# Off

## Litigation

#### Litigation is controlled now---the aff kills it

Emily S. Taylor Poppe 21, Assistant Professor of Law at the University of California, Irvine School of Law, “Institutional Design for Access to Justice”, UC Irvine Law Review, 11 U.C. Irvine L. Rev. 781, February 2021, Lexis

This law-centric orientation is strikingly different from that of most Americans, despite popular claims about their litigiousness. Most individuals never even identify the civil legal problems they experience as "legal." Only a tiny minority will ever seek legal advice in response to a problem, and most are more likely to do nothing than to file a lawsuit. Decades of empirical scholarship have confirmed that despite the prevalence of civil legal problems in everyday life, there is remarkably little recourse to formal law. [FOOTNOTE BEGINS] DAVID M. ENGEL, THE MYTH OF THE LITIGIOUS SOCIETY: WHY WE DON'T SUE 3 (2016) (noting that "specious claims of a litigation explosion have been made so often that they have rooted themselves in the national psyche"). [FOOTNOTE ENDS]

#### Antitrust litigation is uniquely complex and resource-intensive---a spike trades-off with judicial functioning in other areas

Daniel R. Warren 15, JD from the Boston University School of Law, BS from Ohio State University, “Stress Fractures: The Need to Stop and Repair the Growing Divide in Circuit Court Application of Summary Judgment in Antitrust Litigation”, Review of Banking and Financial Law, 35 Rev. Banking & Fin. L. 380, Lexis

A. Summary Judgment Can Cut Short Extreme Costs Antitrust litigation can involve enormous discovery costs, particularly when antitrust litigation overlaps with class action litigation. Due to the wide scope of many antitrust claims, discovery can implicate a broad range of documents, records, interrogatories, and depositions. In fact, "[s]trategically minded" plaintiffs can take advantage of antitrust law's "onerous discovery costs" by requiring the defendant "to respond to wide-ranging interrogatories, produce documents, and prepare for and defend depositions" with only a "facially plausible allegation" of an antitrust violation. These costs can take a very large toll on both large and small businesses. The legal hours necessary to answer and address discovery challenges can also impose extreme costs. Plaintiffs can often use discovery costs as a weapon against defendants in antitrust litigation. The Seventh Circuit Court of Appeals stated that "antitrust trials often encompass a great deal of expensive and time consuming discovery and trial work" in explaining that the "very nature" of antitrust litigation should encourage summary judgment. The court's language here supports [\*389] the idea that in antitrust litigation, summary judgment has a special value, greater even than its normal use in other areas of the law. Summary judgment can be used to cut short lengthy litigation where parties have already accrued extreme costs from discovery and one party still cannot produce a genuine issue of material fact. In antitrust litigation, the value of summary judgment to mitigate discovery costs through shortening litigation is elevated to a special importance even greater than normal for three reasons. First, antitrust litigation normally involves large organizations, which magnifies the costs of those firms going through the discovery process. Large firms have a great number of involved employees and departments, all of which would likely be subject to the broad discovery that is characteristic of antitrust litigation. Summary judgment, though normally considered after discovery, is a procedural weapon available at nearly any point in this process, as "a party may file a motion for summary judgment at any time until 30 days after the close of all discovery." The existence of a stay for extension of discovery shows that summary judgment need not automatically wait for discovery's completion, and thus can be an invaluable safeguard against otherwise incredibly costly discovery. This safeguard allows summary judgment to be a powerful tool to radically lower discovery time and costs without "railroad[ing]" the other party. Second, antitrust litigation is normally a slow process that takes a great deal of time. The amount of time necessary to process and review evidence produced by discovery leads to incredible legal costs, often disproportionately placed on the defendant firm. The plaintiff has the advantage over the defendant in deciding the scope of discovery costs, and may often tailor its claim in such a way as to avoid the discovery costs that a defendant's counterclaim may reflect [\*390] back on the plaintiff. These lengthy trials can be effectively truncated by summary judgment, and thus summary judgment's normal value is even greater in the world of antitrust litigation where protracted trials are the norm. Finally, the vast amount of evidence necessary to prove the elements of an antitrust claim contribute to the large discovery costs tied to antitrust litigation by overwhelming judges' ability to reign in discovery costs. Currently, we rely on judges to limit the range of discovery requested, but in the context of antitrust litigation, judges have difficulty dealing with the broad variety of evidence that may be called for. One analysis of the power of discovery described it as a costly and potentially abusive force, and determined judges' abilities to limit discovery costs on their own as "hollow" at best: A magistrate supervising discovery does not--cannot--know the expected productivity of a given request, because the nature of the requester's claim and the contents of the files (or head) of the adverse party are unknown. Judicial officers cannot measure the costs and benefits to the requester and so cannot isolate impositional requests. Requesters have no reason to disclose their own estimates because they gain from imposing costs on rivals (and may lose from an improvement in accuracy). The portions of the Rules of Civil Procedure calling on judges to trim back excessive demands, therefore, have been, and are doomed to be, hollow. We cannot prevent what we cannot detect; we cannot detect what we cannot define; we cannot define "abusive" discovery except in theory, because in practice we lack essential information. Even in retrospect it is hard to label requests as abusive. How can a judge distinguish a dry hole (common in litigation as well as in the oil business) from a request that was not justified at the time? [\*391] Summary judgment can also reduce costs to both parties by reducing time and discovery costs to the parties, and to the judicial system itself, by cutting short lengthy litigation. Both sides often incur costs from employing experts in various areas, researching and producing evidence necessary to prove or disprove elements of antitrust actions, and in the great many legal hours necessary for both plaintiffs and defendants--not to mention costs to the state--during lengthy litigation that is often fruitless due to an "incentive to file potentially equivocal claims." Antitrust law is structured in such a way as to have a "special temptation" for what would otherwise be frivolous litigation. As antitrust law is, by its very nature, between competitors, there is significant motivation to force costs on to other firms, perhaps even through frivolous legal claims or intentionally imposing other large legal costs. Costs can also multiply in antitrust litigation because antitrust actions are often combined with other particularly complex areas of law, such as patent law or class actions. Class actions particularly in the antitrust context can make trials "unmanageable." Combining two already complex areas of law is a recipe for large legal costs and prolonged litigation. The value of cutting costs short cannot be overstated, as antitrust litigation takes place in the arena of business competition. This means that firms are already engaged in close competition for antitrust cases to be relevant, and thus unnecessary costs can further distort the market.

#### Efficient court review underpins patent-led innovation---that stops nuclear war and a range of existential threats

Robert J. Rando 16, Founder and Lead Counsel of The Rando Law Firm P.C., Fellow of the Academy of Court-Appointed Masters, Treasurer for the New York Intellectual Property Law Association, Chair of the Federal Bar Association Intellectual Property Law Section, “America’s Need For Strong, Stable and Sound Intellectual Property Protection and Policies: Why It Really Matters”, IP Insight, June 2016, p. 12-14 [language modified] [abbreviations in brackets]

