# R1 Harvard Disclosure

# 1NC

## Off

### 1NC---T

Topicality---

#### They violate almost every word in the resolution:

1. **“Increase” means to make greater.**

**Ortega 07** – Judge, Oregon Appeals Court, Oregon Supreme Court

Darleen Ortega, Papas v. Or. Liquor Control Comm'n, 213 Ore. App. 369, Court of Appeals of Oregon, June 2007, LexisNexis

We begin with whether OLCC's interpretation of the rule, as developed and applied in this case, is consistent with the rule's text. Certainly, OLCC's understanding that the rule applies to "competitions" is consistent with the rule's use of the term "contest." See Webster's Third New Int'l Dictionary 492 (unabridged ed 2002) (defining the noun "contest" as a "competition"). However, by its terms, the rule refers and applies to specific types of drinking contests: as pertinent here, ones that involve "increase[d] consumption \* \* \* in increased quantities" of alcoholic beverages. OLCC's interpretation and application in this case fail to account for that qualification or to yield any pertinent point of reference in that regard; that is, nothing in OLCC's interpretation or application of the rule here identifies the consumption or quantities **against which the required** "**increase**" **is to be**, or was, **measured**. See Webster's at 1145 (defining the transitive verb "**increase**" as "**to make greater** in some respect (as in bulk, quantity, extent, value, or amount) : **add to** : enhance" and defining the adjective "increased" as "made or become greater"). Thus, OLCC's proposed interpretation--that mere competition between participants constitutes conduct violating the rule--is inconsistent with the latter, qualifying aspects of the rule

#### “Prohibition” requires completely ending a practice

Feldman 86 – Member of Procopio's Native American Law practice

Glenn M. Feldman, On Appeal from the United States Court of Appeals for the Ninth Circuit, California v. Cabazon Band of Mission Indians, 1986 U.S. S. Ct. Briefs LEXIS 1221, Supreme Court of the United States, 1986, LexisNexis

In arguing that California's bingo laws are prohibitory rat ther than regulatory, the appeallants have simply misunderstood the fundamental distinction between "prohibition" and "regulation" of conduct. As succinctly put by the Supreme Court of Washington more than 50 years ago, after noting that the prohibition and regulation of the sale of liquor are entirely different things: "To prohibit the liquor traffic implies the putting a stop to its sale as a beverage, to end it fully, completely, and indefinitely." In contrast, regulation "implies that the sale of intoxicating liquor shall go on within the bounds of certain prescribed rules, restrictions, and limitations." Ajax v. Gregory, 32 P.2d 560, 563 (Wash. 1934). Because regulation of conduct involves prescribing limitations, regulation, by definition, necessarily involves some degree of prohibition. Blumenthal v. City of Cheyenne, 186 P.2d 556, 566 (Wyo. 1947). The two concepts, however, are analytically distinct. Therefore, when courts have been faced with statutory schemes similar to California's bingo laws, they have consistently held them to be regulatory and not prohibitory.

#### “Expand the scope” means broadening the range of claims that can be brought---the plan regulates, but doesn’t expand conduct illegal under Sherman

Barrera 96 – J.D., Wayne State University Law School

Lise A. Barrera, “Is the Courtroom the New Front for the Resolution of Publishing Disputes?,” The Wayne Law Review, Vol. 42, Summer 1996, LexisNexis

It is important to note the distinction between the expansion of the scope of section 43(a) and the standard that courts apply in granting relief to claims under this section. The scope of section 43(a) allows plaintiffs to claim the section provides them with protection and thus should grant them relief. The expansion of the scope allows a much broader range of claims to be brought legitimately under section 43(a). Once the scope of the statute allows the claim to be brought, the courts apply a standard to the claim in order to determine whether a plaintiff should be granted relief.22 The standard applied is also the product of years of judicial interpretation. While the scope of section 43(a) is expanding, however, the standard for relief seems to be becoming higher and harder to meet.

#### “At least” means at a minimum.

**Macmillan ND**, "AT LEAST (phrase) American English definition and synonyms”, https://www.macmillandictionary.com/us/dictionary/american/at-least

at least

PHRASE

DEFINITIONS4

not less than a particular amount or number, and possibly more

Mr. Gray will remain the director for three years at least.

The disease killed at least 120 people in New England last year.

We are expecting to at least double our money.

at the very least (=not less than and probably much more than): The trip will take a year, at the very least.

at the least: You should walk 30 minutes every day, at the least.

#### “Core antitrust laws” are Sherman and Clayton

The Antitrust Division 07 – Law enforcement agency that enforces the U.S. antitrust laws

“Antitrust Division Statement Regarding the Release of the Antitrust Modernization Commission Report,” The Antitrust Division, Department of Justice, April 2007, https://www.justice.gov/archive/atr/public/press\_releases/2007/222344.htm

The AMC has made many specific recommendations in its report, and the Division is in the process of reviewing all of them. The Division commends the AMC for its three primary conclusions:

Free-market competition should remain the touchstone of United States' economic policy. The Commission's conclusion in this regard is a fundamental starting point for policy makers. Over a century of experience has shown that robust competition among businesses, each striving to be increasingly successful, leads to better quality products and services, lower prices, and higher levels of innovation.

The core antitrust laws—Sherman Act sections 1 and 2 and Clayton Act section 7—and their application by the courts and federal enforcement agencies are sound and appropriately safeguard the competitiveness of the U.S. economy.

New or different rules are not needed for industries in which innovation, intellectual property, and technological innovation are central features. Unlike some other areas of the law, the core antitrust laws are general in nature and have been applied to many different industries to protect free-market competition successfully over a long period of time despite changes in the economy and the increasing pace of technological advancement. One of the great benefits of the Sherman and Clayton Acts is their adaptability to new economic conditions without sacrificing their ability to protect competition.

#### Violation: The AFF legalizes marijuana---it does NOT alter prohibitions on anticompetitive conduct OR increase the scope of our core antitrust laws---if anything, there are anti-topical because they legalize the business practice of marijuana which is a decrease in prohibitions

#### Vote neg---

#### 1---Predictable Limits. Locus of NEG research and pre-round prep is based off predictable understandings of the words in the resolution. There are infinite ways they could eventually impact the conduct of businesses in the U.S. – that makes them effects topical and skews the debate irreparably towards the AFF.

#### 2---Ground. They obviate the entirety of NEG preparation by dodging every core mechanism of the resolution. All DAs are premised off of changes to the scope of core antitrust laws---AND, counterplans are based off of competing mechanisms.

**1NC---DA**

Innovation DA---

**Frenzy of M&A now because Biden’s executive order won’t be implemented for years**

David **French and** Sierra **Jackson**, Reuters, July 12, 20**21**, Analysis: Dealmakers see M&A rush, then chills, in Biden's antitrust crackdown, https://www.reuters.com/business/dealmakers-see-ma-rush-then-chills-bidens-antitrust-crackdown-2021-07-12/

Dealmakers expect **a new wave of transformative** U.S. mergers and acquisitions (**M&A**), as companies **rush to complete deals** **before President Joe Biden's antitrust push takes shape**, to be followed by a slowdown when regulators start cracking down.

Biden signed a sweeping executive order on Friday to bolster competition within the U.S. economy. This included a call for regulatory agencies to increase scrutiny of corporate tie-ups which have left major sectors such as technology and healthcare dominated by few players. read more

The order came amid an **unprecedented M&A frenzy**, as companies **borrow cheaply** and **spend mountains of cash** they have accumulated on **transformative deals** to reposition themselves for the post-pandemic world. **Almost $700 billion** worth of U.S. deals were announced in the second quarter, **the highest on record**.

The dealmaking **bonanza is set to continue**, as companies seek to **take advantage of the time window** during which regulators **frame precise rules** to implement Biden's order, advisers to the companies said. The M&A slowdown will come **only when regulators implement the rule changes**, **possibly in two years or more,** they added.

"The order itself will be **less likely to have a chilling effect** on strategic M&A than the potential chilling effect of a significant increase in the number of prolonged investigations and merger challenges brought by the agencies," said Michael Schaper, partner at law firm Debevoise & Plimpton.

Spokespeople for the White House and the two main antitrust regulators, the Federal Trade Commission (FTC) and the U.S. Department of Justice (DoJ), did not immediately respond to requests for comment.

Dealmakers were **bracing for a tougher antitrust environment** under Biden **even before last week's executive order.** Last month, the DoJ sued to stop insurance broker Aon's (AON.N) $30 billion acquisition of peer Willis Towers Watson (WTY.F). And Biden tapped Lina Khan, an antitrust researcher who has focused her work on Big Tech's immense market power, to chair the FTC.

**Immediately expanding scope of antitrust liability brings mergers to a halt---undermines dynamism and global competitiveness**

**Thierer 21** – Adam Thierer is a senior research fellow with the Mercatus Center at George Mason University. Author of several books on antitrust law; former president of the Progress & Freedom Foundation, director of Telecommunications Studies at the Cato Institute, and a senior fellow at the Heritage Foundation.

(Adam Thierer, 2-25-2021, "Open-ended antitrust is an innovation killer," TheHill, https://thehill.com/opinion/technology/540391-open-ended-antitrust-is-an-innovation-killer)

Antitrust reform is a hot bipartisan item today, with Democrats and Republicans floating proposals to significantly expand federal control over the marketplace. Much of this activity is driven by growing concern about some of the nation’s largest digital technology companies, including Facebook, Google, Amazon and Apple.

Unfortunately, the calls for more bureaucracy and regulation emanating from all corners of the political world could have an unintended consequence: **discouraging the sort of vibrant innovation and consumer choice** that made America’s tech companies household names across the globe.

Sen. Amy Klobuchar (D-Minn.) is leading one charge. Klobuchar, who chairs the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, recently introduced the “Competition and Antitrust Law Enforcement Reform Act.” This sweeping measure seeks to expand the powers and budgets of antitrust regulators at the Federal Trade Commission and the Department of Justice. It also includes new filing requirements and potentially hefty civil fines.

**The most important feature** is the proposed **change to the legal standard by which regulators approve business deals**. It would allow the government to stop any deal that creates an “appreciable risk of materially lessening competition,” and it also defines exclusionary behavior as, “conduct that materially disadvantages one or more actual or potential competitors.”

These may sound like **simple**, **semantic tweaks**, but – much like some of the other policy ideas currently circulating – **they would upend decades of settled law and create a sea change in U.S. antitrust enforcement**. **This change could undermine business dynamism, innovation and investment in ways that inhibit the global competitiveness of U.S. businesses.**

Critics of merger and acquisition (M&A) activity by large tech firms include not only Sen. Klobuchar but also Republicans such as Sen. Josh Hawley (R-Mo.). Hawley recent offered an amendment to a budget bill that would preemptively prohibit mergers and acquisitions by dominant online firms. Klobuchar and Hawley believe that M&A skews the market in favor of today’s largest firms, entrenching their market power and discouraging innovation.

History teaches a different lesson. Consider DirecTV and Skype, both once considered innovative market leaders in their respective fields of satellite TV and internet telephony. Both firms stumbled, however, and they might not even be with us today without creative business deals. DirecTV has been partially or fully controlled by Hughes Electronics, News Corp., Liberty Media and now AT&T. Skype has swapped hands multiple times, moving from eBay, to a private investment firm and now to Microsoft.

These were complex deals, and some didn’t work, leading to divestitures. But each was a learning experience that illustrated **how dynamic media and technology markets** can be with firms constantly searching for **value-added arrangements** that serve their customers and shareholders. If we make this type of activity presumptively illegal, we’re imagining that **government bureaucrats are better suited to make these calls than businesspeople** and the consumers who choose whether or not to buy the product.

Worse yet, legal tests like those Klobuchar proposes – “conduct that materially disadvantages potential competitors” – **are remarkably open-ended and could be easily abused**. The system will be gamed by opponents of deals for business reasons. They will claim that their own failure to attract investors or customers must all be the fault of more creative rivals. That’s a recipe for **cronyism and economic stagnation.**

Those who worry about today’s largest tech giants becoming supposedly unassailable monopolies should consider how similar fears were expressed not so long ago about other tech titans, many of which we laugh about today. Just 14 years ago, headlines proclaimed that “MySpace Is a Natural Monopoly,” and asked, “Will MySpace Ever Lose Its Monopoly?” We all know how that “monopoly” ceased to exist.

At the same time, pundits insisted “Apple should pull the plug on the iPhone,” since “there is no likelihood that Apple can be successful in a business this competitive.” The smartphone market of that era was viewed as completely under the control of BlackBerry, Palm, Motorola and Nokia. A few years prior to that, critics lambasted the merger of AOL and TimeWarner as a new corporate “Big Brother” that would decimate digital diversity and online competition.

GOP divided over bills targeting tech giants

Today, we know these tales of the apocalypse ended up instead becoming case studies in the continuing power of “creative destruction.” New innovations and players emerged from many unexpected quarters, decimating whatever dreams of continued domination the old giants once had.

Today’s biggest players face similar pressures, and it’s better to let rivalry and innovation emerge organically, not through the wrecking ball of heavy-handed antitrust regulation.

**Internal link goes one way---large-firm dynamism is the only way to maintain tech leadership**

**Lee**, senior lecturer at the University of Hong Kong Faculty of Business and Economics, **‘19**

(David S., “Antitrust action risks holding back US tech giants in competition with China,” <https://asia.nikkei.com/Opinion/Antitrust-action-risks-holding-back-US-tech-giants-in-competition-with-China>)

But the administration should not forget the law of unintended consequences -- **effective** antitrust measures could **stifle** the ability of American tech companies to **compete with their Chinese challengers**. Presumably, that is the last thing the America First president wants to see.

While antitrust has been used to regulate technology companies before, perhaps most notably Microsoft two decades ago, its application against Amazon.com, Facebook, and Google seems different.

For the last half-century or so, U.S. antitrust law has been underpinned by the concept of maximizing **consumer welfare**, frequently measured by price to consumers. In regulating big technology companies today, however, a new paradigm has emerged, dubbed "hipster antitrust."

Hipster antitrust looks beyond traditional economic harm and includes wider effects such as wage inequality, data privacy intrusions, and sheer size as grounds to invoke the law.

But **the wider the antitrust authorities reach**, the more likely they are to **damage the tech giants' global competitiveness**. This applies **especially in the key field of artificial intelligence**, where the U.S. and China are world leaders.

AI is the engine powering the Fourth Industrial Revolution and the fuel for that engine is data, **lots of data**. Such data can **only be collected at scale**, which conflicts with hipster antitrust **notions of size**. If American antitrust measures compel large technology companies to shrink or in the extreme, to break up, then the U.S. will find itself at a **disadvantage** to China.

The idea of **size** is one of many **fundamental differences** separating Chinese and American technology ecosystems. Chinese government leaders have clearly grasped that scale matters for the technologies they want to dominate, such as artificial intelligence, as well as for the type of digital governance Beijing is striving to implement.

In the U.S., however, the economic value attached to scale is offset by deep-rooted concerns about privacy, bullying behavior and unfair political and social influence. Senator Elizabeth Warren of Massachusetts, a popular Democratic Party candidate for the 2020 presidential election, wrote: "Today's big tech companies have too much power -- too much power over our economy, our society and our democracy."

But in China this is not a hot-button political issue. In a recent fintech course I helped lead comprised of students from different countries, mainland Chinese students considered privacy differently than peers elsewhere. Though aspects of privacy are important to Chinese users, many readily understand there are trade-offs in operating on technology platforms.

Chinese technology platforms such as Alibaba and Meituan have developed **so-called "super apps"** that serve the same functions that users in the West might find by going to different applications on their devices.

Super apps are designed to be convenient to users so they can handle everything from ride hailing, shopping, food purchases, and payment, all without leaving the digital confines of a single app. This has become the dominant way Chinese citizens consume online. With the most internet users in the world, approximately 750 million, super apps also provide Chinese technology companies an incredible amount of data.

In his book, "AI Superpowers: China, Silicon Valley, and the New World Order," technology executive and investor, Kai-Fu Lee outlined four factors necessary to win the AI race: talent, computing speed, data, and government policy. Though the U.S. has an advantage in many areas, **that lead is shrinking**, and if China does overtake the U.S. in artificial intelligence, it will likely be a result **of advantages in data and government policy**.

This combination of data and government policy is perhaps best exemplified by SenseTime, widely considered the world's most valuable artificial intelligence startup. SenseTime boasts world leading facial recognition, which is enhanced because it reportedly has access to Chinese government databases, a rich source of data to further develop models.

Chinese companies like SenseTime have excelled in facial recognition, with some reports estimating that there are almost ten times as many Chinese facial recognition patents filed as American. Chinese surveillance technology is already used in the U.S., including New York City.

This widening gap will have **broader implications** beyond surveillance, security, and policing. Facial recognition technology will also serve as a biometric identifier for finance, retail, and health. With China moving forward aggressively both domestically and abroad in its use of such technologies, American competitors who are pursuing facial recognition, such as Amazon and Google, may not be able **to close the growing competitive chasm**.

So while American politicians may see antitrust investigations into large technology companies as necessary, there could be a significant impact on America's ability to compete with China.

Google's former CEO, Eric Schmidt forecast last year that China and the United States would lead the bifurcation of the internet into two spheres. Evidence of this splintering is already apparent. What remains undetermined, however, is which of those spheres will dominate.

Large Chinese technology companies, for example Alibaba Group Holding, are already setting-up far-flung outposts by partnering with and investing in local, non-Chinese technology companies around the world. This form of Chinese technological expansion allows Chinese big tech to **shape user privacy norms,** establish global networks, and attract more users into their ecosystems, all of which leads to increased user activity and ultimately more data.

While China aggressively expands its technological reach and hones its ability through mining evermore data, it is important that U.S. regulators understand that **aggressive antitrust sanctions** would risk **inhibiting American companies** from **maintaining the scale necessary to compete with their Chinese rivals**.

**AI supremacy will be a defining feature of superpower status**. And if future researchers one day examine how the U.S. **lost the war for artificial intelligence**, the hindsight of history may show that **the current antitrust debate was the fatal turning point**.

**Tech innovation prevents nuclear conflict---US leadership is key**

**Kroenig and Gopalaswamy 18** – Associate Professor of Government and Foreign Service at Georgetown University and Deputy Director for Strategy in the Scowcroft Center for Strategy and Security at the Atlantic Council; Director of the South Asia Center at the Atlantic Council

Matthew Kroenig and Bharath Gopalaswamy, "Will disruptive technology cause nuclear war?," Bulletin of the Atomic Scientists, 11-12-2018, <https://thebulletin.org/2018/11/will-disruptive-technology-cause-nuclear-war/>

Rather, we should think **more broadly** about how **new technology** might affect global politics, and, for this, it is helpful to turn to scholarly international relations theory. The dominant theory of the causes of war in the academy is the “bargaining model of war.” This theory identifies **rapid shifts** in the balance of power as a **primary cause of conflict**.

International politics often presents states with conflicts that they can settle through **peaceful bargaining**, but when bargaining **breaks down, war results**. **Shifts** in the balance of power are **problematic** because they **undermine effective bargaining**. After all, why agree to a deal today if your bargaining position will be stronger tomorrow? And, a clear understanding of the **military balance of power** can contribute to **peace**. (Why start a war you are likely to lose?) But shifts in the balance of power **muddy understandings** of which states have the advantage.

