# 1NC

## 1

#### BBB will pass – it’s key to meeting the U.S.’s climate commitments

DUMAIN 11/8 (Emma; E&E Daily, “Democrats cheer reconciliation vote, but big fights remain,” <https://www.eenews.net/articles/democrats-cheer-reconciliation-vote-but-big-fights-remain/>, //pa-ww)

Congressional Democrats painted a rosy view this past weekend of the prospects for swift legislative action on their massive, $1.7 trillion climate and social spending package. From the White House on Saturday, President Biden said without equivocation, “We will pass this in the House, and we’ll pass it in the Senate.” From Glasgow, Scotland, on a panel at the United Nations climate talks, Sen. Ed Markey (D-Mass.) said his message to the entire international community was that the Senate would ultimately get the votes to advance the reconciliation bill, enabling Biden to meet his goal of achieving 50 percent emissions reductions below 2005 levels by the year 2030. “We will get this job done,” said Markey of legislation that would invest roughly $550 billion to fight the climate crisis — the biggest federal investment in the environment in history. And yesterday, White House chief of staff Ron Klain hammered the point home: “We are going to lead the world in tackling climate change,” he said on on NBC’s “Meet The Press,” adding, “We’re going to pass this bill and have the tools to do it.” But simmering beneath this optimism are real uncertainties as to how lingering disagreements over the cost and content of the reconciliation bill, known as the “Build Back Better Act,” will get resolved and fulfill the many promises on climate action Democrats intend to tout in Glasgow over the next several days. This past Friday, progressives finally agreed to clear the separate, $1 trillion bipartisan infrastructure package for the president’s signature, even without ironclad commitments from moderate Democratic Sens. Joe Manchin of West Virginia and Kyrsten Sinema of Arizona that they would vote for the separate, partisan bill. Those commitments had been a hard line that liberals had held on to for weeks. Meanwhile, another dilemma emerged: House Democratic moderates said they would not support the reconciliation bill until it had received an official cost estimate from the nonpartisan Congressional Budget Office. House Democratic leadership ultimately culled together the votes to pass the bipartisan infrastructure bill, 228-206, with all but six Democrats supporting and with help from 13 Republicans to make up the shortfall. Moderates essentially promised progressives they’d vote for the reconciliation bill once the CBO score is finalized. At the same time, Congress took a procedural step, 221-213, regarding the reconciliation bill to bring that measure closer to a final passage vote the week of Nov. 15, when the House returns following the Veterans Day recess. Rep. Josh Gottheimer (D-N.J.), one of the moderates who insisted the reconciliation bill be scored prior to a vote, said on CNN’s “State of the Union” yesterday he expected the score to be in line with White House projections, in which case he and his colleagues would back the bill as soon as next week. Party leaders, however, are taking a tremendous gamble that the CBO score will be sufficient. They are now working against a much tighter deadline to resolve intraparty differences on multiple policy proposals by the year’s end, where the final weeks of December will also be consumed by other legislative battles relating to the appropriations process and the debt ceiling. They are also putting tremendous trust in Biden’s ability to convince Manchin and Sinema to support the larger spending package, about which Manchin has expressed serious reservations while Sinema has stayed mostly mum. Manchin released a statement late Friday praising action on the infrastructure bill, which he helped write in the Senate; Sinema tweeted similar sentiments on Saturday. Neither said anything about the reconciliation package. The talking points following the chaos of last week, which culminated in a vote in the House on the bipartisan infrastructure bill in the early hours of Saturday morning, varied. Biden’s allies took to the Sunday talk show circuit to tout the most recent legislative victory and assure the public the reconciliation bill, with its historic climate investments, was next on tap. “What’s in our minds is the fact that the ‘Build Back Better’ plan that we’ve been talking about has the largest investment in American history to get us to a clean energy economy, to create millions of jobs in this country moving forward to sustainable, renewable energy,” Klain said Markey, who earlier this summer helped popularize the #NoClimateNoDeal campaign on Capitol Hill, made clear he had no interest in sowing seeds of doubt in Glasgow. “What we’re saying to the rest of the world here today [is] we are going to act domestically, we are going to act on methane, we are going to deliver on our promises,” he said at a COP 26 event hosted by the Climate Action Center. “You can turn the page on the Trump era,” said Markey. “We’re putting these [clean energy] tax breaks on the books for a 10-year period, there will be a climate bank … a $220 billion in private-sector investment in new clean energy technology … a Civilian Climate Corps.” Elsewhere, environmental advocates were making it very clear there would be political consequences for inaction on the reconciliation package, which contains the vast majority of the climate provisions for which environmentalists have been clamoring. Manish Bapna, president and CEO of the Natural Resources Defense Council, said there was reason to cheer passage of the infrastructure bill only insofar as it “clear[ed] the way” for passage of the reconciliation measure. “The infrastructure bill doesn’t confront the climate crisis,” Bapna said. “For that, we need Congress to enact the historic clean energy investment in the ‘Build Back Better Act’ without delay.” Tiernan Sittenfeld, senior vice president of government affairs with the League of Conservation Voters, agreed. “Today was not the historic day we’d hoped for,” she said in the hours after the House advanced the infrastructure bill but not the reconciliation deal. “Now is the time to finish the job, pass the Build Back Better Act and quickly get it to the President’s Desk.”

#### The plan drains PC

Carstensen, 21

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

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

#### PC key to timely passage – overcomes all obstacles

BARRON-LOPEZ 11/11 (Laura; Politico, “Dems to White House: The only prescription is more Biden,” <https://www.politico.com/news/2021/11/11/dems-white-house-biden-520946>, //pa-ww)

After months of deference to Congress, President Joe Biden moved more assertively last week to shepherd half his domestic agenda into law. With the other half still in limbo, Democrats want some of that Biden punch again. Outside groups fear that congressional Democrats could come up short on Biden’s social spending package. They are concerned that moderates in the House may end up buckling if the budget scores on the bill come back worse than anticipated. And there is residual anxiety that one of the two wavering Senate Democrats — Joe Manchin of West Virginia and Kyrsten Sinema of Arizona — could vote “no” over concerns about inflation and long-term debt. The clearest solution to avoiding this, they argue, is more Biden. “All eyes are on the president, all expectations are on the president,” said Lorella Praeli, co-president of the progressive Community Change Action. “We are playing our role. We are mobilizing. We're reminding people everyday what this is about.” Praeli added that Biden must ensure there aren’t future cuts to the package, which dropped from $3.5 trillion to $1.75 trillion to accommodate centrist Democrats in the House and Senate. “This is what he campaigned on. Only the president can deliver it in the end.” Until last week, Biden’s involvement in negotiations had been more deferential than managerial. That befuddled lawmakers, who were waiting for him to draw red lines about which priorities he wants in and out of the deal or to even demand votes. To date, Biden has publicly refrained from drawing a red line around including paid leave in the final version of the legislation, leaving the leadership in the House at odds with centrists in the Senate. But Biden did ramp up his involvement in the negotiations last week. And Democrats viewed that as key to getting an agreement in the House on their infrastructure bill, as well as on a rule to move forward with their social spending package, which funds universal pre-K, expands Medicare access, cuts taxes for families with children 18 years old and under, and combats climate change. Now they want more. Expectations are high for Biden to keep the House to its promise of a vote on that social spending plan the week of Nov. 15. “They basically made a promise,” said Rahna Epting, executive director of the progressive advocacy group MoveOn. “And Biden was able to get enough progressives to vote for the bipartisan infrastructure bill, on that promise. We are expecting Biden and the Democratic Caucus will make good on their word and pass the Build Back Better Act no later than Nov 15th as stated.” White House officials contend that Biden and his team remain in close touch with the Hill, and their legislative affairs staff continues to push the social spending bill toward a vote. The White House said it is communicating regularly with a range of lawmakers including Manchin, but did not answer when asked whether Biden has spoken to the West Virginia senator or other moderates in recent days. “There has been no kind of slowdown when it comes to our Hill outreach,” a White House official said. The growing demands for Biden to stay heavily involved reflect a fear in the party that the window to act on the agenda is quickly closing, especially as concerns mount about lingering inflation and the midterms near. If the House meets its deadline next week and passes the social spending bill, some Democrats want Biden to issue a deadline for the Senate to act. Others noted that the end-of-year legislative calendar is short and brutal. The “dynamic has totally changed,” said a Democratic strategist. “The president secured this agreement with the five holdouts for House passage of BBB next week and it’s on him to enforce it.” A top climate operative echoed that assessment telling POLITICO that Biden “will have failed” on tackling climate change if the second piece of the agenda doesn’t pass. But the operative also expressed a newfound fear that Biden’s current effort to sell the benefits of the infrastructure bill could distract or complicate Democrats’ attempt to keep public interested in the social spending plan. "They need to sell [physical infrastructure] but also act like it's not enough," said the activist. "How are they also creating the urgency for BBB to get done, for it to stay on the timeline of getting it done by Thanksgiving? It's a balancing act.” Matt Bennett, co-founder of the moderate group Third Way, agreed that the dynamics were “tricky” in trying to sell one just-passed bill as historic while simultaneously making the case that another ambitious bill is needed. Biden will travel to New Hampshire and Michigan next week to highlight the money the infrastructure bill will direct toward new roads, bridges and transit projects across the country. “This moment that we're in is hard,” said Bennett. “It will be much, much easier when both bills are completed. There is a very profound political imperative for Democrats to get this finished, to end the infighting and sausage-making and shift to creating a narrative about what Democrats have just done for Americans because they've been utterly unable to do that.” A number of groups plan to amp up pressure next week as Congress returns. House Speaker Nancy Pelosi and the White House have repeated their desire to have a vote on the social spending plan by the end of next week. The Service Employees International Union will descend on Capitol Hill with some 500 union members, said Mary Kay Henry, the union’s president. “We are escalating phone calls, text messages,” said Henry. “We're bringing members into Washington next Tuesday, we have the president's back, to get Congress to act quickly and get the full back package.” Democratic outside groups have spent more than $150 million on TV and digital ads promoting the president’s social spending plan, known as “Build Back Better.” The League of Conservation Voters and Climate Power launched new digital ads calling on the five moderates who reached an agreement with the White House and House leadership last week to follow through on their commitment to pass the second piece of Biden’s economic agenda “next week.” The longer it takes to pass the social spending plan, the harder it becomes to keep the party unified, Democrats warn, especially amid up-and-down economic news. A new report Wednesday revealed inflation hit 6.2 percent in October, its highest point in 31 years, contributing to high gas, car and food prices. It forced Biden to quickly issue a statement addressing the issue and ever-so-slightly shift his messaging, arguing that passage of the social spending plan would combat inflation. “Inflation hurts Americans’ pocketbooks, and reversing this trend is a top priority for me,” Biden said in a statement. “It is important that Congress pass my Build Back Better plan, which is fully paid for and does not add to the debt, and will get more Americans working by reducing the cost of child care and elder care, and help directly lower costs for American families.”

#### U.S. climate leadership is vital to preventing extinction from global climate change, addressing systemic racism, mitigating global conflict, preserving military readiness and U.S. competitiveness

BLINKEN ’21 (Antony J.; U.S. Secretary of State, “Tackling the Crisis and Seizing the Opportunity: America’s Global Climate Leadership,” <https://www.state.gov/secretary-antony-j-blinken-remarks-to-the-chesapeake-bay-foundation-tackling-the-crisis-and-seizing-the-opportunity-americas-global-climate-leadership/>, //pa-ww)

Well, good afternoon, everyone. And Will, thank you for a wonderful introduction. And thank you for lending us this absolutely spectacular setting and backdrop – certainly the best setting and backdrop I’ve had in my brief tenure as Secretary. And thanks so much to the Chesapeake Bay Foundation for your lasting commitment to save the Bay. The Chesapeake Bay was formed nearly 12,000 years ago by melting glaciers. Today, it stretches 200 miles and is home to over 3,600 species of plants and animals. A hundred thousand rivers and streams feed over 50 billion gallons of water into the Bay every single day. More than 18 million people live in the watershed, and many rely on it for their livelihood. The local seafood industry alone provides some 34,000 jobs and nearly $900 million in annual income. And yet, as Will alluded to, warming temperatures caused by human activity are transforming the Bay. Its water is rising. And the land – including where I stand right now – is sinking due to the melting of the glaciers that formed the Bay. If this continues at the current pace, in just 80 years, the Bay will extend inland for miles, overtaking the homes of 3 million people, destroying roads, bridges, farms. Many of the Bay’s plants and animals will die out. So will the fishing industry. To my children’s children, the landscape will be unrecognizable. We have to stop this from happening while we still can. That’s why President Biden took steps to rejoin the Paris Agreement right after taking office, and named Secretary Kerry as our nation’s first Special Presidential Envoy for Climate to lead our efforts around the world. It’s also why President Biden invited 40 world leaders to Washington this week for a summit on climate. And it’s why the Biden-Harris administration will do more than any in history to meet our climate crisis. This is already an all-hands-on-deck effort across our government and across our nation. Our future depends on the choices we make today. As Secretary of State, my job is to make sure our foreign policy delivers for the American people – by taking on the biggest challenges they face and seizing the biggest opportunities that can improve their lives. No challenge more clearly captures the two sides of this coin than climate. If America fails to lead the world on addressing the climate crisis, we won’t have much of a world left. If we succeed, we will capitalize on the greatest opportunity to create quality jobs in generations; we’ll build a more equitable, healthy, and sustainable society; and we’ll protect this magnificent planet. That’s the test we face right now. Today, I want to explain how American foreign policy will help us meet that test. Not too long ago, we had to imagine the impact of climate change. No one has to imagine it anymore. For the last 60 years, every decade has been hotter than the one that came before it. Weather events are becoming more extreme. During the cold wave this February, temperatures from Nebraska to Texas were more than 40 degrees below normal. In Texas alone, thousands were left homeless, over 4 million people went without heat and electricity, more than 125 people died. It may seem counterintuitive that global warming leads to cold weather. But as the Arctic warms, cold weather gets pushed south. And that can contribute to record cold spells like the one in Texas. The 2020 wildfire season burned more than 10 million acres. That’s more than the entire state of Maryland. We saw five of the six biggest wildfires in California’s history, and the single biggest wildfire in Colorado’s history. Together, natural disasters in 2020 cost the United States around $100 billion. Meanwhile, 2019 was the wettest year on record for the lower 48 states. Heavy rains and floods prevented farmers in the Midwest and Great Plains from planting 19 million acres of crops. And from 2000 to 2018, the American Southwest experienced its worst drought since the 16th century – the 16th century. We’re running out of records to break. The costs – in monetary damage, livelihoods, human lives – keep going up. And unless we turn this around, it’s going to get worse. More frequent and more intense storms; longer dry spells; bigger floods; more extreme heat and more extreme cold; faster sea level rise; more people displaced; more pollution; more asthma. Higher health costs; less predictable seasons for farmers. And all of that will hit low-income, black and brown communities the hardest. The last part’s important. The costs of the climate crisis fall disproportionately on the people in our society who can least afford it. But it’s also true that addressing climate change offers one of the most powerful tools we have to fight inequity and systemic racism. The way we respond can help break the cycle. These are all reasons why we must succeed in preventing a climate catastrophe. But the world has already fallen behind on the targets we set six years ago with the Paris Agreement. And we now know those targets didn’t go far enough to begin with. Today, the science is unequivocal: We need to keep the Earth’s warming to 1.5 degrees Celsius to avoid catastrophe. America has a key role to play in hitting that mark. We only have around 4 percent of the world’s population, but we contribute nearly 15 percent of global emissions. That makes us the world’s second biggest emitter of greenhouse gases. If we do our part at home, we can make a significant contribution to addressing this crisis. But that won’t be enough. Even if the United States gets to net zero emissions tomorrow, we’ll lose the fight against climate change if we can’t address the more than 85 percent of emissions coming from the rest of the world. Coming up short will have major repercussions for our national security. Pick a security challenge that affects the United States. Climate change is likely to make it worse. Climate change exacerbates existing conflicts and increases the chances of new ones – particularly in countries where governments are weak and resources are scarce. Of the 20 countries the Red Cross considers most vulnerable to climate change, 12 are already experiencing armed conflicts. As essential resources like water dwindle, as governments struggle to meet the needs of growing populations, we’ll see more suffering and more strife. Climate change can also create new theaters of conflict. In February, a Russian gas tanker sailed through the Arctic’s Northern Sea Route for the first time ever. Until recently, that route was only passable a few weeks each year. But with the Arctic warming at twice the rate of the rest of the global average, that period is getting much longer. Russia is exploiting this change to try to exert control over new spaces. It is modernizing its bases in the Arctic and building new ones, including one just 300 miles from Alaska. China is increasing its presence in the Arctic, too. Climate change can also be a driver of migration. There were 13 Atlantic hurricanes in 2020 – the highest number on record. Central America was hit especially hard. Storms destroyed the homes and livelihoods of 6.8 million people in Guatemala, Honduras, and El Salvador, and wiped out hundreds of thousands of acres of crops, leading to a massive rise in hunger. Months after the storms, entire villages are still subsumed in mud, and people are carving off pieces of their buried homes to sell as scrap metal. When disasters strike people who are already living in poverty and insecurity, it can often be the final straw, pushing them to abandon their communities in search of a better place to live. For many Central Americans, that means trying to make it to the United States – even when we say repeatedly that the border is closed, and even though the journey comes with tremendous hardships, especially for women and girls who face heightened risk of sexual violence. All of these challenges are placing greater demands on our military. The U.S. Naval Academy is only five miles north of here, and Naval Station Norfolk, the largest naval base in the world, about 200 miles to the south. Both bases – and the critical missions they support – face an imminent threat from climate change. And these are just two of the dozens of military facilities that climate change puts at risk. What’s more, our military often responds to natural disasters, which are getting more frequent and more destructive. In January, Secretary of Defense Austin announced that the military would immediately integrate climate change into its planning and operations and how it assesses risk. As Secretary Austin put it, and I quote, “There is little about what the department does to defend the American people that is not affected by climate change.” Having said all that, it would be a mistake to think about climate only through the prism of threats. Here’s why. Every country on the planet has to do two things – reduce emissions and prepare for the unavoidable impacts of climate change. American innovation and industry can be at the forefront of both. This is what President Biden means when he says, and I quote, “When I think of climate change, I think jobs,” end quote. To give you a sense of scale, consider that, by 2040, the world will face a $4.6 trillion infrastructure gap. The United States has a big stake in how that infrastructure is built. Not only whether it creates opportunities for American workers and businesses, but also whether it’s green and sustainable, and done in a way that’s transparent; respects workers’ rights; gives the local population a say; and doesn’t mire developing countries and communities in debt. That’s an opportunity for us. Or consider the massive investments countries are making in clean energy. Renewables are now the cheapest source of bulk electricity in countries that contain two-thirds of the world’s population. And the global renewable energy market is projected to be $2.15 trillion by 2025. That’s over 35 times the size of the current market for renewables in the United States. Already, solar and wind technicians are among the fastest growing jobs in America. It’s difficult to imagine the United States winning the long-term strategic competition with China if we cannot lead the renewable energy revolution. Right now, we’re falling behind. China is the largest producer and exporter of solar panels, wind turbines, batteries, electric vehicles. It holds nearly a third of the world’s renewable energy patents. If we don’t catch up, America will miss the chance to shape the world’s climate future in a way that reflects our interests and values, and we’ll lose out on countless jobs for the American people. Now, let me be clear: Goal number one of our climate policy is preventing catastrophe. We’re rooting for every country, business, and community to get better at cutting emissions and building resilience. But that doesn’t mean we don’t have a stake in America developing these innovations and exporting them to the world. And it doesn’t mean we don’t want to shape the way countries reduce their emissions and adapt to climate change. So how can we do that? We can start with leading by the power of our example. As we work to meet our ambitious climate targets, the following core principles will guide our approach. We will significantly increase our investment in clean energy research and development, because it’s how we will catalyze breakthroughs that benefit American communities and create American jobs. In all our climate investments, we will aim not only to promote growth, but also equity. We’ll be inclusive, focusing on providing Americans across the country – and from a range of communities – with good-paying jobs, and the opportunity to join a union. We’ll empower youth, not just because they will bear more of the consequences of climate change, but also because of the urgency, ingenuity, and leadership they’ve demonstrated in confronting this crisis. We will enlist states, cities, businesses large and small, civil society, and other coalitions as partners and models. Others have been doing groundbreaking work in this field for a long time. We’ll lift them up and share best practices. And this is important: We will be mindful that for all the opportunities offered by the unavoidable shift to clean energy, not every American worker will win out in the near term. Some livelihoods and communities that relied on old industries will be hit hard. We won’t leave those Americans behind. We’ll provide our fellow Americans with pathways to new, sustainable livelihoods, and support as they navigate this transition. Right after taking office, President Biden created the Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization. It’s working across the government to identify and deliver federal resources to revitalize the local economics of coal, oil, gas, and power plant communities, and ensure benefits and protections for workers in those same communities. And as part of his American Jobs Plan, the President proposed a $16 billion upfront investment to put hundreds of thousands of people to work in union jobs plugging abandoned oil and gas wells and mines. If we can stay true to these principles while meeting our climate targets, we’ll demonstrate a model that other countries will want to partner with and follow. With those values in mind, here’s how the State Department will leverage our foreign policy to deliver for the American people on climate. First, we’ll put the climate crisis at the center of our foreign policy and national security, as President Biden instructed us to do in his first week in office. That means taking into account how every bilateral and multilateral engagement – every policy decision – will impact our goal of putting the world on a safer, more sustainable path. It also means ensuring our diplomats have the training and skills to elevate climate in our relationships around the globe. Now, what it does not mean is treating other countries’ progress on climate as a chip they can use to excuse bad behavior in other areas that are important to our national security. The Biden-Harris Administration is united on this: Climate is not a trading card – it’s our future. I am particularly delighted that President Biden named my friend John Kerry to serve as our Special Presidential Envoy for Climate. No one is more experienced or effective in convincing other countries to raise their climate ambitions. We need the whole world focused on taking action now, and through this decade, to promote the achievement of net-zero global emissions by 2050. I am with John 100 percent in this effort. The leaders of our other U.S. Government agencies, they are as well. And his leadership will be indispensable in weaving climate into the fabric of everything we do at the State Department. Second, as other countries step up, the State Department will mobilize resources, institutional know-how, technical expertise from across our government, the private sector, NGOs, and research universities to help them. In the last few weeks alone, we announced new funding for clean energy entrepreneurship and more efficient renewable energy markets in Bangladesh and to help India’s small businesses invest in solar energy. These investments move us toward our climate goals and bring energy access to people who had never had it before. Third, we’ll emphasize assisting the countries being hit hardest by climate change, most of which lack the resources and capacity to handle its destabilizing impacts. Now, that includes Small Island Developing States, a number of which are literally sinking into the ocean because of rising sea levels. In 2020, only 3 percent of climate finance was directed toward these countries. We’ve got to fix that. To that end, America is deploying experts and technology to vulnerable islands in the Pacific and the Caribbean to improve early warning and response systems, and we’re investing in building resilience in areas like infrastructure and agriculture. Fourth, our embassies will lead on the ground. They already are – helping governments design and implement climate-smart policies, while looking for ways to draw on the unique strengths of America’s public and private sectors. Just last month, the U.S. company Sun Africa broke ground on two massive solar energy facilities in Angola, including the 144-megawatt Biopio site. When finished, it will be the biggest solar facility in all of Sub-Saharan Africa. The project will provide enough power for 265,000 homes and eliminate 440,000 gallons of carbon-intensive diesel fuel that Angola imports and burns each year. Plus, this project is expected to use around $150 million in solar energy equipment exported from the United States. This effort is good for the Angolan people, good for climate, and good for American jobs and business. And it simply wouldn’t have happened if not for the efforts of our diplomats. Fifth, we will use all the tools in our kit to make U.S. clean energy innovators more competitive in the global market. That includes leveraging instruments like the financing provided by the Export-Import Bank to incentivize renewable energy exports; the proposed expansion of tax credits for clean energy generation and storage in the President’s American Jobs Plan; and the Administration’s ongoing efforts to level the global playing field for American-made products and services. Support like these can have an outsized impact, particularly because the current market for renewables is only a small fraction of the market to come. Beyond solar panels, wind turbines, batteries, there are more than 40 additional categories of clean energy, including clean hydrogen, carbon capture, and next-generation renewables like enhanced geothermal energy. No one has staked a dominant claim to these promising technologies yet. And, with a lift from our domestic and foreign policy, every one of them can be American-led and American-made. A Massachusetts start-up called Boston Metal shows how this can be done. The company pioneered a new process that can produce steel and other metals more efficiently and at lower costs, while also producing less pollution. Most of the U.S. steel sector already uses clean technologies, but the company’s CEO, a Brazilian immigrant, saw an untapped market in countries like Brazil, where Boston Metal is partnering with industry to replace older, dirtier ways of making steel. This company is creating good-paying, quality jobs in the United States. Steel is a $2.5 trillion global industry, and many of the world’s producers will need to make a similar leap. America can help them do it. Sixth, our diplomats will challenge the practices of countries whose action – or inaction – is setting the world back. When countries continue to rely on coal for a significant amount of their energy, or invest in new coal factories, or allow for massive deforestation, they will hear from the United States and our partners about how harmful these actions are. And finally, we’ll seize every chance we get to raise these issues with our allies and partners, and through multilateral institutions. At NATO, for example, there is consensus that we need to adapt our military readiness for the inevitability of climate change and reduce the reliance of the Allies’ forces on fossil fuels, which is both a vulnerability and a major source of pollution. I know that Secretary General Stoltenberg, who has called climate a “threat multiplier,” is as serious about addressing climate change as we are. We will convey a strong message to the meeting of the G7 next month, whose members produce a quarter of the world’s emissions. And I’ll also represent the United States at next month’s ministerial meeting of the Arctic Council, where I’ll reaffirm America’s commitment to meeting our climate goals and encourage other Arctic nations to do the same. All of these efforts, at home and abroad, will allow us to lead from a position of strength when the world comes together in November for the United Nations Climate Conference in Glasgow. I spend a great deal of my time focused on threats to America’s security and interests – aggressive actions by Russia or China, the spread of COVID-19, the challenges facing democracies. But an equally grave threat to the American people – and an existential one over the long term – can be seen right here, on the Chesapeake Bay, where the costs of climate change are already manifesting themselves. Yet from this very same place, we can also see examples of American innovation and leadership that – if taken to scale – can prevent a climate catastrophe and benefit American workers and communities. Maryland has committed to cutting the state’s emissions by at least 40 percent by 2030, and to 100 percent clean energy by 2040. Maryland also offers farmers strong incentives to plant cover crops, which help trap carbon dioxide. More than 40 percent of the state’s farmers are now using these crops. And countless others are doing their part to prevent climate change on the Bay – and often benefiting American jobs in the process. Just consider the Merrill Center building right here, from which I speak. When it opened 20 years ago, it was the first LEED Platinum Building in the entire world, a U.S. standard for energy efficiency that has since become the gold standard globally. Around a third of its energy comes from solar power. It uses 80 percent less water than most buildings its size. Nearly half of the building – the building materials, excuse me, came from within 300 miles. Its design saves $50,000 a year in energy costs alone. A newer facility the Chesapeake Bay Foundation built in 2014 is even more efficient, reflecting advances in American design and manufacturing. It produces more energy than it consumes, and all the water it uses is captured rainwater. Its solar panels come from Oregon, its wind turbines from Oklahoma. These solar panels and wind turbines are American-designed, American-owned, American-built. And people from around the world have come to study these buildings. It’s changes like these that will help preserve the Bay as we know it, and all of the communities and livelihoods that it sustains. This is the blueprint for American leadership on climate. Bringing together innovation from government and the private sector, communities and organizations. Not just meeting targets for controlling climate change, but doing it in a way that’s open, that’s a good investment, that creates opportunities for American workers. The climate crisis we face is profound. The consequences of not meeting it would be cataclysmic. But if we lead by the power of our example – if we use our foreign policy not only to get other countries to commit to the changes necessary, but to make America their partner in implementing those changes – we can turn the greatest challenge in generations into the greatest opportunity for generations to come. Thanks for listening.

## 2

#### Neo-Brandeisian polices that attempt to fix the harms of Big Tech through antitrust policies will fundamentally fail. Assuming that competitive markets will force companies to be nice ignores the very root of the problem – competitive companies still exploit users, reinforcing a consumerist society that guarantees extinction from climate change and environmental degradation. Only the alternative solves by shifting to a global digital commons aligned with broader international movements to develop environmental sustainability and challenge capitalism and colonialism.

