# 1NC

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#### Interpretation: Aff teams must prove there are *structural* barriers to aff passage

#### Violation: The Consumer Welfare Standard was dropped over the summer

Roach 21, Lee Roach, “The FTC Expands Section 5 Enforcement Efforts With Potentially Broad Implications”, <https://www.faegredrinker.com/en/insights/publications/2021/7/the-ftc-expands-section-5-enforcement-efforts-with-potentially-broad-implications>

The Federal Trade Commission (FTC) recently updated its interpretation of its authority to challenge “unfair methods of competition” under Section 5 of the FTC Act. It will no longer limit enforcement actions under Section 5 to conduct that violates the consumer welfare standard. This may significantly expand the sorts of business activities the FTC investigates and challenges.

Although this adjustment, in conjunction with other recent developments at the FTC, is widely interpreted to signal increased scrutiny of Big Tech companies, the FTC’s pivot on its Section 5 authority may have broader implications. Companies should monitor the FTC’s next steps closely for further insights on conduct it may challenge in the future.

On July 1, the FTC voted to expand its enforcement efforts under Section 5 of the FTC Act. Section 5 authorizes the FTC to investigate and challenge “unfair methods of competition in or affecting commerce” (15 U.S.C. § 45(a)(1)) — language that is seemingly open-ended. Courts have not precisely defined the outer-bounds of the FTC’s Section 5 authority.

Previously, according to a 2015 policy statement, the FTC was “guided by” the consumer welfare standard when using its Section 5 authority, and focused on whether the conduct in question artificially raised prices. This hewed closely to how courts have interpreted the other main federal antitrust statutes, the Sherman Act and the Clayton Act. In fact, in that same 2015 policy statement the FTC clarified that it would be “less likely to challenge an act or practice as an unfair method of competition on a standalone basis if enforcement of the Sherman Act or Clayton Act is sufficient to address the competitive harm arising from the act or practice.” And even where the Sherman Act or Clayton Act may not have prohibited certain conduct, the FTC’s record of enforcement has tended to focus on “incipient” conduct that could in the future lead to clear violations of those statutes, such as invitations to collude or exchanges of competitively sensitive information.

The FTC’s move on July 1 constitutes a meaningful departure from its prior interpretation of Section 5, and signals that the FTC may now interpret “unfair methods of competition” more expansively than in the past. Indeed, in a statement released in conjunction with the move, new FTC Chair Lina Khan stated that the 2015 policy statement “contravene[d] the text, structure, and history of Section 5 and largely wr[ote] the FTC’s standalone authority out of existence.” The move also harkens to previous advocacy by Chair Khan that the consumer welfare standard is an inadequate tool for challenging Big Tech companies.

Importantly, however, nothing limits the FTC’s newly expansive understanding of its Section 5 authority only to Big Tech companies. In fact, prior statements by those commissioners who voted with Chair Khan to expand the FTC’s authority under Section 5 seem to indicate just the opposite. To take but one example, two years ago FTC Commissioner Rohit Chopra released a statement, joined by fellow Commissioner Rebecca Kelly Slaughter, criticizing an FTC settlement with online cosmetics company Sunday Riley Modern Skincare LLC. The company had posted false reviews of its products online in order to drive traffic. Commissioner Chopra argued this “false advertising [was] an unfair method of competition,” and thereby criticized the FTC’s action for failing to address the conduct as an antitrust violation and not simply a consumer protection violation.

#### Vote negative for Education: Debate 101 suggests affs should be inherent for in depth neg ground, gotta cut those updates

### 1nc

#### **Interpretation – Current “Scope” of core antitrust laws includes agreements between competitors, monopolization law, and merger and acquisition reviews. Topical affs cannot do any of these.**

Waller 20 – John Paul Stevens Chair in Competition Law, Loyola University Chicago School of Law

Spencer Weber Waller, “The Omega Man or the Isolation of U.S. Antitrust Law,” Connecticut Law Review, Vol. 52, April 2020, LexisNexis

The United States defines the antitrust laws as the substantive provisions of the Sherman, Clayton, and Federal Trade Commission acts along with a small number of subsidiary statutes. This limits the scope of antitrust law to agreements between competitors, monopolization law, and the review of potentially harmful mergers and acquisitions. In contrast, the EU and other jurisdictions have led the world to a broader understanding of the meaning and reach of competition law that is only partially understood or appreciated in the United States. This Section explores that broader vision of competition including market studies and investigations; prohibitions against public anticompetitive conduct; state aids; and the use of public interest factors normally not part of the U.S. vision of the antitrust enterprise.

#### Violation – The plan is already within the scope of the core antitrust laws

#### Vote neg for limits and ground—abandoning the floor means they can do any increase in enforcement resources, strategy, take one more case, or apply one more person to an existing case—no DAs link and makes the research burden impossible

### 1nc

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

#### substantially increase the weight afforded to the competitive process in analysis of anticompetitive business practices

#### 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

* **Develop communication with the European Competition authorities to synchronize antitrust policies**

#### Establish a basic income guarantee

#### Raise the minimum wage

#### Develop and implement grid reforms to remove vulnerabilities created by monocultures

#### 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.

#### And it solves an international precedent

Paquin, 20

(Stéphane, professor at l'Ecole Nationale d'administration Publique and Canada Research Chair in International and Comparative Political Economy and Globalization, “Paradiplomacy,” 2020 <http://www.stephanepaquin.com/wp-content/uploads/2020/02/Paquin2020_Chapter_Paradiplomacy.pdf> NL)

The neologism “paradiplomacy” appeared in scientific literature in the 1980s, during a revival in the study of federalism and comparative politics. It was basically used to describe the international activities of Canadian provinces and American states in the context of globalization and an increase in cross-border relations in North America (Paquin 2004). The concept’s inventor, Panayotis Soldatos, defined paradiplomacy as “a direct continuation, and to varying degrees, from sub-state government, foreign activities” (Soldatos 1990, 34). Ivo D. Duchacek also espoused the concept, finding it superior to his idea of microdiplomacy, to which a pejorative meaning could be attributed. For Duchacek, adding “para” before “diplomacy” adequately expressed what was involved, namely a sub-state’s international policies that could be parallel, coordinated, or complementary to the central government’s, but could also conflict with the country’s international policies and politics (Duchacek 1990, 32). Although the concept of paradiplomacy tends to be the most widely used, it nonetheless remains contested by several authors. Some prefer to use the expression “regional sub-state diplomacy” (Criekemans 2011) while others favor multi-track diplomacy or “multi-level diplomacy” (Hocking 1993). In France, the expression “decentralized cooperation” is sometimes used. This article is divided into four parts. In the first part, I present the debate around the concept of paradiplomacy. In the second section, I address the issue of the phenomenon’s magnitude in the world. In the third part, I examine how foreign policy skills are formed and shared, and in the last section, I strive to describe what kinds of international actors represent non-central governments in world politics. The Concept of Paradiplomacy According to Brian Hocking, the concept of paradiplomacy was created to reinforce the distinction between the central government and sub-national governments, thereby increasing aspects of conflict between the two levels of government. For Hocking, however, that approach is incorrect. It would be preferable to situate sub-national or non-central governments in their “diplomatic complex environment” (Hocking 1993). In Hocking’s view, diplomacy cannot be seen as a segmented process between actors within the same state structure. Diplomacy must be perceived as a system intermingling actors from different levels of government and ministries. Actors change according to issues, interests, and their ability to operate in a multi-tiered political environment. Hocking’s rejection of the concept of paradiplomacy is based on “imperatives of cooperation” that exist between central governments and federated states. Thus, rather than talking about paradiplomacy, it would be preferable to refer to it as “catalytic diplomacy” or “multi-level diplomacy” (Hocking 1993). A similar argument is put forward by authors interested in multilevel governance, notably in the context of the European Union. The concept strives to describe the role of Europe’s regions in the process of European construction (Hooghe and Marks 2001). These concepts are interesting and useful in particular contexts, but they remain limited as they tend to underestimate the autonomy of regions, non-central governments, or federated states in pursuing their own international policies. Bavaria, for instance, is not active solely in Europe. It is deeply involved in activities within the conference of heads of government in partner regions. This group includes seven regions of sub-state governments (Bavaria, the Western Cape, Georgia, Upper Austria, Quebec, São Paulo, and Shandong) on four continents; they represent around 180 million inhabitants with a total gross domestic product of 2000 billion euros and are working toward economic and sustainable development. The conference of heads of government also strives to create a network that will enable them to deal with the international challenges regions are facing on the international level. The concept of paradiplomacy should also be distinguished from that of “protodiplomacy” and of “identity paradiplomacy” (Paquin 2002, 2005). Protodiplomacy refers to international strategies designed to promote diplomatic recognition as a way of preparing the establishment of a sovereign country. It is by definition a transitional phase. The concept could define the Catalan government’s strategy in 2017 or that of the government of Quebec before the 1995 referendum on sovereignty-partnership. The concept of identity paradiplomacy occurs on another level. It represents the international policies of a nation without a sovereign state, such as Quebec, Scotland, Flanders, Wallonia, or Catalonia, when the governments of those nations are not seeking independence (Paquin 2002, 2005; Paquin et al. 2015). Thus, one of the fundamental goals of these nations is to work internationally to further the strengthening or building of their nation within a multinational country. The identity entrepreneurs’ objectives are to promote exports, attract investments, seek resources they lack domestically, and try to gain recognition as a nation in the global arena, a crucial process in any attempt at nation-building. This situation tends to be highly conflictual if the central government is hostile to the “other nation’s” identity-based demands, such as with Catalonia and the Basque region in Spain or with Quebec in Canada. The concept of identity paradiplomacy is useful in explaining why the Quebec government, for instance, has adopted different international policies from other Canadian provinces. There is a strong identity-driven element in the Quebec government’s international policies. The government’s goal, whether run by federalists or sovereignists, is to reinforce the French language, to support the development of Francophonie, as well as to gain recognition from foreign governments that it forms the “nation” of Quebec. The Quebec government’s bilateral relations with the French government are greater than those between Canada and France and perhaps between Canada and Great Britain. Former Prime Minister of Quebec Jean Charest met French President Nicolas Sarkozy more often than any other head of state, with the exception of the German Chancellor Angela Merkel. Furthermore, a distinction should be made between “networks of government representatives” and paradiplomacy. According to Anne-Marie Slaughter, networks of government representatives are governmental or paragovernmental actors who exchange information and coordinate their activities in order to manage shared problems on a global scale (Slaughter 2004, 2). Among these actors are financial regulators, police investigators, judges, legislators, and central bank directors, for example. These international governmental networks are a key feature of the current world order according to Slaughter and are increasingly concerned with areas of jurisdiction on all levels of governments. When the Canadian and American police forces coordinate their activities to prevent terrorist attacks, for instance, it involves networks of government representatives rather than bilateral paradiplomacy. In the case of paradiplomacy, an actor—for example, a ministry—is formally mandated by a federated state or sub-state government to defend the state’s interests and promote them in the international arena. The ministry represents the government as a whole and speaks on its behalf. For example, the empowering legislation for the Quebec government’s Ministry of International Relations and la Francophonie entrusts the ministry with the task of establishing and maintaining relations with foreign governments as well as with international organizations. The ministry must safeguard Quebec’s interests in international negotiations and oversee the negotiations and implementation of “agreements” and international treaties. It attends to the implementation of Quebec’s international policies and handles its 32 representation abroad. Magnitude of the Phenomenon A marginal phenomenon in the 1960s and 1970s, paradiplomacy was not only in evidence in North American federated states. It also developed in Europe and elsewhere around the world and even became widespread within unitary states or ones with decentralized or devolved governments such as France, Great Britain, and Spain. It was also increasingly present at the municipal level, notably in global cities like London, New York, Paris, and Shanghai. Nowadays, the paradiplomatic phenomenon is large, intensive, extensive, and permanent despite the sizeable decline after the 2008 crisis. The actors of paradiplomacy, protodiplomacy, and identity paradiplomacy have a considerable degree of autonomy, numerous resources, and increasing influence in international politics (Paquin 2004; Aldecoa and Keating 1999; Tavares 2016). Quebec already had offices in Paris and London in the nineteenth century, despite the fact that very few cases of federated states have been identified as active in the international arena before the 1960s. Since then, things have evolved quickly, to the point where the phenomenon has become quite ordinary. In the United States, for instance, only four states had foreign offices in 1980, compared to 42 with 245 representatives in around 30 countries in 2008. Due to the recession, that number went down to 212 in 2015. In comparison, the American federal government has 267 embassies and consulates around the world (Fry 2017). Germany’s Länder have created around 130 political representations around the world since the 1970s, including over twenty in the United States. In Spain, Catalonia has 4 delegations (France, Belgium, Great Britain, Germany) as well as 34 trade bureaus, 4 cultural and linguistic representatives, 9 overseas development offices, 10 tourism centers, and 5 cultural industries representatives. In 2019, the Quebec government had 32 political representations in 18 countries, including the Quebec General Delegation in Paris whose status is akin to that of an embassy. Flanders has had 100 economic offices since 2004 although its activities mainly concern export and investment issues. Wallonie-Brussels international is the institution with the greatest number of trade offices per capita in the world. The phenomenon is also present in more centralized countries. In France, for instance, the Rhône-Alpes region and its partner Entreprise Rhône-Alpes International have several economic representations abroad. The same phenomenon can be observed in Japan, India, Australia, Austria, Switzerland, Brazil, and several other countries (Paquin 2004; Aldecoa and Keating 1999; Criekemans 2011). The international policies of federated states are an important phenomenon involving all international spheres of action, including economic and trade policies, promoting exports, attracting foreign investments and decision-making centers, science and technology, energy, the environment, education, immigration, and the movement of people, bilateral and multilateral relations, international development, and human rights, which are the major paradiplomatic issues. Paradiplomatic actors are also taking an increasing interest in non-traditional security issues such as terrorism, respecting human rights, cybersecurity, pandemics, and public health (Paquin 2004; Lequesne and Paquin 2017). Some examples of non-central governments participating in various international arenas are: the creation by the governments of California, Quebec, and Ontario of the second largest international carbon market in the world after the European Union; the presence of Australian states in the Australian government’s delegation at a UN conference on development and the environment; the presence of representatives from Texas at meetings of OPEC member countries, whereas the United States is not a member of the organization; Jordi Pujol’s one-on-one discussions with all the G7 heads of state (with the exception of Canada) while he was President of Catalonia; and the Mexican state of San Luis Potosí’s activities to facilitate money transfers sent by immigrants in the United States (Lequesne and Paquin 2017). Regarding security issues, one may observe: Baden-Württemberg’s participation in peacekeeping missions in Bangladesh, Russia, BosniaHerzegovina, Burundi, and Tanzania; the sanctions imposed by the state of Maryland against South Africa in 1985, or the 1996 Massachusetts Burma Law, since invalidated by the US Supreme Court, forbidding public contracts for companies working in Myanmar (Burma); the pressure exerted on the state of Victoria, Australia, to cancel contracts with French companies to protest against the nuclear tests carried out by France in the South Pacific in 1995; national guard officers from American states participating in international military exchange programs, etc. (Paquin 2004). Constitutions and Non-Central Governments Non-central governments hold asymmetrical powers in matters of international politics, which has a considerable effect on their ability to act. That asymmetry exists between countries as well as between regions within them. As a rule, the more decentralized a country, the more non-central governments have constitutional responsibilities that increase their ability to act in the international arena. The more expertise a non-central government has, the more financial resources and a large civil service (Paquin 2004; Michelmann 2009; Criekemans 2011). In unitary states like Denmark or Israel, non-central governments have very little autonomy. In unitary states with a more decentralized structure like France, or in devolved states like the UK, or quasi-federal ones like Spain, non-central governments have more autonomy, despite the central state’s powers remaining dominant (Table 4.1). In federal countries, sovereignty is constitutionally divided between a central government and federated states, such as with Australian and American states, German Länder, Canadian provinces, and Belgium’s regions and communities. To be designated a federal government, a central government cannot unilaterally modify the constitution to its advantage. In such countries, federated states hold a very high number of responsibilities. In Canada, provinces are responsible for issues of health, education, work, culture, and municipal policies. They are also partly responsible for issues relating to economic development, environmental protection, and even justice. India and Malaysia have constitutions that explicitly assign exclusive competence in international relations to the central state. But in several other federal countries, such as Canada, Australia, and Belgium, many specialists have highlighted the difficulty for central governments to negotiate and implement international agreements when the latter involve areas of federal jurisdiction (Twomey 2009). In Australia and Canada, the courts have ruled that the central government could negotiate agreements on all subjects, including those pertaining to federal jurisdiction in domestic law, but did not have the power to force states to implement them, which can create major problems with regard to respecting those countries’ international commitments. Other constitutions, including those of Australia, Germany, Switzerland, and Belgium, grant explicit powers to regional governments in matters of international relations. The Swiss, German, and Belgian constitutions even grant states the power to sign actual treaties by virtue of international law (Michelmann 2009, 6–7). The Belgian constitution goes even further. Since 1993, Belgium has been a federation that allows states to become true international actors. The division of powers in matters of international relations follows the division of jurisdiction by virtue of the constitutional principle: in foro interno, in foro externo, which can be translated as an international extension of domestic jurisdiction. According to that constitution, there are three kinds of treaties in Belgium: (1) treaties within federal jurisdiction; (2) treaties within the individual states’ authority; and (3) combined treaties involving two levels of government that require cooperation between the two in being negotiated and implemented. Furthermore, there is no hierarchy between levels of government, meaning that in reality a Belgian ambassador is not superior in rank to a Flemish diplomat (Paquin 2010). What Kind of International Actors? What kind of international actors are non-central governments? Their status is halfway between that of a sovereign country and a non-governmental organization (NGO). Their status is ambiguous due to being both sovereignty-bound and sovereignty-free, as James Rosenau has stated (1990). Since non-central governments are sovereignty-free, they are not recognized actors in international law. Apart from certain exceptions provided for in the domestic laws of countries such as Belgium, these governments cannot formally sign real international treaties as defined by international law. Nor can they have real embassies or consulates. That said, their status as sovereignty-free actors, thus not formally recognized by international law, does not take away their entire ability to act. Their means of action are more on the level of NGOs. Indeed, non-central governments send fact-finding and outreach missions abroad, take part in trade fairs and certain international forums such as the Davos World Economic Forum, and finance public relations campaigns to increase exports and attract investments. The Canadian province of Alberta was very active in Brussels during negotiations on the EU-Canada Comprehensive Economic and Trade Agreement in order to make sure that oil from tar sands would not be subject to sanctions by the European Union. Alberta was also highly active in Washington to pressure American officials to approve the Keystone XL pipeline project. It is also easier for non-central governments to adopt idealistic international positions, and they have greater latitude to take a strong stance on delicate topics. For example, they can more easily condemn the nonrespect of human rights. Countries, on the other hand, must take a more nuanced tone and a more diplomatic approach in order to take into account a number of political and economic factors. Sub-state governments can also defend their interests in foreign courts. The government of Ontario brought the issue of acid rain directly to American judges, as did British Columbia on the subject of the “salmon war” pitting Canada against the United States. Non-central governments are also sovereignty-bound actors, in that they have partial sovereignty over their territory. Several non-central governments have a minister in charge of international relations and a corresponding ministry. Furthermore, the range of tools available to federated states for international action is nearly as great as for sovereign countries, with the exception of the use of military force. Indeed, several non-central governments have organized official visits with other regional leaders or those from sovereign countries, such as the alternating visits of the prime ministers of France and Quebec. They have representation or “mini-embassies” abroad, establish bilateral and multilateral relations with sovereign countries and other federated states, create institutions for regional or transregional cooperation, and can sign international agreements. In this regard, the government of Quebec has signed 751 of them, including 385 still in effect. Over 80% of these agreements have been signed with sovereign countries. In certain cases, such as the Belgian federated states, it involves actual international treaties (Paquin 2010). Their localization within a sovereign state gives federated states access to decision-makers from the central government, including actors in the country’s foreign policy. Sharing sovereignty with a central government gives non-central governments a reason to establish an international presence and develop their means of influence. Thus, contrary to NGOs and multinationals, for instance, the government of a federated state may enjoy special access to international diplomatic networks if the central government agrees, and may take part in international negotiations within their country’s delegation (Paquin 2004; Lequesne and Paquin 2017). The phenomenon is growing. Since the end of the Second World War, there has been an increase in multilateralism and international negotiations. While in the late nineteenth century only one or two conferences or congresses involving official representatives were documented, today there are around 9000. The register of UN treaties provides access to about 250,000 treaties.1 Multilateralism and international negotiations have therefore become an indissociable component of globalization (Paquin 2013). Parallel to the above, there has been a substantial increase in federal governments around the world. Within the European Union, for example, only two countries had federal governments after the Second World War whereas today 19 of the 27 countries in the EU have experienced a significant increase in regional governments and several have real federal governments. The Forum of Federations estimates that 40% of the world’s population live in federal countries (Lequesne and Paquin 2017). The consequence of these two phenomena has been that all fields of government activity, even in federated states and municipalities, may enter into the jurisdiction of at least one intergovernmental organization and often of several (Paquin 2010; Lequesne and Paquin 2017). Thus, in the framework of international organizations and thematic conferences, topics are addressed regarding the environment, free trade, procurement contracts, education, public health, cultural diversity, corporate subsidies, treatment of investors, the removal of non-tariff barriers, agriculture, services, etc. In this context, federated states are increasingly aware that their political power or sovereignty—in other words, their ability to develop and implement policies—is the subject of negotiations within multilateral international forums. Since international negotiations are having a growing effect on federated states’ sovereignty, the latter have become crucial actors in negotiations. In the negotiations on climate change, for instance, the UN formally recognized the importance of such actors. According to the UN Development Programme: “[…] most investments to reduce GHG (Greenhouse gas) emissions and adapt to climate change – 50 to 80 percent for reductions and up to 100 percent for adaptation – must take place at the sub-national level”.2 Furthermore, at the 16th Conference of the Parties, UN Framework Convention on Climate Change in Cancún in December 2010, the importance of the role of non-central governments was stipulated in article 7 of the Cancún Agreements. During his speech to the delegates, the Canadian representative, John Baird, explicitly recognized the role of Canadian provinces, notably Quebec, on the issue of climate change (Chaloux et al. 2015). In terms of trade negotiations, the same trend can be observed. The provinces played a greater role during Canada’s trade negotiations with the European Union, the largest since the Canada-US Free Trade Agreement in the late 1990s. The European Union demanded that the Canadian government include the provinces in its delegation, with the aim of starting negotiations for a “new generation” free trade agreement. The main reason being that the issue of public procurement contracts in Canadian provinces and cities was of special interest to the European Union in the negotiations. In that context, the European Union deemed that, for the negotiations to succeed, they had to include representatives from the provinces at the negotiating table, since the latter are not required to implement agreements signed by the federal government in their areas of jurisdiction (Paquin 2013). There are many precedents in which representatives have taken part in meetings of international institutions—the European Union, the United Nations, the World Trade Organization, the World Health Organization and Unesco, or again at the Conference of the Parties, UN Framework Convention on Climate Change—both within a country’s delegation, and at times outside it, as with Quebec, New Brunswick, and the WallonieBrussels federation regarding la Francophonie. When central governments block non-central governments’ access to international negotiations, the latter may try to influence the negotiations by going on-site. To make its voice heard, the government of Quebec sent several representatives to the conference of the parties on climate change despite the objection of Stephen Harper’s climate-skeptic government. Another strategy consists in joining networks of non-central governments and creating an accredited NGO at the negotiations, which is entrusted with the mandate of defending the interests of those actors at the negotiations. This was the case for the NGO Network of Regional Governments for Sustainable Development, which represents the regions’ interests in climate change negotiations. ∗∗∗ The paradiplomatic phenomenon, although not generally spectacular, certainly represents an important change in the study of foreign policy and international politics. It is an extensive, intensive, and permanent phenomenon. The international interests of sub-national governments are highly varied and substantial. These governments have considerable leeway and resources in their international initiatives, despite the asymmetry. In short, the phenomenon can no longer be ignored, even in centralized countries such as France or Sweden. Although paradiplomacy has progressed a great deal in the last thirty years, and case studies are increasingly numerous, there are still several blind spots. There are few studies on paradiplomacy and security issues analyzed in the broad sense, for example. Moreover, few studies exist on non-central governments and international negotiations, in particular on negotiations and the implementation of international treaties.

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#### Antitrust enforcers are drawing from other areas to challenge health care mergers now. The plan flips that strategy on its head.

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The dollars and resources need to be increased for a number of reasons. First, as I have discussed, the courts today place a high burden on the government to prove an antitrust violation. That means the enforcers need to devote significant resources to investigating and proving their cases, including extensive document reviews, witness interviews and depositions and expert opinion – industrial organization economists and others. It is time-consuming; it is expensive; and it is resource-intensive. As an example in 2016 the Antitrust Division challenged two proposed mergers that would have dramatically consolidated the health insurance industry: Anthem’s proposed acquisition of Cigna and Aetna’s effort to acquire Humana.13 We successfully persuaded the courts to enjoin both deals, but to get there required the commitment of 25 to 30% of the Division’s professional staff. My colleagues in the FTC’s Bureau of Competition were similarly constrained as they litigated in multiple forums during that same time. That inevitably meant other matters were understaffed. That is no way to ensure adequate enforcement.

#### Enforcement high, resources key, sustained focus solves consolidation

King 21, John and Marylyn Mayo Chair in Health Law and Professor of Law at the University of Auckland (Jaime, “Stop Playing Health Care Antitrust Whack-A-Mole,” Harvard Bill of Health, <https://blog.petrieflom.law.harvard.edu/2021/05/17/health-care-consolidation-antitrust-enforcement/>)

The time has come to meaningfully address the most significant driver of health care costs in the United States — the consolidation of provider market power. Over the last 30 years, our health care markets have consolidated to the point that nearly 95% of metropolitan areas have highly concentrated hospital markets and nearly 80% have highly concentrated specialist physician markets. Market research has consistently found that increased consolidation leads to higher health care prices (sometimes as much as 40% more). Provider consolidation has also been associated with reductions in quality of care and wages for nurses. In consolidated provider markets, insurance companies often must choose between paying dominant providers supracompetitive rates or exiting the market. Unfortunately, insurers have little incentive to push back against provider rate demands because they have the ability to pass those rate increases directly to employers and individuals, in the form of higher premiums. In turn, employers take premium increases out of employee wages, contributing to the growing disparity between health care price growth and employee wages. As a result, rising health care premiums mean that every year, consumers pay more, but receive less. Dynamic health care antitrust enforcement is an idea whose time has finally come, but addressing the ills of consolidation in America’s health care system will require a comprehensive and multi-faceted approach. We have seen repeatedly how an entity with market power can respond quickly to negate the benefits of unilateral policy approaches, leading to an endless cycle of competition policy whack-a-mole. For instance, in the last decade, as health system merger and acquisition challenges became more successful, joint ventures and affiliations, especially with urgent care centers and private equity firms, became more frequent. Further, COVID-19 has exacerbated the threat of health care consolidation by leaving many independent hospitals and physician groups struggling financially and vulnerable to acquisition. Fortunately, the Biden/Harris administration appears uniquely poised to implement a comprehensive initiative to address health care consolidation. First and foremost, Biden has positioned key personnel with antitrust expertise, often with distinct knowledge of the health care industry, throughout his administration. For instance, the nomination of former California Attorney General Xavier Becerra, who championed health care antitrust efforts in the state, as Secretary of Health and Human Services was an inspired choice and presents a unique opportunity to enhance competition through Medicare policy. Biden’s appointment of Tim Wu to the National Economic Council and nomination of Lina Khan to one of five seats on the Federal Trade Commission (FTC) also signal a strong commitment to strengthening antitrust enforcement writ large. Second, the Biden administration should support recent efforts in Congress to address health care antitrust concerns. Senator Amy Klobuchar (D-MN) recently introduced a bill, the Competition and Antitrust Law Enforcement Reform Act, which introduces sweeping reforms that would expand funding to the Department of Justice (DOJ) and the Federal Trade Commission, strengthen prohibitions against anticompetitive mergers by forbidding mergers that “create an appreciable risk of materially lessening competition,” shift the burden of proof to require merging entities to demonstrate that the merger will not harm competition, and take steps to prevent dominant firms from engaging in anticompetitive conduct. Likewise, Senator Patty Murray’s (D-WA) Lower Health Care Costs Act of 2019 demonstrated a sophisticated understanding of how health care entities can use market power to obscure health care prices and negotiate anticompetitive contract terms, like all-or-nothing bargaining, gag clauses, and anti-steering provisions, and provided solid policy solutions to both issues. Providing support for bills like these will be essential to developing a comprehensive competition strategy. Third, on September 17, 2020, the Federal Trade Commission announced much needed plans to revamp the Merger Retrospective program. The Biden administration should provide substantial funding and resources to reinvigorate this program. Merger retrospectives, like Steven Tenn’s Sutter-Summit retrospective in 2008, have been pivotal and provided the FTC with much needed insight on how hospital mergers have leveraged the market power necessary to increase prices and harm consumer welfare. A newly revamped Merger Retrospective program holds great promise for antitrust enforcement in health care, especially if used to gain insight into whether and how vertical and cross-market health care mergers create anticompetitive harms. While a majority of consolidating transactions in health care include vertical or cross-market acquisitions, federal antitrust enforcement has been absent in this area. Fourth, Congress and the Trump Administration have moved mountains to expand price transparency in health care, which will greatly facilitate research into the effects of different types of health care consolidation and contracting practices on prices. The Biden Administration should stand firm on requiring hospitals, insurers, and self-insured employers to report negotiated health care prices, and dedicate resources to analyze that data to determine both the drivers of health care prices and the effectiveness of public policy initiatives designed to control prices. In addition, the Biden administration should promote transparency in health care consolidation by requiring all health care providers (hospitals, clinics, provider organizations, etc.) to report any material change in ownership to the Department of Health and Human Services and the FTC to allow the agencies to monitor consolidation patterns and look for stealth consolidation. All winds seem to blow in the direction of the Biden Administration taking significant action to address rampant consolidation in health care and its harms. Yet, doing so requires funding and willpower. Funding for the FTC and DOJ has decreased in relative dollars since 2010, despite a near doubling in merger filings. The FTC and DOJ need increased funding to expand their ability to review and challenge anticompetitive transactions and practices by dominant health care entities, revamp and expand the scope of their Merger Retrospective Review program, and provide technical assistance to state antitrust enforcers. Furthermore, the FTC should be granted the authority and requisite funding to challenge anticompetitive behavior by non-profit organizations, as they have developed a significant expertise in health care provider markets. Challenging the existing market dynamics in health care also demands the political will to take on some of the biggest industries in the nation (who make some of the largest lobbying contributions). As we have seen in recent challenges to the practices of dominant health care providers, the battle will be hard-fought. Yet, the alternative — allowing the health care industry to continue to siphon off ever-increasing portions of the economy and wages — is unacceptable and irresponsible. The Biden administration must make every attempt to improve the functioning of health care markets where possible, and implement price regulations in markets where competition has failed. Antitrust enforcement agencies must use the full force of their legal arsenal to restore competition in health care — and this may include breaking up large health systems that exploit their market power. For too long, the notion of “unscrambling the egg,” i.e., unwinding a previously consummated hospital merger, has been a non-starter in enforcement circles. To truly restore some form of competition in many health care markets, antitrust enforcers need to break up large systems, or at least have a credible threat of doing so. The Biden administration has an opportunity to reinvigorate our health care markets, but only if it is willing to adopt a bold, determined, and comprehensive competition strategy.