You may see where this is going. New technologies threaten to create potentially **destabilizing shifts** in the balance of power.

For decades, stability in Europe and Asia has been supported by US military power. In recent years, however, the balance of power in Asia has begun to shift, as China has increased its military capabilities. Already, Beijing has become **more assertive** in the region, claiming contested territory in the South China Sea. And the results of Russia’s **military modernization** have been on **full display** in its ongoing intervention in Ukraine.

Moreover, China **may have the lead** over the United States in **emerging technologies** that **could be decisive** for the future of military acquisitions and warfare, including 3D **printing**, **hypersonic** missiles, **quantum** computing, **5G** wireless connectivity, and **a**rtificial **i**ntelligence (AI). And Russian President Vladimir Putin is building new unmanned vehicles while ominously declaring, “Whoever leads in AI will rule the world.”

If China or Russia are able to **incorporate new technologies** into their militaries **before the United States**, then this could lead to the kind of **rapid shift** in the balance of power that **often causes war.**

If Beijing believes emerging technologies provide it with a **newfound, local military advantage** over the United States, for example, it may be **more willing** than previously to **initiate conflict over Taiwan**. And if Putin thinks new tech has **strengthened his hand**, he may be more tempted to launch a Ukraine-style **invasion of a NATO member**.

Either scenario could bring these **nuclear powers into direct conflict** with the United States, and once nuclear armed states are at war, there is an **inherent risk of nuclear conflict** through limited nuclear war strategies, nuclear brinkmanship, or simple accident or inadvertent escalation.

This framing of the problem leads to a different set of policy implications. The concern is not simply technologies that threaten to undermine nuclear second-strike capabilities directly, but, rather, any technologies that can result in a meaningful shift in the broader balance of power. And the solution is not to preserve second-strike capabilities, but to **preserve prevailing power balances** more broadly.

When it comes to new technology, this means that the United States should seek to **maintain an innovation edge**. Washington should also work with other states, including its nuclear-armed rivals, to develop a new set of arms control and nonproliferation agreements and export controls to deny these newer and potentially destabilizing technologies to potentially hostile states.

These are no easy tasks, but the consequences of Washington **losing the race** for technological superiority to its autocratic challengers just might mean **nuclear Armageddon**.

### 1NC---CP

Non-antitrust CP---

#### Text: The United States federal government should legalize the cultivation, use, and sale of marijuana for recreational and pharmacological purposes, with cultivation and sale governed *not* by the Sherman Act, and overturn and expunge all criminal convictions related to marijuana.

#### Ex-ante regulation creates clarity and deters violations before they occur---avoids enforcement proceedings

Posner 10 – Judge in the U.S. Court of Appeals for the Seventh Circuit, Senior Lecturer at the University of Chicago Law School

Richard A. Posner, “Regulation (Agencies) versus Litigation (Courts): An Analytical Framework,” Regulation vs. Litigation: Perspectives from Economics and Law, National Bureau of Economic Research, Inc., 2010, https://ideas.repec.org/h/nbr/nberch/11956.html

Ex ante regulation can, as I said, be judicial as well as administrative, as in preventive detention, injunctions, and regulatory decrees, and ex post regulation can be administered by agencies as well as courts, such as the Federal Trade Commission and the National Labor Relations Board, which operate mainly by trial-type proceedings conducted after a violation of the laws administered by the agency has occurred.

Ex ante: pros. The ex ante approach promotes clarity of legal obligation and therefore presumably better compliance (fewer inadvertent violations) by laying down rules in advance of the regulated activities. Ex ante regulation is activated before there is a loss, unlike a lawsuit; it can be centrally designed and imposed (for example, by a single agency such as the Food and Drug Administration, as opposed to a decentralized judicial system); and it is enforceable by means of light penalties, because the optimal penalty for creating a mere risk of injury is normally lighter than the optimal penalty for causing an actual injury. This means, however, that ex ante and ex post regulation actually are inseparable; because compliance with rules is never 100 percent, there must be a machinery for punishing violators, though the machinery may involve penalties meted out by the regulatory agency itself, with judicial involvement limited to judicial review of the penalty proceeding. But while rules involve heavy fixed costs (i.e., designing the rule in the first place), if they are very clear and carry heavy penalties compliance may be achieved without frequent enforcement proceedings, so marginal costs may be low. Rules are therefore attractive when the alternative would be vague standards, resulting in frequent actual or arguable violations and hence frequent enforcement proceedings.

As this discussion shows, ex ante regulation and rules have an affinity. Ex ante regulation enables exploitation of the economizing properties of rules as preventives. With vague standards, the regulatory emphasis shifts to seeking deterrence by proceedings to punish violators.

### 1NC---DA

FTC Tradeoff DA---

#### The FTC is fundamentally constrained---priority changes drag resources away from current merger investigations

Rose ’19 - Department Head and Charles P. Kindleberger Professor of Applied Economics in the MIT Economics Department. She served as Deputy Assistant Attorney General for Economic Analysis in the Antitrust Division of the DOJ from 2014 to 2016, and was the director of the National Bureau of Economic Research Program in Industrial Organization from 1991 to 2014.

Nancy Rose, FTC Hearing #13: Merger Retrospectives, April 12, 2019, <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-14-merger-retrospectives>

So I want to start with the last question that was on the set that Dan and Bruce circulated for this panel. Should the FTC devote more resources to retrospectives, even at the cost of current enforcement? And I was delighted to see Commissioner Slaughter be so passionate in her defense of the need for more resources. This goes to what I feel is the most significant, and yet still largely invisible message, in the ongoing debate over competition policy, which is that antitrust enforcement in the United States is chronically and substantially underfunded.

For years, the appropriation requests have been modest in their increases. Oversight hearings and interactions with the Hill have too often featured the mantra, “when business picks up, our talented and hardworking staff just do more with less.” I will say I think the career staff at both the FTC and the DOJ Antitrust Division are among the most dedicated, highly-skilled, and hardest-working professionals.

It was my great privilege to work with a number of them at DOJ, and I know that colleagues who have worked at the FTC feel the same way. They deserve our greatest appreciation and applause and not just from those of us who work in antitrust policy, but from the entire American public, on whose behalf they tirelessly work.

But there is a limit to the number of hours in a day and the number of days in a week and the well below market compensation for the lawyers and economists who work in the agencies, which is another significant problem, is insufficient to demand that staff give up all rights to leave their buildings, occasionally see their families, or catch up on sleep.

So I think it’s inevitable that if we’re asking agencies to reflect on the effectiveness of their decision-making through programs like retrospective programs, it is going to come out of someplace else. And I fear that given the ongoing intensity of the merger wave, that’s going to come out of enforcement.

We are amid an ongoing sustained, what’s been called by some, tsunami of mergers. Each year there are thousands of mergers noticed to the agencies and thousands more below the HSR thresholds, that work by Thomas Wollmann at the University of Chicago suggests, skate through to consummation with practically no probability of review or action, the occasional consummated merger enforcement action notwithstanding.

The dollar volume of mergers is at historic levels and that suggests that there are a lot of mega mergers competing for enforcement resources. In addition, litigation costs continue to climb, both for challenging mergers or bringing Section actions, especially as parties with especially deep pockets escalate litigation defenses, correctly calculating that even adding some tens of millions of dollars in antitrust litigation costs would be just rounding error in their merger financing.

And, finally, I would say it’s inconceivable to me that there are not at least some counsel that are advising parties that a good time to bring marginal mergers forward is when the agencies are stretched thin by major investigations or multiple litigations.

#### Current resource allocation allows effective regulation of hospital mergers---plan decimates FTC success

Muris ’20 – Professor of Law at George Mason, former Chairman of FTC, Senior Counsel at Sidney Austin LLP, JD from UCLA,

Timothy Muris, “Response to Subcommittee on Antitrust, Commercial, and Administrative Law Committee on The Judiciary U. S. House of Representatives” April 17, 2020, <https://judiciary.house.gov/uploadedfiles/submission_from_tim_muris.pdf>

Finally, the Committee asks about agency resources and performance. The last section below briefly addresses the continual need for the antitrust agencies to address business practices as they evolve, as well as their own performance record. Such evaluation is necessary: ever a UCLA Bruin, I remain devoted to legendary coach John Wooden‘s maxim that “when you are through learning, you are through.” The section thus offers multiple examples of successful and bipartisan FTC efforts to improve enforcement to the benefit of consumers. In the key healthcare sector, American consumers continue to benefit from the FTC’s hard work. After losing seven consecutive hospital merger challenges before I arrived, upon my direction the FTC worked to devise a new enforcement plan by incorporating fresh economic thinking and issuing retrospective case studies showing that several hospital mergers had indeed harmed consumers. This plan resulted in a successful challenge to a consummated hospital merger that served as a template for future enforcement, leading to Obama administration victories in three separate courts of appeal endorsing the FTC’s approach. Such success did not require abandonment of the consumer welfare standard, nor a dramatic increase in agency resources. Indeed, as discussed below, my predecessor as FTC chairman, Bob Pitofsky, did much more for American consumers using the consumer welfare standard with just 1,000 staff than did the agency in the 1970s when it had far greater resources (1,800 staff by the turn of the decade), but was motivated by an antitrust policy that was, instead, at war with itself.

#### Maintaining competitive hospital markets are critical to avoid terminal budget overstretch---the alternative is a global confidence collapse in the US economic system

Evan Horowitz, Fivethirtyeight, January 11, 2018, The GOP Plan To Overhaul Entitlements Misses The Real Problem, <https://fivethirtyeight.com/features/to-cut-the-debt-the-gop-should-focus-on-health-care-costs/>

There is no wide-reaching entitlement funding crisis, no deep-rooted connection between runaway debts and the broad suite of pension and social welfare programs that usually get called entitlements. The problem is linked to entitlements, but it’s much narrower: If the U.S. budget collapses after hemorrhaging too much red ink, the main culprit will be rising health care costs.

Aside from health care, entitlement spending actually looks relatively manageable. Social Security will get a little more expensive over the next 30 years; welfare and anti-poverty programs will get a little cheaper. But costs for programs like Medicare and Medicaid are expected to climb from the merely unaffordable to truly catastrophic.

Part of that has to do with our aging population, but age isn’t the biggest issue. In a hypothetical world where the population of seniors citizens didn’t increase, entitlement-related health spending would still soar to unprecedented heights — thanks to the relentlessly accelerating cost of medical treatments for people of all ages.1

What’s needed, then, is something far more focused than entitlement reform: an aggressive effort to slow the growth of per-person health care costs. Or — if that’s not possible — some way to ensure that the economy grows at least as fast as the cost of health care does.

Diagnosing the debt: It’s not about demographics

America’s long-term budget problem is very real. Already, the federal government has a pile of publicly held debts amounting to around $15 trillion, or about 75 percent of the country’s entire gross domestic product. That’s the highest level since the 1940s, yet the debt burden is expected to double by 2047 and reach 150 percent of the GDP, according to the Congressional Budget Office.2

It makes sense to list entitlement spending among the culprits for the growing national debt, given that these programs have grown from costing less than 10 percent of the GDP in 2000 to a projected 18 percent in 2047. Part of this is simple demographics: As America ages, more of us become eligible for Social Security and Medicare, thus driving up expenses.3

But there’s a crack in this demographic explanation: It only makes sense for the next 10 to 15 years. That’s the period of rapid transition when graying baby boomers will boost the population of seniors from around 50 million to more than 70 million. A change like that should indeed produce a surge in entitlement spending as those millions submit their enrollment forms.

By 2030, however, this wave will start to ebb, leaving the elderly share of the population at a roughly stable 20 to 21 percent all the way through 2060, based on the size of the population following the boomers and slower-moving forces like lengthening lifespans.

But think what this should mean for entitlement spending. As the population of seniors levels out in those later years, costs should naturally stabilize — at least, if demographics were really the driving factor.

This is exactly what you see for Social Security. The CBO expects total Social Security spending to leap up over the next decade but then settle at just over 6 percent of the GDP, at which point it will cease to be a major contributor to rising entitlement spending or growing debts. Social Security is thus a minor player in our long-term budget drama; if you cut the program to the bone, shrinking future payouts so that they won’t add a penny to the deficit, the federal debt would still reach 111 percent of the GDP in 2047.4

Likewise, cuts to welfare and poverty-related entitlements like food stamps and unemployment insurance are unlikely to improve the debt forecast. In fact, spending on these entitlements has been dropping since the high-need years around the Great Recession and is expected to shrink further in the decades ahead — partly because payouts aren’t adjusted to keep up with economic growth, and partly because the birth rate has been falling and several programs are geared to families with children.5

But the scale of the problem is totally different when you turn to health care. Spending on entitlement-related health programs — including Medicare, Medicaid and subsidies required by the Affordable Care Act — will never shrink or stabilize, according to projections. The CBO predicts these costs will grow over 65 percent between now and 2047 — and then go right on growing after that, heedless of the fact that the percentage of the population that’s over 65 should no longer be increasing.

Why is health care eating the budget? Per-person costs

Demographics aren’t responsible for the projected explosion in health care costs. More important than the growing number of elderly Americans is the growing cost per patient — the rising expense of treating each individual

The CBO found that the lion’s share — 60 percent — of the projected increase in health spending comes from costs that would continue to increase even if our population weren’t getting older.

The reasons for this are many, including the rising cost of prescription drugs and the fact that hospital mergers have reduced competition. But since 2000, per capita health costs in the U.S. have, on average, grown faster than the GDP. And while these costs rose more slowly after the Great Recession and the implementation of the Affordable Care Act, analysis from the Centers for Medicare and Medicaid Services suggests this slower growth rate won’t last.

Which is bad news for these programs, because if the problem were demographic, it’d be easier to solve. By mixing the kind of program cuts Republicans generally support with targeted tax increases favored by some Democrats, you could meet the short-term challenge posed by retiring baby boomers and raise enough money to cover the larger — but stabilizing — population of eligible seniors. But with ever-rising costs, there is no stable future to prepare for. To keep these programs funded, you’d need a wholly different approach — indeed a whole new perspective on mounting federal debt and the role of entitlements.

The future is a race between rising health care costs and economic growth, a race that the economy is losing. Each time health costs outpace the GDP, it creates what the CBO calls “excess cost growth,” which feeds the federal debt. If the government could close this gap, the long-term budget outlook would be a lot rosier.

There are two ways to solve this issue: Either contain health care costs — say through price regulation or more competitive markets — or boost economic growth enough to pay for this expensive health care. Success on either front would make health care spending look more manageable over future decades and lighten the debt load.

Entitlement reform needs health care reform to work

Few of the proposals that commonly fall under the heading of entitlement reform target the health care cost problem, which limits their ability to reduce the long-term debt.

Even when they do address health care, often the result is to shift — rather than solve — the problem. Say lawmakers decide to dramatically cut Medicare. That would indeed ease the government’s debt problem. But the underlying dynamic — the race between health costs and the GDP — wouldn’t really change. Seniors would still need health care, and per-person costs would likely still grow (maybe even faster, since Medicare is a relatively efficient program).

On top of all this, there’s also a deep-seated political barrier: It’s no good if one party picks its favored solution only to watch the other party dismantle it when they next take over. You need political consensus to make changes stick, and America is notably short on consensus right now.

In the end, though, it won’t do to just throw up our hands. Absent some workable solution, spending on health care will sink the federal budget, generating levels of debt that would hold back the economy and potentially spark a global crisis of confidence in the United States’ ability to borrow.

#### Growth is critical to maintaining US posturing across the globe---failure risks nuclear conflict

Henricksen 17

Thomas H. Henricksen, emeritus senior fellow at the Hoover Institution, Post-American World Order, 23 March 2017, https://www.hoover.org/research/post-american-world-order