Robert F. Kennedy’s speech, which includes his reference to the oft-quoted “interesting times” curse, applies throughout history in many contexts and, indeed, with both negative and positive connotation. While he focused on the struggles for freedom and social justice, the requisite ascendancy of the individual over the state, and the institution and integration of those ideals for the greater good, he also promoted the goals of greater global unity, cooperation and communication, which were, and could be, achieved by advances in technology. And, as noted in the excerpt, he championed “the creative energy of men.” Intellectual Property in “Interesting Times” It is beyond question that starting with the last decade of the twentieth century and throughout the first two decades of the twenty-first century, when it comes to matters relating to intellectual property, we have been living in “interesting times.” Some may interpret these interesting times as defined by the curse and others may view it by the ordinary meaning of “interesting.” In either case, those of us that toil in the fields of patents, copyrights, trademarks, trade secrets, and privacy rights have experienced an unprecedented sea change in the way those rights are procured, protected and enforced. Likewise, and perhaps more importantly, even those of us that do not practice in these areas of law, as well as the general public, have been, and continue to be, impacted by the consequences of these changes (both positive and negative). The Changes In Intellectual Property Law Examples of some of the changes in intellectual property law are: the sweeping 2011 legislative changes to the patent laws under the America Invents Act (AIA), which impact is only beginning to be fully appreciated; the various proposals for patent law reform, on the heels of the AIA, beginning with the 113th and 114th Congress; the copyright laws Digital Millennium Copyright Act (DMCA) and numerous 114th Congressional proposed copyright law changes; the recently enacted federal trade secret law (Defend Trade Secrets Act of 2016 (DTSA))2; the impact of the internet, domain names and globalization on Trademark law; the intellectual property law harmonization requirements included in various global/regional trade agreements; and the proliferation of devices (both invasive and non-invasive) that defy any rational basis for believing we can still adhere to the republic’s libertarian understanding of the right to privacy. Without engaging in “chicken and egg” analysis, it is sufficient to observe that technological advancement, societal needs, globalization, existential threats, economic realities, and political imperatives (or what James Madison referred to in the Federalist Papers No. 10 as factious governance), have combined to create the “interesting times” for the United States [IP] intellectual property laws. What was said by Bobby Kennedy in 1966 remains true today. We live in dangerous and uncertain times. Many of the existential threats remain the same (nuclear war and proliferation, [genocides] ~~genocidal maniacs~~ and natural disease) and some are new ([hu]manmade disease, greater awareness of environmental changes and possibly human interrelationship factors, and the unintended consequences of genetic manipulation and robotic technologies). The danger and uncertainty that pervades changes in intellectual property laws, though not an existential threat of the same manner and kind, correlates with the threat and remains “more open to the creative energy of man than any other time in history.” Apropos the creative energy of man, there is a non-coincidental congruence and convergence of activity across and among the three branches of government, occurring almost simultaneously with the congruence and convergence of the rapid developments of technological innovation across various scientific disciplines and the information age, reflected in the transformation of the [IP] intellectual property laws in the United States. Patents The passage of the AIA was a culmination of efforts spanning several years of Congressional efforts; and the product of a push by the companies at the forefront of the twenty-first century new technology business titans. The legislation brought about monumental changes in the patent law in the way that patents are procured (first inventor to file instead of first to invent) and how they are enforced (quasi-judicial challenges to patent validity through inter-party reviews at the Patent Trial and Appeals Board (PTAB)). The 113th and 114th Congress grappled with newly proposed patent law reforms that, if enacted, may present additional tectonic shifts in the patent law. Major provisions of the proposals include: fee-shifting measures (requiring loser pays legal fees - counter to the American rule); strict detailed pleadings requirements, promulgated without the traditional Rules Enabling Act procedure, that exceed those of the Twombly/Iqbal standard applied to all other civil matters in federal courts, and the different standards applicable to patent claim interpretation in PTAB proceedings and district court litigation concerning patent validity. The Executive and administrative branch has also been active in the patent law arena. President Obama was a strong supporter of the AIA3 and in his 2014 State Of The Union Address, essentially stated that, with respect to the proposed patent law reforms aimed at patent troll issues, we must innovate rather than litigate.4 Additionally, the USPTO has embarked upon an energetic overhaul of its operations in terms of patent quality and PTO performance in granting patents, and the PTAB has expanded to almost 250 Administrative Law Judges in concert with the AIA post-grant proceedings’ strict timetable requirements. The Supreme Court, not to be outdone by the Articles I and II branches of the U.S. government, has raised the profile of patent cases to historical heights. From 1996 to the 2014-15 term there has been a steady increase in the number of patent cases decided by the SCOTUS5. The 2014-15 term occupied almost ten percent of the Court’s docket. Prior to the last two decades, the Supreme Court would rarely include more than one or two patent cases in a docket that was much larger than those we have become accustomed to from the Roberts’ Court6. While the SCOTUS activity in patent cases is viewed by some as a counter-balance to the perceived Federal Circuit’s pro-patent and bright line decisions, it can just as assuredly be viewed as decisions rendered by a Court of final resort which does not function in a vacuum devoid of the social, economic and political winds of the times. In recognition of the effect new technologies have on the patent law, the politicization of intellectual property law matters, especially patent law (through factious governing principles of the political branches of the government), and the maturation of the Federal Circuit patent law jurisprudence, the SCOTUS has rendered opinions in cases that impact, and perhaps are/were intended to mitigate the concerns regarding, some of the vexing issues confronting the patent community today (e.g., non-practicing entities or in the politicized parlance “patent trolls,” the intersection of patent and antitrust laws in Hatch-Waxman so called “pay-for-delay” settlements between Branded and Generic pharma companies, and the fundamental tenets that comprise the very heart of what is patent eligible subject matter). Copyrights The advent and ubiquity of the internet, social media and digital technologies (MP3s, Napster, Facebook, YouTube, and Twitter) represents the impetus for changes in the Copyright laws. The DMCA addressed the issues presented by these advances or changes in the differing media and forms of artistic impressions. The proliferation of digital photos, graphic designs and publishing alternatives, as well as adherence to globalization harmonization have given rise to changes in the statutory law and jurisprudence in this area of intellectual property law. Additionally, there is an overlap of patent rights and copyrights for software driven by the ebb and flow of the strength of each respective intellectual property protection. Notably, the Patent and Copyright Clause7, in addition to Author’s writings, has been viewed as discretely applying to two different types of creativity or innovation. When drafted the “sciences” referred not only to fields of modern scienctific inquiry but rather to all knowledge. And the “useful arts” does not refer to artistic endeavors, but rather to the work of artisans or people skilled in a manufacturing craft. Rather than result in ambiguity or confusion, perhaps the Framers were either quite prescient or, just coincidentally, these aspects of the Patent and Copyright Clause have converged. For example, none other than the famous Crooner, Bing Crosby, benefited from both protections. Well-known as a prolific and popular recording artist he also benefited from his investments in the, then innovative, recording technologies. Similarly, the Beatles, Beach Boys, as well as many other rock and roll artists, experimental efforts in music performance, recording and production, helped to transform the music industry in both copyrightable artistic expression and patentable inventions. Similarly, film, literary and digital arts reap benefits at the crossroads of both copyright and patent protections. Trademarks Trademark laws have been impacted by numerous changes in the business landscape. They include the internet, Domain names, international rights in a global economy, different venues and avenues for branding, marketing and merchandising, global knock-offs from nations that have a less than stellar respect for intellectual property rights, and international trade agreements. More recently, politicization (or perhaps political correctness) has creeped into the trademark law arena pitting branding rights and protections against first amendment rights. Trade Secrets As with Copyright and Trademark law, trade secrets law includes some of the same issues related to trade agreements. TRIPS required members to have trade secret protection in place. Initially, the United States compliance with this requirement has relied upon the trade secret law of the individual states. That compliance may be supplanted by the recently enacted DTSA. Similarly, the Trans Pacific Partnership (TPP) trade agreement contains intellectual property rights provisions that will trigger required changes to United States statutory Intellectual Property Laws. The proposed trade secret legislation also gives rise to several concerns. For instance, there is an absence of a specific definition for trade secret, as well as potential issues of federalism, conflict with state law precedent (despite no preemption), remedies, and the impact on employer/employee relations. There is also a real concern that the strengthening of trade secret protection in conjunction with the perceived weakening of patent protection (e.g., high rate of invalidating patents in post-grant proceedings before the PTAB and strict limitations on what is patent eligible subject matter) may very-well have the unintended consequence of contravening the purpose behind the Patent and Copyright Clause: “to promote the progress of the sciences and the useful arts.” Moreover, the incentive to innovate may very well be usurped by the advantage of withholding patent law disclosure of highly beneficial scientific advancements that directly affect the human condition, alter life expectancies and the evolution of the human species (rather than by mere “natural selection”), and what is the very essence of a human being (for better or worse). Thus, crippling innovation and the progress of the sciences and useful arts. Privacy Rights It is increasingly more difficult to function “off the grid.” The invasive and non-invasive attributes of the internet, the reliance upon the multitude of devices, social media, and information age technologies, and access to big data, all contribute to the decrease in and dilution of the right to privacy. Wittingly or otherwise, the strong libertarian roots of the republic have been replaced by dependence upon these modes of an information-age life. Commentary on the benefits and deficits of this reality are beyond the subject and purpose of this writing. Suffice to acknowledge that the right to privacy has been significantly reduced. The laws that protect these rights are in a constant struggle to maintain those rights while yielding to the demands of the lifestyle and security concerns. Laws that relate to cybersecurity in the global and domestic space create interplay with privacy rights. Legislation, trade agreements and jurisprudence all impact this area of intellectual property. Cross-border theft of trade secrets, competitor espionage, and loss of control over personal data are all implicated in the intellectual property law arena. America’s Need For Strong Intellectual Property Protection The need for strong protection of intellectual property rights is greater now than it was at the dawn of our republic. Our Forefathers and the Framers of the U.S. Constitution recognized the need to secure those rights in Article 1, Section 8, Clause 8. James Madison provides insight for its significance in the Federalist Papers No. 43 (the only reference to the clause). It is contained in the first Article section dedicated to the enumerated powers of Congress. The clause recognizes the need for: uniformity of the protection of IP rights, securing those rights for the individual rather than the state; and, incentivizing innovation and creative aspirations. Underlying this particular enumerated power of Congress is the same struggle that the Framers grappled with throughout the document for the new republic: how to promote a unified republic while protecting individual liberty. The fear of tyranny and protection of the “natural law” individual liberty is a driving theme for the Constitution and throughout the Federalist Papers. For example, in Federalist No. 10, James Madison articulated the important recognition of the “faction” impact on a democracy and a republic. In Federalist No. 51, Madison emphasized the importance of the separation of powers among the three branches of the republic. And in Federalist No. 78, Alexander Hamilton, provided his most significant essay, which described the judiciary as the weakest branch of government and sought the protection of its independence providing the underpinnings for judicial review as recognized thereafter in Marbury v. Madison. All of these related themes are relevant to the Patent and Copyright Clause and at the center of the intellectual property protections then and now. The Federalist Papers No. 10 recognition that a faction may influence the law has been playing itself out in the halls of congress in the period of time leading up to the AIA and in connection with the current patent law reform debate. The large tech companies of the past, new tech, new patent-based financial business model entities, and pharma factions have been the drivers, proponents and opponents of certain of these efforts. To be sure, some change is inevitable, and both beneficial and necessary in an environment of rapidly changing technology where the law needs to evolve or conform to new realities. However, changes not premised upon the founding principles of the Constitution and the Patent and Copyright Clause (i.e., uniformity, secured rights for the individual, incentivizing innovation and protecting individual liberty) run afoul of the intended purpose of the constitutional guarantee. Although the Sovereign does not benefit directly from the fruits of the innovator, enacting laws that empower the King, and enables the King to remain so, has the same effect as deprivation and diminishment of the individual’s rights and effectively confiscates them from him/her. Specifically, with respect to intellectual property rights, effecting change to the laws that do not adhere to these underlying principles, in favor of the faction that lobbies the most and the best in the quid pro quo of political gain to the governing body threatens to undermine the individual’s intellectual property rights and hinder the greatest economic driver and source of prosperity in the country. It is also important to recognize that the social, political and economic impact of strong protections for intellectual property cannot be overstated. In the social context, the incentive for disclosure and innovation is critical. Solutions for sustainability and climate change (whether natural, man-made or mutually/marginally intertwined) rely upon this premise. Likewise, as we are on the precipice of the ultimate convergence in technologies from the hi-tech digital world and life sciences space, capturing the ability to cure many diseases and fatal illnesses and providing the true promise of extended longevity in good health and well-being, that is meaningful, productive, and purposeful; this incentive must be preserved. In similar fashion, advancements in technologies related to the global economy and communications will enhance the possibilities for solutions to political and cultural conflicts that arise around the globe. Likewise, the United States economy has always benefited when it is at the forefront of innovation and achieves prosperity from its leadership role in technological advancements. Conclusion As was the case in 1966, how we move forward today, to solve the many problems facing our country and the broader global community in these “interesting times,” both within and without the laws affecting intellectual property rights, depends upon the “creative energy of man” which must prevail. An achievable goal, dependent on the strong, stable and sound protection of intellectual property rights.

