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### Economy---1AC

#### Advantage 1 is the Economy.

#### Compatibility standards are critical to the info and communications tech sector of the economy, but they’re being undermined by anticompetitive conduct.

A. Douglas Melamed and Carl Shapiro 18. \*\*A. Douglas Melamed; Stanford Law School. \*\*Carl Shapiro; University of California, Berkeley - Haas School of Business. “How Antitrust Law Can Make FRAND Commitments More Effective” Stanford Law and Economics Olin Working Paper No. 510. Revised 01-25-18. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3075970>

Compatibility standards are a **critical part of the information and communications technology sector** **of the economy.** From **Wi-Fi and 4G cell phone standards** to the ubiquitous JPEG and MPEG file formats, many of the benefits generated by the recent and dramatic advances in information technology would have been difficult or **impossible to achieve without compatibility standards.** For the past twenty years, antitrust enforcement related to standard-setting has focused largely on the interpretation and implementation of the commitments made by patent holders as part of the standard-setting process to license their Standard-Essential Patents (SEPs) on Fair, Reasonable and Non-Discriminatory (FRAND) terms. The Justice Department and the Federal Trade Commission devoted an entire chapter to this topic in their 2007 report on antitrust enforcement and intellectual property rights.1 The debate over FRAND commitments has continued undiminished in the ten years since that report was issued. With respect to SEPs, the most significant and immediate commercial and antitrust concern centers on the SEPs owners’ command of **highly substantial market power** once the standard in question becomes widely adopted. Put simply: without some checks, SEP owners could opportunistically **engage in patent holdup**, taking advantage of the fact that the firms and users adopting the standard become individually and collectively **locked in to the standard** over time. Of course, it is precisely this danger of ex post opportunism that motivates market participants and standard-setting organizations (SSOs) to require participants in the standard-setting process to **make FRAND commitments.** By its nature, standard setting involves collaboration among competitors and thus **raises core antitrust issues.** In this Feature, we argue that existing antitrust laws have an **important role to play** in ensuring that SSO rules are **effective in preventing ex post opportunism.** In particular, SSOs and their members can violate Section 1 of the Sherman Act,2 if the SSO fails to adopt and enforce rules that are effective in preventing SEP owners from exploiting the ex post monopoly power created by the standard. This Section 1 liability facing SSO participants and SSOs works alongside liability under Section 2 of the Sherman Act for unilateral conduct by SEP owners.3 I. Standard Setting and the Competitive Process The fundamental economics in the information technology sector, driven by network effects, implies that there is enormous value associated with establishing compatibility standards. Popular standards include the mobile broadband standards used in cell phones, which are established by the 3rd Generation Partnership Project (3GPP), and the Wi-Fi technology for wireless local area networks, which is enabled by the 802.11 standard established by the Institute of Electrical and Electronics Engineers (IEEE).4 There are many SSOs, and their rules and procedures differ considerably. Leading SSOs include the International Organization for Standardization (ISO), the International Telecommunication Union (ITU) the European Telecommunications Standards Institute (ETSI), the Institute of Electrical and Electronics Engineers (IEEE), the Internet Engineering Task Force (IETF) and the World Wide Web Consortium (W3C). SSOs generally establish standards by holding a series of committee meetings among industry participants. These meetings culminate in a vote on a technical specification that describes what features or attributes a product must have in order to comply with the standard. Most SSOs are open to all industry participants and seek to operate on a consensus basis, applying certain voting rules. SSOs do not normally engage in patent licensing. Nor do they specify how patent royalties will be divided up among patent holders. They leave that to their members, which in some cases form patent pools to address these issues.5 SSOs have specific policies relating to intellectual property rights (IPRs).6 These IPR policies are generally intended to enable the owners of patents whose intellectual property is incorporated into the standard to obtain reasonable royalties for licensing their patents and to prohibit them from charging excessive royalties after other industry participants have committed to the standard. At that point, firms committed to implementing the standard – which we call “implementers” – would find it very costly to avoid using the patented technology. For this purpose, most SSOs require SEP owners to license their SEPs on FRAND terms. **FRAND policies are especially needed** because negotiations between SEP holders implementers generally take place only **after** the implementers have used and infringed the technologies claimed by the SEPs. Standards involving information and communications technology can involve hundreds or even thousands of SEPs, many with uncertain boundaries for infringement. In addition, a time lag exists between patent application and patent issuance. For these and other reasons, it is impractical for implementers to enter into negotiations for patent licenses with all SEP owners prior to the establishment of a standard and to their implementation of it.7 The fact that patent negotiations generally do not take place prior to lock-in has several critical implications. First, at the time of negotiation, the **implementers are locked into the standard and the technologies claimed by the SEPs**—that is, the cost to switch to an alternative technology or standard at that point – ex post – is much greater than it was ex ante, when the patented technology was first included in the standard. Ex post, the patent holder is no longer competing to have its technology included in the standard, nor is it competing to have implementers of the standard use its technology. Instead, because the patent holder owns an asset that is essential to the standard, **implementers have no choice but to use the patented technology.** If the standard is commercially successful, implementers are willing to pay a much larger royalty for use of the patented technology than they would have paid ex ante, when the SEP holder faced competition from other technologies. In these circumstances, the SEP holder can be said to have obtained monopoly power in the market in which the patented technology is licensed for use in implementing the standard.8 Second, because of lock-in and the implementer’s ongoing infringement, the legal rules governing situations in which an implementer and a SEP holder fail to agree on licensing terms loom large in their licensing negotiations. In effect, the parties are negotiating about how to settle an infringement suit, and that negotiation is heavily influenced by their predictions as to what the court will do if they cannot agree. This situation is not unique to SEPs; it arises frequently when firms are faced with patent infringement claims for products they have independently developed or technologies they have inadvertently infringed. Patent law addresses such instances by specifying that patent holders are entitled to “reasonable royalties,” defined as the royalties that the parties would have negotiated prior to the infringement and thus prior to lock-in.9 Those hypothetical ex ante royalties reflect the market value of the patent license. Notwithstanding the law’s embrace of this principle, however, as a practical matter, patent holders are generally able to recover more than the ex ante value of the patent when litigation occurs after the implementers are locked in to the patented technology; and negotiations in the shadow of litigation after implementers are locked in tend to result in royalties in excess of the ex ante or market value of the patented technology.10 Third, the shadow of litigation is particularly problematic in the communications and technology sector, in which products typically include hundreds or thousands of patented technologies. A court-ordered injunction involving such products would deprive the implementer of not only the value of the technology covered by the patent-in-suit, but also the value of the entire product.11 Implementers that are forced to bear the risk of an injunction are thus induced to agree to royalties greater than those that would be appropriate if only the value of the patented technology were at stake. Those royalties systematically provide SEP holders with excessive compensation in comparison with the benchmark of ex ante royalties, in which the market value of the patented technology is established in a competitive market. These implications of lock-in and ex post dealings are **well understood**. They are an example of the general concept of lock-in and opportunism developed by Oliver Williamson, for which he was awarded the Nobel Prize.12 The Federal Circuit has also recognized the market distortions caused by the inclusion of patented technologies in public standards and the resulting danger of patent hold-up involving SEPs.13 For these and other reasons, the SEP holder has ex post monopoly power that **if left unchecked** would enable it to **obtain royalties far in excess** of the royalties that it could earn in a competitive market.14 To address this common problem and limit ex post opportunism by SEP holders, SSOs typically require participants that own SEPs to **make certain FRAND commitments.** In particular, by requiring a commitment to license on “fair and reasonable” terms, the FRAND requirement aims to prevent, or at least reduce, **the extent of monopoly pricing by SEP holders.** And by requiring a commitment to license on “non-discriminatory” terms, the FRAND requirement can **prevent SEP holders from extracting monopoly premiums** by selective licensing or, more important, migrating their monopoly power from the FRAND-regulated market to the unregulated standard-implementing product market by licensing to only one or a few implementers, or by licensing to selected implementers on discriminatorily favorable terms.

#### Current antitrust law doesn’t cover patent holdups.

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A. Anticompetitive Conduct by SEP Holders Courts have already recognized that, in **some situations**, antitrust cases can be brought against SEP holders under Section 2 of the Sherman Act.41 For example, a SEP holder that makes a FRAND commitment without intending to comply, and thereby induces the SSO to include its technology in the standard, unlawfully obtains its technology monopoly and thus violates Section 2.42 In that situation, the SEP holder could be liable for damages to holders of patents on technologies wrongfully excluded from the standard, and to implementers harmed by the SEP holder’s subsequent exercise of the unlawfully obtained monopoly power.43 However, Section 2 cases of that type are unlikely to have a significant impact on the efficacy of measures designed to **prevent ex post opportunism**, because they require the plaintiff to prove both that the FRAND commitment was **fraudulent when made** and that it caused the inclusion of the patented technology in the standard and, thus, created the SEP holder’s monopoly. Both of these **prongs are problematic and difficult to prove**: a well-counseled firm can rather easily **avoid creating discoverable materials** showing that it never intended to abide by its FRAND commitment, and proving that a given standard would not have been adopted absent the SEP holder’s FRAND commitment can be **very difficult years later when the antitrust case is likely to go to trial.**

#### Antitrust law must address patent holdups---that’s critical to economic growth.

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Patent holdup occurs when a patent holder is able to obtain **unreasonably high royalties** by asserting its patent against **another company’s products** because that company’s most efficient way to develop, make, and sell those target products involves investments that cannot easily be redeployed to non-infringing products.1 The owner of a valid patent that is essential to making devices that comply with a popular telecommunications standard would **wield enormous monopoly power** if it could **block device manufacturers** from selling products that comply with that standard. The elevated royalty rates that would result from such unconstrained monopoly power would be passed through to device prices, **causing substantial consumer harm**. These **problems would be magnified** because there are **thousands** of Standard-Essential Patents (“SEPs”) reading on modern telecommunications standards, and each SEP owner could demand a monopoly price to permit use of the standard. We address the proper role of antitrust in this setting. While many holdup problems can be solved without antitrust law, **antitrust has a role to play in policing holdup**, particularly in cases where the patent owner avoids its contractual commitments or uses a SEP to restrict competition in adjacent markets. The very forces in the federal government that currently oppose antitrust intervention also oppose using patent or contract law to enforce commitments to license patents on Fair Reasonable and Non-Discriminatory (“FRAND”) terms. They have done so in part by denying the very existence of the problem. Ironically, **their efforts may make antitrust intervention more, not less, important.** The problem of patent holdup is a special instance of the general problem of holdup that has been studied extensively in the literature on transaction cost economics.2 Opportunism by firms generally discourages investments that are subject to holdup. As a special case of that general principle, patent holdup [delays] ~~retards~~ **innovation**. With more than **300,000 utility patents** issued each year by the U.S. Patent and Trademark Office (“PTO”),3 **preventing patent holdup is critical to promoting economic growth**, especially in industries **experiencing rapid technological progress**, where patent holdup can act as a **headwind slowing down innovation.**

#### Creates inequality and destroys the economy.

Barry C. Lynn 17. "America’s Monopolies Are Holding Back the Economy". Atlantic. xx-xx-xxxx. https://www.theatlantic.com/business/archive/2017/02/antimonopoly-big-business/514358/

As it happens, Clinton did have the germ of exactly such an idea—if one knew where to look. In an October 2015 op-ed, she wrote that “large corporations are concentrating control over markets” and “using their power to raise prices, limit choices for consumers, lower wages for workers, and hold back competition from startups and small businesses. It’s no wonder Americans feel the deck is stacked for those at the top.” In a speech in Toledo last fall, Clinton assailed “old-fashioned monopolies” and vowed to appoint “tough” enforcers “so the big don’t keep getting bigger and bigger.”

Clinton’s words were in keeping with Bernie Sanders’s attacks on big banks, but went further, tracing how concentration is a problem throughout the economy. It was a message seemingly tailor-made for the wrathful electorate of 2016. Yet after the Ohio speech, Clinton rarely touched again on the issue. Few other Democrats even mentioned the word monopoly.

The pity is that Clinton’s stance wasn’t simple campaign rhetoric. It was based on a substantial and growing body of research that confirms that consolidation is at the root of many of America’s most pressing economic and political problems.

These include the declining fortunes of rural America as farmers struggle against agriculture conglomerates. It includes the fading of heartland cities like Memphis and Minneapolis as corporate giants in coastal cities buy out local banks and businesses. It includes plunging rates of entrepreneurship and innovation as concentrated markets choke off independent businesses and new start-ups. It includes falling real wages, as decades of mergers have reduced the need for employers to compete to attract and retain workers.

Monopoly is a main driver of inequality, as profits concentrate more wealth in the hands of the few. The effects of monopoly enrage voters in their day-to-day lives, as they face the sky-high prices set by drug-company cartels and the abuses of cable providers, health insurers, and airlines. Monopoly provides much of the funds the wealthy use to distort American politics.

For most of the 20th century the Democratic Party worked hard to prevent such extreme concentration of power. This tradition, which dates to the time of Thomas Jefferson, found expression in anti-monopoly policies designed to protect Americans not just as consumers, but also as citizens and producers, from domination by the powerful. Yet today most Americans associate terms like “freedom” and “liberty” with Republicans, and if that remains the case, Democrats will likely have trouble rebuilding their party as they look to 2018. Many Republicans also oppose the formation of monopolies, but the Democrats in particular would benefit from making it a centerpiece of their platform in the coming years.

The idea that America has a monopoly problem is now beyond dispute. Since 2008 there have been more than $10 trillion in mergers, and the pace of deal-making continues to accelerate, with 2015 setting a record for the most mergers in a year and October 2016 setting the record for the most mergers in a month.

In 2016, The Economist published three cover stories on America’s monopoly problem. The magazine reported that two-thirds of all corporate sectors have become more concentrated since the 1990s, that corporations are far more profitable now than at any time since the 1920s, and that an inordinate amount of profit goes to a very few immense investment funds, such as BlackRock and State Street. In April, the White House Council of Economic Advisers came to much the same conclusion, and called for a “robust reaction to market power abuses.”

Ordinary Americans didn’t need experts to explain the danger of monopoly. Populist movements like the Tea Party, Occupy, and the Sanders campaign have all focused to varying degrees on the threats posed by concentration. Polls show that a majority of Americans now believe big corporations are too powerful. Yet through 2016, mainstream Democrats didn’t acknowledge that this growing fear of monopoly power might affect how citizens vote.

Consider some of the mainstays of Democratic confidence going into the fall, and how these collided with the real world.

Party leaders were, for instance, right that millions of Americans today are grateful for Obamacare. But the travails of Obamacare also reinforced for millions of other Americans that hospital, insurance, and pharmaceutical monopolists are driving up costs and cutting back on care, and that the administration had no plan to stop them.

Party leaders were also right that the U.S. economy is on sounder footing than when Barack Obama took power. But while most citizens are in less-dire straits than they were eight years ago, they also have more time to consider the rest of their lives. They see internet providers blocking them from faster service and cable companies charging too much for their entertainment. They see giant food companies driving down the quality of their milk and chicken, and agriculture corporations driving up the cost of seeds and pesticides. They see a few huge corporations dominating the sale of home mortgages, groceries, office supplies, and restaurant meals, and gouging consumers when they buy everything from eyeglasses to cowboy boots.

Further, party leaders were not wrong that the rate of joblessness has fallen sharply from 2009. But those figures do nothing to address the fact that many of those jobs feel very different from the ones that vanished after the crash of 2008. For millions of working Americans, the vanguard technologies of the last decade are fast turning into oppressive systems of direct control. Consider the truck drivers, warehouse workers, receptionists, nurses, and cabbies who find their actions and even their speech monitored and directed in ever-increasing detail. Or consider the white-collar workers in the Seattle headquarters of Amazon, where, according to a New York Times feature, executives run a “continual performance improvement algorithm on its staff.” Such forms of control, especially when wielded by giant corporations, tend only to amplify the sense of powerlessness.

#### COVID creates an economic brink---recovery is strong now because of effective monetary policy, but we’ve hit the zero-lower bound.

Christopher Rugaber 21. Associated Press. “Federal Reserve keeps key interest rate near zero, signals COVID-19 economic risks receding.” https://www.chicagotribune.com/business/ct-biz-fed-interest-rates-economy-20210428-bumyc3ynpza6ri4ygsntmdsmya-story.html.

WASHINGTON — The Federal Reserve is keeping its ultra-low interest rate policies in place, a sign that it wants to see more evidence of a strengthening economic recovery before it would consider easing its support. In a statement Wednesday, the Fed expressed a brighter outlook, saying the economy has improved along with the job market. And while the policymakers noted that inflation has risen, they ascribed the increase to temporary factors. The Fed also signaled its belief that the pandemic’s threat to the economy has diminished, a significant point given Chair Jerome Powell’s long-stated view that the recovery depends on the virus being brought under control. Last month, the Fed had cautioned that the virus posed “considerable risks to the economic outlook.” On Wednesday, it said only that “risks to the economic outlook remain” because of the pandemic. The central bank left its benchmark short-term rate near zero, where it’s been since the pandemic erupted nearly a year ago, to help keep loan rates down to encourage borrowing and spending. It also said in a statement after its latest policy meeting that it would keep buying $120 billion in bonds each month to try to keep longer-term borrowing rates low. The U.S. economy has been posting unexpectedly strong gains in recent weeks, with barometers of hiring, spending and manufacturing all surging. Most economists say they detect the early stages of what could be a robust and sustained recovery, with coronavirus case counts declining, vaccinations rising and Americans spending their stimulus-boosted savings.

#### Slower growth increases populist conflict---140 years of data proves.

James Pethokoukis 6/4/21. The DeWitt Wallace Fellow at the American Enterprise Institute where he runs the AEIdeas blog. "Biden's budget predicts the Roaring Twenties will end in 2022. Uh oh.". https://theweek.com/politics/1001118/the-populist-political-warning-in-the-biden-budget

But there's a big non-economic reason to hope for growth faster than the pace predicted in the Biden budget. The historically slow recovery out of the Great Recession coincided with a rise of nativist populism, both here and in other rich countries. When economic growth falters, bad things often happen. In the study "Going to extremes: Politics after financial crises, 1870 – 2014," researchers found after a severe financial crisis, "voters seem to be particularly attracted to the political rhetoric of the extreme right, which often attributes blame to minorities or foreigners." This reaction equates to a 30 percent increase, on average, in the vote share going to far-right parties. A similar cause-and-effect is suggested in "Populist psychology: economics, culture, and emotions," which finds that economic crises "cause emotional reactions that activate cultural discontent. This, in turn, activates populist attitudes."

#### Economic crisis causes war---history proves.

Deborah Haynes 20. Security and Defence Editor. "Risk of new world war is real, head of UK armed forces warns". Sky News. 11-8-2020. https://news.sky.com/story/risk-of-new-world-war-is-real-head-of-uk-armed-forces-warns-12126389

Economic crises in the past have led to security crises and General Carter said he was worried this could happen again given the blow inflicted on the world economy by the pandemic.

"I think we are living at a moment in time where the world is a very uncertain and anxious place," he said.

"I think the real risk we have, with quite a lot of regional conflicts that are going on at the moment, is you could see escalation lead to miscalculation and that is a thing I think we have to guard against."