Kwet, 20

(Michael, Visiting Fellow at Yale’s Information Society Project. His current areas of research include education technology, the global digital economy, tech startups, safe and smart city initiatives, big data, and Free and Open Source Software. Ph.D. in Sociology, Rhodes University, "Social Media Socialism: People’s Tech and Decolonization for a Global Society in Crisis." Available at SSRN (2020).)\\JM

7. DEVELOPING A PEOPLE’S TECH MOVEMENT THAT INTERSECTS WITH BROADER MOVEMENTS The only way to counter the power of tech transnationals is to develop a popular grassroots movement to re-decentralize social media networks as a global commons. The problem is structural, and the solution will have to challenge the system at a fundamental level. We have already seen popular movements coalesce around relatively complex concepts like net neutrality. There is no reason to think the general public cannot learn about social media decentralization and push for a social media commons solution that democratizes the networks. This should not be a hard sell in the Global South, whose human rights activists and emerging economies have nothing to lose – and everything to gain – from a commons-based solution. Countries in the North might also join the fray, as they are being subjected to the surveillance apparatus of a foreign power which is undermining their local economies. And finally, many US citizens have low and declining levels of trust in Big Tech – and they aren’t even well-informed about invasive social media practices. According to a Pew Research poll, 74% of US adult Facebook users did not know Facebook collects their interests and traits to target ads, and 51% are not comfortable with them compiling that information.336 Another survey found sizable majority of American adults do not understand how the news feed works.337 Activist education campaigns could help garner the support needed to phase out digital capitalism in a way that is equitable for the global poor – a solution that requires a People’s Tech model based on a socialist Digital Tech New Deal. This work intersects with broader social justice movements for environmental sustainability and justice, global equality, and human rights. Changing the way the 21st century economy works at a fundamental level is an enormous undertaking, but it must be done, as we are facing a global crisis that threatens to do permanent damage to the only and only home to life, planet Earth. V. CONCLUSION We have seen that Big Social Media harms society in numerous ways. It concentrates wealth, undermines journalism and democracy, exploits mass surveillance on users, colonizes the global market, and stimulates a consumerist society that is destroying the planet. We have also seen that this is a matter of ownership, design, and the capitalist mode of production. If we have centralized social media networks owned and controlled as private property, seeking to generate revenues through fees or user attention, then those network owners will be incentivized to maximize their well-being at the expense of users. The neo-Brandeisian School of scholars intend to use antitrust to “break up” Big Social Media giants like Facebook and create a “truly free market” based on the theory that “competitive markets” will force social networks to treat their users nicely. However, there is no reason to believe this will occur, as we see software all over the tech ecosystem – including in competitive marketplaces – surveil, deceive, manipulate, and exploit users.338 Tech “critics” frequently say that “tech is not neutral”, but it is just as true that “property is not neutral”. Proprietary software is not neutral, centralization in the cloud is not neutral, concentrated ownership of infrastructure is not neutral, intellectual property monopoly is not neutral. The Free Software community has, for years, led the charge to create commons-based human rights-respecting technologies owned and controlled directly by the people. As Edward Snowden put it, the Free Software Movement is the “last lighthouse of freedom” in the digital world. They were the first to challenge Big Social Media, right at the outset in the 2000s, and they have developed the most advanced technological alternatives to date based on decentralized and distributed solutions like the Fediverse and LibreSocial. Support for the Free Software Movement has been strong in the Global South, from South Africa to Kerala – a fact that is largely ignored by the West.339 Colonialism is racist. It is no less racist in the digital form. As we have seen, Big Social Media giants like Facebook and Twitter are colonial systems. Much like Brandeis in the early 20th century ignored the plight of African Americans – and the capitalist logic which led to their exploitation – the American “tech left” is ignoring the plight of the Global South and the problems of digital capitalism. Their thinking is generated by a network of US legal scholars, who recommend “fixing Big Tech” – transnational corporations – with US laws, interpretations by US courts, and administration by US regulators. Angela Davis recently said, “racism is integrally linked to capitalism” and that “it’s a mistake to assume that we can combat racism by leaving capitalism in place”.340 The critique of capitalism must be taken seriously, and not just as a slogan. It has specific applications to specific institutions and specific individuals acting in the real world. We’re now at a stage in history where the harms of capitalism are reaching epic proportions, threatening not only human life, but the well-being of life on planet Earth.341 The only way to fix the issue is to end commitments to limitless growth, redistribute wealth and income, and build a global, classless society so that everyone can live a decent life. This means, fundamentally, unwinding the racist colonial past by rapidly replacing capitalism with socialism in line with social justice and planetary justice. Big Social Media does the opposite: it concentrates wealth and power, colonizes markets, strengthens US imperialism, undermines global democracy, locks up knowledge for the wealthy, and pushes mindless consumerism on the world population. We need an international solution created by people across the world, based on People’s Tech for People’s Power, in order to stop digital colonialism, end digital capitalism, and work with broader movements to resolve the global crisis. Social media socialism is a necessary component of this struggle.

## 3

#### The 50 states and all relevant sub-federal territories should

#### Expand the scope of antitrust-based regulations to common carriers and broadband

#### Offer substantial personal financial rewards to prosecutors who win antitrust suits

#### Enact substantial personal financial punishment to prosecutors who fail to pursue antitrust litigation

#### Direct vastly supernormal resources to antitrust state prosecutors

#### Solves the entire aff—Congress has devolved antitrust authority to the states

Harvard Law, 20

(Harvard Law Review, “Antitrust Federalism, Preemption, and Judge-Made Law,” JUN 10, 2020 133 Harv. L. Rev. 2557 NL)

Both the United States government and the governments of the fifty states use antitrust principles to regulate firms. A collection of federal statutes, first and foremost the Sherman Act,1 outlaws anticompetitive behavior under federal law. The federal executive branch, through the Federal Trade Commission (FTC) and the Department of Justice's Antitrust Division (DOJ), enforces the federal statutes.2 Meanwhile, each state has its own antitrust statutes outlawing anticompetitive behavior.3 The states' agencies enforce their own antitrust laws, and they can enforce federal antitrust law as parens patriae 4 for full treble damages thanks to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 5 (Hart-Scott-Rodino). However, when state legislation itself produces anticompetitive effects that seem to violate federal antitrust principles, the state gets a free pass: "[A]nticompetitive restraints are immune from antitrust scrutiny if they are attributable to an act of 'the State as sovereign.' 6 Wherever the federal and state governments share regulatory authority, federalism concerns naturally follow. Federalism refers to the division, overlap, and balance of power between the federal and state governments in our federal system.7 The emergence of a strong national government since the New Deal has turned federalism into a statecentric concept about protecting the states' role in that balance.8 This state-centric federalism is partially baked into the Constitution: for example, the Tenth Amendment confirms that the Constitution reserves powers not delegated to the United States for the fifty states, 9 and some scholars have attributed a state-centric view of federalism to the Guarantee Clause.10 However, when, as with antitrust, the federal and state governments share concurrent regulatory authority, the Constitution alone cannot resolve the federalism-nationalism balancing act. Even when it is not a constitutional hurdle, federalism is still a relevant constitutional value. The Framers embraced federalism for its policy virtues,11 and contemporary judges and scholars laud federalism for its modern-day policy perks. 1 2 The Supreme Court often invokes federalism in the form of a presumption that Congress does not lightly intrude on state sovereignty.13 One example is the Court's presumption against preemption: a party alleging federal preemption of state law faces a judicial presumption that Congress did not intend to make that choice.14 That presumption is validated by Congress's choice to refrain from preempting state law in the antitrust arena: state and federal antitrust laws have coexisted since the federal government's first steps into the arena in 1890.15 This congressional restraint is controversial, and likely to grow more so. Some scholars have argued powerfully that Congress should preempt state antitrust laws. 16 These arguments may gain renewed prominence, as antitrust as a whole has recently achieved greater political salience than it has enjoyed in a century.1 7 In the state context, attorneys general have increasingly taken antitrust action in high-profile matters the federal government has declined to pursue. In 2019, states opposed the merger between Sprint and T-Mobile,18 and many began to investigate potential antitrust violations in Big Tech. 19 While some recent, high profile state antitrust actions have been brought under federal antitrust laws, 20 others have been brought under state law.21 Moreover, a number of the current state antitrust actions are at the investigatory stage22 \_ states could potentially bring federal claims, state claims, or both. Newsworthy state involvement in antitrust policing is bringing attention to the states' antitrust role more generally, and that attention will likely bring scrutiny to the oddity of America's competing antitrust systems. This Note argues that, in considering its position within this debate, Congress should grapple with federal antitrust law's peculiar status as a largely judicially created regulatory regime. Congress should be wary of allowing federal judge-made law to preempt state legislative power. Even when the federal government preempts state legislation, the federalism balance is partially preserved by democratic checks on federal power. Yet, when a nondemocratic branch is making the law, those checks disappear. Moreover, the federal judiciary is a uniquely poor policymaking body; its lack of policymaking chops does not support overriding states' policy choices. These factors highlight the need for Congress to account for the degree to which current antitrust law is largely judge made. Part I outlines the general landscape of antitrust federalism. It first describes antitrust federalism's three components and then surveys arguments for and against maintaining one of those components: the coexistence of state and federal antitrust laws. Following this survey, Part II offers a new defense of the current system: federal antitrust law's judge-made status makes it particularly unsuitable to preemption. Finally, Part III compares antitrust's judge-made law to other preemptive federal common law, concluding that federal antitrust preemption would be uniquely susceptible to Part II's criticism. I. THE ANTITRUST FEDERALISM LANDSCAPE Antitrust federalism, meaning the space carved out for the states in the more generally federal antitrust arena, can be thought of as made up of two "swords"- the first the states' ability to bring suit under federal antitrust law and the second their ability to enact and enforce their own state antitrust laws - and one "shield" - immunity from federal antitrust law for state actions. 23 The swords allow states to attack antitrust offenders, while the shield allows states to defend against federal antitrust action. All three elements of antitrust federalism find their roots in congressional action or the courts' interpretation of congressional inaction. The power to enforce federal antitrust law as parens patriae for full treble damages - the first sword - was granted to the states by Congress in Hart-Scott-Rodino. 24 On the judicial front, the Supreme Court acknowledged state immunity from federal antitrust actions - the shield - in Parker v. Brown,25 noting that the Sherman Act did not explicitly mention its application to state action. 26 Finally, when the Court confirmed that states' ability to make their own antitrust laws - the second sword and the one discussed in this Note - was not preempted in California v. ARC America Corp.,2 7 it considered the same Sherman Act silence. 28 This is all to say that antitrust's federalism tools are congressionally, not constitutionally, given rights and are therefore congressionally rescindable. Congress could amend Hart-Scott-Rodino or make explicit that the Sherman Act applies to state action. 29 And, crucially for this Note's discussion, although state antitrust law is not judicially preempted, Congress could choose to expressly preempt it in the future.30 There are strong policy arguments for express congressional preemption of state antitrust law. The remainder of this Part attempts to outline the general pros and cons of congressional antitrust preemption but is not meant to be exhaustive or to cover new ground. The intent is to situate Part II's argument about federalism and preemption by judgemade law within the broader policy landscape. A. The Patchwork Regime Problem First, critics of the status quo argue that a patchwork regime of state antitrust laws can make it expensive for companies that operate across state borders to comply. State and federal regimes share similar philosophies regarding most of antitrust law.31 But state antitrust laws do not perfectly mirror their federal counterparts - and the antitrust laws of the different states are heterogeneous themselves. 32 Disputes are concentrated in a few areas of the doctrine, like vertical restraints and mergers. 33 For example, states often focus on damage to intrabrand competition when enforcing limits on vertical restraints, whereas federal antitrust law focuses primarily on interbrand competition.34 Additionally, state merger guidelines often materially differ from federal guidelines, 35 and states are likelier to define markets "more narrowly," "refus[e] to consider efficiencies" favored by federal agencies, and show a concern for local jobs and competitors that does not "enter . . . the [federal] calculus."3 6 An inconsistent antitrust regime that may conflict between states could cause economic inefficiency, for example by discouraging companies from undertaking what might otherwise be an economically efficient merger.37 This critique relies in part on the federal government having a better approach to vertical restraints and mergers, and that is anything but clear. The classic federalism argument that states function as laboratories of democracy 38 applies here: antitrust law is far from settled, and having multiple regimes allows for testing different theories. For example, some scholars argue that the states are correct to consider intrabrand competition's effects on price, especially in certain markets.39 Similarly, in the merger context, there is support for both the states' refusal to consider only economic efficiency40 and their push for heightened antimerger enforcement. 41 Of course, the laboratories of democracy might not work so well in the antitrust context: because of the interwoven economic effects of federal and state antitrust laws and enforcement in an interconnected national economy, determining the effects of one state's slightly different antitrust regime would be difficult.4 2 But federalism can still offer benefits by breaking the antitrust orthodoxy: by putting different policies on the table, a multilevel regime reminds us both that there are different possible "best" antitrust policies and that antitrust law has a variety of potential goals.43 B. The One-State Dominator Problem Closely related to the patchwork regime problem is the one-state dominator problem: because national firms may not always be able to maintain different business practices in each state, firms could be forced to follow the law of whichever state has the strictest antitrust policy nationwide. For example, a single state could use its own antitrust laws to "challenge the largest nationwide transactions so long as it can show that the state itself, its citizens, or its economy is affected in a way that provides standing." 4 4 If a nationwide merger is illegal under one state's laws, it may not be worth it for the firm to restructure the transaction in order to merge in all but one jurisdiction. This reality could allow for the state with the strictest antitrust policy to dominate the policy decisions of every other state and of the federal government.45 The one-state dominator problem is exacerbated by unrecognized interstate externalities: in making its antitrust laws, a state is not forced to consider the harm or benefit to businesses based outside of its borders. 46 These uninternalized externalities make it more likely that a state will overregulate. The laboratory-of-democracy defenses to the patchwork regime problem, with their variety-is-the-spice-of-life flair, fail to explain why an individual state's antitrust regime should be allowed to dominate the policy of the entire nation. Consider a recently passed Maryland law regulating wholesale pharmaceutical prices. The law prohibited manufacturers or wholesalers from "price gouging," defined as "an unconscionable increase in the price of" certain drugs.47 Federal antitrust law does not prevent monopolists from receiving the reward of monopoly prices, under the theory that potential future monopoly profits encourage present investment.4 8 The Maryland law can be viewed as a limit on this monopolist tolerance in the pharmaceutical space, preventing pharmaceutical companies from taking advantage of their dominant market position in the treatment of certain diseases. Not all states had decided to regulate drug prices, with most hewing more closely to the general rule of monopoly tolerance.49 Based on its drafting, however, Maryland's law could have had significant implications nationwide: even assuming the law required some sort of connection to an eventual consumer sale in Maryland,5 0 the law regulated a wholesaler's initial sale, whether or not that sale occurred in Maryland, so long as the drug was eventually resold in Maryland.5 1 As such, any manufacturer who sold drugs to a Maryland retailer would have to set their initial prices in consideration of Maryland's law. Pricing is a core antitrust issue; why should Maryland be able to set the nation's pricing policy? Or consider the ability of indirect purchasers to sue under antitrust laws. In Illinois Brick Co. v. Illinois,52 the Supreme Court held that only direct purchasers of a price-fixed good or service, not subsequent indirect purchasers, could sue for treble damages under the Clayton Act.5 3 In response, twenty-six states passed "'Illinois Brick-repealer laws' authorizing indirect purchasers to bring damages suits under state antitrust law."5 4 But these twenty-six states have an impact even on the residents of nonrepealer states. In a class action currently on appeal in the Ninth Circuit, a district court applied California antitrust law – including California's repealer law - to a nationwide class that included class members from nonrepealer states.55 The defendant-appellant has argued that this application undermines the nonrepealer states' interest in choosing their own consumer-business balance.5 6 The Maryland and Ninth Circuit examples may be more bogeymen than real threats to federalism. First, alternate doctrines aside from antitrust preemption work to keep individual state interests in check. For example, the Fourth Circuit enjoined enforcement of the Maryland law on dormant commerce clause grounds.5 7 Where one state intrudes too much on other states' ability to regulate antitrust - where "[t]he potential for 'the kind of competing and interlocking local economic regulation that the Commerce Clause was meant to preclude' is ... both real and significant" 58 - the Constitution, rather than Congress, can prevent the onestate dominator problem's greatest harms. Dormant commerce clause challenges are not limited to the Maryland case's facts. In fact, the Fourth Circuit dissent complained that the majority's logic would invalidate other state antitrust laws, including Illinois Brick-repealer laws.5 9 Second, the trouncing of federalism in cases like these is often overstated. Take the defendant-appellant's depiction of the interests in the Ninth Circuit case as an example of exaggerated federalism costs. The district court found that the nonrepealer states had no interest in having their laws applied because the defendant-appellant was a California company; California's more consumer-friendly law would only help nonrepealer-state residents, not hurt nonrepealer-state businesses.6 0 If the nonrepealer states have an interest in denying their own consumers access to relief when there is no benefit to their own businesses, it seems tangential to an interest in striking their own consumer-business balances. Instead, a choice to prioritize foreign defendants over in-state consumers appears more like an attempt to govern the national consumer-business balance, a choice imbued with far less federalism oomph than the defendant-appellant portrayed. Whether exaggerated or not, a worry that antitrust federalism allows one state to dominate national antitrust policy weighs in favor of congressional antitrust preemption. This problem, however, is not unique to antitrust. Any area of law in which states fail to internalize the harms of overregulation, meaning any law that regulates businesses with a national footprint, could be dominated by one state. 61 If Congress were to take the one-state dominator problem too seriously, it would swallow up huge swaths of state regulation, excluding states from their traditional role in consumer protection, at least where the largest (and potentially most worrisome) industries are implicated. C. The Overdeterrence Problem Third, critics argue that a multilevel antitrust regime threatens to overdeter procompetitive conduct. The policy behind much of preemption is to prevent state law from interfering with detailed, well-balanced federal regulation: obstacle preemption exists to prevent states from "stand[ing] as ... obstacle[s] to the accomplishment and execution of the full purposes and objectives of Congress,"6 2 and field preemption exists to prevent state interference where Congress "left no room for lower-level regulation."6 3 Although it is not field or obstacle preempted, 64 antitrust law exhibits the type of detailed regulatory balance that the preemption doctrines attempt to prevent states from damaging. Much of antitrust law is built on finding the perfect balance of standards and remedies: the law must properly deter anticompetitive acts without deterring healthy competition. 65 A state law that shifts remedies or standards can upset this careful balancing, thus overdeterring desirable private action. Critics can point directly to ARC America as evidence of this overdeterrence threat. The Court's decision in Illinois Brick, which limited suits by indirect purchasers, relied in large part on a belief that concentrating suits in direct purchasers would avoid overdeterrence. 66 By allowing for additional suits, ARC America created extra deterrence not envisioned by the federal antitrust scheme. 67 Like the patchwork regime critique, the overdeterrence critique is weakened if the federal regime has failed to achieve proper balancing. Many antitrust regimes around the globe adopt different balances than the United States does. The European Union, for example, differs from the United States on remedial structure, the standard for illegal unilateral conduct, and market definition, among other issues. 68 Moreover, many scholars argue that the U.S. antitrust balance is off and that more enforcement is needed.6 9 Even if U.S. antitrust policies are getting the balance generally right, it is unlikely that the federal regime is so finely tuned that any added deterrence will destroy the balance. D. The Misaligned Incentives Problem7 Fourth, in the misaligned incentives problem, critics argue that states do not have proper incentives when they enforce state antitrust laws. Although state antitrust laws are supposed to mainly target intrastate antitrust violations, courts have refused to police that limit too strictly. 7 1 In an interconnected economy where seemingly hyperlocal activity can have national implications, 72 courts have admitted that limiting state antitrust laws to cases that do not touch the national economy would "fence[] off" "a very large area .. . in which the States w[ould] be practically helpless to protect their citizens."7 But, even though suits under state laws may have nationwide consequences, state attorneys general lack nationwide incentives. Critics of the status quo worry that elected attorneys general are more susceptible to lobbying by state interests than are appointed federal enforcers and that a cost-benefit analysis is flawed where a state can attack a company headquartered out of state in order to protect one headquartered in state.74 These fears seem mostly imagined. The idea that elected attorneys general are bringing antitrust suits to hurt competitors of state businesses "appears to [have] little empirical support[,] ... and none has been provided by the advocates of this position."7 5 Past state antitrust enforcers have stated that, while they considered state-specific factors when deciding where to spend their limited resources, those factors would be used only to choose "from among those cases that also made sense on traditional economic grounds."7 6 And there is reason to believe that these enforcers are telling the truth. For one thing, states often make antitrust decisions that seem to go against the interests of major state employers. For example, New York antitrust enforcers have taken antitrust positions adverse to both Verizon and IBM, top New York employers.7 7 For another, a state that is only minutely affected by an antitrust action is unlikely to bring that action alone. If a state is only trivially affected by allegedly anticompetitive conduct, "that state is very unlikely as a practical and political matter to spend the enormous sums of money required to sustain a challenge." 78 If a state is majorly affected but is the only state affected, then the misaligned incentives critique does not apply because there is no competing set of national incentives. And in a case that actually has major impacts in multiple states, it is unlikely that one state could act without other states wanting to join in on the enforcement.79 When states work together on antitrust enforcement, they tend to cooperate closely with one another, especially through the National Association of Attorneys General's (NAAG) antitrust group.o Even if an individual state might be swayed by state-specific concerns, it is unlikely that it could convince a multistate coalition to act on those concerns - the group would be forced to evaluate the action on its more national merits.81 E. The Incompetent States Problem Finally, critics argue that state enforcers will make error-ridden antitrust choices due to a lack of resources, experience, and expertise. Whereas federal enforcers have significant budgets for antitrust enforcement, the percentage of funding set aside for antitrust enforcement by state attorneys general is minute. 2 Because of this lack of resources, state enforcers have been accused of staffing antitrust cases with senior attorneys who, while experienced in civil litigation generally, are antitrust novices.83 These factors have led critics to argue that state attorneys general handle antitrust suits poorly, clogging the judicial pipeline with questionable suits. 84 State attorneys general are accused of acting as free riders on federal actions and of making settlements more difficult rather than undertaking useful enforcement.1 5 But there is reason to dispute critics' claims. The critique of individual attorneys general ignores the states' ability to work in unison. Cooperating through NAAG, states are able to build on each other's experiences in antitrust enforcement.1 6 Thus, worries about inexperienced antitrust divisions working alone may be overstated. Although interstate coordination may weaken their point, critics can retort that most state actions are not coordinated: according to NAAG's State Antitrust Litigation Database, only nineteen of the fifty-six civil antitrust actions brought by states between 2014 and 2019 were brought by multiple states working together,8 7 although many of the noncooperative suits regarded intrastate anticompetitive conduct. 8 This same dataset, however, also undermines the critics' argument that states act only as free riders: only nineteen of the fiftysix suits included federal participation.8 9 Finally, much of the criticism leveled at state attorneys general occurred before a renaissance in state law enforcement. Since Judge Posner derided the skill of state attorneys general in 2001,90 lawyers and judges, including Chief Justice Roberts, have recognized a marked improvement in state attorney offices' advocacy.9 1 Whether or not Judge Posner's critiques were valid at the turn of the century, it is unclear that the landscape remains the same today. Finally, this critique undermines the arguments, noted earlier, that state law enforcement is overdeterring competition or creating a patchwork of antitrust law. If states are nothing but free riders, then we need not worry about overdeterrence.

#### The incentives planks checks solvency deficits

Rauch, 20

(Daniel E. Rauch, JD Yale School of Law, “Sherman's Missing Supplement: Prosecutorial Capacity, Agency Incentives, and the False Dawn of Antitrust Federalism,” 68 CLEV. St. L. REV. 172 (2020) NL)

(2020).State attorneys general are having a moment. In recent years, they have been main players in some of the country's most important legal and political dramas. They have checked the Trump Administration on abortion rights,3 air quality,4 and the United States Census.5 They have checked the Obama Administration on water rights, 6 immigration policies,7 and the Affordable Care Act.8 They have formed a (very public) front line on issues from the opioid epidemic9 to net neutrality.10 And in a time of federal-level gridlock, they are increasingly seen as critical sites of governance offices that can still "get things done."" As their profile grows, many suggest state attorneys general ought to take a more central role in antitrust enforcement. Sometimes, these calls are motivated by concerns that the federal government is not vigorously enforcing antitrust laws, leaving a "void" to be filled. 12 Sometimes, the calls are motivated by the suggestion that states enjoy institutional advantages in antitrust enforcement, such as superior knowledge of "market-specific information," that make them superior enforcers.13 And sometimes, the calls are motivated by doctrinal differences between state and federal antitrust statutes, differences that might afford states greater freedom of action.14 In any case, these calls point in the same direction: when it comes to American antitrust law, state attorneys general can, and should, be leaders. Rhetorically, the suggestion that states should "step up" as leading antitrust enforcers is a powerful one. It is not, however, new. When the Sherman Act was passed in 1890, the states (as opposed to the federal government) were widely expected to take the lead in antitrust enforcement. John Sherman himself asserted that his Act's "single object" was to "supplement the enforcement of the established rules of the common and statute law by the courts of the several States."1 5 Nor was he alone: at the time of the Act's passage, scholars, politicians, and shareholders all shared Senator Sherman's prediction that state enforcement agencies would be a central, if not decisive, force in American antitrust policy.16 What happened next defied this expectation. In the years following the Sherman Act's passage, from 1890 until the First World War, state antitrust enforcement had remarkably little impact or efficacy. Many scholars have noted this unexpected failure.1 7 None, however, have accurately or rigorously explained it.1 This Article does. Using novel historical and empirical research, I contend that the best explanation for the early failure of state antitrust enforcement was prosecutorial incapacity: state attorneys general and local prosecutors without the incentives or resources to handle antitrust cases. Along the way, I also provide a rigorous rejection of the leading alternative explanations for the states' early failure to act, including those based on doctrinal constraints, statutory text, and contemporary politics. Finally, I close by suggesting some implications that this first, failed era of antitrust federalism has for our own times, times where, once again, state enforcement agencies are held out as promising leaders in American antitrust enforcement. The remainder of this work proceeds as follows. Part II provides historical context for the passage of the Sherman Act and for early state antitrust statutes, the role state enforcement was expected to play, and its unexpected failure to do so. Part III then turns to the historical and empirical record to discern why state enforcement, widely expected to assume a central role, took almost no role at all. Analyzing a comprehensive and novel data set of state antitrust prosecutions, this Part quantitatively underscores the absence of state antitrust enforcement during this period. However, the data also reveals a critical nuance: a set of "high-enforcement states" in which state antitrust law was, in fact, enforced with at least some vigor. Armed with this insight, Part IV returns to the initial question: why, as a general matter, did early state antitrust enforcement fail to take root? This Part assesses four prominent explanations that have been suggested as answers to the question: (1) doctrinal arguments on the legality of state-level enforcement; (2) economic arguments based on the practical efficacy of state-level enforcement; (3) institutional arguments that the federal government's Sherman Act authority somehow "displaced" state activity; and (4) political arguments that public opinion or elected officials lost interest in antitrust enforcement after passing their initial state statutes. Ultimately, this Part rejects each of these explanations. Part V, however, considers and rigorously tests a different explanation: that the cost and complexity of antitrust litigation was simply beyond the capabilities of state prosecutors. On this account, the crucial factor was a lack of "prosecutorial capacity." To date, this explanation has never been systematically explored, examined or established. 19 This Part does so, analyzing the novel data set of state antitrust caselaw, the text of the states' early antitrust laws, the structure of each state's prosecutorial bureaucracy, and the workings of each state's budget processes. Through this empirical and documentary analysis, a striking pattern emerges. In overwhelming measure, the "high-enforcement" states, those where at least some antitrust enforcement took place: (1) offered substantial personal financial rewards to prosecutors who won antitrust suits; (2) offered substantial personal financial punishment to prosecutors who failed to pursue antitrust litigation; (3) directed vastly supernormal resources to antitrust state prosecutors; or (4) pursued some combination of these strategies. In short, these states offered incentives or capabilities that would make it personally easier (or more lucrative) for resource-limited prosecutors to act. By contrast, where such direct prosecutorial incentives and resources were absent, so was enforcement. Even in states that were politically progressive antitrust bastions. Even in states that imposed draconian statutory penalties for antitrust violations. Thus, the best explanation for the failure of early state antitrust enforcement was insufficient prosecutorial enforcement incentives and capacity.

## 4

#### The United States federal government should invite members of the World Trade Organization to negotiate an international antitrust framework that prohibits anticompetitive business practices in the telecommunications, carriers, and broadband sectors.

#### That solves and creates a global model for antitrust.

Hufbauer, 08

(nonresident senior fellow, the Institute's Reginald Jones Senior Fellow from 1992 to January 2018, Maurice Greenberg Chair and Director of Studies at the Council on Foreign Relations (1996–98), the Marcus Wallenberg Professor of International Finance Diplomacy at Georgetown University (1985–92), senior fellow at the Institute (1981–85), deputy director of the International Law Institute at Georgetown University (1979–81), deputy assistant secretary for international trade and investment policy of the US Treasury (1977–79), and director of the international tax staff at the Treasury (1974–76)). Gary Clyde Hufbauer & Jisun Kim. 4-11-2008. Peterson Institute for International Economics. "International Competition Policy and the WTO." <https://www.piie.com/commentary/speeches-papers/international-competition-policy-and-wto>. Accessed 6/2/2021.

