# 2AC v. Penn RE

## Solvency

### 2AC – AT: Circumvention

#### Threat of compulsory licensing solves anticompetitive behavior

Bernardini 21 [Jessica, JD from Lewis & Clark Law School, works at the small business legal clinic at the Patent Program at Lewis & Clark Law School, registered Professional Engineer and engineering consultant with focus on renewable energy development, “Leveraging Mandatory Licensing Under the Clean Air Act – A Novel Framework to Domestic Reduction of Greenhouse Gases,” *Environmental Law* 51.1, p.323-6, JCR]

Part IV evaluates how mandatory licensing of carbon-capture technologies may deter or be used to overcome anticompetitive behavior by patent holders. This is especially important in relation to the proposed framework because many of the entities that will be regulated under the proposed emission standards also hold key patents to carbon-capture technology. Therefore, the use (or even the threat) of compulsory licensing has the potential to eliminate monopolistic behavior by patent holders of critical carbon-capture technology. For example, the threat of compulsory licensing may potentially encourage the formation of patent pools, which has occurred in the past after the threat of government intrusion.149 Also, with the more stringent emissions standards in place by the EPA, regulated entities may not survive without compulsory licensing providing access to these necessary technologies. Part IV begins with analysis of how compulsory licensing has the potential to stop anticompetitive behavior, specifically non-working of patents and refusal to license. The possibility for anticompetitive behavior in the carbon-capture marketplace is high, considering that many of the entities that would be regulated under the proposed emission standard are also those that have patents to carbon-capture technologies and may wish to suppress access to these technologies. This subpart evaluates two potential avenues for patentees to practice anticompetitive behavior—non-working of a patent and a refusal to license—and how the invocation of compulsory licensing, or even the threat of invoking mandatory licensing, would discourage these practices. Patent owners are afforded many IPRs under a patent, including the right to control how the patent is used.150 This includes the option not to use or work the patented process or technology.151 This inaction by the patentee does not put them in violation of the Patent Act because there is no requirement that a patent be worked or practiced after receipt of a patent. Furthermore, while this inaction is not expressly condoned by the courts, it alone is not sufficient to grant an injunction or a finding of anticompetitive behavior.152 If an industry needs a technology and a patentee is not working a patent, compulsory licensing should be utilized to overcome the barrier to accessing the patented technology. Therefore, compulsory licensing can be used to fill the void created in the absence of a working requirement under the Patent Act. The use of compulsory licensing would be especially valuable for forcing a patentee to work a patent in an area that is relatively new. Opponents of compulsory licensing believe it will reduce incentive for innovation and encourage inventors to maintain their knowledge as a trade secret rather than disclose through patents.153 And while obtaining a patent requires sufficient disclosure so that a “person having ordinary skill in the art” may practice the patent, disclosure (without actual reduction to practice and use in the industry) of newer technologies, such as carbon capture, is not as useful as it is for more established technologies. Consequently, in areas of newer technology, innovation is stifled when there is no practicing of the technology, which allows innovators to understand how the technology works.154 Especially in the case of newer technologies, compulsory licensing would actually support innovation by forcing the technology’s real-world application, thereby allowing other innovators to improve upon the technology. While the EPA has significant discretion in selecting a BSER, no existing precedent allows the EPA to establish regulations on the sole basis that a patent exists but has not been demonstrated to be technologically feasible, on even a very small scale. Therefore, the absence of a working requirement under the Patent Act jeopardizes the EPA’s ability to regulate GHGs.155 The Mandatory Licensing provision provides authority for the EPA to pursue mandatory licensing of patented technologies necessary to achieve emissions standards. Invocation of the provision does not require a showing that the patented technology has been adequately demonstrated.156 However, to establish the emission standards in the first place, the technology used to achieve the standards must have been adequately demonstrated (i.e. worked and put into practice even in some small fashion).157 If a technology has not been adequately demonstrated, it should not be considered by the EPA to be part of an emission reduction system.158 In this instance, a general compulsory licensing provision under the Patent Act would help work technologies, show them to be technologically feasible, and ultimately allow the EPA to consider them as part of a BSER. Opponents to compulsory licensing argue that it is unnecessary to invoke compulsory licensing to mitigate non-working of patents because inventors of useful inventions will want to recoup their investments and will do so through working or licensing of the patent.159 However, this argument fails to take into consideration that some entities will not want the patent to be put into use. When a patent is subject to use as part of an environmental regulation, its use would adequately demonstrate the patented material and make it readily available. Therefore, regulated entities would rather have these categories of patents suppressed in an attempt to avoid potential environmental regulation. Patent suppression by fossil-fuel companies has already occurred, as discovered by state prosecutors.160 The prosecutors were looking into whether fossil-fuel companies misled their investors by making statements dispelling climate change and the impacts that it would ultimately have on the companies’ viability.161 These investigations led to the discovery that these same companies patented carbon-capture technologies and never put them into use, suppressing them since the 1960’s.162

### 2AC – Innovation DA

#### Link turn - Patent concentration deprives the market of innovation and competition – patent thickets are self-reinforcing

Day and Schuster 19 (Gregory R Day; Assistant Professor at the University of Georgia Terry College of Business and University of Georgia School of Law & W. Michael Schuster, Assistant Professor at the University of Georgia Terry College of Business, 2019, Patent Inequality," Alabama Law Review 71, no. 1 (2019): 115-162, https://heinonline.org/HOL/Page?handle=hein.journals/bamalr71&collection=journals&id=125&startid=&endid=172)

A. **Not All Patents Are Good for Innovation**

Significant debate exists among both practitioners and academics regarding whether the existence of all patents is beneficial for technological (and thus economic) growth. For instance, former FTC Commissioner Maureen K. Ohlhausen unequivocally asserts "that [more] patents materially spur [more] innovation" and lead to "demonstrably superior innovation in IP-intensive industries."'17 3 This sentiment echoes the early work of Simone A. Rose, which asserted that "technological innovation and economic growth" are undercut when patent filings diminish. 174 Absolute positions of this nature are ultimately summed up in the policy stance that "more patents equals more innovation."175 While some empirical work supports this position, 17 6 another body of literature stands in disagreement. 77

Our findings fill a void in the literature by adding an empirical underpinning to these concerns. Patents-a tool meant to encourage innovation-are actually discouraging research **when large portfolios are held in a discrete field.** This is exacerbated by the self-reinforcing nature of the problem; firms respond to patent thickets by propelling their own patenting activities, **which strengthens the thicket**, requiring firms to further propel patenting activities. 178

These determinations are of particular concern given the firm-size specific nature of our conclusions. Firms with substantial patent holdings are unaffected by an upsurge in patents in their field; they continue to spend on R&D. In contrast, those with relatively fewer patents reduce research expenditures in the face of substantial patent holdings. This divergent response to patent thickets initially **deprives the market of new products**, net innovation, and competition. There is, however, a second, less obvious harm from this phenomenon. Discouraging research by nascent firms undermines the creation of potentially ground-breaking technologies that commonly arise from less mature companies (i.e., those owning fewer patents).' 79 Concentrations of patents thus **deprive the public of research** that can both create market competition and introduce particularly important innovations.

Recognizing these shortcomings of the current system, we now propose methods to correct this misalignment. As set forth in the following Subpart, our findings provide necessary empirical backing to proposals to discourage overpatenting and its associated ills.

## OFF

### 2AC – Cap

#### There’s a timeframe argument on the permutation. Only way to solve climate is to use the tools available within capitalism on the way to socialist transformation.

Aronoff & Denvir 21 [Kate, staff writer at the New Republic, writing fellow at In These Times, Daniel, visiting fellow in International and Public Affairs at Brown Univ, “Capitalism Can’t Fix the Climate Crisis,” *Jacobin*, 08/25/21, <https://jacobinmag.com/2021/08/capitalism-climate-crisis-global-green-new-deal-clean-energy-fossil-fuel-industry>, accessed 08/26/21, JCR]

DD: You write: “My argument in this book is not that capitalism has to end before the world can deal with the climate crisis. Dismantling a centuries-old system of production and distribution, and building a carbon-neutral and worker-owned alternative, is almost certainly not going to happen within the small window of time the world has to avert runaway disaster. The private sector will be a major part of the transition off of fossil fuels. Some people will get rich, and some unseemly actors will be involved. Capitalist production will build solar panels, wind turbines, and electric trains. But whether we deal with climate change or not can’t be held hostage to executives’ ability to turn a profit. To handle this crisis, capitalism will have to be replaced as society’s operating system, setting out goals other than the boundless accumulation of private wealth.” This argument provoked a bit of controversy in the audience a few years back in Chicago when we discussed it on a panel at the Socialism Conference. Both of us would love to live in a socialist world, and we’ve got to continue to fight for one. But why do you think that it’s important for people to understand that we need to deal with climate change before we win an entirely new mode of production? What’s entailed by the conclusion that we need to pursue radical social-democratic reforms on the road to socialism? Is this a theory of how radical social-democratic reforms can lead to socialism? Is it just a reality that the fast-ticking climate clock imposes on us? Or is it some of both? KA: It’s a reality. If the climate crisis were playing out over the course of two hundred, three hundred, or a thousand years, one could have an interesting theoretical debate about whether we should change the system we have and tweak it slightly in order to take on the crisis, or whether we should create an entirely new mode of production and build up a workaround alternative. Unfortunately, we just don’t have that time. The Intergovernmental Panel on Climate Change [IPCC] outlined in its 2018 report on 1.5 degrees Celsius that we had roughly twelve years. That is now nine years in which to rapidly decarbonize the global economy, which is an enormous challenge. In order to meet that ever-shrinking twelve-year window, we have to use the productive system in which we live — which is not my ideal situation, but then again, neither is global warming.

