# 1NC

### T Mergers

#### Practices are ongoing conduct---mergers violate---the merger itself is a one-off event, even if they’re evaluated because of their effects on ongoing practices.

Stanley Mosk 88, Judge, California Supreme Court, “Cal. ex rel. Van De Kamp v. Texaco,” 46 Cal. 3d 1147, Lexis [italics in original]

The statute defines "unfair competition" to mean, as relevant here, "unlawful, unfair or fraudulent business *practice* **. . . ." ( Bus. & Prof. Code, § 17200,** italics added**.)** In so doing it effectively requireswhat the court variously described in the leading case of Barquis **v. Merchants Collection Assn. (1972) 7 Cal.3d 94 [101 Cal.Rptr. 745, 496 P.2d 817],** as "a 'pattern' . . . of conduct**" ( id. at p. 108), "**ongoing . . . conduct**" ( id. at p. 111), "**a pattern of behavior**" ( id. at p. 113),** and, "a course of conduct**" (ibid.).**

What the Attorney General challenges in this actionis the **Texaco-Getty** merger**.** Under the Barquis court's construction **of the statute,** however, the merger itself cannotbe characterized as "a 'pattern' . . . of conduct," "ongoing conduct," "a pattern of behavior," "a course of conduct," or anything relevantly similar: it is rather a single act.That the complaint, under **[\*\*\*\*156]** the Attorney General's reading, alleges that Texaco engaged in certain unlawful, unfair, or fraudulent business practices in the past and may engage in other such practices in the future is simply not enough: the complaint attacks not those past or future practices, but only the merger**.**

#### Voting issue---forcing AFFs to regulate ‘patterns of conduct’ locks in NEG defenses of ways of doing business---any other interp allows review of individual transactions and decisions which are impossible to negate.

### T Prohibit

#### Prohibition – law forbidding action

Garner, Black’s Law Dictionary editor-in-chief, 16

[Bryan A., Black’s Law Dictionary, Fifth Pocket Edition, “prohibition”, p. 630]

prohibition. (15c) 1. A law or order than forbids a certain action.

#### Violation – the affirmative increases funding, which doesn’t prohibit private action

#### Vote neg for limits and ground – there are infinite, unpredictable mechanisms 1AC’s can attach to access extraneous offense and fiat out of neg ground

#### Independently, there’s a plan flaw – plan text has a hanging preposition without an object, meaning it doesn’t pass the grammar text – voting issue for clear plans and vote neg on presumption because courts and congress won’t understand it

### States CP

#### The 50 states and all relevant territories should increase prohibitions on the formation and operative legality of entities protected under the Co-operative Marketing Associations Act.

#### Solves the case

NALC 2020 -- National Agricultural Law Center. “Cooperatives – An Overview” <https://nationalaglawcenter.org/overview/cooperatives/>

\*\*Article has no date listed, but google has it updated / uploaded as of 2020\*\*

Background Farming is a unique industry, where often times individual farmers cannot consistently and reliably control the price they receive for their agricultural products or the price they pay for the inputs needed to produce those goods. This allows external factors to dictate the cost of many farm operations, which leaves individual farmers without a significant leverage over their markets and susceptible to failing to respond to unexpected factors such as food borne illness outbreaks, high or low market demands, or natural disasters. As a result, many farmers enter into cooperatives (co-ops) so that they can enhance their economic market power. A co-op is a legal business entity created under state law that is owned and operated for the purpose of benefiting those individuals who use its services. In other words, co-ops allow similar businesses to associate together in order to gain leverage over a market that they might not have access to as individual businesses. One of the most prominent examples of farmer co-ops in the US is in the dairy industry. Dairy farmers typically have little-to-no control over the cost of their milk to consumers; meanwhile dairy farmers are managing a consistently producing, extremely perishable food product with fluctuating market demands. Dairy co-ops serve to ensure that farmers can consistently sell all their milk by helping distribute (and sometimes process) that dairy to be sold to consumers. A farmer co-op can take many forms and serve different functions depending on market demands. A co-op can provide loans to farmers, supply information pertinent to agricultural production, sell inputs necessary to agricultural production, bargain on behalf of its members, provide transportation services, or market agricultural products for its members. For more information on Business Organizations, including cooperatives, visit the Business Organizations Reading Room. Cooperative Principles Although cooperatives share similarities with other types of business entities, such as corporations, they are a unique and distinct form of business entity. The following characteristics are principles generally, but not always, associated with a traditional farmer co-op: (1) it is owned and democratically controlled by the individuals that use its services; (2) the returns that its members receive on their individual financial investments into the co-op are limited; (3) it is financed mostly by its members and those who use the co-op; and (4) it distributes net margins to its members in proportion to their use of the co-op. An individual (person or business entity) can become a member of a co-op by satisfying that co-op’s membership requirements. Typically, this requirement includes an upfront investment. Once the individual has satisfied the membership requirements, it is entitled to voting privileges. Many states have enacted statutes requiring co-op members to adhere to the one member, one vote principle, regardless of how much a member utilizes the co-op or has invested into it. Occasionally, a co-op may allow an individual member more than one vote. However, state laws usually restrict that member’s increased voting power to no more than a small percentage (typically three percent) of the total number of qualified votes in the co-op. Another principle to cooperatives is that they provide a limited return on investment capital to its members because they are not designed to be for-profit investment enterprises. Most states have enacted statutes that limit the amount a co-op can return to members annually. Although this limit can differ from one state to another, the Capper-Volstead Act, 7 U.S.C. §§ 291-292, establishes that this return may never exceed more than eight percent to cooperative members. Statutes Applicable to Cooperatives Farmer cooperatives are affected by an array of statutes that do not apply to regular business corporations. **In addition to state statutes governing incorporation,** attention must be given to the special treatment of farmer co-ops under antitrust laws, provisions of the Internal Revenue Code (IRC) governing taxation of cooperatives, and to the status of cooperative financial instruments under state and federal securities laws. These and other federal and state statutes apply to the co-op’s formation as well as its ongoing operation. Antitrust Laws The Capper-Volstead Act is perhaps the most important statute relating to the formation and operation of farmer co-ops because the Act provides farmers with unique protections. The Capper-Volstead Act amended the Clayton Act to exempt co-ops of agricultural producers from federal antitrust laws. **A farmer co-op must meet certain eligibility requirements** **to receive the immunity from antitrust laws** provided by the Capper-Volstead Act. First, the co-op must be comprised of “[p]ersons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers . . . .” 7 U.S.C. § 291. The co-op must also be operated for the mutual benefit of all its members. Moreover, the cooperative must either (1) not allow any of its members more than one vote, regardless of the member’s ownership interest, or (2) not pay dividends on stocks or other membership capital to its members in an amount greater than eight percent annually. Tax Laws The Internal Revenue Code (IRC) Subchapter T allows cooperatives to exclude certain items from its gross income through a series of “deductions.” I.R.C. §§ 1381-1388. This special tax status reflects the view of Congress that co-ops are designed to operate at cost and that “profits” belong to its members. For a farmer co-op to have the basic benefits of Subchapter T, it must be “operating on a cooperative basis.” A farmer co-op that meets the requirements of Subchapter T does not include the following in its gross income: patronage refunds and per-unit retains paid in money, other qualified property, qualified written notices of allocation, qualified per-unit retain certificates or qualified written notices of allocation. I.R.C. § 1382(b)(1),(3). Patrons are taxed on such distributions, including any amounts paid in the form of equity in the co-op. Under IRC § 521, further exclusions from gross income are available to farmer co-op in addition to those available under Subchapter T if the co-op elects to meet additional requirements. Specifically, amounts paid as dividends on capital stock during the taxable year are excluded. The same is true for certain distributions of earnings from business with the United States or nonpatronage sources. I.R.C. § 1382(c)(2)(A). With these additional exclusions, a § 521 co-op is likely to have little, if any, taxable income. Securities Laws Generally, equity and debt instruments issued by cooperatives are not considered “securities” for purposes of federal and state securities laws. State securities laws, often called “blue sky” laws, may also apply to farmer co-operatives. Both coverage and requirements of these laws vary considerably from state to state. Types of Farmer Cooperatives There are three main categories of farmer cooperatives: supply, marketing, and service. A supply co-op is designed to furnish inputs necessary for agricultural production, such as fertilizers and pesticides. Supply co-ops purchase these inputs in bulk to enjoy the lowest possible prices and then sells directly to its members at a lower cost than if the farmer had purchased it on its own. A marketing co-op assists its members in the marketing of their agricultural products. It may either purchase its members’ agricultural products at the prevailing market price or act as a pooling agency that holds goods until a more beneficial price can be obtained. A service co-op provides services to its members, such as artificial insemination, housing, or transportation. A co-op can fall into any one or a combination of these three categories. Most farmer co-ops are either supply or marketing co-ops, or a combination of the two. For instance, dairy co-ops are primarily marketing co-ops. “Value-added” cooperatives (sometimes referred to as “new generation”) are distinguished from traditional co-ops because they convert a raw agricultural product, such as wheat, into a further processed product, such as bagels. Although value-added co-ops are not new, they have become more popular in recent years, largely due to “the desire to develop new value-added products and to gain access to an increased share of the consumers’ food dollar.” Andrea Harris et al., New Generation Cooperatives and Cooperative Theory, 11 J. of Cooperatives 15, 15 (1996). Although value-added co-ops incorporate many of the principles and functions associated with traditional co-ops, they can differ significantly. For example, value-added co-ops require its members to make an initial investment that is directly proportional to the degree that member will use the co-op. As a result, the initial investment required by value-added co-ops can be substantially higher than the investment needed in traditional farmer co-ops. Cooperative Formation and Financing **The first major step in forming a cooperative is filing all required legal documents**, such as the articles of incorporation. **Co-ops**, like all other business entities, **must incorporate under state law. Many states have enacted statutes specifically governing agricultural co-ops**. In all other states, a co-op can be formed under that state’s general business corporation statute. The co-op’s founding members must adopt and ratify bylaws, a legally enforceable set of rules that establish the rights and obligations of the co-op’s members. Sometimes the articles of incorporation establish members’ rights and obligations. Once a co-op is established, its members must elect a board of directors. Typically, the board of directors are members of that co-op. The board of directors supervises and handles most business matters. Some states have enacted statutes that determine responsibilities of the board of directors. One of the important responsibilities of the board of directors is to select the individual who will serve as the co-op’s manager or chief executive officer. A critical step in co-op formation and operation is acquiring the necessary capital. As noted above, one of the main principles associated with a co-op is that individuals invest into the co-op to become a member. Regardless of whether that investment is one time or reoccurring, it often provides a substantial amount of finances for the co-ops. If a co-op only requires an initial investment, it must consider alternative sources of income to continue operating on a long-term basis and during months when its cash flow will be limited. While membership investment is the hallmark principle of co-op, it is not a legal requirement for co-op formation. Thus, some co-ops might not require any investments for members to join. Generally, a co-op finances itself through direct investment, patronage income, or nonpatronage income. Common methods of direct investment are charging a membership fee, selling membership stock, and selling preferred stock. The amount charged for a membership fee or stock is usually relatively small. As noted earlier, however, the price of stock in a value-added co-op may be much higher. A patron is anyone that uses the co-op’s services. Patronage income is any income that the co-op incurs from a patron using the co-op’s services. This broad definition includes “invisible income” from members who are working for the co-op but do not get paid. Patronage income is often the most significant source of financing for a farmer co-op. Nonpatronage income is income that does not derive from business transactions with or for members of the co-op. Nonpatronage income is subject to double taxation, like most corporations. A co-op can obtain patronage income through the use of per-unit retains or written notices of allocation. A per-unit retain is an assessed sum based on the value or quantity of units of an agricultural product handled by the co-op for a member. It is treated as an equity investment in the co-op by that member. Per-unit retains are the less preferred option of patronage source income and are used predominantly in marketing co-ops. A co-op not only obtains patronage income to use as capital, but it must also return a certain portion of its net margins—the bulk of which typically derives from patronage source income—to its members each year in order to enjoy certain tax benefits. Essentially, co-ops must refund members for their investment when the co-op incurs a profit. The amount of the patronage refund is determined by the net income of a co-op in proportion to the member’s patronage to the co-op. Patronage refunds are distributed annually, either in cash to the member or are used as further investment in the co-op by the member.

### Section 2

#### The Secretary of Agriculture should serve a complaint under Section 2 of the Capper-Volstead Act against any agricultural cooperatives that exceed an absolute size limit and retain non-farming members are anticompetitive. The Department of Justice should pursue subsequent enforcement against said agricultural cooperatives.

#### Using section 2 of the Capper-Volstead Act allows the Secretary of Commerce to ban monopolistic or unfair practices – without expanding the core of the antitrust laws

Donald A. Frederick ‘2 Program Leader Law, Policy & Governance Rural Business-Cooperative Service U.S. Department of Agriculture USDA United States Department of Agriculture Rural Business- Cooperative Service Cooperative Information Report 59 Antitrust Status of Farmer Cooperatives: The Story of the Capper- Volstead Act

Congress deemed it necessary to provide a mechanism to prevent producers from abusing their combined market power to the detriment of consumers. Section 2 of the Capper-Volstead Act754 doesn' t directly limit the ability of producers to accumulate market power through their cooperative. However, it does bar producer associations from monopolizing or restraining trade and using their market power to unduly enhance the prices they charge for the products they sell. In Section 2, Congress directed that if the Secretary of Agriculture determines a producer association "monopolizes or restrains trade.. .to such an extent that the price of any agricultural product is unduly enhanced thereby, he shall.. ." serve a complaint stating the reasons for his action and a notice of hearing for the cooperative to show cause why the Secretary should not issue an order directing it to cease the challenged conduct."755 After the hearing, if the Secretary believes that an association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby, he or she shall issue an order reciting the facts found and directing the association to cease and desist from its monopolization or restraint of trade. If the association fails to comply with the order within 30 days, the Secretary is required to file a certified copy of the order and certified copies of all records in the matter, in U.S. district court in the judicial district in which the association has its principal place of business. The Department of Justice is responsible for enforcing the order. The district court may affirm, modify, or set aside the Secretary's order; issue a temporary injunction against the cooperative while the case is pending; and "a permanent injunction or other appropriate remedy" after it hears argument.756

### FTC

#### COVID-related enforcement is key to effective recovery---it’s a key priority

OECD 20 (The Role of Competition Policy in Promoting Economic Recovery – Note by the United States, 12-2, <https://www.ftc.gov/system/files/attachments/us-submissions-oecd-2010-present-other-international-competition-fora/economic_recovery_us.pdf>, y2k)

1. The Antitrust Division of the Department of Justice (DOJ) and the U.S. Federal Trade Commission (FTC) (collectively the Agencies) offer this joint submission in response to the Competition Committee’s review of the role of competition policy in promoting economic recovery. In this paper, we highlight some key steps that the Agencies have taken to respond to the present COVID-19 crisis in the United States and to help promote a rapid and sustained economic recovery.

2. The U.S. antitrust agencies have undertaken initiatives in several categories to help spur recovery from the COVID-19 crisis, including stepped-up criminal enforcement, policy guidance to health and emergency-related government agencies, and expedited review of private sector cooperative efforts. The Agencies strongly believe that competition policy has an important role to play in the COVID-19 recovery process and intend to continue to engage in partnership with domestic and international counterparts to ensure the protection of competition and consumers.

2. Deterrence of Cartel Activity, Price Gouging, and Other Harmful Activity

3. Deterrence of unlawful commercial activities has long been a key mission of the Agencies, rendered even more critical by the social and economic disruptions caused by the COVID-19 crisis.1 While most Americans have acted to help their neighbors and communities during the past year, crisis-related disruption increases the risk that some individuals will make unlawful windfall profits at the expense of public safety and the health and welfare of their fellow citizens.2

4. While hoarding and exploitation are not themselves antitrust violations, such behaviors are often accompanied by criminal antitrust collusion, price fixing, and bid rigging, and other attempts to take advantage of the public. As with other natural disasters, the COVID-19 crisis increases the risk that individuals and organizations will engage in these unlawful commercial activities, necessitating increased vigilance by the Agencies.

2.1. COVID-19 Hoarding and Price Gouging Task Force

5. To coordinate enforcement efforts, the Attorney General in March 2020 announced the creation of the COVID-19 Hoarding and Price Gouging Task Force.3 The Task Force is charged with developing effective enforcement measures and best practices, and coordinating nationwide investigation and prosecution of illicit activities. Because health care products and markets are central in responding to the health care crisis and eventually to economic resilience and recovery, the Task Force focuses on protecting the availability of those products designated essential by the Department of Health and Human Services (HHS) under Section 102 of the Defense Production Act. The DOJ consults with HHS during this process, including advising on the antitrust implications of COVID-19 for affected markets and products.

6. The Task Force is currently being led by a coordinating U.S. Attorney, with assistance as needed from the Antitrust Division’s Criminal Program. Each United States Attorney’s Office, as well as other relevant Department components, is directed to designate an experienced attorney to serve as a member of the Task Force. The Antitrust Division’s role in the Task Force involves investigating allegations of criminal antitrust harms, such as price fixing and bid rigging, and responding to citizen complaints about collusive or anticompetitive disaster-related behavior.

2.2. Procurement Collusion Strike Force

7. The DOJ is also stepping up efforts to combat crisis-related disruption through the newly-created Procurement Collusion Strike Force (PCSF). COVID-19 recovery will require substantial investment by national, state, and local authorities, with $3.48 trillion appropriated to date.4 The size and pace of such efforts unfortunately create opportunities for fraud and collusion affecting government procurement and grant-making. Through the creation of the PCSF, DOJ is dedicating significant resources to help identify and prevent these unlawful activities.5

8. The PCSF is an interagency partnership dedicated to protecting taxpayer-funded projects from antitrust violations and related crimes at the federal, state, and local levels. Under the umbrella of the PCSF, prosecutors from the Antitrust Division’s five criminal offices and 13 U.S. Attorneys’ Offices have partnered with agents from the FBI and four federal Offices of Inspector General, including the U.S. Postal Service and Department of Defense, to conduct outreach and training for procurement officials and government contractors on antitrust risks in the procurement process.