Explaining what he meant by miscalculation, the military chief said: "The protagonists, either because they don't realise the implications of their actions, lead to an escalation, which means that more people perhaps get involved, more weaponry gets involved and before you can contain it, it leads the sides ending up in a full-blown war.

"We have to remember history might not repeat itself but it has a rhythm and if you look back at the last century, before both world wars, I think it was unarguable that there was escalation that led to the miscalculation which ultimately led to war at a scale we would hopefully never see again."

Asked whether he was saying the threat of another world war was real, General Carter said: "I am saying it's a risk and I think we need to be conscious of those risks and that's why Remembrance matters because if you look back at history, hopefully you learn from their experience, and you make sure you're very cautious about how you manage the sorts of regional conflicts that we see playing out in the world today."

#### Even if growth is imperfect, the transition away fails.

Hubert Buch-Hansen 18. Associate Professor, Department of Business and Politics, Copenhagen Business School. “The Prerequisites for a Degrowth Paradigm Shift: Insights from Critical Political Economy.” *Ecological Economics* 146: 157-63. Emory Libraries.

Still, the degrowth project is nowhere near enjoying the degree and type of support it needs if its policies are to be implemented through democratic processes. The number of political parties, labour unions, business associations and international organisations that have so far embraced degrowth is modest to say the least. Economic and political elites, including social democratic parties and most of the trade union movement, are united in the belief that economic growth is necessary and desirable. This consensus finds support in the prevailing type of economic theory and underpins the main contenders in the neoliberal project, such as centre-left and nationalist projects. In spite of the world's multidimensional crisis, a pro-growth discourse in other words continues to be hegemonic: it is widely considered a matter of common sense that continued economic growth is required.

It is also noteworthy that economic and political elites, to a large extent, continue to support the neoliberal project, even in the face of its evident shortcomings. Indeed, the 2008 financial crisis did not result in the weakening of transnational financial capital that could have paved the way for a paradigm shift. Instead of coming to an end, neoliberal capitalism has arguably entered a more authoritarian phase (Bruff, 2014). The main reason the power of the pre-crisis coalition remains intact is that governments stepped in and saved the dominant fraction by means of massive bailouts. It is a foregone conclusion that this fraction and the wider coalition behind the neoliberal paradigm (transnational industrial capital, the middle classes and segments of organized labour) will consider the degrowth paradigm unattractive and that such social forces will vehemently oppose the implementation of degrowth policies (see also Rees, 2014: 97).

While degrowth advocates envision a future in which market forces play a less prominent role than they do today, degrowth is not an antimarket project. As such, it can attract support from certain types of market actors. In particular, it is worth noting that social enterprises, such as cooperatives (Restakis, 2010), play a major role in the degrowth vision. Such enterprises are defined by being ‘organisations involved at least to some extent in the market, with a clear social, cultural and/or environmental purpose, rooted in and serving primarily the local community and ideally having a local and/or democratic ownership structure’ (Johanisova et al., 2013: 11). Social enterprises currently exist at the margins of a system, in which the dominant type of business entity is profit-oriented, shareholder-owned corporations. The further dissemination of social enterprises, which is crucial to the transitions to degrowth societies, is – in many cases – blocked or delayed as a result of the centrifugal forces of global competition (Wigger and Buch-Hansen, 2013). Overall, social enterprises thus (still) constitute a social force with modest power.

Ougaard (2016: 467) notes that one of the major dividing lines in the contemporary transnational capitalist class is between capitalists who have a material interest in the carbon-based economy and capitalists who have a material interest in decarbonisation. The latter group, for instance, includes manufacturers of equipment for the production of renewable energy (ibid.: 467). As mentioned above, degrowth advocates have singled out renewable energy as one of the sectors that needs to grow in the future. As such, it seems likely that the owners of national and transnational companies operating in this sector would be more positively inclined towards the degrowth project than would capitalists with a stake in the carbon-based economy. Still, the prospect of the “green sector” emerging as a driving force behind degrowth currently appears meagre. Being under the control of transnational capital (Harris, 2010), such companies generally embrace the “green growth” discourse, which ‘is deeply embedded in neoliberal capitalism’ and indeed serves to adjust this form of capitalism ‘to crises arising from contradictions within itself’ (Wanner, 2015: 23).

In addition to support from the social forces engendered by the production process, a political project ‘also needs the political ability to mobilize majorities in parliamentary democracies, and a sufficient measure of at least passive consent’ (van Apeldoorn and Overbeek, 2012: 5–6) if it is to become hegemonic. As mentioned, degrowth enjoys little support in parliaments, and certainly the pro-growth discourse is hegemonic among parties in government.5 With capital accumulation being the most important driving force in capitalist societies, political decision-makers are generally eager to create conditions conducive to production and the accumulation of capital (Lindblom, 1977: 172). Capitalist states and international organisations are thus “programmed” to facilitate capital accumulation, and do as such constitute a strategically selective terrain that works to the disadvantage of the degrowth project.

The main advocates of the degrowth project are grassroots, small fractions of left-wing parties and labour unions as well as academics and other citizens who are concerned about social injustice and the environmentally unsustainable nature of societies in the rich parts of the world. The project is thus ideationally driven in the sense that support for it is not so much rooted in the material circumstances or short-term self-interests of specific groups or classes as it is rooted in the conviction that degrowth is necessary if current and future generations across the globe are to be able to lead a good life. While there is no shortage of enthusiasts and creative ideas in the degrowth movement, it has only modest resources compared to other political projects. To put it bluntly, the advocates of degrowth do not possess instruments that enable them to force political decision-makers to listen to – let alone comply with – their views. As such, they are in a weaker position than the labour union movement was in its heyday, and they are in a far weaker position than the owners and managers of large corporations are today (on the structural power of transnational corporations, see Gill and Law, 1989).

6. Consent

It is also safe to say that degrowth enjoys no “passive consent” from the majority of the population. For the time being, degrowth remains unknown to most people. Yet, if it were to become generally known, most people would probably not find the vision of a smaller economic system appealing. This is not just a matter of degrowth being ‘a missile word that backfires’ because it triggers negative feelings in people when they first hear it (Drews and Antal, 2016). It is also a matter of the actual content of the degrowth project.

Two issues in particular should be mentioned in this context. First, for many, the anti-capitalist sentiments embodied in the degrowth project will inevitably be a difficult pill to swallow. Today, the vast majority of people find it almost impossible to conceive of a world without capitalism. There is a ‘widespread sense that not only is capitalism the only viable political and economic system, but also that it is now impossible to even imagine a coherent alternative to it’ (Fisher, 2009: 2). As Jameson (2003) famously observed, it is, in a sense, easier to imagine the end of the world than it is to imagine the end of capitalism. However, not only is degrowth – like other anti-capitalist projects – up against the challenge that most people consider capitalism the only system that can function; it is also up against the additional challenge that it speaks against economic growth in a world where the desirability of growth is considered common sense.

Second, degrowth is incompatible with the lifestyles to which many of us who live in rich countries have become accustomed. Economic growth in the Western world is, to no small extent, premised on the existence of consumer societies and an associated consumer culture most of us find it difficult to completely escape. In this culture, social status, happiness, well-being and identity are linked to consumption (Jackson, 2009). Indeed, it is widely considered a natural right to lead an environmentally unsustainable lifestyle – a lifestyle that includes car ownership, air travel, spacious accommodations, fashionable clothing, an omnivorous diet and all sorts of electronic gadgets. This Western norm of consumption has increasingly been exported to other parts of the world, the result being that never before have so many people taken part in consumption patterns that used to be reserved for elites (Koch, 2012). If degrowth were to be institutionalised, many citizens in the rich countries would have to adapt to a materially lower standard of living. That is, while the basic needs of the global population can be met in a non-growing economy, not all wants and preferences can be fulfilled (Koch et al., 2017). Undoubtedly, many people in the rich countries would experience various limitations on their consumption opportunities as a violent encroachment on their personal freedom. Indeed, whereas many recognize that contemporary consumer societies are environmentally unsustainable, fewer are prepared to actually change their own lifestyles to reverse/address this.

At present, then, the degrowth project is in its “deconstructive phase”, i.e., the phase in which its advocates are able to present a powerful critique of the prevailing neoliberal project and point to alternative solutions to crisis. At this stage, not enough support has been mobilised behind the degrowth project for it to be elevated to the phases of “construction” and “consolidation”. It is conceivable that at some point, enough people will become sufficiently discontent with the existing economic system and push for something radically different. Reasons for doing so could be the failure of the system to satisfy human needs and/or its inability to resolve the multidimensional crisis confronting humanity. Yet, various material and ideational path-dependencies currently stand in the way of such a development, particularly in countries with large middle-classes. Even if it were to happen that the majority wanted a break with the current system, it is far from given that a system based on the ideas of degrowth is what they would demand.

#### There has never been a stronger need for effective FRAND commitments---ex post monopoly pricing by SEP holders is reducing the output of standard-implementing products and raising costs for consumers.

A. Douglas Melamed and Carl Shapiro 18. \*\*A. Douglas Melamed; Stanford Law School. \*\*Carl Shapiro; University of California, Berkeley - Haas School of Business. “How Antitrust Law Can Make FRAND Commitments More Effective” Stanford Law and Economics Olin Working Paper No. 510. Revised 01-25-18. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3075970>

Basic economic principles instruct that **ex post monopoly pricing** by SEP holders harms consumers by **raising the cost of products** that comply with the standard. Ex post monopoly pricing also creates **welfare-reducing deadweight loss** in two respects. First, it **increases the cost of, and thus reduces the output of, standard-implementing products.** Second, and perhaps more important, supracompetitive pricing by SEP holders **increases the cost of follow-on inventions** that are built upon or **improve the technologies claimed by the SEPs** and thus acts as a tax on follow-on innovation, **reducing such innovations and impairing the very process of invention that the patent laws are intended to promote.** Third, the prospect of ex post monopoly pricing by SEP holders exaggerates incentives ex ante for firms to obtain patents that might become SEPs and, perhaps more important, to jockey for inclusion of their patented technologies in industry standards. The latter incentive in turn could **cause delays and induce expensive rent-seeking conduct** in the standard-setting process and distort the standards development process away from optimal technical solutions in ways that further the interests of rent seekers. These concerns are not universally shared. Indeed, a heated debate regarding the desirability of efforts to prevent ex post opportunism by SEP holders has ensued for the past twenty years. Those who do not share these concerns argue that the greater risk is inhibiting monetization of the inventions claimed by SEPs and thus discouraging innovation on their part. We believe that those who share our concerns have by far the stronger argument. The **risk of ex post opportunism is very real.** Implementation typically precedes resolution of patent issues for good reason. Deferring implementation until the patent issues are resolved would **delay the commercialization and innovation process.** Implementers are therefore usually locked into the allegedly infringing technologies well before the issue of patent royalties is addressed. The real question is thus **how best to prevent opportunism**, not whether it is a genuine danger. Absent **rigorous enforcement of effective FRAND commitments** or a suitable alternative, SEP holders could **take advantage of lock-in** to exploit their substantial ex post market power by charging royalties far above the ex ante value of the patented technology, tying non-SEPs to SEPs, and implementing other means discussed below.15 Economic theory predicts that SEP holders will exploit their positions, and both anecdotal evidence and litigated cases suggest that they have done so.16

### SSOs---1AC

#### Advantage 2 is SSOs.

#### Patent holdup undermines SSO credibility---industry members are less likely to participate.

Adam Speegle 12. J.D. Candidate, May 2012. “Antitrust Rulemaking as a Solution to Abuse of the Standard-Setting Process”. Michigan Law Review. March 2012, Vol. 110, No. 5 (March 2012), pp. 847-873. https://www.jstor.org/stable/23216802

This process, however, has a major flaw. While it is capable of producing a number of procompetitive results, it is also open to abuse by its members through patent holdup, which may have a **detrimental impact on competition and consumers**. Patent holdup may take a variety of forms and may affect both open and closed standards.22 For example, a member of an **SSO may fail to disclose its patent** during the standard-setting process and may either remain silent or encourage the group to adopt its technology as a standard without the other members **knowing the implications of their decision**. Once the SSO adopts the technology and **expends a substantial amount of time and money integrating the standard into new and existing products**, the patent holder may make known its ownership of the patent and bring patent infringement actions against users of the standard.23 On the opposite end of the spectrum, a patent holder may make its patents known to the SSO and promise licensing at a nominal rate. Once the patent is integrated into the final standard, however, the patent holder may use its newly obtained market power to **extract substantial royalties from the other members**.24 While these are just two examples of possibilities for abuse, there are count less variations on the general principle that they represent: patent holders can easily **abuse the standard-setting process** for their own gain. Patent holdup is harmful for a variety of reasons. First, patent holdup **delays the implementation** of a standard.25 One of the reasons for forming an SSO is to accelerate the adoption of new standards;26 so, in delaying the process, patent holdup directly undercuts the **aim of the entire system**. Second, by taking advantage of their enhanced market position, patent holders also **harm competition** by reducing output, increasing costs to manufacturers, and excluding manufacturers.27 Each of these methods is likely to result in **increased costs to consumers**.28 Third, patent holdup discourages participation in SSOs and **harms innovation.**29 Where the danger of abuse undermines the collaborative process by threatening to extract supracompetitive prices from competitors, industry members are **less likely to participate in SSOs in the future** and, as a result, consumers are less likely to benefit from these organizations.30 And fourth, the costs of patent holdup inflicted on industry members, both in litigation and in royalty payments, draw funding away from research and development and, in extreme cases, may **drive some companies out of business**.31 Given the harmful consequences patent holdup may have on consumers and the marketplace as a whole, the question quickly turns to what can be done to stop it.

#### The lack of clarity in antitrust law hurts SSOs---the scope of the statute must be clarified.

Adam Speegle 12. J.D. Candidate, May 2012. “Antitrust Rulemaking as a Solution to Abuse of the Standard-Setting Process”. Michigan Law Review. March 2012, Vol. 110, No. 5 (March 2012), pp. 847-873. <https://www.jstor.org/stable/23216802>

While there are some issues associated with choosing to combat patent holdup by rule, the benefits of selecting a rule-based approach generally out weigh those issues. One of the greatest benefits of adopting a rule is that it **provides clear notice to industry**. Section 5 is a broad provision; new cases that rely on an expanding interpretation of it have increasingly **drawn concerns** from industry, the courts, and members of the FTC.167 The Act's flexibility has left those in the technology sector **unclear about the scope of the statute** and uncertain about whether specific patent holders' actions are subject to FTC enforcement or whether they are permissible. Under such a regime, manufacturers may become **dissuaded from participating in SSOs** out of concern that the law might not capture critical standard-setting abuses, and patent holders might be **dissuaded from participating in SSOs** out of fear of antitrust liability. But under a rule-based approach, industry has a better idea of the boundaries of the law. This should provide patent holders some **disincentive from engaging in patent holdup** and SSO members some assurance that **good faith participation in SSOs** will not lead to **antitrust liability.**

#### SSOs enable technological innovation---aeronautics, renewables, and biotechnology.

Kristen Jakobsen Osenga 18. Professor of Law, University of Richmond School of Law; Senior Scholar, Center for the Protection of Intellectual Property at Antonin Scalia Law School, George Mason University. “Ignorance Over Innovation: Why Misunderstanding Standard Setting Organizations Will Hinder Technological Progress” University of Louisville Law Review. Vol. 56:159. 2018.

To understand why decisions that affect standards have a **far-reaching impact on innovation**, it is important to grasp the role that these **standards** play in today's society. As just one example, consider the remarkable level of **interconnectivity and interoperability** we rely on and enjoy. Using a wide variety of devices and a few simple clicks, we can be instantly connected to any other person or organization or piece of information, anywhere in the world, through any number of networks. The **innovations and infrastructure** that created today's connected reality did not occur by accident. Rather, the success of things we take for granted-**the Internet**, Wi-Fi, 3G and 4G (and soon **5G) networks**, and the myriad devices with which we access these-is in **large part due to technological standards**. Particularly in the field of information and communications technology, although certainly **not limited to this field**, standards improve how we do business and enhance everyday experiences. Standards are prevalent in many and diverse **other fields**, including aeronautics, health and life sciences, renewable energy, and manufacturing.' In fact, **standards-facilitated technologies** **have become so ubiquitous** across all areas that most of us cannot imagine **life without them**.8 Despite our reliance on and enjoyment of these important innovations, rarely do we talk about technology standards that make them possible. Worse still, if standards are discussed, it is generally in conjunction with accusations of negative behaviors by the firms that contribute the technological innovations that become part of a standard.' For example, owners of patents incorporated in standards are sometimes accused of using patents to seek excessively high royalties from companies wanting to manufacture and sell products implementing the standard.io Others, like Qualcomm, are accused of unfair dealing when licensing patents covering standardized technology." Although there is little to no evidence supporting the existence, extent, or effects of this alleged bad behavior,12 the assertions alone have been sufficient to compel reaction against firms that participate in standard setting activities.13 For example, courts have denied injunctive relief to firms who own patents, found to be infringed, simply because the technology covered by those patents is part of a standard.14 Commentators and policy makers have urged both courts and standard setting organizations to adopt policies that weaken the patent rights of firms that participate in standard setting." And unfortunately, standard setting organizations are heeding this call. In 2015, the Institute of Electrical and Electronics Engineers (IEEE), a major standard setting organization, became the first to adopt many of these suggested policies.16 Even accepting at face-value the assertions that some firms participating in standard setting activities behave badly and that this behavior has negative impacts, the fact that courts and commentators are trying to fix the problem without understanding SSOs is akin to renovating a house without checking for load-bearing walls. Standard setting is a complex, time-intensive, collaborative process that carries both significant risks and benefits for participating firms.17 And yet, the so-called "reforms" being implemented and proposed drastically reduce the benefits to the innovative firms contributing foundational technology to standards, seemingly without any acknowledgement of the accompanying remaining risks and without analyzing the effects on the standard setting ecosystem as a whole. By failing to consider the risks while eviscerating the benefits, courts and commentators are implementing changes to law and policy that will serve to discourage participation by innovative firms in standard setting activities. Decreased participation in SSOs may then lead to **fewer technologies submitted** **for incorporation into standards** and, perhaps, **less incentives to develop innovative technologies** in the first instance. As fewer firms participate in standard setting, the **quality of the technology incorporated into standards may wane**, leading to suboptimal standards and less adoption ofthe standards by the marketplace. This, in turn, destroys a key value of standards- providing interconnectivity and interoperability. At the end of the day, **disincentivizing participation in standard setting activities will hinder innovation.**

#### It’s key to renewable energy innovation---that stops climate change.

IPlytics 21. An IP intelligence tool that enables the analysis of technology landscapes and market competition by providing access to multiple databases. “Who will win the smart energy patent race?” 08-09-21. <https://www.iplytics.com/report/smart-energy-patent-race/>