#### Health consolidation collapses public health

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Covid-19 has initiated yet another wave: A wave of hospital mergers and acquisitions that will have devastating consequences for public health if industry doesn’t soon execute an about-face. Whether because they’re on the brink of bankruptcy and have subscribed to the half-truth that size is protective, or because they think they can score some good deals and believe scale and success are synonymous, the financial fallout of Covid-19 has caused many hospital executives to make consolidation a core part of their future plans. With the intent of increasing care quality and decreasing consumer costs despite these challenging times, the merger between Shannon Medical Center and Community Hospital and partnership between Intermountain and Sanford Health are just two examples. There are multiple reasons why consumers absolutely cannot afford for industry to bulk up in an effort to weather this storm. The first is that the positive efforts executives claim consolidation will help them accomplish often prove to be futile. Research shows that wherever market concentration is high, there are also higher prices for both consumers and the employers who provide their healthcare coverage. In the absence of competition, costs increase and quality deteriorates. That’s the opposite of progress. Second, generally speaking, the union of two institutions with operational shortcomings only creates one larger institution with even more operational shortcomings! That’s not progress either. Third, Covid-induced consolidation will only make future progress many times more difficult. The larger an organization is, the more it will struggle to rapidly adapt to healthcare disruptions like we’re seeing today. Retail giants like Walmart, Walgreens, Amazon and CVS are pivoting to cater to healthcare consumer demands for affordability and accessibility. Right now, they’re still a blip on the radar relative to mainstream healthcare delivery, but they are looking to eventually corner the market and drive the industry forward. And as they continue down this path, consolidated healthcare systems will be left behind, potentially at the expense of the consumers in that area. The potential impact of continued consolidation on rural patients is especially concerning. Rural communities may have a limited number of the big-box retailers mentioned above. And the unfortunate fact of the matter is that when a larger hospital or health system purchases a smaller, rural hospital, it’s usually only a matter of time before the purchasing system realizes that unless they drastically pare down and reconfigure operations, the acquired hospital will never be profitable. Many eventually decide to close up shop, in some instances reducing or even eliminating rural patients’ options for care delivery. In the absolute worst-case scenario, this is exactly the reality all consumers could face if consolidation continues at its current pace. In theory and if left unchecked, all of the hospitals in the United States could be owned by only a handful of mammoth systems that then lack incentive to continually deliver quality services at lower total cost of care.

#### Public Health coverage is key to preventing future pandemics – extinction

Yong, 9/29

(Ed, staff writer at The Atlantic, citing Gregg Gonsalves, a global-health activist and an epidemiologist at Yale, Alex de Waal, of Tufts University and the author of New Pandemics, Old Politics, Mike Osterholm, an epidemiologist at the University of Minnesota, Eric Lander, OSTP director and Biden’s science adviser, former CDC Director Tom Frieden, Alexandra Phelan, an expert on international law and global health policy at Georgetown University, “WE’RE ALREADY BARRELING TOWARD THE NEXT PANDEMIC”, The Atlantic, 9-29-2021, https://www.theatlantic.com/health/archive/2021/09/america-prepared-next-pandemic/620238/)\\JM

A year after the United States bombed its pandemic performance in front of the world, the Delta variant opened the stage for a face-saving encore. If the U.S. had learned from its mishandling of the original SARS-CoV-2 virus, it would have been better prepared for the variant that was already ravaging India. Instead, after a quiet spring, President Joe Biden all but declared victory against SARS-CoV-2. The CDC ended indoor masking for vaccinated people, pitting two of the most effective interventions against each other. As cases fell, Abbott Laboratories, which makes a rapid COVID-19 test, discarded inventory, canceled contracts, and laid off workers, The New York Times reported. Florida and Georgia scaled back on reporting COVID-19 data, according to Kaiser Health News. Models failed to predict Delta’s early arrival. The variant then ripped through the U.S.’s half-vaccinated populace and once again pushed hospitals and health-care workers to the brink. Delta’s extreme transmissibility would have challenged any nation, but the U.S. nonetheless set itself up for failure. Delta was an audition for the next pandemic, and one that America flubbed. How can a country hope to stay 10 steps ahead of tomorrow’s viruses when it can’t stay one step ahead of today’s? America’s frustrating inability to learn from the recent past shouldn’t be surprising to anyone familiar with the history of public health. Almost 20 years ago, the historians of medicine Elizabeth Fee and Theodore Brown lamented that the U.S. had “failed to sustain progress in any coherent manner” in its capacity to handle infectious diseases. With every new pathogen—cholera in the 1830s, HIV in the 1980s—Americans rediscover the weaknesses in the country’s health system, briefly attempt to address the problem, and then “let our interest lapse when the immediate crisis seems to be over,” Fee and Brown wrote. The result is a Sisyphean cycle of panic and neglect that is now spinning in its third century. Progress is always undone; promise, always unfulfilled. Fee died in 2018, two years before SARS-CoV-2 arose. But in documenting America’s past, she foresaw its pandemic present—and its likely future. More Americans have been killed by the new coronavirus than the influenza pandemic of 1918, despite a century of intervening medical advancement. The U.S. was ranked first among nations in pandemic preparedness but has among the highest death rates in the industrialized world. It invests more in medical care than any comparable country, but its hospitals have been overwhelmed. It helped develop COVID-19 vaccines at near-miraculous and record-breaking speed, but its vaccination rates plateaued so quickly that it is now 38th in the world. COVID-19 revealed that the U.S., despite many superficial strengths, is alarmingly vulnerable to new diseases—and such diseases are inevitable. As the global population grows, as the climate changes, and as humans push into spaces occupied by wild animals, future pandemics become more likely. We are not guaranteed the luxury of facing just one a century, or even one at a time. It might seem ridiculous to think about future pandemics now, as the U.S. is consumed by debates over booster shots, reopened schools, and vaccine mandates. Prepare for the next one? Let’s get through this one first! But America must do both together, precisely because of the cycle that Fee and Brown bemoaned. Today’s actions are already writing the opening chapters of the next pandemic’s history. Internationally, Joe Biden has made several important commitments. At the United Nations General Assembly last week, he called for a new council of national leaders and a new international fund, both focused on infectious threats—forward-looking measures that experts had recommended well before COVID-19. But domestically, many public-health experts, historians, and legal scholars worry that the U.S. is lapsing into neglect, that the temporary wave of investments isn’t being channeled into the right areas, and that COVID-19 might actually leave the U.S. weaker against whatever emerges next. Donald Trump’s egregious mismanagement made it easy to believe that events would have played out differently with a halfway-competent commander who executed preexisting pandemic plans. But that ignores the many vulnerabilities that would have made the U.S. brittle under any administration. Even without Trump, “we’d still have been in a whole lot of trouble,” Gregg Gonsalves, a global-health activist and an epidemiologist at Yale, told me. “The weaknesses were in the rootstock, not high up in the trees.” The panic-neglect cycle is not inevitable but demands recognition and resistance. “A pandemic is a course correction to the trajectory of civilization,” Alex de Waal, of Tufts University and the author of New Pandemics, Old Politics, told me. “Historical pandemics challenged us to make some fairly fundamental changes to the way in which society is organized.” Just as cholera forced our cities to be rebuilt for sanitation, COVID-19 should make us rethink the way we ventilate our buildings, as my colleague Sarah Zhang argued. But beyond overhauling its physical infrastructure, the U.S. must also address its deep social weaknesses—a health-care system that millions can’t access, a public-health system that’s been rotting for decades, and extreme inequities that leave large swaths of society susceptible to a new virus. Early last year, some experts suggested to me that America’s COVID-19 failure stemmed from its modern inexperience with infectious disease; having now been tested, it might do better next time. But preparedness doesn’t come automatically, and neither does its absence. “Katrina didn’t happen because Louisiana never had a hurricane before; it happened because of policy choices that led to catastrophe,” Gonsalves said. The arc of history does not automatically bend toward preparedness. It must be bent. On September 3, the White House announced a new strategy to prepare for future pandemics. Drafted by the Office of Science and Technology Policy, and the National Security Council, the plan would cost the U.S. $65 billion over the next seven to 10 years. In return, the country would get new vaccines, medicines, and diagnostic tests; new ways of spotting and tracking threatening pathogens; better protective equipment and replenished stockpiles; sturdier supply chains; and a centralized mission control that would coordinate all the above across agencies. The plan, in rhetoric and tactics, resembles those that were written before COVID-19 and never fully enacted. It seems to suggest all the right things. But the response from the health experts I’ve talked with has been surprisingly mixed. “It’s underwhelming,” Mike Osterholm, an epidemiologist at the University of Minnesota, told me. “That $65 billion should have been a down payment, not the entire program. It’s a rounding error for our federal budget, and yet our entire existence going forward depends on this.” The pandemic plan compares itself to the Apollo program, but the government spent four times as much, adjusted for inflation, to put astronauts on the Moon. Meanwhile, the COVID-19 pandemic may end up costing the U.S. an estimated $16 trillion. “I completely agree that it will take more investment,” Eric Lander, OSTP director and Biden’s science adviser, told me; he noted that the published plan is just one element of a broader pandemic-preparedness effort that is being developed. But even the $65 billion that the plan has called for might not fully materialize. Biden originally wanted to ask Congress to immediately invest $30 billion but eventually called for just half that amount, in a compromise with moderate Democrats who sought to slash it even further. The idea of shortchanging pandemic preparedness after the events of 2020 “should be unthinkable,” wrote former CDC Director Tom Frieden and former Senator Tom Daschle in The Hill. But it is already happening. Others worry about the way the budget is being distributed. About $24 billion has been earmarked for technologies that can create vaccines against a new virus within 100 days. Another $12 billion will go toward new antiviral drugs, and $5 billion toward diagnostic tests. These goals are, individually, sensible enough. But devoting two-thirds of the full budget toward them suggests that COVID-19’s lessons haven’t been learned. America failed to test sufficiently throughout the pandemic even though rigorous tests have long been available. Antiviral drugs played a bit part because they typically provide incremental benefits over basic medical care, and can be overly expensive even when they work. And vaccines were already produced far faster than experts had estimated and were more effective than they had hoped; accelerating that process won’t help if people can’t or won’t get vaccinated, and especially if they equate faster development with nefarious corner-cutting, as many Americans did this year. Every adult in the U.S. has been eligible for vaccines since mid-April; in that time, more Americans have died of COVID-19 per capita than people in Germany, Canada, Rwanda, Vietnam, or more than 130 other countries did in the pre-vaccine era. “We’re so focused on these high-tech solutions because they appear to be what a high-income country would do,” Alexandra Phelan, an expert on international law and global health policy at Georgetown University, told me. And indeed, the Biden administration has gone all in on vaccines, trading them off against other countermeasures, such as masks and testing, and blaming “the unvaccinated” for America’s ongoing pandemic predicament. The promise of biomedical panaceas is deeply ingrained in the U.S. psyche, but COVID should have shown that medical magic bullets lose their power when deployed in a profoundly unequal society. There are other ways of thinking about preparedness. And there are reasons those ways were lost. In 1849, after investigating a devastating outbreak of typhus in what is now Poland, the physician Rudolf Virchow wrote, “The answer to the question as to how to prevent outbreaks … is quite simple: education, together with its daughters, freedom and welfare.” Virchow was one of many 19th-century thinkers who correctly understood that epidemics were tied to poverty, overcrowding, squalor, and hazardous working conditions—conditions that inattentive civil servants and aristocrats had done nothing to address. These social problems influenced which communities got sick and which stayed healthy. Diseases exploit society’s cracks, and so “medicine is a social science,” Virchow famously said. Similar insights dawned across the Atlantic, where American physicians and politicians tackled the problem of urban cholera by fixing poor sanitation and dilapidated housing. But as the 19th century gave way to the 20th, this social understanding of disease was ousted by a new paradigm. When scientists realized that infectious diseases are caused by microscopic organisms, they gained convenient villains. Germ theory’s pioneers, such as Robert Koch, put forward “an extraordinarily powerful vision of the pathogen as an entity that could be vanquished,” Alex de Waal, of Tufts, told me. And that vision, created at a time when European powers were carving up other parts of the world, was cloaked in metaphors of imperialism, technocracy, and war. Microbes were enemies that could be conquered through the technological subjugation of nature. “The implication was that if we have just the right weapons, then just as an individual can recover from an illness and be the same again, so too can a society,” de Waal said. “We didn’t have to pay attention to the pesky details of the social world, or see ourselves as part of a continuum that includes the other life-forms or the natural environment.” Germ theory allowed people to collapse everything about disease into battles between pathogens and patients. Social matters such as inequality, housing, education, race, culture, psychology, and politics became irrelevancies. Ignoring them was noble; it made medicine and science more apolitical and objective. Ignoring them was also easier; instead of staring into the abyss of society’s intractable ills, physicians could simply stare at a bug under a microscope and devise ways of killing it. Somehow, they even convinced themselves that improved health would “ultimately reduce poverty and other social inequities,” wrote Allan Brandt and Martha Gardner in 2000. This worldview accelerated a growing rift between the fields of medicine (which cares for sick individuals) and public health (which prevents sickness in communities). In the 19th century, these disciplines were overlapping and complementary. In the 20th, they split into distinct professions, served by different academic schools. Medicine, in particular, became concentrated in hospitals, separating physicians from their surrounding communities and further disconnecting them from the social causes of disease. It also tied them to a profit-driven system that saw the preventive work of public health as a financial threat. “Some suggested that if prevention could eliminate all disease, there would be no need for medicine in the future,” Brandt and Gardner wrote. This was a political conflict as much as an ideological one. In the 1920s, the medical establishment flexed its growing power by lobbying the Republican-controlled Congress and White House to erode public-health services including school-based nursing, outpatient dispensaries, and centers that provided pre- and postnatal care to mothers and infants. Such services were examples of “socialized medicine,” unnecessary to those who were convinced that diseases could best be addressed by individual doctors treating individual patients. Health care receded from communities and became entrenched in hospitals. Decades later, these changes influenced America’s response to COVID-19. Both the Trump and Biden administrations have described the pandemic in military metaphors. Politicians, physicians, and the public still prioritize biomedical solutions over social ones. Medicine still overpowers public health, which never recovered from being “relegated to a secondary status: less prestigious than clinical medicine [and] less amply financed,” wrote the sociologist Paul Starr. It stayed that way for a century. During the pandemic, many of the public-health experts who appeared in news reports hailed from wealthy coastal universities, creating a perception of the field as well funded and elite. That perception is false. In the early 1930s, the U.S. was spending just 3.3 cents of every medical dollar on public health, and much of the rest on hospitals, medicines, and private health care. And despite a 90-year span that saw the creation of the CDC, the rise and fall of polio, the emergence of HIV, and relentless calls for more funding, that figure recently stood at … 2.5 cents. Every attempt to boost it eventually receded, and every investment saw an equal and opposite disinvestment. A preparedness fund that was created in 2002 has lost half its budget, accounting for inflation. Zika money was cannibalized from Ebola money. America’s historical modus operandi has been to “give responsibility to the local public-health department but no power, money, or infrastructure to make change,” Ruqaiijah Yearby, a health-law expert at Saint Louis University, told me. Lisa Macon Harrison, who directs the department that serves Granville and Vance Counties, in North Carolina, told me that to protect her community of 100,000 people from infectious diseases—HIV, sexually transmitted infections, rabies, and more—the state gives her $4,147 a year. That’s 90 times less than what she actually needs. She raises the shortfall herself through grants and local dollars. Trifling budgets mean smaller staff, which turns mandatory services into optional ones. Public-health workers have to cope with not just infectious diseases but air and water pollution, food safety, maternal and child health, the opioid crisis, and tobacco control. But with local departments having lost 55,000 jobs since the 2008 recession, many had to pause their usual duties to deal with COVID-19. Even then, they didn’t have staff to do the most basic version of contact tracing—calling people up—let alone the ideal form, wherein community health workers help exposed people find food, services, and places to isolate. When vaccines were authorized, departments had to scale back on testing so that overworked staff could focus on getting shots into arms; even that wasn’t enough, and half of states hired armies of consultants to manage the campaign, The Washington Post reported. In May, the Biden administration said that it would invest $7.4 billion in recruiting and training public-health workers, creating tens of thousands of jobs. But those new workers would be air-dropped into an infrastructure that is quite literally crumbling. Many public-health departments are housed in buildings that were erected in the 1940s and ’50s, when polio money was abundant; they are now falling apart. “There’s a trash can in the hallway in front of my environmental-health supervisor’s office to catch rain that might come through the ceiling,” Harrison told me. And between their reliance on fax machines and decades-old data systems, “it feels like we’re using a Rubik’s Cube and an abacus to do pandemic response,” Harrison added. Last year, America’s data systems proved to be utterly inadequate for tracking a rapidly spreading virus. Volunteer efforts such as the COVID Tracking Project (launched by The Atlantic) had to fill in for the CDC. Academics created a wide range of models, some of which were misleadingly inaccurate. “For hurricanes, we don’t ask well-intentioned academics to stop their day jobs and tell us where landfall will happen,” the CDC’s Dylan George told me. “We turn to the National Hurricane Center.” Similarly, George hopes that policy makers can eventually turn to the CDC’s newly launched Center for Forecasting and Outbreak Analytics, where he is director of operations. With initial funding of about $200 million, the center aims to accurately track and predict the paths of pathogens, communicate those predictions with nuance, and help leaders make informed decisions quickly. But public health’s longstanding neglect means that simply making the system fit for purpose is a mammoth undertaking that can’t be accomplished with emergency funds—especially not when those funds go primarily toward biomedical countermeasures. That’s “a welfare scheme for university scientists and big organizations, and it’s not going to trickle down to the West Virginia Department of Health,” Gregg Gonsalves, the health activist and epidemiologist, told me. What the U.S. needs, as several reports have recommended and as some senators have proposed, is a stable and protected stream of money that can’t be diverted to the emergency of the day. That would allow health departments to properly rebuild without constantly fearing the wrecking ball of complacency. Biden’s $7.4 billion bolus is a welcome start—but just a start. And though his new pandemic-preparedness plan commits $6.5 billion toward strengthening the U.S. public-health system over the next decade, it might take $4.5 billion a year to actually do the job. “Nobody should read that plan as the limit of what needs to be done,” Eric Lander, the president’s science adviser, told me. “I have no disagreement that a major effort and very substantial funding are needed,” and, he noted, the administration’s science and technology advisers will be developing a more comprehensive strategy. “But is pandemic preparedness the lens through which to fix public health?” Lander asked. “I think those issues are bigger—they’re everyday problems, and we need to shine a spotlight on them every day.” But here is public health’s bind: Though it is so fundamental that it can’t (and arguably shouldn’t) be tied to any one type of emergency, emergencies are also the one force that can provide enough urgency to strengthen a system that, under normal circumstances, is allowed to rot. When a doctor saves a patient, that person is grateful. When an epidemiologist prevents someone from catching a virus, that person never knows. Public health “is invisible if successful, which can make it a target for policy makers,” Ruqaiijah Yearby, the health-law expert, told me. And during this pandemic, the target has widened, as overworked and under-resourced officials face aggressive protests. “Our workforce is doing 15-hour days and rather than being glorified, they’re being vilified and threatened with bodily harm and death,” Harrison told me. According to an ongoing investigation by the Associated Press and Kaiser Health News, the U.S. has lost at least 303 state or local public-health leaders since April 2020, many because of burnout and harassment. Even though 62 percent of Americans believe that pandemic-related restrictions were worth the cost, Republican legislators in 26 states have passed laws that curtail the possibility of quarantines and mask mandates, as Lauren Weber and Anna Maria Barry-Jester of KHN have reported. Supporters characterize these laws as checks on executive power, but several do the opposite, allowing states to block local officials or schools from making decisions to protect their communities. Come the next pandemic (or the next variant), “there’s a real risk that we are going into the worst of all worlds,” Alex Phelan, of Georgetown University, told me. “We’re removing emergency actions without the preventive care that would allow people to protect their own health.” This would be dangerous for any community, let alone those in the U.S. that are structurally vulnerable to infectious disease in ways that are still being ignored. Biden’s new pandemic plan contains another telling detail about how the U.S. thinks about preparedness. The parts about vaccines and therapeutics contain several detailed and explicit strategies. The part about vulnerable communities is a single bullet point that calls for strategies to be developed. This isn’t a new bias. In 2008, Philip Blumenshine and his colleagues argued that America’s flu-pandemic plans overlooked the disproportionate toll that such a disaster would take upon socially disadvantaged people. Low-income and minority groups would be more exposed to airborne viruses because they’re more likely to live in crowded housing, use public transportation, and hold low-wage jobs that don’t allow them to work from home or take time off when sick. When exposed, they’d be more susceptible to disease because their baseline health is poorer, and they’re less likely to be vaccinated. With less access to health insurance or primary care, they’d die in greater numbers. These predictions all came to pass during the H1N1 swine-flu pandemic of 2009. When SARS-CoV-2 arrived a decade later, history repeated itself. The new coronavirus disproportionately infected essential workers, who were forced to risk exposure for the sake of their livelihood; killed Pacific Islander, Latino, Indigenous, and Black Americans; and struck people who’d been packed into settings at society’s margins—prisons, nursing homes, meatpacking facilities. “We’ve built a system in which many people are living on the edge, and pandemics prey on those vulnerabilities,” Julia Raifman, a health-policy researcher at Boston University, told me. Such patterns are not inevitable. “It is very clear, from evidence and history, that robust public-health systems rely on provision of social services,” Eric Reinhart, a political anthropologist and physician at Northwestern University, told me. “That should just be a political given, and it is not. You have Democrats who don’t even say this, let alone Republicans.” America’s ethos of rugged individualism pushes people across the political spectrum to see social vulnerability as a personal failure rather than the consequence of centuries of racist and classist policy, and as a problem for each person to solve on their own rather than a societal responsibility. And America’s biomedical bias fosters the seductive belief that these sorts of social inequities won’t matter if a vaccine can be made quickly enough. But inequity reduction is not a side quest of pandemic preparedness. It is arguably the central pillar—if not for moral reasons, then for basic epidemiological ones. Infectious diseases can spread, from the vulnerable to the privileged. “Our inequality makes me vulnerable,” Mary Bassett, who studies health equity at Harvard, told me. “And that’s not a necessary feature of our lives. It can be changed.” “To be ready for the next pandemic, we need to make sure that there’s an even footing in our societal structures,” Seema Mohapatra, a health-law expert at Indiana University, told me. That vision of preparedness is closer to what 19th-century thinkers lobbied for, and what the 20th century swept aside. It means shifting the spotlight away from pathogens themselves and onto the living and working conditions that allow pathogens to flourish. It means measuring preparedness not just in terms of syringes, sequencers, and supply chains but also in terms of paid sick leave, safe public housing, eviction moratoriums, decarceration, food assistance, and universal health care. It means accompanying mandates for social distancing and the like with financial assistance for those who might lose work, or free accommodation where exposed people can quarantine from their family. It means rebuilding the health policies that Reagan began shredding in the 1980s and that later administrations further frayed. It means restoring trust in government and community through public services. “It’s very hard to achieve effective containment when the people you’re working with don’t think you care about them,” Arrianna Marie Planey, a medical geographer at the University of North Carolina at Chapel Hill, told me. In this light, the American Rescue Plan—the $1.9 trillion economic-stimulus bill that Biden signed in March—is secretly a pandemic-preparedness bill. Beyond specifically funding public health, it also includes unemployment insurance, food-stamp benefits, child tax credits, and other policies that are projected to cut the poverty rate for 2021 by a third, and by even more for Black and Hispanic people. These measures aren’t billed as ways of steeling America against future pandemics—but they are. Also on the horizon is a set of recommendations from the COVID-19 Health Equity Task Force, which Biden established on his first full day of office. “The president has told many of us privately, and said publicly, that equity has to be at the heart of what we do in this pandemic,” Vivek Murthy, the surgeon general, told me. Some of the American Rescue Plan’s measures are temporary, and their future depends on the $3.5 trillion social-policy bill that Democrats are now struggling to pass, drawing opposition from within their own party. “Health equity requires multiple generations of work, and politicians want outcomes that can be achieved in time to be recognized by an electorate,” Planey told me. That electorate is tiring of the pandemic, and of the lessons it revealed. Last year, “for a moment, we were able to see the invisible infrastructure of society,” Sarah Willen, an anthropologist at the University of Connecticut who studies Americans’ conceptions of health equity, told me. “But that seismic effect has passed.” Socially privileged people now also enjoy the privilege of immunity, while those with low incomes, food insecurity, eviction risk, and jobs in grocery stores and agricultural settings are disproportionately likely to be unvaccinated. Once, they were deemed “essential”; now they’re treated as obstinate annoyances who stand between vaccinated America and a normal life. The pull of the normal is strong, and our metaphors accentuate it. We describe the pandemic’s course in terms of “waves,” which crest and then collapse to baseline. We bill COVID-19 as a “crisis”—a word that evokes decisive moments and turning points, “and that, whether you want to or not, indexes itself against normality,” Reinhart told me. “The idea that something new can be born out of it is lost,” because people long to claw their way back to a precrisis state, forgetting that the crisis was itself born of those conditions. Better ideas might come from communities for whom “normal” was something to survive, not revert to. Many Puerto Ricans, for example, face multiple daily crises including violence, poverty, power outages, and storms, Mónica Feliú-Mójer, of the nonprofit Ciencia Puerto Rico, told me. “They’re always preparing,” she said, “and they’ve built support networks and mutual-aid systems to take care of each other.” Over the past year, Ciencia PR has given small grants to local leaders to fortify their communities against COVID-19. While some set up testing and vaccination clinics, others organized food deliveries or educational events. One cleaned up a dilapidated children’s park to create a low-risk outdoor space where people could safely reconnect. Such efforts recognize that resisting pandemics is about solidarity as well as science, Feliú-Mójer told me. The panic-neglect cycle is not irresistible. Some of the people I spoke with expressed hope that the U.S. can defy it, just not through the obvious means of temporarily increased biomedical funding. Instead, they placed their faith in grassroots activists who are pushing for fair labor policies, better housing, health-care access, and other issues of social equity. Such people would probably never think of their work as a way of buffering against a pandemic, but it very much is—and against other health problems, natural disasters, and climate change besides. These threats are varied, but they all wreak their effects on the same society. And that society can be as susceptible as it allows itself to be.

