# GMU AL – Round 1 NU – 1NC

## OFF

### T - Sector

#### Topical affs must increase prohibitions on the entire economy:

#### 1---By identifies an agent

Lexico, ND (“BY English Definition and Meaning” https://www.lexico.com/en/definition/by)

PREPOSITION

1 Identifying the agent performing an action.

#### 2---“The” before a noun means whole

Webster’s 5 (Merriam Webster’s Online Dictionary, [http://www.m-w.com/cgi-bin/dictionary](about:blank))

The

4 -- used as a function word before a noun or a substantivized adjective to indicate reference to a group as a whole <the elite>

#### 3---“Private Sector” means all

Senate Manual 11 (Senate Document No. 112-1)//babcii

The term ``private sector'' means all persons or entities in the United States, including individuals, partnerships, associations, corporations, and educational and nonprofit institutions, but shall not include State, local, or tribal governments.112 S. Doc. 1

#### Violation: the plan only applies to companies doing patent thickening and hopping

#### Vote NEG for limits and grounds --- Subsets explodes the topic to thousands of affs, and removes core controversy

### States CP/Federalism

#### The 50 state governments territories should establish a presumption against mergers and acquisitions among agribusiness firms

#### State action is effective in every type of antitrust action

Ron Knox 21, Senior Researcher and Writer for the Independent Business Initiative, “State Attorneys General”, Institute for Local Self-Reliance, https://ilsr.org/fighting-monopoly-power/state-attorneys-general/

What State Attorneys General Can Do to Fix America’s Monopoly Problem

State attorneys general can play a crucial role in reversing the rise of concentrated corporate power and its impact on our economy and democracy. They can investigate corporations for abusing their market power, and they have the power to stop harmful actions or break up companies. They can sue to stop corporate mergers that would undermine competition, harming workers, suppliers, rivals, or consumers. But it is more important than ever that they have the tools and resources they need to do that crucial job. The following enumerates both the specific antitrust powers that state attorneys general currently hold and the resources they need to leverage that power more aggressively.

Initiate More Investigations and Actions to Stop Monopoly Conduct

States have the power to win a myriad of concessions from corporations that break the law and hurt competition. They can recover damages suffered on behalf of their residents. They can also use their power to stop anticompetitive conduct and even break up monopolies that harm residents and competition in their state, using both state and federal antitrust laws.

State enforcers can also band together to carry out broad investigations of monopolies nationwide.[12] This has been crucial work, historically and today. In the monopoly case against Microsoft, state enforcers maintained their case long after the federal agencies dropped theirs, effectively opening markets to new, innovative companies. And today, dozens of state AGs are using their investigative powers to examine whether tech monopolies Google and Facebook have abused their monopoly power over online search and the flow of news and information.[13]

State attorneys general have also used the antitrust laws to protect the rights of workers. More than a dozen states joined forces to stop fast-food chains, including Arby’s and Dunkin’ Donuts, from imposing no-poach and non-compete contracts on their low-wage employees. These clauses prevented workers from starting a competing business, or from quitting their jobs to work for a rival chain.[14] And a group of state attorneys general have organized to push the federal enforcers to follow their lead and protect workers from the unfair practices of their bosses.[15]

Block Mergers that Threaten Local Markets

Historically and today, a core role of the states in antitrust enforcement has been to stop harmful mergers. Under state and federal antitrust laws, state attorneys general can sue to block a merger if they believe it will undermine competition to the detriment of producers, workers, or consumers. Over the past 40 years, they’ve done so — sometimes alongside the federal antitrust agencies, and sometimes on their own. While some state-level merger challenges have entailed broad, multi-state coalitions, most involve one or two state attorneys general stepping in to protect competition.[16]

Evidence of states’ importance in merger cases is abundant. Three years ago, the California Attorney General sued to stop the takeover of two oil terminals by Valero Energy, the world’s largest independent petroleum refiner, after finding Valero would be able to raise prices for oil after the merger. The FTC had reviewed the deal and declined to intervene. The companies abandoned it in the face of state scrutiny.[17] And in Colorado, the attorney general moved to alter a health care merger that would have stopped local Medicare patients from accessing doctors — a concern the federal antitrust agencies did nothing to address in their review of the deal.[18]

#### Double bind: either A) the aff has to pre-empt state laws crushing federalism OR B) the aff doesn’t and can’t solve because states circumvent.

Abbott 14 [Alden F. Abbott is Deputy Director of the Edwin Meese III Center for Legal and Judicial Studies and the John, Barbara, and Victoria Rumpel Senior Legal Fellow at The Heritage Foundation, “Constitutional Constraints on Federal Antitrust Law”, December 11, 2014, https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law] IanM

Nevertheless, various constitutionally based interests—such as federalism, freedom to petition the government, freedom of the press, freedom of speech, and freedom of religion—at times may be in tension with the economic-based goals of the antitrust laws. The **courts** have **taken into account** such **interests** in limiting the reach of antitrust. Whether they have struck an appropriate balance, however, is a matter of significant debate.

Fundamental Antitrust Principles

The U.S. antitrust laws seek to curb efforts by firms to reduce competition in the marketplace or to create or maintain monopolies. As Professor Herbert Hovenkamp, author of the leading antitrust treatise, points out, the antitrust statutes’ language is “vague and malleable.”[[2]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn2) For example, over a century of federal case law has been required to make sense of and cabin the Sherman Antitrust Act’s literal prohibition on “every contract, combination … or conspiracy in restraint of trade.”[[3]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn3) Even today, uncertainty about the likely antitrust treatment of many corporate contracts or mergers creates a continuing demand for antitrust counseling.

Until the past 50 years or so, antitrust was viewed by certain commentators as promoting a variety of goals—such as protecting small businesses and reducing the influence of large enterprises—in addition to improving the functioning of free markets. Such views, which also crept into case law, were not unreasonable. The antitrust statutes were enacted in the wake of populist and Progressive Movement concerns about “the trusts” and “big business” abuses, and given their lack of detail, it was natural that these laws might be interpreted in light of such a history. Since the 1970s, however, American federal courts have substituted economic reasoning for this “historical” approach, influenced by economics-based “Chicago School” and “Harvard School” scholarship.[[4]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn4)

Today, American antitrust law generally is aimed at promoting consumer welfare and “economic efficiency.” It pursues this goal by forbidding business behavior that harms the competitive process and that lacks countervailing efficiency justifications. Concern typically focuses on “bad” actions—business behavior that is not “competition on the merits”[[5]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn5)—that reduce output and raise prices. Certain conduct—“naked” cartel activity lacking any efficiency justification, such as secret price fixing or bid rigging—is deemed categorically illegal, or unlawful “per se.” Conduct that is not per se illegal is assessed under a “rule of reason,” which requires detailed and often intrusive analysis of particular practices.

American antitrust law, however, does not prohibit the mere exercise of legitimately obtained market power—that is, the mere charging of “high” prices by firms that succeed through merits-based competition. As the Supreme Court emphasized in Verizon v. Trinko:

The mere possession of monopoly power, and the concomitant charging of monopoly prices, is not only not unlawful; it is an important element of the free-market system. The opportunity to charge monopoly prices—at least for a short period—is what attracts “business acumen” in the first place; it induces risk taking that produces innovation and economic growth. To safeguard the incentive to innovate, the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive conduct.[[6]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn6)

The antitrust laws cannot, of course, be applied in a manner that offends the Constitution. **Two** types of **constitutionally influenced** limitations on the federal antitrust laws are especially well established: limitations derived from federalism and limitations derived from the First Amendment right to petition the government for the redress of grievances. As we will see, both sorts of **limitations** are **in tension** with the **purely materialist** goals of **antitrust.** We will consider them in turn before addressing a few additional constitutional considerations.

The Antitrust State Action Doctrine

First, **state laws** or **regulations** that **foster anticompetitive behavior** are nevertheless exempt from **federal antitrust scrutiny** as long as the state law displacement of competitive activity is clearly articulated and actively supervised by the state.[[7]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn7) This “**state action**” exemption was first pronounced in **Parker v. Brown**,[[8]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn8) in which the Supreme Court upheld a California statute that limited the production of raisins by California farmers.

In Parker, private industry participants set raisin allocations, supervised by state officials. This was **classic cartel behavior** that **raised prices**, **reduced output**, and substantially **harmed raisin consumers** throughout the country. Such **behavior** **would have been** per se illegal absent the state law. Nevertheless, the Supreme Court found in Parker that federalism concerns trumped antitrust. The Court **reasoned** that in enacting the antitrust laws, **Congress** had **never intended** to undermine sovereign state decisions to **displace competition**. In short, federalism principles allow states to immunize grossly anticompetitive schemes from antitrust review.

Over the past 70-plus years, the state action doctrine has taken many a twist and turn. One interesting aspect of this rather complex set of judge-made principles is that this doctrine could be rendered irrelevant by a simple act of Congress that subjected all state regulatory enactments to the federal antitrust laws, consistent with the power of Congress to legislate under the Commerce Clause of the Constitution.[[9]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn9) Given the breadth of Congress’s Commerce Clause powers under modern Supreme Court jurisprudence,[[10]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn10) very few state and local regulatory schemes would be antitrust-immune following the passage of such a law. Yet Congress has never seriously considered such legislation, nor is it likely to do so.

Such a **sweeping federal law** undoubtedly would give rise to objections that the threat of antitrust challenge would undermine state efforts to **promote** a host of regulatory goals unrelated to competition—and even efforts to carry out **routine regulatory actions** that are an inherent aspect of state sovereignty. Moreover, debate over such a law could well highlight the embarrassing fact that various antitrust-exempt federal regulatory schemes—schemes such as a federally sponsored raisin cartel similar to the one upheld in Parker v. Brown—are themselves highly anticompetitive.[[11]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn11)

In a time of concern about federal overreach, it would appear to be unusual for Congress to condemn state regulatory restrictions while shielding analogous federal restrictions from legal scrutiny. Moreover, while federal preemption of state cartel-like schemes and congressional repeal of analogous federal regulatory restrictions would promote consumer welfare in the short term,[[12]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn12) **concerns** about the long-term **effects** of such an unprecedented federal intrusion into **traditional areas** of **state sovereignty** would have to be addressed.

#### Federalism key to prevent blackouts.

Edward MERTA, 13 third year law student at the University of New Mexico in Albuquerque, M.A. in U.S. History from Harvard [“A Climate of Gridlock: Climate Change Adaptation, Federalism, and Expansion of the National Electric Transmission Grid,” August 25, 2013, University of New Mexico School of Law Legal Studies Research Paper Series, Paper No. 2014-07]

The new legal framework for transmission siting sketched here would aim to accommodate national interests in electric transmission expansion while still allowing local and state interests to play a significant role in the new siting regime. This new framework, if implemented, will have to operate in the face of increasingly extreme climate change impacts, but those impacts will not alter today's need for cooperation between state and federal authorities on safeguarding the nation's electric power infrastructure. Historical experience with environmental and natural resources law suggests that the most feasible path to such cooperation is genuine partnership and power sharing, rather than sweeping imposition of federal authority. In the realm of electric transmission, not even the Second World War justified such intervention. Nevertheless, change in the nation's legal framework for transmission siting appears inevitable. Accelerating climate change, and the need to adapt U.S. infrastructure to its physical impact, appears virtually certain to increase political pressure for expansion of the national electric transmission grid in coming decades. The demands of economic and population growth have generated such pressures already, but escalating climate disaster will likely tip the balance decisively in favor of large-scale grid expansion. Other measures will be necessary as well, of course, and many of these alternatives can enhance supplies of electricity without the need for massive new long-distance transmission lines. These options include demand side management, which reduces wasteful end-use of electricity in homes and businesses; improved energy efficiency in commercial homes, buildings, and equipment; distributed energy technologies like household solar panels or rooftop wind turbines;226 and improved storage technologies such as batteries and flywheels to retain electricity from wind and solar generation when wind or sunlight are less available.227 However, even optimistic forecasts for market expansion of such technologies still foresee the need for major new construction of transmission facilities.228 Consequently, the nation will need a new legal framework governing mat construction to address the deficiencies and risks of the current system without inflicting excessive, unjust environmental and economic burdens on local communities. Striking that balance will require transmission law responsive to local, state, regional, and national interests simultaneously, rather than unduly tilted toward one end of the scale or the other. Successful examples of similar power sharing, regarding air and water pollution as well as wartime electric grid expansion, argue against preemptive federal control in the service of primarily national needs. So, too does a history of federal authority tending to sacrifice environmental protection of local communities to interstate commerce or national security. Expanding the transmission grid to promote adaptation to climate change will be an urgent national priority in years to come, but so too will the preservation of local and state interests in a federalist constitutional order. That order has confronted transformative upheavals before, each time adapting and evolving as a result. Adaptation to alien climate conditions on a devastated planet will pose a new challenge, but the ancient dilemma of reconciling central authority with local autonomy, and order with liberty, will remain.

#### Blackouts go nuclear.

Richard Andres and Hanna Breetz, 2011. Professor of National Security Strategy at the National War College and a Senior Fellow and Energy and Environmental Security and Policy Chair in the Center for Strategic Research, Institute for National Strategic Studies, at the National Defense University, doctoral candidate in the Department of Political Science at The Massachusetts Institute of Technology. “Small Nuclear Reactors for Military Installations: Capabilities, Costs, and Technological Implications”, [www.ndu.edu/press/lib/pdf/StrForum/SF-262.pdf](http://www.ndu.edu/press/lib/pdf/StrForum/SF-262.pdf)

The DOD interest in small reactors derives largely from problems with base and logistics vulnerability. Over the last few years, the Services have begun to reexamine virtually every aspect of how they generate and use energy with an eye toward cutting costs, decreasing carbon emissions, and reducing energy-related vulnerabilities. These actions have resulted in programs that have significantly reduced DOD energy consumption and greenhouse gas emissions at domestic bases. Despite strong efforts, however, two critical security issues have thus far proven resistant to existing solutions: bases’ vulnerability to civilian power outages, and the need to transport large quantities of fuel via convoys through hostile territory to forward locations. Each of these is explored below. Grid Vulnerability. DOD is unable to provide its bases with electricity when the civilian electrical grid is offline for an extended period of time. Currently, domestic military installations receive 99 percent of their electricity from the civilian power grid. As explained in a recent study from the Defense Science Board: DOD’s key problem with electricity is that critical missions, such as national strategic awareness and national command authorities, are almost entirely dependent on the national transmission grid . . . [which] is fragile, vulnerable, near its capacity limit, and outside of DOD control. In most cases, neither the grid nor on-base backup power provides sufficient reliability to ensure continuity of critical national priority functions and oversight of strategic missions in the face of a long term (several months) outage.7 The grid’s fragility was demonstrated during the 2003 Northeast blackout in which 50 million people in the United States and Canada lost power, some for up to a week, when one Ohio utility failed to properly trim trees. The blackout created cascading disruptions in sewage systems, gas station pumping, cellular communications, border check systems, and so forth, and demonstrated the interdependence of modern infrastructural systems.8 More recently, awareness has been growing that the grid is also vulnerable to purposive attacks. A report sponsored by the Department of Homeland Security suggests that a coordinated cyberattack on the grid could result in a third of the country losing power for a period of weeks or months.9 Cyberattacks on critical infrastructure are not well understood. It is not clear, for instance, whether existing terrorist groups might be able to develop the capability to conduct this type of attack. It is likely, however, that some nation-states either have or are working on developing the ability to take down the U.S. grid. In the event of a war with one of these states, it is possible, if not likely, that parts of the civilian grid would cease to function, taking with them military bases located in affected regions. Government and private organizations are currently working to secure the grid against attacks; however, it is not clear that they will be successful. Most military bases currently have backup power that allows them to function for a period of hours or, at most, a few days on their own. If power were not restored after this amount of time, the results could be disastrous. First, military assets taken offline by the crisis would not be available to help with disaster relief. Second, during an extended blackout, global military operations could be seriously compromised; this disruption would be particularly serious if the blackout was induced during major combat operations. During the Cold War, this type of event was far less likely because the United States and Soviet Union shared the common understanding that blinding an opponent with a grid blackout could escalate to nuclear war. America’s current opponents, however, may not share this fear or be deterred by this possibility. In 2008, the Defense Science Board stressed that DOD should mitigate the electrical grid’s vulnerabilities by turning military installations into “islands” of energy self-sufficiency. The department has made efforts to do so by promoting efficiency programs that lower power consumption on bases and by constructing renewable power generation facilities on selected bases. Unfortunately, these programs will not come close to reaching the goal of islanding the vast majority of bases. Even with massive investment in efficiency and renewables, most bases would not be able to function for more than a few days after the civilian grid went offline Unlike other alternative sources of energy, small reactors have the potential to solve DOD’s vulnerability to grid outages. Most bases have relatively light power demands when compared to civilian towns or cities. Small reactors could easily support bases’ power demands separate from the civilian grid during crises. In some cases, the reactors could be designed to produce enough power not only to supply the base, but also to provide critical services in surrounding towns during long-term outages. Strategically, islanding bases with small reactors has another benefit. One of the main reasons an enemy might be willing to risk reprisals by taking down the U.S. grid during a period of military hostilities would be to affect ongoing military operations. Without the lifeline of intelligence, communication, and logistics provided by U.S. domestic bases, American military operations would be compromised in almost any conceivable contingency. Making bases more resilient to civilian power outages would reduce the incentive for an opponent to attack the grid. An opponent might still attempt to take down the grid for the sake of disrupting civilian systems, but the powerful incentive to do so in order to win an ongoing battle or war would be greatly reduced.

### DA – PTX

#### Biden’s PC will push reconciliation through a jam-packed agenda but there’s no room for error

BURGESS EVERETT and LAURA BARRÓN-LÓPEZ 9-16 [POLITICO, "Dems call in big gun as they face huge Hill tests," https://www.politico.com/news/2021/09/16/biden-influence-capitol-democrats-511952, hec]

The next few months will push President Joe Biden to wield every drop of his influence over Congress. Democrats are plunging into messy internal debates over social programs from child care to drug pricing as they try to beat back GOP resistance on voting rights while steering the United States away from economic catastrophe. And in order to avert a government shutdown, avoid a debt default and fight ballot access restrictions passed in some GOP states, Democratic lawmakers are urging Biden to get more directly involved. Senate Majority Whip Dick Durbin said that Biden, “more than anyone,” maintains sway over his caucus’s 50 members: “There is no comparable political force to a president, and specifically Joe Biden at this moment.” Biden appears to be answering the call. The president is getting increasingly involved in Congress’ chaotic fall session as he battles sagging approval ratings, heightened concerns around the pandemic and some internal criticism over his withdrawal from Afghanistan. Rebounding as the midterms draw nearer will depend on whether his big social spending ambitions are realized and if his party can dodge a government shutdown and credit default. But even if he has success on those fronts, he still needs to maintain momentum on Democrats’ elections legislation, which Republicans look certain to torpedo. “I have full faith and confidence in Joe Biden in all of this,” said House Majority Whip Jim Clyburn, who's pressed Biden to endorse a filibuster carve out for voting rights legislation. “He is working this … and that’s how it should be.” Biden met with two key Democratic holdouts on his domestic spending agenda on Wednesday, part of a sustained push to keep Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) on board with his legislative program. Biden’s met with Sinema four times this year, in addition to telephone calls made between the two, and has spoken to Manchin a similar number of times. “Now is the time” for Biden to jump full-force into the reconciliation conversation, said Sen. Tim Kaine (D-Va.). And the White House made clear that Biden is diving into the series of tricky issues. Andrew Bates, a spokesperson for Biden, said that Biden and his administration "are in frequent touch with Congress about each key priority: protecting the sacred right to vote, ensuring our economy delivers for the middle class and not just those at the top, and preventing needless damage to the recovery from the second-worst economic downturn in American history.” To help corral all 50 Senate Democrats for the social spending bill, the president and his party need to create an “echo chamber” around its substance, said Celinda Lake, a pollster on Biden’s campaign. But that won't be easy. Manchin has told colleagues he’s worried about whether the bill’s safety net, climate action and tax reforms will be popular in his state, according to one Senate Democrat. He's also said he won't support a measure at the current spending level: $3.5 trillion. If Biden can hammer home the popular aspects of the spending plan, it may help assuage Manchin and improve his whip count in Congress. Underscoring the degree to which he's become the face of the multi-trillion dollar reconciliation bill, a Democratic aide said the party is increasingly seeking to frame it as Biden’s agenda, not that of Sen. Bernie Sanders (I-Vt.) or any single Democrat.

#### Antitrust reform requires PC and trades off with other legislative priorities

Peter C. Carstensen 21, the Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, February 2021, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

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

#### Infrastructure bill key to cyber security

Cat Zakrzewski, 8-14-2021, "The Senate’s $1 trillion infrastructure bill includes funding to secure Americans’ water systems and power grids from cyberattacks," https://www.washingtonpost.com/technology/2021/08/14/cybersecurity-infrastructure-senate-legislation/

A Senate bill intended to shore up the nation’s roads, pipes and electric grid includes billions to protect that aging infrastructure from cyberattacks. With a series of high-profile ransomware attacks fresh in their minds, U.S. Senate negotiators wove cybersecurity investments throughout the bipartisan $1 trillion infrastructure proposal, which passed the Senate in a 69-to-30 vote on Tuesday and now moves to the House for a vote. The allocations are a reflection of the growing realization in Congress that a computer attack could leave Americans without water, power or other essentials. “This is an incredibly serious threat to this country that’s only growing more serious,” said Sen. Angus King (I-Maine). The Colonial Pipeline ransomware attack in May was a wake-up call that gave lawmakers and the public “a taste of what is potentially in store,” King said. The attack disrupted fuel supplies in the eastern United States, prompting gasoline shortages and panicked buying that affected millions for days. The Colonial hack was just one in a series of attacks on lawmakers’ minds. King said he is particularly wary of attacks on the more than 100,000 public water systems in the United States, especially after a hacker in February took control of a water treatment facility in Oldsmar, Fla. The intruder raised the levels of sodium hydroxide to a hazardous point that could have sickened residents. An operator noticed the rising levels and was able to quickly intervene, but the incident highlighted the broader weaknesses at the facilities responsible for ensuring Americans have clean drinking water. To King, one of the Senate negotiators, these incidents underlined that cybersecurity has to be a part of any work the government does on infrastructure, from broadband to power grids. The bill directs the Federal Highway Administration to create a new tool to help transportation authorities better detect and respond to cyber attacks, which could range from ransomware attacks on transportation departments or hacks of traffic lights and road signs. It makes emergency funding available to respond to digital attacks on public water systems and makes grants available that can be used to help some water systems increase their ability to deal with cyberattacks as well as natural hazards and extreme weather. It also calls on the Federal Energy Regulatory Commission to develop incentives to ensure that electric utilities are investing in cybersecurity and sharing data about potential threats. The bill also authorizes nearly $2 billion in spending for specific cybersecurity initiatives, such as the creation of a $1 billion grant program to provide federal cybersecurity assistance to state and local governments, which experts say are among the most vulnerable institutions to ransomware attacks. The bill also would fund a new cyber director office, so that the federal government can better coordinate its response to major hacks, and would create a $100 million response and recovery fund, which the Department of Homeland Security could use to support both private companies and governments’ recoveries from cyberattacks.