A wave of oncoming **smart energy technology** could be about to make the worlds electricity infrastructure more efficient, however it **relies on standardized technology** such as 4G, 5G or Wi-Fi, which are subject to thousands of standard essential patents (SEPs). This has **wide-reaching implications** for the energy industry implementing these standards as well as for the standards developers and owners of relevant patents and SEPs. The demand for electricity, and for energy more broadly, has grown rapidly over the last century, and consequently, so has the price. Therefore, there is a clear imperative for the **efficient use of electricity**. One solution to overcome the challenge of increasing demand is **smart energy technologies**, this refers to so-called ‘intelligent technologies’ that **improve efficiency** in the areas of energy conversion, generation, storage, transmission and consumption. Innovations in this area tend to focus on **sustainable and renewable energy sources while driving down costs.** Smart energy applications heavily rely on standardized technologies such as cellular standards (4G and 5G) as well as wireless standards such as Wi-Fi. To analyze smart energy technologies, we therefore considered worldwide patent data as well as self-declared SEPs and standards contribution data. This allows us to identify the companies that develop smart energy-related standards, as well as companies that own essential patent assets for those standards and companies that file patents on smart energy technologies that use the standards. In this report the authors analyze submitted standards contributions, the number of patent families, as well as the number of self-declared SEP families per company that describe smart energy technologies as the success and adoption of smart energy depends on the technology leaders, who will develop devices, chips, networks, applications, services, sensors and connectivity standards to realize the first use cases of smart energy. As electricity supply and consumption becomes increasingly expensive, advances in the smart energy sector need to be made. These achievements can not only reduce costs but can also **lead to a reduction in CO2 emissions** and make a **meaningful contribution to combatting climate change.**

#### 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.**

#### Biotech innovation solves a laundry list of impacts---food shortages, diseases, pollution, and resource shortages.

Patrick Nee & Christopher DeCunha 16. \*\*Founder and CEO of Universal Bio Mining; MS degree in Mechanical Engineering, Tokyo Institute of Technology; MBA, Columbia University. \*\*Founder and CTO of Universal Bio Mining. “Four problems that biotechnology can help solve.” June. <https://www.weforum.org/agenda/2016/06/four-problems-that-biotechnology-can-help-solve/>

Many of the problems facing humanity are the same recurring challenges that man has tackled for centuries. Hunger, disease, the need for raw materials, and pollution have limited humanity since prehistoric times. However, throughout history the development of new technologies has enabled dramatic improvements in our quality of life. Modern molecular biotechnology, or the application of our knowledge of the genome to engineer organisms with beneficial traits, enables new solutions to today’s challenges. Today, the Fourth Industrial Revolution, which adds the tools of molecular biotechnology to humanity’s toolbox, promises similar improvements in wellbeing as those that were delivered by previous technological innovations. Utilizing every available technology is crucial as we strive as a species to support higher populations with fewer resources. But public fear of biotechnology, in spite of the tremendous advances it has already provided, may prevent these innovations from having the impact they promise. The biotechnology industry must substantially increase its efforts to educate and engage the public to ensure that biotechnology truly lives up to its potential. 1. Feeding the next billion Industrial farming and food production have prompted dramatic shifts in the world economy, and fewer than 5% of developed countries’ populations now work in agriculture. But the World Bank predicts that we will need to produce yet another 50% more food by 2050 while climate change may reduce productivity by 25%. Simply dedicating more land to agriculture is one potential solution, but may result in food production far from the areas of greatest need. Increases in productivity per acre, drought resistant crops, and decreases in the need for chemical fertilizers would all go far to sustainably achieving the food production the world will need, reducing pressure to transform lush forests into agricultural land. Biotechnology companies such as Indigo Agriculture are employing microbes which can make crops more productive and tolerant of environmental stress, helping to feed the next billion people. In addition, drought resistant crops are being developed by Pioneer, Syngenta, and Monsanto. Foods can also deliver enhanced nutrition, such as Golden Rice with additional vitamin A from the International Rice Research Institute. 2. Tackling disease Some of the first applications of genetic engineering were in the pharmaceutical industry, helping to treat medical conditions and diseases. Insulin, synthesized with biotechnology, avoided the use of insulin isolated from pigs, to which some patients are allergic. Other treatments created by biotechnology include interferon therapy to trigger one’s immune system, human growth hormone, and the hepatitis B vaccine. Yet, in spite of this tremendous progress in modern medicine, today we face scary prospects, including the spread of the Zika virus and the rise of antibiotic-resistant bacteria. Biotechnology offers some of the most promising and targeted ways to find solutions to these threats. For example, the British company Oxitec, a subsidiary of Intrexon Corporation, offers a technology to control the spread of a single species of insect, Aedes aegypti, the primary vector for dengue, chikungunya and Zika virus outbreaks around the world. And many researchers are investigating the use of CRISPR/Cas gene-editing technology as a new method of controlling antibiotic-resistant microorganisms. 3. Cleaning up pollution Glacial records have shown us that, as long as 2,500 years ago, roman-era metal production was a source of global pollution. The streets of London and other cities were polluted by coal and wood fires, as well as by the horses used as transportation. Today, our pollution challenges appear more subtle, but surely technologies will also turn them into anachronisms. One company, PIARCS, PBC has a new biotechnology to resolve phosphorous in wastewater treatment plants, our own company Universal Bio Mining is developing enzymes capable of degrading chemical residue of petroleum production in the oil sands industry, and Carbios of France is developing a technique to recycle the ubiquitous PET plastic used in our disposable packaging. 4. Harnessing scarce natural resources The availability of natural resources has always been a constraint and a source of international tension. As easy to reach and process metal deposits are depleted, the mining industry must double the amount of earth it removes from the ground every eight years. In another example, clean fresh water is expected to become one of the greatest sources of international conflict during the 21st century, as people battle over the control of rivers and underground water sources. Here, again, biotechnology offers new tools to soften or resolve these challenges. Our company, Universal Bio Mining, is developing new processes to extract copper and gold from ores that are currently uneconomic, and start-up companies such as CustoMem from Imperial College of London have created water filters utilizing proteins to filter polluted waters.

#### A strong aeronautics industry is key to US air power.

An Interview with Barbara M. Barrett 20. Secretary of the Air Force. “On the Future of Air and Space Power” Conducted on 09-28-20. https://www.airuniversity.af.edu/Portals/10/SSQ/documents/Volume-14\_Issue-4/SECAF.pdf

To meet the demands of the NDS, the Air Force and Space Force **depend on** **reliable, responsive industry that produces and sustains systems**. The pandemic has stressed many elements of the defense industry; however, many partners **found ingenious ways to mitigate** stresses and risks. Importantly, we are accelerating the shift to digital engineering, agile software development, and open **systems architectures**. Additionally, we are working with the industrial base to reduce dependence on foreign sources of raw materials and microelectronics. Finally, to **broaden our collaboration with the defense industry**, we are building new partnerships with companies that have never before worked with the Department of the Air Force.

#### Air Force readiness caps great power war.

Roth et al 21 [Statement of: The Honorable John P. Roth. Acting Secretary of the Air Force. General Charles Q. Brown, Jr. Chief of Staff, United States Air Force. General John W. Raymond Chief of Space Operations, United States Space Force. “Department of the Air Force Posture Statement, Fiscal Year 2022.” Department of the Air Force Presentation to the Committees And Subcommittees of the United States Senate And the House of Representatives 1st Session, 117th Congress. 5-5-21. DOA: 8-24-21. <https://www.af.mil/Portals/1/documents/2021SAF/05_May/FY22_DAF_Posture_Statement.pdf> //shree]

America fights as a joint team, and the U.S. Air Force is the only Service that can meet our Nation’s adversaries with mass, speed, agility and survivability on near-immediate timelines. The Air Force sees, senses, and communicates globally. The Air Force monitors our adversaries’ movements, deploys forces en masse, deters competitors, and strikes enemies without warning. No one else can do it. Without the Air Force, the joint force loses. Only with a modernized and ready Air Force is the joint team—and our Nation—secure.

The American homeland is no longer a sanctuary. Our citizens face threats from a variety of actors in both the physical and digital arenas. Competitors, especially the China and Russia, continue aggressive efforts to negate our long-standing warfighting advantages while challenging America’s interests and geopolitical position. While the Nation was focused on countering violent extremist organizations, great power competitors focused on the American way of war. They studied, resourced, and introduced systems specifically designed to defeat Air Force capabilities that have strengthened the joint force for a generation. That is why the Air Force must accelerate change now, so we can protect the American way of life in 2030 and for decades to come. Simply put, if we do not change, we risk losing. We risk losing in great power competition, we risk losing in a high-end fight, and we risk losing quality Airmen and families. The President clearly stated that diplomacy is our primary means of engaging with the world: it must be our first tool of choice. The President likewise recognizes that our decisions and actions must come from a position of strength. The Air Force offers safe, secure, and effective nuclear deterrence, which strengthens national policies. It is also important to recognize that air dominance is not an American birthright. The Air Force is pivotal to deterring these aggressors and bolstering our allies and partners. America remains committed to freedom of the commons to support maintaining the rules-based international order around the globe. Control of the air and enabling domains ensures that the jointforce has full freedom of maneuver.

The diversity of our Airmen is both a tactical and strategic advantage. We are committed to recruiting and retaining the best of America. While the COVID-19 pandemic provided new challenges to our force, we remain devoted to caring for Airmen. Suicide and sexual assault persist as challenges that we are tackling head-on. Likewise family support programs are vital to our resiliency as a Service. A diverse and inclusive Air Force helps us out-innovate adversaries today and overcome challenges tomorrow. And, we know that each Airman—active duty, Guard, Reserve, and civilian, no matter their background—took an oath to defend the Nation for all Americans.

Airmen in the near future are more likely to fight in highly-contested environments. These complex, all domain conflicts will result in combat attrition rates and risks to the Homeland that are more akin to World War II than the uncontested environments to which we have become accustomed. Given our ability to project power from afar, independent of forward access or lengthy prepositioning timelines, Airmen will be the first to respond to many emerging crises. In any scenario, the Air Force plays a unique and integral role to our collective deterrence and joint warfighting credibility. We must accelerate change to meet the challenges our Nation faces. This requires a relevant, modern force based on cutting-edge capabilities that will survive in future conflicts and shifting away from legacy platforms that are increasingly irrelevant.

The Air Force is expected to provide enduring airpower capabilities irrespective of the threat encountered, the technology utilized, or the budget provided. The core missions of airpower—air superiority; global strike; rapid global mobility; command and control; and intelligence, surveillance, and reconnaissance— provide unequivocal advantage to the joint force. Only the Air Force provides air superiority, global strike, and rapid global mobility for the Nation. Without these missions, the Homeland is unprotected and America cannot project power around the globe. We are innovating and advancing our competencies with innovative capabilities such as the Advanced Battle Management System, which will increase commanders’ decision advantage. Moreover, new approaches to our core missions enhance the joint force and answer the challenges posed by great power competitors.

The Air Force’s future force design recognizes the need for change and the range of threats to the Nation, our allies, and partners. In 2021, we identified three key capability development areas for investment: connect the joint force, generate combat power, and conduct logistics under attack. Moving forward we will prioritize the resources that will allow us to continue to make investments in these areas, with more to come. Additionally, the Air Force will prioritize within its resources, affordable, analytically defensible, force structure and system capability proposals. Through partnership with Congress, the Air Force will prioritize resources to guard the foundations of national freedom and independence for America and our allies.

AIR SUPERIORITY

Combat power, regardless of Service, often depends on the Air Force’s ability to deliver air superiority. Our competitors have fielded air forces, radar systems, and missiles that can attack our territory, bases, forces, and allies and partners, or defend against our military actions. Our job is to stop them through control of the air. To do this, we build understanding of the air situation and then use the right mix of capability and capacity to control the air while creating windows of air superiority—no matter the threat. As we stay ahead of our competitors, the Air Force needs flexible systems and agile design processes to field new capabilities at speed.

Current platforms will not fully support tomorrow’s demands. Airmen are deliberately balancing today’s readiness risk with capability modernization. Remaining ahead of adversaries who are committed to negating our technological edge requires investment in advanced capabilities. Likewise, access to domestic airspace allows us to train in realistic environments, which is essential to developing and maintaining these advanced capabilities. Near-peer competitors are challenging our capability to command the air. We must take action now to ensure the joint force’s success tomorrow.

#### It’s key to the grid.

Timothy Simcoe 11. Boston University School of Management. ”Can standard setting organizations address patent hold­up? Comments for the  Federal Trade Commission” 2011. Date Accessed: 08-29-21. http://people.bu.edu/tsimcoe/documents/working/Simcoe-FTC-SSO-Comments-v2.pdf

Another cause for concern is the **increasing importance of interoperability**, and  particularly the **push for standards** to support the deployment of electronic health  records and **a “smart” electricity grid.**New standards are clearly **needed** to  coordinate the efforts of diverse vendors in responding to these**potentially large  market opportunities.** However, given the highly inelastic consumer demand for  health and energy services, it is not clear that intermediaries like hospitals or public  utilities have the ability or incentive to be an active SSO participant or engage in  protracted fights with sophisticated patent litigators if they can **simply pass royalty  costs on to consumers.**

#### Grid collapse causes extinction.

Alice Friedemann 16. Transportation expert, founder of EnergySkeptic.com and author of “When Trucks Stop Running, Energy and the Future of Transportation,” worked at American Presidential Lines for 22 years, where she developed computer systems to coordinate the transit of cargo between ships, rail, trucks, and consumers. 01-24-16. “Electromagnetic pulse threat to infrastructure (U.S. House hearings).” Energy Skeptic. http://energyskeptic.com/2016/the-scariest-u-s-house-session-ever-electromagnetic-pulse-and-the-fall-of-civilization/

Modern civilization cannot exist for a protracted period without electricity. Within days of a blackout across the U.S., a blackout that could encompass the entire planet, emergency generators would run out of fuel, telecommunications would cease as would transportation due to gridlock, and eventually no fuel. Cities would have no running water and soon, within a few days, exhaust their food supplies. Police, Fire, Emergency Services and hospitals cannot long operate in a blackout. Government and Industry also need electricity in order to operate. The EMP Commission warns that a natural or nuclear EMP event, given current unpreparedness, would likely result in societal collapse.

#### The plan strikes a balance between avoiding undue restrictions on SSOs and making standard-setting more responsive to economic issues.

Donald E. Knebel 17. Serves as adjunct professor and senior advisor to the Center for Intellectual Property Research at the Indiana University Maurer School of Law. “Standard Setting Organizations and Competition Laws: Lessons and Suggestions from the United States” Complications and Quandaries in the ICT Sector. 10-28-17. <https://link.springer.com/chapter/10.1007/978-981-10-6011-3_7>

Various procedures have been suggested for avoiding holdups and making the standard-setting process **more responsive to economic issues**. The simplest procedure allows or even requires the participants in the process to **declare ex ante the maximum royalty rates and other license terms** they would **demand for their SEP should it be accepted** into the standard. Ironically, as seems to be the case in the Discussion Paper, the primary justification for RAND commitments instead of more open discussion of royalty rates is a desire to avoid running afoul of antitrust and similar competition laws.13 At least as interpreted by some, those “antitrust rules may **unduly restrict SSOs** even when those SSOs are serving **procompetitive ends**.”14 The possibilities of **holdup and other anticompetitive consequences** of the standard-setting process are **gaining increasing global attention** because “[s]tandards that incorporate patented technologies are the backbones of rapidly expanding worldwide markets in the information and communications technology (ICT) sector, such as global smartphone markets that have nearly tripled in size since 2009.”15 As a result, the experiences in the United States may be helpful as India and other countries deal with these issues.16

### Solvency---1AC

#### Contention 3 is Solvency.

#### The plan renders SSO behavior that enables ex post opportunism a violation of antitrust law.

A. Douglas Melamed and Carl Shapiro 18. \*\*A. Douglas Melamed; Stanford Law School. \*\*Carl Shapiro; University of California, Berkeley - Haas School of Business. “How Antitrust Law Can Make FRAND Commitments More Effective” Stanford Law and Economics Olin Working Paper No. 510. Revised 01-25-18. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3075970>

3. Application of the Basic Legal Principles The **antitrust principle is straightforward**: industry-wide collaboration through SSOs to establish procompetitive standards is permitted only if it is no more restrictive of competition than **reasonably necessary to enable creation of the standards**. When standard-setting predictably creates technology monopolies that, if unrestrained, will enable anticompetitive ex post opportunism that would otherwise not occur, an SSO that does not take effective measures to prevent or minimize such ex post opportunism is **engaging in conduct that is more restrictive of competition than necessary**. In that case, the SSO and, in appropriate cases, their members, may well violate **Section 1 of the Sherman Act.** Under this principle, SSO procedures and FRAND rules should be evaluated based on whether they lead to **reasonable SEP royalties**, using the competitive ex ante licensing standard discussed above, which has been **adopted by the courts in patent law**. Put differently, FRAND rules should be evaluated based on their ability to **prevent SEP holders from obtaining more than the ex ante value of their technology from implementers**. This limitation would **not prevent a SEP holder from profiting**, perhaps greatly, from participating in the SSO and having its patented technology included in the standard, because such inclusion can still greatly increase the volume of licensing opportunities available to the SEP holder. Those licensing opportunities are the reward to the SEP holder for its having developed or acquired the technology chosen for inclusion in the standard. Whether a particular set of FRAND rules are sufficiently effective in preventing ex post opportunism will depend on the particular circumstances. The procedural unfolding of the case will also depend upon the circumstances. As a general matter, the case would probably be structured as an ordinary rule of reason case.78 First, the plaintiff would have to **demonstrate harm to competition** as a result of the collaboration of the SSO and its members, many of whom are competitors with one another. In this case, the harm to competition would be the ability of the SEP holder to exercise monopoly power by **obtaining royalties in excess of the competitive, ex ante level**. The decision to include patented technologies in the standard would be the allegedly unlawful agreement. Notably, the court would not have to determine what a FRAND royalty is; it would suffice to determine that market power has been created (and, depending upon the circumstances, is being exercised) and that the existing SSO rules and policies were not adequate to prevent the competitive harm. The defendant will win at this point if its rules and policies are found to be adequate to prevent ex post opportunism, even if the plaintiff or even the court thinks that other rules and policies would be preferable. If the plaintiff makes the requisite showing, the defendant(s) would then have to show some procompetitive justification—in this case, the benefits of the standard. These two steps should be **straightforward**. At this point, the plaintiff would have to show that reasonable alternatives available to the SSO would enable realization of the efficiency benefits with less or none of the competitive harms. The plaintiff could potentially identify reasonable alternatives that would have led to a different standard, based on including unpatented technology in the standard or perhaps involving fewer SEPs or fewer owners of SEPs, which would be less subject to patent holdup. More likely, the plaintiff could suggest one or more alternative SSO rules that would not change the standard, but would reduce the likelihood or extent of ex post opportunism. For example, the plaintiff might suggest more rigorous FRAND-type rules, such as rules that set forth more precise principles on which FRAND royalties are to be determined and the circumstances under which SEP holders might seek injunctions. The burden would then shift to the defendant(s) to show, if possible, that the benefits of the standard could not have been realized if the SSO had adopted any of the proffered alternatives or that those alternatives were for some other reason unrealistic.79 The plaintiff would be entitled to judgment if the court concludes that those benefits could have been realized with less competitive harm if the SSO had adopted the standard with different IPR rules or policies. Our overall sense, based on experience and the empirical literature, is that the extant FRAND rules are generally useful, but tend to be inadequate because they are imprecise and leave many issues unresolved. Left unresolved are such critical issues as (a) what is a reasonable royalty, even conceptually; (b) just what does “non-discriminatory” mean; (c) to whom must licenses be offered; and (d) under what circumstances may a SEP holder obtain an injunction.80 Both economic theory and experience suggest that these imprecise FRAND commitments are not sufficient to prevent ex post opportunism. The recent revisions to IEEE’s FRAND policy are a big step in the right direction, but even this advance leaves important questions unanswered.81 If FRAND rules are inadequate in these ways, litigation involving extant FRAND rules would likely be resolved at the final step. The defendant(s) would be able to demonstrate the benefits created by the standard; the plaintiff would be able to demonstrate the creation of market power and that other reasonable and practical rules or policies would ameliorate the problem. The case would thus turn on whether the defendant(s) are able to demonstrate that significant benefits associated with standardization could not have been realized if the SSO had adopted those other rules or policies. The court would have **available a variety of possible remedies** if the plaintiff prevails, depending on the circumstances. Treble damages would be available to implementers that paid supracompetitive royalties or were unlawfully excluded in whole or in part from product markets.82 If the unlawful SSO conduct is regarded as the collective action of the SSO and its members, which is likely to be the case in most instances, SSO members would be jointly and severally liable for the damages. Forward-looking injunctive relief aimed at restoring competition would need to be fashioned to the requirements of the individual case. For example, a court could order the SSO to adopt a new rule or policy proposed by the plaintiff, but the court might be reluctant to take on that governance role. If so, the court might give the SSO a period of time—maybe ninety days—to develop a rule, subject to the court’s ultimate approval, that would adequately ameliorate the competitive problem created by the SSO. Alternatively or in addition, the court might order the parties to attempt to negotiate a rule or policy on which they can agree. And, depending on the circumstances, the court might order SEP holders, including at least those that were defendants in the case, to comply with the new SSO rules and policies. IV. Conclusion As always, antitrust law can and should be flexible and attentive to the specific factual circumstances of each case. What set of rules governing FRAND commitments is best for one SSO might not be best for another. Experience in the marketplace and the creativity of SSOs and their members can best determine which measures are most effective and efficient in any given case. One size does not fit all when it comes to FRAND rules, and antitrust law should welcome competition among SSOs to solve the problem of ex post opportunism by SEP holders. The role of antitrust law is not to prescribe how SSOs should solve this problem, but simply to **require that SSOs and their members implement effective solutions that minimize ex post opportunism without sacrificing the many benefits associated with standard setting.**

#### Patent holdups must be addressed with antitrust law---anything else causes under-enforcement and perverse consequences.

