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## Off Case

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#### The fifty states and all relevant territories through the NAAG Multistate Antitrust Task Force should prohibit private sector business practices that violate an antitrust worker welfare standard.

#### The Supreme Court of the United States ought to not preempt state antitrust laws.

#### State action solves

Arteaga ’21 [Juan and Jordan Ludwig; January 28; former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, J.D. from Columbia Law School; partner in the Antitrust and Competition Group at Crowell and Moring firm, J.D. from Loyola Law School; Global Competition Review, “The Role of US State Antitrust Enforcement,” <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement>]

In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so.

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[[2]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-126) In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[[3]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-125) This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[[4]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-124) Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[[5]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-123)

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[[6]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-122) As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[[7]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-121) This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[[8]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-120)

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorized state attorneys general to bring parens patriae suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[[9]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-119) Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[[10]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-118) These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[[11]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-117) The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[[12]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-116) No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[[13]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-115) To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organizations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[[14]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-114)

#### 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.

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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 neg:

#### 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.

### 1NC

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.

#### Passage depends on Manchin---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.”

#### Warming leads to extinction---it’s a conflict-multiplier and defense doesn’t assume non-linearity

Kareiva 18, Ph.D. in ecology and applied mathematics from Cornell University, director of the Institute of the Environment and Sustainability at UCLA, Pritzker Distinguished Professor in Environment & Sustainability at UCLA, et al. (Peter, “Existential risk due to ecosystem collapse: Nature strikes back,” *Futures*, 102)

In summary, six of the nine proposed planetary boundaries (phosphorous, nitrogen, biodiversity, land use, atmospheric aerosol loading, and chemical pollution) are unlikely to be associated with existential risks. They all correspond to a degraded environment, but in our assessment do not represent existential risks. However, the three remaining boundaries (climate change, global freshwater cycle, and ocean acidification) do pose existential risks. This is because of intrinsic positive feedback loops, substantial lag times between system change and experiencing the consequences of that change, and the fact these different boundaries interact with one another in ways that yield surprises. In addition, climate, freshwater, and ocean acidification are all directly connected to the provision of food and water, and shortages of food and water can create conflict and social unrest. Climate change has a long history of disrupting civilizations and sometimes precipitating the collapse of cultures or mass emigrations (McMichael, 2017). For example, the 12th century drought in the North American Southwest is held responsible for the collapse of the Anasazi pueblo culture. More recently, the infamous potato famine of 1846–1849 and the large migration of Irish to the U.S. can be traced to a combination of factors, one of which was climate. Specifically, 1846 was an unusually warm and moist year in Ireland, providing the climatic conditions favorable to the fungus that caused the potato blight. As is so often the case, poor government had a role as well—as the British government forbade the import of grains from outside Britain (imports that could have helped to redress the ravaged potato yields). Climate change intersects with freshwater resources because it is expected to exacerbate drought and water scarcity, as well as flooding. Climate change can even impair water quality because it is associated with heavy rains that overwhelm sewage treatment facilities, or because it results in higher concentrations of pollutants in groundwater as a result of enhanced evaporation and reduced groundwater recharge. Ample clean water is not a luxury—it is essential for human survival. Consequently, cities, regions and nations that lack clean freshwater are vulnerable to social disruption and disease. Finally, ocean acidification is linked to climate change because it is driven by CO2 emissions just as global warming is. With close to 20% of the world’s protein coming from oceans (FAO, 2016), the potential for severe impacts due to acidification is obvious. Less obvious, but perhaps more insidious, is the interaction between climate change and the loss of oyster and coral reefs due to acidification. Acidification is known to interfere with oyster reef building and coral reefs. Climate change also increases storm frequency and severity. Coral reefs and oyster reefs provide protection from storm surge because they reduce wave energy (Spalding et al., 2014). If these reefs are lost due to acidification at the same time as storms become more severe and sea level rises, coastal communities will be exposed to unprecedented storm surge—and may be ravaged by recurrent storms. A key feature of the risk associated with climate change is that mean annual temperature and mean annual rainfall are not the variables of interest. Rather it is extreme episodic events that place nations and entire regions of the world at risk. These extreme events are by definition “rare” (once every hundred years), and changes in their likelihood are challenging to detect because of their rarity, but are exactly the manifestations of climate change that we must get better at anticipating (Diffenbaugh et al., 2017). Society will have a hard time responding to shorter intervals between rare extreme events because in the lifespan of an individual human, a person might experience as few as two or three extreme events. How likely is it that you would notice a change in the interval between events that are separated by decades, especially given that the interval is not regular but varies stochastically? A concrete example of this dilemma can be found in the past and expected future changes in storm-related flooding of New York City. The highly disruptive flooding of New York City associated with Hurricane Sandy represented a flood height that occurred once every 500 years in the 18th century, and that occurs now once every 25 years, but is expected to occur once every 5 years by 2050 (Garner et al., 2017). This change in frequency of extreme floods has profound implications for the measures New York City should take to protect its infrastructure and its population, yet because of the stochastic nature of such events, this shift in flood frequency is an elevated risk that will go unnoticed by most people. 4. The combination of positive feedback loops and societal inertia is fertile ground for global environmental catastrophes Humans are remarkably ingenious, and have adapted to crises throughout their history. Our doom has been repeatedly predicted, only to be averted by innovation (Ridley, 2011). However, the many stories of human ingenuity successfully addressing existential risks such as global famine or extreme air pollution represent environmental challenges that are largely linear, have immediate consequences, and operate without positive feedbacks. For example, the fact that food is in short supply does not increase the rate at which humans consume food—thereby increasing the shortage. Similarly, massive air pollution episodes such as the London fog of 1952 that killed 12,000 people did not make future air pollution events more likely. In fact it was just the opposite—the London fog sent such a clear message that Britain quickly enacted pollution control measures (Stradling, 2016). Food shortages, air pollution, water pollution, etc. send immediate signals to society of harm, which then trigger a negative feedback of society seeking to reduce the harm. In contrast, today’s great environmental crisis of climate change may cause some harm but there are generally long time delays between rising CO2 concentrations and damage to humans. The consequence of these delays are an absence of urgency; thus although 70% of Americans believe global warming is happening, only 40% think it will harm them (http://climatecommunication.yale.edu/visualizations-data/ycom-us-2016/). Secondly, unlike past environmental challenges, the Earth’s climate system is rife with positive feedback loops. In particular, as CO2 increases and the climate warms, that very warming can cause more CO2 release which further increases global warming, and then more CO2, and so on. Table 2 summarizes the best documented positive feedback loops for the Earth’s climate system. These feedbacks can be neatly categorized into carbon cycle, biogeochemical, biogeophysical, cloud, ice-albedo, and water vapor feedbacks. As important as it is to understand these feedbacks individually, it is even more essential to study the interactive nature of these feedbacks. Modeling studies show that when interactions among feedback loops are included, uncertainty increases dramatically and there is a heightened potential for perturbations to be magnified (e.g., Cox, Betts, Jones, Spall, & Totterdell, 2000; Hajima, Tachiiri, Ito, & Kawamiya, 2014; Knutti & Rugenstein, 2015; Rosenfeld, Sherwood, Wood, & Donner, 2014). This produces a wide range of future scenarios. Positive feedbacks in the carbon cycle involves the enhancement of future carbon contributions to the atmosphere due to some initial increase in atmospheric CO2. This happens because as CO2 accumulates, it reduces the efficiency in which oceans and terrestrial ecosystems sequester carbon, which in return feeds back to exacerbate climate change (Friedlingstein et al., 2001). Warming can also increase the rate at which organic matter decays and carbon is released into the atmosphere, thereby causing more warming (Melillo et al., 2017). Increases in food shortages and lack of water is also of major concern when biogeophysical feedback mechanisms perpetuate drought conditions. The underlying mechanism here is that losses in vegetation increases the surface albedo, which suppresses rainfall, and thus enhances future vegetation loss and more suppression of rainfall—thereby initiating or prolonging a drought (Chamey, Stone, & Quirk, 1975). To top it off, overgrazing depletes the soil, leading to augmented vegetation loss (Anderies, Janssen, & Walker, 2002). Climate change often also increases the risk of forest fires, as a result of higher temperatures and persistent drought conditions. The expectation is that forest fires will become more frequent and severe with climate warming and drought (Scholze, Knorr, Arnell, & Prentice, 2006), a trend for which we have already seen evidence (Allen et al., 2010). Tragically, the increased severity and risk of Southern California wildfires recently predicted by climate scientists (Jin et al., 2015), was realized in December 2017, with the largest fire in the history of California (the “Thomas fire” that burned 282,000 acres, https://www.vox.com/2017/12/27/16822180/thomas-fire-california-largest-wildfire). This catastrophic fire embodies the sorts of positive feedbacks and interacting factors that could catch humanity off-guard and produce a true apocalyptic event. Record-breaking rains produced an extraordinary flush of new vegetation, that then dried out as record heat waves and dry conditions took hold, coupled with stronger than normal winds, and ignition. Of course the record-fire released CO2 into the atmosphere, thereby contributing to future warming. Out of all types of feedbacks, water vapor and the ice-albedo feedbacks are the most clearly understood mechanisms. Losses in reflective snow and ice cover drive up surface temperatures, leading to even more melting of snow and ice cover—this is known as the ice-albedo feedback (Curry, Schramm, & Ebert, 1995). As snow and ice continue to melt at a more rapid pace, millions of people may be displaced by flooding risks as a consequence of sea level rise near coastal communities (Biermann & Boas, 2010; Myers, 2002; Nicholls et al., 2011). The water vapor feedback operates when warmer atmospheric conditions strengthen the saturation vapor pressure, which creates a warming effect given water vapor’s strong greenhouse gas properties (Manabe & Wetherald, 1967). Global warming tends to increase cloud formation because warmer temperatures lead to more evaporation of water into the atmosphere, and warmer temperature also allows the atmosphere to hold more water. The key question is whether this increase in clouds associated with global warming will result in a positive feedback loop (more warming) or a negative feedback loop (less warming). For decades, scientists have sought to answer this question and understand the net role clouds play in future climate projections (Schneider et al., 2017). Clouds are complex because they both have a cooling (reflecting incoming solar radiation) and warming (absorbing incoming solar radiation) effect (Lashof, DeAngelo, Saleska, & Harte, 1997). The type of cloud, altitude, and optical properties combine to determine how these countervailing effects balance out. Although still under debate, it appears that in most circumstances the cloud feedback is likely positive (Boucher et al., 2013). For example, models and observations show that increasing greenhouse gas concentrations reduces the low-level cloud fraction in the Northeast Pacific at decadal time scales. This then has a positive feedback effect and enhances climate warming since less solar radiation is reflected by the atmosphere (Clement, Burgman, & Norris, 2009). The key lesson from the long list of potentially positive feedbacks and their interactions is that runaway climate change, and runaway perturbations have to be taken as a serious possibility. Table 2 is just a snapshot of the type of feedbacks that have been identified (see Supplementary material for a more thorough explanation of positive feedback loops). However, this list is not exhaustive and the possibility of undiscovered positive feedbacks portends even greater existential risks. The many environmental crises humankind has previously averted (famine, ozone depletion, London fog, water pollution, etc.) were averted because of political will based on solid scientific understanding. We cannot count on complete scientific understanding when it comes to positive feedback loops and climate change.

### 1NC

Memo CP

#### The United States federal government should issue a policy memorandum that private sector business practices that violate an antitrust worker welfare standard should be prohibited.

#### The CP competes because it’s not legally binding BUT solves by shifting antitrust policy

Theodore Voorhees 17, Senior Litigator and Member of the Antitrust and Competition Law Practice Group at Covington & Burling LLP, JD from the Catholic University of America, Columbus School of Law, AB from Harvard University, and Leah Brannon, Partner at Cleary Gottlieb Steen & Hamilton LLP, JD from Harvard Law School, BA with Highest Distinction from the University of Virginia, ABA 2016 Presidential Transition Task Force, “Presidential Transition Report: The State of Antitrust Enforcement”, American Bar Association Section of Antitrust Law, January 2017, http://cartelcapers.com/wp-content/uploads/2017/01/ABA-SAL-Presidential-Transition-Report-1-18-17-FINAL-2.pdf

III. ENFORCEMENT MATTERS

A. Agency Enforcement and Policy

1. Guidance

Where there are uncertainties in the Agencies' enforcement policies or priorities, it is often essential for the Agencies to provide guidance. The formal guidance can take the form of formal guidance documents (such as the Horizontal Merger Guidelines of 2010) or FTC opinions. Informal guidance can take the form of agency reports, speeches by key agency personnel, amicus briefs, decisions to litigate, or closing statements. Agency guidance is important and beneficial for multiple reasons, such as providing clarity for businesses, moving competition policy in the right direction, and ensuring a U.S. perspective on the international arena. Agency guidance is also particularly useful to communicate a shift in enforcement policy or practice.3

[FOOTNOTE] 3 The recent guidance issued by the Division and the FTC communicating the decision to treat wage-fixing and no-poaching agreements as criminal violations going forward provides an excellent example of this. See DEP’T OF JUSTICE, ANTITRUST DIV., FED. TRADE COMM’N, ANTITRUST GUIDANCE FOR HUMAN RESOURCE PROFESSIONALS (Oct. 2016), available at www.ftc.gov/system/files/documents/ public\_statements/992623/ftc-doj\_hr\_guidance\_final\_10-20-16.pdf. [END FOOTNOTE]

Furthermore, uncertainty as to the boundaries of antitrust laws may chill potentially procompetitive conduct or enable potentially anticompetitive behavior to continue unchecked. Businesses may be less willing to engage in novel business activities that could benefit consumers. Moreover, agency guidance and enforcement not only define the boundaries of how the Agencies view and enforce the law, but may also impact how courts rule in litigation.

Guidance also ensures a place for the U.S. perspective on the international stage. Because so many foreign antitrust authorities look to the Agencies for leadership and study U.S. enforcement decisions and cases, clearly articulated guidance helps achieve uniformity across jurisdictions. Moreover, an international presence and influence as to antitrust policy is particularly critical in an era in which some foreign competition agencies use the pretense of antitrust enforcement as a cover to mask decisions that are actually based on industrial policy or protectionism.

Speeches, while not binding on the Agencies or as long-lasting as more formal agency documents, can give advance notice of enforcement priorities and the views of agency leadership regarding how best to analyze certain forms of conduct. For instance, in her first speech as Acting Assistant Attorney General, Renata Hesse offered important insights into the use of bargaining models in analyzing vertical mergers and the Division's skepticism of procompetitive claims in horizontal mergers. Indeed, for changes in agency thinking, an agency speech or other non-enforcement guidance can be the fairer approach, at least in the first instance, than initially embarking on litigation.

Business review letters from the Division and advisory opinions from the FTC serve as another avenue for providing guidance on novel conduct. More important, by setting forth the respective agency's reasoning for how it views proposed conduct, these documents in effect make a policy statement as to what characteristics of the conduct are considered to be beneficial or harmful for consumers.

#### It avoids politics and trade-off DAs

Dr. Nicholas R. Parrillo 19, Professor of Law and Professor of History at Yale Law School, JD from Yale Law School, PhD in American Studies from Yale University, AB in History and Literature from Harvard University, “Should the Public Get to Participate Before Federal Agencies Issue Guidance? An Empirical Study”, Administrative Law Review, Volume 71, Issue 1, 71 ADMIN. L. REV. 57, Winter 2019, Lexis

II. BURDEN OF PUBLIC COMMENT ON GUIDANCE LESS THAN LEGISLATIVE RULEMAKING

If the agency is going to solicit public comment on guidance, why not just go the whole nine yards and proceed by legislative rulemaking, which unlike guidance is genuine binding law? The reason is that the actual taking of public comment is only a fraction of the burden that legislative rulemaking imposes, and even if one focuses on the taking of comment alone, it is often less burdensome for guidance than for rulemaking. Thus, for most agencies at least, "notice-and-comment guidance" is considerably faster and less expensive than notice-and-comment rulemaking.

In discussing why legislative rulemaking takes the amount of time and resources that it does, interviewees prominently cited five aspects of the process, all of which are either absent or less costly when the process is voluntary notice-and-comment for guidance. I discuss these in roughly descending order of prominence.

A. Mandates for Cost--Benefit Analysis

Before significant legislative rules can be proposed or finalized by executive agencies, they are reviewed by the President's Office of Management and Budget to ensure, inter alia, that the agency engaged in appropriate cost--benefit analysis. OMB also reviews executive agencies' "significant" guidance documents. The relevant Executive Order's definition of "significant" is, in many ways, open-ended. According to an official at the [\*80] EPA's Office of General Counsel, the decision on which guidance documents to submit to OMB for review is made at the senior management level of the agency, by political appointees, and the handling of the question changes depending on who is in the relevant agency-manager and OMB positions.

Generally, interviewees thought OMB review was less likely for guidance than for legislative rules and, when it occurred, less time-consuming. A former senior official at the EPA's Air Program office said he thought OMB review of guidance took less time than that of legislative rules. Lynn Thorp of Clean Water Action observed that OMB scrutiny of the EPA guidance was less than that for legislative rules. A former senior FDA official noted that OMB was not much engaged with the agency's day-to-day scientific guidance, while a former senior FDA career official said many FDA guidance documents did not go through OMB at all. William Schultz, former HHS General Counsel, in discussing differences between the notice-and-comment process for rulemaking and the notice-and-comment process for guidance, cited OMB delays, which he said can be severe. Daniel Troy, general counsel of GlaxoSmithKline and former chief counsel of the FDA, said one reason for FDA personnel's preference for guidance over legislative rulemaking was that it avoided OMB review. At [\*81] USDA NOP, which does notice-and-comment on "most" of its guidance, the head of the program cited OMB review as one of a few factors that makes legislative rulemaking generally slower than guidance. Richardson, the former chair of the NOSB, said legislative rulemaking was greatly delayed by agency economic analysis in contemplation of OMB review, which was not done for guidance; and whereas OMB was a focal point for private lobbying regarding legislative rules, causing further delay, this was not true of guidance. The result was that legislative rulemaking took "much longer" than guidance even when the latter went through public comment. At the Department of Transportation (DOT), said the former general counsel Kathryn Thomson, guidance, even with public comment, was "much faster" than legislative rulemaking, mainly because it was not necessary to do cost--benefit analysis in contemplation of OMB review; OMB would accept a fast process for guidance more than it would for a legislative rule. At the DOE appliance standards program, recalled a former Department division director, OMB could delay or accelerate legislative rulemaking depending on the administration's calendar and politics, but guidance was not subjected to OMB review.

In banking regulation, where most of the agencies are independent and therefore not subject to OMB review, economic analysis can still cause legislative rulemaking to take longer than guidance, as such analysis may be required on some matters by statute or agency practice. An interviewee who held senior posts at CFPB and other federal agencies said that at the independent banking agencies (i.e., those not funded with tax revenues and not subject to OMB review), where cost--benefit analysis may be required by statute, that analysis would be done for legislative rulemaking but not for guidance, which helped explain why the former took longer. A former senior Federal Reserve official noted that, while the Federal Reserve's legislative-rulemaking-specific cost--benefit analysis was "sometimes a bit skippy," [\*82] the CFPB did voluminous cost--benefit analysis because of its fear of D.C. Circuit case law striking down SEC action for violating cost--benefit requirements.

B. Building a Record and Responding to Comments in Anticipation of Judicial Review

The advent of "hard look" judicial review in the 1970s, ratified by the Supreme Court in Motor Vehicles Manufactures Ass'n v. State Farm, pushed agencies to develop voluminous administrative records to support their legislative rules and to devote countless hours to writing long preambles responding minutely to public comments. An EPA official--in comparing legislative rulemaking (which he said took an "excruciatingly" long time) with guidance (on which he said the agency was "much more nimble")--said that a "huge" difference between the two was the time spent developing the administrative record and replying to comments, both of which he placed under the heading of "judicial review accountability," that is, the agency's "fear" of investing in a legislative rule only to have it struck down in court. EPA lawyers, he explained, were "vigilant" about ensuring that the administrative record was "all there," including the development of supporting documents, with all data gathered and analyzed, which took a "ton of time." Likewise, lawyers were vigilant in making sure the agency accounted for all comments. By contrast, "very little" of this was required for EPA guidance. There might be some accompanying materials, but it was "very rare" to do a full supporting foundation, in part because much of the necessary information would already have been gathered for a prior relevant legislative rulemaking, or would have bubbled up from the implementation process for that prior legislative rule. And even if the EPA took public comment on a guidance document and responded (which it sometimes did), "we're coasting along the surface" compared to what is done for a legislative rulemaking preamble. A former senior official at the EPA Air Program Office concurred that, for guidance, supporting material did not need to be gathered because it had already been assembled in prior legislative rulemakings, and public comments did not need to be addressed [\*83] at the same level of detail as for legislative rulemaking.

There is a similar dynamic at the FDA, which, per the GGPs, takes public comment on a very large proportion of its guidance documents. A former senior FDA official explained the difference. Legislative rulemaking required support for everything in the record and a time-consuming response to comments, and the costs of this process had been part of the agency's drive since the 1990s to rely more upon guidance, for which the process, even with public comment, was much more "abbreviated." Whereas legislative rules were "law" and had to be supported, the agency in issuing guidance felt freer not to develop a voluminous record, and the comments on guidance did not require the kind of response that was required on legislative rules. The fact that the FDA was sued much more on legislative rules than on guidance, he said, was surely part of this. Similarly, a congressional staffer observed that, although the FDA took public comment on guidance, it generally did not give any response to comments, meaning there was not the same kind of " State Farm obligation" as for legislative rulemaking, and so the process did not ensure the same careful consideration of stakeholder views. A former senior FDA official thought the lack of a requirement to respond to comments was a crucial and salutary feature of the FDA's process for guidance: if you required a preamble, you might as well do legislative rulemaking, and the whole thing would become "unworkable." A former senior FDA career official, discussing the difference between legislative rulemaking and guidance, said responding to all substantive comments in a rulemaking in writing for publication added "significantly" to the time spent. Overall, said an FDA Office of Chief Counsel official, whereas legislative rulemaking was criticized for being "ossified," it was possible to issue guidance "pretty quickly."

[\*84] Elsewhere, too, the research and analytic demands are less for guidance than for legislative rulemaking. At OSHA, said the former deputy solicitor of the Department of Labor (DOL), guidance was faster than legislative rulemaking in part because of judicial decisions requiring that the agency in each rulemaking make a showing of significant risk and technological and economic feasibility. By contrast, headquarters might have a regional office draft a guidance document, noted John Newquist, a former assistant administrator of OSHA's Region V (headquartered in Chicago).

C. Taking Comments in Itself

The actual publication of the draft rule/guidance and the taking of comments on it (as distinct from the work of responding to those comments) takes time and effort in itself, but this time and effort did not figure nearly as prominently in the interviews as did cost--benefit analysis, record-building, or responding to comments. And in any event, the burden of taking comment per se tends to be less for guidance documents than for legislative rules. At the banking agencies, said an interviewee who held senior posts at the CFPB and other federal agencies, the comment period tends to be shorter for guidance, and the comments fewer. The comment period was also said to be shorter for guidance at the USDA NOP, and in EPA clean water regulation. Comments were said to be less voluminous on guidance compared to legislative rules at the FDA.

D. Drafting Challenges

Legislative rules are typically harder to draft than guidance, which adds further to the time and resources they demand. Because legislative rules are mandatory, said an EPA official, you "sweat each detail," seeking to account for all factors and contingencies, since once the rule is promulgated, "we can't go back to it for 15 years." Guidance, he said, does not involve the same sweating of details. As to the FDA, a former senior career official [\*85] there said that, in writing guidance, you need not be as careful on wording as on a legislative rule because the language is not binding and is described as reflecting the current thinking of the agency; you are therefore more free to put in details, use narrative form, Q&A form, and plain language, since the document is not "set in stone." He recalled one subject on which he and his colleagues initially sat down to write a legislative rule and found it impossible to start with "codified language," given the complexity of the matter; he therefore suggested handling the problem by writing guidance, as a "dry run," before drawing up binding requirements. In banking regulation, an interviewee who held senior posts at the CFPB and other federal agencies said that guidance was "easier" to write and could be written "faster" than a legislative rule because "you don't need to nail everything down," as the aim is to warn regulated parties to pay attention to certain risks, not prescribe mandatory requirements.

E. Dealing with Mobilized Stakeholders

The length, officially-binding status, and public salience of legislative rulemaking make it a focal point for the mobilization of interest groups to pressure the agency and enlist political allies in Congress, the White House, and elsewhere. This, in turn, makes legislative rulemaking expensive to the agency in terms of political capital. An official at a public interest organization working on immigrants' rights said that, in his experience seeking favorable policies from DHS, he had found that legislative rulemaking tended to "exhaust all [the agency's] political capital," more than issuing guidance did. Legislative rulemaking allowed time for the opponents of an initiative to marshal their forces. If an agency and its stakeholder allies sought to proceed by legislative rulemaking, he said, they were "declaring a grand war" and had to be prepared for greater opposition. A former DOE division director, explaining why there was "no comparison" between the processes for legislative rulemaking and guidance, emphasized that the "politics" of the former process "slowed it down," for whenever the proceeding seemed to veer in a direction that one interest group did not like, [\*86] that group would marshal evidence and political support to stop the process, enlisting friendly members of Congress or the White House. With respect to the USDA NOP, the president of an organic certifier, in discussing factors that slowed legislative rulemaking, immediately cited the agency's internal process for economic analysis (not applicable to guidance), which he said could become a "pawn" in political clashes between different parts of the industry, in which members of Congress might be involved.