## T Sector

#### Private sector” means all non-governmental persons or entities, including non-profits

Senate Report 95, (Senate Report, 1995, 104-1, “UNFUNDED MANDATE REFORM ACT OF 1995,” <https://www.congress.gov/congressional-report/104th-congress/senate-report/1>)

"Private sector" is defined to cover all persons or entities in the United States except for State, local or tribal governments. It includes individuals, partnerships, associations, corporations, and educational and nonprofit institutions.

#### That includes any universally applied standard, like CWS (Consumer Welfare Standard)

Phillips 18, commissioner on the Federal Trade Commission (Noah J. Phillips, 11-1-2018, “Before the Federal Trade Commission, “Competition and Consumer Protection in the 21st Century,” <https://www.ftc.gov/system/files/documents/public_events/1415284/ftc_hearings_session_5_transcript_11-1-18_0.pdf>)

Our second topic today is the consumer welfare standard. And I think most folks even out in the public know, this is the standard that we use across the board, mergers and conduct in courts and at agencies, to judge anticompetitive conduct. It is not only a standard that we in the U.S. apply, it is a standard that is used by competition agencies around the world. It is an economically-grounded standard, and it requires that there be harm to consumers for conduct to be condemned. Mere harm to competitors is considered insufficient. So let me repeat that again. There has to be harm to consumers, not just competitors. The reason that is so, the reason harm to competitors is considered insufficient is because sometimes a less-efficient firm losing sales or market share to a cheaper, more innovative or efficient rival, can be and often is consistent with vibrant competition and with outcomes that benefit consumers. Courts and agencies have embraced this standard for decades. Today, there are two very important discussions going on about the consumer welfare standard, and they are happening simultaneously. And I think it is important that we understand that there are two conversations going on. One is a continuing discussion about how we apply the standard, regarding whether enforcement is at the appropriate level, whether it is properly targeted. This is an introspective question on some level, in which scholars, economists, practitioners, and enforcers all ask ourselves, are we bringing the right kinds of cases? Are we using the right kinds of evidence? Should we be doing more or less in certain places? The antitrust bar, the business community, and others benefit from this ongoing and active analysis. The second discussion happening now, and the one on which today’s consumer welfare standard panels will focus, is whether the standard is itself the right metric we ought to use in antitrust enforcement and in antitrust law; some argue that enforcement under the consumer welfare standard has failed because of the law, and accordingly, that we should reform the law.

#### The aff only applies to conduct in a specific segment of the private sector

#### Vote neg:

#### limits and ground---the number of potential subsets is infinite---any industry, production, single company, individuals could be included, which undermines clash; only big affs have link uniqueness

## FTC DA

#### The FTC will enforce ‘right to repair’ now---it spurs growth and innovation, particularly in agriculture.

Minter ’21 [Adam; July 11; Columnist and author; Bloomberg, “Americans Must Reclaim Their Right to Repair,” <https://www.bloomberg.com/opinion/articles/2021-07-11/americans-must-reclaim-their-right-to-repair>]

When the Apple II personal computer was shipped in 1977, it came with a [detailed manual](https://archive.org/details/Apple_II_Mini_Manual/page/n49/mode/2up) for upgrading and repairing the device. Parts were readily available from Apple Inc. (and, later, other manufacturers), and if Apple owners didn’t want to fix or upgrade at home, they could find plenty of small, competitive repair businesses to do the work for them. That was then. These days, Apple’s products arrive sealed shut, often with [proprietary screws](https://www.ifixit.com/News/9905/bit-history-the-pentalobe). Service manuals, circuit-board schematics and repair parts are [reserved](https://www.ifixit.com/News/43179/apple-endangers-our-business-model-gets-a-repairability-point-for-it) for Apple’s technicians, shops and a handful of “authorized” partners. With no access to parts, manuals or indie repair shops, consumers pay much more to keep their devices running. President Joe Biden’s new executive order to promote competition encourages the Federal Trade Commission to end such anti-competitive repair monopolies. It’s a contentious move. Apple and the makers of other technological products from farm tractors to [35mm cameras](https://www.ifixit.com/News/1349/how-nikon-is-killing-camera-repair) argue that their repair monopolies are good for consumers. But as these monopolies have grown, their toll on consumers, the environment and American productivity and innovation has risen. Biden’s recognition of a “right to repair” can help lower these costs and, at the same time, spur new kinds of growth across the economy. Repair has always been a part of American life. The first prairie farmers had no option but to repair their own carts and plows. When mechanization came along, farmers became expert technicians — so skilled that companies often consulted them on tractor designs. During the past 15 years, as computers have been integrated into expensive farm equipment, that relationship has broken down. The handful of remaining implement manufacturers make sure that only dealerships, with specialized software tools, can diagnose problems. Those same tools are often also needed to install parts and authorize repairs. The costs to farmers can be significant. Paying a Deere & Co dealership to plug in a computer to clear an error code on a tractor or combine can cost [hundreds of dollars](https://www.vice.com/en/article/xykkkd/why-american-farmers-are-hacking-their-tractors-with-ukrainian-firmware) — not including transporting the tractor to the dealership. Worse, by limiting access to crucial diagnostic and repair tools, manufacturers cause significant delays during harvest, planting and other busy periods. At certain times, a piece of equipment immobilized for even a few hours can cost a farmer thousands of dollars. As farmers lose money, farm manufacturers with parts and service businesses [profit handsomely](https://uspirg.org/feature/usp/deere-headlights). From 2013 to 2019, Deere & Co annual sales of new equipment declined 19%, to $23.7 billion, while sales of parts increased 22%, to $6.7 billion. Harvester manufacturers aren’t the only ones who’ve spotted a growth market in restricting access to repair. In 2019, Apple’s Tim Cook [conceded](https://www.apple.com/newsroom/2019/01/letter-from-tim-cook-to-apple-investors/) that lower-cost iPhone battery replacements had negatively impacted new iPhone sales. More expensive repairs, on the other hand, lead customers to think they may as well buy a new phone. That’s bad for the buyers of Apple’s expensive new phones and even worse for lower-income consumers who rely on secondhand devices. Lack of competition in repair markets raises the cost of owning older devices, and ultimately accelerates their untimely, wasteful disposal. The first calls to roll back manufacturer restrictions on repair, in the early 2010s, were focused on cars. But the problem now encompasses everything from phones to farm equipment. Since 2014, [32 states](https://www.repair.org/legislation) have considered so-called Fair Repair bills. Earlier this year, the New York legislature became the [first](https://states.repair.org/states/newyork/) to pass one. But manufacturers have pushed hard to defeat such legislation. In 2017, Apple warned Nebraska lawmakers that Fair Repair “would make it very easy for hackers to relocate to Nebraska.” [TechNet](http://technet.org/), a trade group that represents Apple, Amazon Inc. and Google, has [warned](https://www.bloomberg.com/news/articles/2021-05-20/microsoft-and-apple-wage-war-on-gadget-right-to-repair-laws) several states that Fair Repair legislation would somehow jeopardize the safety of devices. (TechNet did not respond to requests for examples of such consumer safety threats.) The federal government has not bought these arguments. In May, the Federal Trade Commission [reported](https://www.ftc.gov/news-events/blogs/business-blog/2021/05/nixing-fix-report-explores-consumer-repair-issues) that “many of the explanations manufacturers gave for repair restrictions aren’t well-founded.” Biden’s executive order now encourages the FTC to “limit powerful equipment manufacturers from restricting people’s ability to use independent repair shops or do DIY repairs.”