### 1nc

#### Infrastructure will pass now but Biden’s PC is key

Pramuk, 10/1

(Jacob Pramuk, reporter for CNBC, "Biden pushes House Democrats to reach a deal on infrastructure, social spending bills," 10/1/21 <https://www.cnbc.com/2021/10/01/house-infrastructure-vote-democrats-try-to-reach-budget-spending-deal.html> NL)

House Democrats are holding off on passing the bipartisan infrastructure bill, as progressives threaten to vote against it while they seek agreement on a second, larger spending plan. President Joe Biden went to the Capitol to meet with House Democrats and rally support for his economic plans. Party leaders are trying to forge a deal on the second major piece of President Biden’s legislaive agenda, which could expand paid leave, child care, Medicare and education while investing in green energy. The infrastructure bill, which puts more than $500 billion in new money into transportation, broadband and utilities, would go to Biden’s desk once the House passes it. The House waited for word on whether it would vote on a bipartisan infrastructure bill Friday as President [Joe Biden](https://www.cnbc.com/joe-biden/) pushed congressional Democrats to forge a consensus on a broader spending deal. As his legislative priorities hung in the balance, Biden went to the Capitol shortly before 4 p.m. ET on Friday to meet with House Democrats and rally support for his economic agenda. House Speaker [Nancy Pelosi](https://www.cnbc.com/nancy-pelosi/), D-Calif., had told centrist Democrats the chamber would pass the infrastructure plan by Thursday. Democratic leaders pushed the vote until Friday at the earliest, as progressives threatened to sink the bill until they get assurances the Senate will approve a broader plan to invest in party priorities including climate policy, household tax credits and health-care expansion. Democrats cited progress after a flurry of talks among White House officials and key members of Congress bled into early Friday morning. Pelosi suggested the infrastructure bill could pass Friday even as the progressive and centrist flanks of her party stood trillions of dollars apart on a desired price tag for the second spending package. “We are on a path,” the speaker told reporters when asked if the legislation would pass Friday. The House was in recess on Friday morning as Democrats scrambled to strike a deal that would allow them to hold a vote. The Democratic caucus huddled to discuss its strategy ahead of Biden’s visit. As Biden and White House officials try to bridge a gulf between the liberal and centrist flanks of the party, press secretary Jen Psaki told reporters that “compromise is necessary, it’s inevitable.” The talks hold enormous stakes for the government benefits millions of Americans will receive in the coming years. Through their spending package, Biden and top Democrats aim to boost access to child care, paid leave, pre-K and community college. They hope to speed up green energy adoption and lower the Medicare eligibility age, while expanding coverage to include dental, vision and hearing benefits. The proposal would mean changes for corporations and the wealthiest Americans in the form of tax hikes to offset the new spending. Democrats have floated a 26.5% top corporate tax rate and 39.6% high individual rate — both levels below or in line with those set before the 2017 GOP tax cuts. But some of what Democratic leaders bill as a transformative plan in the mold of the New Deal could fall to the wayside as they try to win support from centrist holdouts, Sens. Joe Manchin of West Virginia and Kyrsten Sinema of Arizona. Senate Majority Leader Chuck Schumer, D-N.Y., will need both of their votes to push a bill through without Republicans in a chamber split 50-50 by party. Manchin has set a $1.5 trillion asking price for the plan — less than half of the $3.5 trillion investment his party set out to pass. It is unclear now where the sides can find a compromise or what they would cut from the proposal. Sinema left Washington on Friday as efforts to strike a deal continued, NBC News reported. She returned to Arizona for a medical appointment and expects to speak with White House officials Friday, Sinema spokesman John LaBombard told NBC. Late Thursday, Psaki said Democrats are “closer to an agreement than ever” after White House officials held a flurry of meetings with Pelosi, Schumer and other key lawmakers. She noted that “we are not there yet, and so, we will need some additional time” to strike a deal. “While Democrats do have some differences, we share common goals of creating good union jobs, building a clean energy future, cutting taxes for working families and small businesses, helping to give those families breathing room on basic expenses—and doing it without adding to the deficit, by making those at the top pay their fair share,” she said in a statement. The infrastructure bill — which Biden sees as a complementary piece of his domestic agenda — has already cleared the Senate and will go to the president’s desk once the House passes the legislation. It would put more than $500 billion in new money into roads, highways, bridges, public transit, broadband and utility systems. The Senate passed the bill with bipartisan support. It appears to have more limited Republican backing in the House, which has given progressives leverage to delay a vote as they seek assurances about the second spending plan. “I feel very good about where we are, and I feel very confident that we’re going to be able to deliver both these things, but you’re going to have to give us some time because it does take time to put together these kinds of transformational investments,” Rep. Pramila Jayapal, a Washington Democrat and chair of the Congressional Progressive Caucus, told reporters on Friday morning. Meanwhile, the Republicans who helped to craft the infrastructure bill in the Senate have tried to put more pressure on the House — including their GOP counterparts — to pass it. In a joint statement late Thursday, Sens. Rob Portman, R-Ohio, Bill Cassidy, R-La., Susan Collins, R-Maine, Lisa Murkowski, R-Alaska, and Mitt Romney, R-Utah, said they were “disappointed” by the vote delay. They said they “remain hopeful the House will come together in a spirit of bipartisanship just as the Senate did and pass this important piece of legislation.” The senators added, “It deserves the strong support of both parties.”

#### 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.

#### Infrastructure reduces emissions and sends a global signal which solves warming

Davenport, 21

(Coral, Lisa Friedman, Reporters at the New York Times, and Emily Cochrane, Correspondent at the New York Times, "Collapse of Infrastructure Talks Puts Climate Action at Risk", New York Times, 6-9-2021, https://www.nytimes.com/2021/06/09/climate/climate-congress-infrastructure.html)\\JM

WASHINGTON — The collapse of negotiations between President Biden and Senate Republicans for an infrastructure bill has complicated the prospects for another priority of the administration: fighting climate change. Embedded in the president’s infrastructure proposal were billions of dollars to help pivot the country away from the fossil fuels that are generating the pollution that is heating the planet. Mr. Biden and his Democratic allies want a national network of charging stations for electric vehicles, tax incentives to propel solar, wind and other clean energy, money to retrofit homes to cut energy use, and transmission lines for renewable energy, among other things. But their highest priority is a clean electricity standard, which would require power companies to increase the amount of clean electricity they generate over time until they eventually stop burning fossil fuels. The chances of pushing climate legislation through Congress, a tall order from the beginning, now appear even more uncertain. That is starting to worry Democrats. “The planet cannot survive another successful Republican obstructionist strategy,” said Senator Edward Markey, a Massachusetts Democrat who wrote climate legislation that died in Congress in 2010. “We have to have climate at the center of any infrastructure package in order to have my vote. No climate, no deal.” The United States must take significant action now, just months before nations gather at a climate summit in Scotland, where the Biden administration wants to sway other countries to take similar steps, said Senator Martin Heinrich, a New Mexico Democrat. “If President Biden wants to establish credibility before he goes to Glasgow later this year, we need to do this and we need to do it big and meaningful,” Mr. Heinrich said. On Wednesday, White House officials said they had not wavered in their commitment to making climate a core part of any infrastructure package. The administration has encouraged a bipartisan group of senators to continue to try to hammer out an agreement.“ The president has underscored that climate change is one of the defining crises we face as a nation, and in the negotiations he has continuously fought for leading on the clean energy economy and on clean energy jobs — which is critical for our economic growth, competitiveness, and middle class,” said Andrew J. Bates, a White House spokesman, in a statement. Several Democratic senators as well as many climate activists say they nonetheless fear that the prospects for climate legislation could evaporate, as they did in the first term of the Obama administration. After former President Barack Obama vowed to tackle global warming, the White House repeatedly delayed its push for legislation, focusing first on passing health care and Wall Street overhauls. By the time Senate Democrats took up a major climate bill, well into Mr. Obama’s first term, momentum had waned and the measure failed to muster enough support to merit a vote on the Senate floor. Six months later, Republicans swept into the House majority in the midterm elections and prospects for climate legislation died for the next decade. “I’ve seen this movie before,” said Mr. Heinrich, a veteran of the failed 2009 effort. The impact of climate change is already being felt around the world in the form of drought, wildfire, floods, economic disruption and environmentalists say action cannot be postponed. “We are all nervous,” said Tiernan Sittenfeld, senior vice president of government affairs at the League of Conservation Voters, referring to the environmental community. “We are truly out of time at this point.” A recent report from the International Energy Agency concluded that if the world is to stave off the most devastating consequences of global warming, major economies must end new oil investments by 2035. Public concern about climate change has been rising, according to recent surveys. A March poll by the Yale Program on Climate Change Communication found 52 percent of registered voters say global warming should be a high or very high priority for the president and the Congress. Support for a clean electricity standard is higher, with 61 percent of registered voters saying utilities should be required to produce all of their electricity from renewable energy sources by the year 2035. Carol Browner, who served as Mr. Obama’s senior climate change adviser, said that while memories of the 2009 failures linger, the politics have shifted significantly. “Having gone through the climate wars of the early Obama years, this moment feels very different to me,” she said. “There is more cohesion, more ardor among Democrats 16, 17 years later. That, to me, is very encouraging.” Mr. Biden has pledged to cut greenhouse pollution generated by the United States by 50 percent from 2005 levels by 2030. It is unlikely he can reach that target without passage this summer of climate legislation that includes a clean electricity standard. Even before Mr. Biden ended negotiations on Tuesday with Senator Shelley Moore Capito, Republican of West Virginia, progressive Democrats had warned that Republicans were unlikely to embrace the scale of spending needed to address climate change. Mr. Biden has now shifted his engagement to a bipartisan group of senators working on their own framework. While that group has not yet disclosed details, one of those senators, Lisa Murkowski, Republican of Alaska, said in an interview Wednesday that she was open to including some climate provisions. “I think when you’re talking about infrastructure, it’s really easy — it’s important, actually — to talk about some of the things that allow for reduced emissions,” said Ms. Murkowski, who has helped to write climate legislation in the past. “When you’ve got upgraded pipeline, that’s a good thing. When you have efficiency with the new transportation system, that’s a good thing. Charging stations, E.V., is good.”

#### 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.

### 1nc

**The aff’s faith in the law obscures legalistic violence—that reintrenches military dominance that creates interventions—turns the aff—the alt is to reject their legalistic notions of reformism**

**Smith, 02**

Thomas SMITH Gov’t & Int’l Affairs @ South Florida 2 [“The New Law of War: Legitimizing Hi-Tech and Infrastructural Violence” Int’l Studies Quarterly, 46, p. 367-371] This ev is gender modified

The role of military lawyers in all this has, according to one study, “changed irrevocably” ~Keeva, 1991:59!. Although liberal theorists point to the broad normative contours that law lends to international relations, **the Pentagon wields law with technical precision**. During the Gulf War and the Kosovo campaign, JAGs opined on the legal status of multinational forces, the U.S. War Powers Resolution, rules of engagement and targeting, country fly-overs, maritime interceptions, treatment of prisoners, hostages and “human shields,” and methods used to gather intelligence. **Long before the bombing began, lawyers had joined in the development and acquisition of weapons systems**, tactical planning, and troop training. In the Gulf War, the U.S. deployed approximately 430 military lawyers, the allies far fewer, leading to some amusing but perhaps apposite observations about the legalistic culture of America ~Garratt, 1993!. Many lawyers reviewed daily Air Tasking Orders as well as land tactics. Others found themselves on the ground and at the front. According to Colonel Ruppert, the idea was to “put the lawyer as far forward as possible” ~Myrow, 1996–97!. During the Kosovo campaign, lawyers based at the Combined Allied Operations Center in Vicenza, Italy, and at NATO headquarters in Brussels approved every single targeting decision. We do not know precisely how decisions were taken in either Iraq or Kosovo or the extent to which the lawyers reined in their masters. Some “corrections and adjustments” to the target lists were made ~Shotwell, 1993:26!, but by all accounts the lawyers—and the law—were extremely accommodating. The exigencies of war invite professional hazards as military lawyers seek to “find the law” and to determine their own responsibilities as legal counselors. A 1990 article in Military Law Review admonished judge advocates not to neglect their duty to point out breaches of the law, but not to become military ombudsmen either. The article acknowledged that the JAG faces pressure to demonstrate that he **can be a “force multiplier” who can “show the tactical and political soundness of ~~his~~[their] interpretation of the law**” ~Winter, 1990:8–9!. Some tension between law and necessity is inevitable, but over the past decade **the focus has shifted visibly from restraining violence to legitimizing it.** The Vietnam-era perception that law was a drag on operations has been replaced by a zealous “client culture” among judge advocates. Commanding officers “have come to realize that, as in the relationship of corporate counsel to CEO, the JAG’s role is not to create obstacles, but to find legal ways to achieve his client’s goals—even when those goals are to blow things up and kill people” ~Keeva, 1991:59!. Lt. Col. Tony Montgomery, the JAG who approved the bombing of the Belgrade television studios, said recently that “**judges don’t lay down the law. We take guidance from our government on how much of the consequences they are willing to accept**” ~The Guardian, 2001!. **Military necessity is undeterred. In a permissive legal atmosphere, hi-tech states can meet their goals and remain within the letter of the law.** As noted, humanitarian law is firmest in areas of marginal military utility. When operational demands intrude, however, even fundamental rules begin to erode. The Defense Department’s final report to Congress on the Gulf War ~DOD, 1992! found nothing in the principle of noncombatant immunity to curb necessity. Heartened by the knowledge that **civilian discrimination is “one of the least codified portions” of the law of war** ~p. 611!, the authors argued that “to the degree possible and consistent with allowable risk to aircraft and aircrews,” munitions and delivery systems were chosen to reduce collateral damage ~p. 612!. “An attacker must exercise reasonable precautions to minimize incidental or collateral injury to the civilian population or damage to civilian objects, consistent with mission accomplishments and allowable risk to the attacking forces” ~p. 615!. The report notes that planners targeted “specific military objects in populated areas which the law of war permits” and acknowledges the “commingling” of civilian and military objects, yet the authors maintain that “at no time were civilian areas as such attacked” ~p. 613!. The report **carefully constructed a precedent for future conflicts in which human shields might be deployed, noting “the presence of civilians will not render a target immune from attack”** ~p. 615!. The report insisted ~pp. 606–607! that Protocol I as well as the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons “were not legally applicable” to the Gulf War because Iraq as well as some Coalition members had not ratified them. More to the point that law follows practice, the report claimed that certain provisions of Protocol I “are not a codification of the customary practice of nations,” and thus “ignore the realities of war” ~p. 616!. **Nor can there be any doubt that a more elaborate legal regime has kept pace with evolving strategy and technology**. Michael Ignatieff details in Virtual War ~2000! how targets were “developed” in 72-hour cycles that involved collecting and reviewing aerial reconnaissance, gauging military necessity, and coding anticipated collateral damage down to the directional spray of bomb debris. A judge advocate then vetted each target in light of the Geneva Conventions and calculated whether or not the overall advantage to be gained outweighed any expected civilian spillover. Ignatieff argues ~2000:198–199! that **this elaborate symbiosis of law and technology has given birth to a “veritable casuistry of war.**” **Legal fine print,** hand-in-hand with new technology, **replaced deeper deliberation about the use of violence in war. The law provided “harried decision-makers with a critical guarantee of legal coverage, turning complex issues of morality into technical issues of legality.**” Astonishingly fine discrimination also meant that unintentional civilian casualties were assumed to have been unintentional, not foreseen tragedies to be justified under the rule of double effect or the fog of war. **The crowning irony** is that NATO **went to such lengths to justify its targets and limit collateral damage, even as it assured long-term civilian harm by destroying the country’s infrastructure.** Perhaps **the most powerful justification was provided by law itself**. **War is often dressed up in patriotic abstractions**—Periclean oratory, jingoistic newsreels, or heroic memorials. **Bellum Americanum is cloaked in the stylized language of law**. The DOD report is padded with references to treaty law, some of it obscure, that was “applicable” to the Gulf War, as if a surfeit of legal citation would convince skeptics of the propriety of the war. Instances of humane restraint invariably were presented as the rule of law in action. Thus the Allies did not gas Iraqi troops, torture POWs, or commit acts of perfidy. **Most striking is the use of legal language to justify the erosion of noncombatant immunity.** Hewing to the legalisms of double effect, the Allies never intentionally targeted civilians as such. As noted, by codifying double effect the law artificially bifurcates intentions. Harvard theologian Bryan Hehir ~1996:7! marveled at the Coalition’s legalistic wordplay, noting that the “briefers out of Riyadh sounded like Jesuits as they sought to defend the policy from any charge of attempting to directly attack civilians.” **The Pentagon’s legal narrative is certainly detached from the carnage on the ground,** but **it** also **oversimplifies and even actively obscures the moral choices involved in** aerial **bombing. Lawyers and tacticians made very deliberate decisions** about aircraft, flight altitudes, time of day, ordnance dropped, confidence in intelligence, and so forth. **By expanding military necessity to encompass an extremely prudential reading of “force protection,” these choices were calculated to protect pilots and planes at the expense of civilians on the ground, departing from the just war tradition that combatants assume greater risks than civilians.** While it is tempting to blame collateral damage on the fog of war, much of that uncertainty has been lifted by technology and precision law. Similarly, in Iraq and in Yugoslavia the focus was on “degrading” military capabilities, yet a loose view of dual use spelled the destruction of what were essentially social, economic, and political targets. Coalition and NATO officials were quick to apologize for accidental civilian casualties, but in hi-tech war most noncombatant suffering is by design. Does the law of war reduce death and destruction? **International law certainly has** helped to delegitimize, and in rare cases effectively criminalize, direct attacks on civilians. But in general humanitarian law has **mirrored wartime practice**. On the ad bellum side, the erosion of right authority and **just cause has eased the path toward war**. Today, foreign offices rarely even bother with formal declarations of war. Under the United Nations system it is the responsibility of the Security Council to denounce illegal war, but for a number of reasons its members have been extremely reluctant to brand states as aggressors. **If the law were less accommodating, greater effort might be devoted to diplomacy and war might be averted**. On the in bello side the ban on direct civilian strikes remains intact, but double effect and military demands have been contrived to justify unnecessary civilian deaths. Dual use law has been stretched to sanction new forms of violence against civilians. Though not as spectacular as the obliteration bombing to which it so often is favorably compared, infrastructural war is far deadlier than the rhetoric of a “clean and legal” conflict suggests. It is true that rough estimates of the ratio of bomb tonnage to civilian deaths in air attacks show remarkable reductions in immediate collateral damage. There were some 40.83 deaths per ton in the bombing of Guernica in 1937 and 50.33 deaths per ton in the bombing of Tokyo in 1945. In the Kosovo campaign, by contrast, there were between .077 and .084 deaths per ton. In Iraq there were a mere .034 ~Thomas, 2001:169!. According to the classical definition of collateral damage, civilian protection has improved dramatically, but if one takes into account the staggering long-term effects of the war in Iraq, for example, aerial bombing looks anything but humane. For aerial bombers themselves modern war does live up to its clean and legal image. While war and intervention have few steadfast constituents, the myth of immaculate warfare has eased fears that intervening soldiers may come to harm, which polls in the U.S., at least, rank as being of great public concern, and even greater military concern. A new survey of U.S. civilian and military attitudes found that soldiers were two to four times more casualty-averse than civilians thought they should be ~Feaver and Kohn, 2001!. **By removing what is perhaps the greatest restraint on the use of force—the possibility of soldiers dying—law and technology have given rise to the novel moral hazards of a “postmodern, risk-free, painless war”** ~Woollacott, 1999!. “We’ve come to expect the immaculate,” notes Martin Cook, who teaches ethics at the U.S. Army War College in Carlisle, PA. “**Precision-guided munitions make it very much easier to go to war than it ever has been historically.**” Albert Pierce, director of the Center for the Study of Professional Military Ethics at the U.S. Naval Academy argues, “**standoff precision weapons give you the option to lower costs and risks . . . but you might be tempted to do things that you might otherwise not do**” ~Belsie, 1999!.¶ Conclusion **The utility of law to legitimize modern warfare should not be underestimated. Even in the midst of war, legal arguments retain an aura of legitimacy that is missing in “political” justifications.** The aspirations of humanitarian law are sound. Rather, **it is the instrumental use of law that has oiled the skids of hi-tech violence. Not only does the law defer to military necessity, even when very broadly defined, but more importantly it bestows on those same military demands all the moral and psychological trappings of legality. The result has been to legalize and thus to justify in the public mind “inhumane military methods and their consequences**,” as violence against civilians is carried out “behind the protective veil of justice” ~af Jochnick and Normand, 1994a:50!. Hi-tech states can defend hugely destructive, essentially unopposed, aerial bombardment by citing the authority of seemingly secular and universal legal standards. The growing gap between hi- and low-tech means may exacerbate inequalities in moral capital as well, as the sheer barbarism of “premodern” violence committed by ethnic cleansers or atavistic warlords makes the methods employed by hi-tech warriors seem all the more clean and legal by contrast. **This fusion of law and technology is likely to propel future American interventions. Despite assurances that the campaign against terrorism would differ from past conflicts, the allied air war in Afghanistan, marked by record numbers of unmanned drones and bomber flights at up to 35,000 feet, or nearly 7 miles aloft, rarely strayed from the hi-tech and legalistic script.** While the attack on the World Trade Center confirmed a thousand times over the illegality and inhumanity of terrorism, the U.S. response has raised further issues of legality and inhumanity in conventional warfare. **Civilian deaths in the campaign have been substantial because “military objects” have been targeted on the basis of extremely low-confidence intelligence. In several cases targets appear to have been chosen based on misinformation and even rank rumor**. **A liberal reading of dual use and the authorization of bombers to strike unvetted “targets of opportunity” also increased collateral damage.** Although 10,000 of the 18,000 bombs, missiles, and other ordnance used in Afghanistan were precision-guided munitions, the war resulted in roughly 1000 to 4000 direct civilian deaths, and, according to the UNHCR, produced 900,000 new refugees and displaced persons. The Pentagon has nevertheless viewed the campaign as “a more antiseptic air war even than the one waged in Kosovo” ~Dao, 2001!. General Tommy Franks, who commanded the campaign, called it “the most accurate war ever fought in this nation’s history” ~Schmitt, 2002!.9 **No fundamental change is in sight. Governments continue to justify collateral damage by citing the marvels of technology and the authority of international law. One does see a widening rift between governments and independent human rights and humanitarian relief groups over the interpretation of targeting and dual-use law.** But these disputes have only underscored the ambiguities of humanitarian law. **As long as interventionist states dominate the way that the rules of war are crafted and construed, hopes of rescuing law from politics will be dim indeed.**

### 1nc

#### The International Competition Network should establish that the United States federal government substantially increasing the weight afforded to the competitive process in analysis of anticompetitive business practices is a best practice recommendation.

#### The CP revitalizes the ICN and establishes international antitrust regulations which solves the case and prevents international protectionism—the perm is seen as American takeover which ruins ICN authority

Budzinski, 12

(Oliver, Professor of Economic Theory at Ilmenau University of Technology and Professor of Competition and Sports Economics, Markets & Competition Group, at the University of Southern Denmark, Campus Esbjerg. “International Antitrust Institutions,” Ilmenau Economics Discussion Papers, Vol. 17, No. 72 NL)