Bilateral and Regional Agreements While WTO negotiations on an international competition regime have stalled, some countries have addressed competition policy issues in their bilateral or regional agreements. The most successful case is the European Union. Over several decades, the European Commission has developed a body of European law (drawing on the laws of member states), and has worked out a division of competence between the European Commission and national authorities. As a result, the European Union has made great strides toward creating a single market, now covering 27 countries. The United States has enacted its own laws related to international competition policy, notably the International Antitrust Enforcement Assistance Act (IAEAA) of 1994. This statute authorizes US authorities to enter into agreements for sharing business information in the context of investigations of cross-border transactions. Bilateral and regional trade agreements have blossomed since the early 1990s, and they have become an effective alternative to the WTO for addressing competition policy questions. According to the UNCTAD (2005), of the 300-odd bilateral and regional trade agreements in force or in negotiation, over 100 contain provisions related to competition policy. The main reason is to ensure that efforts to liberalize trade by eliminating border barriers are not undercut by restrictive practices behind the border. The United States is quite active among countries that have incorporated competition policy provisions in trade agreements. Several US free trade agreements (FTAs), either in force or awaiting congressional ratification, include chapters on competition policy.7 However, by contrast with competition laws in the European Union and ASEAN, which promote high-level economic integration, the competition provisions in most bilateral and regional agreements are not binding commitments, and instead depend on the goodwill of the parties to have meaningful effect. Nonetheless, these agreements may offer an opportunity for developing countries to level up their competition policy. In its study, the OECD (2006) analyzed 86 trade agreements that include competition-related provisions, and found that about two-thirds were between developing countries (often referred to as South-South agreements), and more than a fourth covered signatories from developing and industrialized economies (so-called North-South agreements).8 This pattern suggests an opportunity for developing countries to address their own competition policy concerns in bilateral or regional trade agreements. Perspectives on Future Competition Policy under the WTO A multilateral agreement on competition policy may be highly desirable. Given sharply divergent views, however, the prospect for a WTO agreement covering all 150-odd members is remote. Over the next decade (after the Doha Round is concluded or abandoned), the best prospect is for a plurilateral agreement reached among a subset of WTO members. Within this more limited ambit, it would be important to have some developing countries on board. An acceptable agreement under WTO auspices should thus resolve some issues of interest to developing countries, such as export cartels and the anticompetitive aspects of large M&A deals. To end on an optimistic note, scope exists for a constructive WTO competition policy agenda that covers the interests of both developed and developing countries.

## Precision ADV

### 1NC Food Wars

#### No food wars.

Vestby, 18

(Vestby, Ida Rudolfsen, and Halvard Buhaug; 5-18-18; Doctoral Researcher at the Peace Research Institute Oslo; doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO; Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography; “Does hunger cause conflict?” Prio, https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/)

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests. Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

#### Zero risk of global food crisis or export collapse.

Latham 21 - (Jonathan R Latham, Doctor of Philosophy (PhD) Virology, Executive Director of The Bioscience Resource Project, Author of scientific papers in the fields of Virology, Ecology, Genetics, and Molecular Biology; 4-12-2021, Independent Science News | Food, Health and Agriculture Bioscience News, "Agriculture's Greatest Myth," doa: 6-28-2021) url: https://www.independentsciencenews.org/commentaries/agricultures-greatest-myth/

Critiquing the critical assumptions In a new peer-reviewed paper, The Myth of a Food Crisis, I have critiqued FAO’s GAPS – and by extension all similar food system models – at the level of these, often unstated, assumptions (Latham, 2021). The Myth of a Food Crisis identifies four assumptions in food system models that are especially problematic since they have major effects on the reliability of modeling predictions. In summary, these are: 1) That biofuels are driven by “demand”. As the paper shows, biofuels are incorporated into GAPS on the demand side of equations. However, biofuels derive from lobbying efforts. They exist to solve the problem of agricultural oversupply (Baines, 2015). Since biofuels contribute little or nothing to sustainability, land used for them is available to feed populations if needed. This potential availability (e.g. 40% of US corn is used for corn ethanol) makes it plainly wrong for GAPS to treat biofuels as an unavoidable demand on production. 2) That current agricultural production systems are optimized for productivity. As the paper also shows, agricultural systems are typically not optimised to maximise calories or nutrients. Usually, they optimise profits (or sometimes subsidies), with very different results. For this reason, practically all agricultural systems could produce many more nutrients per acre at no ecological cost if desired. 3) That crop “yield potentials” have been correctly estimated. Using the example of rice, the paper shows that some farmers, even under sub-optimal conditions, achieve yields far in excess of those considered possible by GAPS. Thus the yield ceilings assumed by GAPS are far too low for rice and probably other crops too. Therefore GAPS grossly underestimates agricultural potential. 4) That annual global food production is approximately equal to global food consumption. As the paper also shows, a significant proportion of annual global production ends up in storage where it degrades and is disposed of without ever being counted by GAPS. There is thus a very large accounting hole in GAPS. The specific ways in which these four assumptions are incorporated into GAPS and other models produces one of two effects. Each causes GAPS to either underestimate global food supply (now and in the future), or to overestimate global food demand (now and in the future). Thus GAPS and other models underestimate supply and exaggerate demand. The cumulative effect is dramatic. Using peer-reviewed data, the discrepancy between food availability estimated by GAPS and the underlying supply is calculated in the paper. Such calculations show that GAPS and other models omit approximately enough food annually to feed 12.5 billion persons. That is a lot of food, but it does perfectly explain why the models are so discrepant with policymakers’ and farmers’ consistent experiences of the food system. The consequences of this analysis are very significant on a number of fronts. There is no global shortage of food. Even under any plausible future population scenario or potential increases in wealth, the current global glut will not disappear due to elevated demand. Among the many implications of this glut is, other things being equal, global commodity prices will continue to decline. The potential caveat to this is climate chaos. Climate consequences are not factored into this analysis. However, for people who think that industrial agriculture is the solution to that problem, it is worth recalling that industrialised food systems are the leading emitter of carbon dioxide. Industrialising food production is therefore not the solution to climate change –­ it is the problem. Another significant implication of this analysis is to remove the justification for the (frequently suggested) adoption of special and sacrificial ‘sustainable intensification’ measures featuring intensive use of pesticides, GMOs, and gene edited organisms to boost food production (Wilson, 2021). What is needed to save rainforests and other habitats from agricultural expansion is instead to reduce the subsidies and incentives that are responsible for overproduction and unsustainable practices (Capellesso et al., 2016). In this way, harmful agricultural policies can be replaced by ones guided by criteria such as ecological sustainability and cultural appropriateness. A second implication stems from asking: if the models err on such elementary levels, why are critics largely absent? Thomas Hertel’s critique should have rung alarm bells. The short answer is that the philanthropic and academic sectors in agriculture and development are corrupt. The form this corruption takes is not illegality – rather that, with important exceptions, these sectors do not serve the public interest, but their own interests. A good example is the FAO, which created GAPS. The primary mandate of FAO is to enable food production – its motto is Fiat Panis – but without an actual or imminent food crisis there would hardly be a need for an FAO. Many philanthropic and academic institutions are equally conflicted. It is no accident that all the critics mentioned above are relative or complete outsiders. Too many participants in the food system depend on a crisis narrative. But the biggest factor of all in promotion of the crisis narrative is agribusiness. Agribusiness is the entity most threatened by its exposure. It is agribusiness that perpetuates the myth most actively and makes best use of it by endlessly championing itself as the only valid bulwark against starvation. It is agribusiness that most aggressively alleges that all other forms of agriculture are inadequate (Peekhaus, 2010). This Malthusian spectre is a good story, it’s had a tremendous run, but it’s just not true. By exposing it, we can free up agriculture to work for everyone.

### 1NC Economy

#### Econ decline doesn’t cause war

Walt, 20

(Stephen, Robert and Renée Belfer professor of international relations at Harvard University, "Will a Global Depression Trigger Another World War?", Foreign Policy, 5/13/2020, <https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/> JHW)

If one takes a longer-term perspective, however, a sustained economic depression could make war more likely by strengthening fascist or xenophobic political movements, fueling protectionism and hypernationalism, and making it more difficult for countries to reach mutually acceptable bargains with each other. The history of the 1930s shows where such trends can lead, although the economic effects of the Depression are hardly the only reason world politics took such a deadly turn in the 1930s. Nationalism, xenophobia, and authoritarian rule were making a comeback well before COVID-19 struck, but the economic misery now occurring in every corner of the world could intensify these trends and leave us in a more war-prone condition when fear of the virus has diminished. On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).” Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself. The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success. Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then. The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

#### No impact to slow growth.

Stephen M. Walt 20. Robert and Renée Belfer professor of international relations at Harvard University. "Will a Global Depression Trigger Another World War?" Foreign Policy. 5-13-2020. https://foreignpolicy-com.proxy.library.emory.edu/2020/05/13/coronavirus-pandemic-depression-economy-world-war/

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

## China ADV

### 1NC – 5G

#### 5G race’ is bullshit

Nilay Patel 19, J.D. from the University of Wisconsin Law School, Editor-in-Chief of The Verge, Former Acting Managing Editor for Vox, AB in Political Science from the University of Chicago, “Wait, Why The Hell Is The ‘Race To 5G’ Even A Race?”, The Verge, 5/23/2019, https://www.theverge.com/2019/5/23/18637213/5g-race-us-leadership-china-fcc-lte

I have a dumb question that no one seems capable of answering directly: *Why is 5G a race?*

Everyone — the wireless industry, Democrats, Republicans, the major media, you name it — frames the building of next-generation 5G networks as a “race” in which the United States needs to demonstrate “leadership.”

Here is The Washington Post declaring America has the lead in the race to 5G. Here’s CNN asking “Who’s winning the race to 5G?” Here’s AT&T CEO Randall Stephenson declaring that China isn’t beating the US to 5G “yet,” as some sort of ominous warning. Here’s T-Mobile CEO John Legere telling the House Subcommittee on Communications and Technology that merging with Sprint will let his company “win the race to 5G.” Here is an entire microsite from industry lobbying group CTIA titled “The Race to 5G.”

Let us never forget AT&T being so desperate to lead this “race” that it rolled out fake 5Ge logos on its phones.

But the stakes of this supposed race are wholly unclear. What happens if we win, besides telecom execs getting slightly richer? More importantly, what are the drawbacks to coming in second, or even third? Where is the list of specific negative outcomes of China building a 5G network a month, a year, or even five years before the United States? I’ve never seen it, and I keep asking about it.

NO ONE CAN SAY WHAT BAD THINGS WILL HAPPEN IF WE DON’T WIN THE RACE TO 5G

For example, here’s FCC Commissioner Geoffrey Starks on The Vergecast this week, when I asked why 5G is a race.

“I think it is important for us to continue to lead the race ... we obviously led to 4G and I think we get to set some of the standards that are ultimately going to be implemented worldwide, which is why there is a little bit of a race.”

Starks went on to say that China wants to be a global leader in supplying 5G equipment and that’s why Huawei has been so aggressively building and pricing its gear. But Huawei depends on American chip technology to make its products, and the US government has just put Huawei on a blacklist anyway. So... the race is so we can set some wireless standards? I suspect Apple, Google, Qualcomm, Verizon, and AT&T can fend for themselves when it comes to that process.

The other main argument for winning the “race” to 5G is that having the world’s best and fastest networks will create new economic opportunities for businesses of all kinds — we’ll enable self-driving cars and telemedicine and all the other stuff you hear about during interminable 5G slideshows at trade conferences. At a hearing before the Senate Committee on Commerce, Science, and Transportation earlier this year, Mississippi Sen. Roger Wicker confidently declared that “failing to win the race to 5G would not only materially delay the benefits of 5G for the American people, it would forever reduce the economic and societal gains that come from leading the world in technology.”

WE WON THE RACE TO LTE AND OUR LTE NETWORKS ARE AMONG THE SLOWEST AND MOST EXPENSIVE IN THE WORLD

Maybe. It is indeed true that better networks lead to better opportunities, and that widespread high-speed broadband is something everyone wants. But I sincerely doubt that all of these companies will pick up and move to China or Europe if the United States builds 5G networks slightly slower. After all, we already have some of the slowest and most expensive networks in the world, and Apple and Facebook have not yet relocated to South Korea.

The more I hear about the race, the more I don’t buy it. I think the “race” framing is there to make some big decisions seem urgent and important — to make it appear as though some serious trade-offs are worth it in order to “win.” And those trade-offs are indeed serious: 5G networks will require a serious rethinking of how we use wireless spectrum. There are incredible privacy implications around putting millions of IoT devices in a “smart city” on 5G. Investment dollars will naturally flow toward building 5G networks in cities instead of expanding our networks to rural areas, exacerbating the digital divide.

THE “RACE” IS TO THERE TO MAKE SERIOUS TRADE-OFFS SEEM WORTH IT SO WE CAN “WIN”

And once the “race” to build out 5G in big cities is “won,” the pressure to expand access to other places in the country will vanish, making that divide even worse. It is worth carefully considering all of these things before giving in to haste.

Oh, and it appears that some of the required 5G spectrum might interfere with important weather sensors, a concern raised by NASA, the Navy, and the NOAA in hearings before Congress last week. How did the wireless industry respond to these concerns? By writing a blog post accusing meteorologists from across three government agencies of “risking our 5G leadership.” The implication, of course, is that worrying about detecting major weather events could make us lose the race.

This race is imaginary bullshit. It’s being foisted on us by huge telecom companies that know internet access is fundamentally a commodity and want something new to sell at high prices instead of competing to improve service and lower prices on the networks they have. After all, the United States “won” the “race” for LTE, but it bears repeating: our LTE networks are among the slowest in the world, and our prices among the highest. What did winning that race accomplish for the millions of people across the country that still can’t get a reliable LTE signal?

### 1NC Cyber

#### No risk of high-scale cyberattack – beyond terrorists’ capabilities and can’t instill enough fear in targeted population

Olenick, 9/10

(Doug, News Editor for ISMG who has covered the cybersecurity and computer technology sectors for more than 25 years; “20 Years Later: A Cyber 9/11 Is Unlikely,” Bank Info Security, September 10, 2021; <https://www.bankinfosecurity.com/20-years-later-cyber-911-unlikely-a-17477>)

The possibility of a terrorist group launching a massive [Sept. 11, 2001](https://www.databreachtoday.com/does-abandoning-embassy-in-kabul-pose-cybersecurity-risks-a-17309)-scale cyberattack against the U.S. or an ally has been a concern for years, but cybersecurity pros with a background in intelligence and military affairs say such worries are likely to remain unwarranted. Industry experts cite a variety of factors that they believe have given terrorist groups little reason to attempt such an attack, including cyberattacks simply not instilling the level of fear in the targeted population that terrorists desire. The experts also point out that conducting an attack that would cause mass casualties is likely beyond the capabilities of most terrorist organizations. "You probably remember where you were on 9/11 and wondered what might be hit next. However, most people probably didn't have the same reaction to WannaCry or NotPetya," notes Jake Williams, formerly of the National Security Agency's elite hacking team and currently CTO at BreachQuest. What terror groups have learned over the past two decades, however, is the internet is perfect for solving several of their more basic issues, such as radicalizing potential terrorists, funding, recruiting and training. Etay Maor, a former researcher with the International Institute for Counter-Terrorism and currently senior director of cybersecurity strategy at Cato Network, says terror groups now have a highly refined model they follow for using the internet, but these efforts are passive and not kinetic. "Extremist groups and terrorist groups use the internet heavily - just not for physical attacks." They use it for "propaganda information dissemination, recruitment, money, governing money in bitcoin and promoting ideas," he says, adding that such activity can lead to physical attacks.

#### China can’t take out our assets

**Lindsay 15** (Jon, UCSD research scientist, “"Exaggerating the Chinese Cyber Threat", May, <http://belfercenter.ksg.harvard.edu/publication/25321/exaggerating_the_chinese_cyber_threat.html>)

Policymakers in the United States often portray China as posing a serious cybersecurity threat. In 2013 U.S. National Security Adviser Tom Donilon stated that Chinese cyber intrusions not only endanger national security but also threaten U.S. firms with the loss of competitive advantage. One U.S. member of Congress has asserted that China has "laced the U.S. infrastructure with logic bombs." Chinese critics, meanwhile, denounce Western allegations of Chinese espionage and decry National Security Agency (NSA) activities revealed by Edward Snowden. The People's Daily newspaper has described the United States as "a thief crying 'stop thief.'" Chinese commentators increasingly call for the exclusion of U.S. internet firms from the Chinese market, citing concerns about collusion with the NSA, and argue that the institutions of internet governance give the United States an unfair advantage. The rhetorical spiral of mistrust in the Sino-American relationship threatens to undermine the mutual benefits of the information revolution. Fears about the paralysis of the United States' digital infrastructure or the hemorrhage of its competitive advantage are exaggerated. Chinese cyber operators face underappreciated organizational challenges, including information overload and bureaucratic compartmentalization, which hinder the weaponization of cyberspace or absorption of stolen intellectual property. More important, both the United States and China have strong incentives to moderate the intensity of their cyber exploitation to preserve profitable interconnections and avoid costly punishment. The policy backlash against U.S. firms and liberal internet governance by China and others is ultimately more worrisome for U.S. competitiveness than espionage; ironically, it is also counterproductive for Chinese growth. The United States is unlikely to experience either a so-called digital Pearl Harbor through cyber warfare or death by a thousand cuts through industrial espionage. There is, however, some danger of crisis miscalculation when states field cyberweapons. The secrecy of cyberweapons' capabilities and the uncertainties about their effects and collateral damage are as likely to confuse friendly militaries as they are to muddy signals to an adversary. Unsuccessful preemptive cyberattacks could reveal hostile intent and thereby encourage retaliation with more traditional (and reliable) weapons. Conversely, preemptive escalation spurred by fears of cyberattack could encourage the target to use its cyberweapons before it loses the opportunity to do so. Bilateral dialogue is essential for reducing the risks of misperception between the United States and China in the event of a crisis. THE U.S. ADVANTAGE The secrecy regarding the cyber capabilities and activities of the United States and China creates difficulty in estimating the relative balance of cyber power across the Pacific. Nevertheless, the United States appears to be gaining an increasing advantage. For every type of purported Chinese cyber threat, there are also serious Chinese vulnerabilities and growing Western strengths. Much of the international cyber insecurity that China generates reflects internal security concerns. China exploits foreign media and digital infrastructure to target political dissidents and minority populations. The use of national censorship architecture (the Great Firewall of China) to redirect inbound internet traffic to attack sites such as GreatFire.org and GitHub in March 2015 is just the latest example of this worrisome trend. Yet prioritizing political information control over technical cyber defense also damages China's own cybersecurity. Lax law enforcement and poor cyber defenses leave the country vulnerable to both cybercriminals and foreign spies. The fragmented and notoriously competitive nature of the Communist Party state further complicates coordination across military, police, and regulatory entities. There is strong evidence that China continues to engage in aggressive cyber espionage campaigns against Western interests. Yet it struggles to convert even legitimately obtained foreign data into competitive advantage, let alone make sense of petabytes of stolen data. Absorption is especially challenging at the most sophisticated end of the value chain (e.g., advanced fighter aircraft), which is dominated by the United States. At the same time, the United States conducts its own cyber espionage against China , as the Edward Snowden leaks dramatized, which can indirectly aid U.S. firms (e.g., in government trade negotiations). China's uneven industrial development, fragmented cyber defenses, erratic cyber tradecraft, and the market dominance of U.S. technology firms provide considerable advantages to the United States. Despite high levels of Chinese political harassment and espionage, there is little evidence of skill or subtlety in China's military cyber operations. Although Chinese strategists describe cyberspace as a highly asymmetric and decisive domain of warfare, China's military cyber capacity does not live up to its doctrinal aspirations. A disruptive attack on physical infrastructure requires careful testing, painstaking planning, and sophisticated intelligence. Even experienced U.S. cyber operators struggle with these challenges. By contrast, the Chinese military is rigidly hierarchical and has no wartime experience with complex information systems. Further, China's pursuit of military "informatization" (i.e., emulation of the U.S. network-centric style of operations) increases its dependence on vulnerable networks and exposure to foreign cyberattack. To be sure, China engages in aggressive cyber campaigns, especially against nongovernmental organizations and firms less equipped to defend themselves than government entities. These activities, however, do not constitute major military threats against the United States, and they do nothing to defend China from the considerable intelligence and military advantages of the United States. PROTECTION OF INTERNET GOVERNANCE Outmatched by the West in direct cyber confrontation yet eager to maintain the global connectivity supporting economic growth, China (together with Russia and other members of the Shanghai Cooperation Organization) advocates for internet governance reform. These changes, predicated on so-called internet sovereignty, would replace the current multistakeholder system and its liberal norms of internet openness with a formal international regulator, such as the United Nations' International Telecommunication Union, and strong norms of noninterference with sovereign networks. Chinese complaints of U.S. internet hegemony are not completely unfounded: the internet reinforces U.S. dominance, but it does so through a light regulatory touch that relies on the self-interest of stakeholders—academic scientists, commercial engineers, government representatives, and civil society organizations. The internet expands in a self-organized fashion because adopters have incentives to pursue increasing returns to interconnection. The profit-driven expansion of networks and markets through more reliable and voluminous transactions and more innovative products (e.g., cloud services, mobile computing, and embedded computing) tends to reinforce the economic competitiveness of the United States and its leading information technology firms. Many Western observers fear that cyber reform based on the principle of internet sovereignty might legitimize authoritarian control and undermine the cosmopolitan promise of the multistakeholder system. China, however, benefits too much from the current system to pose a credible alternative. Tussles around internet governance are more likely to result in minor change at the margins of the existing system, not a major reorganization that shifts technical protocols and operational regulation to the United Nations. Yet this is not a foregone conclusion, as China moves to exclude U.S. firms such as IBM, Oracle, EMC, and Microsoft from its domestic markets and attempts to persuade other states to support governance reforms at odds with U.S. values and interests. CONCLUSION Information technology has generated tremendous wealth and innovation for millions, underwriting the United States' preponderance as well as China's meteoric rise. The costs of cyber espionage and harassment pale beside the mutual benefits of an interdependent, globalized economy. The inevitable frictions of cyberspace are not a harbinger of catastrophe to come, but rather a sign that the states inflicting them lack incentives to cause any real harm. Exaggerated fears of cyberwarfare or an erosion of the United States' competitive advantage must not be allowed to undermine the institutions and architectures that make the digital commons so productive.

### 1NC Heg

#### No heg impact

Fettweis, 20

(Christopher J., Associate Professor of Political Science at Tulane University. 6-3-2020, "Delusions of Danger: Geopolitical Fear and Indispensability in U.S. Foreign Policy", *A Dangerous World? Threat Perception and U.S. National Security*, https://www.cato.org/publications/publications/delusions-danger-geopolitical-fear-indispensability-us-foreign-policy)

Like many believers, proponents of hegemonic stability theory base their view on faith alone.41 There is precious little evidence to suggest that the United States is responsible for the pacific trends that have swept across the system. In fact, the world remained equally peaceful, relatively speaking, while the United States cut its forces throughout the 1990s, as well as while it doubled its military spending in the first decade of the new century.42 Complex statistical methods should not be needed to demonstrate that levels of U.S. military spending have been essentially unrelated to global stability. Hegemonic stability theory’s flaws go way beyond the absence of simple correlations to support them, however. The theory’s supporters have never been able to explain adequately how precisely 5 percent of the world’s population could force peace on the other 95 percent, unless, of course, the rest of the world was simply not intent on fighting. Most states are quite free to go to war without U.S. involvement but choose not to. The United States can be counted on, especially after Iraq, to steer well clear of most civil wars and ethnic conflicts. It took years, hundreds of thousands of casualties, and the use of chemical weapons to spur even limited interest in the events in Syria, for example; surely internal violence in, say, most of Africa would be unlikely to attract serious attention of the world’s policeman, much less intervention. The continent is, nevertheless, more peaceful today than at any other time in its history, something for which U.S. hegemony cannot take credit.43 Stability exists today in many such places to which U.S. hegemony simply does not extend.

### 1NC Innovation

#### Innovation Fails

Bee 18 [Vanessa A. Bee. Senior Litigation Counsel at the Consumer Financial Protection Bureau with a JD from Harvard Law. Innovation Under Socialism. 10-24-2018. <https://www.currentaffairs.org/2018/10/innovation-under-socialism> ]

The profit motive and exclusive proprietary rights are central to capitalist innovation. By law, private firms must prioritize the interest of their shareholders, which tends to be interchangeable with making as much money as possible. Accordingly, investments in any stage of the innovative process must eventually produce profits. To maximize profit, private firms jealously guard the value of their invention through regulations and restrictive contracts. Statutes and regulations help protect their trade secrets. The U.S. Patent and Trademarks Office routinely grants them utility and design patents that “exclude others from making, using, offering for sale, or selling … or importing the invention” for 20 years after the patent is issued. They enforce licensing agreements that can limit the uses and dissemination of all or part of their inventions. To further frustrate efforts to innovate on the back of their inventions, private firms subject their former employees to non-compete agreements that can severely limit them from using their knowledge and skills on competing projects for a period following their departure. Breaches carry dire consequences like expensive lawsuits, big money judgments, and other enormous hassles.

# 2NC

## CP

#### **Second, the perm tanks solvency—ruins enforcement and gets struck down**

Weiser, 20

(Philip J., Colorado Attorney General; Hatfield Professor of Law and Telecommunications, and Executive Director and Founder of the Silicon Flatirons Center for Law, Technology, and Entrepreneurship at the University of Colorado, "The Enduring Promise of Antitrust." Loyola University Chicago Law Journal, vol. 52, no. 1, Fall 2020, p. 1-14. HeinOnline.)\\JM

Unfortunately, federal antitrust authorities don't always show respect for state antitrust enforcement. In late 2019, for example, the Department of Justice (DOJ) filed a brief taking an unfortunate and unjustified position in the Sprint/T-Mobile merger.1 3 In particular, the DOJ asserted in its brief that the states' "[quasi-sovereign] role does not permit states to override the sovereign interests of the United States." 14 In essence, the DOJ argued that the DOJ itself is the supreme arbiter of antitrust law. On the DOJ's view, once it takes a position on a matter, the states are foreclosed from any enforcement that would be contrary to the selected path of the federal agency.' 5 That view runs contrary to what Congress intended in framing broad enforcement of the antitrust laws that recognizes the critical role of the states. 16 Because this position would upend forty-five years of antitrust practice and jurisprudence, the litigating states properly responded that the "[s]tates are independent enforcers of the antitrust laws, and it is the role of the Court-not any federal agency-to decide the lawfulness of the merger."17 The DOJ's flawed argument in the T-Mobile case was based on the dissenting opinion in Georgia v. Pennsylvania Railroad Co. 18 Notably, the majority in that case held that states are authorized to seek injunctive relief under the antitrust laws. Moreover, the DOJ's suggestion-that the DOJ and FCC (Federal Communications Commission) merger review in the T-Mobile case is exclusive and preclusive-contradicts Congress' empowerment of state AGs and is a dangerous idea as well. Under the DOJ's theory, if a federal antitrust agency approves a merger, antitrust enforcement against the merger would be precluded as long as the merger was subject to review and approval by the federal agency. That would diminish antitrust enforcement and would, in effect, permit the federal antitrust agencies to extinguish the rights of states and private parties to enforce and seek remedies for harm caused by violations of antitrust laws. The DOJ's rationale in the T-Mobile case would also justify exempting transactions from antitrust review because a federal regulatory agency approved such a matter. Notably, the DOJ invoked the FCC's regulatory action in that case as a basis for stripping states of authority to challenge the merger. This is a dangerous claim and goes flatly against federal merger law, which has consistently refused to reject antitrust claims for non-antitrust reasons since the Supreme Court's 1963 decision in Philadelphia National Bank.19

#### They say perm do the CP but that’s severance—the federal government is the central government located in DC and is distinct from the 50 states and subfederal entities

US Legal, 16

(US Legal, “United States Federal Government Law and Legal Definition”, <https://definitions.uslegal.com/u/united-states-federal-government/>, accessed 8-10-17, AFB)

The United States Federal Government is established by the US Constitution. The Federal Government shares sovereignty over the United Sates with the individual governments of the States of US. The Federal government has three branches: i) the legislature, which is the US Congress, ii) Executive, comprised of the President and Vice president of the US and iii) Judiciary. The US Constitution prescribes a system of separation of powers and ‘checks and balances’ for the smooth functioning of all the three branches of the Federal Government. The US Constitution limits the powers of the Federal Government to the powers assigned to it; all powers not expressly assigned to the Federal Government are reserved to the States or to the people.