#### FTC resources stretched thin, trade-offs gut enforcement for Right to repair

--CPRA = law that restores Section 13(b) authority

Soto et al. 21, Darren Michael Soto is an American attorney and Democratic politician from Kissimmee, Florida, who is the U.S. Representative for Florida's 9th district; Lina Khan is Chair at the FTC; Noah Joshua Phillips is Commissioner at the FTC; Rohit Chopra is Commissioner at the FTC; Christine S. Wilson is Commissioner at the FTC, “Transforming the FTC: Legislation to Modernize Consumer Protection,” Committee on Energy and Commerce, 6/28/21, https://energycommerce.house.gov/committee-activity/hearings/hearing-on-transforming-the-ftc-legislation-to-modernize-consumer

Darren Soto (5:03:40): Thank you so much, Madam Chair, and to our FTC commissioners, thank you for your patience. We've been through a bunch of unnecessary motions to adjourn today. And we respect your time. So I wish things were a little smoother. Thank you for sticking with us. We know we just passed a key bill to help out with restoring your restitution authority, the Consumer Protection and Recovery Act, and allowing the FTC to get fraud victims back, allowing you to get ill-gotten gains from con artists, even though recent Supreme Court case sadly took it away. We know COVID only increased the scams throughout this pandemic in everything from stimulus check scams, to paycheck protection loans scams, to vaccine scams. In Florida, we even had a miracle mineral solution scam to sell a solution primarily made up of bleach out of Miami, Florida. They'd sold tens of thousands of bottles and made over a million dollars. It's critical that we give you all the tools you can use to handle this. And the 10-year statute of limitations is an important clarification. It's a compromise. And we applaud you on the major victories, including the Volkswagen and Devrie cases that would have exceeded the five-year statute of limitations if that was what we ended up getting. So to our commissioners, and it'd be great to hear from each of you. Does the current budget give you enough resources to be able to enforce the Consumer Protection and Recovery Act when it becomes law? We'll start with - please continue. Lina Khan (5:05:50): Thanks, Congressman. As a general matter, the agency is significantly under-resourced and additional resources to be able to boost our enforcement across these areas is essential. I think there are questions about how we can be more effective in our enforcement, especially when it comes to the types of frauds and scams that you mentioned. So this is certainly something that we'll be thinking about. Darren Soto (5:06:11): And Commissioner Phillips? Noah Joshua Phillips (5:06:17): Thank you, Congressman, I'd just start with the fact that when I began, our budget was about 309 million, I think, something like that, and the latest congressional budget justification has us at 389. So there's been a substantial increase in the ask, including some funding from Congress. So I think it's important to track how those resources are used. But I do think we can do more with more. That's, that's certainly a true thing. But I think it's important to take care in how we spend what we have. Darren Soto (5:06:46): Thank you. Commissioner Chopra. Rohit Chopra (5:06:48): Sir, I think - I know every agency says that they need more resources. But just looking at the data, we are stretched completely to capacity and the rubber band is snapping. And if we need to effectively enforce the law, we need the resources. There are so many laws that Congress has recently passed, whether it's relates to opioids or so many other topics, that the FTC has not brought a single law enforcement action on. That's not just resources. That's also Commissioner accountability. But resources will certainly help. Darren Soto (5:07:25): Commissioner Slaughter. Christine Williams (5:07:30): Commissioner Slaughter had to leave, but Commissioner Wilson is here. And I would say that our hard working staff have been even harder working during the last 18 months. They are teleworking but they are working incredibly hard to stay on top of the increase in mergers as well as the increase in COVID scams. And I agree with Commissioner Phillips, it's important to understand how we are spending additional appropriations. But I also know that there are many different areas of the economy where Congress has expressed interest in our being very active and aggressive. And it is difficult to do that unless we have the appropriate resources to do that.

#### Extinction.

Castellaw ’18 [John; March 14; Lieutenant General in the United States Marine Corps, member of the Center for Climate and Security’s Advisory Board, teaching fellow in the College of Business and Global Affairs at the University of Tennessee; Senate Committee on Foreign Relations, “Why Food Security Matters,” <https://www.foreign.senate.gov/imo/media/doc/031418_Castellaw_Testimony.pdf>]

Food Security Is Critical to Our National Security The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be nuanced and comprehensive, employing “hard” as well as “soft” power in a National Security Strategy combining all elements of National Power, including a Food Security Strategy. An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence. Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings. These conclusions are based on my decades of experience while serving as a Marine around the world and from a lifetime as a steward of the soil on my family farm in Tennessee. I see food security strategy in military terms as either being “defensive” or “offensive”. “Defensive” includes those actions we take to protect our agricultural infrastructure including crops, livestock and the food chain here in the United States. Conversely, the “Offensive” side of food security takes the initiative to deal with food security issues overseas and this is where I will spend most of my time today. There is a good reason for our success on the “defensive” here at home in ensuring our own food security. As my good friend and former Tennessee Deputy Agriculture Commissioner Louis Buck points out to me, American agriculture has always been about public/private enterprise. The Morrill Act of 1862 – showing our Country’s foresight and confidence in the future even in the dark days of our Civil War – created our Land Grant University model of teaching, research and extension. And equally importantly, we have a private sector that values individual initiative, unleashing an unparalleled vitality. With that vitality driving innovation, our farmers and ranchers leverage the expertise and information from the public sector to manage risks and seek profits from deployed capital. But above all, American farmers and ranchers are our “citizen soldiers” on the front lines here at home fighting to guarantee our food security. America is also blessed with fertile soil, water availability, moderate climate, and the advanced technology to successfully utilize our abundance. Whether I walk the corn fields of Indiana or the cotton fields of Tennessee, I see agricultural technology in use that is amazing. Soon after I retired from the Marines and came home to the family farm, I climbed into the cab of a self-propelled sprayer. Settling into the seat was like strapping into the cockpit of one of the aircraft I flew, except the sprayer had more computing power and better data links. All these factors, public and private, natural and manmade, hard work and innovation, combine to provide the American people with the widest choices in the world of wholesome foods to eat and clothes to wear.

## CP

### 1nc

#### Text: The United States Federal Government should:

#### lift the cap on Medicare-funded physician residencies;

#### increase financial support for nursing schools and faculty;

#### provide scholarships and loan repayment for medical providers;

#### double the visa cap and expedite visas for all foreign highly-trained personnel; and

#### Pursue breakup remedies where required to restore competition in the healthcare sector

#### Solves the whole aff

Rod Hochman (MD, president and CEO of Providence, and immediate past chair of the American Hospital Association's Board of Trustees) 1/14/2022 [“The Entire Healthcare System Is on the Brink of Breakdown” online @ <https://www.medpagetoday.com/opinion/second-opinions/96681>, loghry]

America's hospitals and health systems are seeing rapid increases in inpatient and ICU admissions as the Omicron wave of COVID-19 sweeps the nation. With more than 55 million total cases to date in our country and a heartbreaking 800,000 deaths and counting, hospital teams are pressed beyond belief. As they respond, America's hospitals and other facilities have not been spared the supply chain challenges that many faced leading up to the holidays. One less visible but very serious aspect of our service should concern everyone: making sure we have the necessary workforce to care for patients. Millions of American workers have either quit or changed jobs in recent months. It's been called the Great Resignation or the Big Quit, and it is affecting many employers, including the healthcare field. Data is painting a dire situation for hospitals. A recent survey suggests that one in five healthcare workers has left their job since the start of the pandemic. In addition, the Bureau of Labor Statistics found that hospital employment decreased by almost 100,000 from February 2020 to September 2021. This national emergency demands immediate attention from policymakers at every level of government. Many workers are simply exhausted and worn out after maintaining an unsustainable pace for almost 2 years on the frontlines battling COVID-19. Hospitals and health systems across the country are confronting these challenges every day. At Providence, the health system I'm privileged to lead, we're using our scale to offer an array of workforce programs and services to support our 120,000 dedicated caregivers, including tuition reimbursement and other training benefits, referral and retention bonuses, free behavioral healthcare, caregiver assistance, and online resources. The American Hospital Association has also published resources for the healthcare field and the public, covering topics such as stress and coping, suicide prevention, and clinician well-being. Our workforce is our most precious resource. Caregivers have proven to be the real healthcare heroes. But without a resilient and adequately-sized healthcare workforce, we cannot serve our communities. Our entire healthcare system breaks down. While hospitals always strive to provide quality care, the workforce shortage is affecting how quickly people can get care. There are a number of steps available now to help mitigate this urgent situation. Congress should enact the Dr. Lorna Breen Health Care Provider Protection Act. Named for a physician who led the emergency department at NewYork-Presbyterian Allen Hospital, this legislation would authorize grants to create programs that offer behavioral health services for frontline healthcare workers. Congress can lift the cap on Medicare-funded physician residencies, boost support for nursing schools and faculty, provide scholarships and loan repayment for certain providers, and expedite visas for all foreign highly-trained personnel. We can support state efforts to expand scope of practice laws allowing healthcare professionals to practice at the top of their licenses, and stop commercial health insurance companies' burdensome process practices that take caregivers away from the bedside and increase provider burnout. Workforce challenges are exacerbating the financial difficulties many hospitals are experiencing. We are grateful for relief funding authorized by Congress, but hospitals and health systems still faced catastrophic financial losses in 2020. This is continuing -- losses are expected to be an estimated $54 billion in net income in 2021 alone, according to a recent report by Kaufman Hall.

