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# 1NC---NDT---Round 6

## Offcase

### CP---1NC

#### The United States federal government should:

#### Clarify that state-immunity to federal antitrust law is absolute and does not require “active supervision,” including when state boards are delegated authority

#### Ban unfair practices currently exempt from federal antitrust law through non-antitrust regulation

#### Increase its spending on research and development for medical technology

#### Ban the development of artificial intelligence and nanotechnology

#### Increase the scrutiny and fines for freshwater pollution in the United States

#### Reshape its cyber posture by modernizing the grid, increasing network visibility, and increasing information sharing with the private sector.

#### The counterplan is the opposite of the plan---solves certainty and federalism.

Jonathan S. Franklin et al. 14. Counsel of Record. Robert a. Burgoyne and Mark Emery. Fulbright & Jaworski LLP “Brief for Amicus Curiae National Council of Examiners for Engineering and Surveying in Support of Petitioner.” https://appliedantitrust.com/07\_reasonableness/case\_studies/ncbde/sct/ncbde\_us\_merits\_open\_amicus\_nce5\_29\_2014.pdf

A state agency, even when directed by the legislature to fill positions with individuals who are market participants, is still a state agency, and therefore should receive antitrust immunity without having to satisfy the “active supervision” prong of Cal. Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc., 445 U.S. 97, 104-05 (1980). The Fourth Circuit’s holding that the involvement of market participants in operating a state agency renders the agency a “private actor” that must satisfy the supervision requirement impermissibly allows the FTC and courts to look behind the structure, staffing and operation of state-created licensing boards, to delve into the motives of State actors, and to deem licensing boards “private actors,” simply because sovereign States chose to delegate duties and powers to boards whose members include market participants.

To lose immunity to federal antitrust law is to lose a basic protection that enables state licensing boards to fully function as delegated state agencies. If the Fourth Circuit is affirmed, these agencies will confront serious impediments to fulfilling their stateappointed duties. If affirmed, the decision below would press licensing boards into one of several paths, none of which reflects the outcome of the states’ own democratic processes:

1. By retaining the status quo—i.e., keeping market participants on their boards—states will expose the boards to the risk of antitrust liability for just doing their jobs. This would harm the ability of states to recruit and maintain well qualified members of the professions to serve part-time on licensing boards and would chill the boards’ ability to make tough calls. Thus, States would lose many of the benefits they sought when they delegated legislative authority to licensing boards, and included on those boards the very people who were most qualified to understand the needs and concerns of the professions they are charged with regulating.

2. To the extent States can only preserve their boards’ immunity by instituting “active supervision” that the FTC or federal courts may deem sufficient (but which the States had not deemed necessary), States would be forced to engage in expensive, wasteful institutional experiments, with little assurance that the supervision would reflect adequate subject-matter knowledge or satisfy any particular tribunal. Adding a layer of bureaucracy would complicate and alter the state-designed decision-making process while still subjecting boards and their members to a continued risk of liability.

3. States may feel it necessary to legislatively eliminate market participants from their licensing boards altogether in order to avoid antitrust liability. But when a decision has such coercive effect, it creates serious federalism concerns. The decision below substitutes the FTC or the courts’ determination that action of a state agency is “private” over the State’s own demonstrated intent to delegate regulation of professions as a sovereign state activity. This contravenes this Court’s pronouncements that antitrust law should not nullify the States’ democratic processes for regulating their economies and protecting the public welfare.

ARGUMENT

I. STATE-CREATED LICENSING BOARDS ARE STATE ACTORS REGARDLESS OF WHETHER THEY INCLUDE MARKET PARTICIPANTS.

State professional licensing boards are state actors, even when their members are participants in the market regulated by the board. Acting with authority delegated from a sovereign State, the boards perform their duties as the State. The decision below erroneously holds that when an agency is operated by market participants elected by other market participants, the agency is a “private actor” that may only receive federal antitrust immunity by showing that its behavior is “actively supervised by the State itself.” Midcal, 445 U.S. at 105. Under this Court’s precedents, a sovereign State’s policy is immune from federal antitrust attack, and that immunity should not be conditioned on whether the FTC thinks the agency’s decisionmaking process is sufficiently independent from the interests of those being regulated. Pet. App. 13a. States generally employ market participants on licensing boards precisely because they have specialized knowledge and perspective gained by their participation in the regulated profession. The States should not be forced to change these sovereign legislative choices in order to satisfy the dictates of a federal regulatory agency.

#### Federal R&D is crucial to medical innovation---otherwise, the market will ignore long-term investments which leaves gaps

Mandt et al 20, 8-20-2020, Rebecca Mandt, Department of Immunology and Infectious Diseases, Harvard T.H. Chan School of Public Health; Kushal Seethara, Department of Electrical Engineering and Computer Science, Massachusetts Institute of Technology; Chung Hon Michael Cheng, Institute for Data, Systems, and Society, Massachusetts Institute of Technology. "Federal R&D funding: the bedrock of national innovation," MIT Science Policy Review, https://sciencepolicyreview.org/2020/08/federal-rd-funding-the-bedrock-of-national-innovation/

Addressing Market Failures

Unlike the private sector, the federal government is uniquely suited to guide national innovation toward public priorities, such as healthcare, clean energy, and infrastructure, that market incentives ignore [24]. The government has a role in two different types of market failure. The first is a true market failure where fundamental research underlying new technologies is not funded by the private sector due to the risk-reward profile and timeline to commercial relevance. The second is that regardless of how efficient the market is, an incrementally progressing economy does not always align with pressing societal needs or generate optimal societal outcomes.

Private firms’ and industries’ goal to maximize profit from an R&D investment often results in the financing of short-term, low-risk technologies. This is especially true in areas where the foundational research is mostly complete and the bulk of the remaining work is in short-term development. It follows that U.S. industries tend to spend about 80% of their R&D investments on technological development and only 20% on foundational research, which are longer-term, riskier (although arguably cheaper) investments [8]. This trend towards “short-termism” has become increasingly predominant in industry with more and more investment going into development rather than research [25]. As less and less research is being done in the private sector, companies are increasingly relying on work done at academic institutions funded by the federal government. For example, almost 90% of high-impact research papers authored by corporations were written in collaboration with scientists at academic and government labs [26]. The amount of corporate patents that rely on work done elsewhere has also increased dramatically; almost a third of all patents filed in recent years cite federally-supported research. The patents that cite federally-supported research were also found to be of greater substance and novelty on average [27].

While the reliance of the private sector on research produced elsewhere is not problematic a priori, this model only works when federal funding is available to provide these long-term, risky investments into basic and applied research. For example, the U.S. shale gas boom relied heavily on federal funding through the scientific research performed at the Gas Research Institute and the geologic mapping technology developed at Sandia National Labs [24]. This is an example of the federal funding addressing a true market failure by derisking private sector R&D.

The market by itself, however, is often blind to environmental concerns and the long-run societal and economic impact of pressing issues like climate change. Such societal issues are the purview of the federal government, which can use federal funding and other policies to catalyze national innovation towards clean energy technologies and climate resilience. Other examples of public priorities where the government has a pivotal role include developing new antibiotics and understanding the effects of opioids [28]–[30]. Federal research funding is therefore critical both by supporting fundamental research that the private sector is not incentivized to invest in, as well as by providing leadership in targeting societally critical issues. Below, we give two case studies demonstrating these roles.

Case study 1: A canonical example of the government’s role in laying the foundation for innovative technology is the Internet. While the concept of a wireless telecommunications system was around as far back as the early 1900s when Nikola Tesla coined the term “World Wireless System,” the first working prototype of such a network was created by the Department of Defense under the Advanced Research Projects Agency (ARPA) [31]. The goal of “ARPANET,” as it was named, was to create a secure telecommunications system that could distribute information wirelessly in the case of an attack [32]. ARPANET incorporated many key innovations including the concept of “packet switching”—breaking an electronic message into smaller packages that can be transmitted to a new location and re-assembled. The initial network had host computers connected via phone lines to “interface message processors”—the predecessor to the modern-day router [32]. Over the next 20 years, ARPA-funded researchers continued to develop advanced communication protocols and to expand ARPANET into a broader “network of networks” [31, 33]. In addition to the role of ARPA, another federal agency, the National Science Foundation (NSF), was also essential in providing networking services and high-end computing power to universities across the county. These NSF-supported supercomputing centers developed many advances in web applications, including the first freely accessible web browser, which was the basis of modern browsers including Microsoft Internet Explorer and Netscape Navigator [34]. While the Internet as it is known today cannot be credited to any single organization, the role of government research in laying the foundation is undeniable. It is difficult to imagine that such an expansive project involving years of research and coordination across multiple institutes could have been undertaken without its involvement [35].

Case study 2: A good example of the mismatch of public and private objectives can be seen in the development of new antibiotics to keep ahead of rising bacterial resistance to pre-existing drugs. Antimicrobial resistance is widely recognized as one of the greatest threats of the 21st century [36]. Widespread use of antibiotics has led to the evolution of drug-resistant bacteria that no longer respond to currently used treatment methods. Thus, there is a critical need to produce new antibiotics. In spite of this, there has actually been a decrease in the number of new antibiotics being developed and approved since the 1980s, and many large pharmaceutical companies have downsized or eliminated their antibiotic discovery programs [37, 38]. This is because there are several barriers that limit the profitability of new antibiotics, often leading to a poor return on investment. Unlike drugs for chronic conditions, antibiotics are typically taken for a short period of time. New antibiotics entering the market face competition from cheaper generics, and are often reserved as drugs of last resort [39]. Even if an antibiotic is successful, there is always a danger that resistance to the new drug will emerge, so it may only be effective for a limited window of time.

Given the high risk associated with bringing any new drug to market and limited ability to recoup investments, it is understandable that this is a priority that the private sector will not address on its own. Thus, several government agencies have stepped in to fill the gap. For example, the Biomedical Advanced Research and Development Authority (BARDA) has contributed $1.1 billion since 2010, advancing nine new antibiotics to clinical development, three of which have already been approved [29]. BARDA and several other Department of Health and Human Services (HHS) agencies have also awarded grants and facilitated public-private partnerships to incentivize the development of new drug candidates [39, 40]. It is clear that without continued federal involvement, there would exist few solutions against a post-antibiotic world where millions die each year from bacterial infections that were once easily treatable [36].

#### New posture prevents grid intrusions and deters attacks

Buchanan and Sulmeyer ’16 (Ben and Michael; 12/13/2016; post-doctoral fellow at the Belfer Center’s Cyber Security Project, director of the Belfer Center’s Cyber Security Project; “Russia and Cyber Operations: Challenges and Opportunities for the Next U.S. Administration,” <http://carnegieendowment.org/2016/12/13/russia-and-cyber-operations-challenges-and-opportunities-for-next-u.s.-administration-pub-66433>; Date Accessed: 7/10/2017; DS)

To better position the United States against increased Russian cyber operations, an approach designed to improve American operations in three areas is essential: defense, detection, and deterrence. Implementing these recommendations in these areas will enable U.S. policymakers to have greater confidence in the baseline level of security in key networks, a better chance of quickly identifying and thwarting Russian intrusions when they do occur, and a clearer posture for limiting Russian behavior. The standard of baseline defenses must improve, both in government networks and in privately operated critical infrastructure. Network defenders should prioritize deploying audited code—software that has been checked for vulnerabilities—and applying security updates in order to minimize the opportunities for intrusion as much as possible. Ideally, such efforts will minimize the percentage of successful intrusion attempts, enabling defenders to focus their time on more sophisticated threats, such as those potentially posed by Russia. This will likely involve replacing older so-called legacy systems that were not built with security in mind. In the case of federal networks, Congress should authorize the modernization of important information technology infrastructure; the 2016 budget request from President Barack Obama contains initiatives that are a useful starting point.21 A related component of defense is detection. The faster adversaries can be spotted and removed from a network, the **less damage** the adversaries will be able to do. Better perimeter defenses are a fundamental part of cybersecurity, but they are not by themselves sufficient. Within both the private and public sector, networks should be designed or, where applicable, redesigned to increase the visibility defenders have into all activity taking place. With better network visibility, defenders should monitor their own networks for anomalous activity that could indicate the presence of an intruder.22 Older systems will likely have to be replaced over time in order to achieve this; President Obama’s proposal for information technology modernization in government is also a good start.23 To aid this effort, the United States government should increase its information sharing with the private sector. It should prioritize efforts to declassify as much as possible threat intelligence on sophisticated foreign actors, including Russian operators, and share this data with the relevant sector-specific information sharing and analysis organizations. When this threat intelligence is married with better network architecture, ongoing detection of malicious activity becomes a more tractable problem. Where appropriate, the United States should **increase its intelligence collection** in order to inform this effort. In addition, the U.S. government should lead or encourage a widespread effort to detect adversaries already lurking in American critical infrastructure. This mission, which will likely involve a private-public partnership in some areas, should seek to identify intrusions that have already taken place and remove them from the affected networks. The goal should be to reduce, as much as possible, the Russian ability to perform ongoing collection and to hold key U.S. targets at risk. Decontamination of networks is a challenging and resource-intensive undertaking, but it is vital. The last recommendation relates to deterrence. The United States should make it clear that there are costs for intrusive cyber operations, especially when those operations exceed acceptable norms of behavior. In order to make this deterrent credible, the United States must be prepared to retaliate for activities it deems inappropriate. But this response does not need to be limited to cyber operations. Indeed, there is already a precedent for non-cyber-operation responses to intrusions, a concept known as cross-domain deterrence. In response to cases like the hacking of campaign officials and the leaking of their personal emails, the United States should identify the perpetrators and consider an unambiguous public rejoinder. The Department of Justice has obtained indictments against Chinese and Iranian cyber operators; where appropriate, it should consider using that tool against Russian actors. This naming and shaming, combined with the possible restrictions on travel—due to fear of arrest—that accompany indictments indicates to operators that the United States is capable of doing attribution and that there perhaps will be consequences for their actions. In addition, sanctions in response to cyber activity may also be merited. The 2015 executive order signed by President Obama enables the United States to impose sanctions on other nations for their behavior in cyberspace. With Russia, there are already sanctions in place due to the conflict in Ukraine, but additional targeted sanctions for cyber activity may be warranted.24