#### Third, the commerce clause isn’t an issue for antitrust rulings specifically—the Supreme Court settled this ages ago

Rauch, 20

(Daniel E., Yale Law School, J.D; Finalist, Morris Tyler Moot Court of Appeals; Coker Fellow, Legal Writing Instructor in Contract Law; The Yale Law Journal, Projects Editor; J. Welles Henderson Senior Thesis Prize; Phi Beta Kappa; 2009 American Parliamentary Debate Association Speaker of the Year, Princeton University, A.B., “SHERMAN'S MISSING ‘SUPPLEMENT’: PROSECUTORIAL CAPACITY, AGENCY INCENTIVES, AND THE FALSE DAWN OF ANTITRUST FEDERALISM”, Cleveland State Law Review, vol. 68, no. 2, 2020, p. 172-216. HeinOnline.)\\JM

1. The Dormant Commerce Clause A first doctrinal argument stems from the so-called "Dormant Commerce Clause." Under Dormant Commerce Clause jurisprudence, states are forbidden from legislating when doing so would have a significant adverse effect on interstate commerce. 7 3 Analyzing this doctrine, some have argued that early state antitrust laws were in constitutional peril from the start, since enforcing them might impose unacceptable economic effects beyond state borders. 74 There is no doubt that lawyers of the 1890s thought certain types of economic activity could be off-limits to state antitrust enforcement: indeed, this assumption is partially what motivated the passage of the Sherman Act. 75 However, these categories were not very broad and, therefore, would not have substantially reduced the capacity for state-level enforcement. To the contrary, the Commerce Clause jurisprudence of this period was, if anything, hostile to federal, not state, interventions. Perhaps the leading example of this tendency is the 1895 case of United States v. E. C. Knight Co. 76 There, the federal government brought a Sherman Act prosecution against a group of major sugar manufacturers, all operating within Pennsylvania. Although these manufacturers collectively possessed an enormous share of the sugar market, the Court found this challenge to be beyond the scope of the Commerce Clause, finding the factories were engaged merely in "manufacture," and not in the transport of goods across state lines. 7 7 Yet in doing so, at least some believe that the Court was motivated not so much by a laissez-faire defense of corporate wealth, but by an effort to buttress state authority over the intrastate operations of interstate combinations.78 Accordingly, throughout the period at issue in this analysis, it would have been most logical to conclude, as a doctrinal matter, that state power to regulate the economy, even if such regulations impacted events beyond state borders, was quite robust. Indeed, this point would be confirmed by the Supreme Court in Justice Holmes' opinion in Standard Oil Co. of Kentucky v. Tennessee.7 9 In that case, a Kentucky-based corporation appealed from a conviction under Tennessee's state antitrust statute, arguing that under the Constitution, a state's courts could not levy criminal penalties against an out-of-state corporate entity. 0 In particular, it argued such penalties would violate the Dormant Commerce Clause because it would constitute one state imposing impermissible regulations across state lines. 1 The Court disagreed, instead finding that each state clearly had jurisdiction to regulate economic effects caused within its jurisdiction, even if caused by out-of-state actors: The present statute deals with the conduct of third persons, strangers to the business. It does not regulate the business at all. It is not even directed against interference with that business specifically, but against acts of a certain kind that the state disapproves in whatever connection. The mere fact that it may happen to remove an interference with commerce among the states as well with the rest does not invalidate it. It hardly would be an answer to an indictment for forgery that the instrument forged was a foreign bill of lading, or for assault and battery, that the person assaulted was engaged in peddling goods from another state. How far Congress could deal with such cases we need not consider, but certainly there is nothing in the present state of the law, at least, that excludes the states from a familiar exercise of their power.8 2 To be sure, this power would be limited since "Congress would have understood that state imposition or regulation of direct restraints of interstate commerce would violate the Dormant Commerce Clause."83 However, on the whole, the power available would have been considerable, especially since, as discussed below, America's economy at this time was far more concentrated at the state level anyway.84 Thus, the Dormant Commerce Clause jurisprudence of this era would not have seemed to be a fatal obstacle to effective state antitrust enforcement.

#### Fourth, there’s already precedence for the states to regulate commerce in other states—they’re actively ignoring federal oversight or concerns about overreach

Coleman, 20

([James W. Coleman](https://regproject.org/person/james-w-coleman/) Professor of Law Southern Methodist University Dedman School of Law, "Deep Dive Episode 128 – Can States Trump Interstate Commerce?," Aug 27 <https://regproject.org/podcast/deep-dive-ep-128/> NL)

James Coleman:  Thank you so much, Professor Kochan. I’m just so happy to be here today discussing this topic because, as I’ll try to explain, I think this is the single most important, interesting, and urgent question of constitutional law at the moment. I’ll explain why it is each of those things. To start with why this is the most important question in constitutional law. I think, if you haven’t read Professor Kochan’s Notre Dame Law Review article that was sent with this, go read it now. I’m on Twitter @energylawprof. I just tweeted it. You can go check it out there. The reason it’s important is because looking at those Founding-era sources, Professor Kochan shows how for the people who developed the Constitution and did its initial interpretation, the whole point of the U.S. Constitution was to have free trade between the U.S. states; that states could have their policy, but there would be free trade between them. That was one of the problems that as perceived with the Articles of Confederation, and that’s what the Constitution was supposed to provide. Professor Kochan looks at the writings of Alexander Hamilton, of James Madison, of Justice Story, and shows how each of them saw the Constitution. They thought the whole point of the Constitution was to provide free trade between the states. The reason that’s so important is because it’s not really possible — the problem if you had a very simplistic states’ rights rhetoric is it’s not actually possible for states to choose their own policies unless they have free trade between them. To give a simple example, California — imagine you said, “Okay, let’s just let states adopt their own policies. This whole idea of a Dormant Commerce Clause is a problem.” Well, what happens when California adopts a law that says, “You cannot purchase a product in California unless it was produced in a state that had the same minimum wage or was produced by workers operating with the protection of California labor laws.” That regulation, although it’s just a state regulation of California and it’s a nondiscriminatory regulation because it just says if you’re going to sell any product in our state, it has to have been produced in the same way that we would require somebody to produce it within California, that law would immediately set a minimum wage for every other state in the U.S. So it’s a nondiscriminatory regulation but because it applies to transactions that happen outside of California’s borders—making it extraterritorial—it constrains what other states can do. And this is not just a hypothetical. For many, many years, that was the example that people gave. They said, “Well, surely no state — we can’t have something like that happen because that would be the end of free trade between the states.” But California has actually done something very similar, which is if you go to the grocery store right now anywhere across the country, and if you look at the eggs that you get, on it will be printed “CASEFS.” What that means is that it is compliant with California’s laws for how you treat chickens when you are laying eggs. Those eggs are not laid in California. That is California regulating how every other state treats its egg-laying hens. You might agree with the animal rights perspective that California has. It’s not to say that the law is bad, but the reason that is necessary is because California said, “You can’t sell eggs in our state unless you treat your chickens in this way.” So it’s almost like they’re setting a nationwide minimum wage for chickens, and basically what’s happened is all those other states—because they have to sell in this national market—have, as a result, been forced to follow California’s laws. So it no longer matters what the big states that produce a lot of eggs, places like Missouri and Iowa. It no longer matters what kind of regulation Missouri or Iowa has for treating animals. The only thing that matters is what’s the most strict law that’s adopted by a major market state? In this case, California. If you don’t have some limits on what kind of laws that states can make to break up interstate commerce, the end result is that the states themselves are not allowed to choose their own level of regulation. The laboratories of democracy that we count on don’t work. And this is exactly, as Professor Kochan shows, what the Founders were worried about—this kind of states interfering with each others’ regulatory systems and schemes—so this was the entire point of the Constitution. So it’s extremely important to see that the Constitution actually provides it. Now, why I say it’s the most interesting question in constitutional law—that’s because, although, as Professor Kochan shows, this is the whole point of the Constitution, it’s a real puzzle because there has been extreme disagreement among judges, justices, and legal scholars about what part of the Constitution provides free trade between the states. Historically, this was done under the Dormant Commerce Clause, and Professor Kochan explained how Justice Story basically sees this accomplished through the Dormant Commerce Clause. However, recently, conservative scholars on the Supreme Court have started to say, “We don’t really think the Dormant Commerce Clause does that because the Dormant Commerce Clause, of course, is just an implication from silence.” So, the Constitution doesn’t have a Dormant Commerce Clause; that’s just the implication. Well, if Congress didn’t regulate this, maybe, then, we don’t want the states to regulate this as well. Justice Thomas, initially, then Justice Scalia, now Justice Gorsuch, have all expressed more and more skepticism with applying any kind of review under the Dormant Commerce Clause. For a while, Justice Scalia and Justice Thomas said, “Well, maybe we’ll at least strike down discriminatory regulations.” Since that time, Justice Thomas has moved away from that, and he basically says, “I don’t want to apply the Dormant Commerce Clause at all.” Now, when Justice Thomas initially took a stand against the Dormant Commerce Clause, he, at that time, suggested maybe there was another part of the Constitution—he said the Import/Export Clause, that’s Article I, Section 10—that might operate to stop some discrimination and border controls between the states. Since that time, he has not said very much more about that, so we don’t know if that’s a real viable cause. Other legal scholars have said that, “Well, maybe, actually, the Privileges and Immunities Clause in Article IV, Section 2. Maybe that provides some protection from states; that if you’re okay under one state law, you should be able to trade — if you have eggs that are okay under Iowa or Missouri law, you should be able to trade with California.” Similarly, some people have said the Full Faith in Credit Clause, Article IV, Section 1. Maybe that somehow creates free trade between the states. Others have said, “Well, maybe it’s actually the Due Process Clause. You shouldn’t be trying to regulate how chickens are treated in other states because you don’t have sufficient contact, basically, with that.” And others have said that there’s general principle of horizontal federalism that creates free trade between the states. If you’re counting, that’s six different theories of where this is in the Constitution. The reason that scholars are struggling with this so much is that it’s clear that we do need some limits on state regulations to provide free trade between the states. One way we can tell that is that every federalist system that exists anywhere in the world has limits on state regulation that allow for free trade. If you look at Canada, there are limits on province by province regulation. If you look in Switzerland, there are limits on canton by canton regulation. If you look at the E.U. even, there are limits, and they’re the same limits that Professor Kochan described: You can’t discriminate, you can’t regulate extraterritorially, and you can’t adopt certain regulations that would so mess up things that they would create an undue burden. So, it must be the case that the Constitution somehow provides what it was intended to provide, but the challenge is that we don’t know, and there’s a lot of disagreement about, which specific part of the Constitution does that. As a practice pointer for all of you, if you are filing a Dormant Commerce Clause lawsuit, prepare for the day that you might have to explain it to an appellate court or even the Supreme Court with a different view of what accomplishes free trade between the states, and use all those six theories. You have to plead them because otherwise, when you write your cert petition, Justice Thomas will say, “Well, I don’t believe in a Dormant Commerce Clause. That’s gone. Maybe if you had said something about the Import-Export Clause.” Maybe some of the other justices would be okay with the Privileges and Immunities argument, but you’re going to need to cobble together enough of these different theories to count to five on that, and that’s a very difficult task right now with the U.S. Supreme Court. Lastly, let me just say something about why I believe this is also the most urgent question in constitutional law. That’s from my perspective as an energy scholar. Again, I just posted one of my articles on exactly this topic @energylawprof on Twitter, and you can see. Basically, the problem is that in the U.S. today, we have largely solved the problem of producing energy affordably. We have had the biggest oil boom that’s ever happened in the history of the world, and we’re doing it even at very, very low prices. So, we have extremely low prices. They’re about $40 a barrel today. But if you look at some of our cleaner, newer sources of energy, it’s even cheaper. If I look at natural gas, where that natural gas is produced — often the price is $0 for that natural gas. Sometimes that price is negative. More and more frequently, that price is going negative. The same thing is true of wind power. Rock bottom prices for wind power. Sometimes the price is negative. People will pay you to take away wind power at the wind turbine. So, then, what’s the problem with energy? Why are we having incredibly high energy prices in some places, like the U.S. northeast, in California? Why are we even having outages in California? Well, the reason is because we can’t transport those cheap, cleaner energy sources to the places where they’re needed. Why can’t we transport them? Because you need state-by-state approval to build an oil pipeline or a powerline, and actually, increasingly, even to build a natural gas pipeline. Natural gas pipelines are regulated by the federal government, but the states have found ways to exercise veto authority over those. They do that under Clean Water Act Section 401, which requires a water quality certification for a pipeline, and they’ve also been able to do that using eminent domain where they’ve said, “You cannot exercise eminent domain against those natural gas company even though you have federal approval because of our sovereign immunity.” So, there are a number of obstacles that are emerging to that interstate transport. States have also gotten very aggressive in terms of adopting laws designed to stop energy sources that they don’t like. For instance, Missouri was unhappy about a powerline that was going to cross it to bring wind power to the Midwest, to Chicago from the windy prairies, so it tried to pass laws that were basically to stop eminent domain to get that wind power where it needed to go. Similarly, if you look at California, California has passed a law to block any new oil pipelines across state land. You’ve had coal terminals, you’ve had regulations and laws passed against new coal terminals or oil terminals for export—an attempt to blockade the sources of coal, which are mostly in Wyoming and Montana, as well as sources of oil, trying to prevent that oil from North Dakota from leaving the west coast. There’s also been regulations against oil export in Portland, Maine. So, on both sides of the country, this is happening. There’s an increased effort to blockade both your traditional oil and gas sources as well as some of those new renewable sources. Regardless of what your goal is for the United States energy policy, if you believe in American energy dominance and you want to have more oil and gas production and export—right now, the U.S. is still projected to be the world-leading liquefied natural gas exporter in five years—well, you need to have interstate transport of natural gas. Similarly, if you believe that we need to transition away from fossil fuels and we need cleaner energy sources, we need those renewables that are mostly located in our deserts and prairies to get to the markets where they’re needed—the urban centers on the west coast, east coast, Midwest, and southeast—you also need to have interstate energy transport. This trend towards states blocking interstate transport of sources they don’t like is a huge and pressing problem for the United States. Finally, let me just end by again highlighting something from Professor Kochan’s article, which is he points out that for Madison and Hamilton and Story, free interstate trade was not just about the economic benefits. Of course, it was about those economic benefits, but it was also about creating a more perfect union. That’s why every place—even somewhat imperfect unions like the E.U.—has these free trade rules. The reality is, if you’re concerned about the individual states growing apart and having less to do with each other and wanting to have less to do with each other, then one of the most important things, as Alexander Hamilton and James Madison showed during a time that also included a lot of division, is that increased trade between the states. Because that increased trade between the states binds the United States together, and I think there couldn’t be a more important time for that. With that, I’ll turn it over to Jonathan. Thank you so much.

#### **This is explicit in law—Congress has clearly stated that the federal government does not have the authority to stop the states from going further than the feds on antitrust law**

Weiser, 20

(Philip J., Colorado Attorney General; Hatfield Professor of Law and Telecommunications, and Executive Director and Founder of the Silicon Flatirons Center for Law, Technology, and Entrepreneurship at the University of Colorado, "The Enduring Promise of Antitrust." Loyola University Chicago Law Journal, vol. 52, no. 1, Fall 2020, p. 1-14. HeinOnline.)\\JM

I. THE ROLE OF THE STATES IN ANTITRUST ENFORCEMENT During the 1970s, Congress began to develop a range of "cooperative federalism" regulatory programs. Under such programs, Congress authorizes state enforcement of federal law and generally calls on the federal government to set a floor for enforcement. In so doing, it generally provides states with additional authority to tailor standards as well as pick up any slack in enforcement. By instituting such a model, Congress adopted a hedging strategy-ensuring a base level of uniformity, allowing for appropriate experimentation, and building in the opportunity to pick up the slack as to any underenforcement at the federal level. 2 The environmental laws provide the classic example of cooperative federalism in action, with the Clean Air Act being a clear case in point. 3 Under the Clean Air Act's model, the Environmental Protection Agency (EPA) authorizes state agencies to address air pollution using a variety of tools, provided that they ensure a basic level of air quality. Where state agencies decide to go above the level specified by the EPA, they are permitted to do so. 4 Following this precedent, both telecommunications regulation and health care policy later adopted a cooperative federalism architecture, blending state and federal authority and calling on state agencies to develop and enforce federal regulatory standards. Antitrust law operates in a functionally similar manner to other cooperative federalism regimes. In 1976, by adopting the Hart-Scott-Rodino Antitrust Improvements Act, Congress embraced the ability of state AGs to enforce federal antitrust law on behalf of their states, using what is called "parens patriae" authority.5 The theory of this delegation of authority, like other cooperative federalism programs, is twofold: (1) states may be better positioned to know of competitive issues in their jurisdictions; and (2) states may have a greater willingness to take action and have the ability to collect damages on behalf of their citizens, thereby further advancing the goals of antitrust law. As the Supreme Court stated, the role of states in antitrust enforcement "was in no sense an afterthought; it was an integral part of the congressional plan for protecting competition." 6 One of the questions inherent in a cooperative federalism framework is whether the federal government has the authority to prevent states from going further than the federal government where, in their view, local conditions warrant. In the environmental arena, the EPA has the authority to ensure a minimum level of enforcement, but not to prevent states from taking additional action. In the antitrust arena, the situation is similar: the federal government can take action to ensure a basic level of enforcement, but it does not have the power to prevent states from going further-under federal or state law-to stop anticompetitive conduct.7 For an example of parallel federal and state action, consider the Microsoft case. 8 In that case, the federal government ultimately decided-after a remand on the remedies issue by the Circuit Court of Appeals of the District of Columbia-on a regulatory remedy and declined to pursue structural relief. A number of states that were part of this litigation took a different view and proceeded to challenge the absence of divestiture. As this case was litigated and ultimately decided, it was accepted that the states have the requisite authority to pursue a different view from the federal government if they choose to do so. 9 The opposite approach-empowering the federal government to bar states from antitrust enforcement whenever it so chooses-would undermine the architecture of cooperative federalism. Such an approach would also hurt consumers in states where state AGs pick up the slack in federal enforcement by bringing additional resources to bear and by applying their local expertise. Consider, for example, the case of a recent merger in Colorado Springs between DaVita's clinical network and UnitedHealth Group's Medicare Advantage insurance product.10 In this case, UnitedHealth consummated the merger after its market share declined from around 75% to around 50% as a result of the emergence of a disruptive entrant, Humana. Humana emerged as a rival after building its relationship with DaVita's clinics, which referred patients to Humana's Medicare Advantage offering. In the wake of the merger, however, Humana faced the prospect of losing access to referrals for its Medicare Advantage product from patients at DaVita's clinics. The Federal Trade Commission (FTC) reviewed the UnitedHealth/DaVita merger and declined to take action in the Colorado Springs market. 1 In Colorado, however, the Attorney General's office was concerned about the prospect of UnitedHealth using control over DaVita's clinics to reestablish its dominant position in the Medicare Advantage market-thereby leading to higher prices, less choice, and lower quality offerings to patients. By taking action in this case, separate and apart from the FTC, we were able to protect Colorado consumers. And rather than protest our action, the FTC respected our authority. Indeed, two commissioners wrote separately to highlight the valuable role state AGs play in enforcing antitrust law.12 Unfortunately, federal antitrust authorities don't always show respect for state antitrust enforcement. In late 2019, for example, the Department of Justice (DOJ) filed a brief taking an unfortunate and unjustified position in the Sprint/T-Mobile merger.1 3 In particular, the DOJ asserted in its brief that the states' "[quasi-sovereign] role does not permit states to override the sovereign interests of the United States." 14 In essence, the DOJ argued that the DOJ itself is the supreme arbiter of antitrust law. On the DOJ's view, once it takes a position on a matter, the states are foreclosed from any enforcement that would be contrary to the selected path of the federal agency.' 5 That view runs contrary to what Congress intended in framing broad enforcement of the antitrust laws that recognizes the critical role of the states. 16 Because this position would upend forty-five years of antitrust practice and jurisprudence, the litigating states properly responded that the "[s]tates are independent enforcers of the antitrust laws, and it is the role of the Court-not any federal agency-to decide the lawfulness of the merger."17 The DOJ's flawed argument in the T-Mobile case was based on the dissenting opinion in Georgia v. Pennsylvania Railroad Co. 18 Notably, the majority in that case held that states are authorized to seek injunctive relief under the antitrust laws. Moreover, the DOJ's suggestion-that the DOJ and FCC (Federal Communications Commission) merger review in the T-Mobile case is exclusive and preclusive-contradicts Congress' empowerment of state AGs and is a dangerous idea as well. Under the DOJ's theory, if a federal antitrust agency approves a merger, antitrust enforcement against the merger would be precluded as long as the merger was subject to review and approval by the federal agency. That would diminish antitrust enforcement and would, in effect, permit the federal antitrust agencies to extinguish the rights of states and private parties to enforce and seek remedies for harm caused by violations of antitrust laws. The DOJ's rationale in the T-Mobile case would also justify exempting transactions from antitrust review because a federal regulatory agency approved such a matter. Notably, the DOJ invoked the FCC's regulatory action in that case as a basis for stripping states of authority to challenge the merger. This is a dangerous claim and goes flatly against federal merger law, which has consistently refused to reject antitrust claims for non-antitrust reasons since the Supreme Court's 1963 decision in Philadelphia National Bank.19 In a later speech, DOJ Antitrust Division Chief Makan Delrahim defended the DOJ's position. 20 He argued that allowing states to bring antitrust actions of their own "creates the risk that a small subset of states, or even perhaps just one, could undermine beneficial transactions and settlements nationwide." 2 1 Moreover, he suggested that states should not be authorized to seek any "relief that is incompatible with relief secured by the federal government." 22 This concept of federal supremacy is incorrect and ignores the fact that states can enforce the federal antitrust laws only by bringing cases in federal court. If states advance claims that are unfounded and would undermine procompetitive mergers, the courts will reject them. And the courts can, of course, take into account any action or decision by the federal antitrust agencies in assessing a state's claims, just as the Court in Philadelphia National Bank took into account the actions of federal bank regulatory agencies. 23 But there is no basis in the statutes, the cases, or sound policy for a decision by a federal agency to preclude the states from exercising their rights under the antitrust laws by asking a federal court to prevent or provide remedies for a violation of those laws. Although the court ruled against the states in the T-Mobile case, Judge Marrero declined to adopt Delrahim's proposed limit on the states' role. Rather than reject the states' authority to bring the action, the court evaluated the case on the merits, noting that the views of federal regulators can be informative, but are not conclusive. 24 To be sure, the presence of a remedy-a fix to the harm occasioned by the merger, as it were-is a fact of life that the litigating states and the court rightly had to address. Similarly, the DOJ would also need to "litigate the fix" if another federal regulatory agency (say, the FCC) adopted a remedy in the face of a DOJ merger challenge. But to face challenges in litigation is a far cry from being barred from the courtroom. In short, the states are partners in antitrust enforcement, reflecting the cooperative federalism architecture adopted by Congress. In effect, Congress has empowered states to act as a check on federal enforcement, or, more precisely, on instances of federal underenforcement; as such, it declined to allow federal inaction or preference for particular remedies to remove the states from antitrust enforcement. In this sense, the central question is not-as the DOJ suggests-whether states might "displace the federal government's role as the nation's federal antitrust enforcer," 25 but rather whether states are positioned to pick up any slack and ensure that important issues are raised before the courts, whether or not the federal agencies are inclined or able to do so.26

#### The author of the Sherman act and Supreme Court agree

Dekeyser, 09

(Kris, Director "Policy and Strategy" at the European Commission’s Directorate General for Competition “Coordination among National Antitrust Agencies,” 10 Sedona Conf. J. 43 Lexis NL)

C. Cooperation Between Federal And State Antitrust Authorities All 50 states, plus the District of Columbia, Puerto Rico, and the Virgin Islands, have passed antitrust laws that largely track the Sherman Act and the Clayton Act. In fact, the 1890 enactment of the Sherman Act occurred after 26 states had already put in place some form of antitrust prohibition, and the principal author of the Sherman Act himself stated that the federal statute was to "supplement the enforcement" of state law. During the Reagan administration, many states perceived federal antitrust efforts as lacking and accordingly became more active in enforcing both federal and state law. Today, state antitrust authorities coordinate more closely with federal authorities in the investigation and prosecution of anticompetitive conduct. 1. Background A majority of states have laws similar, many almost identical, to Sections 1 and 2 of the Sherman Act, and less frequently, laws similar to Sections 3 and 7 of the Clayton Act and the Robinson-Patman Act. Many states' competition laws specifically require deference of varying degree to federal precedent, i.e., "harmonization statutes. In states where no harmonization statute exists, state courts generally follow federal caselaw. While some state courts have extended their jurisdiction's competition laws to interstate commerce, some states have used comity to curtail the extraterritorial reach of state law. The United States Supreme Court has held that state antitrust laws are not preempted by either the Commerce Clause or the Supremacy Clause of the US Constitution. In addition to state laws, states can bring suit under federal antitrust statutes. The H-S-R Act included provisions that ordered the DOJ to provide investigative information to state attorneys general and allowed state attorneys general to sue under the Sherman Act with parens patria actions in the name of state residents for treble damages. In addition, a state may bring suit as an injured purchaser on its own behalf under Section 4 of the Clayton Act, and a state can seek injunctive relief under Section 16 of the Clayton Act for harms to the state's economy. In 1983, the National Association of Attorneys General ("NAAG") created the Multistate Antitrust Task Force. In 1989, NAAG formed the Executive Working Group on Antitrust to coordinate federal and state enforcement efforts. A majority of states have joined the Voluntary Pre-Merger Disclosure Compact, which "encourages merging firms to submit pre-merger filings to the member states in return for an agreement by the states to forgo the issuance of individual state subpoenas and to obtain documents through the same process used by the relevant federal antitrust agency. Consultation, coordination, and cooperation between federal and state antitrust authorities can take on a variety of forms. For example, in criminal investigations, the DOJ and state antitrust authorities agreed to a cross-deputization program in which state attorneys generals could be appointed to assist in the prosecution of federal criminal antitrust cases. As another example, the NAAG Executive Working Group holds monthly teleconferences with federal authorities. In the past, the DOJ held Common Ground Conferences with state attorneys general to discuss coordination of state and federal antitrust enforcement. 2. Coordination Protocols In 1998, the DOJ, FTC, and NAAG adopted the Protocol for Coordination in Merger Investigations Between the Federal Enforcement Agencies and State Attorneys General ("Merger Protocol"). In 1996, the DOJ and NAAG adopted the Protocol for Increased State Prosecution of Criminal Antitrust Offenses ("State Prosecution Protocol"). Together, the Merger Protocol and the State Prosecution Protocol represent the two most important examples of the formal coordination between federal and state antitrust enforcement authorities. The Merger Protocol helps define the areas ripe for coordination in the merger review process. For example, to avoid subpoenas from multiple state enforcement agencies, the Merger Protocol specifies that the federal agency investigating the proposed merger will share H-S-R filing documents with the state authorities with the consent of the merging parties. Further, the Merger Protocol encourages the reviewing authorities to hold a teleconference early in the process to coordinate the collection of evidence and the hiring of experts. The Merger Protocol also urges federal and state authorities to work closely with each other during settlement negotiations, and if possible, hold joint settlement talks. The State Prosecution Protocol provides a mechanism for the DOJ to hand off criminal investigations to a state attorney general when the alleged anticompetitive conduct, usually bid-rigging or price fixing, only affects local concerns. The State Prosecution Protocol imposes two criteria: first, the state attorney general must have the legal and personnel resources to undertake the criminal prosecution, and second, the state attorney general is willing to undertake the criminal prosecution. If the attorney general satisfies those requirements, the DOJ will transfer all evidence related to the investigation. 3. Conflicts Between Federal and State Laws and Jurisprudence In Illinois Brick Co. v. Illinois, the Supreme Court closed the door on the recovery of damages for indirect purchasers harmed by Section 1 of the Sherman Act. Before and after the Court's 1977 decision in Illinois Brick, more than 25 states enacted laws, sometimes called "Illinois Brick repealers," that specifically permit recovery for indirect purchasers for violations of state antitrust laws. The Supreme Court ruled that these laws were not preempted by federal law in its seminal decision in California v. ARC America Corp. In that case, the state attorneys general of Alabama, Arizona, California, and Minnesota brought suit against ARC America under Section 4 of the Clayton Act as indirect purchasers who fell victim to a price fixing conspiracy in violation of Section 1 of the Sherman Act. The states also alleged violations of their state antitrust laws. In approving a settlement agreement, the District Court denied relief of the states' indirect purchaser statutes because it found that those laws were preempted by federal law, and the Ninth Circuit affirmed. The Supreme Court, however, found that the state indirect purchaser statutes are not preempted: [T]he Court of Appeals erred in holding that the state indirect purchaser statutes are pre-empted. There is no claim that the federal antitrust laws expressly pre-empt state laws permitting indirect purchaser recovery. [. . .] Congress intended the federal antitrust laws to supplement, not displace, state antitrust remedies.