It is obvious that that our world has pivoted from the immediate post-Cold War order. Gone is yesterday’s unipolar dispensation with the United States sitting unchallenged atop other powers. It still possesses immense conventional and unconventional strength, but it is hardly unrivaled in various geographic corners. The big questions remain: What kind of global order is unfolding and how does America respond? President Donald J. Trump’s frequent voicing of isolationist sentiments during and after the election campaign has been blamed by some critics for this international transformation. Yet he alone is not responsible for the shift. The international order has been undergoing a transformation for years, and the signs of that change began to materialize soon after Barack Obama assumed office. Trump’s move into the White House is more a consequence of this altered global scene than its cause. Obama initiated America’s international pullback with the military withdrawal from Iraq and severe cutbacks in Afghanistan, as well as blinking when Syria crossed his red line while “leading from behind.” China’s Not So Peaceful Rise A series of dramatic events took place in response to Obama’s growing disengagement policies, as world powers noted Washington’s burgeoning inwardness. China switched from its “peaceful rise” policy to aggressively asserting and expanding its international presence. Xi Jinping, the all-powerful Chinese leader, moved to advance Beijing’s political and military suzerainty over the South China Sea (SCS) by seizing and reconstructing the disputed shoals into artificial islands with dredged ocean sands in 2014. Next, China militarized three micro-isles of the Spratly Islands (also claimed by the Philippines, Malaysia, and Vietnam) with runways, radars, and surface-to-air missile sites—actions that broke Beijing’s earlier promise not to militarize the waterway. Since then, Chinese officials have made it clear that the SCS is now their exclusive lake. Other states are expected to recognize China’s claims to most of the energy-rich waters, through which $5 trillion of trade passes annually, roughly half the world’s merchant fleet tonnage. China backs its assertions by modernizing the arsenals of its advanced warships, aircraft, missiles, and ground forces. Xi and company seem bent on restoring the ancient tribute system in which South Korea and Vietnam would become modern-day vassals, while more distant Asian states become supplicants in a Sinocentric sphere. In short, China has become a revisionist juggernaut. Along with its fortifying of these artificial islands, the world’s second largest economy and military spender has emerged as an economic, political, and ideological competitor of the United States not only in Southeast Asian maritime zones but globally. China is maneuvering to set up bases or harbors in Pakistan, Sri Lanka, and Greece—and is even extending its reach to the long U.S.-allied Portuguese Azores in the mid-Atlantic. In reaction to Beijing’s SCS actions, the Trump administration has stepped up America’s own show of force by sending warships, fighter jets, and submarines to the waters. To underline its not-too-subtle counter-signal to China, the United States also test-fired four Trident II submarine-launched ballistic missiles over 4,000 miles into the Pacific Ocean from the California coast last month, the first four-missile salvo in the post-Soviet era. The western Pacific is becoming a tinderbox. Russia’s Resurgence At the other end of the Asian continent, Russia longs to restore its lost prestige and political influence, forfeited with the breakup of the Soviet Union in 1991. Under Vladimir Putin, Russian forces backed the seizure of Crimea from Ukraine before taking over its eastern borderlands. Earlier, Moscow perfected its “frozen war” tactics against two provinces in the Republic of Georgia, thereby yanking them from Georgian sovereignty. Russia’s bullying and intimidation of its Baltic and Eastern European neighbors have become commonplace. Meanwhile, the Russian foreign minister, Sergei Lavrov, called for “a post-West world” at the Munich Security Conference in mid-February. What China and Russia have in common is that both are engaged in advancing their spheres of influence in their neighborhoods and beyond. Both also seek to crack the Western liberal world order. The United States, meanwhile, has become blasé about its former leadership position in the Western hemisphere, where China’s companies have entered into business deals, some with strategic implications. Washington, without a hint of nostalgia, treats the Monroe Doctrine as a relic of yesteryear’s Yankee imperialism in Latin America. These newly assertive major powers are not alone in shattering the post-Cold War order, which witnessed the unrivaled predominance of the United States—the “indispensable nation,” in the words of the Clinton administration. Trouble-making regional powers, such as Iran, Syria, and North Korea either spread terrorism, provoke instability, or arm themselves with longer-range missiles and nuclear weapons. While they were independent actors a few years ago, each of these pariah regimes increasingly aligns with the two chief U.S. adversaries. Iran and Syria cozy up to Russia, and North Korea depends for fuel and food on a China that hypocritically protests that it lacks influence over a nuclear-armed Pyongyang. Western Europe, once a powerful but independently minded U.S. ally, has faltered. Its slippage is evident in the refugee crisis, its sagging economies, its 20 percent youth unemployment rate, and its reluctance to fund an adequate military defense in the face of Russia’s continuing provocations, including cyber-attacks, disinformation campaigns, and fake news stories. Europe’s paltry defense reflects the continent’s lost belief in its own purpose—and even, some might say, its own civilization. Sino-Russian Partnering Little of this threatening world existed when the United States enjoyed its unipolar moment after the eclipse of its Soviet nemesis, and even after the 9/11 terrorist attacks. The emergent world, divided between the United States, China, and Russia, points to the new global order. Particularly worrisome are the warming relations between Beijing and Moscow, despite Chinese designs on Siberian lands and resources. Overcoming a centuries-old rivalry, the recent Sino-Russian rapprochement compounds Washington’s difficulties. Separating Russia from China, as Kissinger and Nixon did, would be a sensible goal for President Trump. It has always been a wise recourse to divide one’s adversaries. Besides, the United States and Russia have worked together in the past. During the World War II, they collaborated against the Third Reich. And during the Cold War, they cooperated in nuclear arms treaties and wheat deals, while mutually trying to skirt a flashpoint that could end in a nuclear war. Washington can work to steer the Kremlin, as it has done before, toward acceptable conduct with its neighbors before Russia can be more than a tactical ally in the great game with China. In the immediate future, the United States can adopt international and domestic approaches to cope with Russian and Chinese territorial expansionism. The tensions stoked by the assertive regimes in the Kremlin or Tiananmen Square could spark a political or military incident that might set off a chain reaction leading to a large-scale war. Historically, powerful rivalries nearly always lead to at least skirmishes, if not a full-blown war. The anomalous Cold War era spared the United States and Soviet Russia a direct conflict, largely from concerns that one would trigger a nuclear exchange destroying both states and much of the world. Such a repetition might reoccur in the unfolding three-cornered geopolitical world. It seems safe to acknowledge that an ascendant China and a resurgent Russia will persist in their geo-strategic ambitions. What Is To Be Done? The first marching order is to dodge any kind of perpetual war of the sort that George Orwell outlined in “1984,” which engulfed the three super states of Eastasia, Eurasia, and Oceania, and made possible the totalitarian Big Brother regime. A long-running Cold War-type confrontation would almost certainly take another form than the one that ran from 1945 until the downfall of the Soviet Union. What prescriptions can be offered in the face of the escalating competition among the three global powers? First, by staying militarily and economically strong, the United States will have the resources to deter its peers’ hawkish behavior that might otherwise trigger a major conflict. Judging by the history of the Cold War, the coming strategic chess match with Russia and China will prove tense and demanding—since all the countries boast nuclear arms and long-range ballistic missiles. Next, the United States should widen and sustain willing coalitions of partners, something at which America excels, and at which China and Russia fail conspicuously. There can be little room for error in fraught crises among nuclear-weaponized and hostile powers. Short- and long-term standoffs are likely, as they were during the Cold War. Thus, the playbook, in part, involves a waiting game in which each power looks to its rivals to suffer grievous internal problems which could entail a collapse, as happened to the Soviet Union. Some Chinese and Russian experts predict grave domestic problems for each other. They also entertain similar thoughts about the United States, which they view as terminally decadent and catastrophically polarized over politics, ethnicity, and the future direction of the country. So, the brewing three-way struggle also involves a systemic contest, which will test the competitors’ economic and political institutions. At this juncture, the world is entering a standoff among the three great and several not-so-great powers. Averting war, while defending our interests, will prove a challenge, calling for deft policy, political endurance, and economic growth, as well as sufficient military force to keep at bay aggressive states or prevail over them if ever a war breaks out.

### 1NC---CP

States Counterplan---

#### The fifty states and all relevant sub-federal entities in the United States should formally legalize recreational marijuana cultivation and use and release and expunge the records of those convicted for marijuana-related reasons.

#### States solves criminal justice policies better than the federal government

Blanks 16 - Research Associate in Cato's Project on Criminal Justice, testified before the U.S. Commission on Civil Rights on police accountability (Jonathan, “(Almost) All Criminal Justice Politics is Local,” *CATO*, <https://www.cato-unbound.org/2016/12/02/jonathan-blanks/almost-all-criminal-justice-politics-local)//BB>

As I mentioned in my first installment, criminal justice reform can be highly localized by installing and electing prosecutors who approach the position with a less punitive mindset than has been common in recent decades. Going a step further, it is important to note that there is more to state and local criminal justice apparatuses than prosecutors, and these other aspects too should be utilized if American criminal justice reform is to have a future. Given the prominence of the federal government in national media and the temptation to bring sweeping legislation to impose change in the face of gross injustice, the inclination to look toward Washington for meaningful reform is understandable. Where the federal government maintains and exercises the most power—such as regulation of international and interstate commerce, foreign policy, and immigration enforcement—national lobbying and reform efforts makes a great deal of sense. But the general police power remains with and within the states, and that necessarily limits how much good national reform can bring. Under an administration that putatively welcomes criminal justice reform, this local limitation appears to be a hindrance to progress. However, as we will soon find ourselves under an administration much more hostile to criminal defendants, the limited role the federal government has in American law enforcement almost seems like a blessing, if a small one. With the announcement that Senator Jeff Sessions is to be President-elect Trump’s nominee to head the Department of Justice, meaningful federal criminal justice reform becomes even less likely than it seemed just after the election. Ethan Nadelmann of the Drug Policy Alliance called the AG nominee “a Drug War dinosaur” for his anachronistic approach to marijuana and other drugs. Not only will a Sessions-led DOJ be less likely to support major federal reform efforts aimed at drug offenders, he may roll back guidance instituted during the Obama administration to tolerate marijuana businesses that operate within state laws where the drug’s medical or recreational use has been legalized. To fight back, and keeping in line with Professor Teles’s belief that the political Right can be a force for good in criminal justice reform, state and local areas should resist federal encroachment into their constitutionally protected powers.[i] Federalism has already been instrumental in marijuana legalization and marriage equality, and many on the Right have prided themselves in their dedication to our federalist system. In the coming years under a potentially energetic Sessions Justice Department, we may just see how dedicated to the federalist proposition Republicans really are. In addition, several municipalities that have previously been designated “sanctuary cities” for refusing to use local resources to proactively enforce federal immigration law have announced their intention to continue their policies under the next administration. Many city halls’ defiance of the incoming administration’s promise to crack down on immigration violations signals intergovernmental challenges ahead. Perhaps these municipal leaders of the political left may rediscover the utility of legal federalism and encourage allies to do the same. It’s difficult to be very optimistic about more humane criminal justice policies in the next four years. That said, state and local leaders who are committed to fairness and doing what is right for their own communities retain the power and ability to make the changes they deem necessary. Reformers on the Left and Right should not let these opportunities slip away at the local level the way it has at the federal one.

### 1NC---DA

Treaties DA---

#### Legalization breaks US technical compliance with UN drug treaties – spills over

Haase 13 – consultant for International Drug Policy Consortium and the Harm Reduction Coalition

Heather, “The 2016 Drugs UNGASS: What does it mean for drug reform?” [http://drogasenmovimiento.files.wordpress.com/2014/01/13-10-14-the-2016-drugs-ungass-e28093what-does-it-mean-for-drug-reform\_.pdf] October 14 //

But why? With all of the progress made in reform around the world lately, many – especially in the US – are asking if the UN is even relevant to domestic drug reform at this point. With the recent marijuana laws passed in Colorado and Washington and the proposed legislation in Uruguay – not to mention decriminalization measures enacted in Portugal and a growing number of other countries – reform seems inevitable. At some point, the argument goes, the UN system will simply be overtaken by “real world” reform on the ground. Why even bother with advocacy at the UN?¶ This is not an easy question to answer; however, I truly believe that to be effective, reform efforts must be made at every level – locally, nationally, and globally.¶ It may be true that reform efforts in the US and around the world have made significant progress in the last 10 years. **But** there is still a long way to go – **marijuana is still not completely legal** anywhere in the world (despite state laws to the contrary, marijuana still remains illegal under federal law throughout the US), and many human rights abuses continue to be carried out against drug users throughout the world in the name of drug control. Meanwhile, the **international drug control treaties** – the 1961 Single Convention on Narcotic Drugs and its progeny – **remain in place and**, in fact, **enjoy nearly universal adherence by 184 member states**.¶ **That so many countries comply –** at least technically, if not in “spirit” **– with the international drug treaty system, shows just how highly the international community regards the system**. As well it should – the UN system is invaluable and even vital in many areas, including climate change, HIV/AIDS reduction, and, most recently, the Syrian chemical weapons crisis (and don’t forget that the international drug treaty system also governs the flow of licit medication). While it is not unheard of for a country to disregard a treaty, **a system in which countries pick and choose which treaty provisions suit them and ignore the rest is**, shall we say, **less than ideal.**

#### Wrecks the entire multilateral system

Koplow 13 – law professor @ Georgetown University

David, “Indisputable Violations: What Happens When the United States Unambiguously Breaches a Treaty?” [http://www.fletcherforum.org/wp-content/uploads/2013/02/Koplow\_37-1.pdf] Winter //

So what? Why does it matter that the United States violates treaties, and occasionally does so **without a shred of legal cover**? Perhaps that is the realpolitik privilege of the global hegemon: to be able to sustain hypocrisy, 69 asserting that its unique international responsibilities and its “exceptional” position in the world enable the United States explicitly to welch on its debts, fudge on its obligations, and adopt a “do as we say, not as we do” approach with other countries.¶ However, there is a cost when the world’s strongest state behaves this way. One potential danger is that **other countries may mimic this disre - gard for legal commitments and justify their own cavalier attitudes** toward international law by citing U.S. precedents. Reciprocity and mutuality are fundamental tenets of international practice; **it is foolhardy to suppose** **that other parties will indefinitely continue with treaty compliance if they feel that the U**nited **S**tates **is** **taking advantage of them by** unilateral avoidance **of shared legal obligations.**¶ So far, there has not been significant erosion of the treaties discussed in the three examples. The United States and Russia will fall years short of compliance with the CWC destruction obligations, but other parties, with the notable exception of Iran, have reacted with aplomb, comfort - able with the two giants’ unequivocal commitment to eventual compli - ance. Likewise, the VCCR is not unraveling, even if other states lament the asymmetry in consular access to detained foreigners. And while many states pay their UN dues late and build up substantial arrearages, that recal - citrance seems to stem more from penury than from a deliberate choice to follow the U.S. lead.¶ But that persistent flouting undermines the treaties—and by exten - sion, it jeopardizes the entire fabric of international law. **Chronic** noncom - pliance—especially **ostentatious**, unexcused, **unjustified noncompli - ance**—also **sullies the nation’s repu - tation and degrades U.S. diplomats’ ability to drive other states** to better **conform with their obligations under the** full array **of treaties** and other international law commitments from trade to human rights to the Law of the Sea. The United States depends upon the international legal structure more than anyone else: Americans have the biggest interest in promoting a stable, robust, reliable system for international exchange. It is shortsighted and self-defeating to publicly and unblushingly undercut the system that o # ers the United States so many bene " ts. It is especially damaging when, following an indisputable violation, the United States acknowledges its default, participates in an international dispute resolution procedure, and apologizes—but then continues to violate the treaty. ! e CWC imple - mentation bodies, the International Court of Justice, and even the UN General Assembly and Security Council are unable to e # ectively do much to sanction or penalize the mighty United States, but it is still terrible for U.S. interests to disregard those mechanisms.

#### Key to solve GPW and existential risks

Muller 2K

Dr. Harold Muller is the Director of the Peace Research Institute-Frankfurt and Professor of International Relations at Goethe University Compliance Politics: A Critical Analysis of Multilateral Arms Control Treaty Enforcement <http://cns.miis.edu/npr/pdfs/72muell.pdf>

In this author's view,3 at least four distinct missions continue to make arms control, disarmament, and non-proliferation agreements useful, even indispensable parts of a stable and reliable world security structure:

• As long as the risk of great power rivalry and competition exists—and it exists today—constructing barriers against a degeneration of this competition into major violence remains a pivotal task of global security policy. Things may be more complicated than during the bipolar age since asymmetries loom larger and more than one pair of competing major powers may exist. With overlapping rivalries among these powers, arms races are likely to be interconnected, and the stability of any one pair of rivals might be affected negatively by developments in other dyads. Because of this greater risk of instability, the increased political complexity of the post-bipolar world calls for more rather than less arms control. For these competitive relationships, stability or stabilization remains a key goal, and effectively verified agreements can contribute much to establish such stability. • Arms control also has a role to play in securing regional stability. At the regional level, arms control agreements can create balances of forces that reassure regional powers that their basic security is certain, and help build confidence in the basically non-aggressive policies of neighbors. Over time, a web of interlocking agreements may even create enough of a sense of security and confidence to overcome past confrontations and enable transitions towards more cooperative relationships. At the global level, arms limitation or prohibition agreements, notably in the field of weapons of mass destruction, are needed to ban existential dangers for global stability, ecological safety, and maybe the very survival of human life on earth. In an age of increasing interdependence and ensuing complex networks that support the satisfaction of basic needs, international cooperation is needed to secure the smooth working of these networks. Arms control can create underlying conditions of security and stability that reduce distrust and enable countries to commit them-selves to far-reaching cooperation in other sectors without perceiving undesirable risks to their national security. Global agreements also affect regional balances and help, if successful, to reduce the chances that regional conflicts will escalate. Under opportune circumstances, the normative frameworks that they enshrine may engender a feeling of community and shared security interests that help reduce the general level of conflict and assist in ushering in new relations of global cooperation. • Finally, one aspect that is rarely discussed in the arms control context is arms control among friends and partners. It takes the innocent form of military cooperation; joint staffs, commands, and units; common procurement planning; and broad and far-reaching transparency. While these relations serve at the surface to enhance a country's military capability by linking it with others, they are conducive as well to creating a sense of irreversibility in current friendly relations, by making unthinkable a return to previous, possibly more conflictual times. European defense cooperation is a case in point.1 Whatever the particular mission of a specific agreement, it will serve these worthwhile purposes only if it is implemented appropriately and, if not, means are available to ensure compliance. In other words, the enduring value of arms control rests very much on the ability to assure compliance.5 Despite the reasons given above for the continuing utility of arms control, the skeptics may still have the last word if agreements are made empty shells by repeated breaches and a lack of effective enforcement.

### 1NC---K

Abolition K---

#### Their notions of progressivism empower state domestic warfare by normalizing explicit violence---they attempt to use free market capitalism to resolve white supremacy and exploitation, which only ends up resulting in more harm---the alternative is a radical disidentification with the state and a strategy of abolition

Rodríguez 8 (Dylan, Professor of the Department of Ethnic Studies at UC Riverside, “Warfare and Terms of Engagement,” *ABOLITION NOW! Ten Years of Strategy and Struggle Against the Prison Industrial Complex*, pg. 91-101 http://criticalresistance.org/wp-content/uploads/2012/06/Critical-Resistance-Abolition-Now-Ten-Years-of-Strategy-and-Struggle-against-the-Prison-Industrial-Complex.pdf)