#### Cyberattacks go nuclear.

Michael T. Klare 19. Professor emeritus of peace and world security studies at Hampshire College and senior visiting fellow at the Arms Control Association. “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation.” https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation

Another initiative incorporated in the strategy document also aroused concern: the claim that an enemy cyberattack on U.S. nuclear command, control, and communications (NC3) facilities would constitute a “non-nuclear strategic attack” of sufficient magnitude to justify the use of nuclear weapons in response.

Under the Obama administration’s NPR report, released in April 2010, the circumstances under which the United States would consider responding to non-nuclear attacks with nuclear weapons were said to be few. “The United States will continue to…reduce the role of nuclear weapons in deterring non-nuclear attacks,” the report stated. Although little was said about what sort of non-nuclear attacks might be deemed severe enough to justify a nuclear response, cyberstrikes were not identified as one of these. The 2018 NPR report, however, portrayed a very different environment, one in which nuclear combat is seen as increasingly possible and in which non-nuclear strategic threats, especially in cyberspace, were viewed as sufficiently menacing to justify a nuclear response. Speaking of Russian technological progress, for example, the draft version of the Trump administration’s NPR report stated, “To…correct any Russian misperceptions of advantage, the president will have an expanding range of limited and graduated [nuclear] options to credibly deter Russian nuclear or non-nuclear strategic attacks, which could now include attacks against U.S. NC3, in space and cyberspace.”1

The notion that a cyberattack on U.S. digital systems, even those used for nuclear weapons, would constitute sufficient grounds to launch a nuclear attack was seen by many observers as a dangerous shift in policy, greatly increasing the risk of accidental or inadvertent nuclear escalation in a crisis. “The entire broadening of the landscape for nuclear deterrence is a very fundamental step in the wrong direction,” said former Secretary of Energy Ernest Moniz. “I think the idea of nuclear deterrence of cyberattacks, broadly, certainly does not make any sense.”2

Despite such admonitions, the Pentagon reaffirmed its views on the links between cyberattacks and nuclear weapons use when it released the final version of the NPR report in February 2018. The official text now states that the president must possess a spectrum of nuclear weapons with which to respond to “attacks against U.S. NC3,” and it identifies cyberattacks as one form of non-nuclear strategic warfare that could trigger a nuclear response.

That cyberwarfare had risen to this level of threat, the 2018 NPR report indicated, was a product of the enhanced cybercapabilities of potential adversaries and of the creeping obsolescence of many existing U.S. NC3 systems. To overcome these vulnerabilities, it called for substantial investment in an upgraded NC3 infrastructure. Not mentioned, however, were extensive U.S. efforts to employ cybertools to infiltrate and potentially incapacitate the NC3 systems of likely adversaries, including Russia, China, and North Korea.

For the past several years, the U.S. Department of Defense has been exploring how it could employ its own very robust cyberattack capabilities to compromise or destroy enemy missiles from such states as North Korea before they can be fired, a strategy sometimes called “left of launch.”3 Russia and China can assume, on this basis, that their own launch facilities are being probed for such vulnerabilities, presumably leading them to adopt escalatory policies such as those espoused in the 2018 NPR report. Wherever one looks, therefore, the links between cyberwar and nuclear war are growing.

The Nuclear-Cyber Connection

These links exist because the NC3 systems of the United States and other nuclear-armed states are heavily dependent on computers and other digital processors for virtually every aspect of their operation and because those systems are highly vulnerable to cyberattack. Every nuclear force is composed, most basically, of weapons, early-warning radars, launch facilities, and the top officials, usually presidents or prime ministers, empowered to initiate a nuclear exchange. Connecting them all, however, is an extended network of communications and data-processing systems, all reliant on cyberspace. Warning systems, ground- and space-based, must constantly watch for and analyze possible enemy missile launches. Data on actual threats must rapidly be communicated to decision-makers, who must then weigh possible responses and communicate chosen outcomes to launch facilities, which in turn must provide attack vectors to delivery systems. All of this involves operations in cyberspace, and it is in this domain that great power rivals seek vulnerabilities to exploit in a constant struggle for advantage.

The use of cyberspace to gain an advantage over adversaries takes many forms and is not always aimed at nuclear systems. China has been accused of engaging in widespread cyberespionage to steal technical secrets from U.S. firms for economic and military advantages. Russia has been accused, most extensively in the Robert Mueller report, of exploiting cyberspace to interfere in the 2016 U.S. presidential election. Nonstate actors, including terrorist groups such as al Qaeda and the Islamic State group, have used the internet for recruiting combatants and spreading fear. Criminal groups, including some thought to be allied with state actors, such as North Korea, have used cyberspace to extort money from banks, municipalities, and individuals.4 Attacks such as these occupy most of the time and attention of civilian and military cybersecurity organizations that attempt to thwart such attacks. Yet for those who worry about strategic stability and the risks of nuclear escalation, it is the threat of cyberattacks on NC3 systems that provokes the greatest concern.

This concern stems from the fact that, despite the immense effort devoted to protecting NC3 systems from cyberattack, no enterprise that relies so extensively on computers and cyberspace can be made 100 percent invulnerable to attack. This is so because such systems employ many devices and operating systems of various origins and vintages, most incorporating numerous software updates and “patches” over time, offering multiple vectors for attack. Electronic components can also be modified by hostile actors during production, transit, or insertion; and the whole system itself is dependent to a considerable degree on the electrical grid, which itself is vulnerable to cyberattack and is far less protected. Experienced “cyberwarriors” of every major power have been working for years to probe for weaknesses in these systems and in many cases have devised cyberweapons, typically, malicious software (malware) and computer viruses, to exploit those weaknesses for military advantage.5

Although activity in cyberspace is much more difficult to detect and track than conventional military operations, enough information has become public to indicate that the major nuclear powers, notably China, Russia, and the United States, along with such secondary powers as Iran and North Korea, have established extensive cyberwarfare capabilities and engage in offensive cyberoperations on a regular basis, often aimed at critical military infrastructure. “Cyberspace is a contested environment where we are in constant contact with adversaries,” General Paul M. Nakasone, commander of the U.S. Cyber Command (Cybercom), told the Senate Armed Services Committee in February 2019. “We see near-peer competitors [China and Russia] conducting sustained campaigns below the level of armed conflict to erode American strength and gain strategic advantage.”

Although eager to speak of adversary threats to U.S. interests, Nakasone was noticeably but not surprisingly reluctant to say much about U.S. offensive operations in cyberspace. He acknowledged, however, that Cybercom took such action to disrupt possible Russian interference in the 2018 midterm elections. “We created a persistent presence in cyberspace to monitor adversary actions and crafted tools and tactics to frustrate their efforts,” he testified in February. According to press accounts, this included a cyberattack aimed at paralyzing the Internet Research Agency, a “troll farm” in St. Petersburg said to have been deeply involved in generating disruptive propaganda during the 2016 presidential elections.6

Other press investigations have disclosed two other offensive operations undertaken by the United States. One called “Olympic Games” was intended to disrupt Iran’s drive to increase its uranium-enrichment capacity by sabotaging the centrifuges used in the process by infecting them with the so-called Stuxnet virus. Another left of launch effort was intended to cause malfunctions in North Korean missile tests.7 Although not aimed at either of the U.S. principal nuclear adversaries, those two attacks demonstrated a willingness and capacity to conduct cyberattacks on the nuclear infrastructure of other states.

Efforts by strategic rivals of the United States to infiltrate and eventually degrade U.S. nuclear infrastructure are far less documented but thought to be no less prevalent. Russia, for example, is believed to have planted malware in the U.S. electrical utility grid, possibly with the intent of cutting off the flow of electricity to critical NC3 facilities in the event of a major crisis.8 Indeed, every major power, including the United States, is believed to have crafted cyberweapons aimed at critical NC3 components and to have implanted malware in enemy systems for potential use in some future confrontation.

Pathways to Escalation

Knowing that the NC3 systems of the major powers are constantly being probed for weaknesses and probably infested with malware designed to be activated in a crisis, what does this say about the risks of escalation from a nonkinetic battle, that is, one fought without traditional weaponry, to a kinetic one, at first using conventional weapons and then, potentially, nuclear ones? None of this can be predicted in advance, but those analysts who have studied the subject worry about the emergence of dangerous new pathways for escalation. Indeed, several such scenarios have been identified.9

The first and possibly most dangerous path to escalation would arise from the early use of cyberweapons in a great power crisis to paralyze the vital command, control, and communications capabilities of an adversary, many of which serve nuclear and conventional forces. In the “fog of war” that would naturally ensue from such an encounter, the recipient of such an attack might fear more punishing follow-up kinetic attacks, possibly including the use of nuclear weapons, and, fearing the loss of its own arsenal, launch its weapons immediately. This might occur, for example, in a confrontation between NATO and Russian forces in east and central Europe or between U.S. and Chinese forces in the Asia-Pacific region.

Speaking of a possible confrontation in Europe, for example, James N. Miller Jr. and Richard Fontaine wrote that “both sides would have overwhelming incentives to go early with offensive cyber and counter-space capabilities to negate the other side’s military capabilities or advantages.” If these early attacks succeeded, “it could result in huge military and coercive advantage for the attacker.” This might induce the recipient of such attacks to back down, affording its rival a major victory at very low cost. Alternatively, however, the recipient might view the attacks on its critical command, control, and communications infrastructure as the prelude to a full-scale attack aimed at neutralizing its nuclear capabilities and choose to strike first. “It is worth considering,” Miller and Fontaine concluded, “how even a very limited attack or incident could set both sides on a slippery slope to rapid escalation.”10

What makes the insertion of latent malware in an adversary’s NC3 systems so dangerous is that it may not even need to be activated to increase the risk of nuclear escalation. If a nuclear-armed state comes to believe that its critical systems are infested with enemy malware, its leaders might not trust the information provided by its early-warning systems in a crisis and might misconstrue the nature of an enemy attack, leading them to overreact and possibly launch their nuclear weapons out of fear they are at risk of a preemptive strike.

“The uncertainty caused by the unique character of a cyber threat could jeopardize the credibility of the nuclear deterrent and undermine strategic stability in ways that advances in nuclear and conventional weapons do not,” Page O. Stoutland and Samantha Pitts-Kiefer wrote in 2018 paper for the Nuclear Threat Initiative. “[T]he introduction of a flaw or malicious code into nuclear weapons through the supply chain that compromises the effectiveness of those weapons could lead to a lack of confidence in the nuclear deterrent,” undermining strategic stability.11 Without confidence in the reliability of its nuclear weapons infrastructure, a nuclear-armed state may misinterpret confusing signals from its early-warning systems and, fearing the worst, launch its own nuclear weapons rather than lose them to an enemy’s first strike. This makes the scenario proffered in the 2018 NPR report, of a nuclear response to an enemy cyberattack, that much more alarming.

### T – Scope

#### Interpretation and violation: Expansion of scope of antitrust laws requires removing a current exemption

#### Antitrust law’s scope is broad

Sagers 15 [Christopher L. Sagers, Editorial Chair, Handbook on the Scope of Antitrust, ABA SECTION OF ANTITRUST LAW, HANDBOOK ON THE SCOPE OF ANTITRUST (2015), poapst]

The Supreme Court’s many **emphatic** generalizations over several decades suggest that **antitrust applies very broadly**. “[A]ntitrust,” the Court has said, “[is] a fundamental national economic policy.” It is no less than a “**charter of freedom**” and our very “**Magna Carta of free enterprise**.”3 When describing the scope of antitrust law in the abstract, therefore, courts commonly speak in very broad terms. Because “Congress intended to strike as broadly as it could” in enacting the antitrust laws, “[l]anguage more comprehensive” than those statutes contain “is difficult to conceive.” The breadth accorded the antitrust laws by the courts “reflects the felt indispensable role of antitrust policy in the maintenance of a free economy….” One might then have thought that the scope of antitrust would be a simple affair. If the law applies so broadly, then cases raising serious issues of applicability would be rare. But in fact it is not simple at all. The scope of antitrust is governed by dozens of federal statutes and by a variety of elaborate caselaw doctrines. Numerous cases every year raise difficult scope issues, and many hundreds or thousands of reported opinions now address them, often in meticulous, complex detail. The scope of antitrust has morphed into a large, distinct, and complex body of law. No prior work appears to have considered the entire law of the scope of antitrust as one body, in any comprehensive and integrated way. Integrated treatment poses certain benefits. A primary goal of this book is to aid practitioners, because several of the scope doctrines have become complex and uncertain, and their interrelationships can be especially challenging. Integrated treatment might also be useful for public policy purposes, given that scope issues have generated frequent reform efforts and debate. While this Handbook takes no position on normative matters, a problem in those debates has been their oftentimes great complexity. As one example, commentators have criticized results in which different doctrines are applied in different ways to similar facts, and the Supreme Court, too, has occasionally indicated that scope doctrines applicable to different circumstances should nevertheless be theoretically consistent. Addressing questions of that nature, however, has been difficult simply because doctrinal scope issues are ordinarily considered in isolation, a fact that in itself reflects the complexity and scale of the issues. In those rare cases in which conflicts among scope doctrines are considered, courts have felt unable or unauthorized to resolve them.

#### Limits to its scope are codified exemptions – means you have to get rid of one

Sagers 15 [Christopher L. Sagers, Editorial Chair, Handbook on the Scope of Antitrust, ABA SECTION OF ANTITRUST LAW, HANDBOOK ON THE SCOPE OF ANTITRUST (2015), poapst]

On the other hand, **scope limits** of various kinds have always existed. Congress explicitly limited antitrust by statute as early as 1914,19 and did so many more times during the rise of organized labor20 and the price-and-entry regulatory regimes of the Progressive and New Deal eras.21 Judge-made limits were likewise recognized as early as 1922, again mainly as a consequence of the new regulatory regimes.22 As new waves of health and safety regulation emerged during the 1960s and 1970s,23 defendants sought antitrust clemency with some increasing success.24 Courts have also long sought to protect the political process from antitrust, even though businesses have frequently turned to that arena for advantage within the marketplace.25 Interestingly, most other nations with competition laws have similar histories of complex scope limits. The European Union (EU), for example, built a process for exemption into the very first treaty creating its competition law,26 and much of the work of its competition authority has involved administration of that process. The national laws of several EU member states likewise included various exclusions before creation of the EU,27 and exemptions exist in Australia, Canada, Japan, and South Korea.28 This long history, in which the generally broad applicability of the antitrust laws has been fraught with controversial disputes, can be seen as a struggle between the general and the specific. For the most part, substantive antitrust insists on generality and purports to oppose special treatment for the idiosyncrasies of particular markets.29 Antitrust presumes, in other words, that in respects important to antitrust, markets are mostly the same. Thus, in the absence of an **exemption**, the U.S. antitrust laws apply to all exchanges of goods or services for consideration, anywhere within the domestic reach of Congress’s interstate commerce power, and quite broadly to overseas conduct as well, where anticompetitive effects are felt in the United States.30 Yet, that broad application, especially during periods in which antitrust laws were applied more strictly and many kinds of conduct were held per se illegal, invites arguments that some contexts simply cannot be subject to one-size-fits-all policies.31 There have been times, as during the heyday of “destructive competition” reasoning during the first part of the 20th century, when industries like transportation, communications, and insurance were quite successful in arguing that special economic problems prevented them from performing well under the rules of competition that antitrust imposed elsewhere.32 Similar arguments have found some traction in more recent times, even as during this purportedly deregulatory age we generally claim to have disposed of the long-standing fear of destructive competition. For example, recent, **explicit antitrust exemptions** now protect standard setting organizations,33 the placement program for medical residents,34 and charitable gift annuities. Accordingly, despite the strong commitment to generality often stated, **we do in fact see limits on scope**. For the most part, the courts and Congress have followed one consistent instinct in moderating these struggles between the general and the specific. They typically will relax the preference for antitrust only where there is some other public, politically accountable oversight of a particular market. In effect, **antitrust exemptions** usually reflect the instinct that we should have **either regulation** **or** **antitrust** in any given context, which is to say that any context should be regulated either by direct government oversight or by competition kept healthy through antitrust.36 Thus, at least traditionally, Congress rarely displaced antitrust without setting up an administrative agency to take its place. Likewise, where courts fashioned scope limitations, they generally did so only where a regulatory agency oversaw rates or conduct (as with the filed rate doctrine) or where the challenged conduct was actually the conduct of a government entity itself (as with the state action doctrine).

#### Vote negative

#### Limits explosion --- antitrust law can potentially cover anything, only defining expand scope as removing an exemption to antitrust law that is on the books prevents tweak of the week affs designed to be small repairs.

#### Ground – Forcing affs to remove exemptions centers the debate on core areas of antitrust that were controversial enough to warrant an exemption.

### ADV CP

#### The United States Federal Government should:

#### -condition agricultural subsidy allocation on compliance with environmental and forest protection criteria,

#### -shift a portion of subsidy revenue to direct conservation support and environmentally conscious agricultural innovation

#### -institute targeted land retirements

#### -condition subsidy recipients on more efficient uses of fertilizer

#### -redirect remaining agricultural subsidy payments to small farming businesses.

#### Solves the aff better than they do

Searchinger 20 [Tim, Senior Fellow and Technical Director of the Food Program at the World Resources Institute, Redirecting Agricultural Subsidies for a Sustainable Food Future, https://www.wri.org/insights/redirecting-agricultural-subsidies-sustainable-food-future, poapst]

To both feed the world and solve climate change, the world needs to produce 50% more food in 2050 compared to 2010 while reducing greenhouse gas emissions by two-thirds. While government funding has an important role to play, a new World Bank report I wrote with seven co-authors found that agricultural subsidies are currently doing little to achieve these goals, but have great potential for reform. Governments provide on average $600 billion per year for agricultural support in the countries that generate two-thirds of the world’s agriculture. This is a lot of money. Government support averages 30% of the agricultural production in these countries (measured by “value added”). Yet our report found that only 5% of this funding supports any kind of conservation objective, and only 6% supports research and technical assistance. Pure income support accounts for 70%. By redirecting even a portion of total agricultural subsidies, governments could do more to feed the world while reducing greenhouse gas emissions. Where Are Agricultural Subsidies Currently Going? What is needed to mitigate the 25% of the world’s greenhouse gas emissions contributed by global agriculture, including emissions from land use change? The good news is that many opportunities exist to boost agricultural productivity to provide more food on existing agricultural land while reducing emissions. Opportunity one is to increase natural resource efficiency by producing more food per hectare, per animal and per kilogram of fertilizer and other chemicals used. Opportunity two is to put in place measures to link these productivity gains to protection of forests and other native habitats. Opportunity three is to pursue innovations, because reaching climate goals for agriculture — just like for energy use — requires new technologies and approaches. Reanalyzing data from the OECD and using country studies, our report examined whether farm support programs are doing any of these things today. Despite a few good examples, most public support is making little contribution. One reason is that half of the support occurs in the form of trade and other market barriers governments impose to boost farm prices in their own countries. Although these barriers increase or stabilize income for one country’s farmers, they result in lower income for farmers elsewhere in the world. As a general rule, the world’s poor farmers are losers rather than winners when it comes to global agricultural subsidies, even though it is they who would most benefit from some reduction in their risk due to fluctuating prices and incomes. And of the 20% of total farm support that comes in the form of direct production subsidies to farmers, most goes to the largest farms that are best able to handle price and income variability on their own. In India and Africa, fertilizer subsidies are designed to stimulate production, but our report found limited and unequally distributed benefits. In India, these subsidies are contributing to both excessive use of fertilizer overall and an imbalance of nitrogen to other nutrients. Although modest, conservation spending has been growing in various forms (see graphic below), but could be better used. For example, most conservation funding reestablishes forests or grazing on cropland, which could generate real benefits. But because most of these programs are temporary, the land can be re-plowed, risking the loss of carbon and biodiversity gains. These programs also have mostly restored plantation forests, which store less carbon and can have even less biodiversity than the farmlands they replace. Some countries, including the United States and EU nations, have made efforts to condition financial support to farmers on compliance with environmental criteria. But we found that those conditions have mostly been limited. Because of trade agreements, governments have also shifted some of their subsidies so that they are less market distorting. As a good result, farmers have less incentive to produce more food than needed in some places or to use too many inputs like fertilizers and other chemicals. These changes have the potential to lead to more efficiency — and did so in New Zealand, where reforms were the most dramatic— but will probably not have significant effects on greenhouse gas emissions globally. How to Put Agricultural Subsidies to Better Use? Despite a concerning global picture, country and regional studies show some areas of progress that governments around the world can build on to meet our challenging climate and food security goals. Key reforms include: Condition farm financial aid on the protection of forests and other native areas. In Brazil, for example, the government conditioned low-cost agricultural loans to farms and municipalities that curbed deforestation. Although imperfectly enforced, these programs helped to reduce deforestation significantly. This example highlights the potential to link efforts to produce more food on existing land with efforts to protect forests. We recommend that other countries follow this approach. This is important even in developed countries like the United States, where farmers continue to plow up carbon-rich native prairie. Direct conservation support toward integrated projects that bring together producers with scientists to develop needed innovations. In the United States and Europe, some conservation funding supports integrated projects that bring groups of farmers together with scientists to try out innovative systems that reduce fertilizer or pesticide use. Such integrated projects are the best way to address vexing challenges and should be the model for spending in general. Condition funding on environmental practices, and use systems of “graduated” payments that reward farmers for better and better performance. Europe put in place a structure that in theory conditions all direct funding to farmers based on some environmental practices and distributes much aid in ways that are supposed to improve the environment. Some is even supposed to address climate change. The environmental requirements for these funds have been too limited to provide much environmental benefit, and little money has actually gone towards climate mitigation. Still, the structure is partially in place to make the money achieve real gains. By offering higher payments based on better performance, such systems can avoid setting one set of standards that are too low to be meaningful. Support more efficient uses of fertilizer in high fertilizer-use countries, and take a more balanced approach to boosting fertilization everywhere. The Chinese government phased out fertilizer subsidies and started to fund improvements in nitrogen and manure management. In India, the government conditioned nitrogen fertilizer subsidies on use with an additive designed to reduce nitrogen losses to the environment. In Kenya, government programs helped dairy farmers increase their use of nitrogen-fixing, high-protein shrubs, an alternative to using fertilizer, to increase the efficiency of their dairy production. Target land retirement (i.e., restoration of agricultural land) on carbon-rich peatlands and lands with limited agricultural productivity, and restore them using native vegetation. ​In the United States, a small part of land retirement funds goes toward restoration of buffers and wetlands in specific river systems. In China, the government promised to put a greater emphasis on using native trees for restoration. Overall, governments around the world should redirect more agricultural funding to focus on mitigation and the synergies between reducing emissions and producing more food. A first step toward a sustainable food future is to make better use of the large financial support governments are already providing.