George S. Cary et al 11. \*\*George S. Cary and \*\*Alex R. Sistla are members of the California and District of Columbia Bars. \*\*Mark W. Nelson is a member of the New York and District of Columbia Bars. \*\*Steven J. Kaiser is a member of the New Jersey and District of Columbia Bars. “The Case for Antitrust Law to Police the Patent Holdup Problem in Standard Setting” Antitrust Law Journal. Vol. 77. 2011. https://www.clearygottlieb.com/~/media/organize-archive/cgsh/files/publication-pdfs/the-case-for-antitrust-law-to-police-the-patent-holdup-problem-in-the-standard-setting.pdf

Patent holdup where a patentee has deceived an SSO in order to secure a position in the standard is, **at its core, an antitrust problem**. In this context, patent holders **harm consumers** by exploiting the competition-reducing aspects of standard setting to their own private advantage. In addition to being the body of law directed toward anticompetitive conduct, **antitrust provides numerous practical advantages**, including the possibility of governmental enforcement, and appropriately broad standing. Remedying the patent holdup problem exclusively through non-antitrust legal remedies **would be perverse**. Indeed, it would be a bit like remedying patent infringement through the doctrine of common law conversion. In some instances, it might work, but there certainly would be **under-enforcement.** To be sure, there are instances where deceptive conduct by the patentee does not harm competition and, in those instances, there is no antitrust claim. Often there will be patent remedies in that situation, or contract or even tort remedies. The legal regimes can and do coexist peacefully. Those who argue that the marginal benefit of antitrust remedies do not outweigh the cost of antitrust litigation both **understate the benefits** (broad stand- ing and ready remedies where appropriate) and **overstate the costs** (the potential, however unknown, of “false positives,” i.e., condemning behavior that is not anticompetitive). In addition to being overstated, the false positives concern is also **misplaced in this context**. Unlike an antitrust attack on price cutting or a securities offering, the risk of a false positive here is **not** the over- deterrence of desired behavior, but rather that **over-deterrence of deceptive and opportunistic behavior**. Fretting about that form of over-deterrence seems itself to be a **misallocation of resources**. And preventing that form of over- deterrence by reliance on the competitive outcomes under legal regimes not designed to protect competition **strikes us as unwise.**

#### Antitrust law must address FRAND violations---key to growth and innovation.

FTC 18. “Standards, Licensing, and Innovation: A Response to DOJ AAG’s Comments on Antitrust Law and Standard-Setting” 2018. https://www.ftc.gov/system/files/documents/public\_comments/2018/08/ftc-2018-0055-d-0031-155033.pdf

5. **Antitrust Law Should Address FRAND Violations** The assertion that antitrust law has no role to play in FRAND disputes is incorrect. **Antitrust is concerned with the acquisition of market power** through anticompetitive means. As discussed above, when companies promise through their FRAND commitments not to exercise the market power they gained from incorporation of their patents into standards but then breach those commitments, they are exercising market power they acquired by promising to forgo that exercise. Recognizing this principle, U.S. antitrust agencies under both Republican and Democrat administrations have warned against anticompetitive conduct related to the violation of SSO patent policies and breach of FRAND commitments.37 Similarly, courts have held that exclusionary conduct by SEP owners is reachable under Section 2 of the Sherman Act when they make FRAND commitments that they do not intend to honor and subsequently breach those commitments.38 Wrongful hold-up conduct can occur, however, even absent such deception.39 At a minimum, competition law **can and should address cases of significant FRAND violations** that harm industry and consumers. To do otherwise would allow SEP holders violating their FRAND commitments to continue to **charge supra-competitive royalties** for the use of their patents incorporated into standards. To the extent that implementers of standards are able to pass along these overcharges to their customers, the impact of a SEP owner’s wrongful attainment of monopoly power is **felt by consumers**. Moreover, if hold-up behavior is allowed to continue unchecked, we should expect that more SEP holders will employ such practices, **hampering the success of the IoT.** B. Innovation Throughout the Value Chain Drives the Economy Today’s complex technology products **involve innovations** by multiple industry participants at different levels in the value chain. Companies can, and often are, both SEP holders and prospective licensees that manufacture standard-compliant products.40 Accordingly, any suggestion that there are two separate camps—innovators and implementers—with “dueling interests” that are “always in tension” is mistaken. Also incorrect is the suggestion implicit in this false dichotomy that standard implementers are effectively free riders exploiting other companies’ innovations without compensating them for their inventions. Moreover, the assumption that only the upstream inventions that are contributed to standard-setting activities merit protection **is also incorrect**. A product can contain a multitude of technological innovations separate and apart from a given SEP. For example, different wireless access points may implement the same standard, but differ significantly relative to other features, such as throughput, antenna design, configuration and management, and interference management features that go beyond the standard. This differentiation explains why a large enterprise may spend hundreds of dollars for an enterprise-class access point that implements the same standard as a consumer access point that is available for less than 50 dollars at a consumer electronics retailer. It is pointless to argue whether consumers benefit more from innovations contributed by SEP licensors or innovations that differentiate products that implement standards. Just as SEP licensors deserve a fair return based on the value of the patented innovations they contribute, implementers of standards that innovate to create products consumers value deserve to enjoy the fruits of their own innovation and must not be compelled to divest value they have themselves created by paying super-competitive SEP licensing royalties. It would be unjust enrichment for SEP licensors to receive royalties based on the added value contributed by downstream innovators. For example, today’s smartphones are computing and multimedia platforms, as well as communications tools. A typical smartphone includes an advanced microprocessor, a sophisticated graphics processor, flash memory, DRAM, location awareness technology, touch technology, voice recognition, high-definition still and video cameras, video and music replay, power management technology, and an advanced operating system. All of these technologies provide benefits to end users that are independent of the cellular technology that enables telephony connections. A holder of SEPs related to cellular technology thus should not be permitted to exercise its market power in such SEPs to extract unreasonable royalties based on the overall price of a smartphone.41 It is unfair and unreasonable for SEP licensors to tax the value created by others – **value that is unrelated to anything claimed in the licensors’ patents.** Competition enforcers should not “pick and choose” between different innovators and **should not privilege upstream patentees** with licensing-based business models. C. Enforcement of a Voluntary FRAND Commitment is Not “Compulsory Licensing” Equating enforcement of voluntary commitments to license on FRAND terms with “compulsory licensing” is also incorrect. This assertion reflects a misunderstanding of the FRAND commitment. Compulsory licensing is the forced licensing by a government of patents that the patent holder does not wish to license.42 A patent holder that voluntarily contributes its intellectual property for use in a standard has made an irrevocable commitment to license based on SSO rules that, as noted previously, are designed to constrain the abuse of market power. In voluntary, industry-led standards development (such as the kind that characterizes hundreds of ANSI-accredited standards development organizations), patentees are free to decide not to make a FRAND commitment and thereby avoid the constraints that such commitment imposes on their subsequent ability not to license or to charge whatever the market will bear.43 Patent holders that agree to participate in standards development and to commit their patents to FRAND licensing are aware that their decision has consequences, positive and negative, on their future licensing prospects. For example, as noted earlier, licensors may agree to the FRAND commitment because they seek access to a potentially large market for their patents from implementers of a successful standard. In exchange, however, they limit their ability to exclude implementers and agree not to seek unfair or unreasonable license terms such as tying SEPs to non-SEPs. Enforcement of that voluntary commitment is **neither** compulsory licensing nor a mandate that SEP holders assist their competitors. Rather, such **enforcement promotes economic freedom and opportunity for all** to compete on a level playing field based on their own innovations, price, and quality. Implementers of standards **rely** on the availability of SEP licenses on FRAND terms as they **decide to make major investments** to bring complex products to market, which contain **innovations that often exceed the standardized technologies**. In forcing SEP holders to uphold their end of the FRAND bargain, **antitrust agencies are fostering competition and innovation** at both the upstream and downstream level.

# 2AC Round 2

## Economy Advantage

#### Incredibly non-unique---their evidence is all about status quo proposals. Here’s the first paragraph of the card.

1NC Rybnicek 21 – Jan Rybnicek is Counsel in the antitrust practice of Freshfields Bruckhaus Deringer and a Senior Fellow at the Global Antitrust Institute at Antonin Scalia Law School at George Mason University, February 12th (“Op-ed: Recent antitrust proposals could ‘throw sand in the gears’ of economic recovery by stalling M&A”, CNBC, Available online at <https://www.cnbc.com/2021/02/12/op-ed-recent-antitrust-proposals-add-friction-to-ma-at-wrong-time.html>, Accessed 08-03-2021)

There is growing hostility to mergers and acquisitions (M&A) among an increasing number of policymakers in Washington, D.C.

Last year, some in Congress called for a merger moratorium banning all M&A during the pandemic. Then, in a surprise announcement, the FTC — over the objection of two commissioners — said it would no longer quickly approve the vast majority of transactions notified to the government that cannot plausibly reduce competition. Most recently, Senator Amy Klobuchar, D-Minn., introduced antitrust reform legislation that would give the government even greater power to block M&A it deems problematic.

#### Big tech enforcement coming now---new DOJ confirmation.

Nihal Krishan 9/24. Technology reporter for the Washington Examiner, antitrust reporter for Yahoo news. “Biden pick for DOJ antitrust post has powerful backers — and Big Tech in his sights.” 9/24/21. https://news.yahoo.com/biden-pick-doj-antitrust-post-173000426.html

President Joe Biden's nominee to head up the Department of Justice's antitrust division is expected to take aim at the tech industry if confirmed by the Senate, where he appears to be a shoo-in.

Jonathan Kanter, who has had the backing of predecessors from every administration dating back to President Gerald Ford, is seen as a hawk on illegal monopolies and anti-competitive mergers, particularly within the tech industry.

"In short, we believe Mr. Kanter is right for this important position," a group of attorneys who previously held the post wrote in a letter to Senate leaders Thursday.

The former top government lawyers who voiced their support included Democrats who worked under Presidents Jimmy Carter, Bill Clinton, and Barack Obama, as well as Republicans who worked under Ford and Presidents Ronald Reagan, George W. Bush, and Donald Trump.

"I like Jonathan. I actually think he'll be a great leader for the antitrust division and move antitrust enforcement forward," Makan Delrahim, Trump's assistant attorney general of DOJ's Antitrust Division, told the Washington Examiner when Kanter was first nominated by Biden in July.

"Both his private sector and government experience will help him run the division successfully. He's a good guy who has been active in the pro-enforcement wing of antitrust lawyers," Delrahim added.

The Federal Trade Commission and the Justice Department are responsible for antitrust enforcement, primarily through investigations, lawsuits, penalties, and fines. Antitrust laws are meant to protect consumers from anti-competitive mergers and business practices.

Kanter's nomination signals a blow for Silicon Valley companies, such as Facebook, Google, Apple, and Amazon, which are under intense bipartisan scrutiny from the government for accusations of monopolistic behavior.

#### Biden’s executive order thumps.

Hamilton et al 21. David Hamilton is a business litigator and as a strategic advisor to businesses and government and community enterprises. “Opportunity Economy: Risks in Antitrust Enforcement”. JDSURPA. 9/2/21. https://www.jdsupra.com/legalnews/opportunity-economy-risks-in-antitrust-9353671/

Executive Order Sets the Tone President Biden issued a wide-ranging executive order on July 9 with the intent of limiting the power of large corporations. The order includes 72 initiatives across a dozen federal agencies and nearly every economic sector is impacted. Hamilton said the executive order puts into action goals Biden set forth during the 2020 campaign. His election also resulted in three significant executive appointments: Tim Wu to the National Economic Council. Wu, an economics professor at Columbia University, has been an outspoken critic of Big Tech. He served as the primary author of the administration’s executive order on competition. Lina Khan as Chair of the Federal Trade Commission. Like Wu, Khan is a favorite in progressive circles who favors bold action in curbing the power of large companies. Jonathan Kanter to lead the DOJ’s Antitrust Division. Kanter is seen as a hawk on antitrust enforcement, and in private practice, he has represented plaintiffs in high-profile antitrust litigation against large tech companies. “These three appointments very much reflect that there is a battle for the soul of antitrust law,” Hamilton said. “The Biden administration and these appointees in particular view existing antitrust law as inadequate and antiquated.” The executive order does not have the effect of law, but Hamilton called it “a flag in the ground.” He expects the Biden administration to seek legislative action to add teeth to the executive order. Potential targets could include no-poach agreements, wage-fixing, and price-fixing. Targeted industries include tech, pharma, and health care, and manufacturing.

#### Causes high costs for producers.

Donald E. Knebel 17. Serves as adjunct professor and senior advisor to the Center for Intellectual Property Research at the Indiana University Maurer School of Law. “Standard Setting Organizations and Competition Laws: Lessons and Suggestions from the United States” Complications and Quandaries in the ICT Sector. 10-28-17. https://link.springer.com/chapter/10.1007/978-981-10-6011-3\_7

This collective standard-setting process creates the possibility that the owner of an essential patent will gain the ability to **engage in what is seen as anticompetitive and anti-consumer behavior** by charging excessive royalties. As the Ninth Circuit Court of Appeals recently stated: The development of standards thereby creates an opportunity for companies to engage in anti-competitive behavior. Most notably, once a standard becomes widely adopted, SEP holders obtain **substantial leverage over new product developers**, who have little choice but to **incorporate SEP technologies** into their products. Using that standard-development leverage, the SEP holders are in a position to demand **more** for a license than the patented technology, had it not been adopted by the SSO, would be worth. The tactic of withholding a license unless and until a manufacturer agrees to pay an unduly high royalty rate for an SEP is referred to as “hold-up.6 “[H]oldup is of particular concern when the patent itself covers only a small piece of the product….”7 Under those circumstances, a seller may **succumb to demands for royalties** that are **excessive** compared to the value of the patent to preserve the potential profits from sales of the product in light of the costs of litigation and the threat of an injunction against continued sales.

#### Raises prices for consumers and decrease profit for manufacturers.

D. Scott Bosworth et al 17. CFA charter holder and a member of the CFA Institute. \*\*Russell W. Mangum III, Eric C. Matolo. “FRAND Commitments and Royalties for Standard Essential Patents” Complications and Quandaries in the ICT Sector. 10-28-17. <https://link.springer.com/chapter/10.1007/978-981-10-6011-3_2>

Another **anticompetitive concern with the SSO process** relates to enforcement of patent rights covering technology required to practice a standard—often referred to as standard essential patents. Upon an SSO’s adoption of a standard, SEP owners gain the position of control of access to rights to the standard, positioning them to capture licensing fees reflecting the resulting value of the standard.9 That is, after adoption of a standard as the industry is **locked into the technology selection**, implementers may have no choice but to license the rights to the SEPs in **exchange for royalties reflecting a lack of technology alternatives** and/or the expanded market value created by the standard adoption, thereby increasing SEP holders’ licensing fees. This effectively non-competitive licensing position for implementers can be of **particular concern** given the common **widespread reach of a chosen standard**, nationally or globally. It is the widespread adoption that enables SEP patent holders to extract whatever the market will bear (potentially including value of the standard) given the standard-enhanced market value and the lack of substitutability from otherwise alternative technologies. After all, it is not only past, un-adopted technology that is locked out once a standard is set; it is also **new technology that arises after standard adoption** that may not reasonably be turned due to the lock-in effect. In addition, in anticipation, and as a result, of widespread adoption of a standard, manufacturers of products implementing the standard technology may **expend significant resources on production processes** based on the selection of the standard, resulting in **significant sunk costs** which together with widespread standard adoption inhibit the pursuit of any alternative product designs due to increased switching costs.10 High switching costs may further enable SEP holders to obtain licensing fees, for example, based on royalty rates higher than they would have absent the establishment of the standard. Thus, patent holders can benefit from the inclusion of their SEP-protected technology into a standard from both increased royalty rates after an industry is locked into a standard, plus an expansion of licensed sales due to widespread standard adoption. SEPs owners’ ability to capture relatively higher licensing fees as a result of industry participants being locked into an industry standard and/or facing high switching costs is commonly referred to as patent “hold-up.” Typically, the more widespread the standard and/or higher the switching costs the higher a patent holder can charge in licensing fees.11 An SEP holder obtaining such increased licensing fees essentially reflects the patentee’s ability to extract the network effects value from the standard for itself. In doing so, SEPs owners may prevent product manufacturers and consumers from experiencing the full realization of the benefit of network effects. If patent holders successfully demand and obtain elevated licensing fees, **this raises product manufacturers’ costs**, which at least partially offsets some of the potential gains for manufacturers from the adoption of a standard.12 In addition, the high licensing fees may delay or hinder further investment by manufacturers in products **implementing the standard.** Furthermore, higher production costs can ultimately result in **decreased profits to product manufacturers, increased prices for consumers, and delayed further investment** by manufacturers in products using the standard.13

## SSOs Advantage

#### Epistemology don’t shape reality

David **Shim 14**. Assistant Professor at the Department of International Relations and International Organization of the University of Groningen, Netherlands. 2014. “Visual Politics and North Korea: Seeing is Believing.” Routledge, pg. 25-26.