Behind the din of progressive and liberal reformist struggles over public policy, civil liberties, and law, and beneath the infrequent mobilizations of activity to defend against the next onslaught of racist, classist, ageist, and misogynist criminalization, there is an unspoken politics of assumption that takes for granted the mystified permanence of domestic warfare as a constant production of targeted and massive suffering, guided by the logic of Black, brown, and indigenous subjection to the expediencies and essential violence of the American (global) nation-building project. To put it differently: despite the unprecedented forms of imprisonment, social and political repression, and violent policing that compose the mosaic of our historical time, the establishment left (within and perhaps beyond the US) does not care to envision, much less politically prioritize, the *abolition of* *US* *domestic warfare* and its structuring white supremacist social logic as its most urgent task of the present and future. Our non-profit left, in particular, seems content to engage in desperate (and usually well-intentioned) attempts to manage the casualties of domestic warfare, foregoing the urgency of an abolitionist praxis that openly, critically, and radically addresses the moral, cultural, and political premises of these wars. Not long from now, generations will emerge from the organic accumulation of rage, suffering, social alienation, and (we hope) politically principled rebellion against this living apocalypse and pose to us some rudimentary questions of radical accountability: How were we able to accommodate, and even culturally and politically *normalize* the strategic, explicit, and openly racist technologies of state violence that effectively socially neutralized and frequently liquidated entire *nearby* populations of our people, given that ours are the very same populations that have historically struggled to survive and overthrow such "classical" structures of dominance as colonialism, frontier conquest, racial slavery, and other genocides? In a somewhat more intimate sense, *how could we live with ourselves* in this domestic state of emergency, and why did we seem to generally forfeit the creative possibilities of radically challenging, dislodging, and transforming the *ideological and institutional premises* of this condition of domestic warfare in favor of short-term, "winnable" policy reforms? (For example, why did we choose to formulate and tolerate a "progressive" political language that reinforced dominant racist notions of "criminality" in the process of trying to discredit the legal basis of "Three Strikes" laws?) What were the fundamental concerns of our progressive organizations and movements during this time, and were they willing to comprehend and galvanize an effective, or even viable opposition to the white supremacist state's terms of engagement (that is, warfare)? This radical accountability reflects a variation on anticolonial liberation theorist Frantz Fanon's memorable statement to his own peers, comrades, and nemeses: Each generation must discover its mission, fulfill it or betray it, in relative opacity. In the underdeveloped countries preceding generations have simultaneously resisted the insidious agenda of colonialism and paved the way for the emergence of the current struggles. Now that we are in the heat of combat, we must shed the habit of decrying the efforts of our forefathers or feigning incomprehension at their silence or passiveness. Lest we fall victim to a certain political nostalgia that is often induced by such illuminating Fanonist exhortations, we ought to clarify the premises of the social "mission" that our generation of US based progressive organizing has undertaken. In the vicinity of the constantly retrenching social welfare apparatuses of the US state, much of the most urgent and immediate work of community-based organizing has revolved around service provision. Importantly, this pragmatic focus also builds a certain progressive ethic of voluntarism that constructs the model activist as a variation on older liberal notions of the "good citizen." Following Fanon, the question is whether and how this mission ought to be fulfilled or betrayed. I believe that to respond to this political problem requires an analysis and conceptualization of "the state" that is far more complex and laborious than we usually allow in our ordinary rush of obligations to build campaigns, organize communities, and write grant proposals. In fact, I think one pragmatic step toward an abolitionist politics involves the development of grassroots pedagogies (such as reading groups, in-home workshops, inter-organization and inter-movement critical dialogues) that will compel us to teach ourselves about the different ways that the state works in the context of domestic warfare, so that we no longer treat it simplistically. We require, in other words, a *scholarly* activist framework to understand that the state can and must be radically confronted on multiple fronts by *an abolitionist politics*. In so many ways, the US progressive/left establishment is filling the void created by what Ruthie Gilmore has called the violent "abandonments" of the state, which forfeits and implodes its own social welfare capacities (which were already insufficient at best) while transforming and (productively) exploding its domestic warmaking functionalities (guided by a " frightening willingness to engage in human sacrifice"). Yet, at the same time that the state has been openly galvanizing itself to declare and wage violent struggle against strategically targeted local populations, the establishment left remains relatively unwilling and therefore institutionally unable to address the questions of social survival, grassroots mobilization, radical social justice, and social transformation *on the concrete and everyday terms of the very domestic war(s) that the state has so openly and repeatedly declared as the premises of its own coherence*. PITFALLS OF THE PEDAGOGICAL STATE We can broadly understand that "the state" is in many ways a conceptual term that refers to a mind-boggling array of geographic, political, and institutional relations of power and domination. It is, in that sense, a term of abstraction: certainly the state is "real," but it is so massive and institutionally stretched that it simply cannot be understood and "seen" in its totality. The way we come to comprehend the state's realness-or differently put, the way the state makes itself comprehensible, intelligible, and materially identifiable to ordinary people-is through its own self narrations and institutional mobilizations. Consider the narrative and institutional dimensions of the "war on drugs," for example. New York City mayor Edward Koch, in a gesture of masculine challenge to the Reagan-era Feds, offers a prime example of such a narration in a 1986 op-ed piece published on the widely-read pages of The New York Times: I propose the following steps as a coordinated Federal response to [the war on drugs]: Use the full resources of the military for drug interdiction. The Posse Comitatus doctrine, which restricts participation of the military in civilian law enforcement, must be modified so that the military can be used for narcotics control ... Enact a Federal death penalty for drug wholesalers. Life sentences, harsh fines, forfeitures of assets, billions spent on education and therapy all have failed to deter the drug wholesaler. The death penalty would. Capital punishment is an extraordinary remedy, but we are facing an extraordinary peril ... Designate United States narcotics prisons. The Bureau of Prisons should designate separate facilities for drug offenders. Segregating such prisoners from others, preferably in remote locations such as the Yukon or desert areas, might motivate drug offenders to abandon their trade. Enhance the Federal agencies combating the drug problem. The Attorney General should greatly increase the number of drug enforcement agents in New York and other cities. He should direct the Federal Bureau of Investigation to devote substantial manpower against the cocaine trade and should see to it that the Immigration and Naturalization Service is capable of detecting and deporting aliens convicted of drug crimes in far better numbers than it now does. Enact the state and local narcotics control assistance act of 1986. This bill provides $750 million annually for five years to assist state and local jurisdictions increase their capacities for enforcement, corrections, education and prosecution. These proposals offer no certainty for success in the fight against drugs, of course. If we are to succeed, however, it is essential that we persuade the Federal Government to recognize its responsibility to lead the way. Edward Koch's manifesto reflects an important dimension of the broader institutional, cultural, and political activities that build the state as a mechanism of self-legitimating violence: the state (here momentarily manifest in the person of the New York City Mayor) constantly *tells stories about itself*, facilitated by a politically willing and accomplice corporate media. This storytelling-which through repetition and saturation assembles the popular "common sense" of domestic warfare-is inseparable from the on-the-ground shifting, rearranging, and recommitting of resources and institutional power that we witness in the everyday mobilizations of a state waging intense, localized, militarized struggle against its declared internal enemies. Consider, for example, how pronouncements like those of Koch, Reagan, and Bratton seem to always be accompanied by the operational innovation of different varieties of covert ops, urban guerilla war, and counterintelligence warfare that specifically emerge through the state's declared domestic wars on crime/drugs/gangs/etc. Hence, it is no coincidence that Mayor Koch's editorial makes the stunning appeal to withdraw ("modify") the Posse Comitatus principle, to allow the Federal government's formal mobilization of its global war apparatus for battle in the homeland neighborhoods of the war on drugs. To reference our example even more closely, we can begin to see how the ramped-up policing and massive imprisonment of Black and Latino youth in Koch's 1980s New York were enabled and normalized by his and others' attempts to story tell the legal empowerment and cultural valorization of the police, such that the nuts-and-bolts operation of the prison industrial complex was lubricated by the multiple moral parables of domestic warfare. This process of producing the state as an active, tangible, and identifiable structure of power and dominance, through the work of self-narration and concrete mobilizations of institutional capacity, is what some scholars call "statecraft." Generally, the state materializes and becomes comprehensible to us through these definitive moments of crafting: that is, we come to identify the state as a series of active political and institutional *projects*. So, if the state's self-narration inundates us with depictions of its policing and juridical arms as the righteously punitive and justifiably violent front lines of an overlapping series of comprehensive, militarized, and culturally valorized domestic wars-for my generation, the "war on drugs," the generation prior, the "war on crime," and the current generation, localized "wars on gangs" and their planetary rearticulation in the "war on terror"-then it is the *material processes of war*, from the writing of public policy to the hyper-weaponization of the police, that commonly represents the existence of the state as we come to normally "know" it. Given that domestic warfare composes both the common narrative language and concrete material production of the state, the question remains as to why the establishment left has not confronted this statecraft with the degree of absolute emergency that the condition implies (war!). Perhaps it is because we are underestimating the skill and reach of the state as a pedagogical (teaching) apparatus, replete with room for contradiction and relatively sanctioned spaces for " dissent" and counter-state organizing. Italian political prisoner Antonio Gramsci's thoughts on the formation of the contemporary pedagogical state are instructive here: The State does have and request consent, but it also "educates" this consent, by means of the political and syndical associations; these, however, are private organisms, left to the private initiative of the ruling class. Although Gramsci was writing these words in the early 1900s, he had already identified the institutional symbiosis that would eventually produce the non-profit industrial complex. The historical record of the last three decades shows that liberal foundations such as the Ford, Mellon, Rockefeller, Soros and other financial entities have become politically central to "the private initiative of the ruling class" and have in fact funded a breath-taking number of organizations, grassroots campaigns, and progressive political interests. The questions I wish to insert here, however, are whether the financially enabling gestures of foundations also 1) exert a politically disciplinary or repressive force on contemporary social movements and community based organizations, while 2) nurturing an ideological and structural *allegiance to the state* that preempts a more creative, radical, abolitionist politics. Several social movement scholars have argued that the "channeling mechanisms" of the non-profit industrial complex "may now far outweigh the effect of direct social control by states in explaining the ... orthodox tactics, and moderate goals of much collective action in modern America." The non-profit apparatus and its symbiotic relationship to the state amount to a sophisticated technology of political repression and social control, *accompanying and facilitating the ideological and institutional mobilizations of a domestic war waging state*. Avowedly progressive, radical, leftist, and even some misnamed "revolutionary" groups find it opportune to assimilate into this state-sanctioned organizational paradigm, as it simultaneously allows them to establish a relatively stable financial and operational infrastructure while avoiding the transience, messiness, and possible legal complication of working under decentralized, informal, or even "underground" auspices. Thus, the aforementioned authors suggest that the emergence of the state-proctored non-profit industry "suggests a historical movement away from direct, cruder forms [of state repression], toward more subtle forms of state social control of social movements." The regularity with which progressive organizations immediately forfeit the crucial political and conceptual possibilities of abolishing domestic warfare is a direct reflection of the extent to which domestic war has been fashioned into the *everyday, "normal" reality of the state*. By extension, the non-profit industrial complex, which is fundamentally guided by the logic of being state-sanctioned (and often state-funded), also reflects this common reality: the operative assumptions of domestic warfare are *taken for granted because they form and inform the popular consensus*. Effectively contradicting, decentering, and transforming the popular consensus (for example, destabilizing assertive assumptions common to progressive movements and organizations such as "we have to control/get rid of gangs," "we need prisons," or "we want better police") is, in this context, dangerously difficult work. Although, the truth of the matter is that the establishment US left, in ways both spoken and presumed, may actually agree with the political, moral, and ideological premises of domestic warfare. Leaders as well as rank-and-file members in avowedly progressive organizations can and must reflect on how they might actually be supporting and reproducing existing forms of racism, white supremacy, state violence, and domestic warfare in the process of throwing their resources behind what they perceive as "winnable victories," in the lexicon of venerable community organizer Saul Alinsky. Our historical moment suggests the need for a principled political rupturing of existing techniques and strategies that fetishize and fixate on the negotiation, massaging, and management of the worst outcomes of domestic warfare. One political move long overdue is toward grassroots pedagogies of radical *dis-identification* with the state, in the trajectory of an anti-nationalism or anti-patriotism, that reorients a progressive *identification* with the creative possibilities of insurgency (this is to consider "insurgency" as a politics that pushes beyond the defensive maneuvering of "resistance"). Reading a few a few lines down from our first invoking of Fanon's call to collective, liberatory action is clarifying here: "For us who are determined to break the back of colonialism, our historic mission is to authorize every revolt, every desperate act, and every attack aborted or drowned in blood." While there are rare groups in existence that offer this kind of nourishing political space (from the L.A.-based Youth Justice Coalition to the national organization INCITE! Women of Color Against Violence), they are often forced to expend far too much energy challenging both the parochialisms of the hegemonic non-profit apparatus and the sometimes narrow politics of the progressive US left. CONCLUSION: ABOLITION AND RADICAL POLITICAL VISION I have become somewhat obsessed with amplifying the need for a dramatic, even spectacular political shift that pushes against and reaches beyond the implicit prostate politics of left progressivism. Most importantly, I am convinced that the abolition of domestic warfare, not unlike precedent (and ongoing) struggles to abolish colonialism, slavery, and programmatic genocide, necessitates a rigorous theoretical and pragmatic approach to a counter- and anti-state radicalism that attempts to fracture the foundations of the existing US social form-because after all, there is truly nothing to be redeemed of a society produced through such terror-inspiring structures of dominance. This political shift requires a sustained labor of radical vision, and in the most crucial ways is actually anchored to "progressive" notions of life, freedom, community, and collective/personal security (including safety from racist policing/criminalization and the most localized brutalities of neoliberal or global capitalism).

### 1NC---CP

HIA Counterplan---

#### The United States federal government ought to commission a binding Health Impact Assessment to evaluate whether the the United States Federal Government should legalize the cultivation, use, and sale of marijuana for recreational and pharmacological purposes, with cultivation and sale governed by the Sherman Act, and overturn and expunge all criminal convictions related to marijuana. The United States federal government ought to implement the recommendations.

#### The counterplan solves the aff but reinvigorates the process of utilizing HIAs

Hom et al 17 – \*MPH from Department of Health Services, School of Public Health, University of Washington. \*\*Affiliate Professor, Env. and Occ. Health Sciences, and Affiliate Professor, Urban Design and Planning, at the University of Washington. \*\*\*Clinical Professor, Health Services, and Clinical Professor, Env. and Occ. Health Sciences, at the University of Washington. \*\*\*\*Public Health, Seattle & King County. (\*Eva Hom, \*\*Andrew L. Dannenberg, \*\*\*Stephanie Farquhar & \*\*\*\*Lee Thornhill, 02/20/17, “A Systematic Review of Health Impact Assessments in the Criminal Justice System,” <https://link.springer.com/article/10.1007/s12103-017-9391-9#:~:text=Health%20impact%20assessments%20have%20potential,increasing%20equity%20and%20improving%20health>.) np

Since the 1970s, our society has experienced a dramatic increase in criminal justice involvement and mass incarceration (Alexander, 2011; Dumont, Brockmann, Dickman, Alexander, & Rich, 2012; Golembeski & Fullilove, 2005). By 2014, the total incarcerated1 population in the United States reached 2,224,400; this does not include over 4.5 million individuals under community supervision 2 (U.S. Department of Justice et al., 2015). Involvement with the criminal justice system,3 whether accused, arrested, or convicted of a criminal act, can have prolonged impacts on many aspects of a person’s life – including health. For each of the over 6 million individuals who have experienced the criminal justice system, the health and social wellbeing of their friends, family, children, and neighbors are impacted as well (Table 1). As an increasing proportion of the population experiences incarceration, the ramifications for public health become more evident. Only recently has there been more collaborative efforts with the public health and criminal justice systems to address health issues at various points along the criminal justice continuum (Akers & Lanier, 2009; Carr, 2007; Hirshfield, 2004; Vaughn, DeLisi, Beaver, Perron, & Abdon, 2012; Vaughn, Salas-Wright, DeLisi, & Piquero, 2014). There are shared root causes of poor health and high incarceration such as lack of job opportunities, low-quality education, and residing in resource-deprived neighborhoods that need to be acknowledged and addressed by both fields (Braveman, Egerter, & Williams, 2011; Cloud, 2014; Graves, 2015). While burgeoning research reveals that historic and current criminal justice policies and practices have contributed to population health problems, the efforts to incorporate this knowledge into reformative solutions have lagged behind. The associations between criminal justice policies or programs and deleterious health outcomes may not always be apparent to decision makers or community members. Health impact assessments offer one approach to elucidate and address these associations. Health Impact Assessments A health impact assessment (HIA) is a systematic process or tool used by a wide range of groups such as governmental entities, non-profit organizations, or community organizations. It uses a combination of data, analytical methods, and stakeholder input to determine if a proposed policy, plan, program, or project will affect the public’s health and to form recommendations directed at policy planners and decision makers to monitor or mitigate those effects (Dannenberg & Wernham, 2012; Human Impact Partners, 2013b; National Research Council, 2011). The evolution of HIAs started with the environmental impacts assessment (EIA), a tool measuring anticipated effects on the environment of a proposed development or project. In the 1970s, EIAs became a requirement for major federal environmental projects and policies with the passing of the 1969 National Environmental Policy Act (NEPA) in the United States (Dannenberg & Wernham, 2012). Other countries followed with the adoption of their own EIA regulations. The public health community felt that the EIAs neglected to focus on human health impacts and independently worked on impact assessments that complimented EIAs on a proposed project or policy plan. This was also a time when the public health field began to recognize social determinants of health and apply an ecological view to understanding health challenges in other disciplines. HIAs have had a longer application in the construction of dams, airports, and transportation, but the social systems theory provided a theoretical basis for expanding the application to other settings like criminal justice (Morash, 1983). In criminal justice settings, impact assessments began as an evaluative process to identify inter-system effects and to modify programs for successful innovations (Morash & Anderson, 1977). The HIA process typically involves six steps: 1) screening (i.e. identifying proposed plans, policies, or projects where a HIA would be beneficial), 2) scoping (i.e. prioritizing health impacts to focus on), 3) assessing risks and benefits, 4) recommendations, 5) reporting results, and 6) monitoring and evaluation of HIA’s impact on the decision (Bhatia et al., 2014; HIP, 2013b; NRC, 2011) (Fig. 1). HIAs are most often conducted prospectively on a proposed policy or project where decision-makers are open to considering recommendations regarding health effects (Dannenberg, 2016). However, retrospective HIAs have also been conducted to revise or reevaluate an existing policy or project (Signal, Langford, Quigley, & Ward, 2006). HIAs can be initiated by a variety of organizations or groups including local, state, or tribal health departments, academic groups, and community-based organizations (Dannenberg et al., 2014). HIAs are well-established and standardized in Europe, Canada, Australia, and Thailand, most HIAs conducted in the past two decades have occurred in those countries. Most HIAs have been conducted in the transportation, housing or urban planning, and environmental sectors (Dannenberg & Wernham, 2012; NRC, 2011). Using HIAs to provide health-focused recommendations to decision makers has become more common in the United States, but are currently conducted on a voluntary basis with no requirements or legislative mandates (Bhatia & Corburn, 2011; Dannenberg & Wernham, 2012).

#### That’s key to stopping zoonotic diseases

USAID 12. “PROPOSED SUPPLEMENTAL GUIDANCE TO THE IFC’S INTRODUCTION TO HEALTH IMPACT ASSESSMENTS,” EPT Program: June 2012. https://www.usaid.gov/sites/default/files/documents/1864/Planning-Tool.pdf

Emerging Infectious Diseases and HIAs 1. Development Projects and Emerging Infectious Diseases Nearly three-quarters of emerging infectious diseases originate from wildlife. Three wild animal groups, which comprise approximately 70 percent of mammal species, are considered most likely to spread new infections to people: bats (Corona virus responsible for SARS and Marburg, Nipah and Rabies viruses), rodents (Lassa, hanta, and monkeypox viruses) and non-human primates (Ebola and yellow fever viruses). People contract these diseases by inhalation of aerosolized contaminated feces and urine, through direct contact via scratches, bites, and bodily fluids—such as blood and saliva— that can occur during hunting and food preparation, and by ingesting contaminated food, water, or undercooked meat. Disease emergence is dynamic, and is influenced by ecological, biological, and social factors. Factors that influence disease dynamics and increase the likelihood of disease emergence include: • High population density (human or animal) • Movement of human and animal populations • Changes in land use (e.g. from forest to agriculture) • Pathogen adaptation and evolution • Presence and mobility of vectors • Behavior changes leading to increased potential for human-animal interaction/exposure • Climate change. Industry activities can contribute to disease emergence. These activities include, but are not limited to: • Deforestation • Road and corridor development • Temporary labor camps and other facilities • Expansion of surrounding local communities and agriculture • Project-induced migration. These activities bring people to previously wild areas and can fragment wildlife habitat and reduce biodiversity, which can alter the distribution and abundance of wildlife and their associated pathogens, and amplify the risk of pathogen “spillover” into new populations. Increasing contact between people, domestic animal (e.g. livestock), and wildlife populations increases the likelihood of spillover and disease transmission between species. All animal species can carry zoonotic diseases. As habitats fragment and people enter previously undeveloped areas, wildlife species will seek alternate food and shelter that will bring them into closer contact with people. Wildlife may become a nuisance or pest and take advantage of the new food sources and habitats created at construction camps, canteens, and villages. As a result, animals come in closer contact with people, potentially increasing human exposure to disease. Other animals raid crops in fields that border their habitat, invade labor camps and homes, become violent, or eat infected animals. As more people populate a previously undeveloped area, hunting pressure often increases. Agriculture may be introduced or intensified. These factors lead to increased potential for interaction between wildlife and people. These interactions may also be exacerbated by growing human populations that can stress local health care, water, food, and waste management infrastructures. In turn, stressed systems are more likely to break down, creating ideal conditions for increased disease transmission and emergence. Table 1 summarizes some health impact issues that can increase the potential of zoonotic disease transmission. 2. Emerging Infectious Diseases and Impact Assessments The International Finance Corporation (IFC), International Council of Mining and Minerals (ICMM), and IPIECA, the global oil and gas industry association for environmental and social issues, have procedures to conduct a Health Impact Assessment. Although these guidelines include veterinary and zoonotic diseases, they emphasize vector-borne diseases and diseases of livestock and domestic animals. This document provides the steps to incorporate emerging infectious diseases of zoonotic origin into a health impact assessment. 3. Screening Impact assessment procedures involve two initial phases: Screening and Scoping. Screening determines what policies and projects are selected for ESHIAs, and are usually rapid in-house evaluations by trained assessors investigating local contexts using set criteria (e.g. location, climate, endemic disease, etc.). Because Screening determines the range and extent of all subsequent impact assessment activities, understanding the local endemic diseases with zoonotic potential is essential. The following screening checklist seeks to identify whether the proposed/existing project is in an area with potential for zoonotic disease transmission and to identify if there will be/are activities that might exacerbate the risk of transmission. If you have answered yes to question 1 and two other questions, then it is worthwhile to further examine the potential of emerging infectious diseases for your project area. 4. Scoping Scoping, the second phase of an assessment, sets the scale for the assessment, determines how key issues identified in the screening process are addressed, and what resources will be available and allocated for further investigation. During the Scoping process, the range and types of hazards, geographic setting, timescale, and population boundaries are determined to assess impacts. The activities to be evaluated and the populations to be considered for each phase of the project are identified. In addition, the potential for cumulative and/or residual impacts is determined.