#### Even if they do try to preempt, dozens of cases have been decided in favor of the states over the feds so it won’t be successful AND the states can just ignore the ruling and block mergers anyways so the CP still solves the aff

Grosso, 21

(Jacob P Grosso, J.D. Candidate, 2021, University of Richmond School of Law. B.A., 2018, George Mason University., The Preemption of Collective State Antitrust Enforcement in Telecommunications,” 55 U. RICH. L. REV. 615 (2021) NL)

While states may differ with respect to their enforcement policies, previous collective state action has led to several disagreements with federal enforcement decisions. In 1994, the DOJ and several states filed suit against Microsoft in the United States District Court for the District of Columbia, alleging violations of Sections 1 and 2 of the Sherman Act. 159 In the end, multiple states disagreed with the settlement forged by the federal enforcement agency.160 Nine states joined the DOJ settlement, while nine other states proposed substantially different remedies. 161 The dissenting states demanded concessions beyond the scope of the federal settlement, including forcing Microsoft to license significant intellectual property cheaply and to change the company's product offerings.16 2 Here, the states undercut a federally engineered settlement, resulting in delays to the suit and continued argument over the appropriate remedy.1 63 The undercutting of the Microsoft settlement is comparable to the T-Mobile-Sprint merger, where the DOJ and FCC negotiated for divestitures to ensure the national goals of both agencies were satisfied, but still faced pushback from a group of states. If the states and federal enforcers do not agree on the terms of a settlement, the states become a complication to the adjudication process. 164 The inability to rely upon a negotiated settlement agreement also creates uncertainty for merger parties. In 2015, during the AT&T-Time Warner merger, twenty states investigated; none joined DOJ's action. 165 The DOJ had filed suit to block the vertical merger, alleging violations of Section 7 of the Clayton Act.166 Nine states filed amicus briefs opposing the DOJ's suit.167 The DOJ eventually lost the appeal, and the merger proceeded. 168 Instead of a national industry facing a unified enforcement front, the enforcement efforts became fragmented and contradictory. The divergence in enforcement policies showed the competing interests at issue for each enforcer. This split is also apparent in the divergence between the states opposing the T-MobileSprint merger and the DOJ, FCC, and states supporting it.

#### States solve the whole aff—the past 30 years prove the states can farther than the feds and that there’s no preemption

Arteaga, 21

(Juan A Arteaga is a partner in Crowell & Moring’s antitrust and white-collar groups. His practice focuses primarily on advising companies, boards of directors, and executives in a broad range of civil and criminal antitrust matters, including litigation, merger reviews, governmental and internal investigations, and counselling regarding various business practices. Between 2013 and 2017, Mr Arteaga was a senior official in the Antitrust Division of the US Department of Justice. During this period, he served as the Deputy Assistant Attorney General for Civil Enforcement, where he worked on and oversaw numerous civil merger and non-merger investigations and litigations involving various industries. Mr Arteaga also served as the chief of staff and senior counsel to the Assistant Attorney General for the Antitrust Division. While at the Antitrust Division, Mr Arteaga worked on various high-profile merger litigations, including the DOJ’s challenges to the Aetna/Humana, US Airways/American Airlines, Halliburton/Baker Hughes, Electrolux/General Electric, Energy Solutions/Waster Control Specialists and National Cinemedia/Screenvision transactions. Mr Arteaga regularly represents Fortune 500 companies and financial institutions in connection with complex transactions and high-stakes litigation and government investigations. Mr Arteaga has been recognised as a leading practitioner by numerous professional publications and bar associations, including the American Bar Association, New York City Bar Association, Hispanic National Bar Association, New York Law Journal, Law360 and the Ethisphere Institute. He has also received numerous awards for his pro bono work and civic service. & Jordan Ludwig is a counsel in the antitrust group in Crowell & Moring’s Los Angeles office, where he focuses on antitrust litigation, civil and criminal antitrust investigations, and appeals. Jordan has extensive experience litigating high-stakes cases in the state and federal courts under the Sherman Act, Cartwright Act, the California Unfair Competition Law, and the California Unfair Practices Act. As a dynamic litigator, Jordan regularly represents both plaintiffs and defendants across a diverse array of industries, including healthcare, telecommunications, hospitality, financial services, and consumer products. "The Role of US State Antitrust Enforcement," Jan 28 2021 <https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement> NL)

In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so. Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition.[[2]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-126) In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions.[[3]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-125) This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage.[[4]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-124) Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.[[5]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-123) In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process.[[6]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-122) As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States.[[7]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-121) This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.[[8]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-120) In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring parens patriae suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations.[[9]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-119) Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices.[[10]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-118) These laws had their intended effect of reinvigorating state antitrust enforcement. During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints.[[11]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-117) The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’.[[12]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-116) No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications.[[13]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-115) To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.[[14]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-114) Since the reawakening of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an important role in the enforcement of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices.[[15]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-113) During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping develop and implement litigation strategies for cases being tried before federal judges presiding in their states.[[16]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-112) Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC.[[17]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-111) State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC.[[18]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-110) In once again flexing their enforcement muscle, state attorneys general have shown a willingness to publicly disagree with the DOJ and FTC on both policy and enforcement decisions, and have also sought to pressure their federal counterparts into more aggressively policing certain industries. Recent examples of the increased independence and assertiveness of state antitrust enforcers include: •The DOJ, FTC and several state attorneys general have been actively investigating and prosecuting ‘no-poach’ agreements (i.e., where competitors for employees agree not to recruit or hire each other’s employees) in recent years. However, the DOJ and state attorneys general have taken directly opposing positions in private litigation challenging the legality of ‘no-poach’ clauses in corporate franchise agreements. The DOJ has argued that courts should review these clauses under the rule of reason whereas various state attorneys general have argued that these clauses should be deemed per se unlawful.[[24]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-104) In their joint investigation into the T-Mobile/Sprint merger, nearly 20 state attorneys general sued to block the transaction in September 2019 even though the DOJ, along with seven state attorneys general, approved the deal after securing certain structural and behavioural remedies.[[19]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-109) After the DOJ announced its proposed settlement with the companies, the Attorney General for New York, who led the states’ challenge to the merger, issued a press release dismissing the adequacy of the remedies negotiated by the DOJ: ‘The promises made by [the divestiture buyer] and [the merging companies] in this deal are the kinds of promises only robust competition can guarantee. We have serious concerns that cobbling together this new fourth mobile [phone] player, with the government picking winners and losers, will not address the merger’s harm to consumers, workers, and innovation.’[[20]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-108) Thereafter, the DOJ opposed the states’ enforcement action by, among other things, moving to disqualify the private counsel hired by the states to represent them[[21]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-107) and filing submissions that argued against the states’ requested injunction.[[22]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-106) Ultimately, the state attorneys general were unsuccessful in their bid to block the deal.[[23]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-105) None of the more than 20 state attorney general offices that actively investigated the AT&T/Time Warner merger joined the DOJ’s unsuccessful challenge to the transaction despite the DOJ’s concerted effort to secure their support.[[25]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-103) In fact, nine state attorneys general filed an amicus brief opposing the DOJ’s appeal of the trial court’s decision.[[26]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-102) After the FTC declined to seek any Colorado-related remedies in connection with Optum’s acquisition of DaVita Medical Group, the Attorney General for Colorado required the merging companies to lift the exclusivity provisions in contracts with certain healthcare providers and to extend their existing contracts with certain health insurers. In announcing this settlement, the Colorado Attorney General stated: ‘I recognize that this case marks an important step in state antitrust enforcement . . . . I am committed to protecting all Coloradans from anticompetitive consolidation and practices, and will do so whether or not the federal government acts to protect Coloradans.’[[27]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-101) After voicing displeasure with federal antitrust enforcement in the technology sector, numerous state attorneys general launched their independent investigations into ‘Big Tech’ companies even though the DOJ and FTC have ongoing investigations into these companies.[[28]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-100) Given that companies will increasingly have to engage with state attorneys general in a meaningful manner with respect to antitrust matters, this chapter discusses key issues related to state antitrust enforcement in the United States. Specifically, this chapter discusses: the federal and state antitrust laws under which state enforcers operate; the processes through which state enforcers coordinate with each other and their federal counterparts; the opportunity for coordination and conflict between state enforcers and private counsel during litigation; strategic and practical considerations when engaging with state attorneys general; and certain noteworthy enforcement actions that state enforcers have recently prosecuted. Statutory regime governing US state antitrust enforcement Civil enforcement of federal antitrust laws Enforcement actions on behalf of state governmental entities Under the federal antitrust laws, state attorneys general have the express authority to bring civil actions on behalf of their state, municipalities, and governmental entities for harm suffered when directly purchasing goods or services.[[29]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-099) In bringing such actions, state attorneys general can seek monetary (treble damages) and injunctive relief, as well as their costs and reasonable attorney’s fees.[[30]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-098) In actions seeking monetary relief, state attorneys general typically allege that the state plaintiffs were forced to pay higher prices by an unlawful horizontal conspiracy, such as a price-fixing or bid-rigging scheme, and seek to recover the overcharges.[[31]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-097) In some cases, state attorneys general have sought to recover damages arising out of anticompetitive unilateral conduct, such as overcharges paid by state governmental entities due to a defendant’s actual or attempted monopolisation of a specific market.[[32]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-096) In seeking injunctive relief, state attorneys general often argue that such relief is proper because the business practice or transaction in question – in addition to harming the state plaintiffs – has or will cause injury to the state’s general economy.[[33]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-095) While general harm to a state’s economy can serve as a basis for injunctive relief, state attorneys cannot base their request for damages on such harm.[[34]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-094) Parens patriae enforcement actions A well-settled principle in the United States’ legal system is that ‘the States have a quasi sovereign interest in protecting their citizens from ongoing economic harm’.[[35]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-093) Consequently, the federal antitrust laws expressly authorise state attorneys general to file parens patriae actions in federal court that seek to redress the harm suffered by their citizens due to federal antitrust violations.[[36]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-092) In providing state attorneys general with parens patriae authority, the federal antitrust laws permit state antitrust enforcers to seek monetary (treble damages) and injunctive relief, as well as their costs and reasonable attorney’s fees.[[37]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-091) State attorneys general have been empowered to seek such broad and substantial relief on behalf of their citizens to allow them ‘to deter further economic harm and to obtain relief for the injury inflicted on their economies and their citizens’.[[38]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-090) In exercising their parens patriae authority, state attorneys general have often sought to protect their citizens and state economies from the harm caused by anticompetitive business practices. For example, in the e-Books Litigation, 33 state attorneys general alleged that Apple, Inc and various book publishers unlawfully conspired to fix the prices of electronic books, which resulted in their citizens paying higher prices and harm to their states’ general economies.[[39]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-089) Ultimately, these state attorneys general, working alongside private class counsel, secured settlements from the defendants that provided nearly US$600 million in direct refunds to their citizens.[[40]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-088) In a pending lawsuit brought against various manufacturers of generic pharmaceuticals, 44 state attorneys general have alleged that the defendants unlawfully conspired to fix the prices for numerous generic drugs, which forced their states and citizens to pay billions of dollars in overcharges, as well as significantly harmed their states’ general economies.[[41]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-087) State attorneys general have also invoked their parens patriae authority to protect their citizens and state economies from the harm caused by anticompetitive transactions. For instance, in their unsuccessful challenge to T-Mobile’s acquisition of Sprint, various state attorneys general alleged that the transaction would result in their residents paying higher prices for lower quality mobile phone services as well as harm to their states’ general economies.[[42]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-086) Likewise, the state attorneys general that joined the DOJ’s successful challenges to the proposed Anthem/Cigna and Aetna/Humana mergers alleged that these mergers would have harmed their citizens and the general economies of their states by reducing the number of large health insurance providers from five to three.[[43]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-085) There are, however, important limitations on the parens patriae authority conferred to state attorneys general under the federal antitrust laws. For instance, the monetary relief sought by state attorneys general must: (1) arise out of a Sherman Act violation;[[44]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-084) (2) have been incurred by natural persons residing in their states (i.e., the losses suffered by business organisations cannot be included in the alleged damages);[[45]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-083) (3) exclude harm suffered by indirect purchasers of the goods and/or services in question;[[46]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-082) (4) avoid the risk of multiple recoveries by excluding amounts previously awarded for the same injuries;[[47]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-081) and (5) arise out of actual financial losses rather than general harm to their state’s economy.[[48]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-080) Moreover, state attorneys general must provide their residents with adequate notice of the lawsuit and a meaningful opportunity to opt out of the litigation.[[49]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-079) In seeking to prove the monetary harm suffered by their citizens, state attorneys general can employ many of the same methods utilised by private plaintiffs. In price-fixing cases, for example, state attorneys general can prove the claimed aggregate damages by utilising ‘statistical or sampling methods’, ‘comput[ing] [the] illegal overcharges’, or relying on any other methodology deemed ‘reasonable’ by the court.[[50]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-078) In addition, a number of state antitrust laws authorise their state attorney general to hire private lawyers to handle parens patriae actions, which was done by the state attorneys general who challenged the T-Mobile/Sprint merger.[[51]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-077) Civil enforcement of state antitrust laws Most states have enacted state antitrust laws that are comparable to Sections 1 and 2 of the Sherman Act.[[52]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-076) In addition, some states have passed antitrust laws that are similar to Sections 3 and 7 of the Clayton Act and the Robinson-Patman Act.[[53]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-075) These state antitrust laws typically contain provisions expressly requiring that ‘they be construed in conformity with comparable [f]ederal antitrust statutes’.[[54]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-074) Some states may have statutes that go beyond the scope of the federal antitrust statutes. For example, California recently passed a statute that would deem certain ‘reverse-payment settlements’ to be presumptively anticompetitive.[[55]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-073) State antitrust statutes typically provide state attorneys general with broad authority to investigate possible violations, including the power to ‘issue civil investigative demands compelling oral testimony, the production of documents, and responses to written interrogatories to individuals and corporations’.[[56]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-072) Like the federal antitrust laws, most state antitrust laws authorise state attorneys general to file civil lawsuits on behalf of their states and state governmental entities whenever a violation has caused them to suffer harm in their capacity as direct purchasers of goods or services, as well as parens patriae actions on behalf of their citizens.[[57]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-071) In bringing enforcement actions under state antitrust laws, state antitrust enforcers typically have the authority to seek a broad range of relief, including treble damages, disgorgement of unlawful profits, injunctions, and attorney’s fees and costs.[[58]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-070) In some states, antitrust enforcers can also seek to have a contract declared void; suspend a violator’s ability to be awarded state contracts for a certain period; rescind an out-of-state company’s ability to do business within the state; and terminate an in-state company’s corporate charter.[[59]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-069) Moreover, state attorneys general can often seek relief on behalf of indirect purchasers when exercising their state law parens patriae authority. This is an important distinction between the parens patriae authority that state attorneys general enjoy under federal and state antitrust laws. The United States Supreme Court’s decision in Illinois Brick Co. v. Illinois precludes state attorneys general from seeking damages on behalf of indirect purchasers in parens patriae actions brought under the federal antitrust laws.[[60]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-068) In direct response to this decision, nearly 25 states and the District of Columbia have passed ‘Illinois Brick repealer’ laws that expressly authorise state attorneys general to recover damages on behalf of indirect purchasers that were harmed by state law antitrust violations.[[61]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-067) Notably, the United States Supreme Court has rejected constitutional challenges to these laws on the bases that states are free to permit indirect purchasers to recover damages given that (1) Congress has not passed legislation that preempts such state laws and (2) allowing indirect purchaser recovery under state law does not frustrate the legislative purpose of the federal antitrust laws.[[62]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-066) The states that have passed Illinois Brick repealer laws include California, New York and Illinois.[[63]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-065) Criminal enforcement of state and federal antitrust laws While many states have criminal penalties for state law antitrust violations, ‘[f]ew state attorneys general’s offices have significant experience prosecuting criminal antitrust violations.’[[64]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-064) Indeed, most state criminal prosecutions for antitrust violations have involved local bid-rigging schemes.[[65]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-063) Coordination in multistate investigations and litigation Coordination among state antitrust enforcers State attorneys general often coordinate their investigation and prosecution of antitrust matters with their counterparts in other states.[[66]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-062) To help ensure that these coordinated efforts are conducted in an efficient and effective manner, the NAAG has created an Antitrust Committee, which ‘is responsible for all matters relating to antitrust policy’.[[67]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-061) This committee is comprised of 12 state attorneys general[[68]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-060) and is responsible for promoting effective state antitrust enforcement by developing the NAAG’s antitrust policy positions and by facilitating communications among state enforcers regarding investigations, litigation, legislative matters and competition advocacy initiatives, among other things.[[69]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-059) In 1983, the NAAG established a Multistate Antitrust Task Force that is ‘comprised of state staff attorneys responsible for antitrust enforcement in their states’.[[70]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-058) This task force ‘recommends policy and other matters for consideration by the Antitrust Committee, organizes training seminars and conferences, and coordinates multistate investigations and litigation’.[[71]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-057) The task force is chaired by a person appointed by the head of the NAAG’s Antitrust Committee[[72]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-056) and has a representative from each NAAG member state.[[73]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-055) The chair of the task force serves as ‘the principal spokesperson for the states on antitrust enforcement’.[[74]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-054) The NAAG’s Multistate Antitrust Task Force does not handle actual investigations or litigation. Instead, such coordination usually occurs through working groups established by the states involved in an investigation or litigation. In most multistate investigations, the working group will designate a state responsible for leading the investigation. The lead state is often a state that has the most relevant experience and can dedicate the appropriate level of resources to the investigation, and has a sufficient interest in ensuring that the investigation is handled in an effective and efficient manner (i.e., the transaction or business practice in question could potentially impact a significant number of consumers or commerce within its state). (If an investigation is sufficiently large or complex, such as a mega-merger involving numerous markets, the states may create an executive committee that oversees the working group as well as designate multiple lead states.) In conducting the investigation, the working group will often have a participating state issue information requests under its authorising state laws and thereafter obtain waivers from the respondent that permit the state to share the information with the other participating states.[[75]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-053) As the investigation progresses, the lead state will typically provide the working group with oral and written status reports detailing the work that has been completed, summarising the factual record that has been developed, identifying any key factual and legal issues, and setting forth proposed next steps. Once the working group has completed its fact-gathering, the lead state will prepare a recommendation indicating whether an enforcement action should be brought and, if so, whether it would be appropriate to enter a settlement. This recommendation is typically shared with the working group first and then with any other interested states. If the lead state recommends that a contested enforcement action be filed, such a recommendation will often be accompanied with briefing material setting forth the legal and factual basis for the recommendation and a draft complaint. After reviewing this material, each state makes an independent determination on whether to join the enforcement action. If more than one state decides to join the enforcement action, the participating states will often file a single complaint in federal court that alleges both federal antitrust causes of action and pendent state law claims. In most cases, the complaint will invoke the participating states’ federal and state law parens patriae authority. Once the decision to file a contested enforcement action has been made, the participating states will often create a litigation working group that coordinates and handles their day-to-day litigation tasks, such as pre-trial motion practice, fact and expert discovery, and witness preparation. In addition, the participating states typically create committees that help oversee the litigation and provide input on important strategic decisions and policy-related issues. The most common committees established in multistate enforcement actions include an executive committee, a discovery committee, an expert committee and a settlement committee. To help cover the cost of prosecuting contested enforcement actions, the participating states typically enter into cost-sharing agreements. These cost-sharing agreements usually provide that common litigation expenses, such as expert and vendor fees, shall be apportioned based on the participating states’ population, thereby requiring larger states to cover a larger portion of the costs. As a result, larger states, such as New York and California, have recently begun advocating for the adoption of a hybrid cost-sharing model that determines each state’s contribution based on a pro rata formula and population figures. In certain instances, the cost-sharing agreements will also specify how any settlement or judgment shall be allocated among the participating states once any common litigation expenses have been paid. In addition to cost-sharing arrangements, state antitrust enforcers sometimes seek to fund enforcement actions through grants from the NAAG’s ‘milk fund’, which was established in 1989, and helps cover expert fees in antitrust investigations and litigation. This fund was set up using portions of the settlements that were secured in a series of bid-rigging cases involving school milk contracts in New York.[[76]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-052) Over the years, the NAAG has maintained the ‘milk fund’ by requiring the repayment of grants provided to enforcement actions that result in a settlement or judgment and by obtaining contributions from recoveries obtained in other antitrust enforcement actions.[[77]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-051) More recently, state attorneys general have also sought to help finance multistate antitrust investigations and enforcement actions through the NAAG’s ‘Volkswagen fund’, which was established in 2017 following settlements that state attorneys general reached with Volkswagen for emissions standards violations.[[78]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-050) Coordination among state and federal enforcers Cooperation in civil matters The level and nature of coordination between state and federal antitrust enforcers can vary based on whether their enforcement philosophies and objectives are aligned. For instance, the current level of coordination between the DOJ and state attorneys general appears to be significantly lower than in recent history as reflected by the conflicting enforcement decisions reached in multiple high-profile investigations and certain new restrictions that the DOJ has implemented with respect to the sharing of investigative material with state attorneys general. Likewise, the collaboration between state and federal antitrust enforcers can vary based on the particular circumstances of an investigation, such as the subject matter of the investigation and the resources and past investigative experience of the state attorneys general involved in the investigation. For instance, the FTC and state attorneys general have a long history of working hand-in-hand on investigations and litigation related to hospital mergers given that such transactions have particularly local impacts.[[79]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-049) As a general matter, however, state and federal antitrust enforcers (especially their career staffs) seek to maximise their coordination when conducting parallel investigations because they have long recognised that ‘[e]ffective cooperation between [them] benefits the public through the efficient use of antitrust enforcement resources’ while ‘promot[ing] consistent enforcement [decisions]’ and ‘minimiz[inig] the burden of duplicative investigations’.[[80]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-048) While state and federal enforcers have most often coordinated on merger investigations, they have a strong track record of working closely on civil non-merger investigations.[[81]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-047) During state-federal investigations, the DOJ or FTC typically take the lead because they have greater resources (including large teams of lawyers and economists), significant expertise in the relevant industries and oftentimes the business operations of the companies being investigated, and extensive experience conducting large and complex investigations. If an investigation involves numerous states, the state attorneys general typically establish an executive committee to coordinate their work and serve as the point of contact for the DOJ or FTC’s investigative team. During the investigation, the DOJ or FTC’s investigative team will provide the participating state attorney general offices with regular updates on the status of the investigation and any key issues. At the conclusion of the investigation, the DOJ or FTC’s investigative team will advise the state attorneys general whether it believes the facts and law support the filing of an enforcement action and, if so, whether a settlement should be entered with the companies being investigated. Each state participating in the investigation makes an independent determination on whether to agree with the DOJ or FTC’s conclusions. In most instances, the state attorneys general reach the same enforcement decision as the DOJ or FTC. However, there have been instances where the state attorneys general reached a very different enforcement decision as shown by the recent AT&T/Time Warner and T-Mobile/Sprint merger investigations. If state and federal antitrust enforcers file a contested enforcement action, the DOJ or FTC will typically take the lead in litigating and trying the case. However, the state attorneys general will continue to play an important and substantive role, including assisting with pre-trial submissions, offensive and defensive depositions, expert reports, and trial witness preparation.[[82]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-046) Coordination between state enforcers and private counsel In general, there often is an overlap between the victims of antitrust violations that state attorneys general seek to represent when suing for damages in their parens patriae capacity and those that private class action counsel seek to represent. This overlap creates the opportunity for close coordination as well as direct conflict. On the one hand, this overlap in ‘clients’ can lead to significant conflict because state antitrust enforcers and class counsel ‘can differ sharply in their respective goals, approaches, and incentives’.[[83]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-045) On the other hand, this overlap in ‘clients’ can result in significant coordination because state antitrust enforcers and private counsel can realise meaningful efficiencies by working together during fact and expert discovery, and can ultimately obtain a better result by ‘presenting a united front in settlement discussions’.[[84]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-044) In addition, state antitrust enforcers can benefit from having access to class counsel’s ‘more experienced trial attorneys and readier access to economic experts’.[[85]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-043) In turn, class counsel can utilise the state antitrust enforcers’ ‘pre-complaint discovery’ to defeat any motions to dismiss and implement an effective fact and expert discovery plan.[[86]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-042) Moreover, class counsel can avoid various class certification issues when state attorneys general invoke their parens patriae authority.[[87]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-041) Oftentimes, the degree of coordination between state antitrust enforcers and class counsel will depend on various factors, such as the stage of the case, the state attorneys general and private lawyers involved in the case, and each group’s perceptions of possible outcomes.[[88]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-040) For instance, state antitrust enforcers are generally less inclined to coordinate with class counsel where class counsel is perceived as simply filing a follow-on action that seeks to piggyback off the work conducted by government enforcers during their investigation and litigation.[[89]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-039) In contrast, state attorneys general are more inclined to coordinate with class counsel that has made significant investments in developing the case and demonstrated a genuine desire to secure the best outcome for consumers rather than simply maximising their fee award.[[90]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-038) The e-Books Litigation is a recent example of effective coordination between state attorneys general and class counsel that resulted in consumers receiving nearly US$600 million in direct repayments from the defendants. Another example of effective coordination between state attorneys general and class counsel are the lawsuits brought by 23 state attorneys general and private class counsel related to a vitamin price-fixing conspiracy that resulted in US$305 million in settlements for indirect purchasers.[[91]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-037) Strategic and practical considerations when engaging with state attorneys general Below are several factors that parties should consider when assessing the most effective manner in which to engage with state antitrust enforcers prior to or during an investigation. Unlike the leaders of the DOJ Antitrust Division and FTC, most state attorneys general are elected officials who have to answer to their constituents. As a result, state attorneys general might be more inclined to take into consideration possible public reaction when making an antitrust enforcement decision. In addition, they might be more willing to listen to the views of key players in their state’s electoral process – such as influential lawmakers, important employers and labour unions, and powerful interest groups – prior to making an enforcement decision. Thus, the efforts of parties seeking to persuade an attorney general office to reach a specific enforcement decision could be helped by having these types of groups advocate – either through public statements or direct communications with state attorneys general – for their desired outcome. Such third-party advocacy is likely to be more persuasive and effective when presented within an antitrust analytical framework. Given that state antitrust enforcers have recently become more active and shown a willingness to act separately from their federal counterparts, parties should assess early on whether any state attorneys general are likely to be particularly interested in an investigation and, if so, determine whether their objectives would be served by proactively engaging with these state attorneys general. Such proactive engagement at the outset of an investigation could take the form of early meetings with senior leaders and investigative staff, written submissions that frame the key issues, or expressing a willingness to respond to targeted information requests. Factors that may influence a state attorney general office’s interest in an antitrust matter could include whether a large number of residents would be or have been harmed by a transaction or business practice; whether an investigation relates to an important industry in the state; whether a merger may result in significant job losses in the state; or whether the issues involved in an investigation have received considerable local or national media attention. While state attorneys general have recently shown a greater willingness to bring enforcement actions when federal enforcers fail to do so, the inability to rely on the DOJ or FTC’s expertise and resources poses challenges that could make state enforcers more reluctant to bring cases that present higher litigation risks, such as vertical merger challenges or conduct that would require a full blown rule of reason analysis. Accordingly, parties should take into account the theories of harm that are likely to arise in an investigation and whether federal enforcers are likely to act on such theories when formulating and adjusting their engagement strategy with respect to state enforcers. There are significant differences among state attorneys general. Some offices have a more pro-enforcement culture and philosophy when it comes to antitrust matters. Certain offices have more experienced staff and greater resources that enable them to take an aggressive enforcement approach. Consequently, parties should take these differences into account when determining their strategy for engaging with state antitrust enforcers. For instance, these differences may cause parties to seek to set the tone for an investigation early on by lining up the support of potentially ‘friendlier’ state attorneys general through immediate and proactive engagement with them. These differences could also cause parties to focus their efforts on state attorneys general that are viewed as leaders within the state antitrust enforcement community. If faced with parallel state and federal investigations, parties should generally welcome and encourage coordination between the investigative teams. Such coordination helps limit the time, burden and cost associated with overlapping investigations. In addition, such coordination can help parties minimise the risk of conflicting enforcement decisions that can disrupt their business operations, hurt employee morale, and create challenges with important customer and supplier relationships. Similarly, parties faced with parallel state and federal investigations should ensure that the positions they take before both investigative teams are consistent because state and federal enforcers often share information with each other. If they believe that parties are misleading them in any way, this can prolong both investigations, increase the time and money that parties have to spend on the investigations, and make it much harder to obtain the desired outcome. Certain state laws provide less confidentiality protection than federal laws. Thus, parties should familiarise themselves with each state’s confidentiality protections for material produced during antitrust investigations when negotiating the scope of information requests and any related confidentiality agreements. Given that state antitrust enforcers tend to have small staffs and limited resources, they may consider closing or limiting the scope of an investigation if they believe that consumer harm is not sufficiently widespread to justify the expenditure of those resources. Similarly, state antitrust enforcers may take a ‘wait and see approach’ in an investigation if there is pending private litigation that could adequately protect consumers and the competitive process. Thus, while not conceding any wrongdoing, parties seeking to persuade state attorneys to close or curtail an investigation could highlight the limited alleged harm or the fact that such harm (if any) would likely be adequately addressed through other proceedings. Recent examples of state enforcement litigation Cartel cases In recent years, the states have been at the forefront of several cartel-related civil litigations. Their role in such cases has varied from taking the lead entirely and breaking from their federal counterparts, to working with the federal government and private plaintiffs. The most prominent example of the state attorneys general taking the lead in civil cartel litigation is their role in the massive (and continuously expanding) In re Generic Pharmaceuticals Pricing Antitrust Litigation.[[92]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-036) In this case, the attorney generals for 47 states and the District of Columbia and Puerto Rico, led by the Connecticut Attorney General, joined a complaint after an extensive investigation that alleges an industry-wide conspiracy to inflate the price of certain generic drugs.[[93]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-035) Two years later, the state attorneys general for 43 states and Puerto Rico, again led by the Connecticut Attorney General, filed a new, second complaint against several manufacturers and, notably, many individuals. The newer complaint, nearly 500 pages long and concerning over 100 different drugs, alleges ‘an overarching conspiracy, the effect of which was to minimize if not thwart competition across the generic drug industry’.[[94]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-034) Most recently, a coalition of 51 states and territories filed a third complaint against 26 corporate defendants and 10 individual defendants alleging that the defendants fixed prices and allocated markets for 80 topical generic drugs.[[95]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-033) The DOJ, by contrast, has been slower to act and pursue this alleged conduct, although it has become more aggressive in 2020. The DOJ obtained two guilty pleas from executives in late 2016. The allegations in the executives’ charging documents concerned only two drugs, as opposed to the sprawling conspiracy alleged by the states.[[96]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-032) Since then – mostly in 2020 – the DOJ has charged six companies and four individuals in the alleged generic drugs conspiracy, most of whom have pleaded guilty.[[97]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-031) DOJ’s charging documents are often of a much narrower scope than the conspiracies alleged by the states.[[98]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-030) This, of course, does not mean that the allegations the states are pursuing have merit or that the DOJ will not ultimately cover more ground, but to date, the states have undeniably taken the more aggressive approach in this sweeping investigation. The Generic Drugs MDL also illustrates the advantages and challenges of coordination with a large contingent of state attorneys general in multi-district litigation. The state attorneys general can be extremely valuable allies for plaintiffs in multi-district litigation. Unlike private plaintiffs, they have the benefit of pre-litigation compulsory process and any complaint they file will benefit from their ability to conduct pre-litigation discovery. To illustrate, the states’ later-filed complaint in the Generic Drugs MDL was based on: (1) the review of many thousands of documents produced by dozens of companies and individuals throughout the generic pharmaceutical industry, (2) an industry-wide phone call database consisting of more than 11 million phone call records from hundreds of individuals at various levels of the Defendant companies and other generic manufacturers, and (3) information provided by several as-of-yet unidentified cooperating witnesses who were directly involved in the conduct alleged herein.[[99]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-029) In only the rarest of circumstances could a private antitrust plaintiff hope to gain access to so much information prior to filing an action. Therefore, by simply being a part of a multi-district litigation, the states can be tremendous sources of information and, to the extent permitted, can significantly assist private plaintiffs. On the other hand, states can (and do) have unique interests from private litigants and may try to distance themselves, as has occurred in the Generic Drugs MDL. There, the states filed a motion to establish a separate government track for case management purposes, apart from the private plaintiffs. Specifically, the states sought a ruling that would exempt them from the court’s requirement to file complaints on a drug-by-drug basis.[[100]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-028) Among other things, the states highlighted the ‘fundamental differences’ between state plaintiffs and class plaintiffs,[[101]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-027) and that the states’ theory was based on an ‘extensive multi-year investigation, including information . . . that was unavailable to the private plaintiffs when pleading their separate complaints’.[[102]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-026) Finally, the states noted that they were not part of the multidistrict litigation when the court issued its original order requiring drug-by-drug complaints.[[103]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-025) The court granted the states’ request with ‘no hesitation’.[[104]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-024) While the Generic Drugs MDL may not be wholly unique, it has previously been less common for states to take the leading role in cartel-related civil litigation, even where states may have started the investigation. The e-Books Litigation discussed above is illustrative of what has been the more traditional dynamic, although that may well be changing. As senior DOJ officials have noted, the e-Books Litigation serves as a ‘remarkable example of effective federal-state cooperation’, where the investigation was opened by the Texas Attorney General’s Office; early investigative work done by the state attorney general offices in Texas and Connecticut enabled the DOJ to get up to speed quickly; one of the best documents in the case was found during a document review by an Arkansas attorney; depositions taken by Texas and Connecticut lawyers were important during trial; and the states’ economist testified at trial, which complemented testimony from the DOJ’s economist.[[105]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-023) Despite the undeniably important role the states played throughout this litigation, the case remained captioned United States v. Apple Inc., and the DOJ took the lead role in establishing liability at trial and prevailing on appeal. One important feature often seen in cartel-related civil litigation (as was seen in the e-Books Litigation and may be seen in the Generic Drugs MDL) is the states’ parens patriae authority. Parens patriae suits are powerful tools in several respects. Unlike private class actions, certain attorneys general are granted ‘statutory authority to sue in parens patriae and need not demonstrate standing through a representative injury nor obtain certification of a class in order to recover on behalf of individuals’.[[106]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-022) Likewise, a state suit in parens patriae can even have a res judicata effect in private litigation.[[107]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-021) For that reason, it is critical for private litigants to be mindful of any parens patriae lawsuits and to engage state enforcers early in the process in order to ensure their cooperation as much as possible. Non-cartel civil conduct cases State attorneys general have also played pivotal roles in recent non-cartel civil conduct cases. Perhaps most notably is certain states’ roles in the American Express anti-steering litigation—an unusual rule of reason case that raised novel issues of relevant market definition. In American Express, the DOJ and 17 states sued Visa, MasterCard, and American Express over each network’s anti-steering rules. Visa and MasterCard settled, but American Express took the case to trial. American Express’ anti-steering rules prohibited merchants who accept American Express cards from ‘steering customers to alternative credit card brands’.[[108]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-020) Led by a DOJ trial team, the DOJ and states prevailed after a month-long trial.[[109]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-019) The district court concluded that ‘[b]y preventing merchants from steering additional charge volume to their least expensive network, for example, the [anti-steering rules] short-circuit the ordinary price-setting mechanism in the network services market by removing the competitive “reward” for networks offering merchants a lower price for acceptance services’.[[110]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-018) American Express, however, appealed the decision and secured a complete reversal of the district court’s judgment; the Second Circuit remanded the case with instructions to enter judgment for American Express.[[111]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-017) At this point, after a change in presidential administrations and after obtaining several extensions of time to file a petition for writ of certiorari, the DOJ dropped out. Led by Ohio, 11 of the original 17 states filed a petition for a writ of certiorari seeking review of the Second Circuit’s decision.[[112]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-016) In an interesting twist, the DOJ then filed a brief opposing review of the Second Circuit’s decision, while nonetheless arguing the decision was incorrect.[[113]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-015) Despite the fact that the DOJ, as the lead plaintiff at trial, affirmatively opposed the grant of certiorari, the United States Supreme Court agreed to review the case. Ohio took the lead at oral argument (although it split oral argument with the DOJ, which rejoined the states’ efforts after certiorari was granted). In a five-to-four decision, the United States Supreme Court affirmed the Second Circuit’s decision, concluding that American Express’ anti-steering rules did not violate the Sherman Act.[[114]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-014) While the scope of the decision is beyond the focus of this chapter, the United States Supreme Court addressed novel issues involving relevant markets for two- or multi-sided platforms and appeared to endorse, for the first time, a structured rule of reason analysis.[[115]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-013) Another high profile non-cartel conduct case brought by a state attorney general is California’s case against Sutter Health (Sutter Health Litigation). Interestingly, this case followed two private class actions: one brought in the California state court and one brought in the federal court.[[116]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-012) In the Sutter Health Litigation, the California Attorney General alleged that Sutter Health ‘unreasonably restrained trade through a variety of anticompetitive [contractual] terms’ that fall into three buckets: all-or-nothing terms, which require health plans that offer services at a Sutter Health hospital or related health care provider to also offer the services at every other Sutter Health hospital or related health care provider;[[117]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-011) anti-incentive terms, which forbid or penalise health plans that use tiered networks or other incentives to incentivise enrollees for choosing a cheaper competing hospital or provider over a more expensive one;[[118]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-010) and price-secrecy terms, which prohibit health plans from disclosing the prices that Sutter Health negotiated for services offered through the health plan.[[119]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-009) Based on these contractual terms, the California State Attorney alleged three violations of California’s antitrust statute, the Cartwright Act. The first cause of action was for price tampering, the second for tying and the third for conspiracy to monopolise. The court denied Sutter Health’s motion for summary judgment,[[120]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-008) and subsequently held that, with one potential exception, the state’s claims would be adjudicated under the rule of reason.[[121]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-007) On the eve of trial, Sutter Health settled the actions brought by the California State Attorney General and private plaintiffs, agreeing to pay $575 million to resolve the class damages claims and agreeing to ‘comprehensive injunctive relief that will enjoin . . . Sutter’s alleged restrictions on the ability of health plans to steer patients away from higher cost providers’.[[122]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-006) The terms of the settlement will in many ways determine the importance and impact of the Sutter Health Litigation but commentators have already noted that this litigation represents a ‘landmark case’, as it ‘is really important for other big health systems and is a clear signal that the state enforcers are looking out for [the challenged business practices] and recognising this as anticompetitive behavior’.[[123]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-005) If nothing else, ‘it reflects a potential expansion of antitrust enforcement from state attorneys general where federal enforcers may be reluctant to intervene.’[[124]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-004) Commentators have also noted that the private plaintiffs received a significant lift when the California Attorney General decided to join the litigation and adopt their theories of harm because it gave ‘them more weight than they might otherwise have if brought solely by private plaintiffs’.[[125]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-003) Merger litigation Traditionally, it has been the federal government that has taken the lead on challenging mergers through litigation. But recently, the states have shown that they are willing to independently challenge high-profile mergers even where federal enforcers have opted not to so. The most notable example by far is the 2019 lawsuit filed by numerous state attorneys generals that unsuccessfully sought to block the merger of T-Mobile and Sprint. Led by New York, these states filed their lawsuit before the DOJ made its enforcement decision. Moreover, the states continued pressed forward with their lawsuit even after the DOJ and Federal Communications Commission negotiated settlements with the companies that included certain structural and behavioural relief. As commentators have observed, there does not appear to have ever been another ‘situation where state antitrust enforcers went to court to challenge a merger without waiting for a decision by their federal counterparts’, or where ‘states tr[ied] to stop a telecommunications merger approved by both the [DOJ] and [FCC]’.[[126]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-002) This state enforcement action was made all the more remarkable by the fact that the states proceeded to try the case to judgment even in the face of the DOJ’s active opposition, which, as noted above, included the DOJ’s efforts to disqualify the states’ retained private counsel as well as the DOJ’s filing of court submissions opposing the states’ requested injunction. There have been other lower profile, but still significant, instances of states independently flexing their enforcement muscle as well. Notably, states have shown a willingness to seek more aggressive remedies to protect their citizens where the federal government fails to do so. As mentioned above, when Optum sought to acquire DaVita Medical Group, the FTC declined to seek any Colorado-related remedies. The Colorado Attorney General, however, took independent action by filing a complaint under the Colorado Antitrust Act with a consent judgment that sought additional protections in Colorado, namely, precluding UnitedHealth Group (Optum’s parent) from enforcing certain exclusivity provisions and from entering into new agreements with certain exclusivity provisions, and keeping in place agreements between DaVita Medical Group and other health plans.[[127]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-001) In seeking this additional remedy, the Colorado Attorney General stated: ‘Traditionally, state attorney general offices have taken a back seat to the federal government in protecting consumers. . . . Today’s action is a path-marking step that demonstrates Colorado’s commitment to protecting consumers from anti-competitive mergers or other harmful actions.’[[128]](https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement#footnote-000) Overall, merging parties should not neglect state enforcers in attempting to gain approval for a transaction, even if it appears that federal approval is likely. As the above examples show, states are willing to depart from their federal enforcement partners if they believe their citizens’ interests and state economies will be harmed by a merger.