### 1NC

#### FTC’s increasing enforcement in privacy now---it’s focused on algorithmic bias.

James V. Fazio 21. Special counsel in the Intellectual Property Practice Group at Sheppard, Mullin, Richter & Hampton LLP, with Liisa M. Thomas, 3/11. “What Is FTC’s Course Under Biden?” https://www.natlawreview.com/article/what-ftc-s-course-under-biden

The new acting FTC chair, Rebecca Kelly Slaughter, recently signaled that the FTC may increase enforcement and penalties in the privacy and data security realm. Slaughter pointed to several areas of focus for the FTC this year, which companies will want to keep in mind: Notifying Consumers About FTC Allegations: Slaughter referred favorably to two recent cases: (1) the Everalbum biometric settlement from earlier this year (which we wrote about at the time); and (2) the Flo Health settlement over alleged deceptive data sharing practices (which we also wrote about at the time). In drawing on these two cases, Slaughter indicated that in future cases the FTC intends to include as part of any settlement a requirement to notify customers of any FTC allegations. This, she said, would allow consumers to “vote with their feet” and help them decide whether to recommend their services to others. FTC Intent to Plead All Relevant Violations: According to Slaughter, another lesson the FTC is taking from the Flo case is to include in the cases it brings all potentially applicable violations of all relevant privacy-related laws. In the Flo case, Slaughter said the FTC should have pleaded a violation of the Health Breach Notification Rule, which requires that vendors of personal health records notify consumers of data breaches. Focus on Ed Tech and COPPA: Given the explosive growth of education technology during COVID-19, the FTC is conducting an industry sweep of the industry. Related to this, the FTC is reviewing its Children’s Online Privacy Protection Act Rule. This goes beyond the refresh the agency did of their FAQs earlier in the pandemic (which we wrote about at the time). For now, Slaughter reminds companies that parental consent is needed before collecting information online from children under the age of 13. Examination of Health Apps: The FTC will take a closer look at health apps, including telehealth and contact tracing apps, as more and more consumers are relying on such apps to manage their health during the pandemic. Overlap Between Competition and Privacy: Slaughter also indicated that it is worth looking at situations where there may be not only privacy concerns, but antitrust as well. Because the FTC has a dual mission (consumer protection and competition) she notes that it has a “structural advantage” over other regulators in that it can look at these issues, especially since -she states- “many of the largest players in digital markets are as powerful as they are because of the breadth of their access to and control over consumer data.” Racial Equality and AI/Biometrics/Geotracking: Slaughter noted that COVID-19 is exacerbating racial inequities. She pointed to the unequal access to technology, as well as algorithmic discrimination (the idea that discrimination offline becomes embedded into algorithmic system logic). The FTC intends to focus on algorithmic discrimination, as well as on the discrimination potentially embedded into facial recognition technologies. (This mirrors concerns that gave rise to the recent Portland facial recognition law, which we recently wrote about). Finally, Slaughter commented on the use of location data to identify characteristics of Black Lives Matter protesters, and said she is concerned about the misuse of location data to track Americans engaged in constitutionally protected speech. Putting it Into Practice: Companies that operate health apps, that are in the education technology space, or that use algorithms or facial recognition tools will want to keep in mind that these are areas of focus for the FTC. And for everyone, keep in mind that the FTC has indicated it will beef up privacy law penalties and will ask for more notification to injured consumers.

#### Antitrust enforcement saps up FTC resources and personnel, which are finite.

Tara L. Reinhart, et al. 21. \*\*Head of Skadden, Arps, Slate, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*Steven C. Sunshine, Co-head of Skadden, Arps, Slat, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*David P. Whales, antitrust lawyer with over 25 years of experience in both private and public sectors. \*\*Julia Y. York, partner at Skadden, Arps, Slat, Meagher & Flom LLP. \*\*Bre Jordan, associate at Skadden, Arps, Slat, Meagher & Flom LLP focusing on antitrust law. “Lina Khan’s Appointment as FTC Chair Reflects Biden Administration’s Aggressive Stance on Antitrust Enforcement.” 6/18/21. https://www.skadden.com/insights/publications/2021/06/lina-khans-appointment-as-ftc-chair

Second, like all antitrust enforcers, Ms. Khan and the FTC will face resource constraints. Bringing antitrust litigation is an expensive and laborious process, often requiring millions of dollars for expert fees and a large army of FTC staff attorneys and taking many months or even years to accomplish. Typically, the FTC can only litigate a handful of antitrust matters at a time. It seems likely that Congress will provide more funding to the FTC in the current environment, but even with these extra resources, the FTC will still have to pick its cases carefully and cannot challenge every deal or every instance of alleged unlawful conduct.

#### That trades off with the necessary resources for privacy enforcement.

John O. McGinnis\* and Linda Sun\*\* 20. \*George C. Dix Professor, Northwestern University, and Associate-Designate, Wilmer Pickering Hale & Dorr LLP. “Unifying Antitrust Enforcement for the Digital Age.” Northwestern Public Law Research Paper No. 20-20. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3669087

The FTC needs more resources to adequately address the nation’s growing privacy concerns. Currently, the FTC oversees both consumer protection—encompassing privacy—and antitrust,249 making the FTC the chief federal agency on privacy policy and enforcement250 and the nation’s de-facto privacy agency.251 The agency has long-standing experience in enforcing privacy statutes252 and also has special privacy assets, such as an internet lab capable of high-quality tech forensics to track invasions of privacy.253 The FTC, however, has failed to keep pace with the massive growth of privacy concerns—a phenomenon also driven by modern technology. Very few Americans feel conﬁdent in the privacy of their information in the digital age.254 According to a 2019 study, over 80% of Americans feel that they have little to no control over the data collected on them by companies and the government.255 To adequately address privacy concerns, the FTC needs more resources.256 The agency has been explicit that it needs more manpower to police tech companies. In requesting increased funding from Congress, FTC Director Joseph Simons said the money would allow the agency to hire additional staff and bring more privacy cases.257 A former director of the FTC’s Bureau of Consumer Protection, which houses the privacy unit, has called the FTC “woefully understaffed.”258 As of the spring of 2019, the FTC had only forty employees dedicated to privacy and data security, compared to 500 and 110 employees at comparable agencies in the UK. and Ireland, respectively.259 Without more lawyers, investigators, and technologists, the FTC will be forced to conduct privacy investigations less thoroughly, and in some cases, forgo them altogether.260 Currently, the FT C’s resources are spread thin across multiple missions, to the detriment of its privacy efforts. Removing the agency’s antitrust responsibilities would reallocate resources from the antitrust department to its privacy unit and other areas of consumer protection. Further, it would free up the scarce time of the commissioners to oversee this essential effort.261

#### Unchecked algorithmic bias risks massive inequality and extinction.

Mike Thomas 20. Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn. THE FUTURE OF ARTIFICIAL INTELLIGENCE: 7 ways AI can change the world for better ... or worse, Updated: April 20, 2020, <https://builtin.com/artificial-intelligence/artificial-intelligence-future>

Klabjan also puts little stock in extreme scenarios — the type involving, say, murderous cyborgs that turn the earth into a smoldering hellscape. He’s much more concerned with machines — war robots, for instance — being fed faulty “incentives” by nefarious humans. As MIT physics professors and leading AI researcher Max Tegmark put it in a 2018 TED Talk, “The real threat from AI isn’t malice, like in silly Hollywood movies, but competence — AI accomplishing goals that just aren’t aligned with ours.” That’s Laird’s take, too. “I definitely don’t see the scenario where something wakes up and decides it wants to take over the world,” he says. “I think that’s science fiction and not the way it’s going to play out.” What Laird worries most about isn’t evil AI, per se, but “evil humans using AI as a sort of false force multiplier” for things like bank robbery and credit card fraud, among many other crimes. And so, while he’s often frustrated with the pace of progress, AI’s slow burn may actually be a blessing. “Time to understand what we’re creating and how we’re going to incorporate it into society,” Laird says, “might be exactly what we need.” But no one knows for sure. “There are several major breakthroughs that have to occur, and those could come very quickly,” Russell said during his Westminster talk. Referencing the rapid transformational effect of nuclear fission (atom splitting) by British physicist Ernest Rutherford in 1917, he added, “It’s very, very hard to predict when these conceptual breakthroughs are going to happen.” But whenever they do, if they do, he emphasized the importance of preparation. That means starting or continuing discussions about the ethical use of A.G.I. and whether it should be regulated. That means working to eliminate data bias, which has a corrupting effect on algorithms and is currently a fat fly in the AI ointment. That means working to invent and augment security measures capable of keeping the technology in check. And it means having the humility to realize that just because we can doesn’t mean we should. “Our situation with technology is complicated, but the big picture is rather simple,” Tegmark said during his TED Talk. “Most AGI researchers expect AGI within decades, and if we just bumble into this unprepared, it will probably be the biggest mistake in human history. It could enable brutal global dictatorship with unprecedented inequality, surveillance, suffering and maybe even human extinction. But if we steer carefully, we could end up in a fantastic future where everybody’s better off—the poor are richer, the rich are richer, everybody’s healthy and free to live out their dreams.”

## Inequality

### No Solvency---1NC

#### Worker welfare standard only considers workers first if they experience a de minimis harm, which is only wage cuts.

Clayton J. Masterman 16. 2019 graduate of the Vanderbilt University Ph.D. Program in Law & Economics. “The Customer Is Not Always Right: Balancing Worker and Customer Welfare in Antitrust Law” Vol. Vanderbilt Law Review. 69:5:1387. 2016. <https://law.vanderbilt.edu/phd/students/The-Customer-Is-Not-Always-Right-Balancing-Worker-and-Customer-Welfare-in-Antitrust-Law.pdf>

Monopsony continues to **challenge antitrust law** despite Weyerhauser. Given that anticompetitive agreements among employers benefit one group of consumers (customers) while hurting another consumer group (workers), antitrust law forces courts to weigh the interests of these two groups of consumers against one another. Weighing the interests of two groups of consumers is complex and requires courts to choose whose economic welfare matters more. Currently, courts are **improperly allowing monopsonists to engage in anticompetitive conduct** merely because it results in lower prices.167 Currently, courts directly weigh the welfare of both customers and workers against each other. Because antitrust law traditionally focuses on customers and anticompetitive conduct in labor markets causes lower prices, direct comparison of the welfare is insufficient. Extending the antitrust history of partial equilibrium analysis, I propose that courts consider the welfare of workers first, then **customers’ welfare only if workers experience a de minimis harm**. This proposal **appropriately weighs the interests of workers against customers** who receive a price cut from monopsonistic conduct. Further, this proposal **sits well with antitrust law’s long history** of providing different treatment to anticompetitive conduct in labor. This rule does not solve every problem that a mirror treatment of monopoly and monopsony creates. Yet, this solution both operates within the established Weyerhauser framework to apply current antitrust standards in new ways and pursues antitrust law’s goal of protecting competitive markets.

#### No empirical or statistical evidence that antitrust decreases inequality

Jonathan Klick et al. 19—University of Pennsylvania Law School, Erasmus School of Law; Elyse Dorsey, Adjunct Professor at Antonin Scalia Law School; Joshua D. Wright, Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission; Jan Rybnicek, Freshfields Bruckhaus Deringer LLP. ("Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust," January 9, 2019, from George Mason Law & Economics Research Paper No. 18-29, Arizona State Law Journal, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3249524)

To unpack these results, Table 5 presents the effect of investigations on real average consumption expenditures for the 1st and 5th quintile households by income. For brevity, we only present the specifications with 2 lags and the time trend.

Table

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On the whole, the relationship between the enforcement metrics and consumption is comparable for the households in both the first and fifth income quintiles. There is not much empirical evidence to substantiate the proposed correlation between antitrust enforcement activity and inequality. And certainly not evidence significant enough to justify the aggressive policy proposals recently injected into discussion of competition policy.

Stepping away from this aggregate analysis for a moment, it is interesting to note that the new(-old) focus on “big is bad” when it comes to inequality ignores an impressive literature on the effects of one of the biggest players in the US in recent decades – Walmart. Work by Jerry Hausman and Ephraim Leibtag shows that when Walmart Supercenters enter a market, food prices paid by consumers in the market drop by about 3 percent, and because they have detailed longitudinal data on household expenditures, they are able to estimate household welfare effects due to this price decrease. They find that the welfare effects are substantial and they are most pronounced for those at the lower end of the socio-economic spectrum.158 In addition to this price effect, David Matsa shows that Wal-Mart’s entry into a market induces competitor supermarkets to improve the quality of their service so as to avoid losing even more business to Wal-Mart and its lower prices.159 Thus, in the posterchild case for big is bad, the behemoth Wal-Mart would appear to improve inequality by its very existence.

Although we believe consumption is the most relevant measure for assessing the welfare effects (in absolute or, as here, in relative terms) of antitrust policy, we provide similar analyses of income and wealth. Using Census data,160 in Table 6, we again provide estimates from an AR(1) distributed lag model examining the effects of DOJ investigations, both merger specific and total, on the income shares received by those individuals in the first quintile and the fifth quintile, while also controlling for a background linear trend.

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As with consumption measures, there is generally no statistically significant effect (individually or jointly) of current or past investigations (regardless of whether we focus on merger-specific or total investigations) on the income shares of those at the bottom or the top of the income distribution. Putting aside statistical significance, while past investigations are associated with increases in the income share received by those at the bottom of the distribution, current investigations have the opposite effect. Further, many of the investigation coefficients are positive for the fifth quintile income share as well. If we examine combined ratios of the shares as we did with the consumption data, we still find no support for the assumption that an increase in antitrust enforcement has any systematic effect on inequality.16

#### Studies find zero causal link between antitrust and inequality

Elyse Dorsey et al. 20—Adjunct Professor at Antonin Scalia Law School; Geoffrey A. Manne, president and founder of the International Center for Law and Economics; Jan M. Rybnicek, Antitrust Attorney, former Advisor at FTC, Editor for the Antitrust Law Journal; Kristian Stout, ICLE’s Director of Innovation Policy; Joshua D. Wright, Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission. ("Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement," June 2, 2020, from Pepperdine Law Review, Vol. 47, No. 861, https://ssrn.com/abstract=3592974)

Second, consider the empirical evidence supporting a causal link between antitrust enforcement and inequality. This proffered link remains, thus far, largely theoretical and undeveloped empirically. Populist papers advocating for increased antitrust as a salve for increasing inequality do not offer empirical support for their preferred course of treatment. But other authors have begun to explore empirically the proposed tie between antitrust enforcement and inequality. Wright et al., for instance, present time series regressions relating measures of inequality to antitrust enforcement measures.88 While the authors acknowledge the standard reasons that these analyses cannot isolate, with confidence, causation, their work provides a useful foray into the empirical basis for the notion that antitrust enforcement and inequality are causally linked. The authors examine data from DOJ investigations between 1984 and 2016, focusing first on merger investigations, given the populist emphasis on merger activity, and then broadly examine all DOJ investigations for a more general enforcement measure. Their results do not offer “much empirical evidence to substantiate the proposed correlation between antitrust enforcement activity and inequality.”89

Populist claims that increased antitrust enforcement is necessary to combat a severe trend of increasing inequality thus appear to be overstated. While inequality appears to be increasing, the rate is likely more modest than the populist movement implies. And there is, as of yet, no empirical support for the underlying proposition that increasing antitrust enforcement levels would slow, stop, or reverse this trend.

### Soft Power---1NC

#### Inequality doesn’t hurt multilat

Ben Ansell 15, PhD, Professor of Comparative Democratic Institutions @ Nuffield College, “Inequality and Democratic Survival”, https://ostromworkshop.indiana.edu/pdf/seriespapers/2016s\_c/Samuelspaper.pdf

In contrast, income inequality is - counterintuitively for median-voter models - not associated with democratic collapse. This is because under universal suffrage income inequality has countervailing effects on key actors’ incentives. Historically, income inequality is correlated not with poverty but with the emergence of urban groups such as a bourgeoisie and working class. These groups have no desire to pay for universalistic redistribution, but they are willing to accept taxes (on themselves and others) that pay for programs that serve their own interests - and that would not likely exist under autocracy - such as public works and education (see Ansell and Samuels (2014)). Both the fear of higher universalistic taxes and the acceptance of taxes to pay for club goods increase as income inequality increases. For this reason, as we explain below, income inequality has no clear theoretical effect on democracy’s survival. If median-voter models of democratic survival were true, both land and income inequality would have the same theoretical and empirical effect. However, we argue and demonstrate below that this is not the case. We agree that democratic survival depends on the relative strength of key political groups at different levels of development. However, aggregate country-wealth does not pick up all the useful information in this regard. A rich country with high rural inequality (a strong landed elite) is less likely to survive than a poor country with high income inequality (a strong bourgeoisie and working class). It is true that such situations are historically unlikely, because the relative economic and political power of landed and urban economic groups often move in opposite directions with the onset of economic development Kuznets (1955). Historically more common situations include poor countries with high rural inequality and low income inequality, and rich countries with low rural inequality but high income inequality. Below we show that the famous result about an income threshold beyond which democracy ‘does not die’, shown in Przeworski and Limongi (1997), obscures the fact that this threshold is in fact far lower for countries with low rural inequality.

### Link Turn---1NC

#### Any alternative to consumer welfare causes a laundry list of problems for the economy – specifically causes special interest rent-seeking and cronyism

Keating 21 – Raymond J. Keating, chief economist for the Small Business & Entrepreneurship Council, “The Treacherous Turn on Antitrust Regulation of U.S. Tech Companies,” 2/24/21, <https://sbecouncil.org/2021/02/24/the-treacherous-turn-on-antitrust-regulation-of-u-s-tech-companies/>

[Modified for objectionable language]

Nonetheless, in the end, the consumer welfare standard is, by far, the best we have in terms of some consistency and reasonableness in applying vague antitrust laws.

Antitrust and Congress: A Bad System May Become Far Worse

Given the formidable shortcomings of antitrust law and regulation, one would hope that if Congress was going to consider reform or updating, the effort would be focused on at least trying to somehow better connect the law and enforcement with economic realities and how markets actually function.

That is not the case with the reports presented by Democrats and Republicans in the House Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary. In fact, each report, and largely the Democrats’ analysis, serves up recommendations that would create far greater distance between how markets work and antitrust regulation.

Let’s be perfectly clear: Neither report offers recommendations that will improve antitrust law and enforcement. Most of the proposals labor under mistaken assumptions; and would actually inject more politics and uncertainty into the antitrust equation, while moving antitrust law, regulation and enforcement further away from sound economics.

The Democrats’ majority report is intent on a vast expansion of antitrust regulation and enforcement, including tossing out the consumer welfare standard in favor of, effectively, more politics over economics; while the Republican report also argues for expanded regulation and enforcement, but more tentatively so at least in terms of the language used.

The overwhelming tendency in the Democrats’ report is to make sweeping declarations about increased and inevitable monopolization (such as: “Over the past decade, the digital economy has become highly concentrated and prone to monopolization.”), along with “weakened innovation and entrepreneurship,” that ignore the dynamism of the tech economy, the enormous benefits derived by consumers, actual consumer decisions, and the definition of a monopoly.

As for the Republican report, it is willing to go along with the Democrats on a number of proposals, raises questions about others, and rejects some. As stated, “We prefer a targeted approach, the scalpel of antitrust, rather than the chainsaw of regulation.”

As it turns out, though, the Republican “scalpel” is far from targeted. The report expresses political disagreements with the firms involved (for example: “Most notably, the report does not address how Big Tech has used its monopolistic position in the marketplace to censor speech. This censorship is experienced by groups and ideologies on all wings of the political spectrum but is most notably realized through tech platforms exerting overt bias against conservative outlets and personalities.”)

Consider some key proposals from the Democrats’ report and our responses.

• Proposal: “Reasserting the anti-monopoly goals of the antitrust laws and their centrality to ensuring a healthy and vibrant democracy.” – “[T]he Subcommittee recommends that Congress consider reasserting the original intent and broad goals of the antitrust laws by clarifying that they are designed to protect not just consumers, but also workers, entrepreneurs, independent businesses, open markets, a fair economy, and democratic ideals.”

Response: This proposal would toss out the consumer welfare standard, and replace it with a broad basis for undermining businesses that have earned considerable market share. Antitrust actions would return to a period in which politics, special interest influences, rent-seekers, and uncertainty held even greater sway over the realm of antitrust – even more so than it does today. By effectively giving more control over business decisions and models to a political class that often fails to understand current business and market conditions, never mind where industries and markets are headed in the future, there inevitably will be losses in terms of innovation, investment, efficiency, and growth.

• Proposal: “Structural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” – “Structural separations prohibit a dominant intermediary from operating in markets that place the intermediary in competition with the firms dependent on its infrastructure. Line of business restrictions, meanwhile, generally limit the markets in which a dominant firm can engage.”

Response: Again, having government determine and dictate business decisions, rather than having decisions made by businesses and entrepreneurs subject to market competition and consumer sovereignty would mean lost innovation, productivity and consumer benefits.

• Proposal: “Interoperability and data portability, requiring dominant platforms to make their services compatible with various networks and to make content and information easily portable between them.”

Response: Investments in engineering and information often are the lifeblood of businesses in the digital economy. It’s how they provide added value to customers. To have government impose assorted mandates on the use and availability of such investments inevitably will reduce and/or redirect such investments, with consumers, again, suffering.

• Proposal: “Presumptive prohibition against future mergers and acquisitions by the dominant platforms.” – “Under this change, any acquisition by a dominant platform would be presumed anticompetitive unless the merging parties could show that the transaction was necessary for serving the public interest and that similar benefits could not be achieved through internal growth and expansion.” – “[T]he Subcommittee recommends that Members consider codifying bright-line rules for merger enforcement, including structural presumptions. Under a structural presumption, mergers resulting in a single firm controlling an outsized market share, or resulting in a significant increase in concentration, would be presumptively prohibited…”

Response: The basis for justifying such random impositions on mergers certainly does not rest with sound economics, nor with how the market works, including that any mergers ultimately will be put to the test of competition and consumer decision-making in the marketplace. Instead, this is simply about a political preference or bias against mergers and “bigness” per se.

• Proposal: “To strengthen the law relating to potential rivals and nascent competitors, Subcommittee staff recommends strengthening the Clayton Act to prohibit acquisitions of potential rivals and nascent competitors.” – “Since startups can be an important source of potential and nascent competition, the antitrust laws should also look unfavorably upon incumbents purchasing innovative startups. One way that Congress could do so is by codifying a presumption against acquisitions of startups by dominant firms, particularly those that serve as direct competitors, as well as those operating in adjacent or related markets.”

Response: A surefire way to ~~cripple~~ [destroy] startups is to reduce or disincentivize investment in such ventures. This proposal seems designed specifically to undermine entrepreneurship. It is rather commonplace in an assortment of industries for a certain portion of startups to eventually be purchased and merged into larger businesses. Indeed, that possibility or option provides incentives for investing in such enterprises.

• Proposal: “Clarifying that market definition is not required for proving an antitrust violation, especially in the presence of direct evidence of market power” and “Clarifying that ‘false positives’—or erroneous enforcement—are not more costly than ‘false negatives’—or erroneous non-enforcement—and that, in relation to conduct or mergers involving dominant firms, ‘false negatives’ are costlier.”

Response: These measures are simply meant to make it easier to impose politically-driven antitrust regulation or actions against businesses. After all, why bother with defining the market or even considering “false positives” when one is so sure that large businesses and mergers are inherently evil – again, despite the fact that large businesses gained their notable market share by serving consumers well?

• Proposal: “Restoring the federal antitrust agencies to full strength, by triggering civil penalties and other relief for ‘unfair methods of competition’ rules, requiring the Federal Trade Commission to engage in regular data collection on concentration, enhancing public transparency and accountability of the agencies, requiring regular merger retrospectives, codifying stricter prohibitions on the revolving door, and increasing the budgets of the FTC and the Antitrust Division.”

Response: The assumption with these proposals is that antitrust agencies are not doing everything that this Democratic report seeks to do at least in part due to a lack of power, dollars and/or staff. The fact that some administrations might see matters differently, and have a dissimilar antitrust philosophy, seems to be ignored. Also, the number of rather absurd antitrust cases brought by such agencies belies the lack-of-power and/or lack-of-funding assumptions. Consider for example, the FTC suing to stop Edgewell Personal Care Co., maker of Schick razors, from buying razor rival Harry’s Inc., or the FTC challenging Post Holdings, Inc.’s proposed acquisition of TreeHouse Foods, Inc.’s “private label ready-to-eat cereal business.” Private label products are made by one company and offered for sale by a different firm under its brand, and the FTC argued for government action to stop a merger in a small portion of the breakfast foods market. Also, there don’t seem to be high barriers to entry in the razor market. In each case, government antitrust action led to the mergers being called off – after all, challenging a federal agency’s antitrust intrusion gets quite pricey. So much for federal antitrust agencies lacking power and resources.

• Proposal: “Strengthening private enforcement through elimination of obstacles such as forced arbitration clauses, limits on class action formation, judicially created standards constraining what constitutes an antitrust injury, and unduly high pleading standards.”

Response: The objectives here not only include an expansion of antitrust actions and special interest interference, but clearly, serving the interests of trial lawyers.

And, the list goes on. As noted already, the two reports do not make recommendations that would improve antitrust law and regulation.

As for the Republican report, while the language is more tentative in expanding antitrust regulation, and does not go as far as the Democrats, the effort in effect would ramp up antitrust regulation, which would lay the groundwork for political allies and opponents to use this as a stepping stone to greater antitrust interference. Most striking from the Republican report was where they clearly went beyond the idea of using a “scalpel” to improve antitrust enforcement. Consider the following for example:

• “The Clayton, Sherman, and Federal Trade Commission Acts were all written with broad interpretations to ensure antitrust regulators would not be hamstrung by future market developments. However, antitrust enforcers have boxed themselves in by relying on judicial interpretations instead of statutory language and Congressional intent. The report accurately describes how these changes have hamstrung true oversight efforts, granting Big Tech a de facto immunity from antitrust scrutiny…

• “By reinforcing presumptions that certain behaviors are likely to reduce competition, lowering evidentiary burdens in litigated cases, and emphasizing that anticompetitive effects are not limited to price effects and include innovation competition, quality, output, and consumer choice, Congress can make a meaningful difference.”

• “We also agree with a number of the majority’s other legislative recommendations, including proposals to shift the burden of proof for companies pursuing mergers and acquisitions and empowering consumers to take control of their user data through data portability and interoperability standards.”

• “The report makes a good case for the need to strengthen our nation’s antitrust agencies with regard to resources. We agree wholeheartedly with this recommendation. We need to give our nation’s antitrust enforcers the resources needed to succeed in litigation against Big Tech.”

Response: Recommendations to expand the powers and discretion of regulators; to increase unnecessary and burdensome regulatory requirements; to reduce checks and balances on regulatory undertakings; and to increase the budget for regulators, all in order to increase regulation of U.S. technology firms seems otherworldly. Missing is a healthy skepticism of governmental power and regulation.

And then there is the willingness to use antitrust action to engage in political disagreements with private companies, as noted earlier. For example:

• “Google used its dominant advertising technology product to demonetize conservative media outlets, including The Federalist. YouTube, a Google subsidiary, blocked videos from Republican politicians and media groups. Amazon censored conservative organizations, including the Family Research Council and the Alliance Defending Freedom by blocking Americans’ ability to donate to these groups through the AmazonSmile tool. Facebook’s algorithms, advertising policies, and content moderation rules have all combined to discriminate against conservative viewpoints, shadow ban conservative organizations and individuals, and suppress political speech… Unfortunately, the majority missed an opportunity to fully scrutinize Big Tech’s use of monopoly power to silence Americans’ First Amendment right to free speech. It is difficult to consider the subcommittee’s investigation into platform behaviors and anticompetitive behavior complete without a robust discussion about platforms using their monopoly power to engage in editorial decisions that silence free speech.”