3.3. The Multilateral Strategy: International Antitrust Institutions in Trade Agreements The basic idea to fight international anticompetitive arrangements and conduct on an international level has been so straightforward to the political sphere that as far back as in 1927, the League of Nations’ World Economic Conference in Geneva put the problem of international cartels on its agenda, discussing options for a coordinated international anti-cartel policy effort (Wells 2002: 10-11). This early initiative did not have any chance of success, however, since in the 1920s a consensus that hardcore cartels are detrimental to welfare and should be combated by antitrust policy was just about to form.10 Still, less than two decades later, the next attempt to establish multilateral antitrust institutions appeared on the agenda. This time, it was driven by the desire to create a coherent and comprehensive post-war world economic order, consisting of international institutions and organizations for the governance of (i) the monetary system and international currency relations (International Monetary Fund; The World Bank Group), (ii) public cross-border restrictions to competition, i.e. trade barriers (Havana Charter and International Trade Organization; in advance established in 1947 as the General Agreement on Tariffs and Trade, GATT), and (iii) private cross-border restraints of competition (the 1948 Havana Charter; International Trade Organization). While the first two institutions were set into force while the window of opportunity due to the global catastrophe of World War II was open, the international antitrust institution-part missed out and was subsequently abandoned in 1953 due to a lack of ratification by leading members states (Wells 2002: 116-125). However, the idea of international antitrust institutions being a complement to trade liberalization rules remained virulent. The benefits of trade liberalization can only be reaped in a sustainable way if the competition-intensifying effects of opening up national markets for international competition (Budzinski 2008a: 27-32) are not counteracted by the emergence of cross-border anticompetitive arrangements and conduct, re-establishing the pre-liberalization non-competitive equilibrium. Therefore, effective means against international cartels and against international market dominance need to accompany trade liberalization. This is in line with theoretical economic thinking (inter alia, Ross 1988; Feinberg 1991; Jacquemin 1995; Cadot et al. 2000; Hamilton & Stiegert 2000; Gaudet & Kanouni 2004; Mehra 2011; rather contrasting: Hauser & Schoene 1994). Consequently, competition provisions somewhat survived on the agenda of the World Trading System and in some instances found their way into regional trade agreements, albeit predominantly in rather rudimental shape (Alvarez et al. 2005; Cernat 2005; Evenett 2005). After the establishment of the World Trade Organization (1995, comprising GATT, the General Agreement on Trade in Services GATS and the agreement on Trade-Related Intellectual Property Rights, TRIPS), international competition resurfaced on the agenda, leading to the adoption of WTO antitrust institutions in the Doha Declaration (2001). However, in the aftermath of the Cancún conflicts, centering predominantly on agricultural markets issues, the antitrust provisions were provisionally abandoned in 2004 – and since then a reappearance does not look likely. While the recurring attempts to establish multilateral competition rules can easily be motivated both by the shortcomings and limits of unilateral and bilateral approaches (see sections 4.1. and 4.2.) as well as by the complementary nature of trade liberalization and protection of competition on international markets, the likewise recurring failures to actually establish international antitrust institutions have motivated additional economic research. From a game-theoretic perspective, negotiations on international antitrust institutions among sovereign nations resemble the characteristics of a prisoners’ dilemma game. Even if adopting international antitrust institutions would represent the world welfare optimum, the players may end up in an inferior equilibrium because it is individually rational to choose strategic competition policies (beggar-my-neighbor policies) in the absence of an effective institution. Due to the incentive structure, such an institution is notoriously difficult to establish outside specific ‘windows of opportunity’ – at least in rather simplistic game-theoretical models (à la Budzinski 2003). More advanced models (building upon so-called supergames) allow for much more differentiated analyses that also display self-enforcing cooperation patterns (Cabral 2003, 2005). However, also dynamic prisoners’ dilemma games show that cooperation is possible but not necessary and may take long to be successfully established. 3.4. The Network Strategy: The ICN after 10 Years During the years where the hitherto last attempt to establish WTO competition rules failed, a new avenue towards international antitrust institutions surfaced. On its route a multilateral perspective was combined with a focus on voluntary cooperation among competition agencies and within one decade the resulting network developed to become the most important international antitrust player in the world. There have been attempts to establish voluntary multilateral cooperation before. In 1967, the Organization for Economic Cooperation and Development (OECD) created a forum for their members in order to debate international competition issues and issue consensus-based recommendations on competition policy – with the latter goal being abandoned in the 1990s (Zanettin 2002: 53-57). Furthermore, in 1980, the United Nations Conference on Trade and Development (UNCTAD) adopted a so-called Restrictive Business Practices Code with the particular aim of protecting developing countries against inbound anticompetitive arrangements and conduct by powerful multinational enterprises. It attempted to ban, inter alia, pricefixing arrangements and other hardcore cartels as well as boycotts. However, the comparatively ambitious code lacked enforceability (First 2003). At the end of the day, both initiatives failed to produce considerable effects regarding a satisfying level of protection of international competition (Wells 2002; First 2003). Based on the concept of a Global Competition Initiative developed by the International Competition Policy Advisory Committee to the U.S. Department of Justice (ICPAC 2000), 15 national competition agencies (including the European Commission) established the International Competition Network (ICN) in October 2001 (Finckenstein 2003; Janow & Rill 2011). Until today, membership of the ICN has risen to 121 competition agencies from more than 100 jurisdictions all around the world.11 Being a network of competition agencies and calling itself a virtual organization, the ICN neither is based on an international contract, nor has its own administrative staff or budget. The ICN is led by a steering group consisting of leading officials from member agencies with the board positions rotating among the members.12 Annual conferences of all member agencies with participation of different stakeholder groups represent the major ‘decision body’. The actual work is done in so-called working groups (WGs), which typically start out by reviewing and comparatively evaluating the current practices of the member agencies. They constitute themselves project-oriented and expire if the respective agenda has been finished. The general goal of the WGs is to develop best practice recommendations that are subsequently consensually adopted by the annual conference. In addition to the substantive WGs, administrative working groups address problems of internal governance. Currently, the ICN consists of five substantive and two administrative WGs, which are overviewed in figures 1-6. The voluntariness of cooperation and the non-binding character of all best practice recommendations represent a fundamental principle and an important characteristic of the ICN. Still, the eventual goal of the ICN is about improving international competition governance. By promoting multilateral cooperation among competition agencies and by creating a common competition culture, convergence of national and regional competition policies, starting with procedural issues but aiming at substantive issues as well, is on the long-run agenda (ICN 2011; Mitchell 2011: 5).13 During its first decade, the ICN has produced an impressive output of more than 10,000 pages of ‘virtual’ paper. While the dozens of comparative analyses of worldwide existing practices and institutions regarding specific competition policy fields represent a valuable stock of knowledge, inter alia, also for competition economics, law and policy researchers, the main institutional contribution of the ICN is represented by the consensually adopted best practice recommendations as well as by enforcement manuals on various topics (ICN 2011). They include, for instance, the Recommended Practices for Merger Notification and Review Procedures, the Anti-Cartel Enforcement Manual or the Market Studies Good Practices Handbook (see also fig. 1-5). The question whether purely voluntary cooperation, resting on the publication of consensual best practice recommendations, can actually be successful triggered theoretical and empirical economic research. Budzinski (2004a, 2004b) analyzed the economics of combing consensual best practice recommendations with peer pressure. Even though it remains completely voluntary whether individual competition policy regimes bring their practices and institutions in line with the published ICN best practice recommendations or not, the consensual character of the recommendations and their public availability creates peer pressure. Agencies that have agreed that a certain practice is the best one will face a loss of reputation if they stick to an inferior practice – even according to their own evaluation expressed in the consensually adopted ICN recommendation. Thus, the combination of published best practice recommendations and peer pressure sets strong incentives to actually comply with the ICN recommendations on the regime level. Furthermore, it is in line with behavioral economic thinking that a systematic and cooperative discussion of competition policy matters among the competition agencies has the potential to harmonize views on competition and antitrust issues, thus, promoting the targeted common competition culture (Budzinski 2004a). Once this ‘cognitive’ harmonization process has taken off, it can develop strong force. However, particularly in the early period considerable obstacles may impede this process altogether. Nonetheless, peer pressure through publication and transparency of superior antitrust practices, which have been consensually acknowledged as superior, should promote a widespread adoption of the ICN best practice recommendations by the member authorities. This economic theory reasoning is supported by early empirical analyses, suggesting that ICN best practice recommendations actually influence competition regime reforms and implementation processes in member jurisdictions (Rowley & Campbell 2005; Evenett & Hijzen 2006). 4. Challenges and Unsolved Problems: The Way Forward 4.1. The Success Story ICN Without any doubt, the ICN has managed many impressive achievements in its first decade – and more so than many experts were expecting. First of all, the combination of consensual best practice recommendations and peer pressure through the publication of the recommendations has been effective in the sense that many countries cited the ICN recommendations as motivation and guideline for domestic reforms of antitrust institutions. Moreover, both scientific analysis (Rowley & Campbell 2005; Evenett & Hijzen 2006) and internal assessment (ICN 2011) confirm that many member jurisdictions indeed reformed their competition rules to be more in line with the ICN recommendations. Thus, there is a harmonization effect on national competition policy regimes through the ICN membership that has potentials to reduce jurisdictional conflicts over antitrust issues as well as to decrease the volume and severity of negative externalities, albeit not to zero. Secondly, the ICN has been very successful in promoting the implementation of competition regimes in developing and transitory countries. The impressive rise in membership is partly due to the establishment of new competition policy regimes in previously antitrust-free jurisdictions and the ICN played a considerable role in this process. Furthermore, the ICN comprehensively engaged in capacity building for agencies in newly-established and also in previously defunct or ineffective competition policy regimes. This has contributed to reduce loopholes in the worldwide protection of competition, which were due to a lack of effective competition policy regimes in particular in many developing and transitory countries (Sokol 2009). And the newly-established regimes have to a large extent particularly used the ICN best practice recommendations as a role-model for their antitrust institutions. Thirdly, the ICN has published compilations of current practices in member jurisdictions (inter alia, merger review including substantive assessment and prohibition standards, anti-cartel enforcement techniques, unilateral conduct, competition advocacy, etc.). In many cases, for instance in the case of the unilateral conduct compilation, the main function of the compilations is to highlight the differences among member jurisdictions. While not directly promoting harmonization, the resulting transparency serves to improve the mutual understanding of differing and potentially incompatible case decisions and, thus, may contribute to reducing conflicts over such decisions (‘informed divergence’; Mitchell 2011: 6). Fourthly, the ICN has produced handbooks, manuals and toolkits on many downto-earth competition policy practices. They represent an important practical help for competition agency officials regarding the everyday handling of cases. Together with the curriculum project (see figure 1), they serve as materials for the training of agency staff and proved particularly useful to young agencies that lack longstanding experiences how to deal with antitrust cases. Fifthly, it is certainly a success story that the ICN managed to actually issue an impressive number of consensually adopted best practice recommendations (see figures 1-5). This achievement alone exceeds the output of former multilateral cooperation attempts. It proved to be considerably supportive for the success of cooperation that competition agencies have been driving the process and negotiated the agreements – instead of governments and government officials. Even across jurisdictions, the interests of competition agencies are significantly more homogenous and consensus-suited than the interests of governments. Eventually, a rather informal effect is often cited by participants as representing the main benefit from the ICN: mutual experience-sharing and getting-to-know each other (ICN 2011; Mitchell 2011: 3). The strong working relationship developed through the face-to-face contact on ICN seminars, workshops and conferences facilitates informal cooperation also outside the direct ICN scope. 4.2. Limits of the ICN Approach? Notwithstanding the achievements, the fifth aspect, however, already hints at some inherent limits of the ICN approach to international antitrust institutions from an economic perspective. A closer look on the best practice recommendations reveals that there are barely any recommendations on substantive issues. The recommendations that were possible in consensus among all the members are predominantly referring to procedural issues like transparency of notification requirements, fees, timetables, etc. One must not underestimate that this type of best practice recommendations represents an important progress in international antitrust both for interacting agencies and norm addressees (the companies). However, along with the lack of substantial convergence (substantive rules and standards, delineation between pro- and anticompetitive effects, theories of harm, assessment practices and policies, etc.), the potential of the ICN to internalize negative externalities from diverging and incompatible case decisions appear to be rather limited and this limited scope has effectively been reaped in the first decade. Without consensus on more ambitious best practice recommendations, diminishing returns on further ‘low controversial’ recommendations must be expected for the second decade. With respect to the problem of negative externalities, the economic analysis identifies the inbound focus of competition policy, i.e. the absence of an international welfare goal for national competition policy regimes, as a sufficient condition to create negative cross-border externalities (see section 2.1). This problem is not addressed by the ICN so far. Furthermore, it appears to be rather unlikely that an institutional arrangement like the ICN can be capable of introducing a world welfare goal for national competition policy regimes. Since it is the very nature of the ICN to rely on consensus and voluntary participation and implementation, it cannot provide any binding, contractual agreement which in case of defection may be enforced in member jurisdictions. Thus, the only way would be to issue a best practice recommendation on antitrust goals (world welfare) and hope for (i) a consensual adoption on an annual conference and (ii) voluntary compliance to the recommendation by the member jurisdictions. Since this typically refers to ‘hard’ law, the members of the ICN – competition agencies – would not be able to implement that recommendation without support from the legislative chambers (e.g. parliaments) and executive institutions (e.g. government) in their jurisdictions. This might well represent a limit to the ‘soft’ law approach of the ICN. Another problem of international competition governance – the deficiencies of multiple procedures (see section 2.2) – has been alleviated by the ICN only to a negligible extent. Due to the imperfect convergence of procedures through the adopted best practice recommendations, the costs of multijurisdictional antitrust case handling have been decreased marginally. However, since there has been no reduction of the number of antitrust procedures in conjunction with, for instance, a multijurisdictional merger, the vast majority of transaction and administration cost burdens remain unchanged. In the end, there is still nothing remotely close to a one-stop shop. Ironically, the impressive increase in active competition policy regimes around the world has actually increased the number of jurisdiction that declares themselves competent for international and particularly intercontinental competition cases. This in turn increases the deficiencies of multiple procedures and most probably more than compensates for the cost improvement due to soft and imperfect procedural harmonization. With the ICN as it is now, it is difficult to see how the second decade can bring significant improvements. The ICN does not entail direct case-related cooperation but exactly this would be necessary if considerable efficiency gains from international antitrust institutions are to be realized. Even though the ICN indirectly facilitates case-related cooperation because the member agencies and their staff know each other and know whom to call for informal exchange and cooperation over a given case (ICN 2011; Mitchell 2011), this grassroots effect – which without any doubt is highly important and helpful for everyday work – remains rather limited in the absence of an institutionalized caserelated cooperation. The loopholes in the worldwide landscape of competition regimes (see section 2.3) have been substantially reduced by the ICN’s activities. Next to the impressive increase in newly-established competition regimes, the ICN has also been very active in arming previously rather ineffective competition regimes. However, there has been virtually no change in a particularly problematic area, which is the power asymmetry when it comes to enforcing domestic competition rules against multinational companies by means of the effects doctrine (see section 3.1). If domestic markets are not sufficiently important for the business of the multinational, then the multinational remains in a position to avoid compliance by boycotting the respective country. The threat of this alone influences the decisions of smaller and less powerful regimes. Again, the regime of the uncoordinated effects doctrine can only be overcome by (i) replacing inbound competition policy goals with international welfare standards and (ii) a case-related cooperation approach. As has been argued in the preceding paragraphs, both seem to be difficult to achieve with an ICN of the current nature and structure. The fourth criterion to assess international antitrust institutions from an economic perspective (as derived in section 2) is the diversity of regimes reflecting the diversity and the provisional nature of economic thinking on competition. It refers to the dynamic and evolutionary efficiency of international antitrust institutions. The ICN highlights this by systematically reviewing the different practices in the member jurisdictions and its compilations of the differences create transparency that serves to speed up mutual learning processes. Actually, the ICN best practice recommendations represent the result of such a learning process. However, this is exactly where problems kick in: with a best practice result that leads to all member jurisdiction harmonizing their regimes according to this result the dynamic learning process comes to an end. This implies no more future learning due to a lack of experiments with new insights and new methods, theories, etc. Thus, the provisional economic knowledge of the time of the best practice recommendation becomes a persistent standard and scientific progress of the future will find it much more difficult to enter the stage.14 If learning from diversity is useful for finding today’s best practices, then learning from diversity will also be useful to detect future’s best practices. Consequently, three hazards are incorporated to the ICN’s harmonization approach. Firstly, the identification of best practices to some extent relies on and promotes academically controversial practices (like the case-by-case effects approach in merger control). Secondly, the injection of new scientific knowledge is deterred. Both hazards together may lead to a deficient harmonization. Thirdly, the ICN best practice approach implicitly assumes that there actually are one-size-fits-all benchmarks. However, best practices for old-industrialized countries’ competition regimes may differ from such for newly-industrialized or developing or transitory countries’ ones. Of course, the reasoning in this paragraph must be qualified to the extent that it becomes only relevant when the ICN is unexpectedly successful in achieving also substantive harmonization. In summary, the first decade of the ICN must be hailed for bringing the most significant progress to global competition governance of all times so far. However, from the viewpoint of global economic welfare, there are still a lot of challenges and unsolved problems, covering all the four criteria (international externalities, deficiencies from multiple procedures, loopholes, and regime diversity) that can be formulated from an economic perspective. Moreover, and even more seriously, it appears to be rather doubtful whether in its current form (purely voluntary cooperation, reliance on consensus and peer pressure), the ICN is well-suited and well-equipped to address the remaining issues. Ironically, the (unexpected) success of the ICN’s first decade may imply bad news for its second decade since the potentials have already been exploited so that from now on diminishing returns of the network strategy must be expected. 15 4.3. A Way Forward? Towards a Multilevel Lead Jurisdiction Model So, how can international antitrust institutions be designed to embrace all four criteria with their conflicting incentives toward more centralization (internalizing externalities and reducing multiple procedures; stationary efficiency) o the one hand and preservation of regime diversity (dynamic and evolutionary efficiency through decentralization) on the other hand? The economic literature offers two interesting concepts to approach this balancing act. The first concept is the idea of a lead jurisdiction model (Campbell & Trebilcock 1993, 1997; Trebilcock & Iacobucci 2004). It extends the positive comity concept (see section 3.2) by allocating competence and responsibility for multijurisdictional competition cases to one of the affected regimes that subsequently handles and decides the case with a view to avoiding anticompetitive effects in the overall geographic market (i.e. in all affected jurisdictions) and by relying on the assistance of the other involved regimes.16 The second concept is the idea of multilevel governance (Kerber 2003) in which regimes on different vertical levels (regional, national, supranational) are interconnected with each other. In such a complex multilevel system of institutions, the design of competence allocation rules, managing the interfaces of the participating regimes, becomes particularly important. Economic analysis reveals that different competence allocation rules (such as the effects doctrine, interjurisdictional commerce clauses, turnover thresholds, nondiscrimination, principle of origin doctrine, relevant markets rule or x-pus rule) are more or less appropriate when it comes to specified horizontal or vertical regime interfaces (Budzinski 2008a: 151-217). With a view to the four economic problems of international antitrust (as derived in section 2), it represents an interesting step to combine these two concepts towards a multilevel lead jurisdiction model (Budzinski 2009, 2011). The advantage of adding the vertical multilevel dimension to the lead jurisdiction concept lies in the option to introduce a referee authority, monitoring and supervising the impartiality of the assigned lead jurisdictions and providing conflict resolution if necessary. Thus, the antitrust institutions on the global level are not about materially deciding cases. Instead, they allocate lead jurisdiction according to agreed-upon criteria on a case basis17, monitor and supervise the lead jurisdiction in respect of its impartial treatment of anticompetitive effects in the overall relevant international market (irrespective where – in which jurisdiction – the effects display) and settle conflicts in case of affected jurisdictions allege that their domestic effects were disregarded by the lead jurisdiction. Consequently, ‘only’ procedural competences are assigned to the global level and all material and substantive decision competences remain on the level of the existing national and regional-supranational regimes. From an economic perspective, the charm of this concept is that it (i) replaces the inbound focus of existing competition policy regimes by a focus embracing all effects in the relevant geographic (international) market, (ii) provides a one-stop shop for the norm addressees (thus avoiding deficient transaction and administration costs of multiple procedures), (iii) closes many loopholes due to the lead jurisdiction being powerful and also providing protection of competition abroad, and (iv) maintains diversity of competition regimes because each assigned lead jurisdiction handles and decides the case according to this regime’s antitrust rules and procedures, just with the explicit inclusion of cross-border effects. On the downside, it requires an international agreement on procedural rules (in particular criteria for allocating case-specific lead jurisdiction as well as for monitoring and conflict resolution mechanisms) and willingness to accept (i) procedural decisions by the international level and (ii) material decisions by the lead jurisdiction as long as all effects are treated impartially irrespective of their jurisdictional location. This certainly represents a higher hurdle for consensus than the ICN-style network cooperation, but certainly a lower hurdle than consensus on binding global competition rules within the WTO framework. And from an economic perspective, such a multilevel lead jurisdiction model appears to be welfare-superior to these alternatives. However, the concept of a multilevel lead jurisdiction model is far from being comprehensively researched. Furthermore, an interesting exploration would be whether such a model could develop from the contemporary ICN when it seriously strives to solve the economic problems of international antitrust in its second or third decade. 5. Conclusion The global governance of competition represents an important economic problem. Economic theory clearly shows that non-coordinated competition policies of regimes that are territorially smaller than the international markets on which business companies compete violate cross-border allocative efficiency and are deficient with respect to global welfare. At the same time, some diversity of antitrust institutions and policies promotes dynamic and evolutionary efficiency so that globally binding, worldwide homogenous competition rules do not represent a first-best solution – even when neglecting obvious agreement and implementation difficulties. Since 2001, the world of international antitrust institutions has been significantly influenced by the then-established International Competition Network. This multilateral forum for voluntary cooperation among competition agencies has been a success story in its first decade – by far exceeding most experts’ expectation. The ICN has considerably contributed to alleviate the negative economic effects from the previous, virtually non-coordinated world of international antitrust. However and notwithstanding, from an economic welfare point of view, considerable challenges and problems remain on the agenda. Whether the ICN in its current structure and nature has the potential to solve the remaining problems represents a decisive question for the future of international antitrust institutions. Despite the success story of its first decade, however, economic analysis justifies skepticism whether the contemporary ICN is up to the remaining challenges. In particular, a change from inbound-, national-welfarefocused competition policies to such pursuing supranational and suprajurisdictional welfare goals as well as cooperation on concrete, specified cases are necessary from an economic perspective. However, both topics are hardly compatible with the contemporary governance principles of the ICN. A way forward can be expected from the economic concept of a multilevel lead jurisdiction model that possesses the potential to balance allocative and dynamic efficiency. It remains an open question, though, whether such a model could evolve out of the ICN during the next decade(s).

#### Trade solves all conflicts

Lee, 09

(Jong-Wha, Corresponding author: Office of Regional Economic Integration, Asian Development Bank, Ju Hyun, Department of Economics at the University of California Davis, “Does Trade Integration Contribute to Peace?” WORKING PAPER SERIES ON REGIONAL ECONOMIC INTEGRATION NO. 24 Asian Development Bank, <https://aric.adb.org/pdf/workingpaper/WP24_Does_Trade_Integration.pdf> RMW)

Table 4 presents estimation results for the logit model for the probability of conflict. Consider first the results in columns (1)–(3). Column (1) includes bilateral trade interdependence variable. Column (2) substitutes the global trade openness for the bilateral trade interdependence. Column (3) includes both of these trade integration variables. Column (1) of Table 4 shows that the model fits the data well, explaining a substantial part of the variation in the occurrence of military conflict. Bilateral distance, contiguity, joint-democracy, relative military capabilities, and major-power variables are individually significant at the 1% critical level. The significantly negative estimated coefficient for the bilateral distance and the significantly positive one for contiguity explain that geographically proximate countries are more likely to engage in military conflict. The positive estimate for log difference of GDP supports the contention that states unequally balanced in military capability are less likely to engage in military conflict. On the other hand, the positive estimated coefficient on major-power variable explains that these countries tend to fight more. The negative estimate for joint democracy confirms that the probability of military conflicts is significantly lower for dyads composed of states that are more democratic. In column (1), the estimated coefficients on formal security-alliance, religious similarity and oil exporters dummy variables show the signs supporting the theoretical predictions, but turn out to be statistically insignificant. Finally, the estimated coefficient on bilateral trade interdependence is negative and statistically significant at the 5% level, indicating that bilateral trade dependence significantly decreases the probability of military conflicts. Most importantly, this estimation result holds true with all other important variables being controlled. For instance, distance affects both bilateral trade and conflict probability negatively.13 In column (2) of Table 4, the estimated coefficient on global trade openness is negative and statistically significant. Dyads of states more dependent on the world economy tend to have fewer conflicts than those less dependent. This result contrasts that of Martin et al. (2008) and holds quite robust as discussed later. As our specification includes a time dummy variable separately, this significant coefficient may not be caused by global factors such as the end of Cold War or peace-promotion efforts of international organizations that are common to all countries. In this specification, the estimated coefficients on formal security-alliance and oil exporters dummy variables turn out to be marginally significant at the 10% and 5% critical levels respectively. Oil exporters are involved with military conflicts more frequently. Alliance commitments tend to reduce the probability that dyads engage in conflict. In column (3) of Table 4, in which both global trade openness and bilateral trade interdependence are included, global trade openness has individually significantly negative effects at the 1% critical level. The estimated coefficient on bilateral trade interdependence is also significant at the 5% critical level. Broadly speaking, both bilateral and global trade dependence promote peace between bilateral trade partners. Hence, this result refutes Martin et al. (2008)’s argument that countries more open to global trade have a higher probability of war by increasing the probability of escalation for proximate countries. In the logit model, the dependent variable is defined as the log-odds ratio and the parameters do not correspond to the marginal effects of independent variables. The marginal effects can be calculated at the means of regressors by using the estimate.14 Then, we can compute the response of the probability of military conflict to a one-standard-deviation change of each explanatory variable, gauging the relative importance of each explanatory variable in influencing the probability of military conflict. For example, based on column (3) of Table 4, an increase in the log of bilateral trade dependence by one standard deviation of 0.008 (starting from the sample mean) decreases the probability of military conflict by 0.019 percentage point, with other variables held constant. On the other hand, an increase in the log of global trade openness (by one standard deviation, or 0.380) decreases the probability of military conflict by 0.109 percentage point. Hence, global trade openness, compared with bilateral trade dependence, has a relatively large impact on the probability of conflict with the bilateral trade partner. Geographic proximity also has a large impact on the probability of military conflict. An increase in the log of bilateral distance by 0.824 (its standard deviation) is associated with a decrease of the likelihood that a pair of countries is engaged in a conflict by 0.069 percentage point. Since the contiguity variable is an indicator variable, its marginal impact is calculated for its change from 0 (no common land or distant by sea above 150 miles) to 1 (common border or distant by sea up to 150 miles). The corresponding response to this change is an increase in the probability of military conflict by 0.421 percentage point. Hence, the probability of a military conflict is substantially higher for contiguous countries. An increase in the log difference of GDP (by one standard deviation or 1.844) generates an increase in the probability of conflict by 0.034 percentage point. The corresponding response to an increase in the joint-democracy index (by one standard deviation or 0.331) is by 0.057 percentage point. The marginal impacts of the major-power and oil-exporter variables correspond to the change of these dummy variables from 0 to 1. The probability of military conflict increases by 0.29 percentage point responding to the change in the major-power variable and by 0.064 percentage point when at least one of dyads is an oil exporter. Hence, the probability of military conflict is substantially higher between dyads that involve a major power. The marginal impact of religious similarity (by one standard deviation or 0.566) decreases the probability of conflict by 0.016 percentage point. The empirical technique used assumes that there is no unobserved country-fixed factor. Column (4) of Table 4 presents the result from the “conditional” fixed-effects logit estimation technique which controls for unobservable country-pair fixed effects. The result with country-pair fixed effects show that while most of estimated coefficients show the same signs as those in the pooled logit regressions, they are not statistically significant. On the contrary, the estimated coefficient on religious similarity becomes larger and statistically significant at the 1% level. Although fixed-effects estimation is often preferred by many researchers, the fixed-effects technique also has drawbacks. Because the fixed-effect estimator exploits only the variation over time, the estimates for time-invariant factors such as distance, contiguity, oil-exporters and major powers dummy cannot be obtained. By eliminating entire information from cross-section variations, the estimation relies on a smaller information set. In column (4), the sample shrinks to only 15,589. In addition, it may exacerbate the bias due to measurement errors in variables. A number of previous studies also include the number of peace years (since the last MID) variable to the regression to control ‘”temporal dependence” between conflict events.(Beck et al, 1998) It is suggested that the temporal dependence problem which means an auto-correlated binary dependent variable can mislead the result of logit analysis. For instance, military conflicts, which can be durable more than a year, can occur with different probability if they are subsequent. Column (5) presents the estimation result. Now, the religious similarity variable becomes significant at the 5% critical level. Countries whose major religions are similar are less involved in conflicts. The estimated coefficients also show that global trade openness has a significantly negative effect at the 1% critical level, while bilateral trade interdependence variable becomes only marginally significant at the 10% critical level. Our specification assumes that the impact of bilateral or global trade openness on the probability of military conflict is the same for all country pairs independent of other country-pair characteristics. But trade patterns (bilateral and global trade openness) may affect the probability of military conflict differently for different subsets of countries, depending in particular on the geographical distance between them. For example, the peace-promotion effect of bilateral trade interdependence may occur more heavily for geographically closer countries that are more likely to be engaged in conflicts. Greater bilateral trade dependence can help prevent proximate countries from being escalated into military conflicts. In contrast, it is less clear if greater global trade openness reduces the probability of escalation. In order to investigate this possibility, a test is conducted on whether the impact of bilateral or global trade openness on the probability of military conflict depends on bilateral distance or contiguity between dyads. First, two interaction terms of bilateral distance with the bilateral and global trade integration variables are introduced to the regression. The estimated result in column (6) confirms that the impact of bilateral trade openness varies depending on the distance between countries. While the estimated coefficient on bilateral trade dependence, (-122.48 s.e.= 25.77) is negative and statistically significant, the estimated coefficient on the interactive term between bilateral trade interdependence and distance (16.95, s.e.= 3.37) is positive and statistically significant. These two estimates combined suggest that the closer two countries are, the greater is the peacepromotion effect from an increase in bilateral trade. In fact, the overall marginal effect of bilateral trade interdependence on the probability of military conflict is negative between proximate countries and then positive between distant ones. The two estimated coefficients imply that the switch occurs at log of bilateral distance of 7.22 which is below the sample median of 8.88. The strong negative relation between bilateral trade interdependence and the probability of military conflict in dyads with smaller bilateral distance seems to support the argument that greater bilateral trade interdependence can be helpful to prevent disputes—especially between geographically closer states—from being escalated into military conflicts. However, the positive relation between bilateral trade interdependence and the probability of military conflict in the upper range of bilateral distance is puzzling. This may reflect that the strong bilateral trade between distant states often comes from more asymmetric trade links, which is often related to exploitation and economic conflicts, leading to more military conflicts between them. The estimation result in column (6) also confirms that the impact of global trade openness varies depending on the distance between countries. The estimated coefficient on the interactive term between global trade openness and distance (-0.602, s.e.= 0.21) is significantly negative, while 12 the estimated coefficient on global trade openness, (2.44, s.e.= 1.57), is positive but statistically insignificant.15 The strong peace-promotion effect of global trade openness for all country pairs regardless of their geographical distance contrasts the negative relation between bilateral trade dependence and peace for the group of geographically distant country pairs. The significantly negative interactive term between global trade openness and distance indicates that the peace-promotion impact of global trade openness is higher for geographically distant countries. An increase in global trade openness likely decreases the probability of conflict less for proximate countries than for distant countries. This may reflect that greater global trade integration can be more helpful to promote peace for dyads of distant countries which likely participate in global conflict, rather than cross-border conflict. Column (7) of Table 4 introduces the interaction terms of the bilateral and global trade integration variables with contiguity by substituting for their interaction terms with bilateral distance. The estimated coefficient on bilateral trade interdependence, (29.34, s.e.= 6.05) is significantly positive and the estimated coefficient on the interactive term between bilateral trade dependence and contiguity (-47.65, s.e.= 7.85) is significantly negative. Hence, the overall effect of bilateral trade dependence on the probability of military conflict hinges on contiguity. The peace-promotion effect of bilateral trade dependence appears to be significantly higher for contiguous countries. But, the estimates indicate that the relation between bilateral trade dependence and the probability of military conflict can be positive in non-contiguous countries, which is consistent with the result in column (6). On the other hand, the estimated coefficient on the interaction term between contiguity and global trade openness (1.69, s.e.= 0.64) is positive and significant. The estimated coefficient on global trade openness (-2.78, s.e.= 0.52), is significantly negative. Hence, the two estimated coefficients imply that the overall marginal effect of global trade openness on the probability of military conflict is always negative for countries regardless of contiguity between them. Greater global trade integration can help to promote peace for all dyads, which is also consistent with the result in column (6). Column (8) presents the estimation result of the specification in which all four interactive terms are included. In this specification, the estimated coefficients on bilateral trade interdependence, (-29.05, s.e.= 36.61) and global trade openness (0.51, s.e.= 2.21) become statistically insignificant. For the two interactive terms with bilateral trade dependence, only the interactive term between bilateral trade dependence and contiguity (-34.37, s.e.= 10.01) is negative and highly significant. Hence, the estimated result confirms that the overall impact of bilateral and global trade openness vary depending on the distance between countries. 4.2 Robustness of the Results The robustness of the basic results of Table 4—about the effect of bilateral and global trade dependence on conflict—is checked. Table 5 considers other possible determinants of military interstate conflict, many of which have been proposed in previous studies. These additional variables are added to the basic specification for the MID in column (5) of Table 4. First, we control the possible spillover effects of military conflicts. The existence of other conflicts at the same time can influence both an occurrence of a bilateral military conflict and bilateral trade flows between a dyad of states. Column (1) of Table 4 includes as an additional explanatory variable the total number of MID that the countries of the dyad are involved in. It shows that the estimated coefficients on all trade variables remain significant. Column (2) includes a dummy for all country pairs for which there was no trade between them to control whether or not the two countries have an economic relationship. The zero-trade dummy variable becomes significantly negative, but does not have any significant impact on other estimated coefficients. Column (3) adds an index for common language and column (4) adds a dummy variable for country pairs with a history of colonialization to control for cultural and/or historical factors that might affect the occurrence of conflicts. It is found that these additional variables tend to make the bilateral trade interdependence variable statistically insignificant. This may be due partly from the significant correlation between these additional variables and bilateral trade. Column (5) adds the measure of political proximity between two countries as a possible determinant of military conflicts. It is the “affinity of nations’” index (Gartzke, 2000), which is constructed by using UN voting data.16 It is assumed that when the UN voting patterns of two nations are more alike, their political interests would be more similar. The index ranges from -1 (most dissimilar) to 1 (most similar). The variable appears significantly negative, indicating that countries that share similar political interests are less likely to engage in military conflicts. Column (6) includes cubic splines of the number of peace years to further control for the potential “temporal dependence” problem. An occurrence of a military conflict not only can have an immediate impact on bilateral trade, but also can influence on the probability of military conflicts at any future moment. Beck et al.(1998) suggest to add cubic splines of the number of peace years, as well as the number of peace years variable, to correct for a temporal dependence bias.17 The estimation result shows that the inclusion of the cubic splines does not cause any significant change in the estimated coefficients. The next three columns present the results with the interaction terms with bilateral distance (column 6) and with contiguity (column 7). The estimated coefficients on the interactive terms are statistically significant and the main results in the basic specifications in Table 4 still hold. For our purposes, an important finding is that the role of bilateral and global trade integration on military conflict—often after interacting with geographical proximity between countries—is robust to the introduction of these additional variables. In order to minimize the simultaneous correlation problem between trade variables and military disputes, columns (1)–(4) of Table 6 present estimation results with 3-year lagged trade integration variables. The main results are similar to those in Table 4. But, the 3-year lagged bilateral trade interdependence variable becomes insignificant in column (1) of Table 6.