#### Second, states is core of the literature—the NAAG spans across all 50 states and allows for uniform action, which proves the CP is predictable and not utopian

Grosso, 21

(Jacob P Grosso, J.D. Candidate, 2021, University of Richmond School of Law. B.A., 2018, George Mason University., “The Preemption of Collective State Antitrust Enforcement in Telecommunications,” 55 U. RICH. L. REV. 615 (2021) NL)

State action is continuing to rise, with collective action becoming a cemented enforcement strategy. 151 The National Association of Attorneys General ("NAAG") serves to help organize disparate state enforcers and gives them a forum to discuss enforcement policies and cooperation. 15 2 The NAAG emulates a federal agency in geographic breadth of enforcement but is comprised of individual states and their elected officials (the States' Attorneys General).1 53 It achieves its influence through standing committees and task forces, including its Multistate Antitrust Task Force. 154

#### An anti-Google case involved 50 state and US territories

McGinnis and Sun 21, John O. McGinnis is the George C. Dix Professor in Constitutional Law at Northwestern Pritzker School of Law. McGinnis is a panelist called on to decide WTO disputes and graduate of Harvard Law School, Linda Sun is an intellectual property lawyer at Wilmerhale and former editor in chief of Northwestern Journal of Technology and Intellectual Property during her time at Northwestern Pritzker School of Law, “Unifying Antitrust Enforcement for the Digital Age”, 78 Wash. & Lee L. Rev. 305, 2021

Big Tech's rise has not gone unnoticed. After the 2016 presidential election, many questioned whether large tech platforms wield too much influence.i0 2 In the years following, Big Tech has come under fire from lawmakers on both sides of the political spectrum.103 In 2019, the House Judiciary Subcommittee on Antitrust opened a bipartisan "top-to-bottom" investigation of the tech industry, calling on tech executives to address allegations of anti-competitive behavior.10 4 In the same year, fifty attorneys general from U.S. states and territories opened an antitrust investigation of Google.i05 Another coalition of state attorneys general announced a similar probe into Facebook. 06

#### Anti-tobacco cases in the early 2000s involved multistate action

Pridgen, 18

(Dee, Carl M. Williams Professor of Law and Social Responsibility, University of Wyoming College of Law, Pridgen has also been a Visiting Professor of Law at the University of Baltimore School of Law, the University of Maryland School of Law, and the Catholic University of America, Columbus School of Law. Before she joined the College of Law Faculty at the University of Wyoming, she served as a Staff Attorney, for the Federal Trade Commission, Bureau of Consumer Protection, Washington, D.C. from 1978-82. She was also a law clerk for the Honorable Barrington D. Parker, U.S. District Court, District of Columbia from 1974-76. In May of 2003, Pridgen was elected to membership in the American Law Institute. Dee Pridgen's publications include two treatises aimed at practicing attorneys, Consumer Protection and the Law, and Consumer Credit and the Law, coauthored with Richard M. Alderman both published by Thomson/Reuters, and both of which are updated yearly. She is also a coauthor of a law school casebook entitled Consumer Law: Cases and Materials (4th ed. 2013; West Academic). She is the principal author (with coauthor Gene A. Marsh) of Consumer Protection in a Nutshell (4th ed. 2016). She has written articles and reports on consumer law, and has given presentations at international consumer law meetings in Helsinki, Finland and Auckland, New Zealand, B.A., Cornell University (1971), Phi Beta Kappa and with distinction, J.D., New York University (1974), Order of the Coif and cum laude, “The Dynamic Duo of Consumer Protection: State and Private Enforcement of Unfair and Deceptive Trade Practices Laws”, (2018). *Faculty Articles*. 13. https://scholarship.law.uwyo.edu/faculty\_articles/13)\\JM

II. KEY ROLE OF STATE ATTORNEYS GENERAL As stated in the preceding part, the FTC developed their model state UDAP statute with a goal of broadening the reach of the FTC’s consumer protection mission to the states. The state government enforcers were viewed as allies, perhaps even foot soldiers, in the fight against unfair and deceptive trade practices. But since the vehicle for this extension of FTC authority to the states came in the form of independently enacted state laws, the FTC had no direct control over the activities of the states in this sector, other than the federal preemption doctrine. Over the years, the power and enthusiasm of the state AG’s for their consumer protection mission grew, while the FTC and the federal government in general became less enthusiastic about perceived over-regulation of the free market during the 1980s and in later periods as well. Further venturing past their federal “parent,” states also enhanced their power by joining together in multistate litigation to take on large corporate advertisers, such as the tobacco companies and magazine publishers using sweepstake marketing. In the 2000s, states used their UDAP statutes to challenge prescription drug makers and predatory lenders, among others, and sometimes employed outside private counsel on a contingent fee basis to further enhance the efficiency and effectiveness of their cases. And yet despite the periodic federal/state tensions regarding the appropriate role of government regulation in the consumer protection arena, both the FTC and the more recently created Consumer Financial Protection Bureau, continue to partner with the state AGs on so-called enforcement “sweeps.” All in all, the role of the states in enforcing the state UDAPs has been beneficial for consumers and the relationship with the federal agencies has been more of a sibling rivalry than an armed conflict.

#### Fourth, the aff is just as undebatable as the CP is—sweeping changes to the core antitrust laws are impossible in a divided Congress, especially given a conservative GOP which would just water down any antitrust legislation—this means their theory arg is either arbitrary or it justifies no affs on this topic and destroys debate

Serwer, 21

([Adam Serwer](https://www.theatlantic.com/author/adam-serwer/) is a staff writer at The Atlantic "‘Woke Capital’ Doesn’t Exist," April 6 2021 <https://www.theatlantic.com/ideas/archive/2021/04/dont-buy-conservative-rebellion-against-corporations/618519/> NL)

Republicans cannot imagine labor relations as exploitative except in that someone might have to sit through a tedious video on race or gender sensitivity in the workplace. They do not perceive the concentration of corporate power as perilous unless companies’ desire to retain their customer base interferes with Republican schemes to entrench their own political dominance. They see freedom of speech as vital, unless it prevents them from using the state to sanction forms of political expression they oppose. Their criticisms of “woke capital” go no deeper than this. As such, the Republican anti-corporate turn is entirely superficial. That’s a shame, because the concentration of corporate power has had a negative effect on American governance, leading to an age of inequality in which economic gains are mostly enjoyed by those in the highest income brackets. Since the 1970s, despite massive gains in productivity, most Americans have seen their wages rise very slowly, while the wealthiest have reaped almost all the gains of economic growth. That outcome was a policy choice, not an inevitability. “Starting in the 1970s, the people in charge of designing and implementing the tax code increasingly favored those at the very top,” the political scientists Jacob Hacker and Paul Pierson wrote in Winner-Take-All Politics. “The rich are getting fabulously richer while the rest of Americans are basically holding steady or worse.” Notably, they argued, this trend “is not obviously related to either the business cycle or the shifting partisan occupancy of the White House.” Economists on the left have concluded that this is because the extremely wealthy have a stranglehold on American politics that prevents policy changes that would more fairly distribute economic gains. And that, in turn, helps explain the seemingly high stakes of the culture war over corporate-branding decisions: The concentration of corporate power means that large companies wield outsize cultural influence, and their policy priorities are more often translated into law than those [with broader public support](https://www.reuters.com/article/us-usa-election-inequality-poll/majority-of-americans-favor-wealth-tax-on-very-rich-reuters-ipsos-poll-idUSKBN1Z9141). “One thing that is clear from the emerging evidence is that economic inequality reinforces differences in political and social power, and these in turn affect market outcomes,” the economist Heather Boushey, now a member of President Joe Biden’s Council of Economic Advisers, wrote in Unbound. This diagnosis lends itself to certain solutions, some of which are apparent in the Biden administration’s agenda. Although in the past, Democratic Party policies have exacerbated the problem, in recent years, much of the party has moved left on economic issues and now appears to recognize the threat that extreme inequality represents. The obvious Republican insincerity on deficits, and the depth of the coronavirus crisis, [expanded the horizon](https://www.theatlantic.com/ideas/archive/2020/04/republican-party-discovers-virtues-stimulus/609244/) for Democrats as they contemplated policy changes. The design of generous unemployment provisions, direct-aid payments, and [the recently passed child allowance](https://www.theatlantic.com/ideas/archive/2021/03/biden-chose-prosperity-over-vengeance/618279/), all of which disproportionately benefit the low-wage workers who have borne the brunt of the pandemic, reflected that new ambition, and Biden has already proposed modestly raising [corporate tax rates](https://www.nytimes.com/2021/04/05/business/raising-taxes-corporations.html) in his infrastructure plan. But reducing corporate power, and with it the grip of the wealthy on government, will require more than that. Strengthening [organized labor through](https://www.epi.org/publication/pro-act-problem-solution-chart/) the PRO Act, which would make it easier to unionize, would provide a needed counterbalance to corporations. The Biden administration has also indicated a willingness to use [antitrust regulations](https://www.washingtonpost.com/politics/2021/01/18/biden-antitrust-big-tech/) against tech firms that have amassed a stunning amount of power over Americans’ daily lives in the past few decades. Proposals from the left wing of the party to [reestablish postal banking](https://www.washingtonpost.com/outlook/2020/07/21/postal-banking-is-making-comeback-heres-how-ensure-it-becomes-reality/) and [mandate worker representation](https://www.nytimes.com/2019/01/06/opinion/warren-workers-boards.html) on corporate boards would further diminish the influence of the extremely wealthy. Perhaps Republicans don’t like these ideas. They are, after all, liberal and left-wing ideas. But when it comes to breaking the concentration of political and economic power in the hands of the very wealthy, Republicans have no ideas of their own to speak of, beyond issuing colorful threats to employ state coercion against firms that fail to do their bidding. The GOP is unbothered by the concentration of wealth or power as such, which is not only why it opposes all of these measures, but also why the centerpiece of its agenda the last time it controlled both Congress and the White House was a [massive and regressive tax cut](https://www.nytimes.com/interactive/2018/08/12/opinion/editorials/trump-tax-cuts.html). What vexes Republicans is the sight of corporations responding to market incentives by making public displays of support for egalitarianism and nondiscrimination, which is not the same as corporations actually supporting those things. Putting out statements supporting Black Lives Matter or adorning their logos with pride colors is very easy for big corporations, but such gestures do not signal a commitment to fair wages, safe working conditions, or a willingness to pay their share in taxes, let alone racial egalitarianism in all but the most cosmetic sense. They are merely brand management. “Woke capital” does not actually exist, only capital—and its interests remain the same as they have always been. Like the Republican turn against democracy, the newfound opposition to the market fundamentalism that conservatives once espoused and the free-speech principles they pretended to revere is superficial and contingent. Free speech, democracy, and free-market capitalism were fine as long as Republicans could expect victory in these arenas. But with public opinion shifting against them on key priorities, their focus has now turned to rigging the rules of the game to their advantage rather than winning over a larger share of the public. They do not seek to achieve a more equitable distribution of either money or power, but to ensure that the present inequities work to their political advantage. An irony is that the era with which the right is enraptured was in part a product of a set of mid-century economic arrangements—higher taxes on the wealthy, greater union density, stronger regulations—that the left is attempting to restore, in some form, while including [a novel commitment](https://www.npr.org/2017/05/03/526655831/a-forgotten-history-of-how-the-u-s-government-segregated-america) to racial and gender equality. Republicans have no interest in curtailing corporate power in this fashion—not when they believe that power could be used to reimpose a diminished cultural hegemony. These so-called populist Republicans do not wish to throw the one ring into Mount Doom; they simply want to wield it on their own behalf.

## Precision ADV

#### Data disproves

Cliffe, 16

(Sarah Cliffe 16, Director of the Center on International Cooperation at New York University, 3/29/16, “Food Security, Nutrition, and Peace,” http://cic.nyu.edu/news\_commentary/food-security-nutrition-and-peace)

However, current research **does not** yet indicate a clear link between climate change, food insecurity and conflict, except perhaps where rapidly deteriorating water availability cuts across existing tensions and weak institutions. But a series of interlinked problems – changing global patterns of consumption of energy and scarce resources, increasing demands for food imports (which draw on land, water, and energy inputs) can create pressure on fragile situations. Food security – and food prices – are a highly political issue, being a very immediate and visible source of popular welfare or popular uncertainty. But their **link to conflict** (and the wider links between climate change and conflict) is indirect rather than direct. What makes some countries more resilient than others? **Many** countries face food price or natural resource shocks **without falling into conflict**. Essentially, the two important factors in determining their resilience are: First, whether food insecurity is combined with **other stresses** – issues such as unemployment, but most fundamentally issues such as political exclusion or human rights abuses. We sometimes read nowadays that the 2006-2009 drought was a factor in the Syrian conflict, by driving rural-urban migration that caused societal stresses. It may of course have been one factor amongst many but it would be **too simplistic** to suggest that it was the primary driver of the Syrian conflict. Second, whether countries have strong enough institutions to fulfill a social compact with their citizens, providing help quickly to citizens affected by food insecurity, with or without international assistance. During the 2007-2008 food crisis, developing countries with low institutional strength experienced more food price protests than those with higher institutional strengths, and more than half these protests turned violent. This for example, is the difference in the events in Haiti versus those in **Mexico or the Philippines** where far greater institutional strength existed to deal with the food price shocks and **protests did not spur deteriorating national security** or widespread violence.

#### Ag resilient—adaptation

FAOUN, 19

(FAO COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE @ UN, “THE STATE OF THE WORLD’s BIODIVERSITY FOR FOOD AND AGRICULTURE”, https://www.courthousenews.com/wp-content/uploads/2019/02/fao-report.pdf)

Maintaining, using and developing adapted genetic resources A number of countries note the significance of well-adapted species, varieties or breeds in terms of enhancing resilience to climate change. Several specific examples of how such components of BFA have been utilized in adaptation efforts are provided. For example, Papua New Guinea mentions the distribution to farmers of crop accessions identified in ex situ collections as being tolerant to salinity (taro and cassava varieties), drought (cassava, banana and aibika13 varieties) and flooding (taro and banana varieties). It notes that this activity proved very useful in sustaining food security during the drought that struck the country in 2015 and 2016,14 when 40 percent of the population was seriously affected. Panama reports that its criollo livestock breeds have a combination of characteristics that are not found in any introduced breeds, including high fertility rates, longevity, resistance to parasites and diseases and good grazing abilities, including the ability to make use of poor-quality pastures. It notes, in particular, the potential of two locally adapted cattle breeds, the Guaymi and the Guabal^, in climate change adaptation. It also mentions, among its climate change adaptation measures, the development of maize varieties and hybrids that are tolerant of drought and diplodia rot (a fungal disease) and that grow well in soils with low nitrogen levels. With regard to choices at species level, Sudan reports that some of its livestock keepers have replaced cattle and sheep with dromedaries and goats, as the latter species are better suited to a climate change-affected environment that is more prone to droughts.Some countries note the significance of participatory breeding programmes in the context of climate change. For example, Oman mentions that local wheat and barley landraces have been improved through such programmes to obtain varieties that have shorter growing seasons and can be managed more flexibly, especially during years with prolonged periods of extreme heat and limited water availability. Ensuring farmers have access to the adapted germplasm they need is another issue highlighted. Nepal, for example, mentions the role of community-based seed banks in providing farmers with immediate access to locally adapted germplasm that can be used in efforts to cope with climate change.

#### No impact to economic decline or slow growth---countries respond with cooperation not conflict. That’s Walt AND…

Christopher Clary 15. PhD in Political Science, MIT; Postdoctoral Fellow, Brown’s Watson Institute for International and Public Affairs. “Economic Stress and International Cooperation: Evidence from International Rivalries.” *MIT Political Science Department*. Research Paper 8: 4.

Economic crises lead to conciliatory behavior through five primary channels. (1) Economic crises lead to austerity pressures, which in turn incent leaders to search for ways to cut defense expenditures. (2) Economic crises also encourage strategic reassessment, so that leaders can argue to their peers and their publics that defense spending can be arrested without endangering the state. This can lead to threat deflation, where elites attempt to downplay the seriousness of the threat posed by a former rival. (3) If a state faces multiple threats, economic crises provoke elites to consider threat prioritization, a process that is postponed during periods of economic normalcy. (4) Economic crises increase the political and economic benefit from international economic cooperation. Leaders seek foreign aid, enhanced trade, and increased investment from abroad during periods of economic trouble. This search is made easier if tensions are reduced with historic rivals. (5) Finally, during crises, elites are more prone to select leaders who are perceived as capable of resolving economic difficulties, permitting the emergence of leaders who hold heterodox foreign policy views. Collectively, these mechanisms make it much more likely that a leader will prefer conciliatory policies compared to during periods of economic normalcy. This section reviews this causal logic in greater detail, while also providing historical examples that these mechanisms recur in practice.