### SG CP

#### Text: the united states solicitor general should submit a brief to the Supreme Court recommending that the United States establish a presumption against mergers and acquisitions among agribusiness firms

#### Solicitor General recommendations are followed by the courts – gives more certainty

Rosch 07 [Thomas Rosch, FTC COMMISSIONER ROSCH SPEAKS AT ANTITRUST SECTION OF MINNESOTA STATE BAR, March 1, 2007 Thursday 10:32 PM EST, lexis, poapst]

A New Direction for Antitrust at the Supreme Court? J. THOMAS ROSCH COMMISSIONER Antitrust Section of the Minnesota State Bar The Supreme Court may issue as many as five antitrust decisions this term - an unprecedented number in recent years. To give one a sense a perspective, in the fifteen years prior to the 2003-2004 term the Court averaged less than a single antitrust decision a year. At the conclusion of the current term the Court may have ten antitrust decisions to its credit since the 2003-2004 term. I thought I would spend my time here today discussing these recent cases, share some of my observations, and then make some predictions for the future. I. Let me begin by briefly recapping the recent cases, starting with two cases decided in 2004 - Trinko and Empagran. Trinko focused on Verizon's alleged failures to comply with its regulatory obligations under the Telecommunications Act of 1996 and claimed that its conduct had stifled competition in the local telephone service market. Justice Scalia's majority opinion, joined by five of his fellow justices, characterized the conduct as a "refusal to deal" and held that given the context of the conduct - that is the regulatory overlay in the telecommunications market and the fact that the conduct at issue was addressed by the FCC - the plaintiffs' allegations did not state a claim under Section 2 of the Sherman Act. Empagran, decided later that same term, dealt with the ability of foreign plaintiffs to bring antitrust claims in United States courts. Relying on principles of international comity and statutory interpretation, Justice Breyer's majority opinion concluded that the plaintiffs' Sherman Act claims were barred by the FTAIA because the adverse foreign effect of the alleged conspiracy was wholly independent of any adverse domestic effect. In other words, there was no allegation that the harm suffered by the foreign plaintiffs was tied to the harm suffered by domestic plaintiffs. The 2005 - 2006 term saw two new Justices take their place on the Court and three antitrust decisions. In Dagher, the plaintiffs challenged the pricing practice of an otherwise legitimate joint venture as a per se violation of the Sherman Act. Texaco and Shell had formed a joint venture that combined their retailing and refining assets on the West Coast. The joint venture had a unitary pricing scheme, but it sold its products under both the Shell and Texaco brand names. Justice Thomas, writing for a unanimous Court, held that the pricing practices of an otherwise legitimate joint venture should be analyzed under the rule of reason. The Court next turned its attention to the Robinson-Patman Act - the perpetual whipping boy of antitrust. The Court's decision in Volvo Trucks toughened the competitive injury requirement in secondary line cases. Justice Ginsburg, joined by six of her fellow justices, held that the plaintiff must show that it actually competed with a favored dealer. The Court refused to draw an inference of competitive injury from evidence that other dealers had received greater discounts when pursuing sales. In the last of the three cases - Illinois Tool Works v. Independent Ink - the Court revisited the presumption that a patent confers market power in tying cases. Justice Stevens, writing for a unanimous Court, held that a patent does not necessarily confer market power upon a patentee - that the plaintiff must prove that the defendant has market power in the tying product. Last week, the Court issued its decision in Weyerhaeuser - the first case of the current term touching on antitrust. That case addressed the appropriate standard for evaluating "predatory buying" claims under Section 2 of the Sherman Act. The plaintiff in that case - a saw mill in the Pacific Northwest - alleged that Weyerhaeuser had purposely overpaid for inputs (alder sawlogs) and bought more than it needed in an effort to increase its rivals' costs and drive them out of business. The Court unanimously rejected the standard adopted by the lower courts and held that the plaintiffs' predatory bidding claims were subject to a test modeled on Brooke Group.8 First, the plaintiff must prove that the predator's bidding on the buy side (in this case, alder hardwoods) caused the cost of the relevant output (all hardwood lumber) to rise above the revenues generated in the sale of those outputs. Only higher bidding that leads to below-cost pricing in the relevant output market will suffice as a basis for liability for predatory bidding. This raises an interesting question that was not explicitly addressed by the Court; what is the output benchmark. Here the relevant input market was alder hardwood; what was the relevant output market? Was it the market defined by the jury - all hardwood lumber? Or was it alder lumber? The Court seemed to suggest that it was the hardwood lumber market. Second, the plaintiff must also prove that the defendant has a dangerous probability of recouping the losses incurred in bidding up input prices through the exercise of monopsony power. Weyerhaeuser was only the first of four antitrust decisions expected this term. The Court is expected to issue a decision in Twomby soon. The plaintiffs in Twombly alleged that the Baby Bells - such as Verizon, Bell South, and SBC - conspired not to compete in one another's geographic territories for local telephone and high-speed internet service. The conspiracy claim is supported by allegations that the firms have not entered each other's markets and that there were incentives under the Telecommunications Act for them to enter new geographic markets. The question before the Court is whether these allegations are sufficient to state a claim under the Sherman Act because they are also consistent with competitively benign conduct. The Court will hear oral argument in two more cases - Leegin and Credit Suisse - later this month. In Leegin, the per se treatment of vertical minimum resale price maintenance - first established in Dr. Miles - is under attack. The Supreme Court has moved away from per se treatment of vertical restraints and I expect them to add Dr. Miles to this list. The last case currently pending before the Court is Credit Suisse. It involves two private class actions, in which respondents allege antitrust violations in the course of initial public offerings (IPOs) of securities, including allegations of illegal tie-ins and "laddering." The Second Circuit ruled that, on a motion to dismiss, the district court had erred in ruling that all of the alleged violations were impliedly immune from the antitrust laws because of IPO regulation by the Securities and Exchange Commission (SEC). There is a chance that the Court will add a fifth antitrust matter to its docket this year. A petition for a writ of certiorari is pending in In re Tamoxifen Antitrust Litigation. This is the third case brought to the Court's doorstep that challenges the legality of patent litigation settlements in the pharmaceutical industry involving so-called "reverse payments." II. If cert is granted in In re Tamoxifen, the Court will have heard argument in ten antitrust matters in the last three years - a remarkable record of activity. In those cases, the Court addressed a broad range of issues - from vertical restraints, such as minimum resale price maintenance and tying claims, to horizontal restraints, such as joint venture activity, to single firm conduct. The breadth of issues addressed by these opinions has provided antitrust scholars plenty of grist to mull over. I have a few observations to share. First, it is obvious that the current Justices are comfortable with antitrust. All the current justices have some antitrust experience, and a few, like Justices Stevens and Breyer, have a documented interest in the subject. Justice Stevens has played a significant role in the Court's antitrust jurisprudence with over two dozen antitrust opinions to his credit. Justice Breyer shares Stevens' interest in antitrust, if not his body of work. Justice Breyer worked as a Special Assistant in the Antitrust Division and he has authored a number of significant opinions on antitrust issues - first as a appellate judge and later as a Supreme Court Justice. Other justices have also written significant substantive antitrust opinions as members of both appellate courts and the Supreme Court. And although Chief Justice John Roberts has yet to author an antitrust opinion - either as an circuit court judge or a Supreme Court justice - he worked on several significant antitrust matters prior to joining the judiciary. Second, and perhaps this is a personal bias, I believe that antitrust is an attractive subject See State Oil, 522 U.S. at 21 ("The general assumption that legislative changes should be left to Congress has less force with respect to the Sherman Act in light of the accepted view that Congress expected the courts to give shape to the statute's broad mandate by drawing on common law tradition."). to the members of the Court - and their clerks. It raises difficult questions that have a profound impact on the nation's economy. Few areas of the law attract academics from so many disciplines - law, economics, business strategy - all have something to add to the debate. Third, the common law nature of antitrust lends itself to reevaluation and reconsideration over time. The drafters of the major antitrust statutes - the Sherman and Clayton Acts - left them vague, allowing the courts to give them substantive meaning. The Court's relative silence on antitrust in the 1990s led to a backlog. There were a number of issues that were ripe for reconsideration - among them the presumption that patents confer market power and the legality of minimum resale price maintenance practices. Fourth, the explosion of private antitrust litigation - particularly class action litigation - in recent years has attracted a sophisticated and well funded plaintiffs bar. The combination of deep pocketed defendants and the prospect of treble damages have led some plaintiff attorneys to test the outer boundaries of the law. One could read the Court's decisions in Trinko, Empagran, Dagher, and Twombly as an effort to define those boundaries more clearly. One last observation I would make is on the role of the Solicitor General's office in the development of the Court's antitrust jurisprudence. The Court, to an even greater degree than in the past, values the current Administration's input on antitrust. If one wants to predict where a majority of the Court will come out on an issue, the Solicitor General's briefs are a good place to start. By my count, the Solicitor General has submitted amicus briefs in at least fourteen antitrust matters since 2002. In five cases it urged the Court to deny cert - and in all five instances the Supreme Court followed that advice. In the five antitrust matters decided since 2004, a majority of the Court agreed with the Solicitor General's ultimate conclusion on the outcome - if not always on the reasoning behind those conclusions. I am not going to speculate as to the reasons but it does put a twist on Justice Potter Stewart's observation forty years ago "that the sole consistency that I can find ... is that the government always wins" when it comes to antitrust.

### Clog DA

#### Increased antitrust cases are remedied through class action suits – overburdens the courts causing case rejections

Grossman 98 [PREPARED TESTIMONY OF STANLEY M. GROSSMAN POMERANTZ HAUDEK BLOCK GROSSMAN & GROSS LLP BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY SUBCOMMITTEE ON COURTS AND INTELLECTUAL PROPERTY SUBJECT - H.R. 3789, THE "CLASS ACTION JURISDICTION ACT OF 1998", Federal News Service, lexis, poapst]

At the same time, we have concerns about the magnitude of some of the changes that H.R. 3789 would make. We would encourage you to keep in mind that the legislation constitutes a major overhaul of class action practice that would overrule in part at least three Supreme Court decisions regarding diversity. Moreover, our experience indicates that the majority of state court class actions have merit. We are concerned that the transfer of nearly all class actions previously handled by the state judiciary to the federal courts will overload federal judges and result in the rejection of class claims based not on the quality of the cases, but merely on caseload considerations. BACKGROUND Congress has enacted numerous laws to protect the public from securities and other frauds, antitrust violations, overbilling by unscrupulous medical providers and other wrongs motivated by corporate greed. State legislatures have similarly recognized the need for such protections on the local level. With limited resources available to government watchdogs at both levels, the class action procedure -- which can provide monetary damages or injunctive relief-- often offers the only meaningful enforcement and means of redress for violation of these laws. The law of class actions is in flux. The Supreme Court issued a landmark decision on the appropriate perimeter of class litigation last year in the Amchem case2; several circuit courts have issued important opinions in the past several years3; and, as U.S. Circuit Judge Scirica testified before the Subcommittee in March, we can expect farther appellate elucidation of class action jurisprudence soon because the Judicial Conference, and now the House of Representatives, have approved interlocutory appeals procedures from class determinations. In addition, the Judicial Conference's Advisory Committee on Civil Rules is conducting a major review of class action procedures, including a working group focusing on mass tort litigation.

#### That decks global stability – terror, climate change and global war

Taylor 16 (Andrea Kendall-Taylor, Senior Associate @ Human Rights Initiative, “How Democracy’s Decline Would Undermine the International Order,” 7-15-16, https://www.csis.org/analysis/how-democracy’s-decline-would-undermine-international-order)

It is rare that policymakers, analysts, and academics agree. But there is an emerging consensus in the world of foreign policy: threats to the stability of the current international order are rising. The norms, values, laws, and institutions that have undergirded the international system and governed relationships between nations are being gradually dismantled. The most discussed sources of this pressure are the ascent of China and other non-Western countries, Russia’s assertive foreign policy, and the diffusion of power from traditional nation-states to nonstate actors, such as nongovernmental organizations, multinational corporations, and technology-empowered individuals. Largely missing from these discussions, however, is the specter of widespread democratic decline. Rising challenges to *democratic governance* across the globe are a *major strain* on the *international system*, but they receive far less attention in discussions of the shifting world order.¶ In the 70 years since the end of World War II, the United States has fostered a global order dominated by states that are liberal, capitalist, and democratic. The United States has promoted the spread of democracy to strengthen global norms and rules that constitute the foundation of our current international system. However, despite the steady rise of democracy since the end of the Cold War, over the last 10 years we have seen dramatic reversals in respect for democratic principles across the globe. A 2015 Freedom House report stated that the “acceptance of democracy as the world’s dominant form of government—and of an international system built on democratic ideals—is under greater threat than at any point in the last 25 years.”¶ Although the number of democracies in the world is at an all-time high, there are a number of key trends that are working to undermine democracy. The rollback of democracy in a few influential states or even in a number of less consequential ones would almost certainly accelerate meaningful changes in today’s global order.¶ Democratic decline would weaken U.S. partnerships and erode an important foundation for U.S. cooperation abroad. Research demonstrates that domestic politics are a key determinant of the international behavior of states. In particular, democracies are more likely to form alliances and cooperate more fully with other democracies than with autocracies. Similarly, authoritarian countries have established mechanisms for cooperation and sharing of “worst practices.” An increase in authoritarian countries, then, would provide a broader platform for coordination that could enable these countries to overcome their divergent histories, values, and interests—factors that are frequently cited as obstacles to the formation of a cohesive challenge to the U.S.-led international system.¶ Recent examples support the empirical data. Democratic backsliding in Hungary and the hardening of Egypt’s autocracy under Abdel Fattah el-Sisi have led to enhanced relations between these countries and Russia. Likewise, democratic decline in Bangladesh has led Sheikh Hasina Wazed and her ruling Awami League to seek closer relations with China and Russia, in part to mitigate Western pressure and bolster the regime’s domestic standing.¶ Although none of these burgeoning relationships has developed into a highly unified partnership, democratic backsliding in these countries has provided a basis for cooperation where it did not previously exist. And while the United States certainly finds common cause with authoritarian partners on specific issues, the depth and reliability of such cooperation is limited. Consequently, further democratic decline could seriously compromise the *U*nited *S*tates’ ability to form the kinds of deep partnerships that will be required to confront today’s increasingly complex challenges. Global issues such as *climate change*, *migration*, and *violent extremism* demand the coordination and *cooperation* that democratic backsliding would put in peril. Put simply, the United States is a less effective and influential actor if it loses its ability to rely on its partnerships with other democratic nations.¶ A slide toward authoritarianism could also *challenge* the *current global order* by diluting U.S. influence in critical international institutions, including the United Nations , the World Bank, and the International Monetary Fund (IMF). Democratic decline would weaken Western efforts within these institutions to advance issues such as Internet freedom and the responsibility to protect. In the case of *Internet governance*, for example, Western *democracies support* an *open*, largely private, *global Internet*. Autocracies, in contrast, promote state control over the Internet, including laws and other mechanisms that facilitate their *ability to censor* and *persecute* dissidents. Already many autocracies, including Belarus, China, Iran, and Zimbabwe, have coalesced in the “Likeminded Group of Developing Countries” within the United Nations to advocate their interests.¶ Within the IMF and World Bank, autocracies—along with other developing nations—seek to water down conditionality or the reforms that lenders require in exchange for financial support. If successful, diminished conditionality would enfeeble an important incentive for governance reforms. In a more extreme scenario, the rising influence of autocracies could enable these countries to bypass the IMF and World Bank all together. For example, the Chinese-created Asian Infrastructure and Investment Bank and the BRICS Bank—which includes Russia, China, and an increasingly authoritarian South Africa—provide countries with the potential to bypass existing global financial institutions when it suits their interests. Authoritarian-led alternatives pose the risk that global economic governance will become fragmented and less effective.¶ *Violence and instability* would also likely increase if more democracies give way to autocracy. International relations literature tells us that democracies are *less likely to fight wars* against other democracies, suggesting that interstate wars would rise as the number of democracies declines. Moreover, within countries that are already autocratic, additional movement away from democracy, or an “*authoritarian hardening*,” would *increase global instability*. Highly repressive autocracies are the most likely to experience state failure, as was the case in the Central African Republic, Libya, Somalia, Syria, and Yemen. In this way, democratic decline would significantly strain the international order because rising levels of instability would exceed the West’s ability to respond to the tremendous costs of peacekeeping, humanitarian assistance, and refugee flows.¶ Finally, widespread democratic decline would contribute to rising anti-U.S. sentiment that could fuel a global order that is increasingly antagonistic to the United States and its values. Most autocracies are highly suspicious of U.S. intentions and view the creation of an external enemy as an effective means for boosting their own public support. Russian president Vladimir Putin, Venezuelan president Nicolas Maduro, and Bolivian president Evo Morales regularly accuse the United States of fomenting instability and supporting regime change. This vilification of the United States is a convenient way of distracting their publics from regime shortcomings and fostering public support for strongman tactics.¶ Since 9/11, and particularly in the wake of the Arab Spring, Western enthusiasm for democracy support has waned. Rising levels of instability, including in Ukraine and the Middle East, fragile governance in Afghanistan and Iraq, and sustained threats from terrorist groups such as ISIL have increased Western focus on security and stability. U.S. preoccupation with intelligence sharing, basing and overflight rights, along with the perception that autocracy equates with stability, are trumping democracy and human rights considerations.¶ While rising levels of global instability explain part of Washington’s shift from an historical commitment to democracy, the nature of the policy process itself is a less appreciated factor. Policy discussions tend to occur on a country-by-country basis—leading to choices that weigh the costs and benefits of democracy support within the confines of a single country. From this perspective, the benefits of counterterrorism cooperation or access to natural resources are regularly judged to outweigh the perceived costs of supporting human rights. A serious problem arises, however, when this process is replicated across countries. The bilateral focus rarely incorporates the risks to the U.S.-led global order that arise from widespread democratic decline across multiple countries.¶ Many of the threats to the current global order, such as China’s rise or the diffusion of power, are driven by factors that the United States and West more generally have little leverage to influence or control. Democracy, however, is an area where Western actions can affect outcomes. Factoring in the risks that arise from a global democratic decline into policy discussions is a vital step to building a comprehensive approach to democracy support. Bringing this perspective to the table may not lead to dramatic shifts in foreign policy, but it would ensure that we are having the right conversation.

## Environment

### No Solvency

#### Antitrust fails---lobbyists block and water down enforcement

Jones and Kovacic 20 [Alison Jones and William E. Kovacic, Alison Jones is Professor of Law at King’s and a solicitor at Freshfields Bruckhaus Deringer LLP; William Evan Kovacic is an American lawyer and legal scholar who was a commissioner of the U.S. Federal Trade Commission from 2006 to 2011. Kovacic is a professor at George Washington University Law School and the director of their Competition Law Center, "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy", The Antitrust Bulletin 2020, Vol. 65(2) 227-255 [https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884]LPAL](https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884%5dLPAL)

\*this card has been modified for ableist language

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125 The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or ~~muted~~ [silenced] if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder. Imagine, for a moment, that the DOJ and the FTC launch monopolization cases against each of the GAFA giants. Among other grounds, these cases might be premised on the theory that the firms used mergers to accumulate and protect positions of dominance. The GAFA firms have received unfavorable scrutiny from legislators from both political parties over the past few years, but the current wave of political opprobrium is unlikely to discourage the firms from bringing their formidable lobbying resources to bear upon the Congress. It would be hazardous for the enforcement agencies to assume that a sustained, well-financed lobbying campaign will be ineffective. At a minimum, the agencies would need to consider how many battles they can fight at one time, and how to foster a countervailing coalition of business interests to oppose the defendants.

#### New Antitrust legislation would take years to enforce even if successful

**Tracy 21** (Dana Mattioli and Ryan Tracy, WSJ, "House Bills Seek to Break Up Amazon and Other Big Tech Companies", 6-11-2021, accessed on 8-31-2021, https://www.wsj.com/articles/amazon-other-tech-giants-could-be-forced-to-shed-assets-under-house-bill-11623423248)

House lawmakers proposed a raft of bipartisan legislation aimed at reining in the country’s biggest tech companies, including a bill that seeks to make Amazon.com Inc. AMZN 1.44% and other large corporations effectively split in two or shed their private-label products. The bills, announced Friday, amount to the biggest congressional broadside yet on a handful of technology companies—including Alphabet Inc.’s GOOG -0.01% Google, Apple Inc. AAPL -0.84% and Facebook Inc. FB -0.34% as well as Amazon AMZN 1.44% —whose size and power have drawn growing scrutiny from lawmakers and regulators in the U.S. and Europe. If the bills become law—a prospect that faces significant hurdles—they could substantially alter the most richly valued companies in America and reshape an industry that has extended its impact into nearly every facet of work and life. One of the proposed measures, titled the Ending Platform Monopolies Act, seeks to require structural separation of Amazon and other big technology companies to break up their businesses. It would make it unlawful for a covered online platform to own a business that “utilizes the covered platform for the sale or provision of products or services” or that sells services as a condition for access to the platform. The platform company also couldn’t own businesses that create conflicts of interest, such as by creating the “incentive and ability” for the platform to advantage its own products over competitors. A separate bill takes a different approach to target platforms’ self-preferencing. It would bar platforms from conduct that “advantages the covered platform operator’s own products, services, or lines of business over those of another business user,” or that excludes or disadvantages other businesses. The proposed legislation would need to be passed by the Democratic-controlled House as well as the Senate, where it would likely also need substantial Republican support. Each of the bills has both Republicans and Democrats signed onto it, with more expected to join, congressional aides said. Seven Republicans are backing the bills, with a different group of three signing on to each measure, according to a person familiar with the situation. “Unregulated tech monopolies have too much power over our economy,” said Rep. David Cicilline (D., R.I.), the top Democrat on the House Antitrust Subcommittee. “They are in a unique position to pick winners and losers, destroy small businesses, raise prices on consumers, and put folks out of work. Our agenda will level the playing field.” Rep. Ken Buck (R., Col.), the panel’s top Republican, said he supports the bill because it “breaks up Big Tech’s monopoly power to control what Americans see and say online, and fosters an online market that encourages innovation.” The four companies didn’t comment on the proposed legislation Friday. All have defended their competitive practices and said that they operate their products and services to benefit customers. Matt Schruers, president of the Computer & Communications Industry Association, whose members include Facebook, Amazon and Google, said the House bills would disrupt Americans’ ability to use products that they like. “Writing regulations for a handful of businesses will skew competition and leave consumers worse off,” he said. We noticed you're already a member. Please sign in to continue reading WSJ or your next reading experience may be blocked. Critics of the tech giants praised the legislation. Roku Inc., which competes with several of the tech giants, applauded the lawmakers for “taking a crucial step toward curbing the predatory and anticompetitive behaviors of some of the country’s most powerful companies.” Gaining sufficient Republic support for the bills will be an uphill battle: While Republicans are concerned about technology companies’ power, many are skeptical about changing antitrust laws. Even if they pass, the laws could take years to implement as federal agencies try to enforce them over the companies’ likely legal objections.