#### The alt fails – No mindset shift and doesn’t solve developing countries

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(Gabor, Maria, and Tamas, “How big is big enough? Toward a sustainable future by examining alternatives to the conventional economic growth paradigm”, published by ERP Environment and John Wiley & Sons Ltd, 4-25-2018, Wiley Online Library, acc. 6-25-2018)//kb

4.4 Shortcomings of the alternatives Alternatives to the conventional growth economy have much to offer, but they also face legitimate criticism, especially regarding their preconditions and the feasibility of the transition they propose. The first major, pragmatic critique of negative and zero growth is that transition is not very popular in times of crisis, and fear of unemployment and a decline in living standards may be major obstacles to change (Kallis et al., 2012). van den Bergh (2011) argues that alternative lifestyles have always existed, but—by definition—are not accepted by the majority. (However, many now mainstream ideas were once also considered insignificant, and a period of crisis can be seen as a window of opportunity for pushing changes through.) Second, Sorman and Giampietro (2013) warn that a transition can only be forced upon societies, but—for unspecified reasons—never achieved voluntarily or through collective choice. This approach suggests that it is highly unlikely that a negative or zero growth economy will ever arise voluntarily within cultures that are generally composed of individuals seeking ever‐higher levels of income and consumption (Buch‐Hansen, 2018; Hamilton & Denniss, 2005). Third, a lack of precise knowledge and successful narratives concerning alternatives is also an obstacle. Trainer (2010) claims that transitioning to a negative or zero growth economy voluntarily is very unlikely if practical experience is insufficient. Alexander (2013) also considers the lack of experience and infrastructure to be important obstacles to the creation of simpler lifestyles (e.g., it is difficult to exit car culture without the existence of safe and accessible cycle paths). Another major critique (based on Maslow's, 1954 thesis) is that voluntary reductions in consumption may be lucrative and attractive only in wealthy countries where basic needs are already satisfied, and thus the approach does not properly address sustainability problems in low‐income countries. Thus, the question of whether “developing” low‐income countries should develop according to the conventional (or positive) growth paradigm remains open. For countries which are in a state of overshoot, it can be argued that negative growth should continue until a “steady‐state” is reached—that is, when ecological limits are fully observed (e.g., Goodland and Daly, 1996)—but from a policy perspective, it is still difficult to know when this point has been achieved.

#### 3. Cap is sustainable, inevitable, and key to solve the environmental crisis – transition fails and ensures environmental collapse

-at: timeframe, thermodynamics, rebound effects

Bosch and Schmidt 19 (Stephan, Institute of Geography, Chair for Human Geography, University of Augsburg, and Matthias, Institute of Geography, Chair for Human Geography, University of Augsburg, “Is the post-fossil era necessarily post-capitalistic? – The robustness and capabilities of green capitalism”, Ecological Economics, Vol. 161, July) DB

Concerning the second dimension of criticism, Section 4 illustrates how the rejection of green capitalism overlooks promising approaches to surmounting the environmental crisis. On the one hand, we argue that in face of the given narrow time slot as well as the prevailing political strategies, it is more realistic and pragmatic to primarily assess the efficiency of market-oriented solutions. Even though in principle we take sufficiency to have the best effectiveness regarding the solution of ecological and social problems, we still do not count on people's willingness to live in greater moderation within due time. On the other hand, we therefore presume that there are no other suitable economic frame conditions for surmounting the crisis than those offered by the capitalist social order. This perspective is based on the assumption that innovations, which above all emanate from thriving economies (Wangler, 2013), are highly relevant for overcoming the environmental crisis. As growth, innovation, and the development of new industries are to be seen as directly related to the export sector as well as the utilisation of comparative advantages (Bathelt and Glückler, 2012), we therefore also strictly object to the concept of autonomy. Moreover, we take innovation and the aspects of growth, entrepreneurship, and democratic processes of negotiation related to it (cf. Gailing et al., 2013; Walter and Gutscher, 2013; Raven et al., 2016), to be essential for the implementation of regenerative energy systems and social welfare (Iversen, 2005; Nasirov et al., 2017). Our presumption that innovations occur more likely and more frequently within a capitalist, than in alternative social orders (e.g. Harris, 2013: socialist markets), is derived from Schumpeter's notion of competitive capitalism, which he distinctly sets apart from trustified capitalism. Competitive capitalism is about fertile destructive impulses emanating from enthusiastic entrepreneurs who are ready to take risks, and act solution-oriented. These impulses may revolutionise the economic process: “This process of Creative Destruction is the essential fact about capitalism” (Schumpeter, 2009). Based on Schumpeter's ‘theory of economic development’ (cf. Herzog and Honneth, 2016; Schumpeter, 1994; Schumpeter, 2009) – which, according to Marques (2008), represents the original idea of innovation-driven capitalism – we analyse capitalism's robustness to the downfall of fossil energy; moreover, we investigate its potential contributions to ecologic sustainability. Yet we want to go beyond Schumpeter's perspective, which fixes on the entrepreneur, and take a closer look at the role of state policy in Section 5. Our argument is that creative entrepreneurs and markets alone will not suffice to specifically and quickly initiate the change of the energy system driven by innovation. We state the thesis that an active role of the state is needed which relies on political continuity when it comes to promoting environmental innovation and creates stable institutional frame conditions. In a last step, we will show that during the deployment of regenerative energy systems, social aspects have hitherto been given too little attention by actors of state and politics and that national objectives were uncoupled from local contexts. To achieve a successful low-carbon transition, these deficits need to be corrected. In principle, this seems possible, as market-economically oriented regenerative energy systems have often been the result of open-minded democratic negotiations. In Section 6, the findings of the study will be summarised. 2. The crisis of fossil energies and capitalism Energy sources are a central element of humankind's materialistic history and elementary changes in the relevance of energy carriers have always led to extensive economic and societal transformations (Bridge et al., 2013). Exemplarily, the drastic increase in productivity during industrialisation cannot be explained without the revolutionary change of the energy system towards fossil fuels (Osterhammel, 2011). Ever since, economic growth is accompanied by an increasing consumption of finite energy resources and non-energetic primary materials (Altvater, 2005). Accordingly, questions of economic development must always be regarded in the context of the energy system, as well as the circulation of energetic and non-energetic crude materials within it (Meadows et al., 2004). Altvater (2007) takes the relationship between humans and nature to be crisis-laden because a limited stock of energy resources within the Earth's thin crust forms the basis of the present economic system. This limitation implied grave consequences for the global ecology. The apparently crisis-laden interrelation of nature and economy is also highlighted in ‘Anthropocene or Capitolocene?’ edited by Moore (2016), in which the impacts of capitalism are regarded as significant enough to be marked as their own geochronological era. The main point of criticism is capitalism's orientation to industrial scaling and quantitative growth (Mathews, 2011), which likely will end abruptly once Earth's limited capacities will have been depleted by the exponential growth of population and economy (Daly, 1995). Yet not only the finiteness of energy carriers, but also the accumulation of extreme meteorological incidents, mass mortality of species, and sea level rise represent impediments of stable economic growth (McCarthy, 2015). The scenarios concerning trends of the world's condition developed by the Club of Rome illustrate that keeping a high wealth level can only be accomplished if a radical change in societal attitude concerning the valuation of growth will take effect (Meadows et al., 2004). Stopping environmental destruction while maintaining the present economic system appears to be impossible, since fossil energy carriers provide globally acting companies with the opportunity to spatially separate production and consumption as well as to externalise the manifold ecological expenses (Chisholm, 1990). Bridge (2010) rates the heated debates about Peak Oil as ecologically motivated forebodings of a new energy order in which the modern industrial nations are going to free themselves of their dependence on oil. For Neomarxist groups, the end of the age of mineral oil even represents an apocalyptic turn of eras during which nature were going to take vengeance on the ecological arrogance of capitalism. According to Bettini and Karaliotas (2013), the narration of Peak Oil thereby attains a symbolism that reaches far beyond mathematical calculations of the scarcity of fossil energy sources, being extended to a general criticism of a system that is exclusively oriented on growth. McCarthy (2015) sees the chance of a post-fossil capitalism especially in the commodification of wind, sunlight, geothermal heat, and waves. This way, nature would again be introduced into the cycle of capital. Van den Bergh (2011) presumes that this may be a practicable approach, perceiving criticism of market economy and capitalism as too radical and warns of one-sidedly problematising growth without simultaneously pointing out realisable alternative ways. He therefore prefers the ‘a-growth-concept’, which assumes a neutral position on growth, trying to create social as well as ecological sustainability by means of pricing policy, environmental agreements, and education initiatives. The commodification of nature, however, is rejected by the degrowth movement, as the comparison of the Montreal Protocol, which is based on regulations (ozone) with the Kyoto Protocol based on trade had shown a greater effectiveness of regulative measures (Kallis, 2011). Concerning the market's capabilities, North (2010) additionally speaks of the neoliberal enthusiasts' mindless faith in technology, who were mistakenly convinced that creative destruction is sufficient to face the societal challenges posed by Peak Oil and the climate crisis. Sarkar and Kern (2008) limit the possibilities of the global community's further development to the two options ‘eco socialism’ or ‘barbarism’. This rhetoric stylises capitalism as the image of the enemy: on the one hand, it represents the cause of the global ecological crisis due to the exploitation of natural resources – and for that reason alone were not to be maintained (Daly, 2005) – while on the other hand not offering a suitable social framework for mastering the crisis (Kallis et al., 2009). Hence, the development of a symbiotic economy (Garcia-Olivares and Sole, 2015) rooted beyond obsessive economic growth (Buch-Hansen, 2018) is promoted. Renewable energies were apt to meet these requirements since they can be developed through collaborative bottom-up mechanisms on a communal level, therefore enabling the decentralisation and democratisation of energy supply (Rifkin, 2013). In fact, this may be an option. However, in the following, we want to demonstrate that capitalism is not only very robust to crises, but is also able to contribute to the solution of the environmental crisis. 3. Robustness of capitalism 3.1. Space-time compression We will now show that the possibility of increasing productivity does not end with the transition to a regenerative energy system, but only needs to be embedded into new logistic-infrastructural contexts. In this, we contradict Altvater (2007), Huber (2009) and North (2010), who claim that capitalism could expand only on the basis of fossil fuels, since, due to the global transportability of oil, gas, and coal, entrepreneurial actions are no longer bound to the local availability of energy resources, but range globally. Furthermore, the usage of fossil energy carriers is not subject to daily or seasonal fluctuations. Transportability and baseload capacity hence lead to space-time compression (Harvey, 1996), as products can be generated in ever shorter intervals of time. Following this logic, the limitation of the fossil resource basis inevitably brings about the end of the capitalistic system. It remains undisputed that energy flow within a solar-based energy system is hard to control (Georgescu-Roegen, 1971). Most forms of renewable energies are intermittent sources, whose contribution to the energy mix are subject to the rhythms of sun, wind, precipitation, and tides (Fares, 2015). Adapting energy production to demand, a fundamental prerequisite of continuous economic growth, thus becomes a major challenge. What Altvater (2007), Huber (2009) and North (2010) actually do not include in their considerations, are the numerous technological innovations for the stabilisation of regenerative energy systems. After all, with biomass and geothermal power, two energy carriers capable of providing base load are at hand (Matek and Gawell, 2015), which may, in the form of regenerative combined power plants, support the weather-dependent energy sources sun and wind (Palensky and Dietrich, 2011; Ramchurn et al., 2011). The numerous energy storage technologies are also important, albeit only few of these have reached industrial maturity. In principle, mechanical, chemical, electrical, or thermal kinds of storage are being discerned (Hadjipaschalis et al., 2009). Compressed air and pumped storage power plants with efficiency levels of up to 80% are especially promising (Anagnostopoulos and Papantonis, 2008). Research is also conducted on the conversion of surplus regenerative power into methane or hydrogen (Jensen et al., 2007), by which the bidirectional operation of the power and gas network is made possible, allowing for transportability as well as baseload capacity within large spatial units. Space-time availability may also be augmented by the development and capacity expansion of high-voltage transmission lines (Walter and Bosch, 2013). Harriss-White and Harriss (2007) have pointed out at an early point, that the existent grids, having been developed following a monopolistic logic, are outdated and incapable of integrating decentrally-produced electricity with strong fluctuations. These deficits, however, are successively being corrected. E.g., Germany's South, which is poor in wind but strong in terms of industry is being provided with direct access to the big wind energy off-shore potentials in the North as well as to the storage power plants in Scandinavia (cf. Fig. 1). The possibilities of intercontinental power transport from regenerative sources have been thoroughly investigated by DLR (2006) and Grossmann et al. (2014). Both energy storage and the development of the power grid thus will successively reverse the present space-time limitations of regenerative energy systems. The two domains, however, are not isolated from one another, but are coordinated via smart grids. Solomon and Krishna (2011) emphasise that smart grids are superbly suitable for the implementation of market-based approaches, so that an innovation-driven mass market for energy efficiency technologies could be anticipated. Smart grids also provide the possibility of no longer designing the mass production of renewable energy technologies on a fossil basis, but by the usage of renewable energy. While the production of the first generation of regenerative technologies was based on fossil energy, in future, the possibilities of energy storage, the almost unlimited energy potential of a solar-based economy, and the combination of both aspects through smart grids will ensure the flexible provision of regenerative energy at every production site without limits of time. Yet in order to optimise the flows of energy and material in smart grids, concepts of closed crude material cycles are needed, which, in the sense of the cradle-to-cradle approach (cf. Section 4), allow the reintroduction of used materials (e.g. old wind power plants made of renewable resources) to the biosphere. Thus, the problem of externalisation of ecological costs can be minimised. Summing up, the increase of productivity and stable economic growth within regenerative energy systems seems possible. Still, it remains to be emphasised that large-scale energy projects also entail negative social consequences. E.g., Yenneti et al. (2016) have shown that the Charanka solar park in Gujarat, India, was erected on areas that the local population's livelihood had depended on for decades. The refuse of access to these areas, as well as the inhabitants' successive dispossession through state measures thus are direct results of the Indian economy's ecological modernisation (Levien, 2013). In this context, Baka (2013) speaks of “energy dispossessions”, a phenomenon which has also been observed with large-scale wind energy parks (Avila, 2018; Cowell, 2010). The socio-material impact of economic modernisation on the local population, whose lives strongly depend on agricultural land use, are often insufficiently respected (Yenneti et al., 2016), so that the dubious impression was given that environmental protection and economic growth based on efficient technologies, competition, and state measures could go with one another without social side effects. Remarkably, the controversial energy mega-projects especially in the global South, are not the cause of the development of new power asymmetries and conflicts, but rather reproduce and harden long-standing social disparities and injustices (Avila, 2018). According to Bradley and Hedrén (2014), a low-carbon transition hence misses its aims if it is only about modernising the energy system without likewise transforming the underlying social structures. 3.2. Crisis as an element of capitalist social order We hold the view that the occurrence of crises in capitalism is not due to it being an ailing, doomed economic order; nor is it a proof of capitalism's ineptitude for meeting ecological challenges. Instead, we deem that crisis is a fundamental element of the capitalist social order that actually provides a chance for readjusting economic processes. Harvey (2011) explains that anything blocking the circulation and accumulation of capital may pose a threat to the capitalist system and induce a fundamental crisis. The finiteness of fossil fuels is a crisis of this kind (McCarthy, 2015). Altvater (2007) is convinced that capitalism will not be able to overcome this crisis; therefore, future technologic progress had to be embedded in a non-fossil, non-capitalist framework. Kallis (2011) also emphasises that the approach to a steady state (cf. Daly, 1991, Daly, 2005) will transform the institutional preconditions of property, work, banking, and distribution to such an extent that in the end, it will be impossible to still identify them as capitalistic. With regard to Kallis' doubts concerning the institutional robustness of capitalism, Schumpeter points out that precisely the ups and downs of industrial development, which are the outcomes of successful innovations' intensifying competition, enable progress (Herzog and Honneth, 2016). As crises therefore represent an immanent part of the capitalist system, an environmental and resources-related crisis caused by the capitalistic process does not provide sufficient evidence to suggest a possible downfall of the capitalistic social order. The crisis might even be taken as proof of an economic cycle, if it is regarded as a period of depression between the dwindling fossil and the emerging regenerative age. Böhm et al. (2012) and McCarthy (2015) confirm that capitalism is capable of overcoming even fundamental crises, actually using these as starting points of its further expansion. Concerning the environmental crisis, Harriss-White and Harriss (2007) also concede that the deployment of renewable energies holds the potential of founding a new form of capitalism that is characterised by a much lower degree of materialistic lavishness. Bettini and Karaliotas (2013) emphasise that from a neo-liberal point of view, the accusation of capitalism bringing about a resources-related and environmental crisis does not at all provoke self-doubts. Rather, it caused the profitable marketing of adequate approaches to solutions in the field of resource depletion and environmental impacts to move into economic focus. Even Altvater (2007) points out that the externalised effects of production and consumption on nature become relevant for companies once they jeopardise profitability and accumulation. In that case, environmental problems and their solutions can actually be made part of capitalist logic. Solomon and Krishna (2011) are convinced that in order to solve the environmental crisis, it were not even necessary to achieve further technologic breakthroughs, as the technologies needed for the remodeling of society towards energy efficiency were already mature and cost-efficient. Even if capitalism might be sufficiently robust, Kallis (2011) still takes the crisis as a chance to break up obstructive social and political lock-ins that have hitherto seemed unalterable and have lead into the crisis. Yet he does not regard the ability of social and political transformation to be inherent in the traits of market, but as a characteristic of a social order orientated towards degrowth. Certainly, Kallis is right in saying that the market is hard to control, making a concerted transformation towards sustainability difficult. Still his criticism only refers to that form of capitalism which Schumpeter characterised as trustified capitalism and which does lead to ecologically problematic lock-in effects. The criticism cannot, however, be applied to competitive capitalism, which generates those basic innovations giving rise to the revolutionary crises described as so fertile by Kallis (2011). Thus, an opportunity is provided for alternative social conditions to be brought about – but within the capitalist social order – and for substantiating these new conditions through further innovations. Innovations may emerge outside of competition and market economy, but will then lack the required frequency and force, as growth represents the most important incentive of innovation