## Adv 1

### 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.

### 1NC Grid

#### Blackouts inevitable and don’t escalate

Kemp, 9/4

(John Kemp via ZeroHedge, the leading economics blog online covering financial issues, geopolitics and trading; “The U.S. Power Grid is at Risk of Catastrophic Failure,” Oil Price.com, September 4, 2021; <https://oilprice.com/Energy/Energy-General/The-US-Power-Grid-Is-At-Risk-Of-Catastrophic-Failure.html>)

Grid Investment Reliability and resilience are not the same, though they are often closely associated, and the National Academies’ study emphasized the need for more focus on resilience issues in utility planning. Blackouts during the big freeze in Texas in February 2021 and the Northeast United States in August 2003 were primarily reliability failures, caused by the failure to manage generation properly. But the prolonged power outage expected in Louisiana and the ice storm in Quebec were primarily resilience failures. Reliability and resilience failures are both low-frequency, high-impact events, which require expensive investments to reduce the expected consequences, making it hard to build support. Boosting resilience often requires hardening transmission and distribution systems by undergrounding wires, replacing wooden poles with concrete ones, strengthening towers, stockpiling replacement transformers, and raising substations above potential flood levels. More generally, electricity systems need to build in sufficient spare capacity and redundancy to make them more reliable and more resilient in the event that one or more components fail. Different customers may put different values on reliability and resilience depending on their circumstances and depending on the length of the service interruption, which makes building a consensus even harder. For example, hospitals and oil refineries may put a higher value on uninterrupted winter than a residential customer with a backup generator. Short interruptions may be tolerable while long ones are unacceptable. Electricity suppliers often find it hard to convince regulators and customers of the need to increase bills – except in the immediate aftermath of a major failure when there may be a narrow window to secure funding for changes. But if more energy services are to be moved onto the grid, much more will need to be invested in modernizing it to reduce the probability of failure and ensure service can be restored rapidly.

#### It doesn’t cascade

Koerth, 18

(Maggie, senior science writer for FiveThirtyEight, citing Bill Lawrence, vice president and chief security officer at the North American Electric Reliability Corporation and Candace Suh-Lee, who leads a cybersecurity research team at the Electric Power Research Institute, a nonprofit research and development lab, " Hacking The Electric Grid Is Damned Hard", FiveThirtyEight, 8/13/2018, <https://fivethirtyeight.com/features/hacking-the-electric-grid-is-damned-hard/> JHW)

The nightmare is easy enough to imagine. Nefarious baddies sit in a dark room, illuminated by the green glow of a computer screen. Meanwhile, technicians watch in horror from somewhere in the Midwest as they lose control of their electrical systems. And, suddenly, hundreds of thousands, even millions of Americans are plunged into darkness. That scene was evoked in recent weeks as federal security experts at the Department of Homeland Security warned that state-sponsored hackers have targeted more than American elections — they’re after the electric grid, too. They’ve gotten “to the point where they could have thrown switches,” a DHS official told The Wall Street Journal. Both DHS and the FBI have linked these attacks to Russia — which was already pinned as the culprit in two attacks that shut down power to hundreds of thousands of people in Ukraine two Decembers in a row, in 2015 and 2016. It’s all very urgent — a high-risk crisis that must be solved immediately. But, surprisingly, some electrical system experts are thinking about it in a different way. Cyberattacks on the grid are a real risk, they told me. But the worst-case scenarios we’re imagining aren’t that likely. Nor is this a short-term crisis, with risks that can be permanently solved. Bringing down the grid is a lot harder than just flicking a switch, but the danger is real — and it may never go away. Representatives from two nonprofit organizations — both of which play large roles in how the electric grid is regulated and maintained — said it is easier to imagine disaster scenarios than create one. “There’ve been some very sensational books out there about the grid going dark because someone’s got their finger ready over a mouse and everything is going to turn off at the same time,” said Bill Lawrence, vice president and chief security officer at the North American Electric Reliability Corporation, the regulatory authority that sets and enforces technological standards for utility companies across the continent. “The grid does not work that way.” Our electric infrastructure is chock-full of both redundancies and regional variations — two things that impede widespread sabotage. That’s not to say that the grid isn’t under attack. Lawrence acknowledged that there is interest in “trying to hurt us from a distance.” But he emphasized there have not yet been any successful attacks — meaning hackers haven’t caused any blackouts. The division of Homeland Security that collects reports of cyberattacks on critical infrastructure has not yet published its incident report numbers for 2017. Organizations report incidents on a voluntary basis, so these numbers may not reflect all incidents. They’ve been poking at our critical infrastructure for a long while. Incident reports published by the Industrial Control Systems Cyber Emergency Response Team — a division of Homeland Security that does training and responds to cyberattacks on critical infrastructure — suggest that electricity, oil and natural gas infrastructure have been routinely targeted for years.1 There are dozens of these attacks reported to ICS-CERTS annually. However, it would be difficult for these attacks to lead to wide-scale blackouts, according to Lawrence and Candace Suh-Lee, who leads a cybersecurity research team at the Electric Power Research Institute, a nonprofit research and development lab. And that’s true even if hackers do eventually succeed in taking control of some electric systems. It helps that the North American electric grid is both diverse in its engineering and redundant in its design. For instance, the Ukrainian attacks are often cited as evidence that hundreds of thousands of Americans could suddenly find themselves in the dark because of hackers. But Lawrence considers the Ukrainian grid a lot easier to infiltrate than the North American one. That’s because Ukraine’s infrastructure is more homogeneous, the result of electrification happening under the standardizing eye of the former Soviet Union, he told me. The North American grid, in contrast, began as a patchwork of unconnected electric islands, each designed and built by companies that weren’t coordinating with one another. Even today, he said, the enforceable standards set by NERC don’t tell you exactly what to buy or how to build. “So taking down one utility and going right next door and doing the same thing to that neighboring utility would be an extremely difficult challenge,” he said. Meanwhile, the electric grid already contains a lot of redundancies that are built in to prevent blackouts caused by common problems like broken tree limbs or heat waves — and those redundancies would also help to prevent a successful cyberattack from affecting a large number of people. Suh-Lee pointed to an August 2003 blackout that turned the lights off on 50 million people on the east coast of the U.S. and Canada. “When we analyzed it, there was about 17 different things lined up that went wrong. Then it happened,” she said. Hackers wouldn’t necessarily have control over all the things that would have to go wrong to create a blackout like that. In contrast, Suh-Lee said, scenarios that sound like they should lead to major blackouts … haven’t. Take the 2013 Metcalf incident, where snipers physically attacked 17 electric transformers in Silicon Valley. Surrounding neighborhoods temporarily lost power, but despite huge energy demand in the region, “the big users weren’t even aware Metcalf had happened,” she said. Difficult isn’t the same as impossible, Suh-Lee told me. Depending on where an attack happened and how people responded, you could get the stuff of our nightmares. Lawrence repeatedly invoked the phrase “knock on wood” as he talked about the possibility of infiltrations of electric infrastructure turning into real-world blackouts. That’s why there’s a lot of effort going into research, monitoring and preparation for cyberattacks. Lawrence’s team, for instance, is gearing up for an event that’s held every other year and is sort of like war games for the electric grid. And the Department of Energy is planning a similar event, focused on figuring out what it takes to reboot after a hacker-caused blackout. But that preparation doesn’t mean we’ll eventually solve this problem, either, Suh-Lee said. If the chances of a cinematic disaster are low, the chances of a theatrical hero on a white horse riding in to save the day are even lower. Making the grid stronger and more resilient also means making it more digital — the work that’s being done to improve the infrastructure has also created new opportunities for hackers to break in. And the risk of attack is here to stay. Security improvements are “never going to completely eliminate the risk,” she said. “The risk is out there and people will find a new way to attack.” We’ll be living with cyber threats to the grid for the rest of our lives.

### 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.

## Adv 2

### 1NC Internet

#### No internet impact—misinformation outweighs

Parks, 21

(Miles, Reporter on NPR’s Washington Desk who covers voting and elections; “Trump Is No Longer Tweeting, But Online Disinformation Isn’t Going Away,” NPR, March 5, 2021; <https://www.npr.org/2021/03/05/971767967/trump-is-no-longer-tweeting-but-online-disinformation-isnt-going-away>)

In the past year, Americans spent more time than ever online and got more of their information from unreliable or false sources. Even with the de-platforming of former President Donald Trump, experts say the way Americans communicate and receive information online remains broken. It's a crisis that is [ripping families](https://www.npr.org/2021/03/03/971457702/exit-counselors-strain-to-pull-americans-out-of-a-web-of-false-conspiracies) apart and led to a violent takeover of the U.S. Capitol in January. A [recent report](https://www.eipartnership.net/) about that attack from the nonpartisan Election Integrity Partnership concluded that while it was appalling to watch, it should not have been viewed as surprising considering what was happening all year online. "Many Americans were shocked, but they needn't have been," wrote the report's authors. It's also not a once-every-four-years problem. Public health officials are currently competing with a deluge of online disinformation to convince the public that the coronavirus vaccines are safe. "We are in serious trouble," said Joan Donovan, the research director of Harvard University's Shorenstein Center on Media, Politics and Public Policy. "Disinformation has become an industry, which means the financial incentives and the political gains are now aligned." Trump may no longer have access to his 80 million Twitter followers, but the system he capitalized on to spread more than [30,000](https://www.washingtonpost.com/politics/2021/01/24/trumps-false-or-misleading-claims-total-30573-over-four-years/) falsehoods remains intact. "We will see more of this," she added.

#### That’s true for at least 50 years

Parks, 21

(Miles, Reporter on NPR’s Washington Desk who covers voting and elections; “Trump Is No Longer Tweeting, But Online Disinformation Isn’t Going Away,” NPR, March 5, 2021; <https://www.npr.org/2021/03/05/971767967/trump-is-no-longer-tweeting-but-online-disinformation-isnt-going-away>)

Timeline for a fix For Whitney Phillips, a disinformation researcher at Syracuse, there is some reason for optimism. Even if it took one election with an unprecedented level of foreign interference, and another that concluded with violence at the U.S. Capitol, people are at least beginning to recognize that there's a problem. "When I started doing this research in 2008, there was such an enormous amount of resistance that anything bad that happened on the Internet was even real," Phillips said. "And it wasn't until really 2017 that there was a critical mass of people who were like 'maybe hate speech on the Internet isn't good.' Maybe these things might correspond into real world action. ... Now there's really little denying the dangers of a dysfunctional information ecosystem." Much of [her new book](https://mitpress.mit.edu/books/you-are-here), co-written with Ryan Milner, focuses on the role memes have played in normalizing hate speech and racism, by layering humor or irony on top of it. When she's asked how much more moderation the major companies need to do to fix the current state of information in the U.S., she says the question misses the point. A future healthy information environment probably doesn't involve Facebook or Twitter at all, at least in anything close to their current forms. It involves a completely redesigned Internet. "My guess is that it will take us 50 years," she says. That has meant she's shifted her focus away from platform moderation and toward K-12 education so that future generations might be better equipped to fix what they are left with: systems that let falsehoods spread like wildfire, without regard to truth. "Our problem is that our networks are working exactly as they were designed to work. They work great. They're not broken at all," she said. "So in order to equip people to navigate these networks that are designed to set us up to be in hell, basically we've got to think about what are we teaching young people." What happens between now and 50 years from now she's unsure about. Those users who have been recently radicalized, for instance, may find new ways to gather online if they are kicked off the major platforms. "Something is going to grow from this," she said. "What exactly is hard to say. But I have a feeling that it's not going to be awesome."

### at: EU

#### Alt causes to EU US Harmonization --- *Mass Surveilance*, OR Status quo solves

Jonathan Keane, April 14, 2021, “With Biden in the White House, EU officials are pushing hard for a new data-sharing pact with the U.S.,” CNBC, https://www.cnbc.com/2021/04/19/privacy-shield-eu-officials-pushing-hard-for-us-data-sharing-pact.html

Officials from the EU and U.S. are “intensifying negotiations” on a new pact for transatlantic data transfers, trying to solve the messy issue of personal information that is transferred between the two regions. The agreement, whenever it is reached, will replace the so-called Privacy Shield. The mechanism for legally transferring personal data between the U.S. and EU was struck down by the European Court of Justice, the EU’s top court, in July 2020. The ruling, dubbed Schrems II, was taken by Austrian privacy activist Max Schrems, who argued that the framework did not protect Europeans from U.S. mass surveillance. While Privacy Shield was invalidated, the court maintained the validity of standard contractual clauses, another mechanism for transferring personal data in and out of the EU. Privacy Shield’s demise was the second time such an agreement was tossed out by a judge. Privacy Shield was introduced in 2016 as a replacement for Safe Harbour, which the court invalidated in 2015, in a case that was also taken by Schrems. Negotiators from the European Commission, the EU’s executive arm, and the U.S. Department of Commerce are now trying to find a deal that fills that void, but questions still abound. Schrems has challenged Facebook in the courts over data transfers and is a frequent critic of Ireland’s data watchdog over GDPR enforcement. The core of his issues with transatlantic data flows is U.S. mass surveillance. It was the undoing of Safe Harbour and the lingering issues unseated Privacy Shield as well. As data moves from Europe to the U.S., he argued, there were few safeguards in place to ensure that a European’s data isn’t snooped on amid mass surveillance – the extent of which was evidenced by the revelations from former National Security Agency contractor Edward Snowden. “The Privacy Shield was not the main issue, the issue is that the Privacy Shield had to yield to U.S. surveillance laws,” Schrems, who chairs the digital rights organization Noyb, told CNBC in an email. He said this requires changes to U.S. laws like FISA 702, which allows for the surveillance of people outside of the country. “In simple words: The U.S. cannot succeed as the globally trusted cloud provider, when foreigners have no rights to their data once it reaches a U.S. provider,” Schrems said. “In the long run we need to agree, at least among the democratic nations, that our citizens are protected in the cyberspace independent of citizenship and location. Such a ‘no spy’ agreement is in our view the basis for continuous international data transfers, no matter if this concerns users or confidential commercial data that is sent abroad.”

# Not 1NC

## States

### A2: Perm Do Both

#### **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

### A2: Perm Do CP

#### 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.

### 2NC CP Solves

#### Basic income guarantee solves economic inequality AND COVID’s a huge alt cause to their scenario

Standing, 20

(Guy, Fellow of the UK Academy of Social Sciences, and Professorial Research Associate, School of Oriental and African Studies, University of London. He was formerly Professor of Economic Security at the University of Bath, and Director of Socio-Economic Security in the International Labour Organisation "The Case for a Basic Income," Nov 24 2020 <https://www.resilience.org/stories/2020-11-24/the-case-for-a-basic-income/> NL)

The COVID-19 pandemic has brought into sharp relief the irretrievable breakdown of the post-war income distribution system in the West that essentially ties income and benefits to employment. The past four decades have seen income, wealth, and power flowing increasingly to rentiers—owners of physical, financial, and so-called intellectual property—while the ranks of the global precariat swell, consigning workers to unstable jobs, low and erratic incomes, and insecure lives. But the pandemic may prove the undoing of that system, as paying people to stay home—indeed, to not do paid work—has become essential to survival. As long as income depends on jobs, workers will feel a need to return to unsafe conditions. And as long as economic power remains concentrated at the top, companies will have every incentive to make workers come back. Even if we manage to weather the current pandemic, our system lacks the resilience to be ready for the next one—let alone other crises. The glimmer of hope amidst the tragedy is that the economic recession triggered by the pandemic is a potentially transformative crisis. Many on the left were puzzled by the reversion to the neoliberal status quo following the 2007/2008 financial crash. However, a hegemonic paradigm will only be displaced if it cannot answer the questions that preoccupy people and if an alternative paradigm is ready. For too long, that second condition has been missing. Fortunately, an alternative economic vision has been emerging, and a basic income system is an essential component of it. A basic income is not a panacea, merely a necessary pillar of the reimagining of work and economic security in our crisis-ridden world. As resolutely against old-style “laborist” social democracy as against neoliberal capitalism, it will foster greater freedom while helping us tackle the worsening crises of inequality, climate change, and authoritarian populism. A Right to Economic Security Basic income is a centuries-old idea with roots in ideas of social justice. As Thomas Paine, an early advocate, said in his 1795 pamphlet Agrarian Justice, “It is not charity, but a right, not bounty but justice that I am pleading for.” A basic income system would aim to assure basic economic security to all, independent of employment, by providing every legal resident of a country with an equal monthly sum of money, without conditions, as an economic right.[1](https://greattransition.org/gti-forum/basic-income-standing" \l "endnote_1" \t "_blank) Such unconditionality is what distinguishes a basic income from other welfare programs. A modest basic income would be paid to individuals as individuals, regardless of household arrangements, work status or prior contributions. Importantly, it would be guaranteed to all regardless of other income, thus bypassing the stigmatizing and exclusionary means-testing intrinsic to many welfare programs. Although some conservative basic income advocates view it as a substitute for existing public programs, they are a distinct minority. Most advocates see it as a complement to robust universal public services like education, health care, and other social supports. There would, moreover, need to be automatic supplements for the disabled and elderly coping with extra living costs and constraints on earnings. A basic income is also a recognition of our collective social and ecological inheritance, the true source of wealth. Indeed, the wealth and income of all of us are due far more to the efforts and achievements of past generations than to what we do ourselves. But we do not know whose ancestors contributed more to our wealth. If society allows for private inheritance of private wealth, then we should allow for social inheritance in the form of a social dividend or basic income. Similarly, a basic income would be partial compensation for loss of the commons, which belong to all of us equally, but which have been appropriated by privileged elites and corporations to generate private wealth. In this context, the commons are not just land, waterways, forests, parks, and natural resources, but also the social amenities, public services, and body of ideas and knowledge we inherit as a society. We all deserve a share of the wealth these commons produce. A Guarantor of Freedom The postwar job-based income distribution system involved a tradeoff between economic security and freedom. Job-based income and benefits lead to dependence on an employer. Accessing means-tested benefits from a welfare state requires going through administrative hoops. Moreover, such welfare programs are often specifically conditioned on having or looking for employment, even if that means accepting a low-paying job. A basic income stands against such strictures. Unlike other social policies, basic income would enhance three types of freedom: libertarian freedom, liberal freedom, and republican freedom. The first—libertarian freedom—refers to the freedom from constraints. Modern policymakers impose paternalistic controls on what “the poor” must or must not do, on pain of worse impoverishment. As a right with no conditions attached, basic income leaves people free to spend their money as they wish, prioritizing what is most important to them. A basic income would strengthen the capacity to say no to abusive or exploitative relationships and yes to forms of paid and unpaid work that might otherwise be out of reach. People would be able to accept more fulfilling jobs that they may have rejected due to economic considerations or to spend more time caring for their loved ones, neighbors, and community. Nobody should need reminding in these pandemic times that there is a care deficit. It would also foster liberal freedom, the freedom to be moral, described by the philosopher T.H. Green as the ability to decide and do what you think is right.[2](https://greattransition.org/gti-forum/basic-income-standing" \l "endnote_2" \t "_blank) You cannot be moral if you must do as you are told or “steered” to do by a paternalistic government or other authority. Unpaid community work is not a virtuous moral choice of activity if you are required to do it to receive welfare benefits or as a punishment. A basic income would reduce these hurdles to moral action. Lastly, such a scheme would advance republican freedom, freedom from actual and potential domination by unaccountable authority. A woman, for instance, may lack such freedom if she can only do things with the approval of a husband or father, even if they usually “allow” her to do what she wishes. Basic income experiments in the US found that in some cases women who had their own basic income were able to leave abusive relationships.[3](https://greattransition.org/gti-forum/basic-income-standing" \l "endnote_3" \t "_blank) Mahatma Gandhi captured the essence of republican freedom by saying freedom means being able to look others in the face and not having to give in to their will. Moving from Crisis to Sustainable Prosperity A basic income system is not only a tool for responding to the pandemic in the short term. It can also help us tackle longer-term crises of poverty and inequality, climate change, and the rise of authoritarian populism. The most obvious benefit of a basic income is poverty reduction. Targeted, means-tested schemes exclude many poor people, sometimes deliberately so, and the inevitable poverty traps—when benefits are withdrawn as income rises—simply serve to keep people in poverty. Job guarantee and subsidy schemes are difficult and expensive to administer, distort the labor market, and come perilously close to workfare. Vouchers, as alternatives to cash, are paternalistic schemes that presume what people need rather than allowing them to decide for themselves (thus food stamps in the US allow mothers to buy food but not diapers). A basic income scheme underwritten by taxation on the rich would reduce economic inequality. As an equal payment to every individual, regardless of household, income or employment status, it would also help promote gender and racial equity. This would help equalize power relations within households, relieving financial dependence on a household “head.” A basic income system would also have macroeconomic advantages. By increasing the purchasing power of low-income households, who have a higher propensity to spend than more affluent ones, it would boost spending on local goods and services, creating more jobs and further raising incomes.[4](https://greattransition.org/gti-forum/basic-income-standing" \l "endnote_4" \t "_blank) Moreover, the security afforded by a basic income would encourage entrepreneurship, since people could take more risks knowing they had something to fall back on if their venture failed. Finally, the delinking of jobs from economic security reduces the perceived threat posed by automation. Rather than fearing the disruption or displacement of millions of jobs, we can share the wealth that mechanized productivity provides. A basic income system could be an important part of effective plans to mitigate climate change. Carbon taxes and other eco-taxes are essential to reduce emissions but by themselves are regressive and unpopular. The solution? Recycle the tax revenue generated as a basic income. More broadly, a basic income would encourage a transition to an ecological society by giving people the freedom to shift from resource-depleting (and often boring and demeaning) jobs to resource-preserving care, craft, and community work. Likewise, funding a basic income system with a taxation scheme that discourages resource depletion and checks luxury consumption would further reduce environmental stress. Tackling climate change and inequality has become more difficult with the spread of an authoritarian populism that combines xenophobia, misogyny, and climate change denial. Fear and insecurity have fueled the surge in neo-fascist populism around the globe. A basic income would counter this dangerous tendency because having economic security fosters altruism, empathy, and tolerance.[5](https://greattransition.org/gti-forum/basic-income-standing" \l "endnote_5" \t "_blank) By freeing time for community and political engagement, it could also help to weaken the appeal of all forms of populism.

### A2: No International Signal

#### Their ev concludes that states solve an international signal AND solves the whole aff – uniformity checks all of the deficits

Edward T. Swaine 1, Assistant Professor, Legal Studies Department, The Wharton School, University of Pennsylvania. A.B., Harvard; J.D.,Yale, “The Local Law of Global Antitrust,” 43 Wm. & Mary L. Rev. 627, 2001, [Lexis](https://scholarship.law.wm.edu/wmlr/vol43/iss2/5)

UGA/aff reads green

State attorneys general suing under the federal antitrust laws are often described as private plaintiffs, 495 and it may be wondered why they would be treated any differently. Like private actors, states are not ordinarily the subjects of international obligations, nor are they addressed by the sources giving rise to the specific norm of antitrust comity. Two differences may be relevant. First, precisely because they are more public-oriented, states may prove even more disruptive to antitrust comity. Second, unlike private behavior, conduct by state governments is generally attributed to the United States under international and foreign relations law; for related reasons, states are legally incapacitated from engaging in effective self-regulation, warranting different treatment in the domestic implementation of antitrust comity.

a. The Potential Risk to Comity

State antitrust enforcers are often drawn to precisely the sort of matters in which they offer the greatest added value: that is, local matters unlikely to be scrutinized by federal officials or private-party plaintiffs. 496 But attempts to confine the states to those matters, or even to distinguish between federal and local matters, [\*757] failed long ago, and the borders were largely erased in the 1980s. Spurred by an infusion of federal funds and a decline in federal enforcement, 497 state enforcement activities increased dramatically, including as to interstate matters. 498 Desiring to coordinate efforts and husband resources, 499 the states formed the Multistate Antitrust Task Force of the National Association of Attorneys General (NAAG) to coordinate multistate investigations and [\*758] litigation 500 and issue joint guidelines. 501 By 1990, according to one analysis, "the sovereign states, acting voluntarily through the Antitrust Committee and the Antitrust Task Force of NAAG, function as a de facto third national antitrust enforcement agency." 502

This is hyperbole, of course; the states lack the unity, expertise, and resources of the federal agencies. 503 But their authority under federal antitrust law indeed has a public dimension with evident international implications. States have the privilege of representing natural residents, 504 and enjoy substantially enhanced standing to challenge mergers, 505 arguably the most significant and problematic [\*759] context for international cooperation. 506 Although state officials lack the overriding profit motives of private plaintiffs, they are by the same token relatively free to pursue judgments without financial incentive, 507 and enjoy their own immunity from antitrust claims. 508 Such authority will increasingly be exercised with respect to international matters, broadly construed. Like interstate commerce before it, globalization is effective at reducing the significance of borders, and state attorneys general may legitimately perceive that foreign conduct has local effect; in addition, their involvement with local or interstate matters will increasingly touch on matters of interest to foreign sovereigns, perhaps by dint of these governments' own extraterritorial authority. 509

One may fairly assume that state enforcers pay some heed to international comity, 510 but their participation makes it more difficult to observe just the same. The problem is not just that state enforcement will catch additional anticompetitive transactions or [\*760] conduct; 511 reduced barriers to competition presumably benefit foreign companies and consumers as well, and one might discount any interest in protecting foreign companies from the application of federal antitrust law. The additional scrutiny, however, comes at a price. State enforcement is criticized domestically for imposing additional administrative costs and delay, and for undermining legal certainty by creating divergent or inconsistent legal standards. 512 Such problems are only magnified for multinationals that must increasingly comply with foreign antitrust regimes as well. 513 Variations between the federal and state interpretations of federal law (as well as state-by-state differences) mean that after Hartford Fire, transnational businesses will be compelled not only to conform to the most restrictive national regime, but also to "the levels set by the most restrictive state interpretation of federal law." 514

Apart from these cumulative and incremental concerns, the distinctive nature of state enforcement policies also makes heeding legitimate foreign interests more difficult. The states' sharpest critics accuse them of being motivated by treble damages 515 or even craven political opportunism. 516 Viewed more benignly, states are [\*761] certainly attuned to public policy considerations other than consumer welfare, such as local employment and local com-petitors. 517 Even where this happens to coincide with foreign enforcement philosophies, state promotion of such values is unlikely to spill over to foreign jurisdictions, and neither are any innovations state-based experimentation may generate in the administration of U.S. antitrust law; foreign parties, for their part, may feel particularly vulnerable to the more subjective elements of state antitrust analysis. 518 Finally, even where state and foreign enforcers agree that particular conduct or a particular transaction poses antitrust concerns, conflicts may arise over state cherry-picking. 519

[\*762]

The Hartford Fire case hints at some of the problems. The lawsuit arose after local governments, experiencing difficulties in obtaining liability coverage, complained to their state attorneys general, who filed suit when the federal government declined to take action. 520 According to the states, the federal government's inaction was due to its flawed analysis of the prospects for collusion in the insurance industry. 521 To the foreign insurers and their governments, on the other hand, the states' intervention was politically tinged, and observers considered the lawsuit as one part of the tort reform movement. 522 The result, in any event, was that the domestic and foreign insurers paid the states $ 36 million to settle the claims after the Supreme Court decision, including the costs of the states' legal action. 523

Particularly in the wake of Hartford Fire, state authority seems likely to make national compliance with antitrust comity more difficult. Cooperative investigations and information sharing may pose some difficulties. 524 Conflicts seem more likely regarding [\*763] enforcement and remedial matters. Because states have different visions of the public interest and different constituencies, they may find it difficult to coordinate with the federal government and its foreign counterparts-even assuming that they can cooperate among themselves. 525 The conflict is inherent. States tend to [\*764] enhance the total stability of U.S. enforcement policy over time, thus making it more predictable for foreign firms and antitrust authorities alike. 526 But this is of diminished benefit in international matters, as the proliferation of foreign antitrust authorities, and expanded notions of foreign antitrust jurisdiction, make it likely that global practices and transactions will be caught by more than one national authority. More to the point, this internal complementarity, which tends to ensure a constant level of American antitrust enforcement, diminishes the ability of the U.S. government to ensure external complementarity, such as by suspending antitrust enforcement in deference to foreign authorities tendering a request for traditional comity. 527 Even if that has not measurably slowed bilateral agreements and the development of a comity principle, it may retard deeper efforts at [\*765] cooperation, 528 and even endanger continued observance of already precarious norms.

