# 1NC

## Off case

### T Anticompetitive

#### Anticompetitive practices reduce competition and lead to higher prices

FTC No Date – Federal Trade Commission, “Anticompetitive Practices,” https://www.ftc.gov/enforcement/anticompetitive-practices

Anticompetitive Practices

The FTC takes action to stop and prevent unfair business practices that are likely to reduce competition and lead to higher prices, reduced quality or levels of service, or less innovation. Anticompetitive practices include activities like price fixing, group boycotts, and exclusionary exclusive dealing contracts or trade association rules, and are generally grouped into two types:

agreements between competitors, also referred to as horizontal conduct

monopolization, also referred to as single firm conduct

The FTC generally pursues anticompetitive conduct as violations of Section 5 of the Federal Trade Commission Act, which bans “unfair methods of competition” and “unfair or deceptive acts or practices.”

#### Violation – they explicitly designate new practices as competitive that go beyond price levels or reduced competition

#### Vote neg for limits and ground- any other interp allows any new practice to be classified as anticompetitive which allows bidirectoinally banning unproductive corporate behavior

### 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 requires what 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 action is the Texaco-Getty merger. Under the Barquis court's construction of the statute, however, the merger itself cannot be 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.

### Adv CP

#### The United States federal government should

#### Not apply or enforce anti-trust law to unions or worker organizing

#### Ban non-compete clauses

#### Adopt a structural presumption against mergers whose participants have a combined market capitalization of 100 billion

#### The cp solves and pics out of CWS

#### Mergers and non-competes cause lower wages

Sandeep Vaheesan 18. Legal director at the Open Markets Institute. “How Contemporary Antitrust Robs Workers of Power” LPE Project. 07-19-18. <https://lpeproject.org/blog/how-contemporary-antitrust-robs-workers-of-power/>

The political economist Albert Hirschman developed the idea that members of an organization can exercise power in two ways—through exit and voice. Market activity is associated with exit: consumers unhappy with the price or quality of service of their current wireless carrier can switch to a rival carrier offering lower rates or better service. Elections exemplify voice: voters can replace a corrupt or ineffective incumbent officeholder with a challenger promising to make the government work for ordinary people. For workers, both exit (joining a new employer) and voice (making demands of a current employer) are important. Despite the pro-worker aims of the framers of the Sherman and Clayton Acts, antitrust law today is an enemy of both exit and voice for workers. For more than a generation, antitrust enforcers have permitted labor markets to become highly concentrated and have also interfered with the efforts of a large segment of workers to build collective power. Through their labor market actions, the Department of Justice (DOJ) and Federal Trade Commission (FTC) reinforce, rather than tame, corporate power. To create a progressive, pro-worker antitrust, legislators and policymakers must adopt a radically different vision for the field. Tens of millions of American workers wield little or no power in their place of work. In many parts of the country, workers lack meaningful exit. They face concentrated local labor markets in which only a handful of employers compete (at least theoretically) for their services. In some labor markets, employees have only one actual or prospective employer. In other words, many Americans, at least in their capacity as workers, may experience what we often think of as a relic of a bygone era—the company town. As recent studies have shown, employer-side concentration is associated with significantly lower wages. And other research has found that concentration at one level of a supply chain can depress wages further upstream. In addition to concentrated markets, approximately 30 million workers are subject to non-compete clauses, which prevent them from accepting a new job or starting a business in the same line of work. Non-compete clauses, regardless of whether they are enforced, can signal to workers that their choice is either stay at their current job or suffer extended unemployment. Along with possessing few exit options, most workers cannot assert effective voice in the workplace. Big business’s legal and political war on labor’s power has severely weakened unions. In contrast to the 1950s when roughly a third of wage and salary workers were unionized, only a small percentage of workers are members of labor unions today—around one in ten among all workers, and one in sixteen among workers in the private sector. This decline in union density explains a significant fraction of the forty-year stagnation in wages and increase in income inequality. Moreover, even if wage gains had kept pace with productivity, the collapse of organized labor means that workers lost say over numerous workplace issues. While employees can speak up as individuals, this type of voice is no substitute for the collective voice that comes from a democratic union. Given that most individual workers are dispensable and replaceable for their employers, a lone voicing of grievance often can easily be ignored or even invite retaliation from an employer. And, beyond the site of employment, unorganized workers are less able to exercise voice in electoral politics and check the dominant influence of corporations. Antitrust enforcers have allowed labor markets to grow more concentrated across the country. Just as labor law has been rewritten to cripple labor organizing, the executive branch and courts have remade antitrust to be much friendlier to capital over the past four decades. Influenced by the writings of Robert Bork, the Supreme Court has held that the antitrust laws are a “consumer welfare prescription.” Although the Supreme Court and the antitrust agencies counterintuitively state that consumer welfare accounts for harms to workers and other sellers of services, the DOJ and the FTC focus their enforcement on mergers and practices harmful to consumers. In developing enforcement priorities, the federal antitrust agencies have relied on simplistic economic theory. Instead of directing their economists to study the structure of labor markets, the DOJ and the FTC have adopted an Econ 101 view of the world and assumed that labor markets are generally competitive on the employer side. Embracing this fiction, the agencies have never stopped a merger on labor market grounds. Due to antitrust inaction (and other factors), labor market concentration has increased since the late 1970s.

#### The cp solves unions but the plan doesnt

Firat **1AC** Cengiz 20. School of Law and Social Justice, University of Liverpool. "The conflict between market competition and worker solidarity: moving from consumer to a citizen welfare standard in competition law". Cambridge Core. 10-8-2020. https://www.cambridge.org/core/journals/legal-studies/article/conflict-between-market-competition-and-worker-solidarity-moving-from-consumer-to-a-citizen-welfare-standard-in-competition-law/6E783D1FC4BAB5605DFABCD17FBE3F35

Introduction

This paper offers a critical investigation of the law and economics of competition law enforcement in conflicts between workers and employers in the European Union (hereinafter EU) and the US. In such cases competition law comes into direct conflict with the principle of worker solidarity: according to the principle of market competition individuals are expected to take independent economic decisions and actions, whereas workers need to take collective economic actions and decisions to protect their interests. This conflict is particularly obvious in the context of the so-called gig economy,1 in which employers keep casualised workers at legal arms’ length to reduce labour and regulatory costs.2 If gig workers take collective action against their working conditions, they might face attack from competition law, because legally they might be considered independent service providers, rather than workers.3

The legal conundrum facing gig workers has become an increasingly popular subject in the law and economics literature.4 Nevertheless, the more fundamental question of how the enforcement of competition rules affects the overall position of workers beyond the limited case of the gig economy remains largely unexplored. This paper aims to investigate this broader and more fundamental question. In order to provide a sufficiently global answer, the paper focuses on the legal positions of the EU and US, as the leading competition law jurisdictions and primary competition policy exporters.5 The EU–US comparison shows that despite the slightly different legal tests applied in these polities, competition rules constitute nearly equally disciplining mechanisms against collective worker action on either side of the Atlantic.

This paper also makes an original contribution to the emerging debate on whether and how competition law can contribute to wealth equality between citizens in the post-2008 crisis economy. The existing debate on the competition law–equality relationship takes the ‘consumer welfare’ standard as its main reference point: it focuses exclusively on the distribution of wealth between consumers and producers; as a result, it overlooks the production process that takes place before consumers meet products and services, and the position of workers within it.6 This is a natural result of competition law's reliance on a limited area of neoclassical economics called ‘equilibrium economics’ that understands efficiency exclusively as a market mechanism in which the price manifests itself where supply meets demand.7 Departing from the mainstream competition law and economics methodology, this paper builds its investigation on a holistic theoretical foundation, looking beyond equilibrium economics at labour exploitation theory as established in neoclassical as well as Marxian models. This analysis shows that despite standing at opposing ends of the political spectrum and whilst having some fundamental differences, Marxist and neoclassical models agree that collective worker action is economically beneficial and socially necessary. As a result, a critical analysis of the current legal situation on both sides of the Atlantic in light of this holistic framework illustrates how competition law's hostility towards collective worker action is not only unjust but also economically unsound.

This paper demonstrates that the key problem in competition law's treatment of labour stems from the application of the consumer welfare standard in cases involving the competition–solidarity conflict without paying any attention to the idiosyncratic qualities of labour that render it naturally open to exploitation. Similarly, the consumer welfare standard overlooks the fact that consumers and workers are essentially the same group of people and one's welfare cannot be increased or decreased without affecting the other's.8 Even if worker exploitation could result in reduced labour costs and decreased prices, this cannot be deemed efficient as it reduces the workers’ welfare and results in broader negative socio-economic effects. Similarly, collective worker action resulting in higher labour costs and potentially higher prices cannot automatically be deemed inefficient, because although this might increase the prices consumers pay, they benefit from higher wages and better working conditions in their position as workers. As a result of this critical analysis, the paper proposes an original and more inclusive ‘citizen welfare’ standard that takes into account the economic effects of anti-competitive behaviour on workers as well as consumers. The citizen welfare standard could also potentially be applied in other contexts to solve long-standing conflicts between competition and other policy objectives, such as industrial, environmental and social policy objectives,9 although this paper primarily focuses on the application of citizen welfare to the competition–solidarity conflict.

The structure of the paper is as follows: the next section provides an opening discussion of competition law, consumer welfare and equality. This is followed by a discussion of the economic theory of labour exploitation. Then, the paper investigates how competition law approaches the competition–solidarity conflict in the EU and the US. The fourth section critically discusses the EU and US legal positions in light of economic theory. This section also develops the citizen welfare approach as an alternative to consumer welfare for the resolution of the competition–solidarity conflict. This is finally followed with conclusions. Regarding terminology, this paper uses the term ‘worker’ (rather than employee) as a non-legal, generic term encompassing all individuals who make a living by providing labour power as a production factor in the production process of goods and services. Similarly, the term ‘labour’ is used to refer to the contribution of the workers to the production process as an abstract human factor. However, if the courts or authorities in question use a different term (such as employee) in a specific case, the paper uses the same term in the discussion of that specific case.

### T – Increase Prohibitions

#### Conduct prohibited by the antitrust laws is subject to punishment even though that punishment can vary because of enforcement flaws.

Spencer Weber Waller\* (2003). SYMPOSIUM: PRIVATE LAW, PUNISHMENT, AND DISGORGEMENT:THE INCOHERENCE OF PUNISHMENT IN ANTITRUST. Chicago-Kent Law Review, 78, 207. https://advance-lexis-com.proxy.library.georgetown.edu/api/document?collection=analytical-materials&id=urn:contentItem:48GD-TP70-00CT-S06T-00000-00&context=1516831.

Rather than reenter that debate about a phenomenon that is unlikely to change, I would like to address a different and less frequently addressed issue relating to a different form of incoherence in the present system of public and private antitrust enforcement. We have reached a point where certain conduct prohibited by the antitrust laws is indeed punished harshly, yet other violations of the laws are effectively immune from punishment because of an evolving system of government enforcement priorities, substantive changes in the standards of liabilities, and restrictive rules of standing and antitrust injury which place some violations beyond effective change. Even some per se violations of the rule are beyond the reach of any meaningful punishment. It is not that antitrust damages are necessarily too high or too low, it is that they vary dramatically and that there is no a priori way to predict where punishment in a particular case or for a particular defendant will come out. This is the real but overlooked incoherence of antitrust punishment.

#### Violation – the aff grants immunity to unions

#### Vote neg for limits and ground – there are infinite exemptions that can be written out and is bidirectional

### States CP

#### The attorney generals of 50 states and relevant territories, through the National Association of Attorneys General’s Multistate Antitrust Task Force, should prohibit private sector business practices that violate an antitrust worker welfare standard.

#### A multistate AG antitrust enforcement over state antitrust statutes solves the aff---causes federal follow-on

Artega 19 (Juan A. Arteaga is an experienced antitrust attorney and a former Deputy Assistant Attorney General for the U.S. Department of Justice’s Antitrust Division, The Role of US State Antitrust Enforcement, Global Competition Review, 11-19, <https://www.lexology.com/library/detail.aspx%3Fg%3Dd423301d-f4d1-4550-a99c-1880869e67e7+&cd=11&hl=en&ct=clnk&gl=us>, y2k)

In the United States, competition laws have been implemented and enforced through a dual system where the state and federal governments play distinct, yet complementary, roles in regulating the competitive process. While the Department of Justice (DOJ) Antitrust Division and Federal Trade Commission (FTC) are widely viewed as the stewards of US antitrust laws, state attorneys general have long played an important, albeit varying, role within the United States’ antitrust enforcement regime. This has been especially true during the past 30 years because state attorneys general have become much more effective at coordinating their antitrust enforcement efforts to ensure that they have a meaningful seat at the table in any actions brought jointly with their federal counterparts or are able to bring their own actions when the DOJ and FTC decide not to do so.

Prior to the enactment of the first federal antitrust law – the Sherman Act – in 1890, state antitrust enforcement was quite robust in the United States because at least 26 states had already enacted some form of antitrust prohibition. In addition, state enforcers had often used general corporation law and common law restraint of trade principles to regulate anticompetitive business practices and transactions. This well-established state antitrust enforcement infrastructure – coupled with the fact that the Antitrust Division and FTC had only recently been created – permitted state attorneys general to continue playing a leading enforcement role for the first 30 years after the Sherman Act’s passage. Indeed, state attorneys general successfully prosecuted a number of the most consequential antitrust enforcement actions during this period.

In the early 1920s, however, state antitrust enforcers began playing a less prominent role because ‘the national dimension of the most important trusts, . . . as well as their ability to restructure in order to evade problematic state laws’, made clear that the federal government needed to step forward in order to adequately protect consumers and the competitive process. As a result, the DOJ and FTC – whose national jurisdiction and greater resources enabled them to tackle the most pressing competition issues of the time – displaced state attorneys general as the primary source of government antitrust enforcement within the United States. This largely remained true until the mid-1970s when Congress, in response to the DOJ and FTC’s perceived inactivity, passed two laws that expanded the authority of state attorneys general to enforce the federal antitrust laws and provided them with financial resources to do so.

In 1976, Congress passed the Hart-Scott-Rodino Antitrust Improvement Act, which, among other things, authorised state attorneys general to bring *parens patriae* suits (i.e., legal actions brought on behalf of natural persons residing within their states) seeking monetary (treble damages) and injunctive relief for Sherman Act violations. Congress also passed the Crime Control Act of 1976, which, among other things, provided state attorneys general with tens of millions in federal grants as ‘seed money’ for the creation of antitrust bureaus within their offices. These laws had their intended effect of reinvigorating state antitrust enforcement.

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints. The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’. No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications. To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.

Since the reawakening of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an important role in the enforcement of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices. During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping develop and implement litigation strategies for cases being tried before federal judges presiding in their states.

Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC. State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC.

In once again flexing their enforcement muscle, state attorneys general have shown a willingness to publicly disagree with the DOJ and FTC on both policy and enforcement decisions, and have also sought to pressure their federal counterparts into more aggressively policing certain industries. Recent examples of the increased independence and assertiveness of state antitrust enforcers include:

In their joint investigation into the T-Mobile/Sprint merger, nearly 20 state attorneys general have sued to block the transaction even though the DOJ, along with seven state attorneys general, have approved the deal after securing certain structural and behavioural remedies. After the DOJ announced its proposed settlement with the companies, the Attorney General for New York, who has been leading the states’ challenge to the merger, issued a press release dismissing the adequacy of the remedies negotiated by the DOJ: ‘The promises made by [the divestiture buyer] and [the merging companies] in this deal are the kinds of promises only robust competition can guarantee. We have serious concerns that cobbling together this new fourth mobile [phone] player, with the government picking winners and losers, will not address the merger’s harm to consumers, workers, and innovation.’

The DOJ, FTC and several state attorneys general have been actively investigating and prosecuting ‘no-poach’ agreements (i.e., where competitors for employees agree not to recruit or hire each other’s employees)in recent years. However, the DOJ and state attorneys general have taken directly opposing positions in private litigation challenging the legality of ‘no-poach’ clauses in corporate franchise agreements. The DOJ has argued that courts should review these clauses under the rule of reason whereas various state attorneys general have argued that these clauses should be deemed per se unlawful.

None of the more than 20 state attorney general offices that actively investigated the AT&T/Time Warner merger joined the DOJ’s unsuccessful challenge to the transaction despite the DOJ’s concerted effort to secure their support. In fact, nine state attorneys general filed an amicus brief opposing the DOJ’s appeal of the trial court’s decision.

After the FTC declined to seek any Colorado-related remedies in connection with Optum’s acquisition of DaVita Medical Group, the Attorney General for Colorado required the merging companies to lift the exclusivity provisions in contracts with certain healthcare providers and to extend their existing contracts with certain health insurers. In announcing this settlement, the Colorado Attorney General stated: ‘I recognize that this case marks an important step in state antitrust enforcement . . . . I am committed to protecting all Coloradans from anticompetitive consolidation and practices, and will do so whether or not the federal government acts to protect Coloradans.’