However, particular representations do not automatically lead to particular responses as, for instance, proponents of the so-called 'CNN effect' would argue (for an overview of the debates among academic, media and policy-making circles on the 'CNN effect', see Gilboa 2005; see also, Dauber 2001; Eisensee/Stromberg 2007; Livingston/Eachus 1995; O'Loughlin 2010; Perlmutter 1998. 2005; Robinson 1999, 2001). There is no causal relationship between a specific image and a political intervention, in which a dependent variable (the image) would explain the outcome of an independent one (the act). David Perlmutter (1998: l), for instance, explicitly challenges, as he calls it, the 'visual determinism' of images, which dominates political and public opinion. Referring to findings based on public surveys, he argues that the formation of opinions by individuals depends not on images but on their idiosyncratic predispositions and values (see also, Domke ct ah 2002; Perlmutter 2005). Yet, it should also be noted that visuals function as unquestioned referents in international politics when underlining the necessity of such specific policy practices as sanctions, deterrents and/or military cooperation. A good example of this is satellite imagery, which plays a pivotal role in the surveillance and assessment of missile or nuclear proliferation activities by so-called 'rogue states' like Iran and North Korea. Regarded as providing compelling evidence about the stage of development of nuclear facilities or about the collaboration between suspect states, satellite images point to a nexus between visuality, knowledge and international politics wherein this way of seeing consequently enables governments to make legitimate statements, draw conclusions and take informed political action. In sum, the visual provides the foundation for knowledge generation and. in doing so, bestows political responses with legitimacy (cf. Moller 2007). A now famous case-in-point is Colin Powell's PowerPoint presentation at the United Nations Security Council in February 2003. In the briefing, the then US Secretary of State showed satellite images that allegedly proved the existence of Iraqi 'Weapons of Mass Destruction'. What was remarkable about Powell's presentation was that the visual emerged as the primary referent for the US government's casus belli, which, in the words of MacDonald ef ai (2010: 7-8), disclosed the fact that the 'logic of geopolitical reason is now inseparable from its visual representation' (see also, Campbell 2007c; Der Derian 2001). The causal theory of the 'CNN effect', or what Perlmutter (1998: 1) has called above 'visual determinism', misconceives of how the visual recasts the political realm itself (Hansen 2011). Rather than asking whether an image caused an intervention, it should be asked instead how the visual has been involved in structuring the understandings of legitimate action, and how visual representations of different policy options affect particular security practices (Williams 2003: 527). For instance, many scholars have shown that images can provoke particularly emotive responses (Bleiker/Hutchison 2008; Crawford 2000; Hariman/Lucaites 2007; Mercer 2006; Ross 2006). Just one example of the (deliberate) evocation of an emotional reaction is the numerous fundraising campaigns that have been run by different humanitarian aid organizations over the years, in which imagery plays an essential role (Bell/Carens 2004; Dogra 2007; Manzo 2008).

#### No endless war --- the public is prudent.

Rosati & Scott 14—Jerel A. Rosati a Professor of international studies and political science at the University of South Carolina; James M. Scott a Professor of political science at Texas Christian University [*The Politics of United States Foreign Policy*, 6th ed., p. 347-348]

A second consequence, usually ignored by those who hold to the traditional wisdom, is that for some issues, especially those that are most salient, public opinion may act as an immediate and direct constraint on political officials in the policymaking process. No matter how inattentive, uninformed, and erratic public opinion is, the public vote political leaders in and out of office, so elected officials are particularly sensitive to public opinion. Within the White House, it is not uncommon to hear people say that “compared with analysts, presidents and potential presidents themselves see a close link between stands in foreign policy and the outcomes of presidential elections” (Halperin 1974:67). Even a casual review of the past two decades reveals extensive efforts by each administration to shape and cultivate public opinion and support (see Heilemann and Halperin 2010 on the 2008 presidential election).

Furthermore, if public feeling becomes intense concerning an issue, it severely constrains the choices available within the policymaking process. As Henry Kissinger (1957:328) once observed, “The acid test of a policy…is its ability to obtain domestic support.” Once the public was educated and let on the issue of anticommunism, American leaders began to feel constrained by public opinion, as cold war lessons—for instance that the United States should take a hardline approach and never appease aggressors—were internalized by Americans. The last remnant of this anticommunist legacy in the present era can still be seen in U.S. foreign policy toward North Korea and Cuba.

In addition, public support for a policy may turn rapidly into public disapproval. Although the public tends to rally around the flag and the president during a crisis such as war, public support for presidential policies tends to dwindle over time. Studies, such as John Mueller’s (1973) classic, War, Presidents, and Public Opinion, demonstrate that the longer a war lasts (and the greater the casualties), the more public support will erode. Quick and successful operations, as in Grenada, Panama, the Persian Gulf, and Kosovo maximize support; lengthy and unsuccessful conflicts, as in Korea, Vietnam, Lebanon, and Iraq bring public disapproval (see Gelpi, Feaver, and Reiffler 2005/06). George W. Bush learned how quickly public approval can pivot as support changed to opposition as time, cost and casualties mounted in Iraq after 2003, and Barack Obama watched public support evaporate for his initial economic policies as well as military action in Afghanistan.

Bruce Jentleson (1992:72) found that public opinion “varies according to the ‘principal policy objective’ for which force is used.” The tendency is for greater public support for the use of force in order to “contain” and “restrain” an aggressor state—such as in the Persian Gulf War—as opposed to using force to “initiate” and “impose” internal political change within another state—such as within Nicaragua, Somalia, or Haiti. Obviously, many cases are likely to be, or be perceived as, somewhat mixed. Nevertheless, Jentleson (1992:72) concludes:

The American public is less gun shy that during the Vietnam trauma period or the 1970s, but more cautious than during the Cold War consensus of the 1950s and 1960s…Presidents who contemplate getting militarily involved in internal [END OF PAGE 347] political conflicts—of which there may well be even more in the post-Cold War world than when bipolarity had its constraining effects—had better get in and out quickly and successfully. Otherwise, the public is strongly disposed to oppose the policy.

Thus the public tends to discriminate over the use of force more than is commonly thought and is “pretty prudent.” As can be seen in the war in Iraq, from overwhelming support in early 2003 at the beginning of the invasion, public support dwindled steadily—with temporary interruptions for such events as the capture of Saddam Hussein or the Iraqi elections in 2005—to the point where over half the public regarded the actions as a mistake by early 2005. Similarly, the public’s preference for withdrawal has also increased steadily as casualties have mounted (Mueller 2005). In late 2005, for example, polls showed that, even while democracy promotion was embraced by most Americans as a foreign policy goal, a majority of Americans opposed the use of military force (either directly or via threats) to promote democracy, and believed that the goal of establishing democracy in Iraq did not warrant going to war.

Finally, the collapse of the cold war consensus has made public opinion somewhat less responsive to the president. During the 1950s, most American leaders and members of the elite public shared a similar cold war view of the world that the mass public tended to follow. Since the Vietnam War, however, differing views of the world and U.S. foreign policy have arisen, leading to greater diversity and volatility in public opinion. This has made it more difficult for the president to rally and maintain public support for particular polices in an environment where opinion leaders with different foreign policy views now compete with each other for public support.

#### It’s real.

Pierre Régibeau et al 16. Raphaël De Coninck and Hans Zenger. Charles River Associates. “Transparency, Predictability, and Efficiency of SSO-based Standardization and SEP Licensing” June 2016. European Commission.

We do not think that this would be a correct conclusion to draw from the literature. First, the **formal empirical literature** - supported by a large number of case studies – shows quite unambiguously that, in the absence of contractual or organisational solutions, **hold-up would be a significant issue.** Second, it is generally hard to write complete contracts about innovations, since it is hard to write down an ex-ante contract about a solution that still has to be found. If we would ever expect un-remedied hold-up to occur, this would concern investment and exploitation of intellectual property rights. Third, the usual solutions to the hold-up problem are **further made difficult** by the current SSO process. There is essentially **no attempt** to force participants to sign reasonably complete contractual agreements at the beginning of the process. Very few SSOs require participants to make **explicit commitments on the prices and conditions** at which their IPRs would be made available to implementers. Traditional contractual solutions to potential hold-up are therefore not used. Common “organisational” solutions such as the formation of joint ventures or vertical integration between IP- owners and implementers are also not used in the SSO-based standardisation process. As we discuss later, when we talk about transactions costs of standardization processes, these features of the standardization process may have good economic reasons that make some contractual incompleteness unavoidable. Fourth, in some sectors like ICT, recent technological evolution has destabilised some of the mechanisms that might have greatly reduced the hold-up problem in the past. In particular, the emergence of new actors such as computer-oriented companies and non-practicing entities has decreased the degree of vertical integration between SEP- owners and implementers and has disrupted a culture of repeated collaboration between more traditional SSO participants. Our own assessment on the basis of these observations is that, if left unchecked, hold- up, in the sense defined, is an **issue in the context of SEPs.** Moreover, as recent changes have weakened some of the mechanisms that have likely limited opportunistic behaviour by SEP-holders in the past, renewed attention to hold-up minimising regulatory mechanisms seems warranted. It is therefore important to contemplate policy measures aimed at reducing hold-up and its negative impact on prices and, possibly, investments. However, we should also expect the relevance of hold-up to vary considerably across industries. Intense competition between users to be first to market, complex, uncertain and **fast-moving technologies** and the emergence of new, non-integrated players are all factors that would **magnify concerns about hold-up related costs.**

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## Advantage CP

#### Government R&D can’t solve growth or innovation

Terence Kealey 21. Professor of clinical biochemistry at the University of Buckingham. "Federal Science Funding Won't Accomplish Anything the Private Sector Can't Do Better". Cato Institute. 6-16-2021. https://www.cato.org/commentary/federal-science-funding-wont-accomplish-anything-private-sector-cant-do-better

A bipartisan group led by Senate Majority Leader Chuck Schumer (D-N.Y.) wants to counter China with legislation to dramatically increase government funding of pure science (science that is mainly concerned with theory rather than practical applications). They call their bill the U.S. Innovation and Competition Act. But if they really want to spur innovation and competition, they should be trying to slash science subsidies, not increase them.

The most potent criticisms of the government funding of science have come from government agencies themselves. The first came in 1969 when the Office of the Director of Defense Research and Engineering analyzed 700 research “events” that had led to the development of 20 weapons systems—finding that only two of those events were in pure science.

Then the Congressional Budget Office (in both 1991 and 1998) and the Bureau of Labor Statistics (2007) reviewed the entire academic literature, finding that study after study showed that the research projects that governments funded had failed, on average, to generate profits: in contrast, the research projects that the private sector funded were, overall, highly profitable.

Finally, in 2003 the Organisation of Economic Cooperation and Development, on studying the growth rates of the 21 leading world economies between 1971 and 1998, found that whereas levels of privately funded R&D correlated strongly with national rates of economic growth, there was no positive impact on GDP per capita from publicly‐​funded research and development.

Government funding of science isn’t just ineffective; it crowds out private sector success. When the government subsidizes a company’s science, or when the government pays for a research program, that company or that program will benefit. But the economy at large will suffer, because scientists have been pulled out of the projects the market was trying to fund.

Many view government funding of science as a foregone conclusion. But while the federal government has long funded so‐​called “mission research,” such as the Coast Survey (1807), it didn’t start to fund pure science until 1950, when it established the National Science Foundation (NSF).

The blueprint for the NSF was provided by American engineer Vannevar Bush. In his “linear” or “pipeline” model, he proposed there were both military and market failures in pure science: Only if the government funded pure science would U.S. technology flourish. In the ensuing years, much federally funded research has proven him wrong.

This is a tough story to propagate because the vested interests are aligned. The universities and the scientists lobby for governments to give them money on their own terms; industry lobbies for subsidies; and governments enjoy distributing research money, as the Medicis once did to Galileo. But the data show that these schemes will not benefit the economy.

Advocates for government funding of science will point to the many good things it has helped produce, including the internet. Vast funds for research will indeed yield good things, but the government studies cited above show that the costs of that research merely equal the benefits. In stark contrast, the costs of private research are dwarfed by their benefits. The plural of anecdote is not data; and if we are to get policy right, we should look to systematic cost‐​benefit studies, not anecdotes.

After the Soviets launched Sputnik in 1957, the federal government hugely increased its funding of research. Yet rates of growth in U.S. GDP per capita did not rise, and rates of productivity growth actually fell. That implies that government funding of research crowded out more useful work

#### Minimum wage doesn’t solve inequality.

Christos Makridis 16. Ph.D. Candidate in Macroeconomics and Public Finance at Stanford University. “Raising the Minimum Wage Won’t Reduce Inequality” The New Republic. 02-05-16. <https://newrepublic.com/article/129286/raising-minimum-wage-wont-reduce-inequality>

How minimum wages affect inequality, however, remains controversial. Detecting it with **standard statistical methods is very challenging** because their full effects are constantly changing and require data on both individuals and companies. Back in 1999, Princeton economist David Lee used the Consumer Population Survey (CPS) from 1979 to 1989 to argue that the declining purchasing power of the minimum wage largely explains why inequality surged in the 1980s. Other new research, however, has put that conclusion in doubt. Perhaps the **most conclusive reassessment** comes from economists David Autor, Alan Manning, and Christopher Smith earlier this year. Using many more **years of microdata from the CPS**, as well as a different statistical approach, they found that the minimum wage explains **at most 30 percent** to 40 percent of the rise in wage inequality among the lowest earners. Since economists had thought that changes in the minimum wage could explain as much as 90 percent of the shift in inequality, these **new estimates are important.** How wages affect worker behavior While the extent is still uncertain, it’s clear that the minimum wage and other wage-setting forces such as tax rates and union bargaining power do in fact affect inequality and the labor market. My own ongoing research, which focuses on the link between such wage-setting mechanisms and company behavior, suggests labor-market distortions like raising the minimum wage can have other **negative effects on workers, businesses and inequality** beyond the overall impact on employment. The first adverse effect concerns how much people work. If, for example, worker wages rise due to a government mandate, the employer may reduce the number of hours staff work, leading to lower paychecks even after the raise. That’s part of the reason why we’ve seen companies like McDonald’s increasingly try to automate tasks that were once held by people. In addition, my research suggests one of the major ways people acquire new skills is by spending more time at work. Thus policies that lead to fewer hours could lower employees’ ability to improve their long-run earnings potential. The second is an indirect effect on the way businesses invest in workers and design compensation and organizational policies. When companies are forced to pay higher wages, they may offset the cost by reducing how much they invest in workers. There is **evidence that minimum wage laws have this effect.** This can result in weaker compensation contracts (e.g., purely salary-based), which provide employees with fewer incentives to accumulate skills. As a result, workers paid fixed wages suffer greater long-run earnings volatility than those receiving performance-based pay. Put simply, if a recession comes and an individual loses his or her job, having more skills makes it easier to find a new position and return to the previous income level. Minimal impact on inequality Even setting aside all the plausible economic arguments against the minimum wage, under the best case scenario, what does it really achieve? If the average full-time employee works 1,700 hours per year, then moving from $7.25 an hour to $9 an hour produces **only about $2,975 in additional annual earnings**. While some may argue that something is better than nothing, this would be **at best a marginal solution to inequality.** Taking a look at the most recent 2015 Current Population Survey data and restrict the sample to full-time earners with over $10,000 earnings per year, Americans at the 90th income percentile (they earn more than 90 percent of their compatriots, or $80,000 a year) make 5.6 times as much, on average, as those at the 10th percentile ($14,200). Increasing the minimum wage to $9 an hour would put the ratio around 4.65. In other words, **even in the best of worlds**—where the minimum wage has no unintended side effects—it appears to only **marginally reduce inequality.**

#### 2. It’s the only avenue for redress.

George S. Cary et al 11. \*\*George S. Cary and \*\*Alex R. Sistla are members of the California and District of Columbia Bars. \*\*Mark W. Nelson is a member of the New York and District of Columbia Bars. \*\*Steven J. Kaiser is a member of the New Jersey and District of Columbia Bars. “The Case for Antitrust Law to Police the Patent Holdup Problem in Standard Setting” Antitrust Law Journal. Vol. 77. 2011. https://www.clearygottlieb.com/~/media/organize-archive/cgsh/files/publication-pdfs/the-case-for-antitrust-law-to-police-the-patent-holdup-problem-in-the-standard-setting.pdf

While other areas of law may prove capable of addressing certain abuses of standard-setting processes, they are an **incomplete solution**, as only antitrust law can **ensure that private parties and government enforcement authorities can seek redress** where the underlying abuse **harms competition**. Although parties should be free to decide for themselves which claims to assert in any given case, we see no reason for disabling antitrust law as an option in appropriate cases, i.e., where the standard-setting misconduct has a substantial anticompetitive effect. The concern that application of antitrust law may lead to “false positives” that could deter innovation is **greatly overstated**, especially when one examines the **particular cases** where allegations of standard-setting abuse have arisen. These cases show not only that the requirements to establish an antitrust cause of action are quite demanding, but also that the opportunistic conduct at issue (and that might be deterred by allowing a role for antitrust) **has little bearing on incentives to innovate**.

#### 4. Either the counterplan relies on self-enforcement.

A. Douglas Melamed and Carl Shapiro 18. \*\*A. Douglas Melamed; Stanford Law School. \*\*Carl Shapiro; University of California, Berkeley - Haas School of Business. “How Antitrust Law Can Make FRAND Commitments More Effective” Stanford Law and Economics Olin Working Paper No. 510. Revised 01-25-18. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3075970>

2. **Why Antitrust Enforcement Is Necessary** Some SSO members have an interest in ensuring that the SSO takes steps to minimize the potential harms from the SEP holders’ monopoly power, and that undoubtedly explains in part why most SSOs have **adopted FRAND policies** or similar requirements designed to limit ex post opportunism by SEP holders. But, as shown in the economic model in the Appendix,69 SSOs **cannot** in general be counted on to adopt **effective FRAND policies**. The bases for this conclusion, which is central to our argument for the applicability of Section 1 to SSO FRAND rules, can be summarized as follows.70 First, the SSO members collectively **have an interest** in permitting SEP holders to **charge supracompetitive royalties** that elevate the downstream price of compliant devices to the monopoly level. Doing so will enable the members in aggregate to **collect increased revenues** from consumers and thus to generate increased profits that in theory could be shared by all the members. In other words, supracompetitive royalties can enrich industry participants as a group at the expense of final consumers. This fact alone should serve as a clear and strong signal regarding the dangers of counting on SSOs to implement effective FRAND policies: if the SSO members negotiate efficiently, the outcome will be just as bad for consumers as if the members agreed to fix downstream prices.71 The fundamental problem is that final consumers are not at the table when the SSO rules are negotiated. Second, SSO members that own SEPs but earn little or no profits as implementers have a **powerful self-interest** in being able to exercise the ex post monopoly power associated with their SEPs. Because SSO policies are usually determined by a consensus process, one can predict that these members will be able to block the adoption of fully effective FRAND policies. Moreover, these SSO members often have the greatest interest in SSO patent policies. Since much of their income may be attributable to patent licensing, they can be expected to devote substantial resources to block the adoption of FRAND policies that effectively prevent patent holdup. Third, even SSO members that earn significant profits as implementers may have mixed incentives if they also own SEPs, which can also lead to weak or **ineffective FRAND rules.** In the Appendix, we show that, if the requisite share of votes in the SSO are cast by firms whose share of SEP royalties is at least as large as their share of downstream profits, and if these firms can coordinate their voting over the FRAND rules, then an SSO not constrained by antitrust laws will establish FRAND rules leading to an outcome no better for consumers than would result from an integrated monopolist controlling all SEPs and all downstream sales.72 Fourth, even SSO members that are downstream implementers and own few if any SEPs may have **only a modest interest** in promoting effective policies to restrict ex post opportunism. This is so because all implementers will be subject to the opportunism, so all of them will face increased licensing costs, and therefore will likely be able to **pass on most or all of the increased costs to their customers**.73 Furthermore, these implementers might not be especially active or effective in the standard-setting process for free-riding/public good reasons, especially if SEP royalties constitute only a relatively small portion of the costs of their standard-implementing products. Public choice theory predicts that the highly motivated SEP holders are likely to have the greatest influence over patent policies. Empirical evidence bears out these concerns. As a starting point, we find it striking that SSO FRAND rules are almost always **quite vague**.74 Notably, SSOs in which SEP holders are more prevalent tend to have weaker FRAND rules.75 Plus, to our knowledge, SSOs have made almost no effort to enforce their FRAND rules and have, instead, left enforcement efforts to others.76 All of this evidence raises serious doubts about the effectiveness of the existing FRAND rules in preventing ex post opportunism.