Response: While one can agree or disagree with particular decisions being made by private companies, they are private companies. And bringing governmental power down upon such decision-making should always be deeply troubling. For good measure, this certainly is not an area for antitrust regulation.

On the more positive aspects of their recommendations, Republicans were unwilling to go along with their Democratic colleagues in other areas. For example:

• “However, the majority also offers policy prescriptions that are non-starters for conservatives. These proposals include eliminating arbitration clauses and further opening companies up to class action lawsuits. Similarly, the majority’s desire to institute Glass-Steagall for America’s tech sector and modeling the majority’s equal terms for equal services recommendation on President Obama’s net neutrality rule will not garner support from Republicans.”

• “The majority report also includes a recommended presumption that any vertical merger by a dominant platform is unlawful. We are concerned that the presumption against vertical mergers, in particular, will chill venture capital investment in a way that will further harm innovative startups and reduce their ability to get their product to market.”

As far as these criticisms of the majority report go, they generally are on target. However, the overall friendliness of the minority report, or response to the Democrats’ majority report, is troubling, and would help to lay the groundwork for a potential vast expansion in antitrust regulation that, in the end, will undermine investment, innovation, dynamism and entrepreneurship in the economy, which, of course, would harm consumers.

## Modeling

### Modeling---1NC

### Populism---1NC

#### Populism won’t cause great power war

Louis F. **Cooper 16**, His online writing includes “Reflections on U.S. Foreign Policy” at the U.S. Intellectual History Blog (July 16, 2014). His Ph.D. is from the School of International Service, American University., 12-6-2016, "WPTPN: Will Populist Nationalism Lead to Great-Power War?," No Publication, http://duckofminerva.com/2016/12/wptpn-will-populist-nationalism-lead-to-great-power-war.html

Several reasons present themselves. First, nuclear weapons have given the prospect of a global war, or any great-power war, a possibility of civilization-ending finality that it did not have in the past. Second, the security architecture created under U.S. leadership after World War II has arguably worked to reduce the likelihood of major armed conflict among the great powers. Third, the existence of a network of international institutions, both inside and outside the UN system, has pushed in the same direction. Fourth, it is very possible that, as John Mueller and Christopher Fettweis have argued, decision-makers have to come see great-power war as “subrationally unthinkable, or not even part of the option set for the great powers.”[ii] The extreme destructiveness of the twentieth century’s world wars, fueled partly by developments in technology, might well have produced long-term effects on how leaders and publics think about global or great-power war, in a way, for instance, that the Napoleonic Wars, for all their horror and bloodiness, did not. Phil Arena’s recent contribution to this series argues that if the U.S. under a Trump administration signals an unwillingness to defend its allies, then Putin might be tempted to gamble on an invasion of the Baltics or Kim Jong-Un similarly might gamble on an invasion of South Korea (and that would drag in China). Putting aside Kim Jong-Un for the moment as a special case, let’s consider Putin. As long as NATO exists – and Trump, despite his statements about the unfairness of the distribution of cost burdens, has not suggested, as far as I’m aware, that he wants to dissolve the alliance – then Putin would have to assume that an attack on the Baltics would trigger a NATO response. Even if Putin does not see great-power war as unthinkable or outside his “option set,” one would assume that for reasons of pure self-interest he would not want to risk a nuclear war. Nor, one might think, would he want to jeopardize the prospect of better (from his standpoint) relations with a U.S. administration less concerned with, among other things, his commission of war crimes in Syria or his annexation of Crimea than the Obama administration has been. For these reasons, I’m not too worried that the advent of the Trump administration will lead to a war with Russia over the Baltics. The Korean peninsula is, perhaps, a more worrisome situation. Chances are, however, that Trump, after taking office, will be prevailed upon to make reassuring noises about the U.S. commitment to South Korea, and that should suffice to deter Kim Jong-Un from doing anything too rash. The cautionary point here, admittedly, is that it’s not clear whether Kim can be counted on to behave in a minimally rational fashion. Putin, whatever one might think of him, is rational. It’s not entirely clear whether Kim is. However, if Kim is irrational then all bets are off regardless of what U.S. policy pronouncements are forthcoming. World politics is not invariably cyclical and states can learn from experience (as even Gilpin acknowledged). If one admits this and pays due attention to history, then it is plausible to think that the force of populist nationalism, as expressed in more erratic and/or less ‘internationalist’ official policy, will not, whatever its other effects may be, increase the low likelihood of a global war.

#### No impact---populist governments aren’t sustainable

Denis **MacShane 17**, Former UK minister for Europe, 4-26-2017, "Judy Asks: Is Populism on the Run?," Carnegie Europe, http://carnegieeurope.eu/strategiceurope/68775?lang=en

Populism is the most overused word in today’s political lexicon. The most populist parties after 1945 were the Communists, then the Greens. The EU and immigration are targets of choice for populist parties, as are globalization and the Bilderberg Group of transatlantic elites. Populist movements of the Left like Spain’s Podemos or Greece’s Syriza have been as strong as those of the Right like the Alternative for Germany (AfD) or the UK Independence Party (UKIP). Populists announce they represent the true interests of the people against the elite establishment and its ruling parties. Populists promise much but deliver little. The problem for populism is that when it succeeds, it becomes part of the establishment and the target for the next anti-elite populist demagogue. In most cases, existing parties adopt populist ideas—many parties have become green, and the British Tories have adopted UKIP’s anti-European rhetoric. Extreme populism as embodied in Britain’s vote to leave the EU and the election of U.S. President Donald Trump can win. Then comes a backlash. The military-judicial state in America is exerting counterpressure against Trump’s populism. The electoral wins for pro-EU forces in Austria, the Netherlands, and France followed the triumph of Brexit populism, which is mainly confined to England outside London. When she wins her populist election on June 8, UK Prime Minister Theresa May will have to swap populism for realism unless she wants to do lasting damage to Britain.

### Piracy-Terror---1NC

#### Philippines’ growth thumped BUT plan couldn’t solve anyways.

---in 2020 Philippines had worst negative growth since 1999, and deepest contractions --- thumps their old impact cards

---plan can’t solve---they can’t handle covid and draconian lockdowns kill certainty and investment, which makes decline inevitable

---our ev is predictive and from a econ professor in the Philippines

Mendoza 8-2 [Rondald Mendoza is the Dean and Professor at Ateneo School of Government at Ateneo de Manila University, “The Philippine economy under the pandemic: From Asian tiger to sick man again?”, 8-2-2021, https://www.brookings.edu/blog/order-from-chaos/2021/08/02/the-philippine-economy-under-the-pandemic-from-asian-tiger-to-sick-man-again/] IanM

That was prior to COVID-19.

The rude awakening from the pandemic was that a services- and remittances-led growth model doesn’t do too well in a global disease outbreak. The **Philippines**’ economic growth faltered in 2020 — **enter**ing **negative territory** for the **first time** since 1999 — and the **country experienced** **one of the** deepest contractions in the Association of Southeast Asian Nations (ASEAN) that year (Figure 1).

Figure 1: GDP growth for selected ASEAN countries

And while the government forecasts a slight rebound in 2021, [some **analysts** are **concerned**](https://www.bworldonline.com/weak-public-consumption-seen-to-dampen-economic-recovery/) over an **uncertain** and **weak recovery,** due to the country’s **protracted lockdown** and **inability to shift** to a **more efficient containment** strategy. The Philippines has **relied** instead on **draconian mobility** restrictions **across** large sections of the country’s key cities and **growth hubs** every time a COVID-19 surge threatens to overwhelm the country’s health system.

WHAT WENT WRONG?

How does one of the fastest growing economies in Asia falter? It would be too simplistic to blame this all on the pandemic.

First, the **Philippines’ economic model** itself appears **more vulnerable** to **disease outbreak**. It is built around the mobility of people, yet tourism, services, and remittances-fed growth are all vulnerable to pandemic-induced [lockdowns](https://www.economist.com/asia/2020/07/11/the-philippines-fierce-lockdown-drags-on-despite-uncertain-benefits) and consumer confidence decline. International travel plunged, tourism came to a grinding halt, and domestic lockdowns and mobility restrictions crippled the retail sector, restaurants, and hospitality industry. Fortunately, the country’s business process outsourcing (BPO) sector is demonstrating some resilience — yet its main markets have been hit heavily by the pandemic, forcing the sector to rapidly upskill and adjust to [emerging opportunities](https://oxfordbusinessgroup.com/analysis/healthy-prospects-emerging-business-process-outsourcing-segments-are-positioned-offset-fall-demand) under the new normal.

Second, pandemic handling was also problematic. Lockdown is useful if it buys a country time to strengthen health systems and test-trace-treat systems. These are the building blocks of more efficient containment of the disease. However, if a country fails to strengthen these systems, then it squanders the time that lockdown affords it. This seems to be the case for the Philippines, which made global headlines for implementing one of the [world’s longest lockdowns](https://interaksyon.philstar.com/trends-spotlights/2021/03/16/187709/philippines-makes-it-to-intl-headlines-with-anniversary-of-one-of-worlds-longest-lockdowns/) during the pandemic, yet failed to flatten its COVID-19 curve.

At the time of writing, the Philippines is again headed for another [hard lockdown](https://www.straitstimes.com/asia/se-asia/philippines-to-place-manila-area-in-lockdown-to-curb-delta-spread) and it is still trying to graduate to a more efficient [containment strategy](https://www.bworldonline.com/world-bank-cuts-philippine-growth-outlook/) amidst rising concerns over the delta variant which has spread across [Southeast Asia](https://www.reuters.com/world/asia-pacific/caseloads-climb-southeast-asia-feels-force-delta-variant-2021-07-09/). It seems stuck with **on-again**, **off-again** lockdowns, which are severely damaging to the economy, and will likely create negative expectations for future COVID-19 surges (Figure 2).

Figure 2 clarifies how the Philippine government resorted to stricter lockdowns to temper each surge in COVID-19 in the country so far.

If the **delta variant** and other possible variants are near-term threats, then the **lack of efficient containment** can be expected to force the country back to draconian mobility restrictions as a last resort. Meanwhile, only [two months of social transfers](https://www.gmanetwork.com/news/news/nation/796835/poe-expects-duterte-to-include-added-ayuda-improved-health-system-in-final-sona/story/?just_in) (ayuda) were provided by the central government during 16 months of lockdown by mid-2021. All this puts more pressure on an already weary population reeling from deep recession, job displacement, and long-term risks on [human development](https://www.unicef.org/philippines/reports/impact-covid-19-crisis-households-national-capital-region-philippines). Low social transfers support in the midst of joblessness and [rising hunger](https://cnnphilippines.com/news/2021/4/30/households-experiencing-having-no-food-amid-the-COVID-19-pandemic.html) is also likely to weaken compliance with mobility restriction policies.

Third, the Philippines suffered from delays in its [vaccination](https://www.economist.com/asia/2021/01/21/asian-governments-are-needlessly-hampering-vaccination-drives) rollout which was initially hobbled by implementation and supply issues, and later affected by lingering [vaccine hesitancy](https://thediplomat.com/2021/03/from-dengvaxia-to-sinovac-vaccine-hesitancy-in-the-philippines/). These are all likely to delay recovery in the Philippines.

#### Philippines terror threat is overhyped—it exists but has no impact

Joseph Chinyong **Liow 16** is the inaugural holder of the Lee Kuan Yew Chair in Southeast Asia Studies and senior fellow in the Brookings Center for East Asia Policy Studies., “ISIS in the Pacific: Assessing terrorism in Southeast Asia and the threat to the homeland”, https://www.brookings.edu/testimonies/isis-in-the-pacific-assessing-terrorism-in-southeast-asia-and-the-threat-to-the-homeland/

I have been asked to offer my assessment of terrorism in Southeast Asia especially in relation to ISIS. Let me begin by saying that any assessment of the threat posed by ISIS in Southeast Asia must begin with the observation that terrorism is not a new phenomenon in the region. During the era of anti-colonial struggle, terrorism and political violence were tactics used frequently by various groups. Since 9/11, Southeast Asia has witnessed several terrorist incidents perpetrated mostly by the Al-Qaeda linked Jemaah Islamiyah terrorist organization and its splinter groups. These incidents include the October 2002 Bali bombings, the August 2003 J.W. Marriott Hotel bombing in Jakarta, the bombing of Super Ferry 14 in the southern Philippines in February 2004, the September 2004 Australian Embassy bombing in Jakarta, further bombings in Bali in October 2005, and further bombings at the J. W. Marriott (again) and the Ritz-Carlton Hotel in Jakarta in 2009. From this last series of attacks to the Jakarta attacks earlier this year, there has not been a major urban terrorist incident, although sporadic violence had continued in the form of clashes between security forces and militant groups, especially in the southern Philippines and also in Poso, Central Sulawesi, Indonesia.[1] In 2010, Indonesian security forces discovered a major militant training camp in Aceh which involved a number of jihadi groups. Several reasons can be cited to explain this hiatus: improved counterterrorism capabilities of regional security forces, disagreements within the jihadi community over the indiscriminate killing of Muslims, and rivalry and factionalism among jihadi groups that have reduced their capabilities and operational effectiveness. Against this backdrop, the ISIS-inspired attacks in Jakarta on January 14, 2016, the April 9, 2016 attack on Philippine security forces in the southern island of Basilan conducted by groups claiming allegiance to ISIS, and a recent spate of kidnappings in southern Philippines serve as a timely reminder of the persistent threat that terrorism continues to pose to Southeast Asian societies. ISIS has emerged as the signal expression of this threat, in part, because of the speed with which it has gained popularity in the region. When Abu Bakr al-Baghdadi announced on June 28, 2014 (the first day of Ramadhan) that a caliphate had been formed by ISIS, the announcement captured the imagination of the radical fringes across Southeast Asia. The announcement was followed by a comprehensive and effective propaganda campaign that conveyed the impression of ISIS’s invincibility and validation from god. July and August that year witnessed a series of bay’at (pledge of allegiance) to ISIS taken by radical groups and clerics from Indonesia and the Philippines. It was the audacity of its announcement of the caliphate and forcefulness of its communications strategy that set ISIS apart from other groups. In September, the Southeast Asian dimension of ISIS was given something of a formal expression with the formation of Katibah Nusantara, a Southeast Asian wing of ISIS formed by Malay and Indonesian speaking fighters in Syria. Katibah fulfills several functions: it provides a social network to help Southeast Asian recruits settle in, training for those among them who would eventually take up arms, and communications with the network of pro-ISIS groups operating in Syria. By dint of these developments, the threat posed by ISIS in Southeast Asia is real, and it has been growing since mid-2014. Nevertheless, the extent of the threat should also not be exaggerated.

### Nuclear Terror---1NC

#### No nuclear terror.

Mueller ’20 [John; Professor of Political Science and Senior Research Scientist with the Mershon Center for International Security Studies @ Ohio State University, Senior Fellow @ Cato Institute, PhD @ University of California, Los Angeles; “Nuclear Alarmism: Proliferation and Terrorism”; June 24th, 2020; https://www.cato.org/publications/publications/nuclear-alarmism-proliferation-terrorism]

Building a Bomb of One’s Own

Because they are unlikely to be able to buy or steal a usable bomb and because they are further unlikely to have one handed off to them by an established nuclear state, the most plausible route for terrorists would be to manufacture the device themselves from purloined materials. That is the course identified by a majority of leading experts as the one most likely to lead to nuclear terrorism.44

The simplest design is a “gun” type of device in which masses of highly enriched uranium are hurled at each other within a tube. Such a device would be, as Allison acknowledges, “large, cumbersome, unsafe, unreliable, unpredictable, and inefficient.“45

The process of making such a weapon is daunting even in this minimal case. In particular, the task requires that a considerable series of difficult hurdles be conquered and in sequence.

To begin with, now and likely for the foreseeable future, stateless groups are incapable of manufacturing the requisite weapons‐​grade uranium themselves because the process requires an effort on an industrial scale. Moreover, they are unlikely to be supplied with the material by a state for the same reasons a state is unlikely to give them a workable bomb.46 Thus, they would need to steal or illicitly purchase the crucial material.

A successful armed theft is exceedingly unlikely, not only because of the resistance of guards but also because chase would be immediate. A more plausible route would be to corrupt insiders to smuggle out the necessary fissile material. However, that approach requires the terrorists to pay off a host of greedy confederates, including brokers and money transmitters, any one of whom could turn on them or — either out of guile or incompetence — furnish them with stuff that is useless.47 Moreover, because of improved safeguards and accounting practices, it is decreasingly likely that the theft would remain undetected.48 That development is important because if any missing uranium is noticed, the authorities would investigate the few people who might have been able to assist the thieves, and one who seems suddenly to have become prosperous is likely to arrest their attention right from the start. Even one initially tempted by, seduced by, or sympathetic to, the blandishments of the smooth‐​talking foreign terrorists might soon develop sobering second thoughts and go to the authorities. Insiders tempted to assist terrorists might also come to ruminate over the fact that, once the heist was accomplished, the terrorists would, as analyst Brian Jenkins puts it none too delicately, “have every incentive to cover their trail, beginning with eliminating their confederates.“49

It is also relevant to note that over the years, known thefts of highly enriched uranium have totaled fewer than 16 pounds. That amount is far less than that required for an atomic explosion: for a crude bomb, more than 100 pounds are necessary to produce a likely yield of one kiloton. Moreover, none of those thieves was connected to al Qaeda, and, most arrestingly, none had buyers lined up — nearly all were caught while trying to peddle their wares. Indeed, concludes analyst Robin Frost, “There appears to be no true demand, except where the buyers were government agents running a sting.” Because there appears to be no commercial market for fissile material

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, each sale would be a one‐​time affair, not a continuing source of profit such as drugs, and there is no evidence of established underworld commercial trade in this illicit commodity.50

If terrorists were somehow successful in obtaining a sufficient mass of relevant material, they would then have to transport it out of the country over unfamiliar terrain, probably while being pursued by security forces. Then, they would need to set up a large and well‐​equipped machine shop to manufacture a bomb and populate it with a select team of highly skilled scientists, technicians, and machinists. The process would also require good managers and organizers. The group would have to be assembled and retained for the monumental task without generating consequential suspicions among friends, family, and police about their curious and sudden absence from normal pursuits back home. Pakistan, for example, maintains a strict watch on many of its nuclear scientists even after retirement.51

Some observers have insisted that it would be “easy” for terrorists to assemble a crude bomb if they could get enough fissile material.52 However, Christoph Wirz and Emmanuel Egger, two senior physicists in charge of nuclear issues at Switzerland’s Spiez Laboratory, conclude that the task “could hardly be accomplished by a subnational group.” They point out that precise blueprints are required, not just sketches and general ideas, and that even with a good blueprint, the terrorist group “would most certainly be forced to redesign.” They also stress that the work, far from being “easy,” is difficult, dangerous, and extremely exacting and that the technical requirements “in several fields verge on the unfeasible.“53

Los Alamos research director Younger makes a similar argument, expressing his amazement at “self‐​declared ‘nuclear weapons experts,’ many of whom have never seen a real nuclear weapon,” who “hold forth on how easy it is to make a functioning nuclear explosive.” Information is available for getting the general idea behind a rudimentary nuclear explosive, but none is detailed enough for “the confident assembly of a real nuclear explosive.” Younger concludes, “To think that a terrorist group, working in isolation with an unreliable supply of electricity and little access to tools and supplies” could fabricate a bomb “is far‐​fetched at best.“54

Under the best of circumstances, the process could take months or even a year or more, and it would all, of course, have to be carried out in utter secret even while local and international security police are likely to be on the intense prowl. In addition, people, or criminal gangs, in the area may observe with increasing curiosity and puzzlement the constant comings and goings of technicians unlikely to be locals.

The process of fabricating a nuclear device requires, then, the effective recruitment of people who at once have great technical skills and will remain completely devoted to the cause. In addition, a host of corrupted coconspirators, many of them foreign, must remain utterly reliable; international and local security services must be kept perpetually in the dark; and no curious outsider must get wind of the project over the months, or even years, it takes to pull off.

The finished product could weigh a ton or more. Encased in lead shielding to mask radioactive emissions, it would then have to be transported to, as well as smuggled into, the relevant target country. Then, the enormous package would have to be received within the target country by a group of collaborators who are at once totally dedicated and technically proficient at handling, maintaining, and perhaps assembling the weapon. Then, they would have to detonate it somewhere under the fervent hope that the machine shop work has been proficient, that no significant shakeups occurred in the treacherous process of transportation, and that the thing — after all that effort — doesn’t prove to be a dud.

The financial costs of the extended operation in its cumulating entirety could become monumental. There would be expensive equipment to buy, smuggle, and set up, as well as people to pay — or pay off. Some operatives might work for free out of dedication, but the vast conspiracy also requires the subversion of an array of criminals and opportunists, each of whom has every incentive to push the price for cooperation as high as possible. Any criminals who are competent and capable enough to be an effective ally in the project are likely to be both smart enough to see opportunities for extortion and psychologically equipped by their profession to be willing to exploit them.

## Democracy

#### Corporations and 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.

#### Labor already under the scope of antitrust

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Labor monopsony is regulated by the antitrust laws, just as the more familiar phenomenon of monopoly is. Indeed, from an economic standpoint, monopolization of product markets and **monopsonization of labor markets** pose exactly the same challenge to the economy—mispricing of resources (material or human), resulting in their underemployment, which both **harms the economy and results in inequitable outcomes**. Because nominally **antitrust law applies to monopsony** as well as to monopoly,18 one might think there would be as much litigation against employers for labor-market monopsonization as there has been against firms for violating antitrust law in the product market. But the opposite is the case. The **antitrust laws have rarely been used against employers** by private litigants or the government.19 And when they have been used—whether by private litigants or by the government—they have been used mostly against the most obvious forms of anticompetitive conduct, like no-poaching agreements.20 Much under-the- radar activity **has been unaddressed.**

#### The plan will be circumvented by the courts

Crane 21 (Daniel A. Crane, Frederick Paul Furth, Sr. Professor of Law, University of Michigan, Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205, y2k)

Even where reform statutes are textually honored in their immediate aftermath, history shows a creeping judicial tendency to begin integrating the reform statutes into the mainstream of antitrust jurisprudence within a few decades. This has been the fate of the four major antitrust reform statutes - the FTC, Clayton, Robinson-Patman, and Celler-Kefauver Acts - each of which was meant to rein in capital in ways that the Sherman Act did not. In all four instances, however, the courts incrementally began mainstreaming the statutes into Sherman Act precedent, creating a homogenous antitrust jurisprudence that read the textual distinctiveness out of the reform statutes. Thus, today, cases under the FTC Act, section 3 of the Clayton Act, and the Robinson-Patman Act are largely indistinct from Sherman Act cases, and merger cases have been rolled into the same modes of price-theoretic analysis that would be employed in a Sherman Act case. Given that neither [\*1252] statutory text nor legislative history seems to have deterred the courts from this process within a few decades after the passage of the statutes, there is little reason to believe that a "this time we mean it" statutory reform would not meet the same fate. If the courts continue to understand aspects of the antitrust statutes as aspirationally motivated and operationally impracticable, the previously observed pattern is likely to continue.

Again, it would be an overstatement to claim that statutory words have no consequences or that antitrust reform statutes are doomed ab initio to judicial culling. But the courts' pattern of antitrust antitextualism and their perennial insistence that the antitrust statutes are delegations of common-law power rather than textually actionable injunctions in all of their particulars provide a cautionary tale for future legislatures: the dynamic of antitrust legislation, enforcement, and adjudication plays out against a longstanding backdrop of contestation over bigness, power, and efficiency that has muted the ordinary importance of statutory language. Writing more definite statutes will not necessarily curb these habits of mind.

### Democratic Backsliding---1NC

#### Democracy is resilient, but it solves nothing.

Doorenspleet 19 Renske Doorenspleet, Politics Professor at the University of Warwick. [Rethinking the Value of Democracy: A Comparative Perspective, Palgrave Macmillan, p. 239-243]

The value of democracy has been taken for granted until recently, but this assumption seems to be under threat now more than ever before. As was explained in Chapter 1, democracy’s claim to be valuable does not rest on just one particular merit, and scholars tend to distinguish three different types of values (Sen 1999). This book focused on the instrumental value of democracy (and hence not on the intrinsic and constructive value), and investigated the value of democracy for peace (Chapters 3 and 4), control of corruption (Chapter 5) and economic development (Chapter 6). This study was based on a search of an enormous academic database for certain keywords,6 then pruned the thousands of articles down to a few hundred articles (see Appendix) which statistically analysed the connection between the democracy and the four expected outcomes. The frst fiding is that a reverse wave away from democracy has not happened (see Chapter 2). Not yet, at least. Democracy is not doing worse than before, at least not in comparative perspective. While it is true that there is a dramatic decline in democracy in some countries,7 a general trend downwards cannot yet be detected. It would be better to talk about ‘stagnation’, as not many dictatorships have democratized recently, while democracies have not yet collapsed. Another fnding is that the instrumental value of democracy is very questionable. The feld has been deeply polarized between researchers who endorse a link between democracy and positive outcomes, and those who reject this optimistic idea and instead emphasize the negative effects of democracy. There has been ‘no consensus’ in the quantitative literature on whether democracy has instrumental value which leads some beneficial general outcomes. Some scholars claim there is a consensus, but they only do so by ignoring a huge amount of literature which rejects their own point of view. After undertaking a large-scale analysis of carefully selected articles published on the topic (see Appendix), this book can conclude that the connections between democracy and expected benefts are not as strong as they seem. Hence, we should not overstate the links between the phenomena. The overall evidence is weak.