After voicing displeasure with federal antitrust enforcement in the technology sector, numerous state attorneys general launched their independent investigations into ‘Big Tech’ companies even though the DOJ and FTC have ongoing investigations into these companies.

Given that companies will increasingly have to engage with state attorneys general in a meaningful manner with respect to antitrust matters, this chapter discusses key issues related to state antitrust enforcement in the United States. Specifically, this chapter discusses:

the federal and state antitrust laws under which state enforcers operate;

the processes through which state enforcers coordinate with each other and their federal counterparts;

the opportunity for coordination and conflict between state enforcers and private counsel during litigation;

strategic and practical considerations when engaging with state attorneys general; and

certain noteworthy enforcement actions that state enforcers have recently prosecuted.

Statutory regime governing US state antitrust enforcement

Civil enforcement of federal antitrust laws

Enforcement actions on behalf of state governmental entities

Under the federal antitrust laws, state attorneys general have the express authority to bring civil actions on behalf of their state, municipalities, and governmental entities for harm suffered when directly purchasing goods or services. In bringing such actions, state attorneys general can seek monetary (treble damages) and injunctive relief, as well as their costs and reasonable attorney’s fees.

In actions seeking monetary relief, state attorneys general typically allege that the state plaintiffs were forced to pay higher prices by an unlawful horizontal conspiracy, such as a price-fixing or bid-rigging scheme, and seek to recover the overcharges. In some cases, state attorneys general have sought to recover damages arising out of anticompetitive unilateral conduct, such as overcharges paid by state governmental entities due to a defendant’s actual or attempted monopolisation of a specific market.

In seeking injunctive relief, state attorneys general often argue that such relief is proper because the business practice or transaction in question – in addition to harming the state plaintiffs – has or will cause injury to the state’s general economy. While general harm to a state’s economy can serve as a basis for injunctive relief, state attorneys cannot base their request for damages on such harm.

Parens patriae enforcement actions

A well-settled principle in the United States’ legal system is that ‘the States have a quasi sovereign interest in protecting their citizens from ongoing economic harm’. Consequently, the federal antitrust laws expressly authorise state attorneys general to file parens patriae actions in federal court that seek to redress the harm suffered by their citizens due to federal antitrust violations. In providing state attorneys general with parens patriae authority, the federal antitrust laws permit state antitrust enforcers to seek monetary (treble damages) and injunctive relief, as well as their costs and reasonable attorney’s fees. State attorneys general have been empowered to seek such broad and substantial relief on behalf of their citizens to allow them ‘to deter further economic harm and to obtain relief for the injury inflicted on their economies and their citizens’.

In exercising their parens patriae authority, state attorneys general have often sought to protect their citizens and state economies from the harm caused by anticompetitive business practices. For example, in the e-Books Litigation, 33 state attorneys general alleged that Apple, Inc and various book publishers unlawfully conspired to fix the prices of electronic books, which resulted in their citizens paying higher prices and harm to their states’ general economies. Ultimately, these state attorneys general, working alongside private class counsel, secured settlements from the defendants that provided nearly US$600 million in direct refunds to their citizens. In a pending lawsuit brought against various manufacturers of generic pharmaceuticals, 44 state attorneys general have alleged that the defendants unlawfully conspired to fix the prices for numerous generic drugs, which forced their states and citizens to pay billions of dollars in overcharges, as well as significantly harmed their states’ general economies.

State attorneys general have also invoked their parens patriae authority to protect their citizens and state economies from the harm caused by anticompetitive transactions. For instance, in their pending challenge to T-Mobile’s proposed acquisition of Sprint, nearly 20 state attorneys general have alleged that the transaction will result in their residents paying higher prices for lower quality mobile phone services as well as harm to their states’ general economies. Likewise, the state attorneys general that joined the DOJ’s successful challenges to the proposed Anthem/Cigna and Aetna/Humana mergers alleged that these mergers would have harmed their citizens and the general economies of their states by reducing the number of large health insurance providers from five to three.

There are, however, important limitations on the parens patriae authority conferred to state attorneys general under the federal antitrust laws. For instance, the monetary relief sought by state attorneys general must: (1) arise out of a Sherman Act violation; (2) have been incurred by natural persons residing in their states (i.e., the losses suffered by business organisations cannot be included in the alleged damages); (3) exclude harm suffered by indirect purchasers of the goods and/or services in question; (4) avoid the risk of multiple recoveries by excluding amounts previously awarded for the same injuries; and (5) arise out of actual financial losses rather than general harm to their state’s economy. Moreover, state attorneys general must provide their residents with adequate notice of the lawsuit and a meaningful opportunity to opt out of the litigation.

In seeking to prove the monetary harm suffered by their citizens, state attorneys general can employ many of the same methods utilised by private plaintiffs. In price-fixing cases, for example, state attorneys general can prove the claimed aggregate damages by utilising ‘statistical or sampling methods’, ‘comput[ing[ [the] illegal overcharges’, or relying on any other methodology deemed ‘reasonable’ by the court. In addition, a number of state antitrust laws authorise their state attorney general to hire private lawyers to handle parens patriae actions, which the state attorneys general challenging the T-Mobile/Sprint merger have done.

Civil enforcement of state antitrust laws

Most states have enacted state antitrust laws that are comparable to Sections 1 and 2 of the Sherman Act. In addition, some states have passed antitrust laws that are similar to Sections 3 and 7 of the Clayton Act and the Robinson-Patman Act. These state antitrust laws typically contain provisions expressly requiring that ‘they be construed in conformity with comparable [f]ederal antitrust statutes’.

State antitrust statutes typically provide state attorneys general with broad authority to investigate possible violations, including the power to ‘issue civil investigative demands compelling oral testimony, the production of documents, and responses to written interrogatories to individuals and corporations’. Like the federal antitrust laws, most state antitrust laws authorise state attorneys general to file civil lawsuits on behalf of their states and state governmental entities whenever a violation has caused them to suffer harm in their capacity as direct purchasers of goods or services, as well as parens patriae actions on behalf of their citizens.

### 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 plan devastates American industry and innovation, undermining the entire financial system

Gary Shapiro 7/23—J.D. from the Georgetown University Law Center, sits on the State Department's Advisory Committee on International Communications and Information Policy, the No Labels Executive Council, the USO of Metropolitan Washington-Baltimore Board of Directors and the American Enterprise Institute Global Internet Strategy Advisory Board. ("Radical antitrust bills would be disastrous for consumers and innovation – Press Telegram," July 23, 2021, https://californianewstimes.com/radical-antitrust-bills-would-be-disastrous-for-consumers-and-innovation-press-telegram/452107/)

Consumers win when they can determine winners and losers so that Uber and Lyft can challenge the taxi monopoly. AirBnB provides an alternative to hotels, allowing working parents to save time and take advantage of next-day delivery from Amazon.

Innovation is built on innovation. I used to have a rotating phone, so I have an iPhone. I once had a Model T, so I have a self-driving car (Note: these were all invented in the United States).

The House of Representatives antitrust bill claims to protect the welfare of consumers, but in reality it is anti-consumer and anti-innovative. Initially, it meant that Amazon Prime’s free shipping, the pre-installed Find My iPhone app, and searching for YouTube videos in Google search results would end.

Aside from the clear and unavoidable consumer backlash, who knows what other inventions will get in the way in the future? Why are our parliamentarians trying to dismantle the products and services that Americans love? Why don’t these policy makers allow businesses to create more?

The bill targets “Big Tech,” but it actually hurt consumers, small businesses, and start-ups. Arbitrary rules contained in the drafted bill, such as merger and acquisition restrictions, will end opportunities for business growth. Today, SMEs looking to grow are usually considering two options. Either it’s bought by a big company and you get a lot of money, or you’re pursuing an IPO (which is much more difficult). What incentives or means do companies need to grow with these bills?

Similarly, venture capitalists and investors hesitate to invest in new and promising businesses. Challenges to the entire system of our financial opportunities and the status quo of old businesses are restrained. What happens to the American dream if it gets bigger, hires more people, invests in more startups, and can’t get the money back into the economy? The spillover effect is devastating.

If the bill is signed, the bill will also bring the United States a competitive disadvantage to China and other countries. The bill imposes obligations and restrictions on US companies and provides ammunition to the EU and other regulators targeting US companies.

What does that mean for the average American? Loss of work for Americans. Little investment in American companies. The price of technology is high. The product you purchase will be less transparent. As soon as China becomes a technology superpower, it will also become a political superpower. As the Atlantic wrote in 2020, “China will not be a pacifist force.” “Export value” with the product.

Finally, these bills are a threat to our cybersecurity. By requiring companies to expose the platform to all parties, this proposal eliminates the ability of services to monitor the site against hackers, terrorists, foreign governments, and other malicious individuals.

These bills do not take into account the views of people across the country, especially consumers and small business owners, who will be most affected by them. To make matters worse, these bills are being tracked quickly throughout the process without hearing or testimony.

We urge Congress to step out of the accelerator and take these complex issues into account. Thoughtful and careful. We work with innovators and consumers to protect America’s world-leading economy and those who are constantly striving to support it.

Out of the most challenging years of the century, we don’t need any more disciplinary law. Instead, we need lawmakers to prioritize growth and success.

#### Losing the innovation warfare battle to China causes World War III

Jeanne Suchodolski et al. 20—Attorney with the United States Navy Office of General Counsel where she currently serves as Patent and Intellectual Property Counsel for the Naval Undersea Warfare Center Division Keyport; Suzanne Harrison, Founder of Percipience, LLC, a board-level advisory firm focused on intellectual property strategy, management, and quantifying and mitigating intellectual property risk; Bowman Heiden, co-director of the Center for Intellectual Property, visiting professor at University of California, Berkeley. ("Innovation Warfare," December 2020, from North Carolina Journal of Law and Technology, Volume 22, Issue 2, Article 4, https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1416&context=ncjolt)

Innovation, in particular, technology-based innovation, is the key driver for both economic competitiveness and national security. Other nations, with interests adverse to the United States, recognize this fact. In an increasingly interconnected world, nation states seek to accumulate innovation prowess, and hence economic strength, as a key element of their geopolitical power. Especially savvy nation states also pursue such ends as a mechanism to influence or diminish the national security and geopolitical power of the United States. There is no need to inflict upon the world the carnage of war if one’s geopolitical aims can be achieved via alternative competitive means.

Several authors suggest China’s long-term ambitions include unseating the United States as the world’s economic and political leader.1 More compelling than opinions, several United States (“U.S.”) government and private studies document a systematic and coordinated effort by China to achieve technical and economic dominance through misappropriation of U.S. technology.2 These efforts are additionally supported by a companion effort to weaken international economic institutions and norms designed to protect U.S. intellectual property and free trade.3 The Chinese tactics include illegal means, and sophisticated use of legal means, to misappropriate U.S. technology and weaken the U.S. innovation infrastructure including: a) Leveraging the open university and laboratory ecosystem via direct sponsorship and engagement of Chinese nationals;4 b) Devaluing U.S. positions in patents and technology platforms;5 and c) Accessing private sector U.S. technology through acquisitions and ownership stakes in existing firms, funding of high-tech start-ups, and forced joint ventures and other contractual agreements as a prerequisite for entering the Chinese market.6

This particular form of competitive strategy targeting the innovation ecosystem in the United States is labeled by the Authors as “Innovation Warfare,”7 and it is defined as an executable competitive strategy: a) Reflecting an innovation, intellectual property, and technology strategy articulated and executed by the state (e.g. China); b) Using illegal means, political means, and legal economic activities—of the type previously residing solely in the province of commercial enterprise, to achieve the state’s objectives; c) Employing these economic and innovation activities to achieve both economic geopolitical power and to enhance military capabilities; and d) Functioning as a military, national security, and defense doctrine not solely as a reflection of the state’s economic policy goals nor commercial competition in the ordinary course.

Innovation Warfare does not just threaten American jobs and economic prosperity. By simultaneously co-opting and weakening the innovation capabilities of the United States, China seeks to advance its rise to world power. China’s prosecution of Innovation Warfare not only encompasses a rejection of a rules-based international order, but also poses an existential threat. A world where China dominates the technology landscape is not just about who earns the profits or prevails in an abstract geopolitical fight. According to the National Security Strategy of the United States of America (“National Security Strategy”), China pursues a world in which economies are less free, less fair, and less likely to respect human dignity and freedoms.8 China’s Innovation Warfare activities risk the type of economic and geopolitical aggressions that were a root cause of two World Wars.

#### Wages high and rising

Patti Domm 21—CNBC Markets Editor. (“Workers’ wages are rising at the fastest pace in years. Companies’ profits could take a hit,” May 22, 2021, from CNBC, https://www.cnbc.com/2021/05/22/wages-rise-at-the-fastest-pace-in-years-firms-profits-could-take-a-hit.html)

Workers are getting higher wages, but at some point that could bite into companies’ profits.

As the economy reopens, costs are climbing for everything from packaging and raw materials to shipping. In addition to these expenses, companies are also paying more to get workers to come in the door.

But the disparity between labor costs and profits has been so wide for so long, that employers should be able to increase pay if they can raise prices for goods and services or improve productivity.

McDonald’s said last week that it was boosting wages for the 36,500 hourly workers at company-owned stores by 10%, and Chipotle announced it will raise wages to an average of $15 an hour by the end of June. Bank of America said it would raise minimum wages for its hourly workers to $25 an hour, from the current $20, by 2025.

Sports equipment company Under Armour also announced it would boost the minimum hourly wage for its retail and distribution workers to $15 from $10.

“It’s some of the strongest wage growth we’ve seen in a quarter century,” said Mark Zandi, Moody’s Analytics chief economist. He said the 3% wage growth for private workers in the first quarter was the strongest since the 1990s and productivity has picked up at the same time.

“All the anecdotes we were getting in the last few months would suggest it’s continuing,” he said.

#### No empirical or statistical evidence that antitrust decreases inequality

Jonathan Klick et al. 19—University of Pennsylvania Law School, Erasmus School of Law; Elyse Dorsey, Adjunct Professor at Antonin Scalia Law School; Joshua D. Wright, Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission; Jan Rybnicek, Freshfields Bruckhaus Deringer LLP. ("Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust," January 9, 2019, from George Mason Law & Economics Research Paper No. 18-29, Arizona State Law Journal, 2019, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3249524)

To unpack these results, Table 5 presents the effect of investigations on real average consumption expenditures for the 1st and 5th quintile households by income. For brevity, we only present the specifications with 2 lags and the time trend.

Table

Description automatically generated

On the whole, the relationship between the enforcement metrics and consumption is comparable for the households in both the first and fifth income quintiles. There is not much empirical evidence to substantiate the proposed correlation between antitrust enforcement activity and inequality. And certainly not evidence significant enough to justify the aggressive policy proposals recently injected into discussion of competition policy.

Stepping away from this aggregate analysis for a moment, it is interesting to note that the new(-old) focus on “big is bad” when it comes to inequality ignores an impressive literature on the effects of one of the biggest players in the US in recent decades – Walmart. Work by Jerry Hausman and Ephraim Leibtag shows that when Walmart Supercenters enter a market, food prices paid by consumers in the market drop by about 3 percent, and because they have detailed longitudinal data on household expenditures, they are able to estimate household welfare effects due to this price decrease. They find that the welfare effects are substantial and they are most pronounced for those at the lower end of the socio-economic spectrum.158 In addition to this price effect, David Matsa shows that Wal-Mart’s entry into a market induces competitor supermarkets to improve the quality of their service so as to avoid losing even more business to Wal-Mart and its lower prices.159 Thus, in the posterchild case for big is bad, the behemoth Wal-Mart would appear to improve inequality by its very existence.

Although we believe consumption is the most relevant measure for assessing the welfare effects (in absolute or, as here, in relative terms) of antitrust policy, we provide similar analyses of income and wealth. Using Census data,160 in Table 6, we again provide estimates from an AR(1) distributed lag model examining the effects of DOJ investigations, both merger specific and total, on the income shares received by those individuals in the first quintile and the fifth quintile, while also controlling for a background linear trend.

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As with consumption measures, there is generally no statistically significant effect (individually or jointly) of current or past investigations (regardless of whether we focus on merger-specific or total investigations) on the income shares of those at the bottom or the top of the income distribution. Putting aside statistical significance, while past investigations are associated with increases in the income share received by those at the bottom of the distribution, current investigations have the opposite effect. Further, many of the investigation coefficients are positive for the fifth quintile income share as well. If we examine combined ratios of the shares as we did with the consumption data, we still find no support for the assumption that an increase in antitrust enforcement has any systematic effect on inequality.16

#### 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.

## Adv 2

#### All their internal links are about the *practice* of CWS, not the standard itself

Doug Melamed & Nicolas Petit 18—Stanford Law School & European University Institute - Department of Law (LAW). ("The Misguided Assault on the Consumer Welfare Standard in the Age of Platform Markets," 10/30/2018, from No Publication, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3248140)

The concern about CW’s supposed blind spots in platform markets is misplaced. Let us start with the first and second blind spots. The idea that CW-driven antitrust cannot address problems of platform innovation and monopsony power is wrong, both conceptually and as a matter of law.