### 1NC---DA

#### Bedoya will be confirmed to the FTC now, but it’s narrow---his agenda is key to regulating FRT

Jessica Rich 11/18/21. Former director of the Federal Trade Commission’s (FTC) Bureau of Consumer Protection (BCP), Counsel at Kelley Drye LLP. “Some fireworks at Bedoya’s Senate confirmation hearing, but confirmation still seems likely.” Ad Law Access, 11-18-2021. https://www.adlawaccess.com/2021/11/articles/some-fireworks-at-bedoyas-senate-confirmation-hearing-but-confirmation-still-seems-likely/

On November 17, the Senate Commerce Committee held its eagerly-awaited hearing on the nomination of Alvaro Bedoya, a data privacy academic from Georgetown Law, to be FTC Commissioner. Bedoya is slated to replace Rohit Chopra, who departed the agency last month to become Director of the CFPB, and Bedoya’s appointment would once again give the Democrats a voting majority. In the run-up to his hearing, some have wondered – Can we expect Bedoya to provide Chair Khan with a reliable third vote for her agenda, or will he bring a more bipartisan approach to the agency? From his answers and demeanor at the hearing, the answer is probably…both.

First, a little table-setting: Bedoya’s nomination was considered along with three others – Jessica Rosenworcel for FCC Chair and two nominees for the Department of Commerce. The hearing was well-attended by Committee members, who directed the majority of their questions to Rosenworcel. (Yes, net neutrality, broadband access, and the “homework gap” all got more attention than privacy.) All four current FTC Commissioners attended the hearing in person, in a bipartisan show of support for Bedoya, though Bedoya attended remotely due to a recent exposure to COVID.

Here are some takeaways from Bedoya’s portion of the hearing.

He appears likely to be confirmed, even if largely along party lines. Although Senator Wicker made a reference to Bedoya’s “strident” views and Senators Lee, Cruz, and Sullivan slammed his “extremist” tweets (see below), most of the questions (from 18 Senators!) related to Bedoya’s area of expertise (privacy), where there is more alignment between the parties than in other areas. He handled the questions well, and repeatedly expressed support for collaboration and bipartisanship (e.g., specifically mentioning that he wants to work closely with Commissioner Wilson on privacy). Democrats have the votes (in the Committee and on the Senate floor), even if they ultimately have to call in V.P. Harris to break a tie.

He spoke about his nomination and the issues in personal and emotional terms. Bedoya highlighted that he and his family were welcomed into this country 34 years ago. He talked about his experience as a Senate staffer, learning about the terror and harm caused by stalking apps from a shelter for battered women. He realized then and believes now that “privacy is not just about data, it’s about people.” His goal as a Commissioner would be to make sure the FTC protects people, and to help both consumers and businesses manage the multiple crises facing the country – a COVID crisis, a privacy crisis, and a small business crisis.

He appears likely to vote with the majority on many (or most) issues. No big surprise here, but when asked his views about various issues, he consistently supported positions that Khan, Slaughter, and (his predecessor) Chopra have supported – federal privacy legislation, Magnuson-Moss privacy rulemaking if Congress doesn’t act, pushing back against the “unprecedented consolidation” that is forcing small businesses to close, streamlining the FTC’s rulemaking and subpoena processes, reducing the power of the platforms, and reining in tracking technologies like facial recognition. As to the latter, he said he would not support banning facial recognition technologies altogether, since some applications assist with benefits like public safety and healthcare. However, he would support banning facial recognition technologies that are hidden, that lack consent, or that collect, use, and share data without limits.

He’s a real-live privacy expert. He clearly has the credentials, starting with his work as a Senate staffer and continuing through his years at Georgetown Law as a professor and head of a privacy think tank. But he also quickly and confidently answered all questions related to privacy – from the need for privacy legislation generally, to his views on Senator Schatz’s “duty of loyalty” and Senator Markey’s proposal to amend COPPA, to the lines he would draw on facial recognition (see above).

He wrote some controversial tweets, and a number of Republicans seem poised to vote “no” on his confirmation. Senator Sullivan cited a tweet from Bedoya calling the 2016 Republican convention a “White Supremacist rally.” Cruz cited tweets about ICE as a “domestic surveillance agency” and a retweet involving critical race theory and white supremacy. He also called Bedoya a “left wing activist, bomb thrower, extremist, and provocateur.” Lee ran through a series of supposedly “yes or no” questions in rapid succession, and accused Bedoya of being evasive when he tried to qualify his responses. And Wicker referred to Bedoya’s “strident” views, as noted above. As to the tweets, Bedoya apologized, saying that it was “rhetoric” and that he would put aside any partisan views if he became Commissioner. However, these Senators (and perhaps other Republicans) seem poised to vote “no” on Bedoya’s confirmation, and some have said they plan to place a “hold” on the process, which could slow it down.

If confirmed, he could help reduce tensions at the Commission. With acrimony among the Commissioners currently at unprecedented levels (see our recent post here), adding Bedoya to the mix could help reduce the tensions (despite the tweets). He’s known to be collegial, he worked across the aisle as a Senate staffer, he repeatedly invoked bipartisanship at the hearing, and all of the sitting Commissioners (Democrats and Republicans) showed up at the hearing to support him. That augurs well for the dynamics at the Commission, even if the votes remain split along party lines.

We will continue to monitor progress on Bedoya’s nomination and post updates as they occur.

#### The plan triggers backlash to the FTC

Alison Jones 20. Professor of Law at King's College London, with William E. Kovacic – George Washington University, March, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” The Antitrust Bulletin. https://journals.sagepub.com/doi/full/10.1177/0003603X20912884

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

Imagine, for a moment, that the DOJ and the FTC launch monopolization cases against each of the GAFA giants. Among other grounds, these cases might be premised on the theory that the firms used mergers to accumulate and protect positions of dominance. The GAFA firms have received unfavorable scrutiny from legislators from both political parties over the past few years, but the current wave of political opprobrium is unlikely to discourage the firms from bringing their formidable lobbying resources to bear upon the Congress. It would be hazardous for the enforcement agencies to assume that a sustained, well-financed lobbying campaign will be ineffective. At a minimum, the agencies would need to consider how many battles they can fight at one time, and how to foster a countervailing coalition of business interests to oppose the defendants.

#### That derails Bedoya’s nomination

Kathleen Murphy 21. Senior reporter at FTC Watch, 11/1/21. “Bedoya’s confirmation hearing draws closer,” FTC Watch. https://www.mlexwatch.com/articles/13940/print?section=ftcwatch

When Alvaro Bedoya, President Joe Biden’s nominee to the Federal Trade Commission, faces US senators, he will be asked about his scholarly views on privacy. But the hearing also gives senators a chance to assess the agenda of the last FTC nominee they confirmed, Chair Lina Khan.

The Senate Commerce, Science and Transportation Committee is set to consider Bedoya’s nomination, although no hearing date has been set. It’s most likely to occur the week of Nov. 15 or early December, based on the 2021 Senate calendar.

Serving on the FTC means Bedoya, a Georgetown University professor and former congressional lawyer, would end a 2-2 split and give Democrats a majority to implement the chair’s policies. Bedoya, founding director of the Center on Privacy & Technology at Georgetown Law, would replace former Commissioner Rohit Chopra who left Oct. 8 to serve as director of the Consumer Financial Protection Bureau.

Biden nominated Bedoya in mid-September. Khan, meanwhile, started serving as FTC chair in mid-June after an 83-day confirmation process. (See FTCWatch, No. 1002, March 29, 2021.)

‘99% about FTC Chair Lina Khan’

Michael Keeley, co-chair of the antitrust practice at Axinn, Veltrop & Harkrider, tweeted: “Bedoya confirmation is going to be 99% about FTC Chair Lina Khan, and 1% to do with Alvaro Bedoya. (And hopefully 0% about the Vertical Merger Guidelines.)”

Keeley said he expects the focus of the hearing to be assessing the wisdom of the policies being pursued by Khan.

“One area that might come up will be the number of steps the commission has been taking already to try to discourage mergers generally, which is consistent with the policies that were pursued and announced by the administration,” Keeley said in an interview. Confirmation hearings are useful for antitrust lawyers, Keeley said, because it’s “always good to understand the priorities that an enforcer believes in and to have them engage with senators on tough questions.”

Bedoya’s expertise

Bedoya, who is a naturalized US citizen born in Peru, has focused his work on the impact of surveillance and commercial data collection on immigrants and people of color. He has written about police use of facial recognition and oversaw the Center’s investigation that showed most American adults are enrolled in police face recognition databases that suffer from race and gender bias. Advocacy groups, such as anti-monopoly and civil rights organizations, urged the Senate to confirm Bedoya swiftly.

The antitrust views of Bedoya, a Yale Law School graduate, are less spelled out, offering another avenue of inquiry for senators. Republican senators are expected to examine how closely Bedoya will mirror the priorities Khan has established.

#### Bedoya confirmation ends immigrant surveillance

Karen Hoffman Lent 21, Partner at Skadden, Arps, Slate, Meagher & Flom, Kenneth Schwartz, Partner at Skadden, Arps, Slate, Meagher & Flom, and Meghan McConnell, Associate at Skadden, Arps, Slate, Meagher & Flom, “Privacy Expert Bedoya To Bring Fresh Perspective to FTC”, New York Law Journal, 11/8/2021, https://www.law.com/newyorklawjournal/2021/11/08/privacy-expert-bedoya-to-bring-fresh-perspective-to-ftc/?slreturn=20220123112923

On Sept. 13, 2021 President Biden nominated Alvaro Bedoya as a Commissioner to the Federal Trade Commission (FTC). If confirmed, Bedoya would replace the recently departed Commissioner Rohit Chopra who now heads up the Consumer Financial Protection Bureau. As a privacy expert, Bedoya will provide a fresh perspective to the agency charged with antitrust enforcement and consumer protection.

Bedoya was born in Peru and grew up in upstate New York. He earned his B.A. from Harvard College and his J.D. from Yale Law School where he received the Paul & Daisy Soros Fellowship for New Americans. After graduating from law school, he spent two years as an associate at WilmerHale before departing to work in the U.S. Senate. A long-time aide to Sen. Al Franken, Bedoya was the first chief counsel for the U.S. Senate Judiciary Subcommittee on Privacy, Technology and the Law. During his tenure he worked on the USA FREEDOM Act and other privacy and surveillance issues related to biometrics and location tracking. Those who worked with Bedoya on Capitol Hill characterize him as willing to engage with industry and to maintain an open dialogue. See Margaret Harding McGill, Privacy Advocate Will Be New Big Tech Threat at FTC, Axios (Sept. 14, 2021).

Currently, Bedoya serves as the founding director of the Center on Privacy and Technology at Georgetown Law, a think tank focused on privacy and surveillance and their impact on civil rights. He is also a visiting professor at Georgetown Law. His nomination to the FTC comes at a time when data privacy and data security—and their impact on competition and civil rights—have emerged as pressing issues in Washington. In a statement that congratulated Bedoya on his nomination and touted his expertise, FTC Chair Lina Khan noted that Bedoya’s “expertise on surveillance and data security and his longstanding commitment to public service would be enormously valuable to the Commission as we work to meet this moment of tremendous need and opportunity.” See Press Release, Fed. Trade Comm’n, Statement of FTC Chair Lina M. Khan on the Nomination of Alvaro Bedoya to Serve as a Commissioner (Sept. 13, 2021).

Bedoya on Privacy

In 2016, Bedoya and a team from the Georgetown Center on Privacy and Technology released a report studying police use of facial recognition programs across America and proposing policy recommendations. See Alvaro Bedoya et al., The Perpetual Line-Up: Unregulated Police Face Recognition in America, Ctr. on Priv. & Tech. (Oct. 18, 2016). According to the report, one in two American adults—or 117 million people—are in a police facial recognition database. Id. The report exposed the existence of few guardrails to prevent the programs’ misuse or to ensure the accuracy of the databases, and highlighted the disproportionate impact facial recognition programs have on people of color, particularly African Americans. Id.