#### No matter what – big ag wins

Mason=Blue

Hannah Kass 19, master candidate in environmental studies at the University of Pennsylvania, 12/26/19, Breaking Up Big Ag Requires Reasonable Antitrust Enforcement, https://www.theregreview.org/2019/12/26/kass-breaking-up-big-ag-antitrust-enforcement/

In 2007, food sovereignty activists from around the world convened in Sélingué, Mali to write the Declaration of Nyéléni. That declaration asserts that activists should seek to democratize the flows of power, wealth, and resources that have moved predominantly toward the core industrialized countries and multinational corporate agribusinesses, and away from farmers all over the world.

The declaration aims to ensure that the food system protects those who produce and consume the world’s food supply: farmers and people, rather than corporate agribusinesses. Yet in the United States and elsewhere, the food system has a long way to go toward meeting the needs of both farmers and consumers.

Farmers are increasingly driven out of agriculture by the unequal distribution of market power. To ensure fair competition in the agri-food marketplace, it is imperative that the federal government provide the proper enforcement of antitrust regulations. Currently, corporate agribusinesses hold a disproportionate amount of market power in the agri-food economy. Farmers, on the other hand, are under economic pressure to compete in a growing global market, and often must rely on contracting with just a few processing companies to sell their products.

Many of these contracts contain conditions which force farmers to buy seeds and equipment from a small handful of input companies. Often, the big food companies are vertically integrated—that is, the same companies operate at various levels of the supply chain. At the end of the day, farmers only receive 14.8 cents per every dollar consumers spend on food—yet the costs of production amount to 80 cents per dollar. The majority of the revenue is realized by corporate agribusiness executives and shareholders.

In 2015, the four largest beef firms controlled 85% of the beef market. The four largest U.S. corn seed firms controlled 85% of the corn seed market, and the four largest U.S. soybean seed firms controlled 76% of that market. In 2017, after the Bayer–Monsanto and Dow–Dupont mergers, the four largest global herbicide and pesticide firms now own 84% of the market share.

The Federal Trade Commission (FTC) and Antitrust Division of the Department of Justice interpret and implement antitrust statutes. The Sherman Antitrust Act of 1890 renders price-fixing, restraint of trade, and excessive market monopolization illegal, and the Clayton Antitrust Act asserts that it is unlawful for any business to merge with or acquire any part of its industry in a manner that significantly damages that industry. Despite these laws, corporate agribusiness’ monopolization of the agricultural market continues to persist at the expense of farmers in the United States.

Over the past 40 years, corporate agribusinesses have benefited from the FTC and Antitrust Division’s lax interpretations of antitrust statutes. These agencies have permitted large corporate agribusinesses to merge and monopolize the market excessively, despite the fact that antitrust statutes were created explicitly to regulate monopolies and ensure fair market competition.

Admittedly, given that the Sherman Act makes it illegal to restrain trade, it might be said that only by allowing agribusinesses to merge, acquire other businesses, and monopolize the market is trade able to continue unrestrained. But that trade is unrestrained only for the big firms. Small farmers are unable to compete in the marketplace when the concentration of big firms continues unrestrained, particularly when mergers and acquisitions promote the monopolization of the market.

Consider how small farmers have fared under the consolidation of the meat packing industry. According to the Packers and Stockyards Act of 1921, price-fixing was supposedly rendered illegal, but even with this protection the plight of small farmers has been profound.

In 2004, for example, cattle farmer Henry Lee Pickett sued meat packer Tyson Foods when he noticed that Tyson was lowering prices in its marketing agreements with farmers. Pickett preferred to charge the cash market price to avoid being paid an unfair price. Even if farmers did not sell their products through marketing agreements like Tyson’s, often they still needed to lower their prices on the open market. Pickett was unable to provide evidence that Tyson’s market agreements were producing unfair competition practices, so he lost his case.

Separately, pork producers also unsuccessfully fought meat packer Smithfield Foods, citing illegal price-fixing under the Packers and Stockyards Act. The marketing agreements were seen by the judiciary as reasonable business practices because they cut costs to the agribusiness contractors.

In both of these cases, Tyson and Smithfield were protected by the “freedom of contract” principle, which declares that everyone is free to participate in, or opt out of, any contractual agreement. However, the share of this “freedom” in terms of food sovereignty is certainly asymmetrical. When the market price is controlled by an artificially low price created by a marketing agreement, farmers are not free from poverty. When marketing agreements are adopted by the majority of processors, and there are not alternative agreements offered, farmers are not free from opting out of unfair contracts. In effect, farmers are locked into receiving an unfair price for their product.

### AT: Warming---1NC

#### Warming doesn’t cause extinction---new studies.

Nordhaus 20 Ted Nordhaus, an American author, environmental policy expert, and the director of research at The Breakthrough Institute, citing new climate change forecasts. [Ignore the Fake Climate Debate, 1-23-2020, https://www.wsj.com/articles/ignore-the-fake-climate-debate-11579795816]//BPS

Beyond the headlines and social media, where Greta Thunberg, Donald Trump and the online armies of climate “alarmists” and “deniers” do battle, there is a real climate debate bubbling along in scientific journals, conferences and, occasionally, even in the halls of Congress. It gets a lot less attention than the boisterous and fake debate that dominates our public discourse, but it is much more relevant to how the world might actually address the problem. In the real climate debate, no one denies the relationship between human emissions of greenhouse gases and a warming climate. Instead, the disagreement comes down to different views of climate risk in the face of multiple, cascading uncertainties. On one side of the debate are optimists, who believe that, with improving technology and greater affluence, our societies will prove quite adaptable to a changing climate. On the other side are pessimists, who are more concerned about the risks associated with rapid, large-scale and poorly understood transformations of the climate system. But most pessimists do not believe that runaway climate change or a hothouse earth are plausible scenarios, much less that human extinction is imminent. And most optimists recognize a need for policies to address climate change, even if they don’t support the radical measures that Ms. Thunberg and others have demanded. In the fake climate debate, both sides agree that economic growth and reduced emissions vary inversely; it’s a zero-sum game. In the real debate, the relationship is much more complicated. Long-term economic growth is associated with both rising per capita energy consumption and slower population growth. For this reason, as the world continues to get richer, higher per capita energy consumption is likely to be offset by a lower population. A richer world will also likely be more technologically advanced, which means that energy consumption should be less carbon-intensive than it would be in a poorer, less technologically advanced future. In fact, a number of the high-emissions scenarios produced by the United Nations Intergovernmental Panel on Climate Change involve futures in which the world is relatively poor and populous and less technologically advanced. Affluent, developed societies are also much better equipped to respond to climate extremes and natural disasters. That’s why natural disasters kill and displace many more people in poor societies than in rich ones. It’s not just seawalls and flood channels that make us resilient; it’s air conditioning and refrigeration, modern transportation and communications networks, early warning systems, first responders and public health bureaucracies. New research published in the journal Global Environmental Change finds that global economic growth over the last decade has reduced climate mortality by a factor of five, with the greatest benefits documented in the poorest nations. In low-lying Bangladesh, 300,000 people died in Cyclone Bhola in 1970, when 80% of the population lived in extreme poverty. In 2019, with less than 20% of the population living in extreme poverty, Cyclone Fani killed just five people. “Poor nations are most vulnerable to a changing climate. The fastest way to reduce that vulnerability is through economic development.” So while it is true that poor nations are most vulnerable to a changing climate, it is also true that the fastest way to reduce that vulnerability is through economic development, which requires infrastructure and industrialization. Those activities, in turn, require cement, steel, process heat and chemical inputs, all of which are impossible to produce today without fossil fuels. For this and other reasons, the world is unlikely to cut emissions fast enough to stabilize global temperatures at less than 2 degrees above pre-industrial levels, the long-standing international target, much less 1.5 degrees, as many activists now demand. But recent forecasts also suggest that many of the worst-case climate scenarios produced in the last decade, which assumed unbounded economic growth and fossil-fuel development, are also very unlikely. There is still substantial uncertainty about how sensitive global temperatures will be to higher emissions over the long-term. But the best estimates now suggest that the world is on track for 3 degrees of warming by the end of this century, not 4 or 5 degrees as was once feared. That is due in part to slower economic growth in the wake of the global financial crisis, but also to decades of technology policy and energy-modernization efforts. “We have better and cleaner technologies available today because policy-makers in the U.S. and elsewhere set out to develop those technologies.” The energy intensity of the global economy continues to fall. Lower-carbon natural gas has displaced coal as the primary source of new fossil energy. The falling cost of wind and solar energy has begun to have an effect on the growth of fossil fuels. Even nuclear energy has made a modest comeback in Asia.

#### There are tons of alt causes — different GHGs and sectors — we’ll insert this table

Kumar et al. 21 — Abhishek Kumar is a Senior Engineer at United Technologies Research Center. He is a professor at the Department of Civil and Environmental Engineering at the Birla Institute of Technology. Shilpi Nagar is a professor at the Department of Environmental Studies and the University of Delhi. Shalini Anand is a professor at the Center for Fire at the Explosive Environment and Safety Department at DRDO. (“1 - Climate change and existential threats” Global Climate Change, Elsevier, 2021, pages 1-31. https://www.sciencedirect.com/science/article/pii/B9780128229286000058)//JLPark

| Greenhouse gases | Source | Contribution (%) |
| --- | --- | --- |
| Carbon dioxide | Electricity | 37 |
| Transportation | 31 |
| Industry | 15 |
| Residential and commercial areas | 10 |
| Non–fossil fuel combustion | 6 |
| Methane | Natural gas and petroleum | 29 |
| Enteric fermentation | 26 |
| Landfills | 18 |
| Coal mining | 10 |
| Manure management | 10 |
| Others | 8 |
| Nitrous oxides | Agricultural soil management | 74 |
| Stationary combustion | 6 |
| Industry or chemical production | 5 |
| Transportation | 5 |
| Manure management | 5 |
| Others | 4 |
| Fluorinated gases | Substitution of ozone-depleting substances | 90 |
| Electrical transmission and distribution | 3 |
| Production and processing of aluminum and magnesium | 3 |
| HCFC-22 production | 2 |
| Semiconductor manufacture | 2 |

### Big Ag Sustainable

#### Aff kills the environment---big ag is better for it.

Nordhaus & Blaustein-Rejto 21 – (Ted Nordhaus is director of research at the Breakthrough Institute and is a leading global thinker on energy, environment, climate, human development, and politics. Dan Blaustein-Rejto is a Master of Public Policy from University of California, the director of food and agriculture at the Breakthrough Institute and has conducted research with the Environmental Defense Fund, International Center for Tropical Agriculture, and Farmers Market Coalition, 4-18-2021, "Big Agriculture Is Best", <https://foreignpolicy.com/2021/04/18/big-agriculture-is-best/>) NL

Debates about the social and environmental impacts of America’s food system cannot be disentangled from the basic reality that in a modern industrialized society, most people will live in cities and suburbs and will not work in agriculture. As a result, most food will need to be produced by large farms, with little labor, far away from the people who will consume it.

Many sustainable agriculture advocates tout the recent growth of organic agriculture as proof that an alternative food system is possible. But growing market share vastly overstates how much food is actually **produced organically**. In reality, organic production accounts for little more than 1 percent of total U.S. agricultural land use. Meanwhile, only a bit more than 5 percent of food sales come from organic producers, mostly because organic sales are overwhelmingly concentrated in high-value sectors of the market, namely produce and dairy, and fetch a premium from well-heeled consumers.

Moreover, organic farms, large and small, don’t actually outperform large conventional farms by many important environmental measures. Scale, technology, and productivity make good environmental sense and economic sense. Because organic farming requires more land for every calorie or pound produced, a large-scale shift to organic farming would entail converting more forest and other land to farming, resulting in greater habitat loss and more greenhouse gas emissions. And while organic farming doesn’t use synthetic pesticides or fertilizers, it often results in greater nitrogen pollution because **manure** is a highly inefficient way to deliver nutrients to crops.

Another benefit of large-scale U.S. farms is that because they are so efficient, economically and environmentally, they are also able to produce vastly more food than Americans can consume, making the country the world’s largest agricultural exporter as well.

That benefits the U.S. economy, of course, but it also comes with an environmental benefit for the world. In the contemporary environmental imagination, highly productive, globally traded agriculture is a bad thing—poisoning the land at home and undermining food sovereignty abroad. But in reality, a pound of grain or beef exported from the United States almost always displaces a pound that would have been produced with more land and greenhouse gas emissions somewhere else.2

## Farming

### No Solvency

#### US ag exports at an all-time high – solves global food scarcity

Ramirez-Santos 7/1 [HERNANDO RAMÍREZ-SANTOS Editorial and Social Media Coordinator, Abasto Magazine. Accomplished and innovative leader and journalist with over 30 years of experience in print, digital, radio and television. U.S. AGRICULTURAL EXPORTS TO REACH A NEW RECORD IN 2021, <https://abasto.com/en/news/u-s-agricultural-exports-to-reach-a-new-record-in-2021/>, poapst]

U.S. agricultural exports in the first four months (January – April) of 2021 were a record $59 billion, exceeding the previous record set in 2014 by nearly $5 billion. At the current pace, there is a strong possibility of a record-breaking year for U.S. agricultural exports surpassing the 2014 mark of $154.5 billion, according to the USDA’s International Agricultural Trade Report. Robust global demand, high commodity prices, and increased U.S. competitiveness have led to record exports of corn, sorghum, beef, food preparations, and other products. Others, including soybeans, soybean meal, wheat, and dairy, have also seen large increases during recent years and have contributed significantly to early-year export levels. The agriculture, food, and related industries are vital parts of the U.S. economy, contributing an estimated $1.109 trillion to the U.S. gross domestic product and providing employment for 22.2 million people in the United States in 2019, according to the USDA’s Economic Research Service. Agricultural exports have grown significantly within the past decades, becoming an increasingly important component of the agriculture industry. From 2000 to 2020, U.S. agricultural exports grew from $56 billion to $150 billion. It is estimated that U.S. agricultural exports supported nearly 1.1 million full-time jobs in 2019. In 2020, exports increased by nearly $9 billion during 2019. A record in 2021 would drive this total even higher, likely supporting more U.S. jobs and making a larger positive impact on the U.S. economy. An August 2020 World Trade Organization report examining the impact of COVID-19 on agricultural trade described the sector’s resilience as a whole. It highlighted the essential nature of food as the main factor. Coming out of a strong year in 2020, the United States appears well-positioned for an even stronger 2021, stated the report. U.S. agricultural exports during the pandemic reinforce this idea. While the export value of a few products like tree nuts, beef, and cotton declined in 2020, total exports increased significantly. Record harvests causing low prices were the main drivers for the decline in tree nut export value (despite volume increases). Still, declines in beef and cotton could be partially attributed to COVID-19 due to reduced hotel, restaurant, and institutional sector demand and a slowdown of global apparel consumption. All other top export products performed as well as or better than 2019. In the first four months of 2021, exports of top products have met, exceeded, or in some cases greatly exceeded exports from the same period in 2020, contributing to an overall increase of more than $12 billion. According to the USDA, many upward trends from 2020 have continued into the new year. Global demand is rising, driven in part due to record purchases by China as it rebuilds its swine herd from African Swine Fever and demand for animal feed surges. The early 2020 signing of the Phase One agreement between the United States and China created a pathway for U.S. producers to step in and fill both the demand for pork, beef, and poultry products as well as the rising demand for animal feed.

### 1NC---Prices Turn

#### Antitrust against Big AG undoubtedly skyrockets prices and lowers sustainability

Watson and Winfree, 21 – (Phillip Watson is an associate professor in Agricultural Economics and Rural Sociology at the University of Idaho and received his Ph.D from Colorado State University, Jason Winfree is an associate professor in Agricultural Economics and Rural Sociology at the University of Idaho and received his Ph.D from Washington State University "Should we use antitrust policies on big agriculture?," 6-17-2021, https://onlinelibrary.wiley.com/doi/full/10.1002/aepp.13173?casa\_token=VM27dae8qbsAAAAA%3ATSShn6TMMvF5ZXY-FQenT0zXSmi4vrCak50HnDUX-bZWmVPUHU5OEcry-DhR1JqvZt3emYDEqFueuuo) nL

In recent years, there has been a movement to use antitrust policy to break up “big ag”.[1](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-note-0002_2) The impetus behind this movement seems to stem from a desire to protect small family farms, protect the environment, and “safeguard the US food supply”.[2](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-note-0003_3) However, any antitrust intervention will have effects on food prices and the availability of food. From a **social welfare** standpoint, **food prices** should be of **utmost importance** when thinking about these policies since cheaper food helps all consumers and alleviates food security concerns.[3](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-note-0004_4) Furthermore, the antitrust policy was designed to prevent higher prices from undue market power, not to protect small producers against competition. In other words, antitrust should not be used to protect producers, rather it should be used to maximize consumer surplus; and any desire to maintain small farms should be done through other policy mechanisms.

**Evaluating** the **economic arguments** for and against antitrust interventions in **large agricultural firms** suggests that the **implementation** of such policies would **result in** protectionism. While there has been **consolidation** for decades in the agricultural industry, much of this is due to changes in the cost structure and does not generally create higher prices due to market power. Certainly there are exceptions to this in various agricultural sectors where market power needs to be curbed, but ultimately this is an empirical question that depends on the changes in food prices. We contend that recent consolidation does not seem to have caused a spike in average food prices, and the proponents of antitrust intervention are implicitly arguing for higher food prices, the exact opposite goal of historical antitrust policy.

First, some historical background and examples of recent proponents of antitrust intervention in agriculture are given. We then consider the economic theory that shows us whether consolidation is due to changes in the cost structure or driven by market power. This is followed by a discussion of the determinants and direction of food prices. Other arguments are then discussed such as income equality, supply chain issues, and food security. We then briefly touch on potential solutions to helping small farms, such as rethinking policies that deal with food standards or output restrictions.

BACKGROUND

Antitrust policy in the United States has an interesting history regarding agriculture. In 1890, the Sherman Act dealt with unreasonable restraints of trade, thereby prohibiting monopolies and collusion of prices. In 1914, the Clayton Act strengthened antitrust laws by prohibiting anticompetitive mergers. However, 8 years later, the Capper–Volstead Act (1922) gave specific antitrust exemptions for the marketing activities of agricultural producers (Bolotova, [2016](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0007)). The reasons cited for passing the Capper–Volstead Act included providing protections to agricultural producers, who were seen as a group of small farms who were fundamentally disadvantaged relative to the larger manufacturers, input suppliers, and wholesalers (National Broiler Marketing Association v. US 1978). This effectively increased producer surplus and increased prices received by agricultural producers. This concern for small and family farms continued through the depression with strictly enforced production quotas to increase prices.[4](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-note-0005_6) Nearly a century later, there is still a movement to protect small farmers, in part due to skepticism of large agricultural firms. Currently, many policymakers feel that large food and agricultural firms are problematic, not just because of competition with small firms but also because of a myriad of related issues such as income equality, health/quality of food, environmental issues, and concentrated control of the food supply.

The agricultural industry is not completely unique in that there is a populist movement to protect small firms in the broader economy. Even though market power may be increasing[5](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-note-0006_7), many lament the competition in the broader economy that large and efficient stores bring to communities, making it difficult for “mom and pop” stores across various industries[6](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-note-0007_8). Furthermore, many consumers are leery of the political clout of companies such as Google or Facebook and advocate for antitrust intervention (Zingales, [2017](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0058)). In this model, lower prices are a bug, not a feature, since they eliminate small firms and concentrate information and control of the market. These are essentially arguments against natural monopolies. These sentiments also occur in agricultural markets, as well as some arguments specific to the agricultural industry. For example, in addition to the exit of small farms and control of the food supply, some feel that cheap food can lead to unhealthy food (Meyersohn, [2019](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0040)) or environmental problems (Carrington, [2019 (July 16)](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0012)). While this may or may not be the case, the use of antitrust policy for social issues or externality reduction purposes represents a myopic and ahistorical application of antitrust policy. Furthermore, **it has been shown** that taxing polluters can yield socially optimal outcomes and that monopolies and oligopolies tend to pollute less **than firms** in **more competitive markets** (Benchekroun & Van Long, [1998](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0004)).

In the political realm, law makers have explicitly called for the break-up of large agricultural firms using antitrust laws. For example, in 2007, then presidential candidate Barack Obama issued the platform “Real Leadership for Rural America” which stated he would “strengthen anti-monopoly laws” in agriculture and “make sure that farm programs are helping family farmers, as opposed to large, vertically integrated corporate agribusiness.”[7](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-note-0008_13) In 2019, US senators Cory Booker and John Tester proposed a bill that puts a moratorium on agricultural mergers[8](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-note-0009_14). Additionally, Senators Elizabeth Warren and Bernie Sanders both proposed measures that would break up what they refer to as “unfair farming monopolies”. Specifically, Warren invoked antitrust laws in restricting vertical integration of large agribusiness companies such as Tyson (Daniels, [2019 (March 27)](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0019)), reversing the merger of Bayer AG and Monsanto (Dorning, [2019 (March 27)](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0021)), and limiting warranties for companies such as John Deere that prohibit repairs (Hirsch, [2019](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0032)). More recently, Joe Biden's platform states that he wants to “strengthen antitrust enforcement” so farmers can have “access to fair markets where they can compete and get fair prices for their products”.[9](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-note-0010_18) In general, these politicians have been clear that the goal is to help smaller farms. This push for policy intervention hinges on the arguments that (1) big agribusiness has the potential to exert too much control over an industry that is fundamental to our food supply and (2) it makes it too difficult for smaller (and ostensibly less efficient) firms to compete.