#### Containing zoonotic diseases is key to reduce global catastrophe risk

Quammen 12, award-winning science writer, long-time columnist for *Outside* magazine, writer for National Geographic, Harper's, Rolling Stone, the New York Times Book Review and others, 9/29/2012 (David, “Could the next big animal-to-human disease wipe us out?,” The Guardian, pg. 29, Lexis)

Infectious disease is all around us. It's one of the basic processes that ecologists study, along with predation and competition. Predators are big beasts that eat their prey from outside. Pathogens (disease-causing agents, such as viruses) are small beasts that eat their prey from within. Although infectious disease can seem grisly and dreadful, under ordinary conditions, it's every bit as natural as what lions do to wildebeests and zebras. But conditions aren't always ordinary. Just as predators have their accustomed prey, so do pathogens. And just as a lion might occasionally depart from its normal behaviour - to kill a cow instead of a wildebeest, or a human instead of a zebra - so a pathogen can shift to a new target. **Aberrations occur**. When a pathogen leaps from an animal into a person, and succeeds in establishing itself as an infectious presence, sometimes causing illness or death, the result is a zoonosis. It's a mildly technical term, zoonosis, unfamiliar to most people, but it helps clarify the biological complexities behind the ominous headlines about swine flu, bird flu, Sars, emerging diseases in general, and the threat of a global pandemic. It's a word of the future, destined for heavy use in the 21st century. Ebola and Marburg are zoonoses. So is bubonic plague. So was the so-called Spanish influenza of 1918-1919, which had its source in a wild aquatic bird and emerged to kill as many as 50 million people. All of the human influenzas are zoonoses. As are monkeypox, bovine tuberculosis, Lyme disease, West Nile fever, rabies and a strange new affliction called Nipah encephalitis, which has killed pigs and pig farmers in Malaysia. Each of these zoonoses reflects the action of a pathogen that can "spillover", crossing into people from other animals. Aids is a disease of zoonotic origin caused by a virus that, having reached humans through a few accidental events in western and central Africa, now passes human-to-human. This form of interspecies leap is not rare; about 60% of all human infectious diseases currently known either cross routinely or have recently crossed between other animals and us. Some of those - notably rabies - are familiar, widespread and still horrendously lethal, killing humans by the thousands despite centuries of efforts at coping with their effects. Others are new and inexplicably sporadic, claiming a few victims or a few hundred, and then disappearing for years. Zoonotic pathogens can hide. The least conspicuous strategy is to lurk within what's called a reservoir host: a living organism that carries the pathogen while suffering little or no illness. When a disease seems to disappear between outbreaks, it's often still lingering nearby, within some reservoir host. A rodent? A bird? A butterfly? A bat? To reside undetected is probably easiest wherever biological diversity is high and the ecosystem is relatively undisturbed. The converse is also true: ecological disturbance causes diseases to emerge. Shake a tree and things fall out. Michelle Barnes is an energetic, late 40s-ish woman, an avid rock climber and cyclist. Her auburn hair, she told me cheerily, came from a bottle. It approximates the original colour, but the original is gone. In 2008, her hair started falling out; the rest went grey "pretty much overnight". This was among the lesser effects of a mystery illness that had nearly killed her during January that year, just after she'd returned from Uganda. Her story paralleled the one Jaap Taal had told me about Astrid, with several key differences - the main one being that Michelle Barnes was still alive. Michelle and her husband, Rick Taylor, had wanted to see mountain gorillas, too. Their guide had taken them through Maramagambo Forest and into Python Cave. They, too, had to clamber across those slippery boulders. As a rock climber, Barnes said, she tends to be very conscious of where she places her hands. No, she didn't touch any guano. No, she was not bumped by a bat. By late afternoon they were back, watching the sunset. It was Christmas evening 2007. They arrived home on New Year's Day. On 4 January, Barnes woke up feeling as if someone had driven a needle into her skull. She was achy all over, feverish. "And then, as the day went on, I started developing a rash across my stomach." The rash spread. "Over the next 48 hours, I just went down really fast." By the time Barnes turned up at a hospital in suburban Denver, she was dehydrated; her white blood count was imperceptible; her kidneys and liver had begun shutting down. An infectious disease specialist, Dr Norman K Fujita, arranged for her to be tested for a range of infections that might be contracted in Africa. All came back negative, including the test for Marburg. Gradually her body regained strength and her organs began to recover. After 12 days, she left hospital, still weak and anaemic, still undiagnosed. In March she saw Fujita on a follow-up visit and he had her serum tested again for Marburg. Again, negative. Three more months passed, and Barnes, now grey-haired, lacking her old energy, suffering abdominal pain, unable to focus, got an email from a journalist she and Taylor had met on the Uganda trip, who had just seen a news article. In the Netherlands, a woman had died of Marburg after a Ugandan holiday during which she had visited a cave full of bats. Barnes spent the next 24 hours Googling every article on the case she could find. Early the following Monday morning, she was back at Dr Fujita's door. He agreed to test her a third time for Marburg. This time a lab technician crosschecked the third sample, and then the first sample. The new results went to Fujita, who called Barnes: "You're now an honorary infectious disease doctor. You've self-diagnosed, and the Marburg test came back positive." The Marburg virus had reappeared in Uganda in 2007. It was a small outbreak, affecting four miners, one of whom died, working at a site called Kitaka Cave. But Joosten's death, and Barnes's diagnosis, implied a change in the potential scope of the situation. That local Ugandans were dying of Marburg was a severe concern - sufficient to bring a response team of scientists in haste. But if tourists, too, were involved, tripping in and out of some python-infested Marburg repository, unprotected, and then boarding their return flights to other continents, the place was not just a peril for Ugandan miners and their families. It was also an international threat. The first team of scientists had collected about 800 bats from Kitaka Cave for dissecting and sampling, and marked and released more than 1,000, using beaded collars coded with a number. That team, including scientist Brian Amman, had found live Marburg virus in five bats. Entering Python Cave after Joosten's death, another team of scientists, again including Amman, came across one of the beaded collars they had placed on captured bats three months earlier and 30 miles away. "It confirmed my suspicions that these bats are moving," Amman said - and moving not only through the forest but from one roosting site to another. Travel of individual bats between far-flung roosts implied circumstances whereby Marburg virus might ultimately be transmitted all across Africa, from one bat encampment to another. It voided the comforting assumption that this virus is strictly localised. And it highlighted the complementary question: why don't outbreaks of Marburg virus disease happen more often? Marburg is only one instance to which that question applies. Why not more Ebola? Why not more Sars? In the case of Sars, the scenario could have been very much worse. Apart from the 2003 outbreak and the aftershock cases in early 2004, it hasn't recurred. . . so far. Eight thousand cases are relatively few for such an explosive infection; 774 people died, not 7 million. Several factors contributed to limiting the scope and impact of the outbreak, of which humanity's good luck was only one. Another was the speed and excellence of the laboratory diagnostics - finding the virus and identifying it. Still another was the brisk efficiency with which cases were isolated, contacts were traced and quarantine measures were instituted, first in southern China, then in Hong Kong, Singapore, Hanoi and Toronto. If the virus had arrived in a different sort of big city - more loosely governed, full of poor people, lacking first-rate medical institutions - it might have burned through **a much larger segment of** humanity. One further factor, possibly the most crucial, was inherent in the way Sars affects the human body: symptoms tend to appear in a person before, rather than after, that person becomes highly infectious. That allowed many Sars cases to be recognised, hospitalised and placed in isolation before they hit their peak of infectivity. With influenza and many other diseases, the order is reversed. That probably helped account for the scale of worldwide misery and death during the 1918-1919 influenza. And that infamous global pandemic occurred in the era before globalisation. Everything nowadays moves around the planet faster, including viruses. When the **Next** Big One comes, it will likely **conform to the** same perverse pattern as the **1918 influenza**: high infectivity preceding notable symptoms. That will help it move through cities and airports like an angel of death. The Next Big One is a subject that disease scientists around the world often address. The most recent big one is Aids, of which the eventual total bigness cannot even be predicted - about 30 million deaths, 34 million living people infected, and with no end in sight. Fortunately, not every virus goes airborne from one host to another. If HIV-1 could, you and I might already be dead. If the rabies virus could, it would be **the most** horrific **pathogen on the planet**. The influenzas are well adapted for airborne transmission, which is why a new strain can circle the world within days. The Sars virus travels this route, too, or anyway by the respiratory droplets of sneezes and coughs - hanging in the air of a hotel corridor, moving through the cabin of an aeroplane - and that capacity, combined with its case fatality rate of almost 10%, is what made it so scary in 2003 to the people who understood it best. Human-to-human transmission is the crux. That capacity is what separates a bizarre, awful, localised, intermittent and mysterious disease (such as Ebola) from a global pandemic. Have you noticed the persistent, low-level buzz about avian influenza, the strain known as H5N1, among disease experts over the past 15 years? That's because avian flu worries them deeply, though it hasn't caused many human fatalities. Swine flu comes and goes periodically in the human population (as it came and went during 2009), sometimes causing a bad pandemic and sometimes (as in 2009) not so bad as expected; but avian flu resides in a different category of menacing possibility. It worries the flu scientists because they know that H5N1 influenza is extremely virulent in people, with a high lethality. As yet, there have been a relatively low number of cases, and it is poorly transmissible, so far, from human to human. It'll kill you if you catch it, very likely, but you're unlikely to catch it except by butchering an infected chicken. But if H5N1 mutates or reassembles itself in just the right way, if it adapts for human-to-human transmission, it could become the biggest and fastest killer disease since 1918. It got to Egypt in 2006 and has been especially problematic for that country. As of August 2011, there were 151 confirmed cases, of which 52 were fatal. That represents more than a quarter of all the world's known human cases of bird flu since H5N1 emerged in 1997. But here's a critical fact: those unfortunate Egyptian patients all seem to have acquired the virus directly from birds. This indicates that the virus hasn't yet found an efficient way to pass from one person to another. Two aspects of the situation are dangerous, according to biologist Robert Webster. The first is that Egypt, given its recent political upheavals, may be unable to staunch an outbreak of transmissible avian flu, if one occurs. His second concern is shared by influenza researchers and public health officials around the globe: with all that mutating, with all that contact between people and their infected birds, the virus could hit upon a genetic configuration making it highly transmissible among people. "As long as H5N1 is out there in the world," Webster told me, "there is the possibility of disaster. . . There is the theoretical possibility that it can acquire the ability to transmit human-to-human." He paused. "And then God help us." We're unique in the history of mammals. No other primate has ever weighed upon the planet to anything like the degree we do. In ecological terms, we are almost paradoxical: large-bodied and long-lived but grotesquely abundant. We are an outbreak. And **here's the thing about** outbreaks: **they** end. In some cases they end after many years, in others they end rather soon. In some cases they end gradually, in others they end with a crash. In certain cases, they end and recur and end again. Populations of tent caterpillars, for example, seem to rise steeply and fall sharply on a cycle of anywhere from five to 11 years. The crash endings are dramatic, and for a long while they seemed mysterious. What could account for such sudden and recurrent collapses? One possible factor is infectious disease, and viruses in particular.

## Adv 1

#### Risk is magnitude times probability—balances their framing with ours—BUT, probability first falls prey to psychological biases and leads to mass death.

Clarke 8 [Lee, member of a National Academy of Science committee that considered decision-making models, Anschutz Distinguished Scholar at Princeton University, Fellow of AAAS, Professor Sociology (Rutgers), Ph.D. (SUNY), “Possibilistic Thinking: A New Conceptual Tool for Thinking about Extreme Events,” Fall, Social Research 75.3, JSTOR]

In scholarly work, the subfield of disasters is often seen as narrow. One reason for this is that a lot of scholarship on disasters is practically oriented, for obvious reasons, and the social sciences have a deep-seated suspicion of practical work. This is especially true in sociology. Tierney (2007b) has treated this topic at length, so there is no reason to repeat the point here. There is another, somewhat unappreciated reason that work on disaster is seen as narrow, a reason that holds some irony for the main thrust of my argument here: disasters are unusual and the social sciences are generally biased toward phenomena that are frequent. Methods textbooks caution against using case stud- ies as representative of anything, and articles in mainstreams journals that are not based on probability samples must issue similar obligatory caveats. The premise, itself narrow, is that the only way to be certain that we know something about the social world, and the only way to control for subjective influences in data acquisition, is to follow the tenets of probabilistic sampling. This view is a correlate of the central way of defining rational action and rational policy in academic work of all varieties and also in much practical work, which is to say in terms of probabilities. The irony is that probabilistic thinking has its own biases, which, if unacknowledged and uncorrected for, lead to a conceptual neglect of extreme events. This leaves us, as scholars, paying attention to disasters only when they happen and doing that makes the accumulation of good ideas about disaster vulnerable to issue-attention cycles (Birkland, 2007). These conceptual blinders lead to a neglect of disasters as "strategic research sites" (Merton, 1987), which results in learning less about disaster than we could and in missing opportunities to use disaster to learn about society (cf. Sorokin, 1942). We need new conceptual tools because of an upward trend in frequency and severity of disaster since 1970 (Perrow, 2007), and because of a growing intellectual attention to the idea of worst cases (Clarke, 2006b; Clarke, in press). For instance, the chief scientist in charge of studying earthquakes for the US Geological Service, Lucile Jones, has worked on the combination of events that could happen in California that would constitute a "give up scenario": a very long-shaking earthquake in southern California just when the Santa Anna winds are making everything dry and likely to burn. In such conditions, meaningful response to the fires would be impossible and recovery would take an extraordinarily long time. There are other similar pockets of scholarly interest in extreme events, some spurred by September 11 and many catalyzed by Katrina. The consequences of disasters are also becoming more severe, both in terms of lives lost and property damaged. People and their places are becoming more vulnerable. The most important reason that vulnerabilities are increasing is population concentration (Clarke, 2006b). This is a general phenomenon and includes, for example, flying in jumbo jets, working in tall buildings, and attending events in large capacity sports arenas. Considering disasters whose origin is a natural hazard, the specific cause of increased vulnerability is that people are moving to where hazards originate, and most especially to where the water is. In some places, this makes them vulnerable to hurricanes that can create devastating storm surges; in others it makes them vulnerable to earthquakes that can create tsunamis. In any case, the general problem is that people concentrate themselves in dangerous places, so when the hazard comes disasters are intensified. More than one-half of Florida's population lives within 20 miles of the sea. Additionally, Florida's population grows every year, along with increasing development along the coasts. The risk of exposure to a devastating hurricane is obviously high in Florida. No one should be surprised if during the next hurricane season Florida becomes the scene of great tragedy. The demographic pressures and attendant development are wide- spread. People are concentrating along the coasts of the United States, and, like Florida, this puts people at risk of water-related hazards. Or consider the Pacific Rim, the coastline down the west coasts of North and South America, south to Oceania, and then up the eastern coast- line of Asia. There the hazards are particularly threatening. Maps of population concentration around the Pacific Rim should be seen as target maps, because along those shorelines are some of the most active tectonic plates in the world. The 2004 Indonesian earthquake and tsunami, which killed at least 250,000 people, demonstrated the kind of damage that issues from the movement of tectonic plates. (Few in the United States recognize that there is a subduction zone just off the coast of Oregon and Washington that is quite similar to the one in Indonesia.) Additionally, volcanoes reside atop the meeting of tectonic plates; the typhoons that originate in the Pacific Ocean generate furiously fatal winds. Perrow (2007) has generalized the point about concentration, arguing not only that we increase vulnerabilities by increasing the breadth and depth of exposure to hazards but also by concentrating industrial facilities with catastrophic potential. Some of Perrow's most important examples concern chemical production facilities. These are facilities that bring together in a single place multiple stages of production used in the production of toxic substances. Key to Perrow's argument is that there is no technically necessary reason for such concentration, although there may be good economic reasons for it. The general point is that we can expect more disasters, whether their origins are "natural" or "technological." We can also expect more death and destruction from them. I predict we will continue to be poorly prepared to deal with disaster. People around the world were appalled with the incompetence of America's leaders and orga- nizations in the wake of Hurricanes Katrina and Rita. Day after day we watched people suffering unnecessarily. Leaders were slow to grasp the importance of the event. With a few notable exceptions, organi- zations lumbered to a late rescue. Setting aside our moral reaction to the official neglect, perhaps we ought to ask why we should have expected a competent response at all? Are US leaders and organiza- tions particularly attuned to the suffering of people in disasters? Is the political economy of the United States organized so that people, espe- cially poor people, are attended to quickly and effectively in noncri- sis situations? The answers to these questions are obvious. If social systems are not arranged to ensure people's well-being in normal times, there is no good reason to expect them to be so inclined in disastrous times. Still, if we are ever going to be reasonably well prepared to avoid or respond to the next Katrina-like event, we need to identify the barriers to effective thinking about, and effective response to, disas- ters. One of those barriers is that we do not have a set of concepts that would help us think rigorously about out-sized events. The chief toolkit of concepts that we have for thinking about important social events comes from probability theory. There are good reasons for this, as probability theory has obviously served social research well. Still, the toolkit is incomplete when it comes to extreme events, especially when it is used as a base whence to make normative judgments about what people, organizations, and governments should and should not do. As a complement to probabilistic thinking I propose that we need possibilistic thinking. In this paper I explicate the notion of possibilistic thinking. I first discuss the equation of probabilism with rationality in scholarly thought, followed by a section that shows the ubiquity of possibilis- tic thinking in everyday life. Demonstrating the latter will provide an opportunity to explore the limits of the probabilistic approach: that possibilistic thinking is widespread suggests it could be used more rigorously in social research. I will then address the most vexing prob- lem with advancing and employing possibilistic thinking: the prob- lem of infinite imagination. I argue that possibilism can be used with discipline, and that we can be smarter about responding to disasters by doing so.

#### Legalization fuels the black market---low prices incentivize illegal businesses

Fertig 19---a writer in Washington, D.C., covering cannabis and politics. (Natalie, “How Legal Marijuana Is Helping the Black Market”, Politico, July 21st, 2019, https://www.politico.com/magazine/story/2019/07/21/legal-marijuana-black-market-227414)//EL

What’s happening to Meguerian is a window into one widespread side effect of marijuana legalization in the U.S.: In many cases it has fueled, rather than eliminated, the black market. In Los Angeles, unlicensed businesses greatly outnumber legal ones; in Oregon, a glut of low-priced legal cannabis has pushed illegal growers to export their goods across borders into other states where it’s still illegal, leaving law enforcement overwhelmed. Three years after Massachusetts voters approved full legalization of marijuana, most of the cannabis economy consists of unlicensed “private clubs,” home growing operations and illicit sales. Though each state has its own issues, the problems have similar outlines: Underfunded law enforcement officers and slow-moving regulators are having trouble building a legal regime fast enough to contain a high-demand product that already has a large existing criminal network to supply it. And at the national level, advocates also point to another, even bigger structural issue: Problems are inevitable in a nation where legalization is so piecemeal.