Bedoya’s academic writings have focused on the intersection of civil rights and privacy, primarily the impact that privacy and surveillance have on marginalized communities. Bedoya has been critical of the way in which data collection and tracking have a disparate impact that “varies greatly by race, class and power.” Alvaro Bedoya, A License to Discriminate, N.Y. Times (June 6, 2018). He has argued that privacy is a civil right because it is about “human dignity.” Alvaro Bedoya, Privacy as a Civil Right, 50 N.M. L. Rev. 301, 306 (2020). Bedoya has also criticized the U.S. Immigration and Customs Enforcement’s (ICE) use of surveillance to track immigrants, cautioning that “[s]urveillance of immigrants has long paved the way for surveillance of everyone.” Alvaro Bedoya, Deportation Is Going High-Tech Under Trump, The Atlantic (June 21, 2017).

Capitol Hill and Digital Privacy

Privacy advocates have long called on Congress to enact a federal privacy law. Despite decades of discussions and proposals, there is no federal law protecting consumer privacy. With 6 in 10 Americans believing data collection is impossible to avoid in daily life, see Brooke Auxier et al., Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information, Pew Rsch. Ctr. (Nov. 15, 2019), consumers are taking an interest in how their data is handled. Technology companies and the data they control have received a renewed focus.

Lawmakers on Capitol Hill and the enforcement agencies have increasingly questioned whether and to what extent digital platforms’ use and control of data impacts privacy and competition. The House Judiciary Subcommittee on Antitrust, Commercial and Administrative Law, on which Chair Khan served prior to joining the FTC, conducted a 16-month investigation of digital markets, culminating in a lengthy report, entitled Investigation of Competition in Digital Markets, Majority Staff Report and Recommendations (Staff Report). The report drew a link between privacy and antitrust laws: “The persistent collection and misuse of consumer data is an indicator of market power in the digital economy.” Staff Report at 51 (citing Howard A. Shelanski, Information, Innovation, and Competition Policy for the Internet, 161 U. Pa. L. Rev. 1663, 1687 (2013)).

The Staff Report led to a legislative effort to crack down on technology companies and ultimately resulted in a bipartisan rollout of a package of bills squarely aimed at large technology companies. The package advanced through committee in the House but is still awaiting a vote. See Press Release, House Comm. on the Judiciary, Chairman Nadler Applauds Committee Passage of Bipartisan Tech Antitrust Legislation (June 24, 2021). Recently, House Democrats released a proposal as part of President Biden’s Build Back Better agenda that would provide the FTC with $1 billion to set up a bureau dedicated to privacy and data protection. While its future is uncertain amid budget reconciliation negotiations, it underscores Congress’s renewed focus on and commitment to data privacy-related issues.

FTC and Privacy

The FTC regulates consumer privacy and data protection under §5 of the FTC Act, which gives the agency authority to bring enforcement actions against unfair and deceptive practices. 15 USC §45(a). In the early days, unfair and deceptive practices typically involved false or misleading claims as to how a company handled consumer data, but privacy enforcement has evolved into “a body of standards that seek to protect consumers’ reasonable expectations of privacy.” Erika M. Douglas, The New Antitrust/Data Privacy Law Interface, Yale L.J. Forum, 647, 652 (Jan. 18, 2021) (Douglas). In addition to §5, the agency is charged with enforcing a number of privacy laws, including the Gramm-Leach Bliley Act, CAN-SPAM Act, Children’s Online Privacy Protection Act, and the Fair Credit Reporting Act. One provision of President Biden’s wide-ranging July 2021 executive order, which outlined a “whole of government” approach to promoting competition, encourages the FTC to crack down on “unfair data collection and surveillance practices that may damage competition, consumer autonomy, and consumer privacy” in order to “address persistent and recurrent practices that inhibit competition.” Executive Order on Promoting Competition in the American Economy, WhiteHouse.gov, §5(h)(i) (July 9, 2021).

A New Direction

In the recently issued FTC Report to Congress on Privacy and Security, the FTC indicated a shift in how the FTC views—and plans to approach—privacy issues moving forward. See Fed. Trade Comm’n, Report to Congress on Privacy and Security (Sept. 13, 2021) (Privacy Report). The Privacy Report highlights four areas in which the FTC plans to focus its efforts, including “integrating competition concerns” into privacy and data security issues, remedies, digital platforms, and algorithms. Id. at 3-6.

Speaking specifically to the intersection between antitrust and privacy issues, the Privacy Report warns that “violation of consumer protection laws may be enabled by market power, and consumer protection violations, in turn, can have a detrimental effect on competition.” Id. at 4. Chair Khan is expected to use §5’s unfair competition clause to turn up the heat on antitrust enforcement, but a new perspective under which the FTC views its privacy enforcement role raises some interesting issues and implications for antitrust law, particularly where the FTC seeks “competition-based remedies” in consumer protection cases. Id. Unsurprisingly, the Commissioners disagree over this approach. Chair Khan’s statement highlighted the connection, emphasizing that “concentrated control over data has enabled dominant firms to capture markets and erect entry barriers.” Press Release, Fed. Trade Comm’n, Statement of Chair Lina M. Khan Regarding the Report to Congress on Privacy and Security (Oct. 1, 2021). But on the other side of the political spectrum, Commissioner Phillips explained that the report “overstates the synchrony between competition and privacy.” Press Release, Fed. Trade Comm’n, Dissenting Statement of Commissioner Noah Joshua Phillips (Oct. 1, 2021). Though we do not know much about Bedoya’s approach to antitrust enforcement, we can expect that his privacy background will shape how he views competition issues and appropriate remedies.

Privacy and Antitrust

With a renewed emphasis on the overlap between these two policy areas, we can expect to see privacy concerns and considerations raised more often in enforcement actions. But just how privacy applies to antitrust enforcement in practice remains to be seen. Tension between antitrust and privacy can arise when their goals do not align. Privacy goals often seek to limit the sharing and use of consumer data, for example, while the goals of increased competition may seek to expand such information sharing. See Douglas, supra, at 660-61, 668.

The Staff Report states that “[a] firm’s dominance can enable it to abuse consumers’ privacy without losing customers,” Staff Report at 52, but efforts to protect consumer privacy to the detriment of other companies have faced setbacks in court. In hiQ Labs v. LinkedIn, 938 F.3d 985 (9th Cir. 2019), LinkedIn sent hiQ a cease and desist letter to prevent hiQ from collecting and using data from “publicly available LinkedIn member profiles.” 938 F.3d at 989, 992. In response, hiQ sued LinkedIn alleging violations of California’s Unfair Competition Law. See Complaint, hiQ Labs v. LinkedIn, No. 3:17-cv-03301-EMC (N.D. Cal. June 7, 2017), ECF No. 1. Though LinkedIn’s stated intention was to protect its customer’s data, the court was not persuaded by this privacy justification and ordered a preliminary injunction to restore hiQ’s access. See hiQ, 938 F.3d at 994.

Regulators have also started using diminished privacy as an example of consumer harm in antitrust enforcement actions. For example, in United States v. Google, 1:20-cv-03010-APM (D.D.C. 2021), ECF No. 94, the DOJ alleges that the anticompetitive effects of Google’s purported monopolization of internet search and search advertising include reduction in quality of privacy and data protection. Privacy considerations are being used both to criticize and justify conduct in antitrust issues.

Conclusion

While we expect Bedoya to be more vocal on consumer protection issues, particularly facial recognition and artificial intelligence, he joins an FTC that has proven motivated to use the antitrust laws to crack down on big tech companies. If confirmed (as expected), Bedoya will join two Democratic appointed commissioners, Chair Khan and Commissioner Rebecca Kelly Slaughter, in pursuing an aggressive enforcement agenda from all corners of the agency. Chair Khan has been hard at work laying some of the groundwork, from agency structural reforms to the FTC’s recent commitment to approaching enforcement with the overlap between privacy and competition in mind. We can expect to see privacy considerations make their way into more antitrust enforcement actions and, though Bedoya has been relatively quiet on competition issues, his privacy-focused background could impact where the FTC ends up on some of these questions.

#### Border surveillance makes inevitable migration flows destablizing

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Companies that profit from selling surveillance technologies and border services to governments are actively lobbying countries to adopt more militaristic approaches to migration. In fact, the border and surveillance industry is now so profitable that it has become a key commodity for major investment companies such as the Vanguard Group, BlackRock, or Capital Research Management, who invest on behalf of pension funds, insurance companies, university endowments or individuals’ savings.

Over the past ten years, the global population of displaced people has grown substantially to at least 79.5 million people, according to the United Nations refugee agency, UNHCR. The agency estimates that since 2012, the number of refugees under its mandate has nearly doubled due to conflicts, including the war in Syria and the Rohingya crisis in Myanmar.

The number of forcibly displaced people is expected to continue to rise, as it is growing even faster than the global population rate, due to conflict, economic insecurity and climate impacts that are forcing people to leave their homes.

However, instead of developing strategies to protect refugees and migrants, several governments around the world have focused their energies on building up borders to keep them out.

A walled world

Over the last 50 years, 63 walls have been built along borders or on occupied territory across the world. Authorities in the United States, Australia and the European Union have increasingly externalised their border controls to foreign countries, stopping displaced people from even arriving on their soil.

They have also been patrolling borders in ways that lead to the unlawful imprisonment, deportation and inhuman treatment of refugees and migrants. And these walls are not only physical, they are also digital, with governments around the world increasingly relying on artificial intelligence and biometrics.

Although governments are responsible for implementing these policies, it is companies that are lobbying, financing and profiting from the growth of the border and surveillance industry.

Governments are outsourcing border management to household name companies such as Accenture, IBM and Boeing, that provide surveillance technologies and services. And a new report released on 9 April by the Transnational Institute (TNI), in collaboration with Stop Wapenhandel has identified that companies including Capital Research and Management (part of the Capital Group), BlackRock, Morgan Stanley and the Vanguard Group are financing this industry’s expansion.

The result: more severe human rights abuses of refugees and migrants, with less accountability for the actors involved in perpetuating this abuse. “People on the move are increasingly confronted with a border security infrastructure specifically hired to treat them as a threat, to keep them out,” explained Daria Davitti, assistant professor in law at Nottingham University. “The levels of violence and abuse are unprecedented and in many cases unchecked.”

“Military and security companies and their lobby organisations are very influential in shaping border and migration policies”

Rightwing politicians and companies—who have financial incentives to see the border and surveillance industry grow – have framed migration as a security threat in their statements and policy briefs.

“Migration has been portrayed, in the EU and more generally in the Global North, as a threat to ‘our’ economic prosperity, cultural identity and ‘values’,” said Davitti. “Defining migrants’ arrivals as a security threat requires security answers, which the border and surveillance industry is of course best placed to provide with services it offers.”

The framing of migration as a security problem has resulted in the dramatic growth of the border and surveillance industry over the last decade, fuelled by booming budgets for border and immigration control. In the United States alone, budgets for borders increased by more than 6,000% since 1980, according to TNI.

The EU has plans to spend about three times more on border security and control in its new seven-year budget than its previous one. And by 2025, the global border security market is predicted to grow by between 7.2% and 8.6%, reaching a total of $65-68 billion.

According to TNI’s report, the border and surveillance industry is expanding in five key sectors: border security (more equipment and technologies that surveil and patrol borders to deter people from crossing them); biometrics (new technologies for fingerprints, iris scans or social media tracking); advisory and audit services (that lobby governments to adopt harsher border policies); and migrant detention and deportation.

“Military and security companies and their lobby organisations are very influential in shaping border and migration policies,” said Mark Akkerman, lead author of TNI’s report. “Representatives of these industries present themselves as experts on these issues and are embraced as such by authorities.”

The path forward

Displaced people are suffering the consequences of the expanding border and surveillance industry, whether they are being monitored at the border by overhead drones or through social media. “The militarisation of borders has led to more violence against migrants and has pushed them to more dangerous migration routes,” said Akkerman. “There have also been many reports about human rights violations in migrant detention and during deportations.”

The lack of accessible information about these companies’ roles in the border and surveillance industry makes it harder to hold them accountable. “These contracts are often kept secret and governments resist sharing them,” said Antonella Napolitano, a policy officer at Privacy International. “It is a system that lacks oversight and ultimately, accountability.”

#### Extinction

Lucas Perry 21, Project Coordinator at the Future of Life Institute, BA from Boston College, and Dr. Michael Klare, Five College Professor of Peace & World Security Studies, “Michael Klare on the Pentagon’s view of Climate Change and the Risks of State Collapse”, Future of Life Institute, 7/30/2021, https://futureoflife.org/2021/07/30/michael-klare-on-the-pentagons-view-of-climate-change-and-the-risks-of-state-collapse/

The influx of migrants on America’s Southern border, many of these people today are coming from Central America and from an area that’s suffering from extreme drought and where crop failure has become widespread, and people can’t earn an income and they’re fleeing to the United States in desperation. Well, this is something the military has been studying and talking about for a long time as a consequence of climate change, as an example of the ways in which climate change is going to multiply schisms in society and threats of all kinds that ultimately will endanger the United States, but it’s going to fall on their shoulders to cope with and creating humanitarian disasters and migratory problems.