(Wangler, 2013). On the other hand, a continuous process of innovation again leads to growth, which may revolutionise the present social conditions, as Schumpeter states (Herzog and Honneth, 2016). Thereby, a new combination of the given means of production within new sites of production emerges, generating new goods, methods, and markets. Productive resources are applied to hitherto untested usages while being withdrawn from those usages they served before (Geels, 2011). What Kallis (2011) terms technological optimism with regard to the ecological innovative power of capitalism, is therefore technological realism in the context of Schumpeter's competitive capitalism. Without doubt, innovative boosts on the part of already established companies are also conceivable and may give rise to the possibility of maintaining trustified capitalism with its ecologically precarious structures. An example hereof is the innovation ‘Carbon Dioxide Capture and Storage’, by which the ecological impact of the emission intensive electrical conversion of coal is being reduced (Benson and Orr, 2008). Technological progress may hence stabilise the existent system of economy and policy that is accountable for the environmental crisis (Bettini and Karaliotas, 2013). In Schumpeter's view, however, the decisive economic order is competitive capitalism, which is characterised by the aggressive economic demeanour of new, innovative enterprises economically challenging the establishment (Herzog and Honneth, 2016). The start-ups of new companies, which are inseparably connected with the processes of innovation, withdraw production goods from the present capitalist system by underbidding, disturbing the former economic balance that is so destructive for nature. Competition is therefore essential for overcoming the environmental crisis. In that respect, the concept of ‘solidary economics’ and its precept of surmounting the allegedly ruthless principle of competition and emancipating oneself from the logic of the markets (Embshoff and Giegold, 2008), is counterproductive, as the renunciation of competition impedes the breakup of crusted economic structures, which thus continue to harm the environment. After all, the big energy providers' strategy was and is to hold on to the fossil-nuclear power plant pool for as long as possible, suppressing alternative concepts of energy supply (Gawel et al., 2012). A radical transformation of the energy system therefore cannot emerge from the existent structures, as Schumpeter assesses (Herzog and Honneth, 2016). Instead, innovative processes emerge outside of the old major companies until proceeding to attack the incumbent regime through the rededication of means of production (Geels, 2011). Innovative marketing strategies of small and middle scale businesses supplanting cumbersome large companies play an essential part especially in the field of renewable energies (Walsh, 2012). In this, competition is a decisive element that cannot easily be superseded. 4. Capabilities of green capitalism A competitive green capitalism develops great creativity by its high rate of innovation, which may also reinvent the relationship between humans and nature. We now want to exemplify how this might be brought about. Schumpeter holds the view that innovation is the result of the capitalistic entrepreneurial spirit, not the other way round (Herzog and Honneth, 2016). Technological and social progress hence are no independent variables materialising out of thin air, but arise from the logic of the capitalist process. Meadows et al. (2004) accept that innovations may relocate the limits of growth, making it possible to maintain the living standard by continuously reducing the consumption of crude materials and energy. However, one of the energy system's prevailing deficits is that depleted or not yet tapped resources are being (re-)obtained based on non-regenerative energy (Schwartzman, 2008), causing capitalistic production to be increasingly energetically inefficient (Murphy and Hall, 2011). Overcoming the energy crisis hence calls for the consideration of thermodynamic principles (Georgescu-Roegen, 1971, Georgescu-Roegen, 1986; Martinez-Alier, 1987). Harriss-White and Harriss (2007) see the deployment of renewable energies as a possibility of limiting the creation of entropy. Kaberger and Mansson (2001) have shown that innovative resources-saving material cycles may be possible and economical if they are based on the usage of the inexhaustible energy of irradiance. What is promising about this approach is that, due to research and development, the utilisation of solar energy becomes more and more efficient and lucrative (Schmid, 2016). Moreover, its inexhaustible potential allows for the exploitation of material resources even from deposits with extremely low crude material density. On a local level, the utilisation of solar energy may actually lead to a reduction of entropy (Ebeling et al., 1998; Kranert and Cord-Landwehr, 2010), as it is the case with the usage of waste heat of solar thermal power plants for the desalination of sea water (DLR, 2007). The integration of these capacities into smart grids and the associated remodeling of every production process to purely regenerative sources have been detailed in Section 3. We further argue that innovation surpasses conceivability. Even Harris (2010) sees a particularly high potential in unpredictable technological innovations to break through economic routine, thus encouraging further entrepreneurs in issuing their own innovations. Capitalism might thereby be provided with the chance to reduce its ecological exploitation. But innovation exceeds strictly technological aspects and may as well comprise social and institutional aspects (Arentsen and Bellekom, 2014). E.g., in the mobility sector, whose pollutant emissions have significantly contributed to the environmental crisis, innovations have led to new features of cargo and passenger transportation. This is illustrated by the example of car sharing as an innovative life style (Prettenthaler and Steininger, 1999) or bicycle-sharing schemes in urban areas (Midgley, 2011). Another representative case is the history of the ozone hole, which Meadows et al. (2004) describe as a history of civil success regarding the correction of a severe overshoot. Quite in the sense of Schumpeter, Meadows et al. (2004) name the ‘industry's creative heads’ as the crucial problem-solving determinant. Through the three innovative boosts ‘better insulation’, ‘reduced toxic substitute materials’, and ‘emission-free alternative substances’, it will be possible to rebuild the original density of the ozone layer by the mid-21st century. Remarkably, this is realised without abandoning the existent economic system. Furthermore, we argue that it is realistic to assume growth-oriented, competitive markets in the future, rather than socio-material conditions beyond them, which, as stated by Van den Bergh (2011) are completely uncertain as of now (e.g. Harris, 2013: socialist markets). We therefore hold the view that it is more pragmatic to design future mass markets in an eco-friendly way. Kallis (2011) rejects the possibility that the wonder of a dematerialised economy might occur, as improvements of efficiency were overcompensated by growing consumption. While dematerialisation may be tantamount to a wonder, researchers still do put effort into adjusting the materialised economy to ecological compatibility. One aspect is the thorough redefinition of nature protection, because nowadays, nature protection is reduced to the attempt of limiting the harmfulness of processes and products (Mulhall and Braungart, 2010). However, due to the potential creation of new mass markets for more eco-friendly and efficient processes or products, this strategy holds the danger of actually augmenting unwanted effects through rebound effects. In this regard, Alcott (2005) points to the Jevon's Paradox which says it is a great error to think that technologic innovations were going to reduce the consumption of resources. Polimeni et al. (2015) name the example of the Green Revolution: the remarkable increase of food production's area efficiency was not at all able to abate the problems of hunger and area consumption, as consequently, the population greatly increased. Likewise, a mass market of efficient and eco-friendly products would again lead to a massive amount of poison and waste, with disposed crude materials hardly being recycled. The ecological costs then would have to be externalised, which Sturm and Vogt (2011) regard as strong evidence of the failure of the market. The core problem hence lies in the fact that products are being produced exclusively for the technosphere (McDonough and Braungart, 2013). E.g., copper is almost universally applicable to and beneficial for technological systems, while in biological systems, this material is extremely poisonous. Thus, the aim must be to design products in a way that makes them equally usable in biosphere, i.e. subsequent to their technical usage. This calls for the development of a combined management of nutrients for techno- and biosphere. Human ways of living, the processes and products they are based on, may thereby be employed for the benefit of nature. The focus must therefore be put on those innovations that break up the present paradigm of environmental protection by realising products that create a useful material connection between techno- and biosphere. An example of this kind of creative destruction is the Austrian company Gugler, the first print shop worldwide that produces printing products free from harmful ingredients and exclusively with substances that can be biologically recycled (Gugler GmbH, 2018). E.g., the accruing sludge is returned to biosphere and the ash of burned printing products can be reused as a fertilizer. These conditions provide the possibility of designing economic activities to be ecologically compatible despite a high resource throughput.