#### 5. Or it’s a ham-fisted regulation that undermines all flexibility.

Adam Speegle 12. J.D. Candidate, May 2012. “Antitrust Rulemaking as a Solution to Abuse of the Standard-Setting Process”. Michigan Law Review. March 2012, Vol. 110, No. 5 (March 2012), pp. 847-873. https://www.jstor.org/stable/23216802

The proposed rule would also buttress SSOs' rules, rather than marking a shift to top-down government regulation of the standard-setting process. A top-down model would not only **strip SSOs of their flexibility** but would also require the government to **shoulder the impossible task of setting SSO bylaws and licensing terms** amenable **across commercial sectors**. Flexibility is **critical for SSOs**, which often arise in industries undergoing rapid technological change. Moreover, even where SSOs operate within the same general sector, each SSO is typically formed to address specific technologies that **require distinct solutions**.148 One size does not fit all.149 Disclosure obligations that an SSO deems appropriate, for example, may vary depending on both the technology and external considerations, such as potential particpants' reluctance to join the SSO due to overly burdensome disclosure rules.150 Some standards may require royalty-free licensing; SSOs con vened to set others may prefer RAND licensing, or set no specific licensing obligations for its members at all.151 In such a **complex climate**, it is nearly **impossible** for the government to act as a top-down rulemaking and rate-setting organization, because it is **hardly capable of analyzing industry conditions and establishing rules that will effectively promote rather than chill innovation** in all cases.

## Neolib K

#### 1. Biomedical innovation solves all sustainability warrants---that’s a defense of our methodology and a disad to theirs.

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New biological capabilities have the potential to bring sweeping change to economies and societies. The effects will be felt across value chains, from how R&D is conducted to the physical inputs in manufacturing to the way medicines and consumer products are delivered and consumed. These capabilities include the following: — Biological means could be used to produce a large share of the global economy’s physical materials, potentially with improved performance and sustainability. Significant potential exists to improve the characteristics of materials, reduce the emissions profile of manufacturing and processing, and shorten value chains. Fermentation, for centuries used to make bread and brew beer, is now being used to create fabrics such as artificial spider silk. Biology is increasingly being used to create novel materials that can raise quality, introduce entirely new capabilities, be biodegradable, and be produced in a way that generates significantly less carbon emissions. Mushroom roots rather than animal hide can be used to make leather.11 Plastics can be made with yeast instead of petrochemicals. — Increased control and precision in methodology is occurring across the value chain, from delivery to development and consumption with more personalization. Advances in biological sciences have made R&D and delivery processes more precise and predictable; the character of R&D is shifting from discovery by accident to rational design. Increasing knowledge of human genomes and the links between certain genes and diseases is enabling the spread of personalized or precision medicine, which can be more effective than the one-size-fits-all therapies of the past.12 Precision also applies to agriculture, where insights from a plant or soil’s microbiome increasingly can be used to optimize yield as well as to offer consumers with, for instance, personalized nutrition plans based on genetic tests.13 — The capability to engineer and reprogram human and nonhuman organisms is increasing. Gene therapies could offer complete cures of some diseases for the first time. The same technical advances that are driving capabilities that improve human health can be used to introduce valuable new traits that, for instance, improve the output or yield of nonhuman organisms like microbes, plants, and animals. Crops can be genetically engineered to produce higher yields and be more heat- or drought-resistant, for instance. By permanently genetically altering the vectors spreading disease (such as mosquitoes), gene drives could be used to prevent vector-borne diseases, including malaria, dengue fever, schistosomiasis, and Lyme disease, although they also come with ecological risks.14 — New methodologies using automation, machine learning, and proliferating biological data are enhancing discovery, throughput, and productivity in R&D. Biology and computing together are accelerating R&D, thereby addressing a productivity challenge. McKinsey analysis in 2017 found that the ratio of revenue to R&D spending in the biopharmaceutical industry hit a low point in productivity between 2008 and 2011.15 An explosion of biological data due to cheaper sequencing can be used by biotech companies and research institutes that increasingly are using robotic automation and sensors in labs that could increase throughput up to ten times.16 Further, advanced analytics, more powerful computational techniques, and AI can be leveraged to provide better insights during the R&D process. — Potential is growing for interfaces between biological systems and computers. A new generation of biomachine interfaces relies on close interaction between humans and computers. Such interfaces include neuroprosthetics that restore lost sensory functions (bionic vision) or enable signals from the brain to control physical movement of prosthetic or paralyzed limbs. Biocomputers that employ biology to mimic silicon, including the use of DNA to store data, are being researched. DNA is about one million times denser than hard-disk storage; technically, one kilogram of DNA could store the entirety of the world’s data (as of 2016).17 While these are early days, the scope and scale of these emerging capabilities could have a broad impact on economies and societies, touching multiple domains both directly and indirectly. These applications may change everything from the food we consume to textiles to the types of health treatments we receive and how we build our physical world. The potential value is vast. As noted, as much as 60 percent of the physical inputs to the global economy could be produced biologically, and even modest progress toward that 60 percent number could be transformative. Beyond the physical world, innovations could transform prevention, diagnostics, and treatment of disease. At least 45 percent of the global disease burden could be addressed with capabilities that are scientifically conceivable today, according to our analysis. Bio innovations, such as high-throughput screening, CRISPR, and machine learning for analyzing large and complex biological data, have also begun to shape R&D. We estimate that roughly 30 percent of private-sector R&D in major economies is in industries where biological data, biological inputs, or biological means of production could be used.18

#### 2. It’s historically supported---but even if it isn’t, rejection is the worst option.

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

Discourse on food ethics often advocates the anti-capitalist idea that we need less capitalism, less growth, and less globalization if we want to make the world a better and more equitable place, with arguments focused on applications to food, globalization, and a just society. For example, arguments for this anti-capitalist view are at the core of some chapters in nearly every handbook and edited volume in the rapidly expanding subdiscipline of food ethics. None of these volumes (or any article published in this subdiscipline broadly construed) focuses on a defense of globalized capitalism.1

More generally, discourse on global ethics, environment, and political theory in much of academia—and in society—increasingly features this anti-capitalist idea as well.2 The idea is especially prominent in discourse surrounding the environment, climate, and global poverty, where we face a nexus of problems of which capitalism is a key driver, including climate change, air and water pollution, the challenge of feeding the world, ensuring sustainable development for the world's poorest, and other interrelated challenges.

It is therefore important to ask whether this anti-capitalist idea is justified by reason and evidence that is as strong as the degree of confidence placed in it by activists and many commentators on food ethics, global ethics, and political theory, more generally.

In fact, many experts argue that this anti-capitalist idea is not supported by reason and argument and is actually wrong. The main contribution of this essay is to explain the structure of the leading arguments against the anti-capitalist idea, and in favor of the opposite conclusion. I begin by focusing on the general argument in favor of well-regulated globalized capitalism as the key to a just, flourishing, and environmentally healthy world. This is the most important of all of the arguments in terms of its consequences for health, wellbeing, and justice, and it is endorsed by experts in the empirically minded disciplines best placed to analyze the issue, including experts in long-run global development, human health, wellbeing, economics, law, public policy, and other related disciplines. On the basis of the arguments outlined below, well-regulated capitalism has been endorsed by recent Democratic presidents of the United States such as Barack Obama, and by progressive Nobel laureates who have devoted their lives to human development and more equitable societies, as well as by a wide range of experts in government and leading nongovernmental organizations.

The goal of this essay is to make the structure and importance of these arguments clear, and thereby highlight that discourse on global ethics and political theory should engage carefully with them. The goal is not to endorse them as necessarily sound and correct. The essay will begin by examining general arguments for and against capitalism, and then turn to implications for food, the environment, climate change, and beyond.

Arguments for and against Forms of Capitalism

The Argument against Capitalism

Capitalism is often argued to be a key driver of many of society's ills: inequalities, pollution, land use changes, and incentives that cause people to live differently than in their ideal dreams. Capitalism can sometimes deepen injustices. These negative consequences are easy to see—resting, as they do, at the center of many of society's greatest challenges.3

And at the same time, it is often difficult to see the positive consequences of capitalism.4 What are the positive consequences of allowing private interests to clear-cut forests and plant crops, especially if those private interests are rich multinational corporations and the forests are in poor, developing countries whose citizens do not receive the profits from deforestation? Why give private companies the right to exploit resources at all, since exploitation almost always has some negative consequences such as those listed above? These are the right questions to ask, and they highlight genuine challenges to capitalism. And in light of these challenges, it is reasonable to consider the possibility that perhaps a different economic system altogether would be more equitable and beneficial to the global population.

The Argument for Well-Regulated Capitalism

However, things are more complicated than the arguments above would suggest, and the benefits of capitalism, especially for the world's poorest and most vulnerable people, are in fact myriad and significant. In addition, as we will see in this section, many experts argue that capitalism is not the fundamental cause of the previously described problems but rather an essential component of the best solutions to them and of the best methods for promoting our goals of health, well-being, and justice.

To see where the defenders of capitalism are coming from, consider an analogy involving a response to a pandemic: if a country administered a rushed and untested vaccine to its population that ended up killing people, we would not say that vaccines were the problem. Instead, the problem would be the flawed and sloppy policies of vaccine implementation. Vaccines might easily remain absolutely essential to the correct response to such a pandemic and could also be essential to promoting health and flourishing, more generally.

The argument is similar with capitalism according to the leading mainstream arguments in favor of it: Capitalism is an essential part of the best society we could have, just like vaccines are an essential part of the best response to a pandemic such as COVID-19. But of course both capitalism and vaccines can be implemented poorly, and can even do harm, especially when combined with other incorrect policy decisions. But that does not mean that we should turn against them—quite the opposite. Instead, we should embrace them as essential to the best and most just outcomes for society, and educate ourselves and others on their importance and on how they must be properly designed and implemented with other policies in order to best help us all. In fact, the argument in favor of capitalism is even more dramatic because it claims that much more is at stake than even what is at stake in response to a global pandemic—what is at stake with capitalism is nothing less than whether the world's poorest and most vulnerable billion people will remain in conditions of poverty and oppression, or if they will instead finally gain access to what is minimally necessary for basic health and wellbeing and become increasingly affluent and empowered. The argument in favor of capitalism proceeds as follows:

Premise 1. Development and the past. Over the course of recorded human history, the majority of historical increases in health, wellbeing, and justice have occurred in the last two centuries, largely as a result of societies adopting or moving toward capitalism. Capitalism is a relevant cause of these improvements, in the sense that they could not have happened to such a degree if it were not for capitalism and would not have happened to the same degree under any alternative noncapitalist approach to structuring society. The argument in support of this premise relies on observed relationships across societies and centuries between indicators of degree of capitalism, wealth, investments in public goods, and outcomes for health, wellbeing, and justice, together with econometric analysis in support of the conclusion that the best explanation of these correlations and the underlying mechanism is that large increases in health, wellbeing, and justice are largely driven by increasing investments in public goods. The scale of increased wealth necessary to maximize these investments requires capitalism. Thus, as capitalist societies have become dramatically wealthier over the past hundred years (and wealthier than societies with alternative systems), this has allowed larger investments in public goods, which simply has not been possible in a sustained way in societies without the greater wealth that capitalism makes possible. Important investments in public goods include investments in basic medical knowledge, in health and nutrition programs, and in the institutional capacity and know-how to regulate society and capitalism itself. As a result, capitalism is a primary driver of positive outcomes in health and wellbeing (such as increased life expectancy, lowered child and maternal mortality, adequate calories per day, minimized infectious disease rates, a lower percentage and number of people in poverty, and more reported happiness);5 and in justice (such as reduced deaths from war and homicide; higher rankings in human rights indices; the reduced prevalence of racist, sexist, homophobic opinions in surveys; and higher literacy rates).6 These quantifiable positive consequences of global capitalism dramatically outweigh the negative consequences (such as deaths from pollution in the course of development), with the result that the net benefits from capitalism in terms of health, wellbeing, and justice have been greater than they would have been under any known noncapitalist approach to structuring society.7

Premise 2. Economics, ethics, and policy. Although capitalism has often been ill-regulated and therefore failed to maximize net benefits for health, wellbeing, and justice, it can become well-regulated so that it maximizes these societal goals, by including mechanisms identified by economists and other policy experts that do the following:

* optimally8 regulate negative effects such as pollution and monopoly power, and invest in public goods such as education, basic healthcare, and fundamental research including biomedical knowledge (more generally, policies that correct the failures of free markets that economists have long recognized will arise from “externalities” in the absence of regulation);9
* ensure equity and distributive justice (for example, via wealth redistribution);10
* ensure basic rights, justice, and the rule of law independent of the market (for example, by an independent judiciary, bill of rights, property rights, and redistribution and other legislation to correct historical injustices due to colonialism, racism, and correct current and historical distortions that have prevented markets from being fair);11 and
* ensure that there is no alternative way of structuring society that is more efficient or better promotes the equity, justice, and fairness goals outlined above (by allowing free exchange given the regulations mentioned).12

To summarize the implication of the first two premises, well-regulated capitalism is essential to best achieving our ethical goals—which is true even though capitalism has certainly not always been well regulated historically. Society can still do much better and remove the large deficits in terms of health, wellbeing, and justice that exist under the current inferior and imperfect versions of capitalism.

Premise 3. Development and the future. If the global spread of capitalism is allowed to continue, desperate poverty can be essentially eliminated in our lifetimes. Furthermore, this can be accomplished faster and in a more just way via well-regulated global capitalism than by any alternatives. If we instead opt for less capitalism, less growth, and less globalization, then desperate poverty will continue to exist for a significant portion of the world's population into the further future, and the world will be a worse and less equitable place than it would have been with more capitalism. For example, in a world with less capitalism, there would be more overpopulation, food insecurity, air pollution, ill health, injustice, and other problems. In part, this is because of the factors identified by premise 1, which connect a turn away from capitalism with a turn away from continuing improvements in health, wellbeing, and justice, especially for the developing world. In addition, fertility declines are also a consequence of increased wealth, and the size of the population is a primary determinant of food demand and other environmental stressors.13 Finally, as discussed at length in the next section of the essay, capitalism can be naturally combined with optimal environmental regulations.14 Even bracketing anything like optimal regulation, it remains true that sufficiently wealthy nations reduce environmental degradation as they become wealthier, whereas developing nations that are nearing peak degradation will remain stuck at the worst levels of degradation if we stall growth, rather than allowing them to transition to less and less degradation in the future via capitalism and economic growth.15 In contrast, well-regulated capitalism is a key part of the best way of coping with these problems, as well as a key part of dealing with climate change, global food production, and other specific challenges, as argued at length in the next section. Here it is important to stress that we should favor well-regulated capitalism that includes correct investments in public goods over other capitalist systems such as the neoliberalism of the recent past that promoted inadequately regulated capitalism with inadequate concern for externalities, equity, and background distortions and injustices.16

Conclusion. Therefore, we should be in favor of capitalism over noncapitalism, and we should especially favor well-regulated capitalism, which is the ethically optimal economic system and is essential to any just basic structure for society.

This argument is impressive because, as stated earlier in the essay, it is based on evidence that is so striking that it leads a bipartisan range of open-minded thinkers and activists to endorse well-regulated capitalism, including many of those who were not initially attracted to the view because of a reasonable concern for the societal ills with which we began. To better understand why such a range of thinkers could agree that well-regulated capitalism is best, it may help to clarify some things that are not assumed or implied by the argument for it, which could be invoked by other bad arguments for capitalism.

One thing the argument above does not assume is that health, wellbeing, or justice are the same thing as wealth, because, in fact, they are not. Instead, the argument above relies on well-accepted, measurable indicators of health and wellbeing, such as increased lifespan; decreased early childhood mortality; adequate nutrition; and other empirically measurable leading indicators of health, wellbeing, and justice.17 Similarly, the argument that capitalism promotes justice, peace, freedom, human rights, and tolerance relies on empirical metrics for each of these.18

Furthermore, the argument does not assume that because these indicators of health, wellbeing, and justice are highly correlated with high degrees of capitalism, that therefore capitalism is the direct cause of these good outcomes. Rather, the analyses suggest instead that something other than capitalism is the direct cause of societal improvements (such as improvements in knowledge and technology, public infrastructure, and good governance), and that capitalism is simply a necessary condition for these improvements to happen.19 In other words, the richer a society is, the more it is able to invest in all of these and other things that are the direct causes of health, wellbeing, and justice. But, to maximize investment in these things societies need well-regulated capitalism.

As part of these analyses, it is often stressed that current forms of capitalism around the world are highly defective and must be reformed in the direction of well-regulated capitalism because they lack investments in public goods, such as basic knowledge, healthcare, nutrition, other safety nets, and good governance.20 In this way, an argument for a particular kind of progressive reformism is an essential part of the analyses that lead many to endorse the more general argument for well-regulated capitalism.

Although these analyses are nuanced, and appropriately so, it remains the case that the things that directly lead to health, wellbeing, and justice require resources, and the best path toward generating those resources is well-regulated capitalism. And on the flip side, according to the analyses behind premise 1 described above, an anti-capitalist system would not produce the resources that are needed, and would thus be a disaster, especially for the poorest billion people who are most desperately in need of the resources that capitalism can create and direct, to escape from extreme poverty.21

#### Past the tipping point and the alt is dictatorship and genocide---only tech can solve.

Eric Levitz 5/17/21. Senior Writer at New York Magazine. MA Johns Hopkins. "We’ll Innovate Our Way Out of the Climate Crisis or Die Trying". Intelligencer. 5-17-2021. https://nymag.com/intelligencer/2021/05/climate-biden-green-tech-innovation.html

Today’s best-case ecological scenario was a horror story just three decades ago. In 1993, Bill Clinton declared that global warming presented such a profound threat to civilization that the U.S. would have to bring its “emissions of greenhouse gases to their 1990 levels by the year 2000.” Instead, we waited until 2020 to do so; in the interim, humanity burned more carbon than it had since the advent of agriculture. Now, it will take a historically unprecedented, worldwide economic transformation to freeze warming at “only” 2 degrees — a level of temperature rise that will turn “once in a century” storms into annual events, drown entire island nations, and render major cities in the Middle East uninhabitable in summertime (at least for those whose lifestyles involve “walking outdoors without dying of heatstroke”). This is what passes for a utopian vision in 2021. If we confine ourselves to mere optimism — and assume that every Paris Agreement signatory meets its current pledged target for decarbonization — then warming will hit 2.4 degrees by century’s end.