Take innovation first. It is universally accepted that technological innovation improves economic and consumer welfare in many ways other than by increasing allocative efficiency and that the welfare benefits of innovation are in aggregate much greater than those from increasing allocative efficiency (Solow, 1957). Conceptually, using the stylized supply and demand curves so common in antitrust analysis, the welfare improvements resulting from technological innovation can be represented as rightward shifts in the demand and supply curves. The normative implications of such shifts are obvious: A firm that prevents rivals from effecting such shifts can be said to have gained market power because doing so would enable it to charge higher prices for existing products or services than otherwise, with a resulting reduction in output compared to the but-for world.

The cases recognize this, for they have long emphasized the very dynamic, non-price harms with which CW critics are concerned. At least as early as Judge Hand’s seminal 1945 decision in United States v. Aluminum Co. of America, antitrust law has been keenly interested in dynamic competition, entrepreneurship and entry.22 And cases decided after the triumph of the CW paradigm in the late 1970s or early 1980s are to the same effect. In U.S. v. Microsoft Corporation, for example, the court condemned practices, unrelated to price, that threatened to raise entry barriers and thus to reduce or delay innovation.23

The same is true of monopsony power. As a conceptual matter, monopsony power is the mirror image of monopoly power (Lerner, 1934). Deadweight loss, wealth transfer, and perverse incentives in seller markets are parallel to those in buyer markets. If CW is understood as total welfare or trading partner welfare, it encompasses buy side or monopsony issues to the same extent as sell-side or monopoly issues (Hemphill and Rose, 2018).

And the case law reflects the application of antitrust law in just that way. In US. v. Adobe Systems, Inc., et al., for example, the Justice Department prosecuted a series of bilateral agreements amongst several large technology firms – including Google, Apple, Intel, Pixar, Intuit and Adobe – that had allegedly agreed to refrain from soliciting, cold calling, recruiting or otherwise competing for each other’s computer engineers and scientists. The Justice Department noted that in a “well-functioning labor market, employers compete to attract the most valuable talent for their needs”. And it regarded the agreement as facially anticompetitive because it “disrupted the normal price setting mechanisms that apply in the labor setting”.24 The Justice Department has also challenged mergers on the ground that they would injure competition in buy-side markets.25

So, one might ask, why the controversy over CW? The answer is that successful challenges to pure innovation harms and monopsony power have been rare. The problem, however, is not legal or conceptual. It is practical. Like all decision-makers, antitrust agencies and courts are constrained in their ability to discover facts that are imperfectly observable (e.g., successful entry deterrence), measurable (e.g., product quality) or predictable (e.g., innovation and technological progress). Some data are easier to obtain, and some facts are easier to establish. So public and private antitrust enforcers have, for reason of prudence or pragmatism, focused on price and output effects.

Enforcers and courts do examine non-price effects and upstream markets, mindful that conduct can produce either injury or improvement, loss or benefit. Consider the FTC’s 2013 decision to terminate its investigation against Google. The Commission explained that the search platform’s “display of its own content could plausibly be viewed as an improvement in the overall quality of Google’s search product”. And in Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co. – which was not a platform case – the Supreme Court rejected a claim of anticompetitive buy-side conduct, not on the ground that such conduct was beyond the reach of the antitrust laws, but because the plaintiff had failed to show that the conduct in question was anticompetitive.26

Similarly, the criticism that current antitrust enforcement has not prevented innovation harm caused by shootout mergers has nothing to do with the CW standard. For one thing, many of those acquisitions are too small to meet the requirement for pre-merger notification. More important, those acquisitions appear to be facially pro-competitive for a number of reasons. They often – or even usually – provide a profit-maximizing exit opportunity for early investors in new and unproven technologies and are thus likely to promote investments in innovation. They can both enable small units with organic constraints to scale through external growth and enhance opportunities for socially efficient combination of complementary assets and the ability and incentives of purchasing incumbent platforms to innovate.

The acquisitions might, on the other hand, be harmful if they nip in the bud nascent or potential competition that would otherwise take place. The enforcement problem is a practical one: in platform markets, it is difficult to distinguish startup acquisitions that seek to extinguish an incipient competitive threat “from a situation in which the dominant incumbent can and will greatly expand the reach and usage of the target firm’s products” (Shapiro, 2017). Nothing about the CW standard prevents the law from incorporating different presumptions about the likely pro- and anti-competitive effects of such mergers based on different assessments of factual likelihoods or different attitudes about the relative risks of Type 1 and Type 2 errors.

#### Populism won’t cause great power war

Louis F. **Cooper 16**, His online writing includes “Reflections on U.S. Foreign Policy” at the U.S. Intellectual History Blog (July 16, 2014). His Ph.D. is from the School of International Service, American University., 12-6-2016, "WPTPN: Will Populist Nationalism Lead to Great-Power War?," No Publication, http://duckofminerva.com/2016/12/wptpn-will-populist-nationalism-lead-to-great-power-war.html

Several reasons present themselves. First, nuclear weapons have given the prospect of a global war, or any great-power war, a possibility of civilization-ending finality that it did not have in the past. Second, the security architecture created under U.S. leadership after World War II has arguably worked to reduce the likelihood of major armed conflict among the great powers. Third, the existence of a network of international institutions, both inside and outside the UN system, has pushed in the same direction. Fourth, it is very possible that, as John Mueller and Christopher Fettweis have argued, decision-makers have to come see great-power war as “subrationally unthinkable, or not even part of the option set for the great powers.”[ii] The extreme destructiveness of the twentieth century’s world wars, fueled partly by developments in technology, might well have produced long-term effects on how leaders and publics think about global or great-power war, in a way, for instance, that the Napoleonic Wars, for all their horror and bloodiness, did not. Phil Arena’s recent contribution to this series argues that if the U.S. under a Trump administration signals an unwillingness to defend its allies, then Putin might be tempted to gamble on an invasion of the Baltics or Kim Jong-Un similarly might gamble on an invasion of South Korea (and that would drag in China). Putting aside Kim Jong-Un for the moment as a special case, let’s consider Putin. As long as NATO exists – and Trump, despite his statements about the unfairness of the distribution of cost burdens, has not suggested, as far as I’m aware, that he wants to dissolve the alliance – then Putin would have to assume that an attack on the Baltics would trigger a NATO response. Even if Putin does not see great-power war as unthinkable or outside his “option set,” one would assume that for reasons of pure self-interest he would not want to risk a nuclear war. Nor, one might think, would he want to jeopardize the prospect of better (from his standpoint) relations with a U.S. administration less concerned with, among other things, his commission of war crimes in Syria or his annexation of Crimea than the Obama administration has been. For these reasons, I’m not too worried that the advent of the Trump administration will lead to a war with Russia over the Baltics. The Korean peninsula is, perhaps, a more worrisome situation. Chances are, however, that Trump, after taking office, will be prevailed upon to make reassuring noises about the U.S. commitment to South Korea, and that should suffice to deter Kim Jong-Un from doing anything too rash. The cautionary point here, admittedly, is that it’s not clear whether Kim can be counted on to behave in a minimally rational fashion. Putin, whatever one might think of him, is rational. It’s not entirely clear whether Kim is. However, if Kim is irrational then all bets are off regardless of what U.S. policy pronouncements are forthcoming. World politics is not invariably cyclical and states can learn from experience (as even Gilpin acknowledged). If one admits this and pays due attention to history, then it is plausible to think that the force of populist nationalism, as expressed in more erratic and/or less ‘internationalist’ official policy, will not, whatever its other effects may be, increase the low likelihood of a global war.

#### Philippines terror threat is overhyped—it exists but has no impact

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I have been asked to offer my assessment of terrorism in Southeast Asia especially in relation to ISIS. Let me begin by saying that any assessment of the threat posed by ISIS in Southeast Asia must begin with the observation that terrorism is not a new phenomenon in the region. During the era of anti-colonial struggle, terrorism and political violence were tactics used frequently by various groups. Since 9/11, Southeast Asia has witnessed several terrorist incidents perpetrated mostly by the Al-Qaeda linked Jemaah Islamiyah terrorist organization and its splinter groups. These incidents include the October 2002 Bali bombings, the August 2003 J.W. Marriott Hotel bombing in Jakarta, the bombing of Super Ferry 14 in the southern Philippines in February 2004, the September 2004 Australian Embassy bombing in Jakarta, further bombings in Bali in October 2005, and further bombings at the J. W. Marriott (again) and the Ritz-Carlton Hotel in Jakarta in 2009. From this last series of attacks to the Jakarta attacks earlier this year, there has not been a major urban terrorist incident, although sporadic violence had continued in the form of clashes between security forces and militant groups, especially in the southern Philippines and also in Poso, Central Sulawesi, Indonesia.[1] In 2010, Indonesian security forces discovered a major militant training camp in Aceh which involved a number of jihadi groups. Several reasons can be cited to explain this hiatus: improved counterterrorism capabilities of regional security forces, disagreements within the jihadi community over the indiscriminate killing of Muslims, and rivalry and factionalism among jihadi groups that have reduced their capabilities and operational effectiveness. Against this backdrop, the ISIS-inspired attacks in Jakarta on January 14, 2016, the April 9, 2016 attack on Philippine security forces in the southern island of Basilan conducted by groups claiming allegiance to ISIS, and a recent spate of kidnappings in southern Philippines serve as a timely reminder of the persistent threat that terrorism continues to pose to Southeast Asian societies. ISIS has emerged as the signal expression of this threat, in part, because of the speed with which it has gained popularity in the region. When Abu Bakr al-Baghdadi announced on June 28, 2014 (the first day of Ramadhan) that a caliphate had been formed by ISIS, the announcement captured the imagination of the radical fringes across Southeast Asia. The announcement was followed by a comprehensive and effective propaganda campaign that conveyed the impression of ISIS’s invincibility and validation from god. July and August that year witnessed a series of bay’at (pledge of allegiance) to ISIS taken by radical groups and clerics from Indonesia and the Philippines. It was the audacity of its announcement of the caliphate and forcefulness of its communications strategy that set ISIS apart from other groups. In September, the Southeast Asian dimension of ISIS was given something of a formal expression with the formation of Katibah Nusantara, a Southeast Asian wing of ISIS formed by Malay and Indonesian speaking fighters in Syria. Katibah fulfills several functions: it provides a social network to help Southeast Asian recruits settle in, training for those among them who would eventually take up arms, and communications with the network of pro-ISIS groups operating in Syria. By dint of these developments, the threat posed by ISIS in Southeast Asia is real, and it has been growing since mid-2014. Nevertheless, the extent of the threat should also not be exaggerated.

## Adv 3

#### The plan will be circumvented by the courts

Crane 21 (Daniel A. Crane, Frederick Paul Furth, Sr. Professor of Law, University of Michigan, Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205, y2k)

Even where reform statutes are textually honored in their immediate aftermath, history shows a creeping judicial tendency to begin integrating the reform statutes into the mainstream of antitrust jurisprudence within a few decades. This has been the fate of the four major antitrust reform statutes - the FTC, Clayton, Robinson-Patman, and Celler-Kefauver Acts - each of which was meant to rein in capital in ways that the Sherman Act did not. In all four instances, however, the courts incrementally began mainstreaming the statutes into Sherman Act precedent, creating a homogenous antitrust jurisprudence that read the textual distinctiveness out of the reform statutes. Thus, today, cases under the FTC Act, section 3 of the Clayton Act, and the Robinson-Patman Act are largely indistinct from Sherman Act cases, and merger cases have been rolled into the same modes of price-theoretic analysis that would be employed in a Sherman Act case. Given that neither [\*1252] statutory text nor legislative history seems to have deterred the courts from this process within a few decades after the passage of the statutes, there is little reason to believe that a "this time we mean it" statutory reform would not meet the same fate. If the courts continue to understand aspects of the antitrust statutes as aspirationally motivated and operationally impracticable, the previously observed pattern is likely to continue.

Again, it would be an overstatement to claim that statutory words have no consequences or that antitrust reform statutes are doomed ab initio to judicial culling. But the courts' pattern of antitrust antitextualism and their perennial insistence that the antitrust statutes are delegations of common-law power rather than textually actionable injunctions in all of their particulars provide a cautionary tale for future legislatures: the dynamic of antitrust legislation, enforcement, and adjudication plays out against a longstanding backdrop of contestation over bigness, power, and efficiency that has muted the ordinary importance of statutory language. Writing more definite statutes will not necessarily curb these habits of mind.

#### Stare decisis is dead – watershed exception, LWOP for minors, upcoming abortion case

Gass 21 “What Supreme Court’s jettisoning of precedent may mean for future” Henry Gass – Staff writer for CS Monitor, May 20, 2021, <https://www.csmonitor.com/USA/Justice/2021/0520/What-Supreme-Court-s-jettisoning-of-precedent-may-mean-for-future> [edited for acronym]

Earlier this week the conservative supermajority on the U.S. Supreme Court voted to scrap a legal rule that, while decades old, had never really been used.

On the surface it may not seem like a radical move – the judicial equivalent of canceling a gym membership you never use. The so-called watershed exception – that criminal rules don’t apply retroactively unless they represent a major procedural change – had never been applied in its 32-year history, Justice Brett Kavanaugh wrote in the court’s majority opinion.

But on closer examination, and in the context of other actions the court took this week, scrapping the watershed exception suggests that the court – in particular its conservative wing – has a more gung-ho attitude toward overturning precedent than in the past.

Respect for precedent is a founding principle of the U.S. legal system, and overturning it is one of the Supreme Court’s defining powers. In a 1932 dissent, Justice Louis Brandeis explained why the high court should, generally, respect past decisions: “In most matters,” he wrote, “it is more important that the applicable rule of law be settled than that it be settled right.”

In other words, following earlier rulings (i.e., precedent) is important even if you disagree with those earlier rulings. Past rulings should only be overturned if there’s “special justification.”

The legal doctrine the justices follow when reviewing precedent is known as stare decisis – taken from a Latin maxim “to stand by things decided and not disturb settled points.” The doctrine has no formal boundaries, so which “matters” fall outside the “most matters” described by Brandeis?

In recent decades, as conservative jurists – and judicial philosophies like originalism – have come to dominate the high court, how those justices interpret stare decisis has become the defining debate.

Justice Antonin Scalia helped entrench the originalist philosophy, which holds that the Constitution should be interpreted as the framers intended. He was also reluctant to overturn precedent, describing stare decisis as a “pragmatic exception” to originalism. Originalists on the court today, such as Justices Clarence Thomas and Amy Coney Barrett, have expressed much less reluctance, however.

“We are in the midst of a change in how Supreme Court justices treat established precedent,” says Kimberly West-Faulcon, a professor at Loyola Law School in Los Angeles, in an email.

Those views were on display this week, and with the court set to review a key abortion precedent next term, they will likely guide some of the court’s future rulings.

“A lot of wiggle room”

The stare decisis doctrine “is far from a model of clarity,” says Ilya Somin, a professor at George Mason University’s Antonin Scalia Law School.

“It leaves a lot of wiggle room” for any justice, he continues, “to overturn any precedent he or she thinks is badly wrong, and also so long as getting rid of it will not cause some kind of enormous harm in society.”

The court’s liberal justices have indulged this trend to a degree – casting important votes in recent years to overturn precedents regarding same-sex marriage and state laws criminalizing sodomy – but since they have been an ideological minority on the court for decades, they have not been as active as their conservative colleagues.

And how the court’s conservative justices view precedent does seem to be shifting. The fact that they abandoned the watershed exception this week despite the question never being asked or argued is one indicator. And their individual records provide further indications.

Justice Scalia famously said that Justice Thomas “does not believe in stare decisis, period.” And as of 2019, Justice Thomas had written more than 250 opinions seriously questioning precedent, according to Stephen Wasby, a professor of political science at the University at Albany.

But where Justice Thomas used to write these opinions alone, he is now finding support from several colleagues.

Justice Kavanaugh – who, having voted with the majority more than any other justice this term, is effectively the court’s ideological center – has shown a recent, expansive view toward overruling precedent. In addition to his opinion this week scrapping the watershed exception, earlier this term he wrote an opinion effectively overturning a 2016 ruling that barred [LWOP] life without parole sentences for nearly all juvenile offenders.

And as court watchers, and some of his colleagues, have noted, he has been overturning precedent with less clarity and consistency than Justice Thomas.

Meanwhile, the newest member of the court, Justice Barrett, wrote extensively on stare decisis while teaching law at the University of Notre Dame. The doctrine is a “soft rule,” she wrote in one article; “modern originalism” raised the possibility that “following precedent might sometimes be unlawful,” she wrote in another. In a third, she wrote that “rigid application” of stare decisis “raises due-process concerns and, on occasion, slides into unconstitutionality.”

When does precedent get overturned?

Beyond that, jettisoning the watershed exception illustrates “the court’s willingness to overrule [a precedent] rather than just leave it,” says Douglas Berman, a professor at the Ohio State University Moritz College of Law.

“The willingness of this court to embrace a shift in doctrine, even when they didn’t have to, that’s the key,” he adds.