#### No extinction---new studies. That’s Peters AND…

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

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

## China ADV

#### China wouldn’t instigate cyber war-they know they would lose

**Sarkar 15**

(Dibya, Fierce Government IT reporter, “China's military still struggling with its cyber and electronic warfare capabilities, new RAND report says”. 2-25, <http://www.fiercegovernmentit.com/story/chinas-military-still-struggling-its-cyber-and-electronic-warfare-capabilit/2015-02-25>)

While China's military has made great strides over the last two decades to modernize itself, struggles still persist in several areas including its cyber and electronic warfare capabilities, according to a new study from RAND Corp. The study examined the People's Liberation Army, or PLA, weaknesses in the areas of human capital and organizational areas, defense research and industrial complex, and combat areas at on land, sea, air, space, cyber and electromagnetic regions. Chinese space, cyber and electronic warfare capabilities collectively was an area that authors said needed improvement. "Although most attention devoted to Chinese cyberactivities focuses on Chinese cyberespionage and the theft of intellectual property, PLA analysts actually view China as potentially very vulnerable to enemy cyberactions," noted RAND's authors in the study (pdf) published Feb. 16. Additionally, the study said that shortcomings – both organizational and technological – in the PLA's command, control, communications, computers, intelligence, surveillance and reconnaissance, or C4ISR, systems could hinder the speed, reliability and effectiveness of the military's targeting capabilities. Another weakness centers around the potentiality of "unintended effects or inadvertent escalation." As prior research has pointed out, PLA analysts "accentuate the positive offensive outcomes of information warfare while ignoring its limitations and unintended consequences," according to the study. The authors noted that China does see space, cyber and electronic warfare capabilities as essential in defeating technologically advanced adversaries and PLA is making those areas a priority. However, it views "itself as occupying a relatively disadvantageous position" in cyber reconnaissance, cyberattack and defense, and cyber deterrence. As PLA increasingly becomes dependent on systems, it will be a potential weakness because China views offense as much easier than defense in network warfare. "Consequently, as the PLA becomes more and more networked, it will become increasingly dependent on technology that is vulnerable to disruption, thus creating a potential weakness that an adversary could exploit," the report said. The U.S.-China Economic and Security Review Commission, which Congress established in 2000 to monitor and report on the economic and national security dimensions of U.S.-China trade and economic ties, sponsored the report.

#### China doesn’t have the tech

**Lindsay 15** (Jon, UCSD adjunct professor, “The Impact of China on Cybersecurity: Fiction and Friction”, Winter, International Security, 39.3, <http://www.mitpressjournals.org/doi/full/10.1162/ISEC_a_00189#.VvREYOIrJD8>)

Although Chinese writers emphasize the revolutionary potential of cyberwarfare, episodes of Chinese aggression in cyberspace have been more mundane. China's “hacker wars” flare up during episodes of tension in Chinese foreign relations, as between Taiwan and the mainland between 1996 and 2004 in the wake of Taiwanese elections, between the United States and China following the 1999 bombing of the Chinese embassy in Belgrade and the 2001 EP-3 spy plane collision, and between China and Japan throughout the past decade during controversies involving the Yasukuni Shrine and the Senkaku/Diaoyu Islands.87 Nationalist hackers (as distinguished from PLA units) deface foreign websites and launch temporary distributed denial of service attacks. Nationalist online outbursts may take place with the tacit consent or encouragement of the Chinese government, yet patriotic “hacktivism” is essentially just another form of symbolic protest. There has been speculation that PLA “cyber militias” associated with Chinese universities maintain a more potent reserve capability, but one study of open sources suggests that they are oriented toward more mundane educational and network defense activities.88 The majority of known PLA cyber operations are CNE for intelligence rather than computer network attacks to cause disruption.89 Nevertheless, many analysts worry that CNE is “only a keystroke away” from CNA, thereby generating dangerous ambiguity between intelligence gathering and offensive operations. Intrusion techniques developed for industrial espionage might be used to plant more dangerous payload code into sensitive controllers or constitute reconnaissance for future assaults. Chinese probing of critical infrastructure such as the U.S. power grid is aggressive, to be sure, so a latent potential for the PLA to convert CNE into CNA cannot be discounted.90 The discovery of access vectors and exploitable vulnerabilities, however, is only the first step to achieving effective reconnaissance of a target, and effective reconnaissance is just one step toward planning and controlling a physically disruptive attack. The most significant historical case of kinetic CNA to date, the Stuxnet attack on Iran's enrichment infrastructure, suggests that painstaking planning, careful rehearsals, and sophisticated intelligence are required to control a covert disruption.91 The U.S. military also considered using cyberattacks to take down Libya's air defense system in 2011, but reportedly it would have taken too long to develop the option.92 The latency between CNE and CNA is more complicated than generally assumed. The PLA does have access to considerable resources, human capital, and engineering skill, so it might in principle overcome operational barriers to weaponization, but its observed operational focus and experience are concentrated on intelligence operations. The PLA has considerable organizational infrastructure for cyber operations, most notably in the Third and Fourth Departments of the PLA General Staff. The Third Department is the Chinese equivalent of the U.S. National Security Agency, with responsibilities for both signals intelligence and network defense. The Fourth Department (formerly headed by Gen. Dai Qingmin) is primarily responsible for electronic warfare, but its cyber mission, if any, is less clear. Western analysts have begun to piece together the bureaucratic organization of the Third Department through open-source intelligence.93 Meanwhile Western corporate and governmental cybersecurity experts have had ample opportunity to observe this organization in action given the routine neglect of operational security by Chinese cyber operators. Lax tradecraft in CNE does not inspire confidence for the sophistication and attention to detail required for serious CNA. If the U.S. cyber community with all its experience and technical savvy still struggles with the weaponization of cyberspace, as difficulties with known U.S. operations suggest, then the untried PLA should be expected to encounter still more operational challenges in the implementation and coordination of cyberwarfare. PLA competency in CNA cannot be simply inferred from high levels of CNE.

#### No heg impact

Fettweis, 17

(Christopher J. Fettweis, Associate Professor of Political Science at Tulane University. [“Unipolarity, Hegemony, and the New Peace,” 5/8/2017, <https://doi-org.proxy.lib.umich.edu/10.1080/09636412.2017.1306394>] KS

Conflict and Hegemony by Region Even the most ardent supporters of the hegemonic-stability explanation do not contend that US influence extends equally to all corners of the globe. The United States has concentrated its policing in what George Kennan used to call “strong points,” or the most important parts of the world: Western Europe, the Pacific Rim, and Persian Gulf.64 By doing so, Washington may well have contributed more to great power peace than the overall global decline in warfare. If the former phenomenon contributed to the latter, by essentially providing a behavioral model for weaker states to emulate, then perhaps this lends some support to the hegemonic-stability case.65 During the Cold War, the United States played referee to a few intra-West squabbles, especially between Greece and Turkey, and provided Hobbesian reassurance to Germany's nervous neighbors. Other, equally plausible explanations exist for stability in the first world, including the presence of a common enemy, democracy, economic interdependence, general war aversion, etc. The looming presence of the leviathan is certainly among these plausible explanations, but only inside the US sphere of influence. Bipolarity was bad for the nonaligned world, where Soviet and Western intervention routinely exacerbated local conflicts. Unipolarity has generally been much better, but whether or not this was due to US action is again unclear. Overall US interest in the affairs of the Global South has dropped markedly since the end of the Cold War, as has the level of violence in almost all regions. There is less US intervention in the political and military affairs of Latin America compared to any time in the twentieth century, for instance, and also less conflict. Warfare in Africa is at an all-time low, as is relative US interest outside of counterterrorism and security assistance.66 Regional peace and stability exist where there is US active intervention, as well as where there is not. No direct relationship seems to exist across regions. If intervention can be considered a function of direct and indirect activity, of both political and military action, a regional picture might look like what is outlined in Table 1. These assessments of conflict are by necessity relative, because there has not been a “high” level of conflict in any region outside the Middle East during the period of the New Peace. Putting aside for the moment that important caveat, some points become clear. The great powers of the world are clustered in the upper right quadrant, where US intervention has been high, but conflict levels low. US intervention is imperfectly correlated with stability, however. Indeed, it is conceivable that the relatively high level of US interest and activity has made the security situation in the Persian Gulf and broader Middle East worse. In recent years, substantial hard power investments (Somalia, Afghanistan, Iraq), moderate intervention (Libya), and reliance on diplomacy (Syria) have been equally ineffective in stabilizing states torn by conflict. While it is possible that the region is essentially unpacifiable and no amount of police work would bring peace to its people, it remains hard to make the case that the US presence has improved matters. In this “strong point,” at least, US hegemony has failed to bring peace. In much of the rest of the world, the United States has not been especially eager to enforce any particular rules. Even rather incontrovertible evidence of genocide has not been enough to inspire action. Washington's intervention choices have at best been erratic; Libya and Kosovo brought about action, but much more blood flowed uninterrupted in Rwanda, Darfur, Congo, Sri Lanka, and Syria. The US record of peacemaking is not exactly a long uninterrupted string of successes. During the turn-of-the-century conventional war between Ethiopia and Eritrea, a high-level US delegation containing former and future National Security Advisors (Anthony Lake and Susan Rice) made a half-dozen trips to the region, but was unable to prevent either the outbreak or recurrence of the conflict. Lake and his team shuttled back and forth between the capitals with some frequency, and President Clinton made repeated phone calls to the leaders of the respective countries, offering to hold peace talks in the United States, all to no avail.67 The war ended in late 2000 when Ethiopia essentially won, and it controls the disputed territory to this day. The Horn of Africa is hardly the only region where states are free to fight one another today without fear of serious US involvement. Since they are choosing not to do so with increasing frequency, something else is probably affecting their calculations. Stability exists even in those places where the potential for intervention by the sheriff is minimal. Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. It seems hard to make the case that the relative peace that has descended on so many regions is primarily due to the kind of heavy hand of the neoconservative leviathan, or its lighter, more liberal cousin. Something else appears to be at work. Conflict and US Military Spending How does one measure polarity? Power is traditionally considered to be some combination of military and economic strength, but despite scores of efforts, no widely accepted formula exists. Perhaps overall military spending might be thought of as a proxy for hard power capabilities; perhaps too the amount of money the United States devotes to hard power is a reflection of the strength of the unipole. When compared to conflict levels, however, there is no obvious correlation, and certainly not the kind of negative relationship between US spending and conflict that many hegemonic stability theorists would expect to see. During the 1990s, the United States cut back on defense by about 25 percent, spending $100 billion less in real terms in 1998 that it did in 1990.68 To those believers in the neoconservative version of hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities doubts that the defense budget has been cut much too far to meet America's responsibilities to itself and to world peace,” argued Kristol and Kagan at the time.69 The world grew dramatically more peaceful while the United States cut its forces, however, and stayed just as peaceful while spending rebounded after the 9/11 terrorist attacks. The incidence and magnitude of global conflict declined while the military budget was cut under President Clinton, in other words, and kept declining (though more slowly, since levels were already low) as the Bush administration ramped it back up. Overall US military spending has varied during the period of the New Peace from a low in constant dollars of less than $400 billion to a high of more than $700 billion, but war does not seem to have noticed. The same nonrelationship exists between other potential proxy measurements for hegemony and conflict: there does not seem to be much connection between warfare and fluctuations in US GDP, alliance commitments, and forward military presence. There was very little fighting in Europe when there were 300,000 US troops stationed there, for example, and that has not changed as the number of Americans dwindled by 90 percent. Overall, there does not seem to be much correlation between US actions and systemic stability. Nothing the United States actually does seems to matter to the New Peace.

# 1NR

## DA

#### BBB will pass – Biden is fully invested and has momentum

DEESE 11/9 (Brian; Director – National Economic Council, “White House ‘confident’ Congress will pass Build Back Better bill,” <https://www.pbs.org/newshour/show/white-house-confident-congress-will-pass-build-back-better-bill>, //pa-ww)

Yamiche Alcindor: Since the infrastructure vote on Friday night, the Biden administration has directed its focus to the Build Back Better package. That's the $1.75 trillion bill with money for child care, health care, and climate change. It needs nearly every House Democrat and all 50 Senate Democrats on board to pass. Brian Deese is the director of the National Economic Council for the Biden administration. He's been a central figure in these negotiations. And he joins me now from the White House. Brian, thank you so much for being here. President Biden will soon pass the bipartisan infrastructure plan, but there were many lawmakers who wanted it tied to the Build Back Better act. What assurances can you give Americans that that Build Back Better act is going to become law? And how soon do you expect that to happen? Brian Deese, Director, National Economic Council: Well, for starters, what I can assure folks is that signing this historic infrastructure bill is going to do a lot of good for the country. We have waited decades to actually do something about infrastructure. And, in that period, the United States has fallen behind. We're 13th in the world in infrastructure. And with this piece of legislation that the president will sign soon, we're going to make historic investments in rebuilding both our physical infrastructure ports, and airports, roads, and bridges, transit, but also provide high-speed Internet to all Americans, clean water by replacing lead service lines across the country. So this is a big set of investments, a capital investment in America that we have waited way too long to do, and we're now finally going to make happen. And I think that's going to build real momentum for getting the second half of the president's economic agenda, the Build Back Better plan, into law. That will start next week, where we anticipate a vote in the House, and then onto the Senate as well. Yamiche Alcindor: Now, the Congressional Budget Office said today that it's releasing estimates for individual titles on this bill, but that it's not clear when it will have a final cost for the final bill. There are some moderates who say they want to see a CBO score before they vote for this. House Speaker Nancy Pelosi has said that she wants to vote on this Build Back Better Act on the week, next week, the week of November 15. How sure are you — how sure are you that this CBO score will be available by then? But also how worried is the president and yourself that there won't be the score needed to pass this bill in the House? Brian Deese: Well, we're very confident that this bill is fiscally responsible and fully paid for. We saw last week the Joint Committee on Taxation, which is the gold standard for the revenue provisions in this bill, reinforce that there is more than enough revenue, more than enough offsets to offset all of the new investment in this package. And this is the typical process. Both chambers of Congress typically vote on bills when they have enough information. So, we anticipate that there will be more information provided to lawmakers this week, and, consistent with the commitments that lawmakers and leadership made, that there will be a vote next week, based on that additional information, in the House. This is a process. The bill will pass the House and then will go to the Senate. But, at the end of the day, the most important bottom line is, these are high-value, targeted investments in the American people and the American economy that are fully paid for. Yamiche Alcindor: How confident are you that you have the votes to get this Build Back Better Act passed? And I also wonder what — you're in the room. What are you telling lawmakers as you try to close this deal? Brian Deese: We are confident that this framework will pass the House and will pass the Senate. And what we're telling lawmakers is, this is an easy vote. The American people are looking to lower the cost of prescription drugs. They're looking to lower the cost of child care and to provide a tax cut to middle-class families, so they finally can have some breathing room. People who are anxious about their economic circumstance, are seeing higher prices, what we — this bill will do is actually lower prices, lower inflationary pressure by getting more people to work. And it is fully paid for, and paid for in a responsible way, by asking the largest companies to pay a bit more, as well as the wealthiest Americans. So this is a straightforward plan to deliver where the American people need it most. We're making that case. And we're confident that we can get it through both houses of Congress. Yamiche Alcindor: I want to also ask you about paid family leave. It was added back into the Build Back Better Act. But senators, including Senator Manchin, they have been opposed to this. I wonder, do you expect paid family leave to be in the final bill? Brian Deese: Well, we're going to work on this issue, and we will see. There's some twists and turns ahead. Paid family leave is certainly something that the president has always and consistently been supportive of. There's been concerns raised by members of Congress. So we're going to work that through. But I think, at the core, the question is not what is not going to be in this package, but what this package will actually deliver for the American people. We have been talking about something like universal preschool for years and decades. Again, economists of all stripes have identified that as the one of the highest investments we could make in terms of value for the American economy, getting all our 3- and 4-year-olds educated at an early age. We have the potential to get that done and, again, get it done in a way that is fiscally responsible, fully paid for, doesn't raise taxes for anyone making less than $400,000 a year. That's the plan. Yamiche Alcindor: And, Brian, in the last administration that you worked for — that would be former President Obama — you were also a key expert on climate change. I want to ask you about climate change in this bill. Are you worried that there are critics who think that you gave up too much on climate and that this bill is too watered down as it relates to those issues? Brian Deese: This bill, as it's structured, would be the largest and most significant investment in climate change in our nation's history by a significant factor. It would, if enacted, reduce one gigaton of emissions from our economy. And, most importantly, it would spark new economic engines in our economy, from the electric vehicle industry, to the clean power industry, not only putting people to work in good-paying jobs around the country, but creating new export opportunities, so that the United States is actually exporting the next generation of, for example, American-made vehicles, electric clean vehicles all around the world. It's an enormous economic opportunity and a very significant investment. We feel good about what we can get done on climate change, in the same way that we feel good about what we can do to get more people to work by providing child care and eldercare and preschool. Yamiche Alcindor: And, right now, Americans are facing some real economic struggles. Gas prices are at a record high, the highest, some experts say, that they have been in seven years. There are people that are paying more for the meat that they want to put on the Thanksgiving table. What do you say that to some critics who think that the White House is too focused on long-term investments and are not focused enough on sort of short-term right now relief for Americans? Brian Deese: Look, President Biden understands deeply the impact that higher prices can have on a typical family, whether that's the price at the pump or the price at the grocery store. And he is focused like a laser on those issues. In fact, just today, he was making calls to CEOs of some of the biggest companies, our biggest retailers, as well as freight movers, like FedEx and UPS, to talk about how we can unstick the bottlenecks, some of these bottlenecks that are keeping goods from moving as quickly as they can throughout the economy. So he is on this case. But I would also underscore the economic momentum and progress that we are making is real. We have seen 5.6 million jobs created. The unemployment rate is down to 5.6 — to 4.6. That's two years faster than most experts created. And a lot of these supply chain challenges are actually a reflection of the fact that we are moving more goods, more products through the American economy now than at any time in history, significantly higher than before the pandemic. That's a good thing. It reflects the fact that Americans are out there unable to buy goods again. We're going to work through those challenges. And we are on that every day in the short term. But we think we can focus on both the short term and the medium and longer-term challenges. Part of why we're in this problem is, we haven't invested in building our infrastructure, so that we have more resilient ports, more resilient roads and bridges around America. We can do both of these things. That certainly is what we're focused on. Yamiche Alcindor: Well, thank you so much for joining us, Brian Deese, the director of the National Economic Council.

#### BBB will pass – Dems are unified behind it

PRAMUK 11/8 (Jacob; CNBC, “As the bipartisan infrastructure bill passes, here's what's next for Biden's economic plans,” <https://www.cnbc.com/2021/11/08/infrastructure-bill-passes-whats-next-for-biden-build-back-better-plan.html>, //pa-ww)

While many Democrats let out a sigh of relief when the House passed a bipartisan infrastructure bill, the party has a grueling few weeks ahead of it to enact the rest of its economic agenda. The more than $1 trillion package passed Friday that would refresh transportation, broadband and utilities fulfills one part of President Joe Biden's domestic vision. Democrats now have to clear multiple hurdles to enact the larger piece, a $1.75 trillion investment in the social safety net and climate policy. Senate Majority Leader Chuck Schumer has said Democrats aim to pass the social spending bill by Thanksgiving. Meeting the deadline will require both chambers of Congress to rush while keeping nearly every member of a diverse Democratic caucus united — a challenge that has led to repeated roadblocks as lawmakers advanced the bills this year. Biden on Saturday sounded sure that his party would line up behind a sprawling bill that it aims to sell on the midterm campaign trail next year. "I feel confident that we will have enough votes to pass the Build Back Better plan," he told reporters. Biden also signaled he could sign the infrastructure bill next week after lawmakers return to Washington. Asked Monday when the president would sign the bill, White House spokeswoman Karine Jean-Pierre said "I do not have a date, but it will be very soon." His administration plans to send key officials around the country to sell the benefits of the package, NBC News reported, citing a memo from a White House official. The House plans to take the next step in passing the social spending plan. The chamber will try to approve the bill during the week of Nov. 15 once it returns from a weeklong recess. With no Republican support expected, Democrats can lose no more than three votes for the package. It would then go to the Senate. To pass the bill under special budget rules, all 50 members of the Democratic caucus will have to support it. Schumer will have to win over conservative Democratic Sen. Joe Manchin of West Virginia, who has not yet blessed a framework agreement on the legislation. The House could also send the Senate a bill that includes four weeks of paid leave for most American workers — a provision Manchin has opposed. Once the Senate irons out any objections from Manchin or other Democrats, in addition to any constraints budget reconciliation rules put on the bill, it could approve a different version of the plan than the House does. The House would then need to vote on the Senate plan or go to a conference committee with the upper chamber to hash out disparities. All told, Democrats will have to navigate a series of obstacles to get the bill to Biden's desk in the coming weeks. Pulling it off will require cooperation and trust between centrists and progressives who have disparate views about how large of a role the government should play in boosting households and combating climate change. The infrastructure bill passed only after House progressives and centrists made a nonbinding pact to approve the social spending plan this month. Five centrist Democrats said they would vote for the larger bill if a coming Congressional Budget Office cost estimate projects it will not add to long-term budget deficits. On Sunday, House Speaker Nancy Pelosi — who has pulled off a range of legislative high-wire acts in her career — expressed confidence that the centrists will honor their side of the deal. "As has been agreed, when the House comes back into session the week of November 15th, we will act with a message that is clear and unified to produce results," she wrote to House Democrats. The nonpartisan CBO could take weeks to release a cost estimate for the sprawling plan. However, the centrist holdouts in a Friday statement committed to voting for the legislation "in no event later than the week of November 15th." If Democrats can push the bill through Congress this month, they will still have another big lift on their hands before the end of the year. Lawmakers need to raise or suspend the debt ceiling sometime in December — or risk the first-ever default on U.S. debt.

#### BBB will pass – Infrastructure gives Biden momentum to get it done

KEITH 11/7 (Tamara; NPR, “Biden's infrastructure win gives him some momentum. Here's why he needs that,” <https://www.npr.org/2021/11/07/1053214146/biden-infrastructure-bill-politics>, //pa-ww)

Friday night was a long one for President Biden, working the phones at the end of a week where his party lost a bellwether race in Virginia, following months of Democratic infighting over his agenda. Down in the polls, he had just returned from an overseas trip where he said he faced questions about whether he had support to back the pledges he made on the world stage. But by Saturday morning, Biden could not contain his ebullience, celebrating a major legislative victory: a long-stalled $1.2 trillion infrastructure bill had passed with bipartisan support. "Finally, infrastructure week," Biden said, chuckling over what had become a running joke about his predecessor, who failed to ever make a deal on the investment needed for the nation's roads and ports despite often promising to focus on the problem. "I'm so happy to say that: infrastructure week," he said. The bill's passage — combined with some positive news on the economy and the pandemic — could give Biden some momentum for tackling the next big piece of his agenda, a sprawling package of social programs, an overhaul of the tax system and billions of dollars of climate incentives. The size and scope of the plan has exposed deep division within his own party. But it's another win he's eager to secure ahead of looming 2022 congressional elections. "The week started rough for Biden, but the [infrastructure] win and great jobs numbers shows the path by which Biden can turn this around," said Jennifer Palmieri, who worked in the Obama White House. But there are a host of forbidding odds working against Democrats as they head into the 2022 midterm elections, says Doug Heye, a Republican political consultant. "Inflation, national security, the border and so much more," Heye said. "It's hard to find an issue where Democrats have an advantage now." Biden says he needs to do more to explain his bills Biden's Saturday morning speech likely won't be the last he'll give celebrating this victory. He said he wants to hold a signing ceremony for the infrastructure bill along with the Republicans who were key to its passage in both the House and Senate — a nod to an idea he campaigned on, that Washington can work for the American people despite political polarization. His advisers have also acknowledged that the White House needs to do a better job explaining their giant legislative packages to Americans. His first bill, a $1.9 trillion COVID aid package, contained a series of measures that Democrats have had a hard time getting credit for, including monthly child tax credit payments. This week, Biden said he'll be talking about ports — a sector that will get a lot of long-overdue investment of $17 billion from the infrastructure package. In Biden's view, his job now is to try to "put people at ease and let them know there's a way through this," whether it's the pandemic or the supply chain snarls that he says have shaken Americans' confidence. "Whether you have a Ph.D. or you're working, you know, in a restaurant, it's confusing. And so, people are understandably worried," he said. Economic concerns have helped fuel the tumble in Biden's approval ratings. He went from a very bad August, after the chaotic U.S. withdrawal from Afghanistan and the surge in COVID cases, to a not-much-better September, and slumped into October. But on Friday, in addition to the infrastructure bill passing, the jobs report showed a big jump with 531,000 jobs created in October, and the unemployment rate falling to 4.6%. And social media started filling with photos of children getting their COVID vaccines, after a CDC recommendation came through making it possible for kids ages 5-11 to get a shot. "I have one focus," Biden said on Saturday. "How do we give you some breathing room? How do we get you to the point where we take pressure off you so you can begin to get back to a degree of normality and we move to a different place?" The bill had been stalled by infighting between progressives, like Rep. Pramila Jayapal, D-Wash. (left), and Rep. Joe Neguse, D-Colo. (right), and moderates, like Rep. Josh Gottheimer, D-N.J. Biden worked the phones to get the bill passed As a senator in the 1990s, Biden boasted about his ability to find common ground and get big legislation passed. As president he has struggled to drag what he called the "once in a generation" infrastructure package over the finish line, wading through weeks of procedural wrangling and ugly congressional sausage-making. Biden and top aides worked the phones from the presidential residence late into the night on Friday, making sure wavering Democrats didn't balk. The progressive wing had wanted to use the infrastructure bill as leverage to ensure Biden's social spending package also passes. After the deal was already sealed, Biden even called the mother of a key House Democrat, Rep. Pramila Jayapal, a classic Biden move. He has also had conversations with moderates, who are concerned he is spending too much time shooting for transformational programs and not enough time on kitchen-table issues. That was the takeaway for some Democrats from the loss in Virginia's gubernatorial race on Tuesday. Rep. Abigail Spanberger, D-Va., told the New York Times that Biden was going too far, saying: "Nobody elected him to be F.D.R., they elected him to be normal and stop the chaos." Asked about Spanberger, Biden described her as a friend, and said they had joked about it afterward. But he stood resolute behind his strategy to go big when it comes to giving Americans relief through the social programs in his next big bill. "I don't intend to be anybody but Joe Biden. That's who I am. And what I'm trying to do is do the things that I ran on to do," he said. "Ordinary, hard-working Americans are really, really — been put through the wringer the last couple years, starting with COVID," he said. And he maintained that Democrats should see Tuesday's election loss as a call to forge ahead on his plans. "They want us to deliver," Biden said of voters. "Last night, we proved we can." The next bill may be tougher for Democrats to pass Former Obama aide Palmieri said this week's elections lit a fire under her party. "The losses had the necessary impact of focusing Democrats on getting the very popular bipartisan infrastructure bill done," she said. The next package would have benefits for Democrats facing reelection next November, Palmieri said, including tax credits that take effect immediately. "There will be benefits for Democrats to run on in 2022," Palmieri said. But first, Biden will need to knit together the progressive and moderate wings again. Republicans have already said they will not support the next package, which has tax increases on the wealthy to pay for extending the child tax credit, universal pre-K and elder care, and other Democratic wish-list items. Biden has faced questions about whether he was forceful enough in forging consensus — or too willing to accept compromise. On Saturday, he defended his approach of brokering deals. "You can't have all you want. It's a process," he said, explaining that it is taking time to build up trust. There is no guarantee the larger package will pass. Biden has been steadfastly mum on whether he has secured commitments from Senate moderates, who have raised concerns about the cost of the social safety net and climate package. But on Saturday, in the State dining room, Biden said he thinks it will happen. "I feel confident that we will have enough votes to pass the Build Back Better plan," Biden said. When a reporter asked what gave him that confidence, Biden responded with one word. "Me."

#### Manchin will come around

BOLTON 11/9 (Alexander; The Hill, “Manchin sees his power grow,” <https://thehill.com/homenews/senate/580647-manchin-sees-his-power-grow>, //pa-ww)

Manchin still hasn’t signed off on the framework, despite the significant concessions to him. But some moderate Democratic strategists are doubtful that lumping everything into one massive infrastructure package or keeping the bipartisan infrastructure bill firmly tied to the outcome of the negotiations on reconciliation bill would have moved Manchin to support more social spending. “That’s not what was going to happen. Manchin is happy to wait five more months,” said Jim Kessler, the executive vice president for policy at Third Way, a centrist Democratic think tank. Even when Democrats set a $3.5 trillion spending target for the reconciliation package in the budget resolution, Kessler thought “this is going to end up at $2 trillion” because of resistance from Manchin and other centrists. But Democratic strategists think Manchin will eventually sign onto the reconciliation package, though it may not be until the week of Thanksgiving, when the Congressional Budget Office is expected to provide an official cost estimate for the bill, or later. Steve White, the director of the Affiliated Construction Trades Foundation in Charleston, W.Va., said “the idea somehow that he doesn’t want the second bill, I think, is wrong.” “I think he doesn’t want all of the second bill. Half of the second bill is a lot,” he added of the reconciliation bill. “I’m looking forward to what it looks like and I think there will be a lot of good stuff for West Virginia.” White said the bipartisan infrastructure bill will have a “huge” impact on West Virginia but he said the reconciliation bill will also have significant investments for the state. He said spending on renewable energy, such as wind turbines, could create good job opportunities in the state.