The reality of our ecological predicament invites denial of our political one. Put simply, it is hard to reconcile the scale of the climate crisis with the limits of contemporary American politics. Delusions rush in to fill the gap. Among these is the fantasy of national autonomy; the notion that the United States can save the planet or destroy it, depending on the precise timeline of its domestic decarbonization. A rapid energy transition in the U.S. is a vital cause, not least for its potential to expedite similar transformations abroad. But the battle for a sustainable planet will be won or lost in the developing world. Although American consumption played a central role in the history of the climate crisis, it is peripheral to the planet’s future: Over the coming century, U.S. emissions are expected to account for only 5 percent of the global total.

There is also the delusion of “de-growth’s” viability. The fact that there is no plausible path for global economic expansion that won’t entail climate-induced death and displacement has led some environmentalists to insist on global stagnation. Yet there is neither a mass constituency for this project, nor any reason to believe that there will be any time soon. Freeze the status-quo economy in amber, and you’ll condemn nearly half of humanity to permanent poverty. Divide existing GDP into perfectly even slices, and every person on the planet will live on about $5,500 a year. American voters may express a generalized concern about the climate in surveys, but they don’t seem willing to accept even a modest rise in gas prices — let alone a total collapse in living standards — to address the issue. Meanwhile, any Chinese or Indian leader who attempted to stymy income growth in the name of sustainability would be ousted in short order. It’s conceivable that one could radically reorder advanced economies in a manner that enabled living standards to rise even as GDP fell; Americans might well find themselves happier and more secure in an ultra-low-carbon communal economy in which individual car ownership is heavily restricted, and housing, healthcare, and myriad low-carbon leisure activities are social rights. But nothing short of an absolute dictatorship could affect such a transformation at the necessary speed. And the specter of eco-Bolshevism does not haunt the Global North. Humanity is going to find a way to get rich sustainably, or die trying.

Thus, the chasm between the ecologically necessary and the politically possible can only be bridged by technological advance. And on that front, the U.S. actually has the resources to make a decisive contribution to global decarbonization — and some political will to leverage those resources. Unfortunately, due to some combination of fiscal superstitions and misplaced priorities, the Biden administration’s proposed investments in green innovation remain paltry. An American Jobs Plan with much higher funding for green R&D is both imminently winnable and environmentally imperative. U.S. climate hawks should make securing such legislation a top priority.

The choice before us is techno-optimism or barbarism.

If governments are forced to choose between increasing income growth in the present, and mitigating temperature rise in the future, they are going to pick the former. We’ll get cheap, lab-grown Kobe beef before we get a U.S. Senate willing to tax meat, and steel plants powered by “green hydrogen” before we get anarcho-primitivism with Chinese characteristics.

The question is whether we’ll get such breakthroughs before it’s too late.

Techno-optimism has its hazards, but the progress we’ve made toward decarbonization has come largely through technological innovation. When India canceled plans to construct 14 gigawatts of new coal-fired power stations in 2019, it did not do so in deference to international pressure or domestic environmental movements, but rather to the cost-competitiveness of solar energy. The same story holds across Asia’s developing countries: Thanks to a ninefold reduction in the cost of solar energy over the past decade, the number of new coal plants slated for construction in the region has fallen by 80 percent. Meanwhile, the road to an electric-car revolution was cleared by a collapse in the cost of lithium batteries, the challenge of powering cities with solar energy on cloudy days was eased by a 70 percent drop in the price of utility-scale batteries, and wind power grew 40 percent cheaper. Our species remains lackluster at solidarity and self-government, but we’ve got a real knack for building cool shit.

The technological progress of the past decade was not sufficient to compensate for tepid climate policy. But real techno-utopianism has never been tried: As of 2019, global spending on clean energy R&D totaled $22 billion a year, or 3 percent of the Pentagon’s annual budget. Increasing spending on such research — while expediting cost-reductions in existing technologies by deploying them en masse — should be twin priorities of American climate policy.

The preconditions for green industrialization can be made in America.

The United States has more fiscal capacity and better-financed research universities than any nation on the planet. And, for all the pathologies of our politics, public investment in green tech inspires far weaker opposition than many less-indispensable climate policies. In fact, late last year, with Republicans controlling the Senate and Donald Trump in the White House, the U.S. increased funding for zero-emission technology R&D by $35 billion. America does not have sovereignty over enough humans to save the planet by slashing our domestic emissions. But we just might have the resources and political economy necessary to help the developing world save us all.

Although progress on renewables has exceeded optimistic expectations, the technical obstacles to global decarbonization remain immense. In the most optimistic scenario, scaling up existing, cost-competitive technologies can get us about 16 percent of the emissions reductions necessary for achieving net-zero by 2050, according to the International Energy Agency. Driving down the price of tech we already have will get us another 39 percent. The rest must come from technologies that have yet to be fully developed. We need electrified cement, hydrogen-powered steel plants, and evaporative cooling. We need utility-scale energy storage, electric airplanes, and ultra-high voltage transmission lines. And we’d be remiss to not toss a bit of our collective wealth at game-changing hail marys like nuclear fusion.

#### 2. It can’t produce innovation.

Philippe Aghion, Céline Antonin, & Simon Bunel 21. Professor at the Collège de France, INSEAD, and the London School of Economics and Political Science and was previously Professor of Economics at Harvard. Senior Researcher at OFCE, the French Economic Observatory at Sciences Po in Paris, and Research Associate in the Innovation Lab at the Collège de France. Senior Economist at INSEE, the French National Institute of Statistics and Economic Studies, and at the Bank of France. “The Power of Creative Destruction: Economic Upheaval and the Wealth of Nations.” Harvard University Press.

Nonetheless, the abolition of capitalism is not the solution. The last century witnessed a large-scale experiment with an alternative system—a system of central planning in the Soviet Union and other communist countries of Central and Eastern Europe. This system failed to offer individuals the freedom and economic incentives necessary for frontier innovation, and so these nations were unable to get beyond an intermediate level of development. Henri Weber, a well-known figure of the French movement of May 1968, was a former Trotskyist leader in the 1960s and 1970s but later became a leader of the French Socialist Party and Socialist member of the European Parliament. He explained his personal conversion to the free market economy and social democracy, looking to the Scandinavian experience: “Having witnessed from a front-row seat the disaster of collectivization of agriculture and firms in the Soviet Union, the Scandinavian Socialists were the first to break with the dogma of socializing means of production and managing the economy by a central planning committee. To control and humanize the economy, it is altogether unnecessary to expropriate management, to nationalize firms, or to eradicate the market . . . altogether unnecessary to deprive society of the creativity, knowhow, and dynamism of entrepreneurs. Under certain conditions, entrepreneurial talent can be mobilized to serve the common good.” A market economy, because it induces creative destruction, is inherently disruptive. But historically it has proved to be a formidable engine of prosperity, hoisting our societies to levels of development unimaginable two centuries ago. Must we therefore resign ourselves to the serious pitfalls and defects of capitalism as the necessary price to pay to generate prosperity and overcome poverty?

In this book, we have sought to better understand how growth through creative destruction interacts with competition, inequality, the environment, finance, unemployment, health, happiness, and industrialization, and how poor countries catch up to rich ones. We have analyzed to what degree the state, with appropriate control of the executive, can stimulate the creation of wealth while at the same time tackling the problems mentioned above. We have seen how, by moving from laissez-faire capitalism, with market forces given free rein, to a form of capitalism in which the state and civil society play their full role, it is possible to stimulate social mobility and reduce inequality without discouraging innovation. We have also seen how appropriate competition policies can curb the decline of growth and how we can redirect innovation toward green technologies to combat global warming. We have seen that, without forgoing globalization, a country can improve its competitiveness through innovative investments and put in place effective safety nets to protect individuals who lose their jobs. Lastly, we have seen how, with the indispensable support of civil society, it is possible to prevent yesterday’s innovators, in collusion with public officials, from pulling up the ladder behind themselves to block the path of tomorrow’s innovators.

## Debt Ceiling DA

#### Biden has no PC, his agenda is shot, other issues overwhelm, and the debt ceiling won’t pass.

Rick Klein et al 9/29. Staff Writer at ABC News. “Biden takes credibility hit at critical time for agenda: The Note.” <https://abcnews.go.com/Politics/biden-takes-credibility-hit-critical-time-agenda-note/story?id=80285075>.

So much of the standoff over the Biden agenda is about Democrats' trust and lack thereof -- among and between progressives and moderates, leaders and rank-and-file members, outside groups and inside caucuses and between virtually everyone and the White House. That makes this an inconvenient time for President Joe Biden's credibility to come into question. Top military advisers' testimony in the Senate Tuesday, with more to come in the House Wednesday, appears to contradict the president's previous assertions about the kind of advice he got before ordering the troop withdrawal from Afghanistan. The White House is pushing back on any notion that the president hasn't been truthful about what he last month called a "split" in the advice he was getting. And Biden aides would like to separate Afghanistan from the domestic agenda entirely. A new ABC News/Ipsos poll published Wednesday shows how hard that might be, though. Biden's approval rating is down across a range of issues compared to a month ago. People are unhappy about his handling of the COVID-19 pandemic, immigration, the economy, gun violence, crime and, yes, even infrastructure. The sagging numbers come after months of stability and relative popularity for the president. The figures started to drop right around the disastrous Afghanistan exit, and so far, they haven't shown signs of recovering. With huge deadlines looming, it's notable not just how many Democrats are implicitly defying the White House, but how many are doing so while suggesting they know what Biden's agenda is better than he is. Sen. Bernie Sanders' urging of House progressives to sink the bipartisan infrastructure bill unless the far larger social-spending package also moves along is a case in point. Republican opposition to Biden has long been unquestioned, but Democrats' commitment to him now very much is. As the federal government barrels toward a possible shutdown, Treasury Secretary Janet Yellen is sounding the alarm. Yellen penned a letter to congressional leadership Tuesday, warning that if Congress doesn't act by Oct. 18, the U.S. could default on its debts. That scenario would send financial markets into a tailspin. "Even coming close to the deadline without raising the debt ceiling can undermine the confidence of financial markets," Yellen said during testimony before the Senate Committee on Banking, Housing, and Urban Affairs. She later added, "This would be a manufactured crisis we had imposed on this country, which has been going through a very difficult period and is on the road to recovery. This would be a self-inflicted wound of enormous proportions." Despite the warning of potentially dire consequences, Republicans have remained steadfast in their quest to keep Democrats from raising the debt ceiling, even blocking an attempt by Democrats to go it alone to raise the debt limit Tuesday. "There is no chance, no chance the Republican conference will go out of our way to help Dems conserve their time and energy so they can resume ramming through partisan socialism as fast as possible," said Senate Minority Leader Mitch McConnell.

#### No plan or path forward.

Jeff Stein et al, 9-28-2021 with Tony Romm& Seung Min Kim "Yellen tells Congress that U.S. will run out of debt-ceiling flexibility on Oct. 18," https://www.washingtonpost.com/us-policy/2021/09/28/yellen-debt-ceiling/

McConnell has attempted to force Democrats to raise the debt ceiling through a lengthier process known as “reconciliation,” something Schumer said on Tuesday was “risky.” Senior Democrats have publicly resisted the reconciliation route, which requires only a simple majority in both the House and the Senate. But such a step was among multiple options discussed by Biden, Schumer and Pelosi in a call Monday afternoon, according to a Democratic official with knowledge of it.

No decisions were made, said the Democrat, who spoke on the condition of anonymity to discuss a private conversation. The contents of the call were first reported by Politico.

The reconciliation maneuver, which Democrats also plan to use to advance some of Biden’s spending initiatives, could span weeks and force party lawmakers to take uncomfortable political votes in the process. In private, the Democratic official said, Schumer has told other Democratic senators that the process would be “burdensome and untenable,” even as he, Biden and Pelosi discuss it as an option.

House lawmakers also signaled they could act as soon as Tuesday to advance their own, stand-alone bill to raise the debt ceiling. “Anything’s possible around here,” Rep. Jim McGovern (D-Mass.) said when asked whether House Democrats would be voting on the debt limit as early as Tuesday.

As the path forward on Capitol Hill remained unclear, Yellen warned that failure to raise the debt ceiling could have catastrophic consequences. She told lawmakers it could cause child tax credit payments to halt for 30 million families, delay Social Security payments for 50 million seniors and result in a spike in unemployment. Her warnings sent shudders through Wall Street, pushing the stock market lower as bond investors tried to recalibrate their expectations in the face of a protracted standoff.

Yellen’s letter to Congress also stressed that even narrowly avoiding a debt default could hurt taxpayers. The uncertainty around the United States’ ability to meet its payment obligations could make investors more nervous about buying U.S. debt, which would drive up borrowing costs for taxpayers for mortgages and other loans.

“We know from previous debt limit impasses that waiting until the last minute can cause serous harm to business and consumer confidence, raise borrowing costs for taxpayers, and negatively impact the credit rating of the United States for years to come,” she wrote in the letter. “Failure to act promptly could also result in substantial disruptions to financial markets, as heightened uncertainty can exacerbate volatility and erode investor confidence.”

It’s an argument that Yellen has been making to senior Republican lawmakers privately over the past several weeks, including McConnell and Rep. Kevin Brady of Texas, the ranking Republican on the House Ways and Means Committee. In those conversations, according to participants, Yellen has made a methodical, economic case for raising the debt ceiling, warning of economic calamity if the breach were to occur.

But Republicans have uniformly refused to participate, pointing to the Democrats’ solo effort to enact a separate, $3.5 trillion package funding their social-safety-net, health-care and climate priorities — even though the debt limit would have to be dealt with even if that separate bill never passes.

#### Or it passes inevitably.

Burgess Everett et al 9-27-2021, with Marianne Levine & Jennifer Scholtes "Dems may drop debt fight to avoid shutdown," POLITICO, <https://www.politico.com/news/2021/09/27/republicans-block-bill-shutdown-debt-ceiling-514405> brackets in original

In the modern Congress, it’s common to be days — or even hours — away from a government shutdown without a clear plan for averting a funding lapse. Sen. Richard Shelby of Alabama, the chamber’s top Republican appropriator, projected confidence that Senate leaders will eventually find ways to head off both fiscal cliffs before turmoil ensues.

"At the end of the day — I don't know when that's going to be now — that we'll pass a [continuing resolution], and we'll work out the debt limit,” said Shelby, who has served in Congress for more than 40 years. “This is nothing new here.”

#### Biden not spending PC on debt ceiling.

Christopher Cadelago, 9-23-2021, "Why Biden isn’t hitting the panic button on the debt ceiling — yet," POLITICO, https://www.politico.com/news/2021/09/23/biden-debt-ceiling-513791

Biden himself has remained mostly mum on the matter, even though he played a central role in debt ceiling negotiations as vice president, working for a boss — Barack Obama — who eventually pledged never to negotiate over the debt ceiling again.

Instead, the face of the effort to get the debt limit raised or suspended has been Treasury Secretary Janet Yellen, who warned that the country will hit its breaking point next month and be unable to pay its bills. On Wednesday, six former Treasury secretaries wrote to Congress urging action on the issue in the face of “serious economic and national security harm.” Yellen has made several similar appeals in letters beginning in July, a recent Wall Street Journal op-ed and remarks and conversations with Republicans and Wall Street tycoons.

But those institutions who have sway within Republican ranks and want to see the debt ceiling raised or suspended have not yet taken a hammer to GOP leadership for their insistence that Democrats act alone. Many of the business leaders and groups that Democrats are counting on to help convince Republicans have stuck only to declarative statements about the need for swift action.

#### Immigration fight thumps unity.

Sabrina Rodriguez, 9-25-2021, "Democratic coalition cracks under immigration strain," POLITICO, https://www.politico.com/news/2021/09/25/immigration-drives-cracks-in-democratic-coalition-514298

Chuck Schumer ripped him. So did members of the Congressional Black Caucus, Hispanic Caucus, Asian Pacific American Caucus and Progressive Caucus, 17 Democratic attorneys general, and a host of other advocacy groups across the country.

This week’s cavalcade of outrage directed at President Joe Biden’s handling of Haitian migrants at the U.S. southern border was as fierce as it was uncharacteristic.

Taken together, the scathing criticism revealed the growing political cost of the disconnect between Biden’s promise of a fair and humane immigration system and his use of a Trump-era public health order to kick out migrants — a crack in the Democratic coalition that threatens the party’s morale and unity in advance of the 2022 midterms.

“The continued use of Title 42 is a glaring failure by this administration,” said Julián Castro, former Democratic presidential candidate and housing secretary in the Obama administration. “Its continued use will not only hurt people who are seeking a better life, but risks the collapse of the Democratic coalition that elected Joe Biden.”

Since taking office, Biden has continued utilizing Title 42, a border policy invoked by Trump early on in the pandemic to swiftly expel migrants without allowing them to seek asylum. It’s generated a consistent stream of criticism from Democrats, immigrant advocates and public health experts who say its use is illegal, inhumane and not justified.

But the spotlight on Haitian migrants in recent days — and news cycles dominated by disturbing images from the border — has opened up Biden to a heightened level of criticism from all across the party, including from organizations and leaders that traditionally don’t weigh in on migration issues.