Indeed, a core principle of overturning precedent is that the justices should first be asked to consider overturning a precedent. That is not something they were asked to address in their ruling this week in Edwards v. Vannoy.

The case instead asked the court if a decision it made last year – barring convictions from non-unanimous juries – applied retroactively. That practice, in Oregon and Louisiana, had roots in the Jim Crow era. For decades, when considering such a question the Supreme Court had followed a precedent holding that no new criminal rules would apply retroactively unless they constitute “watershed” new procedures.

In the 32 years since that exception was written, Justice Kavanaugh said in the majority opinion, “the Court has never found that any new procedural rule actually satisfies the purported exception.”

“No one can reasonably rely on an exception that is non-existent in practice,” he added. “The watershed exception must ‘be regarded as retaining no vitality.’”

Practically, the ruling this week means that hundreds of people convicted by non-unanimous juries in Louisiana and Oregon must serve the remainder of their sentences – even though the method of their conviction has been deemed unconstitutional.

The ruling broke along ideological divides, with Justice Kavanaugh joined by the court’s five other conservatives. Meanwhile Justice Elena Kagan, joined by the court’s two other liberals, criticized the abandonment of the exception in a dissent that struck at the heart of the court’s long-running debate about precedent.

The majority “discards precedent without a party requesting that action,” she wrote. “And it does so with barely a reason given, much less the ‘special justification’ our law demands.”

Justice Kagan wrote with some added authority because, as she pointed out in a footnote, she had dissented from the court’s ruling last year on non-unanimous jury verdicts “precisely because of its abandonment of stare decisis.”

But with that Ramos v. Louisiana ruling now law, she added, “I take the decision on its own terms, and give it all the consequence it deserves.”

The Supreme Court has, for the best part of a century, regularly overturned precedents – led by justices of all ideological stripes. But the theory underlying those decisions – that the court must be asked first, and that a special justification is needed – while admittedly open to some interpretation, has been applied with relative consistency.

The Edwards ruling is one indication of how that consistency is disappearing. And the court is now preparing, in the coming months and years, to review weightier precedents on issues like abortion rights, gun rights, and the nexus of LGBTQ rights and religious liberty.

#### No ! to backsliding

Michael **Mousseau 18**. Professor @ UCF, PhD PoliSci @ Binghamton. Conflict Management and Peace Science, “Grasping the scientific evidence: The contractualist peace supersedes the democratic peace”, Vol 35(2) 175-192, SagePub.

A weighty controversy has enveloped the study of international conflict: whether the democratic peace, the observed dearth of militarized conflict between democratic nations, may be spurious and accounted for by institutionalized market ‘‘contractualist’’ economy. I have offered theory and evidence that economic norms, specifically contractualist economy, appear to account for both the explanans (democracy) and the explanandum (peace) in the democratic peace research program (Mousseau, 2009, 2012a, 2013; see also Mousseau et al., 2013a, b). Five studies have responded with several arguments for why we should continue to believe that democracy causes peace (Dafoe, 2011; Dafoe and Russett, 2013; Dafoe et al., 2013; Ray, 2013; Russett, 2010). Resolution of this controversy is fundamental to the study and practice of international relations. The observation of democratic peace is ‘‘the closest thing we have to an empirical law’’ in the study of global politics (Levy, 1988: 662), and carries the profound implication that the spread of democracy will end war. New economic norms theory, on the other hand, yields the contrary implication that universal democracy will not end war. Instead, it is market-oriented development that creates a culture of contracting, and this culture legitimates democracy within nations and causes peace among them. The policy implications could hardly be more divergent: to end war (and support democracy), the contractualist democracies should promote the economies of nations at risk (Krieger and Meierrieks, 2015; Meierrieks, 2012; Mousseau, 2000, 2009, 2012a, 2013; Nieman, 2015). In the literature are five factual claims for why we should continue to believe that democracy causes peace: (1) an assertion that in three of the five studies that overturned the democratic peace (Mousseau, 2013; Mousseau et al., 2013a, b), the insignificance of democracy controlling for contractualist economy is due to the treatment of missing data for contractualist economy (Dafoe et al., 2013, henceforth DOR); (2) a claim of error in the measure for conflict (DOR) that appears in one of the five studies that overturned the democratic peace (Mousseau, 2013); (3) an alleged misinterpretation of an interaction term that appears in one of the five studies (Mousseau, 2009) that overturned the democratic peace, along with in inference of democratic causality from an interaction of democracy with contractualist economy (Dafoe and Russett, 2013; DOR); (4) a claim of reverse causality, of democracy causing contractualist economy (Ray, 2013); and (5) a report of multiple regressions with most said to show democratic significance after controlling for contractualist economy (DOR). This study investigates all five of these factual claims. I begin by addressing the issue of missing data by constructing two entirely new measures for contractualist economy. I then take up possible measurement error in the dependent variable by reporting tests using both my own (Mousseau, 2013) and DOR’s measures for conflict. Next, I disaggregate the data to investigate a causal interaction of democracy with contractualist economy. I then examine the evidence for reverse causality, and scrutinize the competing test models to pinpoint the exact factors that can account for differences in test outcomes. The results are consistent across all tests: there is no credible evidence supporting democracy as a cause of peace. Using DOR’s base model, the impact of democracy is zero regardless of how contractualist economy or interstate conflict is measured. There is no misinterpreted interaction term in any study that has overturned the democratic peace, and the disaggregation of the data yields no support for a causal interaction of democracy with contractualist economy. Ray’s (2013) evidence for reverse causality from democracy to contractualist economy is shown to be based on an erroneous research design. And of DOR’s 120 separate regressions that consider contractualist economy, 116 contain controversial measurement and specification practices; the remaining four are analyses of all (fatal and non-fatal) disputes, where the correlation of democracy with peace is limited to mixedeconomic dyads, those where one state has a contractualist economy and the other does not, a subset that includes only 27% of dyads from 1951 to 2001, including only 50% of democratic dyads. It is further shown that this marginal peace is a statistical artifact since it does not exist among neighbors where everyone has an equal opportunity to fight. The results of this study should not be surprising, as they merely corroborate the present state of knowledge. This is because, while DOR ardently assert that four alleged errors, when corrected, each independently save the democratic peace proposition—multiple imputation, the exclusion of ongoing dispute years, an interaction term, and their alternative measure for contractualist economy—they never actually report any clear-cut evidence in support of their claims. One issue not addressed is Dafoe and Russett’s (2013) challenge to Mousseau et al. (2013a) on the grounds that our reported insignificance of democracy is not significant. Like the four claims of error made by DOR addressed here, Dafoe and Russett (2013) made this charge without supporting it. Mousseau et al. (2013b) then investigated it and showed that it too has no support. This issue appears resolved, as Russett and colleagues (DOR) did not raise it again. Nor have DOR or anyone else disputed the overturning of the democratic peace as reported in Mousseau (2012a), which has not been contested with any assertion, supported or unsupported. The implications of this study are far from trivial: the observation of democratic peace is a statistical artifact, seemingly explained by economic conditions. If scientific knowledge progresses and the field of interstate conflict processes is to abide by the scientific rules of evidence, then we must stop describing democracy as a ‘‘known’’ cause or correlate of peace, and stop tossing in a variable for democracy, willy-nilly, in quantitative analyses of international conflict; the variable to replace it is contractualist economy. If nations want to advance peace abroad, the promotion of democracy will not achieve it: the policy to replace it is the promotion of economic opportunity The economic norms account for how contractualist economy can cause both democracy and peace has been explicated in numerous prior studies and need not be repeated here (Mousseau, 2000, 2009, 2012a, 2013). An abundance of prior studies have also corroborated various novel predictions of the theory in wider domains (Ungerer, 2012), and no one has disputed the multiple reports that contractualist economy is the strongest non-trivial predictor of peace both within (Mousseau, 2012b) and between nations (Mousseau, 2013; see also Nieman, 2015). The only matter in controversy is whether democracy has any observable impact on peace between nations after consideration of contractualist economy. My investigation begins below with the allegation of measurement error.

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#### Link outweighs the link turn because takes decades to build a doctinral base

Elyse **Dorsey et al 18**. Elyse Dorsey is an Associate at Wilson Sonsini Goodrich & Rosati. Jan M. Rybnicek is a Senior Associate at Freshfields Bruckhaus Deringer. Joshua D. Wright is the University Professor, Antonin Scalia Law School at George Mason University, Executive Director, Global Antitrust Institute, and Senior of Counsel, Wilson Sonsini Goodrich & Rosati. T "Hipster Antitrust Meets Public Choice Economics: The Consumer Welfare Standard, Rule of Law, and Rent-Seeking" <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3165192>

Moreover, a **new public interest test would take years to deploy** **and even longer before meaningful** **guidance could be issued** similar to that which the consumer welfare standard offers today. **In the meantime, firms could use the new standard as leverage over the antitrust agencies**. Once allowed to influence agency enforcement practices during the initial period when no framework exists, **it will be difficult to establish guidelines that do not leave room for such manipulation to continue**. By calling to replace the consumer welfare standard with a vague multi-factored public interest test and elevating a focus on market structure over the application of economic theory and empirical evidence to determine actual anticompetitive effects, Hipster Antitrust ironically would grant large, powerful corporations the ability to exert undue influence over the decision-making process at the antitrust authorities, all to the detriment of consumers.

#### 1—Abandoning consumer welfare makes innovation *impossible*

Grover Norquist 21—MBA and AB from Harvard. ("Republicans should continue to champion the consumer welfare standard," May 3, 2021, from Washington Examiner, https://www.washingtonexaminer.com/opinion/republicans-should-continue-to-champion-the-consumer-welfare-standard)

We have already tried this approach in the United States, and it failed miserably. Just look at case law. Before the consumer welfare standard was adopted, antitrust law was vague and unfocused, leading to inconsistent rulings and enforcement actions designed to reward political allies or punish political enemies.

Abandoning the consumer welfare standard in favor of the Left’s approach would stifle competition and innovation. Overzealous regulators could target large companies no matter how they benefit shoppers. Greedy trial lawyers could make a killing suing companies for alleged anti-competitive practices. Even companies that have done nothing wrong would be forced to pay large sums to avoid an adverse decision in court. Successful firms under constant threat of antitrust investigation would be less likely to engage in robust competition, leading to higher prices and reduced access to goods and services for consumers.

So far, conservatives have rightly remained united against the Left’s big-government antitrust approach. House Republicans have unanimously opposed Democratic Rhode Island Rep. David Cicilline’s absurd playbook for breaking up Big Tech, and no Senate Republican has co-sponsored Democratic Minnesota Sen. Amy Klobuchar’s bill to restrict mergers and acquisitions arbitrarily. This does not mean that threats are not on the horizon. The fact is, antitrust law is simply not designed to address concerns with content and speech moderation. It is just the wrong tool for the job.

Klobuchar sees aggressive antitrust action as a tool to "rejuvenate capitalism " and has announced plans to target every industry with enforcement actions. That can never happen unless foolish Republicans join Klobuchar’s crusade. But if this did happen, it would open the door to unelected bureaucrats using the government to reshape the entire economy.

#### 2—Business confidence—*mixed signals* deck innovation

AEP 21—Antitrust Education Project, legal scholars including Elliot S. Berke, Managing Partner of Berke Farah LLP, Special Assistant Attorney General for Georgia. ("Consumer Welfare Standard," April 2021, date retrieved via Wayback Machine, from https://www.antitrusteducationproject.org/consumer-welfare-standard.html)

Such decisions were not based on any real economic analysis. The Consumer Welfare Standard arose in response to this legal chaos from debates among economists and legal scholars, many at the University of Chicago. These scholars crafted a corrective standard by which to weigh costs and benefits of antitrust law with the welfare of the consumer as its governing principle.

This Consumer Welfare Standard held that the logical goal embedded in antitrust law is “economic efficiency” – delivering lower prices, heightened innovation and more choices for consumers.

Courts were quick to see the merit of this new standard. By 1979, the new scholarship had convinced jurists that because the law was detached from consumer welfare, it was free to pursue aesthetic and political goals at the expense of consumers and innovation. Judges began to eagerly applied the standard’s neutral principles, with no slant against or for “bigness,” or “small dealers,” or a magical ability to identify “worthy men.” It had become an accepted principle that when judges use antitrust law to reorder business according to a judge’s personal whim or aesthetics, they undermine free markets, democracy, and rule of law.

This common understanding of antitrust law’s purpose is now in danger of being replaced by theories that are even more vague, subjective and politicized than they were before the widespread adoption of the Consumer Welfare Standard. We are seeing a renewed push to forget what we’ve learned and embrace what we once legitimately rejected:

Resurrecting old but discredit dogma: Recent lawsuits against technology companies supported by almost every state attorney general and the Department of Justice are rooted in an animus over size, resurrecting the old but discredited dogma of “the curse of bigness.”

Stifling Innovation with Reversible Decisions: Government attorneys in both parties demonize multi-billion-dollar acquisitions as harmful to innovation, when such buyouts were allowed by regulators and have actually stimulated the desire for innovators to innovate. This contradiction threatens to undermine business confidence by making government actions easily reversible or rescindable. These mixed signals threaten to degrade innovation in the name of spurring innovation.

Shifting the Burden of Proof to the Defendant: New proposals in Congress would shift the burden of proof, tasking defendant corporations with the near-impossible task of demonstrating in advance that a given merger or acquisition won’t harm competition.

Vague New Notions: Legislators are advancing new theories of antitrust that would address poorly defined ideas about “equity” and “values” that would uncouple this body of law from its beneficial economic effects.

Ignoring Consumer Preferences for Network Effects: Proponents of a new antitrust standard ignore the benefits of economies of scale and network effects, which are the result of the decisions of millions of consumers who remain free to make competitive choices with a mere purchase or a click.

Degrading Democracy: Modern thinkers and practitioners are losing touch with how democracy depends on neutral judges enforcing a neutral standard. We all lose when judges replace the laws enacted by our elected representatives with their personal sensibilities. We also lose when judges no longer accord respect to the “votes” consumers make with their dollars.

On the political left – a self-declared new Brandeis movement is underway. The 117th Congress faces sweeping legislation that would transform antitrust law into mechanisms for government to regulate any American business of significant size.

#### OECD finds that superstar firms aren’t cheating – their productivity spreads economy wide and are better than small firms

Joe **Kennedy 21**. Senior fellow at ITIF, Previous positions include chief economist with the U.S. Department of Commerce and general counsel for the U.S. Senate Permanent Subcommittee on Investigations. 1-11-21. “Monopoly Myths: Are Superstar Firms Stifling Competition or Just Beating It?” https://itif.org/publications/2021/01/11/monopoly-myths-are-superstar-firms-stifling-competition-or-just-beating-it

OECD looked at the relationship between spending on intangible assets and concentration (measured by the market share of the top eight groups of jointly owned companies) between 2002 and 2014. The data covered manufacturing and non-financial market services in nine countries, including the United States. Concentration increased in about 70 percent of country-industry pairs. The average increase was around 5 percentage points (from 39 percent to 44 percent of the industry, or an average of 0.5 percentage points per firm).25 A 10 percentage point increase in intangible investment within an industry (measured by patents) was associated with 1.5 to 2.2 percentage points more concentration over four years. The linkage was strongest for industries that were more digitized, open to trade, and more concentrated to start with. It was also strongest for investments in innovative property such as patents, research and development (R&D), and new products and systems. The authors summarized that the **results “suggest that [increased concentration]** **may be mostly of the ‘good’ variety** **in the sense** that **it was associated with investment in innovative assets** **and new intangible business models rather than anti-competitive forces.”**26 A subsequent OECD study finds differences in multifactor productivity between companies, looking specifically at the dynamics within both the top and bottom half of companies across 34 industries between 2000 and 2015. Using cross-country data on both productivity dispersion within industries and levels of intangible investment, it concluded that a 10 percentage point increase in intangible investment within an industry is associated with a 1.5 percentage point increase in the dispersion between firms at the 90th and the 10th percentile of the productivity distribution.27 Different forces were operating in the top and bottom halves of the market. Again, industries with higher levels of intangible investment experienced higher increases in productivity dispersion between firms. The dispersion in productivity at the top of the market was associated with the ease of extending intangible capital to other parts of a firm since bigger firms can spread these costs out over a larger volume of production. However, dispersion at the bottom half was linked to synergies between intangible capital and factors such as digital intensity, exposure to trade, and the availability of venture capital. Laggard firms seem to have difficulty effectively making the complementary intangible investment needed to fully exploit digital technologies. Unlike the earlier OECD study, the authors found that the most important type of intangible investment was in economic competencies (branding, market research, employer training, and organizational structure) rather than innovative property such as patents. These are the costs that Eggertsson et al. omitted, arguing that they only diverted sales from one company to another.