#### 4. Capitalism lessens the intensity and quantity of wars---best and most recent studies prove

Julian Adorney 13, economic historian, entrepreneur, and contributor for the Ludwig von Mises Institute. He’s citing Professor McDonald who teaches courses on international relations theory, international political economy, and international security at University of Texas at Austin. (, Foundation for Economic Education, “Want Peace? Promote Free Trade”, 10/15, [http://www.fee.org/the\_freeman/detail/want-peace-promote-free-trade](http://www.fee.org/the_freeman/detail/want-peace-promote-free-trade)//jk)

Frédéric Bastiat famously claimed that “if goods don’t cross borders, soldiers will." Bastiat argued that free trade between countries could reduce international conflict because trade forges connections between nations and gives each country an incentive to avoid war with its trading partners. If every nation were an economic island, the lack of positive interaction created by trade could leave more room for conflict. Two hundred years after Bastiat, libertarians take this idea as gospel. Unfortunately, not everyone does. But as recent research shows, the historical evidence confirms Bastiat’s famous claim. To Trade or to Raid In “Peace through Trade or Free Trade?” professor Patrick J. McDonald, from the University of Texas at Austin, empirically tested whether greater levels of protectionism in a country (tariffs, quotas, etc.) would increase the probability of international conflict in that nation. He used a tool called dyads to analyze every country’s international relations from 1960 until 2000. A dyad is the interaction between one country and another country: German and French relations would be one dyad, German and Russian relations would be a second, French and Australian relations would be a third. He further broke this down into dyad-years; the relations between Germany and France in 1965 would be one dyad-year, the relations between France and Australia in 1973 would be a second, and so on. Using these dyad-years, McDonald analyzed the behavior of every country in the world for the past 40 years. His analysis showed a negative correlation between free trade and conflict: The more freely a country trades, the fewer wars it engages in. Countries that engage in free trade are less likely to invade and less likely to be invaded. The Causal Arrow Of course, this finding might be a matter of confusing correlation for causation. Maybe countries engaging in free trade fight less often for some other reason, like the fact that they tend also to be more democratic. Democratic countries make war less often than empires do. But McDonald controls for these variables. Controlling for a state’s political structure is important, because democracies and republics tend to fight less than authoritarian regimes. McDonald also controlled for a country’s economic growth, because countries in a recession are more likely to go to war than those in a boom, often in order to distract their people from their economic woes. McDonald even controlled for factors like geographic proximity: It’s easier for Germany and France to fight each other than it is for the United States and China, because troops in the former group only have to cross a shared border. The takeaway from McDonald’s analysis is that protectionism can actually lead to conflict. McDonald found that a country in the bottom 10 percent for protectionism (meaning it is less protectionist than 90 percent of other countries) is 70 percent less likely to engage in a new conflict (either as invader or as target) than one in the top 10 percent for protectionism. Protectionism and War Why does protectionism lead to conflict, and why does free trade help to prevent it? The answers, though well-known to classical liberals, are worth mentioning. First, trade creates international goodwill. If Chinese and American businessmen trade on a regular basis, both sides benefit. And mutual benefit disposes people to look for the good in each other. Exchange of goods also promotes an exchange of cultures. For decades, Americans saw China as a mysterious country with strange, even hostile values. But in the 21st century, trade between our nations has increased markedly, and both countries know each other a little better now. iPod-wielding Chinese teenagers are like American teenagers, for example. They’re not terribly mysterious. Likewise, the Chinese understand democracy and American consumerism more than they once did. The countries may not find overlap in all of each other’s values, but trade has helped us to at least understand each other. Trade helps to humanize the people that you trade with. And it’s tougher to want to go to war with your human trading partners than with a country you see only as lines on a map. Second, trade gives nations an economic incentive to avoid war. If Nation X sells its best steel to Nation Y, and its businessmen reap plenty of profits in exchange, then businessmen on both sides are going to oppose war. This was actually the case with Germany and France right before World War I. Germany sold steel to France, and German businessmen were firmly opposed to war. They only grudgingly came to support it when German ministers told them that the war would only last a few short months. German steel had a strong incentive to oppose war, and if the situation had progressed a little differently—or if the German government had been a little more realistic about the timeline of the war—that incentive might have kept Germany out of World War I. Third, protectionism promotes hostility. This is why free trade, not just aggregate trade (which could be accompanied by high tariffs and quotas), leads to peace. If the United States imposes a tariff on Japanese automobiles, that tariff hurts Japanese businesses. It creates hostility in Japan toward the United States. Japan might even retaliate with a tariff on U.S. steel, hurting U.S. steel makers and angering our government, which would retaliate with another tariff. Both countries now have an excuse to leverage nationalist feelings to gain support at home; that makes outright war with the other country an easier sell, should it come to that. In socioeconomic academic circles, this is called the Richardson process of reciprocal and increasing hostilities; the United States harms Japan, which retaliates, causing the United States to retaliate again. History shows that the Richardson process can easily be applied to protectionism. For instance, in the 1930s, industrialized nations raised tariffs and trade barriers; countries eschewed multilateralism and turned inward. These decisions led to rising hostilities, which helped set World War II in motion. These factors help explain why free trade leads to peace, and protectionism leads to more conflict. Free Trade and Peace One final note: McDonald’s analysis shows that taking a country from the top 10 percent for protectionism to the bottom 10 percent will reduce the probability of future conflict by 70 percent. He performed the same analysis for the democracy of a country and showed that taking a country from the top 10 percent (very democratic) to the bottom 10 percent (not democratic) would only reduce conflict by 30 percent. Democracy is a well-documented deterrent: The more democratic a country becomes, the less likely it is to resort to international conflict. But reducing protectionism, according to McDonald, is more than twice as effective at reducing conflict than becoming more democratic. Here in the United States, we talk a lot about spreading democracy. We invaded Iraq partly to “spread democracy.” A New York Times op-ed by Professor Dov Ronen of Harvard University claimed that “the United States has been waging an ideological campaign to spread democracy around the world” since 1989. One of the justifications for our international crusade is to make the world a safer place. Perhaps we should spend a little more time spreading free trade instead. That might really lead to a more peaceful world.

### 2AC – States

#### Can’t solve TRIPS – State foreign policy fails and isn’t perceived

Daniel Abebe 12, Assistant Professor of Law at The University of Chicago Law School, “One Voice or Many? The Political Question Doctrine and Acoustic Dissonance in Foreign Affairs”, 2012, 2013 Sup. Ct. Rev. 233, Lexis

B. ONE VOICE AND CENTRALIZATION

The Supreme Court's emphasis on centralized decision making in foreign affairs is perhaps best exemplified in its foreign affairs federalism jurisprudence. The Constitution specifically limits the participation of states in foreign affairs 22 and, in the event of conflict between a federal statute and state law, the Supremacy Clause ensures that the state law is preempted. But the Supreme Court has also developed several preemption doctrines to ensure the primacy of the national government over the states on a range of foreign affairs questions, including field preemption, 23 obstacle preemption, 24 note dormant foreign affairs preemption, 25 and executive preemption. 26 In each of these areas, the Supreme Court's emphasis on speaking with one voice has resulted in the centralization of foreign affairs decision-making authority in the national government over the states.