#### [THEIR EV ENDS]

b. Resolving Comity's Local ApplicationNotwithstanding these concerns, it remains difficult todistinguish categorically between private and state antitrustenforcement based on their respective impacts. The number of state actions is relatively small,529 and state attorneys general are certainly more likely-whatever else may be said of them-to takesome version of the public interest into account, presumablyincluding international comity."0 In neither case can the U.S.government guarantee that requests from foreign authorities willbe heeded.One might yet find some basis in the international law of antitrust comity for distinguishing the states, but it would be slender. Unlike private plaintiffs, states have not been singledout for distinct treatment in any bilateral cooperation,531 and theinference that they are directly subject to the terms of thoseagreements seems weak. The failure to address their function directly is unsurprising. The U.S. system of antitrust enforcement is unique in the degree to which it permits redundant enforcement of national law by subnational authorities, let alone in the degree to which it permits them to reach international matters."2 Evenwithin the transnational European enforcement scheme,Commission supremacy over transnational matters is maintainedby pre-emptive jurisdictional rules,33 relatively clear protocols,534and constitutional principle.55 The Commission itself is advocatingdevolutionary reforms, but at pains to maintain the principles ofuniformity and supremacy, and criticisms of the proposal suggestthat still greater precautions may be in order.36 Particularly whereadherence to an international agreement is at issue, Commissionefforts at implementation-including cooperation with foreignauthorities-appear to preclude interference by any nationalcompetition authority.37 The key to understanding the states' unique role, instead, involves their standing under more general precepts of inter-national law-as determined in large part by the U.S. Constitution. International law is ordinarily agnostic as to a nation's legal order,and accordingly leaves to U.S. law the question of whether statesmay exercise national regulatory jurisdiction.538 But the federal government retains ultimate responsibility for state compliance with international law unless it has specifically been discharged.539The federal agencies cannot, in short, shirk their responsibility forabiding by comity through the simple expedient of relegatingenforcement responsibility to the states. That the federal government retains responsibility is not, as itdevelops, due to some immutable characteristic of internationallaw-subnational governments do occasionally enjoy the authorityto conduct international relations--but instead stems from theU.S. Constitution, which purposefully deprives the states of anyauthority to conduct foreign relations.5" The scope of this exclusive federal authority is controversial.542 It has been intimated, for example, that state activities are barred whenever they adversely affect foreign relations,543 though that principle has routinely been ignored.5" It is particularly difficult to imagine its application to state invocation of Sherman Act jurisdiction: unlike typical stateactivities touching on foreign affairs, state attorneys generalprosecuting international matters are acting in a fashion faciallylicensed by Congress, making their function objectionable less infederalism terms than as a matter of the separation of powers."

### A2: Preemption

#### **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.

#### Uniformity solves—the feds only intervene to check outlier laws but the CP establishes critical mass for antitrust reform which means the feds won’t intervene

Magnuson, 20

(William Magnuson, Associate Professor, Texas A&M University School of Law; J.D., Harvard Law School; M.A., UniversitA di Padova; A.B., Princeton University, “The Race to the Middle,” Notre Dame Law Review [Vol. 95:3] 2020 NL)

The final factor that drives states toward a race to the middle is the risk of federal intervention. 15 3 The observation here is a simple one: it is more likely that the national government will act to strike down a state's regulation if that regulation is an outlier. If, on the other hand, the state's regulation is well within the norms of behavior of other states, the national government will be less likely to intervene. To the extent that states seek to prevent the national government from stepping in to challenge or preempt their laws, they will have an interest in adopting regulations that look similar to those of their peers, rather than distinguishing themselves from the crowd. 154 Federal intervention may take a number of forms. First, and most formally, it may come in the form of congressional action: Congress may pass laws to prohibit states from enacting regulations with certain content.' 55 In some cases, Congress may be quite specific in the types of laws they are targeting. For example, when several states passed burdensome laws concerning trucking and shipping operations in their states, laws that made it more difficult for new entrants to compete with incumbent trucking companies, Congress stepped in to prohibit the practice, enacting in 1995 a law that prohibited stating from enacting or enforcing any "law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property.' "156 Second, it may come in the form of actions by regulatory bodies or federal prosecutors seeking to challenge the state law as contrary to federal or constitutional law. A recent example of this kind of federal intervention has been seen in the debate around so-called "sanctuary cities," or cities that seek to protect immigrants from deportation under federal law.' 57 After President Trump took office in 2017, he issued an executive order for the Secretary of Homeland Security to prioritize deportation and to ensure that "sanctuary jurisdictions" that refuse to comply with their orders are held ineligible for federal grants. 158 Outlier states found that federal intervention could prove a powerful tool to thwart their legislative priorities. Whatever its form, federal intervention in state regulation is more likely in the case of states with regulations that are viewed as outliers, or more extreme than the regulations of the majority of states. This is so for a number of reasons. First, outlier states are more likely to garner public attention and, thus, become the subject of politically motivated action. If a state adopts a law that looks quite similar to laws in other jurisdictions, it is less likely to gain political attention and salience. On the other hand, if a state adopts a law that goes much further than other states, either in pandering to powerful interests (in the case of races to the bottom) or in creating more efficient solutions to long-term problems (in the case of races to the top), the law is more likely to become a hot-button issue in public discussion.1 59 Second, outlier states are more likely to have regulations that lead to extreme results that create demand for a federal response. State regulations that strongly favor the interests of one group over another can be expected to mobilize burdened groups to react, either by lobbying the state government to change its law or, if those efforts are ineffectual, by appealing to the federal government. 160 But regulations that simply copy the regulations in place in other jurisdictions can be expected to have more moderate effects on the interests of stakeholder groups and, thus, should generate fewer demands for intervention from the federal government. 161

#### Samp concludes neg—says the only time federal preemption happens is when state law directly contradicts federal law—which is not the case with the aff because there aren’t federal laws on the books that contradict

Samp, 14

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The Supreme Court’s June 2013 decision in FTC v. Actavis, Inc.1 raised as many new questions as it answered regarding the application of antitrust law to drug patent settlement agreements. The Court steered a middle course on the issue of so-called “reverse payment” settlements, concluding that such settlements might violate federal antitrust law but providing little guidance regarding when violations should be found. The Court concluded that reverse payment settlements should be subject to the “rule of reason,” rejecting both the FTC’s argument that they should be deemed presumptively anticompetitive and the much more restrictive “scope of the patent” test espoused by the lower court.2 Further complicating the issue is the possible application of state antitrust law. Private plaintiffs who challenge reverse payment settlements often allege that the settlements violate state antitrust law as well as federal antitrust law.3 Defendants who successfully defend against federal antitrust claims may still find themselves facing claims that their patent settlements nonetheless violated state law. A key issue with respect to state claims will have to be addressed by the courts: to what extent does federal law preempt state antitrust law in this area? In particular, are states permitted to impose antitrust liability on parties to reverse payment patent settlements for conduct not deemed actionable under federal law? This paper concludes that state antitrust liability can be imposed on parties to patent settlements so long as the state action “parallels” federal antitrust law. On the other hand, state law is preempted to the extent that it seeks to impose antitrust liability for conduct not deemed actionable under federal law; under such circumstances, state-law liability would be impliedly preempted because it would stand as an obstacle to accomplishing the purposes of federal patent law. The scope of preemption likely would include any effort by states to apply a stricter standard of review to reverse payment patent settlements—either a “quick look” review accompanied by a presumption of illegality, or a declaration that such settlements are “per se” illegal. Part I of this paper summarizes federal preemption law as it has been applied to state antitrust actions. It explains that the U.S. Supreme Court has never interpreted federal antitrust law as imposing a limit on states’ authority to regulate business practices deemed by states to have anticompetitive effects. Nonetheless, federal courts have not hesitated to rule that state antitrust law is preempted by federal law when they determine that state law comes into conflict with some other federal statute. In this instance, the relevant “other federal statute” is federal patent law. Part II examines the Supreme Court’s Actavis decision and explains that Actavis attempted to balance the conflicting demands of federal antitrust law and patent law. The decision was based on what the Court deemed the appropriate balance between those conflicting demands, and the paper concludes that states may not adopt policies that would conflict with the balance arrived at by the Court. Parts III and IV examine the extent to which Activis and other Supreme Court decisions should be deemed to preempt state antitrust law challenges to reverse payment patent settlements. They conclude that state antitrust law should be deemed preempted to the extent that it attempts to impose liability under state law in circumstances under which federal law would not permit imposition of antitrust liability. The paper recognizes, however, that state antitrust claims of this sort are likely to become increasingly common and that defendants may not always prevail in their efforts to convince state courts to rule that expansive state law claims are preempted. Moreover, even when state courts are purporting to do no more than enforce state antitrust law that merely “parallels” federal antitrust law, defendants may nonetheless encounter greater difficulty (in comparison to federal court proceedings) in convincing a state-court fact-finder that settlement of their patent dispute had pro-competitive effects. I. STATE ANTITRUST LAW Congress has passed a series of laws over the past 125 years designed to prevent businesses from engaging in anticompetitive conduct that results in higher prices for consumers. Most prominently, it adopted the Sherman Act in 1890.4 Section 1 of the Sherman Act prohibits “[e]very contract, combination in the form or trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States.”5 Among the types of agreements deemed to constitute per se violations of section 1 are agreements among competitors to limit output.6 Many states have also adopted antitrust statutes. While those laws tend to be similar to federal law, their language is not identical, and state courts routinely interpret state antitrust laws in ways that diverge sharply from federal law.7 For example, California’s antitrust statute, the Cartwright Act,8 diverges in a number of respects from federal antitrust law. The California Supreme Court recently cautioned, “[i]nterpretations of federal antitrust law are at most instructive, not conclusive, when construing the Cartwright Act . . . .”9 The U.S. Supreme Court has rejected claims that state antitrust law is preempted whenever it diverges from federal antitrust law. For example, the Court permitted the Attorneys General of Alabama, Arizona, California, and Minnesota to file antitrust claims under their respective state laws against a group of cement producers even though those state governments, because they did not purchase cement directly from the producers but rather purchased only through intermediaries, would not have been proper plaintiffs under federal antitrust law.10 Under federal law, when producers conspire to fix prices, only direct purchasers, and not subsequent indirect purchasers, are permitted to sue to recover losses incurred as a result of the conspiracy.11 In contrast, antitrust laws from the four states permitted recovery by indirect purchasers.12 The Supreme Court rejected the defendant cement producers’ assertion that federal antitrust law was intended to serve as a ceiling on businesses’ liability for engaging in anticompetitive conduct.13 It stated, “Congress intended the federal antitrust laws to supplement, not displace, state antitrust remedies. And on several prior occasions, the Court has recognized that the federal antitrust laws do not preempt state law.”14 On the other hand, state antitrust laws—like all state laws—are subject to the restrictions imposed by the Supremacy Clause of the U.S. Constitution,15 and are impliedly preempted to the extent that they conflict with federal law.16 Such a conflict arises when “compliance with both federal and state regulations is a physical impossibility,”17 or when a state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”18 On a number of occasions, the Supreme Court has concluded that state antitrust law is preempted because it conflicts with a federal statute other than federal antitrust law.19 The Court has been particularly quick to find preemption when state antitrust law has an impact on labor law, an area in which federal law is pervasive.20 Indeed, on at least one occasion, the Court found that a claim arising under state antitrust law was preempted by federal labor law even though the Court concluded that the conduct that gave rise to the state claim could proceed as a claim under federal antitrust law.21 The Court explained that “Congress and this Court have carefully tailored the antitrust statutes to avoid conflict with the labor policy favoring lawful employee organization, not only by delineating exemptions from antitrust coverage but also by adjusting the scope of the antitrust remedies themselves.”22 The Court said that state antitrust laws “generally have not been subjected to this process of accommodation” and thus that “[t]he use of state antitrust law . . . [must] be pre-empted because it creates a substantial risk of conflict with policies central to federal labor law.”23 Accordingly, in any challenge to a “reverse payment” patent settlement arising under state antitrust law, a court will likely be required to address whether the claim conflicts with the “balance” between federal antitrust law and federal patent law established by the Supreme Court’s Actavis decision. If such state-law antitrust claims stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in adopting the patent laws, it will be preempted by federal law. II. “REVERSE PAYMENT” PATENT SETTLEMENTS When parties to litigation enter into a settlement, one would normally expect that any cash payments would flow from the defendant to the plaintiff. The defendant pays cash in return for something from the plaintiff: the abandonment of a legal claim. The normal expectations have been reversed in the context of litigation involving prescription drug patents, however, as the result of financial incentives created by the Hatch-Waxman Act,24 a federal statute adopted in 1984. HatchWaxman was designed to ensure that generic versions of prescription drugs enter the market more quickly, thereby driving down drug prices.25 The Act includes a provision that permits generic companies, by announcing plans to market a drug before expiration of the drug’s patent, to essentially force the patent holder to immediately file a patent infringement suit.26 That provision sets drug patent litigation apart from all other types of patent litigation. It allows generics to challenge the validity of a drug patent in a virtually risk-free manner— because they can induce a patent lawsuit without actually selling an infringing product,27 generics can place a patent’s validity at issue without the risk of incurring the potentially bankrupting damage awards normally associated with patent litigation.28 While the cost of litigation is about the only loss that a generic company is likely to suffer if it loses a drug patent infringement lawsuit, the stakes are much higher for the typical prescription drug patent holder. It likely spent hundreds of millions of dollars to obtain FDA approval to market its product.29 It can hope to recoup those costs only if it can maintain the validity of its patent and thereby prevent competition from generic manufacturers.30 For a typical brandname prescription drug manufacturer, its patents on the drugs it produces are far and away its most valuable assets. A brandname drug manufacturer often stands to lose billions of dollars in future revenues if one of its key drug patents is declared invalid.31 In light of the dynamics created by the HatchWaxman Act, it is hardly surprising that generic companies— even though they are the defendants in drug patent infringement litigation—are in a position to demand cash or other valuable assets in return for agreeing to settlement of the patent litigation. III. ACTAVIS: AN ANTITRUST CHALLENGE TO “REVERSE PAYMENT” SETTLEMENTS The Federal Trade Commission (FTC) has long complained about the allegedly anticompetitive effects of “reverse payment” patent settlements—settlements whose terms include a cash payment from the drug patent holder to the alleged infringer.32 The FTC contends that by making such payments, patent holders are in effect paying potential competitors not to compete, thereby restricting supply and driving up prices.33 Drug companies have responded that such settlements cannot have an anticompetitive effect so long as the settlement does not prohibit any competition that was not already barred under the terms of the patent.34 They argue that because litigation is always a drain on productivity, settlements of patent disputes ought to be encouraged for their pro-competitive effects35 and that existing patents ought to be presumed valid.36 Lower federal courts have struggled for more than a decade to craft a coherent theory for addressing antitrust challenges to reverse payment settlements.37 On the one hand, there is reason for concern about the competitive consequences of settlements that include substantial payments from the patent holder to the alleged infringer. Very large payments may be an indication that the settling parties recognized that the patent was particularly vulnerable to invalidation,38 and thus that competition would have begun much sooner had the infringement suit been permitted to proceed to a trial, at which the patent almost surely would have been declared invalid. Viewed in that light, payments from the patent holder to the alleged infringer can be seen as a device for sharing monopoly rents made possible by the alleged infringer’s agreement not to compete.39 On the other hand, a patent holder has a legal right to a monopoly on the sale of its patented product. It thus is hard to fault the patent holder for taking steps to enforce that right, even if those steps include making payments to litigation opponents where economic incentives created by the HatchWaxman Act essentially require such payments as the price of settling litigation.40 One potential solution to this dilemma is to instruct trial courts to examine the strength of the underlying patent.41 Under that approach, a reverse payment patent settlement would be deemed anticompetitive, and thus in violation of federal antitrust law, if and only if the court determined that the patent was weak and likely would have been declared invalid had the patent infringement suit been allowed to go to trial. But advocates on both sides of the issue have resisted that approach because it would require overly complex trials. District courts conducting an antitrust trial would be required to retry the previously-settled patent dispute, hearing voluminous evidence regarding patent validity.42 To avoid that result, the FTC has argued that reverse payment settlements should be deemed per se antitrust violations,43 reasoning that patent holders should be required to agree to an earlier onset of generic competition in lieu of making cash payments to the alleged infringers. Prior to 2012, the FTC and private plaintiffs had lost their challenges to reverse payment drug patent settlements. The Second, Eleventh, and Federal Circuits each adopted the socalled “scope of the patent” test, which holds that agreements that do not extend beyond the exclusionary effect of a patent do not injure lawful competition unless the patent was procured by fraud or the infringement claim was objectively baseless.44 Under this standard, the patent holder’s right to exclude infringing competition is fully respected unless the antitrust plaintiff can demonstrate that the patent had no exclusionary effect at all.45 In 2012, the Third Circuit created a split among the federal appeals courts by adopting the FTC’s position. It held that reverse payment settlements are prima facie evidence of an unreasonable restraint of trade, and that the settling parties can rebut that presumption only if they are able to demonstrate, during a “quick look” analysis, that the settlement actually has pro-competitive effects.46 The Third Circuit added that it agreed with the FTC that there is no need to consider the merits of the underlying patent suit because absent proof of other offsetting consideration, it is logical to conclude that the quid pro quo for the payment was an agreement by the generic to defer entry beyond the date that represents an otherwise reasonable litigation compromise.47 Actavis resolved that circuit split. The Actavis litigation was an FTC challenge to a reverse payment settlement of patent infringement litigation involving a brand-name drug called AndroGel.48 Under the terms of the settlement, the alleged infringers (several generic drug manufacturers) agreed not to market their generic versions of AndroGel until August 2015, sixty-five months before the AndroGel patent was scheduled to expire.49 The settlement also required the patent holder to pay many millions of dollars to the generic manufacturers; it stated that the payments were in return for other services to be performed by the generics for the patent holder.50 The FTC filed a complaint against all settling parties under federal antitrust law, contending that “the true point of the payments was to compensate the generics for agreeing not to compete against AndroGel until 2015.”51 Applying its previously adopted “scope of the patent” test, the Eleventh Circuit affirmed the district court’s dismissal of the FTC’s complaint.52 It reasoned that the settlement could not be deemed to have anticompetitive effects because it permitted generic competition sixty-five months before the underlying patent was scheduled to expire.53 The Supreme Court granted review to resolve the conflict between the Third Circuit on the one hand and the Second, Eleventh, and Federal Circuits on the other hand. In its June 2013 decision, the Supreme Court rejected both the “scope of the patent” test and the Third Circuit’s “presumption of unreasonable restraint” test.54 The Court declined to adopt any bright line test and instead directed lower courts to analyze the potential anticompetitive effects of reverse payment settlements under a traditional “rule of reason” analysis.55 The Court repeatedly emphasized that courts must “balance” the competing interests of federal antitrust and patent law, explaining that “patent and antitrust policies are both relevant in determining the ‘scope of the patent monopoly’—and consequently antitrust law immunity— that is conferred by a patent.”56 The Court acknowledged the legitimacy of the concerns that had led the Eleventh Circuit to adopt the “scope of the patent” test: the desirability of promoting settlements and the “fear that antitrust scrutiny of a reverse payment agreement would require the parties to litigate the validity of the patent in order to demonstrate what would have happened to competition in the absence of the settlement” and would “prove time consuming, complex, and expensive.”57 The Court nonetheless held that other considerations led it “to conclude that the FTC should have been given the opportunity to prove its antitrust claim.”58 Chief among those considerations was the Court’s conclusion that settlements have the “potential for genuine adverse effects on competition,”59 particularly when reverse payments are so large that they cannot be explained as an amount necessary to bring about a settlement.60 The Court added that a plaintiff should not necessarily be required to demonstrate the weakness of the underlying patent in order to establish a prima facie case of antitrust unlawfulness, stating that “[a]n unexplained large reverse payment itself would normally suggest that the patentee had serious doubts about the patent’s survival.”61 In rejecting the FTC’s argument that reverse payment settlements should be deemed “presumptively unlawful” and should proceed via a “quick look” approach, the Court explained: [A]bandonment of the “rule of reason” in favor of presumptive rules (or a “quick-look” approach) is appropriate only where “an observer with even a rudimentary understanding of economics could conclude that the arrangements in question would have an anticompetitive effect on consumers and markets.” We do not believe that reverse payment settlements, in the context we here discuss, meet this criterion.62 Remanding the case to the Eleventh Circuit for further consideration, the Court said that it would “leave to the lower courts the structuring of the present rule-of-reason litigation.”63 IV. WHAT DID ACTAVIS DECIDE? Before determining the extent to which state antitrust regulation of reverse payment settlements is preempted by federal law, one must first determine what was actually decided by Actavis. While there is disagreement regarding which side actually won the case, all agree that the decision left a considerable number of issues undecided. The Court explicitly rejected the Eleventh Circuit’s “nearautomatic antitrust immunity to reverse payment settlements” and the FTC’s “presumptively unlawful” approach,64 but provided relatively vague guidance for determining which such settlements violate federal antitrust laws and which do not. The Court said that “[a]n unexplained large reverse payment itself would normally suggest that the patentee has serious doubts about the patent’s survival,” and that the existence of such serious doubts “in turn, suggests that the payment’s objective is to maintain supracompetitive prices to be shared among the patentee and the challenger rather than face what might have been a competitive market . . . .”65 But those sentences raise more questions than they answer; they do not explain how a trial court is to determine whether the reverse payment is “unexplained” or “large” or when the “normal” inference from an “unexplained large reverse payment” might not be appropriate. The Court punted those issues to trial courts with instructions to do their best in applying a “rule of reason” analysis.66 Moreover, while the Court determined that a plaintiff challenging a reverse payment settlement can establish a prima facie case without establishing that the patent was weak and would likely have been invalidated had the infringement suit gone to trial,67 it did not determine whether trial courts may impose any limitations on defendants’ rights to make the opposite showing: that the patent almost surely would have been upheld if the infringement suit had gone to trial and thus that the reverse payment settlement could not possibly have had any anticompetitive effects. The Court did not even determine whether a reverse payment can ever be actionable when it takes the form of something other than cash. Use of the word “payment” at least suggests that the Court did not intend to address transfers of value other than cash, but the FTC has already rejected that interpretation and is attempting to use Actavis to challenge patent litigation settlements in which the value transferred to the infringing party consisted of an exclusive license to market a generic version of the drug during the first 180 days following expiration of the patent.68 Of course, as Seventh Circuit Judge Richard Posner has pointed out, “any settlement agreement can be characterized as involving ‘compensation’ to the defendant, who would not settle unless he had something to show for the settlement. If any settlement agreement is thus to be classified as involving a forbidden ‘reverse payment,’ we shall have no more patent settlements.”69 The Actavis Court did make clear, however, that a license permitting an alleged infringer to bring its product to market prior to expiration of the patent cannot be classified as an unlawful reverse payment.70 Suppose that a patent is not scheduled to expire for another ten years and that the parties reach a settlement whereby the alleged infringer agrees not to compete for the first seven years in return for an exclusive license to market its product during the final three years. Arguably, the alleged infringer has received something of considerable value (a three-year exclusive license) in return for agreeing not to compete for seven years. The Court nonetheless indicated that such agreements not to compete are not actionable under federal antitrust law71—perhaps because the exclusive license increases competition and thus benefits not only the alleged infringer but also consumers, even though the agreement not to compete arguably harms consumers. Moreover, the Court’s repeated use of the word “balance” and the phrase “accommodate patent and antitrust policies”72 made clear that any “rule of reason” analysis undertaken by a district court must seek to balance the competing interests of federal antitrust law (to promote competition) and the federal patent law (to provide monopoly profits to the developers of new and useful products and thereby encourage development of more such products in the future). Those holdings suggest some limits on the extent to which states should be permitted to impose antitrust liability on companies that enter into reverse payment drug patent settlements. In particular, any state-law liability is preempted to the extent that it would upset the balance between federal antitrust law and patent law established by Actavis because such liability would “stand[ ] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.”73 V. ACTAVIS’S PREEMPTIVE EFFECT Application of state antitrust law to reverse payment settlements is not merely a hypothetical possibility. There are a fair number of pending lawsuits that challenge reverse payment settlements on state-law grounds. The California Supreme Court has agreed to review one such suit.74 In seeking affirmance of the appeals court’s dismissal of the suit, the defendants argue inter alia that the suit is preempted by federal law.75 As noted above, there is precedent for a finding that state antitrust law is preempted to the extent that it conflicts with the policy underlying a federal statute.76 Moreover, in the context of patent law, federal courts have not hesitated to preempt state laws that the courts deem to stand as an obstacle to accomplishing Congress’s objectives (i.e., encouraging efforts to develop new and useful products).77 To the extent that any portions of Actavis’s holding can be deemed to reflect the Court’s perception of Congress’s new-productdevelopment objectives, a state law is preempted if it is inconsistent with that holding and seeks to impose a greater degree of antitrust liability on the parties to a reverse payment settlement. Actavis’s treatment of settlements involving a compromise entry date appears to meet that description. Actavis held that federal antitrust liability could not arise from a settlement in which the generic manufacturer agrees not compete for a number of years and in return is rewarded with an exclusive license to market its product several years in advance of the patent’s expiration date.78 Accordingly, states are not permitted to impose antitrust liability under similar circumstances because doing so would upset the balance that, according to Actavis, Congress sought to achieve between antitrust and patent law. Other issues left open by Actavis are likely to be answered in the years ahead. For example, the Supreme Court did not specify whether noncash benefits received by a generic manufacturer in connection with a patent settlement can ever serve as the basis for federal antitrust liability. If the Supreme Court eventually answers that question by stating: “No, federal antitrust law will not examine settlement benefits other than cash that flow to the infringing party,” then it is likely that state antitrust law would be required to conform to that rule. The potential grounds for such a ruling (a desire both to promote settlement of patent disputes and to uphold reliance interests in existing patents) are based largely on values embedded in federal patent law. There is little reason to believe, however, that the Court would prevent application of state antitrust law to patent settlement agreements where state law is fully consistent with federal antitrust law. Even in areas subject to extensive federal regulation, the Supreme Court has upheld the authority of states to engage in parallel regulation that is not inconsistent with the federal regulation.79 Unless the Court were to determine, as in Connell,80 that states could not be trusted to properly accommodate the objectives of the federal statute at issue (here, federal patent law), there is no reason to conclude that Congress would not have wanted states to be permitted to police the same sorts of anticompetitive conduct that is policed by federal antitrust law. Moreover, states are likely free to impose greater penalties on the proscribed conduct than is available under federal law. As the Court explained in California v. ARC America Corp., state antitrust law is not required to adhere to the same set of sanctions imposed by federal antitrust law.81 It seems reasonably clear, however, that Actavis prohibits states from adopting the procedural devices rejected by the U.S. Supreme Court—either a per se condemnation of reverse payment settlements or a presumption of illegality accompanied by “quick look” review. The Supreme Court rejected those approaches because it determined that in many cases there might well be pro-competitive economic justifications for reverse payment settlements and that presuming their illegality could result in the suppression of economically useful conduct.82 State antitrust laws that adopted the FTC’s proposed presumption of illegality would be subject to similar criticism, and thus would likely be impliedly preempted as inconsistent with the careful balance between antitrust and patent law established by Actavis. CONCLUSION Because Actavis left so many questions unanswered regarding the application of federal antitrust law to patent settlement agreements, the extent to which federal law preempts the application of state antitrust law to such agreements remains similarly unsettled. One can be reasonably confident that if private plaintiffs become dissatisfied with the results of pending litigation under federal antitrust law, they will turn with increasing frequency to state antitrust law as an alternative remedy. Even if state law ends up doing no more than “parallel” federal antitrust law, defendants are likely to incur substantial litigation costs fending off such state claims in the years to come.

### A2: 50 States Theory

#### 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

#### Third, we have ev about all 50 states acting uniformly to do antitrust actions, which means it is predictably grounded in the literature and you can research it—

#### 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

### AT: Court Stripping

#### Congress doesn’t have to pass anything from the CP so even if feds get involved it’s not hostile

Bulman-Pozen 16 (Jessica, Associate Professor, Columbia Law School, EXECUTIVE FEDERALISM COMES TO AMERICA, 102 Va. L. Rev. 953, June, lexis)

Compared to legislative processes, executive federalism has several advantages in fostering negotiation across the political spectrum. First, as differentiated integration underscores, negotiations may be bilateral or partially multilateral. Instead of a need for a grand compromise that satisfies an aggregate national body, executive federalism may unfold through many smaller compromises that satisfy disaggregated political actors. n209 The sum total of these negotiations shapes national policy, but no one negotiation does. This disaggregated quality can reduce the partisan temperature and bring intraparty difference to the fore. Second, because it tends to arise in the process of implementing national policy over a period of time, state-federal bargaining involves iterated interactions over both bigger-picture issues and smaller details. Such implementation is policymaking, not mere transmission of preexisting instructions, but it is more concrete than lawmaking, and partisan dogmas may be unsettled as new issues arise in the implementation process. Third, federal and state executives tend to be differently situated with respect to particular programs: The states may rely on the federal executive for funding as the federal executive relies on the states to achieve its policy goals; or the states may rely on federal cooperation to achieve their policy goals as the federal government relies on the states for political capital. [\*1003] Such mutual reliance, but varied responsibilities and interests, may create more paths to, and incentives for, compromise. Finally, executive negotiations may transpire in greater secrecy than legislative deliberations that occur in the sunshine. Consider, for instance, how executive federalism has been remaking national healthcare law, with state-federal negotiations about insurance exchanges and the Medicaid expansion opening new routes to bipartisan compromise. n210 Such compromises are mostly arising from discrete interactions among particular state and federal executives, and they seize on finer-grained questions to begin to find common ground, or at least mutual acquiescence, amid sharp polarization. For instance, in negotiations around the creation of insurance exchanges, HHS repeatedly extended filing deadlines partly in response to requests from Republican governors; it allowed Utah to operate a separate small business exchange that the state cast as more "market-based" than HHS's understanding of the Act, which required "a more government-centric" approach resulting in "less choice and more reliance on public programs"; and it developed alternative forms of partnership exchanges that created ongoing working relationships between federal officials and Republican state officials. n211 Today, Arkansas, Kansas, Nebraska, Ohio, and South Dakota, among other red states, have agreed to coordinate with the federal executive. n212 Although HHS has decisive legal authority with respect to such exchanges, it also has a strong practical and political need for state assistance. Negotiations over the concrete particulars of exchange design have allowed Republican state officials to achieve significant concessions, as Democratic federal officials get more buy-in for the program.