#### The link outweighs the link turn – larger firms are more innovative

Joe Kennedy 20. Senior fellow at ITIF, Previous positions include chief economist with the U.S. Department of Commerce and general counsel for the U.S. Senate Permanent Subcommittee on Investigations. 11-9-2020. “Monopoly Myths: Is Big Tech Creating “Kill Zones”?” <https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones>

The Assumption That Small Firms Are Inherently More Innovative Than Large Firms Is Not Borne Out by the Evidence One core argument made by anti-monopolists who oppose large companies and argue that kill zones and killer acquisitions are real and harmful is that small firms are inherently more innovative than large firms. As FTC Commissioner Christine Wilson argued, “[M]any today believe that small firms are inherently more innovative than large ones, so that the acquisition of a small firm by a large one necessarily reduces innovation.”45 For example, Tim Wu recently testified before Congress that innovation in technology sectors would increase if government imposed greater regulations and increased antitrust enforcement because “[o]ver the last century, competitive, open sectors—ecosystems—have proved themselves superior to those monopolized or dominated by a ‘big three’ or ‘big four.’”46 In fact, large companies are as or more innovative than small firms. In a 1996 paper, Wesley M. Cohen and Steven Klepper found that **large firms invest more in R&D as a share of sales**.47 The number of patents and innovations produced per R&D dollar decline with increasing firm size. But they argued that this reflects a mismeasurement of innovation outputs. Large firms benefit from “cost spreading,” because they can spread the benefits from one innovation across more units and products, leading to a greater overall level of innovation per unit of R&D. They wrote, “Not only does cost spreading provide the basis for explaining the R&D-size relationship, it also challenges the consensus that has emerged from the R&D literature that large firm size imparts no advantage in R&D competition.”48 More recently, in 2016, business professors Anne Marie Knott and Carl Vieregger estimated that a 10 percent increase in the number of employees increases R&D by 7.2 percent, and a 10 percent increase in firm revenues increases R&D productivity by 0.14 percent. **This shows that large firms not only invest more in R&D activities, they also enjoy higher returns on innovation output per dollar invested in R&D**.49Other research has found that “small firms prevail in the early stages and innovation tends to concentrate in larger firms as industries evolve towards maturity.”50 In the 1990s, many small firms emerged and competed to be the winners in IT platforms. But **only a few firms could emerge as winners, and the ones that did continue to invest in innovation.**

#### No correlation between concentration and business establishments

Robert D. Atkinson and Caleb Foote 20. Robert D. Atkinson is the founder and president of ITIF. Caleb Foote is a research assistant at the Information Technology and Innovation Foundation. 8-3-20. “Monopoly Myths: Is Concentration Leading to Fewer Start-Ups?” https://itif.org/publications/2020/08/03/monopoly-myths-concentration-leading-fewer-start-ups

WHAT IS REALLY GOING ON WITH START-UPS? There is no doubt start-ups have fallen. Of the 259 four-digit NAICS code industries with relevant data, 206 saw fewer start-ups in 2016 than in 2006, and only 53 saw increases.14 Overall, the number of start-ups grew from 523,720 in 1997 to 564,888 in 2006, but fell to 438,867 in 2016—a decline of 84,853 over two decades.15 These numbers are even starker given the United States has grown, and with it the number of businesses that exist and workers who could create start-ups. In fact, establishments grew 14 percent from 1997 to 2016, from 6 million to 6.7 million in 2006 and to 6.9 million in 2016. New start-ups as a share of all establishments fell from 12.9 percent in 1997 to 12.3 percent in 2006 to only 10.2 percent in 2016. And concentration has increased, although by less than many people imagine.16 First, according to data from the Census Bureau's Economic Census, in about 40 percent of industries at the 4-digit NAICS code level concentration has not been increasing, and most of the remaining 60 percent are substantially unconcentrated, with their top 8 firms commanding less than 30 percent of their respective markets. So, on the face of it, increasing concentration does not seem sizeable enough to affect the rate of start-ups.17 Moreover, there have been almost no studies that empirically examine the relationship between these two things. Rather, neo-Brandeisians simply assert that increasing concentration is the cause. The argument modern champions of the antimonopolist tradition make is simple: Concentration has gone up and start-ups have gone down, so the former has caused the latter. As a Brookings Hamilton Project report describes it: “A range of data show both increases in concentration in various industries and a decline in the number and activity of start-ups.”18 But this is a bit like implying the number of movies Nicholas Cage appears in is causally corelated to the number of people who drown by falling into a pool each year.19 These two datasets are in fact correlated, but neither causes the other. Indeed, as one learns in any introductory statistics class, correlation does not mean causation. To actually understand the relationship, it’s important to look at concentration and start-ups by industry. In looking at the relationship between the change in the rate of new establishments between 2006 and 2016 and the rate of change in concentration ratios from 2007 to 2012, **there is essentially no relationship**. The more-accurate measure would be change in new firms, rather than establishments.20 But the Census Bureau only reports on establishments. There is, however, a close relationship between new firms and new entablements, with about 33 percent more establishments than firms. Moreover, for concentration, the Census Bureau only reports data every five years, with the latest available being through 2012 (2017 data has not yet been released). When looking at the relationship between new establishments as a share of total establishments in a particular year at the four-digit NAICS code level and the change in industrial concentration in the industry, **there is no relationship**. **When looking at** the change in the **C4 ratio** (the market share of an industry by the largest 4 firms) **and** the change in total number of **start-ups** for 257 industries, the **correlation coefficient** **is** in fact negative (more concentration leads to fewer start-ups), but **very small**: -0.05. When looking at the more-accurate measure of change in the number of start-ups as a share of total firms in the industry, the relationship between change in concentration and start-ups is actually positive, but still very small: 0.05. In other words, more concentration leads to more start-ups. The relationship with change in the C8 ratio is similar: -0.04 for raw number of start-ups and 0.04 for percent change. These relationships are so miniscule that none are anywhere close to being statistically significant.21 When using a regression equation to measure the relationship, it is even weaker: around 0. When outliers are excluded (industries with change in start-ups that are beyond 1.5 times the interquartile range), the results are essentially the same: absolutely no correlation. This is why there are many industries wherein both concentration ratios and start-ups have fallen. Between 2006 and 2016, in the depository credit industry (banks), the C4 ratio fell 5.7 percent, the C8 ratio fell 5.2 percent, and the C20 ratio fell 5.4 percent, yet start-ups fell 72 percent. The C4 ratio in the alumina and aluminum production and processing industry fell 12.3 percent, yet start-ups fell 44 percent. The C4 ratio fell 35 percent in the computer and peripheral equipment manufacturing sector, while start-ups fell 40 percent. In contrast, there are numerous industries wherein both start-ups and concentration increased over the same time period. Start-ups increased 38 percent in the electronic shopping and mail-order houses industry, while the C4 ratio increased 9 percent. Beverage manufacturing start-ups increased 36 percent, while the C4 ratio increased 9.4 percent. And health- and personal-care store start-ups increased 12 percent, while the C4 ratio increased 3.6 percent.

#### Killer Acquisitions are good

Joe Kennedy 20. Senior fellow at ITIF, Previous positions include chief economist with the U.S. Department of Commerce and general counsel for the U.S. Senate Permanent Subcommittee on Investigations. 11-9-2020. “Monopoly Myths: Is Big Tech Creating “Kill Zones”?” <https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones>

**Acquisitions Provide a Needed Exit Route** The knowledge of possibly being acquired can also spur entrepreneurial activity and investment. As the report for the European Commission notes: Simultaneously, the chance for start-ups to be acquired by larger companies is an important element of **v**enture **c**apital markets: **it is among the main exit routes for investors** **and** it **provides an incentive** **for** the private financing of **high-risk innovation**.43 This argument was echoed by James Pethokoukis of the American Enterprise Institute: Not every founder starts a company intending for it become Amazon. **Often future acquisition is the** **goal**. Then the entrepreneur can go on to start another firm or become an investor in other aspirational startups working on risky new ideas. Same goes for the investors in the acquired firm. What’s more, these purchases are often “acquisition-by-hire” situations where the prize is talent rather than the Next Big Thing. And when an upstart firm has a valuable idea, acquisition can be the fastest way to get it to users.44

#### Even if small businesses innovate, they rely on bigger firms to compete

Joshua D. Wright & Jan M. Rybnicek 21—Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission; Antitrust Attorney, former Advisor at FTC, Editor for the Antitrust Law Journal. ("A Time for Choosing: The Conservative Case Against Weaponizing Antitrust," Summer 2021, from National Affairs, https://nationalaffairs.com/time-choosing-conservative-case-against-weaponizing-antitrust)

But that is only part of the story. These major tech firms not only directly employ Americans, but through their investment and innovation, they have created entirely new markets that also have created millions of jobs. Take for instance the app economy—a more than $1 trillion global industry—that has created millions of U.S. jobs since Apple’s iPhone launched in 2007. According to one estimate, the U.S. had more than two million app-related jobs as of April 2019.[xvii] America’s large tech companies also benefit small businesses in yet another way: by connecting them to new markets that they could not access before. Today small businesses are able to take advantage of the major tech firms’ size and scale to grow domestically and compete globally with affordable and secure services.

#### Their evidence doesn’t account for cost spreading and returns on innovation

Joe Kennedy 20—Senior Fellow at ITIF, previously chief economist with the U.S. Department of Commerce, JD, and PhD in economics from George Washington University. ("Monopoly Myths: Is Big Tech Creating ‘Kill Zones?’" November 9, 2020, from Information Technology and Innovation Foundation, https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones)

The Assumption That Small Firms Are Inherently More Innovative Than Large Firms Is Not Borne Out by the Evidence

One core argument made by anti-monopolists who oppose large companies and argue that kill zones and killer acquisitions are real and harmful is that small firms are inherently more innovative than large firms. As FTC Commissioner Christine Wilson argued, “[M]any today believe that small firms are inherently more innovative than large ones, so that the acquisition of a small firm by a large one necessarily reduces innovation.”45 For example, Tim Wu recently testified before Congress that innovation in technology sectors would increase if government imposed greater regulations and increased antitrust enforcement because “[o]ver the last century, competitive, open sectors—ecosystems—have proved themselves superior to those monopolized or dominated by a ‘big three’ or ‘big four.’”46

In fact, large companies are as or more innovative than small firms. In a 1996 paper, Wesley M. Cohen and Steven Klepper found that large firms invest more in R&D as a share of sales.47 The number of patents and innovations produced per R&D dollar decline with increasing firm size. But they argued that this reflects a mismeasurement of innovation outputs. Large firms benefit from “cost spreading,” because they can spread the benefits from one innovation across more units and products, leading to a greater overall level of innovation per unit of R&D. They wrote, “Not only does cost spreading provide the basis for explaining the R&D-size relationship, it also challenges the consensus that has emerged from the R&D literature that large firm size imparts no advantage in R&D competition.”48

More recently, in 2016, business professors Anne Marie Knott and Carl Vieregger estimated that a 10 percent increase in the number of employees increases R&D by 7.2 percent, and a 10 percent increase in firm revenues increases R&D productivity by 0.14 percent. This shows that large firms not only invest more in R&D activities, they also enjoy higher returns on innovation output per dollar invested in R&D.49

Other research has found that “small firms prevail in the early stages and innovation tends to concentrate in larger firms as industries evolve towards maturity.”50 In the 1990s, many small firms emerged and competed to be the winners in IT platforms. But only a few firms could emerge as winners, and the ones that did continue to invest in innovation.

#### Sitaraman is wrong---firm’s size and market structures don’t determine the rate of innovation and leaving the Chinese market kills competitiveness and influence

Jamison 20 (Mark Jamison is a nonresident senior fellow at the American Enterprise Institute, where he works on how technology affects the economy, and on telecommunications and Federal Communications Commission issues. He is concurrently the director and Gunter Professor of the Public Utility Research Center at the University of Florida’s Warrington College of Business. Breaking up Big Tech will not help the US innovate or compete with China, 8-19, <https://www.aei.org/technology-and-innovation/breaking-up-big-tech-will-not-help-the-us-innovate-or-compete-with-china/>, y2k)

Facebook and Google have argued that breaking them up would damage US competitiveness with China. Vanderbilt Law Professor — and former advisor to Sen. Elizabeth Warren (D-MA) — Ganesh Sitaraman and former Federal Communications Commission Chairman Tom Wheeler (now at the Brookings Institution) take exception. Sitaraman argues in Foreign Affairs that breaking up Big Tech companies would bolster US national security. Wheeler writes that US tech innovation would improve if Big Tech companies were required to make their data assets available to rivals.

It is an open question how regulation might affect whatever competition there might be between the US and China, but Sitaraman and Wheeler are wrong. Sitaraman seems unaware of the five decades of academic research showing that market structure — the number and relative sizes of firms in a market or industry — does not determine the amount of innovation. Wheeler also seems unaware of how markets for ideas work. Here are my explanations.

Regulation and market structure

Both Sitaraman and Wheeler assume that government regulation can define an industry’s market structure, but they are wrong for two reasons.

First, more regulation results in industries having larger firms, not smaller ones, and it also lowers labor productivity. This has been confirmed in several economic studies (see examples here, here, and here). Regulations raise the cost of a firm being in business, which means firms need to be larger to cover those fixed costs.

The other reason is that the economics of social media, search, and e-commerce, etc. have determined today’s market structures. Breaking up the companies wouldn’t repeal these economic realities, so the current market structure would reemerge, except with possibly even larger firms.

Market structure and innovation

Sitaraman assumes that less concentrated markets are more innovative. Decades of scholarly research have shown that this isn’t the case.

In the mid-20th century, some economists believed that monopoly markets would produce more innovations than competitive markets. The argument was that a monopoly could capture more profits from innovation than a firm in a competitive market could, so monopoly markets gave more innovation.

But in the 1960s, economists began testing the hypothesis. Studies examined whether an individual firm’s size or the relative sizes of firms in an industry affected research and development or innovation. The Organisation for Economic Co-operation and Development recently released a paper summarizing the research. The summary finds that the relationships vary over time and across industries, so the best conclusion is that firm size and market structure cannot be used to affect innovation.

Ideas and data

Wheeler believes that innovation comes from companies analyzing data and selling products. Actually, in the tech space, more and more innovations are coming from decentralized, small-scale innovators. This pattern was discovered in academic research about 20 years ago and still holds.

What is happening is that innovators develop ideas for products and demonstrate their potential value. In a few instances, such as in the case of Facebook, the innovator forms a business and succeeds. But more often than not, the innovators sell their company or at least their product to an enterprise that has a proven business model. This was probably the situation with Instagram, which had a great idea and a weak business model at best before selling to Facebook, which then turned the idea into a profitable business.

Wheeler also appears to believe that if a company is unable to uniquely profit from the data it captures, the company will capture extensive data anyway. I have heard many times the argument that profits don’t matter, such as in the net neutrality debates. But the arguments are always made by people who care very much about the profitability of their retirement savings. So I think they know they are wrong.

Market structure and geopolitical competitiveness

Sitaraman also believes that smaller firms would be less likely to want to enter the Chinese market and would thus avoid being compromised by China’s influence. This might be true, but if it is, then it is also true that the US firms would be less active in all global markets, which would decrease US influence. Since part of the rivalry between the US and China is likely to include global influence, retracting US companies from the global economy would certainly decrease US competitiveness.

What’s to be done?

Clearly, some writers need to spend more time reviewing the literature: The flaws in Sitaraman’s and Wheeler’s analyses were refuted long ago by scholarly research. It would also be helpful if advocates for hands-on control of companies were humbler in their beliefs that they fully understand businesses and can redesign them at will.

#### Antitrust regulation is low *across the board*

Joshua Wright 21—Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission. ("5 questions for Joshua D. Wright on antitrust and Big Tech," February 18, 2021, from American Enterprise Institute, https://www.aei.org/economics/5-questions-for-joshua-d-wright-on-antitrust-and-big-tech/)

What would it mean if policymakers used antitrust law to break up four or five Big Tech companies?

It would be historic, and it would also be wrong-headed. For one, we’re in the middle of a pandemic, in a time where lots of people are really benefiting from the goods and services these firms provide. Furthermore, the world’s most successful and innovative companies are here in the US, and, from a competitive policy lens, our antitrust regime has largely avoided ex-ante regulation of these firms.

A signature feature of the US system is that our antitrust laws do not punish companies for competing successfully and becoming large — or even becoming a monopoly. You can’t make an antitrust cause of action out of successful innovation in the US. Instead, the US punishes abuses of monopoly power — you can’t climb to the top of the ladder and then burn it down. We have antitrust cases for that, some of which the government can win if they go to court and prove that the firms are monopolists and harm competition. That’s a feature, not a bug, of the US system.

#### Tech innovation *requires* industry

Ferial Ara Saeed 21—CEO at Telegraph Strategies LLC, a risk management firm focusing on the analysis of political and economic trends, former deputy U.S. coordinator for information and communications technology policy at the State Department. ("The Sino-American Race for Technology Leadership," April 23, 2021, from War on the Rocks, https://warontherocks.com/2021/04/the-sino-american-race-for-technology-leadership/)

Setting the right foundation is crucial. Sound analytical judgments about China’s policies, plans, and prospects, along with a new framework for the relationship, are the starting point. Neither wholesale confrontation nor wholesale engagement are adequate to address U.S. concerns, but the relationship should be stable for this approach to have any chance of success. The view that economic competitiveness, innovation, and democratic norms are core components of national security should drive the development of a comprehensive strategy into which discrete policies of pressure, negotiation, multilateralism, high-level dialogue, and domestic measures fit. Industry should work closely with the government to ensure this perspective underpins U.S. policy, and the government should recognize that industry is central to the United States winning the technology race and therefore should get a vote on how to run it.