## Adv 2

**Prosecuting opioid companies fails – they have armies of lawyers and strong legal defenses**

**Bernstein and Rowland 19** Lenny Bernstein and Christopher Rowland, 7-17-2019, Lenny Bernstein covers health and medicine., Chris Rowland reports on the business of health care for The Washington Post, The Washington Post, "As lawyers zero in on drug companies, a reckoning may be coming", https://www.washingtonpost.com/health/as-lawyers-zero-in-on-drug-companies-a-reckoning-may-be-coming/2019/07/17/c634a1bc-a89a-11e9-86dd-d7f0e60391e9\_story.html

But those results don’t mean settlements or court victories for plaintiffs are likely. Johnson & Johnson and many drug manufacturers and distributors populate the Fortune 500 list of America’s largest companies. They have steadfastly denied culpability for the drug crisis and have the resources to wage protracted legal battles.

Johnson & Johnson, for example, has paid a small army of attorneys since Oklahoma filed its lawsuit in 2017, opting to battle the state in a seven-week trial that just ended in a Norman courtroom.

“Johnson & Johnson has been, in a bunch of cases, not afraid to litigate,” said Alexandra Lahav, professor at the University of Connecticut School of Law. “This is not the only mass tort they’re dealing with, and they have been pretty aggressive in their litigation strategy,” she said, citing the company’s defense against lawsuits from women who claimed that asbestos in the company’s talc products gave them cancer.

As Purdue and Teva reached out-of-court settlements with Oklahoma (both denied wrongdoing), Johnson & Johnson took its chances at trial. It rejected state claims that it had minimized the risks of its opioid products and that it was a “kingpin” supplier of raw narcotic ingredients for other manufacturers.

“When you’re right, you fight,” the company’s lead attorney, Larry Ottaway, told Judge Thad Balkman more than once during the trial.

The major manufacturers, distributors and dispensers of opioids, including Johnson & Johnson, have offered a variety of defenses: They sell legal, highly regulated painkillers to willing customers; the Drug Enforcement Administration sets annual quotas for the quantities each company can produce; doctors sparked the epidemic by overprescribing opioids to address their patients’ pain.

Whichever side loses may be inclined to appeal.

# 2NC

## T

#### Antitrust already applies to cannabis companies

**Jenner & Block 20**, 7-6-2020, "How Cannabis Cos. Can Address Enhanced Antitrust Scrutiny," Lexology, https://www.lexology.com/library/detail.aspx?g=7e1eab1f-5b73-46d3-81df-e77af2c152cd

Cannabis companies have a lot on their plate: growing their business in a new industry and staying on the right side of state regulators, for starters. To that list, cannabis companies need to add considering the antitrust implications of their business.

That is especially true for companies preparing to merge, in light of the bombshell testimony of a U.S. Department of Justice whistleblower who claimed that Attorney General William Barr has targeted cannabis industry mergers for heightened scrutiny that may not be warranted on traditional antitrust grounds.

Though cannabis companies may not be recognized as legal enterprises by the federal government, that doesn't mean they are not subject to the federal antitrust laws. Antitrust is an area of the law where a company can quickly find itself in trouble with law enforcement and regulators at both the federal and state level, as well as facing substantial civil liability.

#### Their ev flows neg---we read green

**Harris Bricken 17**—Harris Bricken, Canna Law Blog, May 23 2017, “Antitrust Risks in Marijuana Trade Associations” Harris Bricken is an international law firm with lawyers in Seattle, Portland, Los Angeles, New York City, Phoenix, Salt Lake City, Mexico City, Barcelona, and Beijing. With over a decade in business, we know how important it is to understand our clients’ businesses and goals. We rely on our strong client relationships, our experience and our professional network to help us get the job done. https://harrisbricken.com/cannalawblog/antitrust-risks-in-marijuana-trade-associations/

Last week, [we wrote](https://harrisbricken.com/cannalawblog/new-oregon-cannabis-industry-group-promotes-clean-ethical-and-engaged-local-businesses/) about a new cannabis industry group in Oregon, the Craft Cannabis Alliance. In addition to national groups like the National Cannabis Industry Association, more and **more regional, state, and local cannabis trade associations have been forming.** Generally, they begin with political goals in mind. The national groups work toward marijuana legalization at the state level and on lifting restrictions at the federal level. State and local cannabis groups typically work for specific regulatory fixes or lobby local governments to resolve land use challenges. When cannabis trade associations go beyond run of the mill lobbying work, however, **they can present legal risks to their members with potentially harsh consequences.** Specifically, **if trade association members take steps to limit their competition with one another, they can face massive civil penalties.**

Competition law, referred to in the United States as antitrust law, has both federal and state components. Federally, antitrust law stems from the Sherman Act of 1890, the Federal Trade Commission Act of 1914, and the Clayton Act of 1914. **The**[Sherman Act](https://en.wikipedia.org/wiki/Sherman_Antitrust_Act)**prohibits every “contract, combination, or conspiracy in restraint of trade.” The Sherman Act has been interpreted by courts over the years not to outlaw every restraint of trade — it specifically targets “unreasonable” restraints such as price fixing, dividing markets, and rigging bids. Most states also regulate unfair competition.** In Washington State, we have the [Consumer Protection Act](http://nas/content/live/mockingbird1s.leg.wa.gov/RCW/default.aspx?cite=19.86), which largely mirrors the Sherman Act’s prohibitions in restraint of trade. In most international jurisdictions, actions for violation of competition law are limited to governments. In the United States, however, both state and federal statutes provide for private rights of action. This means **private parties that are damaged or potentially damaged by unreasonable restraints of trade may be able to collect treble damages, attorney’s fees, and injunctions against any company that is a party to the unreasonable restraint of trade.** Trade associations, then, **provide an easy pathway to violations of state and federal competition law.** Many of the smaller regional trade associations are focused on a specific sector of the industry. Retailer groups as well as cultivation groups have formed across the legal cannabis states in the western United States. Imagine this situation: a trade group made up of farmers meets to discuss lobbying on state pesticide rules. As the meeting winds down, conversation turns to talking about the glut of supply in the market, driving down prices. One producer says she has no plans whatsoever to sell below a certain price. Another producer says the same thing, and others nod in assent – agreeing it would be unprofitable for any of them to sell below that price. That conversation can create huge liability problems for all its participants and for the trade group as a whole. **Even if there isn’t a formal written agreement, an aggrieved party could still show an unreasonable restraint of trade. Actions of an association or actions of its members consistent with an unreasonable restraint of trade can be evidence of an agreement of the association’s members. Certain agreements, including price-fixing and market allocation agreements, can actually be crimes that include jail time.** And though federally criminal conduct is nothing new for participants in the cannabis industry, those that violate competition law are not even granted the minimal protections of [the Cole Memo](https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf). Trade associations are particularly susceptible to certain types of anti-competitive behavior. Associations with codes of conduct, standard setting, and certification can unwittingly create anti-competitive behaviors. If a provision of the code of conduct is unreasonable and deemed to act as a restraint of trade — as opposed to a reasonable attempt to pursue a legitimate goal –could make association members that act pursuant to that code section liable for antitrust violations**.** Judges and juries have large amounts of discretion in determining whether a restraint on trade is unreasonable or not, so a legitimate safety standard to one person may be an illegal attempt to force a boycott of a competitor to another person. Trade associations need to take steps to ensure their group does not create antitrust liability for its members. **Anti-competitive agreements can be inferred if two or more market actors are taking parallel action and it can be shown that the competitors have engaged in illicit communications**. So it makes sense for a trade association’s leadership to run tight meetings. All business should be formally proposed to an executive committee, which then limits discussion at broad group meetings to the specific business on the table. Agendas and presentations can be distributed in advance, and participants should be informed to stick to the specific issues at hand. Leadership can further inform the members that certain topics are completely off limits: pricing, whether to do business with certain market participants, decisions regarding company product output, and complaints about the business practices of other companies. By taking these steps, an association can help prevent its meeting minutes from being used as proof of anticompetitive conduct. And if individual members engage in such conduct with one another, it is easier for other members to claim they were not involved in the anticompetitive acts. There are many areas of law that the young cannabis industry hasn’t had major problems with yet. Products liability laws, antitrust laws, and others have seemed like distant problems, given that simple banking and taxation has been such a problem. But it is vital for industry members to remain proactive. Otherwise, public and private actors can upend the industry with a well-timed lawsuit.

#### So does their 2AC ev

Vail et al 20-- Andrew Vail, Lee Van Voorhis and Shaun Van Horn, July 6, 2020, “How Cannabis Cos. Can Address Enhanced Antitrust Scrutiny” Law360, <https://jenner.com/system/assets/publications/20116/original/How%20Cannabis%20Cos.%20Can%20Address%20Enhanced%20Antitrust%20Scrutiny.pdf?1594242298> (<3>O)

A related antitrust issue is that increasing market share can lead to competitor or other third-party suits under the primary federal antitrust law, the Sherman Act. To succeed under the Sherman Act, the plaintiff must show that the defendant has market power, which is the ability to "to raise prices above those that would be charged in a competitive market."[6] A dominant market share can serve as strong evidence of market power.[7] That rule applies with even greater force when there are substantial barriers to entry, such as exist in a heavily regulated and licensed market like cannabis.[8] For this reason, acquisitive increases in market share in the cannabis space may encourage challenges and ought to be evaluated through the lens of a potential Sherman Act claim. However, note that the mere possession of a high market share, or even market power is not itself an antitrust violation. To violate the Sherman Act, there must be some act taken to enhance or maintain that power. The list of potential violations is bounded only by human ingenuity, and therefore, cannabis companies with increasing market shares should make sure they are engaging in best practices in aspects of their business such as pricing, collaborations with competitors, contracts with distributors and suppliers, and the overlapping activities of many vertically integrated market risk benefits — all of which are potential antitrust problem areas

## Non-Antitrust CP

#### Regulation best solves natural monopolies.

Shelanski 11 – Former Deputy Director, Bureau of Economics, Federal Trade Commission, Professor of Law, Georgetown University

Howard A. Shelanski, “The Case for Rebalancing Antitrust and Regulation,” Michigan Law Review, Vol. 109, Issue 5, 2011, https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1160&context=mlr

Economic regulation typically arises because there is some reason that competition is either undesirable or unattainable in a market. Natural monopoly, where it costs less to have one firm serve the entire market than to have multiple firms competing to do so, is a prominent example.160 In such cases, the regulator's main job is to ensure that the monopolist meets its service obligations without extracting monopoly profits from consumers. In other settings, regulators might want to keep multiple firms in the market but allow them to cooperate to overcome certain market failures. Thus, securities regulators might want to let underwriters cooperate in gathering broad information on the potential retail market for securities a firm plans to issue in the future, but at the same time use regulatory oversight to mitigate the scope and harmful effects of collusive pricing that might result from such cooperation in the concentrated securities underwriting market.161 As a final example, regulators might oversee the development of competition in historically monopoly markets. In such cases, the job of the agency may involve establishing conditions on which competitive entrants can gain access and interconnection to the incumbent monopolist's customers and facilities.162

#### Antitrust’s unusually broad scope is the core of our link---that doesn’t apply to the counterplan’s rule-based and industry-specific approach.

Lambert 17 – Wall Chair in Corporate Law and Governance and Professor of Law, University of Missouri

Thomas A. Lambert, “How to Regulate: A Guide for Policymakers,” Cambridge University Press, August 2017

Taken together, then, the difficulty of evaluating the competitive effects of business practices (decision costs) and the inevitability of mistakes (error costs) limit what antitrust can accomplish. Perfection is impossible, and efforts to achieve it are likely to be wasteful. Of course, as Chapter 2 explains, the same can be said for all efforts to regulate mixed-bag behavior. The point is most salient with antitrust, though, because antitrust’s scope is unusually broad (i.e., it is the residual regulator of all business behavior), and the behaviors it regularly restricts – trade-restraining agreements and business methods that may injure rivals – are particularly likely to involve ambiguous welfare effects. It is especially important, then, that courts, in crafting antitrust rules and standards, eschew perfection and settle for optimization – that is, they should develop liability tests calculated not to catch every anticompetitive act but instead to minimize the sum of error and decision costs. Fortunately, the US Supreme Court has in recent years become far more cognizant of antitrust’s inherent limits and has generally endeavored to structure antitrust’s standards in a manner that will optimize the law’s effectiveness.18

In addition to being an inherently limited body of law, a second difficulty with antitrust as a remedy for market power is that it is poorly poised to prevent harms in markets involving “natural monopolies.” The discussion that follows examines natural monopoly conditions and the chief policy responses thereto.

Direct Regulation

As explained earlier, antitrust is standard-based and applies (unless displaced) to all industries. Alternative market power remedies, which we may lump together under the description “direct regulation,” are generally rule-based and industry-specific. They also differ from antitrust in that they tend to be administered by expert agencies rather than by generalist courts.

#### A purely regulatory system is best---it’s much more efficient---the perm wrecks that by including the aff’s ex-post litigation approach

Posner 10 – Judge in the U.S. Court of Appeals for the Seventh Circuit, Senior Lecturer at the University of Chicago Law School

Richard A. Posner, “Regulation (Agencies) versus Litigation (Courts): An Analytical Framework,” Regulation vs. Litigation: Perspectives from Economics and Law, National Bureau of Economic Research, Inc., 2010, https://ideas.repec.org/h/nbr/nberch/11956.html

Pure: pros. A pure system is cheaper, simpler, operates much more quickly, and provides better guidance. The need for speed, well illustrated by the response of the Federal Reserve and the Treasury Department to the sudden financial collapse in September 2008, can be a compelling reason for a regulatory system in which courts play little or no role. Thus, while failing firms normally are subject to liquidation or reorganization in a bankruptcy court (part of the federal court system), commercial banks that fail are “resolved” in administrative proceedings by the Federal Deposit Insurance Corporation.

#### Outright condemnation is incompatible with antitrust.

Kobayashi & Wright 20 – Paige V. and Henry N. Butler Chair in Law and Economics at the Antonin Scalia Law School at George Mason; University Professor and the Executive Director of the Global Antitrust Institute at Scalia Law School at George Mason University, holds a courtesy appointment in the Department of Economics, former Commissioner at the Federal Trade Commission

Bruce H. Kobayashi, Joshua D. Wright, “Antitrust and Ex-Ante Sector Regulation,” Report on the Digital Economy, Section III, Global Antitrust Institute, 2020, https://gaidigitalreport.com/2020/10/04/ex-ante-regulation-versus-ex-post-antitrust-enforcement/#\_ftn29

In contrast, the outright condemnation or blacklisting of practices or behaviors without such evidence would not rest easily with the current evidence-based system of antitrust laws.[27] Rather, the latter approach would be consistent with the abandoned approach taken during the early history of the U.S. antitrust laws, where the per se categorization was used extensively to condemn many procompetitive practices. In contrast, much of the recent evolution of the U.S. antitrust laws involved replacing existing and unsupported presumptions and per se rules with a rule of reason analysis that evaluates the impact of a challenged behavior on competition.[28]

#### The counterplan’s rule is meaningfully distinct from the aff’s standard.

Kobayashi & Wright 20 – Paige V. and Henry N. Butler Chair in Law and Economics at the Antonin Scalia Law School at George Mason; University Professor and the Executive Director of the Global Antitrust Institute at Scalia Law School at George Mason University, holds a courtesy appointment in the Department of Economics, former Commissioner at the Federal Trade Commission

Bruce H. Kobayashi, Joshua D. Wright, “Antitrust and Ex-Ante Sector Regulation,” Report on the Digital Economy, Section III, Global Antitrust Institute, 2020, https://gaidigitalreport.com/2020/10/04/ex-ante-regulation-versus-ex-post-antitrust-enforcement/#\_ftn29

The second factor listed in Table 1 used to distinguish ex-ante and ex-post approaches is a “rules versus standards” distinction.[21] The standard analysis of ex-ante rules versus ex-post standards incorporates the timing tradeoffs discussed above—optimal ex-ante rules often require a more complete ex-ante determination of the specific contours of the rule and the consequences of violating the rule, while ex-post standards and the remedy to be applied are given specific content only after an individual or firm acts and relevant information is revealed.[22] As noted above, which of these approaches generates higher social welfare in a particular setting will depend upon information costs—including the government’s cost of acquiring and disseminating information about the applicable rule or standard to the public, and the costs of discerning whether not an individual or firm has violated the rule or standard. Moreover, these costs can change over time. For example, in dynamic industries, rapid innovation can make carefully crafted rules obsolete. In contrast, ex-post adjudications under a standard can evolve to changes and are less prone to obsolescence.[23]

There is a second important dimension to the rules versus standards distinction relating to the optimal level of complexity and detail contained in the two approaches. In many analyses, this dimension is suppressed by the assumption that the relevant analysis is between simple bright line rules and more complex standards. Indeed, many of the proposals to replace “ex-post” litigation based antitrust are calls to establish lists of prohibited practices (blacklists) for certain firms (e.g., firms that meet a structural presumption or are identified as a gatekeeper).[24] Such bright line rules establishing conduct as illegal per se would replace complex and costly determinations of liability based upon evidence of a business practice’s anticompetitive effects.

#### Antitrust and regulation are different things.

Lambert 17 – Wall Chair in Corporate Law and Governance and Professor of Law, University of Missouri

Thomas A. Lambert, “How to Regulate: A Guide for Policymakers,” Cambridge University Press, August 2017

Available Remedies and Their Implementation Difficulties and Side Effects

Treatments for the market power disease fall into two general categories. One consists of the body of law called antitrust, a set of somewhat amorphous standards that are aimed at preventing competition-reducing business practices and whose precise prohibitions are determined on a case-by-case basis. Sometimes dubbed the “residual regulator” of market power, antitrust governs potentially anticompetitive business practices unless it is displaced by some more tailored form of regulation. The second category of market power remedies, then, consists of direct regulation – i.e., industry-specific, ex ante rules (as opposed to antitrust’s general, ex post standards3) designed to assure that producers do not reduce their output below, or raise prices above, the levels that would prevail in a competitive market.