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Take the expected impact of democracy on peace for example. As Chapter 3 showed, the study of democracy and interstate war has been a fourishing theme in political science, particularly since the 1970s. However, there are four reasons why democracy does not cause peace between countries, and why the empirical support for the popular idea of democratic peace is quite weak. Most statistical studies have not found a strong correlation between democracy and interstate war at the dyadic level. They show that there are other—more powerful—explanations for war and peace, and even that the impact of democracy is a spurious one (caveat 1). Moreover, the theoretical foundation of the democratic peace hypothesis is weak, and the causal mechanisms are unclear (caveat 2). In addition, democracies are not necessarily more peaceful in general, and the evidence for the democratic peace hypothesis at the monadic level is inconclusive (caveat 3). Finally, the process of democratization is dangerous. Living in a democratizing country means living in a less peaceful country (caveat 4). With regard to peace between countries, we cannot defend the idea that democracy has instrumental value. Can the (instrumental) value of democracy be found in the prevention of civil war? Or is the evidence for the opposite idea more convincing, and does democracy have a ‘dark side’ which makes civil war more likely? The findings are confusing, which is exacerbated by the fact that different aspects of civil war (prevalence, onset, duration and severity) are mixed up in some civil war studies. Moreover, defining civil war is a delicate, politically sensitive issue. Determining whether there is a civil war in a particular country is incredibly diffcult, while measurements suffer from many weaknesses (caveat 1). Moreover, there is no linear link: civil wars are just as unlikely in democracies as in dictatorships (caveat 2). Civil war is most likely in times of political change. Democratization is a very unpredictable, dangerous process, increasing the chance of civil war significantly. Hybrid systems are at risk as well: the chance of civil war is much higher compared to other political systems (caveat 3). More specifcally, both the strength and type of political institutions matter when explaining civil war. However, the type of political system (e.g. democracy or dictatorship) is not the decisive factor at all (caveat 4). Finally, democracy has only limited explanatory power (caveat 5). Economic factors are far more significant than political factors (such as having a democratic system) when explaining the onset, duration and severity of civil war. To prevent civil war, it would make more sense to make poorer countries richer, instead of promoting democracy. Helping countries to democratize would even be a very dangerous idea, as countries with changing levels of democracy are most vulnerable, making civil wars most likely. It is true that there is evidence that the chance of civil war decreases when the extent of democracy increases considerably. The problem however is that most countries do not go through big political changes but through small changes instead; those small steps—away or towards more democracy—are dangerous. Not only is the onset of civil war likely under such circumstances, but civil wars also tend to be longer, and the confict is more cruel leading to more victims, destruction and killings (see Chapter 4). A more encouraging story can be told around the value for democracy to control corruption in a country (see Chapter 5). Fighting corruption has been high on the agenda of international organizations such as the World Bank and the IMF. Moreover, the theme of corruption has been studied thoroughly in many different academic disciplines—mainly in economics, but also in sociology, political science and law. Democracy has often been suggested as one of the remedies when fghting against high levels of continuous corruption. So far, the statistical evidence has strongly supported this idea. As Chapter 5 showed, dozens of studies with broad quantitative, cross-national and comparative research have found statistically signifcant associations between (less) democracy and (more) corruption. However, there are vast problems around conceptualization (caveat 1) and measurement (caveat 2) of ‘corruption’. Another caveat is that democratizing countries are the poorest performers with regard to controlling corruption (caveat 3). Moreover, it is not democracy in general, but particular political institutions which have an impact on the control of corruption; and a free press also helps a lot in order to limit corruptive practices in a country (caveat 4). In addition, democracies seem to be less affected by corruption than dictatorships, but at the same time, there is clear evidence that economic factors have more explanatory power (caveat 5). In conclusion, more democracy means less corruption, but we need to be modest (as other factors matter more) and cautious (as there are many caveats). The perceived impact of democracy on development has been highly contested as well (see Chapter 6). Some scholars argue that democratic systems have a positive impact, while others argue that high levels of democracy actually reduce the levels of economic growth and development. Particularly since the 1990s, statistical studies have focused on this debate, and the empirical evidence is clear: there is no direct impact of democracy on development. Hence, both approaches cannot be supported (see caveat 1). The indirect impact via other factors is also questionable (caveat 2). Moreover, there is too much variation in levels of economic growth and development among the dictatorial systems, and there are huge regional differences (caveat 3). Adopting a one-size-ftsall approach would not be wise at all. In addition, in order to increase development, it would be better to focus on alternative factors such as improving institutional quality and good governance (caveat 4). There is not suffcient evidence to state that democracy has instrumental value, at least not with regard to economic growth. However, future research needs to include broader concepts and measurements of development in their models, as so far studies have mainly focused on explaining cross-national differences in growth of GDP (caveat 5). Overall, the instrumental value of democracy is—at best—tentative, or—if being less mild—simply non-existent. Democracy is not necessarily better than any alternative form of government. With regard to many of the expected benefts—such as less war, less corruption and more economic development—democracy does deliver, but so do nondemocratic systems. High or low levels of democracy do not make a distinctive difference. Mid-range democracy levels do matter though. Hybrid systems can be associated with many negative outcomes, while this is also the case for democratizing countries. Moreover, other explanations—typically certain favourable economic factors in a country—are much more powerful to explain the expected benefts, at least compared to the single fact that a country is a democracy or not. The impact of democracy fades away in the powerful shadows of the economic factors.8

### Court Legitimacy---1NC

#### Texas abortion decision terminally destroys legitimacy – the decision was BONKERS and totally undermined any illusion that the court cares about the rule of law

Sarat and Aftergut 9/6 – Austin Sarat is the William Nelson Cromwell Professor of Jurisprudence and Political Science at Amherst College. Dennis Aftergut is a former federal prosecutor who has successfully argued before the Supreme Court.

Austin Sarat and Dennis Aftergut, “Supreme Court trashed its own authority in a rush to gut Roe v. Wade,” *The Hill*, 6 September 2021, https://thehill.com/opinion/judiciary/570958-supreme-court-trashed-its-own-authority-in-a-rush-to-gut-roe-v-wade?rl=1.

But in addition to the harms to women’s rights in this law, the court’s Sept. 1 decision in Whole Women’s Health v. Jackson reveals something dangerous to lawful society writ large: the 5-4 ultra-partisan, conservative majority has, in its haste to gut Roe, eviscerated the rule of law it is supposed to stand for and diminished the court’s own authority. The decision adds fuel to the already strong arguments for reforming the Supreme Court and urgency to the work of President Biden’s Commission on the Supreme Court. It concedes, perhaps even celebrates, the fact that states, and individuals, can engage in legally questionable action and evade judicial scrutiny. By allowing Texas to flout Roe’s clear meaning, the court undermines an ordered society and may be paving the way for authoritarian rule. The decision is a radical departure from the institutional history of the Supreme Court, w hich previously has been marked by efforts to assert and preserve the court’s exclusive prerogative to “say what the law is.” That was the crux of Chief Justice John Marshall’s famous 1803 opinion in Marbury vs. Madison, the case that established the Supreme Court as the ultimate arbiter of the Constitution’s meaning. Over time, the court has jealously guarded its authority against those who have challenged it. It is the court’s right to have the last word on constitutional questions that has secured for it a central place in our system of government. As Supreme Court Justice Robert Jackson once explained, “We are not final because we are infallible. We are infallible only because we are final.” And the court has time and again insisted that everyone abide by its rulings no matter how much they might disagree with them. This was vividly demonstrated in the civil rights era during the middle of the last century when southern states refused to respect the court’s constitutional decisions and when demonstrators took to the streets to promote racial integration in defiance of court orders. The court responded by insisting to both sides: obey the laws first, and only then can you challenge our views of what the Constitution means. When Dr. Martin Luther King and other civil rights activists ignored an Alabama state court injunction in the belief that the order to desist from a planned protest was unconstitutional, the Supreme Court upheld their arrest and conviction. In his majority opinion in the 1967 case of Walker v. Birmingham, Supreme Court Justice Potter Stewart recognized the “substantial constitutional questions” that a challenge to that injunction would have raised. But he firmly rejected the marchers’ contention that they were free to ignore a law they believed to be unconstitutional and condemned their decision to take the law into their own hands: “This Court cannot hold that the petitioners were constitutionally free to ignore all the procedures of the law…. [I]n the fair administration of justice, no man can be [the] judge in his own case, however exalted his station, however righteous his motives, and irrespective of his race, color, politics, or religion.” And the U.S. Supreme Court has not been alone in that view nor has it been alone in striking down attempts by citizens or governments to disobey existing law. In 2004, the California Supreme Court invalidated then-San Francisco Mayor Gavin Newsom’s declaration that the city would marry same sex couples in defiance of an existing voter-approved law that declared “Marriage shall be restricted to a man and a woman.” Justice Sotomayor’s dissent in Whole Women’s Health makes precisely the same point about courts’ exclusive role in deciding on the law’s meaning. Calling the Texas anti-abortion law a “breathtaking act of defiance,” she labelled the court’s failure to act “stunning.” In her view, it “rewards tactics designed to avoid judicial review and inflicts significant harm on the applicants and on women seeking abortions in Texas.” Until last week, defense of the judiciary’s role in saying what the law is and insisting that others defer to its judgments has united conservative and liberal justices. But, in Whole Women’s Health, only one conservative, Chief Justice Roberts, joined with the court’s three liberal justices in standing up for such nonpartisan jurisprudential principles. His five conservative colleagues seem so eager to gut Roe that they are willing to disembowel the judiciary’s own authority. The risk of legal chaos from the Supreme Court’s inaction on Sept. 1 may soon be realized in a kind of Cold War between the states. Imagine blue states reacting to Whole Women’s Health with laws permitting private lawsuits against anti-vaxxers who help someone evade a business’s COVID vaccination mandate, or against owners of banned guns whose prohibition is the subject of federal court challenges. When the current conservative majority on the Supreme Court trashes its own authority to tilt the scales in the current culture wars, it endangers the liberty of all, no matter which side of the cultural wars they are on.

#### Stare decisis is dead – watershed exception, LWOP for minors, upcoming abortion case

Gass 21 “What Supreme Court’s jettisoning of precedent may mean for future” Henry Gass – Staff writer for CS Monitor, May 20, 2021, <https://www.csmonitor.com/USA/Justice/2021/0520/What-Supreme-Court-s-jettisoning-of-precedent-may-mean-for-future> [edited for acronym]

Earlier this week the conservative supermajority on the U.S. Supreme Court voted to scrap a legal rule that, while decades old, had never really been used.

On the surface it may not seem like a radical move – the judicial equivalent of canceling a gym membership you never use. The so-called watershed exception – that criminal rules don’t apply retroactively unless they represent a major procedural change – had never been applied in its 32-year history, Justice Brett Kavanaugh wrote in the court’s majority opinion.

But on closer examination, and in the context of other actions the court took this week, scrapping the watershed exception suggests that the court – in particular its conservative wing – has a more gung-ho attitude toward overturning precedent than in the past.

Respect for precedent is a founding principle of the U.S. legal system, and overturning it is one of the Supreme Court’s defining powers. In a 1932 dissent, Justice Louis Brandeis explained why the high court should, generally, respect past decisions: “In most matters,” he wrote, “it is more important that the applicable rule of law be settled than that it be settled right.”

In other words, following earlier rulings (i.e., precedent) is important even if you disagree with those earlier rulings. Past rulings should only be overturned if there’s “special justification.”

The legal doctrine the justices follow when reviewing precedent is known as stare decisis – taken from a Latin maxim “to stand by things decided and not disturb settled points.” The doctrine has no formal boundaries, so which “matters” fall outside the “most matters” described by Brandeis?

In recent decades, as conservative jurists – and judicial philosophies like originalism – have come to dominate the high court, how those justices interpret stare decisis has become the defining debate.

Justice Antonin Scalia helped entrench the originalist philosophy, which holds that the Constitution should be interpreted as the framers intended. He was also reluctant to overturn precedent, describing stare decisis as a “pragmatic exception” to originalism. Originalists on the court today, such as Justices Clarence Thomas and Amy Coney Barrett, have expressed much less reluctance, however.

“We are in the midst of a change in how Supreme Court justices treat established precedent,” says Kimberly West-Faulcon, a professor at Loyola Law School in Los Angeles, in an email.

Those views were on display this week, and with the court set to review a key abortion precedent next term, they will likely guide some of the court’s future rulings.

“A lot of wiggle room”

The stare decisis doctrine “is far from a model of clarity,” says Ilya Somin, a professor at George Mason University’s Antonin Scalia Law School.

“It leaves a lot of wiggle room” for any justice, he continues, “to overturn any precedent he or she thinks is badly wrong, and also so long as getting rid of it will not cause some kind of enormous harm in society.”

The court’s liberal justices have indulged this trend to a degree – casting important votes in recent years to overturn precedents regarding same-sex marriage and state laws criminalizing sodomy – but since they have been an ideological minority on the court for decades, they have not been as active as their conservative colleagues.

And how the court’s conservative justices view precedent does seem to be shifting. The fact that they abandoned the watershed exception this week despite the question never being asked or argued is one indicator. And their individual records provide further indications.

Justice Scalia famously said that Justice Thomas “does not believe in stare decisis, period.” And as of 2019, Justice Thomas had written more than 250 opinions seriously questioning precedent, according to Stephen Wasby, a professor of political science at the University at Albany.

But where Justice Thomas used to write these opinions alone, he is now finding support from several colleagues.

Justice Kavanaugh – who, having voted with the majority more than any other justice this term, is effectively the court’s ideological center – has shown a recent, expansive view toward overruling precedent. In addition to his opinion this week scrapping the watershed exception, earlier this term he wrote an opinion effectively overturning a 2016 ruling that barred [LWOP] life without parole sentences for nearly all juvenile offenders.

And as court watchers, and some of his colleagues, have noted, he has been overturning precedent with less clarity and consistency than Justice Thomas.

Meanwhile, the newest member of the court, Justice Barrett, wrote extensively on stare decisis while teaching law at the University of Notre Dame. The doctrine is a “soft rule,” she wrote in one article; “modern originalism” raised the possibility that “following precedent might sometimes be unlawful,” she wrote in another. In a third, she wrote that “rigid application” of stare decisis “raises due-process concerns and, on occasion, slides into unconstitutionality.”

When does precedent get overturned?

Beyond that, jettisoning the watershed exception illustrates “the court’s willingness to overrule [a precedent] rather than just leave it,” says Douglas Berman, a professor at the Ohio State University Moritz College of Law.

“The willingness of this court to embrace a shift in doctrine, even when they didn’t have to, that’s the key,” he adds.

Indeed, a core principle of overturning precedent is that the justices should first be asked to consider overturning a precedent. That is not something they were asked to address in their ruling this week in Edwards v. Vannoy.

The case instead asked the court if a decision it made last year – barring convictions from non-unanimous juries – applied retroactively. That practice, in Oregon and Louisiana, had roots in the Jim Crow era. For decades, when considering such a question the Supreme Court had followed a precedent holding that no new criminal rules would apply retroactively unless they constitute “watershed” new procedures.

In the 32 years since that exception was written, Justice Kavanaugh said in the majority opinion, “the Court has never found that any new procedural rule actually satisfies the purported exception.”

“No one can reasonably rely on an exception that is non-existent in practice,” he added. “The watershed exception must ‘be regarded as retaining no vitality.’”

Practically, the ruling this week means that hundreds of people convicted by non-unanimous juries in Louisiana and Oregon must serve the remainder of their sentences – even though the method of their conviction has been deemed unconstitutional.

The ruling broke along ideological divides, with Justice Kavanaugh joined by the court’s five other conservatives. Meanwhile Justice Elena Kagan, joined by the court’s two other liberals, criticized the abandonment of the exception in a dissent that struck at the heart of the court’s long-running debate about precedent.

The majority “discards precedent without a party requesting that action,” she wrote. “And it does so with barely a reason given, much less the ‘special justification’ our law demands.”

Justice Kagan wrote with some added authority because, as she pointed out in a footnote, she had dissented from the court’s ruling last year on non-unanimous jury verdicts “precisely because of its abandonment of stare decisis.”

But with that Ramos v. Louisiana ruling now law, she added, “I take the decision on its own terms, and give it all the consequence it deserves.”

The Supreme Court has, for the best part of a century, regularly overturned precedents – led by justices of all ideological stripes. But the theory underlying those decisions – that the court must be asked first, and that a special justification is needed – while admittedly open to some interpretation, has been applied with relative consistency.

The Edwards ruling is one indication of how that consistency is disappearing. And the court is now preparing, in the coming months and years, to review weightier precedents on issues like abortion rights, gun rights, and the nexus of LGBTQ rights and religious liberty.

### 1NC – Case Turn

#### 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.

#### DOJ effectively reducing antitrust backlog now – new cases overwhelm and turn the aff

Communications Daily 18 [DOJ Seeks to sunset some legacy antitrust judgments, lexis, poapst]

DOJ is proposing eliminating 26 antitrust judgments entered by U.S. District courts in Washington and Alexandria, Virginia, as the first step to get rid of some of the 1,300 legacy antitrust judgments that contain no termination date (see 1804110056), the agency said Wednesday. Many "do little more than clog court dockets, create unnecessary uncertainty for businesses or ... actually elicit anticompetitive market conditions," said Antitrust Division Chief Makan Delrahim. Justice said they generally date from the passage of the Sherman Act through the late 1970s, with the division in 1979 adopting the practice of including sunset provisions. The first judgments it proposes axing it posted on a DOJ website and the agency said it will take comments on those for 30 days. The agency said if after the comment period, it believes the termination is appropriate, it will file a motion with the appropriate court. The judgments DOJ is starting with include a 1957 order enjoining the National Audio-Visual Association from fixing or establishing prices and trade-in allowances for sale or rental of audio-visual equipment such as 16 mm film projectors and tape recorders.

### Judicial Activism---1NC

#### Court is SUPER activists now---it’s overruling precedents left and right

Elliot Williams 4-23, CNN,

<https://www.cnn.com/2021/04/23/opinions/supreme-court-kavanaugh-sotomayor-jones-mississippi-williams/index.html>,

This decision to refuse to impose restrictions on the ability of states to sentence juveniles to life without parole was a clear break from the Court's history, couched in language suggesting, wrongly, that the nation's highest Court wasn't the right venue to decide such issues. Jones "articulates several moral and policy arguments for why he should not be forced to spend the rest of his life in prison," Kavanaugh wrote, but "our decision allows [him] to present those arguments to the state officials authorized to act on them, such as the state legislature, state courts, or Governor."

In effect, it's a sad tale, but not our problem.

Justice Sonia Sotomayor was not having it, writing a withering dissent that accused the majority of turning its back on decades of precedent governing both sentencing minors, and how the Court ought to follow its past decisions. While acknowledging the heinous nature of the crime, Sotomayor outlined Jones' history of suffering abuse and neglect and noted his lack of access before the murder to drugs he took for mental health purposes.

"How low this court's respect for stare decisis has sunk," she also wrote. "Now, it seems, the court is willing to overrule precedent without even acknowledging it is doing so, much less providing any special justification."

She's right. Kavanaugh's opinion presents dozens of pages of justification for an outcome that is plainly out of line with the Court's past decisions. Certainly, the Court has a more conservative majority today than it did several years ago; Kavanaugh replaced a less reliably conservative Anthony Kennedy in 2018, and Amy Coney Barrett replaced Even in spite of a growing bipartisan consensus, there is a persistent strain of conservative thought that continues to cling to the past on matters of criminal justice. The majority in Jones was carrying out a political victory for many, by enshrining in law the belief that anything that makes it easier to put people in jail and keep them there has to be a good thing.

That a new conservative majority so quickly emboldened the Court to overturn longstanding precedent confirms what many in the public might believe about jurists -- that they are not bound by fidelity to the law alone, but are also political actors, deciding as they want. In fact, the majority decision in Jones gave Congress a great reason for expanding the size of the Supreme Court, as some have recently recommended. When a clear majority has signaled how willing it is to toss aside its own precedents with alarming haste, it is hard to argue, as some have, that adding more justices would be the thing that would politicize the Court beyond repair. It seems it is already there.

Never mind the staggering immorality of the Jones decision in the full context of America's justice system. The United States stands alone as the only country in the world that sentences people to life without parole for crimes committed during their youth. The United States is one of only about 50 nations in the world that continues to have a death penalty, placing it in the esteemed company of places we regularly criticize for their human rights records, including China, Iran, North Korea and Saudi Arabia. The United States dwarfs virtually every other nation on the planet with its incarceration rate. The ship sailed long ago on the question of whether America has a humane system of punishment.

However, it is the Supreme Court's caprice, and the fragility of its precedents, that should give us all pause. Despite everything the Court might say about the power of precedent, they made clear this week that their past decisions only matter until they don't.

#### Kavanaugh is the swing vote that has and will overturn anything

Millhiser 21 “Brett Kavanaugh’s latest decision should alarm liberals” Ian Millhiser - senior correspondent at Vox, where he focuses on the Supreme Court, J.D., magna cum laude, from Duke University, where he served as senior note editor on the Duke Law Journal, May 18, 2021, https://www.vox.com/2021/5/18/22440256/brett-kavanaugh-supreme-court-edwards-vannoy-abortion-criminal-justice-constitution-stare-decisis

Because here’s the thing: Edwards did not simply limit the scope of Ramos. Justice Brett Kavanaugh’s majority opinion also overruled a 32-year-old decision governing when the Supreme Court’s precedents apply retroactively. Kavanaugh did so, moreover, without following the ordinary procedures that the Court normally follows before overruling one of its previous decisions. As Justice Elena Kagan points out in dissent, no one asked the Court to overrule anything in Edwards, and the Court “usually confines itself to the issues raised and briefed by the parties.”

Edwards, moreover, is the second time in less than a month that Kavanaugh authored a majority opinion that overrules a prior decision without following the Court’s normal procedures. In late April, Kavanaugh handed down a decision in Jones v. Mississippi that effectively overruled a 2016 decision establishing that nearly all juvenile offenders may not be sentenced to life without parole.

But Jones overruled this 2016 decision in such an oblique and underhanded way that several of Kavanaugh’s colleagues came very close to accusing him of lying about what he was doing. Even Justice Clarence Thomas, the Court’s most conservative member, chided Kavanaugh for overruling a previous decision “in substance but not in name.”

The Court historically has been very reluctant to overrule precedents, both because past justices understood that the law should be predictable, and because strong norms against overruling past decisions help prevent the Supreme Court from becoming a purely partisan prize — tossing out decades’ worth of settled doctrines every time a different political party gains control of the Court.

But Kavanaugh does not appear to share his predecessors’ reluctance to overrule past decisions.

All of this matters because Kavanaugh is the median vote on the Supreme Court. Last week, SCOTUSBlog published an analysis finding that Kavanaugh voted with the majority in 97 percent of cases decided so far this Supreme Court term — more than any other justice. If you want to win a case before the Supreme Court, you’ve got a tough road ahead of you if you can’t secure Kavanaugh’s vote.

And yet, Kavanaugh is signaling in Edwards, Jones, and in a few other significant opinions that he does not particularly care about precedent, and that he is willing to overrule prior decisions for reasons that previous Supreme Courts would have deemed trivial and unwarranted.

With conservatives holding a 6-3 supermajority on the Supreme Court, that’s terrible news for liberals. And it doesn’t just mean that precedents like the Court’s pro-abortion decision in Roe v. Wade (1973) are in danger.

Kavanaugh, the closest thing that this Supreme Court has to a “swing” justice, is telling us that he’s very willing to overrule a wide range of precedents. And a majority of the Court appears to agree with his approach. That’s potentially disastrous news for anyone hoping that this Supreme Court would honor past decisions that protect liberal democratic values.

# 2NC

## States CP

#### And Federal follow on solves

Nolette 11 (Paul Brian Nolette, PhD, Assistant Professor, Marquette University, Department of Political Science, ADVANCING NATIONAL POLICY IN THE COURTS: THE USE OF MULTISTATE LITIGATION BY STATE ATTORNEYS GENERAL, a dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, Boston College, The Graduate School of Arts and Sciences, Department of Political Science, <https://core.ac.uk/download/pdf/151481511.pdf>, y2k)

To some degree this is a constraint on SAG multistate litigation – it suggests that if an argument is too far outside the political mainstream, SAGs may not be interested in litigating. This may be one reason why litigation concerning fatty foods and lead paint, for example, never flowered into multistate campaigns. From the perspective of the broader effort for social reform, however, this constraint is likely fairly easy to overcome. Litigation, far from being an isolated strategy, is coupled with efforts to gain support in Congress and within executive agencies. Even if these congressional and executive efforts had previously failed to produce new policies – as occurred in various campaigns explored in this dissertation – they may generate interest in the issues within Congress and among other actors, including the SAGs. Once these efforts spur at least some support in Congress – though still far from majority support – it paves the way to successfully employ multistate litigation. At that point, the litigation itself may help generate further support within Congress – as the AWP litigation did in transforming congressional views of settled pricing practices into fraudulent behavior.

#### The CP causes federal adoption

O’Connor 2 (Kevin J. O'Connor, Member of the Wisconsin Bar, and formerly Assistant Attorney General, Wisconsin Department of Justice, and Chair of the Multistate Antitrust Task Force, National Association of Attorneys General, Federalist Lessons for International Antitrust Convergence, 70 Antitrust L.J. 413, y2k)

But a system of multiple potential enforcers applying the same law has produced numerous opportunities for federal and state courts to rule on antitrust questions, thereby creating a rich trove of antitrust decisional law, at least in comparison to other enforcement regimes. Even in those instances where a state or private enforcer unsuccessfully litigates an alleged violation, the end result can be the development of useful, or even significant, case law.63 It is precisely this process that allows time-honored theories to be tested against the facts of particular cases. This system has both a qualitative and a quantitative element. Qualitatively, the concurrent enforcement system allows private parties, through litigation, to test theories adopted by the federal government in previous cases64 or in guidelines. 65 Even bedrock doctrine, such as the per se illegality of horizontal price fixing established in government cases, 66 subsequently have been "clarified" in private litigation. 67 Perhaps the most prominent example of an attempt to test theories adopted by the federal agencies is the attempt by a number of states to obtain injunctive relief against Microsoft beyond that obtained by the DOJ and several other states through negotiation. Whatever one thinks of the merits of the litigating states' position, their persistence is likely to generate important decisional law on the appropriate antitrust remedies in an important industry.6a

#### But only after the CP alone builds political momentum

Robert Manduca 19, PhD candidate in Sociology and Social Policy and a doctoral fellow in the Multidisciplinary Program in Inequality and Social Policy at Harvard University, 9/10/19, “Antitrust Enforcement as Federal Policy to Reduce Regional Economic Disparities,”

The ANNALS of the American Academy of Political and Social Science, Vol. 685, No. 1, https://doi.org/10.1177%2F0002716219868141

A third strategic consideration concerns the level of government at which to pursue establishment of a new antitrust regime. Ideally, aggressive enforcement should be pursued concurrently wherever possible, be that through the FTC, the U.S. Department of Justice (DOJ), Congress, or the states. However, action may not always be possible at the federal level, and in recent years the FTC and DOJ have generally looked favorably on mergers (Tepper 2019). Thus, it may be advantageous to initially pursue enforcement at the state level. A number of state attorneys general (AGs) have already begun investigations into Google and Facebook (Romm 2019), and ten state AGs recently sued to block the proposed merger between T-Mobile and Sprint (Harding McGill 2019).