## Market Concetration

### 2NC Economy

#### Countries strengthen institutions instead of go to conflict

Haftel, 20

(Yoram Z Haftel, professor of international relations at Hebrew University of Jerusaleum, Daniel F Wajner, postdoctorate fellow at Freie Universität Berlin, Dan Eran, PhD candidate at the Hebrew University of Jerusalem, "The Short and Long(er) of It: The Effect of Hard Times on Regional Institutionalization" International Studies Quarterly 64 (2020) NL)

Turning to the longer term, by which we mean about five years, our expectations are more compatible with those who promote the proposition that economic crises increase regional institutionalization. After the initial challenges caused by such crises were internalized or addressed and economic conditions gain a modicum of stability, the reasoning advanced by those who view a positive link between the two phenomena kicks in. As with the short term, we consider the role of interest groups, public opinion, and, especially, member states’ governments. We intentionally leave out the neofunctionalist logic that emphasizes supranational institutions, proposed by Jones, Kelemen, and Meunier (2016). Even though others also point to the importance of powerful secretariats in fostering regional cooperation during difficult times, they, too, heavily rely on the experience of the EU (Henning, 2011, 2013; Saurugger and Terpan 2016). Given its uniquely supranational nature, we believe that applying this mechanism beyond the EU is somewhat tenuous. Instead, we ground our argument in the less theoretically demanding intergovernmentalist perspective. Starting with domestic interest groups and public opinion, they should be less resistant to regional cooperation as time lapses. With respect to the former, we concur with Ballard-Rosa, Carnegie, and Gaikwad (2018, 714) that “Protection initially increases when industries lobby heavily for assistance, but then decreases as industries run low on resources to expend on lobbying and as firms in other industries mobilize to counter-lobby and demand liberalization.” In the context of REOs, we expect those sectors that favor unilateral policies over regional ones to weaken, while those that benefit from regional integration to have greater political sway over time. Improved economic conditions in Mercosur member states, for example, tilted the political balance in favor of those who supported regional cooperation, which in turn enabled the Mercosur “relaunch” in 2003 (GómezMera 2009, 771–72). Public opinion, too, should be more favorable toward regional cooperation as economic conditions improve. This is especially likely to the extent that governments push REOs in a direction that enjoys greater popular legitimacy, as was indeed the case in Mercosur (Wajner and Roniger 2019). Turning to policymakers, with less uncertainty and urgency, they can turn their attention to long-term goals. In this respect, they are more likely to consider the sources of the crisis and, more importantly, to contemplate strategies that might prevent its reoccurrence. Here, it seems that they often conclude that regional cooperation can either fend off or at least cushion the negative impact of economic crises and insulate the region from adverse global shocks (Henning 2011, 27–28; Solís 2011). REO institutionalization is very useful in this respect, as it fosters economic growth, improves physical infrastructure, and enhances coordination among the REO’s members. One possible response is the creation or reinforcement of regional mechanisms that pool financial resources and make them available to member states when crises hit. It is not surprising that REO members sometimes launch such initiatives in the wake of painful economic crises. 813 One example of such a mechanism is the Chiang Mai Initiative (CMI) within the framework ASEAN.12 This currency swap arrangement was established in 2003 in response to the 1997 Asian financial crisis (Pempel 2008). Notably, this mechanism was further expended and strengthened in response to the 2008 crisis (and was renamed the Chiang Mai Initiative Multilateralization; Henning 2011, 22). A second example is the EAEC Anti-Crisis Fund, created in 2009 in response to the 2008 crisis. This was a harbinger for the negotiations of and an agreement on the highly institutionalized Eurasian Economic Commission (EEC) in 2012. Vinokurov and Libman (2014, 351–53) argue that in contrast to previous efforts, member states implemented the economic agreements associated with the EEC. As already mentioned, the political dynamics associated with economic crises may result in leadership turnover. While the short-term effects of such turnover can damage regional institutionalization, the longer term effects are likely to be more positive. Given a recent crisis, the new leadership’s main goal is to improve the economic situation in order to cement its political power. Regional institutionalization is a good way to do just that, especially if member states view the particular model of regional cooperation eye to eye. Governments can reasonably claim that cooperation efforts reflect a responsible and growth-inducing approach. In particular, new governments can use greater regional institutionalization to signal to both domestic and international audiences that they are competent, trustworthy, and deserve their support (Haftel 2010; Mansfield and Milner 2018). Given the time it takes for governments to change and take control, it is sensible to see the effects of these dynamics only several years after the crisis erupted. Mercosur is, again, a good example of this logic. In 2002, as political conditions in Argentina and Brazil began to stabilize, its member states signed the Olivos Protocol, which increased the legalization of its DSM. Their willingness to delegate greater authority to this REO emanated from their desire to signal economic stability and political certainty, especially vis-à-vis foreign investors, in the wake of the financial crisis. As Arnold and Rittberger (2013, 113) explain: “In light of the economic and financial crisis besetting the continent in the latter part of the 1990s, Mercosur’s governments supported institutional reforms towards a more legalized DSS [Dispute Settlement System] to signal their commitment to the regional integration project, aiming to secure a prosperous economic environment capable of attracting intraregional and, in particular, extraregional investments.” Based on the so-called Buenos Aires Consensus, signed by Brazil’s President, Lula da Silva, and President Kirchner in 2003, Mercosur experienced a flurry of new economic activities, meetings, and institutions (Caetano 2009, 52). It was, of course, helpful that these two leaders shared a programmatic vision with respect to economic development and regional cooperation. Similarly, Doctor (2013, 532) argues that “After losing momentum in 2008–2009” because of the global economic crisis, “In late 2011, Mercosur stepped up efforts to develop a joint strategy in response to the worsening global scenario.” Since then, among other things, it devised a program to enhance regional trade and an agreement to protect and attract foreign investment (Doctor 2013, 531). Notably, in both instances, agreements were reached about three years after financial crises first hit (with additional time needed for ratification and implementation).

## PTX

### O/V - Warming

#### Outweighs nuclear war

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.

### 1 at: Afghanistan

#### BUT, he’ll overcome it. PC shapes the link, Biden’s able to blow off controversy because of his popular economic agenda, like the covid funding bill. Afghanistan is comparatively 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.

#### Infrastructure is top of the docket and PC is key

Duehren, 10/1

(Andrew Duehren, Kristina Peterson, and Eliza Collins, "Biden Meets With House Democrats Amid Impasse Over Infrastructure Vote," 10/1/21 <https://www.wsj.com/articles/democrats-try-again-to-pass-infrastructure-bill-11633097276?mod=politics_lead_pos1> NL)

WASHINGTON—President Biden headed to the Capitol Friday afternoon as Democrats worked to forge an agreement between their moderate and progressive wings on [a social policy and climate package](https://www.wsj.com/articles/democrats-budget-plan-what-11626301275?mod=article_inline) and break an impasse over [a separate $1 trillion infrastructure bill](https://www.wsj.com/articles/infrastructure-bill-2021-what-11627515002?mod=article_inline). House Democratic leaders had planned on bringing the public works legislation up for a vote on Thursday, but a progressive rebellion against the central element of President Biden’s agenda [forced lawmakers to push the vote to Friday](https://www.wsj.com/articles/infrastructure-bills-fate-uncertain-heading-into-planned-house-vote-11632994202?mod=article_inline). Progressive Democrats are insisting that the party first unite around and pass the social policy and climate proposal, using their threat to oppose the infrastructure bill as leverage in the separate negotiation with other Democrats. “The case that the White House is making is that compromise requires everybody giving a little. That’s the stage we’re in,” said White House press secretary Jen Psaki ahead of Mr. Biden’s meeting with the House Democratic caucus. “No matter where we end, if we can get something done here, we’re going to have a historic piece of legislation pass Congress.” House Speaker [Nancy Pelosi](https://www.wsj.com/topics/person/nancy-pelosi) (D., Calif.) said that the House would take up the infrastructure bill on Friday, and Democrats held a caucus meeting in the morning. The infrastructure bill would fund improvements to roads, bridges, ports and expanded broadband Internet access, while the social policy and climate bill would fund a variety of education, healthcare, child-care and climate initiatives. Top Democrats and White House officials held a marathon session of negotiations on Thursday to try to resolve the disagreements, with more meetings expected Friday. Central to the discussions are centrist Sens. Joe Manchin (D., W.Va.) and Kyrsten Sinema (D., Ariz.), who have each opposed the $3.5 trillion price tag for the social policy and climate bill. Mr. Manchin said on Thursday that [he could support spending $1.5 trillion on the social policy and climate bill](https://www.wsj.com/articles/joe-manchin-says-his-spending-climate-stance-should-be-no-surprise-11633040698?mod=article_inline), far below what progressive Democrats have pushed for. Some aides expect the new agreement to be worth roughly $2 trillion. “We’re going to come to an agreement. I’m trying to make sure they understand I’m at 1.5 trillion. I think 1.5 trillion does exactly the necessary things we need to do,” Mr. Manchin told reporters after a meeting with White House aides late Thursday night. The tortured effort to unite the party around the two pieces of legislation reflects the difficulties of wielding the very narrow majorities Democrats hold in Congress. Democrats cannot afford a single defection in the 50-50 Senate, and they can lose no more than three votes in the House, meaning leadership must build nearly unanimous consensus for the policies in the party. They are pursuing a process called reconciliation to approve the social policy and climate bill without GOP support in the Senate, where legislation would otherwise require 60 votes to advance. Democrats are hoping to secure a broad agreement with centrists on the social policy and climate bill to reassure progressives about that effort’s fate. Rep. Pramila Jayapal (D., Wash.), the chairwoman of the Congressional Progressive Caucus, said that progressives could support the infrastructure bill if there was a firm commitment on the other legislation. She has previously said she wanted to see the social policy and climate bill passed before the infrastructure bill. “The reason I want a vote is I want to be assured that there’s no delay, and that there’s no misunderstandings about what we agreed to, and so if there’s something else that’s short of a vote that somebody can offer me that gives me those same assurances, I want to listen to that,” she said. As part of an earlier agreement with House centrists, Mrs. Pelosi had agreed to hold a vote on the infrastructure bill this past Monday, which she later pushed to Thursday. Delaying the vote again frustrated centrist House Democrats, who have pushed to pass the infrastructure bill, while negotiations continue on the social policy package. “When Iowans tell me they are sick of Washington games, this is what they mean,” Rep. Cindy Axne (D., Iowa) said Thursday night. “Some in my party are insisting that we wait to put shovels in the ground and pass the largest investment in rural broadband in U.S. history until every piece of our agenda is ready.” The failure to pass the infrastructure bill before midnight led to a lapse in authorization for the nation’s transportation programs, putting roughly 3,700 federal employees temporarily on furlough, according to a Department of Transportation spokeswoman. Lawmakers have discussed a short-term patch to continue to reauthorize the transportation programs, while negotiations continue on the broader infrastructure bill. Democrats hope to tackle an array of policy areas in the healthcare, education and climate package, drafting a bill in the House that would offer universal prekindergarten, two years of free community college, expand Medicare and implement many other party priorities. Meeting Mr. Manchin’s desire for a $1.5 trillion bill would require paring back or eliminating many of the provisions. Some liberal Democrats were unfazed by Mr. Manchin’s demand. Sen. Elizabeth Warren (D., Mass.) said that negotiations among Democrats would focus on the specific initiatives that they could unify around. “A lot of different people have given a lot of different numbers over the past several months. But what we’ve all talked about as Democrats is things we need to get done and we need to do with a realistic price tag,” she said. Though 19 Senate Republicans backed the infrastructure bill and at least some House Republicans are also expected to do so, [it isn’t clear whether there will be enough GOP support](https://www.wsj.com/articles/house-republicans-confront-dilemma-on-infrastructure-vote-11632948758?mod=article_inline) to offset opposition from liberal Democrats.

### 1 at: Covid

#### Will pass because of Biden’s PC—full court press now

Chalfant, 10/1

(Morgan, reporter for the Hill, "Biden visits Capitol with agenda in the balance," 10/1/21 <https://thehill.com/homenews/administration/574912-biden-headed-to-capitol-with-agenda-in-disarray> NL)  
President Biden traveled to Capitol Hill Friday afternoon to meet with members of the House Democratic Caucus to try to resolve an impasse around the bipartisan infrastructure bill. The trip to Capitol Hill, which was announced by the White House earlier Friday afternoon, came as Democrats wrangled over the infrastructure bill and the $3.5 trillion reconciliation package that will encapsulate Biden’s economic agenda. "He wants to speak directly to members, answer their questions and make the case for why we should all work together to give the American people more breathing room," White House press secretary [Jen Psaki](https://thehill.com/people/jen-psaki) had told reporters. She said Biden would not be offering a path forward for vote sequencing or timing, saying that would be left to Democratic congressional leaders. "He believes it’s the right time for him to go up there. These are his proposals, these are his bold ideas… and he wants to make the case directly to members," Psaki said. House Democrats were forced to delay a scheduled vote on the Senate-passed bipartisan infrastructure bill on Thursday evening as progressives vowed to oppose it without movement on the larger package. Moderate Sens. [Kyrsten Sinema](https://thehill.com/people/kyrsten-sinema) (D-Ariz.) and [Joe Manchin](https://thehill.com/people/joe-manchin) (D-W.Va.) have opposed the $3.5 trillion price tag and other elements of the package, raising doubts about its fate in the evenly split Senate. Biden’s presence on Capitol Hill is a significant development and shows the president getting involved in the negotiations beyond private phone calls and meetings at the White House. Rep. [G.K. Butterfield](https://thehill.com/people/gk-butterfield) (N.C.) was among the Democrats cheering Friday's visit, saying the president can help unite the caucus by reassuring restive lawmakers "that he has a stake in the outcome" of the messy debate over his agenda. "Biden coming over, he can reassure the members that he's fully engaged and that he's not going to compromise Democratic values," Butterfield said. "He's not an appeasement president. He has a vision, he has institutional knowledge, he's been through fights like this before." Rep. [Dean Phillips](https://thehill.com/people/dean-phillips) (Minn.) and other Democrats have been clamoring for Biden to take a more visible role in pushing his economic agenda across the finish line. “I think the president might be the only person that can bridge both the trust gap and the timing gap," Phillips said Friday. "Joe Biden is president, and not [Bernie Sanders](https://thehill.com/people/bernie-sanders), for a reason. And I think it's his time to stand up." Biden, a former senator from Delaware and self-proclaimed dealmaker, has only traveled to Capitol Hill once before to meet with Democratic lawmakers during his short tenure as president. That trip occurred when he sought to rally lawmakers behind his bipartisan infrastructure framework and a larger reconciliation package.

#### Will Pass, but PC is key

BRODEY and BIXBY 9/27 (Sam and Scott; Daily Beast, “Biden Built Back Better Relations With the Left—Now He Faces the Ultimate Test,” <https://www.thedailybeast.com/joe-biden-built-back-better-relations-with-the-left-now-he-faces-the-ultimate-test>, //pa-ww)

When the top progressive in the U.S. House, Rep. Pramila Jayapal (D-WA), went on Rachel Maddow’s show last week, she used the massive platform to reiterate a threat: that her bloc of lawmakers would vote against a bipartisan infrastructure bill if it weren’t paired with a bill containing the health care, climate, and economic promises they’d ran on for years. Indeed, Democratic leaders long promised that the $1 trillion bipartisan infrastructure bill would travel with a sweeping $3.5 trillion bill that would pass with only Democratic votes. But that vow faces a test this week: Democratic moderates forced a vote on the former bill before the latter is ready, and are essentially daring progressives to sink it. That vote is scheduled for Thursday, according to a “Dear Colleague” letter sent by Speaker Nancy Pelosi Sunday night. Bring it on, Jayapal said. “This is the leverage for transformational investments,” she told Maddow, “that people will wake up and feel differently about themselves and will know that government delivered for them.” President Joe Biden, whose political fortunes ride on the passage of those two bills, was hardly taken aback by this rhetoric. In Jayapal’s telling, Biden loved it—so much so that he felt compelled to tell her so personally. “He called me last night after I was on Maddow and congratulated me on doing a great job and said he was looking forward to talking to me, so I really want to hear what he has to say,” ” she told reporters. The call, which came the night before a high-stakes White House meeting with progressives, distilled a strategy that has been a hallmark of Biden’s administration: conspicuous amounts of care, love, and attention for the party’s left flank. That strategy has been in effect long before negotiations over Democrats’ marquee legislation reached a pivotal stage. “I've had more access in the first four months of this administration than I did in four years of the Obama administration,” Rep. Mark Pocan (D-WI), a former Congressional Progressive Caucus chair, told The Daily Beast. Those open doors and frequent calls might be part of the reason that an establishment president is hearing the saber-rattling of his party’s most boisterous wing as music to his ears. Indeed, progressives have cast their ultimatums over the infrastructure bill not only as a principled stand for Democratic priorities, but as a show of loyalty to Biden and their shared agenda. The claim is hardly a stretch. Progressives may not like the roads, bridges, and transit deal the president brokered with a group of centrist Democrats and Republicans, but they’ll accept it to secure passage of the broader Build Back Better Act, chock-full of investments that Biden himself frequently describes as vital. Jayapal told The Daily Beast on Thursday that during her meeting with Biden on Wednesday, she told him that the outreach to progressives has been “really good.” “His team has been really great,” Jayapal continued. “His vision, the President’s agenda and the Build Back Better plan, going back to the speech he gave in Congress, is what we’re trying to deliver to him. So it really feels like we’ve got his back and he wants both bills.” This is not much different from what Speaker Nancy Pelosi (D-CA) has said about the legislation. But moderates’ anxiety to pass the bipartisan infrastructure deal—which they think is a clear win for the party that shouldn’t be left on the table—complicated her approach, when they used their leverage in the narrow House majority to push for a vote. And some moderates would be happy to cut the scope of the Build Back Better Act down to a third of what Biden asked for. Rep. Kurt Schrader (D-OR) told The Daily Beast he’d have a hard time supporting legislation over $1 trillion. The White House’s intentional relationship-building with the left was, perhaps, made for this intraparty standoff, and many Democrats feel the two sides are in lockstep at a key phase of the process. For a left flank accustomed to being tagged as the skunk at the proverbial picnic, it’s a somewhat unexpected development. “In the House, they assumed progressives would be the issue,” said one Democratic operative. “And now, the moderates are like, ‘where’s my lollipop?’” While the kumbaya energy between the left and the Biden White House might be strong now, the road ahead might prove the greatest test of whatever goodwill they have built up—and prove, perhaps, other Democrats’ perceptions of progressives as uncooperative hardliners. Some left-wing lawmakers, for instance, have laid down increasingly specific red lines around the legislation. Rep. Adriano Espaillat (D-NY), for example, issued a Friday statement saying he could not “fully support” a final deal that did not include significant immigration reforms. The Senate’s nonpartisan rules enforcer declared last week that such language was not procedurally in-bounds for this legislation—meaning any language passed in the House version would reach a dead end there. Beyond that, many progressives remain frustrated over Biden’s decision to pursue bipartisanship on a narrower infrastructure deal, which they believe was unnecessary and complicated their broader agenda. “That really constrained us in our ability to carry out the president’s agenda,” said Rep. Jared Huffman (D-CA), a progressive member of the House Transportation and Infrastructure Committee. Huffman said trust was not running out between progressives and Biden, but suggested time was running short. “Not yet,” he said. “I still think there’s a chance to land the plane.” The fact that there is built-up trust at stake, however, is a relatively new development in the dynamic between left-wing legislators and Democratic presidents. As Pocan suggested, Barack Obama’s administration was famously aloof not just toward Congress as a whole, but progressives in particular. During those years, progressives often felt that Obama and his team found time for them only when they needed their votes; in key instances, he did not convince them to deliver. In 2015, Obama was dealt a major embarrassment when House progressives blocked the advancement of the Trans-Pacific Partnership free trade pact, a second-term legacy item. Some on the left were not convinced that Biden would be much different. He proudly campaigned in the 2020 primary as a mainstream counterweight to Sen. Bernie Sanders (I-VT) and rejected some of the policy stances the left pushed him hardest to embrace. Those familiar with the White House’s approach to building relationships with the various wings of the party’s paper-thin House and Senate majorities say that the focus on outreach to the left feels a little bit like a hangover from the 2020 presidential primaries. “When Joe won the nomination, the conversation immediately became ‘OK, but how does he bring Sanders voters into the fold?’ And the campaign took that seriously,” a former campaign adviser told The Daily Beast. “It wasn’t just in preparation for the general election—it was in preparation for a moment like this, when the entire agenda is on the line.” The charm offensive began almost immediately after Biden clinched the nomination last spring, with the then-nominee and his team making calls to campaign surrogates and their staff in the early days of social isolation. Biden’s adoption of several components of the left’s platform—a $15 national minimum wage, student-loan forgiveness—has been carried over into the trillion-dollar “soft infrastructure” deal, with expansions of the social safety net, carbon emission reduction and higher taxes on the wealthiest Americans all thrown into the bill. Progressives have been pleased from the get-go with how Biden has approached legislation. “We all know that on many of the top progressive priorities, he wasn’t a natural champion during the primaries,” said Huffman. “I’ve been very pleased to see him lean in and embrace many more progressive priorities than I think he traditionally might have.” The biggest roadblocks to passing that enormous package by reconciliation—a straight majority vote in the U.S. Senate that can bypass the filibuster—have actually come from the more moderate flank of the Democratic Party that Biden has long represented. The irony, another former campaign adviser said, has a bitter taste. “The fun of being a Democrat is that in ensuring that one part of the caucus is being accommodated, policy-wise, you’re potentially alienating another part of the caucus,” they said in a text, concluding with an upside-down smiley face. The White House may be trying to smooth over that zero-sum situation with conspicuous outreach to all corners of the party, not just progressives. Few lawmakers, for example, have gotten more direct attention than the two centrist swing votes in the Senate, Sens. Joe Manchin (D-WV) and Kyrsten Sinema (D-AZ). Sinema’s office claimed to the Wall Street Journal that she has had six total meetings with Biden about the legislation. The White House did not comment for this story. Some of the most determined moderate holdouts say they’ve heard very little from the White House, however. Schrader, who has resisted the size, scope, and contents of the Build Back Better Act more than perhaps any other House Democrat, told The Daily Beast he was “disappointed” at the outreach from Biden’s team until now. ‘We're kind of late to the party, a little disappointed,” Schrader said. ‘They needed to be more vigorous earlier on, that hopefully it'll make up for here down the final stretch.” In a show of equanimity, Biden spent his Wednesday afternoon last week chatting with Manchin, Sinema, and other moderates about their concerns before spending the evening hearing out progressives like Sanders and Jayapal. But most Democrats felt that the meeting with centrists was perhaps more adversarial and high-stakes, given the clear differences between their attitudes on the legislation and the White House’s. Progressives, for their part, left 1600 Pennsylvania Avenue that day with the impression they’d just had a friendly huddle with their quarterback. “I felt like we were in there in a celebratory strategy session more than anything else,” said Pocan, who attended the evening meeting with Biden. “That’s all we’re trying to do, is get the president’s agenda done, across the finish line.” The week ahead is the most important one yet for Biden’s top legislative priority, and it will test his success so far in pleasing, or at least placating, progressives and moderates alike. With the House steaming ahead on a vote on the bipartisan infrastructure deal, Pelosi is vowing to advance the Build Back Better Act by week’s end. Appearing on ABC’s This Week on Sunday, Pelosi downplayed divisions in her caucus, insisting that there is overwhelming agreement on the path forward. “This isn’t about moderates versus progressives,” Pelosi said. “Overwhelmingly, the entirety of our caucus, except for a few whose judgment I respect, support the vision of Joe Biden.” But moderates and progressives remain far from agreement on almost every significant component of the package, from how much it will cost and how to pay for it, as well as on the details of key health care and climate provisions. With so much still in flux, some progressives feel like they may inevitably get stiffed because, unlike moderates, all of them would prefer passing something instead of nothing, even if they were enthusiastic about the final product. Indeed, many on the left have seen this particular movie before. But others are insisting this time is different—and they say that the flattery and care from the White House won’t shake their resolve. “Progressives don’t feel like the attention from the White House is like, ‘We’ll just screw progressives in the end and they’ll eat the shit sandwich we give them,’” said a progressive strategist. “They’ve saved up their political capital for a moment like this.”

#### Uniting Dems will be tough but Biden is using a proven strategy

LEMIRE and MILLER 9/18 (Jonathan and Zeke; Associated Press, “One stunning afternoon: Setbacks imperil Biden's reset,” <https://www.clickondetroit.com/news/politics/2021/09/18/one-stunning-afternoon-setbacks-imperil-bidens-reset/>, //pa-ww)

The West Wing is recreating a legislative strategy that worked to secure passage of the $1.9 trillion COVID relief in March and pushed the $1 trillion bipartisan infrastructure bill through the Senate in August, according to a half dozen White House aides and outside advisors who were not authorized to discuss internal deliberations. With Biden cajoling lawmakers, the infrastructure bill is to be passed through the House along with the $3.5 trillion spending bill that contains many of the president’s priorities — like climate change and child care — and would pass the Senate along party lines. With the Senate in a 50-50 tie and Democrats’ margin in the House only a handful of seats, few votes can be lost, and it could be a formidable task to unite Democratic moderates, like Sens. Joe Manchin of West Virginia and Kyrsten Sinema of Arizona, who want a far smaller spending bill, with liberals like Sen. Bernie Sanders of Vermont, who has steadfastly said it could not shrink. The White House also has begun filling the president’s schedule again with events meant to highlight the need to pass the bills, including linking visits to the sites of natural disasters — fires in California and Idaho, hurricanes in New York and New Jersey — to the climate change funding in the legislation. And this past Thursday, on what had previously been tentatively planned as a down day for Biden, the White House scheduled him to give a speech from the East Room during which he zeroed in on how tax enforcement to get big corporations and wealthy Americans to pay more would help fund his plan, without offering any new details. But there are roadblocks. Manchin told Biden that he could not support $3.5 trillion and White House aides have begun signaling that they would settle for a smaller package, even if it raises the ire of progressives. Still, Biden’s advisers believe that, even if there is some unhappiness with the package, no Democratic lawmaker would want to be perceived as undermining the centerpiece of the agenda of a president from their own party. As the activity moves back to Washington, the White House is also scaling back the president’s travel to support the agenda on Capitol Hill, but it’s led to elevated concerns among some Democratic lawmakers that Biden wasn’t doing enough to personally sell the legislation to their constituents across the country. The White House notes that Biden’s Cabinet has been traveling aggressively to promote the legislation, even when the president has been kept back in Washington. The scaled-back travel comes amid some worry from aides about the exposure level Biden may have faced when he mingled in groups during a recent grueling trip west and his three-stop journey to mark the September 11th anniversary, two officials said. Biden, 78, also did not get a summer vacation. His plan to spend time at his Delaware home in August was scuttled by the Afghanistan crisis. Aides had finally scheduled him a break, a long weekend at his house in Rehoboth Beach along Delaware’s coastline. He reached his home Friday just after 1:30 p.m. Ninety minutes later, any hope for a quiet weekend vanished.