## Adv 1

## Adv 2

# 1NR

## Treaty DA

#### Conflicts only escalate when treaty compliance norms break down

Pickering 14

Heath, “Why Do States Mostly Obey International Law?”v[http://www.e-ir.info/2014/02/04/why-do-states-mostly-obey-international-law/] February 4 //

**All states** in the contemporary world, **including great powers, are compelled to justify their behaviour according to legal rules** and accepted norms. This essay will analyse the extent to which states comply and the reasons for their compliance. Essentially, the extent to which states follow their international obligations has developed over the past 400 years. From a historical perspective, international obligations and accepted norms were founded following two key developments in European history. In 1648, the Treaty of Westphalia ended the Thirty Years’ War by acknowledging the sovereign authority of various European princes.[1] This event marked the advent of traditional international law, based on principles of territoriality and state autonomy. Then in 1945, again following major wars initiated in Europe, states began to integrate on a global scale.[2] The UN Charter became the international framework for which norms of sovereignty and non-intervention were enshrined. Now, as a result of modern technology, communication, transport, and more, the evolving process of Globalisation, “The internationalization of the world”,[3] has provided an opportunity for international law and accepted norms to reach every corner of the globe.¶ However, the development of international law and accepted norms has not compelled states to comply all the time. Instead, the trend over the past 400 years has shown that states have been mostly compelled to justify their behavior according to legal rules and accepted norms. The emphasis on mostly should be stressed. Even though the UN Charter does not permit violating sovereignty through the use of aggression, the extent to which states follow their international obligations varies. Louis Henkin’s book, How Nations Behave, articulates the extent of compliance.[4] He said, “Almost all nations observe almost all principles of international law and almost all of their obligations almost all the time”.[5] As such, the trend in contemporary international relations is that war remains possible, but it is much less acceptable now than it was a century or even half a century ago.[6] The benefit of the trend is that almost full compliance is said to lead states into a pattern of obedience and predictable behaviour.[7] Therefore, conflict only arises when countries fail to comply.

#### Participation in the multilateral regime solves extinction

Gwynne Dyer 4, Ph.D. in Military History from University of London, 12/30/2004, The end of war, Toronto Star, Lexis

War is deeply embedded in our history and our culture, probably since before we were even fully human, but weaning ourselves away from it should not be a bigger mountain to climb than some of the other changes we have already made in the way we live, given the right incentives. And we have certainly been given the right incentives: The holiday from history that we have enjoyed since the early '90s may be drawing to an end, and another great-power war, fought next time with nuclear weapons, may be lurking in our future.. The "firebreak" against nuclear weapons use that we began building after Hiroshima and Nagasaki has held for well over half a century now. But the proliferation of nuclear weapons to new powers is a major challenge to the stability of the system. So are the coming crises, mostly environmental in origin, which will hit some countries much harder than others, and may drive some to desperation. Add in the huge impending shifts in the great-power system as China and India grow to rival the United States in GDP over the next 30 or 40 years and it will be hard to keep things from spinning out of control. With good luck and good management, we may be able to ride out the next half-century without the first-magnitude catastrophe of a global nuclear war, but the potential certainly exists for a major die-back of human population. We cannot command the good luck, but good management is something we can choose to provide. It depends, above all, on preserving and extending the multilateral system that we have been building since the end of World War II. The rising powers must be absorbed into a system that emphasizes co-operation and makes room for them, rather than one that deals in confrontation and raw military power. If they are obliged to play the traditional great-power game of winners and losers, then history will repeat itself and everybody loses. Our hopes for mitigating the severity of the coming environmental crises also depend on early and concerted global action of a sort that can only happen in a basically co-operative international system. When the great powers are locked into a military confrontation, there is simply not enough spare attention, let alone enough trust, to make deals on those issues, so the highest priority at the moment is to keep the multilateral approach alive and avoid a drift back into alliance systems and arms races. And there is no point in dreaming that we can leap straight into some never-land of universal brotherhood; we will have to confront these challenges and solve the problem of war within the context of the existing state system.

#### Treaties key to heg – noncompliance on the plan wrecks the entire treaty regime

Meeker et al 13 – former DoS legal adviser

Leonard C., Herbert J. Hansell, Davis R. Robinson, Abraham Sofaer, David R. Andrews, and Will H. Taft IV, “Brief of Former State Department Legal Advisers as *Amici Curiae* in Support of Respondent, Carol Anne Bond v. United States of America” [http://www.americanbar.org/content/dam/aba/publications/supreme\_court\_preview/briefs-v2/12-158\_resp\_amcu\_fsdl.authcheckdam.pdf] August 16 //

The Constitution reflects the Framers' recognition, based on experience under the Articles of Confederation, that the power to enter and implement treaties must rest with the national government in order for the United States to be an effective sovereign on the international stage. Those same imperatives pertain today. The power to make treaties and the need to implement them are inherently intertwined. If Congress cannot fully implement a validly executed treaty, the United States may be unable to honor its international commitments. **This would undercut the U**nited **S**tates' **foreign policy priorities, diminish the President's leverage to pressure nations to comply with their own obligations, and injure the U**nited **S**tates' **credibility as a world leader**—not to mention undermine the efficacy of the treaty itself. Petitioner's position also would hinder the President's ability to negotiate new treaties that may serve the national interest. **If our treaty partners perceive that the U**nited **S**tates **cannot guarantee enforcement of a treaty** that may regulate "local" conduct, **they may walk away from the negotiating table or try to extract otherwise unwarranted concessions**. Nor is petitioner's proposed limitation on the treaty power necessary to protect state interests. The treaty-making process is already designed to address federalism concerns, including through the requirement that two-thirds of the Senate give its advice and consent. Both the executive and legislative branches account for federalism concerns during the treaty-making process. The President tailors negotiations to address important domestic policies. Once an agreement is reached, the President, the Senate, or both can set forth formal reservations, understandings, and declarations to clarify how the treaty will be implemented in the United States consistent with our federal system. Where U.S. ratification of a treaty requires implementing legislation, Congress may pass a law that is necessary and proper to implement the treaty's terms under domestic law. As a result of the careful attention paid to federalism in the treaty-making process, the federal government only joins treaties that strike the appropriate federal-state balance. A nebulous rule that limits the treaty power to certain subject areas would call existing treaties into question and prevent the United States from joining future treaties that advance national interests, without providing additional protections for federalism. The debate over Congress's power to implement treaties that touch "local" concerns did not arise for the first time in petitioner's brief. Efforts to limit that power have been made and rejected at various points throughout the nation's history. Most notably, when Congress failed to adopt the Bricker Amendment in the 1950s, it rejected the type of limitation that petitioner proposes because of the undesirable consequences that would result. Then-President Eisenhower vehemently objected that the Bricker Amendment would "restrict the authority that the President must have, if he is to conduct the foreign affairs of this Nation effectively." Dwight D. Eisenhower, The President's News Conference of March 26, 1953, Public Papers of the Presidents of the United States: Dwight D. Eisenhower, 1953, 132 (U.S. Gov't Printing Office 1954). This Court should not read into the Constitution a new limitation on the federal government's treaty power, especially where Congress has refused to amend the Constitution to add that limitation. ARGUMENT The treaty power is a central part of the President's constitutionally vested "lead role in foreign policy." Medellin v. Texas, 552 U.S. 491, 524 (2008) (citation omitted); see also Missouri v. Holland, 252 U.S. 416, 435 (1920). The Constitution gives the President power "to make treaties," U.S. Const, art. II, § 2, cl. 2, that are capable of confronting a 'Variety of national exigencies." The Federalist No. 23, at 59 (A. Hamilton) (Roy P. Fairfield ed., 1981). While there may be superficial appeal to preventing Congress from implementing treaties that affect what petitioner believes to be purely "local" conduct, such a rule would be unworkable. It would frustrate the federal government's exercise of the treaty power, complicate the President's management of foreign affairs, and hobble the President's efforts to pursue the national interest on behalf of U.S. citizens. I. THE COURT SHOULD NOT IMPOSE NEW CONSTRAINTS ON THE FEDERAL GOVERNMENT'S POWERS TO NEGOTIATE AND IMPLEMENT TREATIES A. Restricting Federal Implementation Would Impair the United States' Ability To Comply with Its Obligations and Would Complicate the President's Ability to Manage Foreign Affairs 1. The national government is responsible for the United States' compliance with all treaties. The Framers of the Constitution provided a centralized treaty power specifically to ensure that the United States would be capable of implementing and complying with its international obligations. See, e.g.. The Federalist No. 22, at 56 (A. Hamilton) (Roy P. Fairfield ed., 1981) (without a centralized treaty power, "[t]he faith, the reputation, the peace of the whole Union, are thus continually at the mercy of the prejudices, the passions, and the interests of every member of which it is composed"); The Federalist No. 42, at 264 (J. Madison) (Clinton Rossiter ed., 1961) (The United States must "be one nation ... in respect to other nations."). Petitioner's brief ignores the important role of treaty compliance in the President's management of foreign affairs. **Unless the federal government** has ample authority to **ensure compliance with treaties, the President cannot effectively conduct foreign policy** and present the United States as "one nation ... in respect to other nations." Id. 2. In order to fulfill its international obligations, the federal government must have the ability to implement treaties. Many treaties are not self-executing. States may fail to pass or enforce necessary legislation, and the federal government cannot require states to do so. As a result, the interest of full compliance sometimes compels the United States to implement a treaty through federal measures. Nowhere is the importance of federal legislation more evident than in U.S. efforts to combat the international drug trade. Stopping the sale of illicit narcotics has been among the United States' most important foreign relations priorities for decades. In a concerted effort to limit the international production and supply of certain dangerous drugs, the United States joined the 1961 Single Convention on Narcotic Drugs, as amended, Mar. 30, 1961, 18 U.S.T. 1408, 520 U.N.T.S. 204; the 1971 Convention on Psychotropic Substances, Feb. 21, 1971, T.I.A.S. No. 9725, 1019 U.N.T.S. 174; and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, May 20, 1988, 1582 U.N.T.S. 95. Congress enacted the Controlled Substances Act (CSA), Pub. L. No. 91-513, 84 Stat. 1236 (1970), in large part to implement U.S. obligations under the 1961 Convention, see 21 U.S.C. § 801(7). Since then, Congress periodically has enacted new legislation to implement other obligations under subsequent conventions related to narcotics. See, e.g., Chemical Diversion and Trafficking Act, Pub. L. No. 100-690, 102 Stat. 4181 (1988). The United States relies on these federal statutes to remain in compliance with international agreements. Federal implementing legislation is particularly important in light of recent state referenda decriminalizing marijuana, a drug that is outlawed by international conventions. See U.N. Office on Drugs and Crime, Cannabis: A Short Review 22 (2012), available at https://www.unodc.org/documents/drug-prevention-and-treatment/cannabis\_review.pdf. The head of the International Narcotics Control Board, which administers the drug conventions, has warned that state referenda may be inconsistent with the United States' treaty obligations. See Intl Narcotics Control Bd., Report of the International Narcotics Board 11-12,116 (2012), available at http://www.incb. org/documents/Publications/AnnualReports/AR2012/ AR\_2012\_E.pdf. Thus, federal implementing legislation serves as an essential backstop that saves the United States from non-compliance with its treaty obligations. **Were the U**nited **S**tates **to fail to comply with** **the international narcotics conventions that it has long championed, the U**nited **S**tates **would have little basis to complain if other countries failed to satisfy their own obligations.**

#### The United States has been the largest cause of the decline of empire internationally --- any other reading interprets singular actions, NOT structural systemic effects.

Deudney & Ikenberry 15 (Daniel Deudney, Johns Hopkins University G. John Ikenberry, Princeton University “America’s Impact: The End of Empire and the Globalization of the Westphalian System”, August 2015, http://scholar.princeton.edu/sites/default/files/gji3/files/am-impact-dd-gji-final-1-august-2015.pdf)

Over the last two and a half centuries, the most important change in the international political system has been the decline of empire, and the simultaneous spread of the Westphalian system of sovereign states, from Europe to universal global scope. Empire – the direct coercive rule of one people over another – has almost vanished from world politics. 1 Where once the world was made up of regional systems – most of which were empires – the contemporary world is marked by a large number of sovereign states, now nearly two hundred. 2 Over these centuries, one state – the United States – initially at the periphery of the European imperial system, has become the most powerful and influential state in the system. There are many debates about America in the international system. One prominent argument developed extensively, particularly by recent historians, is that the United States is, and has been throughout its history, imperial and an empire. This view is widely held by many, both inside and outside the United States. In this view, the United States continued the Western imperial project as European empires faltered in the 20th century, and in the second half of the 20th century created the last and most extensive empire with global reach.3 Arguments along these lines are of more than just of academic interest because they connect to national identity narratives in many parts of the world, including the rising states of China and India, which emphasize anti-colonialism and anti-imperialism, as well as grievances against Western imperialism.4 In this paper, we challenge this view and offer a different account of the American impact on the world which emphasizes that the United States has played a key role in the decline of empire and the globalization of the Westphalian system. In contrast to those who view the United States as an empire, and thus as essentially antagonistic to the Westphalian sovereign state system, we argue that the United States, in an overall ledger sheet of impacts, has been influential against imperialism and colonialism, and has been powerfully supportive of the spread of the Westphalian system. We argue that contemporary views of the United States as imperial profoundly misrepresent the overall impact the United States has had on the international system over the last two and a half centuries. In this paper, we lay out the evidence for how the United States has played a major and often decisive role as an anti-imperial and anti-colonial force. More than any other state in the system, we argue, the United States has undermined empire and spread of the Westphalian system. Of course, the decline of empire and the spread of the Westphalian system are the result of many forces, including the diffusion of military capabilities, the growth of the international trading system, the rise of nationalism, and the spread of anti-colonial and human rights norms have all played powerful roles in diminishing the effectiveness of imperialism and the attractiveness and longevity of empires.5 But efforts to create empires continued well into the 20th century, and their lack of success stemmed not just from these broader trends in ideas and power but also from the grand strategies of the leading states – most notably the United States – in directly opposing the creation and perpetuation of empires. To be sure, the United States has been imperial and briefly had an empire in some times and places. But these episodes, we argue, are greatly overshadowed in their overall impact by American anti-imperialism and anticolonialism. And the global spread of the Westphalian system, by no means solely resulting from American actions, has been more advanced by American foreign policies than of any other state in the system. There are four broad reasons why the American role as anti-imperial and pro Westphalian have been underappreciated. First, many view the liberal international order, which the United States has played such a pivotal role in creating over the 20th century, as a challenge to the Westphalian system and a replacement for it, rather than an addition to it. Second, America’s centrality in the globalization of the Westphalian system through the thwarting and dismantlement of empire has been obscured by the widespread tendency to conceive of Europe and the United States as together making up “the West.”6 This makes it all too easy to see Europe’s centuries of imperialism being continued by the United States. In contrast, we argue that a major dynamic in world politics has pitted an “old West” of European imperialisms against the anti-imperialism and anti-colonialism of a “new West” in America. Third, the historical literature on modern empire building widely identifies two waves of activity (the first from the 16th century to the early 19th century, and the second from the 19th century to the beginning of the 20th). We identify two additional waves of empire building, in the World Wars and then in the Cold War. When these two additional waves are brought back into the picture, the case for seeing the United States as anti-imperial and anti-colonial is significantly strengthened, since the United States played such a prominent role in thwarting and dismantling these late-empire building efforts. Fourth, many contemporary observers of America’s impact on the world focus on infamous moments when the United States did exercise crude imperial behavior: in the many military interventions and covert actions in Latin America and the Middle East over the last century and, most saliently, the 2003 American invasion of Iraq. We do not seek to ignore or justify these episodes and patterns of behavior. The United States has been imperial in some ways and in some instances. But we seek to place them in the context of what we argue is America’s more significant impact on the organization of the global system.

#### Legalization violates UN drug treaties – there’s zero room for legal cover

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David and Martin, “The UN drug control conventions: The Limits of Latitude” [http://gdppc.idebate.org/sites/live/files/The%20UN%20Drug%20Control%20Conventions%20-%20The%20Limits%20of%20Latitude.pdf] March //

As discussed above, there remains a certain amount of debate and legal uncertainty re- garding the flexibility of some aspects of the conventions. **Nonetheless, there is wide- spread agreement on the rigidity of some of its other provisions**. For example, it is diffi- cult to find a flexible interpretation of the obligation laid out in the Single Convention that ‘Coca leaf chewing must be abolished’ within 25 years (article 49, the deadline expired in December 1989). It was due to this inflexibility on the issue of coca chew- ing that the Plurinational State of Bolivia sought to amend the treaty. After this at- tempt failed, Bolivia felt obliged – on June 29th, 2011 – to denounce the Convention; a procedure that came to effect on the 1st of January 2012. A few days before that, Bo- livia presented the reservation it requires to reconcile its various national and interna- tional legal obligations before becoming a full treaty member again. Bolivia reserves the right to allow traditional coca leaf chewing in its territory and the consump- tion and use of the coca leaf in its natural state in general, as well as the cultivation, trade and possession of the coca leaf to the extent necessary for these licit purposes. The reservation will be accepted unless one-third or more of the parties object to it within a one year period.¶ The Bolivian decision has been strongly condemned by the INCB and has generated concern about setting a precedent that other countries might follow for resolving their own legal tensions with the drug con- trol Conventions, for example on cannabis policy.84 The INCB called on the interna- tional community to ‘not accept any ap- proach whereby Governments use the mechanism of denunciation and re-acces- sion with reservation, in order to free themselves from the obligation to imple-ment certain treaty provisions. Such ap- proach would undermine the integrity of the global drug control system’, warning Bolivia ‘to consider very seriously all the implications of its actions in this regard’.85¶ There is also very limited room to relax what are deemed to be trafficking and commercial supply related offences. Only ‘in appropriate cases of a minor nature the Parties may provide, as alternatives to con- viction or punishment, measures such as education, rehabilitation or social reinte- gration, as well as, when the offender is a drug abuser, treatment and aftercare’ (1988 Convention, article 3, §4, c). The earlier treaties had allowed such alternatives for ‘drug abusers’, but the 1988 Convention did significantly ‘widen the scope of appli- cation to drug offenders in general, whether drug abusers or not.’ 86 The fact that the definition of what constitutes a ‘minor nature’ is left to the discretion of national authorities, leaves considerable room for manoeuvre to apply principles of proportionality in national sentencing guidelines. Yet, while punishment may be moderated or even avoided for minor of- fences, there is no doubt that production and supply for non-medical and non- scientific purposes have to be criminalized and that such offences, by default, are to be regarded as grave and therefore be met with sanctions of imprisonment and confisca- tion.¶ Regardless of the inherent ambiguity within and subjective interpretation of the con- ventions, all Parties are required to remain true to the UN drug treaties in line with the 1969 Vienna Convention on the Law of Treaties. As alluded to above, among other things this obliges Parties to interpret trea- ties in good faith and respect the ‘object and purpose’ of the conventions.87 These find their most explicit expression within article 4 (c) of the Single Convention, which determines its overarching philoso- phy and normative character and thus, as its bedrock instrument, of the entire treaty system itself. It should be recalled that as a‘General Obligation,’ the article obliges sig- natory nations, ‘to limit exclusively to medical and scientific purposes the pro- duction, manufacture, export, import, distribution of, trade in, use and possession of drugs.’¶ **According to** both the spirit and **the** letter **of the conventions**, while permitted to ‘soften’ the criminal sanction requirements in various ways, governing authorities can- not create a legally regulated market, in- cluding the supply, production, manufac- ture or sale of presently controlled drugs, for non-medical and non-scientific, or put another way recreational, purposes. **Pro- scriptions laid out in the conventions clearly prevent authorities from creating a legal market for cannabis** or any other cur- rently scheduled drug along the lines of models developed for alcohol and to- bacco.88

#### Legalization is the stress test of the entire treaty regime – other countries will use our response to determine future compliance models

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Wells C. and John, “Marijuana Legalization is an Opportunity to Modernize International Drug Treaties” [http://www.brookings.edu/~/media/research/files/reports/2014/10/15%20marijuana%20legalization%20modernize%20drug%20treaties%20bennett%20walsh/cepmmjlegalizationv4.pdf] October //

**The international legal system,** however suspicious of it many Americans may be, has always mattered and **has never mattered more than now**. For example, the campaign against ISIS and the Ukraine crisis underscore all too dramatically the continuing importance of multilateral security commitments. If anything, **international law’s remit is growing** as environmental, social, economic, and security problems transcend national borders. From global warming to sanctions on Iran and Russia to the campaign against terrorism and military intervention in a host of theaters, the United States and its allies increasingly rely on international agreements and commitments to legitimize and amplify joint action against common threats.¶ Of course, **marijuana and the international narcotics treaties are** only one small piece of that puzzle. But they are **a highly visible piece**, and **they offer a** real **opportunity to demonstrate adaptation through international legal channels, rather than around them**. **Laying groundwork for** manageably incremental **changes—by beginning conversations with treaty partners** and other constituencies about where flexibility might lie—**would reaffirm American commitment to constructive adaptation, and to** **building consensus. Conversely, pushing the** outer boundaries of the **drug treaties’** flexibility **could weaken the international order** and damage American interests.¶ To put the point another way: Marijuana policy reform is a stress test that the United States and the international order should, and realistically can, pass.

