifting will be in [public relations], not in economic analysis.” The virtual hearing is the first time the CEOs of four of the largest tech companies will provide testimony to Congress at the same time. It also comes as the [Department of Justice and Federal Trade Commission are investigating](https://fortune.com/2019/06/03/u-s-regulators-probes-big-tech/) whether the companies have violated any antitrust laws. Meanwhile, the companies continue to face rising public and government scrutiny over privacy concerns, the dissemination of hate speech and violence, and their aggressive competitive practices. The hearing is expected to highlight three schools of thought, according to experts: Democrats will argue that Big Tech has become too big and powerful and thus needs to be reined in. Republicans will also speak to the harms of Big Tech but with a slight nuance in favor of creating new regulation specifically for the tech companies rather than changing overarching antitrust laws. A third group will push the message that these are great American businesses that provide needed services at low costs to consumers. Melamed expects the hearing to give the public a better idea of how inclined Congress is to pass new regulation. It also could give viewers an idea of what future legislative proposals may look like. “You’ll learn that by the nature of their questions,” he said. Previous congressional hearings with [Facebook’s CEO Mark Zuckerberg](https://fortune.com/2018/04/11/facebook-mark-zuckerberg-congress-hearing-data/) and [Alphabet’s CEO Sundar Pichai](https://fortune.com/2018/12/11/google-ceo-sundar-pichai-congressional-hearing/) revealed Congress members’ lack of knowledge about how these big tech companies work. And while experts say there will likely be more of that in Wednesday's hearing, there will also be direct questions related to specific purchases, growth strategies, and monetization efforts.

#### Different antitrust bills thump. It’s not just that one tech bill---takes out the disad.

Cecilia Kang and David Mccabe, 1-20-2022, "Efforts to Rein in Big Tech May Be Running Out of Time," New York Times, https://www.nytimes.com/2022/01/20/technology/big-tech-senate-bill.html

Lawmakers on Capitol Hill are readying a major push on bills aimed at restraining the power of the country’s biggest tech companies, as they see the window of opportunity closing quickly ahead of the midterm elections.

A Senate committee is expected to vote Thursday on a bill that would prohibit companies like Amazon, Apple and Google from promoting their own products over those of competitors. Many House lawmakers are pressing a suite of antitrust bills that would make it easier to break up tech giants**.** And some **are making last-ditch efforts to pass bills meant to strengthen privacy, protect children online, curb misinformation, restrain targeted advertising and regulate artificial intelligence and cryptocurrencies.**