Out-competing and out-innovating China requires that America remain the world’s most attractive innovation hub, enticing the best talent, drawing in the most venture capital, and generating the largest revenues to support U.S. leadership of technology’s newest frontiers. It means continuing to “move fast and break things.” The ethos that made America a technology superpower can keep it so. It also means injecting some strategic realism into U.S. policy. As former Secretary of Defense William Cohen put it, China’s actions have caused the United States to say, “we can’t do business the way we’ve been doing business,” but, “we still have to do business.”

#### Wrong—big firms are the largest contributors to R&D spending, anticipate new competition, and create new markets

Jan Rybnicek 20—Antitrust Attorney, former Advisor at FTC, Editor for the Antitrust Law Journal. ("Innovation in the United States and Europe," November 11, 2020, from The Global Antitrust Institute Report on the Digital Economy 13, <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3733698>) edited for ableist language

A key indicator of a vibrant economy that is characterized by vigorous competition and intense innovation is high levels of spending on research and development. Research and development fuels economic growth, job creation, and competition by allowing researchers and entrepreneurs to discover new technologies, design new products, tap new markets, and improve efficiency and enhance performance. Critics of U.S. competition policy have argued that today’s largest firms have become so large that they are untouchable by competition from current or future rivals and, as a result, have lost the incentive to innovate that once may have been part of their core identity as scrappy upstarts but that has since faded as they rest on their laurels, happy in their dominant positions.37 They further argue that dominant firms snuff out would-be entrants that otherwise would be devoting capital to research and development initiatives to build competing offerings for consumers.38 These critics allege that this purported dampening in the incentive to innovate has deprived consumers of better products and services that would otherwise arise through the push and pull of competition.

But the actual data tell a different story about the state of research and development in the United States and how it compares to its counterparts in Europe. In fact, companies in the United States lead the world in research and development. As shown in Figure 6, out of the top companies globally investing in research and development spending, 11 out of the top 20 (55 percent) and seven out of the top 10 (70 percent) are based in the United States as of 2018.39 By comparison, only six of the top 20 are located in Europe (30 percent), and only two find themselves in the top 10 (20 percent). The remaining firms on the list based on research and development spend are based in Asia.

Contrary to critics’ claims, there is no lack of research and development in the United States, and U.S. firms continue to outpace global counterparts in investing in new technologies and products. The reality is that companies in the United States invest in a broad range of research and development initiatives despite the presence of large, successful tech companies. Unsurprisingly, just as no one today would invest in developing a new combustion engine-powered car that would have to compete against established and mature competitors that have considerable expertise in the market, it would be unwise to try to compete against any of the large tech companies with a “me too” product. Instead, innovators (and, as discussed below, the venture capital and other sources of capital that fund them) devote resources to discovering new and different solutions that may indirectly replace incumbents by disrupting old markets and creating new ones. Indeed, this how many of today’s most successful tech firm achieved success— by building new products and creating new markets, not by mimicking yesteryear’s giants, such as IBM, Microsoft, and Intel.

A closer look at research and development investment in the United States further shows that tech firms are leading the way. In fact, many of the tech firms that have allegedly contributed to the decline of competition and innovation in the United States are the biggest spenders. As shown in Figure 7, Amazon, Alphabet, Intel, Microsoft, and Apple comprise the nation’s topic five spenders, with investments totaling more than $75 billion in 2018.40 These companies are pouring money into innovation not because they have nothing else to do with it but because they are attempting to stay ahead of the competition in their core markets by introducing even better products and services, and to break into adjacent markets where they see opportunities to use their expertise to be disruptive forces

#### Their ev about increasing inequality omits important benefits

Elyse Dorsey et al. 20—Adjunct Professor at Antonin Scalia Law School; Geoffrey A. Manne, president and founder of the International Center for Law and Economics; Jan M. Rybnicek, Antitrust Attorney, former Advisor at FTC, Editor for the Antitrust Law Journal; Kristian Stout, ICLE’s Director of Innovation Policy; Joshua D. Wright, Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission. ("Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement," June 2, 2020, from Pepperdine Law Review, Vol. 47, No. 861, https://ssrn.com/abstract=3592974)

First, consider the evidence on inequality trends. Populist claims regarding increasing inequality largely rely upon analysis of the Gini coefficient for US incomes over the last 50 years, which appears to show a steep increase in inequality. Examining the ratio of the share of US income among the 5th quintile of income-earning households to the share among the 1st quintile of households likewise seems to show increasing inequality.83

While these data points offer interesting insights, it is again important to understand their limitations. As Robert Kaestner and Darren Lubotsky emphasize, for example, failing to account for government transfers and employee benefits—that presumably substitute, in part, for cash income—can meaningfully affect these kinds of inequality measures.84 One important example they explore is that of healthcare benefits. As healthcare costs have rapidly increased in recent years, omitting a measure of health insurance benefits (provided by employers or by the government) could significantly affect ultimate inequality findings. Kaestner and Lubotsky, in fact, analyze inequality measures accounting for this omission, and find that including health insurance benefits substantially lessens the difference between high-end and low-end incomes.85 They find the ratio of income between households at the 90th percentile and the 10th percentile to be approximately 5 in 1995, 5.2 in 2004, and 5.6 in 2012.86 So while their findings support the notion that inequality is increasing, they also suggest that the trend is significantly smaller than reported.

Examining household consumption trends tells a similar story. Scholars have argued that consumption might be a superior measure of welfare, given a “closer link between consumption and well-being.”87 Consumption trends would also seem to be relevant when considering antitrust enforcement efforts, as they offer more information regarding economic effects than isolated income or wealth measurements. Examining household consumption over the last couple decades indicates that inequality is increasing but at a muted rate.

Accordingly, the evidence does seem to indicate inequality is increasing by some amount. Potentially more-accurate measures of income and welfare, however, suggest this trend is not as significant as populists claim. So, the first assumption in this particular populist theory appears to be valid, if often overstated. That leads us to the second—and for this discussion, the critical—assumption that antitrust enforcement is driving the apparent inequality trend.

#### And, wage hikes are sustainable

Jordyn Holman et al. 8/9—Retail reporter for Bloomberg News. ("American workers now have the upper hand as employers rush to raise hourly wages," August 9, 2021, from https://fortune.com/2021/08/09/american-workers-employers-raise-hourly-wages-job-market/)

For the first time in decades, the American worker is finally in command when it comes time to talk money.

There are tell-tale signs everywhere that this is so.

Like the way some employers—such as Kroger Co., Chipotle Mexican Grill Inc. and Under Armour Inc.—are frantically pushing up hourly wages to try to retain employees. Or the way others—like Starbucks Corp. and Drury Hotels—are dangling hiring bonuses to entry-level applicants. Or the way CVS Health Corp. is no longer requiring job seekers to have high-school diplomas. Or the way Dan Sacco, the owner of Your Pie restaurants in Iowa, is instructing his general managers to poach workers from rivals with offers of better hours and higher pay.

“Everything is fair game now,” Sacco says.

It is unclear how long all of this will last in the wild and disjointed economic recovery that’s followed last year’s pandemic collapse. But one thing is certain: Workers are scoring the fattest pay hikes since the early 1980s. Wages for the leisure and hospitality industry have surged at an annualized pace of 6.6% over the past two years. And data released Friday showed that payrolls rose nationally at the fastest pace in almost a year, a sign of how desperate employers are to fill jobs.

“If you’re not able to get staff to cover, it leaves you really crunched and that’s what we’re seeing at the moment,” said Neil Saunders, a managing director at market research firm GlobalData who covers retailers and grocers. “Wages have gone up and have been going up.”

There’s a risk the party could peter out as the Delta variant causes U.S. coronavirus infections and hospitalizations to pick up, mostly among the unvaccinated. Some events, like the New York International Auto Show, are being canceled due to virus concerns. Companies including Alphabet Inc.’s Google, Amazon.com Inc. and BlackRock Inc. have all recently pushed back plans to return to the office as well. Economists at Bank of America Corp. have reported slowing momentum in credit-card spending.

Inflation is another complicating factor that’s limiting the benefits of pay raises. Consumer prices surged 5.4% in June from a year ago, the fastest pace since 2008. According to a Peterson Institute study, inflation-adjusted compensation for all civilian workers is now lower than it was in December 2019.

But if policy makers can tamp down on the price increases, workers should do well. Data from the Labor Department show median wage growth was 4.8% in July on a 24-month annualized basis, up from a 3.3% pace in January 2020. Service workers saw gains almost two percentage points higher than the average for all employees last month.

That could help narrow income inequality, however slightly, after years of widening gaps amid fairly stagnant wages for the service industry accompanied by soaring salaries for white-collar workers. For the most part, corporate America expects wage increases to continue.

The subject came up at a recent meeting with Treasury Secretary Janet Yellen in Atlanta, where she gathered senior leaders from companies including Delta Air Lines Inc. and Coca-Cola Co. to talk about inflation and the economy. During private discussions, some executives bemoaned the fact they still can’t fill open positions even after wages were increased, according to a person familiar with the conversation. The consensus among employers was that higher pay is here to stay.

#### Studies find zero causal link between antitrust and inequality

Elyse Dorsey et al. 20—Adjunct Professor at Antonin Scalia Law School; Geoffrey A. Manne, president and founder of the International Center for Law and Economics; Jan M. Rybnicek, Antitrust Attorney, former Advisor at FTC, Editor for the Antitrust Law Journal; Kristian Stout, ICLE’s Director of Innovation Policy; Joshua D. Wright, Law professor at George Mason University, executive director of the Global Antitrust Institute, former member of the Federal Trade Commission. ("Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement," June 2, 2020, from Pepperdine Law Review, Vol. 47, No. 861, https://ssrn.com/abstract=3592974)

Second, consider the empirical evidence supporting a causal link between antitrust enforcement and inequality. This proffered link remains, thus far, largely theoretical and undeveloped empirically. Populist papers advocating for increased antitrust as a salve for increasing inequality do not offer empirical support for their preferred course of treatment. But other authors have begun to explore empirically the proposed tie between antitrust enforcement and inequality. Wright et al., for instance, present time series regressions relating measures of inequality to antitrust enforcement measures.88 While the authors acknowledge the standard reasons that these analyses cannot isolate, with confidence, causation, their work provides a useful foray into the empirical basis for the notion that antitrust enforcement and inequality are causally linked. The authors examine data from DOJ investigations between 1984 and 2016, focusing first on merger investigations, given the populist emphasis on merger activity, and then broadly examine all DOJ investigations for a more general enforcement measure. Their results do not offer “much empirical evidence to substantiate the proposed correlation between antitrust enforcement activity and inequality.”89

Populist claims that increased antitrust enforcement is necessary to combat a severe trend of increasing inequality thus appear to be overstated. While inequality appears to be increasing, the rate is likely more modest than the populist movement implies. And there is, as of yet, no empirical support for the underlying proposition that increasing antitrust enforcement levels would slow, stop, or reverse this trend.

## Adv 2

#### Studies find antitrust has *no significant effect* on democracy

Niels Petersen 13—Emile Noe¨l Fellow, New York University School of Law; Senior Research Fellow, Max Planck Institute for the Research on Collective Goods. ("ANTITRUST LAW AND THE PROMOTION OF DEMOCRACY AND ECONOMIC GROWTH," 14 May 2013, from Journal of Competition Law & Economics, Volume 9, Issue 3, September 2013, Pages 593–636, <https://doi.org/10.1093/joclec/nht003>)

If we look at the effect of antitrust law on democracy, we find that there is no significant positive effect. Table 3 shows the results of the first difference estimator and the pooled OLS regression. The observation period is five years, and all standard errors are clustered by states. The first two columns show the model with one lag, while the further two columns show the model with two lags. Except for the first column, the antitrust variable is slightly positive in all specifications. However, it is not statistically significant. Therefore, there is no evidence that antitrust law does not have a positive effect on democracy, contrary to our assumptions.

Table

Description automatically generated

Note: All specifications of the model are using 5-year steps for each variable. The 5-year models are estimated with one lag, the 10-year models with two lags. All models include year-fixed effects, and the standards errors are clustered by states. The Pooled OLS regressions contain some additional time-invariant control variables, whose results are not reported. These are Fraction Tropical Area, population density in coastal areas, malaria prevalence, Fraction Muslim, Fraction Buddhist, Fraction Confucian, African, Latin American, and GDP in 1960.

\* p < 0.1 | \*\*p < 0.05 | \*\*\*p < 0.01

#### No impact---populist governments aren’t sustainable

Denis **MacShane 17**, Former UK minister for Europe, 4-26-2017, "Judy Asks: Is Populism on the Run?," Carnegie Europe, http://carnegieeurope.eu/strategiceurope/68775?lang=en

Populism is the most overused word in today’s political lexicon. The most populist parties after 1945 were the Communists, then the Greens. The EU and immigration are targets of choice for populist parties, as are globalization and the Bilderberg Group of transatlantic elites. Populist movements of the Left like Spain’s Podemos or Greece’s Syriza have been as strong as those of the Right like the Alternative for Germany (AfD) or the UK Independence Party (UKIP). Populists announce they represent the true interests of the people against the elite establishment and its ruling parties. Populists promise much but deliver little. The problem for populism is that when it succeeds, it becomes part of the establishment and the target for the next anti-elite populist demagogue. In most cases, existing parties adopt populist ideas—many parties have become green, and the British Tories have adopted UKIP’s anti-European rhetoric. Extreme populism as embodied in Britain’s vote to leave the EU and the election of U.S. President Donald Trump can win. Then comes a backlash. The military-judicial state in America is exerting counterpressure against Trump’s populism. The electoral wins for pro-EU forces in Austria, the Netherlands, and France followed the triumph of Brexit populism, which is mainly confined to England outside London. When she wins her populist election on June 8, UK Prime Minister Theresa May will have to swap populism for realism unless she wants to do lasting damage to Britain.

## Adv 3

#### Court is SUPER activists now---it’s overruling precedents left and right

Elliot Williams 4-23, CNN,

<https://www.cnn.com/2021/04/23/opinions/supreme-court-kavanaugh-sotomayor-jones-mississippi-williams/index.html>,

This decision to refuse to impose restrictions on the ability of states to sentence juveniles to life without parole was a clear break from the Court's history, couched in language suggesting, wrongly, that the nation's highest Court wasn't the right venue to decide such issues. Jones "articulates several moral and policy arguments for why he should not be forced to spend the rest of his life in prison," Kavanaugh wrote, but "our decision allows [him] to present those arguments to the state officials authorized to act on them, such as the state legislature, state courts, or Governor."

In effect, it's a sad tale, but not our problem.

Justice Sonia Sotomayor was not having it, writing a withering dissent that accused the majority of turning its back on decades of precedent governing both sentencing minors, and how the Court ought to follow its past decisions. While acknowledging the heinous nature of the crime, Sotomayor outlined Jones' history of suffering abuse and neglect and noted his lack of access before the murder to drugs he took for mental health purposes.

"How low this court's respect for stare decisis has sunk," she also wrote. "Now, it seems, the court is willing to overrule precedent without even acknowledging it is doing so, much less providing any special justification."

She's right. Kavanaugh's opinion presents dozens of pages of justification for an outcome that is plainly out of line with the Court's past decisions. Certainly, the Court has a more conservative majority today than it did several years ago; Kavanaugh replaced a less reliably conservative Anthony Kennedy in 2018, and Amy Coney Barrett replaced Even in spite of a growing bipartisan consensus, there is a persistent strain of conservative thought that continues to cling to the past on matters of criminal justice. The majority in Jones was carrying out a political victory for many, by enshrining in law the belief that anything that makes it easier to put people in jail and keep them there has to be a good thing.

That a new conservative majority so quickly emboldened the Court to overturn longstanding precedent confirms what many in the public might believe about jurists -- that they are not bound by fidelity to the law alone, but are also political actors, deciding as they want. In fact, the majority decision in Jones gave Congress a great reason for expanding the size of the Supreme Court, as some have recently recommended. When a clear majority has signaled how willing it is to toss aside its own precedents with alarming haste, it is hard to argue, as some have, that adding more justices would be the thing that would politicize the Court beyond repair. It seems it is already there.

Never mind the staggering immorality of the Jones decision in the full context of America's justice system. The United States stands alone as the only country in the world that sentences people to life without parole for crimes committed during their youth. The United States is one of only about 50 nations in the world that continues to have a death penalty, placing it in the esteemed company of places we regularly criticize for their human rights records, including China, Iran, North Korea and Saudi Arabia. The United States dwarfs virtually every other nation on the planet with its incarceration rate. The ship sailed long ago on the question of whether America has a humane system of punishment.