9. Since its creation in 2019, over 50 federal, state, and local government agencies have already sought training and assistance from the PCSF, as well as opportunities to work with the PCSF on investigations. So far, the PCSF has led over a dozen interactive virtual training programs for approximately 2,000 criminal investigators, data scientists, and procurement officials.6 Over a third of the Antitrust Division’s current investigations relate to public procurement, and the PCSF marks an important effort to marshal enforcement resources to tackle these cases. Several grand jury investigations already have been opened as a direct result of the work of the PCSF. In addition to playing a meaningful role in COVID-19 economic recovery, the PCSF will continue to be an important resource for detecting fraud and collusion in government procurement for years to come.

2.3. Protecting Competition in Labor Markets

10. The DOJ and FTC are working to protect competition in labor markets, which have been subject to significant dislocation due to the economic impact of COVID-19. In April 2020, the Agencies issued a statement warning that antitrust enforcers are closely monitoring improper employer coordination that may disadvantage workers.7 The statement affirmed that antitrust laws with respect to hiring and employment remain fully in effect despite the crisis, and stated that “COVID-19 does not provide a reason to tolerate anticompetitive conduct that harms workers, including doctors, nurses, first responders, and those who work in grocery stores, pharmacies, and warehouses, among other essential service providers on the front lines of addressing the crisis.”8

11. Given the special impact of COVID-19 on medical staffing and employment, the Agencies are focused on preventing employers, including health care staffing companies and recruiters, from engaging in collusion or other anticompetitive conduct in labor markets, such as agreements to lower wages or to reduce salaries or hours worked. This announced focus continues the Agencies’ policy of devoting resources to preventing labor malpractice in critical industries, especially health care. As one example, the DOJ in April 2020 reached a significant resolution in the criminal investigation of Florida Cancer Specialists (FCS) for entering into a market allocation agreement that gave FCS a monopoly for services in a densely populated part of southwest Florida. As part of the deferred prosecution agreement reached in that case, the Division obtained a $100 million fine – the statutory maximum – and FCS agreed to waive certain non-compete provisions for current and former employees, including physicians and other healthcare professionals.9 In another important matter, early this year, the FTC investigated, and the parties abandoned a proposed tie-up between two providers of nursing staff. The proposed merger had likely anticompetitive effects in multiple localities across the country on markets both for nursing services and for private duty nursing care.10

2.4. Consumer Protection

12. The FTC has worked aggressively to address consumer protection issues arising from the COVID-19 pandemic. Since late March, as the coronavirus emerged, the FTC has received nearly 225,000 consumer complaints relating to COVID-19, including concerns about fraud related to the government’s economic impact payments.11 In addition, the FTC has been monitoring the marketplace for unsubstantiated health claims, illegal robocalls, privacy and data security concerns, online shopping fraud, and a variety of other scams related to the economic fallout from the COVID-19 pandemic.

13. Acting on this market information, the FTC has pursued a rigorous warning letter program and filed law enforcement actions for injunctive and other relief in federal courts.12 In the health claims area, for example, the FTC and the Food and Drug Administration (FDA) have, to date, issued over 90 joint warning letters to marketers regarding claims that their products will treat, cure, or prevent COVID-19.13 The FTC on its own has issued more than 225 additional warning letters to marketers.14 The letters warn recipients that their conduct is likely to be unlawful, that they could face serious legal consequences if they do not immediately stop, and require a response to the FTC within 48 hours. In nearly every instance, companies that have received FTC warning letters have taken quick steps to correct or eliminate their problematic claims. The FTC also has issued warning letters, in conjunction with the Small Business Administration, to companies making potentially misleading claims about federal loans or other temporary small business relief.15

14. The FTC has also filed court actions involving COVID-19 health claims, distribution claims, and government stimulus check claims.16 For example, the FTC filed four lawsuits in federal district courts against online merchandisers for failing to deliver on promises that they could quickly ship products like face masks, sanitizer, and other personal protective equipment (PPE) related to the coronavirus pandemic.17

15. Finally, the FTC has launched numerous consumer education campaigns, including a website on COVID-19 scams and a resource page that contains brochures, graphics, and videos in multiple languages.18

3. Guidance and Cooperation to Peer Agencies as Part of a Coordinated, GovernmentWide Response Effort

16. The FTC and DOJ also have shared their competition expertise with other international and federal agencies in order to facilitate COVID-19 response and recovery while preserving competitive markets. Among other efforts, the Agencies have been working closely with the Federal Emergency Management Agency (FEMA) to develop a Voluntary Agreement governing cooperation among industry participants seeking to respond to the pandemic.19 The purpose of the Agreement is to maximize the effectiveness of the manufacture and distribution of critical healthcare resources nationwide to respond to the pandemic. Organized under the authority granted by the Defense Production Act, participants to the Agreement receive antitrust immunity for actions taken to carry out the Agreement. Before the Agreement can become effective, however, the Attorney General must find that the purposes of the Agreement may not be achieved through a voluntary agreement having less anticompetitive effects. These efforts also have helped inform the Agencies’ responses to business review letters seeking approval for cooperation in the production of critical health care products, as discussed below.

3.1. International Advocacy

17. U.S. enforcers also have been leveraging our existing bilateral relationships and ties to multilateral organizations, such as the International Competition Network (ICN) and the Organisation for Economic Co-operation and Development (OECD), to increase communication and cooperation.

18. In the immediate aftermath of the declaration of a state of national emergency in the United States, the Agencies played a key role in facilitating communication and cooperation among international enforcers by collecting and sharing on a regular basis rapidly developing information on how COVID-19 has impacted competition law enforcement efforts around the world. After DOJ successfully developed a regular internal process for collecting and disseminating this information, the ICN integrated this project into its ongoing work streams. In early April, as the economic impact of COVID-19 and possible enforcement challenges began to emerge, the ICN Steering Group issued a statement on key considerations related to competition law enforcement during and after the COVID-19 pandemic.20 The Agencies contributed with the FTC serving as a lead drafter of the statement recognizing the importance of competition to economies in crisis and urging agencies to remain vigilant regarding anti-competitive conduct. The statement also calls for transparency of operational and policy changes during the crisis and advocates for competition as a guiding principle for economic recovery efforts in the aftermath of the pandemic.

19. Since spring 2020, the Agencies have participated in several virtual events hosted by the ICN, the OECD, and the United Nations Conference on Trade and Development on international cooperation, investigations and competition law policy in the wake of COVID-19.21 In September 2020, the U.S. Agencies hosted the ICN 2020 Virtual Conference, which brought together enforcers from around the world to discuss antitrust developments, including how to address enforcement and policy challenges raised by COVID-19.

3.2. Doctrinal Responses

20. While procedural aspects of the Agencies’ work have changed as a result of COVID-19, the Agencies’ view of key U.S. antitrust standards has not changed. The Agencies have reiterated that the antitrust laws are flexible enough to account for changing market conditions, even during uncertain times.22

21. In particular, the Agencies continue to take the view that the failing firm defense is “narrow in scope,” and should be invoked selectively.23 The Agencies have continued to reiterate in speeches and publications that they will not relax the stringent conditions that define a genuinely “failing” firm and continue to apply the test set out in the U.S. Horizontal Merger Guidelines24 and reflected in our long-standing practice, and that they will require the same level of substantiation as was required before the COVID pandemic.25 As such, while it is possible that more firms may fail as a result of an economic crisis such as COVID-19, the view of the United States is that economic dislocation, on its own, does not provide a compelling reason why the assets of failing firms should be purchased by close competitors.

3.3. Competition Advocacy

22. The Agencies are continuing to advocate for changes to regulations that may impede competition, which may cause even greater harm in the context of the COVID-19 crisis. For example, the Agencies have submitted multiple letters to state legislatures in recent years expressing their concerns over “certificate of need” laws26 and other restrictions on the availability of health care resources.27 Given the extraordinary disruptions created by COVID-19, the United States views protecting the free functioning of health care markets as even more urgent, and the Agencies plan to continue our advocacy to remove regulatory impediments to competition in the health care sector.

23. Directly relating to the COVID-19 public health emergency, FTC staff submitted a comment to the Centers for Medicare & Medicaid Services (CMS) on its Interim Final Rule with Comment Period (IFC).28 The FTC comment supported the IFC’s provisions that reduce or eliminate restrictive Medicare payment requirements for telehealth and other communication technology-based services during the public health emergency. FTC staff noted that if telehealth practitioners’ entry is limited or reimbursement requirements are overly restrictive, consumers’ access to care and choice of practitioner might be unnecessarily restricted, especially in areas where there is a shortage of healthcare professionals. The IFC’s rule would reduce restrictions on Medicare reimbursement for telehealth services. This is especially important, not only to enhance the use of telehealth to care for Medicare beneficiaries, but also to encourage private payers to expand the use of telehealth. Reducing or eliminating restrictions on reimbursement of telehealth services could potentially enhance competition, improve access and quality, and decrease health care costs in both the public and private sectors. By connecting widely separated providers and patients, telehealth can alleviate primary care and specialty shortages.

24. The FTC continues to advocate against states issuing certificates of public advantage (COPA). For example, in September 2020 FTC staff submitted a public comment opposing issuance of a COPA to the Texas Health and Human Services Commission. FTC staff expressed concern that the proposed merger at issue would lead to significantly less competition for healthcare services in Midwest Texas.29

25. The FTC and its staff have also analyzed potential competitive concerns associated with professional regulations in the health care sector, including licensure and scope of practice.30 For example, FTC staff sent advocacy letters to the Texas Attorney General and the Texas Medical Board relating to regulations that could harm competition by impeding access to surgical and other health care services provided by certified registered nurse anesthetists.31 FTC staff recommended that Texas maintain only CRNA supervision requirements that advance patient protection and avoid adopting regulations that impede CRNA practice.

26. DOJ hosted a virtual joint workshop with the USPTO in July 2020 that included debate on the role of innovation and public-private collaboration in responding to the COVID-19 pandemic.32 The workshop, entitled “Promoting Innovation in the Life Science Sector and Supporting Pro-Competitive Collaborations: The Role of Intellectual Property,” comprised 10 sessions over two days. Panelists included leading figures from industry, government agencies, prominent research labs, the non-profit sector, academia, and the broader legal and economic community. Members of the public were also able to submit questions throughout the event.

4. Facilitation of Cooperative Public and Private-Sector Efforts to Resolve the Crisis

27. The Agencies are working together to bolster the recovery by providing guidance relating to recovery-related collaborations on an expedited basis.33 In a joint statement in April, the Agencies emphasized the potential importance of pro-competitive collaborations between private firms to bring essential goods and services to communities in need. In addition to providing high-level collaboration guidelines consistent with previous DOJ and FTC policies, the statement contained guidance specific to COVID-related business activities, including reaffirming that the Agencies will account for exigent circumstances in evaluating collaborative efforts to address the spread of COVID-19, and that medical providers’ development of suggested practice parameters to assist in clinical decisionmaking will not be challenged, absent extraordinary circumstances.34

28. The Agencies also announced an expedited business review letter program, under which all COVID-19-related requests will receive responses within seven calendar days of the Agencies receiving all necessary information. This expedited process for COVIDrelated business review letters is an outgrowth of the Agencies’ role in advising other executive branch agencies on facilitating COVID-related cooperation within the antitrust laws, and each of the letters issued through the expedited process in 2020 addresses proposed conduct that is critical to COVID-19 response. Since March 2020, DOJ has issued the following four expedited business review letters:

1. A letter approving a collaboration by McKesson Corporation, Owens & Minor Inc., Cardinal Health Inc., Medline Industries Inc., and Henry Schein Inc to expedite and increase manufacturing for the distribution of personal protective equipment (PPE) and coronavirus-treatment-related medication in a way unlikely to lessen competition;35

2. A letter approving a collaboration by AmerisourceBergen with FEMA, HHS, and other government entities to “identify global supply opportunities, ensure product, quality, and facilitate product distribution of medications and other healthcare supplies to treat COVID-19 patients;”36

3. A letter approving a collaboration by Eli Lilly and Company, AbCellera Biologics, Amgen, AstraZeneca, Genentech, and GSK to “exchange limited information about the manufacture of monoclonal antibodies that may be developed to treat COVID19” in order to optimize COVID-19 vaccine production as part of Operation Warp Speed;37 and

4. A letter approving a collaboration by the National Pork Producers Council (NPPC) and the U.S. Department of Agriculture (USDA) “to address certain hardships facing hog farmers as a result of the COVID-19 pandemic.”38 29. The Agencies also pledged to expedite the processing of filings under the National Cooperative Research and Production Act, which provides flexible treatment of certain standards development organizations and joint ventures under the antitrust laws.

5. Revised Rules Regarding Merger Enforcement

30. The Agencies have adapted to changing work conditions and reallocated resources to maintain continuity of core operations and enforcement efforts. COVID-19 initially necessitated temporary changes to ensure the continuation of expeditious and thorough merger review.39 Changes made by both Agencies include (1) extending standard timing agreement provisions so that the post-compliance period runs for sixty to ninety days (instead of thirty days) for pending or proposed transactions that may be subject to a Second Request, (2) requiring all merger filings with the FTC and DOJ to be submitted via the FTC’s electronic filing system, and (3) committing to conducting all meetings and depositions by phone or video conference when possible, absent extenuating circumstances.40 For the initial period of only two weeks at the start of the COVID crisis, the Agencies also suspended the granting of early termination, which can shorten the waiting period for non-problematic mergers. The option of early termination was resumed in March, and timing of grants of early termination has returned to pre-pandemic levels.41

31. Notably, COVID-19 did not sideline other important efforts to improve the Agencies’ enforcement programs. Among other efforts, in June 2020, the Agencies for the first time issued joint Vertical Merger Guidelines.42 In September, the Division also issued a modernized Merger Remedies Manual. As an update to the 2004 edition, the new manual provides “greater transparency and predictability regarding the Division’s approach to remedying a proposed merger’s competitive harm,” including an emphasis on structural remedies and a renewed focus on enforcing consent decree obligations. The Division also has continued to follow through on its September 2018 commitment to modernize banking merger review, with the goal of expedited and efficient resolution for uncomplicated merger matters.43 Economic downturns, as often occur in the wake of disasters such as the COVID-19 crisis, may impact merger activity, which is why continuing to improve the Agencies’ approach to reviewing and remedying potentially anticompetitive mergers remains a priority.

#### Plan causes a trade-off and devastates antitrust agency effectiveness

Sacher & Yun 19 (Seth B. Sacher, Economist, & John M. Yun, Antonin Scalia Law School, George Mason University, TWELVE FALLACIES OF THE "NEO-ANTITRUST" MOVEMENT, 26 Geo. Mason L. Rev. 1491, y2k)

VII. Fallacy Seven: Not Recognizing That Their Proposals Will Strain Competition Agency Resources, Increase Uncertainty, and Make These Agencies More Political and Subject to Capture

Most of those that have worked within, or before, the antitrust agencies, despite their inevitable disagreement with certain actions or policies, are generally very impressed with the high degree of skill, professionalism, and dedication exhibited by the career staff. 131As will be discussed more fully in the [\*1515] context of Fallacy XI below, many proponents of neo-antitrust do not accept the proposition that the antitrust agencies and their staffs function relatively well, in spite of the views of many (on all sides of the political spectrum) who have had experience working within or before the antitrust agencies. Regardless of how neo-antitrust proponents view the agencies, many of their proposals run a serious risk of adversely affecting competition agency performance.

There are a number of objective reasons to expect antitrust agencies to function relatively well. First, antitrust agencies tend to be small relative to many other regulatory agencies and bureaucracies in general. 132Second, their staffs tend to be highly trained professionals, consisting primarily of lawyers and Ph.D. economists. 133Third, they have a well-defined objective (i.e., the consumer welfare standard or some similar standard based on economic reasoning, such as the total welfare standard). 134Finally, although antitrust is considered a form of regulation, it is distinct from other forms of regulation in that it does not involve a continuing relationship between the regulated firms and the regulator. As a goal, antitrust seeks to enable markets to more nearly achieve certain social objectives on their own. 135

First, advocates of neo-antitrust would like to see the responsibilities of the antitrust agencies expanded in a number of ways. This includes more aggressively enforcing existing antitrust laws, as well as the consideration of issues beyond those currently within that purview. 136Further, many of their proposals, such as requiring data sharing, monitoring markets to prevent tipping, or approving platforms' algorithm changes, 137 will require significantly more active market supervision than is currently the case. While many [\*1516] proponents of modern antitrust would agree that the antitrust agencies are underfunded, 138 there is certainly a point at which expanding the antitrust agencies will have "bureaucratic" diseconomies of scale. Fully following the recommendations of neo-antitrust advocates could very well require many antitrust agencies to expand beyond some critical point, which will inevitably lead to significantly larger bureaucracies and associated inefficiencies.

Second, many of the above proposals would require not only more staff, but also staff with differing expertise from that held by most agency lawyers and economists. For example, monitoring data sharing is far from straightforward, as it is frequently unclear where data begins and technology ends. Similarly, considerations of income inequality or environmental questions may involve tradeoffs beyond the expertise of mere law or economics, such as technology, ethics, or even psychology. While staff of the antitrust agencies will frequently contact market participants and other experts with specialized knowledge on an as-needed basis, it is unknown how well such expertise would function within the long-term framing of antitrust, which has been a legal and economic domain since its inception.