Besides the possibility of short-term action, state AGs have a number of advantages as antitrust enforcers. The most important of these is that in most states they are elected politicians. This means that they are well equipped to treat antitrust as a political issue—they have more reason than career bureaucrats to consider the political optics of particular stances and are more likely to be adept at communicating with the media and the public. They also stand to see personal electoral benefits from popular enforcement actions and are directly susceptible to pressure from organized advocates. State AGs thus occupy a unique position. Unlike federal enforcers at the DOJ or FTC, they are elected politicians who know how to mobilize voters and can be directly pressured to adopt pro-competition stances. But unlike members of Congress, they have direct enforcement power.

A state-level strategy also offers the possibility of building enforcement momentum piecemeal. It may prove easier for antitrust advocates to secure the support of a handful of AGs, perhaps from states that are especially harmed by a particular conglomerate or potential merger, than to convince the FTC or DOJ to reverse several decades of harmful policies. As a suit progresses, other states or federal agencies may join in.

#### Coordination through NAAG overcomes deficits

HLR 20, Harvard Law Review, “Antitrust Federalism, Preemption, and Judge-Made Law,” 6/10/20, https://harvardlawreview.org/2020/06/antitrust-federalism-preemption-and-judge-made-law/

D. The Misaligned Incentives Problem

Fourth, in the misaligned incentives problem, critics argue that states do not have proper incentives when they enforce state antitrust laws. Although state antitrust laws are supposed to mainly target intrastate antitrust violations, courts have refused to police that limit too strictly. In an interconnected economy where seemingly hyperlocal activity can have national implications, courts have admitted that limiting state antitrust laws to cases that do not touch the national economy would “fence[] off” “a very large area . . . in which the States w[ould] be practically helpless to protect their citizens.” But, even though suits under state laws may have nationwide consequences, state attorneys general lack nationwide incentives. Critics of the status quo worry that elected attorneys general are more susceptible to lobbying by state interests than are appointed federal enforcers and that a cost-benefit analysis is flawed where a state can attack a company headquartered out of state in order to protect one headquartered in state.

These fears seem mostly imagined. The idea that elected attorneys general are bringing antitrust suits to hurt competitors of state businesses“appears to [have] little empirical support[,] . . . and none has been provided by the advocates of this position.” Past state antitrust enforcers have stated that, while they considered state-specific factors when deciding where to spend their limited resources, those factors would be used only to choose “from among those cases that also made sense on traditional economic grounds.”

And there is reason to believe that these enforcers are telling the truth. For one thing, states often make antitrust decisions that seem to go against the interests of major state employers. For example, New York antitrust enforcers have taken antitrust positions adverse to both Verizon and IBM, top New York employers. For another, a state that is only minutely affected by an antitrust action is unlikely to bring that action alone. If a state is only trivially affected by allegedly anticompetitive conduct, “that state is very unlikely as a practical and political matter to spend the enormous sums of money required to sustain a challenge.” If a state is majorly affected but is the only state affected, then the misaligned incentives critique does not apply because there is no competing set of national incentives. And in a case that actually has major impacts in multiple states, it is unlikely that one state could act without other states wanting to join in on the enforcement. When states work together on antitrust enforcement, they tend to cooperate closely with one another, especially through the National Association of Attorneys General’s (NAAG) antitrust group. Even if an individual state might be swayed by state-specific concerns, it is unlikely that it could convince a multistate coalition to act on those concerns — the group would be forced to evaluate the action on its more national merits.

E. The Incompetent States Problem

Finally, critics argue that state enforcers will make error-ridden antitrust choices due to a lack of resources, experience, and expertise. Whereas federal enforcers have significant budgets for antitrust enforcement, the percentage of funding set aside for antitrust enforcement by state attorneys general is minute. Because of this lack of resources, state enforcers have been accused of staffing antitrust cases with senior attorneys who, while experienced in civil litigation generally, are antitrust novices. These factors have led critics to argue that state attorneys general handle antitrust suits poorly, clogging the judicial pipeline with questionable suits. State attorneys general are accused of acting as free riders on federal actions and of making settlements more difficult rather than undertaking useful enforcement.

But there is reason to dispute critics’ claims. The critique of individual attorneys general ignores the states’ ability to work in unison. Cooperating through NAAG, states are able to build on each other’s experiences in antitrust enforcement. Thus, worries about inexperienced antitrust divisions working alone may be overstated. Although interstate coordination may weaken their point, critics can retort that most state actions are not coordinated: according to NAAG’s State Antitrust Litigation Database, only nineteen of the fifty-six civil antitrust actions brought by states between 2014 and 2019 were brought by multiple states working together, although many of the noncooperative suits regarded intrastate anticompetitive conduct. This same dataset, however, also undermines the critics’ argument that states act only as free riders: only nineteen of the fifty-six suits included federal participation. Finally, much of the criticism leveled at state attorneys general occurred before a renaissance in state law enforcement. Since Judge Posner derided the skill of state attorneys general in 2001, lawyers and judges, including Chief Justice Roberts, have recognized a marked improvement in state attorney offices’ advocacy. Whether or not Judge Posner’s critiques were valid at the turn of the century, it is unclear that the landscape remains the same today. Finally, this critique undermines the arguments, noted earlier, that state law enforcement is overdeterring competition or creating a patchwork of antitrust law. If states are nothing but free riders, then we need not worry about overdeterrence.

#### Cartel model---the federal government lets states enforce nationwide antitrust

Greve 5 (Michael S. Greve, John G. Searle Scholar, American Enterprise Institute; Ph.D. 1987, Cornell University, 2005, “Cartel Federalism? Antitrust Enforcement by State Attorneys General,” *University of Chicago Law Review*: Vol. 72 : Iss. 1, Article 6, https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5317&context=uclrev)

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 and a more ambitious and provocative contribution to the theoretical debate. I present and examine two sets of data:

\* A list of state parens patriae antitrust actions, 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.5 So amended, the list (hereinafter, "the PosnerDeBow 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;' 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 proceedings."

To my mind the most intriguing aspect of the data, however, and the principal subject of this Essay, is not what state attorneys general have done but what they have failed to do. In antitrust federalism's "horizontal," state-to-state dimension,2 attorneys general have almost never invoked antitrust laws to challenge sister states' anticompetitive conduct. In federalism's "vertical," state-to-federal dimension, state attorneys general have consistently advocated a partial surrender of state regulatory autonomy.

Horizontal Antitrust Federalism. Some critics -prominently, Judge Posner-have argued that state enforcers may deploy antitrust law for strategic and parochial purposes, as a means to protect domestic producers and to exploit consumers and producers in other jurisdictions.'3 They may do so either by deploying antitrust law as a sword against out-of-state producers or as a shield for domestic producers (for example, by granting exemptions for export cartels). Either way, one would expect the victimized states to resist the imposition.

But they don't. Consider Parker v Brown," origin of the eponymous Parker or "state action" immunity doctrine, which shields certain anticompetitive state laws and their private beneficiaries against liability under federal antitrust laws. California had established an export cartel par excellence, which supplied some 95 percent of the entire U.S. raisin market and earned virtually its entire surplus profit outside California. And yet, no state protested the imposition in an amicus capacity. (It was the federal government that advocated limits on state cartels with pronounced extraterritorial effects.)5 The Parker example illustrates a general pattern: the evidence shows no clear instance of state resistance to exploitation by other states.

Vertical Antitrust Federalism. As a practical matter, both state and federal antitrust enforcers are constitutionally unconstrained with respect to the scope of their jurisdiction. Each may regulate the full range of private conduct that arguably has price effects within their jurisdictions. Consequently, one would expect rivalry, conflict, and turf protection. But while such federal-state disagreements occurred under the Reagan administration," the general pattern is mutual accommodation. The states have supported both broad federal antitrust authority over purely local transactions and a very narrow view of state action immunity. Conversely, federal agencies have consistently tolerated and sometimes supported state antitrust enforcement, even at considerable cost to national priorities.

These findings are orthogonal to ordinary intuitions about (antitrust) federalism. This Essay explains them as the products of an antitrust enforcement cartel built on extraterritorial exploitation: state governments agree to exploit each other's citizens because that leaves all governments better off (and consumers worse off). The model explains both the extraordinary antitrust consensus among the states and some of their otherwise perplexing legal positions on antitrust federalism. An extension of the model interprets the federal government's accommodation of the states as part of a two-way bargain: states support the federal government's quest for a highly restrictive scope of state action immunity in exchange for federal accommodation of aggressive, extraterritorial state antitrust enforcement. Conversely, the federal government supports state enforcement (even at some cost to coherent national policy) in order to gain state acquiescence to federal enforcement against state-sanctioned cartels. The Conclusion notes the limitations and some implications of this analysis.

#### Congress won’t supersede, the Court would block it, and states are undeterred by the Fed.

De la Cruz ’19 [Peter; June 26; Senior Counsel, J.D. from the University of Toledo; The National Law Review, “States Flex Their Muscles and Antitrust Skills to Block Sprint/T-Mobile Merger,” <https://www.natlawreview.com/article/states-flex-their-muscles-and-antitrust-skills-to-block-sprintt-mobile-merger>]

A highly respected antitrust professor wrote: “When Congress enacted the federal antitrust laws it chose not to foreclose state antimerger activity. The legislative histories of the antitrust laws indicate that the congressional purpose was to supplement, not supplant, state activity. This intention has repeatedly been affirmed by the Supreme Court. Critics fear negative effects from ascendant state merger scrutiny. Many believe that the government’s position towards exceptionally large transactions should be a fundamental matter of national economic policy. Enforcement and nonenforcement decisions, they say, should be made by officials appointed by the President with the approval of the U.S. Senate. Such critics fear that the prospect of challenge by any of fifty states adds uncertainty and delay into an already problematic process, and will cause beneficial transactions never to be attempted.” The year was 1989.1

Since the enactment of the Hart-Scott-Rodino Act in 1976, we have grown accustomed to premerger notification at the federal level for all larger mergers and acquisitions. For the most part, State Attorneys General have participated via comments or supplemental filings in large transactions subject to premerger review. A generation of antitrust lawyers have lived in this environment. Indeed, some years ago lawyers were surprised that the federal government could challenge mergers after the fact given the long lapse in the governments exercise of that power, but that power was never removed, and private merger enforcement action also remains possible.

Can the states seek to block the merger? Yes. Will FCC and US Department of Justice approval stop the state litigation? No. What’s the biggest obstacle facing the state challenge? Limited state funding. Antitrust litigation is often protracted and costly. T-Mobile and Sprint, with their largest stockholders — Deutsche Telekom AG and SoftBank Group Corp., respectively — will certainly dedicate resources to defeat the states via litigation siege. These pressures, coupled with Justice Department clearance, may push the states to settle, although the terms of a successful settlement for the states is unclear. Meanwhile, T-Mobile and Sprint may be delayed in completing the transaction, which is a costly complication without a certain outcome.

The Redacted Complaint filed by nine states and the District of Columbia, and later joined by an additional four states, presents a solid facial argument against the merger. There are only four companies with networks that serve at least 90% of the U.S. population. Verizon and AT&T are the largest. “T-Mobile and Sprint are the third and fourth largest [mobile network operators] MNOs in the United States and serve approximately 80 million and 55 million customers, respectively.”2

The states allege that T-Mobile’s controlling shareholder, Deutsche Telekom AG, believes that it could earn a greater return on its investment by reducing competition.3 The states argue that:

“The proposed transaction would eliminate Sprint as a competitor and reduce the number of [mobile network operators] MNOs with nationwide networks in the United States from four to three. The combined company would have a retail market share larger than the two largest MNOs today, Verizon and AT&T. In some areas, including in the New York City metropolitan area, the combined company’s share of subscribers would exceed 50%. The combined market share of Sprint and T-Mobile would result in an increase in market concentration that significantly exceeds the thresholds at which mergers are presumed to violate the antitrust laws. This increased market concentration will result in diminished competition, higher prices, and reduced quality and innovation.”4

Although the data table is redacted, the Complaint claims that the nation’s top 50 cellular market areas (CMAs) encompass about 50% of the U.S. population, and competition would be substantially lessened in each of the top 50 CMAs. The complaint argues many, particularly those with lower incomes who cannot pass a credit check and must purchase mobile wireless telecommunications service on a prepaid basis, rely on mobile wireless telecommunications services as their primary form of communications and do not have traditional wireline phone or broadband connections. If the merger is permitted, the “merger will negatively impact all retail mobile wireless telecommunications service subscribers but will be particularly harmful to prepaid subscribers”5

The states rely upon these claims to allege that “the transaction likely would substantially lessen competition in these local markets,” creating an actionable harm to the state’s citizens that justify the states’ standing to challenge the merger.

The complaint contains other supporting arguments and detail. The merger “would cost Sprint and T-Mobile subscribers more than $4.5 billion annually.”6 Other countries that have allowed consolidation from four to three competitors recorded an average price increase “between 17.2% and 20.5%.7There are significant barriers to entry that will be faced by any new provider, so potential competition will not be a factor. Finally, the states argue that the proposed commitments made to the FCC are insufficient to protect competition.8

The states have set a solid foundation from which to proceed. There is no obvious precedent that will permit T-Mobile and Sprint to end the case quickly, but protracted litigation will test the resolve and resources of all the parties.

#### It has all 50 states collectively demand the plan---a literally unprecedented signal of support that’s seen as U.S. interest

Julie Melissa Blase 3, PhD in Government from the University of Texas, BA from the University of Texas at Austin, “Has Globalization Changed U.S. Federalism? The Increasing Role of U.S. States in Foreign Affairs: Texas-Mexico Relations”, Doctoral Dissertation, December 2003, https://repositories.lib.utexas.edu/bitstream/handle/2152/463/blasejm039.txt

Although what the states and cities are doing may not rise to the level of federal law, many of these policy initiatives are in harmony with domestic policy goals. Collectively, it can be argued, they serve to shape the foreign relations of the nation as a whole. Ivo Duchacek sees no difference in relations conducted by federal actors and by subnational actors. "If by diplomatic negotiation we mean processes by which governments relate their conflicting interest to the common ones, there is, conceptually, no real difference between the goals of paradiplomacy and traditional diplomacy: the aim is to negotiate and implement an agreement based on conditional mutuality."45 Brian Hocking objects to treating the foreign relations of subnational governments as if they were something distinct from the federal level. Hocking studies what happens in federal systems when foreign policy issues become local concerns. He sets his approach apart from the complex interdependence crowd, such as Duchacek, saying that ideas such as "paradiplomacy" places subnational activities outside of traditional diplomatic patterns. Hocking sees non-central governments as integrated into a dense web of diplomatic interactions, in which they serve more as "allies and agents" in pursuit of national objectives rather than as flies in the ointment. "The nature of contemporary public policy with its dual domestic- international features, creates a mutual dependency between the levels of government and an interest in devising cooperative mechanisms and strategies to promote the interests of each level."46 Rather than separating the activities of non-central governments from those of central governments, Hocking's goal is to "locate" subnational governments in the traditional diplomatic and foreign policy processes initiated and carried through by the federal government. But what Hocking does not look at as closely are the ways in which subnational governments initiate relations directly with foreign governments. Looking at why states initiate their own foreign relations is the way to determine to what degree the states, in pursuit of their own goals, can be "allies and agents" of the federal government. This dissertation addresses state- initiated relations with foreign governments to see whether the states are acting as de facto agents of the federal government, in pursuit of shared goals or distinct state interests. But one point to consider is that the development of state roles is not a matter of devolution. Many of the developments at the subnational level are state and local responsibilities to begin with. While the federal government is responsible for trade policy, states have the primary role in economic development, and criminal justice is a state and local concern, albeit state and local governments share responsibility with the federal government for public safety. But the states are active in the policy areas examined here not so much because the federal government has mandated they be so, but because globalization has changed the nature of governing at the subnational level. These developments signify not a transfer of power from the federal level to the states but an expansion of traditional state- level powers.

#### CP avoids politics even if follow on but sequencing is key

Gluck 11 (Abbe R. Gluck, Associate Professor of Law and Milton Handler Fellow, Columbia Law School, Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond, 121 Yale L.J. 534, y2k)

C. Federalism 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 [\*573] 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. Others have documented how Southern congressmen pushed early implementation of federal welfare programs through the states to preserve the political economy of the region. 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.

#### 3---Real world---50 states action is real!

Hubbard & Yoon 5 (Robert Hubbard is Director of Litigation and James Yoon is an Assistant Attorney General in the Antitrust Bureau of the New York Attorney General's office, FEATURE ARTICLE: HOW THE ANTITRUST MODERNIZATION COMMISSION SHOULD VIEW STATE ANTITRUST ENFORCEMENT. Loyola Consumer Law Review, 17, 497, y2k)

C. States Both Lead and Initiate Antitrust Litigation

Contrary to being free riders, states are often the first and only plaintiff in antitrust matters. Acting alone, states have initiated matters or extended matters into new areas or for new claimants. The cases cited in the footnote illustrates these points for all fifty states.

**(Footnote 127 starts)**

The following cases are illustrative of states' initiatives in antitrust matters:

Alabama v. Blue Bird Body Co., Inc., 573 F.2d 309, 311 (5th Cir. 1978) (Alabama and local educational authorities sued manufacturers and distributors of school bus bodies, claiming defendants conspired to fix prices and restrain trade);

Alaska v. Chevron Chem. Co., 669 F.2d 1299, 1300-01 (9th Cir. 1982) (Alaska sued manufacturers of agricultural fertilizer for fixing prices and allocating markets);

Arizona v. Maricopa County Med. Soc'y., 457 U.S. 332, 336-37 (1982) (Arizona sued medical societies for price-fixing through agreements among competing member physicians who agreed to set the fee amounts they could collect for their services);

Arkansas v. Chicago, Rock Island & Pac. Ry., Co., 128 S.W. 555, 55-56 (Ark. 1910) (Arkansas sued a railroad corporation for fixing the rates to be charged for freight and passenger service);

California v. Am. Stores Co., 495 U.S. 271, 275-76 (1990) (California sued for an injunction after the fourth largest grocery chain acquired all of the outstanding stock of the largest grocery chain in California, alleging the merger constituted an anti-competitive acquisition);

Colorado v. Goodell Bros., Inc., Civ. A No. 84-A-803, 1987, at \*1 (D. Colo. July 7, 1987) (Colorado sued contractors alleging a conspiracy to restrain trade in the highway construction industry by bid-rigging on various highway construction projects);

Connecticut v. Am. Med. Response, Inc., No. Cv-99-589962 (Conn. Super. Ct. June 3, 1999) (Connecticut sued to prohibit acquisition of major competing ambulance service providers in Connecticut);

Delaware v. Mid-Atlantic Paving Co., C.A. No. 7197, 1983 WL 14930, at \*1 (Del. Ch. June 24, 1983) (Delaware sued a construction company for price-fixing the sale of liquid asphalt);

District of Columbia v. CVS Corp., Civ. No. 03-4431 (D.C. Sup. Ct. May 30, 2003) (District of Columbia sued to challenge the acquisition of a pharmacy);

Florida v. Abbott Labs., 1993-1 Trade Cas.(CCH) P 70,241 (N.D. Fla. 1993) (Florida sued and settled with infant formula manufacturers for a conspiracy among competitors regarding pricing and marketing of infant formula products);

Georgia v. Pennsylvania R. Co., 324 U.S. 439, 443-44 (1945) (Georgia sued defendant railroads for conspiring to fix rates charged for transportation of freight);

Hawaii v. Standard Oil Co. of California, 405 U.S. 251, 253 (1972) (Hawaii sued defendants for conspiracy to restrain trade and commerce in the sale, marketing, and distribution of refined petroleum products and for monopolization of the market);

Idaho v. Daicel Chem. Indus., Ltd., 106 P.3d 428, 430 (D.C. Sup. Ct. May 30, 2003) (Idaho sued chemical manufacturers for an illegal conspiracy to fix prices in the commercial sorbates industry);

Illinois v. Sangamo Constr. Co., 657 F.2d 855, 857 (7th Cir. 1981) (Illinois sued construction companies for engaging in a conspiracy to allocate highway construction projects put out for public bids);

Indiana v. The Home Brewing Co. of Indianapolis, 105 N.E. 909, 910 ( Ind. 1914) (Indiana sued a corporation for monopolizing the business of selling beer and other intoxicating liquors);

Iowa v. Scott & Fetzer Co., Civil No. 81-362- E, 1982 WL 1874, at \*1 (S.D. Iowa July 8, 1982) (Iowa sued defendants for antitrust violations, in a case testing the state attorney general's ability to sue under the parens patriae provision of the Clayton Act);

Kansas v. Am. Oil Co., 446 P.2d 754, 755 (Kan. 1968) (Kansas sued corporations engaged in the supply of liquid asphalt for bid-rigging asphalt sales and allocating sales territory);

Kentucky v. Plain view Farms Dev. Corp., No. 234010, 1977 WL 18405 (Ky. Cir. Ct. Sept. 6, 1977) (Kentucky sued a real estate developer for an unlawful tying arrangement which conditioned the purchase of a residential condominium or unit upon the purchase of use of a recreational facility);

Louisiana v. Seifert, 524 So. 2d 160, 161 (La. Ct. App. 1988) (Louisiana sued three defendants for monopolization and attempted monopolization of the film industry);

Maine v. Connors Bros. Ltd., 2000-1 Trade Cas. (CCH) P 72,937 (Me. Super. Ct. 2000) (Maine, in a consent agreement, permitted a Canadian sardine processing company to a acquire the assets of a Maine-based competitor);

Maryland v. Blue Cross & Blue Shield Ass'n, 620 F. Supp. 907, 909 (D. Md. 1985) (Maryland sued health insurers for price fixing and allocating markets, customers, and contracts by submitting non-competitive and collusive bids);

Massachusetts v. William Bayley, Ltd., 1983 WL 14914, (Mass. Super. Ct. Jan. 21, 1983) (Massachusetts sued defendant for exclusive dealing by requiring bid specifications for public construction and renovation projects specify exclusive use of the products of a certain manufacturer of security windows);

Michigan v. McDonald Dairy Co., 905 F. Supp. 447, 450 (W.D. Mich. 1995) (Michigan sued dairy companies on behalf of public schools for bid-rigging on contracts to supply milk to area school districts);

Minnesota v. Nat'l Beauty Supply Co., No. 736778, 1977 WL 18389 (D. Minn. June 9, 1977) (Minnesota sued five beauty supply wholesalers for price-fixing and eliminating discounts from wholesale prices of beauty supplies);

Mississippi v. Jackson Cotton Oil Co., 48 So. 300, 300 (Miss. 1909) (Mississippi sued two competing cotton seed oil manufacturers for a price-fixing conspiracy to limit the price of a commodity);

Missouri v. Poplar Bluff Physicians Group, Inc., No. CV195-393-CC, 1995 WL 788087 (Mo. Cir. Ct. Apr. 12, 1995) (Missouri sued a group of physicians who operated a medical clinic -partnership for conspiracy and attempted monopolization for the sale of prescription drugs and durable medical equipment to patients, nursing homes and residential care facilities);

Montana v. SuperAmerica, 559 F. Supp. 298, 299-300 (D. Mont. 1983) (Montana sued an oil company for a conspiring with its competitors to fix prices for gasoline);

Nebraska v. Associated Grocers, 332 N.W.2d 690, 691 (Neb. 1983) (Nebraska sued dairy product wholesalers, a retail grocer and individuals for price-fixing the sale of milk);

Nevada v. Merkley & Hankins, Inc., No. 20644, 1988 WL 247972 (D. Nev. July 6, 1988) (Nevada sued a gasoline and petroleum product wholesaler for fixing the resale prices of gasoline);

New Hampshire v. New Hampshire Grocers Ass'n, Inc., 348 A.2d 360, 360-61 (N.H. 1975) (New Hampshire sued a retail grocers association for attempts to coerce manufacturers and distributors to refrain from offering fresh baked goods to discount bakery stores);

New Jersey v. Morton Salt Co., 387 F.2d 94, 95 (3d Cir. 1967) (New Jersey filed suit in district court against seven corporations, seeking treble damages for violations of Sections 1 and 2 of the Sherman Act);

New Mexico v. Scott & Fetzer Co., Civil No. 81-054- JB. 1981 WL 2167 (D. N.M. Dec. 22, 1981) (New Mexico sued defendants for antitrust violations, in a case testing the state attorneys general ability to sue under the parens patriae provision of the Clayton Act);

New York v. St. Francis Hosp., 94 F. Supp. 2d 399, 402-03 (S.D.N.Y. 2000) (New York sued two New York hospitals for engaging in illegal price-fixing and market allocation through joint negotiations);

North Carolina v. P.I.A. Asheville, Inc., 740 F.2d 274, 276 (4th Cir. 1984) (North Carolina sued the owner of psychiatric facilities alleging that acquisition of particular facility violated the antitrust laws);

Ohio v. Louis Trauth Dairy, Inc., 925 F. Supp. 1247, 1248-49 (S.D. Ohio 1996) (Ohio sued several dairies, alleging conspiracy to set prices and allocate territories in sale of milk to school districts);

Oklahoma v. Allied Materials Corp., 312 F. Supp. 130, 131 (W.D. Okla. 1968) (Oklahoma sued corporations for conspiring to rig bids for liquid asphalt sales);

Oregon v. Fields & Endsley, Inc., No. 151873, 1984 WL 15669 (Or. Cir. Ct. Oct. 4, 1984) (Oregon sued defendants for price-fixing wholesale and retail gasoline);

Pennsylvania v. Providence Health Sys., Inc., Civ. A. No. 4: CV-94-772, 1994 WL 374424 (D. Pa. May 26, 1994) (Pennsylvania charged that three competing hospitals combining to manage the provision of health care would result in an anti-competitive concentration of market power);

Puerto Rico v. Wal-mart Puerto Rico, Inc., 238 F. Supp. 2d 395, 409 (D.P.R. 2002) (Puerto Rico sued to obtain a preliminary injunction to enjoin a retail chain from buying a chain of grocery stores);

Rhode Island v. Neptune Int'l Corp., Civil Action No. 80-4503, 1980 WL 4688 (R.I. Super. Ct. Dec. 30, 1980) (Rhode Island sued a manufacturer-wholesaler and retailer of furniture products for price-fixing and implementing exclusive dealing and refusal to deal agreements);

Loftis v. South Carolina Elec. & Gas Co., 604 S.E.2d 714, 715 (S.C. Ct. App. 2004) (South Carolina instituted an UTPA (consumer protection) action against SCE&G for routinely overcharging municipal franchise fees to a portion of its population);

South Dakota v. Cent. Lumber Co., 123 N.W. 504, 506 (S.D. 1909), aff'd, 226 U.S. 157 (1912) (South Dakota sued a lumber company for criminal and civil antitrust violations by forming a combination to restrain trade);

Tennessee v. Joe Stewart Body Shop, 1992-1 Trade Cas. (CCH) P 69,748 (W.D. Tenn. 1992) (Tennessee sued auto body repair shop for attempting to fix the prices of repair services);

Texas v. Zeneca, Inc., No. 3-97 CV 1526-D, 1997 WL 570975, at \*1 (N.D. Tex. June 27, 1997) (Texas led a multistate case against a pesticide manufacturer for conspiring with its distributors to fix resale prices);

Utah v. Univ. of Utah, 1994-1 Trade Cas. (CCH) P 70,550 (D. Utah 1994) (Utah sued a state university hospital for exchanging wage information with other health care facilities concerning compensation paid to nurses, fixing prospective compensation, and discouraging others from negotiating with other third-party payers);

Vermont v. Densmore Brick Co., Inc., Civil Action File No. 78-297, 1980 WL 1846, at \*1 (D. Vt. Apr. 10, 1980) (Vermont brought a state parens patriae action against a manufacturer of wood burning stoves for price-fixing);

Virginia v. Buckley Moss, Inc., Civil Action No. G-8998-2, 1983 WL 14948, at \*1 (Va. Cir. Ct. Apr. 5, 1983) (Virginia sued a seller of decorative artwork for price-fixing the resale prices of its dealers);

Washington v. Larson, No. 39916-1- I, 1998 WL 141935 (Wash. Ct. App. Mar. 30, 1998) (Washington sued two pharmacy owners for price-fixing the prices that would be paid by insurers, third-party payers, or consumers for drugs);

West Virginia v. Meadow Gold Dairies, 875 F. Supp. 340, 343 (D. W. Va. 1994) (Action against two dairies alleging conspiracy to illegally and artificially raise price of milk supplied to school boards);

Wisconsin v. Marigold Foods, Inc., 1980 WL 4676, at \* 1-2 (Wis. Cir. Ct. Sept. 3, 1980) (Wisconsin sued a milk products firm for resale price-fixing selected dairy products).