## Cap

#### Antitrust is a capitalist ploy that de-radicalizes and pacifies movements

Crane 18 (Daniel A. Crane is Frederick Paul Furth Sr. Professor of Law at the University of Michigan. “Antitrust’s Unconventional Politics” https://www.virginialawreview.org/articles/antitrusts-unconventional-politics/)sw

A final reason that the politics of antitrust sometimes confound conventional left–right divides has to do with the pragmatic sense that some regulatory interventions may be necessary to preserve capitalism politically, and that antitrust may be the least objectionable one. This “antitrust or else” perspective has characterized the politics of antitrust from the beginning. The conventional view that Congress intended the Sherman Act to seriously undermine the trusts is balderdash. According to Professor Merle Fainsod and Lincoln Gordon of Harvard University, “[T]he Republican Party, in control of the 51st Congress, was ‘itself dominated at the time by many of the very industrial magnates most vulnerable to real antitrust legislation.’”[87] A more realistic view is that the 51st Congress passed the Sherman Act to avert more radical reforms. Speaking on the Senate floor in 1890, Senator John Sherman warned his brethren, many of whom were controlled by the trusts, that Congress “must heed [the public’s] appeal or be ready for the socialist, the communist, and the nihilist.”[88] Sherman thus conceived of his eponymous antitrust statute as politically necessary to diffuse more radical political movements—as a sort of Band-Aid on capitalism. The idea that antitrust legislation and enforcement are necessary accommodations to public demand has a long pedigree in both conservative and more progressive circles. Writing in 1914, William Howard Taft described the Sherman Act as “a step taken by Congress to meet what the public had found to be a growing and intolerable evil.”[89] Notably, Taft did not own the public’s concern himself, nor did he attribute such a concern to Congress. Similarly, Theodore Roosevelt was relatively unconcerned with the trusts personally, but he “saw the trust problem as something that must be dealt with on the political level; public concern about it was too urgent to be ignored [90] Beyond the concern that, absent antitrust, capitalism itself might succumb to reformist pressures, there is a more modest possibility that, absent antitrust, political pressures would lead to overregulation. Antitrust and administrative regulation are conventionally viewed as alternatives to address market failures. From the Reagan Administration to the Financial Crisis of 2008, the overall arc of American law involved simultaneous deregulation and relaxation of antitrust enforcement. If popular dissatisfaction with the economic status quo grows, demand might grow to pull either the regulatory or antitrust lever. Those ideologically committed to a light governmental hand on the market might prefer the antitrust alternative. It is hard to judge at any given moment how much political support for antitrust intervention is motivated by genuine concern over monopoly and competition, and how much of it derives from the fact that, in the face of popular demand for a governmental cure to a perceived evil, it is often easier to delegate the solution to antitrust than to propose a regulatory solution. From the Sherman Act forward, however, it is certain that antitrust has often been deployed as a foil to more interventionist forms of regulation. The ideological and political implications of that move are complex and not neatly housed in left–right categories.

#### **Capitalism guarantees extinction and social crisis – the judge has an intellectual obligation to evaluate the social relations that underpin the plan prior to evaluating the outcome of the policy.**

Molisa ‘14 (Pala Basil Mera, “Accounting For Apocalypse Re-Thinking Social Accounting Theory And Practice For Our Time Of Social Crises And Ecological Collapse,” <http://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/3686/thesis.pdf?sequence=2>)

Ecologically too, the situation is dire. Of the many measures of ecological well-being – topsoil loss, groundwater depletion, chemical contamination, increased toxicity levels in human beings, the number and size of “dead zones” in the Earth’s oceans, and the accelerating rate of species extinction and loss of biodiversity – the increasing evidence suggests that the developmental trajectory of the dominant economic culture necessarily causes the mass extermination of non-human communities, the systemic destruction and disruption of natural habitats, and could ultimately cause catastrophic destruction of the biosphere. The latest Global Environmental Outlook Report published by the United Nations Environment Program (UNEP), the GEO-5 report, makes for sobering reading. As in earlier reports, the global trends portrayed are of continuing human population growth, expanding economic growth,6 and as a consequence severe forms of ecological degradation (UNEP, 2012; see also, UNEP, 1997, 1999, 2002, 2007). The ecological reality described is of ecological drawdown (deforestation, over-fishing, water extraction, etc.) (UNEP, 2012, pp. 72, 68, 84, 102-106, ); increasing toxicity of the environment through chemical and waste pollution, with severe harm caused to human and non-human communities alike (pp. 173- 179); systematic habitat destruction (pp. 8, 68-84) and climate change (33-60), which have decimated the number of species on Earth, threatening many with outright extinction (pp. 139-158). The most serious ecological threat on a global scale is climate disruption, caused by the emission of greenhouse gases from burning fossil fuels, other industrial activities, and land destruction (UNEP, 2012, p. 32). The GEO-5 report states that “[d]espite attempts to develop low-carbon economies in a number of countries, atmospheric concentrations of greenhouse gases continue to increase to levels likely to push global temperatures beyond the internationally agreed limit of 2° C above the pre-industrial average temperature” (UNEP, 2012, p. 32). Concentrations of atmospheric methane have more than doubled from preindustrial levels, reaching approximately 1826 ppb in 2012; the scientific consensus is that this increase is very likely due predominantly to agriculture and fossil fuel use (IPCC, 2007). Scientists warn that the Earth’s ecosystems are nearing catastrophic “tipping points” that will be marked by mass extinctions and unpredictable changes on a scale unseen since the glaciers retreated twelve thousand years ago (Pappas, 2012). Twenty-two eminent scientists warned recently in the journal, Nature, that humans are likely to have triggered a planetary-scale critical transition “with the potential to transform Earth rapidly and irreversibly into a state unknown in human experience”, which means that “the biological resources we take for granted at present may be subject to rapid and unpredictable transformations within a few human generations” (Barnofsky et al., 2012). This means that human beings are in serious trouble, not only in the future, but right now. The pre-industrial level of carbon dioxide concentration was about 280 parts per million (ppm). The Intergovernmental Panel on Climate Change (IPCC) estimates concentrations could reach between 541 and 970 ppm by the year 2100. However, many climate scientists consider that levels should be kept below 350 ppm in order to avoid “irreversible catastrophic effects” (Hansen et al., 2008). “Catastrophic warming of the earth” would mean a planet that is too hot for life – that is, any life, and all life (Mrasek, 2008). We need to analyze the above information and ask the simple questions: what does it signify and where will it lead? In terms of the social crises of inequalities, the pattern of human development suggests clearly that although capitalism is capable of raising the economic productivity of many countries as well as international trade, it also produces social injustices on a global scale. The trajectory of capitalist economic development that people appear locked into is of perpetual growth that also produces significant human and social suffering. In terms of the ecological situation, the mounting evidence from reports, such as those published by UNEP, suggest that a full-scale ecocide will eventuate and that a global holocaust is in progress which is socially pathological and biocidal in its scope (UNEP, 2012; see also, UNEP, 1997, 1999, 2002, 2007). Assuming the trends do not change, the endpoint of this trajectory of perpetual economic growth, ecological degradation, systemic pollution, mass species extinction and runaway climate change, which human beings appear locked into, will be climate apocalypse and complete biotic collapse. Given the serious and life-threatening implications of these social and ecological crises outlined above, it would be reasonable to expect they should be central to academic concerns, particularly given the responsibilities of academics as intellectuals. As the people whom society subsidizes to carry out intellectual work,7 the primary task of academics is to carry out research that might enable people to deepen their understanding of how the world operates, ideally towards the goal of shaping a world that is more consistent with moral and political principles, and the collective self-interest (Jensen, 2013, p. 43). Given that most people’s stated philosophical and theological systems are rooted in concepts of justice, equality and the inherent dignity of all people (Jensen, 2007, p. 30), intellectuals have a particular responsibility to call attention to those social patterns of inequality which appear to be violations of such principles, and to call attention to the destructive ecological patterns that threaten individual and collective well-being. As a “critic and conscience of society,” 8 one task of intellectuals is to identify issues that people should all pay attention to, even when – indeed, especially when – people would rather ignore the issues (Jensen, 2013, p. 5). In view of this, intellectuals today should be focusing attention on the hard-to-face realities of an unjust and unsustainable world. Moreover, intellectuals in a democratic society, as its “critic and conscience”, should serve as sources of independent and critical information, analyses and varied opinions, in an endeavour to provide a meaningful role in the formation of public policy (Jensen, 2013c). In order to fulfil this obligation as “critic and conscience,” intellectuals need to be willing to critique not only particular people, organizations, and policies, but also the systems from which they emerge. In other words, intellectuals have to be willing to engage in radical critique. Generally, the term “radical” tends to suggest images of extremes, danger, violence, and people eager to tear things down (Jensen, 2007, p. 29). Radical, however, has a more classical meaning. It comes from the Latin –radix, meaning “root.” Radical critique in this light means critique or analysis that gets to the root of the problem. Given that the patterns of social inequality and ecocidal destruction outlined above are not the product of a vacuum, but instead are the product of social systems, radical critique simply means forms of social analysis, which are not only concerned about these social and ecological injustices but also trace them to the social systems from which they emerged, which would subject these very systems to searching critiques. Such searching critique is challenging because, generally, the dominant groups which tend to subsidize intellectuals (universities, think tanks, government, corporations) are the key agents of the social systems that produce inequalities and destroy ecosystems (Jensen, 2013, p. 12). The more intellectuals choose not only to identify patterns but also highlight the pathological systems from which they emerge, the greater the tension with whoever “pay[s] the bills” (ibid.).