#### Failed COVID recovery triggers multiple hotspots

Wright 20 (Robin Wright, a contributing writer and columnist @ The New Yorker, The Coronavirus Pandemic Is Now a Threat to National Security, 10-7, https://www.newyorker.com/news/our-columnists/america-the-infected-and-vulnerable, y2k)

The broader danger is the world’s perception now of America as inept and vulnerable, Doug Lute, a retired lieutenant general who was the director of operations for the Joint Chiefs and a deputy national-security adviser to Presidents George W. Bush and Barack Obama, told me. “There are two things that would drive our competitors—the general sense of incompetence by the executive branch and a reading that we are totally self-absorbed internally,” he said. “There’s an overlapping of the pandemic, the protests, and now the election that amplifies that image. In broad terms, those conditions internally will be viewed by external competitors as opportunities.” America faces threats from a spectrum of overseas adversaries, the retired Marine General John Allen, who is now the president of the Brookings Institution, told me. “I’m deeply concerned that there will be foreign actors, all the way from jihadists to state actors, that try to take advantage of a level of duress that we haven’t seen for a long time. It has not been lost on our adversaries, or those who would seek to gain ground, that the United States has consciously chosen to withdraw.” The sense of “sheer confusion” surrounding American politics in 2020 compounds the temptation of foreign actors to make moves, either for their own gains or to diminish America, Allen said. The most obvious perils are from the big powers, which may calculate that the White House will not counter their moves elsewhere in the world during such domestic turbulence, especially on the eve of an election, former military and Pentagon officials told me. From Russia, President Vladimir Putin could dig deeper into Ukraine, meddle in unstable Belarus, or test the strength of the Baltic states to resist. From China, President Xi Jinping could further threaten Taiwan, exert its claim to islands in the South China Sea by deploying equipment or personnel, or take more draconian actions in Hong Kong. Both countries have moved steadily to deepen their presence and influence across Asia and deep into the Middle East—with its access to the Mediterranean and the West. For Moscow and Beijing, overt challenges would be a big bet, especially with an erratic and sometimes reckless President (currently on steroids) in the White House. Yet both countries will also understand that the American public has little appetite for more trauma, the military and security officials said. “I’m sure that foreign adversaries’ intelligence services have their collection systems turned up high so that they understand exactly how disruptive this pandemic is on our national-security structure,” the former C.I.A. director John Brennan said on CNN this week. North Korea and Iran may also try to exploit the moment, although both have fewer capabilities than Russia or China. Tehran is still smarting from the U.S. assassination, in January, of General Qassem Suleimani, the head of its élite Quds Force, a wing of the Revolutionary Guards, which supports several militias that have attacked U.S. troops in Iraq and Lebanon. “I suspect Iran is not done seeking revenge for the killing of Suleimani,” Lute told me. Tehran’s strength is in the proxy forces it arms, aids, and often directs across the Middle East, particularly Lebanon, Iraq, and Yemen. Since Suleimani’s death, attacks by the Popular Mobilization Forces on U.S. troops and the American Embassy in Iraq have steadily escalated; the P.M.F., backed and sometimes directed by Iran, is the umbrella for some sixty predominantly Shiite militias that operate in separate brigades. Last month, the campaign sparked a diplomatic crisis when Secretary of State Mike Pompeo warned the Iraqi government that the United States would close its Embassy in Baghdad—one of the largest American diplomatic facilities in the world—if the government did not prevent the militias from firing on the U.S. compound and American troops based elsewhere in Iraq. “Our global deterrence at the high end—nuclear and conventional deterrence in Europe, Asia, and the Gulf—will not be tested,” Lute said. “But there may be challenges at lower levels through cyber or by proxies.”

### Ptx

#### PC is key to reconciliation---plan’s distraction foils it and causes defection---it’s laser-thin

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

House Democrats yesterday finished penning a 2,600-page bill that finally outlines the specifics of their ambitious “soft” infrastructure plan that won’t attract a single Republican vote. But no one was really rushing to Schneider’s for bottles of bubbly. For a party ready to spend $3.5 trillion to fund its social policy agenda, there were plenty of glum faces on Capitol Hill.

In fact, one key piece of the legislation—a deal that would finally let Medicare negotiate lower prices with drug companies—fell apart in the Energy and Commerce Committee when three Democrats voted against it. It found resurrection a short time later when Leadership aides literally plucked it from the Energy and Commerce team and delivered it to the Ways and Means Committee for its approval instead. Even there, though, one Democrat voted against it, saying the threat it posed to pharmaceutical companies’ profits would doom it in the Senate. “Every moment we spend debating provisions that will never become law is a moment wasted and will delay much-needed assistance to the American people,” Rep. Stephanie Murphy of Florida later argued.

Put another way? Brace for some nasty politics over the next two weeks as House Speaker Nancy Pelosi tries to get this bill to a vote before the budget year ends on Sept. 30. And those 2,600 pages had better be recyclable.

Democrats can only afford three defectors if they want to usher this bill into law, and they’re perilously close to failure. So far, five centrist Democrats in the House have said they prefer a scaled-back version of the Medicare component. But if Pelosi gives the five centrists that win, she risks losing the support of progressives who are already sour that things like a punitive wealth tax and the end to tax loopholes aren’t present in the current version of the bill.

As it stands now, letting Medicare negotiate drug prices would save the government about $500 billion over the next decade. The scaled-back version doesn’t have an official cost, but a very similar version got its score in the Senate last year: roughly $100 billion in savings. Because Democrats are using a budgeting loophole to help them avoid a filibuster and pass this with bare majorities, that $400 billion gap matters a lot more than on most bills. Scaling back the Medicare savings means they would also have to scale back their overall spending on the bill—a big line in the sand for progressives who say they’ve already compromised too much.

All of this, of course, comes as President Joe Biden and his top aides in the White House have been trying to get Senate centrists onboard. Just yesterday, he met separately with Sens. Kyrsten Sinema and Joe Manchin, fellow Democrats who have expressed worries about the $3.5 trillion price tag but have been vague about what exactly they want to cut back on. With the Senate evenly divided at 50-50, and Vice President Kamala Harris in position to break the ties to Democrats’ victories, any shenanigans from those two independent thinkers scrambles the whole package.

Oh, and that other bipartisan infrastructure plan that carries $550 billion in new spending? It’s still sitting on the shelf in the House. Pelosi said she’d bring it to the floor only when the bigger—and entirely partisan—bill was ready. And there’s plenty of grumbling about that package, too.

If this is all beginning to sound like a scratched record that keeps repeating, it’s because this has become something of a pattern here in Washington. Things look pretty grim for legislation in town these days, despite Democrats controlling the House, the Senate and the White House. Their margin for error is literally zero, and so hiccups from a half-dozen centrists can forewarn a doomed agenda.

So far, Pelosi has been a master of holding the line on crucial votes and has managed to maneuver her team to victories, including on an earlier pandemic relief package that passed with only Democratic votes. Now she’s trying again, but the clock is ticking, and $3.5 trillion is an eye-popping sum of money that rivals the spending the United States unleashed to close out World War II.

#### Antitrust trades-off with Biden’s priorities

Carstensen 21 (Peter C. Carstensen, Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST, <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en>, y2k)

Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities.

Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Reconciliation solves climate

Sobczyk 9-15 (Nick Sobczyk, E&E News, Infrastructure Bill Could Cut Carbon Emissions By Nearly a Gigaton, <https://www.scientificamerican.com/article/infrastructure-bill-could-cut-carbon-emissions-by-nearly-a-gigaton/>, y2k)

The reconciliation bill working its way through Congress could cut U.S. greenhouse gas emissions by nearly a gigaton by 2030, according to a new report.

The analysis, released today by the Rhodium Group, an independent research firm, offers a first look at how the sprawling suite of climate policies Democrats are considering as part of their $3.5 trillion package could overhaul energy and contribute to President Biden’s Paris Agreement emissions-cutting pledge.

The bill could ultimately include dozens of different climate and energy provisions. But the report examined six of the biggest proposals currently in the mix: clean energy and electric vehicle tax credit expansions, a methane fee, funding for rural electric cooperatives, money for agriculture and forestry carbon capture programs, and the proposed Clean Electricity Performance Program (CEPP).

Those policies alone would reduce greenhouse gas emissions by 830 million to 936 million tons by 2030 compared with current trajectories, the report found. The CEPP — which would pay power providers to deploy more clean energy, with the goal of hitting 80 percent clean energy by 2030 — would account for the bulk of those reductions.

That would amount to “easily the biggest thing to pass Congress when it comes to climate,” said John Larsen, a director at the Rhodium Group and one of the report’s authors. “It's highly likely that the total impact is bigger — potentially substantially bigger — than what we found simply because we didn't count everything,” he said.

#### Extinction

David Spratt 19, Research Director for Breakthrough National Centre for Climate Restoration, Ian Dunlop, member of the Club of Rome, formerly an international oil, gas and coal industry executive, chairman of the Australian Coal Association, May 2019, “Existential climate-related security risk: A scenario approach,” https://docs.wixstatic.com/ugd/148cb0\_b2c0c79dc4344b279bcf2365336ff23b.pdf

An existential risk to civilisation is one posing permanent large negative consequences to humanity which may never be undone, either annihilating intelligent life or permanently and drastically curtailing its potential. With the commitments by nations to the 2015 Paris Agreement, the current path of warming is 3°C or more by 2100. But this figure does not include “long-term” carbon-cycle feedbacks, which are materially relevant now and in the near future due to the unprecedented rate at which human activity is perturbing the climate system. Taking these into account, the Paris path would lead to around 5°C of warming by 2100. Scientists warn that warming of 4°C is incompatible with an organised global community, is devastating to the majority of ecosystems, and has a high probability of not being stable. The World Bank says it may be “beyond adaptation”. But an existential threat may also exist for many peoples and regions at a significantly lower level of warming. In 2017, 3°C of warming was categorised as “catastrophic” with a warning that, on a path of unchecked emissions, low-probability, high-impact warming could be catastrophic by 2050. The Emeritus Director of the Potsdam Institute, Prof. Hans Joachim Schellnhuber, warns that “climate change is now reaching the end-game, where very soon humanity must choose between taking unprecedented action, or accepting that it has been left too late and bear the consequences.” He says that if we continue down the present path “there is a very big risk that we will just end our civilisation. The human species will survive somehow but we will destroy almost everything we have built up over the last two thousand years.”11 Unfortunately, conventional risk and probability analysis becomes useless in these circumstances because it excludes the full implications of outlier events and possibilities lurking at the fringes.12 Prudent risk-management means a tough, objective look at the real risks to which we are exposed, especially at those “fat-tail” events, which may have consequences that are damaging beyond quantification, and threaten the survival of human civilisation. Global warming projections display a “fat-tailed” distribution with a greater likelihood of warming that is well in excess of the average amount of warming predicted by climate models, and are of a higher probability than would be expected under typical statistical assumptions. More importantly, the risk lies disproportionately in the “fat-tail” outcomes, as illustrated in Figure 1.

## Adv 1

#### The aff doesn’t solve mega mergers which are the biggest i/l to consolidation

Pat Mooney et al. 17, founder of the ETC group, October 2017, TOO BIG TO FEED, http://www.ipes-food.org/\_img/upload/files/Concentration\_FullReport.pdf

Mega-mergers are sparking unprecedented consolidation across food systems, and new data technologies represent a powerful new driver. For decades, firms in the agri-food sector have pursued mergers and acquisitions (M&A) and other forms of consolidation as part of their growth strategies. However, the recent spate of mega-mergers takes this logic to a new scale. Since 2015, the “biggest year ever for mergers and acquisitions”, a number of high-profile deals have come onto the table in a range of agri-food sectors - often with a view to linking different nodes in the chain. These include the $130 billion merger between US agro-chemical giants, Dow and DuPont, Bayer’s $66 billion buyout of Monsanto, ChemChina’s acquisition of Syngenta for $43 billion and its planned merger with Sinochem in 2018. These deals alone will place as much as 70% of the agrochemical industry in the hands of only three merged companies. Meanwhile, the merger between leading Canadian fertilizer companies Potash Corp. and Agrium, Kraft-Heinz’s bid for processing giant Unilever, and online retailer Amazon’s acquisition of Whole Foods Market are proof that mega-deals are sweeping through all nodes of the chain. Financialization – i.e. the increasingly powerful role of financial actors, motives and trends in shaping global economic activity – has become a major driver of corporate consolidation across various sectors as investors demand higher and shorter-term payouts. However, beyond the physical (e.g. drones) and scientific (e.g. gene editing) technologies behind agri-food sector consolidation, information technology comes out as the newest and most powerful driver. Big Data connects inputs—seeds, fertilizers, and chemicals—to farm equipment and retailers to consumers in unprecedented ways.

A significant horizontal and vertical restructuring is underway across food systems. Rampant vertical integration is allowing companies to bring satellite data services, input provision, farm machinery and market information under one roof, transforming agriculture in the process. Mega-mergers come in the context of an already highly-consolidated agri-food industry, and are ushering in a series of structural shifts in food systems. Agrochemical companies are acquiring seed companies, paving the way for unprecedented consolidation of crop development pathways, and bringing control of farming inputs into fewer hands. The mineral-dependent and already highly concentrated fertilizer industry is seeking further integration on the back of industry overcapacity and a drop in prices; fertilizer firms are also moving to diversify and integrate their activities via hostile takeovers, joint ventures, and the buying and selling of of regional assets– with mixed results. Meanwhile, livestock and fish breeders, and animal pharmaceutical firms, are pursuing deeper integration with each other, and are fast becoming a one-stop shop for increasingly concentrated industrial livestock industry. Leading farm machinery companies – already possessing huge market shares – are looking to consolidate up- and down-stream, and are moving towards ownership of Big Data and artificial intelligence, furthering their control of farm-level genomic information and trending market data accessed through satellite imagery and robotics. Agricultural commodity trade remains dominated by a handful of actors – including new players from emerging markets – with trading, shipping, and processing increasingly rolled together into highly-integrated operations straddling different commodity sectors and regions, and independent grain traders finding it ever more difficult to compete. Food processors and retailers, the biggest players in the system, are seeking international expansion and capturing new segments of the market to meet changing consumer demands. Many leading processors already control the digital data for raw material sourcing, processing, marketing, and delivery. They are moving upstream to better oversee their supply chains and meet quality requirements; to address changing consumer demands, they are reconstructing their images through the acquisition and creation of seemingly healthier and more sustainable brands. Retailers are moving to consolidate their position in the major markets while expanding into growth markets through further M&A activity. New actors such as Amazon are vying to harness Big Data possibilities in order to track and analyze consumer shopping habits to strengthen both in-store and online delivery systems.

The high and rapidly increasing levels of concentration in the agri-food sector reinforce the industrial food and farming model, exacerbating its social and environmental fallout and aggravating existing power imbalances. Rather than putting food systems on a path to sustainability, consolidation reinforces the logic of the industrial food and farming model – and its widespread social, environmental, and economic fallout. Consolidation also allows firms to pool economic and political capital in ways that reinforce their ability to influence decision-making on the national and international levels – and to defend the status quo.

Consolidation across the agri-food industry has made farmers ever more reliant on a handful of suppliers and buyers, further squeezing their incomes and eroding their ability to choose what to grow, how to grow it, and for whom. The emergence of increasingly dominant retail and processing firms has driven concentration along the chain in order to provide the requisite scale and volume, enforcing a de facto consolidation of agriculture. Meanwhile, upstream consolidation has left farmers hostage to a handful of suppliers and mounting commercial input costs. These trends have exacerbated existing power imbalances, allowing costs to be shifted onto farmers, squeezing their incomes, eroding their autonomy, and leaving them vulnerable to unilateral sourcing shifts. Despite the supposed efficiencies of a highly-consolidated agri-food industry, consumer food prices have not been systematically reduced – and tend to rise in highly concentrated markets.

The scope of research and innovation has narrowed as dominant firms have bought out the innovators and shifted resources to more defensive modes of investment. Increasing market concentration has reinforced a focus on input traits and major crops promising greater returns on investment. Companies have shifted R&D resources to the least risky modes of investment, e.g. focused on protecting patented innovations and creating barriers to entry. Meanwhile an explosion of new product lines is providing an illusion of innovation in processing and retail – but often amounts to little more than the repackaging of existing products. Genuine innovation is emerging from start-ups, but tends to be diluted as smaller brands and companies are bought out by mega-firms.

The merry-go-round of company buyouts, boardroom turnover, and product rebranding is eroding commitments to sustainability, dissipating accountability, and opening the door to abuse and fraud. Commitments to sustainability tend to be lost as progressive CEOs are replaced and products are rebranded following mergers and buyouts. Proliferating M&A activity in food systems is also bringing financial players, e-retailers, and logistics firms to center-stage in defining the trajectory of food systems – raising further questions about the prospects for building greater sustainability and accountability. Furthermore, horizontal and vertical integration is driving a reduction in seed and livestock genetic diversity, while increasing the risks of foodborne and livestock disease proliferation in increasingly centralized and homogenized systems.

#### Even outside mergers, big ag is inevitable

#### Patents make monocultures inevitable

Hodgson 18 (Camilla, Writer at Financial Times, “Monopoly and Monoculture”, https://medium.com/the-food-issue-weapons-of-reason/global-food-industry-monopoly-monoculture-growing-corporate-profits-3df0ae5f7237)

Patents mean power. Not only did Justice Burger’s ruling mean seed companies had control over who could buy and license their products, it also allowed them to threaten farmers who strayed outside the rules with legal action, including a ban on farmers saving patented seeds from one season to the next. Instead, they had to buy new seeds every year.

Monsanto has been accused of employing particularly aggressive tactics to enforce its patent rights. In 2000, it even admitted to hiring detectives — whom it called ‘auditors’ — to root out and prosecute farmers who were saving seeds. Since 1997, the company has filed 147 lawsuits relating to seed patent infringements in the US.

Since the 1990s, an estimated 75% of plant genetic diversity has been lost as farmers worldwide have turned to cultivating genetically identical, high- yielding crops. Three quarters of the world’s food is now generated from only 12 plants and five animal species, with rice, maize, and wheat contributing nearly 60% of the plant calories and protein consumed by humans.

This reliance on only a few crop varieties is potentially dangerous in the long term: diversity in the natural world and access to a variety of seeds with different traits and resistances is vital, particularly in the context of climate change. But, as farmers’ profit margins have narrowed, growing a single crop and enforcing a monoculture on agricultural land, which is simpler, easier to automate, and requires fewer employees, has become an attractive option for many.

#### No shift to sustainable ag -- metastudies

Laurett et al 21 (Rozélia Laurett, FUCAPE Business School, Vitória, Espírito Santo, Brazil and NECE-UBI - Research Centre for Business SciencesCovilhãPortugal Arminda Paço, Universidade da Beira Interior, NECE-UBI - Research Centre for Business SciencesCovilhãPortugal Emerson Wagner Mainardes, FUCAPE Business School, Vitória, Espírito Santo, Brazil and NECE-UBI - Research Centre for Business SciencesCovilhãPortugal“Barriers to Sustainable Development in Agriculture”, https://link.springer.com/chapter/10.1007/978-3-030-76624-5\_9)

The literature contains various studies identifying the barriers to SD in agriculture. Standing out among them are: the lack of financial resources (Sassenrath et al. 2010; Kata and Kusz 2015; Cederholm Björklund 2018), higher production costs (Kata and Kusz 2015), the need to make high initial investment (Ma et al. 2009) when adopting certain technology, such as changing irrigation processes and/or applying for organic certification. Regarding the process of sustainable certification, Kata and Kusz (2015) mention the low number of organisations issuing such certification and the excessive rules and obligations demanded by those certifying entities as major barriers.