**(Footnote ends)**

As the parentheticals in the footnote specify, many of these cases are local and involve local activity such as groceries, dairies, construction firms, and a varied list of manufacturers and retailers. The majority of the litigations assert claims for price-fixing and bid-rigging, but include other antitrust claims such as tying, monopolization, and exclusive dealing.

#### Specifically, multistate suits are a real thing!

Dishman 20 (Elysa M. Dishman is an Associate Professor at BYU Law School, CLASS ACTION SQUARED: MULTISTATE ACTIONS AND AGENCY DILEMMAS, 96 Notre Dame L. Rev. 291, y2k)

Multistate actions often involve many states, sometimes with almost every state in the country participating in the action. For example, the National Mortgage Settlement had forty-nine participating states, the Target multistate [\*306] settlement had forty-seven participating states, the Western Union multistate settlement had fifty participating states, and the Master Settlement Agreement had forty-six states. Since each AG represents a large number of state residents, the interests of many states and people are represented in multistate actions.

#### All states have antitrust laws

Nolette 11 (Paul Brian Nolette, PhD, Assistant Professor, Marquette University, Department of Political Science, ADVANCING NATIONAL POLICY IN THE COURTS: THE USE OF MULTISTATE LITIGATION BY STATE ATTORNEYS GENERAL, a dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, Boston College, The Graduate School of Arts and Sciences, Department of Political Science, <https://core.ac.uk/download/pdf/151481511.pdf>, y2k)

b) Antitrust

The role of SAGs in antitrust issues date back to the late 19th century, when several attorneys general brought cases against "trusts" that were allegedly engaged in price-fixing and other monopolistic practices.13 Many of their activities were followed by other state and federal efforts seeking to encourage market competition and prevent anticompetitive business practices, including the enactment of the Sherman Act in 1890 and many similar state statutes. Today, all fifty states have antitrust statutes, and other federal laws have supplemented the original Sherman Act, including the Clayton Act of 1914.

#### 4---Literature and solvency advocates check

Rose 13 (Amanda M. Rose, Associate Professor, Vanderbilt University Law School, Article: State Enforcement of National Policy: A Contextual Approach (with Evidence from the Securities Realm). Minnesota Law Review, 97, 1343, y2k)

A mature debate exists over the wisdom of concurrent state enforcement in the antitrust context. See, e.g., Stephen Calkins, Perspectives on State and Federal Antitrust Enforcement, 53 Duke L.J. 673 (2004) (defending concurrent state enforcement); Carole R. Doris, Another View on State Antitrust Enforcement - A Reply to Judge Posner, 69 Antitrust L.J. 345 (2001) (same); Harry First, Delivering Remedies: The Role of the States in Antitrust Enforcement, 69 Geo. Wash. L. Rev. 1004 (2001) (same); Robert L. Hubbard & James Yoon, How the Antitrust Modernization Commission Should View State Antitrust Enforcement, 17 Loy. Consumer L. Rev. 497 (2005) (same); cf. Richard A. Posner, Federalism and the Enforcement of Antitrust Laws by State Attorneys General, in Competition Laws in Conflict: Antitrust Jurisdiction in the Global Economy 252-66 (Richard A. Epstein & Michael S. Greve eds., 2004) [hereinafter Competition Laws in Conflict] (criticizing concurrent state enforcement); Michael L. Denger & D. Jarrett Arp, Does Our Multifaceted Enforcement System Promote Sound Competition Policy?, 15 Antitrust 41 (2001) (same); Robert W. Hahn & Anne Layne-Farrar, Federalism in Antitrust, 26 Harv. J.L. & Pub. Pol'y 877 (2003); Posner, supra note 22 (same). For more information about this debate, see also Michael DeBow, State Antitrust Enforcement: Empirical Evidence and a Modest Reform Proposal, in Competition Laws in Conflict, at 267-88; Michael S. Greve, Cartel Federalism? Antitrust Enforcement by State Attorneys General, 72 U. Chi. L. Rev. 99 (2005).

## Inequality

### No Solvency – 2NC

#### Empirics on our side – zero statistical support for antitrust decreasing inequality

Wright 19 – Joshua D. Wright, University Professor and Executive Director of the Global Antitrust Institute at George Mason University, “Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” *Arizona State Law Journal*, 2019, 51 Ariz. St. L.J. 293

[Tables omitted]

The papers advocating for increased enforcement do not provide evidence that enforcement is, in fact, related to reductions in inequality. What follows is our preliminary attempt to make progress in this regard. We approach this task descriptively, since strong research designs are elusive here given the national nature of enforcement. Left without a plausible comparator, we present time series regressions relating measures of inequality to antitrust enforcement measures. For all of the standard reasons, 175 what follows cannot isolate causation with any confidence, but it is a useful first step to see if there appears to be any association between antitrust enforcement and inequality measures.

For enforcement measures, we use DOJ investigation data, which are available for the period 1984 to 2016 and are broken down by § 1 investigations, § 2 investigations, merger investigations, and other investigations. 17 6 We initially focus on consumption for our outcome measures for the reasons discussed above.

In Table 1 below, we focus on merger investigations, given the focus on increasing market concentration in the papers calling for increased antitrust enforcement. Again, the enforcement data determine our sample period which covers 1984 through 2016. Our outcome variable is the ratio of average consumption expenditures among those in the fifth income quintile to the consumption expenditures of those in the first income quintile. 177 This ratio appears to be AR(1) so we allow for a one period autoregressive term in each of the regressions. 178 Presumably past enforcement is as important or more important than current enforcement, so we provide distributed lag specifications. 179

Although the merger investigations are uniformly negative, in no case are they statistically significant (individually or jointly).

In Table 2, we control separately for a linear trend to account for nonenforcement factors involved in pushing inequality up over the period.

We repeat these exercises using total investigations to allow for a more general measure of enforcement.

Distinct from the merger investigation results, which were uniformly negative though insignificant, in the specifications using total investigations the sign of the effect of investigations on the ratio of quintile five consumption to quintile one consumption switches from lag to lag.

To unpack these results, Table 5 presents the effect of investigations on real average consumption expenditures for the first and fifth quintile households by income. For brevity, we only present the specifications with two lags and the time trend.

On the whole, the relationship between the enforcement metrics and consumption is comparable for the households in both the first and fifth income quintiles. There is not much empirical evidence to substantiate the proposed correlation between antitrust enforcement activity and inequality. And certainly not evidence significant enough to justify the aggressive policy proposals recently injected into discussion of competition policy.

Stepping away from this aggregate analysis for a moment, it is interesting to note that the new (-old) focus on "big is bad" when it comes to inequality ignores an impressive literature on the effects of one of the biggest players in the US in recent decades-Walmart. Work by Jerry Hausman and Ephraim Leibtag shows that when Walmart Supercenters enter a market, food prices paid by consumers in the market drop by about three percent, and because they have detailed longitudinal data on household expenditures, they are able to estimate household welfare effects due to this price decrease. They find that the welfare effects are substantial and they are most pronounced for those at the lower end of the socioeconomic spectrum. 8 ' In addition to this price effect, David Matsa shows that Wal-Mart's entry into a market induces competitor supermarkets to improve the quality of their service so as to avoid losing even more business to Wal-Mart and its lower prices."' Thus, in the posterchild case for big is bad, the behemoth Wal-Mart would appear to improve inequality by its very existence.

Although we believe consumption is the most relevant measure for assessing the welfare effects (in absolute or, as here, in relative terms) of antitrust policy, we provide similar analyses of income and wealth. Using Census data,'82 in Table 6, we again provide estimates from an AR(1) distributed lag model examining the effects of DOJ investigations, both merger specific and total, on the income shares received by those individuals in the first quintile and the fifth quintile, while also controlling for a background linear trend.

As with consumption measures, there is generally no statistically significant effect (individually or jointly) of current or past investigations (regardless of whether we focus on merger-specific or total investigations) on the income shares of those at the bottom or the top of the income distribution. Putting aside statistical significance, while past investigations are associated with increases in the income share received by those at the bottom of the distribution, current investigations have the opposite effect. Further, many of the investigation coefficients are positive for the fifth quintile income share as well. If we examine combined ratios of the shares as we did with the consumption data, we still find no support for the assumption that an increase in antitrust enforcement has any systematic effect on inequality.1 3

#### Statistical evidence proves

Dorsey 20 – Elyse Dorsey, Adjunct Professor, Antonin Scalia Law School at George Mason University, “Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement,” *Pepperdine Law Review*, 2020, 47 Pepp. L. Rev. 861

Second, consider the empirical evidence supporting a causal link between antitrust enforcement and inequality. 260 This proffered link remains, thus far, largely theoretical and undeveloped empirically. Populist papers advocating for increased antitrust as a salve for increasing inequality do not offer empirical support for their preferred course of treatment. But other authors have begun to explore empirically the proposed tie between antitrust enforcement and inequality. Wright et al., for instance, present time series regressions relating measures of inequality to antitrust enforcement measures. 26 1 While the authors acknowledge the standard reasons that these analyses cannot isolate, with confidence, causation, their work provides a useful foray into the empirical basis for the notion that antitrust enforcement and inequality are causally linked. 262 The authors examine data from DOJ investigations between 1984 and 2016, focusing first on merger investigations, given the populist emphasis on merger activity, and then broadly examine all DOJ investigations for a more general enforcement measure. 263 Their results do not offer "much empirical evidence to substantiate the proposed correlation between antitrust enforcement activity and inequality." 264

Populist claims that increased antitrust enforcement is necessary to combat a severe trend of increasing inequality thus appear to be overstated. While inequality appears to be increasing, the rate is likely more modest than the populist movement implies. And there is, as of yet, no empirical support for the underlying proposition that increasing antitrust enforcement levels would slow, stop, or reverse this trend.

## Modeling

### AT: Populism

#### Populism thumpers---it’s high now, no impact.

---Britain’s Johnson, Italy’s Salvini, Turkey’s Erdogan, Poland’s Kaczynski, and Hungary’s Orban are all populist leaders in power now, thumps the impact

---social media makes it inevitable---they can spread their message easily

---numerous EU governments have populists in power changing policies now---Austria, UK etc. all thump

---migration threat construction makes it inevitable by driving nationalism

Balfour 7-15 (July 15, 2020, ROSA BALFOUR is the director of Carnegie Europe. Her fields of expertise include European politics, institutions, and foreign and security policy., “Why Populism Can Survive the Pandemic”, Carnegie Europe)

Bolsonaro, Johnson, Salvini, Trump. Erdoğan, Kaczyński, Le Pen. Modi, Orbán, Putin. Some of these global leaders are populists; some have authoritarian streaks; others are authoritarians using populism to consolidate power. Some will be booted out after their disastrous mismanagement of the coronavirus pandemic. Others will stay, and new ones will arrive.

Given the poor performance of many populist governments in dealing with the coronavirus, populism looks like it could be magically swept away. But such wishful thinking ignores the reasons for the rise of populism and its likely endurance. To rid the world of populism, its root causes must be addressed.

EUROPE’S POPULISM PROBLEM GOES DEEPER THAN ITS MANY CRISES

Many in Europe believe that populism came about because of external crises that have hit the continent over the past ten years. These include the impact of the 2008 financial crisis on the eurozone, which sparked displeasure with the euro and economic inequality, and the refugee influx of 2015 and 2016, which unearthed fears of identity loss and led to greater skepticism about the EU.

In short, EU scholars and policymakers assume that the EU’s success is tied to its performance. They reason that better policies and more efficient institutions will ensure that European and national politics can coexist smoothly. If populism is driven by economic grievances and fears of identity loss, it can be solved by creating more jobs and closing borders to reduce immigration.

This interpretation is wrong. The multiple crises have been a perfect storm for populists, true. But they did not cause the fundamental dissatisfaction that has rattled Europe and other democracies. People who vote for populist politicians do not usually care how well a particular policy performs. In fact, the populist politicians’ common claim—to embody the will of the people—eliminates the possibility that they could ever be wrong. So, populist leaders’ attacks on the elite are rarely questioned—even when they are part of that elite themselves.

HOW POPULISM DAMAGES DEMOCRACY

Understanding the roots of populism is the first step toward identifying how to protect democracy.

First, populism is tied to the hollowing out of advanced democracies. Political elites have become estranged from voters after decades of declining participation in elections, in party membership, and in the civic activities that created links between the electorate and the government. These links once kept the government in check and forced politicians to pay attention to their responsibilities toward citizens. But today, political parties represent fewer societal interests and people, as membership has gone down. As the Irish political scientist Peter Mair perceptively explained, politics has created a void.

Populists have filled this void, bypassing the traditional institutions—from parliaments to newsrooms—that have always been the pillars of democracy. Technological advances have forced the news media’s business model into an existential crisis. Social media enables populists to engage directly with their base, without the mediation and interpretation of the press.

This dynamic plays out at the broader international level too. For years, mainstream political leaders in Europe have played the blame-Brussels game to whip up approval at home. Others have mimicked recklessly populist positions to survive an electoral contest. It is too soon to say whether these political actors and tactics will be successful in the long run. But now, their actions have eroded the institutional machinery of the EU, making it brittle and vulnerable.

In Europe, democracy can no longer be understood only at the national level. Nor can the EU expect to improve its democratic procedures by merely tweaking its institutions. Because governance is shared at many levels—local, national, and supranational at the EU level—nothing short of fixing the relationship between all these levels will solve the populist conundrum. Making local, national, and supranational governance more participative and accountable will lead to better responses to problems of inequality and identity.

Second, even if some populist leaders will be booted out through elections, populism is likely to survive the coronavirus because its right-wing variant has been extremely successful in shifting the entire political and ideological debate further toward the right. In some cases, it has captured center-right political parties. In the most extraordinary example of a traditional center-right defeating its own populist challengers, the UK’s Conservative Party adopted the anti-EU agenda of the then-UK Independence Party and led the country to leave the EU. In other cases, recently in Austria and Italy, the populist right made it into government and changed policies to its liking. But in most countries, it has simply influenced the public debate to the extent that centrist governments have shifted toward the right.

EUROPE HAS A POPULISM PROBLEM ACROSS THE BOARD

This is most evident in European migration policy, which has become illiberal, driven by a fear of losing national identity, and in breach of international commitments. But it can be seen in many other fields, from social policy to security and anti-terrorism. The governments of Hungary and Poland have systematically eroded the rule of law and fundamental rights. Yet curbs on press freedom and civil liberties have also been registered, such as France’s fight against terrorism and Italy’s push to restrict NGO activities helping refugees and migrants. The coronavirus pandemic is accentuating some of Europe’s problems in respecting fundamental rights.

The inability of the European center right to act as a gatekeeper of democracy is one of its greatest failures. The parties of Hungarian Prime Minister Viktor Orbán and Polish Law and Justice Party leader Jarosław Kaczyński have managed to undo their countries’ democratic achievements with the complicity of European sister parties, who were supposed to keep their values and actions in check. In Poland, the victory of Andrzej Duda, thanks to a partisan media, will give the government led by the nationalist and ultra conservative Law and Justice Party more time to undo the independence of the judiciary, and unravel democracy in the country.

EU governance is undermined too. Populist leaders have discovered that they can easily achieve their goals by creating chaos. Populist governments have blocked consensus-building in the European Council, where the EU heads of state or government meet, not only on the trademark topics that keep them in power at home—such as resisting the relocation of asylum seekers—but also on other issues such as China’s abuse of human rights.

It is well known that divisions abound within the EU. Many predate the rise of populism, and vetoing tactics are nothing new. What has changed is that because populists have been successful in hedging against partners and holding political issues to ransom, others are copying them, often on matters of lesser importance. The goal is simply to sow discord, making the EU look weak, divided, and incapable of addressing its great challenges, from Chinese encroachment on European economies to transatlantic tensions.

Behind this dynamic is Europe’s broken democracy, unable to keep up with the transformations of the twenty-first century. So far, institutional reform has not worked. Populist politics pose deeper questions about legitimacy, representation, and political participation. Who are “the people?” Who decides? And for whose benefit?

Filling those voids meaningfully requires a total rethink of the relationship between the local, national, EU, and global levels of governance—instead of the top-down reform the EU has habitually pursued. Addressing this disconnect will be key to renewing the European project.

#### Cultural shifts, immigration, and economics.

Yotam Margalit 19, 12-20-2019, Professor, Department of Political Science, Tel Aviv University, "Economic causes of populism: Important, marginally important, or important on the margin," Vox CEPR Policy Portal, https://voxeu.org/article/economic-causes-populism/

What, then, explains the populist appeal? Out of space limit, I will note only that structural, long-term social changes strike me as central to understanding the resentment underlying much of its appeal. By this account, structural changes – such as increased access to higher education, urbanisation, and growing ethnic diversity – have led to significant progressive cultural shifts. These changes, and the perceived displacement of traditional social values, have caused a sense of resentment among segments of the population in the West, particularly among white men, older people, conservatives, and those with less formal qualifications (see Inglehart and Norris 2019 for an extensive exposition of this view). Increased exposure to foreign influences that comes with globalisation and, even more so, the effects of waves of immigration have exacerbated the sense of a cultural and demographic threat. With gradual generational change, these formerly predominant majorities have increasingly felt their social standing erode, buying into the populist nostalgia for a ‘golden age’ when there was cultural homogeneity and traditional values and a strong national identity prevailed. They have also grown receptive to populist charges against a disconnected elite that has turned its back on them and the values they hold dear.

There’s an obvious, and understandable, reluctance to accept such ‘soft’ explanations. Cultural explanations of populism can be harder to measure or identify causally. Yet that of course doesn’t mean that a cultural explanation is incorrect. One should be careful not to equate quantifiability with importance.

Note, though, that the cultural account does not dismiss the role of economic factors. In addition to the electoral impact of the causes noted earlier (e.g. trade, automation), hard economic times also tend to undermine the perceived competence of the economic and political elites, and thus help fuel popular distrust in them. It is therefore likely that the financial crisis contributed to the populist wave, as some have suggested (Algan et al. 2017, Mian et al. 2014). But given the weak empirical association between measures of economic insecurity and support for populism, we should view the crisis as more of a trigger than a root cause of widespread populist support.

### Piracy-Terror---1NC

#### Philippines’ growth thumped BUT plan couldn’t solve anyways.

Mendoza 8-2 [Rondald Mendoza is the Dean and Professor at Ateneo School of Government at Ateneo de Manila University, “The Philippine economy under the pandemic: From Asian tiger to sick man again?”, 8-2-2021, https://www.brookings.edu/blog/order-from-chaos/2021/08/02/the-philippine-economy-under-the-pandemic-from-asian-tiger-to-sick-man-again/] IanM

That was prior to COVID-19.

The rude awakening from the pandemic was that a services- and remittances-led growth model doesn’t do too well in a global disease outbreak. The **Philippines**’ economic growth faltered in 2020 — **enter**ing **negative territory** for the **first time** since 1999 — and the **country experienced** **one of the** deepest contractions in the Association of Southeast Asian Nations (ASEAN) that year (Figure 1).

Figure 1: GDP growth for selected ASEAN countries

And while the government forecasts a slight rebound in 2021, [some **analysts** are **concerned**](https://www.bworldonline.com/weak-public-consumption-seen-to-dampen-economic-recovery/) over an **uncertain** and **weak recovery,** due to the country’s **protracted lockdown** and **inability to shift** to a **more efficient containment** strategy. The Philippines has **relied** instead on **draconian mobility** restrictions **across** large sections of the country’s key cities and **growth hubs** every time a COVID-19 surge threatens to overwhelm the country’s health system.

WHAT WENT WRONG?

How does one of the fastest growing economies in Asia falter? It would be too simplistic to blame this all on the pandemic.

First, the **Philippines’ economic model** itself appears **more vulnerable** to **disease outbreak**. It is built around the mobility of people, yet tourism, services, and remittances-fed growth are all vulnerable to pandemic-induced [lockdowns](https://www.economist.com/asia/2020/07/11/the-philippines-fierce-lockdown-drags-on-despite-uncertain-benefits) and consumer confidence decline. International travel plunged, tourism came to a grinding halt, and domestic lockdowns and mobility restrictions crippled the retail sector, restaurants, and hospitality industry. Fortunately, the country’s business process outsourcing (BPO) sector is demonstrating some resilience — yet its main markets have been hit heavily by the pandemic, forcing the sector to rapidly upskill and adjust to [emerging opportunities](https://oxfordbusinessgroup.com/analysis/healthy-prospects-emerging-business-process-outsourcing-segments-are-positioned-offset-fall-demand) under the new normal.

Second, pandemic handling was also problematic. Lockdown is useful if it buys a country time to strengthen health systems and test-trace-treat systems. These are the building blocks of more efficient containment of the disease. However, if a country fails to strengthen these systems, then it squanders the time that lockdown affords it. This seems to be the case for the Philippines, which made global headlines for implementing one of the [world’s longest lockdowns](https://interaksyon.philstar.com/trends-spotlights/2021/03/16/187709/philippines-makes-it-to-intl-headlines-with-anniversary-of-one-of-worlds-longest-lockdowns/) during the pandemic, yet failed to flatten its COVID-19 curve.

At the time of writing, the Philippines is again headed for another [hard lockdown](https://www.straitstimes.com/asia/se-asia/philippines-to-place-manila-area-in-lockdown-to-curb-delta-spread) and it is still trying to graduate to a more efficient [containment strategy](https://www.bworldonline.com/world-bank-cuts-philippine-growth-outlook/) amidst rising concerns over the delta variant which has spread across [Southeast Asia](https://www.reuters.com/world/asia-pacific/caseloads-climb-southeast-asia-feels-force-delta-variant-2021-07-09/). It seems stuck with **on-again**, **off-again** lockdowns, which are severely damaging to the economy, and will likely create negative expectations for future COVID-19 surges (Figure 2).

Figure 2 clarifies how the Philippine government resorted to stricter lockdowns to temper each surge in COVID-19 in the country so far.

If the **delta variant** and other possible variants are near-term threats, then the **lack of efficient containment** can be expected to force the country back to draconian mobility restrictions as a last resort. Meanwhile, only [two months of social transfers](https://www.gmanetwork.com/news/news/nation/796835/poe-expects-duterte-to-include-added-ayuda-improved-health-system-in-final-sona/story/?just_in) (ayuda) were provided by the central government during 16 months of lockdown by mid-2021. All this puts more pressure on an already weary population reeling from deep recession, job displacement, and long-term risks on [human development](https://www.unicef.org/philippines/reports/impact-covid-19-crisis-households-national-capital-region-philippines). Low social transfers support in the midst of joblessness and [rising hunger](https://cnnphilippines.com/news/2021/4/30/households-experiencing-having-no-food-amid-the-COVID-19-pandemic.html) is also likely to weaken compliance with mobility restriction policies.

Third, the Philippines suffered from delays in its [vaccination](https://www.economist.com/asia/2021/01/21/asian-governments-are-needlessly-hampering-vaccination-drives) rollout which was initially hobbled by implementation and supply issues, and later affected by lingering [vaccine hesitancy](https://thediplomat.com/2021/03/from-dengvaxia-to-sinovac-vaccine-hesitancy-in-the-philippines/). These are all likely to delay recovery in the Philippines.