What is the logic of this centralization? Much of it rests on general understandings of the merits of centralization in institutional design. The common functionalist account justifying centralization [\*243] of decision making in the national government focuses on collective action problems and the provision of public goods. National governments are best placed to coordinate public policy, determine national interests, and engage in the necessary trade-offs to promote national public welfare. Perhaps most central to the responsibilities of the national government is the provision of national security, the maintenance of a domestic market for trade, and the generation of economic wealth. For example, in the security context, the national government can act as a single, integrated institutional actor to determine the national interest; develop US foreign policy; coordinate the military, diplomatic, and intelligence resources of the nation; swiftly pursue national objectives; and prosecute wars. If the several states were tasked with such responsibilities, it does not take much to imagine the difficulties in coordinating among a large number of heterogeneous subnational governments, each with its own interests and desire to pass on the cost of national defense, when possible, to its co-sovereigns.

The same logic applies to the development and maintenance of a common economic market and the promotion of policies to encourage economic prosperity. The national government can aggregate information and coordinate policy to ensure that the US can benefit from international trade, encourage the production of goods for which it has a competitive advantage, protect the national market from foreign anticompetitive behavior, and redistribute wealth, if necessary, to ameliorate the unequal distribution of wealth across particular regions, states, or demographic groups. The states, by contrast, will tend to be focused narrowly on their own economic prosperity, and will produce economic policies that allow them to reap the benefits and externalize the costs. We can imagine Alaska, Texas, and Louisiana, for example, adopting policies with respect to resource extraction that might impose environmental costs on the US as a whole, just as we can imagine Massachusetts, California, and New York adopting regulatory policies that might limit the ability of the US as a whole to benefit from its resource endowment. In these contexts--national security, trade, and economic prosperity--the benefits of centralization over vast decentralization among dozens of subnational entities are clear.

Beyond this traditional account, there are less obvious but similarly [\*244] important justifications for centralization in foreign affairs. One is the clarity of the ensuing foreign policy. Even if there is substantive disagreement over policy, clarity ensures at least in theory that there is a clear communication of the US national interest to friend and foe alike. Another is the designation of a clear decision-making authority in foreign affairs. Among other things, it reduces the likelihood of constitutional impasses over key issues, provides an accountable governmental entity for the domestic voting public, and encourages specialization over time. Finally, to the extent the national government is working with other countries on an issue of global concern, centralization designates the US representative for international policy coordination.

#### Patents are preempted

Samp 14, \*Richard A. Samp is the chief counsel for Washington Legal Foundation (WLF), a non-profit, public interest law firm in Washington, D.C. WLF filed an amicus brief in support of Love Terminal Partners. (2014, “The Role of State Antitrust Law in the Aftermath of Actavis”, https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1062&context=mjlst)

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-product-development 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.

#### Means the CP is rolled back -- Burdens interstate commerce.

Daniel A. Lyons 19, Professor at Boston College Law School, “State Net Neutrality”, Summer 2019, 80 U. Pitt. L. Rev. 905, Lexis

D. Dormant Commerce Clause

Independent of the Communications Act, state regulation of the Internet may also run afoul of the Dormant Commerce Clause. The Dormant Commerce Clause doctrine prevents states from imposing undue burdens on interstate commerce. It is a judge-made doctrine, derived from the negative implication of the Constitution's grant to Congress of the power to regulate commerce between the states. 245 Its "central rationale . . . is to prohibit state or municipal laws whose object is local economic protectionism." 246 Thus, state laws that explicitly discriminate against [\*941] interstate commerce face "a virtually **per se rule of invalidity**." 247 But even a facially nondiscriminatory state law may nonetheless run afoul of the doctrine **if it unduly burdens interstate commerce**. Courts evaluate such claims under the test announced in Pike v. Bruce Church: "Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits." 248

#### States fail – biases, lack of clarity to businesses, state enforcement interference.

Jacob P. Grosso 21. J.D. Candidate. “The Preemption Of Collective State Antitrust Enforcement In Telecommunications” University of Richmond School of Law. 02-11-21. https://lawreview.richmond.edu/files/2021/04/5-Grosso-552.pdf

Preemption would result in cognizable benefits to the regulatory and business spheres. These benefits would include **clear guidance**, **increased enforcement efficiencies**, and the ability to pursue nonenforcement agendas and broader policy goals.236 Businesses would receive clear guidance on the legality of their business choices. State antitrust enforcers would redeploy costs to state-specific issues. Federal enforcers would be able to effectively pursue broader policy goals. Consolidated enforcement and regulatory schemes would provide clarity to businesses through more uniform regulations and decreased litigation concerns. This consolidation, in turn, would reduce costs for the government and the competitors while encouraging competition and unnecessary compliance costs.237 Clear regulations serving a common goal, without the inherent biases of individual state interests, can provide clarity to businesses and preserve the balancing of consumer welfare with the aggregate social welfare. Individual states make decisions based on their individual needs, as seen in the T-Mobile-Sprint merger.238 When federal law conflicts with state law, federal law controls.239 Despite this standard, multistate task forces continue to come forward as the interpreters of federal law.240 This approach poses problems because of the inherent state biases that underlie the enforcement actions. **Preemption could decrease the effects of individual state biases on the guidance given to competitors**. Antitrust analysis considers geographic differences in determining the concentration of a market, meaning a one-size-fits-all approach does not work for aggregating individual state markets.241 This restructuring would reduce the effects of an individual state’s interests on collective action.242 While any individual state may be best served by one plan, the economy as a whole might suffer for that decision.243 “Divergent approaches to the exercise of enforcement discretion are not just possible, they are likely.”244 States likely face pressure from several groups that can influence their enforcement decisions, as well as the selfish motivation to protect their consumers regardless of the cost to national welfare.245 **Uniform, clear guidance at the federal level**, **without state interference, will reduce opportunities for the individual motivations of states to negatively impact a clear enforcement scheme**. Adding states as parties to a telecommunications antitrust lawsuit complicates the suit by increasing the number of parties that must agree to a settlement.246 The effects of the preemption and resulting enforcement system will create efficiencies for federal and state enforcers, as well as for businesses. For telecommunications antitrust enforcement actions, this will limit costs to the federal agencies, prevent the duplication of effort (in reviewing transactions), and eliminate the costs of coordination that NAAG multistate enforcement teams face.247 Extending even beyond telecommunications, this results in a net positive for the antitrust sections of state attorneys general offices to redeploy resources to monitor and combat anticompetitive behavior in the state-specific areas that these sections were designed to handle.248

### 2AC – Uncoop Federalism CP

#### The permutation is the only option for state interests – it is in their self-interest to preserve broad federal powers

Lemos 20 (Margaret H. Lemos is a scholar of constitutional law, legal institutions, and procedure at Duke Law, 2020, Forward: State Enforcement in an Interstate World, 2019 BYU L. Rev. 1427 (2020). Available at: <https://digitalcommons.law.byu.edu/lawreview/vol2019/iss6/5>) MAM

On closer inspection, however, the distinction between vertical and horizontal conflicts breaks down. While the Republican-led challenge to the ACA looks like an effort to lift the shackles of federal regulation, leaving individual states free to adopt similar plans or even single-payer systems, defenders of the Act argued that the interstate healthcare market is so interconnected that no state could feasibly impose such requirements on its own. If that is correct, it follows that an ACA-type regime expanding healthcare coverage for all could only be done at the national level. In that sense, the conflict was unavoidably a horizontal one: blue states favoring such a regime **had to use the federal government** to achieve their goal by requiring dissenting states to conform. And by arguing the national government lacked power to enact the ACA, the red states effectively sought to force the blue states to **stick with the prior,** less **universal system.**

The key point is that—in the ACA case and **many others like it**—there is an essential connection between the states’ institutional interest in **autonomy and their immediate policy goals.** **Interdependence among the states** means that states often will be able to vindicate short-term policy interests only **via national cooperation**. In other words, the best (sometimes the only) way for states to promote their own autonomy may be **to push for,** not against, **federal intervention.** As Ernie Young and I have argued, “[f]or this reason, states have an institutional interest in ensuring that the national government is **strong enough—and has broad enough powers—to** help them out with regulatory problems they can’t effectively address on their own.”53

#### Federalism is resilient, despite the long term trend to centralization

Kincaid, Lafayette College Government, Political Science Professor, 19

[John Kincaid, Professor, Government and Public Service and Director, Meyner Center for the Study fo State and Local Government, Lafeyette College, “Why the US’ Complex Federal System Will Blunt the Worst Aspects of Trump’s Transgressive Presidency, Phelan US Centre, Long School of Economics, 2—18—19, <https://blogs.lse.ac.uk/usappblog/2019/02/18/why-the-us-complex-federal-system-will-blunt-the-worst-aspects-of-trumps-transgressive-presidency/>, accessed 6-12-21]

American federalism today is a highly institutionalized mix of dualism, cooperation, and coercion that makes it hard for presidents to alter. Long-term trends point to more centralization and polarization, even while states and localities remain independently innovative on many fronts. President Donald Trump, who has never publicly tweeted or spoken the word “federalism,” will not reverse those trends. Trump’s biggest impact to date on federalism was the Tax Cuts and Jobs Act (2017), which capped at $10,000 the amount of state and local taxes taxpayers can deduct from their federal income-tax liability. The uncapped deduction dated back to 1862. The cap adversely affects taxpayers in high-tax Democratic states such as California more than those in lower-tax Republican states. Trump’s biggest impacts on federalism in the long-term will flow from his Supreme Court appointments. More conservative justices will be more friendly to state powers, though not across the board or always for federalism reasons. For instance, because authority for culture-war issues such as abortion and LGBTQ rights historically resided in the states, conservative justices will resuscitate some of that authority; elsewhere, as in commerce and gun regulation, they will often assert federal authority over the states. Otherwise, consistent with American federalism’s dualism (where power is divided between the federal government and the states rather than being shared), states still exercise policy autonomy in many ways: for example, legalizing medical and recreational marijuana and physician-assisted suicide, and pursuing climate-change initiatives, charter schools, abortion rules, consumer protection, occupational licensing, and autonomous-vehicle regulation.