What is conspicuously absent in this debate is a concern for consumer surplus. In other words, much of the debate is focused on protecting small farms by **raising prices**, which is **harmful to consumers**. While protecting farm profitability has long been a mainstay of the Farm Bill policy, it is historically antithetical to the purpose of antitrust law to use it as a means to raise prices. This line of reasoning is also somewhat curious given that food is a basic need. Low prices and consumer surplus is the crux of antitrust policy, and economic theory tells us that, under reasonable assumptions, social welfare is maximized when consumer surplus is maximized. However, in agriculture, the debate seems to revolve around profits between various types of firms. So, as most antitrust debates revolve around consumers, in agriculture, it seems to have become a discussion of “small ag” versus “big ag”. From a producer-surplus perspective, these policies could be seen as an avenue towards income equality. While income equality is a normative position that many take, we argue that any discussion on equality should include consumers.

**Using antitrust** to break up “big ag” could certainly lead to an adverse effect on food prices. The claim that “big ag” is a threat to small farms is based on the argument that large agricultural firms create food prices that are too low and force small, and ostensibly less efficient, producers out of production.10 However, it would be an unusual and counter-productive use of antitrust policy to break up purported monopolies (or oligopolies) in a bid to raise food prices. Antitrust arguments often use the “rule of reason”, which requires proof that firms have engaged in anticompetitive behavior. This implies that the “rule of reason” is used to reduce prices and maximize consumer surplus. Given Engel's law, increasing food prices is regressive, at least on the consumer side. So while increasing food prices could potentially increase profits for small firms (which is ambiguous in terms of regressivity), shifting the costs to food consumers is ill-advised.

The arguments to maintain small farms has many fronts. In addressing the full effect of a policy, it is important to look at both consumer and producer surplus effects of polices rather than focus on one or the other.[11](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-note-0012_20) Many consumers and groups advocate for agricultural firms that are local, resilient, sustainable, environmentally friendly, or organic. While consumers associate these traits with small farms, the causality is unclear. In other words, consumers may advocate for small farms to maintain resilience and sustainability or vice versa. Regardless, there is a clear movement in favor of small family farms (Jaffe, [2019 (May 5)](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0033); Warren, [2019 (March 27)](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0052)).

ECONOMIC CONTEXT

Since antitrust policy is designed to increase competitiveness, we should understand the market structure and how it is changing in agriculture. After all, as Williamson ([1968](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0055)) pointed out long ago, mergers and/or a **more concentrated** market might lead to an increase in **social welfare** if high fixed costs are of more concern than market power. That is, if the benefits of economies of scale are large relative to any added deadweight loss from market power, then **fewer firms** are welfare-increasing since **increased profits** are **larger** than **changes in consumer surplus**. Further, if the cost curve is such that the change in marginal costs from increased production is small or negative, mergers and/or larger firms could increase production and lower prices, thereby benefiting consumers.

The main economic principles that have historically guided antitrust policy are the “rule of reason” and the contestability of markets, not the size of the firms (White, [2021](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0054)). The “rule of reason” implies that market concentration violates antitrust laws only when it constitutes an unreasonable restriction of trade. This “reasonableness” is most commonly evaluated by analyzing prices and consumer surplus (Werden, [2013](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0053)). If prices are not increasing (and corresponding consumer surplus is not decreasing) in the affected market, then the market concentration is generally considered to be not restricting trade. Second, market concentration is susceptible to anticompetitive actions (collusion or monopolization) if it renders the affected market incontestable (Shepherd, [1984](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0047)). A contestable market is when there are de minimis barriers to entry into that market regardless of how much market power a particular firm has in that market. For example, if one firm sells 90% of the cola in a region, but any firm can enter the market with minimal barriers and sell their own cola, then that market is contestable even though it exhibits a high degree of concentration.

Given that agriculture consists of many commodities and often complex supply chains, it can be difficult to make generalizations, and some agricultural markets are more concentrated than others. However, if the agriculture and food market is contestable despite the apparent concentration, it would seem that the goal of breaking up big agriculture would be to **limit competition**, not increase competition. Since the stated goal of these proposed policies is to help small farmers, this implies that it is a protectionist policy, and smaller firms may not be able to produce food at a cost below the market price. In other words, stopping mergers or breaking up large firms will help small firms only if large firms are more efficient and can offer lower prices. This suggests that the competitive market model is the dominant model in this situation.

In a competitive market, the optimal firm size is determined completely by the cost structure since firms will compete down to the lowest price until profits are zero. Under this scenario, firms will minimize average costs (costs per unit), and prices will be set equal to average costs. Assuming that variable costs are increasing at an increasing rate, the average costs are minimized when such costs are equal to marginal costs. At that equilibrium, the optimal price is equal to the average or marginal cost, and the optimal quality level is equal to the total costs divided by the marginal cost. Therefore, the optimal size of firms is determined by the cost curve.

If fixed costs and/or marginal costs are changing, then the optimal firm size is changing as well. Figure [1](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-fig-0001) shows that lower prices can be achieved with higher fixed costs and lower marginal costs, but these prices are lowest when firms are larger. This implies that if costs are changing, but firms are not allowed to adjust their size, this will cause a departure from the minimizing cost equilibrium. So, if firms are not allowed to produce at the optimal quantity, then prices will be higher due to these policies. Given the changes in firm size in agriculture, it is worth examining any changes in costs structures.

Prices and quantities under different cost curves

Changes in the cost structure in agriculture

Clearly the cost structure in agriculture is dynamic and changing over time, and so the **optimal firm size is changing** over time as well. With the growing costs of machinery and capital in agriculture, and the technological advances in machinery and capital, it would appear that fixed costs are increasing relative to variable costs, and consequently marginal costs, in agriculture. It has been a trend for a very long time that economic development typically leads to larger farms (Eastwood et al., [2010](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0023)). Decades ago, it may have been difficult for farms to manage the acreage or herd sizes that they do today. So, at least part of the explanation of the increase in farm size is due to the change in the cost curve (Shapiro et al., [1987](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0045); Tauer & Mishra, [2006](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0050)). This implies that food can be produced more efficiently with fewer firms, and **policies designed to break up large farms and/or save small farms may be counter-productive**. For example, machinery, such as tractors, have become **very expensive**, yet farmers buy new tractors because of the **advanced technology**. So, it must be the case that even if the fixed cost of purchasing some machinery is increasing, it is because it lowers the marginal costs. Under this scenario, changes in technology are driving consolidation in the market and making firms larger.

Regulatory issues can also cause changes in the cost structure and therefore the number and sizes of firms. For example, the Food Safety Modernization Act (FSMA) created fixed costs for firms thereby making it more difficult for small firms to be profitable (Bovay & Sumner, [2017](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0009)), which is a finding similar to previous food safety policies (Antle, [2000](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0001); Crutchfield et al., [1997](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0018)). While there clearly may be benefits from FSMA or other food safety measures, **new regulation undoubtedly increases food costs** that are disproportionately borne by smaller firms and leads to increased consolidation.

Empirical trends confirm the story that the optimal farm size is growing. While economies of scale may not happen at all levels of farm size, typically in developed countries, productivity increases as farm size increases (Foster & Rosenzweig, [2017](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0024)). The number of farmers has long been on the decline, and the market share of farmers is increasing, although this trend seems to have started to level off over the last few decades (Lusk, [2016](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0037)). While this increased concentration in the market may have downsides, it might be explained by economies of scale. Nonetheless, not all farms have grown, and while there are various reasons why some farms are smaller than others (You, [1995](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0057)), changes in the cost structure help explain the economic tensions on smaller farms.

Food prices

While largely absent in much of the debate, **food prices are critical while considering antitrust** policies (Sullivan, [2017 (Aug. 29)](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0049)). The economic theory of antitrust and balancing market power with changes in the cost structure is straightforward, which means this policy is ultimately an empirical question that should hinge on whether or not food prices are increasing. If high levels of market concentration are causing higher food prices, then policy intervention is certainly legitimate. However, in a competitive market, antitrust intervention may lead to higher prices and decrease consumer surplus. Since it is not clear theoretically if mergers and/or fewer firms create higher or lower prices, we should examine trends in food prices. Unfortunately, given the various types of food and changing food preferences, it is not entirely obvious, empirically, whether food prices are increasing or decreasing (Cowen, [2019 (March 19)](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0017)).

The agricultural supply chain can be complex and varies widely depending upon the commodity. While there are many factors that go into prices, as well as many types of food, we can at least examine historical prices. If we take data from 1974 to 2018 from the US Department of Agriculture (USDA), Figure [2](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-fig-0002) shows how prices have changed for food at home, food away from home, and the consumer price index (CPI) in general. As the graph shows, food away from home has become more expensive relative to average goods over the time frame, and especially since 2007. Food at home, on the other hand, has lagged behind average prices since 1979 and is now 14.6% lower than the CPI when compared to 1974 levels and has grown 22.6% less than food away from home. Since consumer units spend on average $4464 (in 2018) on food at home (<https://www-bls-gov.proxy2.cl.msu.edu/news.release/cesan.nr0.htm>), the relative decline in food prices at home compared to the CPI represents a saving of $766 per year.

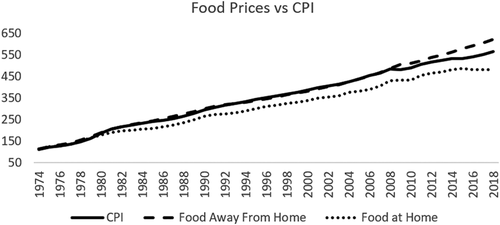
[](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/cms/asset/1a537c02-592f-476b-ba18-5ef1d46350d9/aepp13173-fig-0002-m.jpg)

FIGURE 2

Food prices relative to consumer price index

Many factors go into food prices, and it is difficult to know the magnitude of each factor. For example, food prices spiked around 2007–2008, and Headey and Fan ([2008](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0029)) found this to be due to a myriad of reasons including oil prices, depreciation of the U.S. dollar, and biofuel demand. They also found that this spike in food prices had a harsh effect on the world's poor. However, Gilbert ([2010](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0027)) argued that this spike was more impacted by investments in futures markets. Other factors, including labor and capital supply (Hertel et al., [2016](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0031)), weather (Mitchell, [2008](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0041)), and income (Fukase & Martin, [2020](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0025)), also influence food prices. Therefore, it is difficult to know the exact effect of market structure on prices.

Regardless, it would seem reasonable to assume that market concentration in agriculture would have a more direct impact on prices for food at home compared to food away from home. Furthermore, a relative decrease in food prices translates into considerable household savings. Again, there are certainly exceptions of agricultural markets with high concentrations, and much of the academic literature on antitrust policies in agriculture has focused on these examples (Badruddoza & McCluskey, [2021](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0003); Bolotova, [2021](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0008); Chidmi et al., [2005](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0015); MacDonald, [2017](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0039)). Additionally, Sexton ([2012](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0043)) citing Azzam and Anderson ([1996](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0002)), Ward et al. ([2002](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0051)), Sheldon and Sperling ([2003](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0046)), and Kaiser and Suzuki ([2006](https://onlinelibrary-wiley-com.proxy2.cl.msu.edu/doi/10.1002/aepp.13173#aepp13173-bib-0034)) argues that, while market power in food and agriculture warrants greater consideration in how agricultural markets are empirically modeled, market power has caused only very small departures from competitive prices on both the buying and selling sides of the market. Therefore, since overall food prices appear to be slowly declining relative to CPI, policymakers should proceed with caution in using antitrust policies broadly in agriculture if their goal is to decrease prices.

#### High food prices cause global conflict

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

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

### A2: Food Supply

#### Global food supply is high and resilient

Indur Goklany 15, PhD from Michigan State, Assistant Director of Programs, Science and Technology Policy at the DOI, represented the United States at the Intergovernmental Panel on Climate Change (IPCC) and during the negotiations that led to the United Nations Framework Convention on Climate Change, “CARBON DIOXIDE: The good news”, The Global Warming Policy Foundation, GWPF Report 18

Crop yields have increased (see Figure 3) and global food production, far from declining, has actually increased in recent decades. Between 1990–92 and 2011–13, although global population increased by 31% to 7.1 billion, available food supplies increased by 44%. Consequently, the population suffering from chronic hunger declined by 173 million despite a population increase of 1.7 billion.112 This occurred despite the diversion of land and crops from production of food to the production of biofuels. According to one estimate, in 2008 such activities helped push 130–155 million people into absolute poverty, exacerbating hunger in this most marginal of populations. This may in turn have led to 190,000 premature deaths worldwide in 2010 alone.113 Thus, ironically, a policy purporting to reduce AGW in order to reduce future poverty and hunger only magnified these problems in the present day.

# 2NC

## States CP

### O/V---2NC

#### State level antitrust can target mergers and protect competition

Weiser, 21 – (Phil Weiser, NYU Law grad and Colorado Attorney General, "Prepared remarks: Attorney General Phil Weiser on the State of our Federalism (Jan. 26, 2021)," 1-26-2021, https://coag.gov/blog-post/prepared-remarks-attorney-general-phil-weiser-on-the-state-of-our-federalism-jan-26-2021/) nL

A third critical principle of some cooperative federalism regulatory regimes is that federal agencies **do not have a monopoly** on interpreting or implementing federal law when Congress provides concurrent jurisdiction to the federal government and the states. Recently, the USDOJ Antitrust Division failed to respect this principle when the Division assistant attorney general claimed that, once the federal government declined to challenge a merger, states were **legally barred** from doing so. This argument, which was made to a federal district court as a reason to reject a challenge to the Sprint/TMobile merger by several states—which objected to the merger because it would harm competition and raise prices for consumers—was **properly rejected** as **antithetical** to the 1976 amendments that elevated state **parallel enforcement** of the antitrust laws. As the Supreme Court put it when interpreting those amendments, the states’ role in antitrust enforcement “was in no sense an afterthought; it was an integral part of the congressional plan for protecting competition.” Invoking this authority, states like Colorado have **taken action** and **imposed pro-competitive requirements** on **mergers** when the federal government failed to act.

### Perm---AT: Perm do Both

#### Perm makes blame shifting impossible

Abbe R. Gluck 11, Associate Professor of Law and Milton Handler Fellow, Columbia Law School, the yale law journal 121:534, “Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond,”<http://www.yalelawjournal.org/pdf/1032_qcrpe69v.pdf>, DOA 4-20-16, y2k

zFederalism as a Tool of Federal “Field Claiming” (or Encroachment) There also might be a more instrumental story to tell, one in which the states are relied upon not for some reason related to the traditional federalism values (as they are to some extent when Congress nationalizes state experiments or looks to state bureaucracies as partners in federal statutory entrenchment) but rather one in which the states are utilized as more direct vehicles of federal regulatory aggrandizement. Specifically, I want to highlight the possibility that Congress might design statutes around state-based implementation for the purpose of gradual field entry into areas traditionally dominated by state law. A federal statute that marks new legislative terrain for the federal government but relies—at least in the beginning—on the states to implement it might be a way for the federal government to “claim the field” as one suitable for federal regulation, but at the same time rely on state expertise and state political cover while the federal government gets up to speed. Statutes like these have political benefits. Most obviously, they allow Congress to leave the initial extent of the federal role vague, a strategy that might make the intrusion more acceptable to legislators who otherwise would resist these moves. To be sure, the fact that the federal government offers states the chance to implement new federal statutes does not diminish the reach of federal legislative authority. But by retaining the states in the lead role for implementation, such statutes might be more politically palatable to those who generally resist federal aggrandizement or prefer “smaller” government or local variation. Giving states the lead role in implementation also might assuage concerns of legislators who are suspicious of, or politically opposed to, the current executive branch’s policy agenda. Particularly in times of divided government, some members of Congress might trust their home-state counterparts more than the administrative appointees of the President to fill in the interstices of new federal programs. Work in the political science realm has, indeed, documented an increase in such delegations toward the states and away from the federal government in times of divided government.105 Others have documented how Southern congressmen pushed early implementation of federal welfare programs through the states to preserve the political economy of the region.106 Seen in this light, varied state implementation—and in particular, allowing for less aggressive implementation by some states—might, in fact, be a necessary part of the political deal to get some federal statutes passed in the first place. That is, the possibility of state-based dissent that often is described as a pathology in traditional federalism theory may actually be a beneficial safety valve that, on occasion, makes new federal legislation possible. At the same time, however, these state-led statutes are likely to extend the federal influence further into the field over time. One way in which this may happen is simply that the public will get more comfortable with the idea of federal regulation in the field, thereby allowing for uncontroversial expansion later.107 Political science and historical accounts of the early years of the welfare provisions of the Social Security Act offer an example of this progression.1

### Perm---AT: Perm do CP

#### 2] ‘Federal’ can’t mean states

OED 89 – Oxford English Dictionary, 2ed. XIX, p. 795

b. Of or pertaining to the political unity so constituted, as distinguished from the separate states composing it.

#### 3] ‘Its’ core antitrust laws is singular, meaning federal only

W.C. Updegrave 91, “Explanation of ZIP Code Address Purpose”, 8/19/1991, <http://www.supremelaw.org/ref/zipcode/updegrav.htm>

More specifically, looking at the map on page 11 of the National ZIP Code Directory, e.g. at a local post office, one will see that the first digit of a ZIP Code defines an area that includes more than one State. The first sentence of the explanatory paragraph begins: "A ZIP Code is a numerical code that identifies areas within the United States and its territories for purposes of ..." [cf. 26 CFR 1.1-1(c)]. Note the singular possessive pronoun "its", not "their", therefore carrying the implication that it relates to the "United States" as a corporation domiciled in the District of Columbia (in the singular sense), not in the sense of being the 50 States of the Union (in the plural sense). The map shows all the States of the Union, but it also shows D.C., Puerto Rico and the Virgin Islands, making the explanatory statement literally correct.

### NB---AT: Agenda Ptx

#### State action avoids politics – but the plan gets drawn into partisan wrangling

Beilenson, M.D., CEO and President of the Evergreen Health Cooperative, 10

(Peter, “Let the states lead”, http://articles.baltimoresun.com/2010-01-31/news/bal-op.health31\_1\_national-health-care-reform-health-status-hospital-and-emergency-room)

An additional benefit of reforming health care at the state level first is simply getting the debate out of Washington, where any good-faith effort at figuring out what works for everyday Americans is completely overwhelmed by partisan firefights. In contrast, at the state level, the partisan gridlock and rule by lobbyists is less entrenched, and the media glare that brings out excess partisanship is less extreme. Instead of imagining what a proposal might mean, we could see and weigh results, as we've done with Healthy Howard; the country could then follow the lead of "pioneer" states, saving money and time in the process. Maryland is well-positioned to be among those chosen.

### Theory---AT: 50 State Fiat---2NC

#### States CP is good and legitimate---there’s extensive debate in the literature over state antitrust AND comprehensive datasets prove states work together when doing anti-trust.

Greve 05 [Dr. Michael S. Greve is the John G. Searle Scholar at the American Enterprise Institute, “Cartel Federalism? Antitrust Enforcement by State Attorneys General”, The University of Chicago Law Review , Winter, 2005, Vol. 72, No. 1, Symposium: Antitrust (Winter, 2005), pp. 99-122, https://www.jstor.org/stable/4495485] IanM

Largely in connection with the Microsoft litigation, the antitrust enforcement authority of state attorneys general, in their parens patriae capacity, has **generated** acrimonious **debate**.' Perhaps the only point of genuine agreement is the complaint over the lack of reliable empirical evidence on state antitrust enforcement. This Essay attempts to make a modest contribution to the data front an ambitious and provocative contribution to the theoretical debate. **I present** and examine two sets of **data**: \* A **list of** state parens patriae **antitrust actions**,3 compiled and kindly made available to me by **Judge Richard Posner**.4 I combined and **cross-checked** these cases with parens patriae **cases extracted** from a similar list of state antitrust cases for the 1993-2002 period, compiled by different means by Michael DeBow.' So amended, the list (hereinafter, "the Posner- DeBow list") comprises 103 parens patriae **actions**. \* Sixty-eight antitrust cases, **dating back to** 1977, in which states submitted eighty-four briefs amici curiae. (In four cases, different states submitted briefs on either side; in the remaining cases, states submitted briefs at different stages of the litigation.) Robert Hubbard kindly supplied this list;6 I have added some briefs from a website' and a few obviously "missed" Supreme Court cases.

While these sets of data are still incomplete and, perhaps, unrepresentative, they are at least somewhat more comprehensive than the preceding efforts on which they build. **They** confirm earlier findings about **state antitrust** enforcement in two respects: the extraordinary **extent** of state consensus and cooperation on antitrust matters (**coordinated**, since 1983, **through** the National Association of Attorneys General (NAAG) Antitrust Task Force);9 **and** a pattern of limited, somewhat parochial, state enforcement, interspersed by dramatic and increasingly frequent multistate interventions in high-stakes national antitrust proceeding.

#### Google case proves.

Romm 19 [Tony Romm is a reporter for The Washington Post, “50 U.S. states and territories announce broad antitrust investigation of Google”, 9-9-2019, https://www.washingtonpost.com/technology/2019/09/09/states-us-territories-announce-broad-antitrust-investigation-google/] IanM

**Attorneys general** for 50 U.S. states and territories on Monday **officially** announced an antitrust investigation of Google, embarking on a wide-ranging review of a tech giant that Democrats and Republicans said may threaten competition, consumers and the continued growth of the web.

Appearing on the steps of the Supreme Court, Texas Attorney General Ken Paxton charged that Google “dominates all aspects of advertising on the Internet and searching on the Internet,” though he cautioned that despite his criticism the states had launched an investigation for now and not a lawsuit.

Paxton said the probe’s initial focus is online advertising. Google is expected to rake in more than $48 billion in U.S. digital ad revenue this year, far rivaling its peers, while capturing 75 percent of all spending on U.S. search ads, according to eMarketer.

### Solvency---AT: Preemption

#### States have unlimited authority to enforce antitrust law beyond federal standards

Harry First 1, Professor of Law at the New York University School of Law, JD from the University of Pennsylvania Law School, “Pyrrhic Victories? Reexamining the Effectiveness of Antitrust Remedies in Restoring Competition and Detterring Misconduct: Delivering Remedies: The Role of the States in Antitrust Enforcement”, George Washington Law Review, 69 Geo. Wash. L. Rev. 1004, October / December 2001, Lexis

The constitutionality of state indirect purchaser legislation was presented to the Supreme Court in California v. ARC America Corp., decided in 1989. Four states filed federal antitrust actions for damages they had suffered from an alleged nationwide conspiracy to fix the price of cement. Because at least some of their damages were indirect, they appended to their federal cause of action state law claims under their indirect purchaser statutes. Following a settlement of all federal and state claims, the states sought to participate in the settlement fund. On objection from the direct purchasers, the district court denied the states' indirect purchaser claims to the settlement fund, holding that state indirect purchaser laws were preempted by virtue of Illinois Brick. The Supreme Court reversed.