#### Philippines terror threat is overhyped—it exists but has no impact

Joseph Chinyong **Liow 16** is the inaugural holder of the Lee Kuan Yew Chair in Southeast Asia Studies and senior fellow in the Brookings Center for East Asia Policy Studies., “ISIS in the Pacific: Assessing terrorism in Southeast Asia and the threat to the homeland”, https://www.brookings.edu/testimonies/isis-in-the-pacific-assessing-terrorism-in-southeast-asia-and-the-threat-to-the-homeland/

I have been asked to offer my assessment of terrorism in Southeast Asia especially in relation to ISIS. Let me begin by saying that any assessment of the threat posed by ISIS in Southeast Asia must begin with the observation that terrorism is not a new phenomenon in the region. During the era of anti-colonial struggle, terrorism and political violence were tactics used frequently by various groups. Since 9/11, Southeast Asia has witnessed several terrorist incidents perpetrated mostly by the Al-Qaeda linked Jemaah Islamiyah terrorist organization and its splinter groups. These incidents include the October 2002 Bali bombings, the August 2003 J.W. Marriott Hotel bombing in Jakarta, the bombing of Super Ferry 14 in the southern Philippines in February 2004, the September 2004 Australian Embassy bombing in Jakarta, further bombings in Bali in October 2005, and further bombings at the J. W. Marriott (again) and the Ritz-Carlton Hotel in Jakarta in 2009. From this last series of attacks to the Jakarta attacks earlier this year, there has not been a major urban terrorist incident, although sporadic violence had continued in the form of clashes between security forces and militant groups, especially in the southern Philippines and also in Poso, Central Sulawesi, Indonesia.[1] In 2010, Indonesian security forces discovered a major militant training camp in Aceh which involved a number of jihadi groups. Several reasons can be cited to explain this hiatus: improved counterterrorism capabilities of regional security forces, disagreements within the jihadi community over the indiscriminate killing of Muslims, and rivalry and factionalism among jihadi groups that have reduced their capabilities and operational effectiveness. Against this backdrop, the ISIS-inspired attacks in Jakarta on January 14, 2016, the April 9, 2016 attack on Philippine security forces in the southern island of Basilan conducted by groups claiming allegiance to ISIS, and a recent spate of kidnappings in southern Philippines serve as a timely reminder of the persistent threat that terrorism continues to pose to Southeast Asian societies. ISIS has emerged as the signal expression of this threat, in part, because of the speed with which it has gained popularity in the region. When Abu Bakr al-Baghdadi announced on June 28, 2014 (the first day of Ramadhan) that a caliphate had been formed by ISIS, the announcement captured the imagination of the radical fringes across Southeast Asia. The announcement was followed by a comprehensive and effective propaganda campaign that conveyed the impression of ISIS’s invincibility and validation from god. July and August that year witnessed a series of bay’at (pledge of allegiance) to ISIS taken by radical groups and clerics from Indonesia and the Philippines. It was the audacity of its announcement of the caliphate and forcefulness of its communications strategy that set ISIS apart from other groups. In September, the Southeast Asian dimension of ISIS was given something of a formal expression with the formation of Katibah Nusantara, a Southeast Asian wing of ISIS formed by Malay and Indonesian speaking fighters in Syria. Katibah fulfills several functions: it provides a social network to help Southeast Asian recruits settle in, training for those among them who would eventually take up arms, and communications with the network of pro-ISIS groups operating in Syria. By dint of these developments, the threat posed by ISIS in Southeast Asia is real, and it has been growing since mid-2014. Nevertheless, the extent of the threat should also not be exaggerated.

## Democracy

### Demo Backsliding---2NC

#### No ! to backsliding

Michael **Mousseau 18**. Professor @ UCF, PhD PoliSci @ Binghamton. Conflict Management and Peace Science, “Grasping the scientific evidence: The contractualist peace supersedes the democratic peace”, Vol 35(2) 175-192, SagePub.

A weighty controversy has enveloped the study of international conflict: whether the democratic peace, the observed dearth of militarized conflict between democratic nations, may be spurious and accounted for by institutionalized market ‘‘contractualist’’ economy. I have offered theory and evidence that economic norms, specifically contractualist economy, appear to account for both the explanans (democracy) and the explanandum (peace) in the democratic peace research program (Mousseau, 2009, 2012a, 2013; see also Mousseau et al., 2013a, b). Five studies have responded with several arguments for why we should continue to believe that democracy causes peace (Dafoe, 2011; Dafoe and Russett, 2013; Dafoe et al., 2013; Ray, 2013; Russett, 2010). Resolution of this controversy is fundamental to the study and practice of international relations. The observation of democratic peace is ‘‘the closest thing we have to an empirical law’’ in the study of global politics (Levy, 1988: 662), and carries the profound implication that the spread of democracy will end war. New economic norms theory, on the other hand, yields the contrary implication that universal democracy will not end war. Instead, it is market-oriented development that creates a culture of contracting, and this culture legitimates democracy within nations and causes peace among them. The policy implications could hardly be more divergent: to end war (and support democracy), the contractualist democracies should promote the economies of nations at risk (Krieger and Meierrieks, 2015; Meierrieks, 2012; Mousseau, 2000, 2009, 2012a, 2013; Nieman, 2015). In the literature are five factual claims for why we should continue to believe that democracy causes peace: (1) an assertion that in three of the five studies that overturned the democratic peace (Mousseau, 2013; Mousseau et al., 2013a, b), the insignificance of democracy controlling for contractualist economy is due to the treatment of missing data for contractualist economy (Dafoe et al., 2013, henceforth DOR); (2) a claim of error in the measure for conflict (DOR) that appears in one of the five studies that overturned the democratic peace (Mousseau, 2013); (3) an alleged misinterpretation of an interaction term that appears in one of the five studies (Mousseau, 2009) that overturned the democratic peace, along with in inference of democratic causality from an interaction of democracy with contractualist economy (Dafoe and Russett, 2013; DOR); (4) a claim of reverse causality, of democracy causing contractualist economy (Ray, 2013); and (5) a report of multiple regressions with most said to show democratic significance after controlling for contractualist economy (DOR). This study investigates all five of these factual claims. I begin by addressing the issue of missing data by constructing two entirely new measures for contractualist economy. I then take up possible measurement error in the dependent variable by reporting tests using both my own (Mousseau, 2013) and DOR’s measures for conflict. Next, I disaggregate the data to investigate a causal interaction of democracy with contractualist economy. I then examine the evidence for reverse causality, and scrutinize the competing test models to pinpoint the exact factors that can account for differences in test outcomes. The results are consistent across all tests: there is no credible evidence supporting democracy as a cause of peace. Using DOR’s base model, the impact of democracy is zero regardless of how contractualist economy or interstate conflict is measured. There is no misinterpreted interaction term in any study that has overturned the democratic peace, and the disaggregation of the data yields no support for a causal interaction of democracy with contractualist economy. Ray’s (2013) evidence for reverse causality from democracy to contractualist economy is shown to be based on an erroneous research design. And of DOR’s 120 separate regressions that consider contractualist economy, 116 contain controversial measurement and specification practices; the remaining four are analyses of all (fatal and non-fatal) disputes, where the correlation of democracy with peace is limited to mixedeconomic dyads, those where one state has a contractualist economy and the other does not, a subset that includes only 27% of dyads from 1951 to 2001, including only 50% of democratic dyads. It is further shown that this marginal peace is a statistical artifact since it does not exist among neighbors where everyone has an equal opportunity to fight. The results of this study should not be surprising, as they merely corroborate the present state of knowledge. This is because, while DOR ardently assert that four alleged errors, when corrected, each independently save the democratic peace proposition—multiple imputation, the exclusion of ongoing dispute years, an interaction term, and their alternative measure for contractualist economy—they never actually report any clear-cut evidence in support of their claims. One issue not addressed is Dafoe and Russett’s (2013) challenge to Mousseau et al. (2013a) on the grounds that our reported insignificance of democracy is not significant. Like the four claims of error made by DOR addressed here, Dafoe and Russett (2013) made this charge without supporting it. Mousseau et al. (2013b) then investigated it and showed that it too has no support. This issue appears resolved, as Russett and colleagues (DOR) did not raise it again. Nor have DOR or anyone else disputed the overturning of the democratic peace as reported in Mousseau (2012a), which has not been contested with any assertion, supported or unsupported. The implications of this study are far from trivial: the observation of democratic peace is a statistical artifact, seemingly explained by economic conditions. If scientific knowledge progresses and the field of interstate conflict processes is to abide by the scientific rules of evidence, then we must stop describing democracy as a ‘‘known’’ cause or correlate of peace, and stop tossing in a variable for democracy, willy-nilly, in quantitative analyses of international conflict; the variable to replace it is contractualist economy. If nations want to advance peace abroad, the promotion of democracy will not achieve it: the policy to replace it is the promotion of economic opportunity The economic norms account for how contractualist economy can cause both democracy and peace has been explicated in numerous prior studies and need not be repeated here (Mousseau, 2000, 2009, 2012a, 2013). An abundance of prior studies have also corroborated various novel predictions of the theory in wider domains (Ungerer, 2012), and no one has disputed the multiple reports that contractualist economy is the strongest non-trivial predictor of peace both within (Mousseau, 2012b) and between nations (Mousseau, 2013; see also Nieman, 2015). The only matter in controversy is whether democracy has any observable impact on peace between nations after consideration of contractualist economy. My investigation begins below with the allegation of measurement error.

### Court Legitimacy---1NC

#### Texas abortion decision terminally destroys legitimacy – the decision was BONKERS and totally undermined any illusion that the court cares about the rule of law

Sarat and Aftergut 9/6 – Austin Sarat is the William Nelson Cromwell Professor of Jurisprudence and Political Science at Amherst College. Dennis Aftergut is a former federal prosecutor who has successfully argued before the Supreme Court.

Austin Sarat and Dennis Aftergut, “Supreme Court trashed its own authority in a rush to gut Roe v. Wade,” *The Hill*, 6 September 2021, https://thehill.com/opinion/judiciary/570958-supreme-court-trashed-its-own-authority-in-a-rush-to-gut-roe-v-wade?rl=1.

But in addition to the harms to women’s rights in this law, the court’s Sept. 1 decision in Whole Women’s Health v. Jackson reveals something dangerous to lawful society writ large: the 5-4 ultra-partisan, conservative majority has, in its haste to gut Roe, eviscerated the rule of law it is supposed to stand for and diminished the court’s own authority. The decision adds fuel to the already strong arguments for reforming the Supreme Court and urgency to the work of President Biden’s Commission on the Supreme Court. It concedes, perhaps even celebrates, the fact that states, and individuals, can engage in legally questionable action and evade judicial scrutiny. By allowing Texas to flout Roe’s clear meaning, the court undermines an ordered society and may be paving the way for authoritarian rule. The decision is a radical departure from the institutional history of the Supreme Court, w hich previously has been marked by efforts to assert and preserve the court’s exclusive prerogative to “say what the law is.” That was the crux of Chief Justice John Marshall’s famous 1803 opinion in Marbury vs. Madison, the case that established the Supreme Court as the ultimate arbiter of the Constitution’s meaning. Over time, the court has jealously guarded its authority against those who have challenged it. It is the court’s right to have the last word on constitutional questions that has secured for it a central place in our system of government. As Supreme Court Justice Robert Jackson once explained, “We are not final because we are infallible. We are infallible only because we are final.” And the court has time and again insisted that everyone abide by its rulings no matter how much they might disagree with them. This was vividly demonstrated in the civil rights era during the middle of the last century when southern states refused to respect the court’s constitutional decisions and when demonstrators took to the streets to promote racial integration in defiance of court orders. The court responded by insisting to both sides: obey the laws first, and only then can you challenge our views of what the Constitution means. When Dr. Martin Luther King and other civil rights activists ignored an Alabama state court injunction in the belief that the order to desist from a planned protest was unconstitutional, the Supreme Court upheld their arrest and conviction. In his majority opinion in the 1967 case of Walker v. Birmingham, Supreme Court Justice Potter Stewart recognized the “substantial constitutional questions” that a challenge to that injunction would have raised. But he firmly rejected the marchers’ contention that they were free to ignore a law they believed to be unconstitutional and condemned their decision to take the law into their own hands: “This Court cannot hold that the petitioners were constitutionally free to ignore all the procedures of the law…. [I]n the fair administration of justice, no man can be [the] judge in his own case, however exalted his station, however righteous his motives, and irrespective of his race, color, politics, or religion.” And the U.S. Supreme Court has not been alone in that view nor has it been alone in striking down attempts by citizens or governments to disobey existing law. In 2004, the California Supreme Court invalidated then-San Francisco Mayor Gavin Newsom’s declaration that the city would marry same sex couples in defiance of an existing voter-approved law that declared “Marriage shall be restricted to a man and a woman.” Justice Sotomayor’s dissent in Whole Women’s Health makes precisely the same point about courts’ exclusive role in deciding on the law’s meaning. Calling the Texas anti-abortion law a “breathtaking act of defiance,” she labelled the court’s failure to act “stunning.” In her view, it “rewards tactics designed to avoid judicial review and inflicts significant harm on the applicants and on women seeking abortions in Texas.” Until last week, defense of the judiciary’s role in saying what the law is and insisting that others defer to its judgments has united conservative and liberal justices. But, in Whole Women’s Health, only one conservative, Chief Justice Roberts, joined with the court’s three liberal justices in standing up for such nonpartisan jurisprudential principles. His five conservative colleagues seem so eager to gut Roe that they are willing to disembowel the judiciary’s own authority. The risk of legal chaos from the Supreme Court’s inaction on Sept. 1 may soon be realized in a kind of Cold War between the states. Imagine blue states reacting to Whole Women’s Health with laws permitting private lawsuits against anti-vaxxers who help someone evade a business’s COVID vaccination mandate, or against owners of banned guns whose prohibition is the subject of federal court challenges. When the current conservative majority on the Supreme Court trashes its own authority to tilt the scales in the current culture wars, it endangers the liberty of all, no matter which side of the cultural wars they are on.

#### Stare decisis is dead – watershed exception, LWOP for minors, upcoming abortion case

Gass 21 “What Supreme Court’s jettisoning of precedent may mean for future” Henry Gass – Staff writer for CS Monitor, May 20, 2021, <https://www.csmonitor.com/USA/Justice/2021/0520/What-Supreme-Court-s-jettisoning-of-precedent-may-mean-for-future> [edited for acronym]

Earlier this week the conservative supermajority on the U.S. Supreme Court voted to scrap a legal rule that, while decades old, had never really been used.

On the surface it may not seem like a radical move – the judicial equivalent of canceling a gym membership you never use. The so-called watershed exception – that criminal rules don’t apply retroactively unless they represent a major procedural change – had never been applied in its 32-year history, Justice Brett Kavanaugh wrote in the court’s majority opinion.

But on closer examination, and in the context of other actions the court took this week, scrapping the watershed exception suggests that the court – in particular its conservative wing – has a more gung-ho attitude toward overturning precedent than in the past.

Respect for precedent is a founding principle of the U.S. legal system, and overturning it is one of the Supreme Court’s defining powers. In a 1932 dissent, Justice Louis Brandeis explained why the high court should, generally, respect past decisions: “In most matters,” he wrote, “it is more important that the applicable rule of law be settled than that it be settled right.”

In other words, following earlier rulings (i.e., precedent) is important even if you disagree with those earlier rulings. Past rulings should only be overturned if there’s “special justification.”

The legal doctrine the justices follow when reviewing precedent is known as stare decisis – taken from a Latin maxim “to stand by things decided and not disturb settled points.” The doctrine has no formal boundaries, so which “matters” fall outside the “most matters” described by Brandeis?

In recent decades, as conservative jurists – and judicial philosophies like originalism – have come to dominate the high court, how those justices interpret stare decisis has become the defining debate.

Justice Antonin Scalia helped entrench the originalist philosophy, which holds that the Constitution should be interpreted as the framers intended. He was also reluctant to overturn precedent, describing stare decisis as a “pragmatic exception” to originalism. Originalists on the court today, such as Justices Clarence Thomas and Amy Coney Barrett, have expressed much less reluctance, however.

“We are in the midst of a change in how Supreme Court justices treat established precedent,” says Kimberly West-Faulcon, a professor at Loyola Law School in Los Angeles, in an email.

Those views were on display this week, and with the court set to review a key abortion precedent next term, they will likely guide some of the court’s future rulings.

“A lot of wiggle room”

The stare decisis doctrine “is far from a model of clarity,” says Ilya Somin, a professor at George Mason University’s Antonin Scalia Law School.

“It leaves a lot of wiggle room” for any justice, he continues, “to overturn any precedent he or she thinks is badly wrong, and also so long as getting rid of it will not cause some kind of enormous harm in society.”

The court’s liberal justices have indulged this trend to a degree – casting important votes in recent years to overturn precedents regarding same-sex marriage and state laws criminalizing sodomy – but since they have been an ideological minority on the court for decades, they have not been as active as their conservative colleagues.

And how the court’s conservative justices view precedent does seem to be shifting. The fact that they abandoned the watershed exception this week despite the question never being asked or argued is one indicator. And their individual records provide further indications.

Justice Scalia famously said that Justice Thomas “does not believe in stare decisis, period.” And as of 2019, Justice Thomas had written more than 250 opinions seriously questioning precedent, according to Stephen Wasby, a professor of political science at the University at Albany.

But where Justice Thomas used to write these opinions alone, he is now finding support from several colleagues.

Justice Kavanaugh – who, having voted with the majority more than any other justice this term, is effectively the court’s ideological center – has shown a recent, expansive view toward overruling precedent. In addition to his opinion this week scrapping the watershed exception, earlier this term he wrote an opinion effectively overturning a 2016 ruling that barred [LWOP] life without parole sentences for nearly all juvenile offenders.

And as court watchers, and some of his colleagues, have noted, he has been overturning precedent with less clarity and consistency than Justice Thomas.

Meanwhile, the newest member of the court, Justice Barrett, wrote extensively on stare decisis while teaching law at the University of Notre Dame. The doctrine is a “soft rule,” she wrote in one article; “modern originalism” raised the possibility that “following precedent might sometimes be unlawful,” she wrote in another. In a third, she wrote that “rigid application” of stare decisis “raises due-process concerns and, on occasion, slides into unconstitutionality.”

When does precedent get overturned?

Beyond that, jettisoning the watershed exception illustrates “the court’s willingness to overrule [a precedent] rather than just leave it,” says Douglas Berman, a professor at the Ohio State University Moritz College of Law.

“The willingness of this court to embrace a shift in doctrine, even when they didn’t have to, that’s the key,” he adds.

Indeed, a core principle of overturning precedent is that the justices should first be asked to consider overturning a precedent. That is not something they were asked to address in their ruling this week in Edwards v. Vannoy.

The case instead asked the court if a decision it made last year – barring convictions from non-unanimous juries – applied retroactively. That practice, in Oregon and Louisiana, had roots in the Jim Crow era. For decades, when considering such a question the Supreme Court had followed a precedent holding that no new criminal rules would apply retroactively unless they constitute “watershed” new procedures.

In the 32 years since that exception was written, Justice Kavanaugh said in the majority opinion, “the Court has never found that any new procedural rule actually satisfies the purported exception.”

“No one can reasonably rely on an exception that is non-existent in practice,” he added. “The watershed exception must ‘be regarded as retaining no vitality.’”

Practically, the ruling this week means that hundreds of people convicted by non-unanimous juries in Louisiana and Oregon must serve the remainder of their sentences – even though the method of their conviction has been deemed unconstitutional.

The ruling broke along ideological divides, with Justice Kavanaugh joined by the court’s five other conservatives. Meanwhile Justice Elena Kagan, joined by the court’s two other liberals, criticized the abandonment of the exception in a dissent that struck at the heart of the court’s long-running debate about precedent.

The majority “discards precedent without a party requesting that action,” she wrote. “And it does so with barely a reason given, much less the ‘special justification’ our law demands.”

Justice Kagan wrote with some added authority because, as she pointed out in a footnote, she had dissented from the court’s ruling last year on non-unanimous jury verdicts “precisely because of its abandonment of stare decisis.”

But with that Ramos v. Louisiana ruling now law, she added, “I take the decision on its own terms, and give it all the consequence it deserves.”

The Supreme Court has, for the best part of a century, regularly overturned precedents – led by justices of all ideological stripes. But the theory underlying those decisions – that the court must be asked first, and that a special justification is needed – while admittedly open to some interpretation, has been applied with relative consistency.

The Edwards ruling is one indication of how that consistency is disappearing. And the court is now preparing, in the coming months and years, to review weightier precedents on issues like abortion rights, gun rights, and the nexus of LGBTQ rights and religious liberty.

# 1NR

#### 2---nuclear winter theory false

McDonald ‘19 (Samuel Miller McDonald is a writer and geography PhD student at University of Oxford studying the intersection of grassroots movements and energy transition; 1/4/19; “Deathly Salvation”; *The Trouble*; https://www.the-trouble.com/content/2019/1/4/deathly-salvation)

A devastating fact of climate collapse is that there may be a silver lining to the mushroom cloud. First, it should be noted that a nuclear exchange does not inevitably result in apocalyptic loss of life. Nuclear winter—the idea that firestorms would make the earth uninhabitable—is based on shaky science. There’s no reliable model that can determine how many megatons would decimate agriculture or make humans extinct. Nations have already detonated 2,476 nuclear devices. An exchange that shuts down the global economy but stops short of human extinction may be the only blade realistically likely to cut the carbon knot we’re trapped within. It would decimate existing infrastructures, providing an opportunity to build new energy infrastructure and intervene in the current investments and subsidies keeping fossil fuels alive. In the near term, emissions would almost certainly rise as militaries are some of the world’s largest emitters. Given what we know of human history, though, conflict may be the only way to build the mass social cohesion necessary for undertaking the kind of huge, collective action needed for global sequestration and energy transition. Like the 20th century’s world wars, a nuclear exchange could serve as an economic leveler. It could provide justification for nationalizing energy industries with the interest of shuttering fossil fuel plants and transitioning to renewables and, uh, nuclear energy. It could shock us into reimagining a less ~~suicidal~~ civilization, one that dethrones the death-cult zealots who are currently in power. And it may toss particulates into the atmosphere sufficient to block out some of the solar heat helping to drive global warming. Or it may have the opposite effects. Who knows? What we do know is that humans can survive and recover from war, probably even a nuclear one. Humans cannot recover from runaway climate change. Nuclear war is not an inevitable extinction event; six degrees of warming is.

#### 4---Warming causes extinction and turns all their impacts---it’s the most existential risk---this card answers everything

Dan Brook &, Richard H. Schwartz September 30, 2020 [Dan Brook, sociology PhD, Richard H. Schwart, PhD, September 30, 2020, "Climate change: An existential threat to humanity and how we can survive," 9-30-2020, https://www.jpost.com/jerusalem-report/climate-change-an-existential-threat-to-humanity-and-how-we-can-survive-643267, hec]

Climate change goes way beyond “an inconvenient truth.” We are overheating our planet to alarming levels with catastrophic consequences. According to NASA, “Nineteen of the 20 warmest years all have occurred since 2001, with the exception of 1998” and 2020 is on a sizzling pace to be one of the hottest years. Every decade since the 1970s has been hotter than the previous decade. Picture an overheated car (and what we drive), an overcooked dinner (and what we eat), and someone sick with a fever (and how we act). Now imagine that on a planetary scale. Our climate crisis is the biggest social, political economic and environmental problem facing our planet and its inhabitants, affecting every country and every species, mostly in negative ways. Climate change refers to the increasing average surface temperature of the Earth’s air and water, and its various environmental effects. People are becoming increasingly aware of, and concerned about, the climate crisis and its consequences, despite corporate misinformation and some media obfuscation, due to frequent reports regarding record heat, droughts, wildfires, an increase in the number and severity of storms and other extreme weather events, the melting of glaciers – about 80% of the world’s glaciers are rapidly shrinking – permafrost, and polar ice caps, as well as decreasing snow on Mt. Kilimanjaro and other tropical mountains, shrinking lakes, rising sea levels, flooding, submerged islands, changes in wind directions, acidification of the oceans, endangered species and extinctions, spreading diseases, environmental refugees, and other ominous signs of disaster. Greenhouse gas levels in the atmosphere continue to rise and there are fears of “tipping points” from which we could not come back. Climatologists have asserted that concentrations of 350 parts per million (ppm) of atmospheric CO2 is a threshold level of atmospheric carbon dioxide, which had hovered below 285 ppm for thousands of years prior to the Industrial Revolution, yet surpassed 418 ppm on June 1, 2020, the highest value in human history, indeed the highest level in about three million years. As Jerry Brown, the former governor of California, a state subjected to many severe climate events, commented, “Humanity is on a collision course with nature,”calling this era “the new abnormal,” and warning that various environmental disasters will only “intensify” over the coming years. “Right now, we are facing a \*person\*~~man~~-made disaster of global scale,” says David Attenborough. “Our greatest threat in thousands of years. Climate change. If we don’t take action, the collapse of our civilizations and the extinction of much of the natural world is on the horizon.” Global climate change is also endangering polar bears, penguins, seals, walruses, salmon, elephants, giraffes, frogs, butterflies, birds, bees and many other animals, threatening up to one-third of all fauna species. In contrast, increases in carbon dioxide and heat levels will lead to an increase in the number and range of mosquitoes, further spreading discomfort and disease. Additionally, there is an increase in food insecurity, terrorism, ethnic violence and war, according to various militaries and intelligence agencies, especially in Central America, South Asia, Africa, and the Middle East, including Syria. In December 2019, World Meteorological Organization secretary-general Petteri Taalas lamented that we will witness “ever more harmful impacts on human well being” if we do not substantially reverse course. In August 2010, an “ice island” four times the size of Manhattan calved from the Petermann Glacier in Greenland into the sea (in addition, the Ayles Ice Shelf calved entirely in August 2005 and the Markham Ice Shelf broke up in 2008, to mention just a couple of other such alarming events). Recent years have marked the “historic minimum” of Arctic Sea ice. “Such a path is not merely unsustainable,” according to Harvard Prof. John P. Holdren, former president of the American Association for the Advancement of Science, “it is a prescription for disaster.” Yet, a 2019 UN report wrote that, despite many nations’ pledges to reduce them, greenhouse gases are still rising perilously, growing an average of 1.5% per year in the past 10 years. On June 20, 2020, the temperature in the Arctic Circle soared to 100.4º Fahrenheit (38ºC) for the first time in recorded history, hotter than any June day ever recorded in Miami, Florida, while it was snowing in other parts of Siberia. Houston, Texas, has been ravaged by five “500-year storms” in the last five years. Something projected to happen only once in half a millennium happened five times in a row. None of this is normal. These and various other extreme weather events and other eco-spasms have become more frequent, more intense, and are projected to multiply with dire consequences for the world. Tragically, new records are being set each year. Humanity is threatened as never before and major changes need to occur to put our imperiled planet onto a sustainable path – and as soon as possible. Even though a small number of individuals still deny the reality of climate change, there is strong scientific and environmental consensus across a wide range of disciplines that climate change is real, serious, worsening, and caused by human activity (anthropogenic) among all major scientific and environmental organizations, journals, magazines, and museums, and nearly all peer-reviewed scholarly articles, in addition to all reputable colleges and universities and most governments and large corporations. The evidence is overwhelming and continuing to pile up. A further indication of how serious climate threats are is that in the two weeks prior to the final submission of this article, the following occurred: Israel experienced a major, long-lasting heat wave, with temperature records broken in many cities; California and several other US western states experienced massive wildfires along with some record temperatures; the Koreas were struck by two severe typhoons; the US state of Louisiana was hit by a category four hurricane; there were reports that melting of ice in Greenland had passed a point of no return and that rapid melting of Arctic permafrost is releasing ’shocking amounts of dangerous gases.” This is truly an Earth emergency and earthlings are standing at a global precipice. The 2019 Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report on global warming was written by about 100 climate scientists from 40 countries, based on 6,981 scientific studies and over 42,000 expert and governmental comments. The IPCC has 195 member states. The report carefully delineates clear trends and potentially catastrophic consequences associated with climate change, warning of irreversible change, unless we very soon make radical and unprecedented efforts to counter global warming. According to the United Nations Foundation, “Overall, it is expected that every degree of warming will likely reduce crop yields, productivity and livestock production globally, while food demand continues to rise. And even worse, hunger and water crises – either caused or exacerbated by climate change – may generate ripple effects across society, leading to poverty, conflict, and migration.” “One action that the IPCC recommends,” it continues, “is to change what’s on our plates: swap out meat for more plant-based foods. While we need collective policy changes, individual actions do add up and send an important message to leaders.” Acting conservatively, the IPCC makes it plain that the current and projected climate change is not simply “natural variation” or “solar activity,” and certainly not a “Chinese hoax,” but “extremely likely” (meaning 95%-100% confidence) the result of human activity. The case is closed on the problem of anthropogenic climate change, with only the extent, mitigations, and solutions to still debate. It therefore should not be surprising that the US Pentagon states that global warming is a larger threat than even terrorism. “Picture Japan, suffering from flooding along its coastal cities and contamination of its fresh water supply, eyeing Russia’s Sakhalin Island oil and gas reserves as an energy source,” suggests a Pentagon memo on global warming. “Envision Pakistan, India and China – all armed with nuclear weapons – skirmishing at their borders over refugees, access to shared river and arable land.” The former secretary-general of the UN, Ban Ki-moon, has said that climate change needs to be taken as seriously as war and, further, that “changes in our environment and the resulting upheavals from droughts to inundated coastal areas to loss of arable land are likely to become a major driver of war and conflict.” Fighting global climate change may be one way to prevent future wars and genocides, simultaneously increasing energy security and physical security. There are additional causes for concern. The people disproportionately affected by climate chaos are the poor and socially disadvantaged, since they are in the weakest position to guard against environmental damages and will likely suffer the most harm. In the underdeveloped world, and perhaps especially in China, India and Southeast Asia, as well as much of Africa, the Middle East and Latin America, climate change is negatively affecting urban drinking water systems, agricultural output, and commercial and other transport on rivers. Further, increased suffering and increasing numbers of environmental refugees, along with greater anxiety over access to food, water, land, and housing – the material essentials of life – often lead to unstable conditions that give rise to anger, ethnic violence, gangs, terrorism, fascism, and war. “It’s the poorest of the poor in the world, and this includes poor people even in prosperous societies, who are going to be the worst hit,” states former IPCC Chair Rajendra Pachauri. Those who needlessly degrade and destroy the environment to satisfy their own selfish pleasures are like the pre-revolutionary Queen Marie Antoinette, declaring, “Let them eat carbon dioxide!” Israel is especially threatened by climate change. The coastal plain, where much of Israel’s population and infrastructure are located, could be inundated by a rising Mediterranean Sea. Climate experts project that the Middle East as a whole will become significantly hotter and drier, and military experts believe that this makes instability, terrorism, ethnic violence, and war more likely. The gravity of the climate threats to Israel was captured in the December 4, 2019 headline in The Jerusalem Post: “Hot and dry: Climate report spells disaster.” Don’t we want our children, grandchildren, and future generations to not only survive, but to thrive? To have a world that is at least as good, and hopefully better, than the one we do? Yes, we need our governments, corporations, schools, religious institutions, and other organizations to get actively involved in fighting climate change. Yes, we need to stop deforestation and increase reforestation. Yes, we need more resource conservation and more energy-efficient vehicles, appliances, electronics, batteries, and light bulbs. And, yes, our society needs to switch away from dirty and dangerous fossil fuels and toward renewable energy, such as solar, wind, tidal, wave, biomass, hydrogen, geothermal, algae and others. But while we are struggling for these important and positive large-scale social changes, we also need to say “yes!” to personal changes.