#### Zero bioterror threat – plot failures and technical barriers ensure no escalation

Blum and Neumann 6/22 (Marc-Michael Blum - working the in the field of analysis, decontamination, countermeasures and mitigation of chemical warfare agents with more than 15 years experience, and Peter Neumann - Director, Center for the Evaluation of Value and Risk in Health at the Institute for Clinical Research and Health Policy Studies at Tufts Medical Center; Professor of Medicine, Tufts University School of Medicine, 6-22-2020, Corona and Bioterrorism: How Serious Is the Threat?&nbsp;, War on the Rocks, <https://warontherocks.com/2020/06/corona-and-bioterrorism-how-serious-is-the-threat/>) MAM

The novel coronavirus pandemic has put the threat of bioterrorism back in the spotlight. White supremacist chat rooms are teeming with talk about “biological warfare.” ISIL even called the virus “one of Allah’s soldiers” because of its devastating effect on Western countries. According to a recent memo by the U.S. Department of Homeland Security, terrorists are “[making] bioterrorism a popular topic among themselves.” Both the United Nations and the Council of Europe have warned of bioterrorist attacks. How serious is the threat? There is a long history of terrorists being fascinated by biological weapons, but it is also **one of failures**. For the vast majority, the technical challenges associated with weaponizing biological agents have proven insurmountable. The only reason this could change is if terrorists were to receive support from a state. Rather than panic about terrorists engaging in biological warfare, governments should be vigilant, secure their own facilities, and focus on strengthening international diplomacy. A History of Failures Biological warfare, which uses organisms and pathogens to cause disease, is nearly as old as war itself. The first known use of biological agents as a weapon dates back to 600 B.C., when an ancient Greek leader poisoned his enemies’ water supply. Throughout the Middle Ages, especially during the time of the Black Death, it was common to hurl infected corpses into besieged cities. And during the two world wars, all major powers maintained biological weapons programs (although only Japan used them in combat). Among terrorists, however, the use of biological weapons has been rarer, although groups from nearly all ideological persuasions have contemplated it. Recent examples include a plot to contaminate Chicago’s water supply in the 1970s; food poisoning by a religious cult in Oregon in the 1980s; and the stockpiling of ricin by members of the Minnesota Patriot Council during the 1990s. **No one died** in any of these instances. The same is true for the biological warfare programs of al-Qaeda and the Islamic State group. Both groups have sought to buy, steal, or develop biological agents. For al-Qaeda, this seems to have been a priority in the 1990s, when its program was overseen by (then) deputy leader Ayman al-Zawahiri, a trained physician. With the Islamic State, evidence dates back to 2014, when Iraqi forces discovered thousands of files related to biological warfare on a detainee’s laptop. **Yet none of these efforts succeeded.** The only al-Qaeda plot in which bioterrorism featured prominently — the so-called “ricin plot” in England in 2002 — was interrupted at such an early stage that none of the toxin had actually been produced. The Islamic State’s most serious attempt, in 2017, involved a small amount of ricin, whose only fatality was the hamster on which it was tested. Of the tens of thousands of people that jihadists have murdered, not a single one has died from biological agents. It may be no accident that the most lethal bioterrorist attack in recent decades was perpetrated by a scientist and government employee. In late 2001, the offices of several U.S. senators and news organizations received so-called “anthrax letters,” which killed five people and injured 17. Following years of investigation, the FBI identified the sender as Bruce Ivins, a PhD microbiologist and senior researcher at the U.S. Army’s Medical Research Institute of Infectious Diseases. Unlike the others, he was no amateur or hoaxer, but a trained expert with years of experience and full access to the world’s largest repository of lethal biological agents. Technical Challenges Ivins’ case helps to explain why so many would-be bioterrorists have failed. At a technical level, launching a sophisticated, large-scale bioterrorist attack involves a toxin or a pathogen — generally a bacterium or a virus — which needs to be isolated and disseminated. But this is more difficult than it seems. As well as advanced training in biology or chemistry, isolating the agent requires significant experience. It also has to be done in a safe, contained environment, to stop it from spreading within the terrorist group. Contrary to what al-Qaeda said in one of its online magazines, **you can’t just make a (biological) weapon “in the kitchen of your mom!”**

In addition, there is the challenge of dissemination. Unless the agent is super-contagious, a powerful biological attack relies on a large number of initial infections in perfect conditions. In the case of the bacterium anthrax, for example, only spores of a particular size are likely to be effective in certain kinds of weather. State-sponsored programs often needed years of testing and experimentation to understand how their weapons could be used. Though not impossible, it is unlikely that terrorist groups possess the resources, stable environment, and patience to do likewise. Doomsday Scenarios Even if terrorists somehow succeeded, it is nearly inconceivable that the resulting “weapon” would be as powerful as the recent coronavirus, SARS-CoV-2. One of its uniquely devastating features has been that people are infectious while experiencing no symptoms. As it spread across the globe, there was no treatment, no vaccine, an incomplete understanding of its pathological modes of action, and no easy, cheap and widely available testing. It was the viral equivalent of a “zero-day exploit” — a cyber-attack that happens before any patch is available. None of the viruses on the U.S. Centers for Disease Control and Prevention’s list of the most dangerous biological agents could be easily “weaponized” or would have the same, devastating effects as SARS-CoV-2. Pathogenic viruses such as smallpox, Ebola, Marburg, and Lassa are extremely hard to find, isolate, and spread. Botulinum and ricin are dangerous toxins, but not contagious, while Tularemia cannot be transmitted from human to human. The plague is, of course, capable of causing pandemics, but most countries are nowadays well prepared for this particular virus, and will be able to limit — and cope with — localized outbreaks. This leaves only anthrax, a soil bacterium which is relatively easy to obtain. Even so, isolating a highly pathogenic strain is difficult. More importantly, anthrax is not contagious, and while its spores are durable and affected areas can be hard to de-contaminate, it is unable to spread on its own. Regarding SARS-CoV-2, it is important to distinguish between the possibility that the virus occurred naturally and escaped from a laboratory, and the idea that it was engineered for maximum infectiousness and deliberately released. The first remains a possibility, although other explanations are equally — if not more — plausible, while the second has been debunked by a comprehensive examination in the journal Nature Medicine, which concluded that SARS-CoV-2 was “not a laboratory construct or a purposefully manipulated virus.” The chances that terrorists would be capable of engineering a virus such as SARS-CoV-2 without access to a state’s resources are virtually zero. If anything, the possibility of a lab escape — however remote — highlights the importance of biosafety. While governments have paid much attention to laboratories with the highest biosafety level (level 4), work on bat-born coronaviruses is regularly performed at lower levels (level 3, and even level 2), and should instead be subject to similar safety requirements. In sum, small-scale attacks using anthrax or other agents may be possible, but the risk of a highly advanced, weaponized pathogen that spreads among large populations — a terrorist-initiated biological doomsday — is very low. The only exception, of course, is if terrorists received support from a state, acted as its proxies, or were able to draw on its resources — as in Ivins’ case.

### 2AC – Adv CP

#### SQ mechanisms for compulsory licensing fail – a new compulsory licensing regime is necessary

Gunderson 14 [Adam, practicing attorney at the Gunderson Law Group, “Protecting the Environment by Addressing Market Failure in Intellectual Property Law: Why Compulsory Licensing of Green Technologies Might Make Sense in the United States: A Balancing Approach,” *BYU Law Review* 2014.3, p.681-3, JCR]

One remaining way to avoid technology suppression is through compulsory licensing. Compulsory licensing eliminates the possibility of patent suppression by requiring a patent holder, under certain circumstances, to license its technology to others for “reasonable” compensation. Compulsory licensing is not a new idea. While it is not commonly relied upon as a means of ensuring the diffusion of new technologies, compulsory licensing is already an important part of American law. Compulsory licensing laws exist by statute in some circumstances to be described below. Additionally, courts occasionally create a de facto compulsory licensing situation by refusing to enjoin patent infringers. This existing compulsory licensing framework, while helpful, is severely limited in its ability to address the full scale of patent suppression. The Clean Air Act, Atomic Energy Act, and the Plant Variety Protection Act all include compulsory licensing provisions that are applied narrowly to specific types of technologies.60 The Clean Air Act, for example, requires that when a technology is necessary in order to comply with certain federally established emissions standards and is the only such technology available, it must be licensed for a reasonable price to others seeking to comply with the emissions standards.61 The Atomic Energy Act gives the Atomic Energy Commission the authority to designate certain atomic energy technologies as being within the public interest, and thus subjects them to compulsory licensing to either the Commission itself or to those authorized by the Commission.62 This authority has been construed by the courts fairly narrowly and does not include, for example, patents for safety-related inventions such as anti-radiation chemical compounds.63 The Plant Variety Protection Act gives the Secretary of Agriculture the authority to designate certain patented plant varieties as open to the public in exchange for “reasonable remuneration” in the event of a shortage of fiber, food, or feed.64 In addition to these very specific compulsory licensing provisions, the United States government has additional rights in regards to third party patents under Section 1498 of Title 28. The statute dictates that whenever a patented technology is “manufactured by or for the United States,” without a license, the patent holder may sue the United States government for “reasonable compensation” but may not be granted an injunction.65 Though limited in its application to use by the federal government, in practice this statute constitutes the equivalent of a compulsory license. When a patent holder’s only remedy is to receive compensation for the use of his patent, the outcome is practically identical to that of a compulsory license situation. In addition to these statutory provisions for compulsory licensing, courts can sometimes create a de facto compulsory licensing regime for others by refusing to enjoin patent infringers. While courts will ordinarily give injunctive relief against patent infringers, this is not always the case.66 The patent code says that courts may grant injunctive relief in cases of patent infringement.67 Sometimes, in the public interest, courts determine that it is better to allow the infringer to continue use of the patented technology while paying damages.68 For example, in City of Milwaukee v. Activated Sludge, the City of Milwaukee was using patented technology in one of its waste treatment plants, but didn’t have a valid license from the patent holder. The court refused to enjoin the city from using the patent and instead required the city pay damages to the patent holder.69 In so doing, the court created a compulsory license in fact; the city was permitted to continue use of the technology while paying monetary damages, just as a licensee would pay a licensing fee for licensed technology. Each of these examples of compulsory licensing within U.S. law has potential to prevent patent suppression, but their limitations in scope and applicability prevent them from solving the problem in a substantive way. Under the Clean Air Act, the Atomic Energy Act, and the Plant Variety Protection Act, compulsory licensing provisions apply only to a very small subset of technology and only in very specific circumstances. As a result, technologies outside of those specific industries can still be suppressed. Similarly, compulsory licensing to the United States government, while it can occur with a broader set of technology, does not allow suppressed technology to reach the national marketplace where it can be diffused and innovated upon, because only the government or its agents are authorized to manufacture otherwise suppressed technologies. Right now, a patented technology can be ensured entry into the marketplace only when a court creates a de facto compulsory license. Even this form of compulsory licensing is limited in effectiveness because the suppressed technology is still only legally available to the firm or individual who first sued for infringing on the patent. To really address problems associated with patent suppression, it is necessary to create a compulsory licensing regime that reaches a wider variety of technologies and guarantees access to a larger segment of the market.

### 2AC – Infrastructure

#### Won’t pass – Manchin opposition

MSNBC News 9-12-21 (Sen. Manchin casts doubt on reconciliation deal by Pelosi's Sept. 27 deadline. https://www.nbcnews.com/politics/congress/sen-manchin-casts-doubt-reconciliation-deal-pelosi-s-sept-27-n1279005)

A budget reconciliation package isn't likely to pass Congress by Sept. 27, Sen. Joe Manchin, D-W.Va., said Sunday.