Other obstacles can be listed, such as: the lack of government support to help farmers become more sustainable (Carolan 2006; Cederholm Björklund 2018), the difficulty in understanding what consumers really want or need (Ma et al. 2009; Leite et al. 2014; Grover and Gruver, 2017; Cederholm Björklund 2018), farmers’ lack of information about alternative methods used in the agricultural sector that can make farms more sustainable (Carolan 2006; Leite et al. 2014; Martin et al. 2015; Kata and Kusz 2015), the difficulty in innovating and introducing new ways of working (Martin et al. 2015; Cederholm Björklund 2018) and the lack of successful examples linked to sustainability, i.e., a reference (Rodriguez et al. 2009),

Besides these barriers, also identified are the lack of time (Grover and Gruver 2017), the traditional model of family management being resistant to change (Rodriguez et al. 2009; Cederholm Björklund 2018); the lack of technical support or specialist help/advice (Carolan 2006; Leite et al. 2014; Kata and Kusz 2015; Cederholm Björklund 2018), and appropriate information and technical knowledge about sustainability (Leite et al. 2014; Martin et al. 2015); the lack of understandable legislation and specific regulations (Leite et al. 2014; Czyzewski et al. 2018; Cederholm Björklund 2018), the excess of state and federal laws and regulations (Grover and Gruver 2017) and the difficulty in adopting new technology (Sassenrath et al. 2010; Martin et al. 2015), which can all be barriers to the implementation of more sustainable actions in agriculture.

Some barriers identified were related to the individual, such as: farmers’ reluctance to change their behaviour (Carolan 2006; Sassenrath et al. 2010; Rodriguez et al. 2009; Cederholm Björklund 2018), risk aversion (Ma et al. 2009), and the fear of using new work methods. Others found in the literature were the lack of training directed to sustainable development (Rodriguez et al. 2009) and the difficulty in understanding what sustainable development is (Rodriguez et al. 2009). This literature review revealed that numerous barriers prevent farmers from making farming more sustainable. Therefore, identifying these barriers is the first step towards the adoption of more sustainable actions (Horhota et al. 2014), whether in agriculture or in other sectors.

#### Non-merger monopoly forces!

Hafiz & Miller 21 (Hiba Hafiz, Hiba Hafiz is an assistant professor of law at Boston College Law School. Nathan Miller is the Saleh Romeih associate professor at the Georgetown University McDonough School of Business and Nathan Miller, Associate Professor Nathan Miller is the Saleh Romeih associate professor at the Georgetown University McDonough School of Business. His research covers topics in industrial organization and antitrust economics, with a recent focus on collusion and the competitive effects of mergers. He has published articles in the American Economic Review, Econometrica, and the RAND Journal of Economics, among other journals. Prior to joining Georgetown University, Miller served as an economist at the U.S. Department of Justice, where he provided economic analysis for antitrust investigations. He holds a Ph.D. in economics from the University of California, Berkeley and a B.A. from the University of Virginia., “Competitive Edge: Big Ag’s monopsony problem: How market dominance harms U.S. workers and consumers” https://equitablegrowth.org/competitive-edge-big-ags-monopsony-problem-how-market-dominance-harms-u-s-workers-and-consumers/)

Empirical evidence of the effects of Big Ag’s buyer power on rural communities and consumers nationally is mounting. Suppliers and processing workers suffer lower pay while downstream consumers are paying higher prices on essential food. Around “three-quarters of contract growers live below the poverty line,” and average-sized operators lose money 2 out of 3 years.

Then, there is the evidence of rising farm bankruptcy rates. Farm bankruptcies have steadily increased every year for the past decade, due, in part, to high U.S. farm debt. Small farmers are not the only ones being undercompensated—a 2000 U.S. Department of Labor survey found that 100 percent of poultry processing plants failed to comply with federal wage-and-hour laws.

Buyer power also enables processors to impose abominable working conditions without workers quitting. Even before the coronavirus pandemic, poultry processing workers suffered occupational illnesses at five times the rate of other U.S. workers. But their conditions plummeted during the pandemic, with immigrant workers and workers of color suffering the most. A November 2020 study estimated livestock processing plants suffered 236,000 to 310,000 cases of COVID-19, the disease caused by the new coronavirus, and 4,300 to 5,200 deaths—3 percent to 4 percent of all U.S. deaths—with the majority related to community spread. Consumers have also suffer nationally by having to pay higher prices for meat products while facing fewer choices and lower quality.

More evidence of Big Ag’s buyer power emerges from high-profile U.S. Department of Justice and private enforcement actions against dominant Big Ag buyers in the poultry and pork industries for colluding to fix prices, rig bids, and suppress pay to growers and processing workers. High concentration levels make it easier for Big Ag firms to collude, and in June 2020, the Department of Justice indicted leading chicken industry defendants for price-fixing and bid-rigging in the broiler chicken market. Civil suits were filed against Tyson, Pilgrim’s Pride Corp., and others for price-fixing, wage-fixing, and using no-poach agreements in the markets for broiler chicken products, contract farmer services (contract farmers are farmers who grow chickens from chicks to market weight in long-term contracts with processors), and chicken-processing labor services.

The Department of Justice is currently investigating price-fixing and bid-rigging among dominant beef processors, too, and private plaintiffs have sued pork and beef processors for allegedly colluding to lower prices paid to producers and raise prices for consumers. Current litigation against the poultry, pork, and meat cartels estimates that hundreds of thousands of workers suffer poverty wages from wage-fixing conspiracies.

#### Leadership’s irrelevant.

Christopher **Fettweis 17**. Associate Professor of Political Science at Tulane University. “Unipolarity, Hegemony, and the New Peace,” Security Studies, 26:3, 423-451, 5-8-2017, http://dx.doi.org/10.1080/09636412.2017.1306394

Conflict and Hegemony by Region Even the most ardent supporters of the hegemonic-stability explanation do not contend that US influence extends equally to all corners of the globe. The United States has concentrated its policing in what George Kennan used to call “strong points,” or the most important parts of the world: Western Europe, the Pacific Rim, and Persian Gulf.64 By doing so, Washington may well have contributed more to great power peace than the overall global decline in warfare. If the former phenomenon contributed to the latter, by essentially providing a behavioral model for weaker states to emulate, then perhaps this lends some support to the hegemonic-stability case.65 During the Cold War, the United States played referee to a few intra-West squabbles, especially between Greece and Turkey, and provided Hobbesian reassurance to Germany’s nervous neighbors. Other, equally plausible explanations exist for stability in the first world, including the presence of a common enemy, democracy, economic interdependence, general war aversion, etc. The looming presence of the leviathan is certainly among these plausible explanations, but only inside the US sphere of influence. Bipolarity was bad for the nonaligned world, where Soviet and Western intervention routinely exacerbated local conflicts. Unipolarity has generally been much better, but whether or not this was due to US action is again unclear. Overall US interest in the affairs of the Global South has dropped markedly since the end of the Cold War, as has the level of violence in almost all regions. There is less US intervention in the political and military affairs of Latin America compared to any time in the twentieth century, for instance, and also less conflict. Warfare in Africa is at an all-time low, as is relative US interest outside of counterterrorism and security assistance.66 Regional peace and stability exist where there is US active intervention, as well as where there is not. No direct relationship seems to exist across regions. If intervention can be considered a function of direct and indirect activity, of both political and military action, a regional picture might look like what is outlined in Table 1. These assessments of conflict are by necessity relative, because there has not been a “high” level of conflict in any region outside the Middle East during the period of the New Peace. Putting aside for the moment that important caveat, some points become clear. The great powers of the world are clustered in the upper right quadrant, where US intervention has been high, but conflict levels low. US intervention is imperfectly correlated with stability, however. Indeed, it is conceivable that the relatively high level of US interest and activity has made the security situation in the Persian Gulf and broader Middle East worse. In recent years, substantial hard power investments (Somalia, Afghanistan, Iraq), moderate intervention (Libya), and reliance on diplomacy (Syria) have been equally ineffective in stabilizing states torn by conflict. While it is possible that the region is essentially unpacifiable and no amount of police work would bring peace to its people, it remains hard to make the case that the US presence has improved matters. In this “strong point,” at least, US hegemony has failed to bring peace. In much of the rest of the world, the United States has not been especially eager to enforce any particular rules. Even rather incontrovertible evidence of genocide has not been enough to inspire action. Washington’s intervention choices have at best been erratic; Libya and Kosovo brought about action, but much more blood flowed uninterrupted in Rwanda, Darfur, Congo, Sri Lanka, and Syria. The US record of peacemaking is not exactly a long uninterrupted string of successes. During the turn-of-the-century conventional war between Ethiopia and Eritrea, a highlevel US delegation containing former and future National Security Advisors (Anthony Lake and Susan Rice) made a half-dozen trips to the region, but was unable to prevent either the outbreak or recurrence of the conflict. Lake and his team shuttled back and forth between the capitals with some frequency, and President Clinton made repeated phone calls to the leaders of the respective countries, offering to hold peace talks in the United States, all to no avail.67 The war ended in late 2000 when Ethiopia essentially won, and it controls the disputed territory to this day. The Horn of Africa is hardly the only region where states are free to fight one another today without fear of serious US involvement. Since they are choosing not to do so with increasing frequency, something else is probably affecting their calculations. Stability exists even in those places where the potential for intervention by the sheriff is minimal. Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. It seems hard to make the case that the relative peace that has descended on so many regions is primarily due to the kind of heavy hand of the neoconservative leviathan, or its lighter, more liberal cousin. Something else appears to be at work.

#### Tech can solve scarcity

Paula Gilbert 17, ITWeb telecoms editor,10-9-2017, "An optimistic tech future," ITWeb, https://www.itweb.co.za/content/XlwrKxv3Za1qmg1o

Abundant resources, personalised medicine Clean, cheap energy is a key focus, with futurists saying this could be made possible through better capture, storage and deployment of renewable energy. We could see solar panels not only on rooftops but built invisibly into windows, walls and even some highways. New advanced storage systems will provide steady, reliable power to people in the remotest parts of the world, they predict. "An abundance of energy by 2040 will not only have a positive impact on disposable income, but will have a profound influence on water and food security. It will be a key building block in the establishment of a more resilient world economy," says Geldenhuys. By the 2030s, we could enable access to plentiful clean water, through large-scale water capture projects, ranging from innovative precipitation harvesting techniques to groundwater replenishment and improved desalination. "In the next 15 years, we are going to tackle the global water problem as desalinisation technologies will become vastly more affordable," says Gerd Leonhard, owner of Zurich-based The Futures Agency. "The rise of innovative responses to sourcing water will make it more common in coastal, arid countries to grow vegetables in the middle of deserts using nothing but sunlight and seawater," the report predicts. Food abundance will also be a reality and we "will enjoy a wide range of healthy and delicious sources of meat-free protein and realistic meat alternatives that don't come from animals". "There are many game-changing trends we are seeing within food and agriculture but one we are seeing emerge quickly is 'clean meat' grown in labs; although this is very expensive today, it is becoming exponentially cheaper, as well," adds Leonhard. Tailored medical advice and new treatments will in future take account of our lifestyles, physiology and even our genetics, improving life chances in both developed and developing countries. Experts predict personalised physical repairs, made possible by the early 2020s through 3D bio-printing and "living drugs" designed to turn an individual's own immune system against disease, will end the era of one-size-fits-all healthcare. This will cut costs, reduce waiting times and potentially even end the need for donor lists. "Increasingly affordable DNA analysis will not only assist us to remotely develop personalised medicine, it will also enable us to treat hereditary diseases decades before the symptoms start to appear," predicts Geldenhuys.

## Adv 2

#### Rural economies are terminal AND urbanization is inevitable

Austin et al 18 (BENJAMIN AUSTIN Harvard University EDWARD GLAESER Harvard University LAWRENCE SUMMERS Harvard University, “Jobs for the Heartland: Place-Based Policies in 21st-Century America”, https://www.brookings.edu/wp-content/uploads/2018/03/AustinEtAl\_Text.pdf)

A belief in individual upward mobility reduces the desire for income redistribution (Alesina, Miano, and Stantcheva, forthcoming). Similarly, a belief in the upward mobility of regions limits the demand for place-based policies. America has long tolerated dramatic economic differences across space, partially because people regularly moved from poor places to rich places and capital flowed freely from high-wage to low-wage areas. In this section, we document five trends suggesting that this mobility has fallen considerably and that America appears to be evolving into durable islands of wealth and poverty. At the broadest level, the nation can be divided into its wealthy, costly coasts; a reasonably successful western heartland; and a painfully jobless eastern heartland. These differences are driven mainly by historical differences in human capital and the economic dislocation caused by deindustrialization.

I.A. The Closing of the Metropolitan Frontier

The United States has long been a nation with enormous spatial differences in income. In 1950, 18 states in the continental United States had per capita earnings that were double the per capita earnings of Mississippi. In 2016, Mississippi is still the nation’s poorest state, but there is no state with double its per capita income. Many of Mississippi’s poorest residents went north to the factories of Chicago and Detroit (Smith and Welch 1989). Industry flowed south, encouraged by probusiness policies, like right-towork laws (Holmes 1998). America’s western frontier may have closed at the end of the 19th century, but there was still a metropolitan frontier where workers from depressed areas could find a more prosperous future.

Five facts collectively suggest that this geographic escape valve has tightened: (i) declining geographic mobility, (ii) increasingly inelastic housing supplies in high-income areas, (iii) declining income convergence, (iv) increased sorting by skills across space, and (v) persistent pockets of nonemployment. Together, these facts suggest that even if income differences across space have declined, the remaining economic differences may be a greater source of concern. Consequently, it may be time to target proemployment policies toward the most distressed areas.

#### Inequalaity doesn’t hurt multilat

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

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

#### Multilat and softpower fail

Naazneen BARMA, Naval Postgraduate School national security affairs professor, 13 [“The Mythical Liberal Order,” National Interest, March/April, http://nationalinterest.org/print/article/the-mythical-liberal-order-8146]

Assessed against its ability to solve global problems, the current system is falling progressively further behind on the most important challenges, including financial stability, the “responsibility to protect,” and coordinated action on climate change, nuclear proliferation, cyberwarfare and maritime security. The authority, legitimacy and capacity of multilateral institutions dissolve when the going gets tough—when member countries have meaningfully different interests (as in currency manipulations), when the distribution of costs is large enough to matter (as in humanitarian crises in sub-Saharan Africa) or when the shadow of future uncertainties looms large (as in carbon reduction). Like a sports team that perfects exquisite plays during practice but fails to execute against an actual opponent, global-governance institutions have sputtered precisely when their supposed skills and multilateral capital are needed most. WHY HAS this happened? The hopeful liberal notion that these failures of global governance are merely reflections of organizational dysfunction that can be fixed by reforming or “reengineering” the institutions themselves, as if this were a job for management consultants fiddling with organization charts, is a costly distraction from the real challenge. A decade-long effort to revive the dead-on-arrival Doha Development Round in international trade is the sharpest example of the cost of such a tinkering-around-the-edges approach and its ultimate futility. Equally distracting and wrong is the notion held by neoconservatives and others that global governance is inherently a bad idea and that its institutions are ineffective and undesirable simply by virtue of being supranational. The root cause of stalled global governance is simpler and more straightforward. “Multipolarization” has come faster and more forcefully than expected. Relatively authoritarian and postcolonial emerging powers have become leading voices that undermine anything approaching international consensus and, with that, multilateral institutions. It’s not just the reasonable demand for more seats at the table. That might have caused something of a decline in effectiveness but also an increase in legitimacy that on balance could have rendered it a net positive. Instead, global governance has gotten the worst of both worlds: a decline in both effectiveness and legitimacy. The problem is not one of a few rogue states acting badly in an otherwise coherent system. There has been no real breakdown per se. There just wasn’t all that much liberal world order to break down in the first place. The new voices are more than just numerous and powerful. They are truly distinct from the voices of an old era, and they approach the global system in a meaningfully different way.

#### Drugs not key to cartels---they’ve diversified

Stephanie **Leutert 16**, Director of the Mexico Security Initiative at the University of Texas at Austin, “Fewer Drugs Doesn't Necessarily Mean Less Violence,” 10/20/16, https://www.lawfareblog.com/fewer-drugs-doesnt-necessarily-mean-less-violence

Mexico’s organized criminal groups are **no longer mere drug traffickers**, whose singular revenue streams would disappear if Americans kicked their drug habits. Instead, over the past decade, Mexico’s criminal groups have moved rapidly into a wide range of illicit activities, such as **extortion**, **stealing oil**, **kidnapping**, and **taxing migrant smugglers**. They’ve even gained a foothold in what used to be informal or even **legal markets**: pirated CDs, limes and avocados, and used cars, for example. These are not just drug cartels any more. Most of them are diversified non-industrial criminal conglomerates of a sort. **Think Samsung, only with guns and murder** instead of heavy industry. To really understand the real world effect that fewer drug dollars would have on Mexico’s violence, we’d need to know how much money these groups make overall and how much of it comes from drugs. Sound simple? It shouldn’t. Measuring any illicit market or activity is notoriously difficult and imprecise. Plus if figuring out even the total amount of drug money is tough, trying to decipher how much cartels reap from their other illicit activities is even harder. Many of these activities (like extortion and kidnapping) are never reported and there are few indicators or reliable surveys to get a sense of the true and up to date scope. But lucky for us, analysts and scholars haven’t stopped trying, and their estimates help us get a sense of these activities importance. Let’s take the Knights Templar cartel in Michoacán as an example. Back in their violent heyday a few years ago, the group’s number one revenue source was not the methamphetamines or cocaine that they trafficked, but rather the state’s mining industry. This was followed by their **extortion of other industries**, with the group illegally taxing an estimated 85 percent of Michoacán businesses, and then illegal logging. This means that stripping the Knights Templar of any drug revenues would have hurt the group’s bottom line, but certainly wouldn’t have been a coup de grace. This brings us to one more important factor to consider when thinking about the effect of decreased drug money on violence in Mexico: revenue distribution. Some of the drug money filters back to Colombia or criminal groups in other countries, but the vast majority goes to Mexican drug traffickers, more specifically: the Sinaloa Cartel and increasingly the Cartel Jalisco New Generation (CJNG). This means that the effects from dried up drug money would hit these two big groups particularly hard. And as the New York Times’ op-ed notes, this is a very good thing. However, as with the example of the Knights Templar, there are at least **forty or more smaller groups** operating in Mexico that lack a serious foothold in international drug trafficking networks. Instead, they also rely on the other criminal activities mentioned above to help line their pockets. And unfortunately, these groups are **also to blame** for large chunks of Mexico’s violence.