### at: 2 Link Turn

#### 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?”

#### Backlash from key GOP and dems mean the plan saps PC

Newton, 21

(Casey, Verge contributing editor. He is the founder and editor of Platformer, a daily newsletter about Big Tech and democracy "Why the Tech Antitrust Reform Bills are Struggling to Move Forward," June 24 2021 <https://www.theverge.com/2021/6/24/22548317/tech-antitrust-reform-bills-congress-democrats-republicans-editorial> NL)

That’s why I like [this bill](https://www.congress.gov/bill/117th-congress/senate-bill/228/text), which would increase funding for antitrust enforcement by 30 percent. Rather than simply ban most mergers and acquisitions by default, as another bill in the package would do, this one empowers the Federal Trade Commission and the antitrust division of the Department of Justice to scrutinize M&A more carefully. The downside of such an approach is that absent other legislation, courts could strike down the agencies’ enforcement actions; the benefit is that agencies can make more informed, case-by-case decisions. I also like a bill [designed to make it easier for consumers to switch between platforms](https://www.congress.gov/bill/117th-congress/house-bill/3849/text), even if it raises real privacy concerns. (Are the phone numbers in my contacts app really mine to share, even if it makes consumer apps much more competitive?) I also like aspects of Rep. David Cicilline’s bill [American Choice and Innovation Online Act](https://www.congress.gov/bill/117th-congress/house-bill/3816/text?r=8&s=1), which would restrict platforms from indulging in some of their worst impulses: Amazon using third-party seller data to inform its own product development, for example, or Apple advertising its many subscriptions throughout the operating system. But at the risk of sounding incredibly naive about the political process, this is not really the debate we just had during a marathon bill markup session in the judiciary committee. II. The The House bills all have Republican co-sponsors, and appear to enjoy some support in that delegation. But key Republicans have so far refused to engage with any of these bills on a policy level, insisting instead that tech reform begin (and possibly end?) with prohibitions on “censorship.” Galled by [the removal of former President Trump](https://www.theverge.com/2021/6/4/22519073/facebook-trump-ban-2-year-oversight-board-decision-political-figures-newsworthiness) from Facebook, Twitter, and other platforms, and perhaps energized by Florida’s recent passage of a (likely unconstitutional) bill that would make such content moderation illegal, some Republicans want to throw out the entire process. Members of Congress in this camp include the House minority leader, Kevin McCarthy, and Rep. Jim Jordan, the ranking Republican on the Judiciary Committee. This piece from Politico this week [gives you some flavor of the discussion](https://www.politico.com/news/2021/06/23/gop-infighting-big-tech-crackdown-495605): Jordan has been [publicly pushing against the bills](https://www.foxnews.com/opinion/big-tech-big-government-democrat-bills-rep-jim-jordan-mark-meadows), while McCarthy has said he’s planning to unveil his own tech reform agenda. “We’ve got a beef with all Big Tech in the sense of the censorship they have of conservatives now,” Jordan told Fox Business on Tuesday. Jordan added, however, that the antitrust bills coming to a vote are sponsored by “four impeachment managers” — questioning top Democrats’ ability to write legislation that conservatives can favor. REPUBLIC OUTRAGE IS ROOTED IN THE IDEA THAT ANYONE ELSE MIGHT HAVE POWER OVER THEIR SPEECH Set aside for a moment the fact that Trump was removed from these platforms because he was using them in an effort to overturn the results of a fair election, the thing to highlight here is that Republican leadership’s concerns have nothing to do with “competition” per se. Instead, their outrage is rooted in the idea that anyone else might have power over their speech. We know what happens when elected officials are allowed to post whatever they want online — they attack minorities, they manufacture influence operations against their own citizens, they chip away at the foundations of democracy. (This has been [the story in India](https://www.platformer.news/p/india-censors-the-platforms) for the past year, and if you assume it is a preview of the next Republican administration here in the United States, as I do, it’s quite chilling.) For these Republicans, then, the goal is not actually to make platforms like Facebook and Twitter less powerful — it’s to ensure that they can use those platforms’ power to achieve their own ends, and to make it illegal for anyone to stop them. When Trump [shut down his blog](https://www.theverge.com/2021/6/2/22464930/donald-trump-blog-facebook-twitter-social-media-platform) 29 days after starting it, it wasn’t in protest of platforms’ power — it was out of the frustration that he no longer had access to it. The Politico story and other reporting on the subject suggests that Democrats will struggle to find 10 Republicans in the Senate to sign on to most of these bills, and perhaps to any but the one providing extra funding for antitrust enforcement. For as long as the parties have spent agreeing that somebody ought to do something about Big Tech, in important ways they are still talking past one another. III. IImean, the Democrats aren’t exactly all in agreement, either. There is a split between progressive and moderate Democrats in just how far these bills should go to reshape the economy. And some bills go quite far — Rep. Pramila Jayapal’s Ending Platform Monopolies Act would permit the government to sue big platforms to break them up — Amazon could be forced to divest itself of its logistics network and of Amazon Web Services, for example; Facebook could have to spin out Instagram and WhatsApp. That has made some Democrats uneasy, as [Leah Nylen and Cristiano Lima reported Wednesday in Politico](https://www.politico.com/news/2021/06/23/democrats-tech-antitrust-package-495644): A growing number of moderate Democrats are also voicing concern about the proposals under consideration this week, which they warn could have a vast impact on the U.S. economy. That includes at least two key California Democrats that sit on Judiciary, Zoe Lofgren and Lou Correa, who will have a say Wednesday on which bills make it out of the panel and which don’t. “My concern is that this legislation will essentially push away investment in this area, it will stifle the economics behind it, the job creation,” Correa, whose district includes parts of Orange County, said in an interview Tuesday. CONGRESS HAS LITTLE TO SAY ABOUT THE SPECIFICS I think these concerns are fair? It’s remarkable that, after years of deliberations, we still don’t know exactly how the government would proceed if these bills became law. Would they sue each platform simultaneously and force them to divest most of their acquisitions? Would they begin new, more targeted investigations of the platforms before they acted? And what would the platforms look like after they were through? A coalition of advocacy groups, [most supported by the big tech platforms](https://gizmodo.com/heres-who-funds-the-tech-think-tanks-asking-congress-to-1847142650), wrote in a letter to Congress that: “Rep. Cicilline’s bill would ban Google from displaying YouTube videos in search results; ban Alexa users from ordering goods from Amazon; block Apple from preinstalling ‘Find My Phone’ and iCloud on the iPhone; ban Xbox’s Games Store from coming with the Xbox; and ban Instagram stories from Facebook’s news feed.” Those would represent enormous changes to the economy, and yet Congress — which rarely discusses individual products when talking about these issues — has little to say about the specifics. Given that consumers generally do love all these products, that seems risky and ill advised. I am trying not to be a regulatory nihilist here. Like I said, I think aspects of these bills could do some good. I hope the FTC and DOC get more funding. I hope Apple enables [sideloading](https://www.fastcompany.com/90649203/apple-iphone-sideloading-safety-apps-tech) on iOS, whether or not Congress forces it to. I hope future mergers get more scrutiny, particularly those related to next-generation platforms, rather than last-generation ones. But two big concerns hang over everything else here. One is that in a Congress where a small handful of Republicans can derail almost anything, there are seemingly more than enough here to stop most of what has been presented in its tracks. And two is that as grateful as I am for the bipartisan group’s work here, it’s hard to shake the feeling that they both took too long to act and bit off more than they can chew.

#### Lobbying guarantees that antitrust saps PC

Edgerton, 21

(Anna, Bill Allison, "Big Tech Spent Millions on Lobbying Amid Antitrust Scrutiny", Bloomberg, 7-21-2021, https://www.bloomberg.com/news/articles/2021-07-21/big-tech-spent-millions-on-lobbying-amid-antitrust-scrutiny)\\JM

The largest U.S. technology companies continued to spend millions on lobbying last quarter, seeking to sway legislation intended to bolster antitrust enforcement and force other changes on the industry. Apple Inc. increased its spending to $1.64 million in the second quarter, up 12.3% from the previous quarter. Amazon Inc.’s total increased by 1.3% to $4.86 million. Lobbying expenditures by Microsoft Corp. dipped slightly, down 4.6% to $2.47 million and Facebook Inc. mostly held steady at $4.77 million. Alphabet Inc.’s Google spent $2.09 million, down 22.3% from last quarter, but up 23.7% from last year. While the numbers show a mixed trend, the sustained level of spending on government influence demonstrates what the technology industry has at stake as policy makers debate stronger antitrust enforcement and tougher regulations on a sector that for the most part has been allowed to develop organically. Now, these entrenched companies have surpassed $1 trillion, and in some cases $2 trillion, in market valuation and are using their abundant resources to protect their positions. Most of the companies disclosed dozens of bills and issues that their lobbyists are tracking, grouped into broad categories like taxes, consumers, homeland security and banking. The lobbying reports, required by law, were due Tuesday. A common concern was antitrust. Forcing more competition in the online economy is one of few issues that has bridged partisan divides in Congress, and received the full support of the Biden administration. Antitrust advocates on Tuesday cheered the nomination of Google foe Jonathan Kanter to lead the Justice Department’s antitrust division. He joins Lina Khan, a fierce critic of the technology giants who heads the Federal Trade Commission, and Tim Wu, a leader of the new anti-monopolist movement, as a top White House adviser. A bill to give the Justice Department and the FTC more resources to pursue competition cases passed the Senate and a similar measure received bipartisan support in the House. Five other antitrust measures got votes from Republicans and Democrats on the House Judiciary Committee, including proposals focused on a handful of U.S. tech companies to make mergers more difficult, force platforms to allow consumers to move their data, change how companies present their own services to consumers or force them to divest entirely of certain lines of business. Apple, Facebook, Google, Amazon and Microsoft all listed these House proposals as targets of their lobbying campaign last quarter, trying to convince lawmakers that this legislation would destroy popular products, endanger user safety and benefit foreign competitors. There is some evidence that these arguments resonated, as it’s unclear whether the bills would have enough support to pass the full House, and no floor vote has been scheduled. The companies also mentioned either the semiconductor supply chain, or the Senate bill designed to support U.S. manufacturing of the sophisticated chips needed for consumer electronics. One of the issues for Amazon, Apple and Facebook was the legal liability shield known as Section 230 that lawmakers of both parties want to change to hold tech platforms responsible for how user content is displayed and disseminated. Amazon was the industry’s biggest spender, listing individual pieces of legislation and issues across a wide range of subjects including aviation, transportation and finance -- reflecting the online retailer and distributor’s massive business reach. Apple lobbied on topics related to its consumer credit card business and the development of autonomous vehicles, as well as “privacy practices in the App ecosystem,” which was one of the issues raised in a Senate antitrust hearing this year. Several senators are working on their own antitrust bills, including one aimed at changing app store practices to support Apple’s competitors. Facebook, which recently sparred with the White House over President Joe Biden’s concerns about false online information regarding the coronavirus, said its lobbying issues in the last quarter included “voter suppression/interference, political ads and misinformation policies.” In an indication of how much is at stake for tech companies, the Computer Technology Association, an industry group, increased its spending on lobbying to $1.2 million in the second quarter, up 103.4% from the first quarter. Twitter Inc.’s lobbying jumped 65% from the first quarter, bringing its second quarter total $660,000. The social media company also listed the House’s antitrust bills as an issue, as well as content moderation and digital security. Oracle Corp. increased spending on its lobbying efforts by 45.2% to $2.44 million, listing government procurement as an issue of focus in the same quarter that the Pentagon decided to pull back a $10 billion contract with Microsoft, giving other companies another chance to make their case. ByteDance Ltd., the parent company of TikTok, spent $1.84 million on lobbying in the second quarter, up 162.9% from the previous quarter and up 268% year over year as it fights concerns in Washington about the security of user data.

### 3 AT: Political Capital Not Real

#### **Consensus of empirical research concludes political capital theory is true**

Byers 20 – PhD in Political Science at the University of Georgia, Postdoctoral Fellow at the University of Michigan

Jason S., “Policymaking by the Executive: Examining the Fate of Presidential Agenda Items”, Congress & the Presidency, Volume 47, Issue 1, Taylor & Francis

A number of studies have shown that Congress considers current levels of presidential approval when passing legislation (Brady and Volden 1998; Cohen et al. 2000; Edwards 1980, 1989). Early studies were able to find correlations between approval ratings and success in Congress (see, e.g., Edwards 1980; Ostrom and Simon 1985). However, later research depicts the relationship between approval ratings and legislative success as more conditional (Canes-Wrone and De Marchi 2002; Edwards 1989). Supporting a piece of legislation championed by an unpopular president could ultimately result in negative consequences for members of Congress. If presidents propose legislation to Congress that is salient with the mass electorate and has higher levels of approval, however, then members stand to gain from supporting the president.9

On a similar note, the honeymoon period of a president’s initial time in office has been shown to increase the likelihood of legislative success (Beckmann and Godfrey 2007; Brace and Hinckley 1991; Farnsworth and Lichter 2011; McCarty 1997). Presidents lose their favorability with the public and with Congress the longer that they are in office (McCarty 1997), which is why they often push for significant legislative accomplishments early in their term. Members of Congress are uniquely aware of the public’s sentiments after a presidential election, especially because they share a common constituency with the president and are more likely to capitulate to a president’s agenda.10 Therefore, a president should receive more cooperation from members of Congress for their legislative agenda items earlier in his term.

We should also expect the president to have varying levels of success depending on the policy in question (Ragsdale 2014). One area where the president is more likely to succeed in Congress is in foreign policy. The amount of knowledge the president possesses in matters of foreign policy, compared to members of Congress, is usually much greater (Canes-Wrone, Howell, and Lewis 2008; Wildavsky 1966). This information asymmetry in foreign policy leads Congress to be relatively deferential to the president’s proposals, therefore often negating their need to act unilaterally in order to achieve the president policy goals (Marshall and Pacelle 2005).11 Furthermore, members of Congress often have little incentive to get involved in foreign policy as there is little or no direct electoral return for them (Mayhew 1974).12

A president’s ability to pursue policies with Congress is also affected by institutional features such as unified government, polarization, filibuster or veto pivots, and the partisan composition of the chambers (Bond and Fleisher 1990; Howell 2005; Krehbiel 1998; Mayhew 2011). Much of the previous work on presidential success in Congress has focused on the distinction between unified versus divided government and has found that presidents are more likely to shift policy when there is unified government, which makes intuitive sense (Barrett and Eshbaugh-Soha 2007; Bond and Fleisher 1990; Mayhew 2011). If the same party controls the presidency and both chambers of Congress, then it is reasonable to assume that a majority of the legislation that is proposed by the president will at least make it onto the legislative agenda. It also follows that during times of divided government, the president would have a harder time getting legislation passed through Congress as a result of more divergent policy preferences, which therefore impedes their ability to form the necessary coalition needed to move the status quo (Mayhew 2005; Ragusa 2010).13 The effect of divided government is likely to be exacerbated with greater polarization as well. As the parties’ ideologies diverge, fewer opportunities exist for bipartisan compromise on issues, therefore potentially hampering the president’s ability to move policy.

Beyond simple majority status, the actual size of the president’s party within Congress also matters. Prior research demonstrates that the size of the coalition that the president has within Congress affects the likelihood that policy change is enacted (Bond and Fleisher 1990; Deering and Maltzman 1999). A bare majority is insufficient unless there is no diversity among members’ ideologies, and even substantial majorities may not suffice if one faction holds substantially different policy preferences from the rest of the party (such as the Southern Democrats during the 1950s and 1960s). Therefore, simple majority status is not sufficient for understanding policy changes. Instead, one must consider the size of the president’s coalition and its ideological homogeneity as well (Rohde 1991). Increasing the size of the coalition the president has in Congress should result in an easier path in passing legislation.14 This should be especially true during times of distinctly different ideological preferences between the majority and minority parties.

A variety of factors could influence the success of a president’s legislative proposal in Congress. Based on the president’s proclivity to have legislative proposals realized through law, the previous factors will influence the success or failure of a president’s ability to have proposals make it through Congress. Although presidents may not witness a specific proposal become law, this does not mean their initiatives will necessarily remain unrealized. Allowing an issue to remain at its status quo is indeed an option; however, the president may also decide (or be forced) to move policy unilaterally.15 There are a multitude of reasons that a legislative proposal would receive no action by Congress or the president. At times it is unclear why no action is initially taken in Congress, because it is difficult to ascertain a legislator's motivations in not pursuing a particular course of action. In addition, the use of the Hastert Rule in the House and the filibuster in the Senate could result in no action taken on specific policy proposals. Gridlock is an issue that must be addressed before legislation moves out of either chamber, which would stall progress and result in no action taken by the legislative body. Unpopular presidents usually struggle to have their legislative proposals acted on by Congress (Canes-Wrone and De Marchi 2002); based on the fact that the public does not support the president, Congress will decide not to act. When dealing with legislative proposals, there are two specific endings—either the status quo is changed (i.e., Congress or the president creates a policy shift) or the status quo remains the same and the proposal receives no action.

#### Political capital theory true for Biden

Politi 21 – world trade editor

James, 1/18. “Joe Biden’s challenge: big, early victories in a toxic political climate.” <https://www.ft.com/content/fa01bc64-a80c-4c32-abad-f8eb778c4fe6>

The shock of the mob attack on the US Capitol had barely subsided when Joe Biden took the stage last week at the Queen, a theatre in his hometown of Wilmington, Delaware to lay out his $1.9tn relief plan for the world’s largest economy. That evening, the president-elect made no mention of the January 6 insurrection that shook Washington, leaving five people dead and Donald Trump being swiftly impeached for the second time. Instead, he spoke of Patricia Dowd, the 57-year-old Californian and first known person to die from coronavirus in the US, and the millions of Americans who had lost what he called the “dignity and respect” of employment during the pandemic. “I promise you, we will not forget you. We understand what you’re going through. We will never ever give up and we will come back.” Mr Biden said, adding: “Come Wednesday, we begin a new chapter.” At 78 years old, Mr Biden will be sworn in on January 20 as the 46th US president, without any of the cheering crowds and celebrations afforded to his predecessors. In addition to coronavirus restrictions, his inauguration will be protected by 25,000 members of the National Guard in the US capital to avoid another episode in domestic terror. The bleak circumstances of Mr Biden’s first day in office have added sobriety to the moment, and pointed to the massive political challenge he is facing. Having won the White House by projecting a mix of competence, empathy and renewal to American voters after four years of Trumpism, he will have to translate all that into governing at a wrenching moment in US history. Mr Biden is no stranger to tough starts, given that he became vice-president to Barack Obama at the height of the financial crisis. But the problems now confronting the country are arguably more severe and multi-faceted than they were in 2009, requiring even more sure-handed intervention and political skill. Many Democrats believe Mr Obama spent too much of his first year trying to win bipartisan support for his plans. They are well aware that to be successful, Mr Biden will need to show rapid concrete results. “To be able to deliver tangibly in the near term in ways that all people in the country can see and feel and know is a critically important thing to do,” says Mara Rudman, vice-president for policy at the Center for American Progress, a left-leaning Washington think-tank, and a former official in the Clinton and Obama administrations. “We have had a self-perpetuating cycle in a very negative direction,” she adds. “I think we have the opportunity to get to a self-perpetuating cycle in the positive direction.” The president-elect’s transition team has already set out plans for a barrage of unilateral executive orders during the first 10 days to rejoin the Paris climate agreement and scrap the travel ban imposed on certain Muslim-majority countries, undoing some of Mr Trump’s most controversial policies. It has also made clear that Mr Biden wants to rebuild the US’s traditional alliances with other western nations that frayed during the past four years, while being more focused in confronting strategic rivals such as China and Russia. But Mr Biden has tried to focus the attention of lawmakers rattled by the assault on the Capitol — and an anxious public — primarily on his prescriptions to resolve America’s health and economic crises, as he prepares to enter the White House. Nearly 400,000 Americans have died from Covid-19, and 9.8m fewer Americans are employed compared with last February. At the Queen, the president-elect called on Congress to pass his sweeping relief plan, which includes a new round of direct payments to Americans, aid to cash-strapped states and cities, a top-up of federal jobless benefits, a beefed-up tax credit for children and more funding for vaccinations. Securing its passage will be the first big test of Mr Biden’s presidency, and no easy task given his Democratic party’s exceedingly tight edge in both the House of Representatives and the Senate — and the toxic climate on Capitol Hill that may be exacerbated by Mr Trump’s second impeachment trial. “There is going to be a compulsion to get something done and get something done quickly, but it is definitely under more difficult circumstances given the political environment, the non-cooperation of the Trump administration, the severity of the pandemic itself and the close margins in Congress,” says John Lawrence, former chief of staff to Nancy Pelosi, the House speaker. “It is going to be tough.” Mr Biden’s urgency in pushing for a large-scale coronavirus relief package — less than a month after another fiscal stimulus package, worth $900bn, was agreed by Congress — reflects the knowledge that new presidents often have a short window to make use of their political capital. Midterm elections, where the entire House of Representatives and one-third of the Senate will be up for grabs, will take place in less than two years, and Mr Biden’s Democratic predecessors, Mr Obama and Bill Clinton, each saw their agendas curbed and upended after their party lost control of the House in 2010 and 1994 respectively. “What you really have in American politics is 18 months. Every administration gets 18 months of policymaking every four years,” says Glenn Hutchins, founder of private equity group Silver Lake Partners and a former Clinton administration official. “So once you've begun the process of cleaning up the dystopian nightmare that Trump left behind, how do you then pivot to addressing the long term underlying issues of importance? What do you choose to focus on? That's going to be the main thing.” As the new administration grapples with priorities, there has been plenty of debate among Democrats in recent years about how to make progressive policies more easy to understand and more popular with the American public — which Mr Biden’s team has tried to absorb both in crafting its policies and its communication. “The ambitions are at the New Deal scale, they are about kitchen table, lunch-pail, meat-and-potatoes economic concerns that people have,” says Kenneth Baer, a former senior Obama administration official and co-founder of Crosscut Strategies, a consultancy in Washington. “And [the message is] we are going to help you.” In addition to the $1.9tn stimulus package laid out by Mr Biden last week, he is expected to move quickly in February to present a second recovery plan involving trillions of dollars in additional spending centred on infrastructure and green energy. To be at least partially funded by higher taxes on corporations and the wealthy, it is another hugely ambitious legislative endeavour. Mr Biden’s hopes of a successful first-term agenda did receive a big boost on January 5, the eve of the assault on the US Capitol, when Raphael Warnock and Jon Ossoff, two Democrats, won a pair of run-off Senate races in Georgia. The twin victories handed control of the upper chamber to Mr Biden’s party — albeit with a 50:50 split and tiebreaking votes cast by Kamala Harris, the incoming vice-president. Given that the Democrats now get to decide which proposals can be put up for a vote in the Senate, the Georgia results ensure that, at the very least, Mr Biden’s goals will not be blocked by Mitch McConnell, the Republican senate leader, at every turn. Mr Biden’s ability to enact crucial parts of his agenda will initially depend on keeping the Democratic party fully united behind any legislation, marrying the needs of conservative lawmakers with those of the progressive bloc, with very little room for defection.

### 4 at: Compartmentalize

#### Obama’s experience proves.

Smith 21 – Bloomberg Opinion columnist. He was an assistant professor of finance at Stony Brook University, and he blogs at Noahpinion, Noah, 1/13. “Biden Must Avoid Obama's Mistake When Setting His Agenda.”

The universe of possibilities for the Biden administration radically expanded after the Democrats clinched the Senate majority, but the increase in political capital isn’t infinite. When deciding which problems to tackle first, President Joe Biden should prioritize initiatives that address the pandemic while moving the nation toward long-term goals for public health and green-energy stimulus.

Biden can learn from the experience of Barack Obama, whose focus on health-insurance reform provoked a midterm backlash and probably forfeited a chance to boost the country out of the Great Recession sooner.

He should heed the words of Winston Churchill who urged, “never let a good crisis go to waste.” Because crises are times when the public understands that change is necessary, it’s possible to make deep and lasting reforms. President Franklin D. Roosevelt understood this when he focused parts of his New Deal on long-term alterations to America’s economic structure, such as Social Security and the National Labor Relations Board. These policies not only contributed to the recovery from the Great Depression — the reason for Roosevelt's election — but created a more equal and stable economy in which workers had more bargaining power and old people didn’t have to live in penury.

The U.S. was in the depths of the Great Recession when Obama took office in 2009. With the benefit of unified Democratic control of Congress, he passed a fairly substantial stimulus. But it was still too small to make more than a modest dent in the recession. It was too weighted toward tax cuts and it didn’t include much of a bailout for underwater homeowners. Instead, Obama spent much of his political capital on passing the Affordable Care Act, commonly known as Obamacare.

Now, it’s true that health insurance was, and is, one of the country’s biggest problems. And it’s also true that Obamacare substantially reduced the ranks of the uninsured, which was a big, important victory. But the system Obama crafted was a compromise, which left the problem of ruinously high costs mostly unaddressed. The legislation failed to satisfy many on the left, with a few now even labeling it as mass murder for not making deeper reforms. Meanwhile, Obamacare remained unpopular throughout Obama’s term in office and may have substantially contributed to the Democrats’ catastrophic midterm election losses in 2010.

Alternate histories are difficult to imagine, but it seems likely that had Obama spent his 2009 political capital on things more directly related to the recession — such as more infrastructure spending, a bigger bailout for underwater homeowners and a stronger welfare state — he'd have realized a higher return on that political capital. In other words, a crisis does present an opportunity for long-term reforms, but it’s best to use that opportunity for reforms that address the immediate crisis.

The Democratic victories in the Georgia Senate runoffs have given Biden an unexpected opportunity to pass major legislation in the first year of his presidency, instead of relying on executive action and the faint hope of bipartisan compromise. The left will be clamoring for major action on health care and a variety of other momumental issues, but Biden needs to spend his political capital on reforms that are also tied to the COVID-19 pandemic and the resulting recession.

The first priority is public health. COVID-19 exposed deep and catastrophic weaknesses in the U.S. public health institutions. Right now, vaccination is proceeding at a glacial pace due to an uncoordinated rollout that dumped vaccines in the lap of state public health agencies utterly unequipped to rapidly inoculate the entire populace. Biden needs to come right out of the gate with a coordinated, well-funded vaccination plan that reaches maximum vaccination rates as fast as possible. In doing so, he also needs to bolster public health agencies and revitalize and reform both the Centers for Disease Control and the Food and Drug Administration after years of neglect.

This will be a bigger challenge than is popularly realized because of the possibility that vaccine-resistant virus strains will emerge. Biden will need to reorient much of the U.S. economy toward vaccine production and distribution until COVID-19 has been decisively beaten all around the world. It will take a lot of money and a lot of will.

After the virus is beaten, the U.S. economy will still linger in recession unless the government acts decisively to boost demand. The best tool for doing this, as usual, is infrastructure investment. And the rapid progress in solar power and batteries means that Biden has a unique opportunity to address the climate crisis at the same time. A huge build-out of solar power and electric-car charging stations, including subsidies to rapidly replace fossil fuel plants and gasoline vehicles, will ensure that the U.S. economy comes roaring back while making huge steps toward decarbonization.

Public health and green infrastructure should be the top priorities for Biden in 2021 and 2022. Yes, there are lots of other things in America that need reform, including health care. But the realities of the political system mean these will have to wait. Reforms must fit the crisis of the day; Biden can’t afford to get sidetracked on a quixotic quest to fix everything that’s wrong with the American economy.

### 5 AT: Winners Win

#### Winners don’t win

Subramanian 21 – White House correspondent at USA Today, citing William Howell – political scientist at the University of Chicago Harris School of Public Policy

Courtney, with Joey Garrison, 3/7. “'Dinner table' politics: Why Joe Biden ditched bipartisan dealmaking to pass his COVID-19 relief bill.” https://www.usatoday.com/story/news/politics/2021/03/07/covid-19-bill-biden-chooses-dinner-table-politics-over-bipartisanship/6892438002/

Despite the relief plan's popularity outside the Beltway, it is unlikely that momentum from its passage will hurtle Biden into future legislative wins, Howell said.

“The idea that a legislative win begets a subsequent legislative win in this environment is probably asking for too much,” he said, noting the prospect of passing COVID-19 relief was higher than more hot-button issues like immigration or health care.

A legislative defeat would have raised questions about Biden’s ability to pass any meaningful legislation, but its passage won’t be a “springboard to the production of all kinds of landmark legislation – far from it," Howell said.

“Sure, he can claim victory,” said Ari Fleischer, former press secretary for President George W. Bush. “Nobody will ultimately know whether it truly is a victory until we see the shape the economy is in a year or so.”

#### PC is finite and spills over

Stanage 21 – associate editor at The Hill

Niall, 1/24. “The Memo: Biden gambles that he can do it all.” https://thehill.com/homenews/the-memo/535502-the-memo-biden-gambles-that-he-can-do-it-all

President Biden is seeking to push forward on multiple fronts right away, even as he grapples with the coronavirus pandemic.

Biden has submitted an immigration reform plan to Congress already, and he aims to advance on other topics from climate change to racial justice.

There’s an argument for taking such a multipronged approach. Every president tends to have the greatest leverage at the start of their term, and momentum can be harder to generate as time goes on.

But there is also the question of political capital, which tends to be finite. If Biden proves to have less heft than he thinks to pass legislation, he will disappoint key constituencies.

“We’re going to need ... to be able to act on multiple fronts,” Brian Deese, director of the National Economic Council, said in the White House briefing room Friday.

Deese was making that point in the context of the president’s proposed $1.9 trillion COVID-19 relief package advancing even as the Senate conducts former President Trump’s impeachment trial next month. But the same principle applies to other issues.

Some Democrats are optimistic that across-the-board progress is possible. They suggest the pressure is on their Republican counterparts not to appear obstructionist.

“If Biden does well, then people will be very upset if it looks like the Republicans are obstructing, particularly on the economy and on health — that will be very bad for them,” said Democratic strategist Tad Devine.

“I’m not predicting that we are going to have immigration reform and all this stuff right at once,” Devine added. “But I do believe he has a very strong hand right now. There are a lot of votes out there for what Democrats want.”

The issue of political capital and how best to deploy it is always a vexing one for new presidents.

Former President Obama stuck to his commitment to enact health care reform even amid an economic catastrophe, persevering past the point when some advisers counseled him to settle for a more modest goal. He signed the Affordable Care Act into law in March 2010, only to see his party suffer crushing losses in the midterm elections later that year.

Former President Clinton fared worse. His 1993 effort at health care reform ran aground, and other controversies also slowed his progress. Clinton early on sought to end the ban on LGBT people serving in the military and then backed off to the “Don’t Ask Don’t Tell” compromise policy that didn’t really satisfy anyone.

Republicans suggest Biden could be vulnerable to comparable missteps.

“He has got a very slim majority in the House and no real majority in the Senate,” said John Feehery, a Republican strategist and former GOP leadership aide who is also a columnist for The Hill. “I think the problem is when you throw a punch of spaghetti up on the wall and hope something sticks. You really want to be more targeted. Biden is going to be disappointing a lot of people if he is making promises he can’t keep.”

So far, Biden has utilized executive orders to advance parts of his agenda. He has announced the U.S. will rejoin the Paris climate accord, reversed Trump’s highly contentious travel ban and paused construction of the border wall, among other things.

### 6 Solves Warming

#### Infrastructure 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.

#### 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.