#### Manchin will vote ‘yes’

AP 11/4 (Associated Press, “Biden Claims Historic Progress on Climate Efforts at Summit,” https://news.wttw.com/2021/11/04/biden-claims-historic-progress-climate-efforts-summit, //pa-ww)

President Joe Biden argued Tuesday that historic progress on addressing global warming was achieved at the U.N. climate conference in Glasgow, Scotland, and expressed optimism for a similar outcome in Washington, where his legislative agenda has been stalled by intra-party disagreements. Speaking in a press conference before boarding Air Force One to return to Washington, Biden highlighted new efforts to stop methane leaks, protect forests, invest in new technologies and spend money on clean energy infrastructure. But his efforts to meet U.S. commitments on climate change with a major domestic spending bill remained held up by legislative maneuvering. “I can’t think of any two days where more has been accomplished on climate than these two days,” Biden said. The president contrasted the U.S. posture of leading several major initiatives at the summit with those of Russia and China, who did not send their leaders to Glasgow. “The single most important thing that’s got the attention of the world is climate, everywhere, from Iceland to Australia,” Biden said, “and they’ve walked away.” “We showed up. We showed up,” Biden said. “And by showing up we’ve had a profound impact, I think, on how the rest of the world is looking at the United States.” Biden has been determined to demonstrate to the world that the U.S. is back in the global effort against climate change, after his predecessor Donald Trump pulled the U.S. — the world’s largest economy and second-biggest climate polluter — out of the landmark 2015 Paris climate accord. Putting the U.S. on the path to halve its own output of coal, oil and natural gas pollution by 2050, as his climate legislation seeks to do, “demonstrates to the world the United States is not only back at the table, it hopefully can lead by the power of our example,” Biden told delegates and observers on Monday. “I know that hasn’t always been the case,” he added, in a reference to Trump. But Biden has yet to deliver on his own commitments as coal-state U.S. Sen. Joe Manchin has again threatened Biden’s domestic effort. For all the optimism Biden has been radiating at the summit in Scotland, persistent doubts lurk about whether he can deliver solely through executive actions as continued talks with Congress have steadily cut into his ambitions. Manchin said Monday, at an unfortunate time for the president, that he remained undecided on Biden’s $1.75 trillion domestic policy proposal, which includes $555 billion in provisions to combat climate change. Manchin holds a key vote in the Senate, where Biden has the slimmest of Democratic majorities, and has successively killed off key parts of the administration’s climate proposals. He said Monday he was uncertain about the legislation’s impact on the economy and federal debt and was as “open to voting against” it as for it. Biden minimized Manchin’s objections on Tuesday, saying of the senator, “He will vote for this” and “I believe that Joe will be there.” He insisted no world leaders were pressing him on the fate of the legislation in Washington and expressed confidence in its passage. Biden has essentially bet that the right mix of policies on climate change and the economy are not only good for the country but will help Democrats politically. But questions remain about whether he has enough political capital at home to fully honor his promises to world leaders about shifting the U.S. toward renewable energy. Gubernatorial elections Tuesday in Virginia and New Jersey — states Biden won in last year’s election — will provide the first ballot-box test of how Americans view his presidency. Biden joined other leaders Tuesday for an initiative to promote safeguarding the world’s forests, which pull vast amounts of carbon pollution from the air. As part of a broader international effort, the administration is attempting to halt natural forest loss by 2030 and intends to dedicate up to $9 billion of climate funding to the issue, pending congressional approval. “Forests have the potential to reduce — reduce — carbon globally by more than one third,” Biden said. The president and European Commission President Ursula von der Leyen co-hosted an event to promote an alternative to China’s infrastructure financing programs. Biden compared his “Build Back Better World” policies to the Chinese programs, saying his would not expose countries seeking infrastructure funds to “debt traps and corruption.” He then highlighted the commitments by roughly 100 countries to cut methane emissions by 30% over the next decade. Biden also joined world leaders in promoting investments in new technology to fight climate change and build a carbon-neutral future. “Our current technology alone won’t get us where we need to be,” he said, “We need to invest in breakthroughs.” The president also met behind closed doors with Prince Charles and “commended the Royal Family for its dedication to climate issues,” the White House said. Crucial for his time in Scotland is that he’s emphasizing several policies that can be achieved without congressional buy-in, such as the methane pledges and private partnerships. Back home, his administration chose Tuesday to launch a wide-ranging plan to reduce methane emissions, targeting a potent greenhouse gas that contributes significantly to global warming. Biden came to the summit saying he hoped to see his legislation pass this week, but Manchin’s new objections threaten to close the narrow window Biden may have to win passage of his initiatives. The senator is eager to preserve his state’s declining coal industry despite coal’s falling competitiveness in U.S. energy markets. If Biden’s climate legislation falters, he could be limited to regulatory projects on climate that could easily be overturned by the next U.S. president, and turn his stirring cries for climate action abroad into wistful talk at home. Manchin’s statements are a possible sign that one of two key Democratic votes in the Senate wants to delay votes on the president’s agenda until the bill is fully reviewed. But House Democrats are still taking steps this week to pass Biden’s $1 trillion infrastructure package, which includes efforts to address climate change. The White House is seeking to turn both measures into law, linking them in hopes of appeasing a diverse and at times fractious Democratic caucus. White House press secretary Jen Psaki pushed back, saying the administration is confident the spending package already meets the criteria set by Manchin. “It is fully paid for, will reduce the deficit, and brings down costs for health care, childcare, elder care, and housing,” Psaki said. “We remain confident that the plan will gain Senator Manchin’s support.”

#### Manchin will support the climate provisions

NILSEN 9/14 (Ella; CNN Politics, “Biden's spending bill could be Democrats' last hope of achieving meaningful climate action as crisis worsens,” <https://www.cnn.com/2021/09/14/politics/biden-budget-congress-climate-action/index.html>, //pa-ww)

With a razor-thin majority in both the House and Senate, this is Democrats' only shot at passing a substantial climate bill before world leaders meet in November. But there's at least one prominent Senate Democrat who could thwart those plans. Sen. Joe Manchin of West Virginia, Senate Democrats' key swing vote, wants to pare down the overall size of the bill, and he has said he has concerns about what the climate provisions could mean for a fossil-fuel producing state like West Virginia. As chair of the Senate Energy and Natural Resources Committee, the senator will have a large hand in shaping Democrats clean electricity program. Sen. Sheldon Whitehouse of Rhode Island told CNN negotiations with Manchin are ongoing — but he was optimistic the West Virginia senator would understand the gravity of a fast-warming climate and its impacts. "At the end of the day, we're all answerable to the future to get the job done right," Whitehouse said. "I don't think [Manchin] wants to be on the wrong side of that future."

#### At worst, the climate provisions will be tweaked, not removed

DUEHREN 9/16 (Andrew; Wall Street Journal, “Democrats Rethink Climate Measures, Consider Carbon Tax,” <https://www.wsj.com/articles/democrats-rethink-climate-measures-consider-carbon-tax-11631800800>, //pa-ww)

Mr. Manchin’s concerns have pushed other Democrats to review the design of the program. Sen. Tina Smith (D., Minn.), who has led efforts to craft the clean electricity performance program in the Senate, said she is in talks with Mr. Manchin, with an aim toward broadening the program to better incorporate carbon-capture technology. Sufficient carbon-capture technology, which involves pulling emissions out of the air, could allow states with large fossil-fuel industries—like West Virginia—to rely on the same energy mix and avoid penalties for utilities. “If you take energy, and you make it clean through carbon capture, then that counts as clean, I think, in my book and in Sen. Manchin’s book,” she said.

#### Sinema votes ‘Yes’

SANCHEZ 11/8 (Yvonne Wingett; Arizona Republic, “Sen. Kyrsten Sinema takes victory lap after Congress passes physical infrastructure bill,” <https://www.azcentral.com/story/news/politics/elections/2021/11/08/sem-kyrsten-sinema-takes-victory-lap-after-infrastructure-bill-passes/6342340001/>, //pa-ww)

Sinema said she is unmoved by criticism by the left wing of the Democratic Party and some moderates who have blasted her demand to scale back the budget reconciliation bill and threatened to recruit primary challengers to run against her in 2024. Sinema's comments came after Republicans won the Virginia governor’s race and saw a surge in support in New Jersey, voting trends that signal trouble for Biden and Democrats ahead of next year’s 2022 midterm elections, when the party that holds the White House traditionally loses seats in Congress. “The lesson that I take from (the) elections, whether they be my own or others, is that folks — they expect results,” Sinema said. “They’re less interested in the talking heads on television and the partisan talking points on cable TV. They’re less interested in the tweets. What they are interested in is who is delivering results that make a difference in their lives. And so what I pledge to you and to folks throughout Arizona is to continue to do what I’ve always done, which is just put my head down, stay focused on the work, and deliver results for Arizonans.” On the budget reconciliation front, Sinema said she continues to work with the Biden administration, Senate Majority Leader Chuck Schumer, D-N.Y., and others to pass a package with a price tag that she helped shrink to an estimated $1.75 trillion from Democrats’ original $3.5 trillion. “I’m looking forward to getting this done,” Sinema said. “I continue to work in good faith with President Biden and his team, as well as Sen. Schumer and all of my Democratic colleagues in both the House and Senate to find a package that we can all agree on and get this done.” Last week, Democrats agreed on a prescription-drug plan she supported that brings the party closer to agreeing on the overall budget reconciliation bill. That agreement would include rule changes expected to limit the cost of prescription drugs for Medicare recipients to $2,000 yearly, including a $35 monthly cap on insulin charges. Sinema, whose campaign committee has received hundreds of thousands of dollars from those in the "pharmaceuticals/Health products" industry according to Open Secrets, said her stance on the drug-pricing provisions was not influenced by campaign contributions:"Folks in Arizona know that no outside forces, parties, political efforts or outside entities influence my thinking. I get up each day and try to stay focused on doing what's best for Arizonans and serving everyday people throughout our state. That's been true my entire career. And it's true today." Separately, Sinema, who has long favored immigration reform, reiterated her support for protections for undocumented immigrants that Democrats want to add in the reconciliation bill. But it’s unclear if an attempt to pass immigration provisions through the budget process can clear the Senate, where the parliamentarian already has rejected Democrats’ efforts to try to include a path to legalization for undocumented immigrants. “I do support the immigration proposals that are being offered in the upcoming reconciliation package,” Sinema said. “I also recognize that there are legal limitations to what can be done in a reconciliation package.

#### Short term funds solve Afghan thumper---gives time to focus on infrastructure negotiations

Hunnicutt 9/7, Trevor---writer for Reuters (“White House asks Congress for funding on Afghanistan and hurricanes,” Reuters, Sept 7, 2021, accessed Sept 17, 2021, https://www.reuters.com/world/us/white-house-asks-congress-funding-afghanistan-hurricanes-blog-2021-09-07/)

Biden's acting director of the Office of Management and Budget (OMB), Shalanda Young, said in a blog post that some of the temporary funding would go to still-unmet needs from prior hurricanes and wildfires even as the government responds to Hurricane Ida.

She also said most of the funds directed toward the Afghan effort would be for sites to process refugees from the country recently overtaken by the Taliban as well as public health screenings and resettlement resources.

The funding measure would give lawmakers additional time to negotiate over Biden's proposals to spend trillions on new social safety net programs, infrastructure and other priorities he wants to fund with tax hikes on corporations and wealthy individuals.

#### Foreign policy is a short-lasting focus---attention will shift to infrastructure quickly

Gangitano and Chalfant 9/1, Alex and Morgan---writers for The Hill (“Biden attempts to turn page on Afghanistan with domestic refocus,” The Hill, Sept 1, 2021, accessed Sept 17, 2021, https://thehill.com/homenews/administration/570472-biden-attempts-to-turn-page-on-afghanistan-with-domestic-refocus)

Biden allies think the public’s attention could shift back to domestic issues as soon as the end of the week, when the August jobs numbers from the Labor Department will offer a more fulsome picture of how the economic recovery has held up amid the surge of the delta variant of the coronavirus. In addition to the Louisiana trip, Biden is scheduled to deliver remarks on the jobs report Friday.

“I expect that the conversation will turn back to domestic politics very quickly, and it will return as early as Friday when the jobs numbers come out and then continue throughout the month as we do the high-wire act on reconciliation and the infrastructure bill,” said Jim Kessler, executive vice president for policy at the centrist think tank Third Way.

“What happened in Afghanistan was important and riveting. One of the reasons we’re leaving Afghanistan after 20 years is that America stopped caring a long time ago. It’s unfortunate for the people in Afghanistan, but Americans will stop caring very soon again,” he said.

#### Any major antitrust reform costs PC, even if it’s politically popular—especially given that key personnel are not yet in place

Folio, 21

(Joseph Charles Folio III, JD from the George Mason School of Law, Lisa M. Phelan, JD from the American University School of Law, Jeff Jaeckel, JD from the University of Wisconsin School of Law, and Alexander Paul Okuliar, JD from the Vanderbilt School of Law, "Antitrust Update: Up and Down the Avenue" March 22 <https://www.mofo.com/resources/insights/210322-atr-update.html> NL)

Are the stars aligning for antitrust reform? President Biden is filling key positions in the White House (Timothy Wu, National Economic Council) and at the FTC (Lina Khan, nominee for commissioner) with lawyers who have advocated for increased antitrust enforcement, especially against “big tech.” In Congress, the House antitrust subcommittee concluded a year-long investigation in October 2020 and found bipartisan agreement on discrete areas for reform. With Democrats now in control of both houses of Congress, antitrust legislation seems close. But not so fast. The House and Senate antitrust subcommittees have held four hearings since February 25, 2021, but it is crucial to view these recent developments in their proper context. Even when politicians and enforcers appear to agree on a goal, it can still be a long and winding road to actual policy reform. Two to go Although antitrust reform advocates cheered President Biden’s initial appointments, two of the most consequential antitrust positions—the assistant attorney general (AAG) for antitrust and the FTC chair—remain open. Both the AAG and FTC chair wield tremendous authority; they approve cases, guide investigations, and will decide how to proceed with ongoing litigation. It is unlikely that the Biden administration will make any significant decisions, or support any particular legislation, before its key personnel are firmly in place. And that can take time. Former AAG Makan Delrahim was nominated in March 2017 but not confirmed until September 2017. Interestingly, the pressure to nominate like-minded antitrust reformers for these two positions is coming from multiple angles. One public interest group recently sent a letter to White House chief of staff Ron Klain and, after “highly commend[ing]” the nomination of Ms. Khan to be an FTC commissioner, warned against the influence of certain White House and DOJ officials over the AAG and FTC chair nominations because of their links to “big tech” companies.[[1]](https://www.mofo.com/resources/insights/210322-atr-update.html" \l "_ftn1) Additionally, many in the press have been critical of the level of tech enforcement activity during the Obama administration and want to avoid a replay of those years.[[2]](https://www.mofo.com/resources/insights/210322-atr-update.html" \l "_ftn2) Meanwhile, on Capitol Hill … Down the avenue, Congress is debating whether to provide the agencies with additional tools and resources. But how realistic are the prospects for legislative reform? In short, although the prospects for sweeping legislative reform of the antitrust laws are dim, targeted reforms appear increasingly likely, especially increased funding for the agencies. In October 2020, the House antitrust subcommittee concluded a year-long bipartisan investigation into these issues, and the House Democrats published a lengthy report detailing their findings and making recommendations for reform. Notably, the House Republican response identified several areas of agreement, including “providing antitrust enforcement agencies with the necessary resources.” [[3]](https://www.mofo.com/resources/insights/210322-atr-update.html" \l "_ftn3) House Republicans also made it clear that they too are concerned about tech companies “using ‘killer acquisitions’ to remove up-and-coming competitors from the marketplace,” and that the burdens of proof for mergers and predatory pricing cases need to be reevaluated.[[4]](https://www.mofo.com/resources/insights/210322-atr-update.html" \l "_ftn4) On March 18, 2021, however, the Republican ranking member on the committee reiterated a shared interest in reforming the evidentiary burden of proof in merger cases, which he described as having become “essentially insurmountable” and “a grant of near total immunity to big tech companies.” Although a path to agreement on more substantive issues typically has many obstacles, reforming the burden of proof in certain instances may be emerging as the most likely candidate for significant legislative action. In the Senate, on February 4, 2021, newly installed antitrust subcommittee chair Senator Amy Klobuchar (D-MN) [introduced a bill](https://www.mofo.com/resources/insights/210211-far-reaching-bill.html) that would overhaul existing antitrust laws. Among other reforms, it would lower the government’s burden of proof to block a merger, shift the burden of proof in certain cases and require the merging parties to justify the deal, and increase funding for both the DOJ Antitrust Division and the FTC. At the subcommittee’s March 11, 2021 hearing related to the bill, subcommittee ranking member Senator Mike Lee (R-UT) (who promptly released a statement noting his opposition to Ms. Khan’s nomination) made it clear that he firmly opposes “a sweeping transformation of the antitrust laws.” Throughout the hearing, however, there appeared to be bipartisan support for taking some sort of action to address these issues, and at the very least to provide increased funding to the DOJ and FTC. Even Senator Lee, who recently introduced a bill that would combine the DOJ and FTC to avoid inefficiencies in antitrust enforcement, acknowledged that agency leaders need the resources that are necessary to vigorously enforce antitrust laws. So, what does it all mean? In these circumstances, the most likely outcome appears to be antitrust officials creatively using their existing tools to enhance enforcement while not so quietly pressing Congress for additional assistance. On March 16, 2020, acting FTC Chair Rebecca Slaughter advocated for increased scrutiny of mergers between pharmaceutical companies. She also told the House antitrust subcommittee that the agencies “should consider withdrawing” the guidance for “vertical” mergers issued during the last administration to allow for more aggressive enforcement.[[5]](https://www.mofo.com/resources/insights/210322-atr-update.html" \l "_ftn5) But at the same time, FTC Commissioner Noah Phillips explained that the agency would not be able to challenge certain deals without more funding. The Biden administration and the agencies will need to determine how to square those positions. Also, even assuming Congress could provide the agencies with additional funding quickly (on top of the additional $20 million Congress provided to the FTC in December 2020), using that funding to hire additional attorneys will take time. The path for meaningful legislative reform remains extremely complicated. The prospect for reform depends significantly on whether members of Congress, congressional leadership, and the Biden administration are willing to expend the time and political capital necessary to pass a reform bill (which also assumes the relevant parties can agree on what should be included—or, perhaps more importantly, excluded—from that bill). In light of competing priorities, the absence of key personnel, and the already narrowing congressional calendar (major non-appropriations legislation typically will not move after July in an election year (2022)), those prospects appear to be slim. In the meantime, we expect that Congress will continue to focus attention on these issues with more hearings and new legislative proposals, but it remains to be seen when attention will become action.

#### Antitrust action saps finite capital, imperils rest of agenda

Karaim 21

(Reed, <http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2021050705>, 5-7)

Stucke, the former U.S. Justice Department antitrust official, says that despite Wu and Khan's credentials and reputation, changing antitrust policy will require a concerted effort. With Biden having an ambitious overall agenda and his Democratic Party holding the slimmest possible majority in the Senate, Stucke says, the question is “to what extent will the Biden administration want to expend political capital on this. They've got some bipartisan support for antitrust reform, but to what extent are they going to mobilize that?”

**BBB is key to global follow-through on climate post-Glasgow summit – impact’s extinction**

**Chon 11-8** (Gina Chon, Columnist at Reuters Breakingviews, former US Regulatory and Enforcement Correspondent, Financial Times, BS Journalism, Northwestern University, “America’s **swing senator** can **save or scorch planet**,” Reuters, 11-8-2021, <https://www.reuters.com/breakingviews/americas-swing-senator-can-save-or-scorch-planet-2021-11-08/>)

The **health of the planet** hangs somewhere over West Virginia. Joe **Manchin**, one of the coal state’s senators, is in line to **cast the deciding vote** on President Joe Biden’s $1.8 trillion “**B**uild **B**ack **B**etter” spending plan. He’ll **indirectly be voting on Biden’s ability to influence other countries to fight climate change after the COP26 summit** read more.

Biden has faced two main challenges to his spending plan, a companion to the $1 trillion infrastructure legislation Congress approved on Friday. One objection comes from lawmakers worried about the amount of money at stake. After an earlier compromise, climate change initiatives are the biggest chunk of the overall blueprint at $555 billion, more than half of which comes from tax credits for cleaner vehicles and manufacturing. Manchin is already a self-confessed budget worrier.

The other obstacle is unease around specific climate initiatives. Manchin hails from a state with less than 2 million residents, but a heavy reliance on coal. His disapproval helped squash Biden’s proposal for a Clean Electricity Performance Program that would have incentivized utilities to stop using oil, coal and gas. The goal was for 80% of electricity produced in the country to come from clean sources by 2030, compared to the current 40%.

**Green-energy tax credits are still on the table** and offer a bigger bang for the taxpayer’s buck than the clean electricity program, think tank Resources for the Future estimates. By 2030 they would get the United States to 69% of its electricity coming from clean sources.

**Manchin has good reason to keep those tax credits alive**. While West Virginia is the second-largest coal producer in the United States and top five in natural gas, according to the U.S. Energy Information Administration, it’s also one of the states most exposed to damage from climate change. More than 60% of its power stations are at risk from a so-called 100-year flood, according to the First Street Foundation.

The senator’s decision **will have global repercussions**. **China**, **India** read more and **other countries** are **only likely to listen to Biden’s pleas** to help fight climate change **if he looks able to meet such pledges himself**. For example, the president **wants other countries to help cut methane emissions** by 30% this decade, but would still **need Manchin’s support** to levy fines on U.S. **methane-leakers**, which is far from guaranteed. For such a small population, West Virginia has a huge responsibility.

#### Warming causes extinction

Dr. Yew-Kwang Ng 19, Winsemius Professor of Economics at Nanyang Technological University, Fellow of the Academy of Social Sciences in Australia and Member of Advisory Board at the Global Priorities Institute at Oxford University, PhD in Economics from Sydney University, “Keynote: Global Extinction and Animal Welfare: Two Priorities for Effective Altruism”, Global Policy, Volume 10, Number 2, May 2019, pp. 258–266

Catastrophic climate change Though by no means certain, CCC causing global extinction is possible due to interrelated factors of non-linearity, cascading effects, positive feedbacks, multiplicative factors, critical thresholds and tipping points (e.g. Barnosky and Hadly, 2016; Belaia et al., 2017; Buldyrev et al., 2010; Grainger, 2017; Hansen and Sato, 2012; IPCC 2014; Kareiva and Carranza, 2018; Osmond and Klausmeier, 2017; Rothman, 2017; Schuur et al., 2015; Sims and Finnoff, 2016; Van Aalst, 2006).7 A possibly imminent tipping point could be in the form of ‘an abrupt ice sheet collapse [that] could cause a rapid sea level rise’ (Baum et al., 2011, p. 399). There are many avenues for positive feedback in global warming, including: • the replacement of an ice sea by a liquid ocean surface from melting reduces the reflection and increases the absorption of sunlight, leading to faster warming; • the drying of forests from warming increases forest fires and the release of more carbon; and • higher ocean temperatures may lead to the release of methane trapped under the ocean floor, producing runaway global warming. Though there are also avenues for negative feedback, the scientific consensus is for an overall net positive feedback (Roe and Baker, 2007). Thus, the Global Challenges Foundation (2017, p. 25) concludes, ‘The world is currently completely unprepared to envisage, and even less deal with, the consequences of CCC’. The threat of sea-level rising from global warming is well known, but there are also other likely and more imminent threats to the survivability of mankind and other living things. For example, Sherwood and Huber (2010) emphasize the adaptability limit to climate change due to heat stress from high environmental wet-bulb temperature. They show that ‘even modest global warming could ... expose large fractions of the [world] population to unprecedented heat stress’ p. 9552 and that with substantial global warming, ‘the area of land rendered uninhabitable by heat stress would dwarf that affected by rising sea level’ p. 9555, making extinction much more likely and the relatively moderate damages estimated by most integrated assessment models unreliably low. While imminent extinction is very unlikely and may not come for a long time even under business as usual, the main point is that we cannot rule it out. Annan and Hargreaves (2011, pp. 434–435) may be right that there is ‘an upper 95 per cent probability limit for S [temperature increase] ... to lie close to 4°C, and certainly well below 6°C’. However, probabilities of 5 per cent, 0.5 per cent, 0.05 per cent or even 0.005 per cent of excessive warming and the resulting extinction probabilities cannot be ruled out and are unacceptable. Even if there is only a 1 per cent probability that there is a time bomb in the airplane, you probably want to change your flight. Extinction of the whole world is more important to avoid by literally a trillion times.

#### BBB solves warming, bioD, econ -- extinction

Oakes, 3/25

(Jonette, reporter for the Hill, "Ted Lieu raises alarm over biodiversity and climate change,' 3/25/21 <https://thehill.com/policy/energy-environment/544881-ted-lieu-raises-alarm-biodiversity-climate-change> NL)

Rep. [Ted Lieu](https://thehill.com/people/ted-lieu) (D-Calif.) on Wednesday said declines in biodiversity are a global concern that can be addressed at various levels of government. Speaking at The Hill’s “The Loss of Nature: A Global Threat” event, Lieu said climate change has prompted an upheaval in biodiversity, with policies needed at the state, federal and international to address the problem. “Climate change is an existential threat, not just to California or America, but to the entire world. And the way that we solve this is we get the rest of America to do what California did and the rest of the world to do what America hopefully will do soon," Lieu told The Hill’s Steve Clemons. “The good news is a number of countries are taking climate change seriously. I think they can all do more, but we’ve shifted in just a decade or so from a bunch of people denying that climate change even is happening to now people who are acknowledging it and that’s a very good first step,” said Lieu, a member of the House Foreign Affairs Committee. Lieu's comments come as the Biden administration and congressional Democrats look to pass a sweeping infrastructure package that's expected to include numerous environmental components, including provisions for renewable energy. Lieu argued that California’s climate laws are not only good for the environment, they're good for economic prospects as well. “What we’re seeing is that when you take actions to make your water cleaner, your air having less pollution, and when you’re taking carbon and methane out of air, it actually improves the quality of people’s lives. It gets people to want to come to the state and it can generate green energy and green jobs,” Lieu said at the event sponsored by Natural Security.

#### Outweighs on magnitude

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

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

#### **BBB solves China rise**

Prins, 3/15

(Nomi Prins is a former managing director at Goldman Sachs and author of All the Presidents’ Bankers and Collusion: How Central Bankers Rigged the World, due to be released in paperback on May 7. She served on Sen. Bernie Sanders’s Federal Reserve Reform Advisory Council. "Infrastructure Should Be the Great Economic Equalizer" 3/15/21 <https://truthout.org/articles/infrastructure-should-be-the-great-economic-equalizer/> NL)

Infrastructure as an International Race for Influence

In an [interview with CNBC](https://www.cnbc.com/2021/02/18/cnbc-exclusive-cnbc-transcript-united-states-treasury-secretary-janet-yellen-speaks-with-cnbcs-closing-bell-today.html) in February 2021, after being confirmed as the first female treasury secretary, Janet Yellen stressed the crucial need not just for a Covid-19 stimulus relief but for a sustainable infrastructure one as well.

As part of what the Biden administration has labeled its “[Build Back Better](https://joebiden.com/build-back-better/)” agenda, she underscored the “long-term structural problems in the U.S. economy that have resulted in inequality [and] slow productivity growth.” She also highlighted how a major new focus on clean-energy investments could make the economy more competitive globally.

When it comes to infrastructure and sustainable development efforts, the U.S. is being left in the dust by its primary economic rivals. Following his first phone call with Chinese President Xi Jinping, President Biden [noted](https://www.bbc.com/news/business-56036245) to a group of senators on the Environment and Public Works Committee that, “if we don’t get moving, they are going to eat our lunch.” He went on to say, “They’re investing billions of dollars dealing with a whole range of issues that relate to transportation, the environment, and a whole range of other things. We just have to step up.”

As this country, deep in partisan gridlock, stalls on infrastructure measures of any sort, its global competitors are proceeding full speed ahead. Having helped to jumpstart its economy with projects like high-speed railways and massive new bridges, China is now accelerating its efforts to further develop its technological infrastructure. As Bloomberg [reported](https://www.bloomberg.com/news/articles/2020-05-20/china-has-a-new-1-4-trillion-plan-to-overtake-the-u-s-in-tech), the Chinese are focused on supporting the build-up of “everything from wireless networks to artificial intelligence. In the master plan backed by President Jinping himself, China will invest an estimated $1.4 trillion over six years” in such projects.