#### High food prices reduce poverty – best, newest stats are NEG

-linear relationship – 1% increase in price reduces poverty up to 64%

-happens fast – within one to two years – sequencing analysis supports

Heady, Research Fellow @ International Food Policy Research Institute, 14

(Derek, Higher food prices are better for the poor in the long run, <http://europesworld.org/2014/05/28/higher-food-prices-are-better-for-the-poor-in-the-long-run/#.WIa_U_krJOp>)

The mid-2000s saw some fundamental shifts in the global economy, not least the many global imbalances and policy mistakes that contributed to the financial crisis. Less well known, however, is the dramatic reversal in international food price trends. After a long-term secular decline over the 1980s and 1990s, food prices surged upwards from 2006 to 2008. The international prices of wheat and maize approximately doubled over this period and the price of rice spectacularly tripled in the space of a few months between late 2007 and mid-2008. These rapid changes in the prices of mankind’s most essential commodity became known as the “global food crisis”, but many researchers are now questioning whether it should ever have been labelled as such, as it has since been shown that higher food prices can greatly contribute to poverty reduction in rural communities. Of course this surge in food prices was not labelled a crisis without some justification. Few experts predicted the surge in food prices, and few knew when it would end. Major players in the international grain trade panicked in response to this uncertainty and withheld supply through export restrictions, or imported far more than they normally would in order to sure up stocks. The UN’s World Food Program faced tremendous difficulties in obtaining the grains it needed to distribute to the world’s most vulnerable people. Preliminary evidence and logic also suggested that the bulk of the world’s poor buy more food than they produce, meaning higher food prices would reduce their disposable incomes (at least in the short term). The urban poor were particularly hard hit – since they earn little or no income from farming – and the peak of the 2008 crisis saw food riots across many developing countries, and even the overthrow of the government in Haiti. But although the surge in global food prices was a crisis in some ways, it is also possible that higher food prices have helped reduce global poverty in the long term. The reason is this: While the poor invariably spend much of their income on food, many of them also derive that income from growing food or other agricultural commodities. Indeed, the vast majority of the world’s poor (defined by the World Bank as those living on less than $1.25 per day) live in rural areas; perhaps as much as 75%. Most of these depend primarily on family farming for their livelihoods, or on hiring themselves out as agricultural workers. In the short term, it is true that many of the rural poor will not produce enough food to feed themselves, and could therefore be hurt by higher food prices. But higher food prices also lead farmers to invest more in agriculture in an effort to increase their profits. One of these investments is hiring more labour, and agriculture in developing countries is highly labour-intensive. This increased demand for labour will have a large impact on the wages of the poor, especially in economies with large agricultural sectors, especially since labour is effectively a non-tradable commodity with no international substitutes. For these reasons, several economists are beginning to find it quite conceivable that higher food prices could ultimately benefit the poor. Recent research at the International Food Policy Research Institute examined the impact of higher food prices on poverty rates, in a sample that covers some 68 developing countries and over three decades of data. Our results overwhelmingly suggest that increases in food prices predict reductions in poverty, rather than increases. Moreover, the predicted effects are relatively large: A 1% increase in real food prices is expected to reduce the $1.25 per day poverty rate anywhere between 0.35 and 0.64 percentage points. The evidence also points to these benefits emerging relatively quickly – in the space of one to two years. Two other recent studies have also suggested that wage responses to higher food prices are large enough to overturn the idea that higher food prices hurt the poor. World Bank research on rural India, the country with the single largest concentration of the world’s poor, found that wage responses are large enough to overturn the initially adverse effect of higher food prices on disposable incomes. Furthermore, IFPRI researchers have used an economy-wide simulation model to separate the short and long-term effects of higher food prices on Uganda’s poor. As in rural India, wage responses in Uganda overturn the initial conclusion that higher food prices increase poverty. In the long run, higher prices are actually a boon for poverty reduction.

# 2NC

## States

#### 1---USFG

**Wordnet**, 200**6**

[Wordnet 3.0 by Princeton University, "United States government," http://dictionary.reference.com/browse/united+states+government, ]

united states government- noun

the executive and legislative and judicial branches of the federal government of the United States

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

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

C. States Both Lead and Initiate Antitrust Litigation

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

**(Footnote 127 starts)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(Footnote ends)**

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

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

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

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

#### -Literature and solvency advocates check

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

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

#### The CP gets around pre-emption by engaging in regulatory oversight – that allows anti-trust exemptions to apply if and only if they meet state laws first to register – here’s the same author as the first 1AC card

Sandeep **Vaheesan and** Nathan **Schneider 2019** – Sandeep Vaheesan - Legal Director, Open Markets Institute. Nathan Schneider - †Assistant Professor, Department of Media Studies, University of Colorado Boulder. “Cooperative Enterprise as an Antimonopoly Strategy” <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1000&context=pslr>

D. **States**: **Authorize and Actively Supervise Cooperatives** The Supreme Court has created the state action immunity to protect the legislative and regulatory of states from antitrust attack. States can enact statutes and regulations that restrict competition without risk of antitrust liability. Private parties can also invoke the state action immunity if they can establish that they are acting pursuant to clearly articulated state policy and subject to active supervision by the state. Like other private entities, cooperative businesses are entitled to the state action immunity and protection from antitrust lawsuits if they satisfy this two-part test. The Court established this doctrine in the 1943 decision Parker v. Brown. 279 The plaintiff in that case challenged a California regulatory scheme that governed the production and distribution of raisins.280 The Supreme Court held that the state was immune from antitrust liability. It wrote that “[t]he Sherman Act makes no mention of the state . . . and gives no hint that it was intended to restrain state action or official action directed by a state.”281 The Court further noted that “[t]he sponsor of the bill which was ultimately enacted as the Sherman Act declared that it prevented only ‘business combinations.’”282 While a group of private producers who engaged in collusion would face antitrust liability, this conduct was immune once it had the imprimatur of state sanction.283 The Court later articulated the standard by which private parties could qualify for the state action immunity. In California Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc, 284 the Court held that the activities of private parties were immune from antitrust challenge if they satisfied two conditions.285 The Court wrote that “first, the challenged restraint must be one clearly articulated and affirmatively expressed as state policy; second, the policy must be actively supervised by the State itself.”286 State-granted authority to act is not sufficient to satisfy the first prong; the anticompetitive outcome must be “the ‘foreseeable result’ of what the State authorized.”287 Active supervision means that a state entity reviewed the substance of the anticompetitive act and exercised the power to ratify or reject it.288 Unless both conditions are met, a private party is not entitled to state action immunity. In a 2015 decision, the Supreme Court further clarified the meaning of active supervision by the state. In North Carolina Board of State Dental Examiners v. Federal Trade Commission, 289 the Court held that private actors had to be supervised by an independent state authority to qualify for the state action immunity.290 Supervision by a state agency “dominated by market participants” does not satisfy the active supervision requirement.291 The majority wrote that such state agencies are indistinguishable from private trade associations and “pose the very risk of self-dealing [the active] supervision requirement was created to address.”292 As a result, for such agencies to claim state action immunity they must show that they are acting pursuant not only to clearly articulated state policy but also are subject to active supervision by the state.293 **States can use the state action doctrine to promote the growth of democratically accountable cooperatives**. **They can pass laws authorizing cooperatives to engage in collaborative activities and subject this joint conduct to active state supervision**. **By doing so, states can limit the application of federal antitrust laws to cooperatives**. **Because every state already has a statute for chartering cooperatives,294 states would principally have to work toward establishing regulatory oversight**. This oversight could be provided through the executive branch, courts, or regulatory agencies, but importantly not through a state agency “dominated by market participants.”295 Provided they are acting pursuant to state authorization and supervision, cooperatives would have greater freedom to operate. **While cooperatives would not enjoy legal carte blanche, they would be free to engage in joint action that may otherwise run afoul of the federal antitrust laws**. **For instance, a bargaining cooperative composed of small businesses would be immune from federal antitrust law so long as it acts pursuant to state authority and is actively supervised by a state agency**. **State law and regulation can account for the distinctive needs and objectives of cooperatives, which may not always conform to the prevailing strictures of antitrust law.**

#### Diversity of state statutes prove

Matthews 96 - Mary Beth Matthews. Associate Professor at the University of Arkansas School of Law in Fayetteville. “Current Developments In The Law Regarding Agricultural Cooperatives” https://aglawjournal.wp.drake.edu/wp-content/uploads/sites/66/2016/09/agVol01No2-Matthews.pdf

**It is perhaps not surprising that a corporations-oriented** Delaware **Supreme Court would reach** **a narrow interpretation of shareholder rights**. In fact, the court expressed its reluctance to enlarge or expand corporate law lest it compromise the consistency and established reliability of that body of law. However, an expanded interpretation of member rights could have been fashioned specifically for the cooperative form of business. **Several cooperative statutes specifically create inspection rights,17 and courts in other states have allowed inspection rights to cooperative shareholders18** and members of nonstock cooperatives.19 Corporate law is intended to supplement cooperative law, not to contradict or supplant it in a manner inconsistent with the cooperative objective.

#### Even regulate mergers

Matthews 96 - Mary Beth Matthews. Associate Professor at the University of Arkansas School of Law in Fayetteville. “Current Developments In The Law Regarding Agricultural Cooperatives” https://aglawjournal.wp.drake.edu/wp-content/uploads/sites/66/2016/09/agVol01No2-Matthews.pdf

C. **Merger Disputes** between cooperative and member also may arise during a merger. A question that frequently arises when cooperatives merge is whether cooperative members are entitled to dissenters’ rights.29 Traditional corporate law permits shareholders dissenting from a merger to exercise appraisal rights to receive the value of their shares.30 Whether such rights are afforded to cooperative members depends upon state law. **Many state cooperative statutes contain specific references to merger,**31 although only a few detail the rights of members who dissent.32 In the absence of a cooperative provision, general corporate law usually will be cited.33 Although corporate law only applies if its provisions are not inconsistent with the cooperative statute, whether corporate appraisal rights apply to cooperatives still may be subject to dispute.34

#### Even then, district court precedents go negative

Pratter 11 (Gene Ellen Kreyche Pratter is a United States District Judge of the United States District Court for the Eastern District of Pennsylvania and former nominee to the United States Court of Appeals for the Third Circuit, IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA IN RE: PROCESSED EGG PRODUCTS : ANTITRUST LITIGATION : : MDL No. 2002 : 08-md-02002, THIS DOCUMENT APPLIES TO: : ASSOCIATED WHOLESALE GROCERS, INC. v. : UNITED EGG PRODUCERS, No. 11-cv-3520 : MEMORANDUM GENE E.K. PRATTER, J. 12-19, <https://www.paed.uscourts.gov/documents/opinions/11D1368P.pdf>, y2k)

As previously discussed, although the Complaint contains factual allegations that could give rise to a federal antitrust claim, or factual allegations that ostensibly appear to anticipate a federal defense, the existence of these possibilities do not provide grounds for federal question jurisdiction when Plaintiffs do not actually assert a federal antitrust claim.

[Footnote starts]

9 The Court does not address in this decision whether the Capper-Volstead Act or the other statutes create a recognized defense to the KRTA. However, the Court observes that Defendants, in recounting the development of the Capper-Volstead Act in light of the history of “prosecutions of [agricultural] cooperatives under state antitrust laws,” quote the Supreme Court for the contention that “[s]ome state courts had sustained antitrust charges against agricultural cooperatives, and as a result eventually all the States passed Acts authorizing their existence.” Defs.’ Resp. at 14-15 (emphasis added) (quoting Md. & Va. Milk Producers Ass’n v. United States, 362 U.S. 458, 464 (1960)). Seemingly, the Cooperative Marketing Act, Kan. Stat. Ann. §§ 17-1601 to 17-1636, which provides, “[n]o association, contract, method or act which [under Kansas law qualifies as, or is conduct attributed to, an agricultural cooperative association] shall be deemed a conspiracy or combination in restraint of trade or as creating an illegal monopoly,” id. § 17-1634, may qualify as one such state statute. See Kan. Wheat Growers’ Ass’n v. Charlet, 236 P. 657, 658 (Kan. 1925) (commenting that the Kansas Supreme Court had “held the statute [the Cooperative Marketing Act] to be valid, and held the [defendant] association is not an unreasonable combination in restraint of trade, or an organization for fostering unlawful monopoly”). It follows that the Cooperative Marketing Act might provide an alternative explanation for why Plaintiffs alleged facts that could be construed as anticipating an “agricultural cooperative”-type defense. See, e.g., Compl. ¶ 106 (“These activities fall outside the legitimate objectives of any agricultural cooperative.”); id. ¶ 108 (“UEP members are large corporate competitors rather than small farmers banding together to cut out the corporate middlemen who would otherwise market their eggs. UEP members do not associate to collectively process, handle and market their products, and UEP does not provide those services. UEP does not wash, candle, grade, break, pasteurize, package, store, transport, or distribute its members’ eggs. UEP does not negotiate contracts for sale for its members.”)

[Footnote ends]

Likewise, no grounds for federal question jurisdiction exist because Plaintiffs do not have to prove (or disprove) a substantial question of federal law to make out all necessary elements of their KRTA claim. See Grable, 545 U.S. at 314-15 (recognizing that federal question jurisdiction exists when the meaning of a federal statute both is disputed and is an essential element of the plaintiff’s state law cause of action). 10 As such, the Defendants’ arguments on this score do not implicate any of the previously discussed principles concerning federal question jurisdiction, the well-pleaded complaint rule, and the artful pleading doctrine that would warrant denying the remand request. B. Complete Preemption Another way in which the artful pleading doctrine permits removal is “where federal law completely preempts a plaintiff’s state-law claim.” Rivet, 522 U.S. at 475. That is, when the preemptive force of a statute is so “extraordinary” that it “converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.” Caterpillar, 482 U.S. at 393 (quoting Metro. Life Ins. Co. v. Taylor, 481 U.S. 58, 65 (1987)); see also 13D Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3566 (“It is based on the theory that some federal statutes have such an overwhelming preemptive effect hat they do more than merely provide a defense to a state-law claim.”). 11 This occurs “when a federal statute wholly displaces the state-law cause of action.” Anderson, 539 U.S. at 6, 8; see also In re Cmty. Bank of N. Va., 418 F.3d 277, 294 (3d Cir. 2005). “Once an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law.” Caterpillar, 482 U.S. at 393. 12 The Court of Appeals for the Third Circuit has determined that complete preemption exists only when (1) the federal statute that ostensibly serves as the basis for removal “contains civil enforcement provisions within the scope of which the plaintiff's claim falls,” and (2) there is “a clear indication of a Congressional intention to permit removal.” Goepel v. Nat’l Postal Mail Handlers Union, 36 F.3d 306, 311 (3d Cir. 1994) (quoting R.R. Labor, 858 F.2d at 942); Allstate Ins. Co. v. 65 Sec. Plan, 879 F.2d 90, 93 (3d Cir. 1989). Although our Court of Appeals has not revisited the test in recent years, the second-part of this inquiry may have been modified by a subsequent Supreme Court decision to “focus[] on whether Congress intended the federal cause of action to be exclusive rather than on whether Congress intended that the cause of action be removable.” Anderson, 539 U.S. at 9 n.5. Under her formulation of the test, “Congressional intent remains the touchstone, however.” 14B Wright & Miller, supra § 3722.2. In one case illustrative of complete preemption, the Supreme Court “found complete preemption” when “the federal statutes at issue provided the exclusive cause of action for the claim asserted and also set forth procedures and remedies governing that cause of action.” Anderson, 539 U.S. at 8. However, the Supreme Court has recognized that “the absence of a federal private right of action as evidence [is] relevant to, but not dispositive of, the ‘sensitive judgments about congressional intent’ that [28 U.S.C.] § 1331 requires.” Grable, 545 U.S. at 318. Indeed, “the combination of no federal cause of action and no preemption of state remedies . . . [is] an important clue to Congress’s conception of the scope of jurisdiction to be exercised under § 1331. [Thus, a] missing cause of action [is] not . . . a missing federal door key, always required, but [is] a missing welcome mat, required in the circumstances, when exercising federal jurisdiction over a state . . . action would have attracted a horde of original filings and removal cases raising other state claims with embedded federal issues.” Id. Courts often emphasize that complete preemption, which addresses federal subject matter jurisdiction, is “a distinct concept from ordinary preemption.” R.R. Labor, 858 F.2d at 941 (citing Caterpillar, 482 U.S. at 398). In contrast, “[o]rdinary preemption governs what substantive law—federal or state—ought to control a claim styled under state law.” Krashna v. Oliver Realty, Inc., 895 F.2d 111, 114 n.3 (3d Cir. 1990); see also Guckin v. Nagle, 259 F. Supp. 2d 406 (E.D. Pa. 2003) (“In other words, complete preemption addresses the forum, i.e., federal or state, where the claim must be heard; ‘ordinary preemption’ addresses the substantive rule of decision, i.e., federal or state, which the court must apply.”); Vorhees v. Naper Aero Club, Inc., 272 F.3d 398, 403 (7th Cir. 2001) (“Only ‘complete’ preemption affects federal subject matter jurisdiction. ‘Conflict’ preemption relates to the merits of a claim. It comes into play any time a state law allegedly conflicts with federal law.”); Wright & Miller, supra § 3556 (“The name [of ‘complete preemption’] is misleading and this doctrine should be contrasted with ‘ordinary’ or ‘conflict’ preemption, under which federal law provides a defense to a state-law claim. ‘Complete preemption,’ in contrast, is actually a doctrine of subject matter jurisdiction.” (footnote omitted)). Ordinary defensive preemption is embodied in the three categories of express preemption, conflict preemption, and field preemption. See Farina v. Nokia Inc., 625 F.3d 97, 115 (3d Cir. 2010) (citing Hillsborough Cnty. v. Automated Med. Labs., Inc., 471 U.S. 707, 713 (1985)). However, “[t]he fact that a defendant might ultimately prove that a plaintiff’s claims are pre-empted . . . does not establish that they are removable to federal court.” R.R. Labor, 858 F.2d at 941 (quoting Caterpillar, 482 U.S. at 398). As such, “it is now settled law that a case may not be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff’s complaint, and even if both parties concede that the federal defense is the only question truly at issue.” Caterpillar, 482 U.S. at 393 (citing Franchise Tax Bd., 463 U.S. at 12). Defendants contend that the principles of complete preemption apply to the KRTA claim by arguing that federal law regulating the economic activities of agricultural cooperatives completely preempts state law. According to Defendants, the “Plaintiffs’ claims against [a trade group] and the individual Defendants arise in an area that is completely preempted by federal law” because the Capper-Volstead Act, the Agricultural Cooperative Marketing Act, and Section of the Clayton Act “comprehensively regulate[] the joint economic activities of agricultural cooperatives.” Defs.’ Resp. at 12. As Plaintiffs correctly contend in rejoinder, however, Defendants have not sustained their burden in demonstrating that removal is appropriate on the basis that the Plaintiffs’ claim is completely preempted by the Capper-Volstead Act and the like. For example, Defendants have not pointed to any authority that suggests that any of the federal statutes that purportedly regulate the economic activities or competition of agricultural cooperatives create an exclusive cause of action or set forth procedures and remedies governing such actions. Moreover, the Defendants do not take the position that the Capper-Volstead Act, or the other statutes in combination or separately, create any sort of cause of action—and certainly not an exclusive cause of action—but rather provide for a kind of “immunity” to antitrust claims. Indeed, Defendants argue that those statutes “permit joint actions that might otherwise be illegal” and that “should cooperatives engage in anticompetitive behavior beyond that allowed by these statutes, then federal law provides a remedy through the Sherman Act.” Defs.’ Suppl. at 5-6; see also Defs.’ Resp. at 12-13. In other words, Defendants appear to recognize that any federal cause of action in antitrust cases involving agricultural producers arises under the Sherman Act, not the Capper-Volstead Act or similar federal law. 13 Defendants also have failed to demonstrate that those statutes manifest the Congressional intent that Defendants attempt to assign them. Defendants claim that the statutes “reflect a sustained congressional intent that agricultural cooperatives affirmatively be permitted to act jointly with and on behalf of their members,” Defs.’ Resp. at 12-13, and as such the statutes “evince an intent to occupy the field and preempt state law.” Defs.’ Suppl. at 5. Defendants cite excerpts of the plain language of the Capper-Volstead Act, the Agricultural Cooperative Marketing Act, and Section 6 of the Clayton Act, as well as quotations from case law and commentators that discuss those statutes in a summary manner. See Defs.’ Resp. at 13-17. 14 However, a close review of those authorities reveals that while there may be considerable Congressional interest in the economic activities of agricultural cooperatives, those authorities do not go so far as to serve as evidence that Congress intended to create a cause of action that is exclusively federal and could serve as the basis for removal, or that Congress intended these statutes to completely preempt state remedies.