However, it is the Supreme Court's caprice, and the fragility of its precedents, that should give us all pause. Despite everything the Court might say about the power of precedent, they made clear this week that their past decisions only matter until they don't.

#### Kavanaugh is the swing vote that has and will overturn anything

Millhiser 21 “Brett Kavanaugh’s latest decision should alarm liberals” Ian Millhiser - senior correspondent at Vox, where he focuses on the Supreme Court, J.D., magna cum laude, from Duke University, where he served as senior note editor on the Duke Law Journal, May 18, 2021, https://www.vox.com/2021/5/18/22440256/brett-kavanaugh-supreme-court-edwards-vannoy-abortion-criminal-justice-constitution-stare-decisis

Because here’s the thing: Edwards did not simply limit the scope of Ramos. Justice Brett Kavanaugh’s majority opinion also overruled a 32-year-old decision governing when the Supreme Court’s precedents apply retroactively. Kavanaugh did so, moreover, without following the ordinary procedures that the Court normally follows before overruling one of its previous decisions. As Justice Elena Kagan points out in dissent, no one asked the Court to overrule anything in Edwards, and the Court “usually confines itself to the issues raised and briefed by the parties.”

Edwards, moreover, is the second time in less than a month that Kavanaugh authored a majority opinion that overrules a prior decision without following the Court’s normal procedures. In late April, Kavanaugh handed down a decision in Jones v. Mississippi that effectively overruled a 2016 decision establishing that nearly all juvenile offenders may not be sentenced to life without parole.

But Jones overruled this 2016 decision in such an oblique and underhanded way that several of Kavanaugh’s colleagues came very close to accusing him of lying about what he was doing. Even Justice Clarence Thomas, the Court’s most conservative member, chided Kavanaugh for overruling a previous decision “in substance but not in name.”

The Court historically has been very reluctant to overrule precedents, both because past justices understood that the law should be predictable, and because strong norms against overruling past decisions help prevent the Supreme Court from becoming a purely partisan prize — tossing out decades’ worth of settled doctrines every time a different political party gains control of the Court.

But Kavanaugh does not appear to share his predecessors’ reluctance to overrule past decisions.

All of this matters because Kavanaugh is the median vote on the Supreme Court. Last week, SCOTUSBlog published an analysis finding that Kavanaugh voted with the majority in 97 percent of cases decided so far this Supreme Court term — more than any other justice. If you want to win a case before the Supr

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

eme Court, you’ve got a tough road ahead of you if you can’t secure Kavanaugh’s vote.

And yet, Kavanaugh is signaling in Edwards, Jones, and in a few other significant opinions that he does not particularly care about precedent, and that he is willing to overrule prior decisions for reasons that previous Supreme Courts would have deemed trivial and unwarranted.

With conservatives holding a 6-3 supermajority on the Supreme Court, that’s terrible news for liberals. And it doesn’t just mean that precedents like the Court’s pro-abortion decision in Roe v. Wade (1973) are in danger.

Kavanaugh, the closest thing that this Supreme Court has to a “swing” justice, is telling us that he’s very willing to overrule a wide range of precedents. And a majority of the Court appears to agree with his approach. That’s potentially disastrous news for anyone hoping that this Supreme Court would honor past decisions that protect liberal democratic values.

# 1NR

## PTX

#### Disruption cascades.

Steven **Ferrey 14**, Professor of Law at Suffolk University Law School and served as a Visiting Professor of Law at Harvard Law School in 2003, has been a primary legal consultant to the World Bank and the U.N. Development Program on their renewable energy and climate control policies in developing countries, having worked extensively in Asia, Africa, and Latin America, holds a Bachelor of Arts in Economics, a Juris Doctor, a Master's Degree in Regional Planning, and between his two graduate degrees, was a post-doctoral Fulbright Fellow at the University of London, “ARTICLE: BROKEN AT BOTH ENDS: THE NEED TO RECONNECT ENERGY AND ENVIRONMENT,” 65 Syracuse L. Rev. 53, Lexis

Reliable electricity supply requires a constant, second-by-second simultaneous balancing of power generation supply to meet demand on the utility grid. 3 The United States electric grid will collapse within approximately four seconds if sufficient generation of power is not constantly supplied to meet fluctuating consumer demand. 4 Either too [\*55] much or too little power causes system instability, 5 and a loss of power would disrupt communication, transportation, heating and water supplies, hospitals, and emergency rooms. 6 According to Kirchoff's Law, 7 power moves almost at the speed of light on an energized grid. 8 If power supply does not constantly balance instantaneous demand, the grid can blackout large areas, 9 as happened to the Northeast United States population on August 14, 2003, 10 and subsequently with rolling blackouts in Texas. 11 The 2003 blackout affected fifty million people and caused a loss of six billion dollars. 12 During this blackout, production was lost at approximately half of the Chrysler plants, a Ford plant was lost for a week of repairs, oil refineries shut down, one chain of 237 drugstores in New York City was forced to close, major urban airports closed causing more than a thousand flights to be cancelled, and frozen and perishable foods were lost. 13

#### Destroys everything.

Alice **Friedemann 16**, Transportation expert, founder of EnergySkeptic.com and author of “When Trucks Stop Running, Energy and the Future of Transportation,” worked at American Presidential Lines for 22 years, where she developed computer systems to coordinate the transit of cargo between ships, rail, trucks, and consumers, “Electromagnetic pulse threat to infrastructure (U.S. House hearings)”, Energy Skeptic, http://energyskeptic.com/2016/the-scariest-u-s-house-session-ever-electromagnetic-pulse-and-the-fall-of-civilization/

Modern civilization cannot exist for a protracted period without electricity. Within days of a blackout across the U.S., a blackout that could encompass the entire planet, emergency generators would run out of fuel, telecommunications would cease as would transportation due to gridlock, and eventually no fuel. Cities would have no running water and soon, within a few days, exhaust their food supplies. Police, Fire, Emergency Services and hospitals cannot long operate in a blackout. Government and Industry also need electricity in order to operate. The EMP Commission warns that a natural or nuclear EMP event, given current unpreparedness, would likely result in societal collapse.The $3.5 trillion bill is the last, best chance to prevent catastrophic warming – designed by congress and necessary

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.

#### Infrastructure solves the economy and inequality better and directly

Pearkes 21- George Pearkes is the Global Macro Strategist for Bespoke Investment Group. He covers markets and economies around the world and across assets, relying on economic data and models, policy analysis, and behavioral factors to guide asset allocation, idea generation, and analytical background for clients of ranging from individual investors to large institutions. 2021 (“Bush, Obama, and Trump all failed to jolt the US out of its economic malaise. Biden's huge stimulus package could finally break that trend.”, available online at <https://www.businessinsider.com/bush-obama-trump-failed-boost-us-economy-biden-stimulus-covid-2021-3>, Business Insider)

For nearly more than a decade, the US economy has been stuck in a low growth, low inflation, and low investment malaise that emerged after the global financial crisis. Despite myriad attempts from three presidents and a bevy of lawmakers in Congress, no fiscal action has been able to break the US out of this funk. But now, President Biden's plans have a chance to finally do just that.

The recently-enacted American Recovery Plan (ARP) stimulus and the forthcoming Build Back Better (BBB) infrastructure package represent a fundamental change in how fiscal policy operates. This change could finally spark a change in the trend of consumer spending, total output, and more robust inflation that policymakers have sought in vain.

Fiscal policy's fumbles

This isn't to say that previous administrations haven't tried to kick the economy into gear with some sort of stimulus or federal spending. But those previous attempts were either too restrained or totally misdirected.

During the Bush Administration, the US Treasury did send out stimulus checks to American households, but the overall size of the Bush stimulus in early 2008 was too small to avert the ongoing housing collapse and resulting recession.

The Obama Administration's American Recovery and Reinvestment Act of 2009 didn't include significant direct payments to taxpayers and spent just $111 billion on infrastructure, spread across a range of direct purchases, grants, and tax incentives.

Republicans' surge in the House in the 2010 elections ended any chance of further direct stimulus, and the US entered a period of slow and grinding austerity — cuts to federal spending and little support for the economy — that was a steady brake on the recovery from 2011 onwards.

Then came President Trump, who introduced a package of tax cuts that started to widen the federal deficit. Some mainstream economists fretted at the time that the Tax Cuts and Jobs Act might kick off an inflationary spiral, driving prices higher and higher.

While the $1.5 trillion price tag on Trump's tax cuts with relatively little spare economic capacity could have had an impact on the overall economy — unlike Bush and Obama efforts at stimulus that were relatively small versus slack economic capacity — it was never going to kick off a virtuous cycle of higher demand that drives real growth, investment, and inflation.

The reason was who the tax cuts benefited. The Tax Policy Center estimated households in the bottom 80% of the income distribution would see an income boost of 2% or less from the cuts, while higher income households reaped larger benefits.

That was a huge problem, because higher income consumers spend a much smaller share of their income gains than lower-income consumers. In the chart below, I show the increase in dollars spent as a percentage of after-tax income by decile of pre-tax income over the 5 years from 2014 to 2019. That is, for every additional dollar in income that a household received how much of it went back out into the economy as new spending?

As shown, consumers in the bottom half of the income distribution on average raised spending more than their increase in incomes over the five year period. Conversely, the highest 10% of earners raised spending by less than half as much as their increase in income. Basically, as low-income households get more cash, they tend to spend it on things they need — in turn boosting the economy. By comparison, high-income households save most of that increased income.

Economists call this "marginal propensity to consume", or MPC for short, and the implications are clear: if you want to generate economic activity via consumer spending, you're far more likely to do so by giving more income to lower-income households.

A practical example may be helpful. A $1000 tax cut for the top decile would lead to roughly $470 in new consumer spending, all-else equal. For consumers below the median, it would lead to more than $1000 of new consumer spending.

An ambitious attempt

While the Trump tax cuts barely benefitted low-income households — and thus stifled any chance of a real economic boost — the ARP does just that. Tax Policy Center estimates suggest the $1.9 trillion package will raise the income of those in the bottom 20% of the income distribution by a staggering 20%. By contrast, the top quintile of earners sees a scant 0.7% gain.

From an MPC perspective, the ARP isn't just large. It's also highly likely to generate substantial economic activity via consumer spending because of who it benefits. That makes it unique among fiscal packages over the last several presidential administrations.

Earlier this week, reports started to circulate that the Biden Administration is also eyeing as much as $3 trillion in spending with investments in manufacturing, transportation infrastructure, clean energy, rural broadband, and housing, as well as further transfers to households via free community college, universal pre-kindergarten education, and subsidies for child care.

While this would also likely be coupled with higher taxes on corporations and the wealthy — and therefore be smaller from a simplistic budget deficit perspective — it still represents large increases in government spending on specific goods and services that were missing from prior fiscal plans passed over the past couple of decades.

The combination of huge stimulus for low-income consumers and material government spending to mobilize real resources make Biden's fiscal approach a big shift from recent history. It's too early to have confidence that the plan will boost US economic growth to its stronger pre-2000 trend (as I've discussed previously), but the basic approach of scale and design give Biden's bills a far better shot than other recent attempts by Democrats and Republicans alike.

#### 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.

#### The trade-off with infrastructure is 1:1---so specific

McNamee 21 (Roger McNamee, the founding partner of the venture capital firm Elevation Partners, America Can't Wait for Legislators to Rein in Big Tech. The Biden Administration Must Focus on Antitrust, https://time.com/5952229/biden-big-tech-antitrust/&hl=en&gl=us&strip=1&vwsrc=0, y2k)

President Biden faces challenges greater than any president since FDR. The country is struggling with a deadly pandemic that has shaken the economy and exposed its structural flaws. His political opponents refuse to engage with those challenges, choosing instead to focus their efforts on undermining democracy. Powerful business interests in technology, health care, finance, energy, and agriculture are pursuing agendas that make President Biden’s job all the more difficult. But perhaps the most uniquely destabilizing force in America today is the major internet platforms. Their business models fundamentally reduce human agency, and, in some cases, threaten democracy and public health, as we have seen during the COVID-19 pandemic.

Even if Republicans were willing to cooperate, there would not be enough time in the congressional calendar to address all of these issues through legislation. As things stand, the legislative calendar prior to the 2022 midterms is likely to be dominated by infrastructure and voting rights. Fortunately, there is much that the executive branch can do. Given the scope and novelty of the challenges, President Biden will be best served by appointees who share his bold vision and are willing to embrace new approaches to large and difficult problems.

#### Antitrust has been de-prioritized to push other items

Ward 9-15 (MYAH WARD, politico staff, Klobuchar confident Congress can pass legislation targeting tech giants, https://www.politico.com/news/2021/09/15/klobuchar-legislation-tech-511966, y2k)

The hurdles: Progress on antitrust legislation has slowed as lawmakers tackle other pressing priorities. The House Judiciary Committee moved forward with six bills aimed at the tech giants in late June, but they have yet to get floor time in the chamber and have drawn attacks from some top Republicans. Congress has also yet to move forward with comprehensive privacy legislation.

#### Plan would require negotiating Manchin

Rivero 21 (Nicolás Rivero, Tech Reporter @ QZ, <https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/>, y2k)

How Congress can tackle antitrust

The best hope for stricter antitrust enforcement lies in Congress. Lawmakers could pass bills, like one recently proposed by Minnesota senator Amy Klobuchar, that would make it easier for enforcement agencies to challenge mergers and acquisitions. They could even go a step further and draft an updated set of antitrust laws, perhaps following the blueprint laid out in last year’s antitrust report from the House of Representatives (which was co-authored by Khan). Armed with new laws clearly banning specific behaviors, prosecutors at the Department of Justice and the FTC would stand a better chance winning cases against well-funded adversaries like Facebook and Google.

Those steps wouldn’t hinge on heroics from antitrust hardliners like Khan and Wu. Instead, their success would depend on the whims of Senate centrists like West Virginia’s Joe Manchin, who has lately been flexing his power to derail the chamber’s democratic majority in opposition to left-wing priorities like a $15 minimum wage.

#### Even popular bills require debate and PC---it’s a train-wreck!

Hulse 9 (Carl Hulse, New York Times staff, Legislative Pileup Looms in the Senate, 11-21, <https://www.nytimes.com/2009/11/22/us/politics/22hill.html>, y2k)

In the polarized Senate, even popular bills and generally acceptable executive branch nominees that eventually win easy approval first have to crawl though time-consuming procedural thickets. Now it is hard to see how Congress will make up for the lost time. While the Senate hopes to devote most of December to a landmark debate on health care, time is running out on a number of other difficult and significant issues that must be resolved by the end of the year. What follows the Thanksgiving recess may be a headlong rush into a legislative train wreck. Among the obstacles on the track is raising the national debt limit, always a wrenching vote for lawmakers trying to avoid looking like out-of-control spenders.

#### 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.

#### 3---Aff evidence is all rhetoric

Greve 9-7 (Joan E Greve, Guardian staff, Joe Biden to referee Democrats in brewing battle over $3.5tn budget bill, <https://www.theguardian.com/us-news/2021/sep/07/biden-democrats-brewing-battle-budget-bill>, y2k)

With his entire economic agenda hanging in the balance, Biden will need to convince the two fractious wings of his party to come together and pass a comprehensive spending package. And given Democrats’ extremely narrow majorities in both the House and the Senate, there is virtually no room for error.

Despite warning signs of intra-party friction over the cost of the budget bill, congresswoman Suzan DelBene, who chairs the centrist New Democrat Coalition, said the House’s focus right now should still be on the content of the legislation.

“I think discussion of a number is more distracting when the focus really needs to be on, what is the substance going to be of this legislation?” DelBene told the Guardian. “If we have strong legislation the people support, I think we can find the path forward.”

Over in the Senate, majority leader Chuck Schumer is attempting to advance the bill using reconciliation, meaning Democrats do not need any Republican support to pass the legislation. But the 50-50 split in the upper chamber means that every single Democratic senator must be on board to get the bill approved.

Schumer has been clear-eyed about the challenges ahead for the legislation. Shortly after the Senate approved the blueprint for the bill in a party-line vote last month, Schumer told reporters, “We’ve labored for months and months to reach this point, and we have no illusions – maybe the hardest work is yet to come.”

Manchin proved Schumer’s point last Thursday, when he wrote a Wall Street Journal op-ed calling for a “strategic pause” in advancing the spending package.

“While some have suggested this reconciliation legislation must be passed now, I believe that making budgetary decisions under artificial political deadlines never leads to good policy or sound decisions,” Manchin said in the op-ed. “I, for one, won’t support a $3.5tn bill, or anywhere near that level of additional spending, without greater clarity about why Congress chooses to ignore the serious effects inflation and debt have on existing government programs.”

Bernie Sanders, the leftwing chairman of the Senate budget committee, responded to Manchin’s warning in kind, threatening to torpedo the bipartisan infrastructure bill if the spending package is not approved.

“Rebuilding our crumbling physical infrastructure – roads, bridges, water systems – is important,” Sanders said on Twitter. “Rebuilding our crumbling human infrastructure – healthcare, education, climate change – is more important. No infrastructure bill without the $3.5tn reconciliation bill.”