"There's no way we can get this done by the 27th if we do our jobs," Manchin said on CNN's "State of the Union," because the differences are too big.

"It makes no sense at all," he said.

Manchin came out against a $3.5 trillion budget bill this month, throwing cold water on one of President Joe Biden's top legislative ambitions. It was a warning to Democrats, who have no path to pass a multitrillion-dollar budget bill without his vote in a Senate that is split 50-50 between Republicans and Democratic-voting members.

Writing in The Wall Street Journal opinion section, Manchin called on his party to hit "a strategic pause" on the legislation, rejecting the idea of "artificial political deadlines" to advance it.

Manchin said in an interview Sunday on NBC's "Meet the Press" that there's no reason to rush to meet the deadline.

Pro-impeachment GOP congressman from Ohio won't run again, cites party's 'toxic dynamics'

"I'm just saying that we should be looking at everything, and we're not. And that we don't have the need to rush into this and get it done within one week because there's some deadline we're meeting or someone's going to fall through the cracks," he said.

His reasoning for a pause, he said, is that, because of the unknowns with the Covid pandemic, "inflation is still very high and rampant, and then on top of that, the geopolitical unrest that we have going on, we might be challenged there."

Asked whether he would be OK with being the lone "no" vote on Biden's economic agenda, Manchin said he doesn't think he is the only senator against it. He didn't go into further details.

"I've said this: If I can't go home and explain it, I can't vote for it," Manchin said. "I can't explain what we're doing now

#### So many thumpers - The plan is just a drop in the political bucket –

#### Antitrust – he’s spending capital on antitrust now

Vaalal 7-16-21 (Lindsey. Attorney at Vincent and Elkins Global Cartel Defense and Coordination Team and represents companies and individuals in investigations and litigation in the U.S. and abroad. . Labor, Defense, and Rail Services Among Top Competition Concerns Targeted in President Biden’s Executive Order et al https://www.velaw.com/insights/labor-defense-and-rail-services-among-top-competition-concerns-targeted-in-president-bidens-executive-order/)

The EO seeks to harness the coordinated power of the full federal government, emphasizing “that a whole-of-government approach is necessary to address” competition concerns in the U.S. economy.2 To that end, the Order establishes a White House Competition Council, to be led by the Director of the National Economic Council (“NEC”).3 An integral part of the Office of White House Policy, the general bailiwick of the NEC is to advise the president on economic policy matters. By embedding the new council within the White House, President Biden is sending the strong message that competition is a focus area over which he intends to keep close tabs and invest his personal political capital.

#### Debt ceiling.

#### Drug pricing

Johnson 8-13-21 (Jake. Dems in Congress urged to ‘go big’ as Biden endorses bold reforms to slash drug prices. <https://www.nationofchange.org/2021/08/13/dems-in-congress-urged-to-go-big-as-biden-endorses-bold-reforms-to-slash-drug-prices/>)

Larry Levitt, executive vice president for health policy at the Kaiser Family Foundation, told HuffPost on Thursday that “it’s not yet clear how the Democratic leadership will corral the necessary votes for a drug pricing plan, but there’s no sign they’re backing off**.”** “An epic battle with the pharmaceutical industry is coming,” said Levitt. In a series of tweets responding to Biden’s prescription drug agenda, Levitt wrote that while the president’s “proposal doesn’t break new policy ground,” it “is significant in that he is now using his political capital to push for congressional action at a pivotal moment in the debate.”

#### Afghanistan

Sahil Kapur 8-22-21 (National political reporter for NBC News.Honeymoon over? Afghanistan chaos comes at a critical moment for Biden's agenda. https://www.nbcnews.com/politics/white-house/honeymoon-over-afghanistan-chaos-comes-critical-moment-biden-s-agenda-n1277338)

The larger political impact of the chaos in Afghanistan is unclear. Polls taken during the chaos found that Americans still prefer withdrawing over remaining. But the situation has enveloped the White House in a near-term crisis that may limit its persuasive powers over Democratic lawmakers.

#### No PC link and LT - A shift in political will is generating broad bipartisan Congressional support for more aggressive antitrust enforcement -

Megan Browdie, Jacqueline Grise. Howard Morse 21 (Partners at Cooley. BIDEN/HARRIS EXPECTED TO DOUBLE DOWN ON ANTITRUST ENFORCEMENT: NO “TRUMP CARD” IN THE DECK. https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#browdie)

Even before the most recent election, there has been a shift in political will and federal agencies’ willingness to pursue aggressive antitrust enforcement. By all objective metrics, antitrust is entering the public consciousness in a way not seen for years. In particular, antitrust is viewed as key to addressing what some see as high pharmaceutical prices and powerful tech companies and life science companies allegedly stamping out nascent competitors.

9. Members of Congress on both the left and right are pushing a more aggressive antitrust agenda. Most recently, the Subcommittee on Antitrust Law of the House Judiciary Committee issued the Digital Competition Report concluding “[antitrust] laws must be updated to ensure that our economy remains vibrant and open in the digital age,” and that “the antitrust agencies failed, at key occasions, to stop monopolist from rolling up their competitors and failed to protect the American people from abuses of monopoly power.” [34]

10. Down Pennsylvania Avenue, in response to these political winds, the DOJ and FTC have recently filed monopolization suits against some of the biggest tech companies and are aggressively suing to stop so-called “killer acquisitions” of nascent competitors. For example, the FTC in December 2020 filed to block Procter & Gamble’s proposed acquisition of Billie, a startup direct-to-consumer company that only started selling women’s razors and body care products in November 2017. In announcing the complaint, the director of the FTC’s Bureau of Competition stated, “As its sales grew, Billie was likely to expand into brick-and-mortar stores, posing a serious threat to P&G. If P&G can snuff out Billie’s rapid competitive growth, consumers will likely face higher prices.” [35]

11. Earlier, the FTC alleged Illumina’s proposed acquisition of PacBio would allow Illumina to maintain its “longstanding monopoly” in next-generation DNA sequencing by extinguishing PacBio as a “nascent competitive threat.”

12. The agencies have also opened investigations into a number of high-tech companies, and several have drawn aggressive lawsuits. Both the FTC and DOJ, along with state attorneys general, have filed high-profile suits accusing the tech companies of monopolizing various markets and seeking remedies ranging from injunctions against future conduct to divestitures of previously acquired assets.

13. There is now bipartisan support for additional funding for the DOJ Antitrust Division and FTC, suggesting there will be even more enforcement in the future. Indeed, Commissioner Rebecca Slaughter dissented from the FTC’s 2021 budget request to Congress because she thought “more funding is necessary to meet the increasing demands on the FTC to protect American consumers.” Republican Commissioner Christine Wilson recently said: “I agree that the budgets of the FTC and the DOJ should be increased to keep up with the size of the economy that we are policing. So, a much larger budget would be appreciated.”

14. These views are being echoed in the halls of Congress on both sides of the aisle, as House Democrats and Republicans are calling for increased funding for the antitrust agencies in recent months. Among several recommendations for antitrust enforcement in the Digital Competition Report, the House Judiciary Committee recommended “increasing the budgets of the FTC and the Antitrust Division.” Even the Republican Minority Report responded that the “report makes a good case for the need to strengthen our nation’s antitrust agencies with regard to resources. We agree wholeheartedly with this recommendation.” Indeed, the recently-enacted omnibus spending bill increased the FTC budget by 6% and the DOJ Antitrust Division budget by 11% in FY21 compared to FY20, giving both agencies more funds to hire staff and conduct investigations.

#### LT - Winners win – Biden can leverage his wins to build capital

Barrow 1-17-21 (Bill. Joe Biden’s long political evolution leads to his biggest test; The president-elect will inherit stewardship of a nation wrenched by pandemic and seismic cultural fissures. <https://www.denverpost.com/2021/01/17/joe-biden-political-evolution/>)

While Biden aides argue his shifts don’t involve changes in principle or fundamental values, some other observers say the point is moot. The question, said Maurice Mitchell, who leads the progressive Working Families Party, is simply whether Biden will continue to evolve and leverage his political capital into both post-Trump stability and big policy wins.

“We can’t control people’s convictions but we can shift the politics of the possible,” Mitchell said, noting that Johnson signed seminal civil rights laws less than a decade after quashing such measures as Senate majority leader.

Barber, the minister, pointed to other historical figures whom Biden sometimes mentioned while campaigning: Roosevelt and Abraham Lincoln. Both, Barber noted, were savvy, even ruthless politicians who reached for their biggest achievements only after winning the nation’s highest office — and they did so against vicious opposition and during times of existential national threats.

#### The grid is stable

Wagenseil 3/11/19[Paul Wagenseil, Senior Editor of security and privacy @ Tom’s Guide, Citing Selena Larson, intelligence analyst @ Dragos Cybersecurity Firm, “Hackers Can't Cause Crippling Blackouts, Expert Says”, https://www.tomsguide.com/us/blackout-hack-threat-rsa2019,news-29594.html]

SAN FRANCISCO — Don't believe the hype. Hackers cannot easily take down the North American electrical grid to cause massive blackouts, despite numerous news stories, magazine articles and books claiming that they can, a cybersecurity expert told the last week's RSA Conference.

"There are lots of misunderstandings about threats to the electric grid," said Selena Larson, an intelligence analyst at Maryland cybersecurity firm Dragos and a former CNN reporter. "The reality is that a destructive incident at one site would require highly tailored [malware] tools and operations, and would not effectively scale."

That's because U.S. power plants use different makes and models of hardware and software, are often at least partly isolated from the internet and from each other, and have already undergone a fair degree of hardening against cyberattacks. There's very little chance that a single hacker or group of hackers could knock out the power across a large swath of North America at once.

Scary headlines

Those inconvenient facts haven't prevented journalists and writers from penning what Larson deemed needlessly alarming stories. One July 2018 opinion piece in The New York Times entitled "To Hackers, We're Bambi in the Woods" began with a nightmare scenario of an America thrown back to the Stone Age by a cyberattack that kills the power, stops the trains, empties bank accounts and opens literal floodgates.

Later that same month, The Wall Street Journal ran a story called "Russian Hackers Reach U.S. Utility Control Rooms, Homeland Security Officials Say," lending credence to the nightmare scenario. But it was incorrectly reported — it was based on old information that had been revisited in a DHS presentation.

Larson didn't mention "Lights Out: A Cyberattack, A Nation Unprepared, Surviving the Aftermath," a best-selling 2015 book by former ABC News anchor Ted Koppel.

"A well-designed attack on just one of the nation's three electric power grids could cripple much of our infrastructure — and in the age of cyberwarfare, a laptop has become the only necessary weapon," reads the jacket blurb following another apocalyptic scenario of a months-long blackout leading to societal collapse.