#### Sends signal that the US is unreliable with future enforcement measures – only perception of successful enforcement solves collective action problems

Counts ‘13

Nathaniel, Harvard Law, “INITIATIVE 502 AND CONFLICTING STATE AND FEDERAL LAW,” 49 Gonz. L. Rev. 187

C. On the International Community

In dealing with the conflicting state and federal law, enforcement decisions will affect the United States' role as an actor in international law and the direction of international cooperation in combatting illegal drug trade. First, **if the U**nited **S**tates **breaches its treaty obligations under the Single Convention** on Narcotic Drugs and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, **it would** undermine **the** international rule of law.A strong international rule of law is desirable "to establish and maintain order and enhance reliable expectations" in international affairs. n142 As there are no enforcement mechanisms for international legal obligations equivalent to that which exists with domestic law, the weight of obligations relies to some extent on comity among the states involved. n143 As long as states agree to limit their sovereignty and comply with international law, states will be more likely to respect one another's reasonable expectations and fulfill their obligations. n144 Both conventions have provisions that read, "If there should arise between two or more Parties a dispute relating to the interpretation or application of this Convention, the Parties shall consult together with a view to the settlement of the dispute by ... peaceful means of their own choice," and should this fail, they agree to jurisdiction before the International Court of Justice (ICJ). n145 [\*208] Despite this possibility of justiciability of breach, it is highly unlikely that any state party would bring a case before the ICJ over domestic non-enforcement of the treaty obligations, as diplomatic channels are more predictable and possible noncompliance with ICJ judgments weakens the international rule of law. n146 If the United States fails to enforce the CSA and allows the Washington legalization system to succeed, **it may signal to other states that the U**nited **S**tates **is willing to allow its domestic law overcome** its **international** law **obligations and may not be reliable in** international transnational **enforcement efforts in the future.** **It also signals to other states that they may allow their domestic law to inhibit effective enforcement of international treaty obligations**, which may undermine the United States' goals in the future. Aside from rule of law concerns, breach of treaty obligations may undermine the international cooperation required to combat international drug trafficking. The United States has historically been a strong proponent of drug prohibition and prioritization of enforcement efforts against trafficking, so legalization and non-enforcement of a Schedule I drug within our borders would send a conflicting message. n147 The former Administrator of the DEA, John C. Lawn, commented, "A violation of these treaties by the United States would destroy our credibility with drug source and drug transit countries that are now working with the United States in the global war on drugs." n148 Some parties have already softened their domestic enforcement policies and similar action by the United States would make this course more acceptable. n149 If other governments follow suit and legalize drugs in some capacity, this may decrease the focus on enforcement against drugs generally, which may negatively impact coordinated efforts against illicit drug trafficking. Thus, if the United States allows legalization of marijuana in its borders, it should be ready to support the change in policy that this represents and address it at the international level. The United States would need to restate the importance of cooperation against international drug trafficking, even though some amount of domestic social experimentation may be permissible.

## FTC DA

#### Consolidation meaningfully impacts rates of survival in hospital systems---kills thousands across every county across the country every year.

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Martin Gaynor, “What to Do about Health-Care Markets? Policies to Make Health-Care Markets Work,” Hamilton Project at Brookings, March 2020, <https://www.hamiltonproject.org/assets/files/Gaynor_PP_FINAL.pdf>

IMPACTS ON QUALITY

Just as important—if not more important—as impacts on prices are impacts of competition on the quality of care. The quality of health care can have profound impacts on patients’ lives, including their basic functioning and well-being, and their probability of survival.

Hospitals

A number of studies have found that patient health outcomes are substantially worse at hospitals in more-concentrated markets, where those hospitals face less potential competition.

Studies of markets with administered prices (e.g., Medicare) find that less competition leads to worse quality. One of the most striking results is from Kessler and McClellan (2000), who find that risk-adjusted one-year mortality for heart attack (acute myocardial infarction) patients on Medicare is significantly higher in more-concentrated markets.13 In particular, patients in the most concentrated markets had mortality probabilities 1.46 percentage points higher than those in the least concentrated markets (i.e., a 4.4  percent difference) as of 1991. This is an extremely large difference—it amounts to more than 2,000 fewer (statistical) deaths in the least concentrated versus the most concentrated markets.w

There are similar results from studies of the English National Health Service (NHS). The NHS adopted a set of reforms in 2006 that were intended to increase patient choice and hospital competition, and introduced administered prices for hospitals based on patient diagnoses (analogous to the Medicare Prospective Payment System in the United States). Two recent studies examine the impacts of this reform (Cooper et al. 2011; Gaynor, Moreno-Serra, and Propper 2013) and find that, following the reform, risk-adjusted mortality from heart attacks fell more at hospitals in less concentrated markets than at hospitals in more-concentrated markets. Gaynor, Moreno-Serra, and Propper (2013) also look at mortality from all causes and find that patients fared worse at hospitals in more-consolidated markets.

Studies of markets where prices are market determined (e.g., markets for those with private health insurance) find that consolidation can lead to lower quality, although some studies go the other way. My assessment is that the strongest scientific studies find that quality is lower where there is less competition. For example, Romano and Balan (2011) find that the merger of Evanston Northwestern and Highland Park hospitals had no effect on some quality indicators, while it harmed others. Capps (2005) finds that hospital mergers in New York State had no impacts on many quality indicators, but led to increases in mortality for patients suffering from heart attacks and heart failure. Hayford (2012) finds that hospital mergers in California led to substantially increased mortality rates for patients with heart disease. Cutler, Huckman, and Kolstad (2010) find that the removal of barriers to entry led to better performing (lower mortality rate) coronary artery bypass graft surgeons gaining market share at the expense of worse performing (higher mortality rate) surgeons. Haas, Gawande, and Reynolds (2018) find that system expansions (such as those due to merger or acquisition) can pose significant patient safety risks. Short and Ho (2019) find that hospital market concentration is strongly negatively associated with multiple measures of patient satisfaction.

Physicians

There is also evidence that the quality of care delivered by physicians suffers when physician practices face less competition. Koch, Wendling, and Wilson (2018) find that an increase in consolidation among cardiology practices leads to increases in negative health outcomes for their patients. They find that moving from a zip code at the 25th percentile of the cardiology market concentration (i.e., a market with firms of more equal size, and hence relatively more expected competition) to one at the 75th percentile (i.e., one with firms that are more unequal in size, and thus relatively less expected competition) is associated with 5 to 7 percent increases in risk adjusted mortality. Eisenberg (2011) finds that cardiologists who face less competition have patients with higher mortality rates. McWilliams et al. (2013) find that larger hospital owned physician practices have higher readmission rates and perform no better than smaller practices on process-based measures of quality. Roberts, Mehotra, and McWilliams (2017) find that quality of care at high-priced physician practices is no better than the quality at low-priced physician practices. Scott et al. (2018) find no improvement in quality of care at hospitals that acquired physician practices compared to those that did not.14

Patient Referrals

There has been concern about the possible impact of hospital ownership of physician practices on where those physicians refer their patients, and whether that is in the patients’ best interests (Mathews and Evans 2018). A number of studies have found that patient referrals are substantially altered by hospital acquisition of a physician practice. Brot-Goldberg and de Vaan (2018) find that primary care physicians in Massachusetts who are in a practice owned by a health system are substantially more likely to refer patients to an orthopedist within the health system that owns the primary care physician’s practice. They also estimate that this is largely due to anticompetitive steering. Venkatesh (2019) examines Medicare data and finds a nine-fold increase in the probability that a physician refers to a hospital once their practice is acquired by the hospital. Hospital divestiture of a practice has the opposite effect, as illustrated in figure 10. A study by Walden (2017, 5) also uses Medicare data and finds that hospital acquisitions of physician practices “increases referrals to specialists employed by the acquirer by 52  percent after acquisition,” and reduces referrals to specialists employed by competitors by 7 percent. At present it is not known what the impact of these acquisition-induced referrals is on the quality of care received by patients; that is an important area for research.

Labor Market Impacts

It is also possible that health-care consolidation has impacts on labor markets. Consolidation that causes competitive harm in the output market (i.e., through monopoly power) does not necessarily cause harm to competition in the input market (i.e., through “monopsony power,” which is the term for market power in buying inputs). For example, two local grocery stores merge to form a monopoly selling groceries in an area, but purchase frozen food items to sell in their stores on a national market where they have to compete with lots of buyers. Consequently, the merged store does not possess monopsony power. Conversely, it is possible that a merger does not harm competition in the output market, but causes competitive harm in an input market. Consider two coal mines located ?n the same area that merge: Coal is sold on a national market, so the merger will not cause competitive harm. However, if the coal mines are the largest (or only) employers in the area, then the merger will cause harm to competition in the local labor market.

In the case of health care, both the output market for healthcare services and the input market for labor are local. As a consequence, a merger that causes harm to competition in the market for health-care services has real potential to harm competition in the labor market. The extent to which such a merger will cause labor market harms depends on the alternatives that workers have, such as what types of other jobs are available and where they are located. Nonspecialized workers, such as custodians, food service workers, and security guards, are less likely to be affected by a merger since their skills are readily transferable to other employers in other sectors.15 Workers who have specialized skills that are not readily transferable to other employers in other sectors are more likely to be harmed. For example, consider a town with two hospitals, a large automobile assembly plant, and multiple retail and service establishments. If the two hospitals merge to form a monopoly, hospital custodians and security guards will have alternatives at the assembly plant or at the retail or service establishments. As a consequence, competition for these workers may be little affected by the merger. Nurses and medical technicians, however, have nowhere else to turn in the local market, so there will be substantial harm to competition for health-care workers.

There are a number of papers that have demonstrated the presence of monopsony power in the market for nurses (see, e.g., Currie, Farsi, and Macleod 2005; Staiger, Spetz, and Phibbs 2010; Sullivan 1989). These papers demonstrate that hospitals possess and exercise monopsony power in the market for nurses. They do not, however, provide direct evidence on the impacts of consolidation. A recent paper, however, looks directly at the impacts of hospital mergers on workers’ wages. Prager and Schmitt (2019) look at the impacts of 84 hospital mergers nationally between 2000 and 2010. They find that hospital mergers that resulted in large increases in concentration substantially reduced wage growth for workers with industry-specific skills, but did not reduce wage growth for unskilled workers.16

#### Current FTC authority allows them to nimbly enforce regardless of resource constraints---BUT they have to make pragmatic choices in case selection---the plan would force tons of issues down the docket.

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Chris Jay Hoofnagle, Woodrow Hartzog, and Daniel J. Solove, “The FTC can rise to the privacy challenge, but not without help from Congress,” Brookings, August 8, 2019, <https://www.brookings.edu/blog/techtank/2019/08/08/the-ftc-can-rise-to-the-privacy-challenge-but-not-without-help-from-congress/>

THE FTC WIELDS GREAT POWERS TEMPERED WITH EXPERIENCE

The FTC has remarkable powers. At its creation a century ago, Congress gave it unprecedented investigatory and enforcement tools. These have been broadened over time as the FTC has faced new wrongs. Today, the FTC can examine business practices even where there is no investigatory predicate, and as a general-purpose consumer protection agency, it can sue almost any business.

As a result, the FTC is nimble and can adapt to new technologies without an act of Congress. Founded in the days of misleading newspaper advertising, the FTC was quick to pivot to radio, television, and internet fraud. The breadth and generality of its powers are also a source of strength. Much more than just data protection, modern consumer problems involve platforms, power, information asymmetries, and market competition. In theory, the FTC has a broad enough jurisdiction and charge to handle diverse issues often labeled as “privacy,” such as algorithmic manipulation and accountability.

In the information economy, privacy is among the most important values that law and norms should protect. Yet at the same time, privacy must also accommodate other important values, including the risks inherent in economic development. In our view, privacy is a means to the ends of freedom and autonomy in our personal lives and in our polity. It is a key component for human flourishing.

THE FTC HAS ACHIEVED MUCH WITH LIMITED RESOURCES AND WITHOUT CONSISTENT CONGRESSIONAL SUPPORT

Many privacy issues are thought to be new. But the FTC has decades of experience handling privacy problems, particularly in credit reporting and debt collection. The FTC’s earliest information privacy matters, in 1951 and then a series of cases in the 1970s, recognized the general consumer preference against commercialization of personal data. Using its enforcement powers, the FTC sued companies for deceptive data collection, and for the sale of data collected in preparing tax returns. The agency brought its first internet-related fraud case in 1994, long before most consumers shopped online. Since then, the FTC has pursued the biggest names in internet commerce. It has steadily broadened the duties for fair information handling, particularly in the information security domain.

The FTC’s broadest jurisdiction is its enforcement against unfair and deceptive practices under Section 5 of the FTC Act. Despite a wide reach, however, Section 5 has some significant limits in power. The FTC generally cannot issue a fine for Section 5 violations initially—fines can only be issued for violations of consent decrees, as happened in the Facebook case.

Resources are the FTC’s greatest constraint. It is a small agency charged with a broad mission in competition and consumer protection. It carries out this mission with a budget of just over $300 million and a total staff of about 1,100, of whom no more than 50 are tasked with privacy. In comparison, the U.K.’s Information Commissioner’s Office (ICO) has over 700 employees and a £38 million budget for a mission focused entirely on privacy and data protection. In addition, for much of modern history, Congress has kept the FTC on a short leash. In 1980, Congress punished the agency for being too aggressive, causing it to shut down twice. Congress has held authorization over the agency’s head and used oversight power to scrutinize what members of Congress perceive as the expansive use of FTC legal authority, including its interpretation of privacy harm.

Given these constraints, FTC attorneys make pragmatic choices in their case selection. At any given time, line attorneys are investigating many companies and weighing decisions on where to target limited enforcement resources. The FTC can only bring actions against a small fraction of infringers, and it has chosen cases wisely to make loud statements to industry about how to protect privacy.

Even with these severe limitations, it has managed to bolster important norms and send strong signals to industry that have influenced the practices of many companies. It has become a significant enforcement agency that industry pays attention to. It has an enforcement record that compares quite well to other agencies in the US as well as around the world.

Some critics of the Facebook settlement have focused only on its shortcomings. Despite flaws and limits in the consent order, the five-billion-dollar fine was the biggest privacy settlement worldwide by far. It is an order of magnitude greater than the highest fine under the EU’s General Data Protection Regulation so far (the UK ICO’s €183 million fine against British Airways) and roughly double the record fine under EU competition law, which privacy advocates have urged as the reference for privacy fines.

The settlement also contains significant and noteworthy measures, such as forcing Facebook to make privacy a board-level concern and requiring Mark Zuckerberg to verify compliance. As dissenting Commissioners Chopra and Slaughter note, the FTC’s settlement doesn’t solve every problem; Facebook’s structure and business model remain the same. But no existing enforcement agency has come close to matching the FTC’s impact in this case, and foreign data protection agencies similar to proposed in the U.S. as FTC alternatives have not demonstrated the power or political capital to do so. As privacy enforcers go, the FTC stacks up well to others in many regards.

#### Enforcers have to be selective when prosecuting---expanding scope of antitrust prosecutions would lead to wasted resources.

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Stephen Houck, “Exercising Antitrust Enforcement Discretion: Android,” February 14, 2019, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3328827>

There can be little doubt that antitrust enforcement officials have broad discretion in deciding what civil cases to prosecute. Indeed, they must be selective in the cases they bring because they have finite enforcement resources. 4

[Footnote 4 Begins

4 This dictum applies not only to smaller antitrust enforcement agencies like those of the states, but also to the Antitrust Division and Federal Trade Commission which have limited human and material resources to discharge their myriad obligations, especially given the many large transactions and other complex matters within their purview

Footnote 4 Ends]

Thus, in the currently pending AT&T/Time Warner merger litigation, the District Court refused to allow discovery into the government’s motives for prosecuting the case, noting that each merger - and, by extension, virtually any antitrust - case is unique and observing that “prosecutors have broad discretion to enforce the law, and their decisions are presumed to be proper absent clear evidence to the contrary.” 5

What, then, are the factors that shape decisions by antitrust enforcement officials in selecting which cases to pursue? As discussed below, the principal considerations are the strength of the case on the merits; consumer harm and remedies; deterrence; and protecting competition, not competitors. The discussion is based on my many years litigating a variety of antitrust matters on behalf of both plaintiffs and defendants (with and against antitrust enforcement agencies), but especially on my more than four years making such decisions as Chief of the Antitrust Bureau in the New York State Attorney General’s Office.6

II. Strength of the case on the merits

The most critical factor impacting the decision whether to bring an antitrust enforcement action is, not surprisingly, the same as that confronting any potential plaintiff: what are the chances of succeeding? In other words, is there a good case on the merits given the relevant facts and applicable law? There are, however, considerations relevant to the decision calculus of antitrust enforcement officials that do not impact a private plaintiff in the same way.

First and foremost, the paramount obligation of government officials responsible for enforcing the law, antitrust or otherwise, is to do justice. By contrast, a private plaintiff might calculate that it makes sense to file a lawsuit, even one of questionable merit, if it is sufficiently threatening or burdensome that the defendant may agree to a monetary settlement or other relief. Government officials, however, should not succumb to such a temptation. 7 As stewards of the law, their litigation decisions convey a strong message to the antitrust bar about what they believe the law to be. Additionally, a government lawsuit, even a non-meritorious one, imposes a substantial burden on the defendant and may adversely affect its competitive position. Government officials should be mindful, therefore, of the considerable power they wield and take care not to file an enforcement action absent a good faith belief that it is well-founded on the facts and the law.

Second, government officials must take into account the lost opportunity costs entailed in any decision to file a lawsuit. Antitrust matters are often factually complex. 8 Typically, investigations, and even more so litigations, are resource intensive. Moreover, since almost all antitrust matters are factually unique, how a court will apply the law to a specific set of facts is often uncertain. To be sure, antitrust enforcement officials must devote the necessary time and attention to significant matters, no matter how complex. But they should never lose sight of the fact that litigating and losing such cases means that the resources thus expended are essentially wasted and, had a better decision been made, undoubtedly could have been put to more productive uses.