#### The majority government is anti-ag monopolies---lobbying efforts will fail, but proves our politics link

-biden knows he has to take on monopolies because of the election  
-house and senate are full of anti-monopoly hard hitters

-exec branch is packed with anti-trust hounds

Philpott 21. Tom Philpott “President Biden’s Trustbusters Aren’t Just Experts on Tech. They Know About Big Ag."https://www.motherjones.com/food/2021/03/president-bidens-trust-monopoly-tech-big-ag/

President Joe Biden looks like he’s ready to bust up some monopolies, and it’s not just tech oligarchs who should be worried.

After he tapped antitrust stalwarts Lina Khan to the Federal Trade Commission and Tim Wu to the National Economic Council, media accounts focused on a possible crackdown of the giant companies that dominate the internet. “Biden taps another Big Tech trustbuster,” declared Politico Playbook. “Biden Is Assembling a Big Tech Antitrust All-Star Team,” echoed Wired. And for good reason. Khan, a legal scholar most recently at Columbia University, made headlines in 2017 with her blistering paper “Amazon’s Antitrust Paradox,” an exposé of the everything store’s monopolistic behavior and the assault on the the antitrust establishment that has allowed it to flourish. She also served as counsel for the House Subcommittee on Antitrust, Commercial and Administrative Law and co-authored its landmark 2020 report teasing out Big Tech’s anti-competitive tendencies. Wu, author of the 2018 book The Curse of Bigness: Antitrust in the New Gilded Age and also a Columbia Law School professor, is most famous for coining the phrase “net neutrality” and calling for Facebook to be broken up.

But their hirings should make agribusiness titans quake, too. Biden’s appointments might now be famous for wanting to break up big tech. But both have aimed their antitrust chops at farm country, too, says Joe Maxwell, executive director of Family Farm Action, a non-profit that fights corporate control of agriculture. “Those are tremendous choices,” Maxwell said of Wu and Kahn. “They signal a seriousness about antitrust within the Biden administration that was not indicated in his campaign.”

Like the internet, agriculture is a prime example of a sector under the grip of corporate hyper-consolidation. Democratic and Republican administrations alike have watched idly while the seed and pesticide markets merged under the control of four globe-spanning conglomerates. The German chemical giant Bayer, which subsumed US seed/agrichemical giant Monsanto in 2017, is allowed to aggressively market the herbicide dicamba (along with seeds for cotton and soybean crops designed to withstand it) with scant pushback from the Environmental Protection Agency, despite overwhelming evidence that it is easily airborne and wreaks havoc on neighbors’ land. Mega-players like Tyson, JBS, and Smithfield dominate the meat industry; they have flexed their political power during the coronavirus pandemic, operating their factory-scale slaughterhouses with little federal restraint even as tens of thousands of workers tested positive for COVID-19 and hundreds died.

But these Biden administration officials could shake up agribusiness as usual. Back in 2012, half a decade before her seminal Amazon paper, incoming Federal Trade Commission member Khan published the definitive account of the Obama administration’s ultimately failed effort to check the power that giant poultry companies like Tyson and JBS wield over their farmer-suppliers. The administration promised farmers that it would use antitrust law to level the playing field in their dealings with the meat oligopolies, only to retreat when the industry organized its Congressional allies to push back.

“By raising the hopes and championing the interests of independent farmers against agribusiness, the administration effectively reached out to the millions of rural voters who don’t normally vote Democratic but whose ardent desire to reestablish open and fair markets for their products and labor often trumps any traditional party allegiance,” Khan wrote. “Instead of translating that newfound trust into political capital, the administration squandered whatever goodwill it had begun to earn.” The Democrats’ rural America meltdowns in the 2016 and 2020 elections make her analysis look all too prescient.

Governed by a five-member panel that will soon include Khan, the FTC operates a bit like an FBI for antitrust, with the power to launch investigations and lawsuits against companies suspected of violating antitrust law.

As for Wu, in a 2018 Medium post called “Antitrust’s Most Wanted,” he listed the “10 cases the government should be investigating—but isn’t.” Landing at number four: “Big Ag.” Over the last five years, Wu wrote, the “agricultural seed, fertilizer, and chemical industry has consolidated into four global giants: BASF, Bayer, DowDuPont, and ChemChina.” As a result, “seed prices have tripled since the 1990s, and since the mergers, fertilizer prices are up as well.” Wu called for an investigation of whether the US Department of Justice was right to approve the spasm of mergers that rolled up the industry in the mid-‘2000s.

Back in November, just weeks after the presidential election, I made the case that incoming President Joe Biden should muster the federal regulatory apparatus to rein in the power of Big Agribusiness. The idea seemed fanciful at the time. Famously allied with Big Credit Card, Biden showed little appetite for challenging corporate power over his long Washington career, which dates to 1972. During the same period, federal antitrust enforcement faded and dozens of industries fell under the grip of a handful of companies, which used their heft to boost profit, stifle innovation, tamp down worker wages, and gain political influence.

But since becoming president, America’s oldest incoming chief executive appears to have learned a new trick. As Mother Jones’ Kara Voght recently showed, Biden has stuffed his administration with proteges of his vanquished 2020 presidential rival, Sen. Elizabeth Warren (D.-Mass.), who has spent much of the past decade crusading against the monopoly power of corporate behemoths. During the 2020 presidential primary, Warren vowed to “appoint trustbusters to review—and reverse—anti-competitive mergers, including the recent Bayer-Monsanto merger that should nev

#### \*\*MARKED\*\*

er have been approved.”

Barry Lynn, executive director of the anti-monopoly think-tank Open Markets Institute and a long-time, influential critic of lax US antitrust policy, says the Democratic presidential primary foreshadowed Biden’s shift. A dawning sense came over the party that the Obama administration’s failure to challenge corporate consolidation had helped stoke the emergence of Donald Trump—from the rise of giant tech platforms that facilitated the spread of misinformation, to Big Ag’s tendency to drain wealth and people from rural areas, leaving behind fertile ground for right-wing populism.

While Biden avoided detailed discussions of economic policy to stay laser-focused on the flaws of Donald Trump, high-profile contenders like Warren, Bernie Sanders, and Cory Booker “displayed an awareness of the monopoly problem that we haven’t seen in national politics in 110 years,” Lynn says. Biden won the political battle, but his opponents succeeded in establishing unchecked corporate power as a menace to be confronted by the new administration. And all three made agriculture a key part of their pitch.

Of course, not every Biden personnel choice heralds a crackdown on the power of Big Ag. To lead the USDA, he tapped Tom Vilsack, a former marketing executive for the (highly consolidated) US dairy industry. The USDA plays a key role in overseeing the agribusiness landscape. The ag secretary advises the Federal Trade Commission and Department of Justice on mergers; and enforces rules designed to protect livestock farmers from being pushed around by meat packers.

Before he was a dairy exec, Vilsack steered the USDA during the entire Obama era, presiding over the failed attempt to thwart Big Poultry chronicled by Khan. A former governor of Iowa, Vilsack also served as Biden’s top rural adviser during the 2020 campaign—and advised him against taking on Big Ag from the campaign trail, because of the “substantial number of people hired and employed by those businesses here in Iowa,” as he told a political podcast. In reality, agribusiness corporations aren’t major employers in Iowa, and the jobs they do provide tend to be low-paying and highly dangerous ones in the meatpacking sector. Biden followed Vilsack’s advice—and then promptly placed fourth in the Iowa caucus and later flopped in the general election throughout the rural Midwest. Biden’s decision to restore Vilsack’s reign at the USDA drew strong support in agribusiness circles.

But even Vilsack’s department will have an antitrust champion within its midst. In early March, the department appointed Andy Green, a researcher at the liberal think-tank Center for American Progress, to a new position: the USDA’s senior advisor for fair and competitive markets. In 2019, at the height of the Democratic presidential primary, Green co-authored a paper arguing that “growing corporate power has left relatively small farms and ranches vulnerable to exploitation at the hands of the oligopolies with which they do business.” The piece didn’t mince words, urging antitrust enforcers to “take affirmative steps to break up monopolies.” It also proposed a “temporary moratorium on mergers in the agriculture sector” and a revival of the “powerful tools of antitrust enforcement that have been eroded over the past four decades.”

“My expectation is we’re going to see some pretty dramatic actions,” Barry Lynn, executive director of the anti-monopoly think-think Open Markets Institute, says.

The question now becomes how these key personnel moves translate to change on the ground. Under Biden, will the giant meat companies continue to squeeze workers and farmers with little to worry about from federal regulators? Will Bayer and Corteva (the agribiz offspring of the Dow-DuPont mega-merger) maintain their near-monopoly over the US seed and pesticide markets? Will yet another wave of mergers wash over the industries that feed us, further concentrating profits and lobbying power?

Lynn says Big Ag and other consolidated industries face a different political landscape than they did a decade ago—and not just within the White House. Then, Bernie Sanders was a backbencher who rarely drew headlines. Now, he’s a celebrity lion of the Senate—and has potent allies including Warren, Booker, Amy Klobuchar, and others joining him on the antitrust beat. On the House side, a “squad” of insurgent progressive Democrats, led by Rep. Alexandria Ocasio-Cortez (D.-N.Y.), represent a budding power base eager to take on Big Everything. Two major antitrust champions—Booker and frequent Big Ag critic Rep. Ro Khanna (D.-Calif)—recently joined the powerful Senate and House agriculture committees, respectively.

“This isn’t 2009 or 2010,” Lynn says. “We see a citizenry that is awake to the monopoly problem, and we have policymakers in power that intend to get it fixed.” He adds: “They’re still fighting resistance within the bureaucracy, immense resistance in business community and within the Republican Party. But it’s my expectation we’re going to see some pretty dramatic actions.”

#### Multistate suits give state enforcement negotiating leverage---solvs deterrence better

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

SAGs also found that banding together gave a larger group of litigating states more negotiating leverage over the defendant businesses. One small state suing a large corporation might be but a "flea on an elephant,"60 but corporate defendants facing multiple state litigators found it increasingly difficult to fight state actions via a lengthy war of attrition. By pooling resources, states could give more sustained support to their litigation efforts, and in so doing force industry to deplete their resources. 61 Further, by virtue of involving several states, many of these multistate suits were able to gain significantly more national media attention than would individual state litigation efforts. For the industries targeted in the multistate suits, this meant more potentially negative publicity extended over a long period. In an early multistate suit against Sears arising from an undercover investigation by the California SAG, for example, several SAGs alleged that the retailer’s auto repair centers had systematically overcharged customers for routine repairs. The accusations received substantial media coverage, and the company estimated that its sales dropped off fifteen percent nationwide because of the negative attention.62 The blow to Sears’s corporate image led the company to negotiate a significant settlement with 43 SAGs, which included agreements to give $8 million worth of coupons to customers and to help develop a national program standardizing auto repair "best practices" together with the attorneys general.63

#### No commerce clause challenges

Hildabrand 14 (Clark L. Hildabrand, Assistant Solicitor General, Tennessee Attorney General's Office, Interactive Antitrust Federalism: Antitrust Enforcement in Tennessee Then and Now, 16 Transactions: TENN. J. Bus. L. 67, y2k)

On one hand, some critics of state antitrust enforcement focus on the interstate character and impact of state antitrust litigation. 28 Due to the nationalization and increased interconnectivity of the country's economy, a broader reading of the Interstate Commerce Clause and other federal antitrust laws, that at one time simply precluded state enforcement of activities with interstate effects, would, today, effectively render state antitrust laws useless.29 However, the U.S. Supreme Court has consistently held that federal antitrust laws do not preclude or preempt application of similar or more far-reaching state antitrust statutes.30 As long as the state law or policy in question reflects a legitimate state public interest and is not excessively discriminatory or protectionist, state antitrust enforcement does not run afoul of the Dormant Commerce Clause. 31 State antitrust enforcement thus overcomes one potential barrier for situations in which the regulated activity has interstate effects

## Adv 1

#### Their ev is about medium firms being squeezed out

UCS 21, Union of Concerned Scientists, citing Losing Ground which was written by Rafter Ferguson, a former staffer, 04/14/21, Bigger Farms, Bigger Problems, https://www.ucsusa.org/resources/bigger-farms-bigger-problems

Consolidation has had troublesome consequences for many rural communities. It has come primarily at the expense of midsize farms, which have historically been the economic backbone of these communities. It has reduced opportunities for new farmers, who have become increasingly rare—and this has hit Black farmers, already fighting an uphill battle against multiple barriers imposed by structural racism, especially hard.

In a 2021 analysis, Losing Ground, we looked at US Department of Agriculture (USDA) Census of Agriculture data from the years 1978 through 2017 to connect the dots between farmland consolidation and steep declines in the share of new farmers and Black farmers in US agriculture.

The big get bigger

Consolidation happens when large farms acquire land that formerly belonged to smaller ones. Government policies that have consistently favored larger farms—along with the competitive advantage granted by economies of scale—made consolidation into a pervasive trend across the country for nearly a century. Over time, this has has meant a shrinking number of farm operations, as more land is taken up by a small number of larger and larger farms.

Over the 40-year period of our study, overall US farmland acreage declined 13 percent. But the amount of harvested cropland in large farms—those with more than 1000 acres—nearly doubled, growing by an area larger than the state of California. At the same time, midsize crop farms (50-1000 acres) shrank to just half of their former number and acreage. Though the number of small crop farms (less than 50 acres) increased, their total acreage decreased, indicating that their average size is shrinking.

As the study sums it up, “large crop farms are getting larger, small crop farms are getting smaller, and midsize crop farms are disappearing.”

Nowhere are these trends more pronounced than in the Midwest, where harvested cropland in large farms more than quintupled.

**\*\*\*Minnesota Card Starts\*\***

Consolidation means exclusion

There are multiple reasons why we should be concerned about increasing consolidation. For one thing, larger farms mean that fewer people can be farmers. Consolidation operates to make farming a more exclusive club—and this has the largest impact on groups that are already underrepresented.

Our study focused on how consolidation may be driving exclusion from farming for two populations: new farmers, focusing on the Midwest, and Black farmers, focusing on the 16 states with the largest number of Black farmers in 2017.

Barriers to new farmers (and new ideas)

The energy, innovation, and initiative that new practitioners bring are crucial to the future of any profession—and farmers are no different. Our food system is going to be facing huge challenges over the coming decades, and we need an expanding, diversifying, creative community of farmers to meet those challenges. Consolidation operates in exactly the wrong direction.

During the study period, the proportion of new farmers in the US fell, and the average age of farmers rose—especially in the Midwest, where the proportion of new farmers shrank by nearly one-third and their average age rose by a decade.

Both trends were more pronounced in counties where consolidation was happening fastest: in these counties, the share of new farmers declined 56 percent faster, and average farmer age rose 26 percent faster.

**\*\*\*Minnesota Card Ends\*\***

Barriers to Black farmers

Farmland in the United States has always been highly concentrated among White male farmers and owners—but this has gotten worse, not better, over the past century. In 1920, Black farmers made up 14 percent of all US farmers. By 2017, that figure had shrunk to 1.6 percent.