And as I say, this is not what they view as their primary responsibility. They want to prepare for high-tech warfare with China and Russia, and they see all of this as a tremendous distraction, which will undermine their ability to defend the United States against its primary adversaries. So, it’s multiplying the threats and dangers to the United States on multiple levels including, and we have to talk about this, threats to the homeland itself.

Lucas Perry: I think one thing you do really well in your book is you give a lot of examples of natural disasters that have occurred recently, which will only increase with the existence of climate change as well as areas which are already experiencing climate change, and you give lots of examples about how that increases stress in the region. Before we move on to those examples, I just want to more clearly lay out all the ways in which climate change just makes everything worse. So, there’s the sense in which it stresses everything that is already stressed. Everything basically becomes more difficult and challenging, and so you mentioned things like mass migration, the increase of disease and pandemics, the increase of terrorism in destabilized regions, states may begin to collapse. There is, again, this idea of threat multiplication, so everything that’s already bad gets worse.

Lucas Perry: There’s loss of food, water, and shelter instability. There’s an increase in natural disasters from more and more extreme weather. This all leads to more resource competition and also energy crises as rivers dry up and electric dams stop working and the energy grid gets taxed more and more due to the extreme weather. So, is there anything else that you’d like to add here in terms of the specific ways in which things get worse and worse from the factor of threat multiplication?

Michael Klare: Then, you start getting kind of specific about particular places that could be affected, and the Pentagon would say, well this is first going to happen in the most vulnerable societies, poor countries, Central America, North Africa, places like that where society is already divided, poor, and the capacity to cope with disaster is very low. So, climate change will come along and conditions will deteriorate, and the state is unable to cope and you have breakdown and you have these migrations, but they also worry that as time goes on and climate change intensifies, that a bigger and bigger or richer and richer and more important states will begin to disintegrate, and some of these states are very important to US security and some of them have nuclear weapons, and then you have really serious dangers. For example, they worry a great deal about Pakistan.

Pakistan is a nuclear armed country. It’s also deeply divided along ethnic and religious lines, and it has multiple vulnerabilities to climate change. It goes between extremes of water scarcity, which will increase as the Himalayan glaciers disappear, but also we know that monsoons are likely to become more erratic and more destructive with more flooding.

All of these pose great threats to the ability of Pakistan’s government and society to cope with all of its internal divisions, which are already severe to begin with, and what happens when Pakistan experiences a state collapse and nuclear weapons begin to disappear into the hands of the Taliban or to forces close to the Taliban, then you have a level of worry and concern much greater than anything we’ve been talking before, and this is something that the Pentagon has started to worry about and to develop contingency plans for. And, there are other examples of this level of potential threat arising from bigger and more powerful states disintegrating. Saudi Arabia is at risk, Nigeria is at risk, the Philippines, a major ally in the Pacific is at extreme risk from rising waters and extreme storms, and I can continue, but from a strategic point of view, this starts getting very worrisome for the Department of Defense.

Lucas Perry: Could you also paint a little bit of a picture of how climate change will exacerbate the conditions between Pakistan, India, and China, especially given that they’re all nuclear weapon states?

Michael Klare: Absolutely, and this all goes back to water and many of us view water scarcity as the greatest danger arising from climate change in many parts of the world. In the case of India, China, Pakistan, not to mention a whole host of other countries depend very heavily on rivers that originate in the Himalayan mountains and draw a fair percentage of their water from the melting of the Himalayan glaciers and these glaciers are disappearing at a very rapid rate and are expected to lose a very large percentage of their mass by the end of this century due to warming temperatures.

And, this means that these critical rivers that are shared by these countries, the Indus River shared by India and Pakistan, the Brahmaputra River shared by India and China, these rivers, which provide the water for irrigation for hundreds of millions of people if not billions of people, depend on these rivers, the Mekong is another. As the water supply begins to diminish, this is going to exacerbate border disputes. All of these countries, Indian and China, Indian and Pakistan have border and territorial disputes. They have very restive agricultural populations to start with, that water scarcity is going to be the tipping point that will produce massive local violence that will lead to conflict between these countries, all of them nuclear armed.

Lucas Perry: So, to paint a little bit more of a picture of these historical examples of states essentially failing to be able to respond to climate events and the kind of destructive force that was to society and to the status of humanitarian conditions and the increasing need for humanitarian operations, so can you describe what happened in Tacloban for example, as well as what is going on in the Nigerian region?

Michael Klare: So, Tacloban is a major city on the island of Leyte in the Philippines, and it was a direct hit. It suffered a direct hit from Typhoon Haiyan in 2013. This was the most powerful typhoon to make landfall up until that point, an extremely powerful storm that created millions of homeless in the Philippines. Many people perished, but Tacloban was at the forefront of this. A city of several hundred thousand, many poor people living in low lying areas at the forefront of the storm. The storm surge was 10 or 20 feet high. That just over overwhelmed these low lying shanty towns, flooded them. Thousands of people died right away. The entire infrastructure of the city collapsed was destroyed, hospitals, everything. Food ran out, water ran out, and there was an element of despair and chaos. The Philippine government proved incapable of doing anything.

And, President Obama ordered the US Pacific Command to provide emergency assistance, and it sent almost the entire US Pacific fleet to Tacloban to provide emergency assistance on the scale of a major war, aircraft carrier, dozens of warships, hundreds of planes, thousands of troops to provide emergency assistance. Now, it was a wonderful sign of US aid. There are a number of elements of this crisis that are worthy of mention. In addition to all of this, one was the fact that there was anti-government rioting because of the failure of the local authorities to provide assistance or to provide it only to wealthy people in the town, and this is so often a characteristic of these disasters that assistance is not provided equitably, and the same thing was seen with Hurricane Katrina in New Orleans and this then becomes a new source of conflict.

When a disaster occurs and you do not have equitable emergency response, and some people are denied help and others are provided assistance, you’re setting the stage for future conflicts and anti-government violence, which is what happened in Tacloban And the US military had to intercede to calm things down, and this is something that has altered US thinking about humanitarian assistance because now they understand that it’s not just going to be handing out food and water, it’s also going to mean playing the role of a local government and providing police assistance and mediating disputes and providing law and order, not just in foreign countries, but in the United States itself and this proved to be the case in Houston with Hurricane Harvey in 2017 and in Puerto Rico with Hurricane Maria when local authorities simply disappeared or broke down and the military had to step in and play the role of government, which comes back to what I’ve been saying all along. From the military’s point of view, this is not what they were trained to do.

This is not what they want to do, and they view this as a distraction from their primary military function. So, here’s the Pacific fleet engaging in this very complex emergency in the Philippines, and what if there were a crisis with China that were to break out? The whole force would have been immobilized at that time, and this is the kind of worry that they have that climate change is going to create these complex emergencies they call them, or complex disasters that are going to require not just a quick in and out kind of situation, but a permanent or semi-permanent involvement in a disaster area and to provide services for which the military is not adequately prepared, but they see that climate change increasingly will force them to play this kind of role and thereby distracting them from what they see as their more important mission.

Lucas Perry: Right, so there’s this sense of the military increasingly being deployed in areas to provide humanitarian assistance. It’s obvious why that would be important and needed domestically in the United States and its territories. Can you explain why the military is incentivized or interested in providing global humanitarian assistance?

Michael Klare: This has always been part of American foreign policy, American diplomacy, winning friends, winning over friends and allies. So, it’s partly to make the United States look good particularly when other countries are not capable of doing that. We’re the one country that has that kind of global naval capacity to go anywhere and do that sort of thing. So, it’s a little bit a matter of showing off our capacity, but it’s also in the case of the Philippines, the Philippines plays a strategic role in US planning for conflict in the Pacific.

It is seen as a valuable ally in any future conflict with China and therefore its stability matters to the United States and the cooperation of the Philippine government is considered important and access to bases in the Philippines, for example, is considered important to the US. So, the fact that key allies of the US in the Pacific, in the Middle East and Europe are at risk of collapsing due to climate change poses a threat to the whole strategic planning of the US, which is to fight wars over there, in the forward area of operations off the coast of China, or off of Russian territory. So, we are very reliant on the stability and the capacity of key allies in these areas. So, providing humanitarian assistance and disaster relief is a part of a larger strategy of reliance on key allies in strategic parts of the world.

Lucas Perry: Can you also explain the conditions in Nigeria and how climate change has exacerbated those conditions and how this fits into the Pentagon’s perspective and interest in the issue?

Michael Klare: So, Nigeria is another country that has strategic significance for the US, not perhaps on the same scale as say Pakistan or Japan, but still important. Nigeria is a leading oil producer, not as important as it once was perhaps, but nonetheless important, but Nigeria is also a key player in peacekeeping operations throughout Africa and because the US doesn’t want to play that role itself, it relies on Nigeria for peacekeeping troops in many parts of Africa. And, Nigeria occupies a key piece of territory in Central Africa, which is it’s surrounded by countries, which are much more fragile and are threatened by terrorist organizations. So, Nigeria’s stability is very important in this larger picture, and in fact Nigeria itself is at risk from terrorist movements, especially Boko Haram and splinter groups, which continue to wreak havoc in Northern Nigeria despite years of effort by the Nigerian government to crush Boko Haram, it’s still a powerful force.

And, partly this is due to climate change. The Boko Haram operates in areas around Lake Chad, which is now a small sliver of what it once was. It has greatly diminished in size because of global warming and water mismanagement. And so, the farmers and fisher folk whose livelihood depended on Lake Chad has all been decimated. Many of them have become impoverished. The Nigerian government has proved inept and incapable of providing for their needs, and many of these people have therefore fallen prey to the appeals of recruitment by Boko Haram, young men without jobs. So, climate change is facilitating, is fueling the persistence of groups like Boko Haram and other terrorist groups in Nigeria, but that’s only part of the picture. There’s also growing conflict between pastoralists, these are herders, cattle herders whose lands are being devastated by desertification.

In this Sahel region, the southern fringe of the Sahara is expanding with climate change and driving these pastoralists into areas occupied by… These are all Muslim, the pastoralists are primarily Muslims and they’re moving into lands occupied by Christians, mainly Christian farmers, and there’s been terrible violence in the past few years, many hundreds of thousands of people displaced. Again, inept Nigerian response, and so I could go on. There’s violence in the Nigeria Delta region, the Niger Delta area in the south and in the area, their breakaway provinces. So, Nigeria is at permanent risk of breaking apart, and the US provides a lot of military aid to Nigeria and provides training. So, the US is involved in this country and faces a possibility of greater disequilibrium and greater US involvement.

Lucas Perry: Right, so I think this does a really good job of painting the picture of this factor of threat multiplication from climate change. So, climate change makes getting food, water, and shelter more difficult. There’s more extreme weather, which makes those things more difficult, which increases instability, and for places that are already not that stable, they get a lot more unstable and then states begin to collapse and you get terrorism, and then you get mass migration, and then there’s more disease spreading, so you get conditions for increased pandemics. Whether it’s in Nigeria or Pakistan and India or the Philippines or the United States and China and Russia, everything just keeps getting worse and worse and more difficult and challenging with climate change. So, could you describe the ladder of escalation of climate change related issues for the military and how that fits into all this?

Michael Klare: Well, now this is an expression that I made up to try to put this in some kind of context, drawing on the ladder of escalation from the nuclear era when the military talked about the escalation conflict from a skirmish to a small war, to a big war, to the first use of nuclear weapons, to all out nuclear war. That was the ladder of escalation of the nuclear age, and what I see happening is something of a similar nature where at present we’re still dealing mainly with these threat multiplying conditions occurring in the smaller and weaker states of Africa, Chad, Niger, Sudan and the Central American countries, Nicaragua and El Salvador, where you see all of these conditions developing, but not posing a threat to the central core of the major powers, but as climate change advances, the military expects and US intelligence agencies expect, as I indicated, that larger, stronger, richer states will experience the same kinds of consequences and dangers and begin to experience this kind of state disintegration.

So, what we’re seeing in places like Chad and Niger, which involves this skirmishing between insurgents, terrorists, and other factions in which the US is playing a remote role, is playing the role, but it’s remote to situations where a Pakistan collapses, a Nigeria collapses, a Saudi Arabia collapses would require a much greater involvement by American forces on a much larger scale and that would be the next step up the ladder of escalation arising from climate change, and then you have the possibility, as I indicated, where nuclear armed states would engage in conflict, would be drawn into conflict because of climate related factors like the melting of the Himalayan glaciers and Indian and Pakistan going to war or Indian and China going to war, or we haven’t discussed this, but another consequence of climate change is the melting of the Arctic and this is leading to competition between the US and Russia in particular for control of that area.

So, you go from disintegration of small states to disintegration of medium-sized states, to conflict between nuclear armed states, and eventually to conceivable US involvement in climate related conflicts. That would be the ladder of escalation as I see it, and on top of that, you would have multiple disasters happening simultaneously in the United States of America, which would require a massive US military response. So, you can envision, and the military certainly worries about this, a time when US forces are fully immobilized and incapable of carrying out what they see as their primary defense tasks because they’re divided. Half their forces are engaging in disaster relief in the United States and another half are dealing with these multiple disasters in the rest of the world.