#### Thus the alternative: Vote negative to reject the 1AC to signal a re-commitment to pedagogy centered through class analysis

#### Class pedagogy creates the historical analysis necessary to de-construct capitalist thought and material violences---only pedagogy can open avenues for political action and intersectional analysis

Mclaren ’04 (Education and Urban Schooling Division prof, UCLA—and Valerie Scatamburlo-D'Annibale; University of Windsor, Educational Philosophy and Theory, Vol. 36, No. 2, 2004, [www.freireproject.org/articles/node%2065/RCGS/class\_dismissed-val-peter.10.pdf](http://www.freireproject.org/articles/node%2065/RCGS/class_dismissed-val-peter.10.pdf))

These are the concrete realities of our time—realities that require a vigorous class analysis, an unrelenting critique of capitalism and an oppositional politics capable of confronting what Ahmad (1998, p. 2) refers to as ‘capitalist universality.’ They are realities that require something more than that which is offered by the prophets of ‘difference’ and post-Marxists who would have us relegate socialism to the scrapheap of history and mummify Marxism along with Lenin's corpse. Never before has a Marxian analysis of capitalism and class rule been so desperately needed. That is not to say that everything Marx said or anticipated has come true, for that is clearly not the case. Many critiques of Marx focus on his strategy for moving toward socialism, and with ample justification; nonetheless Marx did provide us with fundamental insights into class society that have held true to this day. Marx's enduring relevance lies in his indictment of capitalism which continues to wreak havoc in the lives of most. While capitalism's cheerleaders have attempted to hide its sordid underbelly, Marx's description of capitalism as the sorcerer's dark power is even more apt in light of contemporary historical and economic conditions. Rather than jettisoning Marx, decentering the role of capitalism, and discrediting class analysis, radical educators must continue to engage Marx's oeuvre and extrapolate from it that which is useful pedagogically, theoretically, and, most importantly, politically in light of the challenges that confront us. The urgency which animates Amin’s call for a collective socialist vision necessitates, as we have argued, moving beyond the particularism and liberal pluralism that informs the ‘politics of difference.’ It also requires challenging the questionable assumptions that have come to constitute the core of contemporary ‘radical’ theory, pedagogy and politics. In terms of effecting change, what is needed is a cogent understanding of the systemic nature of exploitation and oppression based on the precepts of a radical political economy approach (outlined above) and one that incorporates Marx’s notion of ‘unity in difference’ in which people share widely common material interests. Such an understanding extends far beyond the realm of theory, for the manner in which we choose to interpret and explore the social world, the concepts and frameworks we use to express our sociopolitical understandings, are more than just abstract categories. They imply intentions, organizational practices, and political agendas. Identifying class analysis as the basis for our understandings and class struggle as the basis for political transformation implies something quite different than constructing a sense of political agency around issues of race, ethnicity, gender, etc. Contrary to ‘Shakespeare’s assertion that a rose by any other name would smell as sweet,’ it should be clear that this is not the case in political matters. Rather, in politics ‘the essence of the ﬂower lies in the name by which it is called’ (Bannerji, 2000, p. 41). The task for progressives today is to seize the moment and plant the seeds for a political agenda that is grounded in historical possibilities and informed by a vision committed to overcoming exploitative conditions. These seeds, we would argue, must be derived from the tree of radical political economy. For the vast majority of people today—people of all ‘racial classiﬁcations or identities, all genders and sexual orientations’—the common frame of reference arcing across ‘difference’, the ‘concerns and aspirations that are most widely shared are those that are rooted in the common experience of everyday life shaped and constrained by political economy’ (Reed, 2000, p. xxvii). While post-Marxist advocates of the politics of ‘difference’ suggest that such a stance is outdated, we would argue that the categories which they have employed to analyze ‘the social’ are now losing their usefulness, particularly in light of actual contemporary ‘social movements.’ All over the globe, there are large anti-capitalist movements afoot. In February 2002, chants of ‘Another World Is Possible’ became the theme of protests in Porto Allegre. It seems that those people struggling in the streets haven’t read about T.I.N.A., the end of grand narratives of emancipation, or the decentering of capitalism. It seems as though the struggle for basic survival and some semblance of human dignity in the mean streets of the dystopian metropoles doesn’t permit much time or opportunity to read the heady proclamations emanating from seminar rooms. As E. P. Thompson (1978, p. 11) once remarked, sometimes ‘experience walks in without knocking at the door, and announces deaths, crises of subsistence, trench warfare, unemployment, inﬂation, genocide.’ This, of course, does not mean that socialism will inevitably come about, yet a sense of its nascent promise animates current social movements. Indeed, noted historian Howard Zinn (2000, p. 20) recently pointed out that after years of single-issue organizing (i.e. the politics of difference), the WTO and other anti-corporate capitalist protests signaled a turning point in the ‘history of movements of recent decades,’ for it was the issue of ‘class’ that more than anything ‘bound everyone together.’ History, to paraphrase Thompson (1978, p. 25) doesn’t seem to be following Theory’s script. Our vision is informed by Marx's historical materialism and his revolutionary socialist humanism, which must not be conflated with liberal humanism. For left politics and pedagogy, a socialist humanist vision remains crucial, whose fundamental features include the creative potential of people to challenge collectively the circumstances that they inherit. This variant of humanism seeks to give expression to the pain, sorrow and degradation of the oppressed, those who labor under the ominous and ghastly cloak of ‘globalized’ capital. It calls for the transformation of those conditions that have prevented the bulk of humankind from fulfilling its potential. It vests its hope for change in the development of critical consciousness and social agents who make history, although not always in conditions of their choosing. The political goal of socialist humanism is, however, ‘not a resting in difference’ but rather ‘the emancipation of difference at the level of human mutuality and reciprocity.’ This would be a step forward for the ‘discovery or creation of our real differences which can only in the end be explored in reciprocal ways’ (Eagleton, 1996, p. 120). Above all else, the enduring relevance of a radical socialist pedagogy and politics is the centrality it accords to the interrogation of capitalism.

# On

## Inherency

#### Antitrust law enforcement has two areas of focus now: health care and big tech. Health care is under the radar.

Levine 8-25-2021, master’s degree from the Columbia University Graduate School of Journalism and a bachelor of arts in English from the University of Pennsylvania. She is also an alumna of the Fellowships at Auschwitz for the Study of Professional Ethics, a program in Germany and Poland that explores the ethics of reporting on politics, war and genocide (Alexandra, “How Biden's tech trustbuster could change health care,” *Politico*, <https://www.politico.com/newsletters/future-pulse/2021/08/25/how-bidens-tech-trustbuster-could-change-health-care-797333>)

Lina Khan’s Federal Trade Commission has its eyes on health care. The agency known for efforts to rein in Big Tech companies like Facebook and Amazon is also enmeshed in high-stakes health care and health tech battles that extend well beyond Silicon Valley. Case in point: The FTC trial that kicked off yesterday examining monopoly concerns in the market for cancer screening technology. (More on that below.) That closely watched antitrust case — involving the giant Illumina and startup Grail — predates Khan’s confirmation as FTC chair. But it underscores how health issues are looming over the agenda, particularly heading into the pandemic's second year. The way health care companies and consumer health apps handle sensitive data “is an area that I'm sure [Khan’s] very, very interested in,” said Jessica Rich, former director of the FTC’s consumer protection bureau, adding that the Biden administration's FTC will also be closely scrutinizing hospital mergers. “I expect her and the commission to take a very bold approach to what constitutes harm for both,” Rich said. “I expect her to pay close attention to algorithms and potential discrimination in health care, both denials and pricing issues which the FTC's laws can address.” The FTC’s jurisdiction touches nearly the entire health economy. While its competition bureau looks at health care mergers like the Illumina-Grail deal, its consumer protection side is focused on health privacy and data security issues, as well as fighting bogus medical claims on everything from weight loss to Covid cures. When Congress passed the Covid-19 Consumer Protection Act last year, the agency was granted new authority to police Covid scams. Although Khan hasn't spoken publicly about her health care agenda, she's likely to take issue with health apps and companies whose business models maximize, incentivize and monetize data collection. Of particular concern is how firms disclose what they’re doing with consumers’ data — and whether it may still be deceptive or unfair.