The same economic pressures that drive consolidation for all farmers have affected Black farmers as well. But systemic racism has amplified these pressures through discriminatory policies and laws. In one example, laws governing “heirs' property”—an informal system in which land is passed down through generations, often to multiple family members in common, without a will—often left Black farmers without clear title to their farmland, restricting their access to credit and federal farm supports and leaving them vulnerable to losing their farms. But heirs' property is just one of the ways that Black farmers have been dispossessed, and the many decades of systematic discrimination by the USDA are well documented.

To see the impact of farmland consolidation on Black farmers, the study looked at the association between rates of consolidation and how states ranked in proportion of Black farmers. States with faster consolidation tended to fall in those rankings, indicating Black farmers in those states are losing ground fastest.

Why it matters: human and environmental impacts of consolidation

Access to farmland is access to political and economic power. When this power is concentrated in the hands of a small segment of the community, the community suffers: jobs disappear, population shrinks, physical and social infrastructure weakens.

Historically, midsize farms have been the foundation of healthy rural communities. The decline of these farms in favor of larger ones has been called the “hollowing out” of US agriculture. Research has shown that more midsize farms mean more equitable distribution of income, more money circulating in the local economy, more civic engagement, and a healthier community social fabric.

The land itself feels the consequences of consolidation: growth in farm size is associated with landscape simplification, in which large-scale monocultures replace natural vegetation and more fertilizers and pesticides are required, degrading soil health and increasing vulnerability to erosion and climate impacts. Because more farmland in larger farms tends to be rented rather than owned, there is less incentive to invest in measures to improve farmland for the long term by building soil health.

In short, when farms grow bigger and farmers grow fewer, bad things happen.

#### AND—Mergers are irrelevant – Big ag has supply chain control. They’ll do it with contracting!

Hafiz & Miller 21 (Hiba Hafiz, Hiba Hafiz is an assistant professor of law at Boston College Law School. Nathan Miller is the Saleh Romeih associate professor at the Georgetown University McDonough School of Businessand Nathan Miller, Associate Professor Nathan Miller is the Saleh Romeih associate professor at the Georgetown University McDonough School of Business. His research covers topics in industrial organization and antitrust economics, with a recent focus on collusion and the competitive effects of mergers. He has published articles in the American Economic Review, Econometrica, and the RAND Journal of Economics, among other journals. Prior to joining Georgetown University, Miller served as an economist at the U.S. Department of Justice, where he provided economic analysis for antitrust investigations. He holds a Ph.D. in economics from the University of California, Berkeley and a B.A. from the University of Virginia., “Competitive Edge: Big Ag’s monopsony problem: How market dominance harms U.S. workers and consumers” https://equitablegrowth.org/competitive-edge-big-ags-monopsony-problem-how-market-dominance-harms-u-s-workers-and-consumers/)

Big Ag is able to exercise its buyer power through its industry-transforming supply chain restructuring that allows lead firms to extract rents at each layer of their supply chain for their profit, and most especially, from small farmers and workers at the production level.2 Starting in the 1960s, poultry firms such as Tyson vertically integrated to own or control hatcheries, feed mills, veterinary care, slaughterhouses, processors, and sales contracts with poultry growers. The pork industry followed Tyson’s lead in the early 1980s, extending top-down ownership or control of hog production, packing, and processing in large-scale farms and processing facilities.

The only level of the supply chain not directly owned or operated by Big Ag chicken and pork producers is the growing stage, where Big Ag processors rely on small farmers to grow and raise the broilers and hogs provided by Big Ag-provided breeders, hatcheries, farrows, and weaners to slaughter weight. Still, Big Ag firms in these two meat sectors can squeeze these growers’ margins from above and below: Their inputs are supplied by Big Ag, and their product is sold to Big Ag.

Big Ag does this through contractual controls, forcing growers into one-sided production and marketing contracts while using their significant control over spot or cash markets to limit sales outside those contracts. Around 97 percent of chicken broilers are raised by contract growers in “take it or leave it” contractual arrangements; 63 percent of hogs were contractually raised in 2017, nearly double that in 1997.

These arrangements are [devastating] crippling. Chicken growers’ production contracts require significant sunk investments—around $1 million in mostly debt-financing—and growers are required to purchase nearly all inputs, veterinary care, and technical assistance from vertically integrated buyers. Buyers can change or terminate contracts for almost any reason. Farmers sell their chickens in a “tournament system,” where their chickens compete for rankings with others given the same feed amount, but the ranking process lacks transparency—buyers weigh chickens behind closed doors and provide no standards for knowing whether a farmer is “getting the same inputs as the other farmers against whom the company makes him compete,” according to Lina Khan, then-policy analyst at the New America Foundation and now an assistant professor of law at Columbia Law School.

#### The very concept of utility patents make seeds defunct

Barber 19 (Dan, chef and co-owner of the Blue Hill and Blue Hill at Stone Barns restaurants in New York and the co-founder of Row 7 Seed Company. ,6/7/19 https://www.nytimes.com/interactive/2019/06/07/opinion/sunday/dan-barber-seed-companies.html)

The knockout punch for farmer-controlled seed was the utility patent. In a landmark (and utterly bananas) decision in 1980, the Supreme Court ruled in favor of allowing patents on living organisms. It wasn’t long before the same protections were extended to crops. New advances in genetic engineering supported the argument, with companies claiming seeds as proprietary inventions rather than part of our shared commons. Utility patents restricted farmers’ freedom to save and exchange seed and breeders’ right to use the germplasm for research.

The slow march of seed consolidation suddenly turned into a sprint. Chemical and pharmaceutical companies with no historical interest in seed bought small regional and family-owned seed companies. Targeting cash crops like corn and soy, these companies saw seeds as part of a profitable package: They made herbicides and pesticides, and then engineered the seeds to produce crops that could survive that drench of chemicals. The same seed companies that now control more than 60 percent of seed sales also sell more than 60 percent of the pesticides. Not a bad business.

More than 90 percent of the 178 million acres of corn and soybeans planted last year in the United States were sown with genetically engineered seeds. It’s a vision as dispiriting as it is unappetizing.

## Adv 2

#### COVID guts them

Ajilore 20 (Olubenga, Center for American Progress – Think Tank, “Rural America Has Been Forgotten During the Coronavirus Crisis”, https://www.americanprogress.org/issues/economy/reports/2020/10/28/492376/rural-america-forgotten-coronavirus-crisis/)

In both the Aging Farmlands and Rural Middle America communities, there has been a startling increase in the percentage of counties that are considered red-zone counties. Aging Farmlands represents upper Midwest and northern Great Plains states that have elderly populations and little diversity and contain mostly agricultural lands. Rural Middle America represents upper Midwestern states and northeastern states that are majority-white and middle-income and have average college graduation rates.16 At the end of September and beginning of October, more than 200 counties in Rural Middle America have seen a one-week infection rate of more than 100 cases per 100,000 residents.17 This is very concerning because the virus has been ravaging so many communities in the past six weeks. It is as if the United States did not learn the lessons from the virus spreading through rural areas this summer.

A CAP study found that states who had premature reopenings did not experience the economic benefits estimated; in fact, their residents struggled more economically than residents in states with longer lockdowns.18 These same states with premature openings saw surges in COVID-19 cases during the summer and now are continuing to experience further outbreaks.19 This economic struggle, entirely due to the public health crisis, is a greater concern now than during the summer because policymakers have allowed the many components of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which were shown to have helped keep the economy afloat during the early part of the pandemic, to expire.20 The existing unemployment insurance program has been shown to be insufficient for many households around the country, with the average one adult, one child household facing a shortfall of nearly $3,000.21

This pandemic has been allowed to ravage the economy for more than seven months, and the data make clear that the recovery can only happen when the public health crisis ends.22 As of October 14, the United States has surpassed 216,000 COVID-19 deaths and 7.9 million cases, with numbers of cases and deaths continuing to rise across the country.23 Rural communities of color were the canaries in the coal mine when it came to the pandemic, but now the United States is at a point where all communities, both urban and rural, are being adversely affected. Rural areas in states such as Kansas, Nebraska, and Montana, which saw little impact early on, are now experiencing high levels of new infections

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#### Infrastructure prevents food supply shocks.

Jahn ’19 [Chris; August 7; president and CEO of The Fertilizer Institute; “America is in desperate need of infrastructure investment: Senate highway bill a step in the right direction,” https://thehill.com/blogs/congress-blog/politics/456602-america-is-in-desperate-need-of-infrastructure-investment-senate/]

It’s no secret that our country’s infrastructure is in desperate need of investment after years of neglect. We’ve all groaned and said some choice words when hitting deep potholes or been late to an appointment due to road or bridge closures. As our network of roads and bridges have continued to crumble, the situation has degraded from an occasional personal inconvenience to a serious barrier to national economic growth and prosperity.

The infrastructure network we depend upon to move people and commercial goods has long outlived its designed lifespan and is operating on borrowed time. For agriculture, recent flooding in the Midwest highlights how vulnerable our network is, the extensive nature of disrepair and how quickly critical food supply chains can be severed. These disruptions are not just headaches for the fertilizer and farming industries; they can potentially lead to higher prices on everyday goods for all consumers.

Last week Sens. John Barrasso (R-Wyo.), Tom Carper (D-Del.), Shelley Moore Capito (R-W.Va.) and Ben Cardin (D-Md.) demonstrated much needed leadership by introducing “America’s Transportation Infrastructure Act of 2019,” legislation that would provide $287 billion over five years to maintain and repair our crumbling roads and bridges. The funding level authorized in the bill is a nearly 30 percent increase over current levels and will be a much-needed economic shot in the arm for all communities and local economies across the country.

Our country’s roads and bridges have always played a critical role in getting plant nutrients to farmers’ fields when they are needed. But with railroad rate increases, rail service challenges and stalled reform efforts due to oversight board vacancies, roadway infrastructure is more important now than ever. Unfortunately, the state of our road system is hurting our industry’s ability to deliver fertilizer to customers. Last year we had truck drivers waiting in line for up to 11 hours to pick up fertilizer due to bottlenecks and breakdowns in road networks. This year we saw heavy rains wash away deteriorating roads and bridges that should have long ago been repaired and upgraded to standards that keep our economy growing and our communities connected. The Senate proposal would provide $6 billion over five years to address the backlog of bridges in poor condition nationwide and alleviate and prevent future network delays.

The importance of the timeliness of fertilizer deliveries cannot be overstated. The safe and reliable delivery of fertilizer to ensure that nutrients can be applied at just the right time in the growing process is absolutely essential to both keeping crop yields high enough to sate global demand and protecting the environment. The Fertilizer Institute (TFI) has for years been tirelessly promoting 4R Nutrient Stewardship, a collection of best management practices which include using the Right fertilizer source, at the Right rate, at the Right time and in the Right place. The 4Rs have been identified by multiple conservation and environmental stakeholders as one of the most impactful pathways to keep fertilizer on fields where it belongs and out of waterways where it doesn’t. A key part of that formula is getting it there at the Right time and a reliable infrastructure network is necessary to make that happen.

In addition to providing needed investment in roads and bridges, the Senate legislation supports increased research for carbon capture and storage projects. Thanks to years of investment, nitrogen fertilizer production efficiency has essentially reached its technical efficiency limit due to the laws of chemistry. Carbon capture and recycling is and will continue to be a strategy to reduce emissions from the nitrogen fertilizer production process. In 2016, our industry captured 8 million metric tons of carbon dioxide, the equivalent of removing 1.7 million cars from the road for a year. Additional investments in research and development in this area will help continue to reduce emissions by making the technology more feasible, efficient and scalable for future use.

At the end of the day, the fertilizer industry relies heavily on the timely delivery of product to growers where and when they need it so they can grow the food, fuel and fiber to feed a growing world. Our country’s farmers are the best and most productive in the world and the United States is the globe’s top agricultural exporter. A robust and well-maintained infrastructure network to facilitate the movement of critical inputs is necessary to ensure that doesn’t change. “America’s Transportation Infrastructure Act” will help ensure U.S. agriculture has a 21st century transportation network that allows it to thrive and grow in a competitive global marketplace.

#### The bill is the last, best chance to prevent catastrophic warming –

Ella Nilsen 9/14—Climate reporter at CNN. ("Biden's spending bill could be Democrats' last hope of achieving meaningful climate action as crisis worsens," September 14, 2021, from CNN, https://www.cnn.com/2021/09/14/politics/biden-budget-congress-climate-action/index.html)

After decades of inaction from the United States on climate, President Joe Biden and congressional Democrats face a reckoning.

Biden has big climate ambitions, vowing in April to cut greenhouse gas emissions in half by 2030. The world is watching closely to see whether the US will deliver on that promise, as the President's climate envoy, John Kerry, prepares to meet with global leaders in November for the United Nations climate summit.

Jonathan Pershing, one of Kerry's senior advisers, recently told lawmakers the US needs to "walk the talk" to regain its climate credibility on the world stage. What's not clear is whether the President has the votes in Congress — even within his own party — to get it done.

As the drought and extreme weather intensify, Democrats view the massive budget bill and its significant climate provisions as their last, best hope to achieve something meaningful on climate as the crisis worsens. In August, global scientists reported the planet is quickly approaching the critical warming threshold of 1.5 degrees Celsius above pre-industrial levels, below which they say the planet must stay in order to avoid the worst consequences.

Within the US, pressure is mounting after a series of climate disasters this summer, including record-breaking wildfires, deadly heat, water shortages and a disastrous hurricane that's expected to cost the US economy billions.

"Scientists have been warning us for years that extreme weather is gonna get more extreme. We're living it in real time now," Biden said Monday as he toured wildfire damage in California.

Touting the budget and infrastructure bills, the President urged people to "think big."

"Thinking small is a prescription for disaster," Biden said. "We're gonna get this done, this nation's gonna come together and we are going to beat this climate change."

Congressional leaders have set an end-of-September deadline in the House to pass their massive budget bill alongside a separate bipartisan infrastructure bill. Together, the packages contain hundreds of billions of new climate investments, which Senate Majority Leader Chuck Schumer argued will get the US most of the way to hitting Biden's fossil-fuel emissions target of 50-52% below 2005 levels by 2030.

With a razor-thin majority in both the House and Senate, this is Democrats' only shot at passing a substantial climate bill before world leaders meet in November. But there's at least one prominent Senate Democrat who could thwart those plans.

Sen. Joe Manchin of West Virginia, Senate Democrats' key swing vote, wants to pare down the overall size of the bill, and he has said he has concerns about what the climate provisions could mean for a fossil-fuel producing state like West Virginia. As chair of the Senate Energy and Natural Resources Committee, the senator will have a large hand in shaping Democrats clean electricity program.

Sen. Sheldon Whitehouse of Rhode Island told CNN negotiations with Manchin are ongoing — but he was optimistic the West Virginia senator would understand the gravity of a fast-warming climate and its impacts.

"At the end of the day, we're all answerable to the future to get the job done right," Whitehouse said. "I don't think [Manchin] wants to be on the wrong side of that future."

How the bill would tackle the climate crisis

After years of inaction in the White House and Congress, Biden's budget bill represents decades worth of policy in a single bill. Experts told CNN it represents a paradigm shift in how to tackle climate change — moving the entire economy away from fossil fuels and toward clean energy.

"Moving the US economy is equivalent of changing the direction of an enormous ocean liner," Josh Freed, founder of the Climate and Energy Program at the center-left think tank Third Way, told CNN. "It takes time to do but once you have it going in the right direction it can pick up steam and get going quickly."

After re-entering the US into the Paris Climate Accord in January, Biden announced a target to reduce greenhouse gas emissions by 50% to 52% relative to 2005 levels by 2030.

That target could be met in part through federal regulations restricting emissions from vehicles and power plants. A White House spokesperson told CNN the Biden administration sees its climate actions coming both from Congress and executive action.

"We also believe that there exists a number of paths to meeting our emission goals and targets," the spokesperson said. "The Biden climate agenda doesn't hinge on reconciliation or the infrastructure package alone. Rather, it is integrated throughout both — and it is a key part of everything we do in the whole of government effort launched on day one."

But experts told CNN that Biden needs Congress to pass massive investments in renewable energy, electric vehicles and other green programs to truly make a dent in US carbon emissions.

A clean electricity program is Democrats' cornerstone climate initiative in the massive budget bill. It would promote a transition away from fossil fuels by paying electric utilities who increase the amount of renewables and other forms of clean power and penalizing those who don't meet clean targets.

Generating electricity from non-fossil fuel sources like wind, solar and nuclear is a critical to Democrats' climate strategy.

"I see the [clean electricity program] as the lynchpin or the foundation piece for this bold action on climate," Democratic Sen. Tina Smith, who is a lead proponent of the provision, told CNN.

The bill also contains measures to create a job-generating Civilian Climate Corps; tax credits and grants for clean energy, renewables and electric vehicles; new polluter fees for methane and carbon; and consumer rebates to electrify and weatherize homes. What is yet to be finalized is how much funding each program gets.

Schumer's office recently put out an analysis showing the bipartisan infrastructure bill and $3.5 trillion budget bill combined could meet the majority of Biden's target to slash emissions by the end of the decade — putting the US on track to reduce its greenhouse gas emissions by approximately 45% below 2005 levels by 2030.

"When you add administrative actions being planned by the Biden Administration and many states — like New York, California, and Hawaii — we will hit our 50% target by 2030," Schumer wrote in a letter accompanying the analysis.