State-sponsored attacks

The truth is that Russian hackers do try to get into American power plants, but so far they've only seemed to be performing reconnaissance, Larson said. Destructive malware has infected the office networks of some power companies, but the companies weren't specifically targeted, and the malware didn't cross over into plant operations.

"A ransomware infection at the financial-services division of an electric utility doesn't automatically translate to a blackout," Larson said.

While most state-sponsored hacker groups targeting power plants and other industrial-control systems only gather information, two other have gone further, Larson said. Those were the Electrum group, which used malware dubbed CrashOverride to take down a Ukrainian power plant in 2016, and the Trisis group, which infected the safety systems at a Saudi petrochemical plant in 2017.

Both attacks have been attributed to Russian state-sponsored hackers, and the Saudi-plant attack led another presenter at RSA 2019 to conclude that cyberattacks would soon kill people, either deliberately or accidentally.

But as Dragos founder and CEO Robert M. Lee stated in a 2017 blog posting describing the CrashOverride malware, "the public must understand that the outages could be in hours or days, not weeks or months."

Lee said that Dragos had "high confidence" that the CrashOverride hackers were the same who had in fact targeted U.S. and European infrastructure companies in 2014. And CrashOverride contained modules to "delete files and processes off of the running systems" to sabotage computer systems.

Larson said, however, that the CrashOverride creators had spent months or years planning the attack, and that the malware was specifically designed for that power plant. The attacks couldn't easily scale across the world, or even across Ukraine.

Outlook

There are true cyberattack threats out there, Larson added. For example, the Russian NotPetya ransomware worm in June 2017 cost the Maersk shipping line an estimated $200 million, and FedEx an estimated $300 million. The North Korean WannaCry attack the previous month crippled hospital computer systems in Europe and North America.

But in terms of the North American power grid, small animals such as squirrels, cats and raccoons are a much larger threat than hackers, and have caused hundreds of localized blackouts, Larson said. That mundane detail doesn't sell books.

The public should be reassured, she added, that the North American power grid (there are in fact three grids) has always been engineered to limit both the duration and the geographic reach of blackouts, and that there's no single power switch that can turn it all off.

"The truth is that the North American electric grid is resilient and segmented," Larson said.

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## States

#### State enforcement increases litigation cost, causes firms to be legalistic rather than dynamic.

Jacob P. **Grosso 21**. J.D. Candidate. “The Preemption Of Collective State Antitrust Enforcement In Telecommunications” University of Richmond School of Law. 02-11-21. <https://lawreview.richmond.edu/files/2021/04/5-Grosso-552.pdf>

Placing control in the hands of more centralized regulators reduces uncertainty for competitors due to the inherent inconsistencies in court proceedings and allows for better market functioning.258 The inability to pursue nonenforcement agendas and reduce litigation will cause unnecessary false positives. **False positives can discourage competition and innovation**.259 **Too many false positives will cause competitors to restrict their behavior** drastically to comply with enforcers at the cost of innovative business practices.260 Overenforcement and the resulting false positives reduce competition, inviting harm to both the consumer and the aggregate social welfare.261 **Reduction in states’ ability to conduct collective antitrust litigation will naturally decrease the overall amount of litigation**, which provides several benefits to competition and to regulators. **These benefits include reduced compliance costs, legal fees, and the redistribution of resources**.262 Reduced costs will benefit administrative costs, particularly those resulting from the coordination of state agencies. **The result is a leaner, specialized enforcement system;** increased market freedom due to clear regulations; and the opportunity for regulators to balance broader policy goals with antitrust.

## Politics

#### Demand is high – investors across sectors proves.

Max Chen, writer for ETF Trends, 8-27-2021, Investing in Climate Tech Is Gaining Mainstream Attention, https://www.etftrends.com/esg-channel/investing-in-climate-tech-is-gaining-mainstream-attention/?utm\_source=Yahoo&amp;utm\_medium=referral&amp;utm\_campaign=ReadMore

As environmental, social, and governance investments begin to expand from a niche group into the mainstream, socially responsible programs are now able to attract a wider pool of capital to fund sustainable projects.

“I think some of the extreme weather events are making some things a little more apparent to people," Mike Winterfield, founder and managing partner of Active Impact Investments, told Yahoo Finance Live. “But I think the second thing that's happened is it moved from, say, a group of do-gooders and concerned environmentalists to people who were serious about business and wanted to leverage capitalism sincerely in a way to make this a profitable endeavor, and I think that's when it dragged investors in.”

Venture capital-backed climate technology companies brought in $14.2 billion globally so far during the year that ended June 25, according to PitchBook data. From 2013 to 2019, global annual venture capital funding into **climate tech surged 3,750%** in absolute terms, or three times the rate of VC investment into artificial intelligence for the time period, according to PwC.

“I think there's just a lot of tailwinds for the space,” Winterfield added. “This is where the talent wants to work, when you look at millennials. This is where the regulations are going. This is where consumer behavior and preferences are changing. This is where investor money is flooding. So I would expect in the next 10 years that sustainability will become sort of a big go-to and big growth and performance space in investing.”

Some warned of the cyclical nature of the clean energy technology segment. For example, between 2006 through 2011, Silicon Valley VC firms funneled $25 billion into the clean tech sector, but by 2011, over half of that amount was lost, and new clean tech companies in the following years fell off.

Nevertheless, proponents believe that climate tech is more focused on solving the main drivers of climate change in all sectors. Consequently, climate tech leans toward transport and mobility sectors, with 63% of investments going to those areas, according to PwC. Additionally, climate tech is being supported by consumers and governments, which didn't play that large of a role a decade ago.

“The need is bigger and more urgent than it has ever been before, and [so is] people's understanding of that," Winterfield said.

### Won’t Pass

#### Won’t pass---Manchin won’t be persuaded

Hans **Nichols 9/16**, Political Reporter at Axios, “Scoop: Biden bombs with Manchin”, Axios, 9/16/21, <https://www.axios.com/scoop-biden-bombs-manchin-b2b4acbd-24d0-40a3-ba6f-c0509e0e0224.html>

President Biden **failed to persuade** Sen. Joe Manchin (D-W.Va.) to agree to spending $3.5 trillion on the Democrats' budget reconciliation package during their Oval Office meeting on Wednesday, people familiar with the matter tell Axios.

Why it matters: **Defying** a president from his own party — face-to-face — is the **strongest indication** yet Manchin is serious about cutting specific programs and limiting the price tag of any potential bill to $1.5 trillion. His insistence could **blow up the deal** for progressives and others.

Axios was told Biden explained to Manchin his opposition could **imperil** the $1.2 trillion bipartisan infrastructure bill that's already passed the Senate. Biden's analysis **did little** to persuade Manchin to raise his top line.

Manchin **held** his position and appears willing to let the **bipartisan** bill **hang in the balance**, given his entrenched opposition to many of the specific proposals in the $3.5 trillion spending package, Axios was told.

### Infrastructure Fails

#### Infrastructure bill fails

D.J. Gribbin, general counsel of the U.S. Department of Transportation from 2007-2009, founder of Madrus, LLC, a strategic consulting firm focused on infrastructure development, 03/27/2019, Three reasons to think twice about an infrastructure bill, Politico, <https://www.politico.com/agenda/story/2019/03/27/infrastructure-funding-bill-000886/> accessed 3/8/21

In physics, Newton’s Third Law states that for every action there is an equal and opposite reaction. In policy, too, every action creates a reaction, albeit rarely equal or opposite. In fact, the challenge of policy is that reactions, while inevitable, are difficult to predict. When weighing federal expenditures on infrastructure, policymakers need to keep in mind that allocating more federal funds to infrastructure might backfire. Here are three ways that could happen: The “coupon effect” The prospect of federal funding can dampen state and local funding. While voters overwhelmingly support increased infrastructure spending, their strong preference is that someone else pay for it. This dynamic makes it difficult for state and local leaders (who own 90 percent of governmental infrastructure) to turn to their electorate and ask for a tax or fee increase if the federal government is offering “free” funding. This dynamic can be called the “coupon effect.” Imagine if shoppers in the market for a new suit were told that there is a small likelihood they will receive a coupon for 80 percent off their next suit purchase. Consumers will rationally engage in what economists call strategic delay and postpone their purchase in the hope of receiving a coupon, even if the chance of getting the coupon is very small. Every time a consumer considers heading to the store and buying a suit, he will ask, “But what if a coupon arrives tomorrow?” As a result, many will continue to delay until their suits (or our infrastructure) become unacceptably shoddy and worn. In my experience, the prospect of federal funding has this same impact on state and local leaders considering a tax or user fee increase to expand or improve the quality of their infrastructure. This dynamic was clearly apparent in Kentucky in 2014, for instance. That year, a candidate for the U.S. Senate encouraged the communities around the Brent Spence Bridge (connecting Cincinnati and Covington, Ky.) to oppose a toll increase, because if elected, she would get the federal government to pick up the $2.6 billion tab to replace the bridge. Her campaign successfully increased opposition to tolling. Yet five years later, the debate on how to fund the bridge is still unresolved, and the probability of full federal funding is still just about zero (notwithstanding the fact that the state is represented by the Senate majority leader, who is married to the Secretary of Transportation). While further study needs to be done, the coupon effect could actually result in a net decrease in infrastructure funds, especially when coupled with the challenges of substitution; states and local governments receiving an influx of federal dollars frequently substitute the new federal dollars for funds previously allocated to infrastructure and transfer their dollars to other policy priorities. As a result, a dollar in new federal infrastructure spending does not necessarily result in an additional dollar available for infrastructure. The current non-federal to federal ratio of infrastructure spending is 3:1. Thus, if a 30 percent increase in federal spending (along with celebrations that the coupon is in the mail) dampened by 11 percent non-federal spending increases, our nation would be left with a net national decrease in infrastructure funding. The goal of infrastructure policy should be a significant increase in infrastructure funding overall. As counterintuitive as it sounds, an increase in federal funding could work counter to that goal

#### So many thumpers – Antitrust EO, Afghanistan, Drug Prices, Debt ceiling.

#### Anti-Trust enforcement increasing now

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As expected with previous Democratic administrations, we will likely see an uptick in antitrust enforcement under the Biden administration. Criminal antitrust cases, fines, and investigations are all expected to increase, particularly when compared to the low levels of enforcement during the Trump administration. In addition, enforcement is likely to expand in light of the Covid-19 pandemic, as such a crisis can lead to increased incentives for companies to collude. Just how much more aggressive the Biden administration will be with antitrust enforcement is yet to be seen, since Biden is largely considered a centrist and will need to decide how to frame his policies around the competing schools of thought within the Democratic Party itself. [315] As with all new administrations, the intensity of antitrust enforcement under Biden will largely depend on who is appointed to head the DOJ and FTC. Despite the uncertainty, there can be no question that cartel enforcement will intensify under the Biden administration as compared to the lower enforcement levels seen under the Trump administration.