Pointing to "the long history of state common-law and statutory remedies against monopolies and unfair business practices," the Court stated that it is "plain that this is an area traditionally regulated by the States." Indeed, "Congress intended the federal antitrust laws to supplement, not displace, state antitrust remedies." That state law might impose liability beyond what federal law provides does not conflict with any federal policy that the Court identified in prior cases. Writing for a unanimous Court, Justice White stated:

When viewed properly, Illinois Brick was a decision construing the federal antitrust laws, not a decision defining the interrelationship between the federal and state antitrust laws. The congressional purposes on which Illinois Brick was based provide no support for a finding that state indirect purchaser statutes are pre-empted by federal law.

[\*1012]

The Supreme Court's decision in ARC America capped fifty years of judicial and legislative development of the jurisdiction of state antitrust enforcers. Under federal law the states can now seek money damages for federal antitrust violations that injure them or their citizens as direct purchasers. Under state law they can claim damages suffered from antitrust violations that harm them or their citizens as indirect purchasers (if state law provides for such recoveries). The states may also be able to use consumer protection or unfair competition statutes to require defendants who engage in anticompetitive conduct that harms consumers either to disgorge their profits or to provide restitution to their victims. Like antitrust indirect purchaser claims, these state claims can either be brought individually in state court or included as supplemental claims to federal antitrust violations.

Beyond seeking damages, state enforcers are likewise able to use either federal or state courts to seek injunctive relief to prevent future violations. This includes the right to seek divestitures in merger cases and the right to seek structural relief in monopolization cases. So well accepted is the exercise of this right that its assertion now goes unchallenged by defendants. And, finally, individual states' antitrust laws may contain criminal provisions or civil penalties, which the states can enforce in state court.

Indeed, at least as a statutory matter, the jurisdictional tools available to the states exceed those available to the federal antitrust enforcement agencies. The Justice Department can sue for its proprietary injuries, but it almost never does so, and it has not sought to assert a parens patriae right to sue for injury to U.S. citizens (nor could it likely do so in light of the 1976 [\*1013] Hart-Scott-Rodino Act). Federal law would also presumably prevent suit for damages to the U.S. government as an indirect purchaser. There are no civil penalties available for violations of the antitrust laws, and the disgorgement or restitution remedy has only rarely been invoked (by the Federal Trade Commission) and is of uncertain legality.

Similarly, when compared to private enforcement, state antitrust enforcers have stronger jurisdictional tools. The main advantage is that although the federal parens patriae claim for damages under the Hart-Scott-Rodino Act has procedural protections similar to those provided under Rule 23 for class members, such actions need not meet Rule 23's requirements, such as commonality of claims or adequacy of representation. These issues are, of course, major problems in antitrust class actions. On the injunction side, standing presents no problems for the states when they are seeking to protect either their economy in general, or the interests of their consumers; private litigants, however, may still face hurdles. And on the investigative side, the states generally have broad power to use compulsory process to investigate for possible antitrust violations prior to filing a suit (similar to federal investigative power ). Private plaintiffs, of course, lack this ability.

#### The Court will side with states, even when there’s direct conflict with federal law

Daniel J. Gifford 95, Robins, Kaplan, Miller & Ciresi Professor of Law at the University of Minnesota Law School, “Antitrust in the Twenty-First Century: Article: The Jurisprudence of Antitrust”, SMU Law Review, 48 SMU L. Rev. 1677, July-August 1995, Lexis

C. The Role of State Attorneys General and State AntitrustLaw

In addition to their role as official enforcers of state antitrust law, the attorneys general of the several states have, as a group, become increasingly active in filing federal antitrust lawsuits. In so doing, the state attorneys general sometimes act cooperatively, joining together as plaintiffs in the same lawsuit. A professional association of the state attorneys general, the National Association of Attorneys General (NAAG), issues sets of antitrust guidelines which over the years have interpreted federal antitrust law somewhat differently from the Justice Department. The antitrust agenda of the federal courts thus reflects both the haphazard influence of privately-instituted actions and the more studied separate agendas of the state attorneys general in addition to the input of the Justice Department. According to one source, the NAAG guidelines played a significant role in the decisions of state attorneys general to bring suit in the Clozapine, Mitsubishi, Panasonic, and American Stores cases.

The state attorneys general often take policy positions different from those of the federal enforcement authorities. State attorneys general have commenced antitrust lawsuits which the federal enforcement authorities have considered and declined to institute. Although the Justice Department and the state attorneys general have developed working and cooperative relationships, it remains true that state attorneys general con- [\*1695] tinue to assert policy positions which differ from those asserted by the federal authorities.

California v. American Stores Co. illustrates the inconsistent policies permeating official enforcement efforts. Enforcement decisions within the federal government are allocated to both the Department of Justice and the FTC. These two agencies, however, have generally worked out an allocation of effort between them, the Justice Department accepting responsibility for certain industries and the FTC accepting that responsibility for others. The state attorneys general, however, constitute another and sometimes inconsistent source of decisionmaking. In the cited case, the FTC reached a settlement with American Stores on a proposed merger. The day following the FTC's final approval of the merger on the basis of that settlement, the state of California brought suit, seeking to enjoin the merger as a violation of federal antitrust law. California was initially successful, obtaining a preliminary injunction against the merger. Although the Ninth Circuit first took the view that injunctive relief was not available in a private action, the Supreme Court ruled otherwise. This ruling vastly expands the potential of private antitrust actions to restructure the marketplace and diminishes pro tanto the role of the federal antitrust authorities in antitrust policymaking. This ruling also provides a major new tool to the state attorneys general as they seek to implement competing policy agendas. In 1992 the State of Minnesota brought suit to block a healthcare merger which had previously been cleared by the Justice Department, forcing the merger participants to accept a consent order. State attorneys general are also more apt to bring suit on vertical price-fixing charges than is the Justice Department.

In addition to the different policy positions on federal antitrust law manifested in the litigating activities of the federal enforcement agencies on one hand and of the state attorneys general on the other, the coherence and integrity of federal antitrust policy is also vulnerable to the antitrust legislation of the states. Most states have enacted an antitrust law, generally on the federal model. During the period when federal antitrust [\*1696] law was used largely to reinforce competitive-market behavior as a normative construct, state antitrust law tended to add additional reinforcement. In recent years, however, the potential for conflict between federal and state antitrust laws has increased.

The transformations of federal antitrust law have had repercussions upon state law. Minnesota, for example, enacted an antitrust law in 1971 which was designed largely to codify the contemporary federal antitrust caselaw. As a result, the provisions of the Minnesota law conflict to a significant degree with the current federal antitrust caselaw which has since undergone a radical transformation. The extent to which state antitrust legislation is vulnerable to federal preemption is unclear, but the Supreme Court has signaled a wide tolerance for inconsistent state legislation in cases involving procedural differences. The Court has expressed broad acceptance of state antitrust laws permitting recoveries which would not be available under federal law. States, for example, are free to enact legislation granting standing under their own antitrust laws to "indirect purchasers" to recover damages for overcharges by their ultimate supplier resulting from monopolistic or cartel-like behavior, even though indirect purchasers have been denied standing under federal antitrust law for reasons of federal antitrust policy. Moreover, defendants can be subjected to liability to indirect purchasers in antitrust counts under state law that are joined with antitrust counts under federal law and are pursued in federal court actions to which both direct and indirect purchasers are parties.

Federal and state antitrust laws potentially diverge on noncompensatory damages. Federal antitrust law specifies that actual damages will be trebled. When the issue arose, however, as to whether punitive damages in unlimited amounts can be assessed under state law for antitrust offenses, the Supreme Court answered in the affirmative. Punitive damages can be assessed in antitrust actions brought in federal court in which counts under both federal and state law are joined. Certainly the Court's recent remedial decisions enhance the status and power of state antitrust laws. They suggest (but as yet inconclusively) that state law may redefine restrictively the areas of substantive behavior which are permitted to business entities under the federal law. [\*1697]

### Solvency---AT: Preemption---Commerce Clause

#### Procompetitive state action will be granted deference under the DCC

David W. Lamb 1, JD from Vanderbilt University Law School, BA in History from Williams College, now Managing Counsel at Blue Cross NC, “Avoiding Impotence: Rethinking the Standards for Applying State Antitrust Laws to Interstate Commerce”, Vanderbilt Law Review, 54 Vand. L. Rev. 1705, May 2001, Lexis

To the extent that challenges to state antitrust laws arise under the negative Commerce Clause, the most relevant inquiry becomes whether the perceived impact of the regulation upon interstate commerce is procompetitive. This inquiry essentially requires application of the Pike balancing test. The reviewing court must therefore weigh the burden on interstate commerce against the strength of the local interests served by the statute. Because state antitrust statutes are designed to protect and enhance free and fair commercial competition, these "local interests" will generally be procompetitive in nature. Therefore, under any type of [\*1749] balancing test, the "burden" imposed on interstate commerce by state antitrust laws will invariably be lower than in the case of most other types of statutes. In this regard, courts should perhaps grant state antitrust laws special consideration when assessing their propriety under the negative Commerce Clause.

## Adv 1

### Antitrust Fails---2NC

#### Even if the plan doesn’t get blocked, defense teams stall legal proceedings long enough to trigger their internal link.

Jones and Kovacic 20 [Alison Jones and William E. Kovacic, Alison Jones is Professor of Law at King’s and a solicitor at Freshfields Bruckhaus Deringer LLP; William Evan Kovacic is an American lawyer and legal scholar who was a commissioner of the U.S. Federal Trade Commission from 2006 to 2011. Kovacic is a professor at George Washington University Law School and the director of their Competition Law Center, "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy", The Antitrust Bulletin 2020, Vol. 65(2) 227-255 <https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884>]LPAL

Opposition to Legislative Reform Although statutory reform might at first sight appear to be a direct, effective solution to some of the impediments (such as entrenched judicial resistance to intervention), there are good reasons to expect that powerful business interests will also stoutly oppose any proposals for legislation to expand the reach of the antitrust laws or to create a new digital regulator.128 One can envisage the formidable financial and political resources of the affected firms will amass to stymie far-reaching legislative reforms. Legislative steps that threaten the structure, operations, and profitability of the Tech Giants and other leading firms are fraught with political risk. These risks are surmountable, but only by means of a clever strategy that anticipates and blunts political pressure. One element of such a strategy is to mobilize countervailing support from consumer and business interests to sustain an enabling political environment to enact ambitious new laws. Even if successful, “[l]egislative relief from existing jurisprudential structures might take years to accomplish”;129 acts taken under new legislation—even with the establishment of presumptions that improve the litigation position of government plaintiffs—may still be relatively complex and difficult to prosecute. Rulemaking is an alternative to litigation, but it is no easy way out of the problem. On the contrary, promulgation and defense, in litigation, of a major trade regulation rule is liable to take as long as the prosecution of a Section 2 case. It can also be anticipated that a judiciary populated with many regulation skeptics will subject new rules or related measures to demanding scrutiny.

### AT: Warming---2NC

#### Their impact starts at .1%

Perry 20 — Lucas Perry interviewing Toby Ord. Toby Ord is a Senior Research Fellow in Philosophy at Oxford University. He is a world-renowned risk assessment expert who’s advised the WHO, World Bank, WEF, USNIC, and the UKPMO. (“Existential Risk and the Future of Humanity” Future of Life Institute, March 31, 2020. https://futureoflife.org/2020/03/31/he-precipice-existential-risk-and-the-future-of-humanity-with-toby-ord/)//JLPark

Toby Ord: Carl Sagan suggested it could potentially lead to our extinction, but the current people working on this, while they are very concerned about it, don’t suggest that it could lead to human extinction. That’s not really a scenario that they find very likely. And so even though I think that there is substantial risk of nuclear war over the next century, either an accidental nuclear war being triggered soon or perhaps a new Cold War, leading to a new nuclear war, I would put the chance that humanity’s potential is destroyed through nuclear war at about one in 1000 over the next 100 years, which is about where I’d put it for climate change as well.

There is debate as to whether climate change could really cause human extinction or a permanent collapse of civilization. I think the answer is that we don’t know. Similar with nuclear war, but they’re both such large changes to the world, these kind of unprecedentedly rapid and severe changes that it’s hard to be more than 99% confident that if that happens that we’d make it through and so this is difficult to eliminate risk that remains there.

In the book, I look at the very worst climate outcomes, how much carbon is there in the methane clathrates under the ocean and in the permafrost? What would happen if it was released? How much warming would there be? And then what would happen if you had very severe amounts of warming such as 10 degrees? And I try to sketch out what we know about those things and it is difficult to find direct mechanisms that suggests that we would go extinct or that we would collapse our civilization in a way from which you could never be restarted again, despite the fact that civilization arose five times independently in different parts of the worlds already, so we know that it’s not like a fluke to get it started again. So it’s difficult to see the direct reasons why it could happen, but we don’t know enough to be sure that it can’t happen. In my sense, that’s still an existential risk

#### Extinction from warming requires 12 degrees, far greater than their internal link, and intervening actors will solve before then

Sebastian Farquhar 17, master’s degree in Physics from the University of Oxford, leads the Global Priorities Project (GPP) at the Centre for Effective Altruism, et al., 2017, “Existential Risk: Diplomacy and Governance,” https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf

The most likely levels of global warming are very unlikely to cause human extinction.15 The existential risks of climate change instead stem from tail risk climate change – the low probability of extreme levels of warming – and interaction with other sources of risk. It is impossible to say with confidence at what point global warming would become severe enough to pose an existential threat. Research has suggested that warming of 11-12°C would render most of the planet uninhabitable,16 and would completely devastate agriculture.17 This would pose an extreme threat to human civilisation as we know it.18 Warming of around 7°C or more could potentially produce conflict and instability on such a scale that the indirect effects could be an existential risk, although it is extremely uncertain how likely such scenarios are.19 Moreover, the timescales over which such changes might happen could mean that humanity is able to adapt enough to avoid extinction in even very extreme scenarios. The probability of these levels of warming depends on eventual greenhouse gas concentrations. According to some experts, unless strong action is taken soon by major emitters, it is likely that we will pursue a medium-high emissions pathway.20 If we do, the chance of extreme warming is highly uncertain but appears non-negligible. Current concentrations of greenhouse gases are higher than they have been for hundreds of thousands of years,21 which means that there are significant unknown unknowns about how the climate system will respond. Particularly concerning is the risk of positive feedback loops, such as the release of vast amounts of methane from melting of the arctic permafrost, which would cause rapid and disastrous warming.22 The economists Gernot Wagner and Martin Weitzman have used IPCC figures (which do not include modelling of feedback loops such as those from melting permafrost) to estimate that if we continue to pursue a medium-high emissions pathway, the probability of eventual warming of 6°C is around 10%,23 and of 10°C is around 3%.24 These estimates are of course highly uncertain. It is likely that the world will take action against climate change once it begins to impose large costs on human society, long before there is warming of 10°C. Unfortunately, there is significant inertia in the climate system: there is a 25 to 50 year lag between CO2 emissions and eventual warming,25 and it is expected that 40% of the peak concentration of CO2 will remain in the atmosphere 1,000 years after the peak is reached.26 Consequently, it is impossible to reduce temperatures quickly by reducing CO2 emissions. If the world does start to face costly warming, the international community will therefore face strong incentives to find other ways to reduce global temperatures.

#### Climate doesn’t cause extinction.

Kerr et al. 19---Dr. Amber Kerr, Energy and Resources PhD at the University of California-Berkeley, known agroecologist, former coordinator of the USDA California Climate Hub. Dr. Daniel Swain, Climate Science PhD at UCLA, climate scientist, a research fellow at the National Center for Atmospheric Research. Dr. Andrew King, Earth Sciences PhD, Climate Extremes Research Fellow at the University of Melbourne. Dr. Peter Kalmus, Physics PhD at the University of Colombia, climate scientist at NASA’s Jet Propulsion Lab. Professor Richard Betts, Chair in Climate Impacts at the University of Exeter, a lead author on the Fourth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) in Working Group 1. Dr. William Huiskamp, Paleoclimatology PhD at the Climate Change Research Center, climate scientist at the Potsdam Institute for Climate Impact Research. [Claim that human civilization could end in 30 years is speculative, not supported with evidence, 6-4-2019, https://climatefeedback.org/evaluation/iflscience-story-on-speculative-report-provides-little-scientific-context-james-felton/]

There is no scientific basis to suggest that climate breakdown will “annihilate intelligent life” (by which I assume the report authors mean human extinction) by 2050.

However, climate breakdown does pose a grave threat to civilization as we know it, and the potential for mass suffering on a scale perhaps never before encountered by humankind. This should be enough reason for action without any need for exaggeration or misrepresentation!

A “Hothouse Earth” scenario plays out that sees Earth’s temperatures doomed to rise by a further 1°C (1.8°F) even if we stopped emissions immediately.

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

This word choice perhaps reveals a bias on the part of the author of the article. A temperature can’t be doomed. And while I certainly do not encourage false optimism, assuming that humanity is doomed is lazy and counterproductive.

Fifty-five percent of the global population are subject to more than 20 days a year of lethal heat conditions beyond that which humans can survive

Richard Betts, Professor, Met Office Hadley Centre & University of Exeter:

This is clearly from Mora et al (2017) although the report does not include a citation of the paper as the source of that statement. The way it is written here (and in the report) is misleading because it gives the impression that everyone dies in those conditions. That is not actually how Mora et al define “deadly heat”---they merely looked for heatwaves when somebody died (not everybody) and then used that as the definition of a “deadly” heatwave.

North America suffers extreme weather events including wildfires, drought, and heatwaves. Monsoons in China fail, the great rivers of Asia virtually dry up, and rainfall in central America falls by half.

Andrew King, Research fellow, University of Melbourne:

Projections of extreme events such as these are very difficult to make and vary greatly between different climate models.

Deadly heat conditions across West Africa persist for over 100 days a year

Peter Kalmus, Data Scientist, Jet Propulsion Laboratory:

The deadly heat projections (this, and the one from the previous paragraph) come from Mora et al (2017)1.

It should be clarified that “deadly heat” here means heat and humidity beyond a two-dimension threshold where at least one person in the region subject to that heat and humidity dies (i.e., not everyone instantly dies). That said, in my opinion, the projections in Mora et al are conservative and the methods of Mora et al are sound. I did not check the claims in this report against Mora et al but I have no reason to think they are in error.

1- Mora et al (2017) Global risk of deadly heat, Nature Climate Change

The knock-on consequences affect national security, as the scale of the challenges involved, such as pandemic disease outbreaks, are overwhelming. Armed conflicts over resources may become a reality, and have the potential to escalate into nuclear war. In the worst case scenario, a scale of destruction the authors say is beyond their capacity to model, there is a ‘high likelihood of human civilization coming to an end’.

Willem Huiskamp, Postdoctoral research fellow, Potsdam Institute for Climate Impact Research:

This is a highly questionable conclusion. The reference provided in the report is for the “Global Catastrophic Risks 2018” report from the “Global Challenges Foundation” and not peer-reviewed literature. (It is worth noting that this latter report also provides no peer-reviewed evidence to support this claim).

Furthermore, if it is apparently beyond our capability to model these impacts, how can they assign a ‘high likelihood’ to this outcome?

While it is true that warming of this magnitude would be catastrophic, making claims such as this without evidence serves only to undermine the trust the public will have in the science.

Daniel Swain, Researcher, UCLA, and Research Fellow, National Center for Atmospheric Research:

It seems that the eye-catching headline-level claims in the report stem almost entirely from these knock-on effects, which the authors themselves admit are “beyond their capacity to model.” Thus, from a scientific perspective, the purported “high likelihood of civilization coming to an end by 2050” is essentially personal speculation on the part of the report’s authors, rather than a clear conclusion drawn from rigorous assessment of the available evidence.

### Inev

#### Can’t solve--- phosphorous use is inevitable and it’s global. We’re blue

---phosphorous use is what causes eutrophication---even if they break big ag up, all farms still use phosphorous because it’s how they grow stuff---

---BUT phosphorous is used globally, so even if they solve US big ag, they can’t stop China, India, or any other nation from using it

---AND there ev says there’s no solution but to manage it they need reduced food consumption and phosphorous recycling and recovery programs, none of which the plan nor small farms can do

Shama E. 1AC Haque 21, Associate Professor in Civil & Environmental Engineering, 06/09/21, How Effective Are Existing Phosphorus Management Strategies in Mitigating Surface Water Quality Problems in the U.S.?, Sustainability Vol. 13, Issue 12, https://doi.org/10.3390/su13126565

Abstract

Phosphorus is an essential component of modern agriculture. Long-term land application of phosphorous-enriched fertilizers and animal manure leads to phosphorus accumulation in soil that may become susceptible to mobilization via erosion, surface runoff and subsurface leaching. Globally, **highly water-soluble phosphorus** fertilizers used in agriculture have contributed to eutrophication and hypoxia in surface waters. This paper provides an overview of the literature relevant to the advances in phosphorous management strategies and surface water quality problems in the U.S. Over the past several decades, significant advances have been made to control phosphorus discharge into surface water bodies of the U.S. However, the current use of phosphorus remains inefficient at various stages of its life cycle, and phosphorus continues to remain a widespread problem in many water bodies, including the Gulf of Mexico and Lake Erie. In particular, the Midwestern Corn Belt region of the U.S. is a hotspot of phosphorous fertilization that has resulted in a net positive soil phosphorous balance. The runoff of phosphorous has resulted in dense blooms of toxic, odor-causing phytoplankton that deteriorate water quality. In the past, considerable attention was focused on improving the water quality of freshwater bodies and estuaries by reducing inputs of phosphorus alone. However, new research suggests that strategies controlling the two main nutrients, phosphorus and nitrogen, are more effective in the management of eutrophication. There is no specific solution to solving phosphorus pollution of water resources; however, sustainable **management** of phosphorus **requires** an integrated approach combining at least a reduction in consumption levels, source management, more specific regime-based nutrient criteria, routine soil fertility evaluation and recommendations, transport management, as well as the development of extensive phosphorus recovery and recycling programs.

### Phosphorus Shortages

#### No phosphorous shortage

Cho, 13 – staff blogger for the Earth Institute and a freelance environmental writer who has written for www.insideclimatenews.com, E Magazine and On Earth. Previously, Renee was Communications Coordinator for Riverkeeper, the Hudson River environmental organization. She received the Executive Education Certificate in Conservation and Sustainability from the Earth Institute Center for Environmental Sustainability (Renee, 4/1. “Phosphorus: Essential to Life—Are We Running Out?” http://blogs.ei.columbia.edu/2013/04/01/phosphorus-essential-to-life-are-we-running-out/)

In fact, phosphorus is a renewable resource and there is plenty of it left on earth. Animals and humans excrete almost 100 percent of the phosphorus they consume in food. In the past, as part of a natural cycle, the phosphorus in manure and waste was returned to the soil to aid in crop production. Today phosphorus is an essential component of commercial fertilizer. Because industrial agriculture moves food around the world for processing and consumption, disrupting the natural cycle that returned phosphorus to the soil via the decomposition of plants, in many areas fertilizer must now be continually applied to enrich the soil’s nutrients.