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## SSOs

#### PMC’s are inevitable.

Casendino 17 – Alex; (“Soldiers of Fortune: the Rise of Private Military Companies and their Consequences on America’s Wars” Political Review. October 25, 2017. <https://bpr.berkeley.edu/2017/10/25/soldiers-of-fortune-the-rise-of-private-military-companies-and-their-consequences-on-americas-wars/>)//GK

Mercenaries adapted to changing trends in statecraft and warfare by merging into corporate entities under the title of private military companies, or PMCs. America, the country with the strongest national military, is oddly **the largest customer of PMCs.** According to the Congressional Research Service, roughly 10% of America’s armed forces were privately contracted during WWII, but during the wars in Iraq and Afghanistan, **the proportion has grown to a staggering 50%.** This past July, the Trump administration **confirmed America’s affinity for PMCs** when the president’s advisers recruited Erik Prince, the founder of Blackwater Worldwide security firm, and Stephen Feinberg, owner of the military contractor DynCorp International, to draft alternative military strategies in the Middle East **that rely primarily on private contractors.**

#### PMCs are net better than the alternatives.

Stanger and Williams 06 – Allison Stanger and Mark Eric Williams are respectively Professor and Associate Professor of Political Science at Middlebury College. (“Private Military Corporations: Benefits and Costs of Outsourcing Security” Yale Journal of International Affairs. Fall/Winter 2006. <http://yalejournal.org/wp-content/uploads/2011/01/062101stanger-williams.pdf>)//GK

**PMC Benefits** Table 1 delineates the benefits that outsourcing advocates envision from employing PMCs and the costs that we suggest this practice generates. As shown in the first column, outsourcing foreign policy provides the United States a cluster of **closely related political benefits beginning with greater flexibility to pursue a preferred policy.** In Eastern Europe, Latin America, South Asia, and the Middle East, outsourcing has enabled Washington to undertake a **diverse set of strategic operations**—and in some instances, to do so **without committing a large contingent of U.S. troops**. Such flexibility is especially useful to presidents who pursue policies that lack strong support from Congress or the American public. To illustrate this point, consider the **extraordinary flexibility** of U.S. policy in the former Yugoslavia, where outsourcing **enabled Washington to attain three strategic advantages**: influence the balance of power on the ground, retain an official position of “honest broker,” and uphold the 1991 UN embargo on weapons sales to any of the warring groups. In 1994 the U.S. State Department contracted MPRI to provide forty-five border monitors to help enforce UN sanctions imposed against Serbia. Despite the sanctions, conflict continued and the Croatians fared poorly against their Serbian counterparts. At the Pentagon’s urging, the Croatian defense minister sought further assistance from MPRI in late 1994 and signed two contracts with the firm to retrain and help modernize Croatia’s military leadership. Table 1: Benefits and Costs of Outsourcing via PMCs Benefits Costs Policy flexibility Reduced transparency and accountability Greater military agility Encourages copycat actions by other states Minimize U.S. casualties “Loose cannon” effects Financial savings Cost overruns Providing military assistance via a PMC allowed Washington to strengthen Croatia’s military posture **without publicly “taking sides” in the conflict.** By April 1995, the first Croatian Army officer had graduated from MPRI’s Democracy Transition Training program.10 Four months later, Croatia launched Operation Storm, a **stunningly successful attack** on Serbian-held Krajina. Employing typical American tactics, the four-day assault completely dis-placed the Serbian forces as well as some 150,000 Serbian civilians. Croatia’s military success ultimately brought the Serbs to the negotiating table, and in November 1995, Washington brokered the Dayton Peace Accords—an outcome made possible in large part by MPRI’s services.11 In this case, U.S.- sponsored military training for Croatia clearly tipped the balance of power in Croatia’s favor, and **set the stage for the Dayton Peace Accords negotiations.** Moreover, Washington achieved this goal without significant public or congressional support and without committing its own ground forces or incurring significant U.S. casualties. American counternarcotics policy in the Andes illustrates a second instance when outsourcing provided Washington with clear benefits. The United States began outsourcing elements of its Andean foreign policy in the wake of two regional anti-drug summits: the 1990 Cartagena summit and the 1992 summit in San Antonio, Texas, at which the United States pledged to provide the Latin American governments with technical and financial assistance to eradicate coca production and interdict drug shipments.12 Despite increased U.S. aid, coca cultivation rose 171.4 percent between 1991 and 1998. This upsurge transformed Colombia into the United States’ largest cocaine supplier, and the epicenter of Andean coca and cocaine production. In this context, mounting effective anti-drug trafficking measures in Colombia eventually became the linchpin of a concerted U.S. counternarcotics strategy based on aerial coca eradication and drug shipment interdiction. To implement this policy the United States turned to private military corporations, **employing at least five American PMCs to implement its counternarcotics foreign policy.** These companies covered the gamut of Singer’s PMC typology of military provider, military consulting, and military support firms.

#### Antitrust law is enabling FRAND breaches.

Claire Guo 19. “INTERSECTION OF ANTITRUST LAWS WITH EVOLVING FRAND TERMS IN STANDARD ESSENTIAL PATENT DISPUTES” The John Marshall Law School. 2019. https://repository.law.uic.edu/cgi/viewcontent.cgi?article=1456&context=ripl

Compared to China and the EU, the U.S. antitrust laws are enforced very differently in the SEP setting. At least in private litigations, opportunistic breachs of FRAND terms, absent the finding of exclusionary conducts, have **never been found to be Section 2 violations under the Sherman Act by U.S. courts.** In contrast, the Federal Trade Commission (“FTC”) through Section 5 of the FTC Act could reach opportunistic FRAND breaches in the form of demanding supra-FRAND royalties and seeking injunctions through administrative enforcement. There is **no indication** that U.S. courts and FTC would consider expanding Section 2 enforcement. Instead, the remarks of Mr. Makan Delrahim, with the Department of Justice (“DOJ”), suggest **an anti-antitrust interventions movement**.112

#### It’s greenlighted by the Ninth Circuit’s decision.

Sullivan 20 [Sullivan & Cromwell LLP, Leading Firm in Business Law “Ninth Circuit Holds That Qualcomm’s Patent Licensing Program Does Not Violate U.S. Antitrust Law”. 8/12/20. https://www.sullcrom.com/files/upload/sc-publication-ninth-circuit-holds-qualcomm-patent-licensing-program-does-not-violate-us-antitrust-law.pdf]

The Ninth Circuit’s decision, unless modified by the Supreme Court, affirms Qualcomm’s SEP licensing model for OEMs (and its refusal to license rival chipmakers), at least with respect to any challenge under U.S. antitrust laws. Because Qualcomm’s model has driven the cellular modem licensing and sale landscape for chip suppliers and handset makers alike, the court’s decision will likely quiet concerns on the part of some that the district court’s decision would upend that market, although it perhaps makes it less likely that the market will see increased competition or that chip prices will drop as may have been the case if Judge Koh’s injunction had been upheld.

Although the court confirmed that an SEP holder has no antitrust duty to deal with rivals outside the limited Aspen Skiing exception, the Ninth Circuit left open the possibility that an SEP holder’s FRAND commitments may obligate it to deal with its rivals.39 Importantly, however, the Ninth Circuit clarified that a company’s breach of its FRAND commitments does not amount to anticompetitive conduct in violation of the Sherman Act. Instead, the remedy for such conduct lies in contract law. Moreover, the court’s decision to vacate as moot the district court’s summary judgment decision—which found that Qualcomm was required by its FRAND commitments to license rival chipmakers—removes what some had considered to be persuasive judicial authority in the U.S. supporting a claim that FRAND requires licensing at all levels of a product distribution chain which implement a standard. This is noteworthy for SEP holders because it returns U.S. jurisprudence to the status quo, and at least one court in the Eastern District of Texas interpreted a comparable FRAND commitment as not requiring a SEP holder to license all comers at any level of the supply chain. This issue continues to be litigated in the U.S., notwithstanding the Department of Justice Antitrust Division general view that the market, not FRAND, should determine license structures.

The court’s refusal to force licensing at the chip level (rather than the OEM level) also may ease concerns that patent-exhaustion considerations could be used to limit SEP licensors’ ability to maximize profits if licenses were required at the chip level. The Ninth Circuit confirmed that royalty rates are not required to be set strictly using the SSPPU and recognized that “OEM-level licensing is now the industry norm.”40 The Ninth Circuit also recognized that “[t]here are good reasons for SEP owners to structure their licensing programs to license end-user products.”41 The court’s findings appear consistent with current flexibility in structuring FRAND licensing programs.

The Ninth Circuit’s decision also recognizes that royalty rate determinations, and particularly the determination of a FRAND rate, are an issue that sounds in patent law, not antitrust law. The court “decline[d] to adopt a theory of antitrust liability that would presume anticompetitive conduct any time a company could not prove that the ‘fair value’ of its SEP portfolios corresponds to” what the market is willing to pay for those SEPs in royalty rates.42 Arguably, the Ninth Circuit’s decision will impact negotiation power between patent owners and technology implementers by clarifying the circumstances under which patent licensing conduct will give rise to antitrust liability.

Finally, the Ninth Circuit’s decision is noteworthy beyond its application to SEP licensing because it recognizes and demonstrates that courts should be reluctant to ascribe antitrust liability based on conduct occurring in a dynamic, rapidly evolving market—a characterization that will apply to many existing and emerging technology markets.

## Debt Ceiling DA

#### 1. Intraparty fights.

Richard Cowan, 9-29. Columnist, Reuters. “Clock ticking for U.S. Congress as Friday government shutdown looms.” September 29, 2021. <https://finance.yahoo.com/news/clock-ticking-u-congress-friday-100000931.html> Accessed: 9/29/21 9:39am

The U.S. Congress on Wednesday had just two days left before the federal government begins shutting many of its operations unless Democrats manage to pass a bill providing new funding for the fiscal year that begins on Friday. Democratic leaders in the House of Representatives and Senate were expected to put a temporary funding bill, possibly extending through Dec. 3, up for a vote as soon as Wednesday in the hope that Republicans will support it. Passing that would head off one crisis for President Joe Biden's Democrats - who campaigned on a platform of responsible government after Republican Donald Trump's turbulent four years in office. But more risks are ahead as progressive House Democrats are vowing to vote against a $1 trillion infrastructure bill set to come to the floor on Thursday, due to intraparty fights over a much larger social spending bill. Behind it all looms the threat of the federal government hitting its $28.4 trillion debt ceiling around Oct. 18, an event that could cause a historic default. With such a daunting agenda hanging in the balance, Biden canceled a Wednesday trip to Chicago so that he could lead negotiations with Congress, the White House said. The House and Senate may vote on a separate bill that temporarily lifts the debt limit, although that is the subject of a bitter partisan fight. Senate Republicans refuse to vote for it, telling Democrats to act alone, while Senate Majority Leader Chuck Schumer has demanded bipartisan cooperation on a measure to address debts racked up during Democratic and Republican administrations. That left Democrats scrambling to find a way to pass a bill and avert a federal debt default that likely would put financial markets into a tailspin. "There's a number of options but you can take it to the bank Democrats will not let the government default even if Republicans will not vote for it," Democratic Senator Tim Kaine predicted. Investment bank Goldman Sachs this month described the standoff as "the riskiest debt-limit deadline in a decade." DIVISIONS BETWEEN MODERATES, PROGRESSIVES Amid all this, Biden is holding intensive negotiations with his fellow Democrats in Congress on a $3.5 trillion bill to expand social programs and address climate change. Multiple senior Democrats have said that bill will need to be scaled back to pass. "We're still meeting in good faith," moderate Democratic Senator Joe Manchin told reporters following a 90-minute meeting with Biden. He said the overall dollar amount of the bill was not even discussed much less agreed on yet. With deep divisions between Democratic moderates and progressives over the size and scope of that measure, it appeared unlikely they would meet their end-of-week goal of presenting a bill to the rank and file. The disarray deepened when House Speaker Nancy Pelosi stepped back from her promise to move the far-reaching legislation alongside the $1 trillion infrastructure investment bill that already has cleared the Senate on a bipartisan vote. Progressive Democrats have threatened to vote against the smaller bill unless the larger one is nailed down first. Representative Pramila Jayapal, who heads the Congressional Progressive Caucus, told reporters on Tuesday that she thought the vote on the infrastructure bill could be delayed. Moderate Democratic Representative Josh Gottheimer, referring to the infrastructure bill, struck a more optimistic tone, saying: "We’ll get the votes, we'll land the plane and we’ll get this done."

#### 2. Both sides are hardened.

Anthony Adragna 9/29/21. Energy reporter and author of Morning Energy at POLITICO. “Chuck Schumer forcefully said Democrats will not raise the debt ceiling by reconciliation..” https://www.politico.com/minutes/congress/09-29-2021/schumer-draws-debt-line/

Flirting with calamity: The leaders of the Senate appear only more hardened in their positions on the debt ceiling Wednesday. Majority Leader Chuck Schumer forcefully articulated his conference will not go at it alone through reconciliation, which Minority Leader Mitch McConnell has said it is what they must do.

"This body cannot and will not go through a drawn-out and unpredictable process sought by the minority leader."

— Majority Leader Chuck Schumer on using reconciliation to lift the debt ceiling.

What Schumer's worried about: He's expressed fears to his conference the process could take 3-4 weeks, as our Burgess Everett reports, and there are concerns about whether GOP lawmakers would even cooperate in committee. Republicans say it'll take less time.

Republican response? Minority Leader Mitch McConnell did not address the debt limit during his opening remarks, but has repeatedly vowed Republicans will not help.

Reminder: Republicans say they want to avoid a default, but have systematically obstructed any effort to reduce the odds of it happening. They blocked an effort by Schumer on Tuesday to lower the threshold for lifting the debt ceiling to 50 votes — without reconciliation.

#### 3. Biden can’t help

SAMUEL GOLDMAN 9/29/21. national correspondent at TheWeek.com and associate professor of political science at George Washington University. “Democrats' problem is Congress itself.” https://theweek.com/democrats/1005411/democrats-problem-is-congress-itself

President Biden's agenda is in trouble.

House Speaker Nancy Pelosi (D-Calif.) told her caucus Monday she would decouple the $1 trillion infrastructure bill already passed by the Senate from more controversial and costly social spending. The same day, Republican senators blocked a bill already passed by the House that would have raised the debt ceiling and provided funding to prevent a government shutdown before December. Democrats could get around that decision by modifying the pending budget resolution, but that would complicate ongoing efforts to reach a bipartisan deal over its other contents. The upshot: The country faces a government shutdown on Friday and unprecedented default on federal debts in October, and Biden seems powerless to help.

#### 4. GOP obstruction.

Lisa Mascaro & Zeke Miller, 9-28. staff writers at the Associated Press, “Sign of progress, Biden digs in to strike deal on $3.5T plan.” September 28, 2021. https://www.sandiegouniontribune.com/news/nation-world/story/2021-09-28/sign-of-progress-biden-digs-in-to-strike-deal-on-3-5t-plan

The House is also preparing a possible vote to extend the debt limit through through Dec. 16, something Democrats are likely to support. But even if it is approved by the House, it’s unclear if it could pass the Senate in the face of GOP obstruction. Tensions are flaring at the Capitol as the contours of Biden’s big agenda come into focus amid standoff over normally routine votes over government operations. Senate Republican leader Mitch McConnell grew testy with reporters when asked about Yellen’s warning that Congress must swiftly resolve the issue. “Of course the debt ceiling has to be raised,” McConnell said. But he insisted Democrats shoulder the unpopular vote on their own. Meanwhile, the behind-the-scenes action over the $3.5 trillion measure is testing Biden’s grip on his party, as he seeks a once-in-a-generation reworking of the nation’s tax priorities and spending goals. With all Republicans opposed to the big bill, Democratic leaders can’t spare a single vote in the 50-50 Senate, relying on Vice President Kamala Harris to break a tie to pass the eventual package. Physically holding up the bill of 2,000-plus pages, Republican Sen. John Barrasso of Wyoming warned it was nothing but “big government socialism.”

#### 1. Infrastructure---It collapses the agenda.

Erik Wasson & Laura Litvan 9-29-2021. "Biden’s Agenda Faces Pivotal Moment on Capitol Hill," Bloomberg, https://www.bloomberg.com/news/articles/2021-09-29/biden-agenda-faces-pivotal-moment-on-capitol-hill

President Joe Biden’s economic agenda faces a pivotal day in Congress Wednesday, with the prospects growing of an embarrassing setback for his infrastructure bill and markets beginning to take notice of the intensifying debt ceiling standoff with Republicans. Senate Majority Chuck Schumer said he anticipates Congress will avert a government shutdown by passing a stopgap spending bill before current funding expires on Friday. But he was not as optimistic on efforts to suspend the debt ceiling, which Republicans have refused to do. “We’re just asking Republicans to get out of the way,” Schumer said on the Senate floor. Treasury Secretary Janet Yellen has warned that a default looms on Oct. 18 without congressional action. Concerns about the current impasse in Washington over the debt limit and other fiscal measures contributed to the biggest selloff in equities since May. The 2% drop in the S&P 500 Index was partially reversed in Wednesday trading. Congress appears to be working toward averting a shutdown of non-essential government functions after the end of the fiscal year on Thursday. The Senate as soon as Wednesday plans to take up the stopgap spending bill extending funding through Dec. 3 and providing billions in disaster aid and funds for Afghan refugees. The House plans to quickly follow suit. Democrats earlier attempted to use the stopgap measure as a vehicle for a debt ceiling suspension but Republicans blocked that effort in the Senate. For now Democrats plan to fight the public perception war. They plan to pass a standalone debt limit bill in the House to highlight the issue and continue to seek GOP consent in the Senate to pass the debt limit with just 51 votes instead of the usual 60 votes. Republicans continue to press Democrats to use the same fast-track budget process to raise the debt ceiling without GOP support they plan to use for the tax and spending measure that encompasses much of Biden’s agenda. **Spending Standoff** Across the Capitol, Speaker Nancy Pelosi faces an agonizing choice of when to hold a vote on the $550 billion infrastructure bill, which has already passed the Senate with bipartisan support. Pelosi has promised moderates in her caucus a Thursday vote on the bill, a top priority for swing-district Democrats. Progressives however have doubled down on their threat to vote down the bill until the House and Senate passes a $3.5 trillion tax and spending measure that funds many of their priorities. “I think if we come to a place where we have agreement in legislative language, not just principle but legislative language that the president supports,” Pelosi said, “and then I think we will come together.” To unlock the second larger bill, the House is waiting on Senate moderates led by Joe Manchin of West Virginia and Kyrsten Sinema of Arizona to reveal the price tag they’ll support. Manchin has hinted he could back $1.5 trillion while Sinema has been more circumspect. Biden is personally negotiating with the two senators and canceled a trip to Chicago to continue those talks. Without some deal between Biden and the moderates, it is increasingly likely that that the infrastructure bill will fail on the House floor or that Pelosi will pull it from the schedule. As a result, the entire Biden agenda could languish in Congress for months.

#### 2. Afghanistan, election audits, COVID.

Harlan Ullman & Arnaud de Borchgrave, 9-29. Harlan Ullman is senior adviser at Washington, D.C.'s Atlantic Council, the prime author of "shock and awe" and author of the upcoming book, "The Fifth Horseman and the New MAD: How Massive Attacks of Disruption Became the Looming Existential Danger to a Divided Nation and the World at Large." De Borchgrave is a Belgian-American journalist who specialized in international politics. “Tough week in Congress: debt ceiling, infrastructure bills, Afghanistan hearing.” UPI, September 29, 2021. <https://www.upi.com/Voices/2021/09/29/Harlan-Ullman-US-politics-Congress-debt-ceiling/2891632859015/> Accessed: 9/29/21 9:29am.

Members of Congress are describing this week as one from hell. The debt ceiling crisis that can shut government down; two very contentious infrastructure bills; and hearings on the Afghanistan withdrawal debacle and charges that Chairman of the Joint Chiefs of Staff Army Gen. Mark Milley exceeded his authority are among the reasons for this prediction. Add the continuing controversies over COVID-19 inoculations and wearing of masks, along with further redundant audits of the 2020 election to discredit President Joe Biden's conclusive victory, members of Congress have a point. Alternatively, given the increasingly polarized and highly partisan nature of American politics after Sept. 11, this week could be observed as business as usual. And if the politics become too vituperative and nasty, a week from hell could easily become "hell week" in the sense that college fraternities and SEAL training use it for administering harsh and highly unpleasant initiations. Either way, it is hard to see the republic emerging any stronger afterward. It is unchallengeable that the United States needs major infrastructure programs to repair, replace and build what is needed to keep the nation secure, safe, prosperous and competitive in the 21st century. Likewise, police and immigration reform are gaping wounds that will not be closed. Failure to lift the debt ceiling is a ticking financial improvised explosive device.