Lucas Perry: So, I have a few bullet points here that you could expand upon or correct about this ladder of escalation as you describe it. So at first, there’s the humanitarian interventions where the military is running around to solve particular humanitarian disasters like in Tacloban. Then, there’s limited military operations to support allies. There’s disruptions to supply chains and the increase of failed states. There’s the conflict over resources. There’s internal climate catastrophes and complex catastrophes, which you just mentioned, and then there’s what you call climate shock waves, and finally all hell breaking loose where you have multiple failed states, tons of mass migration, a situation in which no state no matter how powerful is able to handle.

Michael Klare: Climate shock wave would be a situation where you have multiple extreme disasters occurring simultaneously in different parts of the world leading to a breakdown in the supply chains that keep the world’s economy afloat and keep food and energy supplies flowing around the world, and this is certainly a very real possibility. Scientists speak of clusters of extreme events, and we’ve begun to see that. We saw that in 2017 when Hurricane Harvey was followed immediately by Hurricane Irma in Florida, and then Hurricane Maria in the Caribbean and Puerto Rico and the US military responded to each of those events, but had some difficulty moving emergency supplies first from Houston to Florida, then to Puerto Rico. At the same time, the west of the US was burning up. There were multiple forest fires out of control and the military was also supplying emergency assistance to California, Washington State, and Oregon.

That’s an example of clusters of extreme events. Now looking into the future, scientists are predicting that this could occur in several continents simultaneously. And as a result, food supply chains would break down, and many parts of the world rely on imported grain supplies, or other food stuffs and imported energy. And in a situation like this, you could imagine a climate shockwave in which trade just collapses and entire states suffer from a major catastrophe, food catastrophes leading to state collapse and all that we’ve been talking about.

### CP---1NC

#### The 50 states, Washington D.C., and all relevant subnational territories should:

#### - Prohibit anticompetitive business practices that are except from penalties via the state action immunity doctrine, and

#### - Cooperate to regulate emerging technologies

#### - Cooperate to resolve freshwater pollution

#### States can pursue autonomous anti-trust enforcement even when conflicting with federal law.

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At the federal level, the U.S. antitrust laws—including the Sherman Act and the Clayton Act, which governs mergers and acquisitions—are enforced by the FTC and DOJ. States also have antitrust laws, which are enforced by state AGs and are often patterned after their federal analogs, but can contain important differences. States frequently collaborate with the federal antitrust agencies and/or other states on merger investigations. However, the Supreme Court has recognized that states are not required to do so, and have the right to make enforcement decisions that differ from other federal and state authorities.[[3]](https://www.jdsupra.com/legalnews/trends-in-state-antitrust-enforcement-42950/#_ftn3) States have sometimes exercised this authority in order to “fill the gap” of perceived under-enforcement at the federal level. For example, in June 2017, the California AG sued to block Valero Energy Partners LP’s acquisition of two petroleum terminals in Northern California, despite the FTC’s decision not to challenge the deal. Several months later, the parties abandoned the transaction. More broadly, in recent years, there has been a growing trend of robust and autonomous state antitrust enforcement, as illustrated by major investigations and enforcement actions by state coalitions in the healthcare, pharmaceutical, telecom, and technology sectors, among others. Consistent with this trend, Colorado AG Phil Weiser—who previously served as Deputy Assistant Attorney General in the DOJ Antitrust Division under the Obama administration—has affirmed his commitment to “protecting all Coloradans from anticompetitive consolidation and practices…whether or not the federal government acts to protect Coloradans.” In keeping with this mandate, the Amendment will bring Colorado increasingly in line with states such as California and New York that have demonstrated an appetite for aggressive, independent antitrust enforcement, even where it may depart (or conflict) with federal action.

### T-—1NC

#### ‘Antitrust laws’ are legislative---courts can’t ‘expand’ their scope

George A. Bibikos 20. J.D. from Widener Commonwealth Law School, Founder of GA Bibikos LLC. “BRIEF OF AMICI CURIAE THE PENNSYLVANIA COALITION FOR CIVIL JUSTICE REFORM, THE PENNSYLVANIA BANKERS ASSOCIATION, THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS, AND THE INSURANCE FEDERATION OF PENNSYLVANIA.” Received 9 January 2020 from Supreme Court Middle District on appeal from an opinion and order of the Commonwealth Court dated March 15, 2019, at Docket No. 58 CD 2018, affirming an order of the Bradford County Court of Common Pleas at Docket No. 2015IR0069 dated December 15, 2017, overruling preliminary objections and certifying immediate interlocutory review. https://paforciviljusticereform.org/wp-content/uploads/2020/11/PCCJR-Chesapeake.pdf

The court’s decision therefore (a) alters the rights of parties in Pennsylvania accused of engaging in anticompetitive behavior to defend against those claims in federal court, (b) creates new causes of action under the Consumer Protection Law, and (c) creates new remedies for antitrust violations that defendants would not face in federal court. These decisions are inherently legislative in nature. See, e.g., State v. Philip Morris, Inc., Nos. 96122017 and CL211487, 1997 WL 540913, at \*6 (Md. Cir. Ct. May 21, 1997) (“Altering common law rights, creating new causes of action, and providing new remedies for wrongs is generally a legislative function, not a judicial function.”). If these decisions are legislative in nature, then they are outside the purview of the courts and the executive.

Moreover, when the General Assembly prescribes specific statutory duties and remedies, those provisions must be strictly followed, 1 Pa.C.S. § 1504, and the courts cannot “expand coverage to subsume other remedies.” See Nat’l R. R. Passenger Corp. v. Nat’l Ass’n of R.R. Passengers, 414 U.S. 453, 458 (1974) (“A frequently stated principle of statutory construction is that when legislation expressly provides a particular remedy or remedies, courts should not expand the coverage of the statute to subsume other remedies.”). If the Consumer Protection Law is designed to protect buyers in consumer transactions and sets forth specific remedies, the courts are unable to expand the statute to subsume antitrust remedies.

#### Violation---the aff is a court ruling

#### Vote neg:

#### 1. Predictable limits---doubles the size of the topic and precedent advantages are infinite and unpredictable

#### 2. Ground---court mechanism skirt core disad links

### CP---1NC

#### The United States federal government should submit a proposal to significantly increase prohibitions on anticompetitive business practices by the private sector immunized by use of state action immunity to the Department of Defense for binding review.

#### The CP is key to national security harmonization.

Alden Abbott 3-8. Senior research fellow at the Mercatus Center, focusing on antitrust issues. He previously served as the Federal Trade Commission’s General Counsel from 2018 to early 2021. "Antitrust Policy and National Security Interests". Truth on the Market. 3-8-2022. https://truthonthemarket.com/2022/03/08/antitrust-policy-and-national-security-interests/

Conclusion

Enlightened antitrust enforcement, centered on consumer welfare, can and should be read in a manner that is harmonious with national-security interests.

The cooperation between U.S. federal antitrust enforcers and the DOD in assessing defense-industry mergers and joint ventures is, generally speaking, an example of successful harmonization. This success reflects the fact that antitrust enforcers carry out their reviews of those transactions with an eye toward accommodating efficiencies that advance defense goals without sacrificing consumer welfare. Close antitrust-agency consultation with DOD is key to that approach.

#### Institutionalizing DOD consultation is key to prevent foreign takeovers of firms.

Scott Fitzgerald & Noah Joshua Phillips 21. Congressman Scott Fitzgerald represents Wisconsin's 5th congressional district. Noah Joshua Phillips is Commissioner of the Federal Trade Commission. "Taking antitrust seriously means exposing foreign investments". Newsweek. 10-1-2021. https://www.newsweek.com/taking-antitrust-seriously-means-exposing-foreign-investments-opinion-1634867

The point is this: Foreign-controlled firms may not compete like other firms. That is a problem for antitrust.

The profit maximization assumption that U.S. antitrust enforcers attribute to firms is a function of free market principles. But what we're arguing is that this assumption and those principles may not hold true for firms controlled or subsidized by foreign governments. And our antitrust regulators need to understand better how foreign ownership or financial support might impact a firm's incentives.

When considering mergers or other conduct involving companies subsidized by a foreign government, antitrust agencies must follow the money to understand the motivations of those firms and incorporate that assessment into their enforcement decisions.

Antitrust enforcers need to understand the competitive dynamics of the markets they investigate. To determine how companies in front of them are likely to behave, enforcers make evidence-based guesses about their incentives. In a merger investigation, for example, they delve into the ownership structures of merging parties to determine competitive overlaps. Answering who "owns" or "controls" a firm is relevant to assessing whether common ownership—simultaneous ownership of stock in competing companies—might harm competition.

Information about control or financial support by a foreign government can be highly relevant to this analysis.

Identifying those firms is an excellent first step. Faced with a transaction or conduct involving such a company, U.S. antitrust enforcers may need to consult with the government authorities charged with protecting national security to determine whether the assumptions they are applying are correct. We should formalize this interagency information flow, so that national security agencies can and do flag foreign companies that compete differently.

Cooperation and coordination with national security experts is nothing new for antitrust enforcers. The Federal Trade Commission has worked closely with the Defense Department for decades on mergers that implicate national security. Antitrust enforcers may need to grapple with such concerns more frequently as foreign-controlled firms expand in their prominence. As state control over and support for the activities of foreign firms in the U.S. becomes more relevant, getting this right will become even more important.

#### China wants to take over---that collapses competitiveness and causes tech theft.

Tom Duesterberg et al. 22 Senior fellow at the Hudson Institute. AND Representatives Scott Fitzgerald and Greg Stanton. “Transcript: Should Companies Subsidized by China Be Permitted to Buy US Tech Firms?” 2-14-2022. https://www.hudson.org/research/17545-transcript-should-companies-subsidized-by-china-be-permitted-to-buy-us-tech-firms

Representative Stanton:

Well, first off, thanks for having me, Tom, and the Hudson Institute, for putting this event together. As Congressman Fitzgerald said, they get the word out on this important bill that was added to the COMPETES Act. And I want to say thanks to Congressman Fitzgerald, who’s been leading the way on this one for a while, for asking me to be his partner on the Judiciary Committee to move forward with this very important bill, the Foreign Merger Subsidy Disclosure Act.

Look, we’re in competition with China, and the United States is fully prepared to win this great global economic challenge that we have with China. But we want to make sure that that competition is done fairly, that there’s not an unfair advantage, and that there’s full disclosure of information as it relates to our economic competition with China. As Congressman Fitzgerald just mentioned, I think a lot of people would be surprised that as the government of China is subsidizing industry, both inside of China, and doing investment outside of China, that there isn’t full transparency, isn’t full disclosure of that information.

And as there’s so much merger activity going on in the United States, it is very important for the regulators to know about which companies are subsidized, and to what level, because that’s important for them to make the decision about supporting a merger, whether or not the new merged company may be engaging in anti-competitive behavior or have market forces other than traditional capitalism moving forward in the marketplace. And so they may, as they make decisions about whether to support those mergers, that’s incredibly important information for them to have. We want the free flow of information, we want the free flow of capitalism. But we want to make sure it’s done for the appropriate capitalistic purpose. That is the reason for this bill, is to make sure that our antitrust regulators have full information as they’re making these important decisions.

Tom Duesterberg:

Well, just to go into some of the details, since this is put together as an antitrust measure, and it would be enforced by the antitrust agencies, in general, the Justice Department and the Federal Trade Administration. There are two reasons, it seems to me, that we have become worried about Chinese acquisition of U.S. companies. One, is the competitiveness angle that both of you talked about. But the other seems to be that Chinese tactics of acquiring sensitive technologies, sensitive in the sense of both affecting national security through dual-use technology, or affecting technologies of the future, such as leading-edge semiconductors, or commercial aviation, jet engines, and the like. Does your bill allow the antitrust agencies to sort of consider these other considerations, the national security and technology leadership issues, as they consider the information that would be become more transparent under your bill, should it become law? Representative Fitzgerald, do you want to…

Representative Fitzgerald:

Yeah. Yeah, let me just offer kind of a few more specifics that I think makes the legislation important, and that is that the government subsidies, they’re often used to acquire U.S. assets. And I think this is what you were getting at. Particularly those that do deal with, not only the strategic and emerging technologies, but also things that have a direct effect on what, I guess you could say, industrial policy. So yeah, not only is it being subsidized, and then obviously the dollars of the subsidies that are being used are now being moved to garner U.S. assets, but then the certain particular parts of those assets are very sensitive, and are something that quite honestly should be protected.

And I’ll just say, China’s very active in the U.S. economy. It’s not like you’ve got some country in Asia that wouldn’t necessarily try and do this in an overt way. I mean, it’s happening, it’s happening right in front of our eyes. And I think that it’s another reason that this piece of legislation is important. We have to be able to track the dollars, and then ultimately see how they’re being used. And that’s what this bill does.

Representative Stanton:

Tom, you mentioned this, specifically the semiconductor industry, that probably is example A as to why this legislation is so important. China has massively subsidized the semiconductor industry, as you know. The United States, over many decades, sadly have lost our global leadership position in the manufacturing of semiconductors. In my district is Intel, their major manufacturing entity is in Chandler, in Arizona. And so, we’ve lost so much position on that, we want to regain that position. And it’s important that regulators have that information as they make decisions. On issues of supply chain, that’s a national security issue. The United States losing our global position on semiconductors, also a national security issue. So yes, the regulators should have this information, and should be able to consider national security implications, as they make important decisions about emerging companies in the United States of America.