#### 5---It outweighs---we’d survive nuke war

Denkenberger, et al, 17—Tennessee State University, Global Catastrophic Risk Institute (David, with D. Dorothea Cole, Mohamed Abdelkhaliq, Michael Griswold, Allen B. Hundley, and Joshua M. Pearce, “Feeding Everyone if the Sun is Obscured and Industry is ~~Disabled~~ [Shut Down],” International Journal of Disaster Risk Reduction 21, (2017), 284–290, dml)

A number of catastrophes could block the sun, including asteroid/comet impact, super volcanic eruption, and nuclear war with the burning of cities (nuclear winter). The problem of feeding 7 billion people would arise (the food problem is more severe than other problems associated with these catastrophes). Previous work has shown this is possible converting stored biomass to food if industry is present. A number of risks could destroy electricity globally, including a series of high-altitude electromagnetic pulses (HEMPs) caused by nuclear weapons, an extreme solar storm, and a super computer virus. Since industry depends on electricity, it is likely there would be a collapse of the functioning of industry and machines. Additional previous work has shown that it is technically feasible to feed everyone given the loss of industry without the loss of the sun. It is possible that one of these sun-blocking scenarios could occur near in time to one of these industry-disabling scenarios. This study analyzes food sources in these combined catastrophe scenarios. Food sources include extracting edible calories from killed leaves, growing mushrooms on leaves and dead trees, and feeding the residue to cellulose-digesting animals such as cattle and rabbits. Since the sun is unlikely to be completely blocked, fishing and growing ultraviolet (UV) and cold-tolerant crops in the tropics could be possible. The results of this study show these solutions could enable the feeding of everyone given minimal preparation, and this preparation should be a high priority now.

#### PC is key to reconciliation---it’s laser-thin but will pass now

Elliot 9-16 (PHILIP ELLIOTT, Staff writer @ Times, Democrats Face a Grueling Two Weeks as Infighting Erupts Over Infrastructure, <https://time.com/6098810/house-democrats-reconciliation/>, y2k)

House Democrats yesterday finished penning a 2,600-page bill that finally outlines the specifics of their ambitious “soft” infrastructure plan that won’t attract a single Republican vote. But no one was really rushing to Schneider’s for bottles of bubbly. For a party ready to spend $3.5 trillion to fund its social policy agenda, there were plenty of glum faces on Capitol Hill. In fact, one key piece of the legislation—a deal that would finally let Medicare negotiate lower prices with drug companies—fell apart in the Energy and Commerce Committee when three Democrats voted against it. It found resurrection a short time later when Leadership aides literally plucked it from the Energy and Commerce team and delivered it to the Ways and Means Committee for its approval instead. Even there, though, one Democrat voted against it, saying the threat it posed to pharmaceutical companies’ profits would doom it in the Senate. “Every moment we spend debating provisions that will never become law is a moment wasted and will delay much-needed assistance to the American people,” Rep. Stephanie Murphy of Florida later argued. Put another way? Brace for some nasty politics over the next two weeks as House Speaker Nancy Pelosi tries to get this bill to a vote before the budget year ends on Sept. 30. And those 2,600 pages had better be recyclable. Democrats can only afford three defectors if they want to usher this bill into law, and they’re perilously close to failure. So far, five centrist Democrats in the House have said they prefer a scaled-back version of the Medicare component. But if Pelosi gives the five centrists that win, she risks losing the support of progressives who are already sour that things like a punitive wealth tax and the end to tax loopholes aren’t present in the current version of the bill. As it stands now, letting Medicare negotiate drug prices would save the government about $500 billion over the next decade. The scaled-back version doesn’t have an official cost, but a very similar version got its score in the Senate last year: roughly $100 billion in savings. Because Democrats are using a budgeting loophole to help them avoid a filibuster and pass this with bare majorities, that $400 billion gap matters a lot more than on most bills. Scaling back the Medicare savings means they would also have to scale back their overall spending on the bill—a big line in the sand for progressives who say they’ve already compromised too much. All of this, of course, comes as President Joe Biden and his top aides in the White House have been trying to get Senate centrists onboard. Just yesterday, he met separately with Sens. Kyrsten Sinema and Joe Manchin, fellow Democrats who have expressed worries about the $3.5 trillion price tag but have been vague about what exactly they want to cut back on. With the Senate evenly divided at 50-50, and Vice President Kamala Harris in position to break the ties to Democrats’ victories, any shenanigans from those two independent thinkers scrambles the whole package. Oh, and that other bipartisan infrastructure plan that carries $550 billion in new spending? It’s still sitting on the shelf in the House. Pelosi said she’d bring it to the floor only when the bigger—and entirely partisan—bill was ready. And there’s plenty of grumbling about that package, too. If this is all beginning to sound like a scratched record that keeps repeating, it’s because this has become something of a pattern here in Washington. Things look pretty grim for legislation in town these days, despite Democrats controlling the House, the Senate and the White House. Their margin for error is literally zero, and so hiccups from a half-dozen centrists can forewarn a doomed agenda. So far, Pelosi has been a master of holding the line on crucial votes and has managed to maneuver her team to victories, including on an earlier pandemic relief package that passed with only Democratic votes. Now she’s trying again, but the clock is ticking, and $3.5 trillion is an eye-popping sum of money that rivals the spending the United States unleashed to close out World War II.

#### Both sides will make minor concessions---that’s sufficient

Kevin Liptak et al, Jeff Zeleny and Phil Mattingly, 9-18 [Kevin Liptak, Jeff Zeleny and Phil Mattingly, Cnn, "How Biden hopes to recapture his momentum after a week of unexpected setbacks," CNN, 9-18-2021, https://www.cnn.com/2021/09/18/politics/joe-biden-political-momentum/index.html, hec]

This week, before leaving for his vacation home in Rehoboth Beach, Biden began meeting in-person with moderate Democratic Sens. Kyrsten Sinema of Arizona and Joe Manchin of West Virginia, hearing out their concerns about the amount of spending. With Manchin, he listened patiently to a proposal that would more than halve the size of the final bill. Biden has not endorsed that plan, but also hasn't yet had luck in convincing the skeptical Democrat to come along with his. In public, Biden has begun signaling the final bill could come in below $3.5 trillion, the figure proposed in an initial blueprint. White House officials acknowledge that's a near certainty at this point in order to secure the votes of Manchin and Sinema. The ever-present balancing act between moderates and progressives has become even more acute as a result. But Biden is pressuring Democrats to avoid stripping out what he believes will prove to be the bill's most salient selling points.

#### Timing is everything---delays risk package failure---it’s the top priority and the House vote is Sept 27

David Morgan 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.

#### Biden’s personally holding the deal together

Christina Wilkie 9-16, White House Reporter at CNBC, Political Reporter at The Huffington Post, “His Economic Agenda on the Line, Biden Prepares to Fight for Tax Increases on the Wealthy”, CNBC, 9/16/2021, https://www.cnbc.com/2021/09/16/biden-prepares-to-fight-for-tax-increases-on-wealthy-families-corporations.html

Central to this mammoth effort will be Biden himself, both as the leader of his party and as a skilled congressional negotiator in his own right.

Any doubt about how involved the president intends to be in the nitty gritty of the legislative battle were put to rest on Wednesday, when Biden hosted separate private meetings at the White House with the Senate’s two most centrist Democrats, Arizona Sen. Krysten Sinema and West Virginia Sen. Joe Manchin.

Both Manchin and Sinema have both expressed skepticism about the size and scope of the social safety net bill. Specifically, Sinema has questioned the size of the bill and Manchin has expressed concerns over some of the tax hikes.

Biden was set to continue his outreach on Thursday, holding phone calls with Senate Majority Leader Chuck Schumer and House Speaker Nancy Pelosi.

Not a done deal

Biden will need the vote of every Democratic senator in order to pass the bill along party lines through the 50-50 split Senate, with a tie-breaking vote cast by Vice President Kamala Harris.

One factor working in Biden’s favor so far is public opinion. Americans by-and-large support raising taxes on the wealthy and corporations in order to fund infrastructure and expand benefits for working families.

#### And he is super confident

Bose 9-16 (Nandita Bose, Biden expects Congress to approve spending, infrastructure bills, <https://www.reuters.com/world/us/biden-says-he-expects-congress-deliver-spending-infrastructure-bills-2021-09-16/>, y2k)

U.S. President Joe Biden on Thursday expressed confidence that Congress will pass both a bill funding infrastructure investments and a supplementary spending bill as Democrats seek to infuse trillions of dollars into the U.S. economy.

#### 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.

#### Infrastructure will pass but PC’s key

Matt Reese 9-14, Columnist for Ohio’s Country Journal, BA from Ohio State University, and Dale Minyo, General Manager for Ag Net Communications, LLC, Farm Broadcaster for the Ohio Ag Net, BA from Ohio State University, “Infrastructure Bill Moving Forward”, Ohio’s Country Journal, 9/14/2021, https://ocj.com/2021/09/infrastructure-bill-moving-forward/

From the local bridge just around the corner to the locks and dams on the nation’s river system, agricultural viability depends heavily on infrastructure. After months of across-the-aisle negotiations, the Senate voted to pass the bipartisan infrastructure package (H.R. 3684) in August.

“This is a very notable move forward. It passed through the Senate with a very bi-partisan vote of 69-30, 19 Republican Senators voted for the legislation. Early on this year, the topic of infrastructure was really expansive. There were a lot of things being discussed that really don’t have a lot to do with what most Americans regard as infrastructure. It has tightened up and we think that is a good thing,” said Mike Steenhoek, executive director of the Soy Transportation Coalition. “We appreciate there are a number of categories within this legislation that, if they come to fruition, would be beneficial to agriculture. There is funding directed at roads and bridges, many in rural areas. There is some funding for our inland waterways and ports. For an industry like soybeans, we rely on robust exports and we have got to have the multi-modal transportation system that can connect our supply with that demand. We think there are some very favorable things in this legislation.”

With Senate passage, attention now shifts to the House on this legislation.

“Very little proceeds on time in Washington, D.C., but it is moving forward. The big question is: does the House adhere to Speaker Pelosi’s stated desire that this bill only gets passed if that $3.5 trillion reconciliation package which involves much more social spending also gets passed? There is still a lot of uncertainty related to this. Clearly there are Democrats and Republicans who support this legislation and it is clearly a priority of the president. It is a big bill. Hopefully it won’t get polluted by some of these more controversial topics.”

If the infrastructure package does get passed, it will hopefully build on existing progress.

“This bill would amplify what is already happening. We have a 5-year Highway Bill that was passed in 2015 and is scheduled to be re-authorized this year,” Steenhoek said. “Last year we had the Water Resources Development Act that paved the way for more funding for the inland waterway system. This is not our only shot for moving the needle on infrastructure. Things are getting done. You could argue that more needs to be done and that is what this bill aspires to do.”

Along with the big picture infrastructure items, there are also some smaller provisions in the legislation that could benefit agriculture, including support for biobased products.

“There is a provision that calls attention to biobased products that have infrastructure implications,” Steenhoek said.“Soy-based asphalt sealants and soy-based concrete sealants that are made largely from soil oil are a sustainable way to elongate the life of roads and bridges and provide another market opportunity for soybeans.”

There is plenty to watch as this continues to move forward.

“This is not a perfect piece of legislation, but we do think when you look at the links in the supply chain that are important to farmers, there are certain investment levels and actions that will improve the supply chain. Overall we look at this legislation favorably,” Steenhoek said. “I think there is a good chance that this does get passed, but as the days progress toward an election year, then the probability of anything getting passed goes down.”

#### It’s a question of PC---it’ll convince Manchin to vote yes---their evidence just quotes him---prefer analysis of his voting record from White House officials

Andrew Solender 9-5 [Andrew Solender, Senior Forbes News Reporter covering Politics, "White House Says Manchin ‘Very Persuadable’ On $3.5 Trillion Budget Bill As Colleague Says He Always ‘Gets To The Right Place’," Forbes, https://www.forbes.com/sites/andrewsolender/2021/09/05/white-house-says-manchin-very-persuadable-on-35-trillion-budget-bill-as-colleague-says-he-always-gets-to-the-right-place/?sh=443a65b72052, hec]

Sen. Joe Manchin (D-W.Va.) is likely to vote for a $3.5 trillion spending package in the end despite his current opposition to its price tag – that’s according to a top White House official and a Senate colleague who place his latest comments within a predictable cycle that ends with him lining up with Democrats. White House chief of staff Ron Klain said in a CNN interview on Sunday that Manchin is “very persuadable,” and that his concerns about the rising debt and inflation can be addressed through the package’s tax hikes on wealthier Americans. Klain also shrugged off the notion Manchin’s rejection of the $3.5 trillion price tag dooms the bill, telling host Dana Bash that if he had a nickel for every time someone told him the package was dead, “I would be a very, very rich person.” Manchin’s stated opposition to the package, which is expected to include spending on social programs including Medicare expansion, universal pre-K and other longtime liberal priorities, is that it will overheat an already fast-growing economy and doesn’t take into account issues like debt and inflation. Sen. Amy Klobuchar (D-Minn.) said on CNN that Manchin has “many times, been willing to get to a place that’s the right place to be,” noting that he voted to pass Democrats’ $1.9 trillion stimulus bill along party lines in March despite his initial opposition. Klobuchar added that she was “not surprised” by Manchin voicing his opposition to the spending package because “this was going to be a tough negotiation,” but reiterated he “gets to the right place.”

#### He’s walking a fine line---doesn’t want to vote on two big-ticket progressive items when his approval rating is slipping in an election year

Darragh Roche 9-8 [Darragh Roche, Newsweek, "Joe Manchin's approval rating drops as senator rebuffs infrastructure bill," Newsweek, 9-8-2021, https://www.newsweek.com/joe-manchin-approval-rating-drops-senator-rebuffs-infrastructure-bill-1626963, hec]

Senator Joe Manchin (D-WV) has suffered a decline in his approval rating among voters in his home state, according to the figures in the latest WV MetroNews West Virginia Poll. Manchin now enjoys 42 percent approval in West Virginia, compared with 37 percent of respondents who disapprove. This is a notable change compared with results in the same poll in October, 2020. The poll comes as Democrats in the House and Senate are pushing ahead with President Joe Biden's $3.5 trillion infrastructure proposal, though Manchin has indicated he will not support that amount of spending. The last WV MetroNews West Virginia Poll in October showed the Democratic senator with 44 percent approval from likely voters and 44 percent disapproval, meaning both his approval and disapproval have declined. A key figure here is poll respondents who said they were unsure whether they approved of Manchin. In October 2020, that figure was 13 percent but in the latest polling it had risen to 21 percent. Manchin has seen a relatively steady decline in his approval rating since a WV MetroNews West Virginia Poll in 2019 found that he had 49 percent approval. He was reelected to the Senate in 2018 and will face voters again in 2024 if he chooses to run. The senator, who is considered a moderate or conservative Democrat, has been a key powerbroker in the evenly divided Senate as the slim Democratic majority has pressed ahead with its legislative agenda. The Democrats aim to pass the bill through the budget reconciliation process, which would allow them to circumvent the Senate filibuster and Republican opposition. However, this will not be possible without Manchin's support. The recent poll was conducted among 400 registered West Virginia voters from August 20 to 25. This period was after Manchin had publicly come against Democrats' major voting rights legislation, the For the People Act. Rex Repass, president of Research America, which conducted the poll for WV MetroNews, noted the decline in Manchin's approval rating since the last poll. "There's no question Senator Manchin is walking a tightwire between the state and the constituents in his state, and the greater Democratic Party in Washington," Repass said.

#### Biden is pushing economic policies to ensure his agenda---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.

#### Biden’s not wasting PC on the debt ceiling---he’s sitting back and calling Republicans’ bluff

Barron-Lopez 9-9 Laura Barron-Lopez and Christopher Cadelago (staff writers). “Biden wants to force Republicans to vote on the debt ceiling, sensing they’ll cave.” Politico. September 9, 2021, <https://www.politico.com/news/2021/09/09/biden-mcconnell-debt-limit-threats-510922>

President Joe Biden is treating the latest Republican threats over the debt limit like a bluff. And the entire party, from congressional Democratic leadership to the top brass at the Treasury Department, is calling them on it. Multiple Democratic sources on the Hill and with knowledge of the White House’s thinking said the administration wants to include a suspension of the debt limit — a legal cap on how much the U.S. can borrow — in a continuing resolution to fund the government. Such a bill, which Congress is expected to consider as early as this month, would require 60 votes to pass in the Senate, meaning at least 10 Republicans would need to vote to advance the measure. To challenge those Republicans, Biden is also calling on Congress to include funding for hurricane relief in the bill, and Democratic leadership has continued to shoot down questions about possible alternative legislative vehicles in recent conversations with members and close allies. Including a debt limit increase in Democrats’ pending party-line reconciliation package, for example, is one option. But the White House and Democratic leaders are not entertaining it at present. “They're right at the moment to say, 'We're working on Plan A,'” said a lobbyist with knowledge of the party’s strategy. “The minute you start to signal that that doesn't work then you're signaling weakness.” The posture from the president on down is setting up a **game of chicken** with incredibly high stakes — if a vote to suspend or increase the debt limit fails, the U.S. [economy will likely crater](https://www.politico.com/news/2021/09/08/yellen-october-debt-cliff-congress-510442). Treasury officials have said lawmakers will have until an unspecified date next month before the department runs out of ways to prevent a default. The debt limit is the foundation of the “full faith and credit” of the country’s currency and bonds. If it isn’t raised or suspended, the U.S. defaults on its bond investors, its credit rating could tank and, in turn, the government could be forced to scale back on Medicare benefits, Social Security checks and other programs. The belief in the White House is that **a mix of pressure** — from business leaders expressing urgency to fears of a full blown financial crisis — will be most acute on Republicans as the deadline nears. After voting for years to suspend or increase the debt limit with Democrats — a routine step required by law — GOP lawmakers in recent history have used the threat of default to score political points when a Democratic president is in charge. Learning from his former boss, President Barack **Obama — who vowed not to negotiate over the debt ceiling** after doing it once — Biden is essentially daring Republicans to vote down a debt limit suspension or increase. Since Republicans led by Senate Minority Leader Mitch McConnell announced publicly that his party members wouldn’t support an increase in the debt limit, the **Biden administration has not had any additional talks with him** on the issue. McConnell’s office pointed to the senator’s past comments on the debt ceiling but did not address whether the two sides had talked. A White House official said the administration is largely **deferring to congressional leaders** on the procedural aspects of how to pursue a debt limit increase or suspension. Whether Democrats are pursuing a long- or short-term increase remains unclear. In public and private conversations and briefings with Hill aides, the White House has two main positions: Don’t negotiate with Republicans over what should be a routine vote and clearly message that the debt limit addresses past, not future, spending, seeking to avoid confusion and rebuff GOP attacks over a complex topic. “The debt limit is a function of bills that Congress has already passed, already wrapped up,” said Brian Deese, director of the White House National Economic Council. “Even if Congress took no future action ever, did nothing else in the future, Congress would have to raise or suspend the debt limit because it’s a reflection of actions already taken.”

#### Moderates will pass it now to show support for the middle class---Bidens’ PC is working---prefer inside sources

Christian Datoc 9-17 [Yahoo News, "Biden tells reconciliation bill holdouts they can either side with him or against the middle class, 9-17-2021, https://www.yahoo.com/now/biden-tells-reconciliation-bill-holdouts-103000013.html, hec]

President Joe Biden unveiled a negotiating strategy Thursday to galvanize support among Democratic holdouts for his multitrillion-dollar budget reconciliation proposal. White House officials told the Washington Examiner the new strategy would present the vote as a fork in the road: Members can either protect the current economic status quo or extend a hand to the middle class. One official added the president's spending agenda, nearly $3 trillion of which would be funded by raising taxes on corporations and the wealthy, is not about penalizing the rich but lowering "the cost of raising a child, of prescription drugs, of taking care of an aging parent, of healthcare, of high-speed internet, and of hearing aids." HERE'S WHAT'S IN HOUSE DEMOCRATS' MULTITRILLION-DOLLAR SOCIAL SAFETY NET PACKAGE Biden's new framing comes as centrist Democrats, including Arizona Sen. Kyrsten Sinema and West Virginia Sen. Joe Manchin, continue to voice concerns over the full scope of the "Build Back Better" package that currently totals $3.5 trillion, in addition to the $1.2 trillion bipartisan infrastructure package. "I believe we are at an inflection point in this country. One of those moments where the decisions we’re about to make can change — literally change — the trajectory of our nation for years and possibly decades to come," the president said during a speech at the White House. "Each inflection point in this nation’s history represents a fundamental choice. I believe that America at this moment is facing such a choice, and the choice is this: Are we going to continue with an economy where the overwhelming share of the benefits go to big corporations and the very wealthy, or are we going to take this moment right now to set this country on a new path? One that invests in this nation, creates real sustained economic growth, and that benefits everyone, including working people and middle-class folks? That’s something we haven’t realized in this country for decades." "This is an opportunity to be the nation that we know we can be, a nation where all of us — all of us, not just those at the top — are getting a share of the benefits of a growing economy in the years ahead," he concluded. "Let’s not squander this moment trying to preserve an economy that hasn’t worked too well for Americans for a long time. Let’s not look backward just trying to rebuild what we had. Let’s look forward together as one America, not to build back but to build back better." Assuming no Republicans vote "yay" on budget reconciliation, Biden will need all 50 Democratic votes to send the bill to his desk. Administration officials confirmed the president's Wednesday meetings with both Manchin and Sinema were to discuss a "path forward" on the $3.5 trillion package. "Today's meeting was productive, and Kyrsten is continuing to work in good faith with her colleagues and President Biden as this legislation develops," a spokesman for Sinema's office said Wednesday evening.

#### His 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.

#### That has a cascading effect on Biden’s agenda AND takes out enforcement for the aff because there will be no political will to ensure controversial policies aren’t circumvented

#### Dems not focusing on anti-trust now---no thumper AND it requires significant PC---we control link UQ

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]

#### Empirically---it causes intra-party fights

Scher 7-19 (Bill Scher, the host of the history podcast "When America Worked" and the co-host of bipartisan online show and podcast, A Short History of Democrats and Antitrust

Biden’s war against corporate gigantism is good policy and better politics. <https://washingtonmonthly.com/2021/07/19/a-short-history-of-democrats-and-antitrust/>, y2k)

Biden’s revival of antitrust isn’t just good policy; it’s also good politics. That’s because it can bridge ideological tensions between the party’s younger left flank and its older centrists. Antitrust has appeal to both factions. Talk of restoring competition may upset a handful of giant corporations, but not the wider swath of smaller businesses and entrepreneurs. Socialists may not love capitalism but it’s hard to see them getting too mad at moderate Democrats who draw real corporate blood in the name of repairing capitalism. Yet intra-party tensions remain. During a recent Congressional Progressive Caucus conference call, a heated dispute broke out as Congresswoman Zoe Lofgren criticized the authors of aggressive antitrust legislation for hasty work, and Congressman David Cicilline accused Lofgren of shilling for Silicon Valley. If Biden is to succeed where his predecessors fell short, he will need to be mindful of his party’s history.