**PC is key to climate change provisions even in a smaller bill**

**Liptak 9/18** (Kevin Liptak, Jeff Zeleny and Phil Mattingly, CNN, How Biden hopes to recapture his momentum after a week of unexpected setbacks, Updated 11:11 AM ET, Sat September 18, 2021https://www.cnn.com/2021/09/18/politics/joe-biden-political-momentum/index.html)

The unrelated events illustrated Biden's predicament as he seeks to recalibrate around his massive economic proposals: a $3.5 trillion budget bill and $1.2 trillion bipartisan infrastructure bill. Officials told CNN that Biden hopes to recapture momentum lost over a calamitous August, but the series of events Friday afternoon underscored the difficulty for any President to completely move past the outside events that often come to define a presidency. Biden's weekend trip to Rehoboth Beach, Delaware -- rescheduled after repeatedly being postponed during a chaotic August -- had been slated to include a heavy focus with his senior advisers on the critical weeks ahead: on his agenda, but also on looming, and equally high-stakes, battles to fund the government and raise the debt ceiling to avoid a catastrophic default, according to two officials. Yet even before he departed the White House, it was evident the economic agenda wouldn't be the only matter at hand. He was briefed before he left Friday morning on the Pentagon investigation into the drone strike that killed 10 civilians. After he'd arrived on the Delaware coast, officials updated him on the FDA decision and the irate announcement from Paris that the French envoy was returning home. Biden did not weigh in on any of the developments himself, leaving the response to aides. He still hopes **the coming weeks will provide an opportunity to move on**. Acutely aware of the stakes, Biden has begun more directly **involving himself** in the strategy to see his priorities passed this autumn. **He plans to put himself more at the center of the legislative process**, a place the longtime Delaware senator feels very comfortable. He meets daily in the Oval Office with senior advisers for updates on legislative process and messaging strategy, repeatedly asking them to find ways to better explain the complicated and wide-ranging proposals in ways Americans can understand. In recent weeks, **the President has seized opportunities**, like a series of natural disasters, to **make the case for sweeping climate change provisions in his pending legislation**. He is planning to invite lawmakers to the White House next week to press on the economic package, according to a person familiar with the matter. "Let's not squander this moment," Biden implored during a speech from the White House. Now at the lowest approval rating of his nearly eight-month term -- putting him, according to some polls, above only former Presidents Donald Trump and Gerald Ford at similar points in their tenures -- Biden is pressing Democrats to put aside their ideological differences and pass what could become his lasting legislative legacy and a political lifeline. The bills have the potential to overhaul the nation's physical infrastructure and the American social safety net for decades to come and would likely make Biden one of the most consequential Democratic presidents in decades. The summertime slide in his popularity among Americans has frustrated the President and his team, who believe he is receiving little credit for a rapidly improving economy. Despite setbacks related to the Delta variant surge, the unemployment rate is down, wages are up and retail sales are improving -- tied, in part, to the emergency measures Biden pushed through at the start of his term. Yet the pandemic is still simmering, delaying a full return to workplaces and complicating the start of the school year for children. A CNN poll conducted by SSRS found 62% of Americans say economic conditions in the US are poor, up from 45% in April and nearly as high as the pandemic-era peak of 65% reached in May 2020. Biden, based on advice from his health team, had predicted a vaccine booster rollout for all adults starting next week. But the FDA decision Friday threw the plan into flux. Biden's attention turns toward Capitol Hill As a part of his recalibration to his domestic agenda, Biden has spent much more time speaking with Democrats on the other end of Pennsylvania Avenue, both on the phone and in person. He spoke by telephone Thursday with House Speaker Nancy Pelosi and Senate Majority Leader Chuck Schumer to confer on a path forward on his massive legislative agenda. "The three are in regular touch and engaging daily on bringing Build Back Better to the finish line," the White House said afterward. In conversations with other Democrats during periodic "congressional call time" blocked off on his daily schedule, Biden has repeatedly stressed the importance of keeping intact the tangible benefits in the bills that can be easily sold to the American people, according to people familiar with the talks. He has stressed that items like free community college and subsidized child care are clear political winners he says Democrats can campaign on for months or years to come. **Polling and messaging memos sent to congressional Democrats and outside allies have sought to double down on this point, while also pushing lawmakers to focus on a bigger -- and more populist -- picture**, rather than get bogged down in the policy disputes that are raging on both sides of the Capitol. "**He's been actively engaged** over the last couple of months **in helping members of Congress** who are more centrists or who are progressive understand and embrace his agenda," said Sen. Chris Coons, a Delaware Democrat who is close to the President. "**President Biden is very persuasive**," Coons said, "and I think **he's making the case and making it wel**l." Implicit in Biden's message, as well as those coming from his senior team, is also the clear reality of the moment, according to people familiar with the discussions: For Democrats, there is no alternative path at this point. The specific policy proposals may shift or shrink in scale or duration, but there is no turning back or a broad shift in course in the cards. **If Democrats** -- **particularly those who are skittish about the political repercussions of enacting such significant changes to the role of government in the US economy --** **can't unify** **now**, **they will likely be left with nothing.** White House tries to keep a level head It is impossible to know whether Biden's current political predicament will last, and some of his **aides are confident that improvements in the pandemic and distance from the chaotic Afghanistan withdrawal will help reverse the fall in approval**. They note it is still more than a year before the 2022 midterm elections, when historically the sitting President's party suffers. A positive result for California's Democratic Gov. Gavin Newsom, for whom Biden campaigned on the eve of his recall vote this week, has also led to renewed confidence in the administration's fights over mask-wearing, vaccines and more. "California won't end the Covid debate," a White House adviser told CNN, "but it could be a tremendous boost for what Democrats are trying to do." Biden's team, during last year's presidential campaign, prided itself on avoiding overly reactive steps when negative polls emerged. Officials stress there is no sense of panic in the West Wing, largely pointing to clear opportunities in the high-stakes weeks ahead as clear and tangible opportunities to shift the dynamics that overtook Biden's first summer in office. But like any political operation, advisers remain highly attuned to shifts in public sentiment, studying focus groups and surveys from top Democratic pollsters who work on behalf of the White House and the Democratic Party. To be sure, any comparisons in approval ratings between Biden and his predecessors are filled with caveats, given the acrid political climate and the remarkable changes in the presidency over the decades. The chaos that surrounded the Afghanistan withdrawal has led some advisers to recognize there is less room for error going forward. The drop in Biden's approval ratings has prompted what one adviser called a "hardening" of the President's mission to see his agenda passed. **The White House softens on** a $3.5 trillion **price tag** This week, before leaving for his vacation home in Rehoboth Beach, **Biden began meeting in-person with moderate** Democratic Sens. Kyrsten **Sinema** of Arizona **and** Joe **Manchin** of West Virginia, **hearing out their concerns about the amount of spending**. With Manchin, he listened patiently to a proposal that would more than halve the size of the final bill. Biden has not endorsed that plan, but also hasn't yet had luck in convincing the skeptical Democrat to come along with his. In public, Biden has begun signaling the final bill could come in below $3.5 trillion, the figure proposed in an initial blueprint. White House officials acknowledge that's a near certainty at this point in order to secure the votes of Manchin and Sinema. The ever-present balancing act between moderates and progressives has become even more acute as a result. **But Biden is pressuring Democrats to avoid stripping out what he believes will prove to be the bill's most salient selling points.**

#### Framing issues:

#### 1---Even if there’s opposition, PC really does solve

Everett 9-16 (Burgess Everett, staff reporter @ Politico, Dems call in big gun as they face huge Hill tests, <https://www.politico.com/news/2021/09/16/biden-influence-capitol-democrats-511952>, y2k)

Senate Majority Whip Dick Durbin said that Biden, “more than anyone,” maintains sway over his caucus’s 50 members: “There is no comparable political force to a president, and specifically Joe Biden at this moment.”

Biden appears to be answering the call. The president is getting increasingly involved in Congress’ chaotic fall session as he battles sagging approval ratings, heightened concerns around the pandemic and some internal criticism over his withdrawal from Afghanistan. On Thursday, he'll speak to Senate Majority Leader Chuck Schumer and Speaker Nancy Pelosi ahead of a critical week for funding the government and lifting the debt ceiling.

Rebounding as the midterms draw nearer will depend on whether his big social spending ambitions are realized and if his party can dodge a government shutdown and credit default. But even if he has success on those fronts, he still needs to maintain momentum on Democrats’ elections legislation, which Republicans look certain to torpedo.

“I have full faith and confidence in Joe Biden in all of this,” said House Majority Whip Jim Clyburn, who's pressed Biden to endorse a filibuster carve out for voting rights legislation. “He is working this … and that’s how it should be.”

Biden met with two key Democratic holdouts on his domestic spending agenda on Wednesday, part of a sustained push to keep Sens. Joe Manchin (D-W.Va.) and Kyrsten Sinema (D-Ariz.) on board with his legislative program. Biden’s met with Sinema four times this year, in addition to telephone calls made between the two, and has spoken to Manchin a similar number of times.

“Now is the time” for Biden to jump full-force into the reconciliation conversation, said Sen. Tim Kaine (D-Va.). And the White House made clear that Biden is diving into the series of tricky issues.

Andrew Bates, a spokesperson for Biden, said that Biden and his administration "are in frequent touch with Congress about each key priority: protecting the sacred right to vote, ensuring our economy delivers for the middle class and not just those at the top, and preventing needless damage to the recovery from the second-worst economic downturn in American history.”

To help corral all 50 Senate Democrats for the social spending bill, the president and his party need to create an “echo chamber” around its substance, said Celinda Lake, a pollster on Biden’s campaign. But that won't be easy. Manchin has told colleagues he’s worried about whether the bill’s safety net, climate action and tax reforms will be popular in his state, according to one Senate Democrat. He's also said he won't support a measure at the current spending level: $3.5 trillion.

If Biden can hammer home the popular aspects of the spending plan, it may help assuage Manchin and improve his whip count in Congress. Underscoring the degree to which he's become the face of the multi-trillion dollar reconciliation bill, a Democratic aide said the party is increasingly seeking to frame it as Biden’s agenda, not that of Sen. Bernie Sanders (I-Vt.) or any single Democrat.

#### 2---Prefer predictive uniqueness---despite challenges, it will eventually pass

Jaacobson 9-10 (Louiis Jacobson, correspondent @ Politifact, The Democrats’ reconciliation bill: What you need to know, <https://www.politifact.com/article/2021/sep/10/democrats-reconciliation-bill-what-you-need-know/>, y2k)

How serious are the centrists and progressives about derailing the process if they don’t get their way?

Experts said it’s certainly possible that either centrists or progressives would tank the bill if they can’t get everything they want, though such a course would be risky since the Democrats are at risk of losing their slim majorities in the 2022 midterm elections.

"It may be too early to be talking about a snowball’s chance in Hades, but the intraparty heat in the Democratic caucuses has already set off the pre-melt warning sirens," Wolfensberger said.

Goldwein said that while the factions’ positioning is deeply felt, he added that there’s a good chance that Democrats want to get to yes. "I think the leadership and the administration will lead them to a deal," he said.

#### Maintaining focus is key to reconciliation

Zelizer 9-4 (Julian E. Zelizer, CNN Political Analyst,

<https://www.cnn.com/2021/09/04/opinions/the-mistake-biden-cant-afford-to-make-zelizer/index.html>, y2k)

As we approach the 2022 midterm elections, the President faces a critical juncture. He will need to maneuver carefully to pass key legislation and retain the Democratic majorities in Congress that will allow him to plow on with his agenda while Republicans are undertaking a massive effort to curtail voting rights and recapture control of Congress in order to make the second half of his term a living hell.

Right now, narrow congressional majorities on Capitol Hill leave Democrats little wiggle room to pass the infrastructure bill and the $3.5 trillion reconciliation package. On paper, it shouldn't be too difficult to round up the necessary votes. In reality, moderates in the Senate, like West Virginia's Joe Manchin and Arizona's Kyrsten Sinema, can easily upend negotiations. These are the legislative conditions holding up Biden's biggest domestic programs.

Biden also faces a radicalized Republican Party that has no intention of slowing down just because they have lost control of the White House and Congress. The conservative fervor is evident in Texas, where state Republicans passed draconian restrictions on reproductive rights by banning abortions once a fetal heartbeat can be detected -- something that usually happens at around six weeks, before most women know they are pregnant.

The law tramples the rights granted by the Supreme Court's decision on Roe v. Wade in 1973. And now that the conservative-leaning bench has decided not to block the Texas law, other red states are likely to follow suit.

When it comes to foreign policy, Afghanistan was as a harsh reminder of how easily plans can go awry. While the majority of Americans supported the US withdrawal, the swift Taliban takeover, the terrorist attack outside Kabul airport and the ensuing controversy and fallout detracted from what Biden was trying to achieve. Many presidents have been forced to confront major foreign policy issues, even when it's inconvenient to their domestic agendas. Afghanistan certainly won't be the last crisis of this sort.

And, of course, as we've seen with the rise of the Delta variant, the coronavirus pandemic is not finished with us even if fatigue has set in for most Americans. This poses an immense and unpredictable challenge as the administration will have to continue to shift gears and respond to a rapidly changing situation. This will entail continued efforts to expand vaccination and issue new public health guidance to an impatient public as cases rise and fall.

What's Biden to do in the face of all these obstacles? The most important thing he can focus on at this point is keeping his party in line. He will need to lean in harder on Manchin and Sinema, giving them the support they need to retain their electoral standing while offering not-so-subtle reminders about the importance of putting on a united front to fulfill his agenda.

If Democrats are perpetually stuck in a legislative logjam as the nation struggles with broken infrastructure, natural disasters, and an ongoing pandemic, there's little chance voters will give the party another shot at trying to address the many problems they face going into 2022.

Biden also has to actively shape his message and agenda, rather than react to events and circumstances as they occur. As the going gets tough, it is easy for presidents to be caught on the wrong foot and get swept up in the noise of the moment. What great presidents learn is that focus means a great deal.

Presidents have the power to keep the nation — and Congress — on track. They have the ability to keep pushing specific issues like the urgent need to protect voting rights or address climate change — even if the news cycle veers off into different directions.

If they succumb to the frenzy of the moment, it can become almost impossible to keep their heads above water. With Afghanistan, Biden demonstrated an understanding of this. Despite all the fire and fury that came his way as a result of the tragic deaths of 13 US service members, he pressed on with the withdrawal, saw to it that the US ended its involvement in a disastrous war and repeated his rationale for doing so.

#### Ag Lobbying specifically will react to derail climate provisions in infrastructure – new and best research proves

Gustin, 21 –covers agriculture for Inside Climate News, and has reported on the intersections of farming, food systems and the environment for much of her journalism career. Her work has won numerous awards, including the John B. Oakes Award for Distinguished Environmental Journalism and the Glenn Cunningham Agricultural Journalist of the Year, which she shared with Inside Climate News colleagues (Georgina, “**Big Meat and Dairy Companies Have Spent Millions Lobbying Against Climate Action, a New Study Finds**”, 4-2-21, Inside Climate News, https://insideclimatenews.org/news/02042021/meat-dairy-lobby-climate-action/?amp=&\_\_twitter\_impression=true&s=09)

Filling a Research Gap The next goal of the study, Jacquet said, was to examine how these companies and their lobbying groups have fought climate regulation in Congress and before the Environmental Protection Agency, and to analyze how they’ve shaped a narrative around animal agriculture’s role in climate change. **The authors calculated that U.S. agribusiness**, which includes meat and dairy companies and also other agricultural companies, **spent $750 million on national political candidates from 2000 to 2020.** The U.S. energy sector, by comparison, spent $1 billion. The same agribusinesses spent $2.5 billion on lobbying from 2000 and 2019, compared to $6.2 billion by energy and natural resource companies. The authors said these companies also spent their lobbying money on issues beyond climate change, including the Farm Bill and farm subsidies. But, they wrote, “it is often difficult to disentangle the two as policy decisions on crop incentives, land-use, and animal production methods have large implications for the extent and intensity of the animal agriculture sector’s emissions.” The report also looked at the contributions of individual companies. Exxon spent roughly $17 million on political campaigns and more than $240 million on lobbying during the 20 years studied. In the same time frame, **Tyson gave $3.2 million to political campaign**

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**s**. **But relative to each company’s revenue, Tyson spent double what Exxon spent on political campaigns and 33 percent more on lobbying. Industry lobby groups**—the National Cattlemen’s Beef Association, the National Pork Producers Council, the North American Meat Institute, the National Chicken Council, the International Dairy Foods Association and the American Farm Bureau Federation, along with its state members—**spent nearly $200 million, much of it lobbying against climate and environmental regulations, from 2000 to 2019**, the authors found. A spokesperson for the National Pork Producers Council said the organization **voted against a cap-and-trade bill specifically** because it “would have converted massive amounts of cropland to forest” at a time when pork producers were already struggling to gain access to feed. The **National Cattlemen’s Beef Association and the North American Meat Institute** (NAMI), the new study said, **published or funded research downplaying the emissions from livestock production,** often pointing to the low percentage relative to overall U.S. emissions. Sarah Little, a spokeswoman for NAMI, said the report referenced outdated documents. “NAMI members are at the forefront of research and innovation to strengthen meat’s contributions and ambitious commitments to healthy diets and protecting our environment. The U.S. meat sector has dramatically reduced its impact on the environment in recent decades, including by reducing greenhouse gas (GHG) emissions…. This study was already outdated the day it was researched.” The nine U.S.-based companies covered in the report emitted 6 percent of overall U.S. emissions, the study found, but emitted about 350 million metric tons of carbon dioxide. That’s on the same scale as Brazil, which has the highest carbon footprint from animal agriculture and where the top four livestock companies emitted about 380 million metric tons of the greenhouse gas annually. But that amounts to about 28 percent of that country’s emissions. “The US industry really leans on Brazil’s terrible carbon footprint to compare to its own,” Jacquet said, but domestic agriculture is “high in terms of absolute emissions.” The report also notes that the U.S. companies’ emissions totals presented in the study don’t include those connected to production outside of the U.S. The authors pointed out in an interview that there’s been ample academic research into the fossil fuel industry’s attempts to influence public discourse, but that a similar body of research into the agriculture industry’s efforts has not yet emerged. That could largely be attributed, they said, to the fact that very little agricultural research is done outside of industry-influenced universities or by independent researchers. “**It’s not surprising that they’re this active in shaping climate discourse,”** Lazarus said, referring to the livestock companies. “**What we’re trying to do is show the extent to which that has largely been ignored.”**

#### Lobbying by large firms guarantees political backlash

Jones 20 (Alison Jones, Professor of Law, King's College London, Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy, 3-20, The Antitrust Bulletin. 2020;65(2):227-255. doi:10.1177/0003603X20912884, y2k)

E. Opposition to Legislative Reform

Although statutory reform might at first sight appear to be a direct, effective solution to some of the impediments (such as entrenched judicial resistance to intervention), there are good reasons to expect that powerful business interests will also stoutly oppose any proposals for legislation to expand the reach of the antitrust laws or to create a new digital regulator.128 One can envisage the formidable financial and political resources of the affected firms will amass to stymie far-reaching legislative reforms. Legislative steps that threaten the structure, operations, and profitability of the Tech Giants and other leading firms are fraught with political risk. These risks are surmountable, but only by means of a clever strategy that anticipates and blunts political pressure. One element of such a strategy is to mobilize countervailing support from consumer and business interests to sustain an enabling political environment to enact ambitious new laws.