Representative Fitzgerald:

Let me, can I throw one more thing in there then, too? I mean, the other thing that regulators can make judgment calls on, and certainly make a determination as to how they want to pursue that, either, on a couple of different legal fronts, but they absolutely engage in predatory pricing, as well. So I think that what you’re going to see, is maybe giving some of the regulators the tools they need, to do just a much better job in monitoring what is going on out there. And again, that part of it, I think, is what many members, certainly, would assume was going on. And yet, there was kind of pushback, like, we don’t have the ability, we don’t have what we need to get that job done. And again, I think this bill lends itself to helping in that specific area.

Representative Stanton:

As you know, already the Treasury Department investigates when there’s foreign investment in American companies, looking at issues like the intellectual property and whether it has national security applications. This bill would give an additional layer of protection for American consumers, and the American public, as it relates to the possibility of intellectual property theft, or the issue that Congressman Fitzgerald just mentioned, and that is pricing that doesn’t make economic sense, but rather pricing to undermine the American marketplace, to create instability in the American marketplace, to create an international competitive advantage. That’s not an appropriate activity, and should be looked at. And this provides tools to the regulators to take a look at that important information.

Tom Duesterberg:

Okay, to be clear, the intent of the bill is really motivated by Chinese mercantilism, and subsidization of their industrial sector over the last 20 or 30 years. But the bill is written more broadly than that, and would apply to other nations as well. Russia is much in the news these days, and I’m sure it would apply to them. But there are other countries that tend to subsidize some of their industry.

We’ve had that long standing case in the World Trade Organization, about Airbus being largely subsidized, and competing with Boeing. But Representative Stanton, in the semiconductor industry, the trade association, the Semiconductor Industry Association, has released figures that seem to indicate that other countries such as Korea and Taiwan offer something approaching what could be called subsidies. Would this bill allow the antitrust authorities to take a look at others, besides Chinese companies, or for Russian companies, for that matter? And is that something you intend for it to do?

Representative Stanton:

Yes. Look, our greatest strength as the United States of America is, number one, the strength of our democracy, our form of government. And then our second greatest strength is our economy, the strength of the American economy, the greatest economy on planet earth. There are bad actors out there that would like to undermine both of those things, to hurt the United States of America. And it’s important that we take steps, as we’re talking about today, the Foreign Merger Subsidy Disclosure Act, provide tools to regulators to help protect those that may inappropriately use our economic system to try to undermine our great economy. We don’t want that to occur.

#### That causes great power war---China ends the LIO.

Alan W. Dowd 21. Senior fellow with the Sagamore Institute, where he leads the Center for America’s Purpose. "Capstones: China’s Dream, the World’s Nightmare – Sagamore Institute". 4-5-2021. https://sagamoreinstitute.org/capstones-chinas-dream-the-worlds-nightmare/

If China is indeed the future, if China is primed to “rule the world,” if China remakes the international order in its image, it won’t be pretty. A future dominated by the People’s Republic of China (PRC) will be demonstrably worse than the world we know. Just look at how Xi Jinping’s regime treats its own subjects—and plays its current role on the global stage.

NO RIGHTS

Those predictions aren’t outlandish. China already is the world’s top manufacturing nation, top exporting nation and second-largest economy. The PRC was the only major economy to emerge from 2020 claiming GDP growth (if we are to trust Beijing’s books). In the pandemic’s wake, China dislodged the U.S. as the world’s primary destination for foreign direct investment. PRC-backed firms are leaders in the global 5G and AI race. On the strength of a 517-percent binge in military spending since 2000, China bristles with anti-ship and anti-aircraft missiles, deploys a high-tech air force, has a growing and openly hostile presence in space, is doubling its nuclear arsenal, and boasts a 350-ship navy (now the world’s largest). Beijing’s growing cultural reach is evident in everything from its influence over Hollywood, to its puppet-master relationship with the NBA, to its 480 Confucius Institutes (designated by Washington as “part of the Chinese Communist Party’s global influence and propaganda apparatus”).

As President Joe Biden concludes, China is “the only competitor potentially capable of combining its economic, diplomatic, military, and technological power to mount a sustained challenge to a stable and open international system.”

Xi is doing exactly that. But the China challenge starts inside the PRC.

Xi is pursuing what he calls the “China Dream,” which enfolds goals such as sustained economic development, military power modeled after and matching that of the U.S., ideological conformity, “rejuvenation of the Chinese nation” and “complete unification of our country.” Making Xi’s “China Dream” come true is turning into a nightmare for his subjects.

Before leaving his State Department post, Secretary of State Mike Pompeo described what Xi is doing to Uighur Muslims as “genocide,” noting that Beijing has “forced more than a million people into internment camps in the Xinjiang region” and detailing “torture, sexual abuse…rape, forced labor…and unexplained deaths in custody.” As he took the baton from Pompeo, Secretary of State Antony Blinken agreed, affirming that “The forcing of men, women and children into concentration camps, trying to, in effect, re-educate them to be adherents to the ideology of the Chinese Communist Party—all of that speaks to an effort to commit genocide.”

The U.S. government isn’t alone. The Uighur Muslim region, according to a UN human-rights watchdog, “resembles a massive internment camp…a no-rights zone.” More accurately, all of China is a no-rights zone.

Xi’s China is a place where Christian churches are smashed and followers of Christ are sent to reeducation camps; Buddhist temples are bulldozed; Uighur men are packed into freight trains, Uighur women are forcibly sterilized and Uighur babies are forcibly aborted; and bishops and Nobel Peace Prize laureates die in prison. Under Xi, “Religious persecution has increased…with four communities in particular experiencing a downturn in conditions—Protestant Christians, Tibetan Buddhists, and both Hui and Uighur Muslims,” Freedom House reports. Amnesty International adds that “hundreds of thousands of people” are subjected to arbitrary arrest and detention in China, many of them for “peacefully exercising their rights to freedom of expression and freedom of belief.”

There’s a brutal logic to Xi’s brutal response to religious activity. The common denominator of most every religion is that there’s something above, something beyond, something bigger, more enduring and more important than the state. That notion represents a mortal threat to the legitimacy and durability of Xi’s regime, which is founded on the premise that people exist to serve the state—not to use their God-given gifts to serve others and God.

Xi’s capacity to control is growing ever more insidious. The PRC’s new “social credit system” is using mega-databases to monitor and catalogue every aspect of life of China’s 1.3 billion people—financial transactions, civil infractions, social-media postings, online activity—and then reward or sanction Xi’s subjects by feeding all that information to the National Development and Reform Commission, banking system and judicial system. PRC subjects with good social credit scores enjoy waived fees, lower utility bills, promotions and expedited overseas-travel approval, while those with poor social credit scores can be fired from their jobs, expelled from school, blocked from universities, or barred from accessing transportation.

An Orwellian surveillance state, more than a billion people denied religious freedom and other human rights, uncounted numbers tortured in reeducation camps, physicians jailed for following the Hippocratic Oath—that’s the kind of future and the kind of world Xi wants to build. As dissident leader Xu Zhangrun observed in the wake of Beijing’s criminal mishandling of COVID-19, “A polity that is blatantly incapable of treating its own people properly can hardly be expected to treat the rest of the world well.”

NO LIMITS

That idea—the notion that the PRC is incapable of treating the world any better than it treats its own—is not particularly profound. After all, this is a regime that over the decades has erased some 35 million of its subjects and tortured millions more. Regimes like this see no limits on their power. Since they believe nothing is above the state, they rationalize everything they do in the name of the state, the revolution, the Supreme Leader, the Dear Leader, the Core Leader (Xi’s new title). With no moral constraints on what they do, they believe their ends always justify their means.

That backwards worldview informs every aspect of decision-making in the PRC. This doesn’t mean Washington should refuse to talk with Beijing. But we must be ever vigilant when dealing with Xi. A regime that can justify imprisoning, torturing and killing its own people for peacefully practicing their faith can and will justify anything: seizing foreign lands, annexing international waterways, absorbing free peoples, stealing proprietary information, leveraging a pandemic to gain geopolitical advantage, breaking treaties. The godless USSR did those sorts of things, and so has the godless PRC.

“It is difficult to imagine that a government that continues to repress freedom in its own country,” President Ronald Reagan said of the USSR, “can be trusted to keep agreements with others.” And here we are yet again.

Experts in policy analysis, academia and military-security affairs conclude that Xi’s response to COVID-19 “was in breach of international law.” It pays to recall that COVID-19 was a local public-health problem that metastasized into a global pandemic due to Beijing’s incompetence or intention (either cause is reason not to entrust the future to Xi); that Xi’s regime lied about human-to-human transmission; that Xi’s regime willfully allowed millions to leave the epicenter in Wuhan for destinations around the world; that Xi’s regime carried out a premeditated plan to hoard 2.5 billion pieces of protective equipment as the virus swept the globe; that Xi’s regime blocked scientists from sharing findings about genome sequencing for weeks; that Xi’s regime continues to refuse to cooperate with international health agencies.

Xi’s intervention in Hong Kong and assertion of rule by remote-control is a brazen violation of an international treaty.

In and above the East China Sea, Beijing is constantly violating Japanese airspace and illegally loitering PRC coast guard vessels in Japanese waters. All the while, Beijing illegally claims some 90 percent of the South China Sea. Xi has backed up those claims by building 3,200 acres of illegal islands beyond PRC waters. These islands feature SAM batteries and warplanes. Xi promised the PRC wouldn’t militarize these islands. But as America and its allies learned at enormous cost last century, words don’t matter to men like Xi. Strength and the will to wield it are all that matters. Xi has both.

His goal is to control the resource-rich South and East China Seas, assert sovereignty claims in fait accompli fashion, and bring Chinese-speaking lands under his heel. Hong Kong—where only PRC-approved “patriots” are allowed to serve in government—was his first objective. Taiwan is next. Xi has made clear that democratic Taiwan “must and will be” absorbed by the communist Mainland. “We make no promise to abandon the use of force,” he warns. That explains Beijing’s ground-unit exercises, naval drills and bomber sorties around the island democracy.

Nor are Xi’s dreams and designs limited to his immediate neighborhood. Beijing is buying loyalty via development projects (see the Belt and Road Initiative), gaining a toehold in strategically located regions (see PRC control over ports in 18 countries), building an authoritarian bloc (see Russia, Serbia, North Korea, Iran, Venezuela), and fielding a power-projecting military capable of challenging the Free World across every region and every domain—land, sea, air, space and cyberspace. Xi’s relentless cybersiege of the Free World is siphoning away inventions, discoveries, technologies and wealth, penetrating defense firms, and interfering in elections.

For those with eyes to see—who know about the laogai camps and brutalization of Muslims and oppression of Tibet and assault on Christianity—none of this comes as a surprise. What’s surprising is that for 40 years, the trade über alles caucus convinced itself that such a regime could somehow be reformed by access to Buicks and Kentucky Fried Chicken.

TAKING AIM

Xi vows to build what he calls “a more just and reasonable new world order”—one that would supplant the liberal democratic order the United States and its allies began building after World War II. Importantly, the PRC not only has the intent to build a new world order; it has the resources and capabilities to do so—which helps explain why those who designed and uphold the existing world order are answering China’s challenge.

The PRC is a country of 1.3 billion people. Its GDP is already $14.1 trillion. Its economic tendrils—trade, banking, manufacturing, logistics, shipping, technology, super-computing, artificial intelligence—stretch into every part of the globe. All of this is fueling the PRC’s relentless military modernization and buildup. The PRC’s annual military expenditure is at least $261 billion. (Beijing recently announced an increase in military spending of 6.8 percent for 2021). The PRC has a 2-million-man military, the world’s largest navy and an intense focus on its neighborhood.

None of this would be a particularly worrisome if China embraced the values of liberal democracy—the rule of law, individual freedom, religious liberty, free enterprise and free trade, majority rule with minority rights. These are the foundation stones of what Churchill and FDR envisioned when they drafted the Atlantic Charter in 1941. Their vision led to what some call the “rules-based democratic order,” others the “liberal international order,” still others the “free world order.” These terms aim to describe how the peoples of the West have tried to make the world work and indeed manage the world: They embraced and encouraged democratic governance; developed rules and norms of behavior; promoted liberal (freedom-oriented) political and economic institutions; and called upon governments to live up to the responsibilities of nationhood by respecting international borders and promoting good order within those borders. The result has been an unparalleled spread of prosperity, an unprecedented expansion of free government and an unexpected remission of great-power war (which had become an increasingly-destructive feature of the centuries leading up to 1945).

To be sure, many regimes reject the values of liberal democracy. But the PRC, like the USSR before it, not only rejects those values; it possesses the military-technological-industrial-economic assets to challenge those values, erode the liberal international order built upon those values, and forge a new international order or at least bend the existing order toward its own goals. But don’t take my word for it.

“Some seek to challenge the international order—that is, the rules, values and institutions that reduce conflict and make cooperation possible among nations,” Blinken and Defense Secretary Lloyd Austin warn, pointedly adding that “China in particular is all too willing to use coercion to get its way.”