Progressive groups have echoed Sanders’s argument, insisting that every component of the $3.5tn legislation is vital. Sanders had initially called for spending $6tn on the budget bill, so progressives already view the current price tag as a concession.

“We’re in a moment of crisis. Is this really the time for the Senate to press pause?” Ellen Sciales, the communications director of the climate group Sunrise Movement, said in a statement.

She added: “If the Senate can’t pass an incredibly popular climate and jobs plan during a summer of unprecedented, fatal climate disasters, and an economy reeling from a global pandemic, we must abolish the Senate. $3.5tn was the compromise.”

Natalia Salgado, the director of federal affairs for the Working Families Party, noted that some progressive economists have suggested the US needs to spend $10tn over 10 years to meet its obligations in the Paris Climate Agreement.

“We’re going to come nowhere near that,” Salgado said. “So we can’t afford to lose a single cent in this $3.5tn. Every single penny will count.”

Despite the war of words between moderates and progressives, the White House has continued to express confidence that Congress will ultimately reach an agreement on the legislation.

“The president and his whole team are proud of and fighting for the substance of his Build Back Better agenda,” a White House official said in a statement. “These are complex processes, but as recent weeks have demonstrated, leaders in Congress and the President know how to move them forward.”

#### 4---Biden is super confident

Bose 9-16 (Nandita Bose, Biden expects Congress to approve spending, infrastructure bills, <https://www.reuters.com/world/us/biden-says-he-expects-congress-deliver-spending-infrastructure-bills-2021-09-16/>, y2k)

U.S. President Joe Biden on Thursday expressed confidence that Congress will pass both a bill funding infrastructure investments and a supplementary spending bill as Democrats seek to infuse trillions of dollars into the U.S. economy.

#### PC solves spending concerns---democrats can entertain proposals like taxing stock buybacks---it fully offsets the bill and makes it difficult for the centrists to backlash

Sargent 9-7 (Greg Sargent, columnist @ Washington Post, Opinion: How Democrats can make it harder for centrists to downsize Biden’s agenda, <https://www.washingtonpost.com/opinions/2021/09/07/manchin-sinema-spending-stock-buybacks/>, y2k)

When Sen. Joe Manchin III shook up Democrats by demanding a “pause” on President Biden’s $3.5 trillion “human infrastructure” package, he took refuge behind platitudes about limiting its spending to what America “can afford and needs to spend.”

The West Virginia Democrat did not specify what he views as the amount that we truly can “afford” and “need” to spend. Similarly, Sen. Kyrsten Sinema (D-Ariz.) has said she won’t support that level of spending, without saying what the right amount should be.

But such arguments should get a lot harder to sustain, once the political world starts focusing seriously on the details of the corporate tax hikes in the package.

Case in point: Two progressive senators are set to unveil a new plan to tax stock buybacks, in which corporations purchase back shares in themselves as a way to channel additional money to shareholders.

The details of the plan are as yet unknown, but the office of Sen. Sherrod Brown (D-Ohio) confirms to me that it will be revealed this week. Brown will champion the plan with Sen. Ron Wyden (D-Ore.), who as chairman of the Finance Committee is assembling the corporate tax increases for the $3.5 trillion bill, which Democrats hope to pass by the simple-majority “reconciliation” process.

The plan to tax stock buybacks is one of numerous proposals Democrats are considering to offset the reconciliation bill’s spending, Bloomberg News reports. These proposals are expected to include an increase in the corporate tax rate, an effort to capture more revenue from multinational corporations that shelter profits abroad, taxing capital gains like regular income, and more.

If and when this proposal gets debated, it will be harder for centrist Democrats to hide behind platitudinous objections to spending. That’s because specific proposals can both generate revenue and have policy value of their own, and centrists will have to say which of these they oppose and why.

Stock buybacks occur when companies purchase back stocks, which transfers money to wealthy shareholders and in the short term might raise the price of stocks still on the market, enriching shareholder value more.

Many tax experts see these as problematic. Some say they decrease the amount available for productive investments, including wage increases to workers. Others argue they are not taxed the way shareholder dividends are, costing us revenue and starving public investment.

The new proposal from Democrats will address these things. It’s not clear how yet — they will either seek to apply an excise tax on buybacks, or treat them as taxable dividends to shareholders — but that’s the general goal.

In a statement sent to me, Brown said the fundamental goal is to tax corporations when they “transfer wealth to Wall Street” by using accounting trickery unavailable to working people. As he put it: “Corporate greed is fundamental to the Wall Street business model.”

With stock buybacks soaring, this would be another way to bring in revenue to offset the spending in the reconciliation package, which will include investments in child care, family supports, education and combating climate change, among many other things.

“The fact that we can raise billions through a small tax on share buybacks just goes to show that there’s no excuse for congressional Democrats to shortchange the critical investments in the reconciliation bill,” Seth Hanlon, a senior fellow at the Center for American Progress, told me. He estimates this could raise as much as $150 billion or more over 10 years.

The key point here is that when proposals like this one start to get debated in earnest, it will be much harder to oppose the reconciliation bill’s spending levels in an abstract way.

#### Reconciliation is key to infrastructure---without it, House dems will not vote for it

Rock 9-15 (Julia Rock, reporter for The Daily Poster, Whip Count: The Democrats Who Support the Progressive Reconciliation Strategy, <https://prospect.org/politics/whip-count-democrats-who-support-progressive-reconciliation-strategy/>, y2k)

The progressive strategy, which has been endorsed by House Speaker Nancy Pelosi and President Joe Biden, has been to pair the bipartisan infrastructure bill with the larger reconciliation package—either both pass or neither does. In August, a group led by Rep. Josh Gottheimer (D-NJ) backed by the dark-money group No Labels successfully split the two packages apart by winning a promise of a vote on the bipartisan bill on September 27. In order to keep the two together, progressives must either complete work on their larger bill by that date, or defeat or stall the bipartisan bill on September 27. Gottheimer was offered a vote, not passage, after all.

The math is straightforward: Democrats have a four-seat majority, so adding 12 Republicans gives a cushion of 16 votes.

Backers of the bipartisan bill say they expect Republican support to be in the low double digits—Rep. Henry Cuellar (D-TX) pegged it at 10 to 12 in August, though that number may have fallen as Minority Leader Kevin McCarthy and former President Trump have been discouraging Republicans from giving Democrats a win.

The math is straightforward: Democrats have a four-seat majority, so adding 12 Republicans gives a cushion of 16 votes—meaning progressives have just enough committed no votes for a razor-thin margin. Dozens of Democrats did not immediately respond to our request for comment, so the figure of 16 may undershoot the count, and this article will be updated as new responses come in. The Congressional Progressive Caucus (CPC) has previously said that it has the private commitments of a majority of its 95 members for the two-track strategy.

“There are a lot more but not everyone is ready to be public,” said Rep. Pramila Jayapal (D-WA), chair of the CPC. “We had the majority of our caucus in our previous whip counts and we expect the same now. We will release names later if we have to. But I feel confident of our numbers.”

The reconciliation bill, called the Build Back Better Act, includes trillions of dollars to address poverty; runaway costs for health care, child care, and education; and climate change, as well as new taxes on the wealthy and corporations. It needs only a simple majority in both the House and the Senate to pass, because the filibuster doesn’t apply to the reconciliation process.

Some conservative Democrats bankrolled by pharmaceutical companies, private equity barons, and fossil fuel giants have been threatening to vote against the reconciliation bill. This is why strategists believe the only way to get their much-needed votes for the package is for other Democrats to withhold enough votes for the infrastructure bill to block its passage unless the reconciliation bill also passes.

Over the weekend, Sen. Joe Manchin (D-WV) announced that he intends to vote against the reconciliation bill when it comes to the Senate for a vote. Sen. Bernie Sanders (I-VT) responded, making his position clear: “No infrastructure bill without the $3.5 trillion reconciliation bill,” he said in a tweet.

The bipartisan infrastructure bill has already passed the Senate. The question now is whether enough Democrats in the House are willing to make their support for the legislation contingent on reconciliation’s passage to block it from passing the House, even with Republican support, without their votes.

The Daily Poster, The Intercept, and The American Prospect reached out to every voting Democrat’s office in the House of Representatives and asked whether they would publicly commit to this strategy. Every House Democrat was asked: “Will you commit to the two-track strategy and vote to block a bipartisan infrastructure bill if it comes to the floor before a reconciliation bill has been agreed to by a majority of the House?”

The following representatives said they would, or have issued public statements saying they would: Reps. Jamaal Bowman, Brendan Boyle, Cori Bush, Veronica Escobar, Pramila Jayapal, Mondaire Jones, Ro Khanna, Andy Levin, Alexandria Ocasio-Cortez, Ilhan Omar, Ed Perlmutter, Mark Pocan, Katie Porter, Ayanna Pressley, Jan Schakowsky, Rashida Tlaib, and Bonnie Watson Coleman.

“I am absolutely firm that we are yoking these two bills together,” Levin said at a press event on Monday. He declined to get into “the minutiae of process.”

Similarly, Ocasio-Cortez stated publicly in a live-streaming session, “Nothing would give me more pleasure than to tank a billionaire, dark money, fossil fuel, Exxon lobbyist-drafted ‘energy’ infrastructure bill if they come after our child care and climate priorities.”

UPDATE: After publication, Rep. Ed Perlmutter’s office said his statement supporting a “two-track strategy” was “not a yes or no answer” on whether he is committing to vote down the infrastructure bill if it is delinked from the reconciliation bill. This story has been updated to reflect that.

“A Robust Package”

The Congressional Progressive Caucus (CPC), of which 95 representatives are members, announced the two-track strategy in an August 10 letter to leadership. According to the letter, signed by Reps. Pramila Jayapal, Katie Porter, and Ilhan Omar, a majority of CPC members intend to withhold their votes on the infrastructure bill “until the Senate [adopts] a robust reconciliation package.”

#### Prefer issue specific uniqueness---our evidence prices in the thumpers---all itmes within the September deadlines are assumed in our evidence AND still concludes that Biden has sufficient PC

Pramuk 9-13 (Jacob Pramuk, CNBC news, Here are the major issues and deadlines facing Congress as lawmakers return to Washington, <https://www.cnbc.com/2021/09/13/congress-tries-to-pass-biden-economic-plans-fund-government-raise-debt-ceiling.html>, y2k)

Lawmakers will have to rush to meet a range of critical deadlines in the coming weeks. The speed at which Congress works will determine whether the government shuts down, if the U.S. defaults on its debts and whether the largest proposed expansion of the social safety net in decades will take effect.

“We know the American people are facing challenges of monumental proportions, so we must and we will pass legislation that meets the moment,” Senate Majority Leader Chuck Schumer, D-N.Y., said Wednesday in pushing for the a torrent of new investments in social programs.

Congress faces a logjam:

Infrastructure: House Speaker Nancy Pelosi, D-Calif., has promised centrist Democrats she will hold a vote on the Senate-passed bipartisan infrastructure bill by Sept. 27. The pledge is not binding, and politics within her caucus could complicate the timeline.

Democrats’ reconciliation bill: Pelosi hopes to approve an up to $3.5 trillion plan that invests in social programs and climate policy in conjunction with the infrastructure bill. But the House, Senate and White House are still writing the plan — and deciding which version could win the support of nearly every Democrat in Congress.

Government funding: Lawmakers need to pass appropriations bills by Sept. 30 to prevent a government shutdown.

Debt ceiling: The United States could default on its obligations in October if Congress fails to raise the debt ceiling. Democrats are deciding how to lift or suspend the limit on their own after Republicans said they would not join in the effort.

Abortion rights: The House plans to vote on a bill that would protect the right to abortions nationwide after the Supreme Court declined to block a restrictive Texas law. If the chamber passes the plan, it faces long odds in the Senate.

Democrat Gavin Newsom easily survives California recall, will remain governor

America’s ‘unworkable’ child-care system is failing families, Treasury Department says

Pelosi told top general Trump should have been ‘arrested on the spot’ for inciting Capitol riot

Infrastructure

Democratic leaders told centrists threatening to hold up the party’s reconciliation plan that they would vote on the $1 trillion bipartisan infrastructure bill by Sept. 27. A final House vote would send the package — which would put $550 billion in new money into transportation, broadband and utility systems — to Biden’s desk for his signature.

Congress has to overcome hurdles before a long-awaited infrastructure investment comes to fruition. If Pelosi moves too soon to pass the bipartisan bill, it could jeopardize support for the plan among progressives who want to see Democrats’ budget plan passed at the same time.

Moving too far past the nonbinding Sept. 27 target risks drawing the ire of the same centrists who previously tried to hold up the Democratic spending plan. Pelosi has said she set the deadline in part because surface transportation funding expires Sept. 30.

Rep. Josh Gottheimer, a New Jersey Democrat and one of the lawmakers who tried to delay the reconciliation bill, stressed Monday that he wants to see the infrastructure bill passed later this month even if the budget plan has not yet made it through the Senate.

Democrats’ reconciliation bill

Democrats have to pull off a heavy lift to push through their up to $3.5 trillion spending bill, the biggest piece of Biden’s economic agenda. While party leaders do not need to win over any Republicans to pass the plan through budget reconciliation, they will need to keep every Democratic senator and nearly all House members on board to get it through Congress.

Committees are working to write their portions of the plan, then lawmakers will combine them into one sprawling package. Schumer first set a Sept. 15 target date for committees to finish crafting their parts of the legislation.

#### AND- Everything is do-able as long as you limit the agenda to the squo

Ogrysko 9-13 (Nicole Ogrysko, Federal News Network, <https://federalnewsnetwork.com/mike-causey-federal-report/2021/09/september-is-looking-downright-nutty/>, y2k)

The Senate returns from August recess today to a mountain of work. Each item on the to-do list is a heavy lift, and the list itself is quite lengthy.

Let’s just quickly run through a few items on that list. Some are technically due by the end of the September, while others theoretically have indefinite deadlines or end-of-calendar-year timelines.

Avoid a government shutdown

Raise the debt ceiling

Pass the $1.3 trillion infrastructure bill

Pass a $3.5 trillion reconciliation bill

Pass the annual defense authorization bill

(Eventually) secure full-year 2022 funding

Let’s start at the top with the “s” word. This is priority no. 1 considering the date on the calendar. Congress must pass some sort temporary stop-gap bill by Sept. 30 to avoid a government shutdown.

But members are nowhere close to finishing a catch-all spending omnibus that would fund federal agencies in fiscal 2022, and we can probably just forget individual appropriations bills at this point.

Insight by Carahsoft: Learn about the efforts today and what’s on the horizon by civilian and the military services in rolling out 5G infrastructure and devices to improve mission effectiveness

A continuing resolution is virtually inevitable, which the White House acknowledged last week when it released a supplemental spending wish-list. It didn’t comment on how long a potential CR should be — or provide any reassuring comments that Congress would make it happen before the fiscal year deadline.

Timing is tight but doable.

#### 2---Any thumper is neg uniqueness argument---there are a lot of things on the plate, but PC is key to prioritizing and sustain momentum for infrastructure---it’s effective now

Okun 9-7 (Eli Okun, The Hill Staff, POLITICO Playbook PM: Biden’s climate/infrastructure challenge, <https://www.politico.com/newsletters/playbook-pm/2021/09/07/bidens-climate-infrastructure-challenge-494225>, y2k)

That’s where things get dicier. We don’t need to remind you how difficult it will be for Democrats to thread the needle and get these bills to the president’s desk.

— If Biden and Democratic leaders go too big with their climate planks in the infrastructure bill, they risk losing the support of the moderate JOE MANCHIN types. (That, too, faces its own political obstacles: Speaker NANCY PELOSI this morning, when a reporter indicated she’d have to lower the reconciliation price tag to accommodate moderates, simply responded: “Why?”)

— The perils of going too small, on the other hand, are neatly exemplified by this NYT story about electric cars, a key piece of the economy-wide shift ahead that’s necessary to tamp down emissions and combat climate change: “The country has tens of thousands of public charging stations — the electric car equivalent of gas pumps — with about 110,000 chargers. But energy and auto experts say that number needs to be at least five to 10 times as big to achieve the president’s goal,” write Niraj Chokshi, Matthew Goldstein and Erin Woo. “Building that many will cost tens of billions of dollars, far more than the $7.5 billion that lawmakers have set aside in the infrastructure bill.”

With a crammed legislative calendar, the White House will have to keep the pressure on to make sure meaningful climate provisions don’t fall by the wayside — as seems likely to happen with legislation concerning abortion rights, police reform, immigration reform and raising the minimum wage.

— Our colleagues Anita Kumar and Chris Cadelago have more on “Biden’s growing policy backlog” — and the political risks for Democrats if they let down key constituencies.

Asked this morning how he’d win over Democrats on infrastructure, Biden said simply, “[T]he sun is going to come out tomorrow,” per pooler Brian Bennett of Time. That’s true. But he’s just gotta make sure it’s not warming the earth too quickly.