Most of the phosphorus used in fertilizer comes from phosphate rock, a finite resource formed over millions of years in the earth’s crust. Ninety percent of the world’s mined phosphate rock is used in agriculture and food production, mostly as fertilizer, less as animal feed and food additives. When experts debate peak phosphorus, what they are usually debating is how long the phosphate rock reserves, i.e. the resources that can economically be extracted, will hold out.

Pedro Sanchez, director of the Agriculture and Food Security Center at the Earth Institute, does not believe there is a shortage of phosphorus. “In my long 50-year career, “ he said. “Once every decade, people say we are going to run out of phosphorus. Each time this is disproven. All the most reliable estimates show that we have enough phosphate rock resources to last between 300 and 400 more years.”

In 2010, the International Fertilizer Development Center determined that phosphate rock reserves would last for several centuries. In 2011, the U.S. Geological Survey revised its estimates of phosphate rock reserves from the previous 17.63 billion tons to 71.65 billion tons in accordance with IFDC’s estimates. And, according to Sanchez, new research shows that the amount of phosphorus coming to the surface by tectonic uplift is in the same range as the amounts of phosphate rock we are extracting now.

## Adv 2

### \*Big AG K2 Low Prices\*---2NC

#### Big AG is best for low prices---their criticisms misidentify the causes of price inflation (answers high prices now)

Bork, 21 – (Robert H. Bork is a former special assistant to the US Trade Representative, and is president of the Washington-based [Antitrust Education Project](https://www.antitrusteducationproject.org/)., "Biden's antitrust demagoguery will drive inflation, not cure it," 9-8-2021, https://thehill.com/opinion/finance/571009-bidens-antitrust-demagoguery-will-drive-inflation-not-cure-it?rl=1) nL

Let’s start with **food prices and Big Ag**.

Two University of Idaho economics professors, Philip Watson and Jason Winfree, wrote in [The Idaho Statesman](https://www.idahostatesman.com/opinion/readers-opinion/article253799648.html) that **larger farms and agricultural companies**, which have the **capita**l to invest in **expensive technology** and **economies of scale**, actually have been making food **steadily** more affordable. It is precisely because of these economies of scale that the cost of food, until the disruption of the pandemic, was taking less out of household budgets. The professors conclude that “**breaking up Big Ag** could have the **disastrous effect** of **raising food prices**, which would likely have a disproportionate impact on poorer households.”

If the Biden approach to agriculture and food is demagogic, its approach to oil and gas is risible. The current increase in gasoline prices results from the supply chain disruption caused by the pandemic, exacerbated by recent hurricanes and storms. It also may be partly because of the unrelenting hostility of the Biden administration to American energy, putting [public lands off limits](https://www.npr.org/sections/president-biden-takes-office/2021/01/27/960941799/biden-to-pause-oil-and-gas-leasing-on-public-lands-and-waters), killing the [Keystone XL pipeline](https://www.politico.com/news/2021/01/20/joe-biden-kills-keystone-xl-pipeline-permit-460555) and using regulation to [harass the fracking industry](https://www.cfr.org/in-brief/whats-next-fracking-under-biden), despite the fact that cleaner-burning natural gas has helped reduce America’s greenhouse gas emissions. Technological advances led the United States to surpass Saudi Arabia and Russia in 2018 to become the world’s [leading producer](https://www.investopedia.com/investing/worlds-top-oil-producers/) of oil. Biden’s antitrust policy also may be contributing to the sudden reversal of this energy glut. It was out of antitrust concerns that Berkshire Hathaway [pulled out of](https://keyt.com/news/money-and-business/cnn-business-consumer/2021/07/12/berkshire-hathaway-scraps-pipeline-purchase-because-of-antitrust-concerns/) a major natural gas pipeline deal earlier this year.

What has been the Biden administration’s response to recent shortages? It has not been to stimulate production at home or to help clear pipeline bottlenecks. Instead, national security adviser [Jake Sullivan](https://thehill.com/people/jake-sullivan) issued a statement pleading with OPEC and Russia to [come to our rescue](https://www.reuters.com/world/middle-east/us-call-opec-its-allies-increase-oil-production-cnbc-2021-08-11/). OPEC demurred and Russian President [Vladimir Putin](https://thehill.com/people/vladimir-putin) used Sullivan’s entreaty to issue a humiliating “nyet.”

The **real** cause of inflation, of course, is **recovery from a pandemic** and **the temporary economic depression** it caused. It also might be driven by the reckless spending by presidents and Congresses of both parties. Our [national debt](https://www.usdebtclock.org/) is now 125 percent of our [gross domestic product](https://www.bea.gov/news/2021/gross-domestic-product-second-quarter-2021-advance-estimate-and-annual-update) — higher than the previous high in 1946, when we won a victory over Germany and Japan rather than losing a war to the Taliban.

**Blaming Big Ag** and Big Oil for high prices will be popular. **It also will be perverse**. The **abandonment** of the consumer welfare standard will, if anything, **lead to higher prices** in both food and fuel for those least able to pay for it.

#### Studies prove alternatives to Big AG raise prices and are worse for the environment

Sexton, 11 – (Steve Sexton is an assistant professor of public policy and economics at Duke University's Sanford School of Public Policy, Steven teaches public economics to undergraduate students and environmental and energy economics to doctoral students. His research employs big data, machine learning, and econometrics to analyze policy and consumer and firm behaviors at the intersection of agriculture, energy, and the environment. A UC Berkeley PhD, Steven's research and commentaries have been featured in leading popular press, including the Wall Street Journal and the Washington Post. With experience working for California Governor Arnold Schwarzenegger, he has advised utilities and firms subject to California's Global Warming Solutions Act., "The Inefficiency of Local Food," Freakonomics, 11-14-2011, https://freakonomics.com/2011/11/14/the-inefficiency-of-local-food/) nL

Two members of Congress earlier this month introduced [legislation](http://brown.senate.gov/newsroom/press_releases/release/?id=62ee64a8-f401-4387-9b2f-ab35ed0fbacc) advancing a food reform movement promising to help resolve the great environmental and nutritional problems of the early 21st century. The intent is to remake the agricultural landscape to look more like it did decades ago. But unless the most basic laws of economics cease to hold, the smallholder farming future envisioned by the local farming movement could jeopardize natural habitat and climate change mitigation efforts, while also endangering a tenuous and temporary victory in the battle against human hunger.

The “Local Farms, Food and Jobs Act” sponsored by Senator Sherrod Brown of Ohio and Representative Chellie Pingree of Maine, throws about $200 million to local farm programs. That’s a rounding error in the $3.7 trillion federal budget. But the bill follows on a [federal rule](http://www.foodsafetynews.com/2011/04/usda-rule-to-encourage-local-food-for-school-meals/) that gives preference to local farms in contract bidding for school lunches. It also builds on high-profile advocacy by Michelle Obama, who has become a leader of the food reform movement, joining the likes of Michael Pollan, the author of [The Omnivore’s Dilemma](http://www.amazon.com/Omnivores-Dilemma-Natural-History-Meals/dp/1594200823), and famed-chef Alice Waters. The bill’s introduction came as the world population [hit 7 billion](http://www.freakonomics.com/2011/10/19/what-are-the-impacts-of-seven-billion-people/), a milestone that provides a stark reminder of the challenge agriculture faces to feed a world population expected to grow to 9 billion by 2050. Experts estimate that in the next 50 years, the global food system [likely needs](http://www.guardian.co.uk/environment/2007/aug/31/climatechange.food) to produce as much food as it did in the previous 10,000 years combined.

Amid heightened concern about global climate change, it has become almost conventional wisdom that we must return to our agricultural roots in order to contain the carbon footprint of our food by shortening the distance it travels from farm to fork, and by reducing the quantity of carbon-intensive chemicals applied to our mono-cropped fields.

But implicit in the argument that local farming is better for the environment than industrial agriculture is an assumption that a “relocalized” food system can be just as efficient as today’s modern farming. That assumption is simply wrong. Today’s high crop yields and low costs reflect gains from specialization and trade, as well as scale and scope economies that would be forsaken under the food system that locavores endorse.

Specialization and Trade

Economists have long recognized the welfare gains from specialization and trade. The case for specialization is perhaps nowhere stronger than in agriculture, where the costs of production depend on natural resource endowments, such as temperature, rainfall, and sunlight, as well as soil quality, pest infestations, and land costs. Different crops demand different conditions and vary in their resilience to shocks. So California, with mild winters, warm summers, and fertile soils produces all U.S.-grown almonds and 80 percent of U.S. strawberries and grapes. Idaho, on the other hand, produces 30 percent of the country’s russet potatoes because warm days and cool nights during the season, combined with rich volcanic soils, make for ideal growing conditions.

In 2008, according to the USDA, Idaho averaged 383 hundredweight of potatoes per acre. Alabama, in contrast, averaged only 170 hundredweight per acre. Is it any wonder Idaho planted more acres of potatoes than Alabama?

Forsaking comparative advantage in agriculture by localizing means it will take more inputs to grow a given quantity of food, including more land and more chemicals—all of which come at a cost of carbon emissions.

It is difficult to estimate the impact of a [truly locavore](http://en.wikipedia.org/wiki/Locavores#Strategies) farming system because crop production data don’t exist for crops that have not historically been grown in various regions. However, we can imagine what a “pseudo-locavore” farming system would look like—one in which each state that presently produces a crop commercially must grow a share proportional to its population relative to all producers of the crop. I have [estimated](http://giannini.ucop.edu/media/are-update/files/articles/v13n2_2.pdf) the costs of such a system in terms of land and chemical demand.

My conservative estimates are that under the pseudo-locavore system, corn acreage increases 27 percent or 22 million acres, and soybean acres increase 18 percent or 14 million acres. Fertilizer use would increase at least 35 percent for corn, and 54 percent for soybeans, while fuel use would climb 23 percent and 34 percent, for corn and soybeans, respectively. Chemical demand would grow 23 percent and 20 percent for the two crops, respectively.

In order to maintain current output levels for 40 major field crops and vegetables, a locavore-like production system would require an additional 60 million acres of cropland, 2.7 million tons more fertilizer, and 50 million pounds more chemicals. The land-use changes and increases in demand for carbon-intensive inputs would have profound impacts on the carbon footprint of our food, destroy habitat and worsen environmental pollution.

It’s not even clear local production reduces carbon emissions from transportation. The Harvard economist Ed Glaeser [estimates](http://articles.boston.com/2011-06-16/bostonglobe/29666344_1_greenhouse-gas-carbon-emissions-local-food) that carbon emissions from transportation don’t decline in a locavore future because local farms reduce population density as potential homes are displaced by community gardens. Less-dense cities mean more driving and more carbon emissions. Transportation only accounts for 11 percent of the carbon embodied in food anyway, according to a [2008 study by researchers](https://freakonomics.com/2011/11/14/2008/06/09/do-we-really-need-a-few-billion-locavores/) at Carnegie Mellon; 83 percent comes from production.

Economies of Scale

A local food production system would largely upend long-term trends of growing farm size and increasing concentration in food processing and marketing. Local “food sheds” couldn’t support the scale of farming and food processing operations that exist today—and that’s kind of the point. Large, monocrop farms are more dependent on synthetic fertilizers and tilling operations than small polycrop farms, and they face greater pest pressure and waste disposal problems that can lead to environmental damage.

But large operations are also more efficient at converting inputs into outputs. Agricultural economists at UC Davis, for instance, analyzed farm-level surveys from 1996-2000 and [concluded](http://giannini.ucop.edu/media/are-update/files/articles/v6n4_2.pdf) that there are “significant” scale economies in modern agriculture and that small farms are “high cost” operations. Absent the efficiencies of **large farms**, the use of polluting inputs would rise, as would food production costs, **which would lead to more expensive food.**

#### Economies of scale ensure Big AG keeps prices low

Haspel 14 – (Tamar Haspel does commentary at Washington Post in pursuit of a more constructive conversation on divisive food-policy issues, "Small vs. large: Which size farm is better for the planet?," Washington Post, 9-2-2014, https://www.washingtonpost.com/lifestyle/food/small-vs-large-which-size-farm-is-better-for-the-planet/2014/08/29/ac2a3dc8-2e2d-11e4-994d-202962a9150c\_story.html nL

I talked with **a passel of people** who either **study (agricultural economist)** or **live (farmer)** on this issue, and there were a few ideas that generated enough consensus that I’m willing to call them **facts**:

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

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

### A2: Food Supply

#### Global food supply is high and resilient --- hunger has declined 173 million despite increases

Indur Goklany 15, PhD from Michigan State, Assistant Director of Programs, Science and Technology Policy at the DOI, represented the United States at the Intergovernmental Panel on Climate Change (IPCC) and during the negotiations that led to the United Nations Framework Convention on Climate Change, “CARBON DIOXIDE: The good news”, The Global Warming Policy Foundation, GWPF Report 18

Crop yields have increased (see Figure 3) and global food production, far from declining, has actually increased in recent decades. Between 1990–92 and 2011–13, although global population increased by 31% to 7.1 billion, available food supplies increased by 44%. Consequently, the population suffering from chronic hunger declined by 173 million despite a population increase of 1.7 billion.112 This occurred despite the diversion of land and crops from production of food to the production of biofuels. According to one estimate, in 2008 such activities helped push 130–155 million people into absolute poverty, exacerbating hunger in this most marginal of populations. This may in turn have led to 190,000 premature deaths worldwide in 2010 alone.113 Thus, ironically, a policy purporting to reduce AGW in order to reduce future poverty and hunger only magnified these problems in the present day.

# 1NR

## PTX

### Impact---Top Shelf---2NC

#### Failure on infra makes it too late to solve warming and crushes international climate credibility

Greg Sargent 9-3 [WaPo, “Opinion: Joe Manchin’s new threat to destroy Biden’s agenda is worse than it seems,” <https://www.washingtonpost.com/opinions/2021/09/03/manchin-oped-threat-biden-reconciliation-bill/>, hec]

Unfortunately, Sen. Joe Manchin III is going to great lengths to dramatically undermine Biden’s ability to deliver this message — and to act on it. And this could have dire long term consequences, in all kinds of hidden ways. The West Virginia Democrat is threatening to withdraw support for Biden’s $3.5 trillion “human infrastructure” package. In a Wall Street Journal piece, Manchin urges a “pause” on the bill and calls for “significantly reducing” its size “to only what America can afford and needs to spend.” Most obviously, this could upend the “two track” strategy, under which progressives support the $1 trillion bipartisan “hard” infrastructure bill on the understanding that centrists such as Manchin will back the reconciliation measure. That could implode Biden’s whole agenda. But this is deeply dangerous in another, less obvious way, one that turns on the reconciliation bill’s provisions to combat climate change. Those are not just critical to Biden’s global warming agenda — which is central to the long-term success of his presidency — but would also propel us into this fall’s global climate conference while showing that the United States is leading by example. Manchin’s threat puts this in peril. A galling omission It’s galling that the word “climate” appears nowhere in Manchin’s piece, even as he piously suggests he has a divinely inspired reading of what America truly “needs to spend.” This is doubly absurd, given that he sternly lectures us about how this spending will imperil our ability to meet “future crises.” Newsflash, senator: The climate crisis is already upon us. As an alarming New York Times piece details, it isn’t just that these extreme weather events are revealing how unprepared we are to handle the short-term consequences (storms, floods, heat waves, wrecked infrastructure, deaths) of global warming. Worse, the longer we delay, the harder it will become to get a handle on global warming itself: There are limits to how much the country, and the world, can adapt. And if nations don’t do more to cut greenhouse gas emissions that are driving climate change, they may soon run up against the outer edges of resilience. So the stakes for the reconciliation bill are extremely high. The two main pillars of its climate agenda are its Clean Energy Standard, which would phase down production of greenhouse gas emissions in electricity generation, and its massive subsidies for renewable energy sources. These two reinforce each other, as David Roberts explains: The first boosts demand for renewable energy sources to produce electricity, and the second increases supply of renewable sources. Paul Krugman frames the need for this starkly: The bad news is that if these proposals aren’t enacted, it will probably be a very long time — quite possibly a decade or more — before we get another chance at significant climate policy. That’s terrible enough. But let’s also note that failure could spill over into the U.N. climate conference in Glasgow this fall. “This is pivotal,” Alice Hill, a senior fellow at the Council on Foreign Relations, told me. If the United States gets knocked off the track to passing that climate agenda, we will have “little to show” in terms of real “ambition to reduce harmful carbon pollution.” That would send “a signal to the world” that the United States “isn’t taking this seriously,” Hill said, which would “embolden other nations to choose not to engage.” This fall’s conference represents an opportunity for countries “to change the course of history” by showing “great ambition on climate change,” Hill said. “Without the reconciliation bill, the opportunity presented is likely missed.”

#### DA turns the aff---supports sustainable agriculture and solves urbanization---checks back against ag labor shortages which is an alt cause to the aff

Theresa Lieb 8-20 [Theresa Lieb, "How the infrastructure bill will enable more sustainable farming ," 8-20-2021, https://www.greenbiz.com/article/how-infrastructure-bill-will-enable-more-sustainable-farming, hec]

Nonetheless, a few components of the bipartisan bill, by far the largest infrastructure package in decades, support sustainable agriculture. The expansion of rural broadband is the most notable improvement for American farmers. Although more indirectly, investments in transportation, water and wildfire risk reduction will also benefit them. So what do these investments look like? Broadband will finally be a reality for rural America According to the White House, "more than 30 million Americans live in areas where there is no broadband infrastructure that provides minimally acceptable speeds." This is especially true for rural communities. The infrastructure bill aims to change this for good by investing $65 billion in new broadband, narrowing the digital divide. Reliable high-speed internet will be meaningful for farming communities in several ways. On the most basic level, it will make them citizens of the 21st century, allowing many to do seemingly simple things such as ordering farm inputs online, digitizing business transactions or granting their kids access to online school. Eric Deeble, policy director of the National Sustainable Agriculture Coalition, sees the broadband investment as equivalent to rolling out electricity across the country in the 1920s and '30s. This won’t only make farmers more efficient entrepreneurs, it might also make rural life more attractive to a larger variety of operators and workers which the sector desperately needs. In addition, better internet access will grant farmers more educational opportunities and allow for a new era of technical assistance and peer learning (especially on the sustainability side) that can extend far beyond their local coffee shops. Big data unlock more sustainable farming practices Beyond this basic support, internet access will enable farmers to make significant strides in terms of growing efficiency and productivity. This will be essential for the sector to make good on its net-zero commitments, serving as a climate solution for the country. Precision agriculture tools measure how fertilizer and pesticide application, the use of cover crops, or irrigation schedules affect yields or soil health. Such tools can already bring about improvements when used individually on farms. But when these measurements can be aggregated in shared data platforms, collectively analyzed and returned to the farmers in the form of custom growing recommendations, they can catalyze an entirely new level of innovation.

### UQ---Top Shelf---2NC

#### Timing is everything---delays on voting risks package failure and locks in our impact---it’s Biden’s top priority and Hoyer is scheduling the vote for Sept 27

David Morgan 8-21 [Reuters, "Pelosi sets Oct 1 target for infrastructure, Biden spending bill," 8-21-2021, https://www.reuters.com/world/us/pelosi-sets-oct-1-target-infrastructure-biden-spending-bill-2021-08-22/, hec]

WASHINGTON, Aug 21 (Reuters) - U.S. House of Representatives Speaker Nancy Pelosi on Saturday set an Oct. 1 target date for passing President Joe Biden's multitrillion-dollar infrastructure and social spending agenda. In a "Dear Colleague" letter to her fellow Democrats, Pelosi also warned against delaying next week's expected vote on a $3.5 trillion budget resolution that some party centrists have threatened not to support. "Any delay to passing the budget resolution threatens the timetable for delivering the historic progress and the transformative vision that Democrats share," the top House Democrat said in the letter. The Senate has already passed both a $1 trillion bipartisan infrastructure bill to rebuild America's roads, bridges, airports and waterways, and the budget resolution, which includes spending instructions for Biden's Build Back Better Plan on education, childcare, healthcare and climate measures. "The House is hard at work to enact both the Build Back Better Plan and the bipartisan infrastructure bill before October 1st, when the (infrastructure bill) would go into effect," Pelosi said in the letter. The infrastructure bill and the more sweeping social spending package are top domestic priorities for Biden.

#### All the thumpers are priced in---sudden changes to the agenda involving big-ticket items cause political havoc

Jacob Pramuk 9-15 [Jacob Pramuk, “Biden meets with Sens. Manchin, Sinema as Democrats try to build support for $3.5 trillion bill,” CNBC, 6-10-2021, https://www.cnbc.com/2021/09/15/joe-biden-to-meet-with-joe-manchin-kyrsten-sinema-about-3point5-trillion-bill.html, hec]

President Joe Biden was set to meet Wednesday with Sens. Joe Manchin and Kyrsten Sinema as he tries to nudge the skeptical Democrats to back his sprawling $3.5 trillion economic plan. The president spoke with Sinema, who represents Arizona, at the White House in the morning. He was expected to meet with Manchin, a West Virginia lawmaker, later in the day. Both centrists have criticized the proposed $3.5 trillion price tag, and Manchin has called on party leaders to delay votes on the legislation. The meetings come at a pivotal point for an agenda that Democrats hope will offer a lifeline to households and stymie Republican efforts to win control of Congress next year. Party leaders gave congressional committees a Wednesday deadline to write their portions of the bill, and they hope to send it to Biden’s desk in the coming weeks. Democrats have to navigate a political maze before they can pass what they call the biggest investment in the social safety net in decades. While the party does not need a GOP vote to approve the bill through budget reconciliation, a single Democratic defection can sink it in the Senate, giving Manchin and Sinema massive leverage to shape the plan. House Speaker Nancy Pelosi, D-Calif., can lose only three votes in her caucus and pass the legislation. She has to balance the often competing interests of centrists wary of $3.5 trillion in spending and progressives who see the sum as a minimum investment. The plan’s success has huge stakes for Biden, who has seen his approval ratings dip amid a chaotic U.S. withdrawal from Afghanistan and a coronavirus resurgence fueled by the delta variant. The president has cast his economic plan as a jolt to the working class and an overdue effort to mitigate climate change.

### PC Key---Top Shelf---2NC

#### Biden’s PC is also uniquely finite

Domenico Montanaro 8-24 [NPR Senior Correspondent, "Here's How Democrats Get Their Domestic Agenda Through — And It's Not Easy," NPR.org, 8-24-2021, https://www.npr.org/2021/08/24/1027592836/heres-how-democrats-get-their-domestic-agenda-through-and-its-not-easy, hec]

For Democrats, getting their historic domestic agenda done was already going to be a tough needle to thread, with a narrowly divided Congress and tensions within the party itself. But now, because of the resurgent coronavirus due to the delta variant and the chaotic U.S. withdrawal in Afghanistan, President Biden's approval rating has dropped. His reduced influence and political capital don't leave much room for error on items that might be difficult to get through Congress. And it doesn't get much more challenging than the path Democratic leaders are going down, pushing dual-track, multitrillion-dollar pieces of legislation — a $1 trillion infrastructure bill and a budget plan that could be $3.5 trillion.