Former national security advisor Gen H.R. McMaster concludes that PRC “leaders believe they have a narrow window of strategic opportunity to…revise the international order in their favor.”

Before he retired as Indo-Pacific commander ,Adm. Phil Davidson told the Senate Armed Services Committee that Xi and his lieutenants are “accelerating their ambitions to supplant the United States and our leadership role in the rules-based international order.”

A NATO panel noted late last year that Beijing’s “approach to human rights and international law challenges the fundamental premise of a rules-based international order.”

These political, diplomatic and military leaders recognize that the liberal order has promoted the peace and prosperity of the Free World for nearly 75 years. But it doesn’t run on autopilot. If we want the benefits of a liberal order that sustains our way of life, we need to sustain the liberal order. As Robert Kagan of the Brookings Institution observes, “The present order will last only as long as those who favor it and benefit from it retain the will and capacity to defend it.” He adds, “Every international order in history has reflected the beliefs and interests of its strongest powers, and every international order has changed when power shifted to others with different beliefs and interests.”

Indeed, the liberal order and its guarantors have arrived at a turning point or breaking point: Either they will marshal the means and will to update, strengthen and preserve the existing order, or Beijing will dramatically transform it. Xi’s callous treatment of his own subjects and contempt for international norms offer a glimpse of what his “more reasonable new world order” would look like.

### K---1NC

#### Anti-trust is a psyop to restore the prestige of capital and cover for union busting---vote neg for socialist governance that refuses faith in competition

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

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

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

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

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

#### Capitalism drives extinction and structural violence

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

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

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

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

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

### DA---1NC

#### China competition bill centered on semiconductors passes through a fragile bipartisan consensus now---but Biden’s push is key.

Brittney Washington 3-18. "Why China Has U.S. Congress Focused On Computer Chips". Washington Post. 3-18-2022. https://www.washingtonpost.com/business/energy/why-china-has-us-congress-focused-on-computer-chips/2022/03/17/94ca635a-a608-11ec-8628-3da4fa8f8714\_story.html

A rare point of bipartisan consensus in Washington is the desire to spend more than $50 billion to bolster U.S. chip production. That’s a key part of bills pending in both houses of Congress intended to increase U.S. competitiveness with China. The bills are similar, but not identical, and differences on auxiliary issues threaten to stall their progress. 1. What does Congress propose to do? Both the Senate bill, passed last June, and the House bill, passed on Feb. 4, provide $52 billion over five years in emergency appropriations to support semiconductor research and development, legacy chip manufacturing, packaging research and microelectronics development. (Legacy chips are frequently used in cars, aircraft and a variety of military hardware.) The vast majority of that money, $50 billion, would be distributed through a new fund overseen by the Commerce Department; the other $2 billion would be overseen by the Defense Department. On top of that, the House version authorizes $45 billion for grants and loans to support supply chain resilience and manufacturing of critical goods in the U.S. Both measures authorize billions more for research and development at the National Science Foundation, the Energy Department and the National Institute of Standards and Technology. 2. Why is this necessary? While the U.S. is a leader in chip design, roughly 90% of global chip manufacturing capacity is elsewhere -- primarily in Taiwan and South Korea. That puts the U.S. at high risk of supply chain disruptions in the event of trade disputes, military conflicts or, as seen in the past two years, a pandemic. China’s state-led industrial policies, which aim to achieve self-sufficiency in all stages of chip production, also threaten U.S. competitiveness. The Chinese government plans to boost its domestic production using government subsidies and tax preferences. 3. How are the House and Senate bills different? The House bill would authorize $8 billion over two years in contributions to the Green Climate Fund, a United Nations-overseen initiative to help developing countries address climate change. Republicans are opposed; Representative Michael McCaul of Texas said the money would go to an “unaccountable U.N. slush fund.” The two bills also take different approaches to creating a new directorate at the National Science Foundation, the federal agency that funds basic research in science and engineering. The Senate’s version would focus it on technology issues. The House bill would focus it on research and development to address societal issues such as climate change and inequality. 4. In what way are the bills aimed at China? Neither bill explicitly states the U.S. is in a race with China for semiconductor sovereignty, but lawmakers regularly describe the bills that way. The Senate bill “will allow the United States to out-compete countries like China in critical technologies like semiconductors,” Majority Leader Chuck Schumer said last May. Any doubt that China is the real target of the bills is put to rest by the many provisions unrelated to semiconductors. 5. What are those provisions? Both bills include funding to develop alternatives to Chinese 5G telecommunications equipment, which the U.S. worries could be used to carry out cyberattacks or espionage. (China denies that.) Both bills would impose sanctions on China for its treatment of the predominantly Muslim Uighurs in the far-western region of Xinjiang and elevate the rank of U.S. special coordinator for Tibetan issues at the State Department. The Senate bill would require U.S. agencies to treat Taiwan’s elected government as the “legitimate representative of the people of Taiwan” and to stop using China’s preferred term, “Taiwan authorities.” The Senate would also impose additional sanctions on China for cyberattacks and theft of trade secrets. The House bill would allow Hong Kong residents to apply for temporary protected status in the U.S. and extend an export ban on certain crowd control equipment to the Hong Kong police. After the Senate passed its bill last June, Chinese lawmakers said the legislation “smears China’s development path and domestic and foreign policies” and “interferes in China’s internal affairs under the banner of innovation and competition.” 6. What are the prospects? There is broad agreement on the need to support domestic chip production and research, as both bills would do. A bipartisan group of over 140 lawmakers wrote to House and Senate leaders to urge them to make sure the $52 billion for chips is included in whatever final bill emerges from negotiations. House Majority Leader Steny Hoyer, a Maryland Democrat, said in March that he was hopeful the legislation would be finished in the coming months. The Biden administration stated its support for both chambers to reconcile differences and put a bill on the president’s desk “as soon as possible.”

#### Plan drains PC and trades off.

Peter C. Carstensen 21. Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, February 2021. “The “Ought” And “Is Likely” Of Biden Antitrust,” https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities. 15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate! 16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Chinese tech edge causes extinction from nuclear war and emerging tech.

Ash Jain 19. Senior fellow with the Scowcroft Center for Strategy and Security, where he oversees the Atlantic Council’s Democratic Order Initiative and D10 Strategy Forum; and Matthew Kroenig, deputy director for strategy in the Scowcroft Center for Strategy and Security and associate professor of government and foreign service at Georgetown University, 10/30/19, “Present at the Re-Creation: A Global Strategy for Revitalizing, Adapting, and Defending a Rules-Based International System,” <https://www.atlanticcouncil.org/wp-content/uploads/2019/10/Present-at-the-Recreation.pdf>

The system must also be adapted to deal with new issues that were not envisioned when the existing order was designed. Foremost among these issues is emerging and disruptive technology, including AI, additive manufacturing (or 3D printing), quantum computing, genetic engineering, robotics, directed energy, the Internet of things (IOT), 5G, space, cyber, and many others. Like other disruptive technologies before them, these innovations promise great benefits, but also carry serious downside risks. For example, AI is already resulting in massive efficiencies and cost savings in the private sector. Routine tasks and other more complicated jobs, such as radiology, are already being automated. In the future, autonomous weapons systems may go to war against each other as human soldiers remain out of harm’s way. Yet, AI is also transforming economies and societies, and generating new security challenges. Automation will lead to widespread unemployment. The final realization of driverless cars, for example, will put out of work millions of taxi, Uber, and long-haul truck drivers. Populist movements in the West have been driven by those disaffected by globalization and technology, and mass unemployment caused by automation will further grow those ranks and provide new fuel to grievance politics. Moreover, some fear that autonomous weapons systems will become “killer robots” that select and engage targets without human input, and could eventually turn on their creators, resulting in human extinction. The other technologies on this lisgt similarly balance great potential upside with great downside risk. 3D printing, for example, can be used to “make anything anywhere,” reducing costs for a wide range of manufactured goods and encouraging a return of local manufacturing industries.61 At the same time, advanced 3D printers can also be used by revisionist and rogue states to print component parts for advanced weapons systems or even WMD programs, spurring arms races and weapons proliferation.62 Genetic engineering can wipe out entire classes of disease through improved medicine, or wipe out entire classes of people through genetically engineered superbugs. Directed-energy missile defenses may defend against incoming missile attacks, while also undermining global strategic stability. Perhaps the greatest risk to global strategic stability from new technology, however, comes from the risk that revisionist autocracies may win the new tech arms race. Throughout history, states that have dominated the commanding heights of technological progress have also dominated international relations. The United States has been the world’s innovation leader from Edison’s light bulb to nuclear weapons and the Internet. Accordingly, stability has been maintained in Europe and Asia for decades because the United States and its democratic allies possessed a favorable economic and military balance of power in those key regions. Many believe, however, that China may now have the lead in the new technologies of the twenty-first century, including AI, quantum, 5G, hypersonic missiles, and others. If China succeeds in mastering the technologies of the future before the democratic core, then this could lead to a drastic and rapid shift in the balance of power, upsetting global strategic stability, and the call for a democratic- led, rules-based system outlined in these pages.63

### T---1NC

#### The scope of competition law defines it goals---attempts to meet current goals by banning practice are implementation questions.

ESE No Date. Erasmus School of Economics (as per their website, “The Erasmus Center for Economic and Financial Governance is an international multidisciplinary network of leading researchers and societal stakeholders initiated by researchers from Erasmus School of Economics and Erasmus School of Law. ECEFG conducts interdisciplinary research (law, economics and political science) and contributes to current debates in public and in academia on issues relating to European and global economic and financial governance.”). "Competition Policy". <https://www.eur.nl/en/ese/affiliated/ecefg/research/competition-policy>

Competition Policy

Research in this field consists of two broad areas. The first area – Theory and Implementation of Competition Law and Policy – refers to fundamental and applied research into topics that are traditionally seen as the core of competition policy. The second area – Scope of Competition Law and Policy – refers to all research on the effect and desirability of including new considerations in competition law and policy in order to address the challenges of our time, such as the increasing power of big tech firms, or global warming.

Theory and Implementation of Competition Policy

This covers for instance collusion, abuse of dominance, mergers, market regulation and state aid. Some examples of research topics are:

* the practices firms can use to engage in collusion and its welfare consequences;
* the practices firms can use to abuse a dominant position and its welfare consequences;
* which practices can be considered proof of such activities;
* how to regulate access to a market;
* how to properly assess the effects of a particular practice or merger;
* the practices, by which the state and public authorities distort competition such as subisidies and tax measures
* the interpretation and application of EU and national competition law by Competition Authorities and Courts and the extent to which they achieve the goals of competition policy

Scope of Competition Policy

The effectiveness of European competition law and policy in combination with rapid technological changes have raised questions about its proper scope. Which policy objectives can and should be pursued by means of competition law and policy, and which should be delegated to other legal fields and policies? Some examples of specific research questions include:

* Can and should competition law be used to protect the privacy of consumers on the internet?
* Information gathered by firms can be used to increase their own profits. How does this affect consumers, and what does this depend on? Can and should competition law deal with market power derived from information gathering? For instance, should the big five tech giants be forced to divest activities?
* Should competition policy also include considerations of economic inequality or environmental effects?
* Can competition law remain effective if it is used for more than safeguarding fair competition?

#### That means the aff must replace the consumer welfare standard.

Trevor Wagener 21. "The Curse of Tradeoffs: Neo-Brandeisians vs. Consumers". Disruptive Competition Project. 5-21-2021. https://www.project-disco.org/competition/052121-the-curse-of-tradeoffs-neo-brandeisian-antitrust-versus-consumers/

Neo-Brandeisians seek to replace the longstanding objective and principles-based framework of the consumer welfare standard in antitrust enforcement with an amorphous, process-based framework guided by an ethos one Neo-Brandeisian described as: “Big is bad. Just don’t let big firms merge. The end.” A movement dedicated to replacing a consumer welfare-maximizing approach with an assortment of competing goals has proven unable to offer a quantified, systematic cost-benefit analysis justifying such a radical change, instead relying upon anecdotal evidence and moving prose. The many goals of the Neo-Brandeisian approach are often rhetorically appealing, but the rhetoric hides a simple truth: When you target every variable, you effectively target none. Addressing a wide range of goals through antitrust policy requires de-emphasizing consumer welfare, creating fundamental tradeoffs expected to harm consumers relative to the status quo.

The willingness to sacrifice consumer welfare in order to achieve other ends is a defining characteristic of Neo-Brandeisian antitrust. This is illustrated by concrete Neo-Brandeisian critiques, which typically emphasize perceived harms to businesses rather than harms to consumers. For example, the Neo-Brandeisian activist group American Economic Liberties Project (AELP) published a pair of policy briefs on May 3 that criticize online service operators for a litany of purported inconveniences to businesses over a combined 22 pages, but struggle to quantify any harms to ordinary consumers and users. Those few purported harms to consumers that AELP raised are distinctly qualitative rather than quantitative, consistent with the broader reluctance of prominent Neo-Brandeisian thinkers to conduct a rigorous quantitative cost-benefit analysis of their antitrust policy prescriptions relative to the consumer welfare standard.

#### Vote negative for limits and ground---only “change goals” creates key economy and legal disads over what antitrust should consider---the affs topic races to tiny exemptions and technical changes with no core ground.