## Rural care

#### Mergers keep hospitals open

AHA ’20 [staff, “Eight Myths About Hospital Mergers and Acquisitions,” American Hospital Association, 2—20, p. 2, <https://www.aha.org/system/files/media/file/2020/02/fact-vs-fiction-8-myths-about-hospital-mergers-aquisitions-consolidation-0220.pdf>, accessed 9-4-21]

Myth 3: Hospital and health system consolidation reduces patient access to care. Fact: Mergers can help keep hospitals open to serve patients and the communities that rely on them. This is particularly critical in rural communities facing low patient volume, heavy reliance on Medicare and Medicaid, increased regulatory burden and shifts from inpatient to outpatient care. More than 100 rural hospitals have closed since 2010. Affiliating with a health system provides some rural hospitals with access to needed capital and can prevent hospital closures. Rural hospitals are trying innovative approaches to address these issues, such as telemedicine programs and relationships that connect pregnant women with specialists that may be farther away.6

#### JAMA study proves that mergers improve mortality

Muoio, health journalist, ’21 [Dave Muoio, journalist, “Rural Hospitals Saw Mortality Improvements After Acquisition Deals, Study Finds,” FIERCE HEALTHARE, 9—21—21, <https://www.fiercehealthcare.com/hospitals/rural-hospitals-saw-mortality-improvements-after-acquisition-per-study>, accessed 9-23-21]

A new study published this week in JAMA Network Open adds to the contentious debate over the pros and cons of hospital consolidation. In it, researchers analyzing rural hospital acquisitions found improved mortality rates across multiple common conditions—acute myocardial infarction (AMI), heart failure, stroke and pneumonia—when compared to equivalent facilities that remained independent. “The findings of this study regarding the positive outcomes associated with mergers in rural hospital quality challenge a common argument in prior research that hospital consolidation is likely to result in greater market power and higher prices but poorer quality,” researchers from the Agency for Healthcare Research and Quality and IBM Watson Health wrote in the journal.Acquired hospitals’ AMI mortality rates saw the quickest improvement of the bunch, with the researchers noting a significant decline compared to independent hospitals as soon as one year after acquisition but for as long as four years. The analysis did not reveal improvements across the other conditions until three to five years after the rural hospitals' acquisition, they wrote. Mortality rates at both merged and comparison hospitals remained similar for patients with gastrointestinal hemorrhages or hip fractures, according to the study. Combining overall mortality changes for all six measured conditions showed a significantly greater decline in mortality at acquired rural hospitals. Elective procedure complications decreased over time but at similar rates across both study groups, the researchers wrote. Additionally, the analysis found an increase in AMI volume across acquired rural hospitals but the opposite at those that remained independent. Volumes remained stable for both settings while heart failure, stroke, gastrointestinal hemorrhage, pneumonia and elective procedures all declined. The researchers noted that their findings differed from other studies that monitored quality changes following consolidation within urban markets, which found either no change or a decline following hospital acquisition. The difference, they theorized, could be that rural hospital mergers more often allow these facilities “to improve quality of care through access to needed financial, clinical and technological resources, which is important to enhancing rural health and reducing urban-rural disparities in quality. This hypothesis needs to be assessed using data sources that capture data both on quality and hospital resources,” the researchers wrote.

#### Consolidation’s key to counteract the COVID-induced drop in health spending

Kaufman 9-1 (As Kaufman Hall’s Chair and one of the firm’s founding partners, Ken Kaufman has provided the nation’s top healthcare leaders with expert counsel and guidance since 1976. 9-1-2021, accessed on 9-1-2021, Kaufman Hall, "No Rebound in Healthcare Utilization", https://www.kaufmanhall.com/insights/thoughts-ken-kaufman/no-rebound-healthcare-utilization)

A recent headline from the Kaiser Family Foundation should make all healthcare provider executives sit up and take notice: “Early 2021 Data Show No Rebound in Healthcare Utilization.” As of April 2021, hospital admissions were almost 15% below the level expected based on historical patterns, according to KFF’s analysis of almost 10 million admissions in the Epic system. And if you exclude COVID-19 cases over that time period, admissions were in fact almost 20% below the expected level. In June of 2021, spending on hospital and ambulatory care combined was 7% below the expected level, according to KFF’s review of Bureau of Economic Analysis data. These findings are serious business for provider executives. First, this study quantifies the financial hit that hospitals and health systems continue to take from the changing utilization patterns caused by COVID’s public health and socioeconomic effects. Second, the study suggests the possibility of a long-term diminution of inpatient and outpatient utilization, with the serious revenue consequences that shift poses.

### Breen Act Solvency

#### Breen act passed

ENA (Emergency Nurses Association) 2/21/2022 [“Senate Passes ENA-Supported Dr. Lorna Breen Health Care Provider Protection Act” online @ <https://www.prnewswire.com/news-releases/senate-passes-ena-supported-dr-lorna-breen-health-care-provider-protection-act-301486818.html>, loghry]

On Thursday, with clear bipartisan support, the Senate passed the Dr. Lorna Breen Health Care Provider Protection Act which will earmark much-needed funding to help nurses, physicians and other health care workers overwhelmed by caring for patients during nearly two years of the pandemic's relentlessness. The bill's provisions include, among other things: establishing grants for training health care professionals on ways to reduce and prevent suicide, burnout, substance abuse and other mental health conditions; grant funding for employee education, peer support programming and behavioral health treatment; and creation of a national education and awareness campaign focused on encouraging health care workers to seek support and treatment. "When you see statistics indicating nurses die by suicide at a considerably higher rate than non-nurses, you quickly realize the critical importance and timing of this legislation," said ENA President Jennifer Schmitz, MSN, EMT-P, CEN, CPEN, CNML, FNP-C, NE-BC. "Our country's mental health crisis has only worsened during the pandemic, and emergency nurses can certainly attest to the stress, fatigue and burnout they've experienced. "Passage of the Dr. Lorna Breen Act will deliver help to health care workers, ultimately saving lives and preserving their ability to provide the best care possible to patients," Schmitz added. ENA praised the efforts of Sen. Tim Kaine, D-Va., and Rep. Susan Wild, D-Pa., for introducing the bill in the Senate and House of Representatives, respectively. The House passed the bill in December. During ENA's virtual advocacy event in May 2021, Kaine spoke emotionally to ENA members about sponsoring this important legislation as a way to help health care workers at a time they need it most.

#### Solves burnout, which is an alt cause to the aff

Isabel Cleary (MULTIMEDIA JOURNALIST) 12/9/2021 [“House passes The Lorna Breen Health Care Provider Protection Act” online @ <https://www.nbc29.com/2021/12/09/house-passes-lorna-breen-health-care-provider-protection-act/>, loghry]

The Lorna Breen Act is designed to help keep healthcare workers safe. “Prior to the pandemic, the healthcare workforce was significantly burnt out, and in fact, going into the pandemic people across the industry were talking about healthcare burnout as the number one issue for the year,” President and Co-founder of Dr. Lorna Breen Heroes Foundation and CEO of UVA Physicians Group Corey Feist said. Feist is Breen’s brother-in-law. He’s been working to get this bill passed for the last year-and-a-half. Feist says the trauma and depression associated with the healthcare field - even before the pandemic - created suicide rates twice the national average. “In fact, over 400 physicians every year died by suicide before the pandemic. Now that the pandemic has occurred, the burnout rates have amplified significantly across the industry,” he said. “We have now sent the equivalent of a significant portion of our doctors and nurses across the healthcare industry off to war for over a year, and we need to support them as they come back from that war.” The Lorna Breen Act works reverse these trends by providing grants to reduce and prevent suicide and burnout, as well as fund mental and behavioral health treatment. Representative Abigail Spanberger, who backed the bill, said in a statement: “From the earliest days of the pandemic, she — along with thousands of dedicated healthcare professionals across our country — worked tirelessly to treat patients from overcrowded waiting rooms. The paralyzing pressures these heroes face day in and day out have been greatly exacerbated by a global pandemic. The Lorna Breen Health Care Provider Protection Act would not only get much-needed help to our doctors, nurses, and healthcare professionals, but it would encourage them to seek support and treatment when they need it. These heroes have been on the front lines of this pandemic for nearly two years, and I am proud to see so many of my colleagues understand that we must do what we can to protect those who work so selflessly to protect us.” Healthcare workers in current or past COVID-19 hotspots would be the first to get the grants. “It recognizes exactly what we’ve heard from the workforce every day is that they’re struggling and they need help. They need to be heard and they need to be taken care of. They’ve done such an amazing job taking care of all of us. This is just one small recognition that that we can make to support them,” Feist said.

### Unions (S)

#### Nurse unions resolving safety and wage issues that drive shortages

Mensik, HealthCareDive Associate Editor, 9/1/2021 (Hailey Mensik, 9-1-2021, HealthCareDive, "Pandemic safety protections, wage increases key for nursing unions in new contracts," Healthcare Dive, <https://www.healthcaredive.com/news/pandemic-safety-protections-wage-increase-key-for-nursing-unions-in-new-co/605887/>, DoA 9/26/2021, DVOG)

Contracts covering thousands of nurses at major hospitals expired and went up for renegotiation this summer, and despite some disputes, most of those hospitals and labor unions are reaching new deals relatively quickly.

While nursing unions have long pushed for stricter staffing requirement like nurse-to-patient ratios — and continue to do so — they're further stressing the need for better wages and benefits to attract needed staff in new contracts. Many new contracts also include language around safety protections for future pandemics after workers grappled with shortages and quick-changing guidance during COVID-19's early months in the U.S.