#### It’s about continuing discussions---PC will eventually assuage them to vote yes

Tony Romm 9-15 [Tony Romm, WaPo, " Democrats prepare for next phase of budget fight as House readies package and Biden meets with Senate skeptics,” https://www.washingtonpost.com/us-policy/2021/09/15/house-reconciliation-manchin-sinema/, hec]

But the fruits of lawmakers’ labors quickly seemed overshadowed by political reality. A proposal that would try to lower the cost of prescription drugs for millions of seniors appeared in fresh jeopardy, after a small group of Democrats dealt it an early blow in the House. The fuller $3.5 trillion plan, meanwhile, faced even more significant hurdles in the Senate — prompting Biden to embark on a renewed effort Wednesday to try to reassure wavering members of his own party. In a burst of personal outreach, Biden huddled Sen. Kyrsten Sinema (D-Ariz.) in the morning, and plans to meet with Sens. Joe Manchin III (D-W.Va.) later in the day. Both centrists have signaled they are unwilling to vote for a final package unless Democrats come down in cost. Their opposition has infuriated liberal lawmakers, including Sen. Bernie Sanders (I-Vt.), who has rebuffed their attempts to whittle down the size of the plan — putting Democrats on a collision course in a chamber where they simply have no votes to spare. [Democrats sorting through painful sacrifices as $3.5 trillion budget package enters final stretch] “The president certainly believes there’ll be ongoing discussions,” White House press secretary Jen Psaki said Wednesday. “Not that there’s necessarily going to be a conclusion out of those today, but that was the primary focus and purpose of these meetings.”

### A2: Agenda Thumpers---Top Shelf---2NC

#### Biden is prioritizing pushing economic policies to ensure the future of his agenda---he knows he can get a big win from reconciliation

Alexander Nazaryan 9-8 [Alexander Nazaryan, Senior White House Correspondent, "The two mistakes that ruined Biden's summer," 9-8-2021, https://news.yahoo.com/the-two-mistakes-that-ruined-bidens-summer-090057360.html, hec]

In the weeks to come, Congress will decide the fate of Biden’s $3.5 trillion human infrastructure proposal, as well as that of a smaller, bipartisan $1.2 trillion proposal focused on traditional infrastructure. If those measures pass, the White House believes, the summer’s challenges will quickly be relegated to a distant memory. “Our heads are down to get that across the finish line,” the senior administration official said, citing some 130 calls between the White House legislative office and members of Congress and their staffs. He described the mood in the White House as “pretty upbeat” but “sober” about the challenges that remain. Biden’s predecessor, Donald Trump, was frequently occupied with day-to-day coverage of his administration, which often had the effect of turning problems into crises. The new president is taking the opposite approach, trying to stay focused on policy while keeping frustrations about media coverage largely private. “There are times when events are larger than any president,” says Eric Dezenhall, a leading crisis communications expert in Washington who worked in the Reagan administration. “It’s not the messaging that’s the big problem; with Afghanistan, it’s the events and the notion that they could have been handled differently. We all know Afghanistan was a no-win situation, but there are core questions that are not being answered.” Biden has struck a defiant tone on the withdrawal and has declined to fire officials like national security adviser Jake Sullivan, whom many hold responsible for the chaotic operation. Only 33 percent of Americans agree that Biden has handled the withdrawal well, with far more (55 percent) disapproving, according to a recent Yahoo News/YouGov poll. “With Delta, Biden has greater moral authority,” Dezenhall told Yahoo News. But that authority, too, could slip as the pandemic looks to continue into the fall and, very likely, beyond. Unemployment benefits are expiring. Evictions loom. Offices remain closed and schools could close too. Last week’s lackluster employment report (only 235,000 new jobs added in August) only underscored the precariousness of the recovery. Already, public approval of Biden’s pandemic response has dropped 10 percentage points since late June. Even though the Delta surge appears to have peaked, new variants are on the way. As in the earliest days of the pandemic, Americans are stockpiling toilet paper in fear of looming shortages. Republicans who have struggled to define Biden now see an opening, pressing a case that is not entirely coherent but could prove politically effective all the same. Gov. Greg Abbott of Texas and Gov. Ron DeSantis of Florida have been fighting him on mask mandates in school, igniting a culture war that seemed to have died down in late spring. And former President Donald Trump has issued a dozen press releases in the last two weeks calling on Biden to resign over his handling of Afghanistan, a breach of post-presidential decorum that is nevertheless indicative of where conservatives stand. Despite the right-wing caricature of a senescent president controlled by his advisers, Biden is well known to be impatient and to favor his own counsel over that of advisers, eager to show Ivy League-trained experts that they were wrong to dismiss him when he was vice president to the more erudite Obama. And he is acutely aware of the historical moment and the opportunities it presents, openly courting comparisons to transformational presidents like Franklin Roosevelt and Lyndon Johnson. But the moment is also rife with dangers, as Biden has discovered in the last two months. In early July, he made two promises that would come undone in the weeks to come, leaving him in a weakened position. On July 4, the White House had a party on the South Lawn. Some had advised against the affair, since the coronavirus pandemic was not over. Having hundreds of people gathering in the presidential backyard for burgers and blues music might make it seem like it was. Biden went ahead with the party, because that was exactly the image he wanted to project, that the pandemic was being brought to its conclusion as a result of his determined leadership. The event was billed as “America’s Back Together,” maskless, vaccinated and no longer 6 feet apart. “Today, we’re closer than ever to declaring our independence from a deadly virus,” the president said, making clear that victory was not yet complete, but coming ever closer, with fewer than 10,000 daily cases being recorded daily by the end of June, a precipitous drop from only six months before. “We’ve gained the upper hand against this virus,” he added a few moments later. The pandemic, he said, “no longer controls our lives.” Then music began to play and the party began. Four days later, Biden made another promise, this one on a very different topic. Trump had made an agreement with the Taliban in 2020 to pull U.S. military forces out of Afghanistan by 2021; but Biden, a longtime critic of the conflict, not only embraced that goal but accelerated the timeline. Now he was defending that decision, vowing that when the last American troops left, the government of Ashraf Ghani would assert his rule, with the help of the U.S.-trained Afghan National Army. “The likelihood there’s going to be the Taliban overrunning everything and owning the whole country is highly unlikely,” the president said. There would be no airlifts of the kind Americans had seen at the dispiriting conclusion of the Vietnam War in 1975, he asserted. Two months later, Biden appears to have made fateful miscalculations on both fronts. The Delta variant has reversed the progress the nation had made throughout the winter and spring, leading to a summer surge that has seen deaths and hospitalizations rise to levels not seen in months. Schools across the Southeast have shuttered. Corporations are telling people to stay home. Bars and restaurants are facing the crushing prospect of yet another pandemic winter. In the White House, masks are back on, as they are in Los Angeles and many other parts of the country. Last month, Oregon became the first state in the country to reimpose an outdoor mask mandate, even for vaccinated people. Seattle recently followed suit. “President Biden absolutely declared a victory too soon,” Dr. Leana Wen, the former Baltimore health commissioner, told Yahoo News last month. Since then, his administration has struggled to formulate a coherent approach — and message — on vaccine booster shots, the necessity of which is in dispute. Dr. Kavita Patel, a Brookings Institution fellow who served as a health policy expert in the Obama administration, thinks that Biden made no “obvious mistakes” but adds that his administration could have provided clearer guidance to schools in July. She also thinks the Biden administration could be doing more to gather data on breakthrough infections and long-haul COVID while also creating a nationwide vaccine registry. “He’s trying to convey that we’re not out of this pandemic without terrifying the country,” says Dezenhall, the D.C.-based crisis manager. Biden could only do so much to control the spread of the Delta variant. He and his top advisers knew that it was coming, and that it would lead to a surge similar to the one that the United Kingdom experienced through the spring. Nor did they have any obvious means to temper the weariness of an American public eager to get on with ordinary life. The same could be said for Afghanistan, a two-decade war of which the American public had grown unambiguously tired. As vice president to Barack Obama, Biden had opposed surging troops there. He and Trump may agree on little else, but they share an antipathy to military intervention without end. Little seemed to prepare the White House for the swiftness with which the Afghan military collapsed in the face of a determined Taliban advance. Ghani, the president, fled Kabul, leading to the rapid collapse of the central government. The images of Afghans clinging to the wheels of American aircraft were exactly what Biden had promised to avoid. “The Afghanistan story will have legs,” Bremmer believes. “It is much bigger than Benghazi,” he adds, referencing the 2012 attack by militants on a U.S. consulate in Libya that left four Americans dead. Investigations into the attack hobbled the presidential prospects of Hillary Clinton, who was then the secretary of state. The twin crises pummeled the White House at a vulnerable moment, as 61 percent of those polled said the country was headed down the wrong track. On both issues, the White House believes it remains on firm footing. Polls are snapshots, and narratives change quickly in Washington. Biden would have liked to head into the fall with a stronger standing, and an infrastructure deal could have him riding high once more. “President Biden has an enormous reserve of credibility,” says Celinda Lake, who conducted polling for Biden’s presidential campaign. “People agree with him on Afghanistan, and the images only convince American voters that the decision to withdraw and bring our troops and money home was the right one.” Lake added that “voters still trust Biden on COVID more than anyone else. And voters see that COVID and the economy are strongly linked.” The economy will be Biden’s top issue as members of Congress return to Washington and Afghanistan subsides, if only as a daily news story for U.S. outlets. Even as the president pushes for new spending, he has to be mindful of existing pandemic-related safety net programs now set to expire. On Tuesday, 7.5 million Americans stood to lose $300 unemployment payments. The federal eviction ban has also expired.

### Top Level---2NC

#### Any risk of a link turns case --- Backlash means the FTC won’t take up the case to enforce the aff

Jones and Kovacic, 20 (Alison Jones and William E. Kovacic, King’s College London, London, United Kingdom, George Washington University, Washington DC, USA. United Kingdom Competition and Markets Authority, United Kingdom, 3-20-2020, accessed on 5-16-2021, SAGE Journals, "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy", https://journals.sagepub.com/doi/full/10.1177/0003603X20912884#\_i12)//Babcii

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.[126](javascript:popRef('fn126-0003603X20912884')) Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.[127](javascript:popRef('fn127-0003603X20912884')) If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

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

#### Popular policies don’t generate further support---*Biden can only go down---not up*

Perry Bacon Jr. 21, a senior writer for FiveThirtyEight, “Why Republicans Don’t Fear An Electoral Backlash For Opposing Really Popular Parts Of Biden’s Agenda,” <https://fivethirtyeight.com/features/why-republicans-dont-fear-an-electoral-backlash-for-opposing-really-popular-parts-of-bidens-agenda/>

Republicans in the U.S. House last week unanimously opposed President Biden’s economic stimulus bill, even though polls show that the legislation is popular with the public. The U.S. Senate will consider the bill soon — and it looks like the overwhelming majority of Republicans in that chamber will oppose it as well. And it’s not just the stimulus. House Republicans also last week overwhelmingly opposed a bill to ban discrimination on the basis of sexual orientation and gender identity. And the GOP seems poised to oppose upcoming Democratic bills to make it easier to vote and spend hundreds of billions to improve the nation’s infrastructure. All of those ideas are popular with the public, too. “Duh,” you might say. Of course, the party out of power opposes the agenda of the party in power. Democrats did that during former President Donald Trump’s four years. Republicans did it during former President Barack Obama’s two terms. The parties just disagree on a lot of major issues. You’ve seen this movie before, right? This sequel is a little different, actually. Obama’s health care bill was only hovering around majority support as it moved through Congress. Trump’s proposals to repeal Obamacare and cut corporate taxes were downright unpopular. In contrast, Biden and the major elements of his agenda are popular. And the Republican Party isn’t, which helps explain why it was swept out of power in the 2018 and 2020 elections. So if an unpopular party uniformly opposes popular policies in the run-up to 2022 and 2024, is it buying itself a ticket further into the political wilderness? Not necessarily. There are several reasons to think that opposing popular policies won’t hurt Republicans electorally, and conversely, that implementing a popular agenda won’t necessarily boost Biden that much. The first reason that congressional Republicans can afford to oppose popular ideas is one that you have probably read a lot about over the last several years: The GOP has several big structural advantages in America’s electoral system. Because of the Electoral College, Trump would have won the presidency with around 257,000 more votes in Michigan, Pennsylvania and Wisconsin, even though he lost nationally by more than 7 million votes. The Senate gives equal weight to sparsely populated states like Wyoming and huge ones like California, so the chamber’s 50 Democratic senators effectively represent about 185 million Americans, while its 50 Republican senators represent about 143 million, as Vox’s Ian Millhiser recently calculated. Gerrymandering by Republicans, as well as the weakness of Democrats in rural areas, makes it harder for Democrats to win and keep control of the House even when most voters back Democratic House candidates. That’s what happened in 2020. Put all that together, and congressional Republicans are somewhat insulated from the public will. In turn, the advantage for Biden and congressional Democrats of being closer to the public’s opinions is blunted. Second, electoral politics and policy are increasingly disconnected. More and more Americans vote along party lines and are unlikely to break from their side no matter what it does. Some scholars argue that voters’ attachments to the parties are not that closely linked to the parties’ policy platforms but rather more akin to loyalty to a team or brand. And partisanship and voting are increasingly linked to racial attitudes, as opposed to policy. So GOP-leaning voters may support some Democratic policies but still vote for Republican politicians who oppose those policies. Third, the last several midterm elections have all been defined by backlashes against the incumbent president. You could argue that there’s nothing inevitable about this, and that former President George W. Bush (Social Security reform, Iraq War), Obama (Obamacare in 2010 and its flawed rollout in 2014) and Trump (Obamacare repeal) all did or proposed controversial things that irritated voters. Maybe if Biden sticks to popular stuff he’ll buck the trend. But it could instead be the case that voters from the president’s party tend to be kind of fat and happy in midterms, while the opposition is inspired to turn out. So even if Biden does popular things, GOP voters could be more motivated to vote in November 2022. Fourth, voters may like a president’s policies in the abstract but still think he isn’t doing a good job or that his policies aren’t that effective if those policies aren’t bipartisan. Think of this as the Mitch McConnell theory. Early in Obama’s first term, the last time Democrats had control of the House, Senate and the presidency, the Kentucky senator and others in the GOP leadership came up with a strategy of trying to get as few congressional Republicans as possible to back then-President Obama’s ideas. As McConnell said publicly back then, he viewed voters as not especially attuned to the day-to-day happenings in Washington. Instead, he said, they evaluate a president in part based on whether his agenda seems divisive, particularly a president who campaigns on unifying the country (as both Obama and Biden did). That allows the opposition party to create the perception of division simply by voting against the president’s agenda. Put another way: The opposition party can guarantee a lack of bipartisan support — and then criticize the president for lacking bipartisan support.

#### Antitrust policy is not something dems are spending a lot of focus on now because of other priorities---no thumper AND it requires PC

Sagers 21[Christopher, “AMERICAN ANTITRUST AND THE NEAR TERM: CONSISTENCY, ONE IMAGINES, AND SOME REASONS WHY,” accessed 5-21-21, <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>]

15. And so I reach the same conclusion being reached by many other Americans who care about antitrust and think it has been wrecked, and hoping for action that even five years ago I would have said was crazy. The only hope left is legislative reform of statutory antitrust. I think Congress should amend the law to reaffirm its own intention that the law be enforced proactively, aggressively, prophylactically, and for real, without giving every defendant the benefit of every conceivable doubt. Congress should do that in a way that keeps the courts from thwarting its intent through nullifying interpretations, as they have done many times before. Obviously, Senate control is again quite relevant. Under those Senate norms that still remain—in which we retain a filibuster rule for ordinary legislation—a party with fewer than 60 seats can typically do little. The two parties do not apparently work together in hardly any fashion. The party that holds the majority, even if only by one vote, controls the institution and its actions outright, but the minority can typically keep it from taking meaningful substantive action. Where the opposing party holds the White House, Senate minorities have filibustered essentially all legislation, apparently just to deny the opposing President any opportunity for campaign-trail self-congratulation. When the majority party can take effective action, it will only be in extraordinary circumstances or by using a filibuster exception, like the budget reconciliation procedure that was used in connection with the Obamacare legislation in 2010, and in subsequent Republican efforts to repeal it. [304] But antitrust, however important and however much it has returned to popular consciousness, seems unlikely to be so high on the Democratic agenda that it is chosen as one of the extraordinary matters Democrats prioritize in this way, even if they win Senate control. 16. And on top of all of that, it does not help that in this world, in which we dwell on ideas and not institutions—perhaps because institutions seem boring, and do not invite intellectual abstraction or Manichean dreams of good and evil—we see sharp divisions even within our factions. Only liberals and progressives in America favor more antitrust enforcement, but among us we have several hotly disputed disagreements, and some difficulties getting along. It reflects in microcosm the struggle of left and center of the election of 2016. So in 2021 and thereafter, it seems like it will be a fair bit of work to build any effective reform coalition. [305]

#### 4) The plan wastes Biden’s PC and trades off with competing priorities

Morrison & Foerster 21Morrison & Foerster (an international law firm). “Antitrust Update: Up and Down the Avenue,” March 22, 2021, <https://www.mofo.com/resources/insights/210322-atr-update.html>

Are the stars aligning for antitrust reform? President Biden is filling key positions in the White House (Timothy Wu, National Economic Council) and at the FTC (Lina Khan, nominee for commissioner) with lawyers who have advocated for increased antitrust enforcement, especially against “big tech.” In Congress, the House antitrust subcommittee concluded a year-long investigation in October 2020 and found bipartisan agreement on discrete areas for reform. With Democrats now in control of both houses of Congress, antitrust legislation seems close. But **not so fast.** The House and Senate antitrust subcommittees have held four hearings since February 25, 2021, but it is crucial to view these recent developments in their proper context. Even when politicians and enforcers appear to agree on a goal, it can still be a long and winding road to actual policy reform. Two to go Although antitrust reform advocates cheered President Biden’s initial appointments, two of the most consequential antitrust positions—the assistant attorney general (AAG) for antitrust and the FTC chair—remain open. Both the AAG and FTC chair wield tremendous authority; they approve cases, guide investigations, and will decide how to proceed with ongoing litigation. It is unlikely that the Biden administration will make any significant decisions, or support any particular legislation, before its key personnel are firmly in place. And that can take time. Former AAG Makan Delrahim was nominated in March 2017 but not confirmed until September 2017. Interestingly, the pressure to nominate like-minded antitrust reformers for these two positions is coming from multiple angles. One public interest group recently sent a letter to White House chief of staff Ron Klain and, after “highly commend[ing]” the nomination of Ms. Khan to be an FTC commissioner, warned against the influence of certain White House and DOJ officials over the AAG and FTC chair nominations because of their links to “big tech” companies.[1] Additionally, many in the press have been critical of the level of tech enforcement activity during the Obama administration and want to avoid a replay of those years.[2] Meanwhile, on Capitol Hill … Down the avenue, Congress is debating whether to provide the agencies with additional tools and resources. But how realistic are the prospects for legislative reform? In short, although the prospects for sweeping legislative reform of the antitrust laws are dim, targeted reforms appear increasingly likely, especially increased funding for the agencies. In October 2020, the House antitrust subcommittee concluded a year-long bipartisan investigation into these issues, and the House Democrats published a lengthy report detailing their findings and making recommendations for reform. Notably, the House Republican response identified several areas of agreement, including “providing antitrust enforcement agencies with the necessary resources.” [3] House Republicans also made it clear that they too are concerned about tech companies “using ‘killer acquisitions’ to remove up-and-coming competitors from the marketplace,” and that the burdens of proof for mergers and predatory pricing cases need to be reevaluated.[4] On March 18, 2021, however, the Republican ranking member on the committee reiterated a shared interest in reforming the evidentiary burden of proof in merger cases, which he described as having become “essentially insurmountable” and “a grant of near total immunity to big tech companies.” Although a path to agreement on more substantive issues typically has many obstacles, reforming the burden of proof in certain instances may be emerging as the most likely candidate for significant legislative action. In the Senate, on February 4, 2021, newly installed antitrust subcommittee chair Senator Amy Klobuchar (D-MN) introduced a bill that would overhaul existing antitrust laws. Among other reforms, it would lower the government’s burden of proof to block a merger, shift the burden of proof in certain cases and require the merging parties to justify the deal, and increase funding for both the DOJ Antitrust Division and the FTC. At the subcommittee’s March 11, 2021 hearing related to the bill, subcommittee ranking member Senator Mike Lee (R-UT) (who promptly released a statement noting his opposition to Ms. Khan’s nomination) made it clear that he firmly opposes “a sweeping transformation of the antitrust laws.” Throughout the hearing, however, there appeared to be bipartisan support for taking some sort of action to address these issues, and at the very least to provide increased funding to the DOJ and FTC. Even Senator Lee, who recently introduced a bill that would combine the DOJ and FTC to avoid inefficiencies in antitrust enforcement, acknowledged that agency leaders need the resources that are necessary to vigorously enforce antitrust laws. So, what does it all mean? In these circumstances, the most likely outcome appears to be antitrust officials creatively using their existing tools to enhance enforcement while not so quietly pressing Congress for additional assistance. On March 16, 2020, acting FTC Chair Rebecca Slaughter advocated for increased scrutiny of mergers between pharmaceutical companies. She also told the House antitrust subcommittee that the agencies “should consider withdrawing” the guidance for “vertical” mergers issued during the last administration to allow for more aggressive enforcement.[5] But at the same time, FTC Commissioner Noah Phillips explained that the agency would not be able to challenge certain deals without more funding. The Biden administration and the agencies will need to determine how to square those positions. Also, even assuming Congress could provide the agencies with additional funding quickly (on top of the additional $20 million Congress provided to the FTC in December 2020), using that funding to hire additional attorneys will take time. The path for meaningful legislative reform remains extremely complicated. The prospect for reform depends significantly on whether members of Congress, congressional leadership, and the Biden administration are **willing to expend the time and political capital necessary to pass a reform bill** (which also assumes the relevant parties can agree on what should be included—or, perhaps more importantly, excluded—from that bill). In light of **competing priorities**, the absence of key personnel, and the already **narrowing congressional calendar** (major non-appropriations legislation typically will not move after July in an election year (2022)), those prospects appear to be slim. In the meantime, we expect that Congress will continue to focus attention on these issues with more hearings and new legislative proposals, but it remains to be seen when attention will become action.