## ADV 1

### AT: Pharma monopolies---1NC

#### Pharma monopolies don’t stifle innovation

Joanna Shepherd, 18 (Professor of Law, Emory University School of Law. " Consolidation and Innovation in the Pharmaceutical Industry: The Role of Mergers and Acquisitions in the Current Innovation Ecosystem," *Journal of Health Care Law and Policy*, 8-28-18, <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1356&amp;context=jhclp>

Note: M&A = Mergers & Acquisitions

Despite concerns among some researchers and competition agencies that consolidation in the pharmaceutical industry reduces innovation, aggregate innovation has held strong notwithstanding dramatic increases in M&A activity. The years 2014 and 2015 generated both record numbers of new drug approvals and record pharmaceutical M&A.152 In fact, although M&A deals and new drug approvals vary slightly year-to-year, the general pattern has been increasing aggregate innovation alongside increasing consolidation.153 Although trend data is not enough to prove a causal relationship between innovation and consolidation, when considered alongside the evolving innovation ecosystem, it suggests that M&A does not stifle drug innovation. Today, most drug innovation originates outside of traditional pharmaceutical companies, in biotech companies and smaller firms, where a culture of nimble decision-making and risk-taking facilitates discovery and innovation. In the later stages of the drug development process, the biotech companies routinely partner with large pharmaceutical companies to advance through late-stage clinical trials and produce, market, and distribute the drugs. 154 In this current ecosystem, biotech and pharmaceutical firms are able to specialize in what they do best, bringing expertise and efficiencies to the innovation process. The specialization has led to an environment in which approximately three-fourths of new drugs are externally-sourced. 155 Internal R&D is no longer the primary source, or even an important source, of drug innovation.

### AT: Vaccines---1NC

#### Doesn’t solve vaccines---people just won’t take them.

#### It’s too late---public can’t be reassured vaccines are safe.

German Lopez, 21. Staff writer, Vox. “How political polarization broke America’s vaccine campaign.” Jul 6, 2021. https://www.vox.com/2021/7/6/22554198/political-polarization-vaccine-covid-19-coronavirus

The Covid-19 epidemic in the United States risks becoming a tale of “two Americas,” as Anthony Fauci warned in June: a nation where regions with higher vaccination rates are able to beat back the coronavirus, while those with lower vaccination rates continue to see cases and deaths. At face value, it’s a division between those who are vaccinated and those who are unvaccinated. But, increasingly, it’s also a division between Democrats and Republicans — as vaccination has ended up on one of the biggest dividing lines in the US, political polarization. Polarization, of course, is not a new force in American life. Growing polarization doesn’t just mean a Congress more starkly dividing between left and right; it means people’s political views now closely hew with views on seemingly unrelated issues, like which movies should win Oscars. But throughout the pandemic, polarization has manifested as stark differences in how Democrats and Republicans each approach Covid-19, from hand-washing to social distancing to masking. That polarization has now opened political rifts in vaccination rates, with people’s decision to get a shot or not today a better predictor of states’ electoral outcomes than their votes in prior elections. It’s led the US’s vaccination campaign to hit a wall, missing President Joe Biden’s July 4 goal. Meanwhile, the more infectious delta variant is spreading, raising the risk of infections, hospitalizations, and deaths in unvaccinated — and often heavily Republican — areas. To put it bluntly: Polarization is killing people. “That’s a perfectly accurate interpretation,” Seth Masket, a political scientist at the University of Denver, told me. “We’re at the point where people are choosing riskier personal behavior due to following the lead of people in their party.” It didn’t have to be this way. Perceptions about Covid-19 weren’t too divided by political party very early on in the pandemic. And while America’s peers around the world certainly saw political debates and conflicts over Covid-19, they by and large managed to avoid the level of polarization that the US has seen, with other nations working across political lines to take the virus seriously and suppress it. But the US began to walk a different path once then-President Donald Trump downplayed the coronavirus — deliberately, as he later revealed — and Republican leaders and the rank and file followed his lead. Whether you took the pandemic seriously very quickly became another way to affiliate with red or blue teams, leading some to do things more dangerous for their own well-being just because of their political party affiliation. “Partisanship is now the strongest and most consistent divider in health behaviors,” Shana Gadarian, a political scientist at Syracuse University, told me. Overcoming this will require confronting an all-encompassing trend in American political life. And while experts have some ideas about the best way to reach Republicans, it may be too late; with a year and a half of Trump and other Republicans downplaying the risk of the virus, there’s a chance that views around Covid-19 — and the vaccine as a result — are just too baked in now.

### AT: Disease---1NC

#### Disease won’t cause extinction.

Amesh Adalja 21. Senior scholar at the Johns Hopkins Center for Health Security and an infectious disease critical care and emergency medicine physician, 4/19/21. “WHAT WOULD HAPPEN IF A PANDEMIC KILLED 10 PERCENT OF HUMANS?” <https://www.inverse.com/science/pandemic-wipes-out-10-percent-of-population-future-earth-2121>

Covid-19 has shown us just how serious the threat of an emerging infectious disease can be — and just how underprepared we are to handle another like it. Amesh Adalja, a senior scholar at the Johns Hopkins Center for Health Security and an infectious disease critical care and emergency medicine physician, tells Inverse that it’s unlikely future pandemics will ever reach the toll on human life caused by something like the Black Death. Still, a disease with even a fraction of plague’s mortality would be a global concern.

Inverse spoke to Adalja about how a deadly pandemic could transform the Earth by 2121. His response has been edited and condensed:

Many people think about pandemics as extinction events for the human species, but it's highly unlikely you find a pandemic able to do something on that level. Our mitigation efforts, as well as idiosyncrasies in the human immune response, are likely to leave some segment of the population able to withstand the infection. It's much more valuable to think about infectious diseases that have mortality rates of around 20 percent.

## ADV 2

### Turn---1NC

#### The plan shreds federalism.

Lynn Fitch et al. 21. Lynn Fitch Attorney General State of Mississippi. Krissy C. Nobile Counsel of Record Justin L. Matheny STATE OF MISSISSIPPI. STEVE MARSHALL Attorney General State of Alabama. MARK BRNOVICH Attorney General State of Arizona. LESLIE RUTLEDGE Attorney General State of Arkansas. WILLIAM TONG Attorney General State of Connecticut. ASHLEY MOODY Attorney General State of Florida. CHRISTOPHER M. CARR Attorney General State of Georgia. LAWRENCE G. WASDEN Attorney General State of Idaho. THEODORE E. ROKITA Attorney General State of Indiana. TOM MILLER Attorney General State of Iowa. DANIEL CAMERON Attorney General Commonwealth of Kentucky. JEFF LANDRY Attorney General State of Louisiana. AARON M. FREY Attorney General State of Maine. DANA NESSEL Attorney General State of Michigan. KEITH ELLISON Attorney General State of Minnesota. AUSTIN KNUDSEN Attorney General State of Montana. GURBIR S. GREWAL Attorney General State of New Jersey. ELLEN F. ROSENBLUM Attorney General State of Oregon. ALAN WILSON Attorney General State of South Carolina. KEN PAXTON Attorney General State of Texas. SEAN D. REYES Attorney General State of Utah. MARK R. HERRING Attorney General State of Virginia. PATRICK MORRISEY Attorney General State of West Virginia. “Brief for the States of Mississippi, Alabama, Arizona, Arkansas, Connecticut, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Michigan, Minnesota, Montana, New Jersey, Oregon, South Carolina, Texas, Utah, Virginia, and West Virginia as Amici Curiae in Support of Petitioner.” https://www.supremecourt.gov/DocketPDF/20/20-1018/170601/20210301174920932\_pdf%20use%20-%20final%20-%20LREAB%20-%20state%20action%20immunity%203-1-21.pdf

I. Parker Immunity is Rooted in State Sovereignty and Federalism, and a Denial of that Immunity is Immediately Appealable.

The purpose of state-action immunity is to protect the States’ sovereign interests. In Parker, this Court recognized that subjecting state action to antitrust suits would be an affront to Federalism and the notion of dual sovereignty embedded in the Constitution. See Parker, 317 U.S. at 350-52; N.C. Dental, 574 U.S. at 503. Parker refused to hold that Congress had acted to interfere with state sovereignty in that way without an express indication it had intended to do so. Parker, 317 U.S. at 350-52. That reasoning rightly rests on the premise that state sovereignty is an integral part of the federal structure created by the Constitution. See id. at 351 (“[U]nder the Constitution, the states are sovereign, save only as Congress may constitutionally subtract from their authority[.]”); N.C. Dental, 574 U.S. at 503 (“[Parker] recognized Congress’ purpose to respect the federal balance and to ‘embody in the Sherman Act the federalism principle that the States possess a significant measure of sovereignty under our Constitution.’” (quoting Cmty. Commc’ns Co. v. Boulder, 455 U.S. 40, 53 (1982))).

Since Parker, this Court’s decisions only reinforce that state-action immunity is “premised on an understanding that respect for the States’ coordinate role in government counsels against reading the federal antitrust laws to restrict the States’ sovereign capacity to regulate their economies and provide services to their citizens,” F.T.C. v. Phoebe Putney Health Sys., 568 U.S. 216, 236 (2013), and “exists to avoid conflicts between state sovereignty and the Nation’s commitment to a policy of robust competition,” N.C. Dental, 574 U.S. at 504. Affording immunity to States and their delegates “preserves to the States their freedom under our dual system of federalism” to “administer state regulatory policies free of the inhibitions of the federal antitrust laws.” Lafayette v. Louisiana Power & Light Co., 435 U.S. 389, 415 (1978) (plurality opinion).

#### American federalism is modeled---it solves global wars.

Steven G. Calabresi 95. Associate Professor, Northwestern University School of Law. B.A. 1980, J.D. 1983, Yale "A Government of Limited and Enumerated Powers": In Defense of United States v. Lopez Source: Michigan Law Review, Vol. 94, No. 3 (Dec., 1995), pp. 752-831 Published by: The Michigan Law Review Association Stable URL: http://www.jstor.org/stable/1289947

The bitter harvest of the nationalist revolution was gathered in this century with the slaughter of the First and Second World Wars and with the fifty-year Cold War that then followed. These events finally made clear to the great-great-grandchildren of the Enlight- enment that celebration of the nation state could lead to Nazism and Stalinism, to war and genocide, and to totalitarianism and the most complete loss of freedom humankind ever experienced. By 1945, the democratic revolution was still in full flow, but the nationalist revolution was not. World leaders scrambled to replace the still collapsing colonial, imperial transnational structures with new federal and confederal transnational structures.

The fifty years since then have seen the birth of the United Nations, the North Atlantic Treaty Organization (NATO), the European Union, the European Convention on Human Rights, the British Commonwealth, the Confederation of Independent States (CIS), the GATT, the NAFTA, and countless other transnational "federal" entities of varying degrees of importance.24 Many of these were openly inspired by the success story of American federalism, which, for example, led many Europeans to want to build a Common Market that could become a "United States of Europe." While many of these new democratic transnational entities are very weak, they nonetheless have developed important powers: they have helped to keep the peace, and in some instances, as with the European Union, they show real potential for some day attaining essentially all the attributes of sovereignty commonly associated with a federal nation-state, like the United States. The growth and success of transnational confederal forms since 1945 is truly aston- ishing and rightly is viewed by many - either with alarm or with hope - as holding out the eventual prospect of a future global fed- eral government or at least the prospect of several continental-sized federal governments.

At the same time, U.S.-style constitutional federalism has become the order of the day in an extraordinarily large number of very important countries, some of which once might have been thought of as pure nation-states. Thus, the Federal Republic of Germany, the Republic of Austria, the Russian Federation, Spain, India, and Nigeria all have decentralized power by adopting consti- tutions that are significantly more federalist than the ones they re- placed.25 Many other nations that had been influenced long ago by American federalism have chosen to retain and formalize their fed- eral structures. Thus, the federalist constitutions of Australia, Can- ada, Brazil, Argentina, and Mexico, for example, all are basically alive and well today.

As one surveys the world in 1995, American-style federalism of some kind or another is everywhere triumphant, while the forces of nationalism, although still dangerous, seem to be contained or in retreat. The few remaining highly centralized democratic nation- states like Great Britain,26 France, and Italy all face serious secessionist or devolutionary crises.27 Other highly centralized nation- states, like China, also seem ripe for a federalist, as well as a demo- cratic, change. Even many existing federal and confederal entities seem to face serious pressure to devolve power further than they have done so far: thus, Russia, Spain, Canada, and Belgium all have very serious devolutionary or secessionist movements of some kind. Indeed, secessionist pressure has been so great that some federal structures recently have collapsed under its weight, as has hap- pened in Czechoslovakia, Yugoslavia, and the former Soviet Union.

All of this still could be threatened, of course, by a resurgence of nationalism in Russia or elsewhere, but the long-term antinational- ist trend seems fairly secure. There is no serious intellectual sup- port for nationalism anywhere in the world today, whereas everywhere people seem interested in exploring new transnational and devolutionary federal forms.28 The democratic revolution that was launched in Philadelphia in 1776 has won, and now it seems that democrats everywhere join Madison in "cherishing the spirit and supporting the character of federalists."29