At Dignity hospitals in California and Nevada, more than 14,000 nurses represented by National Nurses United reached a [**tentative agreement**](https://www.nationalnursesunited.org/press/14000-nurses-reach-tentative-agreement-with-dignity-health-on-four-year-contract) on a new contract that members will vote on in the coming weeks. It includes stronger infectious disease prevention measures along with a 13.5% wage increase over the next four years, according to the union.

NNU nurses at HCA facilities in Florida, Missouri, Kansas, North Carolina, Texas and California also nabbed new contracts in recent weeks, according to the union. Since February, NNU has reached agreements on more than 50 contracts covering around 27,000 nurses across the country, according to an email statement.

The union is still in negotiations for several dozen more contracts, including those at Sutter Health covering more than 8,000 nurses and other staff at 16 hospitals across Northern California.

NNU is the country's largest nursing union and represents more than 175,000 nurses across the country, but other smaller unions are also striking deals with major hospital chains on new contracts.

Healthcare workers represented by the National Union of Healthcare Workers at three Tenet hospitals in Southern California voted to ratify new contracts in August, though they did threaten to strike about a month prior to reaching a deal.

One contract covers 610 respiratory therapists, nursing assistants, medical technicians and other staff and Tenet's Fountain Valley Regional Hospital and will boost their salaries by 15% on average in the first year, with additional raises in the next two years.

That contract also includes language around pay for working late shifts, as well as a new health plan that will lower worker's premium costs, according to NUHW.

## Gender equity

#### No method for resolving bias or fear of medial system from oppressed groups- they cite experiments that the aff can’t retroactively prevent.

#### Alt Causes to rule healthcare shortages

<https://www.americanprogress.org/article/how-states-can-expand-health-care-access-in-rural-communities/> Thomas Waldrop (health policy fellow) & Emily Gee (Vice President and Coordinator for Health Policy) “How States Can Expand Health Care Access in Rural Communities”

Some of the most significant barriers to establishing rural health care practice are financial in nature. As explored below, these obstacles include educational affordability and its effect on the development and placement of the health care provider supply as well as the steep cost of medical malpractice insurance and its impact on retaining a health care provider workforce. The high cost of medical school limits the number of students who apply and attend.7 High levels of student loan debt can lead physicians to pursue high salaries, which can incentivize practicing in populous urban areas over less populous rural settings.8 Additionally, as the COVID-19 pandemic led many states to temporarily prohibit elective procedures, rural settings are at even greater risk of long-term financial unsustainability.9 States can take two policy approaches to help make medical school more affordable and to encourage providers to practice in rural communities after graduation: loan repayment and loan issuance and assistance. Loan repayment programs are initiatives under which a state repays or facilitates the repayment of student loans for qualifying health care providers. The largest of these, the National Health Service Corps’ (NHSC) Loan Repayment Program (LRP), is a partnership between states and the NHSC to promote physician practice in rural communities. Under the program, physicians specializing in primary care, dental care, and behavioral or mental health care can receive up to $50,000 in loan repayments through the federal government. While the NHSC LRP has had a positive effect overall, there are several aspects of the program that reduce its efficacy at promoting rural practice. Foremost is the reality that the repayment amounts, while substantial, comprise a relatively small amount of the total debt accrued by the average doctor during medical or dental school. The most recent data from the Association of American Medical Colleges estimate the average medical school graduate debt in 2021 at $203,062.10 Similarly, the American Dental Education Association estimates the average dental school graduate debt in 2020 at $304,824.11 Repayments of $50,000 represent less than 25 percent and 20 percent of medical and dental graduates’ average debts, respectively. Additionally, not all states provide the matching funds from state dollars. For example, Kentucky requires that applicants secure a private sponsor for the nonfederal portion of the program.12 Supplementing federal funds with state funds to increase the proportion of debt forgiven is a simple method by which states can incentivize physicians to practice in rural settings. The American Rescue Plan Act presents an easy opportunity for states to do so: The law included $100 million in grants to states to make loan repayment awards for medical and dental school graduates, in addition to the $800 million appropriated to the NHSC to create new loan repayment agreements.13 Congress should consider making these investments permanent, but states should also take advantage of the temporary grants while they exist. In addition to the issue of low funding, onerous state eligibility requirements for the NHSC LRP can also reduce the program’s efficacy. The federal standards for the program allow providers to practice in a wide range of settings, including in federally qualified health centers (FQHCs) and FQHC look-alikes, rural health clinics, Indian Health Service clinics, and private practice.14 States should ensure that their participation requirements align with the full breadth of the federal program in order to maximize participation.

#### Feminist politics must begin with a critique of capital---their ambivalence regarding the centrality of class and emphasis on individual choice gets coopted by neoliberal feminism’s fantasy of the entrepreneurial woman

Fraser ‘13 (professor of philosophy and politics at the New School for Social Research in New York, How feminism became capitalism's handmaiden - and how to reclaim it, www.theguardian.com/commentisfree/2013/oct/14/feminism-capitalist-handmaiden-neoliberal)

I worry, specifically, that our critique of sexism is now supplying the justification for new forms of inequality and exploitation. In a cruel twist of fate, I fear that the movement for women's liberation has become entangled in a dangerous liaison with neoliberal efforts to build a free-market society. That would explain how it came to pass that feminist ideas that once formed part of a radical worldview are increasingly expressed in individualist terms. Where feminists once criticised a society that promoted careerism, they now advise women to "lean in". A movement that once prioritised social solidarity now celebrates female entrepreneurs. A perspective that once valorised "care" and interdependence now encourages individual advancement and meritocracy. What lies behind this shift is a sea-change in the character of capitalism. The state-managed capitalism of the postwar era has given way to a new form of capitalism – "disorganised", globalising, neoliberal. Second-wave feminism emerged as a critique of the first but has become the handmaiden of the second. With the benefit of hindsight, we can now see that the movement for women's liberation pointed simultaneously to two different possible futures. In a first scenario, it prefigured a world in which gender emancipation went hand in hand with participatory democracy and social solidarity; in a second, it promised a new form of liberalism, able to grant women as well as men the goods of individual autonomy, increased choice, and meritocratic advancement. Second-wave feminism was in this sense ambivalent. Compatible with either of two different visions of society, it was susceptible to two different historical elaborations. As I see it, feminism's ambivalence has been resolved in recent years in favour of the second, liberal-individualist scenario – but not because we were passive victims of neoliberal seductions. On the contrary, we ourselves contributed three important ideas to this development. One contribution was our critique of the "family wage": the ideal of a male breadwinner-female homemaker family that was central to state-organised capitalism. Feminist criticism of that ideal now serves to legitimate "flexible capitalism". After all, this form of capitalism relies heavily on women's waged labour, especially low-waged work in service and manufacturing, performed not only by young single women but also by married women and women with children; not by only racialised women, but by women of virtually all nationalities and ethnicities. As women have poured into labour markets around the globe, state-organised capitalism's ideal of the family wage is being replaced by the newer, more modern norm – apparently sanctioned by feminism – of the two-earner family. Never mind that the reality that underlies the new ideal is depressed wage levels, decreased job security, declining living standards, a steep rise in the number of hours worked for wages per household, exacerbation of the double shift – now often a triple or quadruple shift – and a rise in poverty, increasingly concentrated in female-headed households. Neoliberalism turns a sow's ear into a silk purse by elaborating a narrative of female empowerment. Invoking the feminist critique of the family wage to justify exploitation, it harnesses the dream of women's emancipation to the engine of capital accumulation. Feminism has also made a second contribution to the neoliberal ethos. In the era of state-organised capitalism, we rightly criticised a constricted political vision that was so intently focused on class inequality that it could not see such "non-economic" injustices as domestic violence, sexual assault and reproductive oppression. Rejecting "economism" and politicising "the personal", feminists broadened the political agenda to challenge status hierarchies premised on cultural constructions of gender difference. The result should have been to expand the struggle for justice to encompass both culture and economics. But the actual result was a one-sided focus on "gender identity" at the expense of bread and butter issues. Worse still, the feminist turn to identity politics dovetailed all too neatly with a rising neoliberalism that wanted nothing more than to repress all memory of social equality. In effect, we absolutised the critique of cultural sexism at precisely the moment when circumstances required redoubled attention to the critique of political economy.Finally, feminism contributed a third idea to neoliberalism: the critique of welfare-state paternalism. Undeniably progressive in the era of state-organised capitalism, that critique has since converged with neoliberalism's war on "the nanny state" and its more recent cynical embrace of NGOs. A telling example is "microcredit", the programme of small bank loans to poor women in the global south. Cast as an empowering, bottom-up alternative to the top-down, bureaucratic red tape of state projects, microcredit is touted as the feminist antidote for women's poverty and subjection. What has been missed, however, is a disturbing coincidence: microcredit has burgeoned just as states have abandoned macro-structural efforts to fight poverty, efforts that small-scale lending cannot possibly replace. In this case too, then, a feminist idea has been recuperated by neoliberalism. A perspective aimed originally at democratising state power in order to empower citizens is now used to legitimise marketisation and state retrenchment. In all these cases, feminism's ambivalence has been resolved in favour of (neo)liberal individualism.